Analyzing the Ethics of Paternalism in Public Health: Applying and Testing a New Framework

Workshop | TOPHC | March 31, 2017

Michael Keeling & Olivier Bellefleur
National Collaborating Centre
for Healthy Public Policy

Centre de collaboration nationale
sur les politiques publiques et la santé

National Collaborating Centre
for Healthy Public Policy

Institut national
de santé publique
Québec

DISCLOSURE OF COMMERCIAL SUPPORT

- None of the presenters at this session have received financial support or in-kind support from a commercial sponsor.

- None of the presenters have potential conflicts of interest to declare.

The National Collaborating Centres for Public Health

NATIONAL COLLABORATING CENTRE FOR ABORIGINAL HEALTH

CENTRE DE COLLABORATION NATIONALE DE LA SANTÉ AUTOCHTONE

Prince George, B.C. | www.nccah.ca

National Collaborating Centre for Infectious Diseases

Centre de collaboration nationale des maladies infectieuses

Winnipeg, MB | www.nccid.ca

National Collaborating Centre for Determinants of Health

Centre de collaboration nationale des déterminants de la santé

Antigonish, N.S. | www.nccdh.ca

National Collaborating Centre for Environmental Health

Centre de collaboration nationale en santé environnementale

Vancouver, B.C. | www.ncceh.ca

National Collaborating Centre for Methods and Tools

Centre de collaboration nationale des méthodes et outils

Hamilton, ON | www.nccmt.ca

Centre de collaboration nationale sur les politiques publiques et la santé

National Collaborating Centre for Healthy Public Policy

Montréal-Québec, QC | www.ncchpp.ca

National Collaborating Centre for Healthy Public Policy (NCCHPP)

Our mandate

– Support public health actors in their efforts to promote healthy public policies

Our areas of expertise

– The effects of public policies on health

– Generating and using knowledge about policies

– Intersectoral actors and mechanisms

– Strategies to influence policy making

Centre de collaboration nationale
sur les politiques publiques et la santé

National Collaborating Centre
for Healthy Public Policy

Institut national
de santé publique
Québec

Paternalism in public health

What do you think? Is it legitimate for the state to:

A. Forbid people from smoking in cars while children are present?

B. Forbid people from smoking in cars, even when they are alone?

Should we protect people against others?

Should we protect people against themselves?

Harm principle

Paternalism

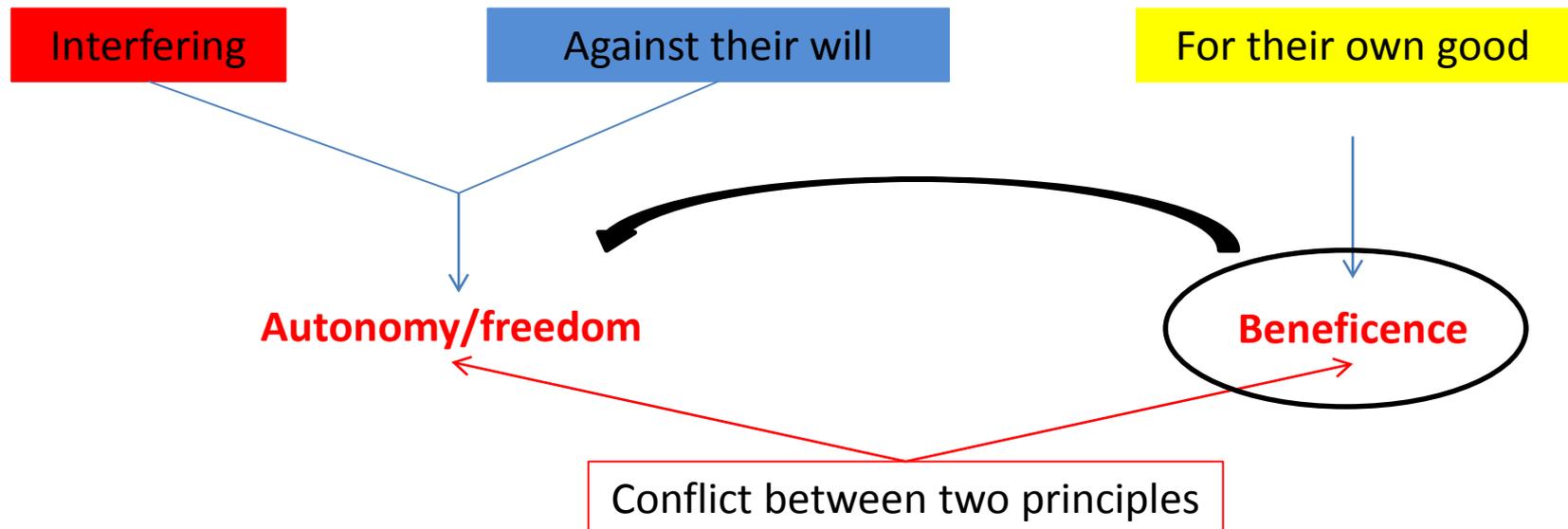Political liberalism

Objectives

To briefly answer the following questions:

- What is **paternalism**?

- Why are we **attracted to** *and* **uneasy about** paternalistic public policies in public health?

- How might we do an **ethical analysis** of policies that are said to be paternalistic in public health?

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)

Interfering

Against their will

For their own good

Autonomy/freedom

Beneficence

Conflict between two principles

What about 'paternalistic' public policies?

Attractive?
People say they are:

- **More effective?**
  - There are limits to what information campaigns can achieve

- **More efficient?**
  - Limiting options can be less costly

- **More equitable?**
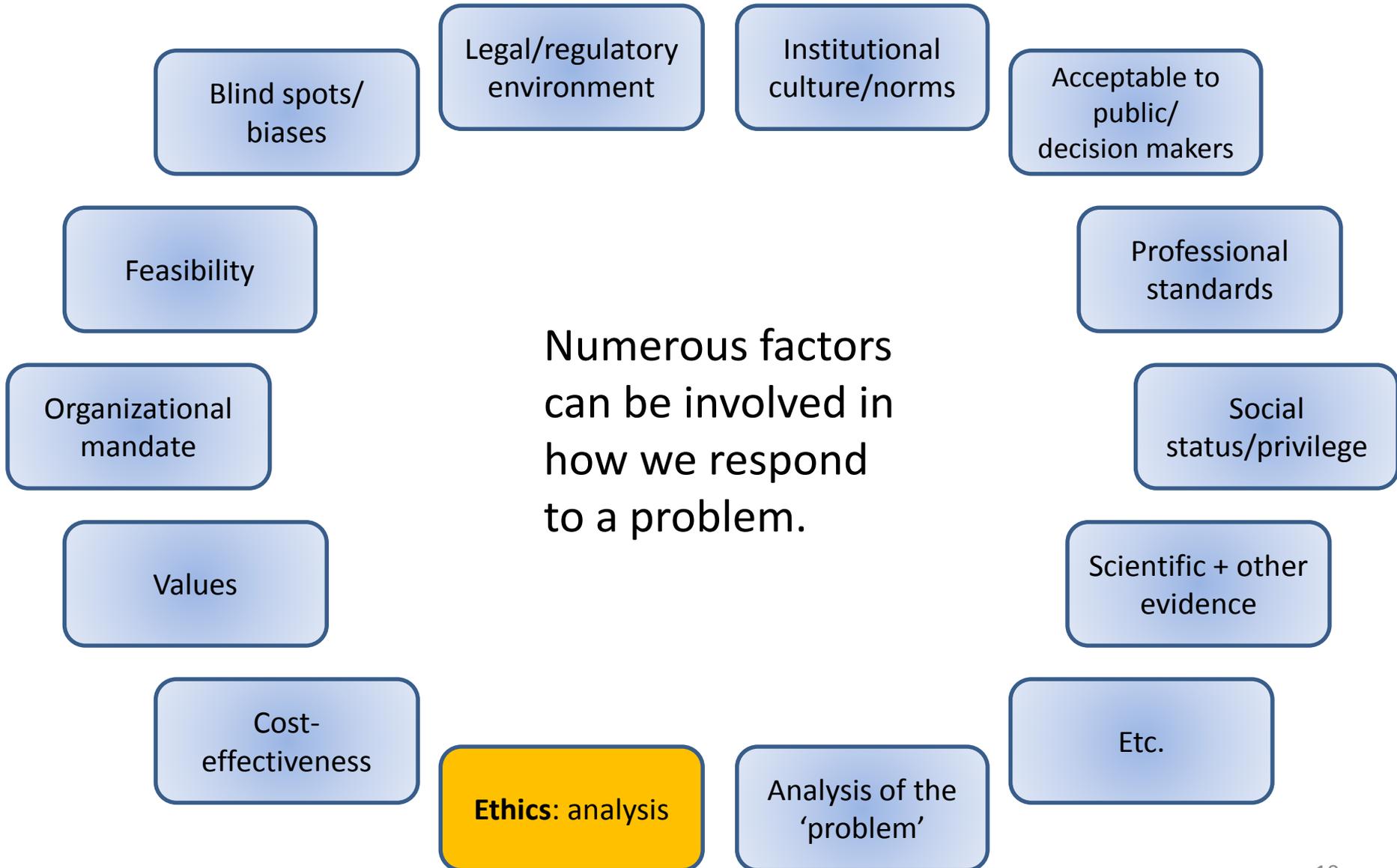 - Freedom of choice in the free market leads to health inequalities

Problematic?
People say they are:

- **Disrespectful?**
  - People are treated like children, as if unable to decide for themselves

- **Anti-freedom?**
  - We should be free to do what we like as long as it doesn't hurt anyone else

- **Tyrannical?**
  - The state imposes its values on us: we are capable of defining our own way

Examples of public policies in public health that have been called paternalistic

- Prohibition of the sale of cigarettes, alcohol, cannabis, tanning salon sessions to minors
- Mandatory seat belt use in cars
- Mandatory use of helmets for motorcycling, or for cycling
- Nutrition labelling required on packaged foods
- Prohibition of swimming at public beaches without a lifeguard
- Limits on fast food restaurants around schools
- Limits on the serving sizes of sugary drinks
- Taxes on sugary drinks, alcohol, cigarettes, etc.
- Ignition interlock devices installed in all cars
- Fluoridation of drinking water
- …

What to *do*? How to *decide*?

Blind spots/ biases

Legal/regulatory environment

Institutional culture/norms

Acceptable to public/ decision makers

Feasibility

Professional standards

Organizational mandate

Numerous factors can be involved in how we respond to a problem.

Social status/privilege

Values

Scientific + other evidence

Cost-effectiveness

Ethics: analysis

Analysis of the 'problem'

Etc.

These are just a few among many. All of these are important and call for critical attention.

What can we use to help us think about ethical issues in public health?
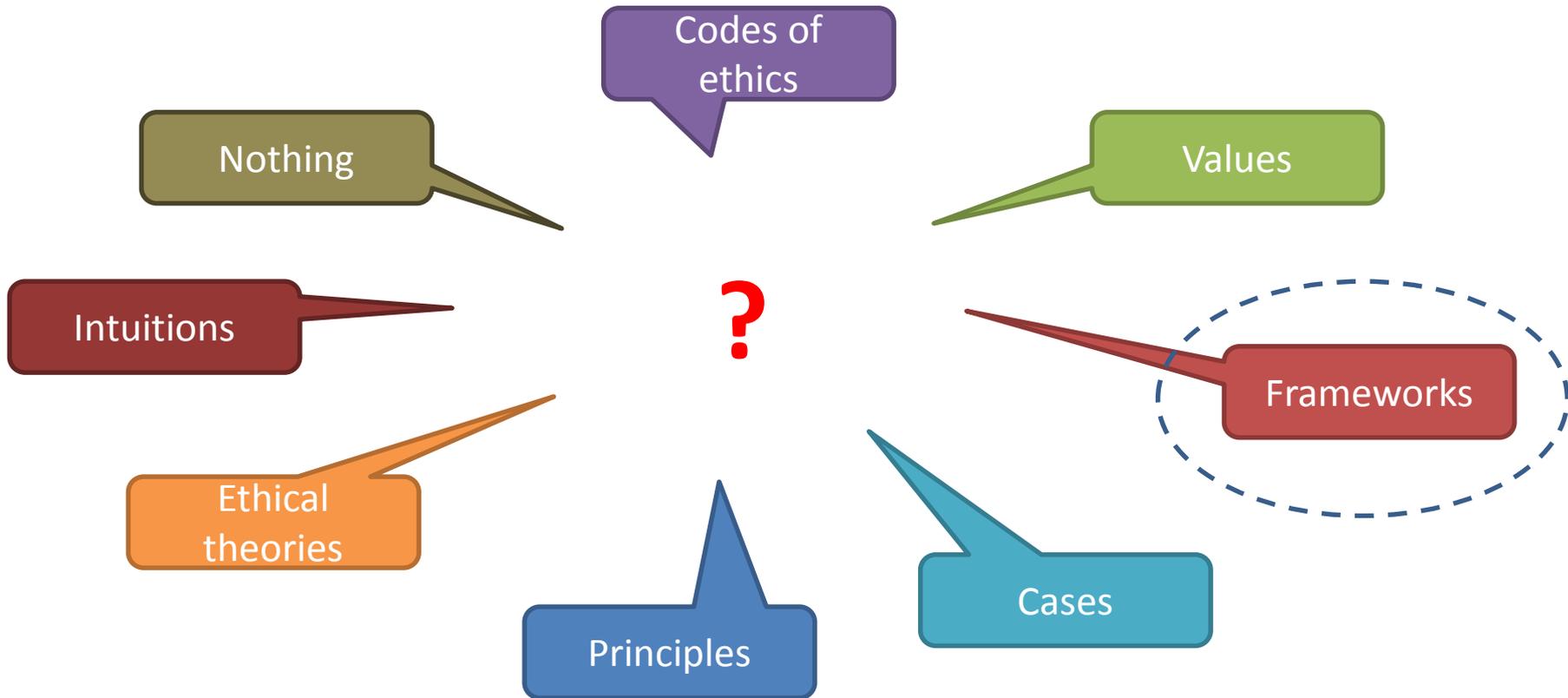
What is an ethics framework?

- A framework is a guide that can help professionals to adopt an ethical perspective to
  - highlight ethical values and issues, and
  - serve as an aid to deliberation and decision making

- No prior expertise in ethics is required – even if it always helps

- Alas, it will only *help* to guide you – the work is still up to you (especially the critical thinking) and so are the decisions

4 cases to test a new framework (in development)

1. Mandatory, detailed nutrition labelling on all packaged foods

2. Obligatory seat belt use

3. A law imposing limits on the serving sizes of sugary drinks

4. Ignition interlock device required in all cars (i.e., breathalyzer test to start the car).

Questions/comments?

'Interdit, Saintes-Maries-de-la-Mer 13 Bouches-du-Rhône France' Photo credit: Jacques Caffin.
Flickr.com. Licence: Creative Commons

Next:

How to analyze policies that are called paternalistic?

Centre de collaboration nationale
sur les politiques publiques et la santé

National Collaborating Centre
for Healthy Public Policy

*Institut national
de santé publique*
Québec

14

How might we do an ethical analysis of policies in public health that are called paternalistic?

A framework in three steps:

1. Determine if the policy option really is paternalistic

2. Determine which type(s) of paternalism it is

3. Broaden the analysis with the help of a more general ethics framework.

Step 1: Determine if the policy option really is paternalistic (1)

Paternalism is a formidable rhetorical weapon

"Paternalism is something we often accuse people of."
- Feinberg (1986), p. 4.

It is therefore used to frame the debate and to try to get people to reject an option without further consideration.

1.1. Does a paternalistic reason really figure among the main reasons behind the policy that is "called" paternalistic?
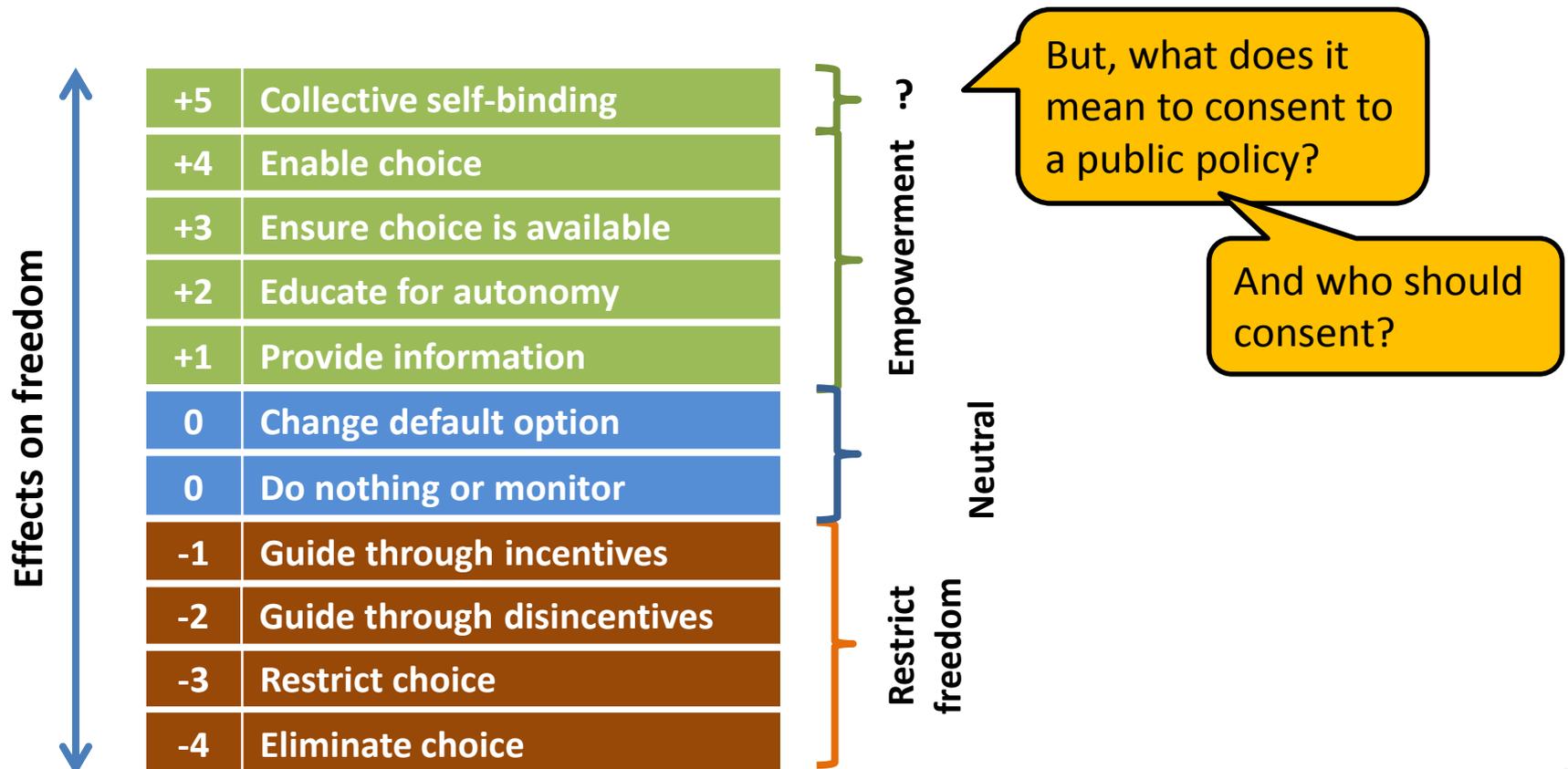
Yes/No

Step 1: Determine if the policy option really is paternalistic (2)

1.2. Is it a case of **beneficence** or **paternalism**?

| Beneficence	Paternalism
For their own good	For their own good
	Restrict freedom
	Against their will

Step 1: Determine if the policy option really is paternalistic (3)

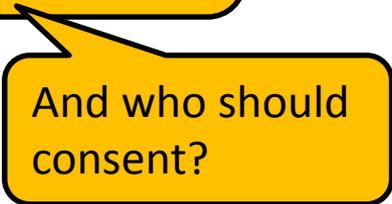1.2.1. Does the policy **restrict freedom** or would it be better understood as a form of **empowerment**?

Griffiths & West's (2015) intervention ladder

Step 1: Determine if the policy option really is paternalistic (4)

1.2.1. Does the policy **restrict freedom** or would it be better understood as a form of **empowerment**?
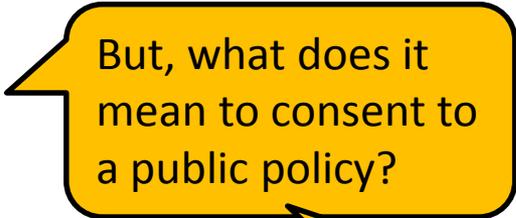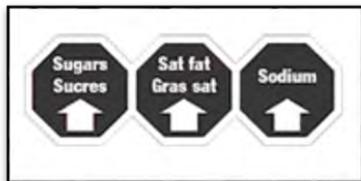
But, what does it mean to consent to a public policy?

And who should consent?

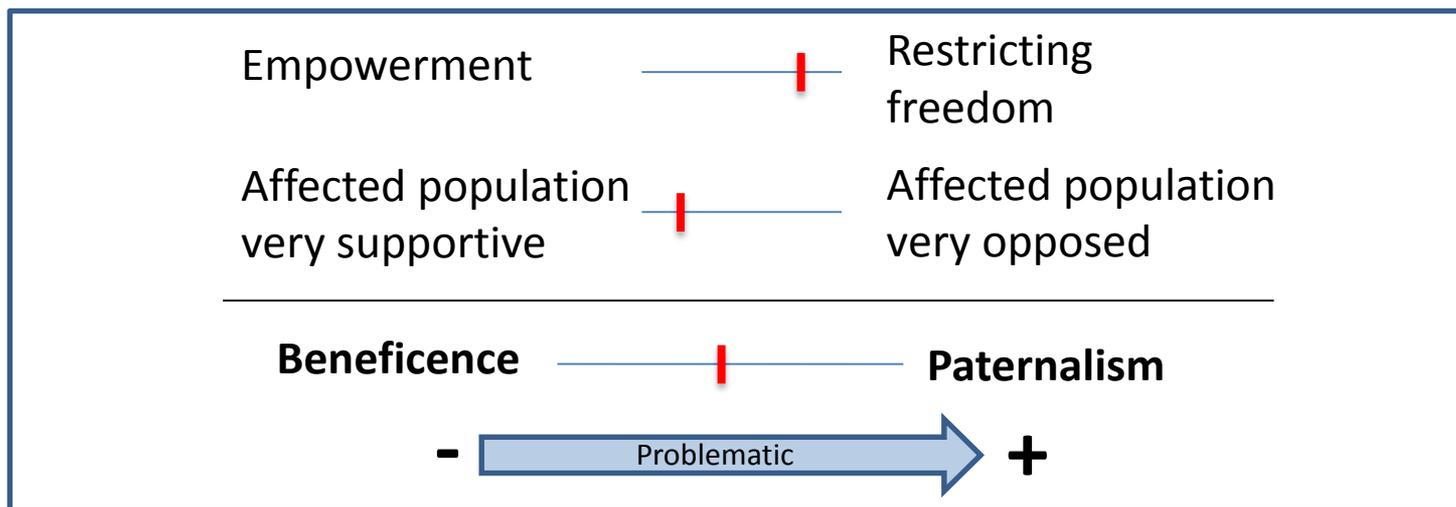1.2.2. Is the affected population **supportive** or **opposed** to the policy?

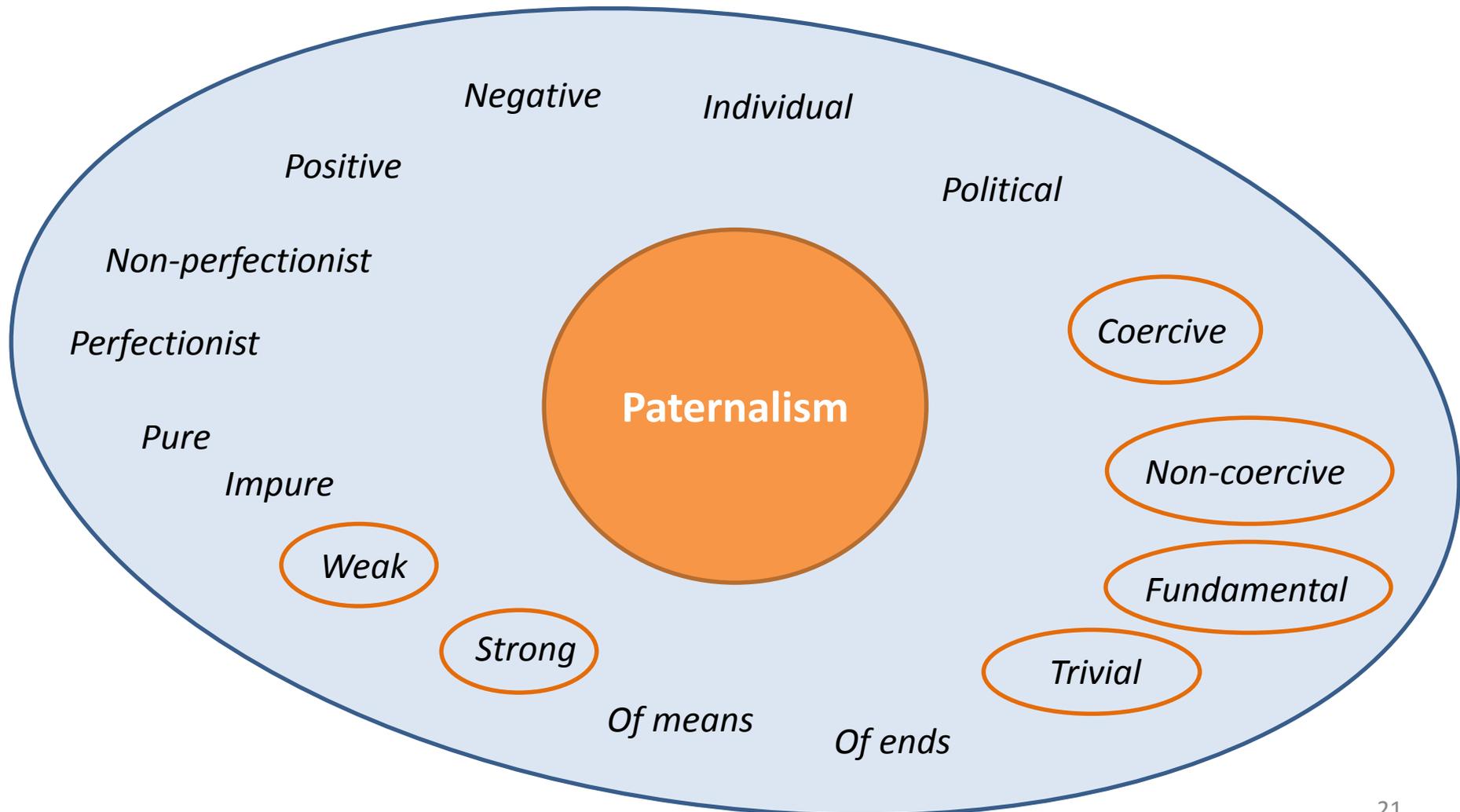# Step 1: Determine if the policy option really is paternalistic (5)

1.1. Does a paternalistic reason really figure among the reasons behind the policy that is "called" paternalistic?

Yes/No

1.2. Is it a case of **beneficence** or **paternalism**?

Empowerment ——————— Restricting freedom

Affected population very supportive ——————— Affected population very opposed

Beneficence ——————— **Paternalism**
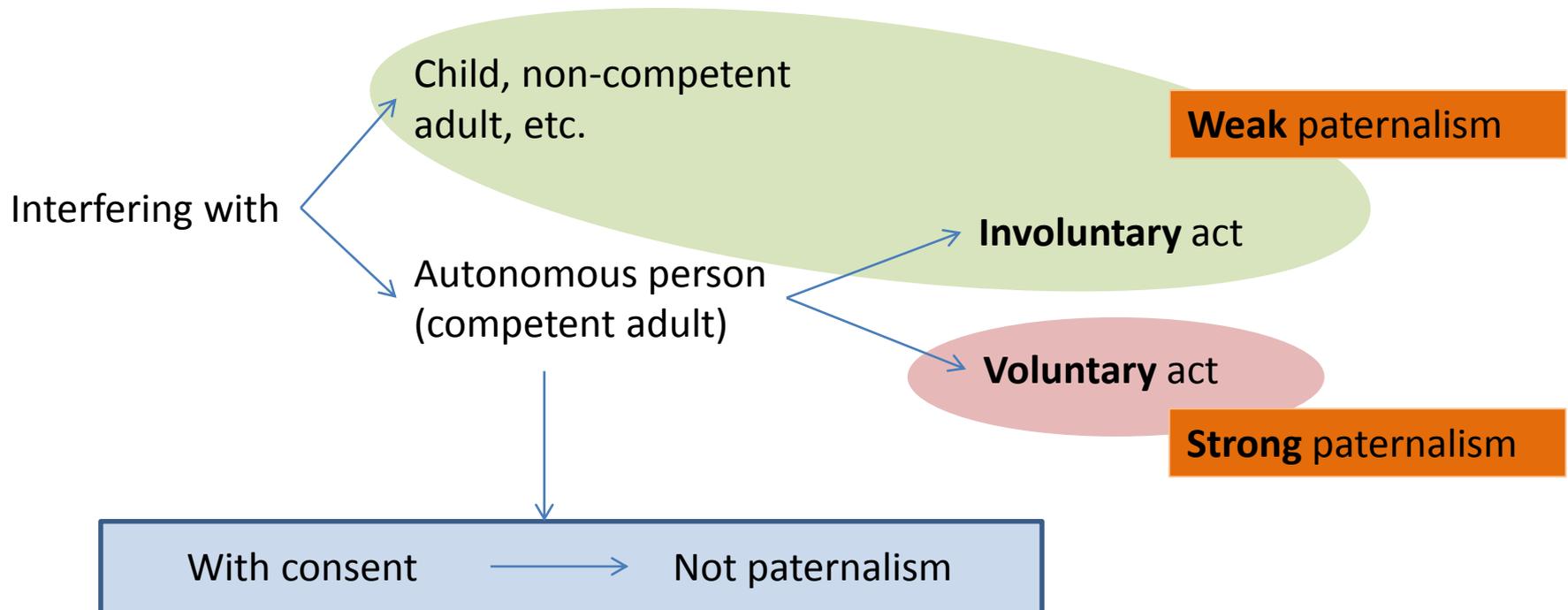
− Problematic +

20

Step 2: Determine which type(s) of paternalism it is

Distinction 1: **strong** or **weak** 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)

Interfering with

Child, non-competent adult, etc.

Weak paternalism

Autonomous person (competent adult)

Involuntary act

Voluntary act

Strong paternalism

With consent → Not paternalism

Voluntary/involuntary acts (1)

Voluntary acts

Fully thought-out choices of competent, autonomous, rational and well-informed adults

Strong paternalism

Emotional acts?

Smoking?

Weak paternalism

Adolescent's acts?

Very badly-informed choices?

Acts of heavily intoxicated people (alcohol, drugs, etc.)?

Children's acts?

Involuntary acts

Reflexive reactions, sleepwalkers

23

Voluntary/involuntary acts (2)

Voluntary acts

Fully thought-out choices of competent, autonomous, rational and well-informed adults

Strong paternalism

Unfavourable circumstance for decision-making (lack of information, short timeframe, cognitive bias, etc.)

High **risk magnitude** (probabilities, severity, irrevocability, etc.)?

Smoking?

Weak paternalism

Adolescent's acts?

Very badly informed choices?

Acts of heavily intoxicated people (alcohol, drugs, etc.)?

Children's acts?

Involuntary acts
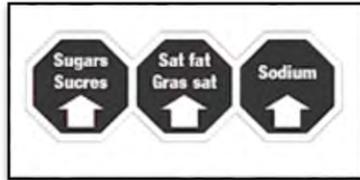
Reflexive reactions, sleepwalkers

24

2.1. Is it strong or weak paternalism?

Labelling   Soda size   Seat belts   Interlock

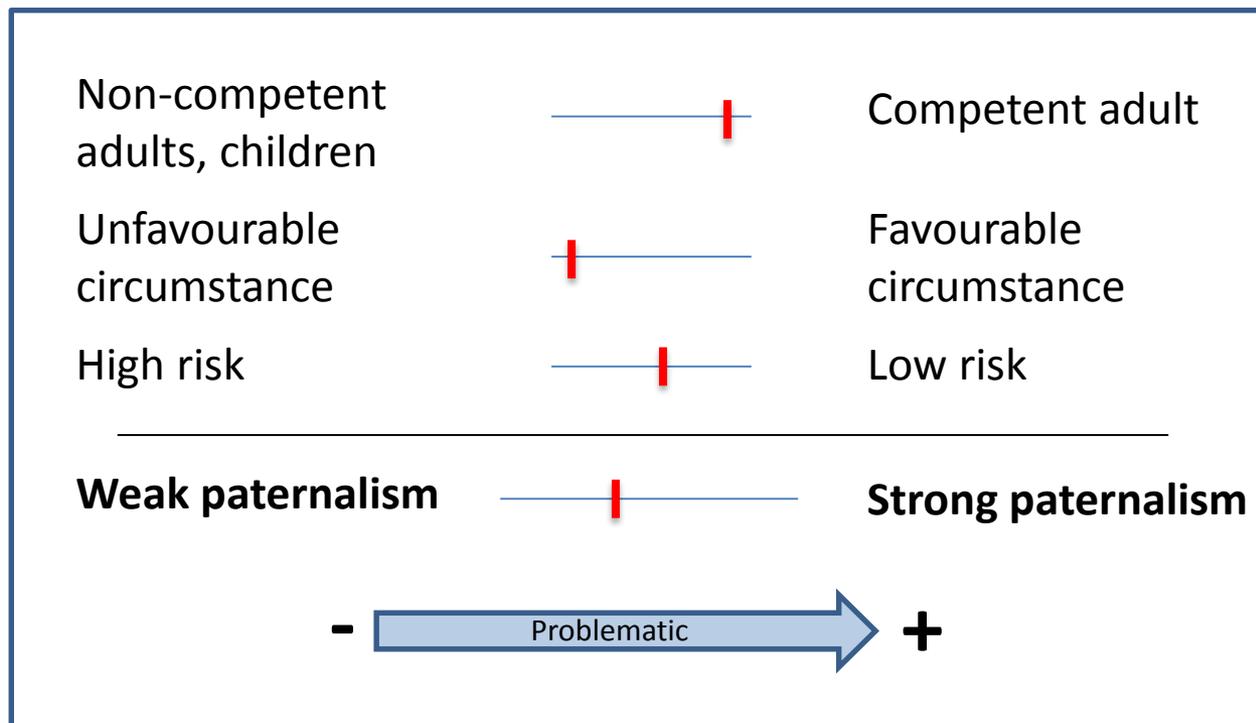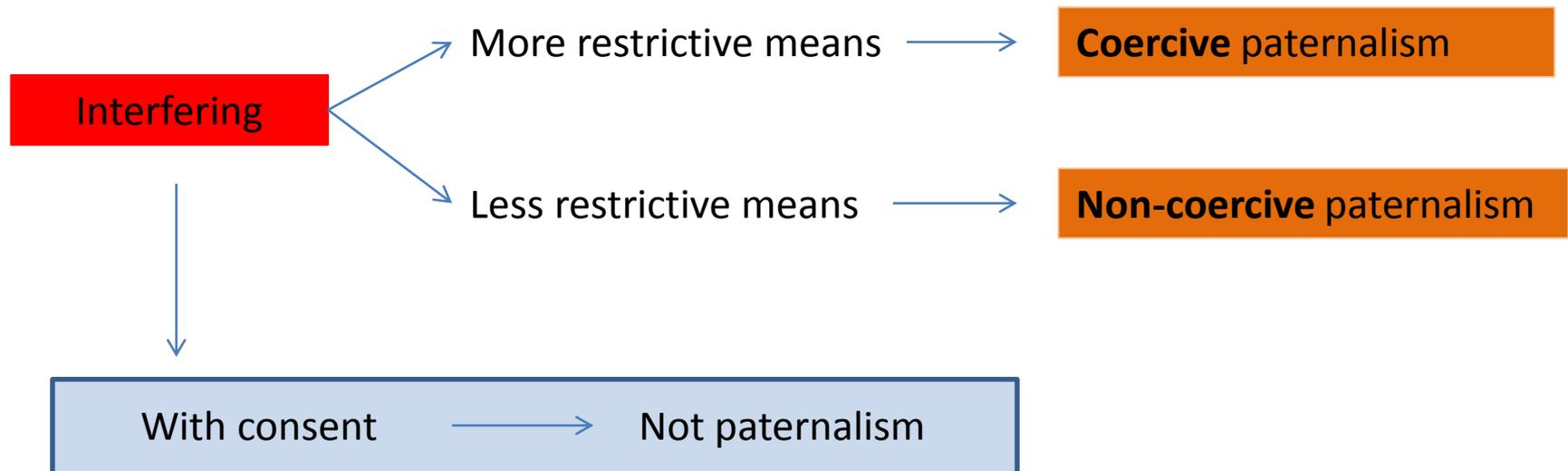| Non-competent adults, children | —————┃— | Competent adult |
| Unfavourable circumstance | ┃———— | Favourable circumstance |
| High risk | ——┃—— | Low risk |

Weak paternalism ——┃—— **Strong paternalism**

− ⟶ Problematic +

Distinction 2: **coercive** or **non-coercive** 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)

Interfering

More restrictive means ⟶ **Coercive** paternalism

Less restrictive means ⟶ **Non-coercive** paternalism

With consent ⟶ Not paternalism

Assessing the degree of interference upon freedom

The Nuffield Council on Bioethics' (2007) intervention ladder

Interference with freedom (+ / −)

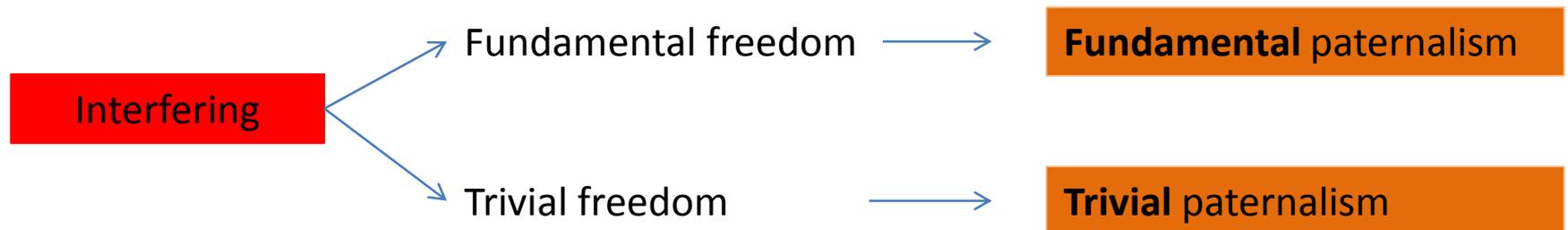|	
Eliminate choice	Ban cigarettes and trans fats
Restrict choice	Limit fast-food restaurants around schools
Guide through disincentives	Tax sugary drinks; limit the supply of parking spaces
Guide through incentives	Subsidize public transit
Change default option	Change the default option from French fries to salad
Enable choice	Build cycle paths; offer healthy food choices in public arenas
Inform	Graphic warnings on cigarette packs
Do nothing or monitor	Monitor trends in overweight and obesity

Coercive

Non coercive

27

2.2. Is it coercive or non-coercive paternalism?

Non-coercive paternalism ———|——— **Coercive paternalism**

- ⟶ Problematic **+**
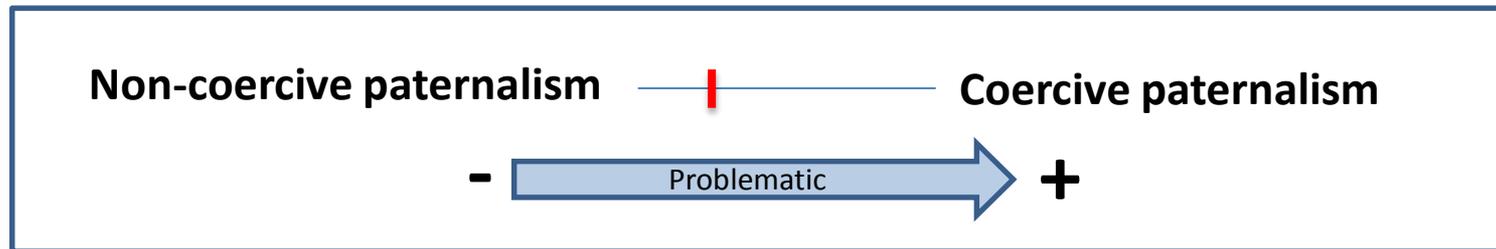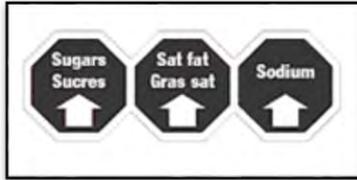
Distinction 3: **fundamental** or **trivial** paternalism?

"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)

Interfering

Fundamental freedom ⟶ **Fundamental** paternalism

Trivial freedom ⟶ **Trivial** paternalism

Fundamental or trivial freedom?

The Nuffield Council on Bioethics' (2007) intervention ladder

Interference with freedom

+

-

- Eliminate choice
- Restrict choice
- Guide through disincentives
- Guide through incentives
- Change default option
- Enable choice
- Inform
- Do nothing or monitor

'FREE THE BIG GULP!' Photo credit: The All-Nite Images. Flickr.com. Licence: Creative Commons

Coercive, but is it an important freedom?

And who decides?

Who decides… and for whom?

> **Risks**:
> The majority imposes its values on minorities
> The more powerful impose their values on the less powerful and marginalized?

Wanting to limit the serving size…

…of this one

…but not that one

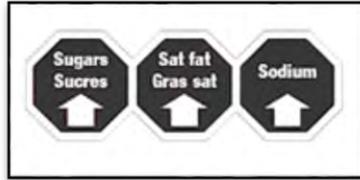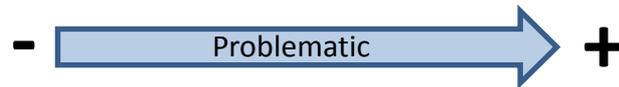'The Big Gulp at Jalopeños' Photo credit: Bill Barnett. Flickr.com. Licence: Creative Commons

'Wine' Photo credit: Oliver Wagner. Flickr.com. Licence: Creative Commons
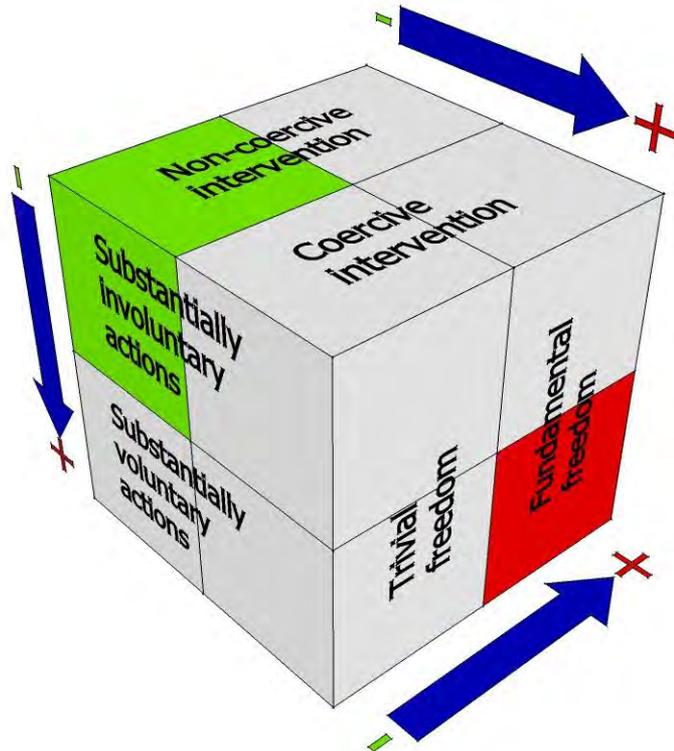
2.3. Is it fundamental or trivial paternalism?

Trivial paternalism ———————— **Fundamental paternalism**
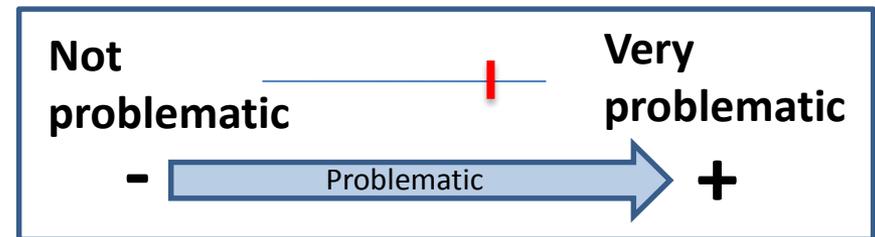
− Problematic +

Step 2: Determine which type(s) of paternalism it is - summary
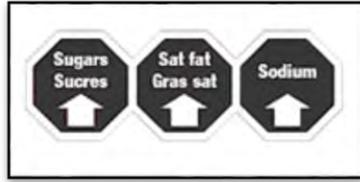
2.4. A visual summary: where would you situate the intervention?

2.5. Overall, how problematic is the paternalistic aspect of the policy or intervention?

Step 3: Broaden the analysis with the help of a more general ethics framework (1)

There is rarely just one unique reason for intervening (or not).

'Flu Shot' Photo credit: WFIU Public Radio. Flickr.com. Licence: Creative Commons

Example: Mandatory flu vaccination for health workers

- ➤ For their own good, but against their will (**paternalism**)
- ➤ For their own good, but with their consent (**beneficence**)
- ➤ To establish herd immunity (**common good**)
- ➤ To avoid harming others (**harm principle**)
- ➤ To protect the most vulnerable (**justice, equity, etc.**)
- ➤ To avoid imposing a burden on the community (**justice, efficiency**)
- ➤ Etc.

Step 3: Broaden the analysis with the help of a more general ethics framework (2)

Many frameworks are available in public health to *help* identify issues, deliberate, and weigh between conflicting values
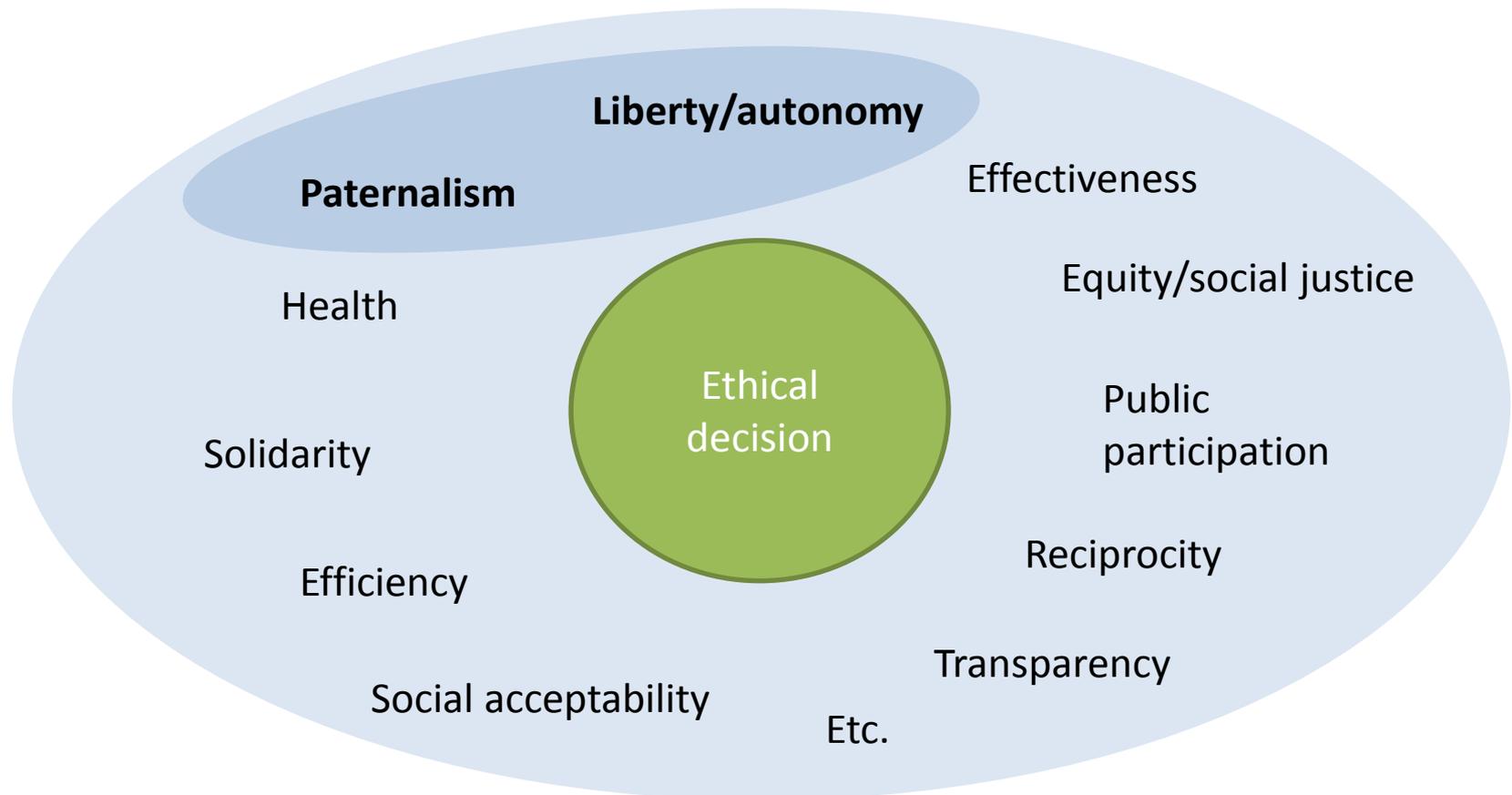
Step 3: Broaden the analysis with the help of a more general ethics framework (3)

A selection of such frameworks to choose from:

Baum et al. (2007)
Bernheim et al. (2009)
Kass (2001)
ten Have et al. (2012)
Marckmann et al. (2015)
Schröder-Bäck et al. (2014)
Upshur (2002)
Willison et al. (2012)

Here is a collection of frameworks with links to the original documents:
http://www.ncchpp.ca/708/Repertoire_of_Frameworks.ccnpps

Adapted summaries of frameworks

Teaching Seven Principles for Public Health Ethics: Towards a Curriculum for a Short Course on Ethics in Public Health Programmes
Schröder-Bäck et al. (2014)
621 K
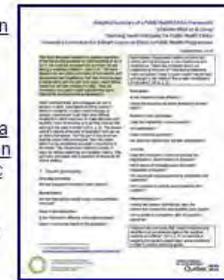
An Ethical Framework for the Prevention of Overweight and Obesity: A Tool for Thinking

2-page summaries of some of these are available here:
http://www.ncchpp.ca/127/Publications.ccnpps?id_article=1525

Feedback and discussion

'Wired' Photo credit: Rafael Matsunaga.
Flickr.com. Licence: Creative Commons

- Is the framework useful?

- How could it be improved?

References (1)

- Baum, N. M., Gollust, S. E., Goold, S. D., & Jacobson, P. D. (2007). Looking ahead: Addressing ethical challenges in public health practice. *Global Health Law, Ethics and Policy*, Winter 2007, 657-667. Available at: http://deepblue.lib.umich.edu/bitstream/handle/2027.42/75478/j.1748-720X.2007.00188.x.pdf?sequence=1&isAllowed=y
  Our adapted summary is available at: http://www.ncchpp.ca/docs/2016_eth_frame_baum_En.pdf

- Bernheim, R. Gaare, Nieburg, P., & Bonnie, R. J. (2007). Ethics and the practice of public health. In R. A. Goodman, R. E. Hoffman, W. Lopez, G. W. Matthews, M. Rothstein, & K. Foster (Eds.), *Law in public health practice*, pp. 110-135. Oxford: Oxford University Press. For information (paywall): http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195301489.001.0001/acprof-9780195301489
  Our adapted summary is available at: http://www.ncchpp.ca/docs/2016_eth_frame_bernheim_En.pdf

- Dworkin, G. (2002). Paternalism. *Stanford Encyclopedia of Philosophy*.

- Feinberg, J. (1986). *Harm to self. The Moral Limits of the Criminal Law, volume 3*. New York and Oxford: Oxford University Press.

References (2)

- Griffiths, P. E. & West, C. (2015). A balanced intervention ladder: promoting autonomy through public health action. *Public Health*, 129(8), 1092-1098. Available at: http://www.sciencedirect.com/science/article/pii/S0033350615003261

- ten Have, M., van der Heide, A., Mackenbach, J. P., & Beaufort, I. D. (2012). An ethical framework for the prevention of overweight and obesity: a tool for thinking through a programme's ethical aspects. *European Journal of Public Health,* 23(2), 299-305. Available at: http://eurpub.oxfordjournals.org/content/23/2/299.long
Our adapted summary is available at: http://www.ncchpp.ca/docs/2016_eth_frame_tenHave_En.pdf

- Kass, N. E. (2001). An ethics framework for public health. *American Journal of Public Health*, 91(11), 1776–1782. Available at: http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.91.11.1776
Our adapted summary is available at: http://www.ncchpp.ca/docs/2016_eth_frame_kass_En.pdf

- Marckmann, G., Schmidt, H., Sofaer, N., & Strech, D. (2015). Putting public health ethics into practice: A systematic framework. *Frontiers in Public Health*, February 2015, 3(23), 8 pp. Available at: http://journal.frontiersin.org/article/10.3389/fpubh.2015.00023/full
Our adapted summary is available at: http://www.ncchpp.ca/docs/2015_TOPHC_Ethique_HandoutB_EN_Final.pdf

References (3)

- Nuffield Council on Bioethics. (2007). *Public health: Ethical issues*. Available at: http://nuffieldbioethics.org/wp-content/uploads/2014/07/Public-health-ethical-issues.pdf (report - 225 pp.) http://nuffieldbioethics.org/wp-content/uploads/2014/07/Public-Health-short-guide.pdf (guide - 9pp.).

- Schröder-Bäck, P., Duncan, P., Sherlaw, W., Brall, C., & Czabanowska, K. (2014). Teaching seven principles for public health ethics: Towards a curriculum for a short course on ethics in public health programmes. *BMC Medical Ethics,* 2014, 15:73. Available at: http://www.biomedcentral.com/content/pdf/1472-6939-15-73.pdf. Our adapted summary is available at: http://www.ncchpp.ca/docs/2016_eth_frame_schroder-back%20_En.pdf.

- Upshur, R. E. G. (2002). Principles for the justification of public health intervention. *Canadian Journal of Public Health*, 93(2), 101-103. Available at: http://journal.cpha.ca/index.php/cjph/article/view/217 Our adapted summary is available at: http://www.ncchpp.ca/docs/2016_eth_frame_upshur_En.pdf

- Willison, D., Ondrusek, N., Dawson, A., Emerson, C., Ferris, L., Saginur, R., Sampson, H., & Upshur, R. E. G. (2012). A framework for the ethical conduct of public health initiatives. Public Health Ontario. Available at: http://www.publichealthontario.ca/en/eRepository/PHO%20%20Framework%20for%20Ethical%20Conduct%20of%20Public%20Health%20Initiatives%20April%202012.pdf Also, this shorter document discusses the framework and provides a table of its Ten guiding questions: Willison, D. J., Ondrusek, N., Dawson, A., Emerson, C., Ferris, L. E., Saginur, R., Sampson, H., & Upshur, R. (2014). What makes public health studies ethical? Dissolving the boundary between research and practice. *BMC Medical Ethics,* 15(61), 1-6. Available at: http://bmcmedethics.biomedcentral.com/articles/10.1186/1472-6939-15-61

Thanks for joining us

You're interested in this topic?
Visit us at **www.ncchpp.ca** for more resources

Michael Keeling and Olivier Bellefleur
National Collaborating Centre for Healthy Public Policy
michael.keeling@inspq.qc.ca
olivier.bellefleur@inspq.qc.ca

Centre de collaboration nationale
sur les politiques publiques et la santé
National Collaborating Centre
for Healthy Public Policy

Institut national
de santé publique
Québec