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A new anti-paternalist theory: autonomy and self

Elouisa M. Leonard

If an agent acts so as to harm only himself, then is state interference with that action ever legitimate? Paternalistic legislation has been the subject of much debate. For John Stuart Mill, the only legitimate ground for state interference was the harm principle: state interference to prevent an actor harming others is legitimate; the state, however, may not interfere with actions which harm only the actor himself. I introduce a distinction between (1) long-term desires and short-term desires and (2) current desires and future desires. I will argue that state interference with current, long-term desires is never legitimate.

When can the state legitimately interfere with exclusively self harming action? The debate over paternalistic legislation has traditionally centred on the concept of harm. For John Stuart Mill, the only legitimate ground for state interference was the harm principle:

*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 civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.*¹

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¹ John Stuart Mill, *On Liberty* (New York: Cosimo Classics, 2005), 13.

The boundary between acts which harm only the actor, and those which harm others is unclear. In this discussion I will be focussing on the limited range of acts which harm only the actor. Joel Feinberg also favoured autonomy above personal safety. He argued for *soft paternalism*: the only instances where harm to self is a legitimate ground for state interference is where that action is not voluntary enough.² I agree with these anti-paternalist positions. Autonomy should be valued above safety.

However, I disagree that harm to self can ever be a legitimate ground for interference. Harm to self can at best serve to indicate that an individual may not be acting voluntarily. I think the debate needs to be reframed around autonomy. In so doing it will be crucial to discuss personal identity: exactly whose autonomy are we protecting and whose autonomy are we interfering with?

LONG-TERM DESIRES VERSUS SHORT-TERM DESIRES

My first distinction is between long-term desires and short-term desires. A long-term desire is something like our notion of the good life: our goal. It is these long-term desires which I think should be protected. Conversely, our short-term desires are less indicative of our true identity. They tend to fluctuate depending on various factors. A short-term desire need not conflict with a long-term desire, but, where it does, I believe we can legitimately overrule such action in order to preserve the long-term desire and thus the actor's true autonomy.

Imagine Chris does not put on his seatbelt before a car journey. He risks death or severe injury in a crash. Let us assume his actions will not harm others either directly or indirectly. In forcing him to wear a seatbelt, we are interfering with the autonomy of the short-term Chris. It is irrelevant whether his short-term desire is the result of a momentary lapse of concentration, a drunken disregard

² Joel Feinberg, *Harm to Self: The Moral Limits of the Criminal Law* (New York: Oxford University Press, 1986), 12.

for his safety or a naïve miscalculation of the risk. Nor does it matter if we say he never actually chose at all; his not wearing the seatbelt results from his forgetting that he had a choice. What does matter is that the decision is not indicative of his long-term goal; instead, it opposes it. In forcing Chris to wear his seatbelt, we are preserving the autonomy of the long-term Chris (who does not actually want to risk not wearing a seatbelt). I believe the true self is located in long-term desires and we should respect their autonomy.

Only if Chris had a long-term desire to feel the adrenaline rush of being in a car without a seatbelt, exhilarated in the knowledge that he could be killed at any point, would we have to concede that not wearing a seatbelt was a long-term desire and state interference was illegitimate.

But, what about people who always unwillingly give in to their short-term desires? I am thinking of the alcoholic, the smoker, or the person who overeats. They follow their short-term desires so often that it may reflect a large part of their identity. Should we not value their short-term decisions too? There is not a clear distinction between long-term desires and short-term desires: the two meet in the middle. The more powerful a long-term desire is, the more weight it should be given. Equally, the more short-term a desire is, the easier it is to show that interference with it is justified. But, I think we should always favour a long-term desire over a short-term one.

Furthermore, a smoker may have a long-term desire not to smoke but a short-term desire to smoke. This does not mean we should ban smoking. He may also have a long-term desire to be permitted to smoke, even if he hopes to choose not to. This can be likened to the case of Odysseus who made his men chain him to the rocks to prevent him succumbing to the sirens' song. As long as Odysseus's long-term desire remains unchanged, his men can legitimately interfere with his short-term desire. Deciphering when a long-term desire has changed could well pose evidentiary problems. However, when we know what the long-term desire is, it should be protected.

The distinction between long-term and short-term desires should not be seen as one which always favours safety conscious actions. Imagine Sarah's long-term desire is to be adventurous and go bungee jumping. Unfortunately, when she steps onto the platform, she is terrified and has a short-term desire not to jump. Here her long-term desire is more dangerous than her short-term desire.

CURRENT DESIRES VERSUS FUTURE DESIRES

In the seatbelt example, we have a conflict between two facets of the current self: the short-term desire not to wear a seatbelt and the long-term desire not to assume that risk. I argued that to best serve a person's autonomy we must favour their long-term desire. But, what happens if it seems that a long-term desire will change over time? In these circumstances I believe that we must favour current long-term goals over future long-term goals.

Imagine Paul is a dedicated boxer who loves boxing and chooses to compete voluntarily. Assume his actions do not harm others. He boxes all the time and takes repeated heavy blows to the head. Doctors have warned Paul that if he continues to box he will do himself irreparable, severe mental damage which will only begin to affect him in his old age. Despite being fully aware of these facts and understanding their implications he continues to box. A hard paternalist may still argue that we should prevent him from harming himself. Even if we disregard the superficial physical damage that he incurs in the present (bruising, bleeding, broken noses...etc), a hard paternalist would take issue with the harm his present actions are going to do to him in the future (the same could easily be said of smoking).

However, I think Paul should be allowed to continue boxing because it is his current desire. We must always favour current desires over future desires. There are several reasons why I hold this view.

1 KNOWLEDGE OF CURRENT GOAL

Firstly, Paul can know, with as much certainty as can ever be possible, what it is he currently desires.³ His current long-term goal is to box. For him, safety is secondary. This choice, which is voluntary enough, should not be overruled. The actor himself is best placed to determine his own desires. If we are pluralistic about what can constitute the good life, then we must allow people to choose their own actions and respect their autonomous decisions. It is irrelevant whether the state or majority or any other group prioritises different values. I agree with Joel Feinberg that this autonomy is not valued because it is best placed to bring about personal well-being. It is valuable because it is your autonomous choice: when you are acting voluntarily enough, autonomy reflects your desires.⁴

2 IGNORANCE OF FUTURE GOAL

Secondly, we cannot know for certain what Paul's future goals will be. An obvious objection to this point is that it is highly unlikely that the future Paul will desire to be brain damaged. This is a powerful criticism which I think can be subdivided into two separate concerns. Firstly, the current Paul's actions cause conventional harm to the future Paul (the harm of mental impairment). The autonomous person who engages in the dangerous activity (the young Paul who is a boxer) is, conceptually, a different autonomous person from the older Paul who experiences harm.⁵ Secondly, the current Paul's actions will also limit the future Paul's autonomy. If he suffers mental impairments then he will not be able to do certain things: his pool of choices from which to choose autonomously is limited. Furthermore, many of his decisions may not be deemed 'voluntary enough' because he is not in full possession of his mental faculties.

I will first consider the problem of the current Paul causing *conventional harm* to the future Paul. Let us compare Lisa, who voluntarily chooses to play Russian Roulette. Her actions are voluntary enough and she harms no-one else. In

³ I will not be discussing any sceptical hypothesis about knowledge.

⁴ Feinberg, *Harm to Self*, 48.

⁵ Again, I will set aside the more superficial harm of boxing, bruising, bleeding etc.

playing the game she will either live or die. Imagine in this case she is killed. Which is worse, Paul's case or Lisa's? This question can be answered in two ways. In one sense, Lisa's case is worse: it is worse to die than be injured. However, there seems to be something unjust about Paul's case. The current Paul harms the future Paul who does not want to be disabled. At least when Lisa plays Russian Roulette she takes on the risk when she is young and believes the risk is worth taking, and suffers the consequences at the same time. Her current autonomous act conventionally harms the current Lisa: the same Lisa. She does not suffer the additional harm of having her liberty limited. I believe that a necessary condition for intervention to be legitimate is that both these types of harm occur.

In Paul's case both harms are present. So, why allow the current Paul to conventionally harm the future Paul? I think the personal identity criterion can overcome this objection. The presence of both harms is a necessary but not sufficient justification for interference. Even although the future Paul would potentially have two claims, one of conventional harm and harm from limited autonomy, I still believe we should favour the current Paul. Up until now I have been describing the current and future Pauls as two conceptually separate entities. However, it is clear that they are not as separate as two actually distinct individuals. The current Paul is inextricably linked with the future Paul yet they will never coexist. They are neither one nor completely separate. It would be a mistake to bluntly apply the harm principle to this special relationship. The future Paul's claim may be stronger than the current Paul's, but, since the future Paul does not currently exist to make any claim, and since his existence is wholly dependent on the current Paul, I think the current Paul's claim must take precedence. For most people, their current self acts with an eye to the future, choosing paths that will make life pleasant for them. Yet, this is their choice to make. It is up to the individual to protect their future self from harm, not the state.

I will now consider the impact of Paul's current autonomous actions on his *future autonomy*. His current decision to box impinges on his future autonomy. His autonomy is limited in two ways. Firstly, as I discussed above, he is harmed

against his will, which is in itself an infringement of his autonomy: he would not choose to be harmed. Secondly, if he is brain damaged he can no longer have the choice to, for example, work as a surgeon. His pool of potential choices is limited. Furthermore, many other choices he may wish to make could fail to meet the voluntariness standard because he is not in possession of all his mental faculties. His choice to swim with sharks may be deemed invalid regardless of whether he would have chosen the same without his impairment. Unfortunately, it is impossible to fulfil both Pauls' autonomies. In a direct conflict between current and future autonomy, both might seem to weigh equally, yet we must choose. A hard paternalist would say choose the person who favours safety, thus avoiding conventional harm. Yet, I believe this distinction is arbitrary. Why should we protect the safety conscious person? Does that not simply impose an objective moral standard? Furthermore, we have no definite reason to believe either party will value safety. We would simply be guessing at what the future person's desires will be. Instead, I propose that when it comes to conflicts of autonomy we should always favour current autonomy. An individual can know, with as much certainty as is ever possible, what it is they currently desire. I therefore do not agree that we should overrule current autonomy to preserve a future autonomy deduced from probability and objective views of safety.

What about the critic who argues that paternalistic legislation which preserves Paul's safety will also increase his autonomy in the long-term? I think it is illogical to refer to a future person's autonomy being limited. The future Paul (P1) who is mentally disabled could never be a surgeon. That choice was never available to him. If the current Paul chose not to box then the new future Paul (P2) would not be mentally disabled. P2 could be a surgeon. However, P2 is a different autonomous person from P1. I would also like to return briefly to Lisa's case. When she was killed playing Russian Roulette I argued that only the current Lisa was affected. But, perhaps the future Lisa is also affected. The future Lisa's autonomy was undoubtedly reduced to zero. A dead person cannot make any choices. Yet, I believe there is a logical problem. If a person does not exist then they cannot have their autonomy limited. Nor can they be harmed.

Harm and autonomy cannot exist without a person to exercise that autonomy or feel the harm.⁶

3 ALTERATIONS TO FUTURE GOAL

The decisions Paul makes in the present could impact his future desires. A person who lives a reckless youth may become an old person who suffers ill health as a result. If Paul chooses to continue boxing he may look back in twenty years and regret his choice. However, we can also conceive of the opposite. If paternalistic legislation was enforced which prevented him from boxing it may not benefit anyone despite being introduced to protect the future Paul's autonomy. That future Paul may regret not being allowed to box. He may look back on his life and ask 'Why couldn't I live wildly when I was young?' There is no way to know what a person will want in the future, especially when current decisions can alter future desires. We should therefore protect the current desires of a person in the event of a perceived conflict.

This change in long-term goals need not be related to age. It is not because Paul is older that he has different desires. Instead, desires change based on experiences. We can view Paul's life in three stages:

- (1) A desire to box
- (2) Boxing
- (3) A desire that he had not boxed in the past because of the mental impairment he now suffers

In order to reach stage (3) he must first pass through stages (1) and (2). If paternalistic legislation were to prohibit boxing, he would never experience stage (2). He would therefore never reach stage (3). If he never reaches stage (3) then the paternalistic legislation has not benefited anyone. The paternalistic rule was designed to protect the autonomy of Paul in stage (3) by limiting his

⁶ A similar 'non-identity' argument was made in relation to future generations by Derek Parfit, as discussed in John O'Neill, Alan Holland and Andrew Light, *Environmental Values* (Abingdon, Oxfordshire: Routledge, 2008), 61-62.

autonomy in stage (1). But, because of the paternalistic legislation, stage (2) and (3) will never be reached. No-one's autonomy has been preserved. Paternalistic legislation was designed to protect the autonomy of a hypothetical person in stage (3) who, as a result of legislation, will never exist. There is a catch 22 situation. Paternalism has only succeeded in limiting the autonomy of Paul in stage (1).

It may be possible that even if he had not been allowed to pass through stage (2) and box, maybe the future Paul would still reach stage (3). If he saw people who had boxed and were now brain damaged he may be grateful that he was prevented from harming himself. Unfortunately, there is no way of knowing whether the future Paul will feel this way. All we can be certain of is the desires of the current Paul. We must respect his autonomy.

Thankfully, most people choose to live with an eye to the future. They are relatively careful and do not assume unnecessary risk. A primary reason that people choose not to smoke is to avoid dying of lung cancer (which is not an immediate risk). Their current goal takes into consideration their future goal. I do not think that rejecting hard paternalism will lead to a great increase in harmful actions. It will allow many people to exercise their autonomy.

4 ENDURING VALUE OF CURRENT GOAL

Finally, if Paul does live to be older, it would be unfair *at that point* to continue favouring the decisions of the younger Paul. What I mean is, when you are young the state should favour the young you. When you are old the state should favour the old you. As long as you are able to give valid consent then the state should not interfere with the decisions of the current you.

SLAVERY OBJECTION

Mill limited the harm principle by arguing that people should not be free to voluntarily contract themselves into slavery: we should not value an

autonomous choice to remove autonomy.⁷ Yet, I disagree. This view cannot be reconciled with the idea that a person should be free to limit their autonomy by harming (or killing) themselves.

The notion of a voluntary slave runs contrary to the traditional understanding of what a slave is: a person who is exploited and forced to act against their will. If a person freely chooses to be a slave then it is questionable whether they can be a slave in the traditional sense: by definition a slave is forced to act *against* his will. We need to separate this traditional understanding from that of a voluntary slave. For a choice to be a slave to be voluntary enough, it would need to be made free from pressures (including social and financial pressures). The actor must also be mentally capable. Perhaps people with masochistic-style personality traits would choose to be a slave. If such a person exists, then I think we must respect their choice.

However, the state is not obliged to enforce the rights of the slave master to oppress the slave against his will. If the slave's long-term desire changes (and he no longer desires to be a slave), his identity also changes. The slave owner could not treat this new person as a slave against his will: to do so would violate the harm principle and state interference would therefore be justified. In any dispute between the slave and slave master in respect of the 'contract of sale', the remedy of specific implement would not be available to the slave master.

Yet, slavery could be understood as being an *irrevocable* renunciation of your autonomy. Let us imagine that Planet Slave exists where anyone who chooses to be a slave can go and experience all the brutality of slave life. There is no way to bring them back. To allow an actor to go to Planet Slave, the state would need to satisfy itself that their choice was voluntary enough. However, if the choice was voluntary enough, the would-be slave should be allowed to go. State interference with that choice would be illegitimate. This may sound counterintuitive, but, we must remember that this person's long-term desire is to go to Planet Slave. However, although I stipulated that it was impossible to

⁷ Mill, *On Liberty*, 125.

return, if it was discovered that the actor's long-term goal had changed, the state would be justified in attempting to bring him home (even if this was impossible). In the boxing example, it is not an infringement of the current Paul's autonomy if we allow him to box, but then offer medical help to the future Paul who is mentally disabled.⁸

Mill argued that a person should not be allowed to sell themselves into slavery because doing so would mean giving up their autonomy. For him, this was the exact opposite of what liberty is protected for. However, I see no way that he can square this view about slavery, with a view that a person should be free to severely harm or kill themselves.

EFFECT

Using the personal identity criterion, the state could not legitimately propose an outright ban on any action. When voluntariness is the main consideration, we must acknowledge that some people will voluntarily choose to partake in harmful activities. There is nothing to prevent the state from informing people of the dangers in the hope this may convince them to be more careful. However, they could not legitimately enforce a rule requiring everyone to wear a seatbelt. There may be a person who desperately wants to drive without one. It would be permissible for police cars to stop drivers who were not wearing a seatbelt and remind them of the dangers. The same would hold for dangerous sports. Participants would need to take part voluntarily. Even extreme religious cults which promote self harm could be legitimate as long as their actions are voluntary enough.

CONCLUSION

⁸ I recognise that there may be a distinction between desiring harm for its own sake, and desiring an action which carries a risk of harm. However, I think the argument holds for both cases.

In the case of a conflict between long-term desires and short-term desires, we must always favour a person's long-term desires. In a conflict between current desires and future desires, it is the current desires which should be protected. The division between current and future desires is enough to distinguish two separate identities for the purpose of autonomy.

So, when can the state legitimately interfere with exclusively self harming action? If we apply the personal identity criterion, the state can never legitimately interfere with current long-term desires. They can only delay self harming action for as long as it takes to determine whether that action is voluntary enough.

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