

PROLEGOMENA TO AN EPISTEMIC CASE FOR CLASSICAL LIBERALISM

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All political theories assume, of course, that most individuals are very ignorant. Those who plead for liberty differ from the rest in that they include among the ignorant themselves as well as the wisest. (F. A. Hayek, *The Constitution of Liberty*, 2011, 82)

Introduction

LIBERTARIAN NATURAL RIGHTS to life, liberty, and property have been defended on a variety of philosophical grounds. Locke and Jefferson¹ argue that God created all people equally and gave them equal opportunity to

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¹ With respect to Jefferson, this seems to be his position prior to his service to France, for example, in his 1779 "Bill Establishing Religious Freedom." Hayek expresses some concern that after his stint in France, Jefferson's conception of liberty changed from "British" in orientation to "French." Hayek associates the former with "spontaneity" of social interaction absent state intervention and the latter with the idea that state intervention is a necessary condition of the most valuable type of freedom, a view which, Hayek claims, "has become the origin of totalitarian democracy" (2011, 111).

appropriate the goods of nature.² Mill and Hayek argue that a cost-benefit analysis of empirical cases reveals that a government that concerns itself with promoting the welfare of its citizens often “interferes wrongly, and in the wrong place”³ and that a free society does a better job of protecting welfare than any other. Robert Nozick suggests without much argument that people are “ends in themselves,” and therefore, that their lives, abilities, and the products of those abilities may not be used or taken away without consent.⁴ Each of these arguments has been challenged with varying degrees of success. A central difficulty with each has to do with the complicated metaphysical and moral ontologies necessary for their conclusions.⁵ Questions that must be answered satisfactorily before any one of these accounts can be considered plausible include: Is it reasonable to believe God created us equally and gave us an equal share in the land? Does Hayek’s historical consequentialist argument hold against contemporary, sophisticated socialist democracies that many argue are more efficient at promoting general welfare than a capitalist society? Are moral principles plausibly expressed in consequentialist terms in light of classical counterexamples? What does it mean for a person to be an “end in himself,” and why does this idea have moral implications for how he may be treated? How might we determine whether a certain lifestyle is objectively valuable or objectively worth pursuing? And, perhaps the most pernicious problem for all realist moral theories, how do we treat one another when we disagree about the right thing to do?

The philosophical debates engaged to answer these questions are quite diverse, and agreement on a set of answers, while narrowed in important ways by sophisticated versions of deontology and utilitarianism,⁶ is far from

² Locke (1937, 3); Jefferson (1779).

³ Mill (2002, ch. IV); Hayek (2011). The quoted phrase is from Mill (2002, 86).

⁴ Nozick (1974, 45-51).

⁵ Because of persistent widespread disagreement, some recent treatments of ethics begin from the assumption that humans will disagree, at the most fundamental levels, about what is right and wrong, and therefore, that the likelihood of developing a universally acceptable moral theory is low (c.f., Gert, 2005, 2007; Kane, 2010). An explicit confession to this effect with respect to political matter is made by Dipert (2001): “The fact that people I intellectually and morally respect disagree about fundamental assumptions in political theory is itself strong evidence, stronger perhaps than my own intuitions and arguments, about the real epistemological status of these assumptions. I do not *know* them to be true” (29, n. 1, emphasis his).

⁶ C.f. the work of Onora O’Neill, Christine Korsgaard, R. M. Hare, and Peter Railton.

forthcoming. And while this ongoing debate is a boon to the academy, political society marches on—policy-making demands that citizens make decisions *now* about government’s relationship to them. In order to sidestep these ontological questions and provide a framework for making political decisions, I offer an alternative approach to natural rights grounded in epistemology, in particular, epistemic limitations with respect to beliefs about individuals’ interests.

I begin, like many classical political philosophers, with the assumption that humans choose to be part of society⁷ because it affords them a greater opportunity than the state of nature to discover and live the sort of life they perceive to be valuable. Given this assumption, a central question for political philosophers is what I call the “scope question”:

SQ: What is the morally justifiable role of government?⁸

As this is a moral question, the questions raised to answer it will tend to be moral as well: for instance, “What (morally) should *citizens* be allowed to do?” as Hobbes and Rawls seem to ask, or “What (morally) should *government* be allowed to do?” as Locke and Nozick seem to ask. It is natural to frame the scope question in moral terms because the dimension of life we are trying to preserve is moral—each of us wants a *good* life—and because we come to the political table with a quiver full of moral beliefs—we generally think we know what is good for others. But it is precisely because of this assumption (that we know what is good for others) that what I will call “descriptive moral

⁷ By “society” I mean social interactions organized under an official governmental body, as opposed to, say, an anarchist collective. By “choose to be part of” I do not mean to imply that anyone has made a conscious choice to be a member of a political society (e.g., we need not presuppose an actual state of nature). I mean simply that people tend to remain where they are or change societies on the grounds that doing so provides them greater opportunities for what they want out of life than becoming a hermit or joining an anarchist collective, and that few people view organized society as so pernicious as to warrant suicide. While this assumption is broad, it is important because it accommodates intuitions about the benefits of society held by many classical and non-classical liberals. Importantly, it includes those most likely to be in dialogue with me, including proponents of democratic socialism and guided democracy. Thus, this assumption frames my discussion in ways with which my opponents will largely agree.

⁸ I am using “role” in the singular for simplicity, allowing that there may be more than one justifiable role and that one or more of these roles may be highly complex, relating to political offices and democratic processes in a variety of ways, any one of which may become morally problematic. In this paper, I will focus on the extent of government involvement in citizens’ pursuit of the good life.

pluralism” threatens our attempts to develop a moral system that can underwrite policy.

By *descriptive moral pluralism* I mean the view that, even after substantial critical reflection, people disagree about what actions are good or contribute to a good life.⁹ Descriptive moral pluralism is distinct from *normative moral pluralism*, which is the view that for different people, different actions are good, and different actions contribute to the good life.¹⁰ I take it as given that descriptive moral pluralism is true: people do, in important respects, disagree about which acts are permissible, obligatory, impermissible, or contribute to a morally good life. Some believe that drinking alcohol and smoking marijuana are morally impermissible, or at least that they cannot contribute to a morally good life, while others embrace one or both as permissible and valuable. Some believe sex can only be fulfilling in marriage and that outside of marriage it is harmful or sinful, and therefore, impermissible, while others believe that a variety of different types of sexual relationships are permissible and can be fulfilling. The challenge for political philosophers is to construct political philosophies that substantiate normative judgments in these disputes even though ethicists and citizens stand in substantive disagreement over the nature of morality.¹¹

⁹ There is an important conceptual distinction between actions that are morally obligatory, permissible, or impermissible, and actions that are valuable. Drinking alcohol may be morally permissible but more or less valuable to a good life. Similarly, to a person who has made a promise of fidelity, breaking that promise may contribute to a more valuable life even if it is morally impermissible to break the promise. There are, of course, important points of overlap: obligatory acts (e.g., telling the truth; repaying debts) often contribute to a valuable life. Despite this important distinction, in following sections I will refer only to value judgments on the assumption that my conclusions apply equally to both categories. I leave it to future projects to determine whether this assumption is fully defensible.

¹⁰ I am borrowing the phrases “descriptive pluralism” and “normative pluralism” from Stephen Stich (1990, 13-16), though Stich uses it to describe different cognitive relationships with respect to rationality.

¹¹ This is not to imply that any two people hold different basic moral beliefs that, for instance, murder and rape are impermissible and telling the truth and repaying debts are obligatory. Sociologists and biologists who study moral patterns make a strong case that even cultures that differ very widely in their overt practices, tend to agree on a number of basic moral claims (Sober and Wilson, 1999; Barber, 2004; Kappeler and van Schaik, 2006), and some even argue that we share these moral attitudes with higher order primates. My argument only presupposes that we disagree about secondary or derived moral beliefs, for instance, about whether prostitution and pornography should be legal,

The truth of descriptive moral pluralism, independent of its normative cousin, is sufficient to motivate a serious problem for public policy. Even if normative moral pluralism is false and there is a single, comprehensive moral theory that determines unambiguously which acts are permissible, impermissible, and obligatory, citizens are still beholden to their cognitive access to evidence about moral claims, and may, through lack of information, error, or carelessness come to a wide variety of divergent conclusions about the moral value of an act. And these conclusions influence how citizens perceive their relationship to government and public policies. What is more, moral philosophers and lawmakers are in no better predicament than any other citizen with respect to these types of cognitive failures. The ubiquity of limited access to and fallibility about what is ultimately valuable constitutes the central premise of my argument below.

In order to sidestep the problem raised by descriptive moral pluralism, I suggest reframing the scope question in epistemic terms. For clarity, I will call it the “epistemic scope question”:

ESQ: What is the epistemically justifiable role of government?¹²

To answer the epistemic scope question, I first argue that justified beliefs about a valuable life include content most directly available to individuals, namely, content about what an individual perceives to be in her interests. Beliefs about individual interests are justified primarily by evidence the individual has about her values, that is, about what she thinks is good, permissible, obligatory, and impermissible. But the bulk of this evidence is, in non-trivial ways, subjective. I then show that this restricted availability of

whether alcohol sales should be illegal on Sundays, whether the FCC should censor national television, etc. Each of these questions often involves deriving justification from other basic and non-basic moral beliefs.

¹² I am using “epistemically justifiable” here in a standard epistemic sense. By “epistemically justified” I mean: A claim, p , is epistemically justified for a subject, S , if and only if, S has a reason, R , to believe that p is true and no defeating reason (either not- R or not- p) sufficient for S that p is not true. By “justifiable” I mean some p such that there are reasons that, if S were to consider them, S would recognize them as reasons to believe that p . This conception leaves “reason” vague to accommodate both internalists and externalists, and it leaves “sufficient for S ” vague to accommodate a variety of views on epistemic sufficiency. These are tangential to my thesis here. I allow that there may be more than one epistemically justifiable role of government depending on our starting assumptions about human nature. I argue that premise 1 below constrains the options in an important way.

information about an individual's interests constitutes a reason to confer an epistemic advantage on others with respect to beliefs about their interests. This epistemic advantage, I argue, entails a reason to believe that each individual is in a better position to judge her interests and how to obtain them than any other, including evidence that supports or challenges the plausibility of her strategies for obtaining her interests. Finally, I argue that these two premises, along with our initial assumption, entail that we have a *prima facie* epistemic obligation to believe that, since government officials are in no better position than any other individual with respect to those individuals' interests, these officials have an obligation to protect each individual's ability to pursue her interests up to the point where it conflicts with another's ability to do so.

One of my assumptions is that arguments for epistemic limitations are more compelling than arguments for particular moral claims. And before I lay out my argument, I need to guard against a potential reading that reduces my view to "subjectivism" about rationality, such that rationality is relative to particular facts about individuals, like preferring the taste of ice cream. This is not the view I defend. I am willing to assent to a type of subjectivism about evidence, namely, every individual's evidence is authoritative for that individual with respect to her rationality for beliefs derived from that evidence. But I take this as a fact of our cognitive machinery, and what motivates the classic skeptical *problem of the criterion*.¹³ But few of us regard evidence this skeptically; we tend to be willing to agree that new evidence can help us improve upon old beliefs. Does my account offer you a reason to believe this? No, it is an assumption based on our widespread cultural commitment to evidential processes we take to be reliable, such as those found in the physical and biological sciences and economics. We are more willing to agree about whether a certain type of reasoning is reliable than whether some behavior or policy is in our moral interests.¹⁴ If that is right,

¹³ The "problem of the criterion" is the classical skeptical worry that, for any claim one might believe, there must be some criterion by which we determine the truth of that claim. If there is no criterion, we have no reason to believe the claim is true. If there is a criterion, then by what criterion was it discovered? If there is none, that criterion is unjustified. If there is, then by what criterion did we discover *that* one? It would seem we are either left with unjustified beliefs or an infinite regress of criteria.

¹⁴ This point can be made more explicit when contrasting varieties of local skepticism with skepticism about reasons in general. For example, one can be skeptical of religious claims because one has reason to doubt the central piece of evidence for these claims exists, namely, divine revelation (even if someone else claims to have "experienced God"). So, one can be justifiably skeptical of religious claims because she lacks a certain

then an answer to the epistemic scope question suggests a more plausible framework for writing public policy than the traditional, moral scope question.

The basic structure of the argument is as follows:

- 1) Individuals are members of societies because it affords greater opportunities for obtaining their interests than the state of nature.
- 2) Each individual has a *prima facie* reason to regard every other as having an epistemic advantage with respect to evidence regarding their interests and how to obtain them.
- 3) If (1) and (2), then each individual has a *prima facie* reason to defer to the judgment of every other with respect to those individuals' interests and how to obtain them, except when that judgment comes into conflict with her own judgment about her interests and how to obtain them.
- 4) The individuals governing societies, as individuals, are subject to (1) and (2).
- 5) Therefore, individuals governing societies have a *prima facie* reason to defer to the judgment of every other individual with respect to those individuals' interests and how to obtain them except when that judgment comes into conflict with their own judgment about their interests and how to obtain them.
- 6) Step (5) restricts the scope of "governing" to enforcing contracts among individuals and protecting individuals' abilities to pursue their interests up to the point where they conflict with the abilities of others to pursue theirs.

In conferences and discussions, (2) and (3) have proved to be the most controversial features of the argument, and space limits a comprehensive treatment. So, in this paper I will assume premise (1) and defend only premise (2), leaving the remainder of the argument for future discussion.

I will use the term "individual" to refer to those organisms (i) for which there are identifiable claims to interests, where "interests" are those objects, behaviors, events, states of affairs, and relationships that an organism values

evidence for them without being skeptical of rationality more generally. The argument I make here is that, while most of us think we have reliable access to evidence for moral claims, the reliability of inferences drawn from this evidence is contingent upon evidence not all of us has access to, namely, individual interests.

and pursues as morally good or contributive to a good life and where “claims to interests” are expressions of interests or expressions of intent to pursue interests,¹⁵ and (ii) that have the capacity to reflect on appropriate ways of pursuing those interests. Although I will use the language of *possession* (“individuals *have* interests”; “an individual *obtains* her interests”) to express a set of relationships between an individual and the activities and objects she values, this is partly a heuristic. It may be true of someone that she values certain objects, behaviors, etc., without *possessing* something that constitutes anything like a property of “valuing.” I intend this heuristic type of “possession” to also include *pursuits* of value, even if ultimately unattained. Further, by “*prima facie* reason” I mean a defeasible reason such that there may be evidence sufficient for an individual that another individual has little reliable access to his interests, for instance, if there are indicators a subject perceives to be reliable that an individual is criminally insane or severely mentally handicapped such that it is rational to assume the role of surrogate reasoner, as we do with children. And finally, by “a reason to defer” I mean a strong normative reason in the sense that, if the *prima facie* considerations for regarding an individual as having an epistemic advantage are not defeated, it is irrational to regard your own beliefs about another individual’s interests as at least as justified as hers.¹⁶

This concept of *individual* allows me to refer only to those members of society we take, *prima facie*, to express claims to interests and to have the

¹⁵ I am using “claim” here differently than the classical liberal tradition has interpreted “rights” as “claims.” Here I simply mean an individual’s expressing his intent to pursue something he perceives to be valuable. In this sense, his claim may be unjustified, for instance, if he claims that he has an interest in his neighbor’s television without his neighbor’s consent. In future work, I will interpret “as-if rights” in terms of “epistemically justified claims,” thus bringing my usage back in line with the tradition.

¹⁶ This need not imply anything with respect to the ability to evaluate that evidence *appropriately* or even *successfully*. For instance, Sherlock Holmes and Dr. Watson may have the same cognitive access to the available evidence relevant to a crime, though we know Holmes has a greater facility for evaluating that evidence. If Watson recognizes the disparity between his own capacities and Holmes’s, he may defer to Holmes’s judgment; but the ability to recognize such differences depends on Watson’s internal access to a reason to regard Holmes as a better reasoner. If Watson recognizes no such disparity, we (on the outside looking in) may regard him as obtuse or irrational, but he has no reason to so regard himself. The problem is exacerbated when some of the evidence is restricted to Watson’s subjective mental states. Holmes may be a significantly better reasoner than Watson, but if he doesn’t have some relevant piece of evidence, his conclusions will likely be incorrect.

capacity to reflect on ways of pursuing them.¹⁷ I interpret “interests” broadly enough to include any desires individuals have, whether for things or experiences or relationships they consider “worth pursuing” or “achieving” or otherwise expending energy on, including families, friendships, positions in professional firms, successes at a skill or profession, money, changing others’ behavior, political power, making the world a better place, collectibles, fame, or houses. I also allow that the ends of a particular behavior (houses, position, etc.) are not the only (and perhaps are rarely) relevant objects of individuals’ interests. The *way they achieve those ends* is also valuable. Earning enough money to purchase your first home may involve a deeper satisfaction for you than if the home were donated to you. Voluntarily paying a tithe to your preferred religious tradition may be more satisfying than if such a tithe were involuntarily extracted from your paycheck.

My epistemic case for classical liberalism is part of a larger philosophical project to develop a uniquely epistemic conception of negative, natural rights. In the larger project, I show how this move might be made. For now, note that the “rights” language I intend should be regarded as a heuristic to avoid the metaphysical implications of many classical liberal positions. Although I am committed to the existence of natural rights in the classical liberal sense, I intend my argument to avoid that assumption for the reasons cited above. Instead, I will borrow a notion of instrumentality from philosophy of science literature to qualify the sense in which I regard individuals as having rights. Given the vast number of scientific theories that have been discarded or significantly altered or updated, some philosophers of science are doubtful that the results of scientific experimentation and theorizing yield an accurate picture of reality.¹⁸ These philosophers doubt

¹⁷ This conception intentionally excludes animals, children, and the severely mentally handicapped, as these are far more complicated cases. Nevertheless, this does not undermine the “*prima facie*” clause discussed above, as it is possible to discover that someone who, on the face of it, has reliable access to his interests is, say, sociopathic.

¹⁸ Cf. Duhem (1954) and Papineau’s (1996) collections. One of the clearest expositions of the distinction between this view and skepticism is given by Poincaré (1958, ch. XI). Poincaré’s anti-realism is grounded in the necessity of respecting the practical necessity of scientific principles alongside the realistic difficulty of establishing their objectivity. For instance, with respect to the principle of induction, he writes, “it is as difficult to justify this principle as to get on without it” (133). And with respect to unobservable events, he explains: “[S]cience reveals to us between phenomena other bonds finer but not less solid; there are threads so slender that they long remained unperceived, but once noticed there remains no way of not seeing them...” (139). The same point can be made about natural rights. The difficulty of justifying the objective

whether science is the sort of project that can tell us, accurately (or better, alethically) the underlying nature of reality. Nevertheless, they accept science as a powerful tool for predicting and manipulating reality, and as the preeminent source of authority for beliefs about reality. Those who hold both argue that we may still regard the findings of science as producing a *real-ish* picture of nature, even though we remain skeptical of its literal accuracy. Science is instrumental for our purposes regardless of whether its deliverances include literally true claims about nature.

This instrumentalism is often called “anti-realism,” but we must be careful how we interpret this phrase. Few anti-realists doubt there are objective natural states of affairs—they are simply skeptical about whether these states are cognitively accessible in a way that human language can adequately or exhaustively express. The term *anti-realism* preserves caution when stating scientific claims, emphasizing theoretical adequacy without assuming anything about the degree to which they accurately express real states of affairs. Given the limitations on our cognitive access to individual interests and to an adequate, comprehensive moral theory, we may use the anti-realistic device to focus, instead, on the theoretical adequacy of a theory of political organization.

With these qualifications in mind, following Hans Vaihinger and Robert Arp,¹⁹ I use the phrase “as-if” to qualify “rights” and to refer anti-realistically to those features of individuals and social relationships that fall under the negative conception of “rights” as used by libertarians like Nozick, John

value of an individual does not constitute a reason to be skeptical of its reality, especially once we’ve recognized the practical implausibility of developing a theory of a “just” or “legitimate” state without it. Nevertheless, such difficulty does cast doubt on the plausibility of a *moral* justification for the existence of such a value. Thus, my strategy will be to derive a restriction on state behavior that corresponds to the restrictions imposed by rights.

¹⁹ Cf. Vaihinger (1924) and Arp (2005). It should be noted that there are varieties of anti-realism, and this characterization is not universally accepted.

Hospers, and Tibor Machan.²⁰ Thus, my argument is neutral with respect to the ontological status of natural rights, but nevertheless defends precisely the same restrictions on state interference in the pursuit and possession of life, liberty, and property identified by the category of classical natural rights.

The Argument

- 1) Individuals are members of societies because such membership affords greater opportunities for obtaining their interests than the state of nature.

Premise 1 is essential to my argument and is derived from Locke's *Second Treatise*: we choose to be participating members of a state (rather than anarchy or choosing to live as hermits or to commit suicide) because we perceive that such membership affords us greater opportunities for obtaining our interests than any other. Locke (1937, 82) explains:

If man in the state of nature be so free...if he be absolute lord over his own person and possessions, equal to the greatest...why will he part with his freedom, this empire, and subject himself to any other power? To which, it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others. For all being kings as much as he...the enjoyment of the property he has in this state is very unsafe, very insecure.²¹

²⁰ With respect to “libertarian” rights to “life, liberty, and property,” I mean those rights derived from Locke’s *Second Treatise* (1937) where he writes that the state’s role is to “preserve and enlarge freedom,” by which he means the “liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another...” (37). Nozick frames and defends this liberty in terms of “entitlements” (1974, chs. 6 and 7). Hospers’ account is comprehensively stated in his (2007) and Machan’s defense can be found in his (2006). The roots of my view can be traced to a comment Mill makes in chapter 4 of *On Liberty*: “...every one who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, *ought to be considered as rights*” (2002, 77, emphasis mine).

²¹ This assumption is not unique to Locke. Hobbes identifies roughly the same motivation in *Leviathan*: “The finall Cause, End, or Designe of men, (who naturally love Liberty, and Dominion over others) in the introduction of that restraint upon themselves,

Because I take the sort of disposition Locke describes as a necessary condition for embracing membership in a state, I will assume premise 1 without argument, conceding that if this assumption is not justified, my argument fails.

Further, premise 1 is a claim about individuals and societies generally. It does not mean every individual inevitably chooses membership in a society over an anarchist commune or a hermit's lifestyle, only that, insofar as they prefer societies to these alternatives, my argument applies to them. In addition, it does not imply that every configuration of society is preferable to solitude, anarchy, or death for all individuals, but simply that individuals recognize some officially organized society affords a greater opportunity for pursuing their interests than alternatives. Citizens who oppose totalitarian regimes do not typically do so in favor of anarchy, but in favor of a different social organization.²²

Note that this assumption is consistent with political views that entail extensive state interference in human behavior. For instance, in his defense of political perfectionism, Steven Wall assumes that the primary function of the state is to "take an active role in creating and maintaining social conditions that best enable their subjects to lead good lives."²³ Wall argues that the best way for individuals to pursue their interests is for the state to take an active interest in helping them to lead good lives. Since Wall uses the term "good life" in roughly the same way I use "interests," his perfectionism is consistent with the Lockean motive to be a member of a state. For example, even classical liberals can admit that one apparently good way to establish a context for individuals to pursue their interests requires some state intervention, e.g., probable cause constraint by police officers, taxation for the provision and protection of voting booths. So how might we adjudicate

(in which we see them live in Common-wealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent...to the naturall Passions of men..." (1985, Part II, ch. 17, 223). As well, Plato, in building his seemingly authoritarian "city in speech" admits that a man gives "a share to another...in the belief that it's better for himself" (*Republic* 369c, Bloom trans.) and writes that a city without laws would not be "pleasing" to its citizens (*Crito* 53a, Allen trans.).

²² It may well be the case that some political organizations offer individuals no benefit over the state of nature. But given a general preference for political structure, the remainder of the argument is about identifying the best of the alternatives to the state of nature.

²³ Wall (2009, 100).

between Wall's perspective on government and the classical liberal's? I suggest pressing the e-scope question makes the difference in favor of classical liberalism.

My central contention is an epistemic one, namely, that perfectionists have no rational grounds on which to formulate policies that will *help* an individual to obtain her interests, and therefore, a limited, neutral state is the only political organization consistent with premise 1.

- 2) Each individual has a *prima facie* reason to regard every other as having an epistemic advantage with respect to evidence regarding their interests and how to obtain them.

Premise 2 is true if there are good reasons to regard an individual as having better access to evidence relevant to her interests than anyone else. The line of argument I will pursue depends on the claim that the rational justification of a behavior depends on information about the interests at stake and the details of the situation. The moral dependence on context I will take for granted (the same act may have different moral valence in different contexts, e.g., firing a gun, taking a life, returning something borrowed). Therefore, my case centers on the subjectivity of an individual's access to evidence about her interests.

It is not unreasonable to assume that what is in an individual's interest is, primarily, a descriptive fact about that individual. It is plausibly an objective fact as to what contributes to an individual's well-being, where well-being includes features such as physical and mental health, personal satisfaction, meaningful relationships, and challenging tasks. If these components are objective features of an individual, then it is a small inference to imagine we can facilitate these features without the individual's help. The problem is that each of these objective features depends, non-trivially, on knowing something about that individual, not least of which includes her subjective mental states, for instance, how she perceives the "benefits" attending those features. Eating only vegetables may increase physical health but at the expense of personal satisfaction, and too much attention to challenging tasks may undermine meaningful relationships. This suggests that a necessary component of epistemic evidence sufficient for beliefs about an individual's interests is inherently subjective—it requires an individual's introspective perception of or reflection on her values. To find the appropriate trade-offs, we must take the individual's subjective states into account. This looks, not surprisingly, like consent.

This does not suggest that such evidence is infallible or infeasible. It does, however, suggest that evidence about an individual's interests or her access to them is a reason to regard her as having an epistemic advantage

with respect to beliefs formed on that evidence. An epistemic advantage with respect to evidence about interests implies that an individual is in a better position (in a sense to be defined) than anyone else to hold a justifiable belief about her interests, though it allows that she still may be fallible at doing so. If this is right, public policies about citizens' interests or the "common good" are doomed to be too imprecise to make reliable assessments of either possible. As such, premise 2 is the central and most controversial principle of my argument.²⁴

If someone else is positioned better than an individual with respect to evidence regarding that individual's interests, premise (2) is false. This may be the case, for instance, in regard to children; without the cognitive ability to reflect on interests, we have good reasons for believing parents are in a better position than children to hold justifiable beliefs about children's interests—again, though they may not do so infallibly.²⁵

²⁴ Interestingly, F. A. Hayek regards a version of this premise as so obvious that it "probably need only be stated to win fairly general assent." He writes, "General altruism, however, is a meaningless conception. Nobody can effectively care for other people as such; the responsibilities we can assume must always be particular, can concern only those about whom we know concrete facts and to whom either choice or special conditions have attached us...[B]elieving in freedom means that we do not regard ourselves as the ultimate judges of another person's values, that we do not feel entitled to prevent him from pursuing ends which we disapprove so long as he does not infringe the equally protected sphere of others" (2011, 141). Although this sentiment is proffered in support of his consequentialist defense of classical liberalism, the idea that individuals lack the capacity to make effective decisions for others runs throughout *Constitution*: "This fundamental fact of man's unavoidable ignorance of much on which working civilization rests has received little attention" (73); "Knowledge exists only as knowledge of individuals. It is not much better than a metaphor to speak of the knowledge of society as a whole" (75). With respect to acceptable inequalities in a state and the suggestion that the state should intervene to rectify these inequalities, Hayek explains, "...[N]o man or group of men possesses the capacity to determine conclusively the potentialities of other human beings and that we should certainly never trust anyone invariably to exercise such a capacity. However great the differences between men may be, we have no ground for believing that they will ever be so great as to enable one man's mind in a particular instance to comprehend fully all that another responsible man's mind is capable of" (151). As it turns out, this principle enjoys anything but general assent, especially in light of recent developments in the psychology of human reasoning (as I show below) and in light of what some have come to call the "Greenspan Bubble Era," cf. Cassidy (2009, 8).

²⁵ Instances of female genital mutilation and NAMBLA are the most obvious cases where beliefs about the interests of children seem to go vastly astray. Public policy with

The subject-relativity of interest evaluations is made clear when we attempt to evaluate an individual's behavior under more and less specified contexts. For example, if we were to ask whether it is in an individual's objective interests to engage in "high risk" behavior, that is, activities that involve a high probability of injury or premature death, we would likely, at first blush, be tempted to say *no*. On the other hand, if asked whether it is in an individual's interests to base jump, join the Peace Corps, or become a fire-fighter or commercial fisherman, we are likely to be less inclined to say *no* despite the fact that, on most accounts, these are high-risk behaviors. What accounts for this inconsistency?

In the absence of details, it is easy to evaluate high-risk behaviors as bad: relative to nothing, taking a high risk of injury or death is unjustifiable. But when we consider particular behaviors in particular contexts, we recognize that individuals may have principled and justifiable reasons for engaging in them. We take it that individuals who participate in these sports or professions recognize *some* rational justification for doing so, even if, on some general descriptions, the context has too few details to understand what those might be. We assume—perhaps unjustifiably—individuals understand the risks involved in their chosen activities and not only consent to undertake them, but believe they are a vehicle (perhaps *the* vehicle) by which they obtain what they perceive to be their interests—whether it be a sense of accomplishment or adventure, to help others, the belief that it is the best option available to them, to advance our knowledge or the world, or even to obtain what we may call "base" motives of fame and fortune. Whatever benefit an individual perceives accompanies surviving high risk behaviors constitutes evidence, for that individual, in favor of performing the act. Thus, it seems that rationality and interests are, to a large extent, dependent on the individual's assessment of their consistency with her values.

Even those who voluntarily smoke tobacco, drink alcohol, or eat fast food may *perceive* interests that outweigh any risks that attend their activities in light of their perceived alternatives, regardless of what an ostensibly "objective" assessment of their interests might reveal.²⁶ Perhaps participants in Bohemian activities do not fully understand the risks, or perhaps they do

respect to children is an especially difficult topic, and I avoid it here, focusing only on individuals in the sense defined above.

²⁶ And in some cases, objective assessments reveal surprising results. A 2010 study of Taiwanese children in the *Journal of Happiness Research* showed that, while fast food and soft drinks decreased overall physical health, they also contributed to less unhappiness (Chang and Nayga, 2010).

not have the willpower to avoid the risks, or perhaps they have the willpower but simply prefer short-term pleasures to long-term pleasures. Or perhaps they simply value some types of pleasure more than some types of pain. How might we know this? A comprehensive psychological examination might reveal some of an individual's motives and behavioral tendencies, but any evaluative conclusions drawn from this sort of analysis would presuppose a variety of judgments about "good" or "appropriate" outcomes. Assuming that individuals perceive different values, and therefore different interests, activities that seem irrational to some, may seem permissible, or even obligatory, to others.

Further still, although many individuals attempt to express their interests to others, they often fail to express them clearly or effectively enough, or understand them well enough, for someone else to effectively help obtain them. For instance, when I say, "I'm *too tired* to grade papers tonight," I may really mean (whether I acknowledge it or not), "I *don't want* to grade papers." In this case, it would be no help to offer me a stimulant. Although a stimulant might help me obtain my *expressed* interest, it would not help me obtain my *actual* interest.

We often find this sort of asymmetry of expression and belief in discussions about religion. For instance, some individuals say that their religious beliefs are simply a matter of "blind faith," but when pressed, they often point to particular religious experiences as evidence for this belief, for example, an overwhelming sense of the divine, a peace of mind, a deep reverence for reality. But of course, all these subjective experiences constitute *reasons* for holding religious beliefs, and without these, an individual may be willing to give them up, or may not perceive them to be valuable in the sense they currently do. In this asymmetry of expression and belief, it would be no help to present this individual with arguments that blind faith is not sufficient for epistemic justification—such arguments would fall far short of their mark because they do not address the actual reasons for belief. Examples of this asymmetry abound, including buyer's remorse, dissatisfaction with gifts that aren't quite what we wanted, and careers that aren't as satisfying as they were imagined to be, even though they are exactly what we expected them to be.

These examples suggest that, even if interests are objective facts about an individual—notice I am making no claim for or against normative moral pluralism—epistemically, they are person-relative. To hold a justifiable belief about an individual's interests, you must have access to that individual's

subjective mental states.²⁷ If this is right, we are now in a position to ask: Who is most likely to have justified beliefs about an individual's interests? I argue that the epistemic principles of evidence that I will call "epistemic positioning" and "epistemic advantage" show that we have a reason to believe that each individual is more likely to be justified than any other.

Epistemic positioning is a principle of access to evidence relevant for a subject for justifying beliefs.²⁸ We may say that an individual is *positioned* relative to some evidence for a proposition, p , if that individual has cognitive access to content constituting evidence that p or not- p . This evidence need not be *sufficient* for justifying a belief that p ; for instance, I can recognize that seeing a wall that looks pink constitutes evidence that the wall is pink, and yet not believe that the wall is pink because I have better, and therefore defeating, evidence, for instance, that the wall is white and there is a red light shining on it. Nevertheless, the wall's *seeming pink* to me constitutes evidence for me that the wall is pink. Thus, the notion of epistemic positioning may be formulated as follows:

Epistemic Positioning = *df.* A subject, A , is positioned with respect to evidence, E , for a proposition, p , if and only if A has or has had psychological access to propositional content that constitutes a reason for A to believe that p or not- p .²⁹

Two individuals may have *equal* access to propositional content constituting evidence that p , or one individual may have *better* access to such content.

For instance, if I am looking at a painting up close and you are a few feet back, I have better access to certain details about the painting than you. If this is right, then it would seem I have an epistemic advantage over you with respect to those details, that is, I am positioned better than you with

²⁷ I do not mean an individual must have direct access to an individual's subjective states. Indirect access (via testimony, relationship, contract, etc.) may be sufficient for justified belief. My point is that interaction, dialogue is essential for fruitful interaction and the mutual pursuit of individual interests.

²⁸ Although developed independently, my concept of epistemic positioning is almost identical to Elizabeth Fricker's notion of "epistemic placement," which she defended first in her (2006).

²⁹ Epistemic positioning is not about whether E is *sufficient* or *compelling* for A that p or not- p , only that it renders A capable of forming a propositional attitude (belief, doubt, suspension, hope, etc.) toward p . It constitutes a step logically (though not necessarily chronologically) prior to epistemic justification.

respect to the evidence that p or not- p .³⁰ If you agree that I am better-positioned than you, then you concede this epistemic advantage—I now stand in a position of epistemic authority over you with respect to those details; if you believe I am trustworthy, it would be irrational for you to disagree with me about claims expressing those details.

I will call this perceived authority the Principle of Epistemic Advantage:

Principle of Epistemic Advantage: B has an epistemic advantage over A with respect to E that p if and only if both A and B are positioned with respect to E and A believes B to be in a better epistemic position with respect to E than A .

To see how this principle works, consider the following example. Imagine I am looking for a lost dog in my neighborhood. I am standing in front of a house, and I wonder whether it is on the other side. If so, a large convex mirror at one end of the house (similar to those placed at blind driveways) might help my cause. I may see something that looks dog-like in the mirror and form the belief that the dog I am looking for is on the other side of the house. If, in addition, you are on the other side of the house, and I am talking with you on a cell phone, I might ask you to confirm my belief that it is the dog. In this case, it seems to me that you have better access to information about what is on that side of the house than I—I recognize that my vision is mediated by the distortions inherent to a convex mirror where yours is not. In recognizing your access to the relevant evidence is better than mine, I confer on you an epistemic advantage with respect to my belief about the dog's location; I have a reason to defer to your judgment.

If, however, I do not perceive that you are in a better position than I, then I do not have a reason to confer an epistemic advantage on you. For instance, even if I am looking through a mirror, if I also believe that your eyesight is poor or that you are unreliable at identifying dogs, your testimony is not stronger than my evidence that there is a dog; while I may consider your testimony that there is a dog as confirming my belief, I do not have a reason to defer judgment. In other words, if I did not believe I saw a dog, then even if you testified that there is one, I remain justified in holding my belief that there is not one, though perhaps to a lesser degree.

³⁰ This does not exclude your being in a better position to know *other* details. For instance, in Salvador Dalí's "Gala Contemplating the Mediterranean Sea which at Twenty Meters becomes a Portrait of Abraham Lincoln" the content necessary for justifying certain propositions about the painting is available only to those further away than a few inches or feet from the original painting (though this may not be true of smaller reproductions of the work).

In the case of disagreement among two subjects who perceive themselves to be well positioned with respect to some evidence, each has three reasonable options available: to stand firm on her original belief until new evidence mitigates the disagreement (surely, she is not more likely than you to be right about whether you have seen a dog; perhaps she made a mistake); to suspend judgment until new evidence mitigates the disagreement (it is also true that you are not more likely than she to be right; perhaps you made a mistake); to defer to the other's judgment (for the same reason you might suspend judgment). Given that none of these options is more rational than the other, which option you choose will be based purely on practical considerations: perhaps you will stand your ground because it affords you the greatest motive for discovering the truth; perhaps you will suspend judgment because you are not too invested in the question; perhaps you defer because it will keep the peace.

What happens when you and I disagree but I perceive myself to be in a *better* position than you? This situation is common in debates over public policy: experts in certain fields presume themselves to be better-positioned with respect to individuals' interests than they (e.g., South Los Angeles's ban on new fast food restaurants³¹ and New York's ban on cigarette smoking in public parks³²). Should we attempt to mitigate this disagreement by force (legal imposition) or reason? Should we attempt to mitigate it at all? This depends, in large part, on the strength of the principle of epistemic advantage.

Note that the principle of epistemic advantage is stated from the perspective of the subject in the weaker epistemic position: I *confer* epistemic advantage on you only if I *perceive* that you are in a better position than I with respect to the relevant evidence. Why may I not confer epistemic advantage on myself if I perceive myself to be in a better position than you? Primarily, this is because I do not have evidence as to how good someone else's access is. It is a corollary to the principle of charity; the extensive fallibility of our own reasoning suggests we should remain open to the possibility that we are wrong, especially in instances of disagreement. An example suggests how epistemic advantage informs epistemic practice.

A common example of a subject's perceiving someone else to be better-positioned with respect to evidence is when someone claims to be in

³¹ Jennifer Medina, "In South Los Angeles, New Fast-Food Spots Get a 'No Thanks,'" *The New York Times*, January 15, 2011.

³² Jordana Ossad, "New York City outside smoking ban begins," *CNN*, May 24, 2011.

pain. Pain is a subjective mental state to which only one individual has access. *A* can hold a justified belief that *B* is in pain (or that some event is a pain-causing event) only if *B* expresses that he is in pain (or someone like *B* has expressed pain under similar conditions).³³ Further, *A* can hold a justified belief about the nature of *B*'s pain only if *B* can explain his experience in terms that *A* can compare with his own experience. *B* must use terms like "sharp," "dull," "throbbing," "constant," in an attempt to make clear to *A* what he is feeling. But these words can, at best, help *A* draw indirect inferences about what *B* is experiencing—*A* cannot access *B*'s conscious states and feel his pain. Even the results of an EEG can only be correlated with *B*'s expressions of pain; EEG readouts are not themselves pains, and *A* cannot feel *B*'s pain by reading EEG data. Thus, with respect to pain, it seems we must conclude that each individual is better-positioned than every other. If you say you are in pain, it would be irrational for me to tell you that you are not really in pain, since I apparently could never be in a better position than you to know. I could have evidence for thinking that you are lying or are misusing the term "pain," but that evidence is weaker than any you could have with respect to your belief that you are in pain.

Now view the case from *B*'s perspective. *B* seems to have direct, well-positioned access to *E* that he is in pain. Can he confer an epistemic advantage on himself over *A*? What might this mean? Notice that if *A* acknowledges or confers (appropriately or inappropriately) that *B* has an epistemic advantage over her with respect to *B*'s expression that he is in pain, she has two options: she can choose to believe *B* or she can suspend judgment, perhaps suspecting some error on *B*'s part. It is true that *B* perceives a certain sort of epistemic advantage; he cannot choose not to believe he is in pain, though he acknowledges his own fallibility. He has no reason to believe *A* is better-positioned than he, and therefore, he is not rationally obligated to choose between suspending his belief and lowering his

³³ The parenthetical insertions allow for justified inferences about pain even in the absence of direct expressions of pain. For instance, we have good reason to believe vaccinations and waterboarding cause pain even in the absence of hearing, directly, someone who is experiencing those events express that he is in pain. If I have good reason to believe someone is being waterboarded in the next room, I have reason to believe that person is in pain even though I am not present to hear the person express it. This is because we are justified on more direct grounds with the sorts of events that cause pain: skin punctures and the feeling of being unable to breathe. Nevertheless, if someone were to experience a vaccination and say, "I didn't feel a thing," it is quite possible that she is correct and that we should defer to her judgment. I thank an anonymous reviewer for this example.

confidence in his belief. Only if he were to perceive some reason to believe that *A* has an epistemic advantage would he have to make this choice.

But despite *B*'s perceived advantage, fallibility demands we acknowledge certain restrictions on how *B* can justifiably express his beliefs. Is it rational for *B*, on the basis of his perceived advantage, to assert control over some aspect of *A*'s behavior with respect to his pain, for instance, force *A* to buy him pain medication? This brings us back to the topic of *interests*. If obtaining my interests is the primary reason I am a member of this or that particular society, to what extent is it rational for me to conscript your behavior for the procurement of my interests?

If interests are person-relative like pain states in this respect, then also like pain states, each individual has a reason to confer an epistemic advantage on every individual with respect to beliefs about his or her interests. But what happens if an individual does not confer this advantage, if she perceives herself to be in a better epistemic position than another individual with respect to his interests? An example might be someone who thinks comedic utterances of the word "fuck" are objectively harmful and should not be allowed on national television. Is it rationally justifiable for such a person to restrict others' behavior on the basis of her interest assessment?

It might be natural to think this is analogous to the person who is in pain conferring on himself an epistemic advantage with respect to that pain, but this is misleading. It is not irrational for someone who perceives himself to have a headache to maintain that belief despite the objections of others, but it would be irrational for him to ascribe headaches to others on the basis of his subjective experience. He is rationally restricted from making judgments about the mental states of others. The person who is expressing the objective harm of "foul" language is not analogous to someone who believes he is in pain despite objections, but to the person who ascribes pain to others on the basis of his perception of pain. She is saying, "You are wrong if you believe it is in your interests to hear comedic utterances of the word 'fuck.'"

Surely, the best she can hold is that those who disagree with her have made an error in reasoning when forming such a belief. Perhaps they reasoned correctly, but from other false beliefs. The problem is that she could have just as easily reasoned poorly or reasoned from other false beliefs. She can be rationally justified about her own value convictions, at best, to the degree that the next individual is justified about his. This is why it is irrational to confer an epistemic advantage on ourselves—not because we do not objectively stand in a better position with respect to evidence that a proposition is true than someone else (as is probably the case with respect to

your own pain), but because when we attempt to assert that perceived advantage over the judgments of others about their own interests—states of affairs to which they have *prima facie* better epistemic access—the content of our beliefs extends beyond that to which we have subjective access.

None of this implies that an individual's subjective mental states *constitute* her interests, or that her interests *refer* to mental states. Rather, any individual's *epistemic justification* for her *beliefs about* her interests necessarily includes some appeal to subjective mental states—in particular, her values and goals, and the activities appropriate to pursuing those values and achieving those goals. In other words, having a justified belief about an individual's interests depends, to a large extent, on having access to that individual's desires and intentions—both of which *are* subjective mental states, like pain and hunger. Since only individuals have direct access to these states, and all other access is derived from often vague, ambiguous, or incomplete testimony about these states, individuals are better-positioned than anyone else with respect to evidence sufficient for determining her interests and how to obtain them.³⁴

To sum up: Why accept premise (2)? Interests are comprised, at least in part, by subjective attitudes toward what we find valuable. Evidence about those states, and therefore, our interests is primarily subjective. Therefore, in order to hold justified beliefs about the interests of others, we must defer to others—it is unreasonable to believe we can make reliable judgments about the interests of others without their input and consent. Because of that, we have a strong *prima facie* reason to regard every individual as having an epistemic advantage over us and every other with respect to her interests.

An Objection Based in Experimental Psychology

Recently, this line of argument has come under fire from researchers studying the efficacy of practical reason. There is now widely accepted experimental support for the idea that individuals reason poorly about their

³⁴ Mill captures this notion of epistemic advantage precisely in *On Liberty*: “[T]he interest which society has in [a person] individually (except as to his conduct to others) is fractional, and altogether indirect: while, with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else” (2002, 79). Of course, Mill wouldn't accept premise (2) because he later appeals to the harm principle for adjudicating policy issues, revealing that he regards it as a more basic normative consideration than our fragmentary knowledge of others' interests.

interests and how to obtain them.³⁵ In much of this literature, subjects rely on heuristics and biases that, while practically reliable in many circumstances, turn out to be theoretically irrational. The classic experiments that sparked an explosion of research in psychology come from Amos Tversky and Daniel Kahneman (1981). In one famous experiment, participants are given the following reasoning problem:

Imagine that the U.S. is preparing for the outbreak of an unusual Asian disease, which is expected to kill 600 people. Two alternative programs to combat the disease have been proposed. Assume that the exact scientific estimate of the consequences of the programs are as follows:

If Program A is adopted, 200 people will be saved. (72% of participants chose this option)

If Program B is adopted, there is a 1/3 probability that 600 people will be saved, and a 2/3 probability that no people will be saved. (28%)

Which of the two programs would you favor?

Given these two options, 72% of participants chose Program A, and 28 percent chose Program B. Other participants were given two differently framed options:

If Program C is adopted, 400 people will die. (22%)

If Program D is adopted, there is a 1/3 probability that nobody will die, and 2/3 probability that 600 people will die. (78%)

Which of the two programs would you favor? (453)

Despite the fact that the options A and C are mathematically equivalent and options B and D are mathematically equivalent, 78% chose Program D and 22% chose program A. Given that it is irrational to choose between options solely on the basis of how they are framed (“will be saved” vs. “will die”), Tversky and Kahneman conclude that, rather than expressing a rational choice, participants’ decisions reflect risk-aversion: “choices involving gains are often risk-averse and choices involving loss are risk-taking” (453). Individuals’ choice patterns reveal that we have a bias toward risk-aversion. Thus, individuals tend to reason poorly, even about apparently important outcomes like how many individuals live or die.

³⁵ For a compelling presentation of some of this research, see Bishop and Trout (2005, chapter 3). For analyses of problems with abstract reasoning about philosophical concepts, see the articles in Knobe and Nichols (2008).

Other experiments show that individuals rely too heavily on their own experience in making important decisions. For instance, “If asked about the risk of having a heart attack, they answer differently depending on whether somebody they know has suffered a coronary. If asked about the dangers of getting mugged in a certain neighborhood, their answers depend on whether they know any mugging victims.”³⁶

Now, we might regard these conclusions as *prima facie* support for premise 2—since, if individuals reason poorly for themselves, it would seem they should do worse for others. Many, however, conclude just the opposite, suggesting that, while ordinary individuals reason poorly, experts can now recognize and eliminate these errors—that is, some individuals may be able to reason better for others than they can themselves. Thus, we should increase our reliance on experts.

If this is where the conclusions stop, it would not be incredibly controversial (e.g., most of us hold that, rationally, we should confer on doctors an epistemic advantage with respect to our physical condition, and we should confer on accountants an epistemic advantage with respect to tax law, etc.). But this conclusion is then extended by some to entail a variety of paternalism: if individuals cannot be trusted to see the value of experts’ opinions for themselves, those opinions should be imposed; experts should, by force of law, become our surrogate reasoners.³⁷

Some proponents of classical liberalism have succumbed to the attractiveness of this conclusion. For instance, economist Kenneth Arrow, whose research provides evidence for a number of free-market policies, found, after extensive research in the health care industry, that insurance programs incentivize overspending, which compounds the costs, and thereby the availability, of health care, drastically reducing its efficiency. In a 2005 interview, he says that, because of the moral hazard and adverse selection problems in the health care industry, “the government is better than the private sector at keeping costs down for insurance purposes. This isn’t true in any other industry. If, for example, you are trying to produce electronics, you could hardly do worse than have the government run such an industry. But, in an insurance program, it’s a different matter.”³⁸ This suggests that expert

³⁶ Cassidy (2009, 196). Cassidy notes that this error in reasoning is called the “availability heuristic,” a phenomenon discovered by Tversky and Kahneman (1973).

³⁷ Cf. Conly (2012); Frank (2011); Thaler and Sunstein (2009); Cassidy (2009); Trout (2005); Sunstein and Thaler (2003). Note that Kahneman does not use these conclusions to justify interventionist policy. See, for example, his (2011).

³⁸ Dubra (2005).

government intervention may be able to help individuals obtain their interests better than the individuals; other experts disagree with Arrow that we should stop at health care.

Despite its seductiveness, there are at least four serious problems with this extended conclusion. First, in experiments of the sort described in these arguments, particular values are ascribed to the subjects—they could not be otherwise, else there would be no control measure. In the Tversky and Kahneman example, the value is consistency. Individuals presumably want to be consistent in their beliefs and behaviors; we have empirical evidence that they choose inconsistently; thus, individuals pursue their values poorly. Again, this is not especially controversial. We regularly meet individuals who abstain from exercise and eating healthful foods despite their apparent or expressed belief that these activities are in their interest; individuals act inconsistently. Should we draw the conclusion from this evidence that we should “help” these individuals by making “better” (i.e., more consistent) decisions for them? A “yes” answer here requires two controversial assumptions: (1) we are right that these individuals fail to recognize the interest-relevant features of their behaviors (they are really acting inconsistently with what matters—their interests), and (2) we accurately perceive the features of their behaviors relevant to their interests (we know the “best” solution to the inconsistency).

To see that these two assumptions are unjustified consider two variants of a classic dilemma in moral philosophy called the Trolley Problem.³⁹ In the first version, you are asked to assume you are alone on a runaway trolley that is headed for a busload of children. The only option available to you is to pull a handle that will switch the trolley onto a side track, sparing the children. Unfortunately, on the sidetrack, another young child has gotten his foot caught in the track, so pulling the lever will inevitably result in his death. When faced with this version of the dilemma, individuals almost invariably choose to pull the handle—they apparently recognize that, given the impending death of at least one innocent person, this is the only way to mitigate the *number* of deaths.

In the second version, you are asked to assume you are standing beside the track on which the runaway trolley is heading toward the busload of children. In this case, the trolley is unmanned, but standing next to you is a corpulent fellow, large enough to stop the trolley with his gratuitous mass. Your decision is whether to stand idle, allowing the trolley to hit the bus or to push the fat man onto the track, killing him but preventing the deaths of the

³⁹ Originally proposed by Foot (1967).

children.⁴⁰ Now, on one way of framing the decisions of both versions, namely, according to expected utility theory, the outcomes are identical: the choice is between one innocent individual's death and multiple innocent individuals' deaths. Nevertheless, studies show that a large percentage of participants choose not to act in the second version, acting in direct contrast to expected utility theory. But there has been a long-standing assumption that expected utility reflects "good" reasoning and that individuals naturally reason this way. The empirical conclusion is apparently obvious: individuals do not reason according to expected utility; they reason according to a set of conditioned heuristics and biases. And since the results of heuristics and biases contradict the results of expected utility, the former lead us to false beliefs.⁴¹

But notice what has happened: the assumption is that, because the results contradict expected utility theory, heuristics and biases have led us to the wrong conclusions. But why think this? Why not, instead, challenge the expected utility assumption?⁴² Or why not challenge the assumption that no other moral principles are at work?⁴³ Or, better yet, why not consider the possibility that reasoning should be guided by principles of social interaction, such as non-interference.⁴⁴

These questions must be left for other research. But they highlight the idea that to claim individuals reason "irrationally" depends on assumptions about individuals that may not be—and in some cases certainly are not—true. These assumptions are constraints necessary for the experimental process,

⁴⁰ The earliest instance of this version was offered by Thomson (1976).

⁴¹ Importantly, moral philosophers do not agree as to how the conflicting intuitions between these two cases should be resolved, and some argue that it is inherently unsolvable.

⁴² According to some psychologists, expected utility may not be the appropriate standard against which to evaluate the appropriateness of our reasoning abilities. Cf. Gigerenzer and Brighton (2009).

⁴³ E.g., Quinn (1994).

⁴⁴ I don't mean to suggest that the Trolley Problems are inappropriately or misleadingly formed. Their original and primary purpose is to highlight implications of moral theories for the purposes of evaluating the strength of these theories. They are not intended as guides to instances of moral decision-making. This is often misunderstood even by those who teach ethics; I have heard ethics educators say, "Oh, I don't talk about those because they are too remote from real life. Students will never face those sorts of decisions."

and their frequency may be different in real life.⁴⁵ In real life, there is no rational way to mitigate ignorance and disagreement outside of voluntary consent. It would be strangely malicious to enact, in the name of consistency, a policy that required, on pain of fine or imprisonment, an individual to either refrain from pulling the lever in the first scenario or to push the fat man in the second.

A second problem with the paternalist conclusion is that, even if experts are better, on average, at making some decisions given certain assumptions about values, without *access* to the values of others it is unlikely that an expert can help someone else reason better about those values. This point is also derivable from the trolley example. One participant may choose to switch the track (in the original version) because she reasons by Expected Utility Theory, while another participant may choose to switch the track because she believes that God commands that individuals should preserve as much human life as possible. Is one less “rational” than the other? That depends on a number of assumptions we are not in a position to answer in individual cases.⁴⁶

Third, there is no reason to think that in real life experts are not subject to the same heuristics and biases as their test subjects. For instance, researchers make use of double-blind experiments whenever possible because, even when aware of poor reasoning tendencies like confirmation bias (even researchers who work on confirmation bias), they are subject to confirmation bias.⁴⁷ But, of course, these rigorous experimental conditions are not available when applying for a mortgage or starting a business.

⁴⁵ Economist Kenneth Arrow expresses a similar worry about the limitations of this research: “You know, most of the biases that people like Kahneman and Tversky found are rules that probably work pretty well most of the time. It’s just that you put people in an experimental situation and you create situations that are very different from the normal, and the rules fail: people do things that are not “rational” or correct,” Dubra (2005, 10).

⁴⁶ For an illustration of such an assumption, imagine someone raised in a village far removed from our scientific society, who was taught that rain dances produce rain, and for whom, coincidentally, rain dances have failed to be followed by rain in only a small percentage of cases. Would we regard her as irrational for performing a rain dance during the next drought? Surely not. There is now a plethora of literature about such mitigating circumstances in practical reasoning, and some of the most interesting research concerns why women remain in abusive relationships. Cf. Frias and Angel (2005) and Villarreal (2007).

⁴⁷ E.g., Nickerson (1998).

Fourth, the most devastating criticism of the attempt to claim an epistemic advantage over individuals on evidence that they reason poorly is that experts disagree, not only about how to alleviate the problems, but about the problems themselves. Take the field of economics, for example. Opponents of a neutral state often cite in their defense a variety of apparent problems with the economic system favored by the neutralist, namely, problems belonging to the institutions of capitalism. For instance, economist John Kenneth Galbraith (1956; 1967) famously complains that the central problem for capitalism is that it incentivizes anti-competitive behavior—a necessary constraint for the success of Adam Smith’s Invisible Hand economics and John Stuart Mill’s classical liberal neutralism. Economic journalist John Cassidy (2009) argues that Galbraith’s conclusions about the market power of corporations is a bit “overstated” (29), and suggests, alternatively, that there are multiple reasons why capitalism fails, including hidden information, poor reasoning (citing the research of Tversky and Kahneman),⁴⁸ the fact that individuals don’t really know what’s in their interests,⁴⁹ and collective action problems. Even more recently, economist Robert Frank (2011), argues that both Galbraith and Cassidy misunderstood the nature of capitalism. Against Galbraith’s conclusion, he argues that markets are free enough to support Smith’s defense of a free market, and he offers examples from failed attempts at corporations to manipulate consumer behavior (the Ford Edsel and the Microsoft Kin) (18-19). Frank argues, instead, that capitalism’s central problems involve “collective action,” problems which arise from a disparity that competition engenders between individual and group interests. These can be resolved most efficiently, he argues, by state intervention, in particular, by taxing “harmful” products and behavior.⁵⁰ All three *economic experts*—the individuals who are supposed to be

⁴⁸ Because Cassidy cites Tversky and Kahneman as experts, it is relevant to note that their conclusions are also not without criticism. Gerd Gigerenzer (2005) argues that rationality assessments depend heavily on reasoning contexts. He concludes, contra Tversky and Kahneman, that humans are not “irrational,” but “ecologically rational.”

⁴⁹ In a telling passage, Cassidy remarks, “People aren’t stupid, but they don’t necessarily know what they really want or where their best interests lie” (2009, 204). This raises even further problems for the idea that one individual can hold justified beliefs about what is in another individual’s interest.

⁵⁰ Note that even if Frank were correct in his assessment of efficiency, he invokes a highly controversial notion of “harm” to make a case for high tax impositions on behaviors such as drinking alcohol and refusing to wear a motorcycle helmet. Is *all* drinking harmful? Why think this? If reading philosophy is correlated with existential crises, would this also constitute harm? Why not?

able to reason for us—disagree about why capitalism is not in individuals' interests, and therefore, propose very different solutions. Which of these (and the myriad of other) experts has the *correct* view of what is in individuals' interests? By what standard of expertise do we choose an interventionist policy?

None of this suggests that there are no problems with capitalism, or that government interference is the wrong solution to every social problem. What it does show is that even if some experts are able to reason better than individuals about certain behaviors, we have no way of forming a strongly justified belief about which experts those are.

Returning to Premise 2

So far, I have argued that (i) the most direct epistemic access to evidence about an individual's interests requires access to subjective content, and (ii) though individuals do not always use this information effectively to pursue their interests, others, including experts, are in no better position to do it for them. But even granting these points, it may still be that some experts in some fields (e.g., physicians, estate planners) can, upon careful analysis, reason better *on average* than most individuals about those individuals' interests. Thus, one final consideration is needed to block this move and shore up premise 2.

The subjective information about interests is not comprised solely of the perception of them as outcomes; they also include perceptions of the value of *how* they are pursued and obtained. This suggests we need to distinguish two types of interests: *outcome interests* and *acquisition interests*. An outcome interest is an interest an individual has in a particular outcome independently of how that outcome is realized: the satisfaction of having money, of having a home, of having good health. But this is particularly shallow dimension of the satisfaction of obtaining interests. The richness of obtaining an interest often comes from its acquisition outcome, that is, the interest an individual has in a particular outcome *because of how* that outcome is realized: building wealth through careful planning and shrewd dealing, earning a home, experiencing the health that comes from the discipline of exercising and eating well.

Consider the case of tithing to a religious organization. Imagine that the state endorses your particular religious tradition, and as such, forces individuals to contribute 10% of their income to it. Jefferson notes that, even in this scenario, the state has overstepped its rational boundaries:

[F]orcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his

contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind.⁵¹

If the moral value of giving to charity, promoting my religious values, and serving the needy depend essentially on *my freely doing so*, then any argument from such an obligation to a paternalistic mandate to fulfill it eliminates the very possibility of obtaining the value to be achieved by the obligation.

A word of caution is in order here. I am not suggesting that individuals are unequipped to help one another, or that attempts to help one another are bound to fail a significant percentage of the time. Every successful contract, business, church, and private school is evidence to the contrary. What these thought experiments illustrate is that attempts to help one another *outside the context of individual consent* as exemplified in successful contracts, businesses, etc. is based on an irrational assumption, namely, that others are in a better epistemic position relative to the evidence for another individual's interests. This mistaken assumption explains—though is not justified by—the tragic failure of interference policies (private or public). And if the state is involved, then unlike unsuccessful contracts and businesses, failures are institutionalized and perpetuated, rather than allowed to dissolve under market pressures.

⁵¹ This consideration was one of the central arguments in favor of the separation of church and state by the “free church” movement in the 1800s. Although originally identified with the “Magisterial Reformation” because of their belief in the divine connection between the church and the state (cf. Romans 13), the Reformed branch of the Protestant Reformation (i.e., the tradition of Zwingli and Calvin) eventually fought against state control over churches. Following dissenters such as Robert Haldane and H. Cesar Malan, the free church movement rejected both state and denominational constraints on worship (cf. Hanson, 1990). An oft noted reason is that such constraints deny parishioners the moral value of voluntary participation. In a pastoral letter denouncing “pew rents” (the practice of charging a fee for the use of pews during worship in order to raise money), free church minister J. H. Hobart Brown writes: “So long as Christian men are not compelled by any divine or human law to exchange a portion of their worldly substance for certain privileges and possessions in the house of God, they are unquestionably entitled to all the credit of perfect voluntariness in adopting such a mode of sustaining the ministrations of the church” (1857).

A Further Objection

Someone might complain that my conclusion, in focusing on interests rather than morality, begs the question against moral perfectionists. Moral values play a different role in our cognitive lives than interests and subjective values. Consider, again, my example of someone who believes that sex outside of marriage is wrong. This person need not perceive this belief as expressing his subjective interests and values; in fact, he does not believe he is making a claim about interests at all—he is talking about what is wrong. He acknowledges that others disagree, but he need not consider whether he is in a superior epistemic position with respect to their subjective states because he is not talking about subjective states.⁵²

The problem with this objection is that it presupposes that moral claims are not subject to epistemic considerations. To be sure, moral claims do not directly refer to subjective interests—if they are true, it is likely they are objectively true. The difficulty comes with acquiring justified moral beliefs. My argument shows that, even if a person perceives himself to have good evidence that having sex outside of marriage undermines the possibility of a good and moral life, that claim depends on the evidence he has for what constitutes a good and moral life, and that evidence is partly subjective. And I am not denying that he may be right! But if someone else perceives herself to be justified in believing something very different about what constitutes a good and moral life such that sex outside of marriage does not undermine the possibility of attaining it, it is not clear how these two people could resolve their disagreement apart from respectful dialogue or legally enforced legislation. Should the first regard himself to be in an epistemic position superior to the second? Even if he is not wrong about morality, it is possible that his justification is poor, incomplete, or rests on poor or incomplete justification for beliefs about the good life. The subjectivity of evidence defuses this sort of objection.

Conclusions

In this paper I aimed to defend premise (2) of a larger, epistemic argument for natural rights. If our access to evidence about our interests and how to obtain them requires that we confer epistemic advantage on every other individual with respect to beliefs about their interests, then we are subject to rational restrictions on how we may behave toward them. This has, I will argue in later papers, important implications for what constitutes

⁵² I thank an anonymous reviewer for this insightful objection.

acceptable public policy. Importantly, my conclusion is consistent with much current common law: individuals formulate complaints about their interests, they present evidence for these claims before ostensibly impartial third parties, and judgments are made according, not to moral theories, but according to contracts, market values, and the pragmatics of human interaction. Its implications for the executive and legislative domains of political activity are more interesting. Nevertheless, this first step is controversial and required extended treatment. But if I have been successful, we at least have a framework for developing and defending a classical liberal political philosophy that avoids the imbroglia of presupposing or defending a particular moral theory.

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