The Economics and the Ethics of Constitutional Order

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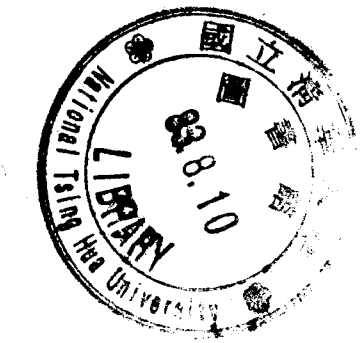

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CHAPTER 18

The Foundations for Normative Individualism

What is the ultimate justification for regimes of social interaction that allow biologically defined members of the human species to choose separately among locational, occupational, associational, evaluational, life-style, production, and consumption alternatives? Why are such regimes deemed superior, in some relevant normative sense, to others that restrict, in some relative degree, the choice options of separate persons? Why is a liberal social order that is descriptively permissive of individual migration among many interlinked communities preferred to an order that defines and enforces the status of each person within the many communitarian dimensions? Social philosophers who are, at the same time, advocates of a liberal or free society embodying the maximal exercise of individual liberties have often neglected these basic questions, perhaps in some misguided presumption that answers are as unnecessary as they are obvious.

1. Epistemic Individualism

It is to Douglas Rae's credit that he has forced a consideration of such questions. At a June 1988 conference in Santa Cruz, California, Rae presented a paper entitled "Epistemic Individualism, Unanimity, and the Ideology of Liberty."[1] The subject matter of the first part of the three-part title, and the paper, directly addresses the justificatory questions and offers a provisional answer. Rae's claim is that the liberal tradition, from which *The Calculus of Consent*[2] emerges, rests upon what he calls *epistemic individualism* as its fundamental justification principle. The claim is that the liberal advocacy of free institutions, notably those of the market economy, find normative justification in epistemological considerations. In Rae's account, the epistemic individualism claim is that the individual is privileged as a

1. Douglas Rae, "Epistemic Individualism, Unanimity, and the Ideology of Liberty: The Calculus of Consent Revisited" (paper presented at the Liberty Fund Conference, Santa Cruz, California, June 1988).

2. James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962).

choice maker because he or she knows better than anyone else what is "best" for his or her own well-being.

I do not challenge the descriptive relevance of Rae's presentation, and implied criticism, in so far as it applies to the normative justification for individualism, along with its institutional consequences, that informs the attitudes of many of my peers in economics and political economy. I want to reject, however, the descriptive accuracy of Rae's thesis in application to my own underlying philosophical perspective. My conceptual starting point, as expressed in *The Calculus of Consent* and other writings, is not based on the individualism that Rae labels to be "epistemic," either in its descriptive or its normative components.[3] In the discussion below I shall attempt to explain in some detail the fundamental ontological and normative assumptions that inform my position and also discuss how these differ categorically from the epistemic individualism attributed to me.

Although economists rarely pause to think about the philosophical foundations of their own constructions, when and if forced to explicit commitment most of them would accept the qualified utilitarian designation that their models descriptively incorporate. In these models, individual choosers-actors maximize utility by selecting a preferred combination of the feasible alternatives available, with the feasibility-set being determined by both natural and institutional limits. In these constructions, "utility," or more generally "that which is maximized" has a presumptive existence that is independent of any exercise of choice itself. An individual's utility function is described as a complete ordinal array of all potential alternatives, both those within and without the feasible set. There exists a unique utility-maximizing choice that can be located once the utility or preference function is specified along with the appropriate constraints.

As noted, implicit in this whole construction is the ontological assumption that there is "something"—whether called a utility function or not—that exists and can, at least conceptually, be objectified and separated from individual choice. If this assumption is made, then the relation between an individual's choice behavior and his or her utility function becomes a matter of fact. That is, there arises a factual question open to investigation concerning the correspondence between the choices made and the change in the individual's position as measured on the independent scalar. It becomes appropriate to classify certain choices as appropriate or even maximizing, as applied against the criteria provided by the utility function.

Only if this ontology—which I *do not* accept—is adopted, do the questions supposedly faced by epistemic individualism arise. And only within this ontology does the conflict between epistemic individualism and its potential

3. I make no claim concerning the position of my coauthor, Gordon Tullock.

alternatives assume relevance. Only if it is presumed that an individual's choice behavior and the utility function exist as conceptually separate things does it make sense to raise the question as to whether the individual or some third party or parties can most reliably identify the choices that are defined as "best" in terms of the given utility function.

If the well-being or welfare of the individual is equivalent to utility and is accepted as the ultimate normative objective, and if, further, the individual is presumed to possess superior knowledge of his or her own utility or preference function, there is an epistemic basis upon which arguments for extending the range of voluntary individual choices can be constructed, along with consequential arguments for the establishment and maintenance of institutions that maximally allow such choices. Conversely, there is a basis for arguments that call into question the normative legitimacy of institutions that restrict individual freedom of choice. Those institutions of an individualistic social order, and notably those of market exchange, derive their normative justification from the relative efficacy of these institutions in exploiting this epistemological privilege granted to participants. Conversely, those institutions that limit individual choice, and notably those of the state, derive their possible normative justification only upon the emergence of some effective demonstration that the epistemic privilege of participants is somehow more than offset by other considerations, or that, in other settings, participants do not enjoy such privileges at all.

2. Challenges to Epistemic Privilege

I propose to examine briefly three separate but related challenges to the legitimacy of social arrangements that embody maximal dependence upon individual choice, each one of which reflects an attempt to deny the epistemic privilege of individuals who participate in such arrangements.

Benevolent Paternalism

Welfare economists often refer pejoratively to those persons who seek to impose their own "meddlesome preferences" on others whose conflicting preferences reflect differing life-styles. And the difficulty of separating attempted intrusions of genuinely meddlesome preferences from the attempted exercise of benevolent paternalism must be acknowledged. The existence of benevolent paternalism on the part of some persons cannot, however, be denied. Such persons genuinely seek to insure that others than themselves secure the highest level of well-being or utility that feasibility limits allow. The paternalists reject only the claim of epistemic privilege; they do not think that individuals know what is best or good for them. The paternalists advance

the counter claim that they, as outsiders, as informed experts, know more about the ability of the relevant choice options to satisfy the ultimately desired objectives of the persons affected than those persons themselves who might otherwise make the choices in question. The paternalistic claim is that, in some final or ex-post reckoning, individuals must acknowledge their own initial unknowledge or tendency to err, and, thereby, must validate, ex-post, the limits that are imposed on their ability to make the "right" choices.

Note that the paternalists' claim can be exclusively epistemic. They need not replace individual utility maximization as the normative goal. And they need not introduce arguments reflecting some supraindividualistic "social" or "public" interest into the relevant functions. The claim is, quite simply, that someone knows better than the individuals themselves how to secure their own well-being.

"Scientific" Socialism

Quite a different sort of challenge to the epistemic privilege of the individual under liberalism is mounted by the "scientific" socialists, especially of the classical Marxist-Leninist tradition. That which is "good" for individuals is to be determined by the objective laws of historical development. Mankind, rather than existing, empirically identifiable individuals, is the normatively relevant unit. Neither the voluntary participation of individuals, even as members of the proletariat, nor their ex-post approval, is required as any part of the justificatory exercise. "Social choices," in this construction, are not derived from "individual values" but are, instead, the implementation of mankind's recognized destiny.

The challenge of the "scientific" socialists to individualism remains epistemic, but in a much more intrusive sense than that of the paternalists. The ultimate objective, at least rhetorically, remains the welfare of individual participants in the political community, but this welfare is not measured, even conceptually, by individually separable indicators of utility. Individuals themselves are defined only as members of the community; they cannot, in principle, conceive of, much less have knowledge of, their separably identifiable well-beings.

Political idealism

A third criticism of the liberal social order in which persons are allowed wide scope for voluntary choice, particularly through the institutions of a market economy, can be interpreted in epistemic terms, although here it is the object of knowledge rather than the means of its attainment that assumes center stage in the argument. This criticism, which I call "political idealism," does not

embody a conception of individuals seeking out or aiming for separately identifiable goals or objectives that assume meaning in other than communitarian terms. This feature is shared with the scientific socialists. But the goals or objectives of persons-in-community are now to be sought, not in some pretense of scientific inquiry, but rather in the Platonic summum bonum—the good, the true, and the beautiful—that can be defined for us by the philosophers. In this strand of criticism, those institutions that allow individuals to exercise private choices over wide ranges of action may tend to promote the vulgar and animalistic desires of ordinary humankind which then take priority over those higher values that can be revealed only to the select few who hold access to the founts of wisdom.

The three criticisms of the liberal order sketched here along with other variants, for example, technocracy, intersect, one with another, and each incorporates different epistemological presuppositions concerning both the inner knowledge of the means possessed by individuals and the "outer" knowledge of the ends that "should" provide the ultimate motivations for action. My purpose in this section has not been to examine any of these, or other, criticisms of liberalism in detail; my purpose is, instead, to suggest the potential vulnerability of any pure epistemic defense, whether to the arguments noted here or to others. A liberal order that is founded on epistemic justification remains open both to analytical and empirical deconstruction of its essential proposition.

3. Subjectivism: Epistemic Limitation and Normative Implications

My purpose in this short chapter is to suggest that the foundation for a normative individualism is not epistemic. In addition, I suggest that the criticisms of the liberal order that seek to exploit the vulnerability of the epistemic argument are not pertinent to the alternative justificatory argument that best describes my own position.

My own ontological presuppositions do not allow any conceptual separation or distinction between an individual's choice behavior and his or her utility function. My position is sometimes classified to be one of strict *subjectivism*, applications of which have been discussed in my book, *Cost and Choice* and other works.[4] From a subjectivist perspective, a "utility function," as such, does not exist which, even conceptually, could be observed and recognized independently of an individual's choice behavior. All there is are individual choices, and it is about these choices, not about some alleged

4. James M. Buchanan, *Cost and Choice: An Inquiry in Economic Theory* (Chicago: Markham Press, 1969).

relationship to some utility function, that we develop theories. We may, for example, observe that persons sometimes regret choices that have been made, and we may conjecture that some third person might have been able to predict that such regret would occur, post choice. And we may then hypothesize that this third person might have been able to offer "good" advice to the chooser, pre choice. But none of these theories about choices require the introduction of a choice-independent utility scalar.

The modern economist who models the individual as choosing among feasibly alternative bundles of goods to maximize a utility function that does exist independently of choice itself presents no evidence that such functions actually exist, and, if pushed, the economist would agree that "utility" is little more than a rhetorical artifice that is introduced as an aid in explaining choice behavior within an imposed rational choice reconstruction. While the issue of epistemic individualism is of relevance for this conception, it has no bearing on my ontological perspective; the individual chooses that which he chooses, and there need exist neither prior nor posterior "knowledge" that enables any choice to be classified as "correct" or "incorrect" against some criterion of well-being. At the moment of choice itself, the individual selects the alternative that is preferred, but this tautological proposition embodies no presumption about epistemic privilege.

Choice exercised by an individual involves self-creation along with the creation of constraints imposed on the choices of others. This reciprocal interaction takes place over a whole temporal sequence. The "individual," as described by a snapshot at any moment, is an artifactual product of choices that have been made in prior periods, both by himself or herself and others. If it is acknowledged that any person, post choice, is necessarily different from the person that made the choice, and that the difference is produced, in part, by the act of choice itself, it becomes absurd to apply criteria of "correctness" directly to choice, as such, including epistemic criteria.[5]

Knowledge concerns that which is, or that which is potentially knowable, by someone. Knowledge cannot, therefore, extend to the unknowable, which must contain *all* that takes place in the future, *including* choices that will be made. Neither the individual who may choose internally nor the paternalist who may impose a selected alternative externally can claim epistemic privilege, since the selection among alternatives at t_0 will itself *create* a setting at t_1, from within which any evaluation of the t_0 choice must be made.

The distinction between the two ontological conceptions that I have tried to contrast has implications for justificatory arguments advanced in support or opposition to alternative social-organizational arrangements. As I have noted, epistemic individualism plays no role in my own ontological presuppositions, but this statement implies nothing directly about the justificatory argument.

5. For an elaboration of my position here, see James M. Buchanan, "Natural and Artifactual Man," in idem, *What Should Economists Do?* (Indianapolis: Liberty Press, 1979), 93–114. I have been influenced by the work of G. L. S. Shackle. For the most complete statement of his position, see G. L. S. Shackle, *Epistemics and Economics* (Cambridge: Cambridge University Press, 1972).

The justificatory foundation for a liberal social order lies, in my understanding, in the normative premise that individuals are the ultimate *sovereigns* in matters of social organization, that individuals are the beings who are entitled to choose the organizational-institutional structures under which they will live. In accordance with this premise, the legitimacy of social-organizational structures is to be judged against the voluntary agreement of those who are to live or are living under the arrangements that are judged. The central premise of *individuals as sovereigns* does allow for delegation of decision-making authority to agents, so long as it remains understood that individuals remain as *principals*. The premise denies legitimacy to all social-organizational arrangements that negate the role of individuals as either sovereigns or as principals. On the other hand, the normative premise of individuals as sovereigns does not provide exclusive normative legitimacy to organizational structures that—as, in particular, market institutions—allow internally for the most extensive range of separate individual choice. Legitimacy must also be extended to "choice-restricting" institutions so long as the participating individuals voluntarily choose to live under such regimes.

For the justificatory construction here, epistemic features of choice are simply irrelevant. Individuals are to be allowed to choose among potentially available alternatives simply because they are the ultimate sovereigns. And this conclusion holds independently of the state of knowledge possessed about either means or ends. If individuals are considered the ultimate sovereigns, it follows directly that they are the *addressees* of all proposals and arguments concerning constitutional-institutional issues. Arguments that involve reliance on experts in certain areas of choice must be addressed to individuals, as sovereigns, and it is individuals' choice in deferring to experts-agents that legitimizes the potential role of the latter, not some external assessment of epistemic competence, as such.

4. Application

I have opposed a subjectivist to an epistemic foundation for normative individualism. The discussion has indicated the central differences between these two philosophical frameworks. I have not yet examined the implications of the two foundations in any practical application. It is, I think, relatively easy to show that the social philosopher who relies on epistemic privilege to defend individual freedom of choice and the institutions that allow this freedom to be exercised maximally faces a much more difficult burden of proof than

the philosopher who rests his or her argument squarely on a subjectivist interpretation.

Consider the eighteenth- and early-nineteenth-century argument in defense of the institution of human slavery. Intellectually honest philosophers, from Plato through the nineteenth century, supported the institution of human slavery on epistemic grounds. Commencing from the presupposition that persons differ in their intrinsic epistemic capabilities, a presupposition that carries solid empirical support, even if not in terms of distinct groupings of persons, these philosophers, both classical and modern, support attempts to construct and to maintain an institutional correspondence between epistemic capabilities and the ranges of voluntary choices allowed to individuals. These institutions are explicitly designed to allow those who are more capable epistemically to impose their will coercively upon those who are considered less capable. And this institutional correspondence is not, of course, limited to the explicit institution of slavery; it applies equally to all institutions that allow for differential access to the exercise of individual choice.

How does the epistemic individualist counter the sometimes persuasive argument of the elitist, which itself evokes epistemic standards? The response that the individual really does "know best" what is "good" for him or her may seem quite empty, and especially when the individual is observed to make choices that seem to guarantee hunger, deprivation, myopic prodigality, and addiction. Is it not preferred, on epistemic grounds, that the homeless alcoholic in the streets be made a slave (under the auspices of the modern state) for "his or her own good"?

The burden of argument placed on the epistemic individualist in all such cases may be contrasted sharply with that which the subjectivist confronts. The latter can remain appropriately deaf and blind to the entreaties of the elitist who claims supraindividualist status. The biological dividing line that separates members of the human species from other animals is surely easier to draw than any within-species line (even the no line limit) that the epistemic defense of individuality must trace out. I am not suggesting that all problems of identification disappear; qualification for membership as individuals in the human species that is relevant for the free exercise of choice cannot be met by children and the mentally incompetent. These problems seem, however, minuscule in comparison with those that arise in the alternative framework.

If "that which is best" for an individual exists independently of choice by that individual, the institutional arrangements within which choice may be exercised are not directly related to the definition of the objective. The problem for institutional-constitutional design is one of achieving "efficiency" in the attainment of the defined state of the world. By contrast, if "that which is best" for an individual does not exist independently of choice by that individual, the institutional structure must, at some level, facilitate such choice if,

indeed, "that which is best" is accepted as the ultimate normative objective. "That which is best" is objectively meaningful only at the moment of choice itself. In the observed context of the institution of human slavery, it becomes absurd to refer, as Plato, to the superior knowledge of the master concerning "that which is best" for the individual slave. In directing the activity of the slave, the master is, at the moment of choice, selecting "that which is best for the master"; he or she could do nothing other than this.

The subjectivist argument requires, however, much more attention to the level of choice than the epistemic argument. As noted it is ontologically absurd to define the master's choice as selecting among alternatives "that which is best for the slave." On the other hand, "that which is best for the *individual* as slave," determined only by the individual in question, may possibly involve voluntary agreement, as some level of contractual choice, to submit to the coercive authority of another person. Slavery, as an institutional arrangement, cannot be condemned as "not best" independently of its observed coercive establishment.

The alternative philosophical foundations for normative individualism, and for the structure of institutions that allow the exercise of voluntary choice, carry quite different implications for individual responsibility. The vulnerability of the epistemic defense of individualism to demonstration of incompetence on the part of some members of the political community lends itself readily to politicized corrections for such incompetence. Regardless of the institutional structure, which may itself reflect a generalized acceptance of normative individualism, the elite may express concern for those who do not demonstrate the capability of knowing what is really best for themselves, in the selection of either means or ends. The way is open for the modern welfare states, which combine elements of epistemic individualism with the elitism of those who defend the institution of human slavery. The normative individualist whose ontology is subjectivist operates on the presumption that, by their very being as individuals, members of humankind are and must be treated as responsible for their own choices. Individuals are not to be "protected from their own folly," even if this basic stance is tempered with ordinary compassion.