

THE PROTECTIVE SOCIETY: A DEFENSE OF PATERNALISTIC PUBLIC POLICY

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In an insightful and challenging paper, Conor McGlynn firstly questions whether society is morally obliged to use paternalistic policies to ensure equality. He then turns a discerning eye to the philosophical foundations of paternalism in an attempt to figure out whether a group can ever be justified in imposing its values on others. Throughout, he displays an astute understanding of the multitude of difficulties inherent in defining and upholding a moral code.

Introduction

Paternalistic public policies aim to prevent people from harming themselves, or to ensure that they benefit themselves. Many people object to such policies on the grounds that they violate individuals' liberty. Others disagree, and say that the benefits to society of such policies outweigh the loss in personal freedom. In this paper, I will make the case for paternalistic public policies on two different grounds. First, I will argue that paternalism is necessary to ensure equality in society. Second, I will argue that we should implement paternalistic policies which reflect our own liberal values, and that we should promote such policies in other communities.

Hyperbolic Discounting and Obesity

One argument used in favour of paternalistic public policies is from hyperbolic discounting. When deciding between a reward today and a reward in the future, people show a preference for the reward that comes today. When offered the choice between receiving €100 today or €110 a month from now, people will often go for the immediate payment even though it is of lesser value. They discount the value of the future reward by a certain factor; if the discounted value of the future reward is lower than the value of the reward today then they will choose the reward today. Neoclassical economic theories originally assumed this rate to be constant. However, observation reveals that in reality people often do not use a constant discount rate; instead they are hyperbolic discounters, and their discount rates change over time (Kirby, 1997).

Starting from the time period of ‘Today 1’ the discount rate increases gradually in the near future, but increases more steeply in the distant future (Graph 1).



Graph 1: Hyperbolic discounting

When the time period moves the graph also shifts, from ‘Today 1’ to ‘Today 2’. The value of future rewards is hence much lower under hyperbolic discounting. This leads to dynamic inconsistency, where an individual’s preferences at one point in time are inconsistent with their preferences at another time. If an individual is offered the choice between €100 a year from now or €110 in 13 months, they will choose the €110. However, if in a year they are told they can change their choice, and can instead take the €100, then they may do so instead of waiting a month for the €110. This means that the individual is ‘present-biased’; they have very short time horizons and heavily discount any time period that is not today (Hillman, 2009).

Hyperbolic discounting is associated with cases of personal excess (O’Donoghue and Rabin, 1999). People who have short time horizons will decide to act today in such a way that they know they will regret in the future. Overeating is an example of this; a person’s choices in an otherwise beneficial market lead to a lower standard of living. Paternalistic policies may be implemented to stop people eating unhealthily. The least controversial way of doing this is through public awareness campaigns, which inform the public about the dangers of obesity and the benefits of healthy eating. Other methods in-

clude setting limits on the amount of fat that products may have, offering tax incentives to people who lose weight, and even banning certain foods outright. However, such paternalistic laws are often unpopular. One such law, attempting to introduce a size limit for soft drinks in New York City in 2013, was met with huge public anger, and was ultimately defeated in a court challenge. It is argued that people should be free to choose how much they want to eat. Why should the food lover be prevented from eating now, just because his ‘future self’ may regret the decision? A nanny state which enforced such laws would have too much control over our personal lives. There are other cases of personal excess, such as watching too much television or having unprotected sex, that, although they have consequences we might regret, we feel that it is a violation of people’s liberty for the state to limit or ban these activities.

An argument from equity can be made in reply to these objections. It has been observed that there is a significantly higher incidence of obesity amongst low income and low education groups. One study (Singh, et al., 2010) shows rising inequality between socioeconomic groups in childhood obesity levels (Table 1). There are a number of possible reasons for this. It has been speculated (Hillman 2009, p.372) that obesity reduces income, particularly for women, due to discrimination in employment and in spouse-selection against the obese. However, this does not account for the inequality in childhood obesity. Another possible explanation is that low education groups aren’t sufficiently informed about the dangers of an unhealthy lifestyle, and about healthy foods (McKinnon, 2010). If this is the case then it is a strong argument for more comprehensive public awareness programmes.

	Obesity Prevalence 2007	Obesity Prevalence 2003
Total Population	16.37	14.83
Family Income: Poverty Threshold		
< 1:1	27.37	22.18
1:1 - 2:1	21.15	18.68
2:1 - 4:1	14.51	13.78
> 4:1	9.96	9.33
Household Employment Status		
Employed	15.11	14.1
Unemployed	26.05	20.7
Highest Household Education Level		
< 12	30.43	22.95
12	20.52	19.9
13 - 15	17.93	16.36
16+	9.74	10.48

Table 1: Obesity prevalence amongst US children aged 12 - 17, 2003 and 2007, according to socioeconomic group

Another, more controversial reason why such inequalities exist is suggested by evidence from a recent study (Can and Erdem, 2013) carried out in Turkey. The researchers surveyed the level of hyperbolic discounting in different income groups. What they found were significantly higher present bias levels in lower income groups. While for high income individuals the present bias prevalence was 6.4 per cent, this increased to 29.4 per cent for low income individuals. A higher level of present bias could account for some of the disparity in obesity between high and low income groups. Low income groups discount the future at a higher rate than high income groups, making them more susceptible to personal excesses such as overeating. This provides a justification for stronger paternalistic policies dealing with obesity. A child born into a low income family is more likely to develop obesity than a child in a high income family, and therefore to have a lower standard of life. If the causes of this inequality go beyond a lack of information about healthy eating then a public awareness campaign won't be enough to correct the inequality. In order to ensure ex ante equality, or equality of opportunity, there must be paternalistic laws, such as limits on fat content and bans on unhealthy ingredients. Paternalism is therefore essential for an equal society.

Community Values and Illegal Markets

Another reason why paternalistic public policies are implemented is that they are a way of expressing the values of a community (Sandel, 2009). Many paternalistic laws which seek to protect people from personal excess and self-inflicted injury, such as laws criminalising the use of dangerous drugs, are partly motivated by the values of the community. States prohibit the use of drugs not just because of the damage they cause, but also because the community values sobriety. Prostitution is illegal in many countries not just to protect women, but because the community thinks that sex should not be a marketable commodity. Some people object to such laws as they force people to comply with the value system of others, even if themselves do not share those values. If a value system is incorporated into law and enforced by the state then there is no way for people who disagree to opt out of it. The difficulty of reconciling competing value systems is a problem faced by many modern societies. Increased immigration leads to a greater variety of values in a country, but the majority may still want their own value system to be expressed in the law.

One solution to this problem was proposed by Robert Nozick in *Anarchy, State, and Utopia* (1974). According to him, there is no justification for one community to impose its values on another, as long as people have a choice about what community they are or are not part. This means that the state cannot implement paternalistic laws. He maintained that while states should not enforce any sort of paternalistic legislation, communities within the state could voluntarily agree to such laws limiting their own freedom, the proviso being that people were always free to leave a community, and consequently a

set of values, if they wish. Society would therefore be made up of a minimal state and a number of different sub-communities within the state, each maintaining its own value system and not interfering with the values of any other community. Since people voluntarily consent to the paternalistic policies adopted by the community, there is no coercion, and no violation of liberty.

A problem with Nozick's solution is interdependent utilities, where the actions of other people affect your utility level. Censorship is an example of this. The state is not permitted, according to Nozick, to ban books or films. Instead, if some people want a book or film banned then they should form a community and agree not to read the book or watch the film. They cannot, however, forcibly prevent anyone else from viewing the book or film. This poses a difficulty, as the point of censorship is to stop a particular piece of culture from being consumed by anyone. That object is defeated if people may opt in or out of the censorship law. The utility of the people who want the book banned is dependent on the ban applying to everyone. Nozick would reply that it's too bad for them, that they have no right to impose their own values about what should and should not be read or watched on others.

While censorship laws are generally unpopular, there are other cases when the values of another community clash with our own, and these pose a greater moral challenge to us. In the West, there are currently paternalistic laws forbidding a market in human organs (Wilkinson, 2003). While people are free to donate their organs to others it is illegal to sell them for profit. Suppose that another community allows trade in human organs, and that in this community there are a large number of people living in poverty¹. If there was a practice here of the wealthy buying organs from the poor, what would our reaction be? Such a practice strikes us at once as barbaric. However, according to Nozick we cannot insist on our own paternalistic legislation being enforced in another community. If the selling of human organs is not against the value system of this other community then there should be nothing objectionable about it. The same is true of any number of cultural practices, including communities which deny rights to women, or permit child labour. If we believe that cultural value systems are independent of each other, and that all should be respected equally, then we have no grounds on which to prevent the cultural practices of other communities.

How then are we to justify the paternalistic laws we enforce? This issue of conflicting community values, and the proper bounds of paternalistic policies, poses a huge challenge to liberals. There is a tension between on the one hand trying to end practices such as the subjugation of women, and on the other trying to promote multiculturalism, where no system of values is placed above any other. Esteeming the value system of our civilisation more than the value system of others is a practice that seems like cultural imperialism, and yet we do attempt to stop practices in other cultures that seem unjust and

1. Such a situation may not be so remote; see Shimazono, 2007.

immoral according to our value system. One answer to this puzzle is given by the neo-pragmatist philosopher Richard Rorty who puts forward a theory of 'liberal ironism'. He thinks we should pursue Western liberal goals and promote the rights which we in the West hold as fundamental in a free society. However, he also admits that there is nothing that makes these rights and goals universal, or better than those of other countries. We can only justify our cultural practices in relation to our own culture; we can only judge other cultural practices relative to our own cultural standards. We pursue liberal goals, but are ironists about the justification of such goals. Thus "a circular justification of our practices, a justification which makes one feature of our culture look good by citing still another, or comparing our culture invidiously with others by reference to our own standards, is the only sort of justification we are going to get" (1989: 57). This ironic justification will seem unsatisfactory to someone who is looking for an 'absolute' grounding for their set of values. Ultimately, however, if we wish to implement paternalistic policies that reflect our community values then such an ironic defence is perhaps the only defence we can make.

Conclusion

In this essay, I have put forward what I believe to be the two strongest reasons why paternalistic public policies should be enacted in society. Many of the things that paternalistic policies try to protect us from disproportionately affect the poor. Further, paternalistic policies are an essential way for us to express the values of our community. While society could probably function without such policies, I contend that we would not want to live in such a society that allowed such grave inequalities to persist, and which did not enforce the moral code by which its citizens live.

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