

The Normative Core of Paternalism*

Kalle Grill

ABSTRACT: The philosophical debate on paternalism is conducted as if the property of being paternalistic should be attributed to actions. Actions are typically deemed to be paternalistic if they amount to some kind of interference with a person and if the rationale for the action is the good of the person interfered with. This focus on actions obscures the normative issues involved. In particular, it makes it hard to provide an analysis of the traditional liberal resistance to paternalism. Given the fact that actions most often have mixed rationales, it is not clear how we should categorize and evaluate interfering actions for which only part of the rationale is the good of the person. The preferable solution is to attribute the property of being paternalistic not to actions, but to compounds of reasons and actions. The framework of action-reasons provides the tools for distinguishing where exactly paternalism lies in the complex web of reasons and actions.

Keywords: actions, action-reasons, anti-paternalism, harm to others, interference, paternalism, reasons

*Spelling and reference errors in the published *Res Publica* version have been corrected.

INTRODUCTION

The normative core of paternalism is the invocation of the good of a person as a reason for interference with her.¹ In order to clearly distinguish this normative core, we must resist the temptation to define paternalism in terms of actions and instead accept a somewhat more complex analysis. There are two distinct components involved in paternalism: an action component, but also a reason component. The property of being paternalistic should be attributed not to any one of these components, but only to action-reason compounds. Only then can we describe and evaluate the paternalistic content of a situation independently of other aspects of that situation.

This article concerns the conceptual issue of how paternalism should be defined. A methodological premise of the discussion is that we want to define paternalism in a way that will let us evaluate claims about its moral properties. The most common attitude towards paternalism is to reject it, absolutely or conditionally. A normatively useful definition of the concept should therefore accommodate different forms of anti-paternalism. Discussions of the justifiability of paternalism often simply assume that the object of discussion is liberty-limiting or interfering actions (or omissions) that are

¹ Or the invocation of the good of a group of people for interference with them. I will for the most part talk of single persons, though the analysis fits equally well for groups.

supported by one reason only – the good of the person interfered with.² Some authors even claim explicitly that only such actions can involve paternalism.³ In fact, however, actions most often have mixed rationales: they are supported by more than one reason. Interferences are no exceptions. The good of a person can be a greater or smaller part of the rationale for an interference with her; it can be a sufficient reason in and of itself, it can be a necessary part of any sufficient set of reasons, or it can be a non-sufficient but contributory (possibly redundant) reason. I propose that allowing a person's good to count as a valid reason for interference with her is paternalistic regardless of the (relative) strength of that reason.

In order to distinguish the invocation of one particular reason for some action with a mixed rationale, we need a way to talk about the compound of a certain reason for a certain action. I propose that we simply adopt the term 'action-reason' to refer to such compounds. As a definition of paternalism, I propose that only action-reasons can be paternalistic and that an action-reason is paternalistic if and only if the reason is one referring to the good of a person and the action is an interference with the same person.⁴ This definition concerns the structure of the concept. More specific conceptions of paternalism, corresponding to different normative views, should define the action and the reason components in greater detail.

Interpreting paternalism in terms of action-reason compounds coheres perfectly with the target of classical, Millian anti-paternalism.⁵ According to this doctrine, interference as such may be quite acceptable so far as it is justified by the protection of people from *each other*.⁶ Conversely, a person's good may be quite acceptable as a reason

² A prominent example is Gerald Dworkin, *Paternalism*, in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2002 Edition), <http://plato.stanford.edu/archives/win2002/entries/paternalism/>. The third condition in Dworkin's analysis of 'X acts paternalistically towards Y by doing (omitting) Z' is: *X does so just because Z will improve the welfare of Y* (emphasis added).

³ John Gray claims that paternalism can only be the 'genuine moral dilemma as to whether it is proper to coerce an individual solely in his own interest' – Gray, *Mill On Liberty: A Defence* (London: Routledge & Kegan Paul, 1983), p. 90, emphasis added.

⁴ Actions can be quite complex, as in the case of such state 'actions' as the formulation, adaptation and implementation of policies; policies that can involve legislation, law enforcement, taxes, information, direct aid and infrastructural adjustments.

⁵ J.S. Mill's liberty principle states 'that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant'. See Mill, *On Liberty*, in *On Liberty and Other Essays* (Oxford: Oxford University Press 1991), p. 14. Part of the thesis of the present article is that, interpreted generously, Mill claims not only that the good of a person is not a sufficient warrant, but more generally that it is not an acceptable reason, whether or not it is sufficient. C.L. Ten has interpreted Mill along these lines: 'There are certain reasons for intervention in the conduct of individuals which must always be ruled out as irrelevant' – see his *Mill on Liberty* (Oxford: Clarendon Press 1980), p. 40. Joel Feinberg's professed methodology in *The Moral Limits of the Criminal Law* is to investigate 'what kinds of reason can have weight when balanced against the presumptive case for liberty' – see his *Harm to Others* (Oxford: Oxford University Press 1984), p. 9. On Richard Arneson's interpretation of Feinberg's anti-paternalism, 'Antipaternalism says that harm or risk of harm to a person who voluntarily consents to absorb the harm or stand the risks is never a good reason for criminal prohibition' – see Arneson, 'Joel Feinberg and the Justification of Hard Paternalism', *Legal Theory* 11 (2005) 259-84, p. 263.

⁶ Cf. Mill, *On Liberty*, p. 83: 'As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it'.

for *non-interfering* actions such as giving gifts and offering advice and support.⁷ It is the combination of acting for a person's good while interfering with her that is rejected by anti-paternalism.

REASONS AND ACTIONS

The great majority of proposed definitions of paternalism attribute the predicate *paternalistic* to actions.⁸ Such action-focused accounts do include a reason component, but only as a qualifier on what actions count as paternalistic. Interferences are usually said to be paternalistic only if they are motivated solely, or mainly, by the good of the person interfered with, or to the extent that they are so motivated. As I will try to show, neither these nor more complex conditions capture the normative core of paternalism.

On the action-reason account here put forth, there are two components of paternalism – the interference with a person, being some kind of action, and the good of the same person, being a reason for that action.⁹ The term *interference* is here used generically. I do not wish to claim that this term in and of itself contributes much to our understanding of paternalism. Rather, *interference* functions as a place-holder, to be fleshed out by more detailed conceptions of paternalism.¹⁰ Such conceptions must specify a class of actions, the members of which can pair up with reasons referring to the good of a certain person, to form paternalistic action-reasons. More detailed conceptions of paternalism should be based on substantial normative views about what reasons are invalid or problematic when invoked for what actions, or on attempts to describe such substantial normative views.

In the following survey of action-focused definitions of paternalism, I will try to show that regardless of how interference is fleshed out, actions by themselves cannot be paternalistic, but can only form parts of paternalistic action-reasons. I will not in this section distinguish between e.g. motivational, explanatory and justificatory reasons, but will return to the nature of reasons later on. For expository convenience, I will call reasons for an interference that refer to the good of the person interfered with

⁷ Cf. *Ibid.*, p. 84: 'Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter.'

⁸ These include Gerald Dworkin, 'Paternalism', *The Monist* 56 (1972) 64-84; Bernard Gert and Charles M. Culver, 'Paternalistic behavior', *Philosophy and Public Affairs* 6(1) (1976) 45-57; John Kleinig, *Paternalism* (Manchester: Manchester University Press 1983); Donald Van de Veer, *Paternalistic Intervention* (Princeton: Princeton University Press 1986); David Archard, 'Paternalism Defined', *Analysis* 50(1) (1990) 36-42; Gerald Dworkin, 'Paternalism', *Stanford Encyclopedia*; Simon Clarke, 'A Definition of Paternalism', *Critical Review of International Social and Political Philosophy* 5(1) (2002) 81-91; and Peter De Marneffe, 'Avoiding Paternalism', *Philosophy and Public Affairs* 34(1) (2006) 68-94.

⁹ On some action-focused accounts of paternalism, lack of *consent* is listed as an independent condition on paternalistic actions. However, we may incorporate consent into the action component by assuming that whether and what kind of consent is given affects what counts as interference. This approach has the advantage of allowing for different versions of paternalism to attribute to consent as central or as marginal a role as its proponents would like in specifying interference.

¹⁰ The action component of paternalism traditionally goes by such names as 'interference with choice' (Van de Veer, p. 19), 'imposition' (Kleinig, p. 7), 'violation of autonomy' (Gerald Dworkin, 'Some Second Thoughts', in Rolf Sartorius (ed.), *Paternalism* (Minneapolis: University of Minnesota Press 1983) 105-11, p. 107), 'limiting liberty' (Joel Feinberg, *The Moral Limits of the Criminal Law Vol. 2 Harm to Self* (Oxford: Oxford University Press 1986), p. ix), or 'interference with the liberty of action' (Mill, *On Liberty*, p. 14).

‘paternalistic reasons’, though I do not intend to suggest that reasons can be paternalistic in themselves any more than actions can. As mentioned in the introduction, a common assumption is that an interference is paternalistic only if it is performed *solely* for paternalistic reasons. This reason-condition is far too narrow. Indeed, on inclusive accounts of what counts as a reason for an action this condition renders the class of paternalistic actions empty. As soon as there is some non-paternalistic reason for an action, the action is not paternalistic. Even actions for which paternalistic reasons by themselves provide a sufficient rationale do not qualify as paternalistic if there are other, redundant, reasons for the action.

Normatively, this is very strange. The mere presence of another reason, such as one referring to harms to others, should not erase the paternalistic content of a situation, especially not where an interference with a person is performed mainly for her own good. The inadequacy of the *solely* condition may suggest that we should relax our requirement and say that an action is paternalistic only if it is performed *mainly* for paternalistic reasons.¹¹ This condition is, however, also too narrow, in much the same way. Reasons that are not the main reason for an action may still be very important. They may for example be necessary parts of any set of reasons that provides a sufficient rationale for a certain action. The *mainly* condition entails that there is no paternalism involved when an interference is performed mainly for non-paternalistic reasons, even if it would not be motivated, *all things considered*, if it were not for the impact of paternalistic reasons. This does not accord well with the concern of anti-paternalists, who typically think that something has gone wrong when paternalistic reasons are allowed to tip the balance in favour of interference. More generally, the moral question raised by paternalism does not hinge on what reason is the main reason for an action, but on whether the good of a person may contribute to the rationale for an action – on whether this kind of reason is a valid reason for interference at all. It makes no sense to allow that a reason R contributes to the rationale for an action, making it motivated or justified, as long as R is weaker than some other reason, while rejecting the same action if R is (or becomes) stronger.¹²

The *mainly* condition is also too wide, since it fails to appreciate the importance of non-paternalistic reasons. Again, reasons that are not the main reason for an action may be very important. Even if the main reason for an interference is indeed a paternalistic one, other reasons may quite independently offer a sufficient rationale for the action. On the *mainly* condition, if the main reason for an action is a paternalistic reason and if paternalism should be rejected, then the action should consequently be rejected, regardless of what other reasons there are for the action. The non-paternalistic reasons are simply ignored. This is surely not intended by antipaternalists; nor is it reasonable.

Alongside the *mainly* condition, there may be any number of different conditions, demanding that some larger or smaller fraction of the rationale of an interference be paternalistic in order for the interference to be paternalistic. The larger the fraction, the

¹¹ This is proposed for example by Archard, ‘Paternalism Defined’, pp. 38-9.

¹² Clarke explicitly renounces the ‘solely’ and ‘mainly’ conditions, with the argument that also ‘minor’ reasons can make an action paternalistic – ‘A Definition of Paternalism’, p. 2, esp. n.1.

more vulnerable the condition is to the narrowness objection. The smaller the fraction, the more vulnerable it is to the wideness objection. Nearly all fractions face both objections, and no fraction avoids both.

The problems with the *solely* and *mainly* conditions stem from the fact that interferences can have, and often do have, mixed rationales. One attempt to deal with this complexity is to propose with John Kleinig that ‘impositions are paternalistic to the extent that they are motivated by consideration of the welfare, etc., of the person imposed upon’.¹³ Presumably, this is also how other action-focused accounts that allow that there are cases of *mixed* paternalism should handle the question of what actions count as paternalistic.¹⁴ What, however, is the moral import of an action being paternalistic to some extent? What is it, for example, to reject paternalism on this account? If it is to reject those interferences that are paternalistic to a certain extent, the severe problems faced by the *mainly* condition reappear. Depending on exactly to what extent an action must be paternalistic in order to warrant rejection, anti-paternalism so defined is to varying degrees both too wide and too narrow.

The most generous interpretation of how the *extent* condition could accommodate anti-paternalism is arguably to allow that interferences be rejected to the extent that they are supported by paternalistic reasons. This interpretation presupposes that rejections of actions come in degrees, which may be problematic. Supposedly, one must consequently allow that actions are sometimes partly wrong and so on, thereby complicating any more comprehensive theory of the rightness and wrongness of actions. However, let us for the sake of argument disregard these complications. If nothing else, counter-measures taken towards actions can certainly come in degrees of severity.

That interferences are rejected to the extent that they are supported by paternalistic reasons can be understood either in an absolute or in a relative sense. Either the force of the rejection depends solely on the strength of the support from paternalistic reasons, or it depends on the strength of that support in relation to the strength of other supporting reasons. According to the first interpretation, paternalistic reasons are the only reasons to have any influence on what interferences are rejected. The stronger these reasons are, the stronger the rejection, independently of what non-paternalistic reasons there are for the action and the strength of these reasons. This surely amounts to an unacceptable disregard for non-paternalistic reasons. According to the second interpretation, non-paternalistic reasons may have an impact, but only through their relative strength. What matters is not the strength of the non-paternalistic reasons as such, but only their strength in relation to the strength of the paternalistic reasons. This implies, for example, that an interference supported by strong reasons referring to harm to others and equally strong paternalistic reasons should be rejected more forcefully than an interference supported by weak reasons referring to harm to others and somewhat weaker paternalistic reasons. Such disregard for harm to others is unreasonable. Under

¹³ Kleinig, p.12 (emphasis in original). The more formally stated definition of paternalism on p. 13 suggest a strict either or-account of the rationale for an action. The surrounding discussion, however, makes it clear that the quoted passage is more in line with Kleinig’s intentions.

¹⁴ E.g. Feinberg, *Harm to Self*, p. 8. That there are such cases is often acknowledged, but the problems they raise for the analysis of paternalism are not.

both interpretations then, the *extent* condition discounts non-paternalistic reasons in a way that is entirely unwarranted.

In sum, all three main attempts to incorporate the reason component of paternalism as a qualifying condition on what actions count as paternalistic fail to make sense of the attributing of a special moral status to paternalism, and, especially, fail to make sense of anti-paternalism. They therefore fail to capture the normative core of paternalism. More complex accounts of paternalistic actions are admittedly possible. Peter de Marneffe considers the possibility of counting an action as paternalistic ‘only if it cannot be fully justified unless paternalistic reasons are counted in its favour’ and the action ‘would be fully justified if paternalistic reasons were allowed to count in its favour’.¹⁵ This account avoids the unfortunate disregard for non-paternalistic reasons. The rejection of all actions that are paternalistic on this account leave us with the same class of justified actions as does the rejection of all paternalistic action-reasons, to be further explored below. However, anti-paternalism will deliver no judgement as to the moral status of paternalistic reasons for interferences that are not justified, all things considered. It follows from the definition that no interference is paternalistic if it would not be fully justified even if paternalistic reasons were accepted as valid. Unjustified interferences that are performed for the good of the person interfered with are thus not paternalistic. This curiosity does not affect the judgement of what actions are justified, but it does affect the judgement of how we should reason. De Marneffe recognises this consequence of his account and proposes as a remedy that we add the further condition that the agent (or some of the agents in the case of government policy) is (are) psychologically motivated by paternalistic reasons. This solution has the unfortunate consequence that no paternalism is involved unless there is both a paternalistic motive and a paternalistic justification, thus excluding from the realm of the paternalistic cases where there is one or the other but not both. The preferable solution is simply to define paternalism not as the performance of certain actions, qualified by complex reason conditions, but rather as the invocation of certain reasons for certain actions.

EMPIRICAL CONSIDERATIONS

The strong tendency to define paternalism in terms of actions is perhaps partly due to the prevalence of empirical arguments in the literature. Mill set the stage for this mode of discussion. His classical arguments against state involvement in the market include state incompetence and corruption, and the inability of society to adhere to individual circumstances.¹⁶ While Mill points out that these arguments are independent of his anti-paternalist liberty principle, his argument for that principle includes more subtle empirical considerations such as every person’s greater interest in her own well-being, her greater knowledge of how to improve her own wellbeing, and the tendency of *vigorous and independent characters* to rebel against benevolent interference.¹⁷ In ethics our main interest

¹⁵ de Marneffe, p. 72.

¹⁶ Mill, pp. 122-8.

¹⁷ *Ibid.*, pp. 84-5, 92.

is perhaps the moral status of actions – which actions are, for example, permissible, required or forbidden. This matter is in part decided by the likely consequences of actions, which are determined by empirical circumstances. We want to know, for example, whether a state should prohibit duelling or professional boxing, or the use of tobacco or LSD. Whether it should do so depends to some extent on the likely consequences of prohibition. If, for example, prohibition is counter-productive for some reason, so that it would lead to a surge in the prohibited activity, few would favour prohibition as a matter of principle.

This is all very well, but it has little to do with paternalism. Attempts to promote or protect a person's good that are likely to fail are obviously not very desirable, especially if they entail a cost in terms of liberty. There is no need to invoke the idea of paternalism to make that point. Empirical circumstances that determine the likelihood of successful promotion or protection of a person's good are instrumental to deciding the moral status of an action with that aim. However, quite a separate idea runs through the liberal tradition from Mill through Joel Feinberg and onwards. This idea is that it is somehow *illegitimate* to interfere with a person for her own good. Regardless of whether an interference with a person does in fact promote her good, there is something morally wrong with such interference. This moral wrong may not have the status of an ultimate principle, but neither is it the mere belief that benevolent interference is always counter-productive. Anti-paternalism as a normative doctrine is in this respect independent of empirical circumstances.

One may of course be a thoroughgoing consequentialist, and have no direct concern with normative doctrines beyond the principle of utility. For such consequentialists, paternalism is not really an issue. It does not matter what reasons there are, only how we act. Reasons may however enter the stage with the introduction of rules of thumb, action-guiding rules abiding by which promotes utility in the long run. Such rules of thumb may apply to our mental actions, to our mode of reasoning. They may, for example, tell us how to reason with regard to paternalistic reasons for interference. If they do, they do in fact entail a position on paternalism, though indirectly. The mental action of considering or attributing weight to a certain reason is one kind of invocation of a reason for an action and may properly be described as an action-reason. Positions on paternalism based on consequentialist rules of thumb therefore concern action-reasons rather than (physical) actions, just like positions on paternalism based on less empirically focused normative doctrines.

Though psychologically motivating reasons may perhaps have consequences, justificatory reasons do not. Empirical considerations on the whole, therefore, connect most naturally with actions, rather than with reasons or action-reasons. As shown in the previous section, however, defining paternalism in terms of actions fails to make sense of the normative core of paternalism. We should not let the widespread habit of mixing empirical and normative arguments lure us into accepting a flawed definition of paternalism. The moral problem of paternalism concerns the invocation of paternalistic reasons for interference. The moral status of an interference will in the end depend both

on our (correct) normative position on paternalism and on the consequences of interference.

ACTION-REASONS AND EFFECT-REASONS

Making use of action-reason compounds to describe the interplay between reasons and actions accommodates the fact that actions may be supported by many different reasons and that reasons may support many different actions.¹⁸ Based on normative considerations, we may distinguish certain such (kinds of) compounds and attribute moral properties to them. I have proposed that an action-reason be counted as paternalistic if and only if the action is an interference with a person and the reason refers to the good of the same person. This is a very general definition of paternalism. Both the action and the reason component of paternalism can be further specified. Every paired specification delimits a different class of action-reasons, and so a different conception of paternalism.¹⁹ As for the moral properties of these classes of action-reasons, the most common position to endorse regarding paternalism is to reject it – to hold it to be wrong or illegitimate or forbidden, at least under certain conditions. What is it then to reject an action-reason? Presumably, it is to hold that the reason in question is invalid for the action in question.²⁰ This is the form of anti-paternalism I will focus on in this section, though other moral properties than this relation of invalidity are certainly possible.²¹

¹⁸ It may be that the reasons there are for an action determine what kind of action it is. This does not pose a problem for the action-reason account. Once an action is distinguished, whether by its actual effects or by some standard based on intentionality, it may be paired with different reasons, that are reasons for that action, to form action-reasons. The framework of action-reasons is independent of how exactly actions and reasons are individuated, though theories about individuation may perhaps be informed by this framework.

¹⁹ This account of paternalism makes no direct reference to the attitude of the paternalist. To some extent, being motivated by or accepting as valid, paternalistic reasons for interference may be taken to constitute a paternalistic attitude. However, there is no reference to specific attitudes such as that of superiority or condescension, or the proper attitude of a parent towards her child. This is arguably an advantage of the account, since it is unclear whether paternalism necessarily involves any such attitudes.

²⁰ We may distinguish between on the one hand the relevance of a reason, determined by whether or not the value that the reason refers to is affected by the choice or action under consideration, and on the other hand the validity of a reason, determined by whether or not the reason should have any weight according to (the correct) normative principles. In order to be a reason for an action, it is enough that the reason is relevant. In order to actually give normative support to the action, the reason must also be valid.

²¹ Moderate anti-paternalists may want to discount paternalistic reasons in some fashion, rather than reject them outright. Louis Groarke argues against absolute anti-paternalism and suggests that for any interference the value of *care* should be subtracted from the value of freedom – ‘Paternalism and Egregious Harm’, *Public Affairs Quarterly* 16(3) (2002) 203-30. However, he believes that ‘[p]aternalism would be permissible only in those cases where the net value was largely or perhaps very largely negative’ – p. 219, emphasis added. On the other hand, extreme anti-paternalists may suggest that paternalism is so degrading that the fact that an interference protects or promotes the good of a person should not only not count as a valid reason for that interference but should actually count as a reason against it. The fact that (part of) the rationale for an interference is the good of the person interfered with *adds insult to injury*, so to speak (see Kleinig, pp. 70-2, for ideas along these lines). Interfering with a person for selfish purposes could thus be morally better than interfering in the same way out of benevolence. To encompass this view, the rejection of an action-reason may be taken to give rise to an anti-paternalistic reason against the action, with whatever weight necessary to account for the strength of the extreme anti-paternalism.

Importantly, the normative status of the components of an action-reason is independent of the normative status of the compound. In the case of anti-paternalism, what is rejected is neither the interference as such, nor the paternalistic reason, but only the combination of the two. A person's good may be a valid reason for some actions directed towards her, but not for interferences with her. Correspondingly, interferences with a person may be legitimately supported by some reasons, but not by her good.²²

An example will illustrate the action-reason account: A seizes B's cigarettes in order to prevent B from smoking. This is presumably an interference with B.²³ A's motivating reason for interfering is concern for B's health (perhaps B has emphysema). C observes this incident and, being an anti-paternalist, rejects the action-reason 'seizing B's cigarettes – concern for B's health'. However, C is aware that unless A had seized B's cigarettes, B would later have smoked them in a confined space together with D (perhaps B's child). The action-reason 'seizing B's cigarettes – concern for D's health' is not paternalistic since the person interfered with and the person whose good is invoked are not identical.²⁴ C may therefore find the action 'seizing B's cigarettes' perfectly in order. C does not necessarily reject A's action, but only A's action-reason.

The analysis becomes somewhat more complicated if we take into account actions that have multiple effects, each of which may be an interference with a different person. It may not be paternalistic to invoke the good of a person A for an action which is an interference with A and with a second person B, if A's good is protected or promoted only through the interference with B and not through the interference with A. Public policy, for example, may interfere with all or many of those affected and may promote the good of all or some through the interference with others. In order to distinguish the paternalistic content of complex situations, we must extend our framework to cover separate effects of actions and allow that a reason for an action may be directed at one (some) of the effects of an action only, and not at others. We may call the invocation of a reason for an action which is directed at one of the effects of the action an 'effect-reason'. Strictly speaking, reasons are of course invoked not for effects but for actions. However, since one and the same reason (such as a person's good) may be directed at several different effects of an action, we must distinguish between a reason as it applies to one effect rather than another. In order to avoid dividing reasons into different aspects or subreasons, we may in the more formal analysis allow that reasons

²² It follows from this interpretation that anti-paternalism cannot be dismissed with the simple observation that it is all but impossible to identify any action (and especially, perhaps, any state policy) that interferes with certain persons and promotes their good, without affecting the interests of others. This is as it should be.

²³ Whether or not it is an interference depends on how interference is fleshed out as part of a more detailed conception of paternalism. Most such conceptions would consider the seizing of another's property (against her will) an interference.

²⁴ In general, nothing prevents direct involvement with one person counting as interference with another. It could in some cases be an interference with P to seize Q's cigarettes. More commonly, it may be an interference with P to prevent Q from selling cigarettes to P. Such interference is an example of what Dworkin calls *impure* paternalism and Feinberg a 'two-party-case' – see Dworkin, *Paternalism*, *Monist*, p. 68; Feinberg, *Harm to Self*, ch. 22, e.g. p. 172.

are reasons for effects rather than actions.²⁵ In practice, the distinctions are quite intuitive.

An effect-reason is paternalistic if and only if the reason is one referring to the good of a person and the effect is an interference with the same person. This is intended as a specification or extension of the previously given definition of paternalism, rather than an alteration. The compound of an interference with a person and a reason referring to the same person's good is paternalistic, whether the interference is an action or an effect. Effects of actions may in this framework be individuated on the basis of normative concerns. In the case of paternalism we want to divide the total effect of an action into parts according to how the action interferes with different people. If possible, an action that interferes with several persons should be divided into one effect per person interfered with. It then straightforwardly follows where and how paternalism is involved in the complex web of actions, reasons and effects.

Consider the action of preventing A and B from fighting each other. Keeping A and B apart (or threatening them with punishment if they fight) will have the double effect of both preventing A from fighting B and preventing B from fighting A. Assume that the first effect amounts to an interference with A, and the second to an interference with B. The reasons for action in this kind of situation are typically A's and B's good. Both reasons may be invoked for both effects of the action. The effect-reasons 'preventing A from fighting B for A's good' and 'preventing B from fighting A for B's good' are paternalistic. It is paternalistic to invoke a person's good as a reason for preventing her fighting someone (or so we have assumed). Most typically, however, the main reason for preventing a fight is to avoid people being *fought with*. Now, if A and B do not want to be fought with (though they may perhaps want to fight back if attacked), neither 'preventing A from fighting B – B's good' nor 'preventing B from fighting A – A's good' are paternalistic. It may be, however, that A and B both want to have this fight, so that (let us assume) 'preventing A from fighting B' would be an interference not only with A but also with B, and 'preventing B from fighting A' would be an interference not only with B but also with A. Then both these effect-reasons are paternalistic, and the fight may only be prevented if paternalism is allowed (or if prevention is supported by other reasons than the good of A and B). Finally, it may be the case that A welcomes the fight while B does not. Then 'preventing B from fighting A – A's good' is paternalistic, while 'preventing A from fighting B – B's good' is not (and it may be that the fight can be prevented without paternalism, since preventing A from fighting B will prevent the fight from occurring).

Similarly, in the case of public policy, actions that amount to interferences with a number of people and are supported by the good of the same people may be given quite varied analyses depending on their finer structure. A policy involves little or no paternalism if no important reason for any interference effect refers to the good of the person interfered with. This is typically the case for standard criminal law such as the

²⁵ An alternative would be to introduce subreasons and 'effect-subreasons', which would be paternalistic if and only if the sub reason referred to the good of a person and the effect was an interference with the same person.

prohibition on theft and assault. Such policies protect the good of each person not through interference with her, but only through interference with others. Reasons for such policies that refer to the interests of the thief or the assailant may be relevant, but are negligible compared to the interests of others not to be robbed or assaulted. A policy involves a lot of paternalism, on the other hand, if an important reason for every interference effect is the good of the person interfered with. This might be the case for what we ordinarily think of as ‘paternalistic policies’, such as safety regulations and prohibitions of dangerous activities. It is for such policies that the framework of effect-reasons could do important work by distinguishing the paternalistic content of policy-making. The crucial question is to what degree each person’s good is promoted or protected through interference *with her*, and to what degree the good of each person is rather promoted or protected through interferences *with others*. In other words – what reasons may be invoked for what effects?

Conceptually, the action-reason (effect-reason) account may be too complex to be in tune with everyday use of the term ‘paternalistic’. For terminological convenience and out of consideration for common usage, actions may therefore be called paternalistic, in a derived sense, if they form a part of a paternalistic action-reason. In this matter, investigations of the *mainly*, *solely* and *extent* conditions may inform our terminology. Actions could perhaps be called paternalistic, in this derived sense, if their belonging to a paternalistic action-reason is a significant enough property of the action, or to the extent that it is significant. Importantly, these terminological choices have no bearing on the moral status of paternalism.

ACTUAL, BELIEVED AND INTENDED EFFECTS

The traditional focus on actions leads to problems not only with specifying in what way reasons make actions paternalistic (as discussed above), but also with what kind of reasons should be singled out as qualifiers of paternalistic actions. Though Joel Feinberg professes himself concerned with reasons for action and their legitimacy or quality, he is nevertheless absorbed by the search for the proper reason-qualifier for paternalistic actions. After noting that interferences (prohibitions) may be supported and opposed by several different reasons, in the introduction to *Harm to Self*, Feinberg goes on to discuss, at length, when actions and policies are properly called paternalistic.²⁶ He distinguishes between four kinds of reasons: ‘conscious reasons’, ‘deep motivations’, ‘implicit rationales’, and ‘true justifications’.²⁷ In the end, the deciding factor seems to be the ‘implicit rationale’ for an action, being the main or *true* reason for the action.²⁸

Action-focused definitions of paternalism must tell us what kinds of reasons qualify actions as paternalistic. Is an interference paternalistic if it is psychologically motivated by the good of the person interfered with, or is the question rather whether or not the most reasonable justification for the action refers to the good of the person? Do

²⁶ Feinberg, *Harm to Self*, pp. 16-23.

²⁷ *Ibid.*, p. 16.

²⁸ *Ibid.*, p. 17.

the officially stated reasons have any impact on what actions count as paternalistic? On the action-reason account, there is no need to single out some (kinds of) reasons as more 'true' than others. The invocation of different reasons may be attributed different moral properties, independently of what other reasons there are. This account, therefore, can accommodate varied and complex moral positions and principles which cannot be accommodated by action-focused accounts.

A reason for an interference may, most saliently, refer to believed, intended or actual promotion or protection of good. The action component may similarly refer to actual, believed or intended interference. Compounds of paternalistic reasons and interferences, each either actual, intended, or merely believed, are paternalistic in different ways and concern different normative questions.²⁹ Beliefs and intentions are important primarily for matters of responsibility and blame, while actual effects are our prime interest in determining the desirability of different options.

Different kinds of paternalism can now be distinguished. We may for example look at intended and actual interferences that are meant to promote or protect the good of the person interfered with, but that in fact fail to do so. These interferences are obviously undesirable, but perhaps they are also especially immoral, at least according to some anti-paternalists. We may further consider whether intended and actual interferences that are not intended, nor believed, to promote or protect the good of the person interfered with, should be evaluated any differently than the first category. Or we may inquire as to the moral status of merely believed or intended interferences that do in fact, or are merely believed or intended to, promote or protect the good of the person believed or intended to be interfered with. However, the most important questions arguably concern actual interferences that actually promote or protect the good of the person interfered with, regardless of beliefs and intentions. Do the corresponding action-reasons or effect-reasons have a special moral status? Are they illegitimate somehow? Is there something that stops actual good-promotion or good-protection from generating valid reasons for action when it coincides with interference? These are questions I have not tried to answer. I have merely tried to defend an analysis of paternalism that allows them to be clearly stated.

CONCLUSION

Most accounts of paternalism assume that the entities that are potentially paternalistic are interfering actions. Such action-focused accounts do recognize that there is a reason component to paternalism – actions are said to be paternalistic only when performed for the good of the person interfered with. The reason component is thereby incorporated as a qualifier on what actions count as paternalistic. However, all such attempts fail to capture the normative core of paternalism, which is the invocation of reasons referring to

²⁹ On most action-focused accounts, the good-promotion or -protection is taken to be believed rather than actual. As for the action component, some authors focus on actual interference (e.g. Dworkin 'Paternalism', *Stanford Encyclopedia*), while others place the interference as well as the protection or promotion of good entirely in the head of the agent (e.g. Gert and Culver, pp. 49-50).

the good of a person for interference with her. Most importantly, action-focused accounts fail to make sense of the most common attitudes towards paternalism – anti-paternalism of various strands.

The failure properly to accommodate the reason component undermines all normative discussion of paternalism. Moral positions and principles cannot be properly formulated when the basic analysis of the concept prevents us from distinguishing between different reasons for the same action and attributing different moral properties to the invocation of these different reasons. We therefore need to forego the simplicity of action-focused accounts and allow that paternalism resides not in actions, but in reasons for action – action-reasons. In fact, we often need to complicate the analysis further and allow that effect-reasons lie at the heart of paternalism.

If we accept this analysis, we are in a better position to describe normative positions on paternalism, and to discuss their merits. The rather technical language of action-reasons offers a tool to help capture and explicate normative positions that are implicit in the liberal tradition. The account does not determine what counts as an interference or what counts as a paternalistic reason, nor does it determine what is the appropriate attitude towards different compounds of these two components of paternalism. It merely offers a framework in which these components and compounds can be given their proper place. Thus the road is paved for an important normative discussion of what reasons are valid for what actions.

ACKNOWLEDGEMENTS

Papers from which this article has developed were presented at the 2006 Society for Applied Philosophy conference on the Philosophy of Public Health and the 2006 Brave New World graduate student conference, both in Manchester, UK. For constructive comments, I am grateful to the participants of these discussions, to my fellow ethicists at the Royal Institute of Technology in Stockholm, to Torbjörn Tännsjö, and to an anonymous referee for this journal. A special thanks for inspiration and encouragement, as well as valuable comments, goes to my colleagues Lars Lindblom and Niklas Möller.