

BOOK OF ABSTRACTS

FOR ONE'S OWN GOOD? THE CONCEPT AND ETHICS OF PATERNALISM

International Scientific Conference
02-04 OCTOBER 2019, BELGRADE, SERBIA

IES

INSTITUTE OF EUROPEAN STUDIES, SERBIA

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FOR ONE'S OWN GOOD? THE CONCEPT AND ETHICS OF PATERNALISM

It is fairly uncontroversial, even among liberals, that paternalism, i.e. interferences with a person's freedom or autonomy for their own good, is justified and called for if this person is not, not yet, or no longer sufficiently autonomous and thus not able to decide and act in her best interest. This applies first and foremost to children and people who are mentally incapacitated, be it temporarily or permanently. However, once people are deemed sufficiently autonomous, liberal consensus states that paternalistic interferences are out of the question. Yet, it seems that paternalistic interferences still pervade our lives, be it in the form of certain laws or state actions or be it in the form of social interaction on various levels. For example, we are obligated to wear seatbelts when driving or to have insurance when owning a car, so that we avoid or at least lower the risk of serious injury and are avoid going bankrupt when having to cover costs in case we cause an accident. In the medical context, physicians often still face the expectation to decide and act on behalf of their patients, i.e. to act paternalistically, despite the prominence of the principle of respect for autonomy in medical ethics and getting a patient's informed consent. In private life, friends and family tend to interfere with our lives if they think we are about to make a mistake that goes against our best interests. Finally, sometimes we even try to act paternalistically toward ourselves—strange as this may sound—, e.g. by using technology to manipulate and steer our own behavior toward what we think is best for us but which we would not do if it were not for such manipulations.

All of these examples and practices raise a number of theoretical and ethical questions. First of all, how should we

understand the concept of paternalism in general? A number of different conceptual variants of paternalism have been put forward in philosophical debate, and it is far from clear which of these we should refer to in order to classify certain situations or actions as paternalistic or not. Most prominently, hard paternalism, which consists of ignoring also autonomous decisions of persons, has been distinguished from soft paternalism, according to which paternalistic interferences are essentially only meant to check whether a person's decision is sufficiently autonomous or to improve on a person's autonomy, and which is supposedly compatible with respecting peoples' autonomy. Moreover, libertarian or nudge paternalism has been suggested not even to interfere with peoples' liberty, let alone their autonomy, while still being able to steer people in the direction of their own good. Yet, on the one hand, it has been questioned whether soft paternalism and nudging should count as paternalism at all. On the other hand, and regardless of whether to classify such interferences as (soft or nudge) paternalistic or not, they may raise serious ethical concerns of their own, e.g. when it comes to the kind of interferences needed in order to be able to check whether a person is sufficiently autonomous in the case of soft paternalism, or whether nudging, due to its subtle manipulating nature, should in fact still count as interfering with a person's autonomy. Finally, hard paternalism raises the question of what should count more in cases of conflict: a person's well-being or her autonomy, whereas this includes the challenge whether (respecting a person's) autonomy should be considered an important part of well-being. Moreover, these questions are not only of theoretical or metaethical interest, i.e. how to spell out these conceptions convincingly and in sufficient detail, but also unavoidably comprise serious ethical challenges. Accordingly, there is an ongoing debate on whether, and if so on what grounds,

either of these conceptions may be morally acceptable or even called for in certain contexts or situations.

The papers presented at the workshop discuss both the theoretical and the ethical dimension of paternalism, with a special emphasis on the interrelation between theoretical or metaethical analyses, on the one hand, and discussions in various contexts of applied ethics, on the other hand. What implications may certain conceptual analyses and state-of-the-art conceptions of paternalism have on specific assessments of concrete situations in applied ethics, and how plausible are these implications, especially when it comes to possible or contested justifications for paternalistic interferences (vs. non-interfering)? Conversely, what can discussions in applied ethics about cases of (apparent) paternalistic interferences tell us about the appropriateness of certain theoretical or metaethical analyses of such cases in terms of state-of-the-art conceptions and theoretical distinctions of paternalism? Could they provide us with convincing reasons for criticizing and revising certain conceptual analyses of paternalism?

International conference
**FOR ONE'S OWN GOOD? THE CONCEPT
AND ETHICS OF PATERNALISM**

October 2–4, 2019

Organized by

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Host institution

Institute of European Studies (IES) (<http://www.ies.rs/en/home/>)
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CONFERENCE PROGRAM

Wednesday, Oct 2	
13:00 – 13:30	Miša Đurković, Veselin Mitrović and mister Simon Ilse, Director Heinrich Böll Stiftung, Belgrade Office <i>Introduction</i>
13:30 – 14:30	Lucie White <i>The Complicated Relationship Between Autonomy and Wellbeing</i>
14:30 – 14:45	—Break—
14:45 – 15:45	Jovan Babić <i>Deciding for others</i>
15:45 – 16:00	—Break—
16:00 – 17:00	Katja Stoppenbrink Art. 12 UNCRPD – Does the change from substitute to shared decision-making imply an end to all problems of paternalism?
18:00	—Dinner—
Thursday, Oct 3	
10:00 – 11:00	Milica Mitrović Prehistory of Paternalism. Paternalistic Culture and Cultural Paternalism in the age of Neolithization.
11:00 – 11:15	—Break—
11:15 – 12:15	Thomas Gutmann <i>Liberalism and (How to Avoid) Paternalism</i>
12:15 – 14:00	—Lunch—
14:00 – 15:00	Miša Đurković <i>Obesity and the Limits of Legitimate Paternalism</i>
15:00 – 15:15	—Break—
15:15 – 16:15	Zoran Todorović & Dragana Protić <i>Paternalism in current medical practice: quo vadis?</i>

16:15 – 16:25	—Break—
16:25 – 17:00	Veselin Mitrović <i>Nesting Paternalism</i>
18:00	—Dinner—
Friday, Oct 4	
10:15 – 15:00	Round table and presentation of the papers: Michael Kühler, <i>How Would an Acceptable Autonomy-Oriented Paternalism Have to Look Like?</i> Jörg Zeller, <i>Patronizing or not – that's the question</i> Birgit Beck, <i>Paternalism and Liberty/Autonomy as Dialectically Related Concepts</i>

LIST OF THE SPEAKERS

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Lucie White*

THE COMPLICATED RELATIONSHIP BETWEEN AUTONOMY AND WELLBEING

Respect for autonomy and concern for wellbeing are generally regarded as two fundamental, and routinely opposed, values in medical ethics. While respect for autonomy demands that we allow a patient to make his own self-regarding decisions, a concern for wellbeing can support paternalistic interference with these decisions. However, these two values are frequently understood (often unintentionally) in ways that are far more intertwined than this picture would suggest. Autonomy is often deployed in a way that sanctions paternalistic interference with self-regarding decisions. And there is often fundamental confusion concerning how wellbeing should be understood, with some theorists suggesting that autonomous decision-making is closely related to or amounts to the pursuit of subjective wellbeing, while others (implicitly or explicitly) see autonomy as shaped in some way around an intersubjective conception of wellbeing. These two notions of wellbeing are often not clearly distinguished.

I will argue that autonomy and wellbeing do indeed play an essential role in medical ethics. But in order for these concepts to play their respective roles, we need to draw them out from each other, and define their conceptual boundaries, and points of opposition, clearly. Chiefly, we need to keep intersubjective (paternalistic) judgments out of judgments concerning autonomy.

I will first draw out the connections between judgments of autonomy or competence in medical ethics and subjective wellbeing, explaining what role subjective wellbeing plays in decision-making. I will argue that pursuit of subjective wellbeing is an important reason (though not the only reason)

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that patients value making their own self-regarding decisions. These two values are therefore inescapably and closely intertwined. Subjectively-conceived wellbeing, however, should be carefully distinguished from intersubjectively-conceived wellbeing. It is the latter type of wellbeing that forms the justification for paternalistic interference with a patient's self-regarding decisions. I will show how intersubjective judgments concerning wellbeing often creep into judgments concerning autonomy or competence, and argue that this leads to a notion of autonomy that is unable to play its normative role. I will provide some suggestions for how to separate out judgments of autonomy from intersubjective concern for wellbeing. As well as carefully distinguishing between subjective and intersubjective notions of wellbeing, a key part of this will be to reduce the motivation to use a principle of autonomy as a means of separating out the decisions we do not wish to respect from those we do.

This, I argue, must involve at least entertaining the notion that intersubjective concern for wellbeing can, in some cases, legitimately override autonomous judgments. The premise that autonomous decisions must be honoured at all costs has led to many attempts in both research and medical ethics to deem any behaviour considered problematic nonautonomous. Though it may seem counterintuitive, accepting that intersubjective judgments might in some cases legitimately override the imperative to respect autonomous action could reduce paternalism by bringing it out into the open.

Key words: Autonomy, Wellbeing, Paternalism, Medical Ethics, Intersubjective Judgment

Jovan Babić*

DECIDING FOR OTHERS

Two main theses are analyzed in the paper. First is that deciding for others, i. e. on their behalf and in a way that is assumed not to be against their will, is always something that must be justified. There is no direct justification for deciding for others in any real justificatory terms in the sense in which decisions are *prima facie* justified: that some end has been set and an act is launched to produce it (otherwise it won't happen by natural causation). There is not such *prima facie* justification in deciding for others: such decisions are not based in the will of those who act but outside it (in the will of others). Deciding for others requires delegating the capacity to decide to others, who through that act become part of the "self" of the ones for whom the decision has been made. In the final analysis it will be found that the only way to justify deciding for others is through identification (as a form of deciding for oneself), otherwise it will be imposing one's will on others, i. e. violence.

The second thesis, having as a collateral implication that Hippocratic Oath is, or might become, morally wrong, is that from the moral point of view respecting others and helping them have very strict requirement regarding their ordering. That's because respect can exist only as a reflexive and reciprocal relation (I cannot respect others without respecting myself and vice versa) which give priority to respect over helping: helping is legitimate only under condition of respecting the autonomy of those helped. However, duty to help is also a universal moral duty (you cannot respect and at the same time refuse help). That's why duty to help is the duty, i. e. it is obligatory, despite, or rather because of, the fact that help itself has to be conditioned by autonomy of the helped one: duty to respect precedes the duty to help but when the two

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are in accordance the obligatory force contained in the duty to help is strong enough to make it an absolute duty, stronger than any possible apologetic scheme to avoid that duty, like the “sanctity of life”.

Key words: Deciding for others, moral duty, violence, Autonomy, helping others

Katja Stoppenbrink*
**SUPPORTED DECISION-MAKING
AND PATERNALISM**

In what can be termed an exercise in legal ethics I will assess whether and, if so, in how far the legal arrangements which have been either adopted in the aftermath of article 12 of the UN Convention on the Rights of Persons with Disabilities (13 Dec 2006) (in the following: CRPD) or which have been deemed compatible with art. 12 CRPD can improve the situation for those who are – by the very definition of ‘mental and legal capacity’ – regarded as mental health patients because, from a legal point of view, they are incapacitated and incompetent decision-makers. Art. 12 CRPD demands “equal recognition before the law”, its para. 2 provides that “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.” According to some, an outright revolution is at present going on in mental health law. However, especially art. 12 CRPD is being controversially discussed as to whether it will foster protection and self-determination of mentally impaired persons or whether it will rather lead to a deterioration of their health care, legal and other support. I will argue that the proclaimed shift from substitute to supported decision-making is dilemmatic in a threefold way: *first*, taken at face-value it constitutes a premature abandonment of the advantages of the ‘competence model’ (i.e. the clear-cut distinction of competent and incompetent persons), *second* it can lead to a challenge to the possibility of involuntary treatment and admission, and *third*, the abandonment of legal guardianship and curatorship in favour of a model of ‘assisted self-determination’ itself is problematic. While pursuing the objective of greater self-determination,

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we are *de facto* threatening mentally ill or cognitively impaired persons' well-being and (financial or other) safety.

Key words: Paternalism, Supported decisions, incompetency, mental health, involuntary treatment

Milica Mitrović*

CONCEPTS OF PATERNALISTIC CULTURE AND CULTURAL PATERNALISM IN THE AGE OF NEOLITHIZATION

The paper examines the indicators of paternalism in archaeological remains from the Neolithic period. At this time people moved from the Mesolithic mobile to the Neolithic sedentary way of life, that is, from a hunter-gatherer to a producer economy. Neolithisation involves two processes: 1) the emergence and development of the Neolithic in primary areas and 2) the spread of the Neolithic into the surrounding areas. Paternalism is viewed through the concepts of paternalistic culture and cultural paternalism.

Paternalistic culture is here explored through the qualities of paternalistic leadership on the Early Neolithic remains of the Pre Pottery Neolithic (PPN, c. 9700-6250 years B.C.) of the Fertile Crescent. Manifestations of the PPN period, such as public buildings, squares, communal (mortuary) rituals and feasts, equal mortuary treatment of all, as well as a common ancestor, paraphernalia and prestige items, can in certain contexts be understood as indicating a family atmosphere: close and individualized relationships within the community, leaders involved in the non-work domain, expecting loyalty and maintaining status, which are all characteristics of paternalistic leadership.

Cultural paternalism, when one group imposes its own culture on another group with the intention of advancing its way of life, is explored on material remains that originate from the area of the Iron Gates (in the Danube Gorges, border between Serbia and Romania) from the transition of the Mesolithic to the Neolithic, c. 6200-6000 / 5950 years cal B.C. The paper examines how local Mesolithic communities embraced the culture of the surrounding Neolithic population that inhabited

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the Morava, Middle Danube, and Tisza valleys. The period represents cultural hybridity in this region, given that subsistence patterns and mortuary practices continue from the preceding Mesolithic period, while new forms of material culture, such as ceramics and novelties in stone and bone tools, appear in trapezoidal houses of older tradition. Individuals of nonlocal origin appear in the Late Mesolithic, and their numbers increase over the course of Mesolithic-Neolithic transformations. One model suggests that Neolithic communities coming to southeastern Europe treated other communities as if to domesticate them, which bears connotations of paternalism. The question is whether the prolonged process in which local hunter-fisher-gatherer communities abandoned their characteristics and embraced material culture as well as the newly arrived people was voluntary or inevitable. The answer may lie in the remarkably sculpted fish-like boulders discovered at the Lepenski Vir site dated to this stage. The emotions of fear and sadness that can be read on their faces may indicate an unwilling acceptance of new Neolithic cultural elements, and suggest that cultural paternalism was part of the process of Neolithisation.

Key words: Paternalistic Culture, Cultural Paternalism, Archaeology, Neolithisation, Fertile Crescent, Iron Gates

Thomas Gutmann*

LIBERALISM AND (HOW TO AVOID) PATERNALISM

The lecture first presents a rough sketch of the core dynamics of the anti-paternalist liberal tradition (from Kant to Dworkin) which is centered around the notion of an egalitarian normative individualism, protecting the conditions of autonomy as a set of individual rights expressive of one's sovereignty over oneself. Historically, the liberal tradition starts with a strong anti-paternalist momentum (part A). The presentation then (part B) recaps three of the topics paternalism theory has dealt with recently, i.e. different concepts of autonomy, the moral and legal limits of "soft paternalism" and the relationship between paternalism and consequentialist moral theories (part B). In its main part C, the lecture focuses on the so-called "argument from justice" which claims that paternalistic and anti-paternalistic policies do have distributive effects of their own and might be a matter of distributive fairness (Arneson 1997; Anderson 2014). It discusses several options to analyze this claim and its relevance and criticizes that most autonomy-enhancing approaches blend out the dialectics of protection and tutelage: To protect people from making wrong choices by invalidating their choices is incompatible with recognising them as equals. In an autonomy-orientated society, being classified as being incompetent or as still not competent enough means fundamental exclusion. Against this, having the license to make use of their rights must be the default position for adults. It is only through a low threshold concept of autonomy that the fundamentally egalitarian, as well as the inclusive character of the concept (or regime) of autonomy can be ensured.

Key words: Anti-paternalism, Autonomy, argument for justice, individual rights, Liberalism

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Miša Đurković*

**OBESITY AS POLOITOICAL AND THEORETICAL PROBLEM:
AN ARGUMENT FOR THE LIBERAL STATE INTERVENTION**

Spread of obesity and diseases that it causes brought to justified warnings of an epidemic. Author starts from classical liberal differentiation between self regarding and others regarding acts, and then raises the issue of the possible liberal approach to obesity problem. He presents real causes of the obesity, and proceeds with two different visions of contemporary liberalism: one, abstract, which doesn't pay attention to context in which we have to draw the line between self and others regarding acts, and second, advanced, responsible liberalism of contemporary liberal democratic state which cares a lot about the context, including international one. From the first perspective state would be obliged not to interfere in overweight problems of its citizens. From the second it would be forced to do so for many substantial reasons. Although author justifies right and even duty of the state to deal with obesity problem, he insists that for the time being it is mostly reacting in wrong way: since idea of individual autonomy is not perceived in adequate way, state reacts to the consequences and not to the causes of the problem.

Key words: Obesity, Liberalism, Limits of State Intervention, Food

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Zoran Todorović^{*}, Dragana Protić^{***}

PATERNALISM IN CURRENT MEDICAL PRACTICE: QUO VADIS?

Paternalism could be defined as “an action performed with the intent of promoting another’s good but occurring against the other’s will or without the other’s consent”. Hence, it is an antipode of autonomy. Liberalism protects individual freedom, and it defines autonomy mainly as a permission, i.e. self-rule that is free from both controlling interference by others. European school of bioethics offers a more comprehensive definition of autonomy by emphasizing the importance of the interaction with others in the fulfillment of all its aspects. In medical practice, autonomy involves two important steps: (1) patient with decision-making capacity makes autonomous decision about his health and treatment, and (2) health workers give the advice and conduct the treatment according to the patient’s choice. Patients could apprehend autonomy in different ways. First, they can decide on their own, and second they can delegate the decision to medical professionals. Obviously, a selective paternalism is usually present (and necessary to some extent) in medical practice. There are various scenarios of selective paternalism, for example management of critically ill, and use of placebo in clinical practice. Unnecessary paternalism could be overcome by assessing the importance of treatment goals with different tools, such as Analytic Hierarchy Process and Likert scales.

Key words: Paternalism, Liberalism, Medical practice, Bioethics, Selective paternalism

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Veselin Mitrović*

NESTING PATERNALISM

Paternalism is the interference of a state or an individual with another person (*V.M. and a group*), against their will, and defended or motivated by a claim that the person interfered with will be better off or protected from harm. The issue of paternalism arises with respect to restrictions by the law such as anti-drug legislation, the compulsory wearing of seatbelts, and in medical contexts by the withholding of relevant information concerning a patient's condition by physicians. At the theoretical level it raises questions of how persons should be treated when they are less than fully rational.**

The text focuses on two main goals. First, the relation between diminished autonomy and freedom to act in one's best interest, and a person's actions. Accordingly, the second aim is to present challenges for the contemporary understanding of paternalism.

The main hypothesis is that certain social groups value (state-issued) benefits more than their autonomy.

Various forms of paternalism are analyzed through four case studies: the relation between paternalism-protectionism, paternalism-collectivism, paternalism-authoritarianism. Aside from this, the analysis also focuses on how the given definition of paternalism includes and excludes certain cases or states containing a paternalist approach, e.g. "against their will," individuals not entirely rational, exclusively individuals and not groups, etc.

The results obtained show that certain groups begin to think in a paternalistic way, even though there is a fine line between paternalism, protectionism, and authoritarianism.

Emptiness in social relations occurs when the gap left by the

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** <https://plato.stanford.edu/entries/paternalism/> Accessed 22.09.2019.

narrowing of autonomy is replaced with paternalistic thinking. Combined with apathy and “state altruism,” such a social state not only maintains, but actively generates groups dependent on state-issued benefits, mostly distributed through corrupt state officials.

Key words: Paternalism, Protectionism, Authoritarianism, Collectivism, Autonomy

Michael Kühler*

HOW WOULD AN ACCEPTABLE AUTONOMY-ORIENTED PATERNALISM HAVE TO LOOK LIKE?

Paternalism may be generally defined as follows:

“I suggest the following conditions as an analysis of X acts paternalistically towards Y by doing (omitting) Z:

[1] Z (or its omission) interferes with the liberty or autonomy of Y.

[2] X does so without the consent of Y.

[3] X does so only because X believes Z will improve the welfare of Y (where this includes preventing his welfare from diminishing), or in some way promote the interests, values, or good of Y” (Dworkin 2019, section 2).

Paternalistic interferences in people’s freedom or autonomy are then taken to be *prima facie* unacceptable within modern ethics, which emphasizes people’s freedom and respect for individual autonomy. Consider the following two otherwise famously opposing authors Immanuel Kant and John Stuart Mill, who share a fundamental rejection of paternalistic interferences.

“No one can coerce me to be happy in his way (as he thinks of the welfare of other human beings); instead, each may seek his happiness in the way that seems good to him, provided he does not infringe upon that freedom of others to strive for a like end which can coexist with the freedom of everyone in accordance with a possible universal law (i.e., does not infringe upon this right of another). A government established on the principle of benevolence toward the people like that of a father toward his children – that is, a *paternalistic government*

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(*imperium paternale*) [...] is the greatest *despotism* thinkable” (Kant 1793, 291).

“[T]he sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant” (Mill 1859, 236).

However, Mill himself has provided an equally famous example of what is, in current debate, considered a case of soft paternalism, whereas soft paternalism is taken to aim at merely checking whether a person’s decision is actually sufficiently autonomous or at promoting the person’s autonomy:

“If either a public officer or any one else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river” (Mill 1859, 292).

This raises the well-discussed question whether some form of paternalism, i.e. primarily soft paternalism, may nevertheless be deemed acceptable within the framework of modern ethics. In my paper, I address this question and try to add to the debate in discussing a number of crucial criteria for any such soft or autonomy-oriented paternalism to be considered acceptable in principle.

In particular, firstly, I discuss how autonomy-oriented interferences may already feature within a person’s will-formation, i.e. as long as the person has not yet made a decision and is about to put it into action. For, this complicates possible cases of paternalism, since interferences at such an early level introduce a gray area of what may count as interferences with-

out the person's consent if the person had not yet made up her mind in the first place. Secondly, I discuss the relation between autonomy and goodness, for it seems natural to assume that a person's sufficiently autonomous decision would always aim at what may be considered the best option in any given situation. Hence, if a person appeared to opt for a less good option, this would put into question the assumption that her decision was sufficiently autonomous to begin with. Finally, I discuss the nature of goodness involved and argue that an acceptable autonomy-oriented paternalism, if there is any, has to comprise a subjectivist notion of goodness, featuring the individual conception of the good of the person in question but in an enlightened and assumingly better-informed version. For, otherwise, there would obviously be no need for paternalistic interference in the first place.

Key words: Paternalism, autonomy, autonomous decision, goodness, soft paternalism

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Jörg Zeller*

PATRONIZING OR NOT – THAT’S THE QUESTION

Paternalism is a problem on the border of theoretical and applied ethics. If it is theoretically necessary to base ethics on free will it is easy to imagine situations where it would be unethical not to act in the place of another person. This would be the case if the patronizing person realizes that the patronized person - say a child or a person physically or mentally incapable to assess a situation correctly and to act appropriately - would act in a way detrimental for him- or herself. On the other hand, it would be disastrous for a person’s ability to behave and act as a self-conscious and autonomous person if he or she has accustomed him- or herself to let other people act on his or her behalf.

To patronize another person - also if it happens with the best intentions to do the best for the patronized person - seems thus to evoke an ethical paradox: to patronize or not to patronize another person in a given situation can at the same time be ethical and unethical.

In my paper I will try to find out if the paradox is real or seeming - i.e. if it can be solved in a both theoretical and practical satisfying way.

Key words: Paternalism, applied ethics, incapability, autonomy, patronized person

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Birgit Beck*

**PATERNALISM AND LIBERTY/AUTONOMY AS
DIALECTICALLY RELATED CONCEPTS**

Paternalism is commonly understood to comprise interventions (acts or omissions) which interfere with a person's liberty and personal autonomy, respectively, for her own good and irrespective of her (explicit or implicit) consent. In this regard, interference with liberty and/or autonomy, lack of consent by the paternalised person as well as a benevolent intention on the part of the paternalising person are considered to be necessary conditions of paternalistic interventions. A frequently referred to definition by Gerald Dworkin conceptualises paternalism as follows:

“I suggest the following conditions as an analysis of *X acts paternalistically towards Y by doing (omitting) Z*:

[1] Z (or its omission) interferes with the liberty or autonomy of Y.

[2] X does so without the consent of Y.

[3] X does so only because X believes Z will improve the welfare of Y (where this includes preventing his welfare from diminishing), or in some way promote the interests, values, or good of Y.” (Dworkin 2017, sub 2)**

Furthermore, it is often assumed by both proponents and opponents of paternalism that paternalistic interventions are “justified and called for if [the concerned] person is not, not yet, or no longer sufficiently autonomous and thus not able to decide and act in her best interest” (Mitrović/Kühler 2018) as,

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** Dworkin, G. (2017): Paternalism. *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), Edward N. Zalta (Ed.), URL = <<https://plato.stanford.edu/archives/win2017/entries/paternalism/>> [06.08.2018].

for example, in the case of children, persons suffering from dementia or otherwise (at times) cognitively impaired persons. To the contrary, interventions which interfere with the liberty and/or autonomy of persons who are deemed to be sufficiently autonomous without their consent are considered to be at the least morally problematic (Ach/Pollmann 2017)*. If and to what extent they are morally *wrong* depends on the axiological weighting of autonomy as against well-being.

Assuming that it is a necessary condition for an intervention to interfere with the liberty and/or autonomy of a person in order to instantiate a case of paternalism, it appears that paternalism has to be considered as a heterogeneous concept which alters its structure and meaning according to the interrelated concepts of liberty and autonomy, respectively. If one takes (legal/political) *liberty* as a *threshold concept*, then it appears that an intervention can be *either paternalistic or not* depending on the attribution of liberty or the lack thereof to the relevant person. In this case, paternalism can be viewed as a threshold concept, too. If one takes (ethical) *personal autonomy* to be a *gradual concept*, it appears that an intervention can be *more or less paternalistic* depending on the degree of autonomy the person in question is currently endowed with. In this case, paternalism amounts to a gradual concept as well.

Moreover, the ethical evaluation of instances of paternalism likewise appears to depend on the related concepts of liberty and autonomy, respectively. To this effect, paternalistic interventions can be considered as *binary (categorically) morally problematic* concerning liberty and/or *gradually morally problematic* contingent on the degree of a person's autonomy assumed. Furthermore, one can question if instances of morally *unproblematic* (here in the sense of being "justified and called

* Ach, J. S./Pollmann, A. (2017): Moralisch problematisch – Was aus einem Problem ein moralisches Problem macht. In: Hoesch, M./Laukötter, S. (Eds.): Natur und Erfahrung. Bausteine zu einer praktischen Philosophie der Gegenwart. Münster: mentis, 39–60.

for”) seemingly paternalistic interventions amount to paternalism in the first place. If children, persons suffering from dementia or otherwise (at times) cognitively impaired persons lack a sufficient degree of autonomy and a certain threshold of liberty, respectively, they can *by definition* not be treated in a paternalistic way, because a necessary condition for paternalism (interference with autonomy and/or liberty) does not apply. However, this assumption appears to run contrary to the etymological roots of the term “paternalism” as well as to the established terminology in ethical and particularly public political debates.

In the light of these considerations, the paper proposes the following conceptual differentiations:

[1] The concept of paternalism depends dialectically on the interrelated notions of liberty and personal autonomy, respectively.

[2] Whenever a person’s *liberty* (in the above-mentioned legal/political sense, not in a metaphysical sense regarding “free will”) is interfered with, irrespective of her explicit or implicit consent and with (exclusively or – pace Dworkin – at least partly) benevolent intent, this amounts to an instance of legal/political, institutional or state paternalism.*

[3] Whenever a person’s *autonomy* is interfered with, irrespective of her explicit or implicit consent and with (exclusively or at least partly) benevolent intent, this amounts to an instance of (hard/soft or rather weak/strong) paternalism in both institutionalised, for example, clinical contexts and informal social or private contexts (Kühler 2017)**.

* If one took Dworkin’s condition for granted that paternalistic interventions are necessarily undertaken exclusively for the sake of the paternalised persons, actual instances of state paternalism would arguably be extremely unlikely.

** Kühler, M. (2017): Toleranz und/oder Paternalismus im engeren sozialen Nahbereich? Zeitschrift für Praktische Philosophie 4(2): 63–86.

[4] Only persons who are ascribed a legal status of liberty (which roughly means positive and negative freedom to execute certain civic liberties) or possess a sufficient degree of personal autonomy can be treated in a paternalistic way.

[5] Persons who lack a legal status of liberty or a sufficient degree of personal autonomy can certainly be treated in *benevolent* ways irrespective of their consent which, however, does *by definition* not amount to any paternalistic intervention.*

[6] Persons who lack a legal status of liberty or a sufficient degree of personal autonomy can certainly be treated in *morally problematic* ways, however, the respective problems do *not* relate to paternalism.

[7] To manipulate the beliefs, decisions and actions of persons which are ascribed a legal status of liberty and/or possess a sufficient degree of autonomy (like in the case of nudging) can only count as paternalistic intervention if the applied measures are actually and justifiably based on *benevolent intentions* (on the part of the respective “choice architects”).”

From these assumptions, the paper concludes that in current ethical and political debates some, on the one hand, benevolent and, on the other hand, morally problematic interventions are misleadingly classified as paternalistic. Paternalism only comprises such interventions which at the same time 1) interfere with the liberty or autonomy of sufficiently

* It depends on the underlying legal and ethical theory whether such individuals would be considered as (legal or moral) persons in the first place. Furthermore, it appears that the notion of consent presupposes a sufficient degree of autonomy or at least liberty. If this is the case, it appears – again *ex hypothesi* – impossible to ignore such individuals’ consent (because they lack the required preconditions) which, however, according to Dworkin’s definition, is a necessary condition of paternalism. Therefore, they cannot be treated paternalistically.

autonomous persons, 2) ignore those persons' consent and 3) are conducted out of benevolent intentions. If one of those premises does not apply, there is no instance of paternalism. In order to exemplify the above conceptual suggestion, the paper discusses some current examples of (seemingly) paternalistic interventions from applied ethics.

Key words: Paternalism, Liberty, Autonomy, Benevolent intention, Well being

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