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ARTICLES

- 67 What's New about Fake News?  
*Jessica Pepp, Eliot Michaelson, and  
Rachel Katharine Sterken*
- 95 Rights, Roles, and Interests  
*Robert Mullins*
- 116 Making Peace with Moral Imperfection:  
The Problem of Temporal Asymmetry  
*Camil Golub*

DISCUSSIONS

- 133 Fittingness and Good Reasoning  
*John Brunero*
- 144 "Fake News" and Conceptual Ethics  
*Étienne Brown*

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## WHAT'S NEW ABOUT FAKE NEWS?

*Jessica Pepp, Eliot Michaelson, and Rachel Katharine Sterken*

ON MARCH 4, 2016, the *National Enquirer* reported that Supreme Court Justice Antonin Scalia was murdered by a high-end prostitute employed by the CIA. On October 30, 2016, a Twitter account purportedly belonging to a Jewish New York lawyer, but in fact run by a white supremacist, claimed that the NYPD had unearthed emails confirming the existence of a pedophilia ring run by prominent Democratic lawmakers—out of a pizza joint in Washington, DC. Thus began “Pizzagate,” a story that spread from Twitter and 4chan to a variety of right-wing websites and, eventually, the Turkish mainstream media.

Both of these are recent paradigm instances of “fake news.” Yet, as we shall see below, there are some significant differences between the two cases. The former is largely contiguous with a type of fake news that has been around for some time. It is produced by organizations resembling real newsrooms, many of which employ real reporters and do occasionally break real news (the *National Enquirer* really did break the story about John Edwards’s extramarital affair, for instance), and is distributed in tabloid form and via websites. The latter is a new sort of fake news, which is interestingly different in a number of ways: (a) it is often produced by individuals; (b) it is often distributed entirely via social networks like Twitter and Facebook; and (c) it relies for its spread not on any sort of physical infrastructure, but rather on the function of those networks, specifically via “sharing.”

In this essay, we will pursue two interconnected goals. First, we will develop a preliminary understanding of what fake news is. On our account, neither deceptive intentions on the part of originators, nor deceived beliefs on the part of consumers are essential to fake news. We will compare our account with recent efforts by some other philosophers, all of whom have argued that characterizing fake news requires some appeal to the intentional state of the agent or agents who produced the content in question.<sup>1</sup> Against such views, we will argue that what newer types of fake news (like Pizzagate) reveal is that fake news can arise

1 Rini, “Fake News and Partisan Epistemology”; Gelfert, “Fake News”; and Aikin and Talisse, “On ‘Fake News.’”

without any of the efforts or expectations to deceive or mislead that these philosophers have taken to be necessary. In fact, we will argue that attention to the “new” fake news reveals how even older forms of fake news *could* have been produced in this sort of way, even if they actually were not.

Our second goal will be to try to better understand certain features of the contemporary speech landscape that we take to be characteristic of the new fake news. In particular, we think that the speech act of “sharing” is characteristic of, if not essential to, the new fake news. We will explain why we take this to be a specific sort of speech act, how we think it differs from the types of sharing that people were able to partake in before the advent of social media networks, and why all of this matters. In short, what consideration of this new act of sharing reveals is that the *infrastructure* essential to the spread of fake news (and thus, on our account, essential to fake news itself) has shifted radically in the past few decades. That, in turn, raises the question of what sorts of responsibility ought to be borne by the corporate social networks that have effectively become, structurally speaking at least, the publishers of fake news.

A brief note on what this essay is and is not: importantly, it is not an attempt to capture all the diverse, and very often politically loaded, ways that the term “fake news” is used in contemporary life. Rather, what we hope to do is capture something of the essence of a social phenomenon that has been around for some time, but came to particular prominence around the time of the 2016 US presidential election. The project is partially descriptive and partially ameliorative; we hope to offer a way of thinking about this phenomenon that both captures a significant amount of what motivated people to start talking about “fake news” around this time, and that could be useful for practical considerations regarding potential protections and regulations of our media environment. In other words, we hope to better understand a certain fairly coherent social phenomenon that we take to often be picked out by the term “fake news,” one that we think manifests in importantly different ways in different sorts of media environments, and to offer a way of thinking about this phenomenon that will prove useful in efforts to grapple with its political and ethical dimensions and effects.<sup>2</sup>

2 We do not mean to commit ourselves here to the claim that the use of the term “fake news” is essential to carrying out this project. As Habgood-Coote has argued, it might well be that, to combat the sort of phenomenon we are interested in, we would do best to stop calling it “fake news” (“Stop Talking about Fake News!”). While we disagree, we will avoid getting into these issues here. Interested readers are encouraged to look at our “Why We Should Keep Talking about Fake News” for our thoughts on the matter.

## 1. WHAT IS FAKE NEWS?

We propose to define fake news as follows:

Fake news is the broad spread of stories treated by those who spread them as having been produced by standard journalistic practices, but that have not in fact been produced by such practices.

This definition locates the “fakeness” of fake news in its status as *news*. Fake news is treated as news by those who spread it, but because it is not produced in the manner in which real news is produced—i.e., by standard journalistic practices—it is not real news. Four important components of this definition need further elaboration: *story*, *broad spread*, *standard journalistic practices*, and *treating as*.

The requisite notion of *story* is quite broad: it encompasses any narrative or report of events, real or imaginary. *Spread* is a matter of how many people read the story and treat it as news. One or two people treating a story as having been produced by standard journalistic processes, when in fact it was not, does not seem to be enough for that story to be fake news. Fake news requires a *broad spread* of a story. The question of how broad is broad enough for fake news is hard to answer precisely. The required breadth would seem to vary with the field of interest for the story. For instance, if a story concerns local politics in a small town, the field of interest for that story—the group of people who are likely to care about the events it reports—might be just a few thousand residents of the town. For this story to become fake news it might only need to be read and treated as news by fifty or so people. By contrast, for a story of national or international interest to become fake news would require a much larger circulation.

It will not be among our aims here to give an analysis of *standard journalistic practices*. We take journalism to be a type of activity focused on (though not defined by) informing members of a society about events relevant to them as members of that society. Journalism is a dynamic social institution with gradual historical origins (mainly in Europe after the invention of the printing press) and forerunners.<sup>3</sup> When exactly this social institution came into existence and where the boundaries of the concept of journalism lie are difficult questions that we will not try to answer. Nonetheless, certain practices do seem to be at least partly constitutive of the activity of journalism; it is these that we refer to by “standard journalistic practices.” We will say more about them in the next section.

Finally, the notion of *treating* a story *as* having been produced in a certain way plays an important role in our understanding of fake news. In general, treating something as having a certain feature is not the same as believing that it has

3 See McQuail, *Journalism and Society*, ch. 1, for a brief international history.

that feature. Often, we treat things as having certain features for certain purposes, even though we do not really believe that they have those features. So, for instance, one might treat a hobby as a business for tax purposes, because the activity seems to meet enough of the IRS's criteria, while believing that it is still really more of a hobby. Or one might treat a dear family friend as a family member for the purposes of Christmas gift giving, without believing that the person is actually a family member. Another way of treating something as having a certain feature is to behave as if it has that feature. This also does not require believing that it has that feature. For instance, one might treat a comment as a compliment by responding with a smile and "thank you, that's nice of you to say," even if one believes the comment was an insult. Still another way of treating something as having a certain feature is to decide to make that feature prominent in one's mental categorization of the thing. For instance, the prolific author Harlan Coben said in a 2015 interview, "Every successful author I've ever known still has to treat it as a job." But in the very same interview he also said, "I don't want a real job; that's why I became a writer."<sup>4</sup> What Coben seems to convey with these two claims is that if you want to be a successful writer, you have to categorize writing as a job in your mind, so that you will do it regularly and diligently. This is consistent with failing to believe that it is, in fact, a job.

There is clearly some overlap in these ways of "treating something as having a certain feature," and they often go together (e.g., in acting as if a sarcastic comment is a compliment, one may also mentally categorize it as a compliment, and one may treat it as a compliment for purposes of the conversation). Treating a story as having been produced by standard journalistic processes, i.e., as genuine news, could be done in any of these overlapping ways. One might feel justified in citing the story during political arguments, thereby treating it as genuine news for purposes of political argumentation. One might include it in a dinner-table description of the day's world events, thereby acting as if it is genuine news. One might focus on its status as news when using it as motivation to get one to take various kinds of political action, thereby making that feature prominent in one's mental categorization of the story. None of these requires believing that the story is genuine news, i.e., that it was produced by standard journalistic practices.

This is an important feature of our definition, because it is not clear to what extent those who consume and spread fake news stories actually believe them, or actually believe that they are instances of genuine journalism. It may be that the impetus to treat fake news stories as having been produced in the standard journalistic way comes more from their ability to serve as weapons against perceived political or social enemies, or as solidifiers among political allies, than

4 Kiesling, "Harlan Coben."



from readers' belief in their status as genuine news.<sup>5</sup> Further, it may be that those who consume and spread fake news have an erroneous or premature understanding of what constitutes news and journalism in our new technological and communicative reality. In this case, consumers and spreaders of fake news may believe that certain stories count as news or as produced by genuine journalism, even though what counts as news and genuine journalism in the age of social media is yet to be determined or negotiated by society at large.<sup>6</sup>

Another noteworthy feature of our definition is that it does not require that fake news stories be substantially false.<sup>7</sup> As mentioned above, the definition locates the fakeness of fake news in its status as news—understood here as the status of having been produced by standard journalistic processes—rather than in its content. Fake news is not genuine news because it has not been produced in the way that genuine news must be produced. Typically it is also false, but this need not always be the case. Just as real news can turn out to contain errors—due either to honest mistakes or to minor breaks in journalistic standards—so too can fake news occasionally (and most likely accidentally) turn out to be true.

Finally, our definition does not require any intentions to deceive or mislead on the part of those who originate or spread fake news. This makes it quite different from several other definitions recently advanced by philosophers. We will take a quick look at three of these. All are attempts to characterize “fake news” in such a way as to capture both the more contemporary phenomenon often referred to by that name as well as most of the work by publications like the *National Enquirer* or *Weekly World News*. We will continue to treat the Scalia example as a paradigm case of this latter form of fake news and Pizzagate as a paradigm case of the new fake news. Some other instances of the “old” sort of fake news would include: anything from the *Weekly World News*'s “Bat Boy” series or the *National Enquirer*'s 2015 story alleging that Hillary Clinton's deleted emails

5 This is related to the phenomenon of “blue lies,” or lies that are purportedly told to benefit one's group (see Fu et al., “Lying in the Name of the Collective Good”). It has been suggested, for example, that supporters of Donald Trump do not see his frequent lying as bad because they take it to be done to promote their political side against enemies. (See, for instance, Smith, “How the Science of ‘Blue Lies’ May Explain Trump's Support.”) In a similar way, those who spread fake news stories may view it as good to treat the stories as genuine news, even if they do not believe that they are, because doing so is favorable to some “side” they are on.

6 We return to this issue in section 4.

7 This is in contrast to, e.g., Rini, “Fake News and Partisan Epistemology”; Allcott and Gentzkow, “Social Media and Fake News in the 2016 Election”; and Gelfert, “Fake News.” See also *Collins English Dictionary*, s.v. “fake news,” accessed June 13, 2019, <https://www.collinsdictionary.com/dictionary/english/fake-news>.

contained evidence that she is a lesbian. Some other instances of the “new” sort of fake news would include: Trump’s tweets about the size of the crowd at his inauguration or the 2016 claim by YourNewsWire that 25 million fraudulent votes had been cast in favor of Hillary Clinton.<sup>8</sup>

The first definition of fake news that we will consider comes from Rini:

A fake news story is one that purports to describe events in the real world, typically by mimicking the conventions of traditional media reportage, yet is known by its creators to be significantly false, and is transmitted with the two goals of being widely re-transmitted and of deceiving at least some of its audience.<sup>9</sup>

So, the key elements of Rini’s definition of fake news stories are (a) that they purport to describe real-world events, (b) that their content is known by their creators to be false, and (c) that they are created with the goal of being widely disseminated and deceptive to at least some readers.

Here is another definition, from Gelfert:

Fake news is the deliberate presentation of (typically) false or misleading claims as news, where the claims are misleading by design.<sup>10</sup>

Gelfert further explains that for a claim to be “misleading by design” is for it (a) to succeed in actually misleading a relevant audience, and (b) *either* to be intended to be misleading in virtue of its specific content *or* to have been produced de-

8 The inauguration case is particularly interesting in light of the comment in the text above to the effect that standard journalistic processes, and what counts as journalism, may be in flux due to changes in media. Trump’s tweets in this case might be seen simply as assertions by an individual speaker, with no connection, pretended or otherwise, to news or journalistic processes. However, these tweets have been treated as paradigm instances of fake news. This is probably because tweeting by government officials (US presidents, in particular) can have a semi-journalistic status: just as White House press briefings deliver news to the public (via the press), so White House tweets can deliver news without the press as middleman. There seems to be a similar status for corporate press releases. The issuing of these documents is something the press can report, but the documents themselves are already written as news—they are purpose-built to be *treated as having been produced by standard journalistic practices*. But whereas old-style press releases were also designed to be reported as events—the making of assertions by a government or corporation—in keeping with standard journalistic practices, today’s tweets go direct to the public. This might make it easy for such stories—including Trump’s tweets about the inauguration—to become fake news.

9 Rini, “Fake News and Partisan Epistemology,” E-45.

10 Gelfert, “Fake News,” 108.

liberately using “a process of news production and presentation that is designed to result in false or misleading claims” being spread.”<sup>11</sup>

Finally, a third definition comes from Aikin and Talisse:<sup>12</sup>

Fake news characterizes the activities of institutions that *pose* as journalistic which by design feed and codify the *antecedent* biases of a pre-selected audience by exploiting their vulnerabilities (cognitive and otherwise), all with a view towards facilitating some decidedly political objective.

All three definitions make the intentions of the originators of fake news essential to the phenomenon. Rini requires that the originators have the goals of wide dissemination and deception of at least some readers. Gelfert requires that the originators intend to be misleading, or at least that they deliberately use processes that are designed to produce misleading claims.<sup>13</sup> Aikin and Talisse require that originating institutions are designed (and so, presumably, intended by someone or some institution) to identify and promote antecedent audience biases. To be sure, many actual instances of fake news have involved such goals and intentions. But it seems to us that neither intentional deception, nor deliberate use of a process designed to result in false or misleading claims, nor the designing of institutions to feed public biases should be built into the definition of fake news.

Here are some reasons why. First, consider once more the Pizzagate example. For all we know, the white supremacist who instigated this news story actually believed that Clinton’s emails contained an elaborate code for talking about pedophilia. “Cheese pizza,” for example, was claimed to stand for “child

11 Gelfert, “Fake News,” 111.

12 Aikin and Talisse, “On ‘Fake News.’” Similar definitions can also be found in Levy, “The Bad News about Fake News”; and Lazer et al., “The Science of Fake News.” See also Mukerji, “What Is Fake News?” for a nearby variant that characterizes the relevant intentions not as intentions to mislead or deceive the consumer about the content of the relevant stories, but rather to deceive them regarding whether those stories constitute bullshit.

13 It is worth noting that Gelfert’s explanation for why he opts for the claim that fake news must be misleading by design does anticipate some of our own thinking. In particular, as Gelfert stresses, he is concerned with the ways in which contemporary fake news is often designed to take advantage of how people will react, systemically, to items shared via social media, e.g., by playing to their cognitive biases (“Fake News,” 111–13). If we understand him correctly, this means that it would be open to Gelfert to claim that his definition is satisfied when someone aims to take advantage of cognitive biases to spread beliefs that happen to be false or misleading, even if the person doing the spreading actually believes those things to be true. Since Gelfert never explicitly considers such a case, we are not entirely certain whether he would be happy with this outcome. Regardless, we still disagree on two important points: first, about whether fake news needs to actually be false, or even misleading, and second, about whether it requires any sort of intention to exploit a systemic feature of, e.g., social media to spread the claim.

pornography” in virtue of the phrases sharing common first letters. Absurd as this may sound, it is certainly possible that someone could genuinely believe it. Suppose that the progenitor of this story did, in fact, believe in this elaborate code. What is more, suppose that he believed that he had broken the code, and could thus decipher the real contents of Clinton’s emails. Working alone as he was, there was little to stop him from believing such things and putting the purported fruits of his labor online. All of this could easily have been completely in earnest, and without any intention to deceive, mislead, or exploit biased thinking. On the contrary, our hypothetical author would likely have taken himself to be *getting the truth out*. We are not inclined to think that, once the story gets up and running, it will fail to count as fake news simply because it was conceived of in a completely sincere manner. Rather, one of the real worries about the media environment we now find ourselves in is that it makes such well-meaning, but highly misinformed, acts of authorship much more likely to gain a significant and wide readership.<sup>14</sup>

Second, having seen how individuals are capable of generating pieces of fake news without any intentions to deceive or mislead, we are in a better position to see how whole organizations can do the same sort of thing. Consider an organization like the *National Enquirer*. Suppose that the motivation of the proprietors of this organization is to maximize profit, and they incentivize their employees in order to carry out this maximization. It is not all that hard to imagine that each employee of the *National Enquirer* might act either (a) to maximize profit, or (b) to maximize personal gain, with no one intentionally putting forward content with the intention to deceive or mislead anyone else. It might just happen that putting forward patently absurd stories turns out, after some trial and error, to be the winning strategy for pursuing (a) and (b). So each person does their part, without anyone intending any deception. In fact, we might even stipulate that everyone in the organization takes the product they are generating to be so

14 Mukerji, “What Is Fake News?” briefly considers a case like this one, which he calls “PIZZAGATE\*” (sec. 5). Recognizing that this case constitutes a potential counterexample to his theory, Mukerji contends that one can in fact bullshit unwittingly. But this alone is not enough, for on Mukerji’s analysis, producers of fake news must also intend to cover up the fact that they are bullshitting. Presumably, then, Mukerji must accept that we can unwittingly intend to cover up the fact that we are bullshitting. While we cannot offer a full-fledged argument against this claim here, we would note that we find the possibility of such complex unwitting intentions rather far-fetched. We take it to be a point in favor of our theory that we do not have to posit any such unwitting intentions in order to account for a core instance of contemporary fake news.

clearly unbelievable that they genuinely believe that no one will take the stories appearing in it at all seriously. Still, we submit, this is fake news.<sup>15</sup>

We do not see an easy way of modifying any of these earlier definitions to account for either the recent or the more traditional phenomenon. That said, we think that such a repair strategy—which might involve requiring that originators of fake news either intend to produce misleading stories or *ought to know that this will result from their actions*—is more plausible for traditional sources of fake news like the *National Enquirer* than for recent sources like lone tweeters. This is because these traditional sources have a more robust agential structure—with a CEO, publisher, board, editors, etc.—which might both engage in reflective decision-making and be subject to various norms regarding testimony and the public space. On Twitter and Facebook, some of the most prolific generators of fake news have been individuals generating fake news for one country from another, often not in their native language and with little to no reflective oversight. In such circumstances, it is far more plausible that the only real motivations are monetary remuneration, and that these agents' intentions and predictive awareness of results track those thin motivations. This is not even to countenance the possibility of bot-generated fake news—which could very plausibly end up being generated by a machine learner designed only to maximize views in order to promote a certain product, with nothing about deception or mimicry of journalistic practices anywhere in its initial programming, nor even ever contemplated by its programmers as a possible strategy for view maximization.<sup>16</sup>

## 2. STANDARD JOURNALISTIC PRACTICES

Fake news is not just widespread sharing of any old stories, but of stories treated as products of standard journalistic practices that are not in fact such products. As we said above, we are not going to give necessary and sufficient conditions for a story to be the product of standard journalistic practices. But we take it that the relevant standard derives from historical and evolving ideals for the practice of journalism, such as those laid out by Bill Kovach and Tom Rosenstiel in the now-classic book *The Elements of Journalism*. These include a commitment to

15 This kind of concern is also raised in Talisse, “There’s No Such Thing as Fake News, and That’s Bad News,” though it would seem to cut against the requirement from Aikin and Talisse, “On ‘Fake News,’” that producers of fake news work “with a view towards facilitating some decidedly political objective.”

16 It might well be that, just as sentencing algorithms rapidly made use of racial data without their designers ever contemplating that they might do so, view-maximizing algorithms might search the available space of options and conclude that news-like content is the way to go.

the interest of citizens (or other members of a society); careful verification of putative information received; active seeking out of information that is or will be important for members of society; transparency about sources, conflicts of interest, and unknowns; independence from those covered and from sources; proportionality in the amount of coverage given to events relative to their likely significance; and historical and social contextualization and synthesis of information.<sup>17</sup> To qualify as genuine journalism, a process of story production need not maximally fulfill all such ideals. When news-production processes live up to these ideals to a significant extent, their outputs have a strong claim to being genuine journalism. But when such processes are substantially out of line with these ideals, they have a much weaker claim to being genuine journalism. This is the case for the usual examples of fake news that we have mentioned. These are stories for which putative information has been fabricated rather than gathered, where there have been no efforts to verify the putative information or to put it into context, and where there is little or no transparency regarding the sources of the putative information or who is responsible for verifying it.

It is important to note that following the standard journalistic practices just described offers no guarantee of reliability, and news sources following standard journalistic practices may well be untrustworthy. For instance, a news organization may, in spite of its best efforts, be fed a line by government sources with their own agendas and little regard for the truth.<sup>18</sup> Should there be little additional information to go on in order to fact-check this line, even well-intentioned reporting can become highly untrustworthy—particularly where reporters are relying on sources who have proven accurate in the past. We take it that such news is hardly “fake” in the sense we are after. Rather, it is the result of the epistemic limitations of standard journalistic practice, which cannot guarantee anything like perfect reliability.

Equally important to stress is that these standards are background expectations for journalistic writing, not ways in which audiences in general would

17 One aspect of synthesis is the idea that journalists and news organizations should aim to synthesize information from a politically neutral perspective. To what extent this is actually achievable is an interesting question. However, even if it is not, there are questions about how much effort toward neutrality is needed in order to satisfy journalistic standards and for journalistic output to count as genuine news. How much lack of neutrality is needed for a story to count as “slanted” or “spun”? How much slant or spin can a journalist or news organization get away with before their story should be counted as fake news? It is worth noting that our account provides the structure to answer such questions about the relationship between spun or slanted news and fake news.

18 Arguably, this is what happened with Judith Miller’s reporting on Iraq for the *New York Times*, ca. 2002.

articulate what the standards for journalistic practice are. People identify journalistic writing—that which is subject to these standards—by superficial features such as the use of headlines (with their special grammatical rules), bylines, and certain prose styles and diction. (We will not try to enumerate the latter.) Journalistic writing is also associated with the broader kinds of looks that are customary for print, online, or video news sources—including, increasingly, Twitter feeds.<sup>19</sup> Hence, by employing these looks and superficial features, content originators may produce stories that look like genuine journalism, whether or not they are, and whether or not content originators are aware that they are making their stories look like genuine journalism.

In addition to clear cases where stories are produced in ways that qualify them as genuine journalism, and clear cases where stories are produced in ways that do not qualify them as genuine journalism, there are likely to be plenty of unclear cases. Especially if work in a news organization is divided up, it is conceivable that one journalist might make up a story that others in the news organization sincerely attempt to verify, synthesize, and distribute. Likewise, information might be legitimately gathered by a news organization but distributed directly without the appropriate process of verification and synthesis. It is also possible that information might be properly gathered, verified, and synthesized, but distributed in a way that obscures or removes responsibility for the journalistic process and transparency of sources. It is not clear that any one of these breaches, combined with a broad spread of the story, is sufficient to make the story fake news. If a rogue reporter at an established news organization fabricates an event that is then verified and synthesized in good faith by others in the organization, it is perhaps not obvious that its spread on social media creates fake news. The same uncertainty applies if news organizations hastily distribute unconfirmed reports during a crisis without appropriate caveats. Finally, an unknown but principled journalist who sets up his own website to look like an established newspaper in order to get people to read his (excellently sourced, well-researched) stories may not generate fake news even if his stories get widely spread.<sup>20</sup>

19 On Twitter, this “look” might amount to the mere inclusion of certain hashtags or handles, typically in conjunction with Twitter’s own blue check mark indicating a “verified” account.

20 This scenario is to some degree resonant with the real-life I. F. Stone, though Stone was probably working alone out of necessity rather than by choice, and not impersonating real newspapers but rather producing his own. Still, this raises the question of what to say about journalistic practices that are, intuitively, superior to our present practices—or, in a word, journalistic innovation. Stone’s own work was innovative, but shared much of its basic pattern and ideals with ordinary journalistic practice; we suspect that at least some other innovative journalism will follow this same basic pattern, and will thus be recognizable as such. It

All this suggests that it may not be right to treat the (even partial) fulfillment of any of journalism's characteristic ideals as a necessary condition for a story to escape becoming fake news if it is spread widely. Rather, we take the substantial realization of these ideals to be characteristic features of genuine journalism, any of which might nonetheless be missing in some particular bit of genuine journalism. Of course, if many of the ideals are substantially unrealized on a given occasion, that will be fairly damning and the resulting story is likely to constitute a potential instance of fake news.<sup>21</sup> There are likely to be any number of borderline cases, however, and which side of the border a case sits on may depend not just on the fact that a standard practice has not been followed, but the specific ways in which it has not been followed. Still, in spite of this admitted lack of a clean philosophical analysis, we hope that the reader will have enough of a feel for what we are calling "standard journalistic practice" that she will not object to our invoking it in our attempts to better understand the nature of fake news.

### 3. WHAT'S NEW ABOUT FAKE NEWS?

We argued above that producers' intentions to deceive, or to make use of produc-

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will be nonstandard, but in a way that shares at least a substantial number of features with more standard instances of journalistic practice. We are happy to allow for such superlative instances of journalism to fall under "standard journalistic practice" on our way of talking about things.

- 21 As a referee points out, however, one can easily imagine an algorithm capable of accurately predicting—more accurately than current reporting practices, say—events in far-off and inaccessible locales in real time when fed data about surrounding areas. The outputs of such an algorithm might be widely spread and treated as news, and they would not have been produced by standard journalistic practices—for instance, no verification, contextualization, or commitment to citizens' interests seems to be involved. But it may seem odd to classify true, reliably generated stories as fake news, as our definition seems to predict. Nonetheless, we think this is the correct verdict about such a case. The matter is complex and deserves more discussion than we can give it here, but our basic reason for the verdict is this: when a story is treated as the product of standard journalistic practices, it is treated as giving a certain kind of epistemic status to the information it contains. This is not merely a certain level of reliability, but also that the reliability itself is transparent to a significant degree. Journalism lets us understand not only how things are but why we should believe that they are that way. Thus, two characteristic features of journalistic epistemology are: (a) a heavy reliance on information obtained non-inferentially, either via testimony, the public record, or photographic or video evidence, with these sources being clearly disclosed; and (b) a lack of reliance on appeals to broad laws, be they of physics, chemistry, or one of the special sciences, to fill in informational gaps when and where such gaps arise. The imagined algorithm does not create the same kind of epistemic relation between readers and the information it conveys. So if its outputs are widely treated as doing so, this is epistemically problematic.



tion and distribution systems designed to be misleading, are inessential to fake news. Any story or claim that is spread widely and treated as having been produced by standard journalistic practices, although it was not in fact so produced, can be fake news, regardless of its producer's intentions. As we have shown, it is not hard to imagine that prominent examples such as Pizzagate did not involve any intentions to deceive, mislead, or utilize inherently misleading procedures (for all we know, this may even have actually been the case). When social media users are able to easily share articles with large networks of followers who can, in turn, easily share them with their own large networks, even stories produced sincerely but non-journalistically can quickly turn into fake news.

Does the inessentiality of originator intentions distinguish the new, social-media-based fake news from traditional fake news? We do not think so. Because traditional fake news tends to be produced by organizations that, in one way or another, do intend to produce at least a certain proportion of misleading stories, it is harder to imagine cases where no such intentions are in place. But in some cases of traditional fake news, individuals, rather than organizations or institutions, have exploited existing journalistic structures to spread claims that they knew to be false or misleading. These cases make it easier to see how even more traditional sorts of fake news could have been, and possibly even were, produced and distributed without any kind of deceptive intentions or misleading design being involved in the process.

An example is Benjamin Franklin's *Supplement to the Boston Independent Chronicle*. This was a forged "supplement" to a real newspaper, which Franklin printed on his personal printing press in Passy, France. One article in the supplement purported to be a letter from a New England militia captain reporting that a capture of British military goods had yielded two bags of colonists' scalps that the British had obtained from Iroquois and Seneca warriors whom they had put up to the task. According to the letter, these bags of scalps had been carefully catalogued together with grisly descriptions of each colonist's mode of death, and were prepared to be sent back to England. Franklin sent his forged supplement to several friends internationally, hinting slightly at its fakeness and also suggesting that it should make its way into the British press, which it ultimately did. It is debatable whether Franklin's supplement was intended as satire, propaganda, or both. But when the "bag of scalps" story gained traction in the British press of the time, it was clearly fake news. Now, Franklin probably intended to be deceptive and misleading (at least to the average British reader), but it is perhaps not so hard to imagine a different situation in which he created the forged broadsheet for his own entertainment, and in which it fell into the hands of someone who took it for a real newspaper supplement and circulated it to foreign press-

es.<sup>22</sup> This would still have been fake news. Hence, we maintain that intentions to deceive, mislead, or use production and distribution processes designed to be misleading are not essential to fake news of either the new or traditional varieties.

How then is new, social-media-based fake news different from traditional fake news? The difference lies in the relevant media infrastructure, the mechanisms by which fake news is spread. Traditional fake news is spread primarily by institutional news producers, such as the *National Enquirer* or, in Franklin's case, the various British papers. By publishing these stories in their pages, these producers spread the stories to the readership of the publications. New fake news, by contrast, is spread primarily by social media sharing.<sup>23</sup> An originator of new fake news does not bring fake news into existence simply by publishing a story on a web page or Twitter account. Rather, social media users collectively bring it into existence by sharing the story with their networks, members of which in turn share it with their networks, and so on.

A similar kind of spreading mechanism is possible for traditional fake news. Franklin shared—in the ordinary, non-social-media sense—his forged broadsheet with his friends. If they had also had hobby printing presses, they might have reproduced the forgery and shared it in turn with their friends. And so on. The story might have been spread fairly widely, and been treated as news, without any established newspaper or magazine ever publishing it. Perhaps more

- 22 This is not so hard to imagine since Franklin seems to have assembled and used his personal printing press partly as a passionate hobby to provide downtime from diplomacy. See Mulford, "Benjamin Franklin's Savage Eloquence."
- 23 Social media has facilitated a change in the mechanisms of news dissemination and uptake, which may be thought to mimic those of gossip or rumor. As a result, there may have been a substantial blending of the social functions of the two. This may be, in part, what underlies uneasiness about fake news—that (at least certain sorts of) news and journalistic practice nowadays is more like or serves the function of gossip in many respects. The social functions of gossip are taken by many sociologists to be social bonding and the maintenance of social groups, networks, and relations. In addition, gossip is one of the tools that subordinates use to "facilitate open criticism, threats, and attacks" while "shielding their identity" in fear of retaliation (Scott, *Domination and the Arts of Resistance*). It is also thought to be the mechanism by which we spread information about who can be trusted within a social network, e.g., to explicitly control and punish "free-riders" (Dunbar, "Gossip in Evolutionary Perspective"). Finally, gossip offers us a way to increase our social capital within a group or network. It is worth noting that these functions are all markedly different from the social and epistemic functions of news, and are plausibly nothing like whatever functions underlie our journalistic practices. Hence, even if *sharing* fake news bears certain superficial similarities to gossiping, and even if certain types of news are now generated largely in order to be shared in ways that will reinforce (largely partisan) social groupings, it remains to be shown whether fake news is itself merely a type of gossip. Thanks to Elmar Unnsteinsson for discussion.

realistically, a similar forger living in the age of widespread photocopier access might share a forged news article with many friends who could in turn copy it and share it with many more.

Social media sharing drastically increases the ease and scale of such transmission. This explains why the sharing-based spreading mechanism typical of new fake news was more or less unheard of until quite recently. But the difference between sharing something with someone in general, not in a way specific to social media, and sharing something on social media, is not just a matter of ease and scale. For one thing, sharing in the ordinary sense is a broad category comprising many different kinds of actions. *A* can share a news story with *B* by telling her about it, showing it to her, or giving her a copy of it. These acts, in turn, can be done in myriad different ways. The specific behaviors people use to convey to each other that a given item is something of interest that they would like the other person to look at and take an interest in are highly varied and idiosyncratic.

By contrast, social media sharing is a comparatively narrow category of action that can be carried out in a limited number of ways. These ways correspond, roughly, to the different operations on social media platforms: one can do a Facebook share, a Twitter share, an Instagram share, etc. *Modulo* minor platform-specific variations, everyone does social media sharing in the same way. This kind of sharing, we propose, is enough of a uniform action to constitute a distinctive kind of speech act.

The distinctiveness of the act of social media sharing is also observed by Rini, though she conceives of sharing rather differently than we do.<sup>24</sup> According to Rini, sharing is an “ambiguous speech [act] that may or may not be testimony depending on as-yet-unsettled communicative norms.”<sup>25</sup> A second key feature of social media sharing that Rini notes is: “There is something about social media sharing that seems to deaden people’s normal application of consistency-with-the-world filtering on testimony.”<sup>26</sup> She suspects that these “bent aspects of social media testimony play a role in the transmission of fake news” and suggests that a way to combat fake news is to unbend such testimony by trying to settle its norms in the direction of accountability.<sup>27</sup>

While we agree with Rini that sharing is not clearly a form of assertion or testimony, even though it sometimes shares certain features with each of these, we see no ambiguity here. Rather, we take it to be far more plausible that sharing simply is not testimony, nor is it a special kind of assertion. Sharing, we would

24 Rini, “Fake News and Partisan Epistemology.”

25 Rini, “Fake News and Partisan Epistemology,” E-60n10.

26 Rini, “Fake News and Partisan Epistemology,” E-49.

27 Rini, “Fake News and Partisan Epistemology,” E-49, E-55–58.

suggest, is a *sui generis* speech act available only within the landscape of social media.

One good reason for thinking that sharing constitutes a new sort of speech act, one that is irreducible to others in the more familiar taxonomy, is that it has significantly different sincerity conditions than any other speech act. In fact, it is not clear that sharing has sincerity conditions at all, as opposed to something weaker like aptness conditions.

Suppose for a moment that one were inclined to think of sharing as a new type of asserting or testifying. Then acts of sharing should inherit their sincerity conditions from these acts of which they are a type. But this yields some patently incorrect results. For instance, suppose sincerity in asserting or testifying requires that one believe what one is asserting or testifying.<sup>28</sup> One can appropriately share a news story simply because one likes the picture in it, or because one finds the writing style to be noteworthy, with no commitment at all to the truth of the story itself. We take there to be nothing unsettled about this; it is just that flexibility can sometimes be mistaken for unsettledness. In contrast, consider “liking” something on Facebook or Instagram: with these, one is acting insincerely if one does not actually have some positive attitude toward the post in question. What is more, with sharing, there is no easy way of paraphrasing what it is that one is asserting when one shares something. With liking, on the other hand, the act can be fairly straightforwardly paraphrased as “I like this.”

If there is anything in our earlier linguistic repertoire that sharing seems most akin to, it would seem to be pointing, or perhaps pointing and saying “this.” We will expand on this similarity below, but first we note that, if sharing were really a sort of asserting or testifying, this similarity would be highly unexpected. Nor do we think that viewing sharing as a sort of advisory or suggestion adequately captures the flavor of this act. At least as advisories are standardly understood in speech-act theory, they are supposed to express the belief that whatever is being suggested to do—here, to look at what has been shared—would be in the listener’s interest.<sup>29</sup> But one can aptly share something even when one believes that looking at it will *not* be in the interest of most of one’s social network. For instance, one can share yet another editorial on the unending chaos in the Trump White House with one’s overwhelmingly liberal social network, even though one takes it that reading this editorial is likely to be a waste of time for pretty much everyone involved. One often shares such stories, we take it, as an act of social positioning rather than to actively suggest to one’s network that they

28 Searle, *Speech Acts*; Stokke, “Insincerity.”

29 Bach and Harnish, *Linguistic Communication and Speech Acts*, 48–49.

should actually read the story. And we are highly skeptical that one is contravening any established norm of sharing when one does so.<sup>30</sup>

Sharing in social media is an easy, readily available way to make content available to one's network while simultaneously indicating that it is you who has made it available to them. While obviously contiguous with earlier modes of sharing, the fact that this action has become one of the basic ways we interact with our social environments sets it apart. Whereas before, one could contrive to do something similar to sharing on a social network by harnessing one's resources, either on- or off-line, now this is one of the standard ways of interacting with pieces of media. In slightly loaded terms, whereas sharing was once a complex action that could be undertaken with dedication, it is now a basic *affordance* of our interaction with the media landscape.

As mentioned above, we see social media sharing as having much in common with another type of off-line speech act: *declarative pointing*. Broadly speaking, pointing is a communicative bodily movement that projects a vector from a body part, indicating a certain direction, location, or object.<sup>31</sup> Declarative pointing is often distinguished from imperative pointing, the former being aimed at bringing the audience's attention to something, and the latter being aimed at causing the audience to do something.

Brinck argues that the function of declarative pointing is simply to indicate an object to an addressee, i.e., to direct the attention of the addressee to that object.<sup>32</sup> Further goals that one may have in pointing vary widely and, on Brinck's analysis, are not themselves parts of the function of pointing considered as a type of act. Such further goals might include getting attention for oneself from the addressee, gauging the addressee's evaluative reactions to the objects, coordinating with the addressee on some course of action involving the object, and so on. The role of pointing itself, however, is just to secure the addressee's attention to the object.

30 Thanks to Elmar Unnsteinsson for pushing us here. We would also note, briefly, that the more one relies on traditional speech-act theory to try to understand speech in social media, the more one will run into the problem of having to make sense of machine-generated speech acts. So, for instance, bots now regularly share huge amounts of content on all the major social media networks. Yet, plausibly, these bots do not have anything like the sorts of intentions required for these speech acts to count as felicitous, according to traditional speech-act theory. It is open, of course, to the speech-act theorist to posit that these are all mere pseudo-speech acts. But given their prevalence on social media, we are loath to think that the liking and sharing undertaken by bots is some fundamentally different kind of act than the liking and sharing undertaken by human beings on these networks.

31 Kita, "Pointing."

32 Brinck, "The Pragmatics of Imperative and Declarative Pointing."

We find Brinck's analysis of pointing persuasive, and we are struck by the similarities with social media sharing. The speech act of sharing might well be seen as a new form of Internet-enabled declarative pointing. Ordinary declarative pointing exploits contiguity in time and space of a speaker, an object, and an addressee: the speaker and addressee must be able to see each other and both of them must be able to see the object. Social media sharing exploits the connectedness of a speaker, an object of interest (e.g., a story), and her addressees via the Internet: a speaker and her addressees must be connected to each other by a social media network, and the object of interest must have a web address or be embedded in a shared post. Given the former setup, declarative pointing by the speaker functions to focus the attention of the addressee on the object. Given the latter setup, sharing by the speaker functions to focus the attention of the addressees on the object. Like ordinary declarative pointing, social media sharing may be done with a wide range of aims beyond simply focusing the attention of an addressee on an object. One may aim to get the addressees to believe in what the object says, to share the object further on their own networks, to react with praise or disgust to the object, and so on. But sharing itself is purely indicative.

One might object to this analysis on the grounds that people seem to react to sharing as if it conveys at least some level of endorsement, unless this is explicitly disavowed. As noted above, Rini thinks that the norms around sharing are unsettled. She also thinks that, at present, "our accountability conventions seem to tolerate this instability; we may roll our eyes at 'a retweet is not an endorsement,' but we don't (yet) place most embarrassed retweeters in the same category as outright liars or bullshitters."<sup>33</sup> If, in fact, there is a collective eye roll at those who claim not to have endorsed things they share without further comment, this might suggest that sharing is not purely indicative, like declarative pointing, but also functions to convey some sort of positive endorsement of the thing indicated.<sup>34</sup>

This is a fair criticism. One option in reply is to treat sharing as a speech act with the function of indicating an object in an at least slightly better-than-neutral evaluative tone. However, this proposal might also run into trouble with sincerity conditions. Suppose that someone encounters a news article toward which they are perfectly neutral: it strikes them as mediocally researched, mediocally

33 Rini, "Fake News and Partisan Epistemology," E-48.

34 Alternatively, this might merely suggest that we are apt to suspect that there are further intentions behind many acts of sharing, and that the respondent is being disingenuous about these further intentions—even though all of this is unrelated to any constitutive norms of social media sharing. Still, we take Rini's objection here to be a serious and interesting one, even if the evidence she offers for it is probably not beyond question.

written, and of no particular relevance to their own life, but perhaps of enough interest to some people's lives to merit having been written. This person is also feeling worried about having been silent on Twitter recently, so they decide to share this article, perhaps precisely because it seems so neutral and inoffensive. If sharing conveys at least a mildly positive evaluation of the shared item, which this person does not feel, then we should judge this person to be insincere in sharing as they do. But this does not seem right. This person wishes to share something—to achieve joint attention to a bit of online content with her followers—and this is something she feels comfortable sharing. Insincerity does not seem like the right diagnosis, reinforcing the point that sharing does not seem to have sincerity conditions. Given this, it does not in itself convey positive (or negative) evaluations.

Another consideration is that sharing by others is itself a central aim of many who produce online content. When one shares a post, article, video, or the like, one is often giving its creator what they want. This might figure into how one's audience interprets one's share. The addressees may think, "This sharer is rewarding the producer of that content, so she must approve of the content." But this is not always the situation. Sometimes the wide sharing of some online content is very much *not* what its producer wants. (Think of embarrassing selfies that make their way onto the Internet and go viral.) In such situations, we are not likely to interpret an uncommented share as expressing even mild approval: rather, we are likely to interpret it as expressing disgust, *schadenfreude*, or some other negative emotion. This is because the sharer is doing something against what the producer of the content (presumably) wants. This suggests, once again, that sharing in itself does not have anything like a stable evaluative force.

If this is right, it offers an interesting potential explanation of why the advent of social media has made fake news so prominent. First, there is a natural connection between standard journalistic practices and trust. If followed, these practices should, more often than not, yield information we can use and rely on. The information would come from the world (rather than the imaginations of writers), it would be verified and synthesized into a useful form, and we would know who was responsible if these processes turned out not to have been followed. Not surprisingly, then, the surface appearances that correlate with results of such processes tend to inspire trust. When one encounters a story with this kind of surface appearance, especially if it reports an event whose occurrence would give one some form of emotional satisfaction (for instance, if it says that one's most hated politician has done something terrible), it is easy to let oneself trust the story. Even if one does not trust the story, it may be pleasurable to see the satisfying claim *looking like* a product of standard journalistic processes. And

if we are right about social media sharing being a purely indicative speech act, further sharing of the story may not seem especially risky. Thus, the recent epidemic of fake news might be an unsurprising result of the interaction between the newly emergent distributional infrastructure of social media, the correspondingly new speech act of social media sharing, and our shifting attitudes toward journalism as an institution.

Moreover, to the extent that much social media sharing is done with the further aim of expressing evaluative and reactive attitudes toward people and institutions, stories treated as having been produced by standard journalistic practices are especially fruitful objects for joint attention. Here is why. People in the same social networks often have similar evaluative attitudes toward music, art, religion, politics, and so on. As with face-to-face social interaction, it is pleasing to share one's evaluative feelings with others online, and to get evaluative agreement in return. If two friends are eating a meal together, they can happily gripe about a politician or rhapsodize about a musician in nonspecific terms. ("He's so clueless," "Her being in power really scares me," "What a sound she had!" "They don't make musicians like that anymore," etc.) But on social media, the same kind of social bonding seems to require continually introducing new objects of attention. One cannot just express dislike for Hillary Clinton, one has to *point* to something that gives new content to that dislike. A negative story that has the appearance of having been produced by standard journalistic practices is an especially good vehicle for providing such content.

Of course, this explanatory suggestion is only a conjecture. Which psychological factors figure in the spread of fake news is an empirical question that we are not in a position to answer. Still, in the same conjectural spirit, a possible objection to the picture just sketched comes from a recent study suggesting that, at least in the US, it is members of far-right groups that share by far the most (of what the researchers categorized as) fake news.<sup>35</sup> Given that these groups also tend to be most suspicious of mainstream media, one might doubt that mimicking the surface appearance of such media would be effective with them. However, we suspect that even those who think journalistic practices are not being followed (at all) by the most prominent institutions of journalism still view them as requirements for *genuine* journalism. The characteristic surface features of journalism may not, by these people's lights, typically indicate genuine journalism, but they are associated with it. News is supposed to be produced in a certain way, and this is how stories produced in that way are supposed to look. A story that looks the right way and says (by a given reader's lights) the right

35 Narayanan et al., "Polarization, Partisanship and Junk News Consumption over Social Media in the US."



thing might be treated as having been produced in the right way without much additional scrutiny.

#### 4. SHARING AND STANDARD JOURNALISTIC PRACTICES

According to our definition of fake news, a story, *S*, is fake news just in case: (i) *S* is broadly spread, (ii) those spreading *S* treat *S* as having been produced by standard journalistic practices, and (iii) *S* was not produced by standard journalistic practices. We have claimed that part of what is distinctive about the new fake news is that it is spread by way of sharing on social media, where sharing is itself understood as a distinctive sort of speech act. It is this profound shift in the infrastructure by which the stories constituting fake news are spread that makes the new fake news importantly different from more traditional fake news. Thus, on our understanding, there really is something distinctively new about the new fake news: it has come into existence with the advent of social media and, in particular, with the speech act of sharing. Without this new sort of infrastructure, the spread of fake news is constrained by access to means of widespread copying and dissemination—namely, printing presses or industrial printers, delivery trucks, vans, and drivers, and access to vendors or vending machines. With this new sort of sharing infrastructure in place, these constraints fall away and fake news can be generated far more easily by far more people and in more sorts of ways than ever before.<sup>36</sup> So the new fake news is contiguous with the old, but also distinct in important ways.

In this section, we highlight two corollaries of this view. These will serve to clarify the proposal and address some potential objections.

*Corollary 1:* Our notion of news is *diachronic* and *dynamic*. It is diachronic in the sense that news items are treated as objects that exist over time. It is dynamic in that news items can, in surprising ways, change properties over time. In particular, the status of *S* as an instance of fake news can change over time.

<sup>36</sup> Again, to stress a point we have gestured at before, it is not exactly that this new sharing infrastructure could not have been mimicked with certain aspects of the older infrastructure. A copy machine and the post office can be used rather effectively to spread fake stories. See Garner, “98 Years of Mail Fraud.” Email makes this sort of thing even easier. But even if it is possible to spread fake news by these means—and we have no doubt that it is—something significant has clearly changed with the advent of social media. This is what we tried to capture above in pointing out that social media infrastructure has made sharing into a kind of basic affordance, as easy as (and very similar to) pointing at something in your visual field to achieve joint attention with an audience.

According to our view, at time  $t$ ,  $S$  is not fake news if at least one of the following conditions obtains:

- C1  $S$  is not widely shared.
- C2  $S$  is widely shared but those sharing it do not treat it as the result of standard journalistic processes.

Suppose, for the moment, that  $S$  meets one of these conditions at  $t$  and so  $S$  is not fake news. On our proposal, at a later time,  $t'$ ,  $S$  can turn into an instance of fake news either by becoming widely shared or by being treated as the result of standard journalistic processes. For instance, a satirical story from *The Onion*, which has many of the trappings of real news, might be shared widely at time  $t$ , but not be treated as the result of standard journalistic practice. So it will not count as fake news at  $t$ . At  $t'$ , however, it might well become the case that the story, still widespread and still intended by its originators as satire, for whatever reason comes to be treated as the result of standard journalistic practices. On our account, this same story will now count as fake news.<sup>37</sup>

Essentially, we propose to think of a piece of news in a similar way to how Kaplan thinks about words: they are objects that exist over time and different stages of a word (story) can have different properties.<sup>38</sup> As such, on our view, a news item can turn into fake news, not by its intrinsic features changing (e.g., the set of sentences that constitutes the story or the propositions expressed by those sentences), but by becoming widely shared or by being treated in a new way by those sharing it.

The aim of our notion is in part to shift attention away from a narrow focus on the informational content of a story and the intentions and acts of the original author. These are not the full story, we have argued, about what makes a piece of news what it is. The history of the news story, including the way people treat

37 There are, in fact, real-world cases of something like this, though many involve the simultaneous spread of a story and treatment of it as non-satirical. So, for instance, Iran's FARS news agency apparently republished, word for word, a 2012 *Onion* article claiming that polling suggested that rural Americans preferred Ahmadinejad to Obama; in fact, the *Washington Post* reports that this sort of thing, minus the outright plagiarism, is actually fairly common, and not just in foreign countries. (See Taylor, "7 Times the Onion Was Lost in Translation.") Assuming this story became widespread in Iran, it would now count as fake news in Iran on our account. This brings out another interesting aspect of the view that we will not have time to focus on in the main text: on our view, it is possible for a story simultaneously to count as fake news (relative to some region) and not to count as fake news (relative to some other region). This should come as no real surprise given that our account of what it is to be fake news is essentially relationalist in nature—as opposed to its rival, more essentialized accounts.

38 Kaplan, "Words."

it on social media, is partly constitutive of whether, at a given time, a particular news story will count as fake news or real news.

*Corollary 2:* We just articulated the idea that a consequence of our diachronic and dynamic conception is that what, at  $t$ , was not fake news, can turn into fake news. Our view also entails the contrapositive of this: what once was fake news can turn into not-fake news.

Here is how this might conceivably happen: at a time  $t$ , a story,  $S$ , is an instance of fake news (i.e., at  $t$ ,  $S$  is widely shared and treated as a product of standard journalistic practices when in fact it is not). Now at a later time,  $t'$ , a journalist,  $J$ , looks into  $S$ .  $J$  is a hard-working, thorough, and conscientious journalist working on a normal deadline. She does her due diligence—that is, she does what she can, given restrictions of time and resources, to check on the accuracy of  $S$ . When she does that, she keeps encountering sources that unbeknownst to her are inaccurate and supportive of  $S$ . The bad sources she encounters in her research all confirm  $S$ —this might be because she's in an informational environment where fake news is ubiquitous. Bear in mind that standard journalistic practice is not a guarantee of infallibility:  $J$  can follow standard journalistic practice and get it wrong. That is what happens in the case under consideration:  $J$  publishes the story and it is shared further. However—and this is the interesting part— $S$  is no longer an instance of fake news, according to our account, since in order to be an instance of fake news,  $S$  cannot be the result of standard journalistic practices. So at time  $t$ ,  $S$  was fake news, then at  $t'$  (when  $S$  is published by  $J$ ),  $S$  is no longer fake news—even though  $S$ 's content with all its inaccuracies is constant across  $t$  and  $t'$ . Alternatively, one is welcome to imagine the same basic scenario, but where  $S$  is actually accurate the entire time. That is equally well a possibility on our view.

Is this a feature or a bug of our proposal? We see it as an advantage of the view. Our view suggests focusing on the historical development of  $S$  and thinking of a news story as having different properties at different times. Our proposal adds to this that the presence and absence of standard journalistic practices create crucial junctures in such histories. As a result, our account allows not-fake news to turn into fake news and vice versa. When fake news turns into not-fake but nonetheless false news, as in the first variant of the case described above, we can provide an accurate diagnosis of what has gone wrong:  $S$  is now an example of how standard journalistic practices can fail, without the journalist or news organization being to blame. Journalists and news organizations are fallible and, in the case described, we have a way of understanding what went wrong ( $J$ 's sources were bad). We are proposing that it is crucial to mark this defect as importantly different from the defect  $S$  suffers from at time  $t$ . In the case where  $S$  turns out

to have been accurate the whole time, we see how standard journalistic practice can manage to grant a story real epistemic *bona fides*, even when the causal origins of that story are epistemically suspect. In both instances, real journalism can, on our account, *salvage* a fake story. When that story is false, we grant that it will not have been worth salvaging. But, when it is true, it seems to us that we should want a story of how something of real epistemic worth can be gained; our account provides that story.

That said, this is a feature of the view that would be fairly easy to avoid if one were so motivated. Here is one strategy: we have not given you necessary and sufficient conditions for being the same news story over time. That is, we have not answered the question: When does a set of sentences (or propositions) count as the same news story? It might be that the individuation conditions for news stories are such that, in a case like the one described, *J*'s research and reporting result in a new story, *S'*, which is not identical to *S*. *S* is a source of *S'*, and *S* is fake news. But because *S'* is the result of standard journalistic processes (albeit in a situation where these have not yielded accuracy and appropriate contextualization), *S'* is not fake news.

So a diachronic and dynamic conception of a news story will need to be supplemented with an account of the individuation and perdurance conditions for news stories. One needs to know what counts as the same news story over time. Our view highlights this question, but does not yet answer it. Indeed, on our view, the question is not settled prior to the development and uptake of new communicative technologies. In the shift from a primarily print, picture, and audio-based conception of news to one driven by social media, what counts as news (and so fake news) has changed. The same is likely true of the question of what counts as the same news story over time. The medium, and in particular the distributional infrastructure that it engenders, is in part constitutive of the nature of news and news stories, and is bound to play a role in determining their means of individuation. These are issues we will not settle here, but we note it as an advantage of our view that it highlights the importance of these questions.

## 6. CONCLUSION

We have argued that fake news is best conceived of as something that can arise independently of anyone's having intended to produce it. What is more, we have attempted to sketch a way of defining fake news in terms of the way that a story is treated, rather than in terms of how it is created. We think that this definition is superior to earlier ones, not just because it can handle cases where there was no intention to produce a piece of fake news—and even cases where there was no

intentional agent producing the fake news—but also because it highlights the ways in which what will count as fake news can change over time in significant ways. This can happen when journalistic standards change, when the look of news changes, and when the means of distributing news stories change. Stories that once would not have counted as fake news can become such, and vice versa.

Our definition as it stands is schematic in certain ways, in particular when it comes to the notion of “standard journalistic practices.” We have suggested that this is, in fact, a virtue of the view. It offers us a decent first-pass understanding of fake news, but also allows for a more refined use of the concept as it becomes clearer what it is that we ought to consider standard journalistic practice in the present context. Many contemporary debates on what, in particular, should count as fake news hinge, we take it, on just these questions. So making this explicit, rather than merely tacit, can hopefully serve as a step toward a more useful refinement of this concept—one that might help to clarify how we might reform our social media space in order to preserve its enormous potential to connect people without descending into a realm of spin and disinformation that can pose a fundamental threat to free society.

We will close by highlighting one aspect of our account that *is not* schematic. Unlike its rivals, our account makes widespread dissemination an essential feature of being fake news. While we expect this to be a controversial aspect of the view, we also take it to be a point worth defending. It is worth defending not only because it allows our definition to capture an important set of cases—those that involve no sort of intentions to deceive or mislead—that other views cannot easily account for, but also because it helps us to understand the import of the radical changes in the infrastructure of fake news that we have witnessed in the last decades. These changes, of course, are not changes in the nature of fake news on our account. But they are fundamental changes in the ways that that nature can be manifested in our world; they represent a huge shift in how fake news can be generated. Accordingly, we take our account to be helpful to a broader sort of ameliorative project to which we are sympathetic: we should hope for our philosophical theories not just to achieve extensional (or intensional) adequacy with respect to some concept. Rather, at least for a certain class of concepts, we should hope for those theories to aid in our attempts to usefully grapple with the world around us.

We think our proposed definition of fake news meets this criterion better than its rivals. First, it highlights the important role that regulating *unintentional* fake news is going to have to play in creating a healthier epistemic environment. Second, and related, it points to the importance of infrastructure in these debates. The infrastructure of news used to be controlled by publishers, who could

be held to account for the things that were reported in their papers. With the advent of social media, this is no longer the case. In the West at least, social media companies have been largely exempted from the sorts of laws that hold publishers to account for the contents of the stories they publish. We would hardly recommend that these networks be subjected, wholesale, to libel or truth-in-advertising laws of the sort that more traditional publishers were subject to. That said, if constraining fake news is the sort of worthy policy goal that we take it to be, then the possibility of subjecting these networks to greater scrutiny with regard to stories that (a) become widespread, and (b) exhibit the superficial features of real news might be worth considering. For if we are right about fake news, then such a policy might allow for a significant reduction in the spread of fake news with only minimal impacts on the sorts of individual free-speech rights that most of us will—rightly, we think—take to be well worth protecting.<sup>39</sup>

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## RIGHTS, ROLES, AND INTERESTS

*Robert Mullins*

ACCORDING TO the interest theory of rights, rights exist to promote the interests of their bearers. The interest theory fits within a tradition in moral theory that assigns a fundamental role to well-being in the explanation of deontic concepts. In spite of its pedigree, the interest theory has fallen out of favor in recent years. It has been subject to sustained and telling critiques by a number of prominent rights theorists, including Frances Kamm, Leif Wenar, Rowan Cruft, and Gopal Sreenivasan.<sup>1</sup> One prominent objection focuses on the rights of role bearers: since many roles are burdensome, and since their justification hinges on their social value rather than their value to the bearer, it is hard to see how role bearers' rights exist to promote their interests alone.

In this article I aim to defend the interest theory against this particular line of objection. My aim is not to definitively establish the merits of the theory (I doubt that can be done) but to show that it at least offers a reasonable account of the rights of role bearers. I argue that role bearers' rights are grounded in their interests: under certain conditions, the interests of the individual role bearers provide sufficient reason for existence of the right. After illustrating the problem at greater length, I make my argument in three stages. First, I argue that many of our valuable roles are partly constituted by duties or obligations. Second, I argue that our valuable roles—even when they are apparently burdensome roles—promote our interests. Once it is bestowed upon them, a role is no longer just a role; it is a role that has special value for its bearer. I then argue that, under certain conditions, the individual's interest in performing their role is sufficient to ground rights to perform that role. In the final section, I briefly discuss the possibility of "detached" or "noncommitted" rights attributions, and their significance to the description of the rights of role bearers in social morality and law. Within law and other systems of positive norms, role-based rights may be attributed in a noncommitted way in situations where it is believed by others that the roles in question sufficiently promote the interests of their bearers.

1 Kamm, *Intricate Ethics*, ch. 8; Wenar, "The Analysis of Rights" and "The Nature of Claim-Rights"; Cruft, "Rights"; Sreenivasan, "A Hybrid Theory of Claim-Rights."

## 1. THE PROBLEM: ROLE BEARERS' RIGHTS

The problem that role bearers' rights pose for the interest theory can be illustrated by considering the legal rights of parents. In most jurisdictions, parents have legal rights with respect to the education, religious upbringing, and medical treatment of their children. For instance, in most jurisdictions, parents have a right to information concerning the medical treatment of their children, which correlates with a duty on behalf of medical practitioners to provide parents with this information. Yet these rights are conferred on parents with the child's interest in mind. Possessing these rights on behalf of their children may even be quite burdensome for parents. This is problematic because, according to the interest theory, parents' rights are supposed to be grounded in the interests of the parents, not their children.

This is the crux of the challenge considered in this article. I will argue that rights promote the interests of their bearers. Wherever there are rights, there are interests—not just any interests, but interests that are in themselves sufficient reasons for the existence of a duty or set of duties owed to the rights bearer.<sup>2</sup> But the rights of parents appear to offer a direct counterexample to this philosophical position. How can it always be in a parent's interests to act on their child's behalf? Surely, parenting at least occasionally involves burdens and self-sacrifice. Furthermore, the interests that ground the right appear to belong to the child, not to the parent. The parent has a right to act in their child's interest, and might even have an interest in doing so, but they do not have this right *because* it serves their own interests to have it.

The problem presented by parental rights to interest theories of rights is a variant of a more general problem, which has been noted by any number of prominent critics of the interest theory (and some of its supporters).<sup>3</sup> Many of our roles, both within our special relationships and within social or institutional structures, appear to exist because they serve the interests of others, rather than the interests of the role bearer. A promisor has the right to keep their promise,

2 As will become clear, I have in mind Joseph Raz's theory of rights (*The Morality of Freedom*, 166). A closely related account is the account of rights commonly attributed to Bentham and defended assiduously by Matthew Kramer; see Hart, "Bentham on Legal Rights"; Kramer, "Rights without Trimmings" and "Refining the Interest Theory of Rights." I will not concern myself with defending this alternative version of the interest theory, though similar arguments to my own are broached by Kramer and by Steiner, "Theories of Rights," 288–94.

3 See, e.g., Cruft, "Rights," 372–75; Kamm, *Intricate Ethics*, 244–48; Sreenivasan, "A Hybrid Theory of Claim-Rights," 265–66; Wenar, "The Analysis of Rights," 241–42, and "The Nature of Claim-Rights," 204–7. Raz acknowledges the difficulty in his own work in "Rights and Individual Well-Being."

even though they might have promised to do something that appears to be burdensome or unpleasant.<sup>4</sup> A journalist has the right to free speech, even when that right does very little to protect the journalist's own interests, and mostly seems to promote the interests of his readers.<sup>5</sup> Legal officials have rights to perform responsibilities that do not appear to be to their benefit. The rights of a police officer seem to exist so that they can act in the interests of their fellow citizens, rather than in their own interests. It is therefore hard to imagine how, on the interest theory, any of these role bearers could accrue any rights properly associated with their responsibilities. Problems like this can be created for just about any purportedly burdensome role—especially those roles (like the roles of parent or police officer) that require us to perform duties on behalf of others.

The focus of my discussion will be on claim rights that protect role bearers in the performance of their duties. Nonetheless, it is worth noting that the rights of role bearers doubtless involve other Hohfeldian incidents.<sup>6</sup> It may well be that these other incidents are also grounded in the interests of the role bearer. For instance, many roles are associated with normative powers to impose duties on others. A standard justification of normative powers is that they serve our autonomy interests—they give us some sort of control and ability to impose a chosen pattern on our own lives.<sup>7</sup> The explanation of the way in which these powers might serve our interests, and the explanation of the claim rights that enable or protect these powers, are closely related if not identical projects.<sup>8</sup> Moreover, many of the claim rights of role bearers protect them in the exercise of normative powers. Parents' powers to make decisions about the health of their children are protected by claim rights against doctors to inform them about the nature of their child's illness. Without such rights, the power to consent to examination or treatment would be vulnerable to failures on a doctor's behalf to explain the child's condition. Similarly, the extraordinary powers of police officers are very often protected by claim rights that they have against interference with the exercise of their powers.

4 Wenar, "The Nature of Claim-Rights," 204; cf. Owens, *Shaping the Normative Landscape*, ch. 6.

5 Kamm, *Intricate Ethics*, 244–48.

6 Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*.

7 For a compelling defense of the view that we have such normative interests see Owens, *Shaping the Normative Landscape*.

8 See Kramer and Steiner, "Theories of Rights."

## 2. THE INTEREST THEORY AND THE PROBLEM OF ROLE BEARERS' RIGHTS

### 2.1. *Interests and the Interest Theory*

According to interest theorists, rights promote their bearer's interests or well-being. There are different versions of the interest theory. On Joseph Raz's widely cited formulation of the interest theory, we have a right if and only if we have an interest "that is, other things being equal, sufficient to justify holding some other person to be under a duty."<sup>9</sup> A number of features of Raz's theory need further explication. To begin with, Raz's own account is intended to preserve an ambiguity when he talks of being justified in "holding" someone to be under a duty; he might be taken to be referring to our reasons for the act of asserting that someone is under the duty, our reasons for an attitude like acceptance or "internalization" of the duty, or he might be taken to be referring to the duty's actual normative grounds—the reasons for the existence of the duty.<sup>10</sup> I will assume here that he is referring to the reasons for existence of the duty, and not reasons for an act or attitude.

An equally important aspect of Raz's version of the interest theory is its focus on the sufficiency of the individual's interest as a reason for the duty owed to the interest bearer. The interest must be, other things being equal, a sufficient reason for the relevant duty. Many counterexamples to the interest theory focus on the insufficiency of the individual interest in question, as we shall see. The sufficiency requirement might be interpreted in a number of ways, including the straightforward truth-functional account: if the interest exists then it is a sufficient reason for existence of the duty.<sup>11</sup> I will assume that this truth-functional approach to the sufficiency requirement is the correct one, though I think my argument could also be adapted to defend other interpretations of the sufficiency requirement.

Raz's formulation focuses on the relationship between an interest and a singular duty. It sometimes may be the case that the interest in question is sufficient to justify a set of duties rather than a single duty. This is particularly clear in the case of social roles. The interest of role bearers is often associated with a set of duties, each of which protects the role bearer in the performance of different duties associated with their role. The role of parent may be supported through a complex set of duties, including, for example, a duty to provide them with child

9 Raz, *The Morality of Freedom*, 166. Cf. Kramer, "Refining the Interest Theory of Rights," 32.

10 Raz, *The Morality of Freedom*, 171–72. See also Cruft, "Why Is It Disrespectful to Violate Rights?" 205.

11 See further Cruft, "Why Is It Disrespectful to Violate Rights?" 205.

support, duties to provide opportunities for childcare and education, and a duty not to interfere with the parent's decisions regarding their child's religious upbringing. None of these duties is individually necessary for the protection of the parental role. But the entire set of such duties is collectively sufficient to protect the role.

I will assume that an interest is the kind of good we have in mind when we say that something is *good for* another person.<sup>12</sup> Many accounts of our interests treat them as equivalent to an individual's well-being. But it is possible to envisage substantive theories about what is in a person's interest that do not have well-being in mind, at least as well-being is commonly understood.<sup>13</sup> It is also possible to imagine that different interest theories of rights might invoke different theories about what constitutes individual well-being.

My argument does rely on the assumption that our individual roles contribute to our interests in a manner analogous to other projects and attachments. Crucially, I will assume that the contribution that our roles make to our well-being is at least partly dependent on the value of the role—particularly the contribution that it makes to the well-being of others. My argument is therefore incompatible with approaches to well-being that deny that the contribution that our roles make to our well-being could depend on anything other than the pleasure we take in the achievement or the preferences or desires that we satisfy.<sup>14</sup>

## 2.2. Role-Based Counterexamples

As Leif Wenar has noted, significant problems for the interest theory are created by apparently burdensome social roles, since they involve what John Rawls referred to as “enabling rights”: “rights we have so that we can fulfill certain duties that are prior in the order of grounds.”<sup>15</sup> Many of the rights of parents are rights of this sort: they arise with respect to the performance of their duties toward their children. Just about any social role will be associated with a set of enabling rights. Police officers, for example, have exceptional rights that are meant to enable them to fulfill the special duties associated with their office.

Rights to perform role-based duties are problematic for the interest theory in

12 Moore famously thought we could do without the concept *good for* (*Principia Ethica*, sec. 59). But perhaps even the most devout contemporary Moorean will wish to make use of some kind of relativization that will suffice for the purposes of analyzing rights—a relativization like “good in the life of” or “good belonging to,” for instance. See Rosati, “Objectivism and Relational Good.”

13 See, e.g., Macklem and Gardner, “Value, Interest, and Well-Being.”

14 See, e.g., Crisp, “Utilitarianism and Accomplishment.”

15 Rawls, *Lectures on the History of Political Philosophy*, 144; Wenar, “The Nature of Claim-Rights,” 206–7.

two ways. First, they appear to show that rights are not to the benefit of the role bearer—that they do not serve their interests at all (in fact, they may even be damaging to their interests). Second, they appear to show that even when rights are to the benefit of the rights holder, the rights holder's interest is not an individually sufficient reason for the corresponding duty. The rights holder's interest is dependent on the interests of others whom the role benefits, and therefore not an individually sufficient reason for any duty.

The first set of counterexamples supposedly shows that the promotion of interests is not even a *necessary* feature of rights. Philosophers point to rights that are thought to demonstrate that interests are not even a necessary feature of the right (or that they do not play any necessary role in the justification of the right). Other counterexamples concede *arguendo* the association of rights with interests, and focus solely on the sufficiency of the interest—they do not intend to deny that the role bearer has some interest that is protected by the right, but they do deny that the role bearer's interest would, on its own, be sufficient reason for a duty.<sup>16</sup> Parents have a right to receive a child's benefits payment, for example, but that right exists because it serves the child's interest.<sup>17</sup> We can also think of the rights of police officers, or journalists, or the rights of other legal officials, which seem to be entirely justified by the interests of those they serve. The journalist may have an interest in publication, but the individual interest is not a sufficient reason for assigning them a right. Only the combination of the journalist's interests with the interests of others who are served by the socially valuable role of journalist could result in the journalist having such a right. The journalist does have such a right, so it must follow that the interest theory of rights cannot be correct. According to Kamm, "if the satisfaction of the interests of others is the reason the journalist gets a right to have his interest protected, his interest is not sufficient to ground the duty of non-interference with his speech."<sup>18</sup>

The latter set of counterexamples is the one that creates the most difficulty for the interest theory. The sufficiency requirement is an important aspect of the interest theory—it is needed to rescue the theory from trivial counterexamples involving beneficiaries of duties who are not rights bearers. Hart's example of the third-party beneficiary to a contract illustrates the problem nicely: interest theories without a sufficiency requirement allow us to derive a right, on behalf of the third-party beneficiary, that the contract be performed. But not all jurisdictions recognize such a right.<sup>19</sup> In the context of rights within roles that are

16 See especially Wenar, "The Nature of Claim-Rights," 204–5; Kamm, *Intricate Ethics*, 244–48.

17 Cf. Raz, *Ethics in the Public Domain*, 50.

18 Kamm, *Intricate Ethics*, 246.

19 Hart, *Essays on Bentham*, 187–88.

justified by their social value, however, the sufficiency requirement is problematic. The interests of the journalist only justify holding others to be under the requisite duties because the role in question serves other interests. So it appears as though the role bearers' interests are not sufficient to justify the duties—since their own interests depend on the role serving the interests of others.

### 3. THE EXISTENCE AND WEIGHT OF ROLE BEARERS' INTERESTS

The gist of the response to the role-based counterexamples lies in the observation that our projects and attachments make an indispensable contribution to the shape of our lives, and accordingly are vital to our interests. Roles and relationships are among our valuable projects and attachments. Since the duties and responsibilities associated with our roles are *constitutive* of those roles, it follows that they are constitutive of our interests in a more fundamental way than is commonly supposed. Where our interest in performing these roles is sufficient to justify holding others to be under duties, it is capable of grounding a right on behalf of the role bearer. The major premise of the argument is that duties are constitutive of valuable roles and relationships. The minor premise is that roles and relationships, where they are valuable, contribute to the interests of their bearers. From both premises we thus conclude that the duties and responsibilities that are constitutive of valuable roles and relationships serve their bearer's interests. Below I will defend each premise in turn. I then discuss the relationship between the considerations that justify the role, which are often only weakly related to the interests of the individual, and the individual's interests in performing the role. This last point is important—it allows us to distinguish the manner in which the individual interests are sufficient to justify the duties in question.

#### 3.1. Duties and Roles

Duties are constitutive of all roles—at least when roles are understood in the thicker sense that is favored by most philosophers and many sociologists. Some writers working in a broadly sociological tradition have tried to argue that it is possible to identify and define social roles without referring to those roles' constituent deontic features. These explanations of roles are inadequate precisely because they fail to describe exactly what distinguishes these roles for internal participants.<sup>20</sup> Other sociological accounts have never sought to deny what we might describe, paraphrasing Hart, as the “internal aspect” of roles—it is im-

20 For critiques of this conception see Emmet, *Rules, Roles and Relations*, 17–32; Downie, *Roles and Values*, 121–27.

possible to describe role bearers' behavior without referring to their belief in the existence of certain role-based reasons for action.<sup>21</sup> Jerry Cohen notes that statements like "John is a barrister, but he does not have the right to plead in court" or "Sir William is chancellor of the exchequer, but he does not have the duty to prepare a budget" have a paradoxical ring to them.<sup>22</sup> Deontic features like rights, duties, and permissions are inextricable from the proper description of these roles. A sociologist who sought to describe roles without reference to these features would be failing to understand the role as the role bearers themselves understand it.

### 3.2. *Roles and Interests*

The roles and relationships we fulfill and pursue are an important source of our projects and attachments. Performing roles and assuming responsibilities within relationships contributes directly and indispensably to role bearers' interests. The contribution that roles and relationships make to our interests is well discussed in the philosophical literature. A broad philosophical consensus holds that, where roles and relationships have value, they contribute to our interests.<sup>23</sup>

This consensus is typically associated with what Derek Parfit referred to as "objective list" theories of well-being—theories that stipulate that "certain things are good or bad for us, whether or not we want to have the good things, or avoid the bad things."<sup>24</sup> Many objective-list theories of well-being stipulate that our valuable relationships and social roles are among those things that are good for us.<sup>25</sup> Yet we need not be objective list theorists in order to acknowledge the importance of valuable goals and achievements to the promotion of our interests. Those who hold that well-being consists in the satisfaction of desires or preferences might be willing to concede that there is some objective component to our interests—that the contribution of our desires or preferences to the promotion

21 Hart, *The Concept of Law*, 88–91. In fact, sociologists, rather than philosophers, may have been the first to draw our attention to these attitudes. Lacey notes, for example, that Hart's ideas in *Concept of Law* were influenced by Weber's sociology ("Analytic Jurisprudence versus Descriptive Sociology Revisited," 951–52).

22 Cohen, "Beliefs and Roles," 21.

23 See Brighthouse and Swift, "Parents' Rights and the Value of the Family"; Cottingham, "Ethics and Impartiality"; Miller, "Reasonable Partiality towards Compatriots"; Raz, "Liberating Duties," 59, 93.

24 Parfit, *Reasons and Persons*, 493.

25 Finnis, *Natural Law and Natural Rights*, 88; Griffin, *Well-Being*, 67; Hurka, *Perfectionism*, ch. 10; Kraut, *What Is Good and Why*, ch. 3.



of our interests depends in part on the value of the object that is desired or preferred.<sup>26</sup>

It is instructive to note the different ways in which our fundamental individual interests are themselves socially dependent. Many of our goals depend on the forms that are given to them by different social attitudes and practices. If the role is otherwise worthwhile, it is in my interest to perform the role of dogcatcher. But the precise responsibilities and rights associated with the role of dogcatcher may depend on either or both social practices or legal instruments that define the role and its constitutive duties. In many circumstances, legal or social rules will determine the specific content of our moral rights. Our specific moral rights may depend upon how our roles are socially defined.<sup>27</sup> What is in my interest as a parent or friend, and therefore what is sufficient to ground a right, depends in part on how the particular role is shaped by different social customs and pressures.

In this respect it is important to concede that at least some of the constituent rights and duties that define our social roles are not indispensable to the existence of the role. There is something contingent about the particular duties we attribute to role bearers, and so too with the rights that enable them to fulfill these duties. The role of journalist would almost certainly continue to exist even if journalists had no right not to disclose their sources. No one doubts that even if parents were denied the right to receive child-benefit payments the role of parent would continue to exist and to have value to its bearers. However, the interests we have in these roles are in the roles as they are currently (and contingently) defined—not as they might otherwise be defined. In contemporary liberal society the role of journalist is partly defined by a duty not to divulge one's sources. It is part of the social value of the role that is a condition of its special value to the role bearer. Journalists have an interest in conforming with the duties that currently attach to their role, even if the role itself is susceptible to being redefined by law, custom, or other social pressures. A journalist who is told that she must disclose her sources is unlikely to be consoled by the thought that she will still be able to call herself a journalist even if she does not fulfill one of the duties of the role.

### 3.3. *General Justifications and Special Interests*

Recall that in Rawls's definition of "enabling rights," he defines them as rights that are dependent on prior duties that ground them. The possibility of enabling

<sup>26</sup> See, e.g., Parfit, *Reasons and Persons*, 501–2.

<sup>27</sup> Raz, "Legal Rights"; Honoré, "The Dependence of Morality on Law"; Owens, "Wrong by Convention."

rights thus provides an important counterweight to some prominent distortions of the role of rights in practical reasoning, including the view that rights are by their very nature conceptually prior to duties. Rights can certainly have priority over those duties that the rights themselves justify. But it is also evident that rights may be dependent upon the existence of certain valuable duties—the duties, in virtue of the role or practice that they constitute, may contribute to an individual interest, and that individual interest may itself be sufficient reason for further duties that enable the performance of the role.

A distinction needs to be made between having an interest in the general practice or institution within which the role occurs, and having an interest in the particular role that one occupies. The role-based rights and responsibilities of journalists offer one example of the importance of this distinction. Roles like “journalist” are often said to have a non-individualistic justification.<sup>28</sup> Many of the role-based duties associated with journalism are grounded not by the interests of the journalist, but by the way in which journalists serve the interests of others. It appears to follow that any rights associated with the role of journalist must also be justified by consideration of the general interest, and that therefore the interests of the individual are not sufficient to ground any duties.

This puzzle draws attention to an important distinction between what Hart called “special” rights and “general” rights.<sup>29</sup> Special rights are those rights that arise out of special transactions or relationships between people, where general rights are those rights held by everyone, which are not “peculiar to those who have them.”<sup>30</sup> (Hart goes further than this in drawing the distinction, but I do not think his particular explanation of the distinction is important here.) Role-based rights are *special* rights—they are held by particular individuals who occupy particular roles within relationships or social institutions. And the social institutions within which these roles occur are frequently justified by a diversity of considerations apart from the interests of the role bearers.<sup>31</sup>

Role-based rights qualify as special rights in two ways—they depend on the particular responsibilities of the role as it is currently defined, but they are also particular to the individuals who occupy the role. The individual’s interest is pro-

28 For a nice elaboration of these problems see Cruft, “Why Is It Disrespectful to Violate Rights?”

29 Hart, “Are There Any Natural Rights?” 183–88.

30 Hart, “Are There Any Natural Rights?” 188.

31 In addition to having rights that arise with respect to the relationships we have already formed, we might have certain general, fundamental rights to form relationships with others; see Brownlee, “Ethical Dilemmas of Sociability” and “A Human Right Against Social Deprivation.”

moted by fulfilling the role, in part, because it is their role, because, like other projects and attachments, it enables them to shape their lives around a particular pattern of responsibilities. It is not simply the fact that journalists have a generic interest in publication that justifies holding others to be under respective duties. It is the fact that the particular individual occupies the role of journalist that gives their interest its particular weight, and which makes it a sufficient reason for the relevant duties. The same can be said, *mutatis mutandis*, with respect to the rights of parents. The role of parent is at least partly conditional on the needs of the child. But once a particular person becomes a mother or a father, they gain a particular and significant interest in serving their child's interest. They have rights because it is their child, and because the particular child that they have has particular needs and interests to which they are committed. It is true that the role that they have occupied is a fiduciary one that it is centered mainly if not entirely on the promotion of the child's interests. But this does not preclude parents from having what Brighouse and Swift call a "non-fiduciary interest in playing this fiduciary role."<sup>32</sup>

Raz argues that role-based rights exist to protect the interests of persons with general characteristics.<sup>33</sup> In law and other rule-based institutions, rights (and their correlative duties) cannot help but trade on generalizations of this sort—we do not know who exactly will possess a given role or what their characteristics will be. However, our moral, role-based rights are also tied to the uniqueness of the role to the role bearer. My rights as a parent are not just the rights I possess *qua* parent, they are rights I possess as a particular parent of a particular child—rights shaped by a history of interaction and attachment to that child.<sup>34</sup> A journalist's rights are not just rights *qua* journalist, they are rights possessed by the individual who has chosen the role, and who has imposed a particular pattern of responsibilities on their life. Their rights enable them to continue to fulfill the role that has meaning to them.

The interests of the particular individual in occupying the role that they occupy thus possess greater gravity than many of us have previously considered. When we consider role bearers *de dicto*—in terms of the generic interests of someone who possesses their role—their interest in fulfilling their responsibilities can be hard to envisage. Once we consider role bearers *de re*, however, we

32 Brighouse and Swift, "Parents' Rights and the Value of the Family," 95.

33 Raz, *The Morality of Freedom*, 180.

34 On the role played by histories of interaction in constituting valuable projects and attachments, see Raz, *Value, Respect, and Attachment*, 10–40; Kolodny, "Which Relationships Justify Partiality? The Case of Parents and Children" and "Which Relationships Justify Partiality? General Considerations and Problem Cases."

get a greater sense of the significance that their role might have to them. To the extent that the roles that we perform are part of imposing a meaningful pattern of responsibilities on our lives, they make an indispensable contribution to our interests.

It is true that, for some people, performing a role is against their interests. I consider these cases, which are indeed problematic for the interest theory, in greater detail below.

#### 4. THE INTEREST AS A SUFFICIENT REASON FOR DUTIES

It might still be objected that, the gravity of role bearers' interests notwithstanding, their interests are still not sufficient to justify rights because these interests are dependent on the value of the role, and the role itself is justified by its instrumental value. The role exists for the promotion of collective interests. If the role itself is dependent on instrumental justification, then how could the individual's interest in that role be sufficient to ground the relevant duties? Recall Kamm's objection concerning the journalist's rights of freedom of speech: the journalist's interests are only protected by the right in virtue of the right's also serving the public good.<sup>35</sup> Similar objections, focusing on the sufficiency requirement, are repeated by Sreenivasan and Cruft.<sup>36</sup>

When philosophers like Kamm formulate these objections, they often have something like an additive picture of the justification of these rights in mind: the reasons supporting the existence of the role, together with the individual's interest in performing that role, jointly ground the role bearer's rights.<sup>37</sup> They are following Raz, who himself acknowledged that the interests of the journalist's readers were part of the "justifying reason" for the right.<sup>38</sup> If Raz's reference to the "justifying reason" is taken to refer to the grounds of the right, it follows that the role bearer's interest is not individually sufficient to ground the right. I do not think this is the correct way to conceive of the justificatory relationship between the two interests and the right. Rather the role bearer's interest is conditioned in some way on the value of the role. That the role serves the journalist's interest would in and of itself be sufficient reason to hold others under relevant duties. But it is a condition of the role serving the journalist's interest in this way that the role also serves the interests of their audience.

An analogy with promising might be helpful. That someone has promised to

35 Kamm, *Intricate Ethics*, 245–46.

36 Cruft, "Rights," 372–75; Sreenivasan, "A Hybrid Theory of Claim-Rights," 265–66.

37 Kamm, *Intricate Ethics*, 245–46.

38 Raz, "Rights and Individual Well-Being," 55.

dance is, other things being equal, a sufficient reason for there being a duty for them to dance. But a condition of the promise acting as such a reason is that it was not extracted under duress. According to various theories of promising, the presence of duress either “disables” or defeats the validity of a promise.<sup>39</sup> It is tempting to insist on specifying the absence of duress as part of the reason for the duty: the existence of a promise is a necessary, but not itself sufficient, reason for the duty. Only the existence of the promise and the absence of duress (or other disabling factors) are jointly sufficient for the existence of the reason. But I am convinced that this response is inappropriate in the context of value and practical reasons.<sup>40</sup> The relationship between the conjunction of the promise and the absence of duress and the duty is not the same as the reason relationship. Rather, the absence of duress is a condition of the promise acting as a reason for the duty.

Once we distinguish between the normative grounds of the duty and the conditions of those grounds, the relationship between the role bearer’s interest and the duties it grounds can be determined. The role bearer’s special interest in serving their role is dependent on the interests of others. The social value of the role and the individual’s interest in the role do not make a joint contribution to justification of the duty. Rather, the social value is a condition of the interest, which in turn is sufficient to ground the duty. It is worth noting that our interests in performing other roles might be conditional on the role’s instrumental value in other ways than serving the common good. The conservationist tasked with preserving a historic piece of art has an interest in performing their role that is conditioned on the value of the artwork. If they were to find out that the work was an elaborate forgery, then their interest in performing this role would largely disappear. If we can appeal to conditional value in the case of the conservationist, then we can appeal to it in the case of roles that depend on their social value.

That the social value of the role acts as a condition of the role’s value to its bearer is also consistent with the rights that protect that role having a greater stringency than if we just consider the role bearer’s interest in isolation. This is the true point behind Raz’s insistence that the social value of the role forms part of the “justifying reason” for the duty to protect the journalist’s readers—the duty has a greater stringency than it otherwise might because the journalist’s

39 Dancy, *Ethics without Principles*, ch. 3. For a filled-out account of the way in which duress invalidates promises, see Owens, *Shaping the Normative Landscape*, ch. 11; cf. Hart’s treatment of duress as a “defeater” of contractual responsibility in “The Ascription of Responsibility and Rights.”

40 For frameworks that distinguish between the grounds of a reason and its enabling or modifying conditions see Dancy, *Ethics Without Principles*; Horty, *Reasons as Defaults*, 55–59; Bader, “Conditions, Modifiers, and Holism.”

interests protect a diversity of other interests. As Raz rightly observes, there are cases where “interests of the right-holders and those of the others” are “doubly harmonious”: “not only do the others benefit through the benefit to the right-holders but the right-holders themselves benefit from the service their rights do to those others.”<sup>41</sup> The right gains its stringency partly because a condition of its value is its social value.

##### 5. ROLES, CONFLICTS, AND LOSS OF INTEREST

The argument I have offered here provides a counterweight to the tendency to overstate the prevalence of conflict between interests. It is true that in some circumstances promotion of my interests necessarily precludes promoting the interests of others. Sometimes these conflicts of interest arise because resources are scarce. More frequently these conflicts arise because we are required to allow one party’s choice about what is in their interests to prevail over another. Laws that give minors the power to determine when they should obtain an abortion conflict with laws that endow the minor’s parents with similar powers. More fundamentally, the interests of children in having a secure and comfortable upbringing do restrict the capacity for parents to make the sorts of choices that they otherwise might make. The sacrifices that we make in performing our different role obligations are real, and it is important not to diminish them. In the context of parental rights, this is what leads Brighouse and Swift to refer to the conflict between parents’ rights and children’s rights as embodying an “underlying tension” between the promotion of children’s autonomy and toleration of parental choices.<sup>42</sup>

Yet focusing on these conflicts can be misleading because they conceal the ways in which the interests of role bearers can converge with the interests of those for whom the role is being performed. The real conflict concerns who should be able to exercise authoritative control over those interests. For instance, many of the conflicts that characterize relationships between parents and their children revolve around shared interests. Both parent and child can agree that it is in their shared interest that the child obtain the correct medical treatment while disagreeing as to who should have the power to determine the correct course of treatment. These conflicts have a higher-order quality; they arise with respect to who has most interest in deciding how those interests are best pursued. Though they are pressing conflicts, they should not be allowed to conceal deeper convergences between the interests of parents and children.

41 Raz, “Rights and Individual Well-Being,” 51.

42 Brighouse and Swift, “Parents’ Rights and the Value of the Family,” 81–84.

None of this is to deny that it may be against someone's interest to perform a given role. There are people who would be better off if they had never become a parent, or if they had never become a magistrate. We should be wary of concluding too much from these cases. In fact, they tend to illustrate the complex interplay between individual and collective interests. There is a difference between saying that someone should never have occupied a role and saying that they should abandon the role. Perhaps I would have been better off if I had never become a parent. It does not follow that I would *now* be better off if I abandoned my responsibilities as a parent. Roles, and our interests in performing them, follow complex patterns of path dependency.

Nonetheless, those of us who are interest theorists should be willing to concede that there are at least some cases in which individuals lose their moral right to perform a role because it has ceased to promote their interests. Even in these cases, we might be unwilling to intervene in their performance of the role for other reasons unrelated to the rights of the role bearer—it might be simply inappropriate to intrude on their life or second guess their decision-making about what is in their interests. For this reason, it may be that the individual does not lose their legal rights to perform the role. The grounds of the moral right that the legal right was designed to protect disappear, but the legal right persists for other perfectly sound reasons.

#### 6. DETACHED RIGHTS ATTRIBUTIONS

I have argued that duties, even apparently burdensome duties, are constitutive of many valuable relationships and roles, and that these valuable relationships and roles promote the interests of those who share in them. It ought to follow, then, that all rights associated with roles are in the interests of their holders, and this ought to be enough to dispense with any concerns that we might have about role-based or relationship-based rights. However, a further complication for the interest theory of rights arises due to the fact that many roles actually socially practiced may not have the value that they are believed to have by those who practice them, and that, as a result, they might not actually contribute to the interests of the individual. It appears as though we can felicitously cite a kamikaze pilot's right to fuel, or parents' rights to arrange marriage on behalf of their children, even when we are personally certain that roles or relationships that are constituted in this way are lacking in value, and thus do not actually believe that the rights promote their bearers' interests.<sup>43</sup>

When discussing the rights of role bearers, it is important to recognize the

43 These examples are provided by Wenar, "The Nature of Claim-Rights."

possibility that some of our rights attributions will be detached or noncommittal. This is an important (and I think occasionally overlooked) component of our understanding of rights in law and within social roles more generally. It may be true, for instance, that children's rights to access certain medical procedures without their parents' consent do not actually serve their interests. It does not follow that attributing a legal right to children to obtain the procedure is infelicitous. Any deontic language may be used in what legal philosophers usefully describe as a "detached" manner. This kind of detachment is equally evident in the case of legal duties as in the case of legal rights. It would apply equally if, rather than speaking in terms of the child's legal rights to a medical procedure, I was to speak of the doctor's legal duties to provide the procedure. In either case, I would have cited the norm as a norm, without endorsing it as a guide to action.

Though there are dissenting voices, the possibility of detached or noncommitted use of deontic language is well known and has been discussed at length elsewhere in a variety of philosophical contexts.<sup>44</sup> It is a crucial feature of normative language and thought that is often resisted in discussions of legal rights. For instance, Leif Wenar says that "what legal rights there are cannot depend on what makes a human life go well," and that "we cannot make the analysis of the former depend on the truth about the latter."<sup>45</sup> Others find the idea of detached statements about legal rights implausible. Nigel Simmonds worries that basing a theory of legal rights on the moral beliefs of legal officials is an "abandonment of positivism."<sup>46</sup> Cruft worries that the theory makes "what qualifies as a right overly dependent on lawmakers' judgments about people's interests."<sup>47</sup> If these objections succeed, then they succeed against a reasonably prominent position in legal philosophy. The philosophical theses associated with this position may be wrong, of course. But there is little basis for taking them to be obviously incorrect, or for asserting that they are an unprecedented abandonment of positivism. In fact, many (though not all) legal positivists are committed to the thesis that the validity of legal rights and duties is dependent on facts about the psychology and practices of legal officials.<sup>48</sup>

44 E.g., Raz, "Legal Validity." For a critique, see D'Almeida, "Legal Statements and Normative Language." Compare with Shapiro's notion of "perspectival legal claims" (*Legality*, 184–86). For example discussions of the possibility of descriptive usage of deontic language elsewhere in the philosophy of language, see Hare, *The Language of Morals*, 159–60 (on "descriptive" usage); Lasersohn, "Context Dependence, Disagreement, and Predicates of Personal Taste," 643, 672 (on "exocentric" usage); Lyons, *Semantics*, 792–93 (on "objective" usage).

45 Wenar, "The Nature of Claim-Rights," 205.

46 Simmonds, "Rights at the Cutting Edge," 202.

47 Cruft, "Rights," 375.

48 See, e.g., Raz, *The Authority of Law*, 37–52; Gardner, "Legal Positivism." For a defense of an



In many circumstances, to assert that a parent has a right against interference with the arrangement of his child's marriage, or that a victim's family has a right to attend an execution, may merely be to say elliptically, without necessarily endorsing such a right, that the existence of such a right is accepted by others. In the case of law, the assertion that there are certain legal rights by law-applying officials has been said to result in a claim or representation, made by the legal officials at the time of application, that such rights are valid moral rights.<sup>49</sup> In these cases, the individuals' rights within the role must ultimately be explained in terms of mistaken beliefs in the value of the role, and thus a mistaken belief in the contribution that the role makes to the interests of its bearer. Social norms become norms in virtue of being accepted or practiced by a given social group. That social norms support a role indicates a collective belief in its value to the bearer—the belief that it is, other things being equal, a meaningful and worthwhile pattern of responsibilities and burdens to impose on one's life.

Invoking the possibility of detached legal statements in order to buttress any theory of rights risks trivializing the identification of rights in legal systems—since almost anything could be claimed as a right by legal officials, depending on their beliefs, and thus almost anything could be claimed to be in the interests of their subjects. Because legal systems create or acknowledge purported rights and obligations, there is no limit to the kinds of purported rights and obligations they can be said to create or acknowledge, and thus to the kinds of moral claims that legal officials might wish to make. There is something in this objection. But defenders of the interest theory are still constrained by the plausibility of attributing these false beliefs to legal officials. Usually it is possible to imagine why certain law-applying officials might believe that a certain duty serves the interests of the rights holder. It may well actually run against a parent's interest to have the right to determine whether or not their child receives a blood transfusion, but it is easy to see why some law-creating or law-applying officials might believe that it was in their interest to have such a right. Supposing it is not the case that it serves parents' interests to allow them to arrange marriage on behalf of their children, it still seems plausible to attribute the belief that it serves those interests to those who practice the custom.

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alternative characterization of positivism, see Kramer, *Where Law and Morality Meet*, pt. II.

49 See Gardner, "How Law Claims, What Law Claims"; Raz, *The Authority of Law*, ch. 2. Plunkett similarly suggests that the law *represents* itself as moral ("Legal Positivism and the Moral Aim Thesis," 592–603). For a dissenting view, see Kramer, *In Defense of Legal Positivism*, ch. 4.

## 7. CONCLUSION

It is possible that we have reasons to act for the sake of others that are not grounded in facts about what would be good for them. If we do have such reasons, it is likely that some of these reasons will ground rights. But I do not think the rights we have to perform our social roles are the right place to look. Once we offer an appropriately detailed philosophical account of the way in which various social connections serve our interests, and the relationship between these interests and the rights they ground, many apparent difficulties with this category of rights disappear.<sup>50</sup>

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## MAKING PEACE WITH MORAL IMPERFECTION THE PROBLEM OF TEMPORAL ASYMMETRY

*Camil Golub*

THE FOLLOWING SCENARIO should be familiar to many readers. Some-  
one believes that they made a significant moral mistake at some point in  
their life. They strongly prefer not to make similar mistakes again. And  
yet, thinking about what might have been, they do not wish that they had done  
things differently in the past. Here are some examples:

*Acting:* Greta accepted an acting gig with a director who she knew had  
been accused of sexual misconduct. She believes that it was wrong of her  
to take the job, and would not make a similar decision again. However,  
looking back, she does not wish that she had never worked with that di-  
rector.<sup>1</sup>

*Lying:* Tyler lied about his credentials on a job application years ago. He  
believes it was wrong of him to lie, and has resolved not to make similar  
mistakes again. However, he does not wish that he had never lied on that  
job application.

How can people like Greta and Tyler rationally make peace with their past mor-  
al failings, while committing to avoid similar mistakes in the future? This is what  
I call *the problem of temporal asymmetry* for our attitudes toward moral imper-  
fection.

Note that, by *making peace* with a moral mistake, I mean having a retrospec-  
tive preference for one's actual life path, when comparing it to nearby worlds in  
which one would not have made that mistake. Similarly, I take regret for a past  
mistake to be a retrospective preference for the closest world in which one did  
not make that mistake. Such *global* preferences about the past, which concern  
entire life paths, should be distinguished from *local* retrospective preferences,

<sup>1</sup> This example is inspired by a *New York Times* interview with Greta Gerwig, in which she dis-  
cussed her conflicted feelings about a similar episode in her career. Nevertheless, it should  
be treated as fictional.

e.g., wishing that a particular event had not happened, considering it in isolation, and holding fixed everything else about one's life. I will have little to say about the second type of preference in what follows.<sup>2</sup>

Preferring retrospectively one's actual life path is also different from finding emotional closure with the past, and regret as a retrospective preference should not be confused with the affective states typically associated with it, such as guilt and shame. Someone can make peace with a moral failing, in the sense described above, while still thinking about what might have been, and even feeling guilty or ashamed about that mistake. I do not mean to dismiss the significance of such emotions in our ethical lives, but I will focus on preferences regarding moral imperfection because they are more clearly subject to norms of rationality, and they give rise to our puzzle: How can we rationally prefer our imperfect past, while preferring to do the right thing in the future?<sup>3</sup>

I should also clarify what I mean by *moral mistake*. I have in mind cases where one did something morally wrong, and the moral disvalue of said act was *not* outweighed by the agent's self-interest or any other kind of nonmoral value, such as one's practical identity or ground projects.<sup>4</sup> In other words, I am focusing on cases where, by the agent's own lights, one ought to have done the morally right thing, all things considered.

Moreover, I am not talking about cases where one had *subjective* reasons to do the morally right thing in the past, i.e., reasons relative to what one could reasonably expect at the time of action, but retrospectively one can identify *objective* reasons that justify one's moral transgression, such as the long-term positive impact of that mistake on the agent's well-being. Rather, I am focusing on cases where the agent believes that she objectively ought to have done the right thing, and yet retrospectively prefers the life path in which she acted wrongly, while wanting to avoid similar mistakes in the future.

Finally, when I say that the agent wants to do the right thing if she is to face similar circumstances again, I have in mind cases where the overall balance between moral reasons and other types of value would be the same as for the

- 2 In Wallace's terms, I will focus on *all-in regret*, rather than regrets, for past mistakes (*The View from Here*).
- 3 In taking regret to be a retrospective preference, I am following, e.g., Harman, "I'll Be Glad I Did It' Reasoning and the Significance of Future Desires" and "Transformative Experiences and Reliance on Moral Testimony"; and Wallace, *The View from Here*. This conception of regret diverges from some recent literature in moral psychology, where regret is understood as an emotion. See, e.g., Morton, "Cousins of Regret"; and Priest, "Reasonable Regret."
- 4 See Williams, "Persons, Character, and Morality"; Wolf, "Moral Saints"; and Frankfurt, "The Importance of What We Care About," for canonical arguments to the effect that moral demands may be outweighed by other types of value in our lives.

agent's past mistake. So the temporal asymmetry in *Acting*, for instance, cannot be explained by the fact that Greta's retrospective preference concerns an entire section of her life, while the prospective preference focuses on a particular action. By hypothesis, Greta wants to do the right thing in the future, even if doing the wrong thing again were to bring the same type of long-term consequences as her past mistake.<sup>5</sup> How can this prospective attitude be reconciled with Greta's retrospective preference for her actual life path?

A good answer to this problem should accommodate the fact that people often do regret their moral mistakes, and reasonably so. That is, we need an account that would explain why, e.g., Greta's lack of regret is rationally permissible, while allowing that regret for past mistakes is also permissible. Moreover, such regret might even be rationally required if one's moral failings are grave enough.<sup>6</sup>

Here is the answer that I will defend. Two kinds of attachments can justify conservative attitudes about past moral mistakes, without shifting retrospectively the balance of objective reasons for our actions, and without providing equal support for wanting to be morally imperfect in the future: personal attachments to relationships, projects, and other particular valuable things in our past, and a commitment to our biographical identity. That is, we can rationally prefer a life path marked by significant moral failings if we give enough weight to the personal attachments that those mistakes enabled, and to the way in which said mistakes have shaped who we are. But these attachments need not change the fact that we ought to have done the right thing, all things considered, nor need they give us sufficient reason to want to do the wrong thing again in the future.<sup>7</sup>

- 5 Admittedly, the agent might never be in a position to know that she finds herself in such circumstances, given that this would involve being able to predict the long-term consequences of her actions. But this need not prevent the agent from forming a preference with respect to such circumstances. We can reasonably form preferences concerning situations that we assume would be opaque to us in relevant respects, e.g., if I ever pick a winning lottery ticket, I prefer not to die in a car accident before I find out about it and claim my prize.
- 6 Of course, this is not the kind of case on which I focus here: I want to make sense of cases like *Acting* and *Lying*, where the agents' mistakes are arguably not grave enough to make regret obligatory.
- 7 The role of identity and personal value in retrospection has been explored before—see Adams, "Existence, Self-Interest, and the Problem of Evil"; Harman, "I'll Be Glad I Did It' Reasoning and the Significance of Future Desires" and "Transformative Experiences and Reliance on Moral Testimony"; Wallace, *The View from Here*; and Golub, "Personal Value, Biographical Identity, and Retrospective Attitudes." These discussions have focused on how retrospective preferences can diverge from evaluative judgments about the past, where this includes prudential and moral judgments. There has been no comprehensive treatment of the problem of temporal asymmetry for our attitudes toward moral imperfection, including a comparison between the *personal value and biographical identity* proposal and alternative accounts of such attitudes. This is what my paper will provide.



In section 1, I will examine some views on how we can reasonably make peace with our moral failings that cannot support a temporal asymmetry in our attitudes, such as the idea that we can rationally prefer our imperfect past from a self-interested standpoint, even if we believe that, all things considered, we ought to have acted morally. This discussion will help show that, in cases that give rise to our puzzle, conservative attitudes about the past must be supported by attachments to *particular* bearers of nonmoral value, rather than indicating the weight that one gives to certain *types* of nonmoral value, or any general attitude toward moral imperfection.

In section 2, I will discuss some views on making peace with moral imperfection that do allow for a temporal difference in our attitudes: (i) it is irrational to wish that we had done things differently, because we cannot do anything to change the past; (ii) it is rational to prefer that bad things be in our past rather than our future; (iii) regret for our past mistakes is undesirable because psychologically harmful; and (iv) we can rationally affirm our imperfect past because we learn from our mistakes. None of these proposals, I will argue, properly accounts for our asymmetric attitudes toward moral imperfection. This discussion too will help me isolate some virtues of the view that I favor, such as its ability to account for cases where people reasonably regret their past mistakes.

In section 3, I will elaborate on the positive proposal. In particular, I will say more about the normative force of my claims and the nature of biographical identity, and will briefly address a skeptical challenge to the effect that autobiographical stories are too unreliable to serve as a foundation for conservative attitudes about the past.

#### 1. TEMPORALLY NEUTRAL VIEWS ON MORAL IMPERFECTION

Ordinary discourse about morality is full of reminders that we should try to make peace with at least some of our mistakes. We should not be too hard on ourselves. Nobody is perfect. To err is human. Similar ideas about moral imperfection can be found in philosophical literature, usually as part of a broader call to embrace the imperfections in our lives, where this is not limited to our moral flaws.

Cheshire Calhoun, for instance, argues that it is a virtue to adopt an attitude of *contentment* toward our lives, despite their bad features, insofar as said lives contain plenty of good things that we ought to appreciate.<sup>8</sup> This disposition to contentment, she says, is enabled by using appropriate expectation frames with respect to what are *good enough* life conditions, and extends to moral features of

8 Calhoun, "On Being Content with Imperfection."

the world, including our own moral qualities. Michael Sandel holds that striving for perfection, in ourselves or others, indicates a lack of humility or a Promethean desire for mastery over nature, and that we need to learn to accept the givens of human existence.<sup>9</sup> Similarly, in theorizing about interpersonal love, Vida Yao articulates the notion of *grace* as love for the qualities of human nature, including the flaws of one's beloved.<sup>10</sup> This idea would presumably extend to self-love as well, and thus support an attitude of acceptance toward one's own imperfections.<sup>11</sup>

Whatever truth there might be in these ideas, they cannot explain the temporal asymmetry involved in our puzzle. Insofar as we have reasons to be content with our morally imperfect lives, or to accept our flaws as a given of human nature, these reasons would seem to equally apply to our future moral mistakes as well. But again, it seems reasonable to make peace with some of our moral failings while resolving to avoid similar mistakes in the future. We cannot account for this by appealing to a general attitude toward moral imperfection as such.

Calhoun discusses the temporal dimension of contentment, and argues that her view does not condone complacency with respect to one's moral flaws: contentment with how one's life has unfolded so far is compatible, she says, with being motivated to improve oneself in the future.

I agree that this combination of attitudes is rational, but I do not see how Calhoun's view on contentment can account for it. If a conservative preference for one's actual life path is enabled by having an expectation frame according to which one's life has been *good enough* from a moral standpoint, despite its flaws, why should one not adopt a similar expectation frame with respect to one's future life?<sup>12</sup>

9 Sandel, *The Case against Perfection*. In defending his conservatism about value, Cohen, "Rescuing Conservatism," also makes some remarks about accepting the given as an attitude worth cultivating.

10 Yao, "Grace and Alienation."

11 Nietzsche, *The Gay Science*, offers a characteristically bolder view on this issue. We should not only accept our moral imperfections, he claims, but see them as contributing to the aesthetic value of our lives: "To 'give style' to one's character—a great and rare art! It is practiced by those who survey all the strengths and weaknesses of their nature and then fit them into an artistic plan until every one of them appears as art and reason and even weaknesses delight the eye" (sec. 290).

12 Calhoun also proposes that we distinguish between expectation frames that govern our *emotions* toward how things are, and normative standards that determine what we should prefer and how we should act: this explains, she says, how we can be emotionally content with how our lives have gone so far while wanting to improve our condition for the future. But insofar as Calhoun is only interested in contentment as an emotion, her view will not offer a solution to the puzzle discussed in this paper, which concerns preferences about moral

A different account of our conservative attitudes about the past would go as follows: we can reasonably prefer our actual life path from a *self-interested* standpoint, even if we accept that, all things considered, moral considerations outweighed the rational significance of self-interest, so we ought to have done things differently. In other words, we can compartmentalize retrospection into different sets of attitudes—e.g., self-interested, moral, all-things-considered—and this might explain how retrospective preferences can rationally diverge from normative judgments about the past.<sup>13</sup>

However, this self-interest diagnosis cannot account for the temporal asymmetry either: if the fact that a morally imperfect life was better for us gives us reason not to wish that things had gone differently, we should have equally strong reason to pursue a similar life path again. Nor is it plausible to say that we form our conservative preferences about the past from a self-interested perspective, but then adopt a moral or all-things-considered perspective when considering what we want to happen in the future. In cases like *Acting* or *Lying*, there seems to be no such shift between evaluative standpoints.

There is a significant difference between our evaluative perspectives on past and future moral mistakes, but this is not a contrast in how we weigh different *types* of value. When thinking about the past and preferring that our life unfolded as it did, despite our judgment that we ought to have done things differently, this conservative attitude is not explained by the weight we give to self-interest or any other type of nonmoral value in our preferences. Again, if this were the explanation, the problem of temporal asymmetry would remain unsolved: by hypothesis, the agent wants to do the right thing in future cases that would involve the same balance between morality and other kinds of value.

In order to solve our puzzle, we need to focus instead on *particular* things in our past to which we can be reasonably attached, rather than the weight we give to any *type* of value. More precisely, on the view that I defend, particular bearers of personal value and specific ingredients of our biographical identity

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imperfection. And if we switch our attention to normative standards governing preferences, again it is not clear how Calhoun's idea of appropriate expectation frames can help solve the problem of temporal asymmetry. Why should we adopt standards according to which our lives have been morally good enough so far, despite the mistakes that we have made, but would not be good enough were we to make similar mistakes again?

13 This is how Parfit explains the divergence between moral judgments and retrospective preferences in cases that give rise to the non-identity problem: e.g., it can be rational for someone not to regret his own existence from a self-interested perspective, while accepting, from a moral standpoint, that his mother made a mistake by having him at a very young age (*Reasons and Persons*).

are sources of support for conservative retrospective attitudes, and the temporal asymmetry is explained by the fact that we cannot yet be similarly attached to particular things in our future.

I will develop this proposal in section 3. But first, let me examine other views that allow for a temporal asymmetry in our attitudes toward moral imperfection. I will argue that these views do not provide good answers to our puzzle: they either cannot explain why regret for past mistakes is often rationally permissible, or they do not properly account for some cases where people do not regret their past mistakes but want to be better in the future.

## 2. WHAT IS SPECIAL ABOUT THE PAST?

Someone might think that we do not need to explore what we value in our lives and how we value it in order to explain why it is reasonable to feel differently about our past and future moral failings. Perhaps the explanation is simpler: it is irrational to wish that we had not made the mistakes that we made, because we cannot do anything to change the past. But our future is still open: it is largely up to us whether we will make similar mistakes again. So it is rational to want to be morally better in the future. We could call this response to the puzzle *fatalism about the past*.<sup>14</sup>

The problem with this proposal is that we *can* rationally prefer that things had gone differently in our lives. In particular, we can reasonably regret our past moral mistakes. Coming up with examples of this is all too easy. For instance, I suspect that Christopher Wylie wishes that he had not contributed to the election of Donald Trump by working for Cambridge Analytica, and this is a reasonable attitude to have. The right account of these matters should make sense of conservative retrospective attitudes while allowing that revisionary preferences about the past are rationally permissible as well, and might even be required in some cases. Focusing on the temporal structure of agency is too blunt a tool to deliver this result.

Perhaps, though, a more moderate version of fatalism about the past could do the job. Suppose someone suggested that revisionary preferences about the past are rationally permissible, but only for grave moral mistakes. When it comes

14 This should be distinguished from a *global* fatalism according to which everything that has happened and *will* happen to us is predetermined, so it is irrational to want the world to conform to our desires—a view that is often attributed to ancient Stoics like Seneca and Epictetus. Global fatalism might support an attitude of resignation with respect to our moral flaws, but it would not help address the puzzle of temporal asymmetry. I should note in this context that Irvine, *A Guide to the Good Life*, interprets the Stoics as defending fatalism about the past rather than global fatalism.

to mistakes that are below a certain threshold of severity, it is irrational to wish that things were different.

However, this proposal will not work either. First, the idea of a threshold beyond which regret for past mistakes is rationally permissible does not square well with what seemed to be the core underlying claim of fatalism about the past: that it is irrational to want the impossible. And even putting aside its *ad hoc* character, this moderate version of fatalism is still too strong, as it entails that regret is irrational for moral mistakes that fall below the given threshold of gravity. This is implausible. For instance, in a case like *Acting*, Greta would not be making any mistake if she did regret her past mistake and her actual life path.

What we need, again, is an account according to which both regret and the lack thereof are permissible attitudes with respect to past moral mistakes, at least insofar as said mistakes were not too grave. Fatalism about the past, in either of its forms, cannot have this permissivist upshot.

The temporal asymmetry in our attitudes toward moral imperfection might also remind us of the *bias toward the future* famously examined by Derek Parfit: we tend to prefer that bad things be in our past rather than our future. If we could show that this tendency is actually rational and not a mere bias, perhaps this would help solve the problem of temporal asymmetry.<sup>15</sup> Not directly, because the question we have been discussing is not about choosing between the past and the future as the temporal location for our moral mistakes.<sup>16</sup> But even so, if the temporal bias were rational, this would seem to entail that we have weaker reasons to care about our past moral failings than about our future mistakes, which might account for the cases in which we are interested: e.g., if it is rational for Tyler to give less weight to the moral disvalue of his past mistake than to a similar mistake in the future, then his self-interest and other types of nonmoral value might outweigh moral considerations retrospectively but not prospectively.

However, this is not a good account of the temporal asymmetry. It is implausible that what goes on in cases like *Acting* and *Lying* is that people care less about their past mistakes than about their future ones. Or, to put it differently, it would seem perfectly reasonable for someone to treat his past and future moral mistakes as equally important, and yet to affirm his actual life path while wanting to be morally better in the future. The rationality of these asymmetric attitudes is

15 Parfit, *Reasons and Persons*. I will not discuss here any attempts to justify the bias toward the future. But see, e.g., the evolutionary justification proposed by Horwich, *Asymmetries in Time*; and Dyke and Maclaurin, “Thank Goodness That’s Over,” for a critical response.

16 We could have it all, as it were: we could both wish that we had never made certain mistakes and want to avoid making similar mistakes again.

still left unexplained.<sup>17</sup> The proposal that I defend fills this explanatory gap: it is not because we care less about our past mistakes that we can rationally affirm our actual life paths, but because we are attached to particular valuable things in our past and committed to our biographical identity, while our prospective attitudes are not influenced by such attachments.

Another intuitively plausible response to our puzzle would be that regret for our past mistakes is undesirable because psychologically harmful. Moreover, it might be argued, regret is inimical to the goal of avoiding moral mistakes in the future, because it undermines our confidence and self-worth. We need to forgive ourselves in order to find the strength to improve, as well as for the sake of our well-being.<sup>18</sup> A virtue of this proposal is that it can allow for the rational permissibility of regret in cases where its instrumental disvalue is outweighed by the moral disvalue of our past mistakes.

However, these pragmatic considerations do not seem to capture what goes on in the relevant cases either. Our main reasons for affirming our imperfect past intuitively concern the content of our life path as such, rather than the prospective benefits of making peace with our mistakes: we look back at our lives, discover that we are attached to some of their particular ingredients, and therefore do not wish that things had gone differently. My proposal makes good on this intuition. Moreover, remember that we have been talking about regret as a retrospective preference, rather than about the various affective states typically associated with this preference, and mere retrospective preferences are arguably much less harmful than emotions such as guilt or shame.

A different pragmatic approach to the temporal asymmetry would focus on the instrumental value of moral mistakes for our moral growth. We learn from our mistakes, it might be argued, and this gives us reason to affirm our imperfect life path, without supporting a preference for making similar mistakes again, given that doing so would not deliver the same educational benefits.

Now, it may well be true that some moral mistakes enable our access to certain moral truths or help build our character. But this cannot be the full story, or

17 Moreover, insofar as it is rational to care more about how well our lives will go in the future than about our past well-being, it is even more mysterious why we would prefer to do the morally right thing in the future while not wishing that we had acted rightly in the past, given that the balance between moral demands and self-interest is assumed to be the same from both perspectives.

18 See, e.g., Lieberman, "Why You Should Stop Being So Hard on Yourself," for a summary of recent psychological research on the negative impact of self-criticism. See also Card, *The Atrocity Paradigm*, who suggests that some self-forgiveness may be required for self-respect, even for evil deeds (210). Thanks to an anonymous reviewer for drawing my attention to this passage.

even the *main* story, about our asymmetric attitudes toward moral imperfection, as it does not account for two important categories of cases. First, even when we do learn from our mistakes, we can still reasonably affirm our actual past when comparing it to a life path in which we would have made the same moral progress through other means, e.g., by learning from others.<sup>19</sup> Second, some moral mistakes may not lead to any gain in moral knowledge or any improvement in our character. For instance, we might have already known that we ought to have done the right thing, but we succumbed to temporary temptations. Or we lacked some relevant moral knowledge in the past, which we gained in the meantime, but in ways that had nothing to do with our past mistakes. (This might be the most common scenario for people who contemplate their past moral failings.) In all these cases, we can reasonably prefer our actual life path while wanting to be better in the future. The personal value and biographical identity proposal can account for this wide range of cases where the temporal asymmetry is present, while the epistemic diagnosis cannot.

### 3. PERSONAL VALUE AND BIOGRAPHICAL IDENTITY

Two sources of support for conservative attitudes about the past can explain the temporal asymmetry in our attitudes toward moral imperfection: personal attachments and a commitment to our biographical identity. That is, we can reasonably affirm our morally imperfect lives if our mistakes have enabled some of our significant relationships or projects, or other attachments to particular valuable things, or if they have shaped who we are in a biographical sense. Such attachments can allow us to make peace with our past mistakes without shifting retrospectively the balance of reasons for our actions: it can still be the case that we objectively ought to have done the right thing, all things considered.<sup>20</sup> Moreover, our prospective attitudes toward moral imperfection cannot be shaped to the same extent by personal attachments that we might develop as a result of making moral mistakes, or by things that may become part of our identity in the future. This is how the problem of temporal asymmetry is resolved.

To use the *Acting* example again, Greta may reasonably prefer her actual life

19 Note, moreover, that when we do learn something valuable from our mistakes, but similar future mistakes would not deliver similar benefits, this means that there is a difference in objective reasons between our past circumstances and our future ones. So, strictly speaking, this is not the kind of case on which I have been focusing: I want to make sense of our asymmetric attitudes in cases where the balance of objective reasons would be the same for a future mistake as for a past mistake.

20 See Salow, "Partiality and Retrospective Justification," for a discussion of whether personal attachments can retrospectively justify one's actions.

path because the mistake that she made enabled a significant relationship to which she is now attached or has led to other events and experiences that are central to her identity. She may also predict that doing the wrong thing again would enable a new significant relationship or shape a new chapter of her life story, and that if this were to happen, she would then have sufficient reason to retrospectively affirm her actual life path once more. But those possible future attachments do not presently give Greta equally strong reasons to want to be morally imperfect. To be clear, prospective attachments *can* factor into the balance of reasons for our actions, e.g., someone might decide to have a child because she sees the parent–child relationship as distinctly valuable. But such merely possible attachments do not have the same normative force as our *actual* attachments to specific aspects of our lives: actual personal attachments matter more than merely possible ones, and in a way that is not reducible to their objective value. I take this feature to be central to the very notion of personal attachment. For this reason, our actual attachments can support a preference for how our life has unfolded, when compared to morally better lives that we could have had, while the prospect of similar attachments in the future need not support a preference for making similar moral mistakes again.<sup>21</sup>

Someone might object that this asymmetry in normative force between actual and merely possible attachments, or between actual and possible ingredients of our identity, only shows that our personal attachments and biographical identity do shift the balance of objective reasons for our past actions, which goes against how I described cases like *Acting* and *Lying* in setting up the puzzle. For example, it might be argued that Greta can now recognize reasons for her past moral mistake that were not available to her at the time of action, such as the actual personal attachments enabled by that mistake.

However, the special weight carried by actual attachments in retrospection goes beyond the objective reasons that someone had at a time when those attachments did not yet exist. Again, this is not to deny that prospective attachments can affect the balance of objective reasons for our actions. The fact that a moral mistake is likely to enable a significant personal attachment can provide *some* reason to commit that mistake. Similarly, the personal attachments enabled

21 To be clear, I am not suggesting that our actual attachments only matter when we think about the past. Existing personal attachments and a commitment to our actual identity can also play a normative role when we deliberate about the future, and in particular they can favor being morally imperfect in the future, e.g., we may be moved to make choices that fit who we are, or that privilege the relationships and projects that we especially care about, rather than comply with impersonal moral demands. But in most cases, we can give proper weight to our existing attachments and our actual identity while avoiding moral mistakes that we made in the past.



by a past mistake can be retrospectively recognized as favoring that mistake, insofar as there is objective value in developing such attachments. But when personal attachments become *actual*, they gain a normative significance that they did not have before and can support preferences that are not aligned with our judgments of value. This is why, for instance, it is reasonable for Greta to form the following combination of attitudes: I retrospectively prefer my actual life path because the decision to work with director X has enabled a significant relationship of mine and has shaped who I am, but it is still true that, all things considered, I objectively ought to have done the right thing.

This proposal allows for reasonable regret for what might have been—not only in cases of grave moral mistakes, where regret might be rationally required, but also in cases like *Acting* and *Lying*, where lack of regret is permissible. In other words, the moral disvalue of our mistakes may sometimes decisively outweigh our personal attachments and the commitment to our identity, while in other circumstances neither regret nor affirmation is rationally required: in those cases, it is up to us whether to take facts about our personal attachments or biographical identity as good enough reasons for lack of regret.

Someone might agree that the temporal asymmetry is explained by the special weight we give to particular things in our past, and still wonder why only bearers of personal value and ingredients of our biographical identity can play this normative role. Why not include all particular valuable things in our lives among the sources of support for conservative attitudes about the past?

The answer is that, unlike other forms of valuing, personal attachments and the commitment to one's identity are constitutively governed by a norm of *non-fungibility*. For instance, someone is not really attached to a significant project in his life if he is willing to replace it with something of greater value as soon as he has the chance. Similarly, if a person is genuinely committed to who she is, she must be disposed to prefer that identity to other identities that she might have, including morally better identities.<sup>22</sup> This norm of non-fungibility

22 This is not to say that someone who is committed to her identity must be disposed to prefer that identity at all costs, or over any other alternative. But she must give some weight to the fact that *this* is who she is, when comparing her actual identity to better alternatives. The same holds for personal attachments to persons, projects, etc.: non-fungibility does not entail that we should treat the things we are attached to as absolutely irreplaceable, no matter how great the difference in value is between them and other possible objects of attachment. Moreover, how much weight we should give to our actual attachments will depend on the strength and quality of those attachments, e.g., someone whose marriage is coming apart may reasonably ponder ending it and seeking a new romantic relationship that would be more valuable. But even in such cases, we will still give some special weight to our actual attachments, when comparing them with merely possible ones—if we do not, then those

does not apply, for instance, to all bearers of prudential value. The fact that something contributed to my well-being is not a reason to prefer it to other things that would have made my life even better. And there is no reason to assign greater weight to things that have actually made my life good for me than to things that will equally contribute to my well-being in the future. This is, again, why an explanation in terms of self-interest cannot resolve the problem of temporal asymmetry, and more generally why not all particular valuable things in our past give us reason for conservative attitudes.<sup>23</sup>

Personal value has been much discussed in contemporary moral philosophy, including its role in retrospection.<sup>24</sup> While the influence of our self-conception on our retrospective attitudes has also been explored before, less has been said about what this notion of identity amounts to and its normative force.<sup>25</sup> Let me end, then, with some remarks on the nature of biographical identity and how it interacts with our retrospective attitudes and moral judgments, and by addressing a skeptical worry about its ethical significance.

It has become common to distinguish between metaphysical and ethical notions of personal identity: metaphysical questions about our essence and persistence as individuals do not seem to concern the same type of identity as ethical questions about authenticity and who we are in a qualitative sense.<sup>26</sup> A non-metaphysical type of identity is involved in conservative retrospection.

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actual attachments have simply ceased to exist. Thanks to John Monteleone for discussion on this issue.

- 23 Thus, I am rejecting here the conservatism about value defended by Cohen, "Rescuing Conservatism," according to which all particular valuable things give us reason to wish to see them preserved, at the expense of new and better things, insofar as this general conservatism is meant to apply to attitudes about the past as well. Properly arguing against this view goes beyond the scope of my paper, but I should point out that, when discussing a counterexample proposed by David Wiggins, Cohen himself tentatively concedes that his view might be too strong, and that perhaps conservative attitudes should be directed at only certain categories of valuable things.
- 24 See Scheffler, "Relationships and Responsibilities"; and Kolodny, "Which Relationships Justify Partiality?" for canonical treatments of the ethical significance of personal attachments. Cohen, "Rescuing Conservatism," discusses personal value as a source of support for conservative prospective attitudes. On the role of personal value in retrospection, see Adams, "Existence, Self-Interest, and the Problem of Evil"; McMahan, "Preventing the Existence of People with Disabilities"; Harman, "'I'll Be Glad I Did It' Reasoning and the Significance of Future Desires" and "Transformative Experiences and Reliance on Moral Testimony"; and Wallace, *The View from Here*.
- 25 For the influence of our self-conception on our retrospective attitudes, see especially Adams' and Harman's papers cited in the previous footnote.
- 26 See, e.g., Schechtman, *The Constitution of Selves*; and DeGrazia, *Human Identity and Bioethics*.

More precisely, our conservative attitudes toward our own moral imperfection are often rooted in a commitment to who we are in a biographical or narrative sense. This identity is partly constructed by ourselves, through the stories we tell about our lives, in which we assign a central role to certain events, experiences, etc., but it also depends on objective facts about the world: for instance, being a great soccer player could not be part of my biographical identity, no matter what I told myself, given that I am terrible at this sport.<sup>27</sup>

If we judge that something in our past has become part of who we are and we endorse our biographical identity, this gives us reason to prefer our actual life path, even if we believe that, all things considered, we ought to have pursued a morally better life. Importantly, this applies not only to valuable things in our past: disvaluable things, e.g., experiences of adversity and hardship or even moral mistakes, can also become part of our identity and thus support conservative preferences about the past.

The reasons for conservative attitudes provided by the commitment to our biographical identity are defeasible: if our moral mistakes were grave enough, regret might be rationally required. Indeed, in some cases the fact that a given mistake has come to shape our identity might even strengthen our reasons for regret. Think again of the Christopher Wylie case: it would be reasonable for him to regret not only his work for Cambridge Analytica, but also the fact that this career choice has come to define his identity.

Moreover, even in cases where lack of regret is reasonable, we should allow for reasonable divergence between people's retrospective preferences: for instance, if someone in Greta's position did not assign much weight to her biographical identity and regretted her morally imperfect life path, she need not be making any normative mistake. It is generally our prerogative whether to endorse our biographical identity and how much weight to give it in retrospection—again, at least if our moral mistakes were not too grave.

Someone might worry that our biographical identity cannot serve as a good foundation for conservative attitudes toward the past, given that the stories we

27 This characterization of biographical identity is inspired by the narrative conceptions of identity defended by Schechtman, *The Constitution of Selves*, and DeGrazia, *Human Identity and Bioethics*, and by psychological research on life stories and narrative identity, e.g., Cohler, "Personal Narrative and Life Course"; Habermas and Bluck, "Getting a Life"; and Harbermas, "Autobiographical Reasoning." I cannot offer here a full account of biographical identity, including a discussion of the challenges faced by theories like Schechtman's and DeGrazia's, e.g., how exactly to reconcile the idea of narrative identity as our own creation with the thought that the narratives we tell ourselves can be misguided. But I hope that the brief remarks I offer give the reader an intuitive grasp on this notion and the role it plays in retrospection.

tell about our lives are often unreliable: we tend to ignore events that do not fit our general sense of who we are, particularly when it comes to our moral failings.<sup>28</sup>

In response to this skeptical worry, let me first note that I have been talking about cases where people do acknowledge their past moral failings, rather than ignore those mistakes or reinterpret them away. One cannot make peace with a moral mistake if one does not acknowledge it as a mistake.

However, the worry might persist: even if we see certain events in our past as moral failings, perhaps we find it easy to make peace with these mistakes due to our general tendency to see ourselves retrospectively as better than we actually were, e.g., to ignore other mistakes that we have made and thus misjudge the overall moral value of our lives, or to think that those mistakes were not representative of our character. Thus, the commitment to our biographical identity is not a suitable ground for conservative attitudes, insofar as autobiographical stories are plagued by self-deception. Or so the argument would go.

This is indeed a disquieting thought about the role of biographical identity in retrospection, and I cannot offer here a clear criterion for distinguishing the good cases in which self-told narratives are reliable enough to support conservative retrospection from the bad cases in which they are not. But I do believe that there are good cases, and my thesis about the retrospective import of biographical identity should only be taken to apply to such cases in which we are not vastly deluded about who we are: if the moral mistakes in our past were not too damning, we can reasonably prefer our imperfect life path to alternative lives that would have been morally better but too different, and thus alienated from who we are.<sup>29</sup>

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28 See Harrelson, “Narrative Identity and Diachronic Self-Knowledge,” for a recent discussion of skeptical worries about autobiographical stories.

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## FITTINGNESS AND GOOD REASONING

John Brunero

CONOR MCHUGH and Jonathan Way have defended a view of good reasoning according to which good reasoning is explained in terms of the *preservation of fittingness*. According to the Fittingness View (FV):

It is good reasoning to move from  $P_1 \dots P_n$  to  $C$  iff, and because, normally, if  $P_1 \dots P_n$  are fitting,  $C$  is fitting too.<sup>1</sup>

The FV does well in accounting for good deductive reasoning. It is often remarked that good deductive reasoning is *truth preserving*. For instance, when I reason from my belief that  $P$  and my belief that  $P \rightarrow Q$  to the belief that  $Q$ , my reasoning is truth preserving in that if  $P$  and  $P \rightarrow Q$  are both true, then  $Q$  is true too. If we now add in the plausible assumption that a belief is *fitting* if and only if it is true, we can understand my reasoning here as *fittingness preserving* as well.<sup>2</sup> And this preservation of fittingness, according to FV, explains why my *modus ponens* reasoning here is good reasoning.

The FV extends to cover good practical reasoning as well. But, to do so, McHugh and Way must tell us when *intentions* are fitting. They adopt Nishi Shah's suggestion that the standard of fittingness for intention is permissibility: "it is fitting to intend to  $F$  just when it is permissible to  $F$ ."<sup>3</sup> Consider now a case of practical reasoning from intended ends to necessary means. (I will adopt the familiar convention of listing the relevant attitude in the left-hand column and the contents of the attitude in the right-hand column, drawing a line to separate the "premise-attitudes" from the "conclusion-attitude.")

- 1 McHugh and Way, "What Is Good Reasoning?" 170. See also their "Broome on Reasoning," sec. 3. The FV quoted here is just a first pass, since they also add, to deal with a certain kind of counterexample involving necessarily fitting (or unfitting) attitudes, the condition that the fittingness must be preserved "because of some relationship between the premise-responses and the conclusion-response" ("What Is Good Reasoning?" 168). But I will set this restriction aside since it will not be relevant to the argument I develop in this discussion note.
- 2 McHugh and Way, "What Is Good Reasoning?" 165.
- 3 See McHugh and Way, "What Is Good Reasoning?" 165.

|           |                                       |
|-----------|---------------------------------------|
| Intention | I shall <i>E</i> .                    |
| Belief    | I shall <i>E</i> only if I <i>M</i> . |
| Intention | I shall <i>M</i> .                    |

This counts as good reasoning because it is fittingness preserving. In other words, if the premise-attitudes are fitting, so is the conclusion-attitude. To see this, note that if the premise-intention is fitting, then it is permissible to *E*. And, if the premise-belief is fitting (true), then I shall *E* only if I *M*. But this guarantees that the conclusion-intention is fitting, provided that we adopt the following plausible transmission principle:

If your *E*-ing is permissible, and you will *E* only if you *M*, then it is permissible to *M*.<sup>4</sup>

Since this reasoning is fittingness preserving, the FV allows us to count it as good reasoning as well.

McHugh and Way have offered us a novel account of good reasoning that covers standard instances of good deductive and instrumental reasoning (as well as many other kinds of reasoning I will not discuss here). But I will argue in this discussion note that the FV is incorrect. Specifically, I will argue (section I) that it is possible for the transition from  $P_1 \dots P_n$  to *C* to be fittingness preserving without that transition being an instance of good reasoning. In short, not all fittingness-preserving transitions in thought involve good reasoning. I will then consider (section II) possible replies to the objection, and respond to them.

## I

Let us consider an example of what strikes me as very *bad* reasoning. Suppose I reason as follows:

|           |   |
|-----------|---|
| Intention | I shall <i>E</i> .                                |
| Belief    | <i>M</i> -ing is not permissible.                 |
| Belief    | <i>M</i> -ing is not necessary for <i>E</i> -ing. |

Consider a specific instance of this pattern of reasoning. Suppose I intend to get to the airport on time, and believe that speeding is not permissible. Now suppose that, on the basis of these two attitudes, I come to form the belief that speeding

4 McHugh and Way, "What Is Good Reasoning?" 165. They write: "If it is fitting to intend to *E*, then it is permissible to *E*. And if it is permissible to *E* and *M* is a necessary means to *E*, then it is also permissible to *M*. Thus it is fitting to intend to *M*."



is not necessary for getting to the airport on time. This is bad reasoning.<sup>5</sup> The conclusion of my reasoning is an ordinary belief about the world, namely, that I can get to the airport on time without speeding. But I do not arrive at this belief by considering *evidence* for its contents; I do not, for instance, reason from the contents of beliefs about how far I am from the airport, what the speed limit is, and so forth. Indeed, it does not seem as though I have any evidential basis for this belief whatsoever, so far as this line of reasoning goes. The only belief from which I reason is a belief about the impermissibility of speeding. But that is hardly a good basis for drawing a conclusion about the possibility of getting to the airport in time without speeding. This transition in thought is not one that we should declare to be an instance of good reasoning. At best, it seems to be a kind of wishful thinking.

However, this transition in thought is fittingness preserving. In other words, if the premise-attitudes are fitting, then so is the conclusion-attitude. Note that if the premise-intention is fitting, then it is permissible to *E*. And if the premise-belief is fitting (true), then it is not permissible to *M*. And these would guarantee the fittingness of the conclusion-belief provided that we work with the same transmission principle we employed above in explaining why instrumental reasoning to necessary means counts as good reasoning:

If your *E*-ing is permissible, and you will *E* only if you *M*, then it is permissible to *M*.<sup>6</sup>

From that transmission principle, and the permissibility of *E*-ing and impermissibility of *M*-ing, it follows that it is not the case that you will *E* only if you *M*. And that guarantees that my conclusion-belief (that *M*-ing is not necessary for *E*-ing) is fitting (true) if my premise-attitudes are fitting.

This example suffices to show that the FV is incorrect: it is possible for a transition from premise-attitudes to a conclusion-attitude to be fittingness preserving (in that if  $P_1 \dots P_n$  are fitting, *C* is fitting too) without that transition amounting to a case of good reasoning. This is not the place to defend an alternative account of good reasoning. But it is worth noting that other theories of good reasoning are better positioned to explain why my reasoning in the airport example above is not good reasoning. For instance, on the view recently defended by Jonathan Dancy, good reasoning to a belief that *P* will involve, among other

- 5 The style of objection here resembles the “asymmetry” objections to wide-scope rational requirements, first put forth by Schroeder, “The Scope of Instrumental Reason”; and Kolodny, “Why Be Rational?”
- 6 This is logically equivalent to: if your *E*-ing is permissible, and your *M*-ing is not permissible, then it is not the case that you will *E* only if you *M*.

things, one's proceeding from the considerations that *favor* my believing *P* to my so believing.<sup>7</sup> And in the airport example, I do not proceed from any such favoring considerations. So, we can explain why this is bad reasoning. More importantly, Dancy's theory, and others in the same ballpark, need not be committed, as McHugh and Way's theory is, to counting the airport example as an instance of *good* reasoning.

## II

One might wonder about the extent to which my objection to the FV depends upon McHugh and Way's particular suggestion, taken from Shah, that the standard of fittingness for intentions is *permissibility*. After all, Shah's suggestion does not appear to be an essential feature of their view. They tell us that they are adopting the suggestion "for illustrative purposes."<sup>8</sup> And in another paper published around the same time, they tell us that the fittingness of intentions is a matter of whether they are "choice-worthy," without telling us the difference, if any, between permissibility and choice-worthiness.<sup>9</sup> Could they avoid my objection, and save the FV, simply by abandoning the suggestion that an intention to *F* is fitting just when *F*-ing is permissible and replacing this view with another view of fitting intentions?

While it is hard to assess the reply in advance of any particular proposal, I think there are reasons to be skeptical that any such easy fix would be available. For on any view of the fittingness of intentions, the defender of the FV would have to employ some transmission principle to account for good instrumental reasoning, and the worry is that we could then use that same transmission principle to generate counterexamples like the one given in the previous section. For instance, suppose that we took the standard of fittingness of intentions to be *choice-worthiness* (so that an intention to *F* is fitting just when *F*-ing is choice-worthy). To explain how good instrumental reasoning is fittingness preserving, we would then need some transmission principle along the following lines:

If your *E*-ing is choice-worthy, and you will *E* only if you *M*, then your *M*-ing is choice-worthy.

This would ensure that good instrumental reasoning is fittingness preserving (in that if both your intention to *E* and your belief that you will *E* only if you *M* are fitting, then your intention to *M* is fitting too). But the problem is that, assum-

7 Dancy, *Practical Shape*, esp. ch. 4.

8 McHugh and Way, "What Is Good Reasoning?" 164.

9 McHugh and Way, "What Is Reasoning?" 178.

ing choice-worthiness is the standard of fittingness for intentions, this principle would also have it come out that the following pattern of intuitively bad reasoning (a slight variation on the pattern from section 1) is fittingness preserving:

|           |   |
|-----------|---|
| Intention | I shall <i>E</i> .                                |
| Belief    | <u><i>M</i>-ing is not choice-worthy.</u>         |
| Belief    | <i>M</i> -ing is not necessary for <i>E</i> -ing. |

And so we would encounter the same kind of problem on this view of what makes intentions fitting.

Perhaps another strategy of reply available to McHugh and Way would be the bullet-biting strategy of maintaining that my purported counterexample in section 1 is in fact a good pattern of reasoning. They could argue that we are inclined to think it is a bad pattern only because we confuse it with a closely related pattern that is in fact bad:

|        |   |
|--------|---|
| Belief | I will <i>E</i> .                                 |
| Belief | <u><i>M</i>-ing is not permissible.</u>           |
| Belief | <i>M</i> -ing is not necessary for <i>E</i> -ing. |

The confusion is a natural one since English phrases like “I shall *E*” could be used to express either an intention or a belief. This strategy of reply is inspired by McHugh and Way’s treatment of an anticipated objection: that their account would allow for a transition from an intention to *E* to a belief that *E*-ing is permissible to count as good reasoning. They reply that this transition is in fact good reasoning, and we think it is bad reasoning only because we confuse it with what is in fact bad reasoning: transitioning from a belief that one will *E* to a belief that *E*-ing is permissible.<sup>10</sup>

I am not convinced by this line of reply, neither as a reply to the current objection, nor as a reply to the objection they anticipate. (I will focus here on the former, but the same points would apply to the latter.) Of course, I agree that the pattern above involving two premise-beliefs and a conclusion-belief is not good reasoning. But note that this does nothing to show that my counterexample, which starts instead from an intention, *does* involve good reasoning. Why not just say that *neither* pattern is a pattern of good reasoning? Moreover, the claim that we think such reasoning is bad only because we are confusing it with the above reasoning starting with a belief does not strike me as very plausible. We do not suffer from this confusion in general. For instance, we are perfectly capable of understanding *good instrumental reasoning* as reasoning that proceeds from an intention, not a belief. So why would we be confused about starting points

10 McHugh and Way, “What Is Good Reasoning?” 171–72.

in this particular case? Additionally, even if we did suffer from such confusion, it seems easily remedied: we could set up the example to make it clear that the reasoning proceeds from the contents of an intention, not the contents of an associated belief. One way—but not the only way—to do this would be to set up the example so that one intends to *E* but *does not have* the associated belief that one will *E*. (Standard examples of this possibility include cases of difficult attempts—for example, intending to make a half-court basketball shot while not believing one will succeed—or anticipated distraction, as in Bratman’s famous case of the bicyclist who intends to stop by the bookstore, but, given his tendency to go on autopilot, is agnostic about whether he will.<sup>11</sup>) In such cases, it is harder to think that we are confusing an intention to *E* with a belief that one will *E*, since the agent has only the former.

Another line of reply available to McHugh and Way would draw upon their distinction between *good* reasoning and *competent* reasoning. Good reasoning involves conformity with a good pattern. But there is no guarantee that a token piece of reasoning in accordance with a good pattern is done *competently*.<sup>12</sup> It could be that people conform to the good pattern accidentally, perhaps because they are not *following* the good pattern, but instead following some other *bad* pattern that fortunately leads them to conform to the good pattern.<sup>13</sup> (They explain the distinction by noting a familiar, analogous one in ethics: doing the right thing does not guarantee that you have acted well, since you may do the right thing for the wrong reasons.) As they note, “At the least, competent reasoning requires that you *follow* a good pattern.” Using this distinction, McHugh

- 11 See Bratman, *Intentions, Plans, and Practical Reason*, 37. Some philosophers hold the view that intentions to *E* always involve belief that one will *E*, and so they would deny that in these examples, one, strictly speaking, *intends* to make the shot and *intends* to stop by the bookstore. However, they would likely concede that the cases involve some related attitude—perhaps we might call it a goal instead of intention—that could be the starting point for good instrumental reasoning. (For instance, see Velleman, *Practical Reflection*, 112, on the “plan-state” and “goal-state” senses of “intention.” For Velleman, intentions to *E* in the former sense involve believing one will *E*. But intentions in the “goal-state” sense need not involve any such belief. However, intentions in the goal-state sense could be the basis for good instrumental reasoning.) And if the attitude, whatever we call it, could be the basis for good instrumental reasoning, there is no obstacle to it being the basis for *bad* reasoning as well, as in the pattern of reasoning discussed in section 1.
- 12 As they put it, “to say that it is good reasoning to move from some premise-responses to a conclusion-response is not by itself to say anything about whether any token piece of reasoning was done well, or as we shall say, competently” (“What Is Good Reasoning?” 155).
- 13 See their example, taken from John Turri (“On the Relationship Between Propositional and Doxastic Justification”), of compliance with *modus ponens* when following the faulty pattern of *modus profusus*. McHugh and Way, “What Is Good Reasoning?” 156.

and Way could argue that my airport example from section 1 is a case of good reasoning, and hence no threat to the FV, but it is not reasoning that is done competently.

However, although the airport example is a token piece of reasoning, the problem seems to be with the *pattern* exemplified there, not with the way the particular reasoner in that example complies with the pattern. In other words, the following pattern does not strike us as a good pattern:

|           |   |
|-----------|---|
| Intention | I shall <i>E</i> .                                |
| Belief    | <i>M</i> -ing is not permissible.                 |
| Belief    | <i>M</i> -ing is not necessary for <i>E</i> -ing. |

To make it more clear that the problem lies with the pattern itself, rather than with the way in which some particular agent complies with it, we could stipulate that the usual threats to competence in reasoning are not present. For instance, we could stipulate that our agent complies with the pattern *non-accidentally*, and that he is *following* this, and not some other, pattern. If we add such features to the airport example, it will still strike us as a case of bad reasoning, and hence be a counterexample to the FV. (Similarly, in ethics, if one tried to deflect some counterexample to a theory of right action by holding that it confuses acting rightly and acting for the right reasons, we could stipulate that the relevant agent acts for right reasons—whatever that amounts to—and then see whether we still find the counterexample to be forceful.) In short, in the example I give in section 1, above, the problem seems to be with the pattern exemplified, rather than with the particular way in which an agent conforms to that pattern in a token piece of reasoning.

Yet another line of reply is available to McHugh and Way that, like some of the possible replies considered above, involves them biting the bullet and holding that my example does indeed involve good reasoning, while giving a debunking explanation of why we are inclined to think otherwise: they could hold that we think there is something wrong in my example not because of a defect in the *reasoning*, but because of a defect in the *starting points* of the reasoning. It is widely accepted that one can reason well from defective starting points. For instance, one can reason well via *modus ponens* from a belief that *P* and a belief that  $P \rightarrow Q$  to a belief that *Q*, even if one's premise-beliefs are false and unjustified.<sup>14</sup> The badness of the starting points need not affect the quality of one's reasoning from them. So, if McHugh and Way can show that we think there is something wrong

14 McHugh and Way themselves make this familiar observation: "To say that some reasoning is good, in our sense, is to say something about the transition between attitudes, rather than something about the attitudes you begin from" ("What Is Good Reasoning?" 155).

with the airport example only because we think there is a defective starting point, they could save the FV, which is a view only about the goodness of *transitions from* those starting points.

In support of the idea that that my airport example (and any other example exemplifying the pattern of reasoning outlined in section 1) involves a defective starting point, McHugh and Way could argue that there is something inappropriate about intending to *E* whenever one is wondering about whether *E* can be accomplished in a permissible way. And they could then maintain that whenever one follows the pattern of reasoning outlined in section 1, one must be wondering about whether *E* can be accomplished in a permissible way.

I have two objections to this proposed reply. First, it is not clear to me that we must consider the example as one in which the reasoner is wondering about whether he can *E* in a permissible way. It is supposed to be an example of bad (fittingness-preserving) reasoning, and I am free to set up the example so that our bad reasoner is wondering instead about the ordinary empirical question of whether he can get to the airport in time without speeding, and reasoning to a conclusion in a very bad, but fittingness-preserving, way. Second, even if we allow that the example involves him wondering about whether he can *E* in a permissible way, and we allow that this makes his intention to *E* a defective starting point, it is not clear to me why we cannot say that *both* the starting point and the transition from that starting point are bad. After all, we are perfectly capable of identifying *good instrumental reasoning* from bad starting points—including from intentions that are defective in precisely this proposed way.<sup>15</sup> So, why would we have trouble seeing the allegedly good reasoning in the airport example?

I will consider one final line of reply available to McHugh and Way, one that again aims to show that the counterexample I presented to the FV in section 1 does not work because, contrary to appearances, the reasoning there is actually good reasoning. If we start from McHugh and Way's thought that reasoning to an intention aims at permissibility, we could argue that when one intends to *E*, and this intention is fitting (in that *E*-ing is permissible), the intention to *E* would be *based on* those considerations that favor *E*'s permissibility. And if that is so, then one's intention to *E* will reflect *E*'s permissibility. But then, according to this line of reply, our reasoner will have the evidence that will license him

15 Relatedly, as Jay Wallace observes, there are familiar cases of what Wallace (following Aristotle) calls "cleverness," in which one intends some end one knows to be impermissible, but in which one nonetheless reasons well in pursuit of that end ("Normativity, Commitment, and Instrumental Reason"). It does not seem as though the defective starting points affect our judgment about the goodness of the instrumental reasoning proceeding from them. So why should we think it would do so in the airport example?

to conclude that *M*-ing is not necessary for *E*-ing, given *M*'s impermissibility. So, it would come out that the reasoning in our example is good reasoning after all. (Note that this line of reply would not commit McHugh and Way to the implausibly strong claim that intending to *E* involves *believing E* is permissible. Rather, it would just commit them to the idea that intending to *E* is *based on* the considerations favoring *E*'s permissibility, which in turn provides the relevant evidential basis that allows us to count the reasoning as good reasoning.)

In reply, we can note that since we need only one case to provide a counterexample to McHugh and Way's view, we could set up the example so that the intention to get to the airport *is not* in fact a fitting intention—or, we could even allow that it *is* fitting, but hold that it is not *based on* the considerations that point toward its fittingness, but on other considerations. (All of this is compatible with the thought that reasoning to an intention *aims* at fittingness; sometimes such reasoning simply fails to hit its aim, resulting in intentions that are not based on the considerations pointing to fittingness.) If we stipulate that these are features of the example—and this stipulation does not strike me as incoherent or otherwise implausible—then we will have an example of fittingness-preserving reasoning where the proposed strategy for vindicating it as good reasoning would be unavailable, since we would not be able to claim that the intention is itself based on considerations pointing to fittingness.

However, perhaps the *actual* fittingness of *E*—that is, *E*'s actually being permissible—is not needed to get this defense of McHugh and Way off the ground. Perhaps they could argue that an agent's intention to *E* will be *taken by the agent* to be based on considerations supporting *E*'s permissibility. (Whether the intention is actually so based, on the current proposal, is neither here nor there.) Again, on this strategy, we are supposing that this state of *taking* the intention to be based on considerations supporting *E*'s permissibility falls short of *believing* that *E* is permissible. Perhaps this will provide a way of vindicating the reasoning in my airport example as good reasoning.

The question at this point would be whether we should accept this view about the nature of intention. In support of this view, one could claim that one cannot just decide to *E* in the absence of taking there to be considerations that support *E*'s permissibility. But this claim can be read in two ways. On one plausible reading of it—a reading perhaps supported by certain defenses of versions of the Guise of the Good thesis—deciding to *E* involves taking *E* to be supported by *some reasons*—that is, by some considerations that cast *E*-ing in a favorable light in some respect, and to some degree.<sup>16</sup> A second, implausibly strong, reading

16 See, for instance, Raz, "On the Guise of the Good." It would take us too far afield to explore the question of which, if any, version of the Guise of the Good thesis is correct. However,

would hold that deciding to *E* involves taking *E* to be supported by considerations that *sufficiently* support *E*-ing. This is implausibly strong—as defenders of the Guise of the Good thesis would likely concede—since standard cases of weakness of will (e.g., deciding to have the chocolate cake I know I should not have) do not involve my taking the reasons (e.g., the tastiness of the cake) on which my decision is based to be *sufficient*. The problem, however, for this proposed defense of McHugh and Way, is that the implausibly strong reading is what would be needed to vindicate the reasoning in the airport example as good reasoning. Think for a moment about reasoning involving beliefs. While it is good reasoning to transition from a belief that *E*-ing is *permissible* and a belief that *M*-ing is not permissible to a belief that *M*-ing is not necessary for *E*-ing, it is *not* good reasoning to transition from a belief that there is *some reason to E* and a belief that *M*-ing is not permissible to a belief that *M*-ing is not necessary for *E*-ing. We are of course exploring a strategy that avoids the thesis that intending to *E* involves *beliefs* about the reasons for *E*-ing. But an analogous point would hold. The weak, plausible reading, according to which deciding to *E* involves taking there to be *some reason* for *E*-ing, would not be strong enough to vindicate the reasoning in the airport example as good reasoning. The second, stronger reading *would* be strong enough to vindicate the reasoning, but it is an implausibly strong thesis about the nature of intention. Either way, the strategy runs into difficulty.

### III

In conclusion, I hope to have shown in this discussion that fittingness preservation and good reasoning can come apart, since not all fittingness-preserving transitions make for good reasoning. I have presented (in section I) a counterexample to the FV and (in section II) discussed difficulties faced by various possible replies to that counterexample.<sup>17</sup>

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for reasons given in the text below, I think my objection to McHugh and Way can stand independently of this question.

17 I commented on an earlier version of “What Is Good Reasoning?” presented by Jonathan Way at the NYU Abu Dhabi Normativity and Reasoning Workshop. Thanks to Way and the other participants for helpful discussions. More recently, I taught the paper in a seminar on practical reasoning at the University of Nebraska–Lincoln. Thanks to Joe Mendola, Mark van Roojen, and the graduate students in that seminar. (Thanks especially to Mark for telling me to write this point up and send it to *JESP*.) My greatest debt is to three excellent referees for *JESP*, whose various helpful objections and comments are considered in section II.



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## “FAKE NEWS” AND CONCEPTUAL ETHICS

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CONCEPTUAL ETHICS is the branch of normative theory concerned with the question of knowing which concepts we *should* and *should not* use when thinking about the world and sharing our thoughts with others.<sup>1</sup> In his article “Stop Talking about Fake News!” Joshua Habgood-Coote contributes to conceptual ethics by arguing that academics and journalists should refrain from using the term “fake news,” which is commonly employed in public discussions focusing on the epistemic health of democracies.<sup>2</sup> In his view, “fake news” suffers from three defects. First, it is linguistically defective as it does not have any stable public meaning.<sup>3</sup> Second, the use of such a term is unnecessary as there already exists a wide range of available concepts to describe the epistemic dysfunctions of democracies. Third, Habgood-Coote contends that the use of “fake news” serves propagandistic aims, and that academics who rely on the concept risk importing “problematic ideology in our everyday discussions.”<sup>4</sup>

In this paper, my contention is that academics and journalists need not refrain from using “fake news” if they do so with care. In fact, not only do I wish to suggest that it is possible to use “fake news” in a linguistically and politically unproblematic manner, but I will argue that doing so is philosophically fruitful insofar as it allows us to raise questions that could not be formulated if the concept was abandoned. To do so, I discuss each of the three objections formulated by Habgood-Coote. First, I contend that, although “fake news” is a contested term, there is significant agreement among academics and other members of

1 Burgess and Plunkett, “Conceptual Ethics 1.”

2 Habgood-Coote, “Stop Talking about Fake News!” As Habgood-Coote notes, others have argued in favor of abandoning the term “fake news.” See, for instance, Oremus, “Stop Calling Everything Fake News”; Sullivan, “It’s Time to Retire the Tainted Term ‘Fake News’”; Wardle, “Fake News”; and Talisse, “There’s No Such Thing as Fake News (and That’s Bad News).”

3 Throughout the paper, I use quotes (e.g., “fake news”) to refer to terms, not as scare quotes.

4 Habgood-Coote, “Stop Talking about Fake News!” 18. All of Habgood-Coote’s arguments also apply to the use of the term “post-truth.” For space reasons, my discussion focuses on “fake news” and remains agnostic on the value of “post-truth.”

the public about its key feature. Moreover, even if multiple definitions of the concept currently contrast with each other, using it enables us to raise important philosophical questions. Second, I argue against the claim that "fake news" is an unnecessary concept. As Habgood-Coote suggests, "fake news" relates to terms such as lying, misleading, distorting the facts, propaganda, and so on. Yet, there is philosophical value in understanding *how* precisely it relates to these phenomena. Furthermore, I contend that Habgood-Coote is not in an epistemological position that allows him to establish that "fake news" is unnecessary. Last, I suggest that using "fake news" need not serve propagandistic aims. Like many moral and political concepts, "fake news" has been weaponized by individuals who use it in a careless manner, but this alone is an insufficient reason to abandon it as a concept. What is more, philosophers can avoid using "fake news" in a polarizing way by discussing the phenomenon without engaging in epistemic policing—that is, commanding their interlocutors not to believe specific news stories or sources.

#### 1. FAKE NEWS AS A LEGITIMATE OBJECT OF PHILOSOPHICAL INQUIRY

Habgood-Coote's first objection is that "fake news" is linguistically defective as a concept because it has no stable meaning. Not only do laypeople use it in an inconsistent manner—often to express disapproval of a specific news story—but academics and journalists do not agree on a specific definition of the term. As influential philosophical theories imply that the meaning of terms is determined by community use or expert agreement, the fact that "fake news" is a contested concept proves problematic according to Habgood-Coote.<sup>5</sup> To grasp the extent of this disagreement, note that some philosophers consider that "fake news" simply expresses the property of being false or misleading and presented as news, while others add that news must be circulated with the *intention* to mislead to qualify as fake.<sup>6</sup> This lack of consensus over the descriptive content of "fake news" also explains why philosophers disagree over its *extension*—that is, the "set of things it correctly applies to."<sup>7</sup> For instance, those who consider that an intention to deceive necessarily lies behind fake news will rule out errors in printing or reporting as instances of it while those who consider that fake news may be accidentally produced and diffused will not.

Let us agree with Habgood-Coote that the meaning of "fake news"—a term that was already in use in the mid-2000s but rose to prominence during the 2016

5 Burge, "Individualism and the Mental"; Putnam, *Mind, Language and Reality*.

6 Levy, "The Bad News about Fake News"; Rini, "Fake News and Partisan Epistemology."

7 Habgood-Coote, "Stop Talking about Fake News!" 4.

us election campaign—is currently disputed by philosophers, other academics, and journalists. A first question worth raising is the following: Is “fake news” more contested than other concepts central to public reflection? To use a few examples, it appears that the meaning of “fake news” is disputed in a very similar way as the meaning of concepts used to describe political affiliations (neoliberal, conservative, socialist), concepts describing morally problematic forms of behavior (manipulative, passive-aggressive), and concepts created by academics or activists to describe undertheorized social issues (sexual harassment, gender, social deprivation). Here, the fact that the precise meaning of these concepts is subject to reasonable disagreement is arguably an insufficient reason to abandon them altogether.

Relatedly, the formation and erosion of agreements on the meaning of terms is a temporal process, and the judgment that experts do not agree on a definition of “fake news” is premature. For instance, philosophical discussions of fake news already seem to converge regarding the conditions that must be met for a news story to count as fake. In 2017, Neil Levy proposed to conceive of fake news as “the presentation of false claims that purport to be about the world in a format and with a content that resembles the format and content of legitimate media organizations.” While doing so, he stressed that this definition is only “intended to fix the reference for discussion, not serve as a set of necessary and sufficient conditions.” Subsequently, Axel Gelfert proposed to add a necessary condition to this definition, claiming that fake news is “the *deliberate* presentation of (typically) false or misleading claims as *news*, where the claims are misleading *by design*.”<sup>8</sup> Here, it is worth noting that both philosophers agree with an important insight of Regina Rini, in whose perspective a central feature of fake news is that it *mimics* the conventions of traditional media reportage while *pretending* to fulfill its main function, which is to inform the public of what is happening in the real world.<sup>9</sup> Beyond philosophical circles, communication scholars, political scientists, and psychologists have proposed a similar definition of “fake news” according to which it “mimics news media content in form but not in organizational process or intent.”<sup>10</sup> Lastly, journalists such as Elle Hunt have argued that fake news is “manipulated to resemble credible journalism.”<sup>11</sup> *Encyclopaedia Britannica* stresses that fake news is generated by “Web sites posing as legitimate

8 Gelfert, “Fake News.”

9 Rini, “Fake News and Partisan Epistemology.”

10 Lazer et al., “The Science of Fake News,” 1094. For a similar definition, see Pepp, Michaelson, and Sterken, “What’s New about Fake News?”

11 Hunt, “What Is Fake News?”

news organizations."<sup>12</sup> Academics and other members of the public are thus beginning to agree that the distinctive element in fake news is not so much that it is *false*, but precisely that it is *fake*, i.e., that it amounts to a form of intellectual imposture. In fact, "fake news" may only be lacking as a term insofar as it is on its way to acquiring a more stable meaning.

Yet, even in the absence of an agreed fixed meaning, discussions of fake news can raise several interesting philosophical questions. For instance, if Levy, Rini, and Gelfert are right that the main gesture behind fake news is one of *mimicking*, is there a specific moral wrong in designing and diffusing fake news articles or does it amount to paradigmatic cases of lying? Moreover, who can be held accountable for the spread of fake news on social media? From a legal point of view, can the diffusion of fake news be prohibited on the grounds that it amounts to false representation? France's President Emmanuel Macron believes that it should be, and his government recently enacted a law against fake news.<sup>13</sup> Does this law amount to a violation of our individual right to free speech?<sup>14</sup> Certainly, epistemologists will find something interesting in the study of fake news, wondering for instance whether an individual is warranted in believing claims he encountered in a fake news article he mistook for real news. Beyond the attempt to provide "fake news" with a stable meaning—which itself appears to be a legitimate philosophical project—relying on this concept can enable academics and journalists to shed new light on the moral and epistemic value of our online interactions as well as on the justifiability of our current political and legal institutions. In other words, my suggestion is that using "fake news" is unproblematic when it is done in the context of a discussion that either aims to fix the meaning of this concept or, more generally, to question our moral, legal, and epistemic practices. While philosophers have a habit of doing so, I see few reasons to

12 *Encyclopaedia Britannica*, s.v. "journalism."

13 More precisely, France's law enables judges to order the removal of false information ("fausses informations") during electoral periods. Yet, most definitions of "fake news" imply that not all kinds false information qualify as fake news, and there is therefore a real worry that, in its current phrasing, such a law is too broad. The ambiguity comes from the fact that, in French, "faux" renders both "false" and "fake." For instance, "What you say is false!" translates as "Ce que vous dites est faux!" but "This painting is a fake" also translates as "Ce tableau est un faux." In general, no consensus has yet formed on the correct French translation of "fake news." While some simply use the English term, others prefer to speak of "fausses nouvelles" or "information fallacieuse." Recently, the Commission for the Enrichment of the French Language has proposed the term "infox," a neologism derived from "info" and "intoxication," as a translation of "fake news" (BBC News, "Fake News"). Of course, such a term suggests different associations at it evokes substance abuse.

14 See Mathiesen ("Fake News and the Limits of Freedom of Speech") for a discussion of attempts to censor fake news in relationship with free speech.

believe that journalists should not participate in this enterprise. They too have expressed interest in understanding fake news as a media phenomenon, and discussing the moral, legal, and political challenges tied to such a phenomenon is not the prerogative of academics. What is more, journalists can take the same precautions as philosophers when they use “fake news” by providing readers with a precise definition of this concept, underlining that not all news is fake, and raising epistemic, moral, and legal issues without commanding readers not to believe specific news stories or sources.

## 2. IS “FAKE NEWS” UNNECESSARY?

Habgood-Coote’s second argument amounts to the claim that “fake news” is an unnecessary concept. In his view, we already have access to a wide range of concepts to diagnose the epistemic dysfunctions of contemporary democracies, terms such as lies, misleading, bullshitting, false assertion, false implicature, being unreliable, distorting the facts, being biased, and propaganda. As he explains, we can “describe our current predicament perfectly adequately using these terms.”<sup>15</sup> The assumption behind this claim is that “fake news” cannot refer to an epistemic dysfunction of democracy for which the concepts enumerated above cannot already account. I doubt that this is the case. As we have seen, at least one feature of fake news is not captured by such concepts, as discussed by Levy, Rini, and Gelfert. In their view, fake news is a *specific kind* of intellectual imposture, one that amounts to mimicking traditional news stories while pretending to fulfill the purport of news, that is, informing the public. Nevertheless, even if fake news did amount to something for which we already have a concept, there would be value in understanding how, precisely, it relates to such a concept. If fake news is reducible to propaganda, for instance, it will be interesting to determine how it compares to more classic instances of wartime propaganda.<sup>16</sup> If fake news amounts to bullshit instead, then explaining how it does not straightforwardly amount to lying will also have epistemic value.<sup>17</sup>

A further question is whether Habgood-Coote truly is in an epistemic position to conclude that “fake news” is not sufficiently distinct from other concepts such as misinformation and propaganda, regardless of whether this conclusion is true. For the claim that “fake news” is an unnecessary concept presupposes that we have access to its meaning, that we can compare it with the meaning of other concepts we customarily use to describe the epistemic dysfunctions of

15 Habgood-Coote, “Stop Talking about Fake News!” 16.

16 Brown, “Propaganda, Misinformation, and the Epistemic Value of Democracy.”

17 Mukerji, “What Is Fake News?”

democracies, and that we can then establish that it is redundant. Yet, as we have seen, the conclusion of Habgood-Coote's first argument is that we do not really understand what "fake news" means because it has no stable meaning. This, however, seems to entail that we cannot compare its meaning to the meaning of other terms that are part of our conceptual arsenal in a sufficiently precise way to establish that it is necessary or unnecessary. In other words, the conclusion of Habgood-Coote's first argument against the use of "fake news" seems to be in tension with the assumption on which his second argument rests.<sup>18</sup>

Given his first argument, Habgood-Coote's suggestion that we should stop talking about fake news but keep using terms such as propaganda is also surprising. Indeed, there are few reasons to believe that "propaganda" has a more stable meaning than "fake news." First, the definition of propaganda proposed by Jason Stanley on which he relies has been heavily disputed by philosophers.<sup>19</sup> Second, such a definition also contrasts with other definitions available in the contemporary literature.<sup>20</sup> Third, the meaning of propaganda is even more contested in public discourse, where partisan affiliations often incite individuals to loosely use the term in an attempt to besmirch their political adversaries.<sup>21</sup> Habgood-Coote proposes to assuage this worry by explicitly associating the term with a specific descriptive content, but of course, philosophers and journalists who talk about fake news can assuage his own worry regarding their use of the term in precisely the same way—that is, by providing readers with an explicit definition of this concept. Here, my intention is not to deny that Habgood-Coote should talk about propaganda, but simply to note that the objection that "fake news" has no stable meaning also applies to terms on which Habgood-Coote relies. Why he considers that some equivocal terms should be used by philosophers ("propaganda") while others should not ("fake news") remains hard to understand.

18 My suggestion is that we need to assume that terms have a meaning to establish that they are *redundant*, not that they are *nonsense*. Indeed, it seems that we can establish that some terms are nonsense without assuming that they have a stable meaning (for instance, "jertain" in sentences like "there's a jertain in the curtain"). Yet, arguing that a term is redundant amounts to claiming that its meaning is the same as the meaning of another concept (for instance that "fake news" means the same as "propaganda," or that "jertain" means the same as "meerkat"). But how could we establish that "fake news" has the same meaning as "propaganda" without first assuming that *it does have a meaning*? I thank an anonymous reviewer for pressing me on this point.

19 Stanley, *How Propaganda Works*; Leiter and Leiter, "Not Your Grandfather's Propaganda"; Brennan, "Propaganda about Propaganda."

20 See Marlin, *Propaganda and the Ethics of Persuasion*, 22.

21 I owe this point to an anonymous reviewer.

## 3. DO DISCUSSIONS OF FAKE NEWS SERVE PROPAGANDISTIC AIMS?

Arguably, the crux of Habgood-Coote's argument against the philosophical use of "fake news" amounts to the claim that using such a concept will have negative political consequences that outweigh its potential benefits. Even if we admit that there is philosophical value in discussing fake news, should we not consider that relying on this concept will yield undesirable results? A first worry is that using "fake news" can incite individuals to mistake metalinguistic disputes for first-order disagreements. Suppose that we disagree about the acceptability of France's law against fake news, and this in turn incites us to think that we hold distinct political views. It remains possible that we (unconsciously) believe that the same types of speech should be legally prohibited, but that our disagreement is motivated by the fact that I envision *speech x* as fake news while you do not.

No one—including academics—is immune to metalinguistic disagreement. Yet, we can prevent semantic mishaps by providing our interlocutors with precise definitions of concepts we use. Given that his article is clear and precise, for instance, I know that Habgood-Coote uses "propaganda" in the very same way as Stanley. Similarly, when defending Mill's harm principle, philosophers can avoid confusion by specifying what type of harm is covered by the principle in their view.<sup>22</sup> Here, the mere possibility of a metalinguistic disagreement does not warrant the claim that we should stop discussing the harm principle in the first place.

More worrisome is Habgood-Coote's suggestion that using "fake news" serves propagandistic aims. In his view, "fake news" has become a weaponized term that now functions as an epistemic slur. During the last few years, it has been used by political speakers to discredit all news that dares criticize their views. Even when academics and journalists use "fake news" with the best of intentions, Habgood-Coote contends, we play right into the hands of such dishonest speakers and risk spreading bad ideology. For instance, using "fake news" may help to disseminate a "narrative of media manipulation that parallels the right-wing ideology of media bias."<sup>23</sup>

Beyond the question of knowing whether there is anything condemnable in highlighting the fact that news sources are biased on both sides of the political spectrum, this arguably depends on the nature of the claim made.<sup>24</sup> Surely, angry tweets about the "fake news media" legitimate attacks against journalism, especially when they come from a (relatively) authoritative figure such as the

22 Mill, *On Liberty, Utilitarianism and Other Essays*.

23 Habgood-Coote, "Stop Talking about Fake News!" 21.

24 Groseclose and Milyo, "A Measure of Media Bias"; Entman, "Framing Bias."



president of the United States. Yet, that *all* uses of “fake news”—including the most prudent ones—cue up the ideology of media manipulation is an ambitious claim, one that should be supported by empirical evidence. Indeed, it is far from evident that scholars who publish scientific journal articles about fake news, for instance, have a major impact (if any) on the public’s perception of major news outlets. Proposing a precise definition of “fake news,” expressing interest in assessing who can be held responsible for the spread of fake news on social media, and arguing that legal prohibitions against fake news are incompatible with free speech hardly warrant the generalizations that “all news is fake” and “no media is trustworthy.”

Interestingly, the risk that a term will be weaponized not only applies to “fake news” but to all politically charged concepts. Yet, we often judge that such a risk is outweighed by the political gains we make by continuing to use such concepts. For instance, it remains unclear that I should stop calling myself a feminist or a socialist just because I risk being interpreted as believing that women are superior to men or that labor camps are a good idea. Doing so may be considered provocative, but it can also spark fruitful discussions (Speaker 1: “Why do you call yourself a feminist? Do you think that all men are bad?” Speaker 2: “No, that is not what I mean by using the term.”). In many ways, discussing fake news can lead to good democratic outcomes. As mentioned, it already led a democratic public to reflect upon the ways in which governments should regulate social media. Recently, it also sparked a fruitful discussion about our individual moral duties as social media users.<sup>25</sup>

Habgood-Coote also worries that “operating with the dichotomy between real and fake sources also encourages an overly simplistic picture of the epistemic vices and virtues of news sources.”<sup>26</sup> Indeed, we need to be conscious that establishment news sources often get things wrong when they are well-intentioned. It is hard to disagree with him on this point, but as mentioned above, the definitions of “fake news” that currently dominate the philosophical literature rule out accidental mistakes as instances of it. For instance, Gelfert explains that “the originator of an instance of fake news either intends a specific claim to be misleading in virtue of its specific content, or deliberately deploys a process of news production and presentation that is designed to result in false or misleading claims.”<sup>27</sup> Note also that defining “fake news” in such a way does not imply that establishment news sources are devoid of bias.

A final concern of Habgood-Coote is that applying “fake news” to a story is

25 Liao, “Do You Have a Moral Duty to Leave Facebook?”

26 Habgood-Coote, “Stop Talking about Fake News!” 21–22.

27 Gelfert, “Fake News,” 11.

not like advising our epistemic peers to avoid believing the claims it contains or giving reasons why it is poorly supported. In his view, “it is more like issuing a command to disbelieve the story,” often by manipulating their emotions and dispositions to trust. Whether inciting an individual to disbelieve a specific news source amounts to manipulation is an open question, but the important point here is that such an argument obliterates the fact that many discussions of fake news do not contain claims such as “this article is fake news” or “this article is not fake news.” As mentioned above, there is a wide range of epistemological, moral, and political questions upon which philosophers can reflect without having to decide whether specific news articles qualify as fake news.

All things considered, Habgood-Coote has successfully drawn attention to the fact that there is much controversy—both outside and inside academia—surrounding the use of “fake news.” More generally, his arguments raise the question of whether philosophers should engage in reflection on and with terms that are central to public discourse, even when the meaning of such terms is relatively ambiguous. Providing a general answer to this question goes beyond the scope of the present discussion, but my final suggestion is that refusing to do so can hinder philosophical creativity, perhaps even create an unnecessary conceptual barrier between scholarly work and public reflection. Like “neoliberal” and “feminist,” “fake news” sometimes functions as a slur, but it need not do so if used with care. When it is, it allows us to raise philosophical questions that could not be discussed if the concept was abandoned. Hopefully, a general assessment of which slurs should generally be used or avoided by academics will be a matter of future work. In the meantime, we should keep talking about fake news.

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