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WHAT IS WRONG WITH ANTI-PATERNALISM?

ABSTRACT

The article scrutinizes anti-paternalistic arguments concerning the best judgements, the autonomy and the moral status of persons. The first two have been criticized by Quong as inadequate, and the article attempts to point out the shortcomings of this critique. The best judgement argument can be reformulated, having in mind particular situations in which person's own judgement should be considered as decisive. The autonomy argument cannot be disregarded as too permissive regarding paternalism as it allows paternalistic interventions, which are weak and confined only to a strictly limited scope. Also, when considered as the condition for the validity of choice, autonomy cannot be treated as an ultimate value. Finally, the moral status argument proposed by Quong is plausible to some extent, when claiming that it is presumptively wrong to treat persons as not having equal moral powers. However, this argument does not cover the legitimate institutional policies in specific cases when it can be reasonably presumed that people will omit to act in favour of their well-being. Also, this argument would prohibit any interventions in order to increase availability of goods, even if the moral status of the persons is not affected

KEYWORDS

autonomy, availability of goods, paternalism, anti-paternalism, Quong.

Introduction

The first thought when mentioning paternalism is what it refers to etymologically, that is, the relationship between adults and children. In the literature on the philosophical concept of paternalism, this relationship is often instantiated as paradigmatic. Suppose the child does not want to eat healthy food, and the parent thinks they should do it regardless of the child's aversion to it. A parent can get a child to eat healthy food in several ways, for example through coercion, by giving rewards for having healthy food, or by eliminating the option of junk food which the child prefers. At the same time, the intentions of parents are aimed at the well-being of the child, regardless of their agreement or disagreement with the parent's food choice. The action will, therefore, be paternalistic if the person or more of them believe that the other person does not have sufficient rational capacities, the ability of independent decision-making and the

will to act or choose in their own interest.¹ In this case, it would be permitted to apply restrictive measures against a deficient person, with the condition of good intentions or motives of the person or group that deploy restrictions, in order to change the values and preferences of the deficient person towards increasing their rational interest and well-being. Bearing in mind this example, it would be necessary to establish whether persons have a special relationship, as it existed between parent and child, in order for a certain act to be considered paternalistic. The moral justification of this interpersonal paternalism is not questionable, but the case is different when it comes to state intervention aimed at the well-being of an individual, assuming that without certain regulations or obstacles, their well-being will be threatened or diminished.

Another frequently instantiated paradigmatic case is the obligation to wear seatbelts, which stems from the assumption that people will not (or will not always) be responsible or careful to fasten seatbelts, primarily endangering themselves by this lack of character. Although most theorists agree that this rule can be characterized as paternalistic, it is an open question whether legal paternalism is the same type of paternalism as interpersonal or they differ radically. In addition, some might even claim that institutional intervention, i.e., the prohibition to drive without a fastened seatbelt, is unjustified considering the coercion and disregard for the will, autonomy and moral status of a rational adult person.

There are several reasons why institutional or legal paternalistic intervention could be different than interpersonal. First of all, the state, that is, the legislators, do not have a special relationship with individual citizens in the way that exists in the interpersonal relationship between parents and children. Second, in the justification of legislation, both paternalistic and non-paternalistic motivations and intentions are most often present. Strict paternalistic laws are difficult, or even impossible to detect, since in a democratic state laws are passed by a multitude of persons and groups who have different reasons for enacting laws and which are based on both paternalistic and non-paternalistic motives (Husak 2003: 390–391). Third, there is no justification for the state's imposition of a good or healthy life on a person as it exists in interpersonal relationships. Coercion to prevent bad actions towards oneself can be considered legitimate only in extreme cases when it leads to severe impairment of mental and physical capacities.² For example, hard drugs are prohibited for the reason that their use leads to complete addiction, i.e., significant impairment of judgment and autonomy, in the extreme cases to death, and it is difficult to

1 Evidently, the insufficiency in intellectual and moral abilities – which is considered as the justification of paternalism in parents-children relationship – is neither the reason for state or institutional paternalism towards citizens, as the state is not a being with human capacities, nor it is the only reason for paternalistic actions. On various relational modes of paternalism cf. Quong (2011: 76) (paternalism between parent and child), Wall (1998: 200) (paternalism between friends), Dworkin (2015: 19), and Enoch (2016: 27) (paternalism between spouses).

2 Cf.: Brock (1988: 551).

consider those drugs as one of the thrills, the enjoyments or the lifestyles that would be equal to others and which people use in full consciousness and autonomously. Fourth, laws are general and legislators cannot regard all citizens as lacking autonomy or ethical integrity. As it will be analysed in the last part of this article, this treatment of persons will lead to diminishing their personal sovereignty and render null and void their moral status.

Nevertheless, numerous liberal countries enact laws that could be characterized as paternalistic, in the sense that the paternalistic component in the motivation of the lawmakers is more pertinent. As it has been noticed (de Marneffe 2006: 91), it would be too inhumane, but also incorrect to claim that when banning driving without a fastened seatbelt, legislators are guided by the interest of insurance companies due to the increased number of premiums they have to pay to accident victims. A similar conclusion can be applied to the cases of regulation of gambling, alcohol and tobacco, the prohibition of drugs and the obligation to wear a helmet on construction sites. Although there are controversies about the nature and scope of regulation, about the effectiveness of particular measures and outcomes that may be contrary to the intention of the legislator (the ban can lead to a significant increase in crime), critics of paternalism object that supervision, over-regulation and criminalization by the state leads to restrictions to personal autonomy in determining their ends. State paternalism means a violation of the right of persons to choose what is best for them, and this choosing should be independent of state interference.

This arose two arguments against paternalism, scrutinised in details by Quong (2011: 96–100).³ In the best judge argument, a person is in the best position to determine what is good for them, and the state is wrong when it assesses that other goals serve better for their well-being than those they prefer. The second argument refers to the autonomy of the individual, whereby the autonomy is threatened when the state limits certain aims, assuming that, on the one hand, people are not capable of making valid judgments about them or, on the other hand, that there are values or goods that are more important than autonomy itself. Therefore, paternalists claim that it would be wrong to give priority to autonomy whatever in the conflict between autonomy and other goods. The anti-paternalist argument implies that autonomy is vital to an individual's well-being, so even bad choices, if voluntary, have moral priority over choices imposed on them by someone else, regardless of the desirability and value of these heteronomous choices. In the further sections of the paper, I will deal with Quong's criticism of these arguments against paternalism, in which he points out their inadequacy, and I will try to bring out the weaknesses of this criticism. Also, I will explicate my claim that Quong's explanation of the incompatibility of liberalism with paternalism through the moral status argument also has its own shortcomings.

3 Mill is considered as the main proponent of the best judge argument, while Feinberg's and early Arneson's positions are treated by Quong as exemplary for the thesis on the primacy of a person's autonomy over her well-being.

1. The Best Judge Argument

One of the enduring traits of philosophical and political liberalism is skepticism regarding the legitimate use of paternalistic policies. As a paradigmatic, we will analyze Quong's criticism of anti-paternalism, whereby he rejects two already mentioned standard anti-paternalist arguments, i.e., the best judge argument and the autonomy argument, introducing his own argument against paternalism which is constructed in order to be fully compatible with liberalism. The first argument elucidating what is wrong with paternalism is the best judge argument, which considers that a person have the best assessment of what is good and beneficial for them, and this argument can be found in the most pertinent form in Mill, although with certain exceptions.⁴ The best judgment argument has often been associated with the figure of a rational actor in the economy who can better than society or the state comprehend the aims and consequences of his actions and thus more efficiently economize with the available resources and plan economic activities optimally.

Also, certain theories of person in philosophy assumed that an individual, independently of psychological, social and political influence, will set and pursues their goals consciously, purposefully and rationally. Both the first and second theories have been proven to be fallacious.⁵ As it has often been pointed out, another person or group can, on many occasions, know what the interests of a given person are better than herself/himself, and not only in terms of means, but also of the very ends that the person has set for herself/himself (Quong 2011: 97, ff. 51).⁶ Just as a person can choose inadequate means due to insufficient rationality or faulty logic, in the same way, due to neurosis or some other reason, they can have irrational goals and will focus their life around unrealistic matters. It would be better for the person's well-being if someone else corrects their flaws and irrationalities, that is, to decide on their behalf if it would lead to improvement of their aims. Indolence, weakness of will, akrasia and biases can permanently harm a person's well-being. Paternalistic guidance could give a person an objective perspective and direct them to

4 Thus, Mill considers voluntary slavery and women's consent to polygamous union as illegitimate because those practices lead to diminishing a person's future ability for voluntary choice (Mill [1859] 2001: 94 and 84–85.). As it is well-known, Mill allowed that on certain occasions, where a person puts himself in danger due to a lack of information, or due to his doing something which is not his desire (when somebody wants to cross the bridge but does not wish to die), there may be a justifiable reason for legitimate paternalistic coercion. Accordingly, paternalism is prohibited in any situation where a person is informed about the nature and consequences of his decisions.

5 In recent decades, numerous winners of the Nobel Prize in economics have developed theories that have criticized classical theses on the individual as a rational agent aware of his own best interests. Psychology after Freud takes the irrational as an integral part of the personality, while the cure of neurosis consists in (paternalistic) redirection of the person's wishes to other, more realistic goals.

6 See also: Sunstein and Thaler (2003: 1167–1170), Arneson (1980: 486), de Marneffe (2006: 89), against Mill's epistemic basis for a general right against paternalism.

realistic goals, could correct them concerning adequate means, and thus paternalism would be justified. Having in mind the facts from economics and psychology on individual's imperfect rational judgments regarding their own welfare and their difficulties with handling internally conflicting self-interest motives, Quong, along with numerous authors such as Arneson, deMarneffe, Sunstein and Thaler, conclude that the best judge argument is inadequate as anti-paternalistic.

It should be noted that critics of the best judge argument often relate well-being and the best interest of the person to health, productivity, and the future development of human capacities. It can be reasonably argued that other people can know better than me about my future well-being, as well as about the means by which I can achieve my goals and preferences, but it is questionable whether their judgements can be considered as superior independently of my assessment of how to organize my own life in accordance with my interests and preferences, and what kind of activities suit my character and most satisfy my affinities and ambitions. The best judge argument cannot be dismissed unhesitatingly if it is reformulated in an appropriate way, claiming that interference in the judgment on certain harmless activities is unjustifiable. A hobby, such as philately, may be considered by most people to be less valuable and trivial, having in mind that there are much more useful ways to spend time, but this does not mean that a person is not the best judge when they consider that going in for philately is great for them and fulfills them with peace and joy. After all, who can condemn a person for counting blades of grass if it calms them down or if it is a form of meditation? Can we blame a person who spends fifteen minutes every day counting blades of grass for wasting their life? The sole purpose of the argument is to point out that there is a domain of personal activity (the so-called "authority of the first person") which is impermeable to external critique, when such activity is not harmful to others and debilitating for the very person who pursues it, as well as when the activity is not completely time-consuming and exhausting. The anti-paternalist argument is correct in this narrow and trivial domain, and in it the personal sovereignty has its place, which does not imply that the argument is correct in ethical considerations related to a person's overall well-being and in the domain of a significantly valuable ends. It is necessary to reconsider the inviolability of personal sovereignty concerning their overall well-being and complex goods. The autonomy argument tries to defend this inviolability.

2. The Autonomy Argument

A more common and well-reasoned approach against paternalism is to challenge paternalism on the grounds that it infringes personal autonomy. The argument states that autonomy does not have only the instrumental value of achieving the good or well-being of the individual, but should be taken as a value independent of goods and results of their actions. Moreover, autonomous choice has primacy in relation to well-being that is externally imposed on the

individual (Quong 2011: 97–98).⁷ Although other person or more of them can know better than the person herself/himself what their interest is in terms of well-being (the smoker can admit that other people are right when they say that smoking harms their health), the person still has sovereignty over the decisions because their own life is at stake⁸ (the person can still continue to smoke despite counselling and awareness of the harm). Anti-paternalistic justification of autonomy frequently is also anti-perfectionistic and differs from Raz's justification of autonomy, which regards the development and preservation of autonomy as a legitimate, if not the most important, function of public policies. Here we will scrutinize autonomy as the basis of the anti-paternalistic argument, that is, the assumption that paternalism is illegitimate for the reason of infringing autonomy.⁹

As autonomy surpasses well-being and choices that are determined externally, personal choices, however bad, should be respected, so paternalistic intervention is unjustified (Feinberg 1986: 62). Justified state intervention must be compatible with respect for personal autonomy, and when state promotion of the person's good is in conflict with the right of self-determination, this right always has priority over the good. Quong distinguishes two flaws in this justification of anti-paternalism. First, this argument is not as anti-paternalistic as it *prima facie* appears, as it keeps a back door open for paternalism in cases where it is necessary to protect a person's capacity for autonomous choice. Since the set of such activities that can impair this capacity, i.e., can put a person's physical and mental integrity at risk, is undetermined (for example, such activities can include the use of hard drugs, the consumption of foods containing saturated fats, or extreme dangerous sports, as well as mountaineering), soft paternalism becomes a hard limitation of freedom of choice.

Second, autonomy as the highest value in the anti-paternalistic argument is a conception of the good that not all rational subjects as participants in the deliberation about constitutional political principles would accept: someone prefers membership in an authoritarian non-political group, others are satisfied with the non-reflected existing social order, and some will choose a non-autonomous life, say in a monastery, as better than an individualistic one. This criticism stems from Rawls' rejection of comprehensive conceptions of the good

7 The primacy of autonomy over well-being and other ethical values is defended, among others, in Arneson (1980), Feinberg (1986), VanDe Veer (1986) and Scoccia (1990). On the critique of this primacy, see: Brock (1988) and de Marneffe (2006).

8 "The life that a person threatens by his own rashness is after all his life; it belongs to him and to no one else. For that reason alone, he must be the one to decide—for better or worse—what is to be done with it in that private realm where the interests of others are not directly involved." (Feinberg 1986: 59.) The term *autonomy* can be used synonymously with Feinberg's concept of *personal sovereignty* and VanDe Veer's concept of *the right to self-determination*. Those concepts will be used in this text interchangeably.

9 Therefore, here will be no discussion about autonomy as a value that requires a perfectionist constitution of the basic structure of society, that is, about its place within perfectionist theories.

as the basis of the construction of the principle of justice, since the acceptance of a particular conception (in this case the value of autonomy, which according to Rawls is accepted by philosophical liberals such as Mill and Kant as the basis of justice) would lead to the exclusion of persons who accept different comprehensive, but reasonable, conceptions of the good, and thus it will disregard them as equal and free members of society. Institutional interference in such a non-autonomous life, claiming that such life is less admirable, is a form of paternalism because this type of policy singles out one value as supreme one and treats the person's affirmative judgment on a non-autonomous life as ethically defective or less valuable.

The first critique is part of Quong's broader anti-perfectionist argument, and his first objection to the flaws of the anti-paternalistic autonomy argument is prone to the same controversy as the critique of perfectionism, in which any, however weak and non-intrusive, perfectionist policy is repressive for the individual's liberty. However, contrary to Quong surmise, it can be argued that perfectionist actions are not always paternalistic in the strict sense which includes coercion and repression of personal self-determination. Perfectionism legitimizes non-coercive actions that, according to some definitions of paternalism, are not paternalistic, or are so weak that the liberal political order could tolerate, even encourage them in some circumstances. For example, liberal perfectionism is akin to nudge theories that emphasize the compatibility of liberalism with posing incentives, as people's decisions are subjected to biases, prejudices, weaknesses of the will and recklessness, and an intervention can influence people non-coercively to correct their wrong orientation.¹⁰ In the case of bias and prejudice, it is straightforward that, if the non-coercive influence of institutions or other persons leads to a change in decisions, the person himself would admit that the previous decisions (for example, to employ people on the basis of skin colour) were non-autonomous (that they were dictated by the influence of prejudices rooted in family, environment, social networks he follows, etc.). In addition, the above-mentioned influence on autonomy does not justify coercion and intrusion into, in Rawls' terms, reasonable conceptions of the good that are compatible with the principles of justice, so the impact is legitimate up to certain limits. The autonomy argument can allow certain modes of paternalistic intervention, as well as influence on decisions that are autonomous only apparently, and at the same token, the assumption on the wrongness of paternalism due to the restriction of autonomy will be correct all things considered.

Let us now consider the second critique, according to which the autonomy argument treats autonomy like any other conception of the supreme good. Rawls's theory of justice distinguishes full autonomy, or autonomy as a condition of the legitimacy of proposed political principles, and autonomy as

¹⁰ On this view, see: Sunstein and Thaler (2003), Sunstein and Thaler (2008), as well as Dworkin (2020). Quong (2011: 78) argued that these choice-improving measures are not the proper cases that can be labelled paternalistic.

the ultimate value i.e., as a part of a conception of good. In the first case, the place of autonomy is different from that comprised in Rawls' critique of perfectionist accounts of Mill and Kant, considering that their treating autonomy as a supreme value is a basic part of the comprehensive conception of good. As such, autonomy would be unwarranted as the political principle because many members of society would not accept it as the value on which the basic principles of justice should be based. In contrast, as a strictly political value, full autonomy has a prominent place when it is understood as reasonableness in the formation and acceptance of principles of justice that would have a reflexive and universalizing component by means of which the principles as political could be confirmed as fair by all reasonable persons in a society. Understood this way, autonomy is not a value chosen between others, and it is not a choice similar to, say, a choice of profession, membership in a group, or the course in which the person will lead his life. The exclamation "I decide to be autonomous" would be rather odd. Autonomy is a condition for a person to be able to decide about the fundamental principles of justice, to maintain and follow them. As Rawls in *Political Liberalism* stated, „full autonomy is realized by citizens when they act from principles of justice that specify the fair terms of cooperation they would give to themselves when fairly represented as free and equal persons” (Rawls [1993] 1996: 77).¹¹

But Quong would object that the autonomy argument works on a different level than the political one in constituting fair public principles, as the autonomy argument concerns the domain of ethics and morality when autonomy is singled out as an aim of ethical action, or as an achievement in personal self-development. Also, the anti-paternalistic argument claims that paternalism is unjustified because any voluntary (which can be understood synonymously with autonomous) choice that does not harm another person is valid regardless of whether it can be rationally explained and universalized in order to be accepted by everyone. Ethical autonomy is fundamentally different from universalizing and rational full autonomy in the context of the constitution of a just order, which Kant and Rawls have in mind.

Autonomy can nevertheless be considered as a formal condition of moral and ethical judgments, so that only if a person has independently chosen certain activities as a self-legislator their choices should be considered as valuable and immune from intervention (even if they, as part of ethical action, were imprudent and in accordance with the capricious character of the person, and not

11 As Forst wrote, “reason is autonomous (“self-originating and self-authenticating” /.../) and does not need any other normative source to bind moral persons – categorically, we may add, because no other comprehensive system of value can justifiably trump the normativity of reason and its constructions” (Forst 2017: 131). About “full autonomy” see also: Forst (2017: 140). Scoccia notes that Rawls' fully autonomous subject is part of the philosophical understanding of the person in liberalism, according to which autonomous persons will inevitably develop diverse values and conceptions of the good. (cf. Scoccia 1990: ff. 16.) On the similarity of Rawls' approach with Kant's on autonomy, see also: Kogelmann (2019).

well-thought-out).¹² In a pseudo-Kantian way, two conditions of autonomy can be introduced: the first is that a person must be self-legislator, that is, be able to defend their intentions, interests, actions or values in a conscious way and to provide endorsement for them (with the already mentioned disclaimer that it does not include Kantian rational and universalizing justification of choices and values as prerequisite for personal sovereignty). The second condition is the negative aspect, claiming that a person should be able to discern in their actions, judgments and beliefs those which are independently chosen, and those which originate from heteronomous motives, such as natural impulses and the influences of the environment. An autonomous person can accept other people's interests, beliefs, concepts of good, etc. as their own, but at the same time they can admit that they were created under the influence of external incentives. We would not call a person autonomous when they emulate all the values and judgments of another person, group or society to which this person belongs. The choices that meet these two conditions could be characterized as those that are not susceptible to paternalistic coercion at any rate.

My aim was to show that the autonomy argument that would vindicate anti-perfectionism can still be valid, beside the question whether autonomy can be defended in a perfectionist and limited paternalistic way. The protection from infringement of voluntary choice can be a strong anti-paternalistic trump card, although its extension to all cases is highly disputed, i.e., the self-endangerment of a conscious choice, when a person is engaged in the destruction of his own mental and physical abilities, can be reckoned as the limit of autonomy.¹³ If my interpretation is correct, the non-paternalistic autonomy argument is not 1. too permissive as it allows paternalistic interventions in a strictly limited scope, nor 2. does it represent a specific conception of good that is based

12 The case is different, however, with moral action, which must also take into account the consequences it would have on other people, as well as the opinions of other people affected by this action.

13 As it can be seen, this permission of paternalistic intervention is limited. This strict limitation of paternalism is the response to the objection of early Arneson, invoked by Quong, that the justification of paternalism in preventing voluntary slavery, health risks, and similar cases opens up space for the wide application of paternalistic measures. Banning both the sale of tobacco and fried food can be justified by the fact that they extend the lifespan of people, and thereby increase their future autonomy, albeit at the price of a significant reduction in present freedom of choice (Arneson 1980: 475.). But since every food is to some extent a medicine, and to a great extent a poison, if we were to carry out this argument ad absurdum, every food could be subject to prohibition. No one is keen to defend this kind of concession to paternalism. Soft anti-paternalism in the autonomy argument can justify prohibition measures in a strictly limited range of clear and present self-destruction of a person, as well as some restriction measures, such as tobacco taxation, regulation of casino advertising, and serving exclusively healthy food in workers' canteens. As Scoccia claims in defending the autonomy argument: "In general, the desire to live one's own life free from outside meddling will almost certainly be weaker when the consequences of implementing the choice are disastrous, unforeseen when the choice was made, irrevocable, and imminent" (Scoccia 1990: 313). See also: Husak (2003: 403).

on the ultimate value of autonomy, about which there is no agreement of all rational persons in a society. When understood as a condition for the validity of choice, autonomy (as the primacy of personal sovereignty or self-determination) does not deny a person the right to choose a non-autonomous life and does not promote autonomy and its enhancement as the highest good, but limits the institutional infringement of voluntary personal choice.

3. The Moral Status Argument

Quong's argument from moral status is part of his anti-perfectionist argument, where paternalism has been considered as one of the main hallmarks of perfectionism. Considering the failure of anti-paternalistic arguments from the best judgment and the autonomy, Quong proposes a third reason why paternalism is unsustainable from a liberal point of view. He introduces the moral status argument, according to which the unacceptability of paternalism is in the suspension of a person's judgment and consequently in denial of their status as free and equal. By preventing a person from following their conception of the good, or by pressuring them to replace it with a better one, the state does not recognize them as free. Also, if a person is treated as one who does not have the necessary capacity to possess moral powers, this person is denied the right to be a cooperative member of society, and therefore to be equal with others. Paternalism introduces relationships of supremacy, since the affected persons are treated as inferior in terms of moral status, as deficient either in terms of their intellectual or volitional abilities, while society, state, or group, by imposing restrictions on choice, considers itself to be significantly better equipped with these potentials.

Obviously, this third anti-paternalistic strategy originates from Rawls' theory. As is well known, Rawls claims that persons are regarded as equally competent members of society if they have two moral powers, namely the capacity for a sense of justice and the capacity for a conception of the good. The first moral power is the capacity to understand, to apply, and to act from the public conception of justice as a rational cooperative member of society, while the second moral power is the capacity to form, revise, and rationally pursue a conception of the good which she/he regards as worthy of living as a human being (Rawls [1993] 1996: 19 and 303). Paternalism disregards above all the second moral power by attempting not only to impose, but also to institutionally interfere with the conception of a person's good, thereby making the person aware that she/he is not able to follow their own values and choose goals independently, and thus she/he is in need of external interference to narrow down specific choices and exclude unacceptable ones. Quong calls this determination the judgmental definition of paternalism, according to which "A's act is motivated by a negative judgment about B's ability (assuming B has the relevant information) to make the right decision or manage the particular situation in a way that will effectively advance B's welfare, good, happiness, needs, interests, or values" (Quong 2011: 80).

Quong anticipated a potential objection that is often raised to the initial assumption that persons should be treated in such a way that they are always presupposed to possess two moral powers and are equally endowed with the capacities to exercise them. The objection is that empirically those capacities are not equally developed, and Quong does not disagree with this statement. Apparently, it is possible that these moral powers are so unequally distributed that a person with a reduced capacity to judge his own good would benefit from delegating choices to others who make better choices of the good and can accomplish them more effectively. This, after all, entails the description of paternalism, as this concept refers to the fact that children, addicts and mentally impaired persons are not able to know, choose, or pursue their own good. Quong does not deny that it is possible to justify paternalism *all things considered*. Paternalistic policy is *prima facie* or *presumptively wrong*, which means that in some cases, the overall good of the paternalized person can outweigh the cost of limiting free choice, i.e., disregarding their moral status, but only with solid justification under particular conditions. *Prima facie*, moral wrongness is implied when persons or classes are treated as if they do not possess the first or second moral power, i.e., *prima facie*, it is morally right only to treat persons *as if* they possess both moral powers above the threshold (Quong 2011: 102-104).

By introducing the presumptive wrongness of paternalism that applies to everyone, as different from the matter of fact of special cases in which paternalism can be justifiable, Quong partially answered Birks' future criticism that gradation in ability concerning second moral power should be considered. It has not been denied that people in fact differ in their ability to choose ends, as well as to pursue them rationally and consistently, but a policy that treats them unequally with regard to these powers is not morally acceptable. The concept of the second moral ability is a threshold, instead of scalar, which implies that a person competent to determine the principles of justice always already has a constituted concept of good that is prudent and acceptable from a moral point of view. On the idealized level of deliberation and enacting the constitutive political principles, it should be considered that people already possess two moral powers and possess them equally. Nevertheless, all things considered and with special justification, it is not excluded that specific paternalistic measures are justified (Quong 2011: 102–103).¹⁴

14 On unequal capacity for second moral power, see: Briks (2014: 492–493). Here, I will not deal with Rawls'/Quong's idea of idealized moral powers. I generally agree with the rest of Birks' excellent criticism, in particular with the assumption that the argument of moral status "is incapable of discriminating between the wrongness of various cases of interventions" (Birks 2014: 497 as well as 491, ff. 25.). Birks examines the Grass encounter and Fatal enhancer cases, which in the moral status argument are unjustifiably treated as the same. The first is a well-known example of a person who counts blades of grass all day without any artificial aids that would enhance this counting. Despite its pointlessness, we are not entitled to intervene in this activity. In the second case of fatal enhancer, we prevent a person from taking pills that improve their ability to count blades of grass if those pills can fatally deteriorate a friend's health. We are

The question is, however, whether those measures can be justifiably applied only to a certain segment of the population or whether there are certain measures legitimately applicable to entire people. Bearing in mind that in the political sphere adult persons are taken as decision-making subjects, individuals with certain mental or volitional impairments can be treated as if they do not possess moral powers, so, for example, mentally impaired persons are assigned a tutor, and addicts are referred to rehabilitation and special courses for the retrieval of their intellectual abilities. As for binding regulations, which are considered paternalistic and applicable to the entire population, it can be argued that there are special cases in which paternalistic measures are imposed on all people, such as the case of seatbelts or mandatory contributions to pension funds. Quong does not scrutinize this type of paternalism, and we can only guess how he would accommodate it in his argument. He can claim that here, too, we are concerned with the cases requiring special justification and that all things considered, state intervention can be adopted, but this explanation would thereby extend the notion of paternalism significantly, which would also include those cases in which two moral powers are not called into question.

On the other hand, he can claim that this is not a matter of paternalism, but a matter of enforcement of the rule of justice when it comes to pension insurance when it is introduced in the absence of the employee's explicit consent, that is, a matter of general safety measures mandatory for everyone when it comes to the obligation to wear seatbelts. In both cases, coercion would not call into question the citizen's respect concerning their moral powers, and the respect of citizens as free and equal persons is preserved. Since "[T]he state's coercive power may be necessary to provide the requisite assurance to each citizen that others will do their fair share," citizens, as ideal legislators, might enact coercive measures related to social security and safety if all people are equally covered by them and if everyone is giving their fair share for their achievement (Quong 2011: 103, ff. 72).

However, this non-paternalistic explanation of such cases is controversial because it deviates from the standard understanding of paternalism and marks examples that are usually considered paternalistic as those that do not belong to paternalism. According to the non-paternalistic understanding, the mandatory contribution for pension insurance does not differ from the obligation to pay taxes, while the obligation to wear seatbelts has the same status as the obligation to respect traffic signs. In Quong's interpretation, paternalism is equated with perfectionism, as it is intended to the improvement of moral character and the change or correction of the conception of the good of those who are

prone to justify anti-paternalism in the cases similar to a grass encounter, but we are much less willing to justify anti-paternalism as refraining from preventing a person from taking a potentially lethal drug. Quong should argue that these two cases are equally wrongful (Birks 2014: 495-497). Cf. also a part one of this article on the best judgment argument. For criticism of Quong's understanding of paternalism see also: Düber (2015: 38), Grill (2015: 51, ff. 2), and Tahzib (2022, chapter 9).

influenced. As we can see, this is a much narrower definition than the usual and received one, in which obligations such as wearing seatbelts and contributing to pension insurance are considered paternalistic and differs from the obligatory cases of tax contribution and obeying safety measures. Later measures are directed toward non-perfectionistic and non-paternalistic aims such as equal distribution of resources, security of property, safety of other persons in traffic etc. Although it can be considered to some extent that the function of the laws regulating the above-mentioned paternalistic obligations is to correct moral traits such as weakness of will, carelessness and negligence, it cannot be argued that these laws at any rate underestimate the moral capacities of persons, diminish or insult their moral status and disregard equal respect or freedom. Even less do they negatively affect the second moral power and persons' deeply rooted conception of the good.

It has already been mentioned that Quong apprehends that paternalism is acceptable in special cases in the interaction between individuals when a person is benevolently influenced to adopt certain values that due to intellectual or volitional weaknesses the very person does not acknowledge. Some theorists believe that paternalism can be justified on an interpersonal as well as an institutional level. Wall gives an example in which one friend gives money to another for the purpose of going to see a landscape and beginning to appreciate the aesthetic value of natural beauty (Wall 1998: 200). According to Wall, such a procedure is justifiable not only on an interpersonal level, but on an institutional level as well, since the incentive given by the state for visiting a certain landscape does not violate the moral status or personal integrity of the persons to whom the support is intended. Although, according to Quong, the interpersonal action is paternalistic and, as such, *prima facie* unacceptable, it can still be justified by reliable information that person has about their friend, knowing his character traits, preferences, aspirations, etc. This cannot be justified in the case of state incentives because a specific person has reliable information about the weak character or insufficient interest of friends, while the state does not have such detailed information. Friends and closely related persons are in a special relationship and have detailed information about each other, while such a position and information do not exist between the state and citizens. By imposing paternalistic measures in order to induce people to appreciate natural beauty, the state shows a lack of respect for citizens because all persons are treated without sensitivity for their distinctness, as if they do not have the capacity to appreciate valuable things on their own in the absence of an incentive from a higher authority.

However, just as a person can give a financial incentive to his friend to visit a national park in order to begin to appreciate the value of natural beauty, the state can build a road that leads to an uninhabited remote area. Why should we assume that people in general (or anyone except adventurers and a few avid nature explorers) would acquire the ability to appreciate this value if it is considerably difficult to access at a given moment? If greater justifiability of a person's paternalistic action can be given based on detailed information about

their friend's particular situation, the representatives of the state can correctly assume that the great majority of people would not be inclined to exert considerable effort to reach almost impassable areas. When officials have information, or at least justified assumptions, that people would be eager to visit the landscape if it were easily available to them, they could legitimately propose to build a road leading to it.¹⁵ In this case too, some people could start to value natural beauty positively because a new opportunity would open up for them, but it would be dubious to claim that the decision to build the road is degrading people's second moral power, as it can be argued by Quong.

Quong omits to mention this reason in favour of perfectionist action in his critique of the experience argument for perfectionist, albeit allegedly non-paternalistic intervention. The experience argument claims that there are many valuable activities that people will not appreciate until they experience them, so the state intervention in order to create the opportunity for this experience will be legitimate. Quong criticized and refused several accounts of why people are not willing to experience valuable activities and therefore are in need of external influence, but he does not consider the low availability of the good (which is the case of remote landscape) as the reason for the public non-coercive actions which can form or increase admiration of that good.¹⁶ The critique of experience argument deals with the paradigmatic question of why more people do not value going to the opera highly. Hypothetically, similar to the landscape case will be the situation where there is no proper road to the opera house and officials have decided to build it for non-commercial reason to make the valuable activity more available to a potential audience. This reason is not derogatory concerning people's moral and intellectual abilities whatsoever.

Conclusion

Quong's theory, as one of the most versatile defences of Rawls' liberalism and critique of perfectionism, served as a pretext for my examination of anti-paternalistic arguments. I argue, *pace* Quong, that the best judge argument can be reformulated so that in some morally and ethically trivial actions, priority should always be given to a person's choice and their judgement concerning the choices over third-party paternalistic pressure. In the case of the autonomy

15 It can be objected that the representatives who decide on financing the construction of the road are guided by non-paternalistic motives of attracting tourists and thereby advancing the economic prosperity of the region. But the problem is whether all the representatives will vote exclusively from the economic motive, or whether the majority will vote from this motive, or maybe the perfectionist motivation will prevail, and the representatives consider that people should appreciate and positively value the beauty of the landscape. There is a difficulty in distinguishing purely paternalistic and purely economic motives, since the representatives, who in this case vote for or against the construction of the road, are a multitude of people with different motivations for approving the same thing.

16 On the experience argument, see: Quong 2011: 94–95.

argument, autonomy, when conceived as the condition of choosing ends but not end itself, in a particular class of case may trump paternalistic measures. Like many others, Quong begins with the negative definition of paternalism and endeavor to provide valid reasons for its wrongness. But as some critics have already noticed, it is necessary to distinguish different types of influence, interpersonal as well as institutional, which are usually labelled as paternalistic, and some of them can be morally justified under certain conditions. Instead of strict anti-paternalistic approaches, perhaps it would be more plausible to distinguish a class of cases in which paternalism will be justified, while in another class, anti-paternalistic arguments will be valid.

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Šta je pogrešno u antipaternalizmu?

Apstrakt

U članku se ispituju anipaternalistički argumenti koji se odnose na najbolji sud, autonomiju i moralni status osobe. Prva dva argumenta je Kvong (Quong) kritikovao kao neadekvatne i ovaj članak nastoji da ukaže na nedostatke ove Kvongove kritike. Argument najboljeg suda može se preformulisati tako što se uzima u obzir posebna situacija u kojoj bi vlastiti sud osobe trebalo da se smatra za odlučujući. Razlog za odbacivanje argumenta autonomije ne može da bude to što isuviše dozvoljava paternalizam, pošto paternalizam koji ovaj argument dopušta jeste blag i ograničen na striktno određeno područje. Takođe, ukoliko se razmatra kao uslov valjanosti izbora, autonomija se ne tretira kao najviša vrednost. Konačno, argument moralnog statusa koji uvodi Kvong jeste primeren do određene granice kada se njime tvrdi da je prema osnovnoj pretpostavci pogrešno da se osobe tretiraju kao da ne poseduju moralne moći. Ipak, ovaj argument ne obuhvata legitimne institucionalne politike u specifičnim slučajevima u kojima se može opravdano pretpostaviti da će osobe propustiti da delaju u korist svoje dobrobiti. Takođe, ovaj argument zabranjuje svaku intervenciju koja bi povećala dostupnost dobara, čak i kada ova intervencija ne utiče na moralni status osoba.

Ključne reči: antipaternalizam, autonomija, dostupnost dobara, paternalizam, Kvong.