

Whose Rights?

A Critique of Individual Agency as the Basis of Rights^{*}

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E. Glen Weyl[†]

Abstract

I argue that individuals may be as problematic political agents as groups. In doing so, I draw on theory from economics, philosophy and computer science and evidence from psychology, neuroscience and biology. If successful this argument undermines agency-based justifications for embracing strong notions of individual rights while rejecting the possibility of similar rights for groups. For concreteness, I critique these mistaken views by rebutting arguments given by Chandran Kukathas in his essay “Are There Any Cultural Rights?” that groups lack the temporal coherence, political independence and indivisibility of individuals. I also show how formal critiques of group agency from social science (in particular, Arrow’s Impossibility Theorem) can be applied as reasonably to individuals as groups. Because these symmetries between groups and individuals undermine common implicit assumptions in political philosophy, I argue that they may have broader implications for liberal political theory, as they emphasize the importance of intra-personal justice.

Keywords: moral individualism, group rights, social choice theory, liberal-communitarianism debate, behavioral economics

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[†] Bendheim Center for Finance, 26 Prospect Avenue, Department of Economics, Princeton University, Princeton, NJ 08540. (650) 255-8809 eweyl@princeton.edu.
<http://www.princeton.edu/~eweyl>

Faust complained about having two souls in his breast, but I harbor a whole crowd of them and they quarrel. It is like being in a republic.
Otto von Bismarck¹

Individual human beings – their choices, agency, rights and reason – are the basic units of analysis in most modern philosophy and social science. From the rational agent model to the moral individualism, the individual has become something of a mascot for the modern Anglo-American academy. Debate over the nature and proper understanding of the individual and her relationship to political community has been a dominant force in political philosophy over the last quarter century. The first three decades of post-war political theory primarily focused on providing an analytic account of liberal, non-utilitarian Western political discourse, culminating in the seminal egalitarian and libertarian theses of John Rawls and Robert Nozick, respectively.² The liberal thesis, characterized by Allen Buchanan as the view that “the state is to enforce the basic individual civil and political rights”, came under vigorous attack from a number of communitarian critiques during the 1980’s.³ Several thinkers found fault with liberal theory along various contrasting avenues. Michael Sandel targeted the flawed and internally inconsistent metaphysical conception of the self that he claimed is fundamental to the liberal, and particularly Rawlsian, conception of justice.⁴ Alisdair MacIntyre alleged that liberalism lacks a coherent moral underpinning, while Michael Walzer took issue with what he saw as the reductive, unitary liberal conception of justice.⁵ In response, liberals sought firmer and more broadly appealing foundations for their core arguments as well as means of synthesizing into liberal political theory important ideas suggested by the communitarian critics.⁶ As issues of multiculturalism and the appropriate treatment of minorities have played an increasingly prominent role in modern political discourse, liberals and their critics have worked to develop accounts of notions like “group rights” and “ethno-linguistic minority protections” consistent with their broader political vision.⁷

One current running through these debates, usually taking the form of an implicit assumption, is the primary status of individual rather than collective agency. Liberals, communitarians and their synthetic progeny often disagree about the nature of the good for the individual, whether collective good is a sensible notion, the importance of the community to individual identity and well-being and many other matters. However, they seem to implicitly agree that individuals, but not groups, can sensibly be thought of as unitary agents or selves.⁸ Beginning with Rawlsian concept of individual choice behind a veil of ignorance as the basis of just political order, it is clear that most liberal theory assumes (even if it need not) this view, which I will refer to as the *individualism of agency*. Perhaps more surprisingly, however, communitarian MacIntyre also implicitly affirms the individualism of agency when he writes that “the possession and exercise” of virtue “tends to enable us to achieve...goods.” Note that he never refers to groups of individuals as possessing or exercising collective traits or being enabled to take actions or achieve goods.⁹ Nor do the defenders of liberalism generally see communitarianism as an attack on the individualism of agency. For example, in offering what he sees as a communitarian defense of liberalism, Buchanan writes that liberal rights “allow individuals to partake of the... good of community...by giving individuals freedom to unite with like-minded others to create new communities.”¹⁰

Despite the prevalence of this maintained hypothesis, it clashes with prominent theoretical arguments and an emerging body of evidence from science which I develop below. Important decisions that individuals make are sensitive to small changes in the framing of the choice. Different parts of individuals are often in conflict with each other. Individual lives and decisions may therefore be fraught with the same paradoxes that undermine group agency. It is far from clear that individual agency is on qualitatively better footing than collective agency.

While the individualism of agency is commonly assumed in liberal, as well as non-liberal, political theory, I do not want to claim that this is necessary or fundamental to liberalism. While I

suspect my critique of the individualism of agency may have broader implications for liberal theory, exploring the nature of these is beyond my ambitions here. Instead this paper has two principle goals. The first is to draw on a wide range of arguments and evidence to add force to previous philosophical critiques of individual agency and thereby show the weakness of distinctions commonly assumed to exist between the plausibility of individuals and groups as agents. The second is to note the potential destructive implications of this thesis for a rather narrow liberal view, which I call *rights individualism*: individuals, but categorically not groups, may be reasonably thought to have fundamental, ethically irreducible and inviolable political claims to rights. Rights in this very strong sense seem closely tied to agency: it would seem strange if the fundamental units of political currency were be protections of choice if choice were not of fundamental import. However, there may be other justifications for rights individualism that do not rely on the individualism of agency; my purpose here is to argue that this justification, more plausibly integral to rights individualism than to liberalism more broadly, is invalid.

I will take aim at two types of arguments for the individualism of agency. The first type of argument is philosophical; for concreteness I address a case put forward by Chandran Kukathas in his essay “Are There Any Cultural Rights?”, which begins with a defense of rights individualism through the individualism of agency. Kukathas’s broad case is composed of three related arguments covering the relationship between groups and the political system, temporal problems of groups and challenges arising from divisions within groups. The second class of arguments is related to the first, but is phrased in the language of rational choice theory in social science. Again for specificity, I focus on Arrow’s classic Impossibility Theorem demonstrating the general incoherence of group decisions, though I briefly discuss other formal critiques of group agency.¹¹ I focus on using a variety of theory and evidence to demonstrate the ways in which these arguments against group agency can be brought to bear on individual agency and therefore demonstrating the qualitative

symmetry between groups and individuals that contradicts the individualism of agency. Thus while a critique of Kukathas and an analysis of Arrow's arguments in relation to the individual organize the paper, my target is the doctrines of individualism of agency and rights individualism, rather than the (possibly evolving) views of particular authors.

Following this introduction I first discuss Kukathas's arguments in somewhat greater detail. I then provide a non-technical overview of Arrow's Impossibility Theorem and the challenge it poses to group agency. I invoke a classic argument by Kenneth May to apply Arrow's result to internal divisions within an individual. Recent evidence from several disciplines and further theoretical arguments make such an application more plausible than at the time of May's writing.¹² I use this evidence, along with a variety of philosophical and formal arguments, to rebut Kukathas's points and provide a number of examples of the symmetries between the problems of individual and group agency. I conclude by indulging in a bit of speculation about possible broader implications of my argument for political theory.

Wrong for Rights

The central pillar on which Kukathas rests his case is the inherent dependence of groups on the political and social system. “Groups or cultural communities,” Kukathas writes, “do not exist prior to or independently of legal and political institutions but are themselves given shape by those institutions.”¹³ Even if groups happen to be constituted chronologically earlier than the political systems that support them, this is a historical accident and “does not confer on a community the right to continued existence” because “[such] legal rights can themselves be important determinants [in the creation, structure, or substances of cultural groups].” Granting fundamental political rights to groups which are themselves constituted on the basis of the political system would lead to circular and indeterminate political reasoning at best and invite a paralyzed and arbitrary political philosophy. Kukathas summarizes, “It is not acceptable to evaluate or choose political institutions or to establish legal rights on the basis of the claims or interests of cultural communities because those very institutions or rights will profoundly affect the kinds of cultural communities individuals decide to perpetuate or form.”¹⁴

Supporting this point, Kukathas argues that groups lack the important quality of temporal constancy and reliability that we require of agents if they are to form the foundation of a political philosophy. “Groups are constantly forming and dissolving,” Kukathas argues, “There is no more reason to see [their] particular interests as fixed than there is to see particular political arrangements as immutable.”¹⁵ Groups, being inherently hard to pin down or even characterize, do not seem sound agents to constitute a polity.

The divisions that inherently exist within groups offer Kukathas’s last reason to avoid collective rights. “Within cultural communities,” he argues, “there may be important differences of interest.” Particularly troublesome are divisions that exist between the masses within a group and

the group's elite.¹⁶ Granting privileges and rights to the group as a whole may empower the elite to harm the interests of many members. "Minorities within a cultural community which might over time have formed quite different coalitions with other interests may find that their interests are to a significant degree subject to control by the larger rights-bearing community."¹⁷ Granting rights only to cultural groups when important alliances and organizations may form between minorities that are part of various rights-bearing groups seems arbitrary and illiberal. "From a liberal point of view, the divided nature of cultural communities strengthens the case for not thinking in terms of cultural rights."¹⁸

In summary, Kukathas views groups as essentially like electoral majorities: ephemeral, complexly constituted, inconsistent over time and not inherently worthy of political protection.¹⁹ This analogy is apt, given that the field of social choice theory in economics and political science has extensively addressed the problems of group agency that arises from the inherent flaws of voting systems. The seminal result in this field, and the one I focus on primarily below, is Arrow's Impossibility Theorem. However, it is important to note that I focus on Arrow's result not because it is the definitive or even most important such formal critique. In fact, the Gibbard-Satterthwaite Theorem, which I mention briefly below, shows that under weaker conditions if voters are strategic, the limits on group agency are severe.²⁰ More broadly, game theory has taught us that strategic interactions among individuals do not usually result in outcomes that can plausibly be thought of as in the interest of the group.²¹ Many of the critiques of individual agency I will put forward below depend on these more general forms of internal conflict. Nonetheless I will extensively discuss Arrow's result here because of its such prominence as a critique of group agency, because it is simple and elegant and because it offers a particularly clear structure for analyzing the symmetries between group and individual agency.

Impossible Choices

In his classic 1951 dissertation *Social Choice and Individual Values*, Kenneth Arrow took formal aim at group agency. He demonstrated mathematically that group decision-making is an inherently troubled process. In particular, he showed that it is impossible to devise a means of aggregating individual preferences into group decisions which are both consistent and satisfy basic axioms of social choice. By “consistent”, Arrow meant that these choices obey the most basic principles of rational choice: the group must have some preference between any two possible courses of action, X and Y (prefer X, prefer Y, or be indifferent) and such preferences must obey transitivity (if the group prefers X to Y and Y to Z, it must prefer X to Z).²² Arrow’s other axioms are equally intuitive and are fundamental to any meaningful definition of group decisions:

1. *Non-dictatorship*: No individual should act as a dictator, unilaterally determining the group’s preferences.
2. *Independence of Irrelevant Alternatives*: In deciding whether the group should prefer X or Y, only individuals’ rankings of X against Y should matter.
3. *Unanimity*: If all individuals prefer X to Y then the group should.
4. *Universal Domain*: The method of social choice must be defined (must give some answer) for any arrangement of individual preferences.

Additionally, Arrow’s theorem requires two basic assumptions about the environment being considered, which are easily satisfied in most situations of social choice:

1. *Ordinality*: Preferences are known in determining social preference only as rankings of alternatives, not as cardinal numbers or degrees of preference. Non-ordinal social choice systems would require knowing the degree of individuals’ preferences, which they would always try to exaggerate. This would also make comparisons of “degree of preference”

across individuals necessary, thereby potentially valuing some individuals more than others in voting. Each of these is sufficiently unpalatable or impractical, Arrow argued, so as to rule it out.

2. *Richness of Setting*: The social choice rule continues to work if there are more than two alternatives and more than two individuals.

Thus, Arrow showed that, in most reasonable settings, the concept of collective choice cannot be well-defined.²³ As Arrow put it in his classic statement:

*[T]he only methods of passing from individual tastes to social preferences which will be satisfactory (in the sense defined above) and which will be defined for a wide range of sets of individual orderings are either imposed or dictatorial.*²⁴

Any non-pathological method of group decision-making will be susceptible to incoherence or will only be applicable to a limited set of social choices. Even if we are willing to restrict the domain of situations (arrangements of preferences) in which the group may make a decision, this is simply a hack. Presented with other situations (if individuals change their preferences) the group will be unable to choose or will choose in an inconsistent or pathological manner. Thus granting cultural groups the right to self-determination, or anything else, seems deeply misguided. Because Arrow's critique fundamentally undermines group agency, it also undermines the capacity for groups for groups to bear rights, at least of one who views rights as closely tied to agency.

While Arrow's theorem may seem the ultimate watertight critique of group agency, a closer examination of the result, first suggested by Kenneth May in his 1953 essay "Intransitivity, Utility and the Aggregation of Preference Patterns", shows that it may pose equally serious challenges to individual agency. These problems have roots in the conception of the individual that Arrow and classical economic theory more generally, assumes. This "rational agent" suffers none of the problems of inconsistency that beset groups. She can easily rank all possible social outcomes in

expressing her preferences and these rankings constitute the basis of consistent choices. What is so surprising about Arrow's theorem, in fact, is that the problem of making a group decision can cause such chaos when the individuals that compose the group are perfectly rational.

Such an idealization of individuals, however, is poorly instantiated by humans. An extensive psychological literature inspired by the path-breaking work of Amos Tversky and Daniel Kahneman has catalogued hundreds of situations in which individuals act in ways that clearly violate the most basic principles of rational choice.²⁵ In situations where many conflicting and qualitatively different attributes are important in making a decision, when uncertainty plays a role or when the consequences of a choice can be described relative to many starting or "reference" points, these framing effects are particularly pronounced.²⁶ Thus, individuals often exhibit the same sorts of inconsistencies that plague group decisions. Their status as rights-bearing agents may, therefore, be subject to the same criticism.

Nonetheless, one might argue that whereas groups are *inherently* given to inconsistency and incoherence, individuals have the capacity for rational choice, which they can and should exercise, even if they sometimes fail to do so. The view that the inconsistency we observe in individuals is, in Tversky and Kahneman's words, "normatively distasteful" and essentially a form of confusion on the part of actors is one widely held within the psychological community.²⁷ Inconsistent decisions are described as "biases" or as the consequences of "heuristics". Incoherence in decision-making is often considered intimately related to errors in positive judgments.²⁸ In the realm of rights, then, it would seem that individuals may fail to exercise rights meaningfully, but, unlike groups, there is nothing preventing their doing so. It still appears reasonable that individuals, and not groups, should hold rights.

This limited "judgmental psychology" view of inconsistency tells only part of the story, however. Individuals do not deviate from being rational agents merely through small inconsistencies

or mistakes. More than merely being inconsistent, individuals do not seem nearly as unified or “whole” as the rational agent model posits. In fact, recent research in economics, neuroscience and philosophy paints a picture of the individual which more closely resembles the troubled collective in Arrow’s problem than it does the rational individuals that compose it. And as May pointed out, individuals with multiple incomparable desires, or who are divided into several selves, may just as easily as groups suffer from Arrow’s conundrum. In fact, economists have made important strides in explaining a variety of empirical phenomena by considering the conflict, cooperation and game playing of various “selves” within an individual.²⁹ Psychology, dating back to Plato, has considered theories of the individual as divided into many relatively independent and sometimes conflicting parts.³⁰ A number of philosophers have investigated metaphysical and some ethical issues relating to the problem of multiple selves and internal conflict.³¹ The idea that many areas of the brain act in an environment of relative independence to one another in evaluating choices is an important finding of modern cognitive neuroscience.³² Internal conflict in non-human animals, leading to indecision and intransitive preferences, has been observed by biologists and animal psychologists since the 1940’s.³³

Unifying several of these trends, Adi Livnat and Nicholas Pippenger have shown that this indecision in mice can be parsimoniously explained as the result of a computationally optimal division of labor within the brain.³⁴ Furthermore, they prove that in such a computationally optimal arrangement, the internal agents (selves) can be selfish, engaged in explicit (game theoretic) conflict and only have ordinal preferences available for higher level aggregation.³⁵ This work not only provides strong evidence confirming the multiple selves hypothesis; it also places this hypothesis on extremely firm theoretical foundations, leading us to believe that, from an evolutionary and computational perspective, we should *expect* multiple, conflicting selves.

Livnat and Pippenger's work also suggests a somewhat different interpretation of the notion of multiple selves. We need not see potentially conflicting preferences as separate agents or selves within an individual. Instead, as May originally argued, they might represent independent, distinct criteria for evaluating actions that are not commensurable with one another. For example, suppose that an individual cares about various things in life: she values her health, her relationships with others, her material well-being, etc. And suppose that she can (at least in theory), like a rational agent, rank every conceivable outcome according to how well it satisfies these *desires* (as I will refer to them henceforth).³⁶ If the individual considers several relatively independent (or independently computed) attributes there is no guarantee that these various desires can be brought into some common currency of "utility" that allows the expression of a consistent preference.

If we are to take this idea seriously, we must substantially alter our normative and positive expectations for individuals. Even if each of the selves that make up an individual is rational and has coherent preferences, a person attempting to make decisions may fall prey to the same problems of social choice that Arrow details in the context of group decision-making. That is, we should not expect an individual to be able to aggregate the preferences of multiple selves fundamentally better than groups are able to aggregate the preferences of the individuals that they comprise.³⁷

It is important, however, to remember that Arrow's theorem is not an immediate or universal result. It follows only if one requires certain axioms of choice, as discussed above. These axioms may or may not be fully compelling in the context of social choice; this has been a long topic of debate in the economic and philosophic communities.³⁸ What matters for the current discussion is whether these axioms are qualitatively and fundamentally *more* applicable to a context of social than one of individual choice. In order to answer this question, we must consider each axiom listed above in turn.³⁹

Dictatorship in the context of individual decision-making translates into the lexical priority of one desire over others or, under the multiple selves interpretation, the dominance of one self's preferences in all contexts over the desires of other selves. When conceptualized in this second manner, dictatorship does not initially seem unreasonable. One of the most common framings of multiple selves, emphasized in various forms by thinkers from Plato and Freud to modern behavioral economists, is the division between passions and reason. Some psychologists and economists who consider individuals divided among passion and reason not only believe that it would be best if reason could act as a dictator; many in fact advocate policies designed to facilitate this dominance.⁴⁰ While useful in some contexts, this resolution is far from satisfactory, even in this narrow view of internal division. Individuals with brain damage in “passionate” regions of the brain can be far more debilitated than those suffering lesions in the most “rational” regions, suggesting that simple dominance of reason over passion is unlikely a template for a flourishing life.⁴¹ On a more casual level, I suspect most people would find a life in which reason always triumphed over passion barren and boring.

Even if one were to accept dictatorship in such a limited context, there are many reasons, however, to believe that intrapersonal divisions are much deeper and broader than this view suggests. Modern neuroscience and neuroeconomics supports the view, held by thinkers including Plato and Freud, that the brain is divided into more than two separate functional units.⁴² From the perspective of Livnat and Pippenger's work mentioned above, this is precisely what should be expected: the computationally optimal decision algorithm is unlikely to involve merely one split in processing; at least some processing units into which computation on a complex task is split will themselves find it optimal to make another split.⁴³ Each of these separate systems is integral to the process of making good decisions; otherwise, they would not be part of the computationally optimal solution Livnat and Pippenger (and, presumably at least in approximation, evolution) compute.

When each conflicting self provides an important input to optimal decision-making, the axiom of non-dictatorship becomes immediately compelling. If we accept dictatorship of one desire within the individual, why should we be troubled by the imposed or dictatorial social choices that Arrow rules out? If there is some easily calculable overriding moral principle by which individuals should make all decisions and to which all other desires should be subservient, then might we not simply say the same about groups? Perhaps groups, too, should follow some consistent ethical principle, but fail to; if so why should this fact detract from their agency any more than in the case of an individual?

Despite the preceding arguments, it still seems that the unity of the human body offers an important basis for differentiating individual from group choice. Individuals always must make a single, unified choice; groups often may choose not to choose and allow a particular matter to be handled by its members independently. Yet the necessity of unified action does not logically imply the reasonableness of assuming unified decision-making. To see this sharply, consider the case of Siamese twins.⁴⁴ The two individuals that share a body clearly may have different preferences. Clearly they may also have to coordinate their decision-making, either because they directly share control over some organ or because any effective action requires them acting in concert. It seems unjust, impractical and implausible that one of the two twins would ever act as a dictator over the other. The fact that they will be paralyzed during any conflict does not imply that such conflicts are impossible nor does it imply that it would be reasonable that one individual's preferences should dictate the actions of the pair. By analogy, the simple fact that divisions among preference orderings held by different selves or contained in different desires reside within the same brain does not imply that it is reasonable to think of these desires as unified or to think of one as being an appropriate or actual dictator over the others.

A further challenge to the dictatorship axiom (and the notion of internal conflict more broadly) in the context of individual choice is the notion that individuals may possess more effective, non-coercive means than groups for confronting the problem of disunity by exerting effort in order to bring various parts of the self into agreement. It may very well be the case that individuals more often than groups have effective means of achieving such internal concertation than do groups. However, it is certainly not the case that groups entirely lack such mechanisms, nor is it the case that the mechanisms within individuals are *uniformly* more efficacious than those within groups. At least since the time of the Greeks straight through to Barack Obama's presidential campaign, political rhetoric has played a crucial and effective role in achieving consensus around directions of social action.⁴⁵ The faith-based calls of religion, as well as secular ideologies, to self-sacrifice have also proven powerful forces for unifying individuals with seemingly disparate interests around common cause. In fact a major theme of modern social psychology is the study of the various mechanism, such as conformity, obedience and social learning, through which groups achieve unity of, unfortunately often sinister, purpose.⁴⁶ Recent work in economics has similarly emphasized the tendency of individuals in group to sacrifice their independent processing of information and choices in favor of various forms of group-think.⁴⁷ More broadly herd-like group behavior, mobs, nationalism, group-think and other such mechanisms of concerting collective action have been important themes in literature and popular discourse at least since the enlightenment.⁴⁸ Thus it would be difficult to argue that groups entirely lack the means individuals have of achieving consensual internal unity through deliberate effort.

Furthermore, it is not the case that individuals are uniformly more effective at exerting effort to peacefully overcome internal conflict than are groups. Literature has long featured characters from, Hamlet to Scrooge, whose internal struggles provide the dominant drama. Casual observations reinforces this theme: most of us know someone whose struggles to achieve internal

cohesion when confronting troubles with drug abuse, career choice or romance can, even when heroic efforts are made, outlast and eclipse their inter-personal conflicts. Post-war debates about stimulating savings tended to focus on capital taxation or social security. However, recent evidence suggests policies aimed at resolving internal conflict, such as adjusting default settings on retirement plans or adjusting individuals' ability to prohibit themselves from withdrawing from an account, rather than large-scale social policies may be most effective.⁴⁹ None of this argues that individuals are usually or on average more divided than groups; such a question would be an empirical question difficult to even pose coherently. But it does demonstrate that it is difficult to draw a qualitative distinction between individuals and groups in their capacity to achieve unification through purposeful effort. After all, given that difficulty internal motives have in effectually expressing their dissent, the importance to a dominant self of cohesion within an individual at any particular time may be less than that for a group. Thus this final objection to the dictatorship axiom is not categorically stronger in its applications to individuals than groups.

The axiom that is perhaps most deceptive is *independence of irrelevant alternatives* (IIA), which requires that changes to the preferences of selves or desires over possibilities *other than X or Y* from do not affect the unified individual ranking *of X against Y*. One potential objection to IIA in the context of individual decision-making is that the various desires or selves may not constitute merely ordinal preferences; rather there may be some extent of cardinality or “degree” to these preferences.⁵⁰ If such degrees of preference are fixed and independent of the set of alternatives offered, then an aggregation mechanism which takes these degrees of preference into account need not violate IIA. However, this is fundamentally an objection to the notion that only *ordinal* preferences of desires or selves are available.

There are a few reasons to believe this is the case, many of them hinted at above. If we believe that selves represent separate neural processes that each output incomparable (ordinal)

preferences, then ordinality is an immediate consequence. Furthermore, ordinality is even more crucial if selves are strategic, as they would of course have an incentive to inflate their degree of preference to obtain their desired outcome. If we instead take the “desire” interpretation, then ordinality simply requires that the desires not be fungible or directly commensurable. This, as I argued above seems quite reasonable for many desires. For example, it seems quite intuitive that social relationships are not commensurable with money or health. If desires are construed too narrowly, ordinality certainly will not hold: desires to achieve a high mark in mathematics are likely commensurable with desires to do well in English. But if a broad enough perspective is taken, it seems very plausible, as well as computationally efficient, that there will be multiple, incommensurable desires or selves.

Accepting ordinality, the case for IIA becomes much stronger. Because we have excluded any notion of degrees of preference, violation of IIA can be seen as a reversal of aggregated preference on the basis of the addition or subtraction of some item from the choice set. On the face of it, that behavior seems deeply strange and inconsistent with rational choice.⁵¹ We might, however, attempt to resurrect the notion of degrees of preference in a purely ordinal context by violating IIA. For example, we might say that if X is globally the best (among all options in the choice set) for self one and Y globally worst, but for all other selves Y is second worst and X is absolute worst we should choose X over Y; however in the case that X and Y are the only two options, then we should simply take majority vote. Such a preference aggregation rule seems reasonable on the face of it, but fundamentally appeals to an intuition about cardinal preferences which cannot apply when preferences are only ordinal. Note that one self or individual could cause individual or society to choose X over Y by adding to the choice set a number of alternatives that are better than either X or Y for all other selves and are worse than X for herself. Even if these alternatives are never chosen globally, their mere addition to the global menu of choices may cause

reversal in preference. Such an outcome seems deeply strange, manipulable and open to pervasive framing effects. In fact, as Arrow hypothesized and Gibbard and Satterthwaite proved, there is a close connection between a social choice rule satisfying IIA and that rule being robust to strategic manipulation, in a game theoretic sense.⁵² So long as the selves within an individual have at least some strategic sophistication, as economic evidence indicates they often do, IIA is a necessity for choice rule.

These problems do not seem much less acute in the case of aggregating the preferences of selves within an individual than they do in aggregating preferences across individuals. While one may reasonably doubt the strategic sophistication of internal motives or selves, it may at the same time be easier for one self to manipulate a choice set or change the framing of a decision for the individual in which she resides than for an individual to shape a large social group's choices or twist the way in which choices are framed on such a large scale. Thus, despite its subtlety, it does not seem that IIA is significantly more applicable to groups than individuals.

Unanimity seems immediately compelling and does not merit much analysis. Would it be reasonable for an individual to make a choice which every imaginable desire, consideration or self ranked as inferior to another choice?

The last of Arrow's axioms is equally immediate in its appeal. Universal domain states that we cannot, *a priori*, rule out any ranking over the set of actions by various selves. While this appears a stringent condition, it is actually very intuitive: we cannot ahead of time say anything in particular about the alignment of preferences of various selves or desires with respect to one another.⁵³ It may seem likely, for example, that things that make one healthy will also promote good social relationships. Clearly, however, there will be cases when these conflict and cases when they disagree on preferences between certain actions but agree on other trade-offs. The primary requirement of universal domain, it turns out, is that it is not always the case that there is some one-dimension

spectrum on which the actions can be placed that causes every preference to have a single peak along this spectrum. Decisions in the world are complex and variegated. It therefore is fleetingly unlikely that in every interesting situation preferences will be single-peaked. Furthermore, in the Gibbard-Satterthwaite result, this can be further weakened to the even less objectionable assumption that for all pairs of alternatives X and Y, we cannot rule out that there is some preference under which X is preferred to Y and another where Y is preferred to X.⁵⁴ Most importantly, there seems no immediate reason why preferences between individuals should have a richer relationship to one another than various desires within individuals. In short, universal domain seems just as reasonable in the case of individuals as in the case of groups.

If we are now satisfied that Arrow's axioms seem reasonable in the context of aggregating various desires or the preferences of various selves, then Arrow's theorem implies that there may be no coherent way to take these various things that they value and join them into an overall preference. Since its birth, modern formal economics has simply maintained this counter-intuitive assumption that various desires are *fungible* with one another. When considering a complex problem where many different, independent desires are important, it is often hard to find a means of trading these various considerations off. Only economists find it a natural concept that years of life are commensurable, through some utility function, with dollars and cents. Arrow's theorem demonstrates decisively that this unstated assumption of fungibility in economics, long criticized by anthropologists and sociologists, is far from innocuous.⁵⁵

Nor does the mere fact that an individual makes some decision imply that this action represents a choice in the sense of embodying a coherent preference. If an individual makes intransitive choices, there is no sense in which these "choices" reflect anything about what the individual would choose or prefer among the options involved. These choices no more reflect meaningful individual agency than the oft-derided actions of an alleged group representative can be

thought to report the preferences of a group. If we permit intransitivity in individual choice, then Arrow's critique of collective agency wilts. Even when an individual is simply incapable of making a choice, we will usually observe this as a choice in favor of the status quo. In fact, I provide much evidence below that this sort of tendency to choose default options is strongly prevalent in individual choice, just as Arrow argued it was in social choice.⁵⁶ While some bounds on an individual's preferences can be recovered by decomposing that individual into her conflicting desires or selves, such a procedure could as easily be applied to problematic group choice.⁵⁷ Therefore, we cannot use Arrow's theorem to argue against group agency while defending that of individuals.

The Livnat and Pippenger computational argument for multiple selves suggests an important parallel between multiple selves within an individual and individuals within a group. Many, if not most, groups are constituted to advance some measure of the interests or welfare of their constituent members. Democratic procedures within groups can then often be viewed as a delegation to members of parts of the computation of the group's welfare. Each individual is likely to be expert in understanding their own welfare. Since each individual's welfare composes part of the group's welfare, allowing individuals to draw conclusions about their own good and then utilizing democracy to aggregate these judgments is a sensible way to optimize group well-being. In fact, Buchanan offers a similar "communitarian" justification for liberal rights.⁵⁸ Of course, Arrow's theorem teaches us that such separately computed preferences may not lead to any coherent social judgment, but it does not imply that such delegation is a bad heuristic for maximizing group welfare. In the same way, an individual may delegate the computation of health, social, material and other costs and benefits of decisions to separate internal systems, as Livnat and Pippenger argue is computationally optimal, and then seek to aggregate these independent preferences. The fact that group welfare is computed by a messy process of aggregating potentially irreconcilable individual

preferences should not undermine the agency of groups any more than the same problems undermine individual agency.

Of course, as discussed above, Arrow's theorem was only one of several formal critiques of group agency. Nonetheless all of these critiques have the structure that the interactions between interests of various agents (or desires) should not be expected to result in a sensible aggregate decision process. Thus, though I discussed the applicability of Arrow's conditions to the individual more extensively than these other critiques, the crucial point is that once one accepts a divided self or a self with many competing desires (almost) any formal critique of group agency is likely to also undermine individual agency. However, I began, before considering formal critiques of collective decisions, with a series of broader arguments offered by Chandran Kukathas about the problematic nature of groups as "right-and-duty bearing units". I now turn back to these and show that considerations relate that undermine formal justifications of the individualism of agency run like an erosive river through the terrain on which Kukathas's case is built.

His Own Sword

As we have seen, it is a bit ironic that Kukathas compares the cultural groups that he considers unfit for exercising rights to electoral majorities. This is, in fact, a particularly natural metaphor for the view of the individual we saw above.⁵⁹ At any moment in time, certain desires or selves within the individual are assembled as a majority in the “voting system” that resolves conflicts between various selves or desires of an individual. We should therefore expect that the same lack of permanence and moral contingency that afflict groups to also affect individuals. In each of the areas he considers, the problems which Kukathas maintains stymie group claims on rights manifest themselves in individuals.

Kukathas argues that groups, unlike individuals, are heavily dependent for their existence and form on the political structures that support them. In fact, group interests may make up some of the desires that contest for control of individual decisions. Loyalty to nation, tribe, religion and ethnic group may each constitute desires or selves that express preferences about various courses of action an individual might undertake. Thus while individuals may form the units that make up groups and therefore seem more fundamental, we may also consider groups to be among the units that make up an individual. It may seem that, at least in a narrow sense, a group cannot exist without individual members. But, as the communitarian critiques of liberalism have forcefully argued, the individual agent that forms the foundation of liberal theory cannot plausibly be thought of as existing independent of political community. While Sandel primarily focuses on showing that a powerfully individuated and independent self is necessary for the Rawlsian conception of justice, he also argues that many, if not most, reasonable conceptions of the individual and her good are inconsistent with this view.⁶⁰ Strong, involuntary commitments to community, including political community, are important in many understandings of the good held by philosophers and ordinary

citizens. Thus individuals' commitment to the good life may undermine the liberal argument that individuals, unlike groups, are prior to political community. Given the importance of family and culture in human life, this argument is all the stronger when the groups being discussed are cultural, rather than purely political. In a related argument, MacIntyre writes

(W)e all approach our circumstances as bearers of a particular social identity...I am a citizen of this or that city..I belong to this tribe, that clan, this nation...As such I inherit from the past of...my city, my tribe, my nation, a variety of debts, inheritances, rightful expectation and obligations. These constitute my moral starting-point.⁶¹

Similarly another prominent communitarian, Charles Taylor, argues that “I am a self only in relation to certain interlocutors...in relation to those conversation partners who were essential to my self-definition...in relation to those who are now crucial to my continuing grasp of languages of self-understanding.”⁶² Because the identity and nature of these interlocutors are heavily influenced by or even constituted of the political community in which we reside, our identity cannot be prior to our political and cultural community. To the weight of these arguments, which I cannot give the full force of articulation in this short piece, I want to add a further piece of evidence about the surprising pervasiveness of political influence on individual values.

Recent psychological research has shown that the influence of political institutions on the nature of individuals is not limited to realms of direct state regulation and control. Because individuals are inherently and sometimes predictably sensitive to framing, the structure of freedoms can have a substantial effect on how individuals choose to exercise their rights. In classic studies of organ donation patterns, Eric Johnson and Daniel Goldstein demonstrate the importance of framing. They show that the only statistically significant factor in explaining rates of organ donation across states and countries (in Europe) is whether such donation requires “opting in” or whether it

is the default.⁶³ Such sensitivity to default options can extend into politically important questions. Provisions to assist in military recruitment in President Bush's "No Child Left Behind" offered a natural experiment on the importance of defaults. Most school districts required parents to opt out of letting their children be recruited by the military and others required parents to opt in. This seemingly small change was responsible for a two order of magnitude difference in enlistment rates!⁶⁴ Both the opt-in and the opt-out systems impose no substantial costs on individuals making the choice they prefer. Nonetheless, which option is the default, in fact, makes all the difference.⁶⁵ Similar effects have been extensively documented in the arena of savings. While the liberal state may struggle to be as neutral as possible in the framing of rights, it must confront the fact that, in giving rights to an individual, it is destined to influence her preferences because these preferences are inherently sensitive to the way choices are framed. Some of these, like military service, will be important political preferences. In fact, there is an extensive literature in political science documenting the power of framing to affect political preferences on topics ranging from affirmative action to poverty relief.⁶⁶ The framing of political decisions, even in the most liberal of societies, is therefore likely to affect in crucial ways how individuals choose to exercise their basic rights. Thus, rights individualism is therefore committed, as much as systems including group rights, to building a political system on the foundation of individuals who are co-determinate with that system itself.

Inter-temporal conflicts within individuals offer another basic reason to be skeptical of their privileged political status.⁶⁷ Individuals are often engaged in games with themselves, seeking to constrain the range of options available to their future incarnations. This is natural when individuals suffer from temptations that cause present and future selves to disagree about the best course of future action.⁶⁸ The success of competing selves in this sort of a conflict depends crucially on the terms of the game; in fact, this constitutes perhaps the most prevalent formal critique of individual agency in economics. Laws on bankruptcy, contracts, money management, labor relations, organ

sales and wills (to mention only a few areas) can condition the way that internal conflicts shape the life of an individual. For example, individuals' ability to plan for the long term and build a productive life depends crucially on institutions that allow for the right kinds of (and disallow the wrong kinds of) pre-commitments in economic matters, such as savings and contractual obligations.⁶⁹ Such strategic situations can also arise when an individual dislikes the preferences she knows she will hold at some time in the future (perhaps different selves or desires vying for sustained dominance) or wants to guard against the possibility of a permanent change in her preferences.⁷⁰ A potent example of this problem is Derek Parfit's classic story of the Russian noble:

*Let us take a nineteenth-century Russian who, in several years, should inherit vast estates. Because he has socialist ideals, he intends...to give the land to the peasants. But he knows that in time his ideals may fade.*⁷¹

Parfit argues that to prevent himself from trying to reverse his generosity, the nobleman may sign a contract for the lands to be given away that can only be revoked with his wife's permission and implore his wife not to allow such a revocation, even if his future self desires it. One might also imagine the nobleman asking his wife to shoot him if ever he came to such a point. Clearly the structure of laws and contracts may have important effects on the balance of power in such intra-personal, inter-temporal conflicts.

Another way of viewing temptation is to see it as resulting from a division between a short-term oriented, passionate self and a rational long-term-oriented self. While this moves a bit away from a focus on inter-temporal conflict within the self, it is worth noting that recent studies have found that relatively small changes of psychological context can have large effects on the balance of power between these selves. Dan Ariely and George Loewenstein have found that sexual arousal can lead experimental subjects to be willing to commit unsafe and even violent acts they would never consider outside of this "hot" state.⁷² Thus small political changes, such as to permissible

dress and public advertising may potentially have important impacts on the balance of power and values within an individual. In a very real sense, therefore, political institutions necessarily will be instrumental in determining which of many conflicting selves comes to dominate the personality and choices of an individual. Therefore, individuals suffer from much the same problem of sensitivity to political institutions that groups do, so we must reject such sensitivity as a meaningful justification of rights individualism.

It is not obvious, either, that individuals consistently exhibit more stability over time and political institutions than groups do. For more than a hundred years, through reconstruction, the civil rights movement and into the present, the Ku Klux Klan has been inciting racial hatred and channeling such hatred into violence. At the same time, thousands of Americans in the short span from 1960 to 1985 moved from politically apathetic suburbia to pot-smoking left-wing counter-culture and eventually to the Reagan-loving Wall Street of the 1980's. While the KKK's strength was certainly influenced by changing political culture, its fundamental nature was not; the baby boom generation, on the other hand, had many members who would have a hard time claiming that the trajectory of their lives was independent of social and political structure. In terms of temporal extent, groups have the fundamental advantage over individuals of freedom from a fixed lifespan. Thus, both in absolute terms and relative to political events, groups are not inherently shorter-lived or less stable than individuals. Therefore, we cannot make such arguments the basis for categorically ruling out group rights while maintaining the rights of the individual.

Internal conflicts and divisions offer a further parallel between groups and individuals. At an abstract level these issues were extensively discussed above, but a concrete example shows how many of the problems Kukathas argued plague groups are also problematic for individuals. Consider an ethnically Jewish student born into a Zionist family whose paradigm is now dominated by the views of the leftist pro-Palestinian atmosphere prevalent at the university she now attends. A

definite part of her may feel more aligned to certain selves within other ethnic Jews on campus, even if each of their political instincts is subservient within the individual to a “progressive” approach to the Israel-Palestine conflict. Many such students may simultaneously join and identify with the campus Jewish cultural organization and groups seeking the liberation of Palestine. A substantial internal conflict may rage within these individuals, where selves ally across individuals to battle other groups of selves within the same individuals. In such situations, the interests of these allied selves are much clearer and closer to one another than are the conflicting desires and interests within a single individual. Giving rights to the groups to which the individual belongs seems a more efficacious way to provide justice among agents (selves) than giving rights to individuals. It addresses the importance of conflicts and divisions that exist not only between individuals in society, but also within individuals. Furthermore, it recognizes that individuals are simply one collection of selves and not the only such aggregation that deserves respect within a political system.

In Kukathas’s analysis, this last point is of particular importance. He criticizes group rights for artificially privileging some associations over equally important connections of minorities within groups to minorities in different groups. However, individual rights, too, can improperly ignore the important interpersonal alliances of “minority” desires or selves within individuals. In the case of the torn Jewish student, assertive individual rights may allow dominant leftist self to take an action (such as an anti-Semitic public statement) designed to ruthlessly suppress her internal minority. On the other hand, assertive group rights (in the form, say, of campus sponsorship or protection of various groups independent of their subscription) may structure a fairer fight within her and her compatriots between their conflicting loyalties, by offering equal opportunity for expression to her various identities. This is not to say, of course, that group rights will always be the most efficacious means of insuring the appropriate mixture of intra- and inter-personal justice; my example is quite

special. All I want to argue is that Kukathas's reasoning cannot be coherently used to categorically rule out group rights while simultaneously maintaining individual rights.

A further argument, along these lines, is that concentrating power in the hands of groups (or their representatives) is likely to lead to tyrannical elite abuse while the diffusion of power in the form of individual rights is likely to mitigate the extent of possible oppression. While answering this concern strays somewhat from my focus on agency, a proper understanding of the possibility of internal tyranny as I have begun to develop here can effectively address this argument and I will therefore briefly elaborate on this point. As I have argued, tyranny within the individual can result from the oppression, by a dominant self or desire, of other selves or desires in controlling the life of an individual. One form of such tyranny commonly referenced and discussed above is the dominance of an individual by her passions or temptations. To see that concern for such oppression plays an important role in contemporary political discourse one need only think of the frequent public discussion about the scourges of obesity, smoking, teen suicide or drug addiction. Of course the opposite tyranny of the rational mind or ambition, leading to over-work, stress-related disorders and depression are just as much a mark of modern life. Much common discontent with individualist, market-driven society arises precisely from liberty it gives to individuals, empowering dominant selves to subjugate their internal rivals. Many conservatives would argue that legal drugs or even our current, overly permissive sexual culture empower the tyranny of temptation. Many on the American left would argue that America's fluid and aggressive labor market empower workaholicism and agreement by workers reckless, unsafe work environments. Yet both of these are a product of individual freedoms.

In a context more directly relevant to the problem of group rights, the market's (i.e. individual rights') homogenizing tendencies are constantly bemoaned by the defenders of minority and traditional cultures.⁷³ Whether the magnitude of this effect is significant and the extent to which

individuals face internal conflict in such cultural matters is an empirical question. However, it certainly seems consistent with many arguments given for the protection of cultural rights to suggest that defenders of cultural rights would see liberal society as pushing to the fore the common, materialistic, acquisitive, bourgeois self characteristic of modern capitalism while oppressing within each individual traditional loyalties and cultural concerns. It is precisely in such cases that our moral intuitions push us towards a defense of collective rights to self-preservation, language, customs, incentives discouraging extra-group marriage and so forth as a bulwark against such homogenizing internal tyranny. Why should we reject these intuitions when individual claims of agency are no more plausible than those by groups?

A natural response is that if one is truly concerned with justice among various desires or selves, why should rights not be granted directly to these? In practice, such a scheme would certainly be impossible: since the preferences and choices of internal desires and selves cannot be observed directly, it seems impossible to structure a system of rights defending these sub-individual agents.⁷⁴ Even if it were possible to assign rights to intra-personal agents such a scheme would hardly square with a firm commitment to individual liberty in the rights individualist sense and probably would not be consistent with any standard conception of liberalism, as it would require many apparently paternalistic interventions. Thus, if we are to consider rights at all as solutions to problems of internal and external justice, we must restrict our attention to allocating these rights to observable units, such as individuals or groups. While it is reasonable to concede that in certain contexts individual rights might be useful, even necessary, for a society to address the demands both internal and external justice, why should group rights be categorically ruled out as similarly useful or necessary in at least some contexts? Certainly an excessive neglect of individual freedoms in favor of collective agency is likely to lead to oppression or even totalitarianism. Yet a moderate empowerment of communities as checks on the power of internal tyrants elevated by license, such

as the right to restrict pornography advocated Sandel, may be equally important to inhibit an internal autocracy of the selves empowered by poorly structured individual rights and liberal society.⁷⁵

Furthermore the fact that any particular community right may have greater potential for harm than any particular individual right is a non-sequitur: a large number of small harms (or small avoided benefits) is just as dangerous as a small number of large harms, as palpably demonstrated by the magnitude of the macro-economic effects of framing and commitment effects in savings policies discussed above.

While an appeal to internal justice may initial seem a strange means of defending the political empowerment of community, this argument squares with currents in philosophy from the Greeks through contemporary communitarians. Plato famously saw the just allocation of power among social groups as closely linked to the just ordering of conflicting desires and interests within men, drawing an analogy between the just ordering of the city and the soul.⁷⁶ While his conception of justice differs substantially from what most would find plausible today, his basic insight about the connection between internal justice and social organization is highly relevant to the debates I discuss. The importance of internal justice for political arrangements can also be seen as potentially offering an alternative argument for dissecting of political and economic goods into “spheres of justice” as advocated by contemporary communitarian Michael Walzer.⁷⁷ Walzer argues that “different goods ought to be distributed for different reasons, in accordance with different procedures”.⁷⁸ Stephen Mulhall and Adam Swift crisply summarize Walzer’s argument as the view that “what is unjust about capitalist society is not so much the unequal distribution of money as the fact that money is able to bring its possessor goods, such as health care and education, that properly belong to different distributive spheres.”⁷⁹ One problem with the existence of such a “dominant” good may be not only that it allows “individuals who have it, because they have it, (to) command a wide range of other goods”, but also that the existence of such a good permits a desire within an

individual for abundance of that particular good to deny that individual her just enjoyment of another good.⁸⁰ This rebuts to the common critique that Walzer's view of justice "involves constraining an individual's freedom to do as she will with what she has."⁸¹ Of course the justification for, and therefore proper division among, spheres of justice would likely be profoundly different in the psychological view I advocate here than the socio-semiotic one Walzer propounds. But I suspect that part of the appeal of Walzer's hostility to free exchange among goods, particularly in the areas of health care and education that he emphasizes as examples, can reasonably be attributed to a hesitance to see a dominant desire or self appropriate the full resources of an individual.⁸² And if this is so, it reinforces the argument that our political concerns have in the past and rightly should include fear of intra- as well as inter-personal tyranny.

This paper focuses on arguments put forward by Chandran Kukathas because they represent a classic defense of the individualism of agency, and thereby rights individualism, in political theory. He offers three important characteristics of groups that make it inappropriate to recognize their rights as fundamental political claims, a status he reserves for individuals. In each of these areas, however, we see that individuals are susceptible to the same problems that groups face. Fundamentally, these arguments for the individualism of agency are grounded in a false vision of the individual as a simple, unified, consistent and independent agent. While groups are sensitive to political circumstance to form a normative basis for evaluating such circumstances, individuals do not escape this sensitivity to and contingency on political institutions; rather, we have seen the deep effect institutions can have on the lives individuals choose to lead. Groups *are* often in flux and have little temporal consistency. Yet, individuals similarly often engage in complex inter-temporal games within themselves and are not always more stable over time than groups. The internal divisions that often exist within groups may make the granting of rights to these groups seem arbitrary and illiberal. But individuals do not consistently display more unity and intrapersonal

conflict presents many challenges to a theory of individual rights. Thus many of the strongest arguments against the individualism of agency can be found precisely within the points he put forward to defend it. Kukathas's individualism falls on its own sword.

Where Now?

During the second half of the twentieth century, a central doctrine in the social sciences was the “rational agent model”, which views individuals and their consistent preferences as the fundamental unit of social analysis. This model has come under attack from many quarters in recent years. Cognitive psychologists have challenged its empirical foundations by demonstrating many circumstances under which individual behavior exhibits substantial bias and inconsistency, while social psychologists have demonstrated the powerful cohesive forces within groups that may make them meaningful units of analysis. Neuroscientists have studied the operation of intra-personal conflict and cooperation within the brain, while computer scientists and biologists have studied how and why this internal conflict arises in organisms. Economists have discovered that models acknowledging the imperfection of economic actors, often referred to as “behavioral economics”, can have substantial success in explaining many market phenomena. Philosophers have questioned the basic foundations of the theory in the concept of a coherent and time-consistent self. Political scientists, legal scholars, sociologists and anthropologists are, with increasing success, warding off the influence of this imperial export from economics departments.

In this paper, I have surveyed and synthesized many of these arguments and evidence in order to add force to previous philosophical critiques of sanguine views of individual, and overly pessimistic view of group, agency. In turn I have used these reinforced arguments take aim at two positions in political philosophy, rather than social science: the individualism of agency and the use of doctrine to support rights individualism. The rational agent model may, and in my opinion does, remain highly relevant and useful in modeling certain economic and political phenomena. However, the preponderance of evidence and arguments I supply above provide a strong case against the *qualitative* distinctions between groups and individuals needed to maintain the political philosophical arguments I critique. The primary target of this paper is, therefore, two narrow arguments within

political philosophy. Nonetheless I suspect that, given the importance of agency in modern political theory, the basic arguments put forward here may have some broader implications in the field. An attempt to consider or even anticipate these with any confidence would require a different and much more ambitious paper. In the interest of encouraging further thought about these important questions I nonetheless conclude with a brief bit of speculation in this direction.

As I argued in the introduction, the individualism of agency seems to be an implicit assumption in much modern political philosophy. While it is occasionally mentioned or even challenged in passing, it is rarely confronted and its significance in political theory has not been extensively explored.⁸³ Given its pervasiveness, I suspect that a successful undermining of this view, which I leave my readers to judge whether I have achieved, may have wider implications for political philosophy. In particular, my paper suggests two potential launching points such future investigation. The first is the basic negative point I have explicitly emphasized throughout this piece, namely that there is at best weak grounds for thinking that individuals are qualitatively less problematic than groups as agents. The second is a constructive point which has been more implicit in my discussion, namely that attention to intrasubjective conflict, distribution and justice may be an important sphere for further political theorizing.

A very casual recollection of Rawls's classic theory of justice as fairness suggests that an undermining of the individualism of agency may have implications for his thought. In particular, one can ask what contracting behind a "veil of ignorance" might look like if the contracting agents really are as I have portrayed them here. In fact, Rawls admits that his agents, behind the veil of ignorance must be rational in the sense of rational choice theory.⁸⁴ Would the identical selves, ignorant of their conceptions of the good and the conditions of their lives, be unified? Or might they be divided still among competing desires or selves? Would there be any notion of them suffering from temptation? Would they be internally divided about how to evaluate the risky

prospects signing a social contract behind the veil of ignorance involves, as we know the brain to be in evaluating risk?⁸⁵ If not, why not, when we know this is a basic human trait? If so, what would the implications of this be? Might they be sensitive to framing, contextual, structure or other perverse effects we know exist in real contracting relationships? If so, how can we be confident they would reach a particular, unique social contract independent of the details of the frame or context in which the agreement takes place? Even if they were not so divided, which self(s) would they favor or how would they adjudicate, in deciding which rights to give themselves, knowing that one self might use such rights to the disadvantage of another in certain contexts? Might not this united self behind the veil of ignorance choose to restrict certain freedoms so as to protect certain selves or desires? Given my critique here, is it even clear that individuals are the right contracting agents to place behind the veil of ignorance? Why not groups or representatives of groups as suggested by Buchanan?⁸⁶ Robert Nozick's firmly individualist perspective is anchored all the more strongly to the notion of a coherent, unitary self-possessing agent might also face serious challenges. Might the much more basic moral individualist claim that the good can only reasonably be thought of as the good of and for individuals seem less overwhelmingly convincing in the light of the flaws of individual agency? There likely are convincing and perhaps even short liberal answers to many of these questions and there may be satisfying responses to most of even all of them. Yet I would argue that they are worth a more extensive treatment than they have thus far received.

At a more constructive level, the problems I discuss above raises a number of questions of practical import and relevance to economic and other policy that only philosophers are equipped to answer. These issues primarily concern how the institutions of the state should be structured so as to ensure a fair and just, or at least proper, balance between the rights of and good for various selves within the individual. I have argued above that there is some relationship in particular instances between these questions and those of group rights and community good discussed extensively in

political philosophy over last quarter century. However the issues themselves are quite different, and in many cases entirely separate, from the main thrust of political philosophy in recent years. At very least they provide a different frame for questions about when it is appropriate to restrict traditional notions of individual liberty and perhaps might form the basis for quite different standards for answering these questions. These problems are not new, but neither are they addressed by contemporary analytic philosophy. I think this is a shame, as they can only be properly answered by philosophers and plague contemporary debates in economics.⁸⁷ Public political debates and the process of globalization brought questions of group and cultural rights and protections of minority and indigenous cultures to the fore in political philosophy in the 1990's.⁸⁸ So too should contemporary public debates about "libertarian paternalism", "sin taxes" and strategically chosen default options as well as concern about obesity, addiction, gambling, suicide and other such afflictions of liberal society merit a philosophical response.⁸⁹ Today as our understanding of human psychology and the brain progresses increasingly rapidly we are better equipped than at any time in history to attack the questions of intra-personal justice Plato posed more than two thousand years ago. By addressing such potent and confusing normative puzzles, political philosopher could make an enormous contribution to my home field of economics, as well as to public policy. And perhaps by asking such questions, political theorists would learn something themselves about the nature of the good and just society that they have long sought to describe.

¹ Otto von Bismarck to Robert von Kederdall, August 18, 1865 in Otto von Bismarck, *Die Gesammelten Werke* (Berlin: Stollberg, 1924-1925) 14: 14-15 as quoted in (and translated by) Otto Pflanze, "Toward a Psychoanalytic Interpretation of Bismarck," *American Historical Review* 77, no.2 (1972): 419-444.

² John A. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) and Robert Nozick, *Anarchy, State and Utopia* (New York, NY: Basic Books, 1975).

³ Allen E. Buchanan, "Assessing the Communitarian Critique of Liberalism," *Ethics* 99, no. 4 (1989): 852-855.

⁴ Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge, UK: Cambridge University Press, 1982).

⁵ Alisdair MacIntyre, *After Virtue: A Study of Moral Theory* (South Bend, IN: University of Notre Dame Press, 1981) and Michael Walzer, *Spheres of Justice* (New York, NY: Basic Books, 1983).

Another important communitarian critic of liberalism is Charles Taylor in *Hegel and Modern Society* (Cambridge, UK: Cambridge University Press, 1979) and *Sources of the Self: The Making of the Modern Identity* (Cambridge, MA: Harvard University Press, 1989) who primarily takes aim at the moral subjectivism he sees inherent in the liberal commitment to pluralism. The radical situation of the self within a political community and social conditions, an idea that like Taylor and Sandel he derives from Hegel, is crucial to another early prominent communitarian challenge, Roberto M. Unger, *Knowledge and Politics* (New York, NY: Free Press, 1975).

⁶ Two prominent early defenses of liberalism from the communitarian assault are Amy Gutmann, "Review: Communitarian Critics of Liberalism," *Philosophy and Public Affairs* 14, no. 3(1985): 308-322 and Buchanan, "Assessing the Communitarian Critique of Liberalism". A more balanced and

extended survey of the early debate is provided by Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford, UK: Blackwell, 1992). A more complete theoretical response to the communitarian critique, one which is perhaps the classic instantiation of the liberal claim to an ethically-thin political justifications of liberalism, is John A. Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993). Several authors of basically liberal inclinations take a more synthetic approach to the communitarian challenge. Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge, UK: Cambridge University Press, 1989) turns the communitarian critique on its head, arguing that liberalism can and should be justified within the context of Western political culture and vocabulary, rather than in abstracted universalizing terms. In contrast, Ronald Dworkin, “Liberalism” in Stuart Hampshire (ed.) *Public and Private Morality* (Cambridge, UK: Cambridge University Press, 1978) responds by constructing a far thicker foundation for liberalism, grounded in a comprehensive conception of the good for individuals in the social relationships. A more explicit synthesis of the two views, though a surprisingly individualistic one, is effected by Joseph Raz, *The Morality of Freedom* (Oxford, UK: Oxford University Press, 1986), who argues that liberalism explicitly seeks to promote the good of its citizens by fashioning for them an autonomous and pluralistic life.

⁷ Will Kymlicka, *Multicultural Citizenship* (Oxford, UK: Oxford University Press, 1995) develops a liberal theory of collective rights for minorities founded on principles of justice as fairness. In contrast, Charles Taylor, “The Politics of Recognition” in Charles Taylor and Amy Gutmann (eds.) *Multiculturalism and “The Politics of Recognition”* (Princeton, NJ: Princeton University Press: 1992) develops a communitarian view of the proper protections of minority communities in a multicultural society. Chandran Kukathas, “Are There Any Cultural Rights?” *Political Theory* 20, no. 1 (1992): 105-139, who I extensively critique below, develops a libertarian liberal, agency-based theory of rights in a cultural context in the tradition of Nozick. K. Anthony Appiah, *The Ethics of Identity* (Princeton,

NJ: Princeton University Press, 2005) surveys and synthesizes many of the views in the debate over cultural and group rights from a broader ethical perspective.

⁸ Note that for some thinkers, who view choice and preference as being of primary moral significance, the status of individual agency is necessarily closely tied to that of *moral individualism*, the view that good can only sensibly be thought of as the good of and for individuals. Moral individualism has been a topic of considerable debate within the liberal-communitarian dialogue, but those attentive to choice and preference have tended to be firmly in the individualist camp and therefore conversations about the relative merits of group and individual agency have not been common in the literature on moral individualism.

⁹ MacIntyre, *After Virtue* 178 as cited in Mulhall and Swift, *Liberals and Communitarians*, 83.

¹⁰ Buchanan, "Assessing the Communitarian Critique of Liberalism" 858.

¹¹ Kenneth J. Arrow, *Social Choice and Individual Values* (New York, NY: John Wiley, 1951).

¹² Kenneth O. May, "Intransitivity, Utility, and the Aggregation of Preference Patterns," *Econometrica* 22, no. 1 (1954): 1-13.

¹³ Kukathas, "Are There Any Cultural Rights?" 110.

¹⁴ *Ibid.*, 111-112.

¹⁵ *Ibid.*, 110-111.

¹⁶ *Ibid.*, 113.

¹⁷ *Ibid.*, 114.

¹⁸ *Ibid.*, 114.

¹⁹ "Liberal theory is generally concerned to avoid entrenching majorities or creating permanent minorities [within the groups by granting rights." *Ibid.*, 114.

"In the end, liberalism views cultural communities...like...electoral majorities. Both are the product of a multitude of factors and neither need be especially enduring, although they can be. The

possibility that they might be, however, does not justify entrenching the interests they manifest.”

Ibid., 115.

²⁰ Allan Gibbard, “Manipulation of Voting Schemes: A General Result”, *Econometrica*, 41, no. 4 (1973): 587-602. Mark A. Satterthwaite, “Strategy-Proofness and Arrow’s Conditions: Existence and Correspondence Theorems for Voting Procedures and Social Welfare Functions”, *Journal of Economic Theory* 10, no. 2 (1975): 187-217.

²¹ Drew Fudenberg and Jean Tirole, *Game Theory* (Cambridge, MA: MIT Press, 1991) provides an excellent overview of the modern literature in game theory.

²² Arrow, *Social Choice and Individual Values* : 13.

²³ Ibid., 46-59.

²⁴ Ibid., 59.

²⁵ For an exhaustive review of the theory and evidence of Kahneman, Tversky and those that followed their lead in pioneering the field of psychology of decision-making, see Daniel Kahneman and Amos Tversky (eds.) *Choices, Values and Frames* (Cambridge, UK: Cambridge University Press, 2000). For a more pedagogical text in the subject, see Jonathan Baron, *Thinking and Deciding* (Cambridge, UK: Cambridge University Press, 2000). For a survey of recent, related work in moral psychology exposing inconsistencies in moral reasoning, see K. Anthony Appiah, *Experiments in Ethics* (Cambridge, MA: Harvard University Press, 2007). May, “Intransitivity, Utility and the Aggregation of Preference Patterns,” 5-6 shows that in a simple, Arrow-like setting where there are three dimensions along which a choice can be evaluated and ordinal preferences along these dimensions are non-single-peaked, individuals exhibit non-transitivities.

²⁶ See Kahneman and Tversky, *Choices, Values and Frames* parts six, two and three respectively or Baron, *Thinking and Deciding* chapters eleven to fifteen.

²⁷ Most of the prominent work in the psychology of decision-making and judgment implicitly endorses this view. The quote comes from a classic piece which helped establish the dominant view of inconsistency as deviant behavior, Amos Tversky and Daniel Kahneman, “Rational Choice and the Framing of Decisions,” *Journal of Business* 54, no. 4 (1986): 5251-5278. There are two other classic contributions to this perspective. George Loewenstein and Benjamin Adler, “A Bias in the Prediction of Tastes,” *The Economic Journal* 105, no.431 (1995): 929-937. Daniel Kahneman, “New Challenges to the Rationality Assumption,” *Journal of Institutional and Theoretical Economics* 150, no. 1 (1993): 18-36. Recently economists have worked on developing comprehensive welfare frameworks for irrational consumers that largely take this perspective. See Botond Köszegi and Matthew Rabin, “Revealed Preferences and Revealed Mistakes,” working paper (2007), University of California, Berkeley and B. Douglas Bernheim and Antonio Rangel, “Beyond Revealed Preference: Choice Theoretic Foundations for Behavioral Welfare Analysis,” working paper (2007), Princeton University.

²⁸ For a text which explicitly endorses and teaches this view, see Baron, *Thinking and Deciding*.

²⁹ The first model of this sort was proposed, in the context of inter-temporal inconsistency by Robert H. Stortz, “Myopia and Inconsistency in Dynamic Utility Maximization,” *Review of Economic Studies* 23, no. 3 (1956): 165-180. Work on multiple selves models in economics has exploded in recent years. A particularly influential application to the macroeconomics of savings and consumption is David Laibson, “Golden Eggs and Hyperbolic Discounting,” *Quarterly Journal of Economics* 112, no. 2 (1997): 443-477. Inter-self relations also play an important role in the normative analysis of Ted O’Donoghue and Matthew Rabin, “Doing it Now or Doing it Later,” *American Economic Review* 89, no. 1 (1999): 103-124. Multiple selves, sometimes referred to as “multiple systems”, is a particularly influential hypothesis in the growing neuroeconomics literature surveyed in Colin Camerer, George Loewenstein and Drajan Prelec, “Neuroeconomics: How Neuroscience

can Inform Economics,” *Journal of Economic Literature* 43, no. 1 (2005): 9-64. Two influential models, which explicitly incorporates trade-offs and conflicts between selves, are Drew Fudenberg and David K. Levine, “A Dual Self Model of Impulse Control,” *American Economic Review* (forthcoming) and Ted O’Donoghue and George Lowenstein, “Animal Spirits: Affective and Deliberative Processes in Economic Behavior,” working paper (2006), Carnegie Mellon and Cornell Universities.

³⁰ Freudian theory and subsequent work in psychology is explored from a multiple self perspective in Jon Elster, “Introduction,” in *The Multiple Self*, edited by Jon Elster, 20-23 (Cambridge, UK: Cambridge University Press, 1986). Early psychological thinking about multiple selves is reviewed, in a typically whimsical style, by Thomas C. Schelling, “Mind as Consuming Organ,” in Elster, *The Multiple Self*. The notion of multiple selves plays an important role in the works of Kant, Ricoeur, Plato and Freud as discussed by Anthony J. P. Kenny, *Action, Emotion and Will* (London, UK: Humanities Press, 1963).

³¹ An exhaustive, fascinating and classic critique of the unity of self is Derek Parfit, *Reasons and Persons* (New York, NY: Oxford University Press, 1984). Other philosophers have offered related, relevant perspectives on similar issues. David F. Pears, “The Goals and Strategies of Self-Deception” and Donald Davidson, “Deception and Division,” both in Elster, *The Multiple Self*. Bernard Williams, “The Self and the Future” and Galen Strawson, “The Self,” both in Raymond Martin and John Barresi, *Personal Identity* (Malden, MA: Blackwell, 2003). For some of the earlier, pioneering work in this area, a classic collection of essays is Bernard Williams, *Problems of the Self* (Cambridge, UK: Cambridge University Press, 1973).

³² The neurological evidence for independent functioning of different parts of the brain in the context of ethical decision-making is a particularly interesting example; see Joshua D. Green, R. Brien Sommerville, Leigh E. Nystrom, John M. Darley and Jonathan D. Cohen, “An fMRI Study of Emotional Engagement in Moral Judgment,” *Science* 293, no. 5537 (2001): 2105-2108. The literature

on internal conflict in the brain is too extensive to detail here, but an excellent introductory text in neuroscience which extensively treats these issues is Dale Purves, George J. Augustine, David Fitzpatrick, William C. Hall, Anthony-Samuel Lamantia, James O. McNamara and S. Mark Williams (eds.), *Neuroscience* (New York, NY: Oxford University Press, 2004)

³³ Neal E. Miller, “Experimental Studies of Conflict” in J. McV. Hunt (ed.) *Personality and Behavior Disorders* (New York, NY: Roland, 1944) and Judson S. Brown, “Gradients of Approach and Avoidance Responses and Their Relation to Levels of Motivation,” *Journal of Comparative and Physiological Psychology* 41 (1948): 450-465 found rats torn between attraction to sex, attraction to food and repulsion from pain. Warren S. McCullough, “A Recapitulation of the Theory, with Forecast of Several Extensions,” *Annals of the New York Academy of Sciences* 50, no. 4 (1948): 258-277 provides an excellent overview of the early literature in biology and comparative psychology on internal conflict. Interestingly May, “Intransitivity, Utility, and the Aggregation of Preference Patterns”, 7 cites exactly this evidence in making his original case for the applicability of Arrow’s theorem to the individual.

³⁴ Adi Livnat and Nicolas Pippenger, “An Optimal Brain Can Be Composed of Conflicting Agents,” *Proceedings of the National Academy of Sciences* 103, no.9 (2006): 3198-3202.

³⁵ Under much weaker conditions than Arrow’s axioms, the Gibbard-Satterthwaite Theorem establishes that game theoretic conflict among individuals may make implementation of social choice functions impossible. I do not discuss the Gibbard-Satterthwaite Theorem in more detail here for the reasons discussed in the text.

However, it is important to reinforce my argument above that the Gibbard-Satterthwaite Theorem, or other game theoretic considerations, does *not* constitute a stronger argument for rights individualism than those rebutted here. While it may seem more reasonable for game theoretic conflict to arise from informational asymmetries or unknown preferences among individuals than within an individual, Livnat and Pippenger’s work directly disproves this intuition and shows that

not only is such an outcome possible within an individual, but it is computationally optimal under plausible assumptions. Furthermore, many of the most fruitful behavioral economic models in recent years, discussed throughout the text, rely on precisely such strategic interactions among competing selves. While a more detailed discussion of the political theoretic implications of Gibbard-Satterthwaite Theorem, and game theory more generally, between selves will likely be fruitful, it is beyond the scope of my argument here.

³⁶ The terminology of desires for conflicting preferences within individuals was first coined by Lara M. Bucak, “Arrow and the Individual,” working paper (2003), Princeton University.

³⁷ May, “Intransitivity, Utility and the Aggregation of Preference Patterns,” 9-13 provides an alternative set of axioms which chop up the assumptions necessary and sufficient for Arrow’s theorem slightly differently than Arrow does; he considers these alternative axioms somewhat more plausible in the context of the individual than Arrow’s. I stick with Arrow’s axioms for simplicity and transparency.

³⁸ For an excellent examination of the plausibility of Arrow’s axioms and perhaps the classic treatment of social choice theory, see Amartya Sen, *Collective Choice and Social Welfare* (San Francisco, CA: Holden-Day 1970).

³⁹ Buchak, “Arrow and the Individual” also provides a philosophical discussion of the applicability of Arrow’s axioms to the individual context.

⁴⁰ An excellent short summary of, and argument for, such policies is given by Cass R. Sunstein and Richard R. Thaler, “Libertarian Paternalism,” *American Economic Review* 93, no. 2 (1993): 175-179.

⁴¹ Purves, Augustine, Fitzpatrick, Hall, Lamantia, McNamara and Williams (eds.) *Neuroscience*, 700-730.

⁴² Daria Knoch, Alvaro Pascual-Leone, Kaspar Meyer, Valerie Treyer and Ernst Fehr, “Diminishing Reciprocal Fairness by Disrupting the Right Pre-Frontal Cortex,” *Science* 314, no. 3 (2006): 912-915

finds that suppressing the right pre-frontal cortex facilitates calculating, rational self-interested actions in experimental economic games. His findings cut against the “two-systems” view and show that at least some part of social preferences are located separated from the emotive, and the calculating, part of the brain. This provides some extremely preliminary evidence for the sort of tripartite division of “ego-superego-id” envisioned by Freud or of “lower passions-higher passions-reason” imagined by Plato. Evidence in the Freudian direction includes Manfred Spitzer, Urs Fischbacher, Bärbel Herrnberger, Georg Grön and Ernst Fehr, “The Neural Signature of Social Norm Compliance,” *Neuron* 56, no. 1 (2007): 185-196 who find that social norm compliance takes place in a different system than either simply the emotive limbic system or the rational cortex.

⁴³ Livnat and Pippenger, “An Optimal Brain may be Composed of Conflicting Agents,” 3200-3201.

⁴⁴ In fact, to satisfy the axioms under which Arrow’s theorem holds we would need Siamese triplets, but the discussion of twins is more vivid, simpler and conveys precisely the same intuition, so I will consider this case here. Note that even with the problem of Siamese twins, many of the game theoretic problems of internal conflict remain; temporal inconsistencies result from conflicts between a short- and long-run self of course involve only two selves.

⁴⁵ A penetrating analysis of the unifying power of political rhetoric in ancient Athens see Josiah Ober, *Mass and Elite in Ancient Athens: Rhetoric, Ideology and the Power of the People* (Princeton, NJ: Princeton University Press, 1989).

⁴⁶ The classic treatment of group cognition from social psychology, a field often called “social learning theory”, is Albert Bandura, *Social Learning Theory* (Englewood Cliffs, NJ: Prentice-Hall, 1977). The most important experimental work on obedience, which found individuals shockingly willing to submit to authority against their individual consciences, is Stanley Milgram, *Obedience to Authority* (New York, NY: Harper-Collins, 1974). A classic social psychology perspective arguing for the reasonableness of group agency in many contexts is Albert Bandura, “Social Cognitive Theory:

An Agentic Perspective,” *Annual Review of Psychology* 52, no. 1 (2001): 1-26. For a standard introduction to social psychology which treats these issues well at a lay level see Daniel G. Myers, *Social Psychology* (New York, NY: McGraw-Hill, 1990).

⁴⁷ Christophe Chamley, *Rational Herds: Economic Models of Social Learning* (Cambridge, UK: Cambridge University Press, 2004) provides a survey of the literature on rational social learning and inherent tendencies of social situations that lead even self-interested rational individuals towards herd-like behavior. A survey that comes a bit closer to stepping outside of a pure rational choice perspective is Sushil Bikhchandani, David Hirshleifer and Ivo Welch, “Learning from the Behavior of Others: Conformity, Fads, and Information Cascades,” *Journal of Economic Perspectives* 12, no. 3 (1998): 151-170. The classic *economic* model of conformity is B. Douglas Bernheim, “A Theory of Conformity,” *Journal of Political Economy* 102, no. 5 (1994): 841-877. Finally an interesting recent contribution that addresses the strengths and weaknesses of “rational” approaches to group-think is Edward L. Glaeser and Cass R. Sunstein, “Extremism and Social Learning,” working paper (2007), Harvard University and University of Chicago.

⁴⁸ Perhaps the most famous early modern intellectual treatment of pathologically strong group unity is Charles Mackay, *Extraordinary Popular Delusions and the Madness of Crowds* (Boston, MA: Page, 1932; originally published in 1852). A literary classic that deals with similar themes is Henrik Ibsen, “An Enemy of the People” in *Four Great Plays by Ibsen* (New York, NY: Bantam, 1958; originally published in 1882). An immensely popular recent treatment from the perspective of administrative psychology and intended for the general public is Irving L. Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* (Boston, MA: Houghton Mifflin, 1982).

⁴⁹ For evidence on the importance of commitment see Laibson, “Golden Eggs and Hyperbolic Discounting”. Laibson argues that a large part of the decline in US savings rates has been due to the erosion of commitment devices caused by financial innovation. A good survey of the importance of

default options in savings is James J. Choi, David Laibson, Brigitte C. Madrian and Andrew Metrick, “For Better or Worse: Default Effects and 401(k) Savings Behavior” in David A. Wise (ed.), *Perspective on the Economics of Aging* (Chicago, IL: University of Chicago Press, 2004).

⁵⁰ Buchak, “Arrow and the Individual,” 8-15.

⁵¹ In particular, it would allow social preferences over X versus Y to be sensitive to the addition or subtraction from the set of all possible options (though not necessarily those feasible in a particular choice problem) of Z. This, in turn, can undermine a broader sense of consistency of choice than simple transitivity. For a good discussion, see Amartya Sen, *Rationality and Freedom* (Cambridge, MA: Harvard University Press, 2002).

⁵² See Manimay Sengupta, “Monotonicity, Independence of Irrelevant Alternatives and Strategy-Proofness of Social Decision Functions,” *Review of Economic Studies* 47, no. 2 (1980): 393-407 for a detailed analysis of this connection.

⁵³ For a further articulation of this argument, see Buchak, “Arrow and the Individual,” 5-7.

⁵⁴ Arunava Sen, “Another Direct Proof of the Gibbard-Satterthwaite Theorem,” *Economic Letters* 70, no. 3 (2001): 381-385.

⁵⁵ For an excellent exposition of the perspective of “economic anthropology”, see Richard R. Wilk, *Economies and Cultures: Foundations of Economic Anthropology* (Boulder, CO: Westview, 1996). Chapters one through three provide a focused critique of economic methodology and assumptions, particularly the fungibility assumption.

⁵⁶ Arrow, *Social Choice and Individual Values*, 119-120.

⁵⁷ Jerry R. Green and Daniel A. Hojman, “Choice, Rationality and Welfare Measurement”, working paper (2007), Harvard University have laid out a theory of welfare bounds using multiple selves. However this theory could as easily be applied to group choices (though there direct measurements of the composite individual preferences seem more fruitful).

⁵⁸ Buchanan, “Assessing the Communitarian Critique of Liberalism”, 858-859. Given the symmetry between individuals and groups on this dimension, Buchanan’s “communitarian” case for liberalism might easily be translated into a liberal case for intra-personal rights which, as I argue below, might plausibly justify group rights in practice. Thus I suspect it is not only Kukathas’s extreme rights individualist position which may be susceptible to the sorts of arguments put forward here.

⁵⁹ Kukathas, “Are There Any Cultural Rights?” 114.

⁶⁰ Sandel, *Liberalism and the Limits of Justice*, 15-65.

⁶¹ MacIntyre, *After Virtue*, 204-205 cited in Mulhall and Swift, *Liberals and Communitarians*, 89.

⁶² Taylor, *Sources of the Self*, 36 cited in Mulhall and Swift, *Liberals and Communitarians*, 112.

⁶³ Eric J. Johnson and Daniel Goldstein, “Do Defaults Save Lives?” *Science* 302, no. 5649 (2003): 1338-1339.

⁶⁴ I would like to thank Eldar Shafir for pointing me to a variety of resources on this issue that he has personally collected over the last several months. A number of non-academic articles and websites document this astounding result. Joshua Sonnefeld, “Truth and Privacy Opt-in and Opt-out Campaigns: A Detailed Narration by the Organization,” (Resource Center for Non-Violence, 2004), <http://www.rcnv.org/counterrecruit/optoutcampaign/> (accessed January 2006). For more notes, slides, letters and resources in electronic form relating to this issue, contact Eldar Shafir at shafir@princeton.edu.

⁶⁵ Shafir, in conversation, points out, “With opt-out, we have the world’s strongest military. With opt-in, given the dramatic difference in enrollment rates that have been found, the army would evaporate. How can anyone insist that a school board, or who ever sets this policy, can maintain neutrality?”

⁶⁶ Donald R. Kinder and Lynn M. Sanders, “Mimicking Political Debate with Survey Questions: The Case of White Opinion on Affirmative Action for Blacks,” *Social Cognition* 8, no.1: 73-103 discuss the

effects of framing on affirmative action preferences and Paul M. Sniderman and Sean M. Theriault, “The Structure of Political Argument and the Logic of Issue Framing” in Willem E. Saris and Paul M. Sniderman, *Studies in Public Opinion: Attitudes, Non-Attitudes, Measurement Error and Change* (Princeton, NJ: Princeton University Press, 2004) discuss the effects of framing on preferences about poverty relief. A good, critical survey, and counterpoint, to the framing literature in the context of politics is James N. Druckman, “On the Limits of Framing Effects: Who can Frame?” *Journal of Politics* 63, no.4 (2001): 1041-1063.

⁶⁷ Philosopher and social scientist Jon Elster extensively catalogues the most important forms of these clashes in the Jon Elster, *Ulysses Unbound* (Cambridge, UK: Cambridge University Press, 2000): 1-7.

⁶⁸ A survey of time discounting and time preference and its role in economic theory is provided by Shane Frederick, George Loewenstein and Ted O’Donoghue, “Time Discounting and Time Preference: A Critical Review,” *Journal of Economic Literature* 40, no. 2 (2002): 351-401.

⁶⁹ Elster, *Ulysses Unbound*, 33.

⁷⁰ Elster, *Ulysses Unbound*, 7-24 and 57-77.

⁷¹ Derek Parfit, “Later Selves and Moral Principles” in Alan Montefiore (ed.), *Philosophy and Personal Relations* (London, UK: Routledge and Kegan Paul, 1973), 145 quoted in Elster, *Ulysses Unbound*, 145.

⁷² Dan Ariely and George Loewenstein, “The Heat of the Moment: The Effect of Sexual Arousal on Sexual Decision Making,” *Journal of Behavioral Decision Making* 19, no. 2 (2006): 87-98. Ariely and Loewenstein also interestingly find that subjects fail to anticipate their own sensitivity to arousal, indicating that the problems raised by such sensitivity may be particularly bad as people do not know to avoid them. For another example of the potential of small contextual manipulations to change important decisions, this one in ethical decision making, see a survey of psychological literature on this by George Loewenstein and Deborah A. Small, “The Scarecrow and the Tin Man: The

Vicissitudes of Human Sympathy and Caring,” *Review of General Psychology* 11, no. 2 (2007): 112-126.

Loewenstein and Small also present a multiple self model of ethical choice to help rationalize empirical findings. For a more general survey of earlier work on such small, visceral influences on human behavior, see George Loewenstein, “Out of Control: Visceral Influences on Behavior,” *Organizational Behavior and Human Decision Processes* 65, no.3 (1996): 272-292.

⁷³ For example, see Taylor, “The Politics of Recognition”, 52-73.

⁷⁴ Green and Hojman, “Choice, Rationality and Welfare Measurement” shows that some semblance of welfare of internal agents can be recovered from the individual’s choices. However, the bounds on these welfare notions are so vague as to make an implementation of rights impractical.

⁷⁵ Michael Sandel, “Introduction” in Michael Sandel (ed.), *Liberalism and its Critics* (New York, NY: New York University Press, 1984).

⁷⁶ Plato, *The Republic*, translated by Benjamin Jowett (B.C.E. 360)

<<<http://classics.mit.edu/Plato/republic.html>>> Books II-V. Plato was hardly the only Greek thinker to worry about internal justice. Aeschines in N. R. E. Fisher, *Aeschines: Against Timarchus* (Oxford, UK: Oxford University Press, 2001: I denounces Timarchus for being an unfree man not because he was a slave to another man, but because he was a slave to his own passions. Michel Foucault, *The History of Sexuality, Volume 2: The Uses of Pleasure* (New York, NY: Pantheon, 1985) and Ian Morris, *Archaeology as Cultural History: Words and Things in Iron Age Greece* (Oxford, UK: Oxford University Press, 2000): 114-119 extensively discusses the importance of self-mastery to citizenship in ancient Athens. More contemporary treatments which particularly emphasize the pervasive connection between inter- and intra-personal justice are James N. Davidson, *Courtesan and Fishcakes* (London, UK: Fontana Press, 1997): 139-210 and Sean Corner, *Philos and Polites: The Symposium and the Origins of the Greek Polis*, dissertation (2005), Princeton University: 403-455.

⁷⁷ Walzer, *Spheres of Justice*.

⁷⁸ Walzer, *Spheres of Justice*, 6 quoted in Mulhall and Swift, *Liberals and Communitarians*, 127.

⁷⁹ Mulhall and Swift, *Liberals and Communitarians*, 147.

⁸⁰ Walzer, *Spheres of Justice*, 10-11 quoted in Mulhall and Swift, *Liberals and Communitarians*, 148.

⁸¹ Mulhall and Swift, *Liberals and Communitarians*, 153.

⁸² Walzer, *Spheres of Justice*, 84-116.

⁸³ For example, Sandel, *Liberalism and the Limits of Justice*, 63 devotes a paragraph to pointing out that one of the flaws in Rawls's conception of the self is the lack of credence he gives to the possibility of intrasubjective conflict.

⁸⁴ Rawls, *A Theory of Justice*, 143n14.

⁸⁵ Camerer, Loewenstein and Prelec, "Neuroeconomics", 43-46 survey evidence that very different neural systems, which evaluate risky choices in very different ways, are integral to choice under risk and thus may conflict. As Kenneth J. Arrow, "Some Ordinalist-Utilitarian Notes on Rawls's Theory of Justice," *Journal of Philosophy* 70, no.9 (1973): 245-263 persuasively argued and Rawls, *A Theory of Justice*, 152-155 admits risk-preferences are crucial to establishing Rawls's maximin principle.

⁸⁶ Buchanan, "Assessing the Communitarian Critique of Liberalism", 864 argues that even such groups or their representatives would settle on the same contract Rawls's individual agents would. I think this argument was dubious at the time of its writing, was substantially weakened by the debates over group rights in the 1990's and is further called into question by this paper.

⁸⁷ The notion that philosophers are better equipped than economists to answer questions of this sort is commonly accepted in economics and cries for philosophers' help are common. See, for example, from various sides of the behavioral debate, Faruk Gul and Wolfgang Pesendorfer, "Welfare without Happiness," *American Economic Review* 97, no. 2 (2007): 471-476; Green and Hojman, "Choice, Rationality and Welfare Measurement," 11n15 and Robert Sugden, "The Opportunity Criterion," *American Economic Review* 94, no. 4 (2004), 1015-1018.

⁸⁸ Appiah, *The Ethics of Identity*, x-xi and Kymlicka, *Multicultural Citizenship*, 1-5.

⁸⁹ A good example of the popular debate on these issues is given by a pair of articles in *The Economist*:

“The Avuncular State” and “The State is Looking Out for You” in the April 6th, 2006 edition.