

Chapter 9 argues that the government can indeed raise the well-being of individuals who suffer from reasoning failure, even when allowance is made for possible reasoning failure among those individuals who constitute the government. However, democratic mechanisms must be put in place to ensure that the latter do not pursue their own agenda and turn the paternalistic state into an instrument of authoritarianism. In particular, we argue for a retrospective endorsement of the policy concerned, with either a vote taken in the representative assembly or a referendum.

The final chapter summarizes the book's arguments and uses them to address what might be viewed as the central questions with which we have been grappling: Is a paternalistic government necessarily a nanny state that infantilizes its citizens and illegitimately erodes their autonomy? Or could it be a helpful friend that promotes their well-being at minimal, if any, cost to autonomy? For the answers to these questions, read on.

## 2 What Is Paternalism?

A simple definition of paternalism is the interference by some outside agent in a person's freedom for the latter's own good. It describes an action deemed impermissible by John Stuart Mill's classic statement of the liberal position in *On Liberty*: "the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant" (Mill 1974/1859, 68).

Paraphrasing Mill, this states that the only justification for state intervention in an individual's freedom is if that person is inflicting or is about to inflict harm on another; intervention designed to promote the individual's own good is never justified.

As is apparent, the simple definition of paternalism above has two elements that, taken together, offend this principle—the interference in freedom, and the promotion of a person's good. Very often a third element, the absence of consent, is included in definitions of paternalism to accommodate Mill's reference to the exercise of power against the individual's will.

But each of these three elements is controversial. Defining paternalism has not proved straightforward; certainly no consensus has emerged in the philosophical literature (Garren 2006). One reason for the lack of consensus is that how one defines paternalism will affect how easy it is to justify (or reject) what one has defined. A narrow definition will omit many acts that a broader definition might include as paternalistic. So someone adopting a narrow definition will be able to reject "paternalism" completely while at the same time supporting an interference in an individual's freedom that would have been included within a broader definition.<sup>1</sup> Questions of definition are intimately bound up with questions of justification.

<sup>1</sup> For example (and as we shall discuss further below), some authors support only "soft" paternalism but then go on to describe this as "really no kind of paternalism at all" (Feinberg 1986, 16). This leaves "real" or "hard" paternalism as a narrower set of interventions that can be rejected outright.

Another reason for a lack of consensus is that people will inevitably perceive and interpret words in subtly different ways, particularly when discussing abstract terms such as freedom, autonomy, good, and consent. Further, no matter how carefully one tries to define a concept, a real-life example may not neatly and unambiguously fall within or without a definitional boundary. This has led to some highly complex definitions with many conditions, provisos, and ruminations on semantic matters. We will discuss many of these complexities before offering a simple definition that nevertheless captures what we see as the essence of paternalism—not a description of the act but rather the *reason* for acting paternalistically.

Our focus in this book is on public policy and thus on the actions of the government as the paternalist agency. Much of the philosophical literature, by contrast, is concerned with paternalism in the context of interactions and relationships between private individuals. The two scenarios raise quite different issues. We shall be concentrating on the government as paternalist; however, inevitably we draw on the rich tradition of debate about individual paternalism, and, where appropriate, we will point out where the government fits into this definitional debate.

But first we must examine in some detail the three controversial elements in existing definitions of paternalism: the interference in freedom; the promotion of good; and the question of consent.

### The interference in Freedom

Gerald Dworkin (1972, 65) has provided one of the most commonly cited definitions of paternalism: the “interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced.”<sup>2</sup> Similarly, John Kleinig (1983, 18) defines paternalism as where “X acts to diminish Y’s freedom, to the end that Y’s good may be secured,” a definition quoted and implicitly endorsed by Sarah Conly (2013, 17).<sup>3</sup> This definition focuses on liberty or freedom of action, understood as the absence of constraints.<sup>4</sup> One’s physical liberty is most obviously interfered with by coercion, as Dworkin implies; if one is held up at gunpoint and offered the option of “your money or your life,” for example, that is not normally considered a

2 Dworkin’s article is perhaps the seminal piece in the modern debate on paternalism; it was originally published in Wasserstrom (1971).

3 In her important recent book, Conly actually argues for a stronger form of paternalism—what she terms coercive paternalism. We address some of her arguments in chapter 6.

4 “Liberty” is sometimes taken to refer specifically to political freedoms, although we do not imply that connotation here. See Feinberg (1986, 62–68) for a discussion of the various types of *de jure* and *de facto* liberty and freedom.

“free” choice. However, following Dworkin’s article, a number of commentators noted that many kinds of interference often associated with paternalism do not restrict freedom (Gert and Culver 1976; Weale 1978). Gert and Culver provide the example of someone admitted to the hospital in need of a blood transfusion. It transpires that the person is a member of a religious sect that does not allow transfusions. While still conscious, the injured person informs the doctors of his wish not to be transfused before lapsing into a coma. If the doctors now proceed with the transfusion, they might be considered to be acting paternalistically, but they are clearly not interfering with the liberty of someone who, at the point of interference, is incapable of making decisions of any kind.

There are, of course, libertarian objections here to the doctors’ failure to take account of the wishes of the patient, which could be viewed to be as offensive to liberty or freedom as an explicit act of coercion, and these we shall consider shortly. But the central point here is that it is possible to undertake a paternalistic act without any immediate coercion.

Numerous other examples have been offered of non-freedom-restricting paternalism. We may act paternalistically by declining to play tennis with a friend who is becoming upset at the frequency with which she is losing—or, rather more subtly, we may even allow the friend to win without letting her know what we are doing. In both cases we seek to improve the friend’s well-being in a more or less paternalistic way. In another scenario, a doctor may not tell a terminally ill man that his daughter has just died following a road accident when he asks after her well-being (even if he specifically demands to know the worst). A converse case would also be paternalistic: telling the man that his daughter has died even if he specifically asks to remain in ignorance. Examples of these kinds often occur in the context of health care, where decisions need to be made as to whether it would be in a patient’s interests to be informed of her medical condition regardless of her wishes.<sup>5</sup> Again, in none of these examples is there interference with an individual’s liberty in any normal understanding of the term. Nevertheless, in all cases the actions of the paternalist influence the way that the recipient of the paternalism decides to conduct his or her life and probably also his or her sense of self-esteem or even happiness.

This led Gert and Culver (1976, 49) to suggest that paternalism occurs whenever an action, as well as being for the good of the paternalized individual, “involves violating a moral rule” with regard to the paternalized person. This adequately encompasses some of the cases above: the doctor and tennis player could be said to be breaking a moral rule of respect for another person’s wishes and perhaps also honesty. However, some paternalistic acts do

5 See Buchanan (1983); further examples are discussed in Gert and Culver (1976) and G. Dworkin (1983).

not obviously break any moral rules. For example, it would be difficult to describe as immoral a householder's decision to lock up all the drugs in his apartment when a suicidal friend comes to stay—even if the friend specifically asks where they are. The drugs are the householder's property and he can do what he wishes with them (Dworkin 1983). And yet the action still seems paternalistic. Referring to "moral rules" does not ultimately succeed in pinning down the precise nature of a paternalist intervention.

If apparently paternalistic acts do not always restrict liberty, it should be equally clear that paternalism does not necessarily involve coercion. None of the individuals subject to paternalism in these examples are being threatened with any punishment if they fail to act in a certain way. However, it is possible to engage in a form of coercion *without* restricting liberty. To give patients verbal information about their condition against their will is a form of coercion—they are being "forced" to listen to bad news for their own good—but it does not restrict their freedom.<sup>6</sup> However, it does interfere with their *autonomy*. This is a concept that will preoccupy us a great deal in this book and for which, unfortunately, there is no simple, widely accepted definition. But at root it is an idea that emphasizes human beings' capacity for self-rule, their ability to act as deliberating agents. People may find their autonomy restricted through ill health or intoxication, while at the same time they retain the complete freedom to act. In chapter 6 we consider in detail a justification of paternalism that depends on the idea of compromised autonomy: if one has lost the capacity for self-rule, then many apparently paternalistic interventions, so it is argued, are not really paternalism at all. We will challenge this account and argue that interference in autonomy is not so easily avoided. In any event, autonomy is crucial to an understanding of paternalism; and for the purposes of the present discussion, it may be understood simply as the ability to formulate and act out one's own conception of the way one's life should go.

Gerald Dworkin (1983, 107) sought to broaden his 1972 definition of paternalism by suggesting that it is this interference with autonomy that is the crucial aspect of the concept. For paternalism to be present, "there must be a violation of a person's autonomy (which I conceive as a distinct notion from that of liberty). . . . There must be a usurpation of decision-making, either by preventing people from doing what they have decided or by interfering with the way in which they arrive at their decisions."

Thus interference in autonomy could involve coercion, omission (withholding information, refusing to cooperate), and manipulation or deceit (misinformation or trickery). So, for example, when we refuse to play tennis

<sup>6</sup> Unless one believes that someone can be "free" from unwanted information. It seems more sensible, and clearer, to understand this compulsory information as burdening the patients rather than making them less free.

with an increasingly depressed opponent, we are interfering with her autonomy, not because we simply do not want to play with her—it cannot be a claim of her autonomy that we *must* play tennis with her—but because we judge, unlike her, that playing more tennis will serve to increase her unhappiness. We are taking a position on *her* autonomous judgment by rejecting her desire to play tennis with us even though we normally enjoy doing so. The point is that her judgment is being usurped by our judgment.

In two more recent contributions to the debate on the definition of paternalism, Archard and Clarke reformulate this emphasis on autonomy by simply requiring that a "choice or opportunity to choose is denied or diminished" (Archard 1990b, 36) or that one person "aims to close an option that would otherwise be open" to another (Clarke 2002, 82).<sup>7</sup> Clarke argues that his (and to some extent Archard's) definition should be preferred to Dworkin's because the latter definition is too narrow: some paternalism does not usurp autonomous decision making, as revealed in the case of the unconscious patient being treated by a doctor discussed above. Clarke argues that there is no autonomy to usurp, and yet the treatment is still paternalist.

It seems questionable, however, whether there is no autonomy to usurp if the patient has explicitly given his views prior to lapsing into unconsciousness. It is precisely because the patient communicated his wishes that the treatment is controversial. But we have a more significant reason for, in the end, preferring Dworkin's emphasis on the *judgment* of the individual rather than whether options have been closed off: to explain why, it will be convenient to introduce the government into the definitional debate.

It is easy to conceive of the government acting in a manner similar to the various examples given above. It can clearly coerce people with a threat of sanctions by, for example, fining motorcyclists who refuse to wear helmets, or imprisoning unlicensed doctors. It can withhold information from people by, for example, restricting the release of controversial research, or it can force them to consume information they may not want to receive.<sup>8</sup> And the government can tax or subsidize certain goods to make them less or more

<sup>7</sup> Clarke adds that where someone chooses on behalf of someone else "in the event that [they] are unable to choose" for themselves, this is also paternalist, thus including decisions made on behalf of unconscious people.

<sup>8</sup> In 2007 the British government proposed that all parents should be informed of their child's weight and told whether this weight constituted a dangerous level of obesity. While in the proposed policy parents are allowed to opt out of receiving the letter, the receipt of such information could be made compulsory, in the sense that a letter might be written to the parent whether or not the parent wished to have the information. Short of throwing the letter away without reading it, the parent would be coerced into receiving the information. Similarly, Shiffrin (2000, 214) suggests it is paternalistic to provide someone with a wider range of options against her will (perhaps because the individual considers she has too much choice already) even if this is technically "freedom-enhancing."



attractive. These “freedom/autonomy-coercion” combinations are shown in table 2.1.

The government can also manipulate people’s decision making in ways that do not obviously fit into any one category. It can use shock tactics such as obliging manufacturers to place lurid images of diseases on cigarette packets. Or it can manipulate an individual’s default position, for example, by automatically enrolling people into a national contributory pension scheme rather than leaving them to choose to opt in. We will revisit these examples in more detail.

Now it is moot whether manipulating information is closing off an option. Certainly, changing the default position seems to alter the nature of an option rather than closing it off. More clearly, where the state subsidizes goods or services it serves to *increase* the options available to individual consumers. For example, if the government makes the provision of museums or art galleries free, the individual now has a greater range of opportunities than he did before because he can now afford to go to a museum or gallery without sacrificing other pleasures.<sup>9</sup> And yet this, along with the other interventions just mentioned, seems intuitively paternalistic.

Some authors dissent from this intuitive position about the paternalism of specific subsidies. Archard (1990b, 37) describes a situation where a secret patron, P, provides free tickets for Q to attend various activities—including the opera—which P believes will be for Q’s good, but which she suspects Q would not choose to buy ordinarily. Archard notes that it would “sound perverse to describe P’s behaviour with regard to Q as paternalist” precisely because P is *adding* to the set of choices Q already has.<sup>10</sup> However, Archard acknowledges that P may have a paternalist *reason* for behaving as she does, even if—in his view—the effect is not paternalistic. But it no longer sounds perverse to describe the behavior as paternalistic if one accepts that P’s reason is crucial: P will act in this way only if she believes there is something wrong with Q’s judgment. That is where the paternalism comes in.

Now it could be argued that specific subsidies do involve coercion or the closing off of options because the subsidies have to be financed by taxation. Since taxation inevitably involves coercion, or the threat of coercion, and since it reduces the resources that taxpayers have available for private consumption, it also involves the coercive closing off of options. Should we not

<sup>9</sup> This also applies to individual contexts. Archard (1990b) cites the example of an elderly relative using the terms of his will to persuade a young relative not to marry a certain unfavored person or else lose a substantial financial inheritance. The fact that the offer of the inheritance effectively increases the range of options open to the legatee does not alter its paternalistic nature.

<sup>10</sup> Not all agree with this suggestion. Hershey (1985) takes the view that giving a financial donation to an individual without the person knowing *is* paternalistic even if it does *not* violate autonomy.

Table 2.1. Types of Intervention

	<i>Coercive</i>	<i>Noncoercive</i>
Freedom-restricting	Laws obliging helmets to be worn on motorcycles, or for doctors to be formally licensed	N/a—impossible to restrict freedom without being coercive
Non-freedom-restricting	Obliging people to receive information regardless of their wishes	“Sin” taxes; public subsidies of museums and the opera; withholding findings of state-conducted scientific research
Non-autonomy-interfering	N/a—all interventions interfere with autonomy to some degree, if only to increase autonomy (as perhaps with public subsidies)	

view the policy concerned as a subsidy-tax combination, and hence, since the method of finance does involve coercion and the closing of options, could we not describe it as paternalistic for that reason? Here there are a number of points. First, subsidies need not be financed from taxation; they could also be financed from government borrowing or even printing money, neither of which obviously involves coercion. Putting the point another way, suppose we could unambiguously demonstrate that, say, the method of government financing of a subsidy to opera was shifted from taxation to printing money; surely this would not imply that the subsidy had in some way ceased to be paternalistic? More generally, the method of financing a subsidy policy has to be irrelevant to determining whether that policy is actually paternalistic; so, too, how the government uses the revenues from a potentially paternalistic tax, such as a tax on cigarettes, is irrelevant to the question as to whether the intention behind the imposition of the tax is actually paternalistic.<sup>11</sup>

<sup>11</sup> In most countries, all forms of government revenue are pooled, and there are few or no hypothecated taxes. In such cases it is impossible to identify the specific source of revenue finances for an item of government expenditure. For further discussion of this point, though

A further problem with this argument about the source of finance is that there are two different sets of actors—taxpayers and service users—who may or may not be the same. The act of coercive taxation could be in part itself paternalistic, if the intention behind the taxation was to promote the taxpayer's own good (as with some taxes on tobacco or alcohol). The act of government subsidy is in itself paternalistic because it encourages service users to engage in one activity rather than another. In the first case, where the money goes to is irrelevant; in the second, where the money comes from is irrelevant.

In the subsidy case, it is more convincing to argue that the government activity seems paternalistic, even though it increases the individual's range of options, because the government is substituting its *judgment* for that of the individual.<sup>12</sup> It seeks to influence the way that the individual decides whether to go to museums. The government does not simply rely on ensuring that people's income levels are high enough to be able to afford entrance fees. Even in such circumstances, people's judgment may not lead them to choose a museum; their reasoning might be considered in some way insufficient. Only by making museums free can people be tempted to experience something they would otherwise neglect to the detriment of their well-being. Something similar is happening in all the other nongovernment examples: the tennis player is thought to misunderstand how losing at tennis is making her unhappy; the dying father is considered to have misjudged his decision to know the worst about his daughter; and so on.

The difficulty that arises from using phrases like "interfere with another" or "limitation on Q's autonomy"<sup>13</sup> in a definition is that there is simply too much ambiguity in what people understand by terms such as "interference" and "autonomy." Is subsidizing a theater production an interference in my autonomy? If the government fails to reveal unasked-for information, is there any effect on my autonomy? These examples may not feel like interference in the normal sense of the word, but even an expansion of my autonomy—if this is what the subsidy case amounts to—is a manipulation of the world in which I am making decisions. Surely this is an interference in, or even a limitation of, my autonomy in *some* sense? Also, not revealing the findings of research will affect the kind of decisions I am *capable* of making. Maybe these examples do constitute interference with something we call autonomy, or maybe not. Yet such ambiguity is unhelpful for definitional purposes.

in a different context (the assessment of the distributional impact of government spending), see Goodin and Le Grand (1987, chap. 2).

12 Here we follow Gerald Dworkin (1983, 107): "we must ascertain in each case whether the act in question constitutes an attempt to substitute one person's judgment for another's."

13 To use Gerald Dworkin's latest (2001) definitional foray.

But there is one final reason why it is preferable to focus on the poor reasoning or judgment of the individual in defining paternalism. We have seen that withholding or manipulating information, or supplying it when it has been specifically declined, can be paternalistic. But what if information is provided with no attempt to correct a judgment but merely to assist it? Take the sale of cigarettes. For many years the British government simply obliged manufacturers to state on the packet that "cigarettes can seriously damage your health." This was a piece of information that not everyone may have known. Such intervention thus helped people to make a judgment about whether to smoke. However, this kind of information provision does not call into question people's reasoning, even if in this case it is likely to deter rather than encourage the activity. Simply supplying the bald fact that cigarettes are dangerous is thus not, in this interpretation, paternalistic. Or consider an even less controversial example of a driver on a country road who is not aware of an approaching bend. He is not necessarily displaying limited reasoning if he crashes on that bend, as long as he was driving at a generally sensible speed for the conditions. He may simply have been unable to react fast enough. If the government introduces signs that warn of the impending bend, neither should this be considered paternalistic—the government would simply be improving the general supply of information about the conditions on that road.

Another way of thinking about this is to consider how it is possible to have poor information about a particular set of circumstances and yet still make a decision that maximizes well-being, given the information available. Having little information *in itself* does not impair our ability to reason.<sup>14</sup> Under these circumstances we must simply make a judgment about what to do given our knowledge as it stands—including, perhaps, not taking any course of action until the level or quality of information improves. One can make an analogy between human reasoning and the working of a computer. A computer can suffer from either limited or poor data (imperfect information) or corrupted, virus-ridden software (a possible case for paternalism). But an uncorrupted, well-functioning piece of software will not *in itself* be affected by the quality of the data, even if the usefulness of what it can produce will be. It will merely do the best it can with the information provided.

A famous example from John Stuart Mill ([1859] 1974, 166) reinforces the point. He described a situation in which a walker is about to cross an unsafe bridge. He argued that it would be reasonable for an official forcibly

14 Indeed, when an individual is in circumstances where there is very little information about what course of action to take—such as a trapped potholer or a kidnapped hostage—it is often observed that these individuals act with extraordinary mental clarity. Their minds work extremely well with limited distractions and maximize their chances of survival. This should be contrasted with someone overloaded with information—in the middle of a very busy and boisterous crowd, for example—where the consequence could be to panic.

to prevent the walker from crossing it if there “were no time to warn him of his danger”; otherwise “he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it.” Mill was no paternalist, and he did not think providing information about the bridge, even forcibly, was paternalistic. The official is certainly intervening in the autonomy of the individual—in this case by preventing him from carrying out his decision to cross an unsafe bridge in ignorance of the bridge’s condition—but is not acting paternalistically. The intervention becomes paternalistic only if the walker continues to be prevented from crossing the bridge once apprised of its condition and the risk he is about to take. By doing so, the intervening party is now making some implicit or explicit assessment about the poor-quality judgment being displayed by the walker. So by defining paternalism with reference to the judgment of the individual, rather than by describing the act itself, we avoid conflicting interpretations of what counts as an interference in autonomy.

Thus one key aspect of government paternalism is that it involves an intervention whose rationale is to address a failure of judgment or reasoning of an individual, at least as perceived by the government.<sup>15</sup> We should add that we are not *endorsing* government paternalism at this stage but simply trying to define the concept; the legitimacy of different kinds of paternalism is discussed later in the book.

### Promoting the Good

It is central to the concept of paternalism that the intervention should be intended to further the good of the person whose judgment or reasoning ability is in question, rather than to further the good of anyone else.<sup>16</sup> Mill differentiated what have come to be known as “other-regarding” actions, which involve harm to others, from “self-regarding” actions, which do not, and which simply involve the individual herself acting in ways that only influence her own good. This distinction establishes the particular focus of paternalism as on actions that are self-regarding in Mill’s terms—that is, actions that do not harm others. An individual’s reasoning ability could be flawed and the state could act to protect others from the consequences of that person’s failings, but this would not be paternalism:

<sup>15</sup> Shiffrin (2000) is one of the few commentators who develops a definition with a similar emphasis on the motivational desire to correct or improve others’ judgment. However, Shiffrin’s definition contains an unusual rejection of the requirement—outlined in the next section—that the intervention should be, at least in part, for the good of that individual.

<sup>16</sup> The good done often involves preventing harm but it may also positively promote benefit, the so-called benefit-conferring legal paternalism (Feinberg 1988, 311).

It is important to note at the outset that self-regarding actions may involve the cooperation of another person. Say I take out a loan at an exceptionally high rate of interest from a loan shark. Unless I have dependents of some kind, the decision to take out the loan is self-regarding—it harms or benefits no one else—but is undertaken through a consensual agreement with another person. If the government decides that I am likely to cause myself financial difficulties, it may outlaw such punitive interest rates. The person whose activity is restricted is the loan shark, but the prohibition on his activity is intended to prevent harm to me.

Nevertheless, the distinction between self- and other-regarding actions is not always clear-cut. Activities that have absolutely no influence on others—by giving offense or causing other types of unhappiness, for example—are few, if any.<sup>17</sup> Mill believed that we should not regard acts that we might find merely distasteful, such as fornication or gambling, as constituting harm to others. On the other hand, actions that are essentially self-regarding, such as getting drunk, might be viewed as potentially harmful in certain circumstances: for example, if someone predisposed to violence were to drink excessively, the government may be justified in intervening. The difficulties in establishing whether a government intervention can be justified on the basis that it is ultimately directed at behaviors that may harm others, rather than as a paternalistic intervention directed only toward the self-regarding actions of an individual, are examined in more detail in subsequent chapters.

We noted above that one element in the definition of paternalism is that it is concerned with correcting some shortcoming of an individual’s judgment. The corollary of this is that the act (or omission) must also *benefit* a particular individual or group in some way relating to these shortcomings. But it should not do so merely as a side effect. Take a law designed to prevent a firm from polluting the local environment. This is a classic other-regarding harm, and the law is passed to protect the health of those third parties not involved with the business. However, the law may also serve to benefit the individual producing the pollution, to the extent that she too no longer breathes the smoke. However, this is not a paternalistic law as long as we have reason to believe that the law is intended only to benefit others. The distinction is important from a justificatory point of view: it would be odd to defend principles for a paternalistic outcome that was only a “side effect” of other laws.

Notwithstanding this proviso, one feature of paternalism universally acknowledged in the literature is that the intervention should seek to do good to the recipient and not harm. A government that acts cruelly or simply to sustain its own continuance is not acting paternalistically. So much is

<sup>17</sup> Indeed Hart (1963, 5) suggests that “in an organised society it is impossible to identify classes of actions which harm no-one but the individual who does them.”



uncontroversial. But we should not ignore the fact that there are a wide variety of ways in which people can in principle pursue their own good, not all of which might be obviously related to the individual's "happiness." One example would be a stoical action, such as the self-denial of material goods for reasons of a religious or spiritual nature. Amartya Sen, in particular, has argued that there are a number of ways in which people may act or choose in the world that do not seem to accord with traditional notions of well-being maximization. For example, someone who liked reading only the *Times* newspaper might feel the quality of his life was drastically reduced by a state that allowed him to read only that paper: he might give up reading it altogether because the intrinsic value of being able to choose what one wishes to read has been lost (Sen 1988). Or people may "commit" to certain acts—such as working hard or protecting the environment—even if they do not really "want" to and know that their well-being will be reduced as a result (Sen 1977, 2005). Perhaps the most controversial type of nonstandard well-being is that pertaining to moral well-being and the accompanying moral paternalism (Dworkin 2005). If the government acts to enforce morality, as long as this morality does not require or involve explicit and intentional harm to the interests of the individual, then it will be considered paternalistic rather than, say, merely cruel.

Moral paternalism is considered in more detail below. But in all these cases the "good" in question can involve valued things other than well-being per se. It will be assumed here that any interference in decisions relating to these valued things will not be discounted from the class of paternalistic actions merely because people appear to be acting in pursuit of nonwelfarist outcomes; it is enough that the interference appears to be subverting or restricting the pursuit of what the individual considers right for him or her.

### The Question of Consent

The third characteristic commonly cited as being necessary for an act to be paternalistic is that, broadly speaking, there is a lack of consent. We say "broadly speaking" because the many authors who have tackled this issue have introduced subtleties into their definitions to which we cannot do justice here.<sup>18</sup> Nevertheless, it is a commonplace in the literature that some

18 How consent, or its absence, is characterized varies widely in the literature. Gert and Culver (1976, 50) require that paternalistic acts operate "independently of . . . past, present, or immediately forthcoming (free, informed) consent"; Arneson (1980, 471) suggests that paternalistic interventions must be carried out "against [the paternalized's] present will . . . or against his prior commitment"; Dworkin (1983, 106) stipulates that the person "who is being treated paternalistically does not wish to be treated that way"; VanDeVeer (1986) requires that an act or omission is contrary to the preferences of the recipient; Archard (1990b, 36) makes the point

reference is made to the fact that the individual has not acceded to the intervention.<sup>19</sup>

However, some authors disagree. Clarke, for example, argues that the consent clauses in all the aforementioned definitions of paternalism are redundant in his formulation, which, as we have seen, simply requires that the paternalist "aims to close an option that would otherwise be open . . . in order to promote [the paternalized's] good" (2002, 89). Clarke argues that as long as an option is closed off, this act constitutes paternalism whether the recipient of the act agrees to it, is indifferent to it, or even asks for it. For reasons already outlined, we prefer a definition that specifies that the intervention addresses reasoning or other cognitive failures rather than simply closes off options. Can we also dispense with the additional clause referring to consent?

Take the realm of individual private relationships first. If all interventions addressing shortcomings of reasoning or judgment are nonconsensual—as seems superficially plausible—then there would indeed be no need for the additional condition. How can we ever "agree" to have our reasoning interfered with? At any given time this would be logically incoherent. The individual would need to say to the intervener: "Ignore or confound the way I'm making this judgment and the decision I am now coming to." How should the potential paternalist establish which judgment or decision of such a person should be heeded?

However, it does make sense for someone to agree to have her *future* reasoning interfered with. In this case, she presumably realizes that her reasoning is going to become compromised in some way, and she wishes specifically to prepare for such an eventuality. Perhaps the most famous and oft-quoted example in all literature is that of Odysseus ordering his men to tie him to the mast of his ship and to ignore his pleas to release him to avoid the consequences of hearing the Sirens' song (having wisely told the crew to plug their own ears so that they are not affected). While Odysseus is tied to the mast, his men are interfering with his current reasoning by ignoring his

rather less directly, suggesting that "P [the paternalist] discounts Q's belief that P's behaviour does not promote Q's good"; and de Marneffe (2006, 73) suggests that the condition is that the paternalized "prefers [her] own situation when [her] choices are not limited" by the paternalist. Hershey (1985, 179) stipulates that the recipient's consent or dissent is not "a relevant consideration" for the paternalist. Interestingly he argues that the only extra condition for an act to be paternalistic is that it should be intended to benefit the recipient; however, this would allow the provision of cash redistribution to be counted as paternalistic.

19 Shiffrin (2000, 214) notes that simply requiring that an action is against someone's will—as did Mill—would allow for interventions that are unknown to an individual, such as having one's credit card destroyed before one received the letter containing it. In this case the individual did not will anything at all because he was ignorant of the opportunity to use the credit card coming his way. Nevertheless, the letter was his and the action was not done with his consent, rendering it paternalistic.

request to set him free. However, they are only ignoring his current entreaties because of his own previous order: it was *just this eventuality* that Odysseus had in mind when he made the original request. The refusal to obey his command does not seem paternalistic when viewed in this way because Odysseus's *prior* reasoning is being respected, and the earlier decision was directed at a situation when he knew his future reasoning would be compromised.<sup>20</sup>

In some ways the arena of government intervention is immune from these philosophical niceties. Laws apply to populations rather than individuals, and an individual cannot meaningfully consent to a law at the time of its enforcement—the law applies whether the individual consents or not. On the other hand, most laws and government policies are sufficiently controversial that there will always be some who oppose them. So we can be reasonably sure that laws will always fail to obtain the consent of some of those to whom they apply (and maybe to others too). This tends to make the definitional issue of consent redundant, at least for government paternalism.

This should not seduce us into believing that the issue of consent may not be important for the *justification* of a paternalistic law. For example, the law plays a significant role in allowing or disallowing various forms of contractual agreement between individuals. Take an individual who wishes to plan for the event of some terrible accident that leaves him severely brain damaged. This person may set out in a formal document such as a living will a wish to be helped to die. The government is not neutral in this process. It can allow such a document to stand and simply let the courts decide on whether the proposed action conforms to what was agreed, and whether the consent was genuine. Alternatively, it can disallow any such agreements that involve assisted deaths, whether apparently consensually agreed in advance or not.<sup>21</sup> In fact, contemporaneous consent may not be any less problematic: witness severely disabled people who wish to end their life when fully mentally competent but suffering from a physically degenerative disease. Current law in many countries does not allow such consensual acts. We may consider the law paternalistic if it is concerned with correcting the autonomous (prior) reasoning of the individual. Its status as paternalistic does not depend on

20 See Kleinig (1983, 56–58) for a general discussion of difficulties associated with prior consent. Unusually, Regan (1983) takes the view that ignoring Odysseus's cries to be released fails to acknowledge people's right to change their minds, and that as a result the "interference"—failing to set him free—needs to be justified on paternalistic grounds and not on the basis of prior commitment.

21 See Spellecy (2003) on the wider case for accepting as binding so-called Ulysses contracts (Ulysses being the Latin equivalent of the Greek Odysseus), and Richards (1992) for arguments in favor of living wills from an antipaternalist point of view; see also Davis (2002) for an argument against them in decisions relating to medical treatment.

whether people generally agree with such a law because laws will always have their opponents.<sup>22</sup> But whether such a law is *justified* will depend in part on our attitude toward the status of prior consent.

What about the effect of laws on that proportion of people who *do* agree with them? Are they still paternalistic for these individuals? Clarke would argue that their consent to the law is irrelevant. He gives as an example laws against prostitution that, according to his definition, are paternalistic even toward those who have no wish to engage in paying for sex. Many people consent to the measure or perhaps positively support it. But Clarke argues they are subject to an option being closed off for their own good; the law, for them, is still paternalistic. We would agree that consent is irrelevant, but according to our definition the law is *not* paternalistic because the autonomous reasoning of supportive people is not considered to be faulty.

A similar line of argument applies to those laws to which more or less everyone consents. Consider street lighting. It is not consent that excludes such public provision from the class of paternalistic interventions. The only way people can obtain public goods such as these is for the state to prevent free-riding and to oblige all those who can afford it to contribute to the cost. Thus the desires of the majority are not thwarted by a minority. A similar case is that of compulsorily providing information—say, that of the nutritional content of foods. Certainly not everyone is likely to consent, because providing accurate, clear information is not costless. Some individuals may object that the compulsory provision of information has pushed up the cost of the food. They would rather take their chances and pay the lower price. However, to accommodate these risk-takers, the state would be faced with the difficulty of providing information only to those who want it (and thus are willing to pay for it) and not to those who do not. This is not practical because those who do not pay will, again, free-ride on the benefit of the additional information.

We justify these kinds of intervention on the basis that they are devised to enable the majority to get what they want. The minority who oppose the law are not necessarily being treated paternalistically. Gerald Dworkin (1983, 110) cites the example of putting fluoride in the general water supply to improve the general state of dental health: "The restriction on the minority [who are obliged to drink fluoridated water] is not motivated by paternalistic considerations, but by the interests of a majority who wish to promote their own welfare."

22 It is logically possible for literally the whole population to whom a law applies to consent to that law in order that they might protect themselves from weakness of will—in other words, it is their own reasoning that is at fault, and they all recognize the problem. But this is sufficiently far-fetched to be ignored.



Even laws that are implemented for individuals' own good and that many oppose will not inevitably be paternalistic, for the same reason. For example, some pacifists may wish to do without a national defense force. But, for the majority, the only way to obtain the relevant deterrent effect is through state provision. This effectively closes off the option to do without. And yet this is not paternalistic, because the government does not believe that people's judgment or reasoning is defective; it is simply providing a service for people who do judge that they want it but can get it in no other way. The government may also believe it is for the good of those who do not approve of the service, but this is not the principal rationale behind the state intervention. Helping people to get what they want does not involve the government substituting its reasoning for that of its citizens. Thus, this "test" of whether an act is paternalistic is not passed, and a further element to the definition relating to consent is not required.

### Conclusion: A Definition of Paternalism

We are now in a position to summarize the argument so far, and to provide the two conditions that define paternalistic interventions by the government.<sup>23</sup>

Most definitions of government paternalism involve three elements: the government restricts in some way an individual's freedom or autonomy; it engages in such restrictions to promote the individual's own good; and it does this without the individual's consent. There are problems with all these elements, but the principal difficulty is with the first: the restriction on freedom. Any definition that incorporates this element excludes interventions that most people would consider paternalistic, such as subsidizing the arts. Such acts do not restrict freedom: if anything, they seem to be freedom- or autonomy-enhancing.

In fact, for such cases, as indeed for all cases of government paternalism, the rationale for the intervention is that the government does not trust the individual's judgment.<sup>24</sup> It does not believe that, without the intervention, the individual will make the "right" decision—"right" in terms of promoting the individual's own good, at least as the government perceives it. Without this intervention, the individual's judgment will fail to promote her own good, or at least not promote it as successfully as it would be promoted with the intervention in place. It therefore seems preferable to define gov-

<sup>23</sup> Or noninterventions, for we must bear in mind that paternalism can involve a failure to act. However, in most cases, particularly where the state is concerned, there will be an active intervention, and thus we use "intervention" as a convenient shorthand for both acts and nonacts.

<sup>24</sup> Arguably, as Sarah Conly points out, this is true of all forms of paternalism, not just government paternalism. Thus "in paternalism there is a substitution of judgment; one party assumes that what you need is superior to your own judgment" (Conly 2013, 36).

ernment paternalism, not in terms of the intervention itself or of its consequences, but in terms of (a failure of) individual judgment. We should emphasize at this point that we are not addressing the questions as to why might the government mistrust the individual's judgment, whether that mistrust is well founded, and whether it can in fact achieve a better outcome with the intervention. Answers to those questions are provided later in the book. Our goal here is simply to provide a definition of government paternalism that will serve as a basis for our subsequent discussion.

The intention to promote the individual's own good must remain an integral part of the definition, but it is now that good as defined by the government, not necessarily as defined by the individual. Of course, the government may accept the individual's own conception of his good as that which ought to be promoted; indeed, later we argue that it *should* do precisely that, and that its paternalistic interventions should be confined to substituting its judgment for the individual's only both where there has been a failure of the *means* by which the individual tries to achieve his perception of the good, and where the government could do better. However, as we shall see, many proposed and actual paternalistic interventions have as their rationale substituting the government's perception of the good for the individual's perception; hence our definition has to include that possibility.

The inclusion of a condition that the intervention takes place "without the individual's consent" is redundant—unless it is assumed only to refer to *prior* consent. For it would be logically incoherent for individuals to make their own judgment concerning decisions they have to make, and simultaneously to consent to having that judgment replaced by the government's judgment.

So to our definition. We conclude that a government intervention is paternalistic with respect to an individual if it is intended to

- ⊙ address a failure of judgment by that individual
- ⊙ further the individual's own good

However, this does not conclude the terminological discussion. For there are important distinctions that must be made between the different types of paternalism that fall within this definition. These we must now consider.

### 3 Types of Paternalism

A large number of different types of paternalism have been discussed in the literature. In this chapter we consider some of these. In particular we examine legal paternalism, soft and hard paternalism, and means and ends paternalism. As part of our discussion of means and ends paternalism, we also examine perfectionism, volitional and critical paternalism, moral paternalism, and legal moralism. Finally we consider some distinctions that are less important but nonetheless necessary to keep the terminology consistent.

#### Legal Paternalism

Legal paternalism is a term Feinberg (1971) originally coined to refer to the specifically lawmaking form of paternalism enacted by governments, as opposed to the paternalism that might arise from the actions of its agents or employees. As such, in chapter 2 we have already discussed some of the issues arising from legal forms of paternalism. Husak (1989, 2003) has analyzed in some depth the particular difficulties that arise when applying philosophical insights about the paternalism of personal relationships to the law. He argues that, unlike the personal, the law applies to groups of people who differ in degrees of maturity, competence, knowledge, and physical characteristics. This poses a stern challenge to those wishing to justify government paternalism, because it will be virtually impossible to specify the unique circumstances that might render an act justifiable in an individual context. For example, Husak refers to Feinberg's analysis of drug laws in which Feinberg uses a hypothetical discussion between a doctor and a patient to illustrate his case. In this discussion the doctor is able to establish whether there are any special and particular reasons for allowing certain individuals the opportunity to take a dangerous drug. However, it is difficult to extrapolate from such an analysis to the circumstances of government paternalism because it would be impractical for the government to "have a dialogue with its citizens" on an individual basis in deciding whether to act paternalistically (Husak 1989, 372). The only remedy in such a case,

and one suggested by Feinberg, is to have a special statutory board to review individual claims for special dispensation from the law, something that would clearly be time-consuming and presumably open to endless legal challenge and judicial review. In practice, where the government makes laws, they will often apply indiscriminately both to individuals who would benefit from paternalism and to those who would not.<sup>1</sup> In chapter 7 we examine the possibility that flexible and “libertarian” forms of paternalistic policy can accommodate such concerns.

But, as we have seen, there are difficulties too in establishing the definition of a paternalistic legal act. Of particular difficulty is the requirement that such a legal act should be *intended* to address a failure of judgment by, and to be for the good of, an individual. For how can we know what was in the mind of legislators? They may not be open about the intentions of the legislation, to the wider public or perhaps even to themselves. We may never be able to pin down precisely which laws are truly paternalistic in these circumstances. Indeed, in a literal sense, no law may have ever been paternalistic if no legislator intended it to be so. Nevertheless, our approach to definition is helpful if it focuses minds on what would be the most plausible rationale for a law, that is, to correct a failure of individual judgment; in other words whether paternalism, as defined, is the “best fit” justification. In chapter 4 we discuss numerous examples of government intervention and the conditions that would make them paternalistic. And in general we favor the term “government paternalism” to “legal paternalism” because it allows for a wider range of paternalistic interventions by the government than just those that involve lawmaking.

### Soft and Hard Paternalism

A major distinction often made in the literature is that between soft and hard paternalism (Feinberg 1986; Pope 2004). The distinction is important in paternalist analysis and is based on the degree to which the individual concerned is considered to be acting *autonomously* or *voluntarily*.<sup>2</sup> Autonomy is clearly important in thinking about paternalism, and where autonomy (or voluntariness) is compromised or absent, then a particular form of paternalism—soft paternalism—becomes a possibility. If someone is mentally ill, under the influence of drugs, or afflicted by uncontrollable com-

1 See also Hobson (1984) for an earlier discussion of this point.

2 These two terms are not synonymous—autonomy has a wide range of complex and subtle shades of meaning, some of which will be outlined in chapter 6. However, although “voluntarily” or “voluntariness” is normally used in discussions of soft paternalism, “autonomously” is occasionally used instead, being taken to refer to the extent of a person’s capacity for self-determination (Buchanan and Brock 1989, 42; Beauchamp 2004).

pulsions, then her autonomy is restricted. It is argued that interfering in the decision making of these individuals is justified on the basis that the decision is not really their own, and thus their autonomy is not offended. Thus Feinberg (1986, 26) seeks to develop “a soft paternalistic theory of how forcible implementation of a person’s will can accord with his personal autonomy.”<sup>3</sup>

Soft paternalists consider that intervening in the decisions of people who are acting in a nonvoluntary way is not really interfering with their “true” selves at all. Rather, the intervention is a means of protecting them from harms that, owing to their lack of voluntariness, are not being chosen by them in any meaningful sense. The situation is, according to the soft paternalist, closer to that governed by the harm principle—akin to one individual being harmed by another—and really no kind of paternalism at all.

Nevertheless we have seen that not all commentators have required autonomy to be present in a definition of paternalism—some have required simply that options or choices are removed or diminished—and for these authors closing off an option for someone with severely limited autonomy would still be paternalistic. Our own definition takes a similar line: a cognitive limitation might involve a loss of autonomy, and an act intended to address that limitation would nonetheless be paternalistic. The question becomes one of when such interventions are *justified*. Indeed, antipaternalists reluctantly accept the term soft paternalism for those interventions in people’s self-regarding actions where these actions are considered to be nonvoluntary. Hard paternalism, on the other hand, describes interventions in the decision making of individuals that do encroach on their autonomy, the justification for the intervention being the prevention of sufficiently serious harm. The question of whether soft paternalism does avoid offending autonomy, and thus evades the principal criticism of the antipaternalists, will be reviewed in chapter 6.

### Means and Ends Paternalism

A distinction that has rarely been made in the literature, but one that is of great importance for our purposes, is that between paternalism directed at the decisions people make to achieve certain goals or ends, and paternalism directed at the ends themselves.

3 Conly (2013, 5–6) also refers to a distinction between hard and soft paternalism in terms of the types of paternalistic intervention, with hard paternalism referring to what she terms coercive paternalism (and what we call legal restrictions), and soft paternalism referring to other, less coercive types of intervention, such as taxes or subsidies. We do not pursue this distinction here.



Brock (1988, 561) describes the distinction between means and ends this way: first, an individual has “various aims, ends, and values that at any point in time define or give content to [the individual’s] life plan and which the person appeals to in choosing between alternative courses of action,” and second, there are the “choices between alternative courses of action” themselves—the means to those ends.<sup>4</sup>

Take someone who is choosing a school for his child and notices that its students’ performance on a national examination appears to be significantly lower in the current year than in the previous year. This outcome for the school might simply be a statistical blip whereby random factors had influenced the results in the current year (several of the star students had been struck by illness on the day of the exam, perhaps). In fact, its teaching performance could have been equally good in both years, but, based purely on the exam results, the appearance was of a reduction in standards. The parent might be tempted to choose an alternative school that had previously had poor results but whose current exam results seem to show improvement (an outcome that, for similar reasons, might equally be misleading). The end that this parent desires is the best school in terms of teaching performance for his child, but his analysis of the situation may fail to provide him with the best chance of achieving that end.

Raz (1986, 423) makes an explicit reference to “means-related paternalism.” He argues that some forms of government activity that restrict people’s choices are acceptable if they are simply of instrumental value. Thus rules that impose safety and quality controls on manufactured goods are—for Raz—an acceptable form of paternalism precisely because people do not want unsafe goods. Clarke (2006) argues in a similar vein for paternalistic food hygiene regulations. In fact, the case for means-related paternalism is not as simple as this. Whereas people may be assumed not to want to eat food *known* to be harmful, they may wish to take the risk that the food may be harmful if it is therefore cheaper. Thus justifications for this type of paternalism involve more than simply citing the “good” of safe food because there is also the “good” of cheap food. People’s true ends may be a complex mixture of the two.<sup>5</sup>

4 For other accounts that make explicit this kind of distinction, although not always in the same terms, see Scoccia (1990), Goodin (1991), Archard (1994), Wolfe (1994), Groarke (2002), and Conly (2013).

5 Clarke (2006, 119n) acknowledges that if people genuinely wanted to eat unsafe food, as a conception of the good in and of itself, then a neutral state—i.e., one that seeks to promote no particular conception of the good (Sher 1997; Wall and Klosko 2003)—would need to find ways for such people to be exempt from the regulations. However, we would suggest that a neutral but paternalist state might accept that people want to take a *risk* but misjudge the balance between potential harms and pleasures even according to their own conception of the good.

Indeed, people are almost always striving to achieve an appropriate balance between largely uncontroversial ends. If the means-related paternalist judges adversely people who seem to be failing to set aside enough money for their retirement, it may appear that the paternalist is making a judgment that the apparent ends of the individuals concerned—maximizing their present consumption—are misguided. There is a better end of having a well-provided-for old age, and this end should take precedence over the individuals’ own goals. But in fact there may be no disagreement about ends. It is reasonable to suppose that individuals do not wish to have an impoverished old age. They may just hope that things will work out somehow: perhaps there will be an inheritance, or a sufficient increase in the value of their property, or they believe that their pensions will actually be sufficient for their (perhaps reduced) needs. They still wish for a comfortable and happy old age but are making a particular judgment about the balance between pleasure and happiness now and in the future. And the paternalist, as an onlooker concerned for their well-being, would not disagree about the appropriateness of these ultimate goals—both “pleasure now” and “comfort in old age” are not in dispute as goals or ends to be supported. Nor would the paternalist dispute that they have to balance the two. The paternalist might, however, disagree with them about the particular judgments they make in trying to strike that balance: the likelihood of an inheritance, for instance, or the predicted performance of pension plans they choose. And that would be the rationale for the means-related paternalist’s intervention—a disagreement about means, not ends.

Thus means-related paternalism is concerned only with assisting in the *achievement* of ends that are considered to be fundamentally the individual’s own—including the balance between these ends.<sup>6</sup> This conceptualization has echoes of Hume’s notion of reason being the means to satisfy “passions”: “Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.”<sup>7</sup> To intervene in this “reason” would be means-related paternalism; to question the “passions” themselves would be ends-related.

Some ends may be unchanging and unchosen. These are what we might call basic desires. We simply enjoy a Thai massage or eating chocolate brownies—we do not know why; we did not choose to enjoy them; we just do. The desires are part of “us.” But other ends may change over time, and we

6 If an individual *genuinely* wished to live life to the absolute maximum now and risk very likely privation in old age, there would be no well-being loss for those individuals who make decisions reflecting this balancing of goals. A paternalistic policy must be mindful of the fact that some people’s ends will appear odd if not downright perverse. Addressing this point will take up some of our discussion in chapter 8.

7 *A Treatise of Human Nature*, book 2, part 3, section 3.

may be able to influence them by choosing the conditions under which we live. Someone might, for example, choose to take a course in English literature in the hope that she would thereby cultivate a love of poetry or Shakespeare. Or we may act to obstruct unwelcome desires, such as avoiding shops where brownies are sold because of a concern about our weight or our long-term health.

Means and ends can easily become entangled. Take the example used earlier of the parent choosing a school. We suggested that the end was one of achieving a high quality education for his child. But perhaps there is another end lying behind this one—that the children get well-paid jobs, or secure jobs, or that they develop some aptitude to its full extent. Or perhaps the true end is yet more fundamental—that the children become simply happy or satisfied adults. Obtaining high-quality education is just a means to these ends. Sometimes this hierarchy of ends can involve a conflict. Which is the “true” end—the desire to have another cigarette or the desire to stop smoking and have a longer and healthier life? Gerald Dworkin (1988, 15–20) argues that the capacity for second-order motivations—the desire to not have the desire to smoke—is a defining quality of autonomous human beings, and that it is these “higher,” more reflective and considered ends that take priority.

Questions such as these take us beyond the scope of this book. However, the distinction between means- and ends-related paternalism is nevertheless useful. For it reminds us that we can, in principle at least, either help people to achieve their own ends (while acknowledging that identifying the true end is rarely straightforward) or seek to intervene in the identification and construction of the ends themselves. For example, in developing a justification for a policy that seeks to deter people from engaging in casual sex with multiple partners, it is important to be clear about whether we wish to help people avoid excessive risk to their own health (means-related paternalism) or consider multiple sexual partners wrong in itself (ends-related paternalism). And, as we shall see, the justifications for means-related paternalism are rather different—and, in our view, much stronger—than those for the ends-related version.

### Perfectionism

Ends-related paternalism has close links to perfectionism, a school of thought that has grown in significance in recent years. Perfectionism has many different varieties, and there is no unanimity about how to define or defend it,<sup>8</sup> but it is generally accepted that “in its broadest sense, perfection-

ism is the view that the state should promote valuable conceptions of the good life” (Chan 2000, 5). Thus the government is justified in taking a judgmental stance on the kinds of activities people engage in or about the character traits that should be encouraged. Perfectionists do not accept that it is only the view of the individual that counts in establishing the value of certain ends: “a perfectionist doctrine of the human good holds that what is good for its own sake for a person is fixed independently of her attitudes and opinions toward it” (Arneson 2000, 38).

Now it is reasonably easy to show how some forms of paternalism are not perfectionist. Take Sher’s (1997) classification of theories of the good on a continuum from subjective to objective. For simplicity he emphasizes four points on this continuum:

- ⊙ Most subjective: all value depends on people’s actual preferences, choices, or affective states.
- ⊙ Moderately subjective: what is valuable is not what people actually want, choose, or enjoy but what they would ideally want, choose, or enjoy if they were more instrumentally rational, better informed, or better able to imagine alternatives.
- ⊙ Borderline subjective/objective: while the value of a character trait or an individual’s chosen activity does depend on certain facts about the individual, the relevant facts concern neither her actual or ideal desires but certain broad capacities that all members of her species share.
- ⊙ Most objective: the value of a trait or activity depends on nothing at all except its own nature; it is simply intrinsically valuable *whatever* else is the case.

The first two points constitute “subjectivist” positions, and the last two are varieties of perfectionism. It should be reasonably clear that the form of paternalism that we have termed means-related accords most closely with the second, “moderately subjectivist”—and nonperfectionist—position. Conversely, some adherents of perfectionism, such as Raz, argue specifically that the government should encourage the adoption of valuable ends. He limits the scope of such perfectionism by stipulating that these perfectionist policies should promote valuable ends only through the creation of the conditions of autonomy. Nevertheless, it is autonomy *as an end* that is important to his political philosophy, and Raz is comfortable with this being referred to as paternalistic (Raz 1986, 423).<sup>9</sup>

<sup>8</sup> See, for various approaches, Raz (1986), Wall (1988), Sher (1997), Hurka (1993, 2001), Chan (2000), and Clarke (2006).

<sup>9</sup> For a detailed debate on Raz’s political philosophy, including a reply from the author, see the special issue of the *Southern California Law Review*: “Symposium: The Works of Joseph Raz,” vol. 62, nos. 3–4 (March–May 1989).

Others develop similar arguments that, at least in part, support varieties of perfectionism on the (supposedly nonpaternalist) grounds that they do not offend autonomy because they are aimed at increasing people's range of opportunities and choices. For example, Clarke (2006) suggests that interventions that expand rather than restrict a person's options may be perfectionist but not paternalistic. So if the government makes interesting and stimulating occupations available to those stuck in dead-end jobs, it is seeking to promote a particular conception of the good as interesting and stimulating work. The kind of jobs that the government considers interesting and stimulating may not be those that the individual thinks of in this way, but Clarke argues this is not paternalistic because the individual's choices are only being expanded—he could still choose an “unstimulating” job if he wishes. However, we argued above that subsidies in general are paternalistic where they seek to increase consumption of an item or activity that, owing to some form of mistaken judgment, individuals choose not to purchase at their original price. The government could increase people's cash income as a nonpaternalist solution. This is essentially the same where it subsidizes certain jobs: it could instead raise the level of income for people to the point where they were not forced to take demeaning or menial work. Hence even these cases have a paternalistic element to them.

If perfectionism goes beyond expanding opportunities and instead supports policies that clearly *restrict* choices, then it is more obviously paternalistic. Wall (1988, 224) advocates an unequivocally restrictive policy on drugs, for example, on the basis that such prohibitions “promote and sustain social conditions that promote the flourishing of those subject to [the state's] authority.” Some authors are positively supportive of the paternalist nature of perfectionist theories (Deneulin 2002).

It may be that many of the policies that emerge are nonetheless closer to means-related paternalism than they profess to be. For example, Wall's support for restrictive drug laws cites as its aim to promote the “flourishing” of the individual. Like Raz, he supports a perfectionism that promotes autonomy as the “good.” But flourishing and autonomy are ends about which it is very difficult to disagree. People might well fail to achieve them by, for example, becoming addicted to drugs. They might not realize how drugs will affect them and how they will thereby be prevented from attaining their true ends. Thus the government, in outlawing drug use, is engaging in a form of means-related paternalism.

We cannot do justice to these theories here. We would simply note that, if true perfectionist theories are largely nonsubjective in Sher's taxonomy, they must make their justification based on factors other than the desires or wishes—actual or ideal—of individual citizens themselves. In the practical world of policy making this is a tall order: citizens are unlikely to look

kindly on policies that make no reference at all to their own conception of their ends.<sup>10</sup>

### Volitional and Critical Paternalism

A subtle twist to the means-ends distinction is provided by Ronald Dworkin and his understanding of “volitional” and “critical” forms of paternalism.<sup>11</sup> Dworkin's concern is with the various strategies, deriving from different concepts of community, that have been employed to attack what he calls “liberal tolerance,” a notion he is keen to defend. Dworkin regards such a communitarian strategy as paternalistic insofar as it involves members of a community taking an active interest in, and possibly intervening coercively to support, the well-being of other members of the community for the sake of their well-being alone. But Dworkin sees this paternalism working in two distinct ways.

First, paternalism can focus on people's volitional interests—those aspects of one's well-being that simply involve people getting what they want. Volitional paternalism would intervene to assist people, possibly coercively, in getting what they already acknowledge they want. This form of paternalism is equivalent to what we termed means-related paternalism earlier. The ends are not questioned. Dworkin uses the examples of wanting good food, fewer visits to the dentist, and the capacity to sail better as volitional interests. Clearly volitional paternalism would not be relevant in all these cases, but where it could help—say by taxing sugary food so that one's teeth do not need the dentist's attention so often—it would intervene only in the means to these ends.

Second, paternalism can intervene in people's critical interests—those aspects of one's well-being that involve having or achieving something one *should* want, that is, those things without the attainment of which one's life would be a worse life. They are thus contrasted with things we want (good food, sailing better) that are not critical—although we want them, we do not think our life would be a poorer life if for some reason we did not want them. Dworkin uses the examples of having a close relationship with his children and achieving some success in his work as critical interests. Unlike volitional interests, we can make mistakes about these ends: we can misjudge

10 One difficulty for perfectionism in empirical terms is whether there is any genuine evidence for what is the good—see Sher (1997, 149–50).

11 For a full explication of his theory, see R. Dworkin (1989, 1990), and for a summary, R. Dworkin (2000). Wilkinson (2003) and Wolfe (1994) offer a critique of Dworkin's theories as they relate to paternalism.



the importance of striving for success at work, or bonding with our children.<sup>12</sup> This provides an opening for critical paternalism: coercion, for example, might sometimes provide people with lives that are better than the lives they now think are good.

Dworkin, while implicitly suggesting that volitional paternalism may have a role, essentially makes the point that critical paternalism is self-defeating. The components of a good life contribute to that life only if the individual endorses them. That is, people must consciously arrive at a position where they value and acknowledge the contribution a certain activity or relationship makes to the value they put on their life. But critical paternalism, in its most crude form, *imposes* a new way of life on that person without their endorsement.<sup>13</sup> Even if in some sense the life imposed really is a more valuable life, if the individual does not endorse it her life will not go better for her. Further, the rather more subtle forms of critical paternalism that lead people to endorse the changes they undertake also fail for Dworkin because they will tend to lessen the ability of the individual to consider the critical merits of the change in a reflective way. In particular, he rejects what he calls cultural paternalism—which removes bad options from people's imagination through educational constraints and other such devices, rather than prohibiting them outright—because this also removes the important *challenge* involved in making meaningful choices. Living well involves responding appropriately to challenges that have been rightly judged. Paternalism removes that challenge.

One problem for this approach is whether it is possible successfully to distinguish volitional from critical interests. Another question is whether all forms of paternalism—including what Dworkin terms cultural paternalism—are in fact self-defeating. He acknowledges that there are circumstances where genuine endorsement of government interventions—such as that of compulsory education—is possible. Perhaps the task for the paternalist is to build such genuine endorsement into the design of any paternalistic project that seeks to intervene in people's critical interests.

12 There may be some parallels here with Mill's distinction between "higher-value pleasures" and others, described in *Utilitarianism* ([1863] 1991), the higher pleasures being those that people who have experienced many different kinds of pleasure will almost always prefer as superior; see West (1977) on this point in relation to paternalism.

13 As happens to the heroes of Koestler's *Darkness at Noon* and Orwell's *1984*. In both cases the individuals come to accept the "truth" as understood by the authorities and endorse it but only as a result of unacceptable brainwashing. Alex in Burgess's *A Clockwork Orange*, on the other hand, does not endorse the "mind control" methods the authorities use on him and instead finds his *own* rationale for reforming his violent ways.

### Moral Paternalism and Legal Moralism

Gerald Dworkin (2005) has differentiated a number of principles lying behind legal action intended to prevent various kinds of unwanted outcome; two of these can be described as follows.<sup>14</sup>

- 1 Legal moralism: preventing inherently immoral, though not harmful or offensive, conduct.
- 2 Moral paternalism: preventing moral harm (as opposed to physical, psychological, or economic harm) to the actor himself.

We have already noted that there are many types of harm that the paternalist, legal or otherwise, can seek to prevent—and goods that he can seek to promote. But here Dworkin separates the prevention of *moral* harm into a distinct category of paternalism. He further distinguishes the concept of legal moralism that seeks to prevent immoral acts where the immorality of the acts is independent of their connection with harm. The claim about legal moralism is that certain conduct—say, prostitution—is intrinsically bad. The world is a worse place for containing such conduct whether or not prostitution has harmful effects on either the persons being restrained or others.<sup>15</sup>

Moral paternalism, in contrast, appeals to a particular person being morally improved, with the implication that legal restrictions and prohibitions can be good for the moral character of a person. Thus a person's well-being can directly involve, and therefore be increased by, changes in her moral character and actions—changes that do not necessarily result in her being happier or healthier, and so on. A morally virtuous life might lead one to live longer if one does not indulge in excessive gluttony or hedonistic drug taking. But moral paternalism seeks to improve the moral well-being *independently of these effects*. A person can be better off just because he is morally better, just as he can be better off just because he is happier.<sup>16</sup>

14 They are based on Feinberg's work (1986, 1988); the other principles are legal paternalism and the harm principle, both introduced above, and the offense principle, which provides reasons for intervening to prevent offensive behavior. The distinctions here are presented in terms of their relation to harm; exactly the same distinctions can be made with respect to the promotion of good. More generally on the debate over moral paternalism, see Scoccia (2000) and Ten (1971).

15 Conversely, from a legal moralism perspective the world can also be a better place morally without any particular person being made a better person. Dworkin provides the example of the death of an evil dictator making the world a better place morally even though the moral character of everyone still alive remains unchanged.

16 Some authors discount moral paternalism from the class of paternalistic interventions altogether because the paternalist would not be acting for "the agents' own good, as defined by the agents themselves when their judgement is not in any way clouded" (Häyry 1992, 200).

Dworkin notes that such claims stretch back to Plato and the Stoic philosopher Epictetus.

According to our definition of paternalism, legal moralism is not a variant form of paternalism because it is not intended to do good to or for an individual. In fact, it is somewhat difficult to see what its status is beyond that relating to religious strictures, for if good is not made real *for anyone*, then who is to decide that it is good at all? Moral paternalism at least has in its favor that the good it promotes is a good for the person who is subject to the government intervention.

Dworkin acknowledges that, like perfectionism, moral paternalism takes a stance on the ends that people pursue. It is thus a form of what we have termed ends-related paternalism. Smokers and motorcyclists do not deny that the end of good health is valuable; but most people who watch pornography do not believe that watching pornography is morally corrupting. And yet moral paternalism takes a view on this end: it claims that the moral well-being of those who watch pornography can be improved even if they do not accept in any way that their activities are wrong, or that they would be leading a morally superior life if they refrained from them. This distinction between standard means-related paternalism and its moral cousin hinges to some extent on an empirical question: where ultimately lies the source of knowledge on the basis of which the paternalist believes she knows that there is a “mistaken judgment” about well-being that warrants the paternalistic interference? When it is only the means that are in question, one can in principle refer to the subject himself (perhaps later at a time when he is not making the relevant decision, or as part of a survey or trial, or as part of the democratic process), in order to discover whether he agrees that his ends are better achieved with the paternalist’s help. With moral paternalism (and to some extent perfectionism) this is not possible because the individual is unlikely ever to agree that his ends are wrong.

### Other Categories of Paternalism

There are a number of other, largely uncontroversial distinctions that can be made between various types of paternalism. We discuss these distinctions here purely for completeness, since some readers may have read only a portion of the literature and thus may be confused by terminology—especially since different authors on occasion adopt the same terminology to represent different distinctions.

First, Kleinig (1983) has made a distinction between negative and positive paternalism. Negative paternalism, for Kleinig, refers to actions that protect people from harming themselves and positive paternalism to those

that promote a positive benefit. Seat belt laws are an example of the former, and subsidies for leisure facilities an example of the latter. Unfortunately this distinction has also been referred to as weak and strong paternalism, respectively (G. Dworkin 1981). To add to the confusion, some writers (for instance, Beauchamp 1983) use the weak/strong terminology to distinguish between soft and hard paternalism.

A second distinction is between mixed and unmixed paternalism (Feinberg 1986). The former refers to paternalistic policies that are combined with other motives (such as correcting market failure or promoting social justice), the latter to those motivated *only* by improvement in the well-being of the individual whose autonomy is interfered with. Again the semantics are not straightforward: Kleinig (1983, 12) refers to this distinction as between pure and impure paternalism, terms that we restrict to a rather more narrow meaning below.

The third distinction is between direct and indirect paternalism (Feinberg 1986, 1971), yet another distinction occasionally termed pure and impure (G. Dworkin 1972). Direct paternalism involves only one party, such as prohibiting suicide and drug use; indirect paternalism involves two parties so that the actions of a second person are interfered with to benefit the first, such as laws prohibiting euthanasia or drug sales. In the latter case a restriction is placed on a second party even though the first party has voluntarily entered into an arrangement with the second party that would affect only the first party’s interests. The second party may be punished even though it is the first party’s (supposed) misjudgment that is being addressed.

Fourth, there are paternalistic laws that require actions and there are those that forbid them: these have been termed active and passive paternalism, respectively (Kleinig 1983). For example, compelling the use of a helmet when riding a motorcycle is an active policy; outlawing the consumption of certain drugs is a passive one. This terminology, at least, has no conflicting usage.

A fifth and final distinction is between pure and impure paternalism, a distinction that, as we have already seen, is used in a variety of ways. We follow Pope (2004), using pure paternalism to refer to cases where there are consequences for the intended individual only, and impure paternalism where there are consequences both for the individual and for others.

Tables 3.1 and 3.2 in this chapter’s appendix, adapted from Pope (2004), illustrate some of these distinctions. Table 3.1 categorizes paternalist interventions as to whether they are direct or indirect or mixed or unmixed; and table 3.2 as to whether they are pure or impure and again as mixed or unmixed. So compulsory helmets for motorcyclists are pure, direct, and unmixed, whereas licensing medical professionals is impure, indirect, and mixed.

### Conclusion

This chapter has distinguished between various kinds of government paternalism and pointed to the confusion in the literature concerning the different terminologies involved. Of the distinctions discussed, the most important are that between soft and hard paternalism and that between means-related and ends-related paternalism. The possible justifications for each are different, and in fact we will argue that the only forms of (potentially) justifiable government paternalism are means-related, nonperfectionist, volitional forms. And we will reject moral paternalism and legal moralism, both forms of ends-related paternalism. This will be elaborated in subsequent chapters.

### Appendix

**Table 3.1. Categories of Paternalism: Direct/Indirect and Mixed/Unmixed**

Motive	Intervention	
	Direct	Indirect
Unmixed	Compulsory helmet laws directed at, and intended to benefit, only the motorcyclist (A)	Regulations on allowable additives directed at food manufacturers (B) to benefit consumers (A)
Mixed	Laws directed at individuals who smoke in public places (A), intended to benefit both the smoker (A) <i>as well as</i> others who breathe the smoke (C)	Laws obliging medical professionals to be licensed (B) to ensure benefits for consumers (A) <i>as well as</i> (economic) benefits to the producer (B)

Source: Adapted from Pope (2004).

Note: A is the individual whose well-being is the target of the paternalistic intervention; B is a second person whose action is restricted in some way in a two-party agreement; and C is another individual whose well-being may also benefit as a result of the paternalism but is not subject to any specific regulation.

**Table 3.2. Categories of Paternalism: Pure/Impure and Mixed/Unmixed**

Motive	Consequences	
	Pure	Impure
Unmixed	As in table 3.1	Regulations intended to prevent an individual harming herself—e.g., compulsory use of life vest on a boat (A)—that mean she is incidentally also able to save another life (C)
Mixed	A law banning smoking outright intending to benefit both the individual (A) and his nonsmoking family (C), but where the individual only ever smokes outside	As in table 3.1

Source: Adapted from Pope (2004).

Note: As in table 3.1.