

**YOU'LL THANK ME FOR THIS ONE DAY: SOME EXCEPTIONS TO
MILL'S PRINCIPLE**

OHP 1

Although it is my contention that the motives for paternalistic legislation – laws for the individual's own good – lie in the complex world of political lobbying and populist democracy, I explore in this paper the political theory and philosophy that is used to support acts of coercion that purport to be beneficial to the actor under threat of criminal law. Laws that are intended to prevent the use of narcotics, prevent the consumption of beef on the bone, make us wear seat belts in cars and crash helmets on motorcycles may be unproductive or even counterproductive, but what I am considering here is not the efficacy or negative results of these measures, but the justifications that have been put forward for their implementation. I find that these arguments divide into two sections and I will briefly summarise the categories in each, then concentrate on one which I find particularly engaging.

John Stuart Mill, in *On Liberty*, expresses what he calls his one simple principle as follows:

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, p13)

Mill does not defend this position from the point of view of individual liberty as an ideal goal, but from a utilitarian position. This follows on from Wilhelm von Humboldt who maintained that paternalism drives out independent action and produces weak willed citizens who are of little use for scientific and cultural advancement. Those that seek to justify exceptions to Mill's principle do so on two grounds: that modern circumstances deserve different considerations and that Mill's own utilitarian motives can be shown to breach his principle on certain cases.

The types of justification for paternalistic intervention may be divided into the paternal and non-paternal. I have found that speaking of paternalistic and non-

paternalistic justifications for paternalism has confused some so I have created the less precise but also less wordy terms benevolent and civic justifications for paternalism.

One side accepts that the intervention will be classified as paternalistic and seeks to prove that the level of paternalism in a particular case is justified. Mill himself gives exceptions to his principle which allows for many cases to fit into this category with a little elastic interpretation. The problem with this approach is that one is called upon to explain why intervention may be justified in one case and not in another without exposing some bias. I call this the benevolent justification for paternalism.

The other branch accepts the need to avoid paternalistic intervention unless a clear case is brought forward by the proposer which does not exhibit paternalistic tendencies. The justification for intervention on this approach is a case by case claim that an intervention is not paternalistic. It would attempt to show that some actions that are, on the surface, of concern only to the individual, may substantially harm others and could no longer be considered self regarding. This would then fall under the more acceptable type of intervention: the private harm principle: preventing the individual from harming others. I call this the civic justification for paternalism.

OHP 2

The **benevolent** justifications fall into four distinct categories. I have grouped them as follows:

Freedom maximisation

Mill was quite precise about the absolute prohibition of anyone selling themselves into slavery. This, he claims, would throw away the very liberty that is being defended. Some have sought to extend this principle to other areas; Lincoln

Allison highlights the ambiguity around defining whether one is free to enjoy drugs or be a slave to them, freed by colonialism or freed from colonialism.

Mill did not however propose punishing someone for selling themselves into slavery but for not enforcing the contract. The nature and conditions of contract are the legitimate interest of the state. The slavery exception, selling oneself as a slave, is not properly liberty of the individual in matters that affect no other, but concerns the *implied* liberty of individuals to form mutually binding contracts and the adjudication or acceptance of a contract by an independent arbiter which, in law, is the state.

Self paternalism

It cannot be denied that we sometimes act in a paternalistic manner towards ourselves, although it is clear that in these cases we are judging our own best interests and not raising contentious issues with either the paternalist or the libertarian.

Examples might include the action of moving the alarm clock to the other side of the room when expecting, for whatever reason, a reluctance to get up in the morning.

Another often quoted example is that of Odysseus from Greek mythology who, wishing to hear the call of the sirens, orders his crew to lash him to the mast and plug their own ears until the danger has past. In anticipating a future weakness, he makes provision to safeguard the ship whilst his mind may be unbalanced. A similar situation may be if one were to ask one's friends not to give you cigarettes even if specifically asked.

The acceptance of self paternalism only becomes a legislative issue when it is suggested that in authorising a democratic government to intervene in our lives for the collective and individual good of us all generally, we defer to them the right to intervene in a more general manner in ways that would be in our best interests. A small sacrifice of liberty is a part of the deference to governance which is in itself a self paternalistic act.

Balancing of harms and benefits

In stretching principles by degrees, there inevitably appears a set of scales to balance a loss of liberty against a gain in some other sense. If the overwhelming majority have no interest in, or disapprove of a certain activity, then the value attached to it will be negligible, far less, presumably, than the actor involved would value it. On the other side, the benefit gained by the actor in terms of health or longer life are, I argue elsewhere, often founded on popular wisdom and the weight of evidence necessary to tip the scales is dependant on the cultural and numerical status of the actors affected. In the words of CL Ten.

But where we disapprove of an activity, or cannot appreciate it, we tend to think that the agent himself derives little benefit from it. In these ways the practice of strong paternalism easily becomes a cloak for the imposition of our values on those who are coerced. (Ten, 1980, p117)

Knowledge of one's objective interests

A further justification for intervention is the notion, so effectively denounced by Isaiah Berlin, that we may coerce individuals in the name of a particular goal that they would pursue themselves were they more enlightened. Once we take the view that we know their objective interests better than they do themselves, we may, Berlin argues, “bully, oppress, torture them in the name and on behalf of their ‘real’ selves” (Berlin p151 in Quinton ed).

OHP 3

We now turn to the **civic** justifications for paternalistic intervention

Health care costs

The first claim to this would cite the burden on state funded health care resulting from irresponsible action on the part of individual actors. It may be claimed that this argument is used most where the effects are least – relying on appeals to common assumption rather than evidence – and that measures that would result in a

substantial and identifiable reduction in health care costs are normally of the sort that would not be politically acceptable.

State investment costs

Secondly, the state has made an investment in people as working units and are entitled to a productive return and not have that life rashly curtailed. We educate and provide for all whilst opportunities to 'repay' society are limited. There is only a finite number of roles within which one may repay debts to society and many will remain an unemployment, pension and elderly health service burden. It seems unreasonable to complain that a few lives shortened by rash behaviour have left a debit on an individuals account with the rest of us.

Effects on those close to the actor

An emotional appeal to view self harming action as other regarding is one which reflects on the suffering of friends and relatives after the premature death or injury of a loved one. Those who witness their painful death after a smoking related illness those that give up parts of their lives to cope with the drug addiction of someone close to them and those that may have to care for a paralysed relative as the result of a risky act of bravado or failure to protect themselves adequately do indeed suffer a harm.

The failure of this appeal is that the harm claims to be relevant even if it is less than that born by the actors themselves. If this is accepted, then it appears to have no readily drawn boundaries. Surely every action anyone takes will, to some degree, affect someone else, whether or not we would normally define that act as self regarding. The combination of those two points would lead to all sorts of restrictions. This can be taken to mean that the state is to protect everyone from the effects of another's actions and that in the end nothing is self regarding.

Finally, **the future self argument**, which I pursue in more detail.

I shall describe the theory in the terms of Derek Parfit, whose work on personhood and identity may be adapted to view paternalistic intervention.

OHP OFF

The argument, put simply, that as one's character changes over time and with traumatic events, each change in character constitutes the creation of a fresh identity and therefore, a later self. This argument suggests that your later self is, for the purposes of Mill's basic premise, another, and thereby denying claims to an act being self regarding. It is interesting to note that acceptance of the principle is used to argue both for and against intervention.

The psychological link between ourselves now and what we were some years ago is in its nature one of varying degrees. Some views we hold or targets we seek may be identical and others may be quite different. If however we take the view that each day we live is directly connected with the previous one and, barring an attack of total amnesia, we are for all purposes the same person, then we speak of a continuity that makes us the same person at all times. Derek Parfit, in 'Personal Identity' and 'Later Selves and Moral Principles' describes what he calls the complex view which holds that although the continuity view is an all or nothing assessment, it involves 'connectedness' which may hold on a stage by stage basis, but over time will be a matter of varying degrees.

There are many cases that could be considered differently depending on whether the simple or complex view is held. I shall outline those on desert and promises before moving on to paternalistic coercion, and highlight inconsistencies if this theory is extended.

The complex view on desert may suggest that a criminal whose psychological connection with the crime is weak, deserves less punishment. John Locke has

suggested this in *An Essay Concerning Human Understanding* (book II chapter XXVII section 26).

In 'Justifications for Paternalism', Donald Regan presents us with the example of an embezzler who, discovered after ten years, fully regrets what he has done and has a different set of values. It could be argued that he is so different that it would be unfair to treat him as the sort of person who would embezzle. Furthermore, if they were to be also guilty of a separate crime – Regan's suggestion is a violent assault – which has not been psychologically separated, then there is no way of treating them as different people for the purposes of inflicting a punishment.

Regan's proposals raise several problems regarding desert for different future selves in the same body which, although they are applied to other regarding acts, may also be applied to paternalistic measures in a deeper way as the one who is being protected is also the one being coerced. Punishing someone on the grounds of protecting a potential future self, is also punishing the other person with many other plans who has made promises which may not be kept due to the punishment inflicted.

With regard to promises, if we claim to have some commitment to our relations because they are related to us, do we have a lesser commitment to some one who is less closely related? If we follow the complex view we may believe our commitment varies by matters of degree. This assessment might then be applied to the idea of future selves. Promises, however are not easily adapted to a scalar view: you cannot be bound by a promise to a greater or lesser degree, you either are or are not.

If a promise is made to someone now, how much should your future self be bound to it. It seems fair to believe that if you make a promise to someone, your future self cannot release you from it, but the recipient may and therefore the future self of that recipient may also.

If you promise somebody that you will look after a child after their death, you are obviously bound by that promise even though the recipient is not the one to whom the promise was made. There is therefore, no problem in the proposal that you are bound to a promise made to any future self, including your own, no matter how psychologically separate they may become.

An interesting scenario is drawn by Parfit as follows. A nineteenth century Russian Socialist, due to inherit land in the future, decides that it should be given to the peasants and draws up a document to that effect. In the event of his socialist ideals changing over the years he makes up the document to say that only his wife can rescind the commitment. He then asks his wife to promise that she will not do so no matter how much he may plead. How is the wife, as promiser, to consider her husband's attempts to later release her from that promise?

This is not to be confused with 'self-paternalism' mentioned previously which elicits a promise to prevent one from actions that might occur under the influence of addictive cravings or extreme temptation. Examples of these might be those previously quoted of cigarette denial and Odysseus and the Sirens. These suggest that the one to whom the promise is made is still the same person, but under a predicted duress.

PATERNALISTIC INTERVENTION

The case of the Russian noble presents an interesting problem for the complex view of the future self; he may be considered a different person as his values have changed so much, but the promise was made to cover that very eventuality. Whilst this gives an example pertaining to commitment, it also shows the opposite view when considering paternalistic intervention. The priority in this example is given to the ideals of the younger man and the values of his later self are considered to be overridden. In using the future self argument in matters of intervention, the paternalist

argues that if the consequences of what you do now are likely to be regretted by a future self then they must be curtailed. This is noted by Bernard Williams with regard to the Russian.

Why should I hinder my future projects from the perspective of my present values rather than inhibit my present projects from the perspective of my future values? (Williams p206)

Presumably, Williams' question can be inverted to ask why the paternalist should treat present values as subservient to the future ones. Without a time machine, we can never extract the opinion of the former self on the values and judgements of a later self, but discussion between a teenager and parent may give some guide.

CL Ten argues that if a regretting future self is born out of traumatic incident, then if that incident results in death, no future self is created to regret. On the future self justification, this would prevent us from intervening to prevent fatalities. Kogan, on this basis, claims suicide to be "purely self-regarding action".

What I would like to suggest is that it is inevitable that one's values and goals change with age and that to interpret that change as good is to equate age with wisdom. If we accept that the later self constitutes a different person, then any judgement of previous action as regrettable is not valid as the judge has different opinions and values and may be considered a different person. They may even belong to a different culture. He or she is not 'qualified' to judge.

The probably misplaced belief that recreational drug use occurs only amongst the young, reinforces the idea. If people stop using drugs at the age of twenty, they have perhaps, with maturity, judged that activity as regrettable. It is then, with an extension of the assumed irrationality of children, easy to prohibit drugs on the basis of an expected later consent.

If we view policy makers and politicians, we find they are not young; they do have the values of a particular age group, culture and class. We should not be surprised therefore to find their judgement clouded by their own experiences.

OHP 4

I hope that I have explained that there are many reasons given to justify the application of paternalistic coercion and that they fall in to two sections with different ideological foundations: one accepts Mill's principle and the other seeks to breach it. One could not therefore look to one section for supporting argument without having first given up on the other – even though they sometimes seem to be making the same case.

The debates around personal identity make the future self argument the most thought provoking and, to my mind, sadly inconclusive. The theory claims to justify both intervention and non-intervention on behalf of a future self. It also explains the actions of the individuals who are the objects of coercion. People smoke tobacco knowing that it increases the chances of a painful death. They also know that most people who smoke regret having taken it up. Only the complex view of identity can explain why we care so little about our future selves: less even than others around us.

If we can accept that a future self is a different person then, even though they are affected by the results of previous actions, they are not competent to judge, in Bentham's terms, the value placed on the other side of the risk scales by the earlier self. This reflects the view that the earlier self cannot competently judge the values and concerns of the later self. Should the law give priority to one over the other?