

PATERNALISM: MORAL HARM VERSUS MORAL WELFARE

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ABSTRACT

The paternalist can either respect the target's autonomy or exempt from protecting the target's well-being or the paternalist can preserve the target's well-being and not respect autonomy. For instance, either the doctor can respect the patient's autonomy to choose death as the patient thinks will be better than the painful treatment or he may provide treatment aiming at his future good despite the patient's will to discontinue the treatment. This paper aims at understanding how paternalism aims at preventing moral harm and improving moral welfare. It mainly attempts to understand the concepts like moral harm and moral welfare. For this, the paper is divided into three sections. The first will discuss, what paternalism is? The second section discusses questions such as, what is moral harm? And how is the moral harm different from physical harm. How does moral welfare if any justifies paternalism? Can there be imposition of justifiable moral improvement on the agent who does not consider the self-regarding action as morally harmful? This section argues that paternalistic reasons are not enough to improve a person morally until he or she finds it harmful. This includes examining the three most discussed areas, prostitution, homosexuality, and pornography. The third section shall conclude that paternalism is a morally problematic issue.

MEANING OF PATERNALISM

We often make wrong decisions. We get confused with our choices and selections. Even if we choose things according to our own will many a times, we tend to regret for not being able to choose the right kind of action. Such mistakes and confusions with our decisions happen in almost every sphere of our life. As a patient I find it difficult whether to go for kidney transplantation- given my age and economic conditions, as a guardian I find it difficult to choose what form of school education I should provide to my children, as a government taxpayer I might be in indecisive state whether to give money to charity organizations and so on. Situations like these thus seem to suggest that if there was somebody with proper knowledge in the given domain of things making decisions would have been much easier for us. That person or institution would have been able to tell what I should do as a moral agent. He or she would have been able to tell us what sort of decision I ought to take in a given situation all things considered. In the patient's situation, when doctors suggest her to go for kidney transplantation the patient finds it much relieved. The doctors might justify this or that according to their ways of calculating human welfare and pain. Such a decision may not necessarily be always good. Since it such a suggestion comes from a professional or specialist, we take it seriously. We consider this as the best course of action. We tend to treat this decision as the ultimate as this appears to solve our moral indecisiveness. To put simply in the language of morality, this form of unsolicited help or assistance is paternalism. Paternalism in this sense is an interference with a person's liberty of choosing things for her own according to her desires. It is an intrusion to people's ability to decide what is good or bad for them. This study is an ethical analysis of the arguments that are provided in the literature to justify a paternalistic act.

Paternalism has been an enduring topic of interest for moral and political philosophers as it raises many genuine practical concerns. Philosophers have defined paternalism in different forms. While some of these definitions are designed to express a positive view there are others that try to remain neutral about whether paternalism is morally justified or not. To put it straightforwardly, paternalism is an act or attitudinal attitude with which one tries to influence others by taking a higher moral ground. It is an interference in which an agent X treats Y with a belief that whatever X decides for Y that will essentially promote Y's betterment. This also includes X's understanding that Y is incapable of deciding what is good or better for herself

and that is why it is important that X decides things for Y. This further presumes that X is in the better position than Y's position.

The philosophical definition of paternalism first appears in John Stuart Mill's masterpiece *On liberty*.ⁱ Although Mill never used this term himself, many of his contemporaries interpreted the idea in a way that justifiably corresponds to our modern day concept. He writes,

"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 opinion of others, to do so would be wise, or even right. The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In part, which merely concerns him, his independence is of right, absolute, over himself. Over his body-mind, the individual is sovereign."ⁱⁱ

Mill here talks about individual autonomy and sovereign character. Mill emphasizes on freedom/liberty as an essential element for exercising human intellectual faculties. He claims that no outside agency can ever coerce an individual on the ground of superiority in status or knowledge. People instead should exercise one's mental faculties to confront situations that come their way. He maintains this by saying that the worth of being human lies in exercising one's faculties rather than imitating others. According to him, each person should develop its individuality and originality, which will lead to excellence. Mill is presumably saying that paternalism is a way of limiting a person's liberty in order to prevent that person from his /her self-regarding harm. He anticipates that paternalism will make people dependent, cowardice and duplicate in fitting their ways of living as others instructs. This led him believe that interfering with people's choices by giving reasons that it will make him better off is not sufficient. Therefore, he seems to give a negative assertion of paternalism because it infringes individual liberty and interrupts one's growth into a matured being.

Ronald Dworkin in "Liberal Community"ⁱⁱⁱ strives to define paternalism in respect to distinction he made between volitional and critical well-being. Volitional well-being is improved if people have or achieves something that they want and critical well-being is improved if people get what it should want irrespective of what it actually wants. Dworkin maintains that life is lived well or is a good life when it is a skillful response to the distinct set of circumstances and is normatively appropriate. But when something is facilitated in terms of living well or appropriating it for one's good life than it cannot be good per se because the life

than is not endorsed by the agent himself. He doubts the motive for coercion would have much practical importance. Dworkin considers this concept of life as a challenge model because living a life requires the skillful response to the challenge of life. For him a good life is not determined by how it is impacted by the world but how much of one's performance is at all valued. Paternalism, for him is that which "try to make people's lives better by forcing them to act in ways that they think make their lives worse." ^{iv} It is an active coercion by the state to support people's well-being by making them act in ways that the others think will make their lives worse if not acted in the manner one prescribes. However, he sees that paternalism is working in two different ways, first it focuses on the volitional well-being, and second it focuses on the critical well-being. He attempts to favor one type of paternalism, which promotes the critical well-being and later considers it as self-defeating. He observes that one cannot coerce to promote something because if people do not have such interests than it would make their life worse. He thinks that paternalism towards critical well-being is too harsh because it imposes a way of life, which the agent himself does not endorse it. For instance, forcing one to do a job, which the agent does not find significant might lead her to earn enough money but might not be suitable for her until she genuinely endorses it. Paternalism, for him seems to lessen the individual's ability to consider the critical merits in reflection because it removes the challenges involved in making choices. It rather infantilizes the agent by assisting it towards living well and intrudes the very possibility of taking challenges for oneself.

A paternalistic act is defined in terms of both the outcome it produces and the reasons for which it acts. These definitions show that a paternalistic act does not necessarily involve any coercive methods or any imposition or thwarting of beliefs/desires but it primarily intends at promoting benefit to the individual who is undergoing some deficit. This means that paternalism does not simply own an absolute method for which an act is called so but there could be many methods used in acting paternalistically. There is no consensus among the philosophers regarding the definitions on paternalism where some of them conceive paternalism primarily as a matter of intent and others understands it as a matter of result. It is broadly aimed at facilitating the action of an individual who is judged to be undergoing some kind of deficit. These philosophers penetrate that there are some significant elements present in defining a paternalistic act. This includes inference with liberty, though some of the philosophers have interchangeably used autonomy and freedom for liberty. There are also other elements in the thought of some other thinkers while defining a paternalistic act. The second element is the lack of consent. When

philosophers mentioned that paternalism involves acting against the will of the target that means there is no involvement from the agent itself. Emphasizing on the element of consent the writers have provided certain requirements for its justification like, voluntariness, rational choice etc. Promoting the good is the third element, which is one of the most important elements that attract the attention of the subject. The intervener acts on behalf of the target to facilitate his good choices or direct the target to achieve its goals. This rationale for intervention depends on the subject's cognitive ability, as it cannot be trusted always to act from one's settled wants or beliefs. They might work through one's momentary pleasures and not settled wants and beliefs. Even if the paternalizer acts in order to promote the good for the target but for both, the target and the intervener the knowledge of good could mean different.

MORAL HARM

The basic idea behind paternalism that we have been concerned so far is about the nature of preventing harm and promotion of benefit largely. It is evident that many types of harm are at play. In investigating the ground of state policy, we tend to think that, it focuses on promoting physical, psychical welfare and mostly ignore the moral welfare. However, this is not true because moral welfare also plays a significant part in the formulation of a state policy. There are two reasons, which are eligible for state policy- one is paternalistic reason, and the other is moralistic reason. Joel Feinberg in *Moral limits to Criminal Law: Harm to self* suggests that a state policy might adopt specific reasons in order to justify a state coercion. They are:

- (1) Legal Moralism: It is a good reason to prevent conduct, which is considered as inherently immoral without disrupting or causing actual harm to the actor and others. It is supposed to produce evils of other kinds. Here, the harm is independent of its location and is objective irrespective of any transformation of individual character
- (2) Moralistic legal Paternalism: It is a good reason to prevent a moral harm irrespective of the physical harm to the actor. It aims at protecting and promoting good character or well-being by eliminating the moral harm done of the agent. ^v

These are the reasons upon which state coercion is justified even if it limits the liberty of the person concerned. Mill similarly distinguishes between paternalistic and moralistic restrictions of liberty and argues that they are never the right reasons for restricting liberty. He concedes

that Z's restriction of M's liberty is paternalistic if done for M's benefit and Z's restriction of M's liberty is moralistic if it is done to ensure that M's act is immoral or moral. For instance, the legal prohibition of euthanasia if based on paternalistic reason then it is prohibited to secure the best interest of the terminally ill person on the ground that cure would soon be found. Moreover, if prohibition of euthanasia depends on moralistic reason, then it will be prohibited on the ground that euthanizing people is morally wrong, as it is wrong to take away people's lives, which is God's gift.

A state policy depends on either of these above reasons to prevent a harm that justifies state coercion. Both the above reasons are directed to alter the moral harm, but the moral harm is used in two different manners. For the legal moralists the real motive behind restricting an individual choice is to enforce morality independent of moral harm. But the moral paternalists restrict the individual's choice on the ground of its harmfulness to the individual. Peter Manerffe explains these reasons with the help of drug laws that the state prohibits.^{vi} He supposes that if a drug law is grounded on moralistic reason then the laws are directed to protect the world from becoming a worse place irrespective of harm to the self. If a person uses drugs then it makes the world a bad place to live. The moralistic reason is directed to alter the unhealthy habits in order to protect the world from becoming a worse place to live in. He takes the example of sodomy laws, which uses moralistic reasons. The act of sodomy is considered as sinful despite the harm it causes to the actor. The sodomy laws were derived from Church laws designed to protect non-procreative sexuality or any sexuality outside marriage. Such acts are prohibited on ground of its immorality irrespective of the harm it causes to the self. In addition, if a drug law is proscribed based on paternalistic reasons then the act of taking drugs is restricted in order to protect the actor and not the world. Here, the state or any external authority presupposes that having certain vices is bad for the actor himself, as it will make the actor a morally worse person.

A person having certain vices like- gluttony, wickedness, lust, sloth, etc. would mean making the person a morally worse by forming a bad character, which in a way is a moral harm. It signifies that performing certain actions would cause a moral harm and thereby preserving and protecting moral harm would necessarily lead to moral welfare. Here, it seems that there is no problem in protecting the person from undergoing any harm to the character. But, can paternalism be justified in protecting moral harm or promoting moral welfare? Can moral preservation of character be a justifiable reason to act paternalistically? The paternalistic

restriction does not seem to be a problem at all because however, at the end it will prevent moral harm and promote moral welfare concerning the agent. Gerald Dworkin considers paternalistic reasons as appealing because it is not just making the world a better place but it morally improves the actor. He says, “MP appeals not just to the world being a better place morally speaking if certain changes are made, but to particular persons being morally improved.”^{vii} It is intrinsically bad for the person to have a bad character and not that such a character would make the world a bad place.

However, when the other cannot know the interests of the agent then how would it know that something would damage the self? Moral harm is the damage done to the self or the character, how could the other access the other’s harm to the character? Now, it becomes important to analyze the notion of moral harm and how is it protected. According to Dan Scoccia, moral harm is the deterioration caused to the character, which is contrary to their interests, so moral paternalism is required to improve their character for their benefit.^{viii} Moral harm simply is viewed as the harm done or caused to the self. Feinberg writes, “Moral harm is the harm to one’s character, becoming a worse person as opposed to harm to one’s body, psyche, or purse.”^{ix} For him something is morally harmful only if one has an antecedent interest to not be harmed in such a manner or if one has an interest in having a good character. It means that when someone has an interest to have a good character than only, he can be harmed if the harm affects its soul. However, something, which is not desired, cannot be morally harmful for the agent, so paternalism to morally improve makes no sense to him. For instance, if the prostitute has no desire to have a prostitute-free life then prohibiting such an act on the ground of moral improvement has no sense.

Feinberg recognizes harm as damage to one’s interest that a physical harm is a setback to welfare interest of people who had normal functioning. And since he considered harm, as the setback of interest and so for him moral harm to character has to be setback to one’s interest and for this the actor had to have a prior interest in becoming morally excellent. Moral improvement is not possible until one has a desire to be a morally better person. For him, moral paternalism would be justifiable only if one undergoes moral harm but one can be morally harmed only if he in prior had the interests to be morally excellent. The person has to desire the good or something that contributes to his good. Feinberg seems to associate moral harm to psychological disposition because for him if someone has an interest to be morally excellent only then can it harm the character.^x But moral harm is not just confined to harm caused to the

character, it is not necessarily a harm to the character. It is the most controversial of all harms because what might be viewed as a moral harm to one person may not be viewed as such by the other. Bodily harm is easy to locate and uncontroversial as what is viewed as bodily harm is most considered as a harm by the other. But harm to character is difficult to locate and is the most controversial object for paternalistic concern. Kleinig says that “moral harm” is often used persuasively by the moral conservatives to create a space in order to enforce their values.^{xi} They defend the legal measures in forcibly changing the character of the person concerned.

But if moral harm is considered as harm to character and character to the psychological disputes than it will be a harm to the things than the character. Vice of intemperance would be a good thing but will be practically irrelevant in order to prohibit drug use. One can be punished only for the bad consequences but he cannot be for having a poor character. If this is the case, then how can paternalistic concern for moral improvement be justified? Since paternalistic concern for the person’s character to morally improve, the person is tricky. Put simply, it is not possible for the other to consider one’s character as defective because obviously one knows better what suits one’s character. One could defend this interference by saying that the behavior of unhealthy habits and ideas are vices that damages the character. It is difficult to justify coercive measures to change the character of the person because there is an intimate connection between the character and individuality.^{xii} Just as the anti-paternalists are concerned about running a risk of threatening the individuality, so imposing a different character would run the similar risks.

Three Issues

Dworkin says that there is an entitlement to morally improve the character of the person concerned not for the world or any other person but for his own sake. They say that it is morally legitimate to preserve society’s traditional way of life from the radical and essential changes. A person is the amalgamation of certain character traits, which justifies his identity, and if this character is judged as harmful and forces one to change it then it would be intrusive for him. It becomes important now to analyze the paternalistic reasons in three respective areas and examine whether the coercive moral improvement is justifiable or not.

(1) Prostitution

Prostitution is a type of sex work that grants the client to get direct access to the prostitute’s body. It is one of the most condemnable acts in society because of the consequences reflected

in its practice. There has been a continuous debate about eliminating such practices off from the society because it is socially undesirable. But, are the coercive measures justified in interfering with the liberty of the individuals to sell and buy sex? There are some principles involved in understanding the applicability of justifiable coercive measures in interfering with individual liberty. Firstly, the harm principle suggests that coercively eliminating such an act is inappropriate if it involves only the competent and consenting adults without harming anyone. Secondly, the coercive interference can be granted to protect public health- spread of sexually transmitted diseases. Thirdly, the offense principle accepts the coercive interference to protect the ones who gets offended being exposed to such acts. This can be done by confining the activities to some closed venues. Legal paternalism provides arguments for making prostitution illegal. It tries to secure the prostitute from exposing herself to various hazards- AIDS, abusive or violent behavior of the clients, and exploitation of owners, damage on private sex and emotional lives and protect children from accessing such acts. Fourthly, the legal moralism principle, justifies the criminalization of prostitution on the ground that it condemns societal values. If prostitution is mainly proscribed based on the degradation it causes to the prostitute then it could be an extrapolation of prostitute's life so considering prostitution as morally harmful act and proscribing it on the basis that it would improve the agent's life is unjustifiable. This would mean imposing the interests of the other upon that of the prostitutes, which they themselves are, not the author. Imposing values on the prostitutes by presupposing that their work morally corrupts or degrades them is not valid. Prostitution could be prohibited for non-paternalistic reasons but the prostitute who gains income by sexual favors may not reflect on being harmed because for her there might be no wrong to earn most quickly. Though this easiness might be disputable but this is possible only if the actor undergoes self-disgusting attitude. Character paternalistic reasons against prostitution violate the claims of individuality.

(2) Homosexual behavior

Homosexuality is often considered as an immoral act. But does this mean that something which is immoral must be criminalized? The legal moralists would reply that such an act should be criminalized because it makes the world a worse place to live. Like Patrick Delvin viewed that homosexuality is a vice and presence of it causes an offense to the shared morality of a society.^{xiii} He argues that when public morality is challenged so society is entitled to preserve itself. Kleinig deriving from Lord Devlin suggests that legal restrictions on sexual activities within the same sexes is favorable because sometimes the youth might not be in a position to

appreciate what they have been letting themselves be, destruction in character, loss of moral fiber, unhappiness and insecurity. It can be rejected on the ground that heterosexual relationships develop the character of a person by creating a framework to grow. Though by growth John Kleinnig seems to refer to the growth in generation, and growth in attitude is impossible in the homosexual relationships. But is it possible to criminalize on the ground that homosexuality would damage the character and regulation would improve the agent's character is contestable? There is nothing of the possibility of paternalistic reason to change the character but rather non-paternalistic reason. It is true that public health officials cannot ignore several practices that are unsafe and threat to all but to regulate it based on improving moral welfare is untenable.

(3) Censorship of Pornography

Pornography is a form of representing sexual relations in degrading and dehumanizing way. Catherine and Andrea Dworkin defined pornography as sexually explicit materials that subordinate women through pictures and words. It includes the sense of women celebrating pain caused, enjoying rape, penetration through objects or animals, basically women are shown as objects to be thrived for. It also includes men planning and executing the rape and the women enjoying despite its initial resistance. Pornography is seen as harmless to the liberals until harm done to others. However, it is believed to be in the consumer's interest to refrain from such an act because it diminishes the self-enhancing activities. For as long as it is directed only to the self and concerns no others, the individual is sovereign. As Mill noted that unless an act affects no one else other than the agent himself, the act should not be regulated even if the act is degrading and depraving. There are some kinds of harms that are brought about by availability of pornographic materials- sexual assault, women discriminated, corrupts the users. The four ways in which pornography is misused which requires legal proscription- rise to masturbation fantasies. Masturbation is considered morally wrong because it is unnatural which caused many mental and physical disturbances. Pornographic materials intensify sexual feeling which later intensify frustration because of its idealization of performance will be self-destructive. It projects an overly sexualized image of women, which delivers a power to be exploited.

CONCLUSION

Thus, it is difficult to justify a paternalistic act depending essentially on the promotion of moral good. Moral welfare makes no sense, as we have observed in Joel Feinberg's writings, until the agent the subject will the moral excellence. If the subject does not will to be morally improved the interfering or forcing the agent to have some alien values. Many a times interference might not aim at well-being of the subject but other then, that which is might be related to the subject, the environment, the society, at best the world. Then such case fails to constitute the nature of paternalism so, how will moral improvement be justified on paternalistic reason. But Gerald Dworkin who suggests that moral paternalism is appealing even if the agent does not desire to be morally improved is controversial because forcing to change one's character is unreliable. This moral wrongness is not only confined to the physical welfare but also in preventing moral harm. When it comes to promotion and protection of moral welfare, it becomes more difficult to explain its legitimacy. Though there are some thinkers who drags us to believe that paternalism is presumptively wrong, but in these grounds, even their refutation is not applicable. Although the thinkers provided enough reasons to object to paternalistic policies, but paternalism in some areas helps to work against the poor decisions that human beings are prone. In areas like health and education, paternalistic policies could position us better than we would be if we were left to our own devices.

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ⁱⁱ Mill, 2007, p. 16.

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^{iv} Dworkin, Ronald. 1990.

^v Feinberg, 1990, p.20.

^{vi} Marneffe, 2015, p.35.

^{vii} Dworkin, 2005, p.307.

^{viii} Soccia, 2008.

^{ix} Feinberg, 1986. p. xvii.

^x Marneffe, 2018.

^{xi} Kleinig, 1983, p.201.

^{xii} Ibid.

Kleinig adds that what causes harm to one may be benefitted by another.

^{xiii} Hart, 1963.

