

1: The Limits Of Medical Paternalism | Download eBook PDF/EPUB

The Limits of Medical Paternalism (Social Ethics and Policy) and millions of other books are available for Amazon Kindle. Learn more Enter your mobile number or email address below and we'll send you a link to download the free Kindle App.

Introduction The government requires people to contribute to a pension system Social Security. It requires motorcyclists to wear helmets. It forbids people from swimming at a public beach when lifeguards are not present. It forbids the sale of various drugs deemed to be ineffective. It forbids the sale of various drugs believed to be harmful. It does not allow consent to certain forms of assault to be a defense against prosecution for that assault. The civil law does not allow the enforcement of certain kinds of contracts, e. It requires minors to have blood transfusions even if their religious beliefs forbid it. Persons may be civilly committed if they are a danger to themselves. Doctors do not tell their patients the truth about their medical condition. A physician may tell the wife of a man whose car went off a bridge into the water and drowned that he died instantly when in fact he died a rather ghastly death. A husband may hide the sleeping pills from a depressed wife. A philosophy department may require a student to take logic courses. A teacher may be less than honest about telling a student that he has little philosophical ability. All of these rules, policies, and actions may be done for various reasons; may be justified by various considerations. When they are justified solely on the grounds that the person affected would be better off, or would be less harmed, as a result of the rule, policy, etc. As the examples indicate the question of paternalism is one that arises in many different areas of our personal and public life. As such, it is an important realm of applied ethics. But it also raises certain theoretical issues. Perhaps the most important is: It also raises questions about the proper ways in which individuals, either in an institutional or purely personal setting, should relate to one another. How should we think about individual autonomy and its limits? What is it to respect the personhood of others? What is the trade-off, if any, between regard for the welfare of another and respect for their right to make their own decisions? This entry examines some of the conceptual issues involved in analyzing paternalism, and then discusses the normative issues concerning the legitimacy of paternalism by the state and various civil institutions.

Conceptual Issues The analysis of paternalism involves at least the following elements. It involves some kind of limitation on the freedom or autonomy of some agent and it does so for a particular class of reasons. As with many other concepts used in normative debate determining the exact boundaries of the concept is a contested issue. And as often is the case the first question is whether the concept itself is normative or descriptive. Is application of the concept a matter for empirical determination, so that if two people disagree about the application to a particular case they are disagreeing about some matter of fact or of definition? Or does their disagreement reflect different views about the legitimacy of the application in question? While it is clear that for some to characterize a policy as paternalistic is to condemn or criticize it, that does not establish that the term itself is an evaluative one. As a matter of methodology it is preferable to see if some concept can be defined in non-normative terms and only if that fails to capture the relevant phenomena to accept a normative definition. I suggest the following conditions as an analysis of X acts paternalistically towards Y by doing omitting Z: Z or its omission interferes with the liberty or autonomy of Y. X does so without the consent of Y. 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. Condition one is the trickiest to capture. Clear cases include threatening bodily compulsion, lying, withholding information that the person has a right to have, or imposing requirements or conditions. But what about the following case? A father, skeptical about the financial acumen of a child, instead of bequeathing the money directly, gives it to another child with instructions to use it in the best interests of the first child. The first child has no legal claim on the inheritance. Or consider the case of a wife who hides her sleeping pills so that her potentially suicidal husband cannot use them. Her act may satisfy the second and third conditions but what about the first? Does her action limit the liberty or autonomy of her husband? The second condition is supposed to be read as distinct from acting against the consent of an agent. The agent may neither consent nor not consent. He may,

for example, be unaware of what is being done to him. There is also the distinct issue of whether one acts not knowing about the consent of the person in question. Perhaps the person in fact consents but this is not known to the paternaliser. The third condition also can be complicated. There may be more than one reason for interfering with Y. Or what about the case where a legislature passes a legal rule for paternalistic reasons but there are sufficient non-paternalistic reasons to justify passage of the rule? If, in order to decide on any of the above issues, one must decide a normative issue, e. Ultimately the question of how to refine the conditions, and what conditions to use, is a matter for philosophical judgment. One should decide upon an analysis based on a hypothesis of what will be most useful for thinking about a particular range of problems. One might adopt one analysis in the context of doctors and patients and another in the context of whether the state should ban unhealthy foods. Given some particular analysis of paternalism there will be various normative views about when paternalism is justified. The following terminology is useful. If he knows, and wants to, say, commit suicide he must be allowed to proceed. A hard paternalist says that, at least sometimes, it may be permissible to prevent him from crossing the bridge even if he knows of its condition. We are entitled to prevent voluntary suicide. A broad paternalist is concerned with any paternalistic action: So if a person really prefers safety to convenience then it is legitimate to force them to wear seatbelts. A strong paternalist believes that people may have mistaken, confused or irrational ends and it is legitimate to interfere to prevent them from achieving those ends. If a person really prefers the wind rustling through their hair to increased safety it is legitimate to make them wear helmets while motorcycling because their ends are irrational or mistaken. Another way of putting this: So if a person tries to jump out of a window believing he will float gently to the ground we may restrain him. If he jumps because he believes that it is important to be spontaneous we may not. The group we are trying to protect is the group of consumers not manufacturers who may not be smokers at all. Our reason for interfering with the manufacturer is that he is causing harm to others. Nevertheless the basic justification is paternalist because the consumer consents assuming the relevant information is available to him to the harm. It is not like the case where we prevent manufacturers from polluting the air. In pure paternalism the class being protected is identical with the class being interfered with, e. In the case of impure paternalism the class of persons interfered with is larger than the class being protected. It is things like death or misery or painful emotional states which are in question. Sometimes, however, advocates of state intervention seek to protect the moral welfare of the person. So, for example, it may be argued that prostitutes are better off being prevented from plying their trade even if they make a decent living and their health is protected against disease. The interference is justified, therefore, to promote the moral well-being of the person. This then can be called moral paternalism. Finally, it is important to distinguish paternalism, whether welfare or moral, from other ideas used to justify interference with persons; even cases where the interference is not justified in terms of protecting or promoting the interests of others. In particular moral paternalism should be distinguished from legal moralism, i. Not because the dwarf is injured in any way, not because the dwarf corrupts himself by agreeing to participate in such activities, but simply because the activity is wrong. To be sure it is not always easy to distinguish between legal moralism and moral paternalism. If one believes, as Plato does, that acting wrongly damages the soul of the agent, then it will be possible to invoke moral paternalism rather than legal moralism. Normative Issues Is there a burden of proof attached to paternalism? Does the paternalist or anti-paternalist have to give a reason for their action? As we have seen the analysis of paternalism seems to cut both ways. It is an interference with liberty which might be thought to place the burden of proof on the paternalist. It is an act intended to produce good for the agent which might be thought to place the burden of proof on those who object to paternalism. It might be thought, as Mill did, that the burden of proof is different depending on who is being treated paternalistically. If it is a child then the assumption is that, other things being equal, the burden of proof is on those who resist paternalism. If it is an adult of sound mind the presumption is reversed. Suppose we start from the presumption that paternalism is wrong. The question becomes under what, if any, circumstances, can the presumption be overcome? Essentially it is the view that the fact that an act is intended to be beneficial for a person, and does not affect or violate the interests of others, settles the question of whether it may be done. Only a view which ignores the means by which good is promoted, and the ethical status of such means, can hold this. Any sensible view has to distinguish between

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good done to agents at their request or with their consent, and good thrust upon them against their will. So the normative options seem to be just two.

2: Lecture 8: Paternalism by Hayley Webster on Prezi

Defining specific limits of physician or patient authority that would be applicable to all situations is an impossible task, but, since selective paternalism is commonplace and essential in clinical practice, a model of the process is both pragmatic and necessary.

Mentally Impaired Drug Induced State Then there would need to be someone to make decisions on behalf of those who are incapable. These decision makers would become the proxy for persons who are, for whatever reason, incapable of doing so for themselves. They would exercise a proxy consent. More of this in a subsequent section of this chapter. Some believe that there can be justifications for violations of the principle of autonomy. There are four principles cited to justify restrictions on Autonomy: Harm Principle- stop an individual from causing harm to others Paternalism Principle- Weak -to stop a person from self harm Strong -to benefit a person Legal Moralism Principle- legislated morality to prevent harm or improve situations Welfare Social Benefit Principle- for the benefit of many others or for all Examples of each principle: Of all the threats to Autonomy, paternalism is the most prevalent within health care. It exists as a tradition in some settings and with some providers of health care. It has its defenders. Paternalism is characterized by action taken by someone: Patients are usually lay-persons with respect to medical care. Health care professionals have limited time to explain complicated physiological or psychological concepts to their patients. It is not clear that, even given the time, health care professionals generally would be able to provide adequate explanations, since such professionals are not usually teachers. Not every lay-person is capable of completely understanding all the issues involved in making a medical decision. Even if all the issues involved in making a medical decision can be adequately explained, health care professionals dislike being put in the position of having to defend their decisions from skeptical patients. Often, medical professionals must make decisions about what to disclose to others about a particular patient on the basis of what is best for the patient or in order to prevent harm to others. When should the demands of the recipient of care be granted, even if the decision would result in the certain death of the recipient of care? Paternalism is the interference with the liberty or autonomy of another person, with the intent of promoting good or preventing harm to that person. Examples of paternalism in everyday life are laws which require seat belts, wearing helmets while riding a motorcycle, and banning certain drugs. An action is paternalistic if its intent is to promote good or prevent harm to a person, the action is contrary to the current preferences of that person, and the action is a limitation of that persons autonomy. Examples of this are when people suffer from mental incapacities and the parental disciplining a child against their will. Hard paternalism justifies actions in cases even when the person is acting voluntarily seat belts and helmet laws.

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