

# Epistemic Risks and Objective Rights

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# Setup

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Agents like us are subject to a many types of ignorance:

- moral uncertainty
- practical unpredictability
- normative opacity

Does our non-culpable ignorance affect whether our actions are permissible from the point of view of moral rights?

## important notions

**Error:** An action done in non-culpable ignorance, that, if performed with full information, would be a rights-infringement.

A **Rights-based moral standard** prohibits Xing iff Xing will infringe an agent's rights.

Is an agent's epistemic state (esp. non-culpable ignorance) relevant to whether it is rights-based morally permissible for her to X?

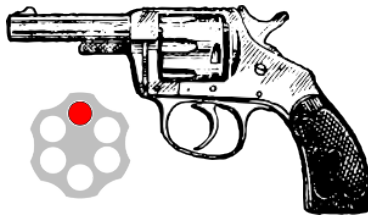
- *Separation Strategy*: **No, never.** Epistemic limitations are relevant *only* to agent-evaluation, not permissibility.
- *Evidential Strategy*: **Yes, always.** If, on B's evidence, Xing does not infringe A's right, then Xing does not infringe A's right *simpliciter*.
- *Perspectival*: **Sometimes.** We must do more work.

### Theoretical Commitments of Rights talk

### Theoretical Commitments of 'Rights' Talk

Rights are grounded in A's moral status, to protect (i) her strong interests or (ii) her autonomous agency.

- **Correlativity**: A's claim right that B X entails that B owes A an (enforceable) duty to X
- **Deliberative function**: guide agents' *ex ante* deliberation.
  - rights provide reasons to guide agents' *ex ante* deliberation.
  - rights ground duties to give rights-holder's concerns certain weight in their deliberation.



- **Distributive function**: secure the greatest mutually compatible scope for agency & fair enjoyment of goods.
  - rights provide reasons *ex post* for who owes/should get compensation
  - rights characterize the *fair* demands of agents *on each other*
  - fair demands are sensitive to background limitations

### Moral Standards

An **objective** moral standard determines whether an action is permissible.

- Sets whether someone is *wronged* by the act.

A **subjective** moral standard determines how an agent should be evaluated.

- Sets whether the agent is *blameworthy* for so acting.

Fact-Relative:

$$\underbrace{(\text{objective chances}_o)}_{\text{probabilities}} \times \underbrace{(\text{value of } X\text{-ing}_o)}_{\text{outcome}}$$

Evidence-Relative:

$$\underbrace{(\text{B's evidence}_o)}_{\text{probabilities}} \times \underbrace{(\text{value of } X\text{-ing}_o)}_{\text{outcome}}$$

Belief-Relative:

$$\underbrace{(\text{B's credences}_o)}_{\text{probabilities}} \times \underbrace{(\text{value of } X\text{-ing}_o)}_{\text{outcome}}$$

Setup 000      The Separation Strategy 00000000000000000000      Evidential Strategy 0000      A Perspectival Alternative 0000

## Umbrella Mixup

### Objective Rights

Facts	1	0
B's Evidence	.01	.99
B's Credences	0	1
	Alan's umbrella	Beth's umbrella
Take Umbrella	stealing!	fine
Leave Umbrella	inconvenient	miserable

$$\underbrace{(\text{objective chance}_o)}_{\text{probabilities}} \times \underbrace{(\text{results of } X\text{-ing}_o)}_{\text{outcome}}$$

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The rights-based moral standard prohibits Xing iff Xing will infringe an agent's rights.

The objective rights-based standard seems like fact-relative standard.

Are facts about an agent's epistemic state (esp. non-culpable ignorance) relevant to whether it is rights-based morally permissible for her to X?

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## The Separation Strategy

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## Objective rights: fact-relative and independent of epistemic situation

“justifications concern themselves with the rightness of actions, which is an ‘objective’ determination in the sense that it proceeds **without reference to the subjective mental states of actors**; and excuses concern themselves with the culpability of actors, which is a ‘subjective’ inquiry in the sense that it is interested in actors’ mental states and unique epistemic limitations.” -Hurd (1999:1571)

“when what explains its permissibility or justifiability are facts that are **independent of the agent's beliefs**.” -McMahan (2009:43)

“Y wrongs X in the fact-relative sense as Y does what he ought not to do **were he to know all the relevant facts**.” -Tadros (2016:112)

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## The Separation Strategy

Is an agent's epistemic state (esp. non-culpable ignorance) relevant to whether it is rights-based morally permissible for her to X?

SEPARATION STRATEGY: **No, never.**

B's Xing infringes A's rights iff, were B to X with full information, it would infringe A's rights.

- No errors are permissible.
- B's epistemic limitations are relevant *only* to agent-evaluation (praise/blame).

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## Against the separation strategy

### The Relevance of Epistemic Limits: Correlativity


SEPARATION mischaracterises duties. B's epistemic states are relevant to...

- ... which duties she has
- ... the relative priority of her duties
- ... which actions satisfy her duties
- ... whether Xing can be reasonably demanded of B

Abstracting away treats epistemic limitations as radically dissimilar to other limitations.

Setup 000      Rights 0000      000      Evidential Strategy 0000      A Perspectival Alternative 0000

## hikers



**Hikers.** Magne is the chief of rescue operations at Trolltunga. Two hikers are stranded on the mountain, but are unable to signal for help, and Magne does not know that they are on the mountain. Were he to launch a rescue operation to their location, the hikers would be saved without endangering the rescuers.

Against the separation strategy

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DOCTOR



Doctor. John has a minor but not trivial skin complaint. There are 100,001 treatments, but Jill knows that John is allergic to nearly all of them.

- Risky: prescribe a non-*a* treatment, knowing (given the odds) it will almost certainly kill John. It does.
- Lucky: prescribe a non-*a* treatment. Luckily it cures John completely.
- Safe: prescribe *a*: it won't fully cure, but also runs no risk of killing John.
- Mislabeled: prescribe *a*. But a lab tech has switched the labels; the treatment labelled *a* is actually one of the other 100,000, and it kills John.

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Against the separation strategy

**The Relevance of Epistemic Limits: Correlativity**

The full-information fact-relative rights standard makes unreasonable demands:

- Requires Magne to be responsive to facts he can't know
- Requires Jill to accept unreasonably high epistemic risks
- Grounds no reproach for infringements resulting from justified risks

Against the separation strategy

**The Relevance of Epistemic Limits: Deliberation**

- (1) Guidance: facts B cannot know aren't available to (& so cannot guide) her *ex ante*
- (2) Content: A's objective rights demand that B treat A's *objective rights* as reasons constraining B's *ex ante* deliberation.

An agent's epistemic states are relevant to whether her objective duty is fulfilled.

While (1) can be offloaded to a *subjective standard*, (2) can't.

Against the separation strategy

**The Relevance of Epistemic Limits: Distributions**

Important moral goods (autonomy, security, respect) require a *reasonable expectation of non-infringement*

This depends on error propensities, which are in turn shaped by:

- how much agents disvalue infringing vs. suffering an infringement
- credences that Xing will constitute an infringing vs. prevent suffering one

If non-culpable ignorance isn't relevant to the permissibility of Xing, then the disvalue of errors is not discounted by probability.

No Probabilistic Discounting

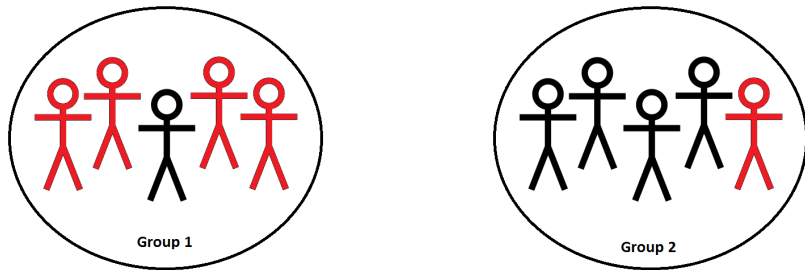
**Distributive problem 1: Conscientious agents shouldn't enforce their rights**

Evidence	.99	.01
	is aggressor	is innocent
Defend	permissible defense	impose infringement
Refrain	suffer infringement	no harm (best)

It is morally worse to **impose** harm than to suffer the same harm.

Probabilistic Discounting on Evidence

**Distributive problem 2: subjective permissions unjustly pool risk**



$Cr(\text{aggressor} | \text{in group 1}) = .75$

$Cr(\text{aggressor} | \text{in group 2}) = .25$

Probabilistic Discounting on Evidence

Distributive problem: subjective permissions unjustly pool risk

*Through no act of their own*, innocent members of group 1 suffer:

- Loss of security: no reasonable expectation against suffering infringements
- Loss of goods sacrificed in risk-minimization efforts
- Costs when harmed by an actual error

A nuanced subjective permissibility standard can change whether we blame the agents who impose these costs, but can't acknowledge that those who suffer (i & ii) are thereby **wronged**.

## Evidential Strategy

## The Evidential Strategy

Should allow that epistemic limitations are relevant. How relevant? **Decisive.**

$$\underbrace{(B's\ evidence_o)}_{probabilities} \times \underbrace{(value\ of\ X-ing_o)}_{outcome}$$

**Evidential:** B's Xing objectively infringes A's rights iff, were B to X given B's (appropriately idealized) evidence, Xing would infringe A's rights.

## Failings of the Evidential Strategy

**Evidential:** B's Xing objectively infringes A's rights iff, were B to X given B's (appropriately idealized) evidence, Xing would infringe A's rights.

- **correlativity** - Gets the right verdicts in Hikers and Doctor: avoids positing unreasonable duties, and takes epistemic risks to be relevant to rights.
- **deliberation** - The more idealised, the less accessible guidance; the less idealised, the worse the distributive failures.
- **distributive** - renders rights too fragile to secure target goods
  - Deliberative care is not all that is owed
  - Delivers the wrong ex post compensation verdicts
  - Exacerbates risk pooling problems

## Distributive Problems with Evidentialist Strategy

### Duped Soldiers

A group of young soldiers are successfully fooled by a totalitarian regime into believing that the regime is good and just, and is under repeated attacks from their evil neighbours, the Gloops. The regime's misinformation campaign is subtle and absolutely convincing: the soldiers are justified in believing what they are told by the regime. Once the misinformation campaign is complete, these Duped Soldiers are given orders to attack and destroy a Gloop village on the border, which they are told is really a Gloop terrorist camp plotting a major attack. In fact, [...] the Gloop village contains only innocent civilians.



Setup ○○○      Rights ○○○○      The Separation Strategy ○○○○○○○○○○○○○○○○○○○      A Perspectival Alternative ○○○○

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## A Perspectival Alternative

Setup ○○○      Rights ○○○○      The Separation Strategy ○○○○○○○○○○○○○○○○○○○      Evidential Strategy ○○○○

An **objective** moral standard determines whether an action is permissible.

A **subjective** moral standard determines how an agent should be evaluated.

- the objective standard needs to be fact-relative to get distributive stability
- & it needs to be sensitive to agents' epistemic limitations to get the right duties & deliberative profile.

Setup ○○○      Rights ○○○○      The Separation Strategy ○○○○○○○○○○○○○○○○○○○      Evidential Strategy ○○○○

**Evidence-Relative:**

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**Fact-Relative:**

$$\underbrace{(objective\ chances_o)}_{probabilities} \times \underbrace{(value\ of\ X-ing_o)}_{outcome}$$

**Full-Info Fact-Relative:**

$$\underbrace{(objective\ chances_o)}_{probabilities} \times \underbrace{(results\ of\ X-ing_o)}_{outcome}$$

**Perspectival:**

$$\underbrace{(objective\ chances_o)}_{probabilities} \times \underbrace{(results\ of\ X-ing\ \&\ epistemic\ profile\ of\ B's\ choice_o)}_{outcome}$$

Is an agent's epistemic state (esp. non-culpable ignorance) relevant to whether it is rights-based morally permissible for her to X?

**Perspectival:** Some facts about B's epistemic limitations affect permissions; others are only relevant to evaluation of the agent as blameless/blameworthy. Duties must be constrained by what agents can be reasonably expected to know.

- Lazar - asymmetric: epistemic profile grounds strictly more/more demanding duties
- Quong - practical unpredictability affects permissibility; moral & normative uncertainty only blame
- Bolinger - misleading evidence arising from A's agency affects negative duties, while other evidence only affects blame

Do the best you can until you know better.  
Then when you know better, do better.  
-Maya Angelou