Paternalism, with and without identity

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Interference is paternalistic when it restricts an individual’s freedom for their own good. Anti-paternalists, such as John Stuart Mill, object to this for various reasons, including that the individual is usually a better judge of her own interests than the would-be paternalist. However, Wilkinson argues that a Parfitian reductivist approach to personal identity opens the door to what he calls ‘identity-relative paternalism’ where someone’s present action is restricted for the sake of a different future self.[1]

This is an interesting argument, but it is not clear whether it involves permissible paternalism. At the risk of stating the obvious, permissible paternalism must be both permissible and paternalistic. Wilkinson’s identity-relative paternalism could be either, but not obviously both. If the present and future selves are different individuals, then interference is potentially permissible but no longer paternalistic. Alternatively, they are identical, in which case the interference is genuine paternalism, but cannot be justified by appeal to their distinctness.

Wilkinson may escape this dilemma by invoking Parfit, who challenges the common notion that identity is all or nothing.[2] According to Parfit’s revisionary view, the present and future self may share some connections but not others. However, once we have identified these similarities and differences, there is no further question whether or not they are the same person. This is why it is a reductivist account of identity.

Parfit’s view complicates matters slightly, but does not change the basic dilemma. To the extent that the future self is substantially the same as the present, interference would be paternalistic but not obviously justifiable. To the extent that they are different, interference is more justifiable, but no longer truly paternalistic. It still seems difficult simultaneously to hold that (i) the interference is permissible, because the future individual is a different person from the present one, *and* (ii) the interference is paternalistic, because the future individual is the same person as the present one.

One possible response is to concede that identity-relative paternalism is permissible, precisely because it is not really paternalistic after all. Although the phrase identity-relative paternalism sounds like it refers to a form of paternalism, it might be like a rubber duck.[3] A rubber duck is not actually some kind of duck, but rather an imitation of a duck. Similarly, it may be that identity-relative paternalism is not really paternalism, but merely resembles it in certain respects.

However, if identity-relative paternalism is not really paternalistic, it is no challenge to Mill’s harm principle. Mill allows that we may restrict individual A in order to protect other people, such as B or C, from harm.[4: vol.18, p.223] So far as I am aware, he never says that B or C must be presently existing people. Thus, it is potentially permissible to restrict A’s current behaviour to prevent harm to some future person, B. If this is so, the fact that A will later become B makes no obvious difference. Since B is no longer the same person as A, then any restriction imposed on A, to protect B from harm, would be consistent with the harm principle. This is permissible, because it is not paternalistic.

Alternatively, it may be that paternalism is sometimes justifiable anyway. Mill’s initial statement of the harm principle seems to preclude this entirely.[4: vol.18, pp.223-4] However, this may be an overstatement, for the apparent absolutism is soon qualified. Almost immediately, Mill notes that the principle applies only to competent adults.[4: vol.18, p.224] He later excludes cases where people are temporarily unable to reason or reflect.[4: vol.18, p.294] Further, people’s choices must be informed[4: vol.18, p.294] and genuinely their own, rather than the result of outside influence.[4: vol.18, pp.296-7] If these conditions are not met, interference may be justifiable. Thus, Mill’s rejection of paternalism is not as absolute as it first appears.

Elsewhere, I have argued that the traditional distinction between ‘self-regarding’ and ‘other-regarding’ conduct does not well capture Mill’s concerns.[5] First, the sphere of liberty is not limited to literally self-regarding actions, but also includes actions that affect others, provided they freely consent.[4: vol.18, pp.225-6] Second, not all self-regarding actions are immune from interference, for instance where they are non-voluntary.[4: vol.18, p.294] Thus, other-regarding harm ought to be tolerated, where it is consensual, but self-harm can be interfered with where it is not consensual. Therefore, I suggest that the crucial distinction is in fact that between consensual and non-consensual harm, rather than that between harm-to-self and harm-to-others. Freedom should only be restricted to prevent non-consensual harms, but this can include some self-harm.

If this is right, then there may be no need to invoke doubts about personal identity. It may be permissible to interfere with certain long-term choices, on the more prosaic grounds that individuals cannot give consent – or, at least, informed consent – in these cases.

Mill hints at something like this when he argues that permanent slavery contracts ought not to be recognised.[4: vol.18, pp.299-300] These remarks are brief, but Mill also discussed similar cases in his earlier *Principles of Political Economy*. There he clearly stated that one “exception to the doctrine that individuals are the best judges of their own interest, is when an individual attempts to decide irrevocably now, what will be best for his interest at some future and distant time. The presumption in favour of individual judgment is only legitimate, where the judgment is grounded on actual, and especially on present, personal experience; not where it is formed antecedently to experience, and not suffered to be reversed even after experience has condemned it”.[4: vol.3, p.953]

Thus, Mill’s harm principle may permit paternalistic interference in some long-term decisions, simply because the individual lacks the experience to make an informed choice. We do not need controversial metaphysical accounts of personal identity to justify interference here, although they may be relevant to whether this is really paternalism or not.

Acknowledgements: This work was produced during a period of research leave from the University of Southampton. I also thank Piers Norris Turner for literature suggestions.

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