

WHY PATERNALISTS MUST ENDORSE EPISTOCRACY

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RECENT FINDINGS from psychology and behavioral economics suggest that we are “predictably irrational” in the pursuit of our interests.¹ Paternalists from both the social sciences and philosophy use these findings to defend interfering with people’s consumption choices for their own good.² We should tax soda, ban cigarettes, and mandate retirement savings to make people healthier and wealthier than they would be on their own.

While there is an extensive literature arguing for paternalistic interference with people’s consumption choices, little has been said on behalf of paternalistic interference with people’s *voting* choices. Brennan’s work in defense of epistocracy, for instance, focuses on the ways in which incompetent voters wrongly harm others.³ Our thesis is instead that the standard arguments offered in support of restricting someone’s consumption choices for their own good also imply support for restricting someone’s voting choices for their own good. Indeed, the case for paternalistic restrictions on voting choices is in many ways *stronger* than the case for restricting personal consumption choices. So, paternalists face a dilemma: either endorse less interference with consumption choices or more interference with voting choices. Note that we do not take a stand here on whether paternalism or epistocracy is justified; we are merely arguing that paternalists should, on pain of inconsistency, also accept a strong presumption in favor of epistocracy.

We begin with a sketch of the social scientific research on cognitive bias and its effects on decision making (section I). From there we explore how this research informs recent philosophical defenses of paternalism: due to the pervasiveness of cognitive bias, paternalists claim, the state will frequently be positioned to better advance the aims of citizens than citizens themselves (section II). Next, we show that the same considerations that purportedly count in favor

1 Ariely, *Predictably Irrational*.

2 See, e.g., Thaler and Sunstein, *Nudge*; Conly, *Against Autonomy*; and Hanna, *In Our Interest*.

3 See, e.g., Brennan, *Against Democracy*.

of paternalistic interference with citizens' consumption choices also count in favor of paternalistic interference with citizens' voting choices (section III). We then consider a variety of objections, including the claim that political liberties occupy a special status that shields them from coercive restriction (section IV). In closing, we acknowledge that the extent to which paternalists ought to endorse interference with the vote is an empirical question but insist that they are committed to such interference in principle (section V).

I

Most of the recent arguments for paternalistic interference with consumption choices begin by identifying ways in which people fail to be competent judges and pursuers of their own interests. One issue could be a simple lack of information or the presence of misinformation. Maybe you do not save enough for retirement because you do not understand the power of compound interest. Or perhaps you drink too much Mountain Dew because you do not know the calorie count of a sixty-four-ounce Big Gulp. People fail to obtain vaccines because they are misinformed about a supposed link between vaccines and autism, or about the dangers of thimerosal and other chemicals.

Another obstacle to competent decision making is cognitive bias. A cognitive bias is a systematic deviation from rational thought. A bias prevents a person from believing what she ought to believe in light of the evidence and information she possesses. In some cases, consumers might possess the relevant information but fail to use it to form true beliefs.

Sarah Conly, for instance, discusses the problem of the optimism bias within personal choice.⁴ People systematically underestimate their chances of being harmed by risky behavior like driving without a seat belt. As a result, we may play things less safe than we would if we made a sober assessment of the risks.

Consider also the case of "present bias"—we find it harder to endure a wait for a reward *right now* than to endure that same wait in the future.⁵ This bias may explain why we are not as healthy and wealthy as we would like to be. For instance, if someone offers to give you \$10,000 in ten years or \$100,000 in twenty years, you will probably wait an extra ten years to get the extra \$90,000. But if someone offers to give you \$10,000 *today* or \$100,000 in ten years, many people will take the money now and not wait the extra ten years to get the extra \$90,000. This tendency would help explain why many people save too little for retirement and pile up credit card debt. The same problem applies to decisions about health.

4 Conly, *Against Autonomy*, 22.

5 See, for instance, O'Donoghue and Rabin, "Present Bias."

If you have to fill out a dinner card months before your friend's wedding, you might request "no dessert" because you figure the taste of the cake is not worth the blood-sugar spike. But once you are at the wedding and the server mistakenly puts a slice of cake in front of you, you are far more likely to eat it. Motivated reasoning can also lead us to make poor decisions. Relapsed smokers, for instance, are more likely than successful quitters to accept positive beliefs about smoking—beliefs that rationalize their unhealthy behavior.⁶

For many decades in the middle of the twentieth century, economists often modeled consumers and producers as perfectly rational utility maximizers. The development of behavioral economics offered an empirical challenge to this model, and by extension to some of the normative positions economists and philosophers took in response to that model. In fact, along some dimensions, individuals make predictable mistakes.

Just how robust these behavioral economics findings are, and in particular how much laboratory results spill over into genuine market behavior, is a matter of considerable debate. We take no stance here, although of course paternalists' arguments often rely upon such findings. For instance, Conly writes:

The ground for valuing liberty is the claim that we are pre-eminently rational agents, each of us well suited to determining what goes in our own life. There is ample evidence, however, from the fields of psychology and behavioral economics, that in many situations this is simply not true. The incidence of irrationality is much higher than our Enlightenment tradition has given us to believe, and keeps us from making the decisions we need to reach our goals. The ground for respecting autonomy is shaky.⁷

We will note that even standard neoclassical economics often incorporates some of the findings of behavioral economics by accounting for the *costs* of rationality. Consider that activities such as thinking carefully or scientifically, engaging in mathematical calculations rather than relying upon gut heuristics and shortcuts, and working to overcome bias, are expensive rather than cost-free behaviors; they require time, effort, and other resources. The neoclassical model predicts that people will "spend" on information and rationality only if the expected benefits exceed the expected costs. When decisions are immediate with all or nearly all the consequences felt immediately, then over time people will be disciplined to make better, more rational decisions. However, the more the consequences of decisions are attenuated or the power of individual choices weakened, the

6 Fotuhi, Fong, Zanna, et al., "Patterns of Cognitive Dissonance—Reducing Beliefs among Smokers."

7 Conly, *Against Autonomy*, 2.

weaker the connection between outcomes and choices. The weaker the feedback signal, the less that reality disciplines individuals to become ever more rational. This explains, perhaps, why people learn quickly how to order food they will find tasty, take far longer to learn to be rational in choosing mates rather than rely entirely on gut feelings and heuristics, and seem to be even worse at planning long term for retirement. It explains why they can and do indulge irrational beliefs about vaccines (since vaccination is partly a collective action problem) but less often irrational beliefs about driving or crossing the street.

II

The implication of these sorts of findings is that people tend to smoke more and buckle their seat belts less often than they would if they had accurate beliefs about the risks. Paternalists then argue that policies like cigarette bans and seat-belt mandates can help people satisfy the preferences they *would* have were their beliefs accurate and if they reasoned about that information in a bias-free way. If people *really* understood how high the health costs of smoking are, very few would take up smoking. The ban simply helps people get what they really want and avoid what they do not really want.

Further, it may be possible to accommodate people who genuinely prefer to smoke despite the high health risks. A cigarette tax in effect shifts some of the high long-term costs of smoking forward, forcing the potential smoker to bear them today.⁸ Remember, one of the predictions is that consumers will be less rational in their choices when the costs are attenuated or distant. On some margin, this reduces smoking, though it appears that very high tax rates are necessary to produce significant reductions in smoking.⁹ Even if a polity institutes a ban on cigarette consumption, it might allow people to “opt out” of the ban by performing some relatively expensive procedure, such as having to apply for a smoking license after passing a test on the health risks of smoking.

To further motivate the case for paternalism, consider the following example from Conly.¹⁰ Suppose the person next to you is about to drink antifreeze because they think it is blue Gatorade. You can try persuading them that it really is antifreeze, but if that does not work, you should forcibly prevent them from

8 For a recent, informative discussion of “sin taxes,” see Allcott, Lockwood, and Taubinsky, “Regressive Sin Taxes, with an Application to the Optimal Soda Tax.”

9 Bader, Boisclair, and Ferrence, “Effects of Tobacco Taxation and Pricing on Smoking Behavior in High Risk Populations”; Callison and Kaestner, “Do Higher Tobacco Taxes Reduce Adult Smoking?”

10 Conly, *Against Autonomy*, 3.

drinking it. Here again, you are just helping them achieve their own ends—they do not want to drink antifreeze, they want to drink Gatorade. You are enabling them to satisfy the preferences they *would* have were they to possess more accurate beliefs about the facts.

To extend that example, suppose your friend actively tries to investigate whether the drink in her hand is Gatorade or antifreeze. She goes so far as to conduct chemical tests on the drink before drinking. However, she is so bad at chemistry that she concludes the propylene glycol in the liquid is actually sucrose, and so tries to drink it. Here, she *tries* to be scientific but fails. Again, you would feel justified in swatting the drink out of her hands.

This example suggests that paternalistic measures, such as cigarette bans, that coercively prevent people from making self-harming choices may be justified. But you could endorse milder forms of paternalism, such as Richard Thaler and Cass Sunstein's "nudges."¹¹ Maybe cafeterias should put healthier food in easier-to-reach places. You can still get a donut, but you will have to work for it.

Although critics may worry that paternalism is insulting or degrading to citizens—implying that they are not competent to make decisions about their own lives—Conly argues that this is not the case. As she puts it:

We don't regard it as insulting to assume that the man on the street can't do quantum mechanics, because he can't (unless you're on a very special street). The paternalist believes it is the facts that suggest a change in the status we accord people, a change from what we might have thought about ourselves to a more realistic acceptance of our inabilities. The suggestion here is simply that we should treat people in accordance with their real abilities and their real limitations.¹²

It is not degrading to face up to our own fallibilities and seek to help each other overcome them when we are in a position to do so.

Jason Hanna takes a similar position as Conly. For you to tell an obese person you randomly see in Target that he needs to lose weight may indeed be insulting. However, for a doctor to calmly and politely inform a patient that his obesity is harming him is not. Further, Hanna argues, if prominent physicians declare obesity a national health crisis, on the basis of overwhelming scientific evidence, and then issue diet and exercise recommendations, it is unclear why this would have an insulting message. If the national government then issues policy changes on that basis—such as taxes incentivizing healthy choices—it is unclear why

11 Thaler and Sunstein, *Nudge*.

12 Conly, *Against Autonomy*, 41.

this would suddenly become insulting if the underlying message on which the policies were based is not insulting.¹³

Hanna says that the most plausible version of this kind of objection to paternalism holds that certain policies objectively express an insulting message regardless of what the policymakers' motives are or how the policies make people feel. However, Hanna argues, the expressive significance of a political policy is not written into the fabric of the universe, but rather is a contingent social construct that depends upon the meaning people attach to it. As policies become commonplace and accepted, they lose their insulting force. Adults might find it degrading at first for the government to mandate that they wear seat belts. After a generation, it feels normal. Indeed, Conly argues that paternalism can actually be quite liberating by taking tedious decisions off our plates.¹⁴ By removing options from our option set, paternalistic regulation allows us to focus on those dimensions of our lives that we find more worthy of attention, or so the paternalist argues.

Although Conly may regard personal autonomy or freedom as being of largely instrumental value, other paternalists may simply hold that liberty is not of *absolute* value. If one has an absolutist view of liberty, then one would never accept a paternalistic interference with a person's freedom simply because it produces better consequences. But this seems implausible. To take John Stuart Mill's familiar case, if we stop you from crossing a bridge because you fail to see that the bridge is unsafe, it is implausible to regard that as wrongful, though we interfere with your movement.¹⁵ A more moderate deontology holds that rights violations or restrictions can be justified not whenever doing so promotes overall utility, but when doing so prevents some sufficiently severe enough harm or causes some sufficiently momentous good. However, Hanna argues, regardless of where one sets the "threshold" for justifying restrictions on liberty, it will be easy to construct at least hypothetical cases where paternalism meets that threshold.¹⁶ We need only imagine cases where paternalism stops someone from suffering a severe harm or helps them obtain a momentous good. Further, the *lighter* the burden a restriction imposes, the easier it is to justify. (For example, requiring adults to wear seat belts is less burdensome than requiring them

13 Hanna, *In Our Interest*, 73.

14 Hanna, *In Our Interest*, 90.

15 Mill says that we do not interfere with your liberty at all, since we do not stop you from doing what you want to do. You want to cross the bridge, not fall into the water. We do not actually stop you from crossing the bridge.

16 Hanna, *In Our Interest*, 118–44.

to save 5 percent of their income, which is less burdensome than mandating that they eat kale and quinoa.)

Of course, there are many reasons why one might reject paternalistic interference. Perhaps what appears to be cognitive bias at first blush will turn out not to be bias after all. For instance, the “sunk cost fallacy” may not be fallacious in some cases.¹⁷ Suppose you are deciding whether or not to change your college major. That you have already invested in a particular course of study might supply evidence that you will find your current major to be the right one for you at some point again in the future. Similar arguments may apply to other apparent biases.¹⁸

Another strategy for resisting paternalism appeals to deontic considerations. Evidence suggests that newlyweds suffer from optimism bias when surveyed about the prospects for their marriage.¹⁹ Even if the state could coercively arrange—or even nudge—marriages for citizens more successfully than the citizens themselves could, you might find such paternalistic interference with their choices to be impermissibly disrespectful of their autonomy.²⁰

There is also a consistency objection to paternalism: that people are systematically irrational does not speak in favor of paternalism because paternalistic regulators are themselves systematically irrational.²¹ Perhaps individuals are prone to undervalue future gains and overvalue present gains, but the same tendency presumably holds true of bureaucrats and legislators. Thus, we have at least a *prima facie* reason to doubt that paternalist intervention will succeed in correcting the biases it is introduced to correct. The emerging field of behavioral political economy argues in this vein.

We take no stand on whether consumption paternalism is ultimately justified. Rather, ours is a point about symmetry: we claim that paternalists about consumption should also favor paternalism about voting. Of course, neither form of paternalism may be acceptable. For example, if an apparent bias is not in fact a bias, then this result speaks against both consumption and epistocratic pater-

17 T. Kelly, “Sunk Costs, Rationality, and Acting for the Sake of the Past.”

18 See, e.g., Nebel, “Status Quo Bias, Rationality, and Conservatism about Value”; and Hedden, “Hindsight Bias Is Not a Bias.”

19 Lavner, Karney, and Bradbury, “Newlyweds’ Optimistic Forecasts of Their Marriage.”

20 Along similar lines, Jessica Flanigan writes, “Falling in love is often irrational and motivated by inconsistent and imprudent desires. Though some people may take steps to avoid finding themselves in this irrational state, many of us value the chance to make such an irrational decision even when we know it might have disastrous consequences. So it does not follow from the fact that a particular choice is irrational that people have rational reasons to want to avoid it, all things considered” (“Seat Belt Mandates and Paternalism,” 307).

21 Rizzo and Whitman, *Escaping Paternalism*.

nalism in that instance. The challenge for consumption paternalists who wish to avoid epistocratic paternalism is to argue for an asymmetry between the two cases. In the next section, we explain why the problem of cognitive bias is at least as troublesome for voting choices as consumption choices.

III

There is a large literature on paternalism and a growing literature on restrictions on the vote, but the two have not come into much contact. As noted, paternalists tend to consider restrictions on consumption choices. Much of the debate on epistocratic restrictions on suffrage focuses on the threat that incompetent voters pose to others rather than to themselves.²² For instance, Brennan analogizes incompetent voters to incompetent jurors or surgeons who impose serious risks on innocent people.²³ The right to vote not only gives you a say over your own life, but the lives of others—and this sort of authority requires justification. But may the state interfere with a citizen's vote for that citizen's own good? The considerations that speak in favor of paternalistic restrictions on consumption choices seem to speak as strongly in favor of paternalistic restrictions on voting choices.

One prominent line of argument in defense of democracy alleges that people tend to be the best judges of their own interests. Consider, for instance, these remarks from Samuel Freeman:

The rule of law, representative assemblies (elected and non-elected), separation of powers, and the convention that government acts solely as representative of the people, are all institutional expressions of the public nature of political power. Democracy, or a universal franchise with equal rights of political participation, is a natural extension of this idea; for if what affects all concerns all, and *assuming that adults are normally best situated to understand and advance their own interests*, then it is natural to conclude that each person ought to have a share of political authority to better ensure that no one's basic rights are undermined or interests are neglected in political procedures.²⁴

Surprisingly, Conly's own confidence in democratic institutions is unshaken by

22 E.g., López-Guerra defends epistocracy (he uses the term "aristocracy") on the grounds that incompetent voters may unjustly harm others (*Democracy and Disenfranchisement*). Other defenses of epistocracy appeal to general improvements in electoral quality. See, for instance, Mulligan, "Plural Voting for the Twenty-First Century."

23 Brennan, "The Right to a Competent Electorate."

24 Freeman, "Illiberal Libertarians," 122, emphasis added.

her thorough review of the pervasiveness of cognitive bias in human decision making. She claims that paternalistic “legislation, like all legislation, is best made under a democratically elected and accountable legislature under conditions of transparency.”²⁵

However, the assumption of voter competence is even more doubtful than the assumption of consumer competence. *A priori*, we would expect that every flaw in consumers to be worse in voters because the expected cost of an uninformed and biased consumption choice is higher than an uninformed and biased voting choice. A consumer bears most of the cost of their decision to smoke. But unlike consumers, voters never have unilateral decision-making power. Their votes are thrown in with everyone else’s. Except in very tight elections, how individual voters vote (or whether they vote at all) has almost no effect; the expected utility of voting one way is the same as voting the other.

To illustrate, imagine a professor tells her students in a five-hundred-person Econ 101 lecture that fourteen weeks from now they will take a final exam worth 100 percent of their grade. Instead of getting their individual grades, she will average all their scores together and everyone will receive the same equal score. One would expect—pending heroic efforts to overcome a collective action problem—that average grade would be an F , and that students would work less to overcome whatever biases and prejudices they harbor in economic reasoning (say, for instance, the exponential growth bias that causes them to systematically misunderstand compounding).²⁶ Students would be rationally ignorant and rationally biased, meaning that, in light of the professor’s rules, the expected costs of overcoming bias and learning the materials exceed the expected benefits. In short, investing in getting one’s answers right is instrumentally irrational given that such an investment is highly unlikely to change their grade. Democratic elections have roughly same basic structure and thus the same incentives as this final exam.²⁷ While the stakes are higher, the number of other “students” (i.e., voters) is also much higher.

A massive body of evidence, collected over seventy years, indicates that the majority of voters are uninformed. We will spare you the details, but voters tend to be ignorant of political matters ranging from their local representative, which party controls Congress, or changes in economic performance, to changes in

25 Conly, *Against Autonomy*, 39. Elsewhere she writes, “What we need is a democratically elected government, but one in which the government is allowed to pass legislation that protects citizens from themselves, just as we now allow legislation to protect us from others” (*Against Autonomy*, 2).

26 Stango and Zinman, “Exponential Growth Bias and Household Finance.”

27 See, e.g., Caplan, *The Myth of the Rational Voter*.

social indicators such as unemployment, recent changes in legislation, or the branches of government.²⁸ They are not simply ignorant; rather, voters many have systematically mistaken beliefs about both basic political facts as well as basic social-scientific issues.²⁹

Voters, like consumers, are also subject to a variety of biases. Some biases are the same as those at play in the marketplace. Take motivated reasoning. Plenty of studies show that political partisans are selectively skeptical—they will accept evidence that confirms their preexisting policy commitments and reject evidence that threatens them.³⁰ Just as a consumer may be motivated to rationalize their preference for an expensive luxury car, voters are motivated to rationalize their preference for the platform of their favorite party. So even when they are presented with relevant information, these voters will not update their beliefs appropriately.

Consider also the present bias discussed earlier. Suppose two candidates are running for president: Sensible and Reckless. Sensible proposes the immediate installation of a carbon tax to start tackling the problem of climate change. Yes, the tax will impose short-term economic pain but it is for the sake of long-term gain. Reckless argues that no immediate action needs to be taken. He downplays the urgency of the threat of climate change and floats the idea of nonbinding, vague emissions targets to be met at some unspecified point in the future. Voters biased toward the present will tend to prefer Reckless because he promises small but immediate benefits, despite the policies working toward voters' long-term disadvantage.

Voters also suffer from availability bias.³¹ The easier it is for us to think of something, the more common we think that thing is. The easier it is for us to think of an event occurring, the more significant we assume the consequences will be. We are thus terrible at statistical reasoning. Vivid things—plane crashes, shark attacks, terrorist attacks, Ebola—come to mind easily, so we assume these things are much more common than they are. Things that are not vivid—deaths from the flu or pneumonia—do not come to mind easily, and so we wrongly conclude these things are uncommon. This bias can cause voters to ignore less

28 See, e.g., Somini, *Democracy and Political Ignorance*; Delli-Carpini and Keeter, *What Americans Know about Politics and Why It Matters*; Brennan, *Against Democracy*; and Achen and Bartels, *Democracy for Realists*.

29 Bartels, "Uninformed Votes"; Althaus, *Collective Preferences in Democratic Politics*; Caplan, *The Myth of the Rational Voter*; Gilens, *Affluence and Influence*; and Caplan, Crampton, Grove, and Somini, "Systematically Biased Beliefs about Political Influence."

30 Erisen, Lodge, and Taber, "Affective Contagion in Effortful Political Thinking"; Lodge and Taber, *The Rationalizing Voter*; Westen, Blagov, Harenski, et al., "The Neural Basis of Motivated Reasoning"; Westen, *The Political Brain*.

31 Tversky and Kahneman, "Availability."

vivid but real harms—such as the dangers of climate change or the common flu—and instead support policies aimed at less common harms. For instance, even though deaths from terrorism are rare—only about 3,500 Americans have died from terrorist attacks in the past sixty years—Americans nevertheless support a “war on terror.” The Watson Institute at Brown University estimates the total real monetary costs of the wars on terror at \$5.9 trillion.³² John Mueller and Mark Stewart say that to justify the expense of the Homeland Security Administration, it would need to prevent nearly seventeen hundred major terrorist events per year, which of course it does not.³³ Most voters are undeterred.

Voters also are strongly influenced by “framing effects.”³⁴ How they respond to survey questions (including how they describe their own ideologies or political beliefs) and how they vote in democratic referenda depend strongly on how the questions are written. Voters can appear to change their mind, e.g., going from overwhelmingly supportive of government social insurance to opposing it, or from supporting capitalism or socialism, simply by substituting one word for a synonym in a poll. A psychologically savvy person—a pollster, newscaster, pundit, politician, moderator in a deliberative forum, or person writing up a referendum question on a ballot—can take advantage of framing effects to induce voters to support the manipulator’s favored position. The problem is so pervasive that some political scientists claim that most voters are largely “innocent” of ideology.³⁵

To be clear, we do not mean to suggest that the problem of political bias is immutable. There may be ameliorative steps that voters can take. One suggestion is to make use of heuristics—a voter may recognize her own susceptibility to bias and therefore defer to the judgment of an impartial expert.³⁶

We would like to register two concerns about the use of heuristics, however. First, evidence indicates that our choice of heuristic is itself susceptible to partisan bias.³⁷ More generally, there is empirical literature on the degree to which heuristics enable otherwise uninformed or irrational voters to vote well, a litera-

32 Watson Institute for International and Public Affairs, “\$5.9 Trillion Spent and Obligated on Post-9/11 Wars.”

33 Mueller and Stewart, *Terror, Security, and Money*.

34 For a thorough review of the dangers of this bias, see J. Kelly, *Framing Democracy*.

35 Kinder and Kalmoe, *Neither Liberal nor Conservative*; Achen and Bartels, *Democracy for Realists*; Converse, “The Nature of Belief Systems in Mass Publics.”

36 For a discussion of the value of shortcuts, see, e.g., Christiano, “Voter Ignorance Is Not Necessarily a Problem,” 257–60.

37 Somin, “The Ongoing Debate over Political Ignorance,” 386. For additional criticism of the appeal to heuristics, see Freiman, *Why It’s OK to Ignore Politics*, 18–21.

ture that suggests that heuristics not only often fail to overcome information and rationality deficits, but may even exacerbate them.³⁸

Second, and more important for our argument, an appeal to heuristics does not break the symmetry between consuming and voting. If heuristics enable voters to overcome bias, they presumably could enable consumers to overcome bias too. Indeed, consider that Thomas Christiano's defense of heuristics in voting makes explicit use of analogies to consumption heuristics:

People use shortcuts in all walks of life and in every aspect of their lives. Going to the doctor is a shortcut compared to studying for the rest of my life how my body works. Going to a mechanic is a shortcut compared to learning a lot about how cars work. In a society with such a complex division of labor such as our own, economic life and political life would grind to a halt if it were required that people know a lot about the things they depend on. It is well known that people are strikingly ignorant of what is in their toothpaste, their cars, their financial arrangements, and their bodies, just to start an endless list. Does this mean that they act on the basis of no information? No. It implies that they act on the basis of other people's beliefs and statements about these matters while not knowing or even understanding the bases of those beliefs.³⁹

Perhaps heuristics do correct for bias and ignorance in voting. But then we should even more strongly expect them to correct for bias and ignorance in consumption as well, thereby undermining the case for consumption paternalism in the first place.

Just as consumer incompetence opens the door for paternalistic interference, so too does voter incompetence. Conly claims coercive paternalism is justified when four conditions are met: (1) the activity proscribed must genuinely be against individuals' long-term interests according to the individuals' own values; (2) the coercive interference must tend to succeed; (3) it must survive cost-benefit analysis; and (4) noncoercive interventions are not as effective.⁴⁰ Hanna offers similar criteria. He claims that meeting condition 1 provides a presumptive justification for a "pro-paternalism attitude"; after that, it is an empiric-

38 Dancy and Sheagley, "Heuristics Behaving Badly"; Bartels, "Uninformed Votes"; Kuklinski and Quirk, "Reconsidering the Rational Public"; Fiske and Taylor, *Social Cognition, from Brains to Culture*; Kahneman, and Frederick, "Representativeness Revisited"; Nyhan and Reifler, "When Corrections Fail"; Kuklinski, Quirk, Jerit, and Schwieder, "Misinformation and the Currency of Democratic Citizenship"; Nadeau and Niemi, "Educated Guesses."

39 Christiano, review of *Against Democracy*.

40 Conly, *Against Autonomy*.

ical, social-scientific question whether paternalism will succeed and be worth implementing, all things considered.

So, the paternalist claims that if someone who decides to smoke *would not* have started smoking if they had made an accurate appraisal of the costs and benefits, and if the harms of smoking are sufficiently high, this provides presumptive grounds for interfering with their decision. Whether the government should then implement a smoking ban, impose cigarette taxes, or do nothing depends on matters of political economy, such as to what degree paternalist policies will be captured by special interests or how effective the bans will be. Similarly, if someone who decides to vote for a candidate or policy *would not* cast that vote if they had an accurate appraisal of the costs and benefits, and if the harms of doing so are sufficiently high, then the paternalist should say the same about interfering with those voters.

What might this look like in practice? A number of social scientists have provided accounts of the public's "enlightened" policy preferences.⁴¹ We could, for instance, empower a regulatory body with the authority to veto legislation that conflicts with the public's enlightened economics and political preferences.⁴² As Bryan Caplan puts it, "In the enlightened preference approach, one estimates what a person would think if you increased his level of political knowledge to the maximum level, keeping his other characteristics fixed."⁴³ To calculate such enlightened preferences, voters are asked to (1) express their opinions on a wide range of issues, (2) provide their demographic information (since this influences policy preferences), and (3) take a quiz of basic political information. With such data (all of which can be made public), it is possible to statistically estimate what a demographically identical voting public *would* have wanted if they were fully informed. It is easy to check for the robustness of the results if the questions had been changed in various ways. Indeed, this method is the way political scientists today estimate the independent effects of demographics on policy preferences while controlling for knowledge, or estimate the independent effects of knowledge while controlling for demographics.⁴⁴

41 Bartels, "Uninformed Votes"; Althaus, *Collective Preferences in Democratic Politics*; Caplan, *The Myth of the Rational Voter*; and Gilens, *Affluence and Influence*.

42 See, e.g., Brennan, *Against Democracy*; and Caplan, *The Myth of the Rational Voter*. You could go for more moderate forms of epistocratic paternalism. Maybe you could nudge the voters by designing the ballot order to increase the chances of voting no. We take no stand on the particulars here.

43 Caplan, *The Myth of the Rational Voter*, 55. See also Althaus, *Collective Preferences in Democratic Politics*.

44 Brennan advocates for this kind of epistocracy, which he calls "government by simulated oracle" or, more recently, "enlightened preference voting" (*Against Democracy*). He offers

Crucially, the enlightened-preference approach to policy is similar to Conly's and other paternalists' approach to consumption. In neither case are we contemplating the perfectionist notion of imposing alien values on the public. Rather, the government is providing people with what they *would* prefer if they possessed accurate beliefs about the facts.

A fringe benefit of epistocratic paternalism is that it would spare us from the tedium of politics, just as Conly proposes that consumption paternalism would spare us from the tedium of researching car safety.⁴⁵ Indeed, it is probably a political philosopher's conceit to believe that Americans do or should care more about electoral politics than their cars. A stable finding in political science is that most citizens find politics uninteresting. The minority who do find it interesting tend to be more active and better informed, but also extremely biased.⁴⁶

IV

At first glance, the philosophical justification for paternalistic intervention in consumer choices looks like an even stronger presumptive argument for paternalistic intervention in voter choices. Voters appear to be even more strongly beset by biases than consumers, in part because the feedback mechanism in democracy is far weaker than almost all market decisions. However, some will claim that these two cases are disanalogous, or that paternalism against voters faces special problems. We will turn now to considering those objections.

One objection holds that there is an asymmetry between voting badly and making bad consumer choices. Your individual consumer choices are individually efficacious. If you decide to smoke a pack of cigarettes daily, you in fact do so. Your individual vote is not efficacious. How you vote has a tiny chance of making any difference. How *we* vote matters, but how any one of us votes does not. (This, remember, explains why the problems of ignorance and bias are worse in voter choices than with consumer choices.) Thus, one might worry, the case for paternalistic interference with individual voters is weaker. How can we coerce Bob to vote better if Bob's vote does not matter?

In response, consider a variation of Mill's famous bridge case. Suppose one hundred marathoners are trying to cross a bridge all at once. The bridge can safely hold ten people, but will collapse under eleven or more people. Again,

an account of how to choose the questions on the "knowledge quiz" portion to avoid or reduce special-interest manipulation.

45 The idea that Conly's argument about self-regulation could carry over to the vote was first suggested by Aaron Ross Powell.

46 Mutz, *Hearing the Other Side*.

suppose you cannot warn the marathoners or convince them to cross in small groups. Here, it seems plausible, on paternalistic grounds, that one may interfere to stop them from passing, even though in this case no individual person crossing makes any significant difference. Even though an individual's choice to join the marathon will not make or break the collapse of the bridge—and it would be better for a particular individual to be permitted to run while the others are blocked—it looks like the reason to endorse paternalism in Mill's original bridge case justifies paternalistic interference here: the enlightened preferences of the marathoners would be satisfied by fencing off the bridge.

A closely related variation on this objection holds that “intelligence” can be an emergent feature of the collective decision maker. Certain mathematical theorems imply that, in some conditions, a group can make smart decisions as a whole even if the individuals within that group are not so smart. The miracle of aggregation theorem holds that ignorant voters might make random errors that cancel each other out. Condorcet's jury theorem claims that, in certain conditions, if the mean reliability of individuals within a group is greater than chance (>0.5), then as the group becomes larger the probability it will make a correct decision approaches 1. (The theorem also says that if mean reliability <0.5 , then as the size of the group increases the probability they will make the wrong decision approaches 1.) The Hong-Page theorem says that increasing the “cognitive diversity” of a group improves collective decision making more than increasing the average reliability of individuals within the group.⁴⁷

Now, there is a long debate about just when and whether those conditions are met in actual democratic decisions.⁴⁸ We will not try to settle that debate here. Instead, we note that everyone agrees that if voters make systematic errors and mistakes, then the Hong-Page and miracle theorems do not apply, while Condorcet's jury theorem instead implies that democracies will always make bad choices. We note that both sides agree that the theorems apply to real-life democracies only under special conditions, and many real-life democratic decisions do not meet those conditions.⁴⁹ We also note that both sides of the debate seem to agree that sometimes the theorems apply and sometimes democracies make systematic errors. The debate concerns how *prevalent* these problems are.

47 Brennan, *Against Democracy*, 172–203; and Landemore, *Democratic Reason*.

48 Caplan, *The Myth of the Rational Voter*; Brennan, *Against Democracy*; Landemore, *Democratic Reason*; Somin, *Democracy and Political Ignorance*; and Achen and Bartels, *Democracy for Realists*.

49 E.g., Brennan claims that the Hong-Page theorem does not apply to most actual votes, because the conditions of the theorem are not met (*Against Democracy*). Landemore seems to concede this but then argues that we should change democratic decision procedures in order to better fit the theorem and take advantage of cognitive diversity (*Democratic Reason*).

Here, the paternalist can just say, “Sure, when there is emergent collective intelligence, the case for paternalism disappears, but when there is collective folly, it remains. Now it is an empirical question how often we have collective wisdom or folly. But that is no different from the problem of consumer choice. Sometimes consumers tend to make wise choices; sometimes they make systematic errors.”

Another objection to our argument alleges that the vetoed legislation would inevitably have benefited *some* citizens, thereby harming a few to help the many. For instance, tariffs might benefit some domestic producers, but an epistocratic veto would probably disallow them.

The problem with this objection is that it counts against consumption paternalism as well. As Conly herself says,

do these [paternalistic] laws mean that some people will be kept from doing what they really want to do? Probably—and yes, in many ways it hurts to be part of a society governed by laws, given that laws aren’t designed for each one of us individually. Some of us can drive safely at 90 miles per hour, but we’re bound by the same laws as the people who can’t, because individual speeding laws aren’t practical. Giving up a little liberty is something we agree to when we agree to live in a democratic society that is governed by laws.⁵⁰

Similarly, a smoking ban would harm the small group of smokers who do have accurate beliefs about the risks of smoking and proceed to smoke anyway. But this implication leaves coercive paternalists undeterred.

A Rawls-inspired objection might allege that the right to vote is a political liberty that is protected as basic, meaning that it may not be infringed upon except for the sake of other basic liberties. This implies that Steve’s right to vote may not be restricted to promote Steve’s welfare, for example. This objection would rule out paternalistic interference with the vote.

Before we address this objection in depth, it is important to reiterate that our aim is not to defend paternalism about consumer choices or voting; rather our aim is to argue that those who endorse paternalism in consumer choice have grounds at least as strong to endorse paternalism in democratic choice. Sarah Conly, Jason Hanna, and Cass Sunstein and Richard Thaler, among other paternalists, do not seem to accept the Rawlsian theory of basic liberty. However, perhaps some readers might think that, even if Conly and Hanna are not Rawlsians, nevertheless the Rawlsian theory explains why paternalism in consumer choices is less objectionable than in democratic choices.

We contend that the basic liberty objection fails to break the symmetry be-

⁵⁰ Conly, “Three Cheers for the Nanny State.”

tween voting choices and consumption choices. Paternalistic interference with consumption choices will frequently involve infringing upon liberties that Rawlsians consider basic. For instance, the right of bodily autonomy is a basic liberty and it would appear, on the most obvious reading, to protect a person's right to smoke a cigarette or eat sugary foods. They are your lungs and it is your waistline, after all. Similarly, liberals believe in freedom of speech, yet paternalistic interventions such as mandatory calorie counts and health warnings on cigarettes are plausibly construed as forms of compelled speech. If the state may nevertheless interfere with your choices regarding your body or your speech, we see little reason why it may not interfere with your choices regarding your vote.

You could reply that the right of bodily autonomy or free speech does not protect *all* uses of one's body or one's speech. Perhaps, in a Rawlsian spirit, only those uses that are required for the *adequate* development and exercise of your sense of justice and conception of the good are protected. In a debate with John Tomasi, Samuel Freeman elaborates that a liberty is basic only if it is necessary for *all* citizens to possess that liberty in order to adequately develop and fully exercise their two moral powers.⁵¹ However, elsewhere he recognizes that there will always be exceptions. Perhaps some "peripatetic ascetic" is able to adequately develop their moral powers despite living in extreme deprivation.⁵² So, Freeman probably means that a liberty qualifies as a basic liberty just in case it is an essential social condition for *most* people to adequately develop and fully exercise the two moral powers.

However, here the Rawlsian runs into serious trouble. As an empirical matter, it seems very little liberty is strictly speaking essential for most people to develop the two moral powers. People in moderately illiberal, deeply authoritarian, or even totalitarian regimes may have a harder time than we do in accessing the proper evaluative horizons for them to develop the moral powers, but even in such countries, it is not impossible, or even all that difficult to develop these powers. Most citizens do. To develop the two moral powers, you do not need much (let alone extensive) freedom of speech, freedom of marriage rights, much freedom of association, or much political liberty.⁵³ You do not need to have the right to vote or run for office. You do not need to live in a society that completely realizes the rule of law. You do not need to have the unlimited right to choose your own occupation. Surely you can adequately develop and exercise your moral powers without being permitted to smoke. But here again, people can ade-

51 Freeman, "Can Economic Liberties Be Basic Liberties?"

52 Freeman, *Rawls*, 56.

53 See Flanigan, "All Liberty Is Basic"; and Freeman and Thrasher, "The Right to Own the Means of Production," 194.

quately develop and exercise their moral powers while having the results of their vote subject to an epistocratic veto or enlightened-preference calculations.

This last point is worth stressing. Depriving citizens of the right to smoke is compatible with their freedom to make plenty of other choices about what to do with their bodies. Thus, one's right of bodily autonomy may well be adequately respected despite being truncated by paternalistic intervention. But presumably the same point holds with respect to democratic rights. Subjecting citizens' votes to enlightened-preference calculations is compatible with respecting plenty of other participatory rights. Citizens may still participate in politics via phone banking, door-to-door campaigning, writing op-eds, and more.

The Rawlsian might agree, but then say that while people can *develop* their two moral powers despite having significant paternalistic interference with consumption choices or one's vote, nevertheless, one cannot fully exercise one's moral powers without such a right. Perhaps not—we take no stand on this point. Here we would only once again reiterate that our thesis concerns the symmetry between consuming and voting. If citizens are unable to fully exercise their moral powers when their democratic rights are abridged, then presumably they are unable to fully exercise their moral powers when their right of bodily autonomy is similarly abridged. At a minimum, we think the burden of justification rests with those who would assert an asymmetry.

Another reply to our argument may appeal to the *intrinsic* value of democracy and self-governance. Perhaps the right to make unabridged democratic choices is simply good in itself. This could be true, but it is unclear whether this reply is available to consumption paternalists given their views about the value of consumer freedom. Conly, for instance, suggests that we ought to downgrade the value of autonomy in light of the finding that we use it to make systematically bad choices. She writes, "Autonomy is not all that valuable; not valuable enough to offset what we lose by leaving people to their own autonomous choices. The truth is we do not reason very well and in many cases there is no justification for leaving us to struggle with our own inabilities and to suffer the consequences."⁵⁴ Any given paternalist might assign unencumbered choice *no* intrinsic value, or perhaps simply sufficiently low intrinsic value such that it is outweighed by the value of the welfare benefits of paternalist interference. Of course, paternalists might be wrong—maybe self-governance *is* quite intrinsically valuable. But in this case, the challenge of explaining why uninhibited choice is more intrinsically valuable in the political realm than the economic realm remains.

Perhaps less drastic, non-epistocratic institutional reforms could ameliorate the problems of voter ignorance and bias. In his discussion of affluence and ac-

54 Conly, *Against Autonomy*, 1.

cess to political information, Christiano writes, “Education is a good place to start with, but it will not solve the problem of political information. What is needed are institutions that disseminate what Downs calls ‘free information’ to ordinary people.”⁵⁵ Yet if the dissemination of free information obviates the need for paternalism in voting, it should also obviate the need for paternalism in consumption. Moreover, paternalists themselves are skeptical that information alone will make consumers more rational. For instance, people are fairly well informed of the dangers of cigarette smoking and yet they continue to smoke too much for paternalists’ liking.⁵⁶

We acknowledge that objections to epistocracy may remain that we lack the space to consider. However, we remind readers that we are not here defending paternalism or epistocracy. We instead say that paternalists face a dilemma: they should either *also* accept epistocracy or give up paternalism about consumer choice. Their reasons for endorsing paternalism in the market are at least as strong as reasons to be paternalists about politics as well. (We thus acknowledge that if you have no interest in being a consumption paternalist, our arguments do not apply to you.) Thus, a good objection to our argument must find a *disanalogy* between the two cases. It must not simply be an argument that defeats the case for paternalism *simpliciter*. Rather, it must be an objection that defeats paternalism about political choices but that does not also refute paternalism about consumer or personal choices.

v

Last, there is a practical objection to paternalistic regulation of the vote: state agents might abuse their new powers. They are influenced by self-interest and bias like anyone else. Special interest groups and political groups might engage in rent seeking with the goal of capturing administrative agencies or paternalistic laws for their own benefit. Perhaps government failure would be so severe that the paternalistic interventions into voter behavior would not on net promote good outcomes.

This sounds right to us, but at first glance the point applies equally to paternalistic regulation of consumption choices.⁵⁷ Indeed, paternalistic regulation of consumption has proven to be corruptible time and again. Consider, for instance, the role of “bootleggers and Baptists” in institutionalizing alcohol prohibition, sugar and corn syrup manufacturers’ influence on the US government’s campaign

55 Christiano, review of *Against Democracy*.

56 Conly, *Against Autonomy*, 3.

57 For a more detailed exploration of this worry, see Rizzo and Whitman, *Escaping Paternalism*.

against fat and in favor of carbohydrates, the influence of opiate manufacturers, alcohol producers, and police unions in preserving drug criminalization, Big Tobacco's attempts to stifle vaping through regulations, and casino owners' fight against online gambling. In these cases and more, protecting people from themselves has simply served as a convenient pretext for self-interested rent seeking.

There are also some reasons to think government failure in paternalism about voter choice may be less severe than government failure in consumer choice. The media keeps constant vigil on issues of gerrymandering, purported voter fraud, campaign finance, Russian hacking, and the like. In contrast, the media largely ignores cases of blatant, socially destructive rent seeking in consumer markets, such as Archer-Daniels-Midland's corn subsidies, even though such cases are routinely used in economics textbooks as examples. Epistocratic paternalism will be more closely monitored than consumer paternalism.

And remember that people have far stronger incentives to acquire accurate beliefs to inform their consumption choices than their voting choices, because their consumption choices are "decisive" but their voting choices are not. If you choose to buy a particular house, you will get it. Thus, you had better make sure you have done your homework to ensure that it is in a safe neighborhood, zoned for good schools, and in reasonably decent shape. If you are wrong, you will suffer the costs. On the other hand, your voting choice will never be decisive—your choice to vote for Candidate *X* will never cause Candidate *X* to win the election. Thus, the cost of casting a careless vote is dramatically smaller than the cost of making a careless purchase. One implication of the comparative thoughtfulness of consumption choices is that states may have less occasion to paternalistically interfere with them. Further, the *moral* cost of interference seems greater when the choice in question is more thoughtful and informed. Perhaps you should be less willing to interfere with your friend's reflective decision to handle snakes as part of a religious ritual than his kneejerk decision to grab a cobra at the zoo. The former decision is more expressive of his values and commitments and may therefore be deserving of more respect.

At any rate, note that Conly and Hanna, among others, already hold that whether a particular paternalistic intervention is warranted should be decided on a case-by-case basis, taking such factors as government failure and rent seeking into account. Conly, for one, thinks all-things-considered this means that alcohol prohibition, while *prima facie* justifiable according to paternalistic reasoning, is not worth pursuing, while a ban on cigarettes is. For such paternalists, the issue is only whether a suitable institutional framework for any particular paternalistic intervention can be developed. Conly, Hanna, and other paternalists should thus apply the same reasoning to paternalistic interventions in voting.

Prima facie, they should regard such interventions as justified. They might accept some interventions and reject others on the final analysis if, in light of problems of political economy, they fail cost-benefit analysis.

It may very well turn out that unfettered democracy simply performs better than the available institutional alternatives in terms of promoting social trust, securing stability, and so on. In this case, democracy should be preferred to epistocracy on purely instrumental grounds. This conclusion is consistent with our argument, which is that paternalists should have no in-principle opposition to epistocracy and therefore no objection to exploring whether paternalistic restrictions on democratic performance can be made to work. But note that this conclusion—perhaps to the dissatisfaction of some democratic theorists—holds the viability of democracy hostage to our cost-benefit calculations.⁵⁸

In closing, let us issue a reminder that our claims are appropriately modest: paternalists should endorse the permissibility of epistocratic paternalism in principle. The extent to which their principles commit them to paternalist interference with the vote in practice is an empirical question. As of now, no one in political science or economics has done sufficient empirical work to merit the conclusion that epistocratic paternalism cannot work while consumer paternalism can and does. Our argument may make coercive paternalists uneasy. As we have seen, even Conly does not waver in her commitment to the competence of voters. And many political philosophers want to reject epistocratic interference with the vote *in principle*. As a sociological matter, paternalists about consumption vastly outnumber epistocrats. But if we are right, philosophers should be either less paternalistic or more epistocratic.

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