

X*—STATES OF NATURE, EPISTEMIC AND POLITICAL

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ABSTRACT The paper asks what is living in political state-of-nature approach and answers by way of considering recent epistemic uses of state-of-nature arguments. Using Edward Craig's idea that a concept of knowledge can be explicated from the need for good informants, I argue that a concept of authority can be explicated from a parallel need for good practical informants. But the need not justify rule of a Platonic elite. Practically relevant epistemic advantages are more likely to be secured by the political creation of institutions. In conclusion it is suggested that this approach can explain a problem of justification which arises for Joseph Raz's account of authority.

I

Introuction. What is living and what is dead in the state of nature? An approach to the legitimacy of political authority? The living legacy, for many thinkers, was long the doctrine of consent. But if actual consent is sought, it is scarce and potentially enslaving while if rational consent is imputed, the volitional bond is lost. Joseph Raz has grasped this nettle. He starts afresh with a substantive theory of authority which rejects any conceptually constitutive link between consent and authority.¹ But his analysis while capturing the basis of authority as mediating between subjects and independently applying reasons, obscures the need for authority to bear marks which identify it to its subjects. I argue

1. Among Raz's works on authority are: *The Authority of Law* (Oxford, 1979); 'Authority, Law, and Morality', *The Monist* 68:3 (1985), pp. 295-324; *The Morality of Freedom* (Oxford, 1986); 'Introduction' and 'Authority and Justification' in Joseph Raz (ed.), *Authority* (New York University Press, 1990), pp. 1-19, 115-41. Below I cite these works including the edited collection, by title only. For Raz's view of consent, see *The Morality of Freedom*, pp. 80-93, also 'The Obligation to Obey: Revision and Tradition' and 'Government by Consent' in *Ethics in the Public Domain* (Oxford, 1994), pp. 341-54, 355-69, and the mildly expanded role countenanced in 'Facing Up: A Reply to My Critics', *Southern California Law Review* 62:3-4 (1989), pp. 1153-1235, at p. 1183. I refer to this volume of the *Southern California Law Review*, which is a Symposium on the Works of Joseph Raz, simply as *SCLR* below.

that practical explication² of authority from a revived and revised state of nature can restore this core notion of epistemic connection. On my account, the state of nature suggests that authority involves a central role not of individual consent but of the social construction and control of institutions.

II

Arbitrariness and the Epistemic. Invocation of a state of nature may seem to invite arbitrary stipulation on the part of the theorist.³ The evidence of the Grotian⁴ or (as I shall call it) political state of nature tradition is not encouraging. Although part of the aim of that tradition was to find minimal starting points to which all could agree, these were moral-juridical structures which in bestowing normative resources on individuals answered to few functional constraints. Disagreement about dispositions (how sociable? how suspicious?) only exacerbated the seemingly arbitrary choice of the degree of normative complexity with which a given state of nature was endowed.

Many students of political theory have found these difficulties insuperable. Recent epistemologists, however, have been unabashed. As used by Edward Craig, the state of nature can help to explicate a concept which is practically analogous to a concept

2. I draw the notion of practical explication from Edward Craig, *Knowledge and the State of Nature: an essay in conceptual synthesis* (Oxford, 1990), p. 8, and discuss it further below.

3. See the methodological comments by Miranda Fricker, 'Rational Authority and Social Power: Towards a Truly Social Epistemology', *Proceedings of the Aristotelian Society* n.s. XCVIII, 2 (1998) 159–78, at pp. 164–5. It was hearing a precursor of that paper which prompted the thoughts expressed in this one. Analytical discussions of the political state of nature tradition tend to zero in immediately on 'contract and consent', the heading of Jean Hampton's contribution on the topic to Robert E. Goodin and Philip Pettit (eds.) *A Companion to Contemporary Political Philosophy* (Blackwell, 1993), pp. 379–93. The moral arbitrariness and putative patriarchy of the depictions of states of nature have attracted much criticism from feminist thinkers; see e.g. the summary remarks by Seyla Benhabib, 'The Generalised and the Concrete Other' in her *Situating the Self* (Polity, 1992), pp. 148–77, at pp. 155–8.

4. Grotius's intervention marked a turning point in the natural law tradition; he was the first of those whom contemporary (following the 18th century) theorists see as 'state of nature' thinkers. For the situation of this tradition in the development of natural rights and natural law theories more broadly, see Richard Tuck, *Natural Rights Theories: Their origin and development* (Cambridge, 1979), and his introductory remarks in *Philosophy and Government, 1572–1651* (Cambridge, 1993), pp. xiv–xvii. I take Grotius, Hobbes, Locke, Selden, and Pufendorf to be the primary participants in this tradition, with Rousseau and Kant as reinterpreters of its significance, methods, and point. I believe nothing in this paper to depend on this precise lineage or on the many and important differences among these thinkers.

which we actually have, the concept of knowledge. The explicated concept is not extensionally identical with the actual concept, for which its core features may be neither necessary nor sufficient.⁵ But they will, if the explication succeeds, illuminate aspects of the practical role played by the concept (what it does for us, what we do with it) which may elude strictly analytical approaches.

Whereas political states of nature have begun from what they take to be basic normative structures, Craig's epistemic state of nature (as I shall call it) begins from certain very basic features of human social life: the fact that humans need true beliefs in order to engage effectively with their environment, which means that they need to be able to evaluate sources of information, and the fact that they are diversely situated.⁶ The idea is that in these minimally social conditions, a practice of identifying good informants would arise as a specially important and distinctive way of acquiring such true beliefs. And so where political states of nature saw a chasm between the state of nature and civil society governed by authority, Craig argues that a concept which would arise in a minimal human social world will be with us in more complex worlds 'whether things started that way or no'.⁷ In the epistemic state of nature our concepts are, if I may put it this way, always already present.

The political state of nature having in part prompted Craig's approach of practical explication, can the latter now be borrowed to revive the former? I believe it can, both in form and in content. Using the *form* of practical explication for the concept of authority may attract objection. Surely the aim in political theory is normative justification, not explication.⁸ But conceptual clarification, whether analysis or explication, is intertwined with the theory of justification.⁹ One way in which Raz has advanced beyond the Grotian tradition is by insisting on separating the two; my revision of the state of nature is intended to show that that approach can make a contribution to the former as well as to the latter.

5. Craig, p. 5, pp. 49–52.

6. *Ibid.*, p. 11.

7. *Ibid.*, p. 84.

8. As Craig himself notes, p. 9.

9. Raz agrees, noting that his editorial juxtaposition of analytical and justificatory articles 'indicates a belief that the conceptual-clarificatory and the moral-justificatory issues are inextricably intertwined', 'Introduction', *Authority*, p. 1.

What about the validity of borrowing the *content* of the epistemic state of nature for its political counterpart? Ironically, the Grotian tradition itself tended to downplay or deny the epistemic dimension of political authority. Richard Friedman makes a stylised contrast in this vein. On the one hand is theoretical (epistemic) authority, an unequal system rooted in an already existing inequality in expertise between an authoritative person and her fellows. On the other hand is practical authority, an unequal system rooted in a prior equality between the authoritative person and her fellows and set up as a system precisely because they as equals disagreed.¹⁰ Friedman tells what is essentially a state of nature story about the setting up of a system of practical authority as an arbitrary second-order mechanism to resolve the problems arising from natural equality. For him, the need to resolve disagreement is what is relevant to practical authority, not the need to evaluate diverse sources of information.

But the need to resolve disagreement is itself ambiguous. It may mean only anointing one or another side the winner. In this case the reasoning required is purely evaluative, deciding who is right, or else simply invoking decision by fiat. However, when disagreement is about action, what is to be done, it is implausible that it can be resolved by purely evaluative means; resolving it will require attention to the facts of the situation and the position of others as well as to the disputants themselves. That is, insofar as the resolution of disagreement bears on the resolve to act, it requires practical as well as evaluative reasoning. It is only a practical dimension which can make sense of the broad and general powers claimed by political authorities in particular.¹¹ Argument from the disagreements of equals leads naturally, if not necessarily, to a broad conception of practical authority.

Such practical authority will necessarily have an epistemic dimension. The authority must have the relevant knowledge of applicable reasons, facts and causal connections; and it must be able to exercise good judgment, using this knowledge, about what is to be done. So far, scrutinising state of nature assumptions has

10. R.B. Friedman, 'On the Concept of Authority in Political Philosophy', *Authority*, pp. 56-91, at pp. 77-84.

11. I suspect that the Grotian tradition, like Friedman's ideal-typical account, was typically ambiguous between these two senses of why practical authority was required.

shown in common with Raz's own analysis that there must be an epistemic dimension to practical authority (though it cannot claim to have developed the analytical structure of the point to the same extent). Suspicion of this epistemic dimension derives often from the thought that it must rest, like Friedman's construal of theoretical knowledge, on some special knowledge accessible only to an elite few.¹² I argue below that this is a misunderstanding of what epistemic advantage for practical authority requires or indeed allows.

Political and other forms of practical authority will then require some access to knowledge, and some advantages in judgment, if their rule is to benefit their subjects. Authority requires certain epistemic assets. It appears then that any state of nature in which authority could and would arise, must be one in which these assets, including knowledge, could and would arise as well. The converse should then hold. Assuming that Craig's state of nature story does the job of explication for the concept of knowledge, it is economical to see whether it can do the same for authority. If it can, then the arbitrariness of the post-Grotian states of nature may be remedied; and the place of the concept of authority in our social practices illuminated.

III

An Explication of Authority. Recall the epistemic state of nature. It is characterised by individuals who are diversely situated, and diversely capable, and who need to evaluate sources of information in order to acquire the true beliefs they need to function. Craig argues that the practice of exchanging information will hinge on the identification of good informants. These must have the qualities dubbed by Miranda Fricker as competence, trustworthiness, and possession of indicator properties or 'marks' by which their fellows can pick these properties out.¹³ Viewing one another as informants

12. Leslie Green expresses such suspicion in 'Law, Legitimacy, and Consent', *SCLR*, pp. 795-825, at p. 803. Green is right to believe that Raz does not argue from premises of elite access to special knowledge about what to do, *contra* Michael S. Moore, 'Authority, Law, and Razian Reasons', *SCLR*, pp. 827-96, at p. 831, and Yasutomo Morigawa, 'Authority, Rationality, and Law: Joseph Raz and the Practice of Law', *SCLR*, pp. 897-912, at p. 899; cf. Raz, 'Facing Up', p. 1179. I argue below that what might be called an argument from expertise in the state of nature does not need to rely on such objectionable premises either.

13. Fricker, p. 163, cf. p. 169 for Craig's term 'marks'.

engaged in a co-operative venture will improve their chances of gaining true beliefs insofar as informants (unlike other evidential sources) can tailor their information to the perceived needs of the inquirer.¹⁴ Such a co-operative backdrop is then part of a minimal development of the practice of using informants, although parasitic practices of deceit will certainly arise as well. I would add that because diversity in situation means that no one can gain a complete monopoly of truths (while they may gain limited monopolies over secrets), all remain subject to the disciplines of the epistemic regime which tests and identifies good informants.

The identification of good informants, then, is the core of the reconstructed concept playing the same role in our lives as does knowledge. What converts the social ascription 'good informant' to the social ascription 'knower' is a process of 'objectivisation', in which people come to assess and identify the adequacy of informants for persons and purposes beyond their own immediate concerns.¹⁵ So the social ascription of 'knower' marks out persons who can be trusted, on the basis of social interaction, as sources of knowledge. Notice that though the search for knowledge aims at truth, often what is true cannot be ascertained independently of the testimony of an informant.¹⁶

In the epistemic regime described above, the need for what becomes knowledge originates in difference of situation. Most crudely, some people can see what others cannot because of where each stands. Cases of more sophisticated beliefs can still be fit into this schema: some people can form certain true beliefs because they are specially situated, meaning now that they have access to a range of data and resources for understanding at their disposal. In Raz's words, their advantage lies 'in their easy access to the evidence and in their better ability to grasp its significance'.¹⁷ Such special situatedness can become a shared good. While it may arise naturally or by an individual's solitary efforts, one step further in

14. Craig, pp. 35–36.

15. *Ibid.*, pp. 82–97.

16. Peter Lipton, 'The Epistemology of Testimony', *Studies in the History and Philosophy of Science* 29:1 (1998) 1–31, at p. 29: 'without first independently knowing whether what she [a testifier] says is true', we may in some cases judge that the 'best explanation of her saying what she did is that she is unlikely to be deceived or deceiving on that sort of matter...'. My argument is that institutional design helps us to be able to judge this the best explanation.

17. Raz, 'Authority and Justification', p. 129.

social complexity will plausibly bring schemes to foster the epistemic assets of certain people, to (help them to) develop their expertise for general benefit. Along with those gaining expertise by being naturally advantaged or industrious, these institutions will nurture those who count as theoretical authorities. The institutions are likely to be able to develop far more complex forms of situational advantage than are individuals acting on their own.

The same incentive to foster expertise should apply to practical authorities. If one has reason to find something out, one has reason to turn to a good informant. If one has reason to do something, one has reason to find and obey someone who can enable one to do it better than one could oneself. Here I acknowledge that the argument so far applies only to those reasons for action which are internal to the person and which they recognise as facilitated by relying on the directives of authority. The point at present is that such a drive toward institutional authority seeks to turn the natural diversity in situations, with which we began, into an artificially enhanced common benefit.

While the establishment of institutions can be seen, on the positive side, as simply an artificial enhancement of 'natural' situational advantage, there are also features of institutions which can protect them especially well against negative epistemic influences. The risks of bias and, more sinisterly, blackmail, attend many otherwise well situated individual knowers. Institutions, however, can be designed precisely to minimise such risks. Procedures can be established to expose and reduce bias, and institutions are for various reasons less susceptible to blackmail than individuals. So institutions can at once develop special epistemic assets and protect them against the risk of abuse. In the state of nature, those who have reason to seek good informants will also have reason to establish good institutions to inform them.

Institutions and procedures are especially relevant to practical problems in a further respect. I distinguish now between practical reasoning and judgment. Practical reasoning deals with reasons understood as facts and concludes in deontic statements: I ought to ϕ . (If so, practical reasoning aims at truth of a kind: it is true that I ought to ϕ .) Judgment deals with aspects of uncertainty which enter into practical reasoning: some of the facts which are relevant to my reasoning may be uncertain, so that I have to adopt

an epistemic strategy for dealing with this.¹⁸ There are many sources of uncertainty. Among them, some facts consist in probabilities; future events or actions by others are uncertain; the best way to satisfy multiple deontic requirements in a single course of action may be uncertain.¹⁹ Judgment tells us how to handle these uncertainties. While it may be true that there are right and wrong ways to incorporate such uncertainties into practical reasoning, the resulting judgments about how to act are classed as good or bad (so also better or worse) rather than true or false. Unlike theoretical reasoning, which seeks truths, and practical reasoning which seeks true deontic statements, judgment has no truth-making properties. But it does have good-making properties and these will depend largely on the goodness of the procedures adopted.

Procedures, then, are even more important as markers of good judgment than they are as markers of competence and trustworthiness. To the extent that uncertainty afflicts the domain of action of a given authority, there will be an incentive to regularise that authority by institutional procedures which can enhance and protect its judgments. Political authorities, in virtue of their generality and the relatively large populations they govern, will be especially in need of good judgment about how to integrate the many reasons for action which apply to their subjects (e.g. how best to satisfy the importance of swift travel with the importance of protecting the environment and of cutting taxes to stimulate the economy).

Institutionalisation then has positive benefits; it can also protect against negative influences. This has an especial significance for practical authority. I noted above that in the theoretical case, diversity means that good informants will not be able to establish a monopoly over truths (though they may do so over some subset thereof). Practical authorities, however, precisely establish monopolies in the domain to which their directives apply. Within the scope of the reasons and persons in their particular domain, no one else may give directives except by permission of the authority

18. On uncertainty see Stephen R. Perry, 'Second-Order Reasons, Uncertainty, and Legal Norms', *SCLR*, pp. 913-94, at pp. 920-27. Raz admits in response to Perry that 'I have failed to provide an adequate explanation of the role of uncertainty or risk in practical reasoning', though I believe he is right to resist Perry's specific claim that exclusionary reasons must be understood subjectively; for both points see Raz, 'Facing Up', p. 1154, 1162-4.

19. I owe this last point to some stimulating remarks by Onora O'Neill.

(such permission may be tacit). Practical authorities claim a monopoly of power within their bounds. But the monopoly of power threatens to corrupt the free flow of information and reasoning. It reduces the reliance of the authority on others' free cooperation in providing information (since it can coerce them, though not always legitimately) and so reduces the incentive of the authority itself to pass on true information.

That power tends to corrupt is, then, an epistemic as well as a moral truth. Notice, by the way, that to say in this connection that absolute power corrupts absolutely is to make a technical point about the monopoly which all authorities hold, not a constitutional point about the advantages of limited government. The argument about monopoly applies to the nature of the power which authorities enjoy, not to its scope which in all cases will be more or less limited.

The best defence against these moral and epistemic risks of practical monopoly lies in extending the drive to institutionalisation once again. Good procedures mark competence and trustworthiness; transparent procedures simultaneously thwart epistemic and moral corruption, and mark its absence. The mark of a well-functioning authority is its procedures; the more visibly monitored these are, the more common and evident the mark. One of the obvious and best ways to produce justified trust in an authority is for it to be designed, controlled, and monitored according to transparent procedures. And this, I submit, is the core of the concept of authority which is illuminated by the state of nature argument. Raz says nothing about whence the epistemic assets of authority derive; as far as his conceptual analysis is concerned, they may be gifts of a *deus ex machina*. Argument from the state of nature restores the significance of epistemic assets and the fact that one of their central, though not necessary or sufficient, sources, lies in the right sort of epistemic connection between authorities and their subjects.

IV

External Reasons and Political Authority. Notice that the argument has not required any moral scaffolding, nor has it required any sharp break between the state of nature and the normatively transformed world (transformed by the concept of knowledge or

of authority). However, it has so far remained within the ambit of internal reasons for agents. But can authority also oblige people to act, when basing its directives on reasons which are 'external reasons', in Bernard Williams's sense, for some or all subjects? How can authority oblige me to act for reasons which may in fact apply to me, but which I do not recognise or feel the motivational force of, as reasons for me?

Raz's answer to this is simply to invoke moral objectivity: '[p]ublic authority is ultimately based on the moral duty which individuals owe their fellow humans.'²⁰ The state of nature, however, points instead to practices arising within the human social world, this time as it increases in complexity. Craig's term for the parallel case of knowledge arising out of the practice of identifying good informants is 'objectivisation'. People begin to recognise that they have an interest in identifying sources of information for other persons and for purposes other than their own immediate ones (even for purposes which they themselves could never adopt). It is the social nature of objectivisation which extends the concept of authority from internal to external reasons.

This is why the concept of knowledge as it ultimately develops does not require the knower necessarily to be a good informant for the person ascribing knowledge: as the concept is objectivised, someone can be termed a knower who may not be willing or able to inform me, or anyone. Nevertheless the normative force of the concept remains for me and is socially binding. I am rationally bound to accept certain persons as knowers on the basis of their socially acknowledged standing as such, and I can be held socially and epistemically liable if I do not. If my neighbour, who has access to the main drains, informs me of a sewage leak, I cannot claim not to have known it by saying that I don't consider my neighbour someone who knows.

So for the practical case. Although the core notion of authority lies in its ability to get me better to comply with reasons I recognise (internal reasons), it is objectivised to include compliance with reasons which I may not recognise. In neither case does objectivisation mean that every time a concept is applied, it must be assumed to obtain; we can debate whether my neighbour really

20. Raz, *The Morality of Freedom*, p. 72.

knows about sewage leaks or whether the Taliban are a genuine authority in Afghanistan. The point is only that the concept of authority, like the concept of knowledge, would in being objectivised come to include the possibility of external as well as internal reasons justifying its application. It is only the possibility of these being justificatory considerations, rather than the issue whether they hold in a particular case, which is needed here.

Vindicating authority based on external reasons will clearly be crucial for vindicating political authorities in particular. I have said little about the peculiarities of political authorities so far, except that they claim general authority and deal with large populations. Raz himself says scarcely more than this about what distinguishes political authority.²¹ On both his account and my own, this is because, I believe, the reason-based approach to authority makes political authorities different in degree rather than in kind from other practical authorities.

It may be that to say more would require rehabilitating Friedman's point about the problem of disagreement about equals as also part of the core of political authority; that is, rehabilitating the Grotian tradition in the terms in which it would have understood itself. But equals disagree about many things, not all of which are political, and if it is said that there must ultimately be a sovereign judge to resolve disagreements at the highest level, then the point with which I began about resolution of disagreements leading on to general practical concerns must be reinvoked. Contrary to the self-understanding of the Grotian tradition, the reworking of the state of nature argument which I have hazarded here suggests that Raz is right to say that the fundamental concept in the field is not political authority as *sui generis*, but rather that of practical authority as the genus. Resolving disagreements will be one important, perhaps defining, task of political authority but not its entire *raison d'être*.

21. *Ibid.*, pp. 71–5. Raz notes on p. 75 that the possession of wisdom, and freedom from bias and impetuosity, are two of the five most common grounds for legitimating political authorities (the other three being the value of indirect strategies, the drawbacks in having to decide for oneself what to do, and the fact that the authority is in a better position to achieve what the individual is in no position to achieve). But he does not tie these epistemic assets specifically to institutions, nor show how they require people to control and monitor such institutions as well as establish them.

V

Institutions and Justification: on the problem of 'showing'. The state of nature argument, then, has so far corroborated Raz's point about the fundamental concept being practical authority; and it has, against the Grotian tradition, argued that epistemic concerns will be part of a necessary drive to institutionalise such authorities. I show now that the state of nature argument can also complement Raz's analysis by resolving a problem which arises within it. The problem is how subjects are to know, or judge, that they should obey an authority. To appreciate its force requires a brief account of some aspects of Raz's theory.

Raz's substantive theory of authority consists of two parts: an analysis of the concept of authority, which includes both theoretical and practical authorities, and a moral doctrine of the conditions of legitimate political authority. These two parts are, as in my own argument, intertwined. The Normal Justification Thesis (hereafter, 'NJT') states conditions which flow directly from the conceptual analysis but which are necessary and, Raz says, 'normally' sufficient²² for the moral justification:

...the normal way to establish that a person has authority over another person involves *showing* [italics mine] that the alleged subject is likely better to comply with reasons which apply to him...if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.²³

What does it mean to 'show' this, and to whom must it be shown? In keeping with Raz's objectivism, one might think that what matters is showing it to be a fact independently of whether the subject believes it (perhaps to someone who criticises the authority for coercing the subject on these grounds). But since authority is unlikely to be generally effective unless it is generally believed by

22. There are cases in which the NJT may not be sufficient to establish the claim of authority, such as when 'there is another person or institution with a better claim to be recognized as an authority' and the two claims are incompatible; Raz, *The Morality of Freedom*, p. 57. While 'better claim' is ambiguous (it might mean the claim to be 'a better authority': more efficacious, more scrupulous, and so on) I think that Raz means it to indicate something like a *prior* claim. The idea would be that a reasonably good authority in the hand is worth two in the bush: though all that we need is *an* authority, we have reason to remain loyal to *this* one just because and insofar as it is already in place and already ours. This is, interestingly, an essentially Hobbesian thought.

23. Raz, *The Morality of Freedom*, p. 53, applied to groups on pp. 71 and following.

its subjects to be legitimate, and since it must be effective in order to be a candidate for legitimacy, the subjects must figure among those who are to be shown that the NJT obtains.

The authority might point to the results of acting on its directives as evidence that the NJT obtains for its subjects. But however good the results, how are subjects to know that these are *better* than they were likely to achieve on their own? This seems to engender a paradox. To see that the authority's results were better would require subjects to reproduce the reasoning of the authority in order to check it against their own. But if they were able to reproduce the authority's reasoning, they wouldn't need to follow its directives.

The institutional conception of authority which arose from the state of nature can help to resolve this paradox. As Heidi Hurd has observed, a person may be able to judge the capacity and motivation of an authority (in the terms used above, its competence and trustworthiness) without having or being able to test its judgments against her own.²⁴ The fact that institutions can bear the marks of their competence and trustworthiness in their procedures and constitution, means that individuals will have reason to trust their judgments. And the fact that institutions are designed to dispose of greater situational advantages than can most individuals, while being better protected against epistemic disadvantages, means that individuals will have reason to trust their judgments as better than their own. Neither of these facts defeats individual challenge; they can be outweighed by other reasons such as those stemming from an individual's own exceptional expertise. But together, they can 'show' subjects that it is rational for them to follow an authority so as to be likely better to comply with right reason.

While Raz is right to argue that an authority is normally legitimate only if it meets the NJT, the NJT itself means that the people must be shown the sort of marks which can indicate that the authority's reasoning is sound and superior to their own. The marks may mislead, but they are the main source of evidence for the normal justification thesis, and the only source when truth is

24. Heidi Hurd, 'Challenging Authority', *Yale Law Journal* 100:6 (1991), pp. 1611-77, at p. 1674. Hurd argues that all practical authority is in fact simply theoretical authority; an authority's commands should be taken as evidential of what to do, not as having exclusionary force.

not independently to be found. It is neither necessary nor sufficient for the justification of authority that it be constituted in institutions bearing marks of competence and trustworthiness. But the practice of having authorities at all would be obscure if not for the deep need of being able to identify, promote, protect and control the epistemic and practical services they render.

Institutions, of course, do not design themselves. They are designed by people. And so in monitoring and assessing the institutional marks of expertise and good judgment, people are engaged in a continuing collective process of promoting and protecting the authorities which serve them. It is this ongoing constructive process which argument from the state of nature can establish as part of the core point of the concept of practical authority; and it is this, rather than the notion of individual consent, which deserves to live on in political theory.²⁵

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