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On the expressive theory of paternalism*

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ABSTRACT

The expressive theory of paternalism holds that an action is paternalistic when and because it expresses the insulting idea that the actor knows better than the person acted upon. I argue that the expressive theory has implausible implications. First, it entails that a government's interventions in people's lives count as paternalistic only if their motivations are sufficiently consistent and well-publicised that the circumstances allow its policies to express the relevant insult. In other words, secret paternalism is impossible. Second, the theory implies that governments can remove any objection to a policy *qua* paternalistic by means of a manipulative exercise in public relations. Nor, I argue, does the expressive theory offer any explanatory advantage over autonomy-based theories.

KEYWORDS

paternalism; expressive theory; autonomy; coercion


I. Introduction

The expressive theory of paternalism holds that an action is paternalistic because it expresses the idea that the actor knows better than the person acted upon. Call that the *nature claim*. It holds that a paternalistic action is wrong in circumstances when, and insofar as, the expression of that idea is insulting. Call that the *wrongness claim*. I argue that both these claims are implausible.

I do not have a knock-down argument against the expressive theory. The case I offer is cumulative. I show that the expressive theory has a series of implausible implications. Some may not find all of these implications implausible; indeed, those who are instinctively sympathetic to the expressive theory will likely embrace at least some of them. But I hope that each further (as I see it) implausible implication of the theory strengthens the argument against it.

I start off in section II by giving a *prima facie* case against the expressive theory by arguing that it is extremely implausible to regard as manifesting paternalism a scenario which Nicolas Cornell's expressive theory treats as a central example of paternalistic behaviour. In the course of doing so, I acknowledge that this argument will have little purchase against some, and note the particular difficulty with using intuition-pumping examples to try and settle the question of the nature of paternalism.

In sections III and IV I examine the nature claim and the wrongness claim respectively. I argue that the nature claim makes answers to the question what is paternalistic

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too heavily dependent on the wrong kind of circumstances, and that the wrongness claim fails to track what we really care about in paternalism. In section V I press this latter argument further by showing that the expressive theory turns paternalism into a *communicative* wrong. I present what I call the *public relations objection* to the expressive theory. In short, the theory implies that governments can remove any objection to a policy *qua* paternalistic by means of an exercise in public relations.

In section VI I argue that the expressive theory (*pace* Cornell) offers no explanatory advantage over effect-based theories. In fact, I argue, the conditions under which paternalistic policies are regarded as insulting on the expressive theory track quite closely the conditions under which such policies are autonomy-infringing. I briefly outline a slightly revisionary account of the relationship between autonomy and respect, and argue that on this account such a correspondence is not surprising. And since the autonomy-focused account of paternalism makes better sense of why paternalism concerns us, we should favour it over the expressive theory.

The argument of this paper is relevant even to those who are not attracted to the expressive account, for two reasons. First, because it helps us to view the significance of autonomy in a new light, in its relation to respect and insult. Secondly, because the expressive account attempts to make sense of what are real and important features of paternalism. Even if the expressive account fails, we need to have something to say in its place about the phenomena it identifies. My argument contributes to this effort to account for these significant yet contingent aspects of paternalism.

II. The expressive theory

As its name suggests, the expressive theory categorises an act, policy, or law as paternalistic on the basis of what it *expresses*. It is to be distinguished from accounts that focus on its *effects on the paternalisee* (for example, that it restricts her freedom or autonomy) and accounts that focus on the *motivations of the paternaliser*. Recent well-known accounts of paternalism that contain elements of or hints towards the expressive theory include Seana Shiffrin's¹ and Jonathan Quong's,² but it has been labelled and most comprehensively defended by Nicolas Cornell.³ Here I focus on Cornell's defence.

The expressive theory provides an account of what makes an action paternalistic (a *nature claim*) and an account of what makes a paternalistic action wrong (a *wrongness claim*). As to the first, according to Cornell, actions 'are paternalistic when they express the idea that the actor knows better than the person acted upon regarding something that is normally within that person's sphere of control'.⁴ They are wrong in the circumstances when, and to the extent that, the expression of that idea is insulting.⁵

It is a substantially revisionist view. It yields the result that many actions are paternalistic that common usage would not regard as such. This is because it drops the traditional requirement that, in order to be paternalistic, an action must be done for the

¹Seana Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation' (2000) 29 *Philosophy & Public Affairs* 205.

²Jonathan Quong, *Liberalism without Perfection* (Oxford University Press 2011), 73–107. See note 22 and text thereto.

³Nicolas Cornell, 'A Third Theory of Paternalism' (2015) 113 *Michigan Law Review* 1295–336.

⁴Cornell (n 3) 1316. Cornell also says more specifically that paternalistic action 'implicitly expresses the claim that A knows better than B what will benefit B'.

⁵Cornell (n 3) 1297; 1315; 1323.

good of the paternalisee. This feature is well illustrated in one of Cornell's central examples:

[A] park ranger puts up a sign that says, "Climbing on rocks prohibited" because she thinks it will protect certain delicate lichens. The policy ends up preventing rock climbers from using one of the area's more challenging ledges, which has seen some recent accidents. The park ranger, however, did not even think about the rock climbers as she created the policy. Nevertheless, a rock climber might plausibly criticize the policy as paternalistic.⁶

What are we to make of this example? I am inclined to say that the park ranger's action is not paternalistic, precisely because it is not for the climbers' own good. Rather, we should say that, given the circumstances – that is, given the possible motives for putting up the sign, and the content of the sign – it might not have been unreasonable for the climbers mistakenly to think that the action was paternalistic. Cornell rejects this analysis. On his view, the park ranger '[has] not merely produced an illusion of paternalism; [she] has been paternalistic, albeit accidentally. [Her] actions were paternalistic, even if [her] intentions were not'.⁷ Moreover, Cornell holds, 'Paternalism, in this sense, refers to a generally bad way of treating others. We can commit this wrong through inattention, laziness, or negligence, as much as through deliberate choice. And that suggests that the problem with paternalism isn't the intention behind it per se'.⁸

Here is a difficulty with the argument. The evidence Cornell adduces might suggest the conclusion he invites, *if* we were inclined to accept it as evidence at all; that is, if we were persuaded that the park ranger's was a case of unintentional paternalism. Unfortunately, this claim seems to me singularly unpersuasive. The implausibility of regarding the park ranger's action as paternalistic seems to me a good basis from which to start to confirm the *prima facie* judgment that paternalism cannot be unintentional. There is a perennial difficulty here with debates about paternalism. The intuitions that drive them are insufficiently uniform to perform their usual philosophical function.⁹ My overall approach in this paper will be to challenge the claim that paternalism can be engaged in lazily, inattentively, or negligently – in a word, unintentionally – by exploring some of the (as I see it) implausible implications of the expressive theory in a way that I hope goes beyond these individual 'is it paternalistic or not?' examples.

⁶ibid 1311–312.

⁷ibid 1312. There is a problem here with the second attribution of 'paternalistic', to the park ranger's intentions. On Cornell's view, actions are paternalistic in virtue of their expressing the message that the paternaliser knows better than the paternalisee. What, then, could it mean for a person to have paternalistic intentions? The most natural understanding, it seems to me, is that a person has paternalistic intentions if she intends to express the message that she knows better. I am not sure whether this is what Cornell would say, but this does not seem to fit here. As I read it, Cornell is emphasising that the park ranger's action is paternalistic even though she is not motivated by the rock climbers' benefit. That is what warrants drawing attention to, since that is what is surprising about the expressive theory's account of this example. But if that is what is meant by 'paternalistic intentions', then the expressive theory of paternalistic *acts* seems to depend for its coherence on a separate account of paternalistic *intentions*. (The difficulty is still more plain when Cornell says that certain 'policies aren't paternalism because, given the available justifications, the policies don't express a judgment that citizens cannot make good decisions for themselves, even though the government's intent was paternalistic' (1320).) It is hard to see how Cornell could provide such an account, since the very idea of categorising intentions as paternalistic in this way is motivated by a theory of paternalism that ascribes some normative significance to *having* such intentions. Since the expressive account recognises no such significance, it is hard to see how it can help itself to this idea of paternalistic intentions.

⁸Cornell (n 3) 1312.

⁹And that is even after taking into account the common criticism that people's intuitions are less uniform than philosophers like to suppose.

III. The nature claim

The success of the expressive theory's analysis of the park ranger example requires us to agree that the park ranger's action expresses the idea that the ranger is a better assessor of the climbers' safety than they are themselves. The nature claim says that, if the action expresses this idea, then it is paternalistic. The wrongness claim says that to the extent that the expression of this idea is insulting, this act of paternalism is wrong.

Both these claims make much depend on the circumstances in which the act is done. This is unsurprising, given that the expressive theory consciously moves away from analyses of paternalism that focus on the intentions of the paternaliser. The whole idea is to make both the fact of, and the wrongness of, a paternalistic act external to the actor. I hope to show that this externalisation makes the theory implausible.

We need a contrast case for the park ranger's notice. Take the flying of the Confederate flag. It is widely agreed that, whatever her intention, a person who flies the Confederate battle flag expresses the idea that black Americans are inferior or subordinate to white Americans, and that it is an insulting and offensive act. It is not a good excuse for such a person to plead that she meant only to commemorate fallen soldiers, or to defend states' rights, and not to indicate support for segregation, or generally to demean or insult or oppress black people. Such an intention, even if honestly held, would neither change the expressed meaning nor remove the insult.¹⁰ But of course there is nothing intrinsically racist about the particular arrangement of stars, lines and colours on the flag. What it expresses it does so symbolically. That symbolic means of expression depends on the historical uses of the Confederate flag, both during the Civil War and subsequently, and the associations that it has acquired as a result.

What are the equivalent circumstances that could make the park ranger's notice convey the message that the climbers are incapable of looking after their own safety? We are told that the area 'has seen some recent accidents'. But that alone would not make it reasonable to infer that the park ranger's intention was to protect climbers from the possible consequences of their own poor decisions. It must be combined with some assumptions about the activities of park rangers, about their past and current relationships with climbers, about the attitudes and policies of the National Park Service, and so on. These facts together lead Cornell's climbers reasonably to believe that their decisions regarding their own welfare are being second-guessed, so that, on the expressive theory, the policy is paternalistic.

Now suppose instead that the park rangers, National Park Service, and so on, have a track record of very rarely intervening in the best interests of climbers. They prefer to allow them to make their own mistakes. But they also have a history of being extraordinarily zealous in their protection of delicate lichens. In these circumstances, Cornell will presumably concede, the climbers' interpretation is an unreasonable one. Given these different background facts, the notice does not convey the message they think it does. They have *mis*interpreted the notice, not just the park ranger's intention. Consequently, the park ranger's action is not paternalistic.

¹⁰In the case of someone who could not reasonably have been expected to know or understand the racist connotations of her act, it would still neither change the expressed meaning nor remove the insult, but it would make the insult excusable.

This is supported by Cornell's claims about the relation between expression and justification.¹¹ A person is disappointed that her friend Sally didn't call back, and interprets it as showing that 'she isn't interested in me'. Another friend points out that Sally was having her wisdom teeth out that day, so her failure to call does not express what her friend feared it did. According to Cornell it is the availability of the alternative explanation to the friend that prevents the failure to call from expressing lack of interest.¹² Presumably, then, in the park ranger case it is the unavailability to the climbers of the true motivation for putting up the notice that secures the 'paternalistic' interpretation.¹³ If the park ranger had made available the alternative (and true) explanation, the notice would not have carried the meaning that Cornell claims it did.

I claim that the dependence of the verdict – 'paternalistic or not?' – on these background facts is implausible. Now I must admit that this may appear unpersuasive to those who find Cornell's analysis of the park ranger example intuitively appealing. All I can do here is to draw out the implications of that analysis in order to test the robustness of the intuition that the actor's intention makes a difference to whether her act is paternalistic. So let us push a bit further. Let us expand our horizons beyond the National Park Service to the government at large. By analogy with the park ranger case, in a world in which the government rarely intervenes in people's lives to implement its own 'better' judgment of what is good for them, citizens will rarely be justified in interpreting their actions as motivated by such judgments. If, moreover, the government's interventions can readily be ascribed to non-paternalistic¹⁴ motives, then those interventions will not bear the expressive meaning that Cornell ascribes to the park ranger's sign. Consequently, on the expressive theory, they will not *be* paternalistic. If mandating motorcycle helmets was publicly, non-disingenuously, and plausibly justified in terms of public health expenditures rather than in terms of benefit to individual motorcyclists, then the policy would turn out not to be paternalistic. (And – to anticipate the topic of the next section – no insult would be expressed by the policy.) And this is true on the expressive theory, *even if* – contrary to expectations and in spite of the government's record – those interventions *are* in fact motivated by the judgment that the government can manage people's lives better than they can themselves.¹⁵

Here is another illustration. Imagine two governments, A and B, each of which wishes to implement prohibitions on smoking in public places for non-paternalistic public health reasons. That is, they seek to protect the health of non-smokers. Government A has a

¹¹Cornell (n 3) 1318ff.

¹²Incidentally, it is not clear to me that Cornell's is the best understanding of how the expression of lack of interest works. Suppose Sally was having her teeth pulled out that day, but also that her motivation for not calling her friend back was that she wasn't interested in her. It would seem to me accurate for her friend to conclude, on discovering this, that, *in fact*, Sally's failure to call *did* express lack of interest, and that she had been *mised* as to what it expressed by the availability of the alternative explanation. I return to this issue in section V.

¹³[A] lack of other available justifications might mean that my action expresses something that I didn't really intend': 1319.

¹⁴Here I use 'paternalistic' in the sense of being concerned to promote the good of the object of the intervention. Henceforth I will sometimes use 'paternalistic' in scare quotes to indicate that this more conventional meaning is to be understood even in the context of discussing the expressive theory.

¹⁵Cornell notes (1312–314) the difficulty of ascribing intentions to group agents, and believes that this speaks in favour of a theory that does not rely on the possibility of such ascriptions. I'm not sure the difficulty is insuperable but here we can assume for the sake of argument that every individual who voted for the helmet policy had paternalistic motivations. In any case, as I show below, the expressive theory *does* rely on such ascriptions, only in a strange and counter-intuitive way.

reputation for intervening in people's lives on the basis of a judgment about what is good for them. Government B has a reputation for eschewing such interventions. Plausibly, A's policy will be taken to express the idea that they know better, because their policies have often been justified on this basis in the past. Whereas B's policies will be accepted as intended to do what B says, viz. to protect public health. Even assuming that the public health benefits are identical in the two cases, and the policies are identically motivated, A's policy turns out to be paternalistic but B's not. This is a strange result. But that is not all. Suppose now that government B is in fact – despite its overwhelmingly libertarian record of recent decades – motivated by concern for the health of individual smokers. Knowing that the policy would be unpopular if justified on these grounds, it ensures that its public pronouncements on the issue are as opaque as possible. Given its impeccable record, the true motivation for the policy is not recognised, and the policy does not express the idea that the government knows better than citizens what is best for their health. According to the expressive theory, an insider who denounced this government's 'slide into paternalism' would be making an error. No policy becomes paternalistic until it *expresses* the idea that the government knows better, even if every member of the legislature who votes for the policy is motivated by that idea. These implications, it seems to me, fly in the face of our normal discourse about paternalism. (I reformulate these ideas as the 'secret paternalism' objection to the expressive theory in section V.)

IV. The wrongness claim

It might be replied that my objection to the nature claim is inconclusive against an avowedly revisionary theory. Sometimes common usage is confused or incoherent, and can benefit from theoretical tidy-up. Perhaps more damning, then, is the implausibility of the wrongness claim. Arguments about paternalism are ultimately moral arguments, and a theory of paternalism ought to explain why we care about it (or why, contrary to common belief, we shouldn't care about it).

The expressive theory, I claim, fails to make sense of what concerns us about paternalism. This is evident from its treatment of the paternaliser's motivation, as described in the previous section. We might be tempted to go for an expressive account of paternalism if we are attracted to the idea that the paternaliser's motivation by a negative judgment about the paternalisee is objectionable,¹⁶ but impressed by the objections that Cornell raises to motive-based accounts – viz., that they rely on the dubious premise that motivation affects permissibility, and/or that no account can be given of collective motivation that will in turn sustain a satisfactory account of paternalism by group agents. An account in terms of what is *conveyed* by the paternalistic act seems to offer us a way of retaining the negative judgment – that appears in the expressive theory as the content of the message conveyed – without the difficulties of ascribing motivations to groups, or of associating motivation with permissibility.

But the appearance is deceiving. I argued in the previous section that the expressive theory entails that in the two governments example, criticism of government B's policy qua paternalistic is not warranted until its motivations have become sufficiently consistent and sufficiently well-publicised that the circumstances allow its policy to

¹⁶As Quong believes: *Liberalism Without Perfection*, 73–107.

express the insulting idea that the government knows better. On the basis of this example we can see that the expressive theory does not track what concerns us about paternalism. If you started off worried about the negative judgments made by paternalisers, you would be disappointed to find that, as in the two governments example, every member of government B could be motivated by a negative judgment about your rational powers, without government B's action counting as paternalistic. I can think of two independent reasons why a person might be worried about such judgments. The first is simply that we do not like people to think badly of us. It irks us that someone could seek to correct for behaviour that we would rather not believe needs correction.¹⁷ On motive-based accounts of paternalism, there is a wrong involved in being so motivated. Adherents of such views, even if they are impressed by the 'group motivation' and 'permissibility' objections to such accounts, will not be inclined to move to an expressive account, on which the wrong lies not in what motivates the action, but in what the action expresses.

The second reason to be worried about the negative judgments that motivate paternalistic interventions is the worry that they might be inaccurate. We might be interested in motives because we are suspicious of the empirical reliability of the justificatory arguments that could support actions motivated by the desire to protect people from their own decisions. I want to know if the point of a policy is to prevent me from harming myself, because I believe myself to be in a good position to assess whether it is likely to be justified on those grounds. And if it is not so justified, it will be wrong. Again motivations can be seen as relevant to wrongness, but not in anything like the way that the expressive view envisages.

It might be said at this point that, on the expressive theory, motives are simply *not* relevant. But this would be a mistake. They remain relevant, but in a highly counter-intuitive evidential, rather than constitutive, way. On the expressive theory what people *think* about the (would-be) paternaliser's motive matters, because it is via people's beliefs about the agent's motivation that the agent's actions come to have the meaning that makes them (on this view) paternalistic. In the park ranger example, it is because the climbers (reasonably) believe that the ranger's intention is to deter them from running a risk to themselves that the sign is said to convey the insult that is characteristic of paternalism. Conversely, it is because the subjects of government B do not take its actions to be motivated by concern for the health of smokers themselves that its policy does not convey insult and thus does not count as paternalistic. And how do people come to have the beliefs they do about the motivations of governments and other would-be paternalisers? They infer from the evidence of their *past* motivations. Since government B has never before pursued policies that restricted people's options for their own good, it is (mistakenly) regarded as not doing so on this latest occasion.

Thus the expressive view ends up with the strange position that an agent's motives are (evidentially) relevant to whether its *future* actions count as paternalistic, but not at all relevant to whether the action so motivated is itself paternalistic. This is especially strange given that the supposedly insulting message conveyed by an (expressively

¹⁷On this point, see David Enoch, 'What's Wrong With Paternalism – Autonomy, Belief, and Action' (2016) 116 *Proceedings of the Aristotelian Society* 21. As against Enoch, Anne-Sofie Greisen Hojlund argues that 'moral reasons of relational equality encroach on the epistemic, rendering paternalistic beliefs objectionable unless they are supported by approximately conclusive evidence': 'What Should Relational Egalitarians Believe?' (2022) 21 *Politics, Philosophy & Economics* 55, 56.

understood) paternalistic action is parasitic on the beliefs and concerns people have about agents' *actual* motivations. It is only because the climbers believe the park ranger to be *in fact* motivated by concern for their well-being that the sign's message is (interpreted by them as) insulting. In trying to avoid the pitfalls of motive-based accounts of paternalism, the expressive theory makes nonsense of the normative significance of motive.

V. Paternalism as a communicative failure

Let's go back to governments A and B, and their implementation of anti-smoking policies. Neither is motivated by concern for the smoker's own health, but government A (but not B) has a track record of implementing policies motivated by this kind of concern. Suppose we could convince people in this case that government A was not motivated by a negative judgment about smokers' ability to look after their own good. What would people say? They might decide that the policy was not objectionable after all. But if the expressive theory is right, they would be wrong to think that. Given the nature of the policy, and government A's history of intervening on the basis of its judgments about what is good for people, the policy still expresses the negative judgment, even if it is not motivated by it. That is why it is paternalistic, and that is why it is objectionable. The government in such a case is guilty of the negligent type of paternalism. But if that is right, we should consider just what kind of moral failing is involved here. The answer seems to be that it is a failure of *communication*. The government has pursued a policy which is in fact not motivated by any judgment of inferiority, but has carelessly or unthinkingly allowed it to carry this negative message. If it had been more solicitous in its public messaging – in the same way that the park ranger could have added 'delicate lichens' to her notice – then its action would not have been wrongful. And notice that this must be true about paternalism generally on the expressive theory. Even when the policy *is* motivated by a negative judgment about people's abilities, the wrong of paternalism lies in what it expresses, so even in such cases, the moral failure is a failure of communication,¹⁸ because a change in communicative strategy could have avoided the (expressive) wrong.

None of this is to deny that the meaning conveyed by an utterance is to a significant extent outside the control of the utterer. Whatever additional hand gestures, eyebrow raises and unusual intonations I add, I can't *make* my utterance of the sentence 'Shut the door!' *mean* 'Close the window!' There will be some circumstances when it is not possible for a government to prevent its policy from expressing an objectionable message. In such cases no communicative efforts on its part could have prevented it from carrying the message it did. In Confederate flag-type cases the weight of historical connotation and social convention is too great to override. But most cases are not like the Confederate flag case. To a significant extent, and especially in the long run, utterance

¹⁸At least in part. The situation is in one respect similar to that of promise-breaking. I do wrong by making a promise that I know I will not be able to keep. But when – sure enough – I break the promise, the wrong lies in the promise-breaking. Since I made the promise, albeit wrongly, I should keep it (assuming there are no overriding reasons not to). On the expressive theory, if a government institutes a policy that restricts people's liberty for their own good, knowing it will not be able to prevent its act from carrying an insulting message, then it does wrong by instituting the policy. But once the policy has been put in place, the government should – if possible – prevent it from expressing the insult.

meaning is within the control of the utterer. And it is much easier to preclude specific meanings than to determine a precise meaning. Adding the words ‘delicate lichens’ as an explanation of the injunction against climbing does change what is expressed by the notice. Making transparent the justification for an anti-smoking policy, analogously, changes the meaning of the policy.

But Cornell says as much himself. What is the significance of this point? Again, let me pursue the implications of this feature of the expressive theory to a point at which I hope they will make the theory start to appear implausible. If the failure in paternalism is a communicative one, then governments who wish to pursue policies that do intervene in people’s lives for their own good, and are based on negative judgments about those people’s abilities, can pursue such policies while avoiding paternalism, by manipulating the cultural-linguistic context in which these policies are pursued. And even if they cannot avoid paternalism, they can avoid *wrongful* paternalism. That is, even if their policies are openly justified in terms of the benefits to the lives of the people whose freedoms they restrict, thus sending the message that the government is able to make better choices about their lives than they are, whether this message is insulting will again depend heavily on the social circumstances.

As against the nature claim, then, consider the case of (what I think we should call) secret paternalism. Government B is universally regarded as giving paramount importance to its citizens’ ability to decide for themselves how to conduct their lives. It has never cited the affected citizens’ own good in order to justify any liberty-restricting or rationality-manipulating policy. And no member of the legislature has ever voted for any measure on such a ground. Its libertarian credentials are genuine and unimpeachable. But things change. Somehow legislators and ministers begin to be convinced that legal measures designed to incentivise and disincentivise certain self-regarding behaviours are a good idea. They are unlikely to go down well with the electorate of B, but still: they do not know what is good for them, after all. So the government proceeds in secret; or, at least, the legislators and ministers keep their true motivations secret. Plausible non-‘paternalistic’ rationales are given to justify the new policies, and in fact the government finds that the rationales don’t even need to be as plausible as they expected, because citizens are so disinclined to attribute ‘paternalistic’ motives to them.

The manipulation of circumstances involved here is in a sense passive. All the government has to do is hide its true motivations, and let political history do the rest. This seems to me a case of secret paternalism. The government is liable to be criticised, including by the expressive theorist of paternalism, on the ground that it is deceptive about its policy motivations. But on the expressive theory it is not liable to be criticised on the ground that its policies are paternalistic. On the expressive theory no paternalism ever occurs. It is important to be clear about why that is the case. Since (i) the expressive theory holds that paternalism consists in the government expressing the idea that it knows better than its citizens, (ii) what is expressed depends on the citizens’ perception of its justification (just as in the park ranger example the ‘paternalistic’ interpretation of the notice is dependent on the justifications available to the climbers), and (iii) the social and political circumstances are such as to render ineligible ‘paternalistic’ interpretations of the government’s policies, no such meaning is expressed. On the expressive theory, paternalism is *necessarily transparent*; there can be no secret paternalism. Call that the *secret paternalism objection* to the nature claim.

Now imagine a government that takes a wholly different approach. This government is able to design a highly sophisticated campaign of public messaging, over many years, which successfully persuades its citizens that governments manifest concern and respect for their citizens above all by looking after their well-being. In short, this government performs the miracle of changing people's attitude to paternalistic policies. Instead of regarding the state as an officious and overbearing interferer, they come to see it as a benign helper. Instead of being insulted by the implication that the state can do better for them than they can do for themselves in some respects, they regard this as an innocuous truth and appreciate the state's efforts to improve their lives. That is not to say that they blindly accept the judgments of the government of the day on such issues. They raise objections to specific policies, on various grounds – that the government does not have the administrative competence to achieve its aims; that it does not have the requisite knowledge; even that it has overstepped the boundaries of its authority. All they do not say is that the government is insulting them by expressing the view that they know better. They do not raise this complaint because now the cultural-linguistic context has changed to such an extent that no insult is expressed by the judgment (let alone the mere possibility of a judgment)¹⁹ that the state knows better than the citizen. In fact, these actions now convey not insult, but respect – both for the citizen's well-being and for the government's task of advancing their well-being.

It looks as though what has happened is that the government has managed to eradicate the wrong of paternalism by means of a spectacularly successful public relations exercise. The effect on people's liberties and autonomy remain the same as before; the actual motivations for the policies remain the same as well; any concern that might have been raised about the government's standing to make the requisite judgments is still there; what has changed is that the population perceives the policies differently, so the expressive content of their pursuit by the government is different. But if paternalistic policies are something that we have reason to care about, it seems odd that a government could remove the concern simply by adjusting its public message (albeit in a far-reaching and comprehensive manner). My claim – we can call this the *public relations objection* to the expressive theory – is that this possibility shows that the expressive theory has misidentified the wrong in paternalism.

I now consider a couple of objections to this argument. The first objection focuses on an aspect of Cornell's account of paternalism that I have so far not said much about. Cornell says that 'actions ... are paternalistic when they express the idea that the actor knows better than the person acted upon *regarding something that is normally within that person's sphere of control*'.²⁰ It might be argued that, even if the government can change people's attitudes to its actions to the extent that I have suggested, nonetheless it cannot by similar efforts alter what lies within an agent's legitimate sphere of

¹⁹Cornell's canonical formulation is that 'Paternalistic actions imply that the actor knows better than the subject with regard to a matter within the subject's sphere of control' (1304) or again, that the action 'implicitly expresses the claim that A knows better than B what will benefit B' (1316), but this looks under-inclusive. Some policies may be motivated by concern for people's volitional rather than rational failings. In Cass Sunstein's famous cafeteria example, in which food is arranged such as to encourage visitors to make healthier choices, most would still regard the policy as paternalistic if the sole thought behind it was that, although people know perfectly well what is good for them and are rationally inclined to choose the healthy options, they will be better able to resist temptation if the cakes are out of their line of sight.

²⁰Cornell (n 3) 1304 (emphasis added).

control. If the government usurps a role that is properly reserved to the agent herself, then it will still express insult, regardless people's attitudes. Insult will be conveyed not through the reasonable interpretation of the paternalisee but through the conventional meaning of the act of usurpation. But if that is right, we need an account of a person's legitimate sphere of control,²¹ and it looks as though it is *that* account that is going to be doing the normative work in the argument.

The second objection is more revealing. The objection starts from the observation that what determines whether insult is conveyed is the *reasonable* perception of the paternalised party. Even if the government has managed to persuade people to think that 'paternalistic' government action expresses respect rather than insult, their interpretation of the 'paternalistic' policies is not reasonable because it has been artificially produced by manipulative means.

The first way of responding to this objection is to adjust the example. Whether you regard the story I have told about the government's efforts to change the public's perception of its policies as benign or sinister will likely depend on your prior attitude towards paternalism and to the role of the state more generally. But if it sounded sinister, let us remove any hint of manipulation from the process of cultural-linguistic change. Suppose what we have is not an insidious, still less totalitarian, procedure, but an open public discussion initiated by the government in good faith, in an attempt to bring the public round – perhaps over decades – to its view (again, held in good faith) that 'paternalistic' policies do not express an insulting message. Suppose that, by a feat still more miraculous than the one described previously, they succeed. Can we still say that the citizens' lack of perception of insult at the government's policies is unreasonable? It is not unreasonable for having been artificially produced, at any rate.

But perhaps we might still think it unreasonable if we think that the citizens have missed something – surely, we might want to say, certain actions *just do* 'express the idea that the actor knows better than the person acted upon regarding something that is normally within that person's sphere of control', and consequently *just are* insulting? Those who live under them, it might be said, *should* feel insulted. We might even be inclined to think that they *must* have been brainwashed not to be, that they are just mindless drones if they can't see that there is something to feel insulted about. But if that is the view, then it must be the something that they *ought* to feel insulted *about* that is driving the objection to paternalism.²² If you think that such a society is not possible, that people *could not* have the attitudes I am suggesting, then again that must be because you think there is something that people *ought* to feel insulted by, something so blatant that it is impossible that any substantial group of people could not feel insulted. It will be this something that is objectionable, not the expression of insult.

But it is not clear what we will be able to point to as a feature of a policy that makes it necessarily the expression of this insult. The obvious candidate would be actual motivation by a negative judgment about a person's ability to act for her own good. But that

²¹Shiffrin's account also relies on such an idea, since she holds that the wrong of paternalism lies in a person's 'effort ... to assert her will over a domain in which [she] does not have (or even assert) legitimate authority on the grounds that her judgment is superior': Shiffrin (n 1) 218.

²²Something like this is Jonathan Quong's view. He thinks that an insult is necessarily conveyed by paternalistic policies because they deny that a person has what Rawls calls our second moral power, the ability to form and pursue a conception of the good.

is precisely what the expressive theory says is unnecessary. Any view that says that paternalistic policies are wrong because they are insulting, and that they are insulting because they are motivated by such a negative judgment, is a motive-based view, not an expressive one, regardless of the invocation of insult.²³

I should stress that Cornell himself does not suggest these objections. He even emphasises the contingency of the wrong on the expressive account, noting that the permissibility of paternalistic policies depends greatly on the nature of the relationship between the state and the citizen, the facts of which are central to constituting the expressive meaning of the government's policies.²⁴ But while this might be regarded as a strength of the expressive view as against a pure motive-based account – either because it is not clear why an agent's motivation in itself makes a difference to the permissibility of her act,²⁵ and/or because of the difficulties of ascribing motivations to group agents²⁶ – it is also a vulnerability. It leaves the expressive theory open to the secret paternalism objection and the public relations objection.

VI. Respect, coerciveness, and autonomy

Just how significant the expressive theory's vulnerability to the secret paternalism objection and the public relations objection is depends on what can be said in its favour. If the expressive theory can make sense of many of our deeply held beliefs about the nature and wrongness of paternalism, then maybe we should just give up some others. Maybe we should accept that paternalistic policies can't be pursued in secret, and that their wrongness can be eliminated by careful management of the circumstances in which they are implemented. Cornell thinks that the expressive theory can account more convincingly than effect-based theories – specifically, theories that focus on paternalism's *coerciveness* – for our intuitions about the circumstances in which paternalism is objectionable. I am not so sure.

Cornell considers two examples. In *Overworking 1*, he imagines a person who 'spend [s] far too many beautiful summer days in the office taking appointments and holding meetings'. Her husband arranges with her secretary to reschedule those appointments and meetings and turns up unannounced to whisk her off for a sailing weekend that he knows she will enjoy. He responds to her uncertainty by insisting that he will not take no for an answer and ushering her out of the building. *Overworking 2* involves a person with a tendency to work too much 'on matters that [she] acknowledge[s] aren't pressing'. She 'admit[s] that working a little less would be better for [her], but ... never seem[s] to manage to change [her] habits'. Instead of trying to change the choices she makes, her husband 'tries to give [her] little nudges so that [she] choose[s] to work less', such as hiding her work phone, rearranging her office, and failing to pass on messages.²⁷

Cornell thinks that the husband's behaviour in the first example is permissible, while the behaviour in the second is not, 'even though the conduct in the second example is less

²³Hence Quong's is a motive-based view, not an expressive one.

²⁴Cornell (n 3) 1332–35.

²⁵ibid 1309–11.

²⁶ibid 1312–14.

²⁷ibid 1305.

forceful and easier for the spouse to resist’.²⁸ He takes the contrast to illustrate that ‘the problematic feature of paternalism is not the coercive interference with choices’, since the second relationship is less coercive, ‘in the sense that the subject can more readily continue on her preferred course of action’, but more objectionable.²⁹ His alternative explanation is that the first intervention.

does not express wholesale superiority of judgment. When someone’s actions generally express respect for your autonomy, an isolated intervention may seem benign. General or widespread disrespect, in contrast, is precisely what makes the second relationship seem objectionable. Even if a friend or spouse doesn’t ever force you to do anything, her actions can express the view that you cannot choose well for yourself.³⁰

While it might be true that the second intervention is less coercive ‘in the sense that the subject can more readily continue on her preferred course of action’, it’s not obvious that this is the sense that matters most for paternalism. If what is objectionable (or part of what is objectionable) about paternalism lies in its coerciveness, then we need to ask what is objectionable about coercion. If the expressive theory is competing against an *effect-based* theory, what is the negative *effect* on the paternalisee? I suggest that it is the reduction in the paternalisee’s *autonomy*. I will argue that distinguishing between coerciveness and reduction in autonomy will help to dispel the doubts that Cornell’s contrasting cases raise for an effect-based account of paternalism.

Autonomy can be reduced in different ways. The most obvious methods are coercive. Physical force is the paradigm here.³¹ The husband’s action of ushering his wife out of the building in *Overworking 1* is an example. Another method is the manipulation, or ‘shaping’, of a person’s choices so as to influence the decisions they make.³² Perhaps the most famous example is the positioning of healthy food in a cafeteria in a more readily accessible place than unhealthy food.³³ It is not clear that a bright line can be drawn between coercion and shaping.³⁴

Cornell describes the husband’s behaviour in *Overworking 2* as consisting of ‘nudges’, which suggests they should fall into the ‘shaping’ category; but his point is to contrast the degree of force exerted in the two cases, and since force is a variable that applies to coercion but not to shaping, this suggests he regards the behaviours as forms of coercion. In the end I do not think it matters, because neither coercion nor shaping is intrinsically more detrimental to a person’s autonomy. Which of two interventions reduces autonomy to a greater extent depends on further factors, as I shall show presently. Nevertheless, let us look at the categorisation question.

Nudges, write Hausman and Welch, ‘are ways of influencing choice without limiting the choice set or making alternatives appreciably more costly in terms of time, trouble, social sanctions, and so forth. They are called for because of flaws in individual decision-making, and they work by making use of those flaws’.³⁵ It might be thought

²⁸*ibid.*

²⁹*ibid* 1306.

³⁰*ibid* 1318.

³¹Or, on some views, the only true coercion. See H Steiner, ‘Individual Liberty’ in David Miller (ed), *The Liberty Reader* (Edinburgh University Press 2006).

³²Daniel Hausman and Brynn Welch, ‘Debate: To Nudge or Not to Nudge’ (2010) 18 *Journal of Political Philosophy* 123. I am grateful to an anonymous reviewer for this reference.

³³Richard Thaler and Cass Sunstein, *Nudge* (Penguin 2008) 1–2.

³⁴See note 37.

³⁵Hausman and Welch (n 32) 126.

that husband 2's interventions fall into this category, especially given that Cornell himself explicitly refers to them as 'nudges'.³⁶ But they seem to be geared precisely towards 'making alternatives appreciably more costly'.³⁷ The point of hiding a person's phone is to make it more difficult for them to use it. The point of rearranging a person's office is to make the organisation of work more difficult.³⁸ Failing to pass on messages may not involve physical intervention, but again its purpose is to give the wife further trouble to overcome in order to work efficiently.

If *Overworking 1* and *Overworking 2* are both examples of coercion, which is the more forceful? The *force* of a coercive intervention, let us say (following Cornell), is measured by the difficulty in resisting the coercer's attempt to change one's behaviour. On Cornell's view, *Overworking 1* exhibits greater force. But while it is true that the first wife is less able to resist being whisked away than the second is able to resist any of the individual interventions – it is easier for wife 2 to find her phone, for instance, than it is for wife 1 to remain at her desk – it is not so clear that it is easier for wife 2 to continue to work as efficiently as she would like³⁹ than it is for wife 1 to remain at her desk. Even if our attention is restricted to degrees of coercion, the verdict here is not straightforward.

But our attention should not be so restricted, because an effect-based account of paternalism is not committed to assessing its permissibility by reference to the degree of coerciveness involved. The force of a coercive intervention is one variable relevant to deciding how much a person's autonomy is eroded. Other things equal, more forceful interventions erode autonomy to a greater degree. But things are rarely equal. An equally significant variable is the *scope* of the intervention, that is, the number of choices that are affected by it.⁴⁰ And a third is the *value* of the options ruled out. Distinguishing between these, we may think that an extremely forceful intervention that rules out altogether a trivial option is less damaging to (valuable) autonomy than a highly pervasive series of interventions which moderately disincentivise (or otherwise influence a person against choosing) a very large number of valuable options. Force, scope, and value are all important dimensions in the reduction of autonomy, and some interventions of broad scope may be more significant for autonomy than some interventions even of irresistible force.

Now let's consider whose autonomy is more significantly affected by the interventions in *Overworking 1* and *Overworking 2*. I tend to think that the husband's behaviour in the second case, although it involves a series of individually smaller interventions, is more

³⁶Cornell (n 3) 1305.

³⁷Compare the analogous provision in Thaler and Sunstein's definition of a nudge: 'any aspect of the choice architecture that alters people's behaviour in a predictable way without forbidding any options or significantly changing their economic incentives' (*Nudge*, 6). What counts as making alternatives appreciably more costly, or significantly changing economic incentives? Since there is no non-arbitrary cut-off to be had here, these (plausible) definitions cannot provide a hard-and-fast boundary between coercion and shaping. But if for many equivocal actions we cannot say definitively that they constitute coercion or shaping, we can at least say that, to the extent that an action disincentivises behaviour, it is coercive, even if its influence is predominantly through shaping. I do not take a stand on the distinction here, because – as I state in the text – I think it is reduction in autonomy that matters.

³⁸Examples of genuine nudges could be imagined here. If the husband moves his wife's stationery to make it more difficult to find or access, that is coercive. If he reorientates her desk so that she is facing the window, knowing that she is then more likely to be seized by a desire to go outdoors rather than continue working, that is a nudge.

³⁹This description is not ideal, since Cornell stipulates that the wife herself admits that 'working a little less would be better for [her]' (1305). But since an analogous and correspondingly problematic description ('the subject can more readily continue on her preferred course of action': 1306) is the basis for Cornell's own contrast between the cases, I will not discuss that complication here.

⁴⁰On the individuation and enumeration of options, see I Carter, *A Measure of Freedom* (Oxford University Press 1999) 169–218.

eroding of his wife's autonomy. In the second case she is no longer able to control the overall structure of her working life, since the environment in which she chooses is manipulated at every turn. Whereas in the first case the structure of her working life is still as she would have it, albeit interrupted by a one-off coercive intervention. So *if* what concerns us about coerciveness is that it erodes autonomy, then we have a plausible explanation of why the behaviour in *Overworking 2* is less easily regarded as permissible, *even if it is less coercive* (and even if it counts as shaping *rather than* coercion). And so the case does not present a counter-example to one of the most popular effect-based accounts of paternalism, that it is objectionable insofar as it reduces the paternalisee's autonomy.⁴¹ Notice, further, that this account allows us to vindicate Cornell's claim that 'the second relationship seems more objectionable *for the reasons that paternalism is objectionable*'⁴² – only the reasons in question have to do with autonomy, not insult.

Cornell and I agree, then, that, on the whole, it is the more *pervasive* interventions that are more objectionable. But we locate the significance of this fact in different places. On his account, pervasive interventions express the 'wholesale superiority' of the paternaliser, while one-off interventions, even sometimes highly forceful ones, express the paternalistic idea only on a retail basis, and so are not insulting.⁴³ But I wonder whether we need this extra step. Consider the expressive theory's account of widespread nudging policies:

When government policy slides over into expressing a general disrespect for its citizens' judgment, then it may become objectionable regardless of whether it is carried out through prohibitions or nudges. This can happen in a number of ways. One way that this can occur is through ubiquity. This is why reading *Nudge* produces a faint suggestion of Big Brother. The broad suggestion that the government knows best, not just with regard to a few things, but with regard to practically everything, can start to feel alienating.⁴⁴

One point to make here is simply that the greater the scope of a government's interventions – when a government appears to suggest that it knows best 'with regard to practically everything' – the less we should trust its authority. Other things equal, its claim to know better becomes less plausible the greater the range of matters over which it is made. It is sensible to distrust at least the competence, and very likely the motives also, of a government that makes implausibly extensive claims to know better. Once we start wondering about the possibly sinister motivations of a pervasively interventionist government, we are well into Big Brother territory. Such a government will not respect its citizens, to be sure, but that is unlikely to be the primary reason why we feel uneasy about it.

More pertinently, though, why should we think that it is what the ubiquity of interventions *expresses* that is the worry rather than the ubiquity itself – or, rather, the impact on our autonomy that is wrought by such ubiquitous interference? And what of the suggestion that such a scenario would be *alienating* – does one feel alienated by an *insult*? It is perhaps idle to speculate on what people may or may not feel alienated by.⁴⁵ But here is an explanation in which respect and insult do not feature. I feel alienated

⁴¹Joseph Raz, *The Morality of Freedom* (Oxford University Press 1986) 400–429.

⁴²Cornell (n 3) 1306.

⁴³*ibid* 1318.

⁴⁴*ibid* 1335.

⁴⁵As an anonymous reviewer points out, I may *feel* alienated regardless of whether my autonomy is infringed. Equally, I may not feel alienated even when it is. Alienation in a population may be an issue for all sorts of reasons. My aim here is

because I feel as if I am being oppressed by the people who govern me – partly because they seem to have an influence on every aspect of my life, and partly because they seem to be operating in a way that is entirely outside of my control. I feel alienated from my own agency, in two ways. First, because at every turn my own choices and decisions are manipulated and second-guessed. And, possibly, second, because I feel alienated from the state that my democratic activities in part constitute. Not only am I not the author of my own life because of the narrowing of my everyday agency produced by the government's regulation; nor am I the democratic co-author of the rules and institutions that shape my life.⁴⁶

In short, the conditions under which according to the expressive account paternalistic policies are to be regarded as insulting turn out to track very closely the conditions under which such policies are autonomy-infringing.⁴⁷ If there is any role for what is expressed here, it is that these pervasive 'nudges' express disrespect *because* they infringe so far on my autonomy – but it seems to me that the infringement of autonomy is in the driving seat, not the expression of disrespect. I now want to outline a way of thinking about respect and its relationship with autonomy that shows why this is not surprising.

'Respect' is talked about as a moral value or a moral imperative, but it is also the name of a set of social practices. We talk literally about keeping a 'respectful distance' from someone. But respect in a social context has more generally to do with letting people be, with not encroaching on their (literal and metaphorical) territory. We draw certain boundaries around ourselves over which others are not supposed to step; or if they do, they are expected to provide special justification. Respect is often about maintaining distance.⁴⁸ What is the point of these practices? An answer which I think is plausible, but which I do not have space to argue for here, is that these practices serve to protect our autonomy.⁴⁹ It is often true that pervasive interventions express disrespect for their object, but that is because they threaten her autonomy. Respect here serves as a kind of 'meta-value': the immediate moral wrong involved in ubiquitous interventions in a person's life might be one of disrespect, but it is the value of autonomy that ultimately justifies the practice of respect.

If this is right, we should expect the expression of disrespect to track closely the infringement of autonomy. Governments which intervene in every aspect of their citizens' lives fail to respect their citizens, insofar as they fail to defer to those citizens' own choices to an extent that is sufficient to secure their autonomy. But it is not simply that eroding a person's autonomy is intrinsically disrespectful. The point I am making is, rather, that

only to show that, *if* citizens feel alienated by a government that seeks to coerce them or influence their decision-making at every turn, there is a more plausible explanation for this than that they are disrespected or insulted.

⁴⁶Cornell notes (1334) that the relationship between state and citizen makes a significant difference to whether paternalism is objectionable. At least on empirical grounds we might think that when the interventions become very highly pervasive, it is likely that democratic control will also have been significantly eroded.

⁴⁷I have focused, as Cornell does, on the question of the scope of coercion, in the sense of the number of choices affected, and its impact on autonomy. A similar story can be told about the significance of those choices, however. Cornell claims that 'even when paternalism is not pervasive, it may still be objectionable if it touches upon particularly fundamental liberties' (1335). This seems right – but again we need not invoke insult. A person's fundamental liberties protect what is of most value to her. So policies that infringe these liberties are highly (valuable-)autonomy-infringing. This is reflected in another of Cornell's own examples – of a husband coercing his wife into not marrying a certain man after he dies by threatening to disinherit her. This is an isolated intervention, but one of such far-reaching significance for her well-being that it is highly eroding of her (valuable) autonomy.

⁴⁸See Ian Carter, 'Respect and the Basis of Equality' (2011) 121 *Ethics* 538.

⁴⁹Among other things, such as privacy.

failing to maintain a certain distance from others' lives is what is disrespectful; and the practices that we label 'respectful' are there, *inter alia*, in order to preserve autonomy.

This explanation might appear to miss an important dimension of the *Overworking* examples. Is there not something about the message conveyed by the interfering second husband to his wife that is deeply disturbing? Yes, I think there is. And it is something that may often be present in paternalism. But it is not what makes his action paternalistic, and still less is it *the wrong* of paternalism. It is surely evident that husband 2 does not have a healthy relationship with his wife. Rather than discussing her habits with her, seeking to change her behaviour rationally, even perhaps suggesting openly some of the measures he decides to impose unilaterally, he circumvents her agency. Such behaviour expresses a certain attitude towards her: it tells her that he regards her not as a partner, to challenge and be challenged by on equal terms, but as an object to be managed.

The worry here is about what the husband's behaviour expresses, but what it expresses in the *factive* sense of that word. In this sense, when a person's behaviour expresses some attitude or belief, it *reveals* that attitude or belief. The behaviour expresses the attitude because it flows from the attitude. To illustrate this point, we can distinguish between the expression of motivation or the expression of emotion, on the one hand, and the expression of a proposition, or an insult, on the other.⁵⁰ I express my anger by slamming my book down: my act is a manifestation of a genuinely felt emotion. My perfunctory review of your paper is expressive of my motivation in reading it, which is to repay the favour you did me by reading mine rather than any actual interest in it. These are cases of factive expression. The expression that interests the expressive theory of paternalism is of the non-factive kind. The flying of the Confederate flag expresses an insult regardless of the motivations or beliefs of the person flying it. The park ranger's action (according to the expressive theory) expresses the claim that the ranger knows better than the climber what is good for her, even though the ranger has made no such judgment.⁵¹

If the husband's behaviour expresses the kind of disrespect just described in the factive sense, it reveals that his real attitude towards her is unfitting for a marriage. It reveals a deep flaw in his relationship with his wife. But it is *that flaw* that speaks to us in the scenario described.⁵² It is disturbing that a husband should think of his wife in such a way as to make those actions seem appropriate to him. Since the expressive theory focuses on what is expressed independently of real attitudes, it does not help us make sense of this concern.

⁵⁰This distinction helps us to understand the case of expressing lack of interest, which I claim (see note 12 above) Cornell fails to deal with adequately.

⁵¹Non-factive expression does not *preclude* the expressing subject's belief in the proposition, or intention to convey the insult, but it is not dependent on them. I should note here a difficulty in applying the distinction between factive and non-factive expression to the state's actions. The grounds on which motivations and propositional attitudes are correctly attributed to the state are controversial, and on some views it might be that the circumstances in which a state action can rightly be said to communicate, or non-factively express, an attitude are precisely those in which we ought to attribute such an attitude to the state (or that the latter systematically but imperfectly track the former). Even if this is true, I am doubtful that the question which attitudes can be attributed to the state in the abstract, as opposed to what the real attitudes are of the individuals whose actions collectively constitute state conduct, is the most important one for assessing the morality of state paternalism. See J Turner, 'Paternalism at a Distance' (forthcoming, *Law and Philosophy*).

⁵²I should add that it is possible for actions to express an attitude in the factive sense *by* expressing a belief (etc.) in the non-factive sense. For example, the fact that I am careless of the possibility that you will interpret my action as meaning that I don't care about you may itself reveal – and thus allow the action factively to express – that I don't in fact care about you.

That is not to say that non-factive expression does not matter, but it is not all that matters, and it is doubtful that it is what is behind our intuitive response to paternalistic behaviour. Insofar as we are inclined to regard paternalistic behaviour as insulting, our reaction is summed up in the question, ‘*Is that* how you think of me?!’ But what if we know that it is not? That is, how concerned should we be about conduct that expresses an insult because of the social and linguistic context in which it arises, but which we know reflects no objectionable attitude on the part of the agent? The answer, I think, is ‘in general – and at least in the case of paternalism – not much’.⁵³

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⁵³There are many complications. Sometimes we should be very concerned. The insult itself will vary greatly in its level of severity. For example, if a seatbelt mandate expresses an insult towards adults at all, it seems to me a pretty trivial one. Whereas the message conveyed to persecuted minorities by the use of political flags and slogans may be extremely severe. Then there are the further consequences of the insulting behaviour, which may include normalisation of such behaviour and thus greater acceptance of deplorable attitudes or beliefs, psychological harm to and further social marginalisation of those who are insulted, and so on.