

# Paternalism(s), Cognitive Biases and Healthy Public Policy

JASP – Should we protect people from themselves?

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## What is paternalism?

“Paternalism is the **interference** of a state or an individual with another person, **against their will**, and defended or motivated by a claim that the person interfered with will be **better off** or **protected from harm**” (Dworkin, 2002).<sup>1</sup>

- In other words: it is protecting people from themselves.
- Paternalism is generally seen as an ethically suspicious intrusion in the domain of personal autonomy or freedom.
- When there is consent, an intervention is not paternalistic.
- But, what is group consent? **What does it mean to consent to a public policy?**

## What is interfering?

Here are two responses that rely on different conceptions of freedom:

1. Interfering is infringing upon **(negative) freedom** by limiting the options available or by influencing choices.
  - Liberal or libertarian conception of freedom: being free means not being constrained (whether internally or externally).
2. Interfering is infringing upon autonomy or **(positive) freedom** by limiting the capacity to make informed decisions.
  - Communitarian, republican or relational conception of freedom: being free means being able to make informed choices or actually having a range of options available.

<sup>1</sup> Dworkin, G. (2002). Paternalism. *Stanford Encyclopedia of Philosophy*. Online: <http://plato.stanford.edu/entries/paternalism/>

## INFRINGING UPON NEGATIVE FREEDOM

The Nuffield Council on Bioethics' (2007)<sup>2</sup> intervention ladder can be used to assess the degree of interference upon negative freedom (see Figure 1).

Interference with negative freedom	Intervention
+	<b>Eliminate choice</b> : Ban cigarettes and trans fat
	<b>Restrict choice</b> : Limit fast-food restaurants around schools, limit the size of sugary drinks
	<b>Guide through disincentives</b> : Tax sugary drinks, limit supply of parking
	<b>Guide through incentives</b> : Subsidize public transportation
	<b>Change default option</b> : Change the default option from French fries to salad
	<b>Enable choice</b> : Build cycle tracks, offer healthy choices in public arenas
	<b>Inform</b> : Mandatory nutritional labelling
-	<b>Do nothing or monitor</b> : Monitor trends in overweight and obesity

Figure 1 Assessing the degree of interference upon negative freedom using the Nuffield Council on Bioethics' (2007) intervention ladder.

The underlying idea: most state interventions interfere with freedom. The higher we climb up the ladder, the more severe the interference, and the more we need good reasons to justify intervening (e.g., there is no alternative, the importance of the benefits or risks, equity, etc.).

## INFRINGING UPON POSITIVE FREEDOM

The alternate ladder by Griffiths and West (2015)<sup>3</sup> can be used to assess the effects of an intervention on positive freedom (see Figure 2).

<sup>2</sup> Nuffield Council on Bioethics. (2007). *Public health: ethical issues*. Online: <http://nuffieldbioethics.org/wp-content/uploads/2014/07/Public-health-ethical-issues.pdf>

<sup>3</sup> Griffiths, P. E. & West, C. (2015). A balanced intervention ladder: promoting autonomy through public health action. *Public Health*, 129(8), 1092-1098.



Figure 2 Assessing the effects on positive freedom with the help of Griffiths & West's (2015) ladder.

The underlying idea: some interventions are necessary to protect or promote freedom and do not interfere with it. Only those interventions at the bottom of the ladder can be paternalistic. The more we climb down the ladder, the more we need good reasons justifying the intervention.

## What can contribute to justifying a paternalistic intervention?

### NON-COERCIVE INTERVENTIONS

Generally, less coercive interventions are easier to justify than more coercive ones – something that both ladders reflect. Some interventions that guide towards “good” choices without eliminating “bad” choices can even be considered non-coercive. This distinction makes it possible to talk about **non-coercive paternalism** and **coercive paternalism**.

**Cognitive bias:** research on cognitive bias opens up possibilities for new interventions that guide without being coercive.

### INVOLUNTARY ACTIONS

It is generally accepted that it is possible to justify paternalistic interventions when they target persons who are not **competent** (i.e., they have not reached a sufficient level of autonomy as for example with young children or people with some severe cognitive deficiencies) or competent persons who are in situations or contexts that render their actions sufficiently **involuntary** (e.g., persons who are heavily intoxicated or who are missing crucial information). This distinction makes it possible to talk about **weak paternalism** (when sufficiently involuntary acts are targeted) and **strong**

**paternalism** (when sufficiently voluntary acts are targeted).

**Cognitive bias:** research on cognitive bias can widen the category of sufficiently involuntary acts.

## Four types of paternalism

### NON-COERCIVE PATERNALISM

Non-coercive paternalism consists of guiding people towards their own good(s) while preserving their freedom to choose otherwise (e.g., changing the default option).

### COERCIVE PATERNALISM

Coercive paternalism consists of using strong incentives, strong disincentives, restricting options or eliminating options for the good of those who are being interfered with (e.g., banning cigarettes).

### WEAK PATERNALISM

Weak paternalism consists of interfering with choices that are sufficiently involuntary, for the good of those who are being interfered with (e.g., eliminating minors' access to tanning beds).

### STRONG PATERNALISM

Strong paternalism consists of interfering with sufficiently voluntary choices for the good of those who are being interfered with (e.g., mandatory bike helmet law for adults).

## Possible combinations

	Non-coercive intervention	Coercive intervention
Sufficiently involuntary action	1. Weak non-coercive paternalism	2. Weak coercive paternalism
Sufficiently voluntary action	3. Strong non-coercive paternalism	4. Strong coercive paternalism

Ethically speaking, combinations 1 and 2 are generally seen as less problematic as compared to combination 3 and especially to combination 4. The more we give weight to individual freedom, the harder it is to justify (if it is possible at all) combinations 3 and 4.