

## Paternalism

**1. Paternalism vs. Autonomy:** Plausibly, people should not be free to do WHATEVER they want. For, there are many things that people might want to do that will harm others—e.g., murder, rape, steal—which we ought to prevent. So, you probably agree with Mill's Harm Principle that it is permissible to restrict people's freedoms in order to protect OTHERS from being harmed.

But, what about protecting people FROM THEMSELVES? This is called 'paternalism':

**Paternalism:** Overriding, restricting, or interfering with someone's freedom (or, autonomy) for their own good. \*

\* or the good of others (impure paternalism)

Note that paternalism is ALWAYS in direct tension with autonomy.

**Autonomy:** A person's capacity to determine their own course of action.

The government commonly restricts our freedoms "for our own good." For example:

- (1) There are laws requiring drivers to wear seatbelts, motorcycle helmets, etc.
- (2) Certain harmful drugs are illegal.
- (3) Gambling is illegal in most places.
- (4) Contracts where a victim "consents" to being killed are invalid.
- (5) Contracts where a victim "consents" to slavery are invalid.
- (6) The water supply is filled with flourides.
- (7) Education is mandatory.
- (8) A retirement plan in the form of "social security" is mandatory

Consider: Without seatbelt laws, roughly 15,000 more people would die in traffic accidents each year. (And, even with such laws, not everyone wears them. If everyone actually wore seatbelts, an additional 5,000 lives would be saved annually.)

Question: Is a law requiring passengers of automobiles to wear seatbelts (which causes a very small restriction of our freedom) justified by the amount of lives that are saved? What do you think? *[Note that, strictly speaking, perhaps my choice to NOT wear a seatbelt does not always harm only myself. For instance, if I receive greater injuries which make everyone's insurance premiums increase.]*

## This section for Bioethics students (PHIL 3140):

Doctors are frequently faced with some potentially paternalistic decisions. For instance:

- (1) Committing someone to a mental institution against their will because they are deemed a danger to society (even though they are lucid at the moment).
- (2) Giving a blood transfusion to someone against their will, even though they refused the treatment on religious grounds.
- (3) Resuscitating someone who has earlier expressed that they do not wish to be resuscitated (or, even, saving the life of someone who has attempted suicide).
- (4) Deceiving a patient into thinking that their condition is not as bad as it really is, for fear that knowing the truth will make their condition worse.
- (5) Deceiving a patient by downplaying the (small but significant) risks of a fairly effective treatment in order to ensure that the patient seeks the treatment.

These are examples of “strong paternalism” (overriding the autonomy of someone who IS primarily autonomous), and these are all fairly controversial. “Weak paternalism” (overriding the autonomy of someone who is NOT really autonomous) is much less controversial; for instance, detaining or treating severely psychotic, mentally retarded, or extremely addicted individuals.

The conflict goes all the way back to the Hippocratic Oath (460BC), which states, “**I will keep them [the sick] from harm and injustice.**” But what if someone does not WANT to be treated? In other words, what if they WANT the harm? For, we also value freedom. That is, we think that **autonomous persons should be allowed to determine their own course of action.** When these two aims are in conflict, which one should win?

**2. Against Mill, In Favor of Paternalism:** John Stuart Mill explicitly states that he opposes “pure” paternalism (i.e., restricting an individual’s freedom for their own good; contrast this with “impure” paternalism, which restricts an individual’s freedom for the good of OTHERS). Mill writes,

“[T]he only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.”

But, Mill seems to contradict this claim frequently, and ordinary intuition opposes it (so Gerald Dworkin argues). Consider some cases where overriding someone's freedom solely for their own good seems clearly permissible:

**Explicit Consent:** Surely, at the very least, it is permissible to restrict someone's freedom to preserve their best interests when they have CONSENTED to it. Recall Odysseus in The Odyssey who asked his crewmates to tie him to the mast as they sailed past the island of the Sirens. Or, imagine an addict who tells a friend, "If I try to buy cigarettes, you have to stop me."

Presumably this is permissible, because the person being interfered with has FREELY CHOSEN to have certain future choices interfered with. So, there is no true violation of liberty here. This is fairly uncontroversial.

**Children (Hypothetical Consent):** Mill explicitly states that being "paternal" to one's own children is permissible, and even encouraged.

Imagine if we let children do WHATEVER they wanted, so long as they weren't hurting OTHERS. In that case, we should not intervene if we saw our child about to stick a fork in an electric socket. We might WARN them of the danger (just as Mill advises us to warn someone who is about to walk across an unsafe bridge), but we must not COMPEL them to stop. That is absurd. We think that parents ought to restrict their children's liberties. "It's for your own good," parents commonly tell their children. But, WHY is this permissible?

In this case, the child is deemed an incompetent judge of what they really want. If they were fully rational and capable of understanding the consequences of their actions, they WOULDN'T want to stick the fork into the electric socket. We can capture this idea with the concept of hypothetical consent:

**Hypothetical Consent:** It is permissible to restrict an individual's autonomy for their own good if that is what they WOULD WANT us to do, were that individual fully rational, aware of the consequences, etc.

The idea is that, SOMEDAY, the children will look back and be glad that their parents didn't let them stick a fork into an electrical socket. The consent is hypothetical. Hypothetically, children will one day look back and consent to the restrictions that their parents placed on them.

Objection: If this proposal were true, hypothetical consent WOULD justify paternalism. But, IS it true? If it is, then it may end up justifying coercive interference in a much broader range of cases than just parents raising children.

For instance, if someone thinks that, when they jump out of the window, they will fly away, we might (like a parent) forcibly restrain them and say, "This is for your own good." Why? Because the person is not thinking clearly. They are being IRRATIONAL. We believe that, if they knew the facts, and could consider them rationally, they would not really want to jump out of the window; or, as a more commonplace example, pushing someone out of the way when they unknowingly walk in front of a car. We think this interference permissible because, if they knew the facts, they would want to be shoved.

Perhaps we're happy with that. But, now we're off on a slippery slope. Consider, for instance, the motorcyclist who refuses to wear a helmet. We might think that he irrationally weights the slight inconvenience/un-coolness of wearing a helmet as being much more significant than it really is, while at the same time under-estimating the seriousness and probability of the potential harm. (Either that, or else he KNOWS that it is irrational, but does it anyway because he is weak-willed.) Dworkin writes,

"We all know that ... we are prone to disregard dangers that are only possibilities, that immediate pleasures are often magnified or distorted." (92)

But, then, perhaps the **motorcyclist** DOES hypothetically consent to being forced to wear a helmet, since he WOULD consent to it if he could vividly consider and accurately weight the potential harm against the present inconvenience. If so, then a law requiring helmets is justified.

Similarly, if **smokers** could accurately comprehend the real threat of the risk of cancer, or if he weren't weak-willed due to addiction, he WOULD stop smoking. So, apparently, smokers give their "hypothetical consent" to being forced to quit smoking. Is this correct? Or, imagine teenagers being forced to use condoms, or be abstinent, or get STD tests before sex, because they cannot fully comprehend the real threat of STD's from **unprotected sex**. Do they, too, "hypothetically consent" to this sort of coercion?

What of those religious sects who believe that **blood transfusions** are immoral? Who decides whether they are being irrational? Do we think that they would want the blood transfusion if only they were "in their right mind"? If so, then we ought to compel individuals to receive certain medical treatments, even when those treatments are against that person's religion.

**Selling One’s Self Into Slavery (Maximizing Liberty):** Mill explicitly states that individuals ought not be permitted to sell themselves into slavery. This is CLEARLY a case of interfering with someone’s autonomy solely “for their own good”. So, Mill endorses at least this ONE instance of pure paternalism.

Why is this? Because, if we are against paternalism, presumably it is because we place great emphasis on FREEDOM, or autonomy. But, then, it would be contradictory to allow someone to make one single free choice which then removed ALL of their future free choices (e.g., by enslaving themselves). If the goal is to preserve freedom, then in these cases, single free choices will need to be restricted in order to preserve future free ones.

Objection: The problem with Mill’s justification of interference here is that this ALSO applies to a much wider range of cases. For, it is not just enslavement that removes freedom. So does death! It is fairly uncontroversial that we should stop someone who puts out an ad in the newspaper asking someone to kill them; or that we should try to stop people from committing suicide. Preventing someone from making a free choice to die in these cases preserves their future freedoms. *(or, on the previous justification of hypothetical consent, it is justified because such a person is not thinking clearly; if they WERE, then they would consent to being stopped).*

But, then, helmet and seatbelt laws would be justified for this reason, as would blood transfusions against a patient’s will (to prevent the risk of death, which removes all future free choices). Again, there may be a slippery slope here. For, lots of other common activities are fairly dangerous. For instance, mountain-climbing, sports-car racing, eating fast food, and moving to downtown Detroit. Should we, then, restrict the ability to do these things in the interest of saving lives and preserving future freedoms? How high does the risk have to be before it justifies paternalistic interference? Consider:

<b>Activity</b>	<b>Chance of Death<sup>1</sup></b>
• Attending a Dance Party	1 in 100,000
• Playing Football	1 in 50,000
• Driving	1 in 6,700
• Mountain Climbing	1 in 1,750
• Hang-Gliding	1 in 560
• Using Heroin	1 in 112
• Base-Jumping	1 in 60
• Climbing Above 6000’ in the Himalayas	1 in 10

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<sup>1</sup> Source: <http://www.besthealthdegrees.com/health-risks/>; Heroin statistic: In 2013, there were 900,000 heroin users and 8,000 deaths from heroin overdose (<http://luxury.rehabs.com/heroin-addiction/death-mortality-rates/>)

Conclusion So Far: Here are some principles that WOULD justify paternalism, if true, but seem to be false in light of counter-examples:

- **Maximizing Utility:** It is permissible to restrict an individual's autonomy whenever doing so promotes what is best for that person.

Problem: This would justify mandatory exercise, healthy eating, studying, etc. Basically, this would make it permissible for the government to COMPLETELY violate autonomy, micro-managing every aspect of our lives, and restricting liberty 100%.

- **Hypothetical Consent:** It is permissible to restrict an individual's autonomy whenever doing so promotes what a fully informed, fully rational individual WOULD WANT.

Problem: This, as we have seen, would potentially justify all of the above as well.

- **Maximizing Liberty:** It is permissible to restrict an individual's autonomy whenever doing so maximizes the number of free choices that that individual has access to.

Problem: This, as we have seen, would potentially justify all of the above; or, at the very least, justify a prohibition on dangerous activities (including mountain climbing) as well as, e.g., mandatory treatment of illnesses, etc.

Dworkin's Reply: We might think that these absurd results count as a decisive refutation of the legitimacy of paternalistic laws or actions. Dworkin, however, says that it is just a matter of figuring out where to draw the line. Paternalism about seatbelts, he says, is permissible because the restriction on freedom (putting a strap across your chest while driving) is miniscule compared to the benefit (not dying). On the other hand, paternalism about mountain-climbing is morally wrong because the restriction on freedom is great (it might be an entire lifestyle choice, or play a very important role in one's identity) compared to the benefit. In short, he seems to propose:

- **Maximizing Cost-Benefit:** It is permissible to restrict an individual's autonomy whenever the cost to that individual of doing so (e.g., costs of utility, liberty, etc.?) is very minor, and the benefit is very great.

*[Is Dworkin right? Can you think of any counter-examples to this proposal?]*