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Paternalism

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BOOK REVIEW

John Kleinig, *Paternalism* (Totowa, NJ: Rowman and Allanheld, 1984), 242 pp.

Paternalism is often thought of as coercive interference with a person's liberty that is justified by appeal to the welfare or interests of the person being coerced. In this useful book, John Kleinig argues that one can influence a person's behavior for paternalistic reasons without coercing that person or directly interfering with his or her liberty or action, and thus he prefers to consider paternalism in a broad sense that is defined by two elements: "an imposition and a rationale. X acts to diminish Y's freedom, to the end that Y's good may be secured" (18).

The result of this broad conception of paternalism is to make it unlikely that a categorical negative judgment about paternalism will be reached. When paternalism is conceived broadly enough to include things that diminish a person's freedom without coercing him or her (such as putting a fence around a hazardous area) it is much less plausible to hold that it is always morally wrong. Kleinig thinks that some cases of paternalism are justifiable, and the book tries to identify and evaluate considerations that are relevant to deciding when paternalism is and isn't justifiable. Kleinig's overall position is that although paternalism is sometimes justifiable, it "is not something to be evangelistic about. It is not a substitute for persuasion and education, but a strategy of last resort" (70).

Kleinig considers a number of arguments against paternalistic actions. These include: (1) "The Argument from Oppression of Individuality," which claims that paternalistic impositions violate the demands of individuality or – in more Kantian language – fail to respect mature people's capacities for rational choice; (2) "The

Argument from Paternalistic Distance,” which claims that those who act paternalistically are generally less well placed to understand the welfare of the person whose freedom they reduce than that person him or herself; and (3) “The Argument from the Developmental Value of Choice,” which argues that people should be left free to make their own mistakes so that they can learn from them. Kleinig holds that arguments 2 and 3 do not rule out all cases of paternalism, and thus holds that the Individuality argument, with its Kantian overtones, provides the strongest barrier to paternalism. “Of the various objections to paternalism, the most powerful relates to what is regarded as its insulting, demeaning or degrading character” (38). One would expect from this endorsement that much attention would be given to this sort of argument, its weight, problems, and limits, but this expectation is disappointed. Kleinig seems prepared to endorse the “liberal” view that the liberty principle is absolute within its proper scope, but little argument for this position is offered. The view of some “intuitionists” that principles such as liberty and welfare must be weighed against each other on a case-by-case basis is not considered.

Kleinig offers a survey and evaluation of rationales for paternalism, and gives a good treatment of rationales based on human interconnectedness. His conclusion about them is that “the various arguments from interconnectedness have at best a limited validity, carrying some weight in contexts where an assignable duty or others can be established, but otherwise coming into contention only where self-regarding failure occurs on a large scale” (45). He also considers, and reaches largely negative conclusions about, arguments from freedom promotion and protection, and arguments from consent, including subsequent consent or gratitude.

Kleinig thinks that the most promising rationale for paternalism is “The Argument from Personal Integrity.” It distinguishes desires that are central to one’s life plan from peripheral desires and inclinations (e.g., a desire not to be bothered with seatbelts)

that may conflict with the deeper desires. He suggests that restrictions on the latter involve no disrespect to autonomy and individuality. "Where our conduct or choices place our more permanent, stable and central projects in jeopardy, and where what comes to expression in this conduct or these choices manifests aspects of our personality that do not rank highly in our constellation of desires, dispositions, etc., benevolent interference will constitute no violation of integrity. Indeed, if anything, it helps to preserve it" (68).

This restricts the scope of the liberty principle; it suggests that only choices central to one's overall life plan must be left free from interference. When we are disposed "to act in ways that are perilous to the projects and plans that are partially constitutive of our identity ... paternalism may not be violative of integrity" (73).

But lest acceptance of this rationale for paternalism lead to excessive interferences with people's freedoms, Kleinig suggests a number of restrictions on its application. These include a preference for least restrictive alternatives, a presumption in favor of paternalistic impositions that accord with the recipient's own conception of good, a preference of effective over less effective impositions, and a requirement that social spinoffs be taken into account (74–77). These seem, however, to be little more than requirements of institutional rationality.

As noted above, Kleinig rejects justifications for paternalism that are based on subsequent consent or gratitude. Robert E. Goodin has recently advocated this sort of justification very forcefully, claiming that it alone can account for what one ought to do in the following case:

Imagine Ian, a Glaswegian dockworker of times past. Ordinarily a reliable fellow saving faithfully to marry his childhood sweetheart, Ian nevertheless is weak and knows it. He realizes that if he receives his pay with everyone else on Friday afternoon, he will be unable to resist the temptation to join his mates in the pub and drink away his week's wages. So he arranges for his supervisor, Alistair, to collect his pay and not give it to him until teatime Sunday. Alistair's task is a difficult one, for every Friday Ian comes begging

he be given his pay packet. But it is not a thankless one, for every Sunday Ian proves grateful.¹

Goodin thinks that the most plausible rationale available to Alistair for denying Ian's Friday requests is the fact that Ian is grateful every Sunday, and will continue to be grateful in the future (except on Friday afternoons prior to his marriage). Kleinig's alternative justification in this case would appeal to the fact that Ian's desire to save money to marry his sweetheart is more central or integral to his life plans than his desire to drink with his friends on Friday afternoons. Both of these positions require judgments that are difficult to make – and thus are vulnerable to abuse by those who wish to rationalize their manipulations of others – but Kleinig's position seems to me to be the more plausible by far.

The second part of Kleinig's book is devoted to applications of his theory. He offers excellent discussions of paternalism in respect of physical protection (seatbelts, suicide), health, long-term welfare (children, political paternalism), the marketplace (consumer protection, labor laws), and personal character. As in his theoretical treatment of paternalism, Kleinig proceeds here by identifying, analyzing and evaluating arguments for and against paternalistic measures.

There are four possible views about the justification of an apparently paternalistic law or social policy. First, one may hold it unjustified. Second, one may hold that paternalistic grounds alone are sufficient to justify it. Third, one may hold that non-paternalistic (public interest) grounds alone are sufficient to justify it. And fourth, one may hold that although neither paternalistic nor public interest grounds alone is sufficient to the law or policy, the combination of these considerations is sufficient to justify it. Concerning mandatory seat belt legislation, Kleinig takes the fourth position. Although he rejects

¹ Robert E. Goodin, *Political Theory and Public Policy*, (Chicago: University of Chicago Press, 1982), p. 42.

the view that the liberty to refrain from wearing seat belts is not in general an appropriate kind of liberty to be covered by the liberty principle (89), he holds that the desire not to be bothered by seatbelts is generally not central to people's lifeplans and major projects – and thus falls outside the scope of the liberty principle. “The Argument from Personal Integrity claims that seat belt and safety helmet legislation may be justified because the reasons why many people fail or even refuse to wear them do not accord with their own acknowledged goals, purposes, attitudes and values – or at least not those they value highly” (90). Kleinig holds that this argument provides partial support for seat belt legislation, and that public interest considerations provide the rest.

Kleinig is more critical of paternalistic arguments for promoting health by regulating unhealthy habits such as smoking. Unlike failures to wear seatbelts, Kleinig judges such vices to be “associated with significant pleasures” and thus thinks that interferences with them are likely to “violate concerns of real importance to the individual” (110). Because of this, Kleinig holds that the Argument from Personal Integrity carries no weight in these cases. My worry about this is that the difference in pleasurableness between riding unencumbered by seatbelts and smoking two packs of cigarettes a day seems a shallow and inadequate basis for deciding whether or not something is sufficiently central to one's lifeplan to fall under the liberty principle. This illustrates one of the difficulties in applying the Argument from Personal Integrity.

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