

Maternalism as a Viable Alternative to the Risks Imposed by Paternalism.

A Response to “Paternalism, Obesity, and Tolerable Levels of Risk”

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ABSTRACT

In his paper, Michael Merry poses an interesting and important question: How can we navigate between two often opposing interests—that of protecting the welfare of our society’s children and that of protecting their liberties by avoiding paternalism? While Merry lays out his argument with clarity and insight into the risks and harm that state paternalism incurs, his discussion of such risks and his suggestions for possible resolutions are all bound within a paternalistic framework. Taking on a maternalistic, or more specifically, a caring, perspective may allow us to understand the issue more fully—that is, as part of the larger problem of oppression, and to offer alternative solutions that enable a society to care for the health and well-being of its children while avoiding the harms that paternalism imposes.

This article is a response to:

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WHEN WE LOOK at Aldous Huxley’s *Brave New World* (1932/2006), we see that the vast majority of people who live in this world (i.e., not the “savages” who live outside of it) do not suffer from poverty, disease, hunger, violent crime, fear, or even from unfulfilled desires. The leaders of this world seem to exercise an extreme form of *paternalism*, particularly as it is defined and discussed in Michael Merry’s paper, “Paternalism, Obesity, and Tolerable Levels of Risk” (2011). The Directors in Huxley’s novel believe that citizens cannot be trusted to make decisions that serve their best interests; thus the Directors must make the rules for them. When I teach this book to my students, they feel sure they wouldn’t want to live in Huxley’s world, but they have a hard time defending the right of individual liberty over the good of having an entire people live without suffering. “Maybe the Directors’ way *is* the best way to live,” they say with frowns and a bad feeling in their guts.

The Problem of Paternalistic Solutions to Childhood Obesity

While Huxley’s brave new world shows the horror of living in an entirely paternalistic society, it is not necessarily the case that his

readers have a problem with paternalism. Parents, and more specifically fathers in their traditional role, have acted paternalistically for ages without thinking such behavior morally suspect. Also, many, even those in pluralistic democratic societies, do not seem to have a problem with government acting paternalistically, at least in some situations. For example, when governments set age limits on such activities as smoking tobacco products, drinking alcohol, having sex, driving, voting, getting tattooed, buying pornographic material, and getting married, many can see the merit in such laws even though they do limit parents’ rights to make decision for their children. Many in society also see the merits in requiring all children of a certain age to attend school, live free from abuse and neglect, and not participate in pornography. These are laws designed to prevent children suffering from all of the serious and potentially fatal harms that such activities can incur. The laws are in

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place and are fairly well accepted presumably because many don't fully trust that all parents will protect and safeguard their children from these harms. Merry argues, rightly, that though these laws are intended to protect the needs and well-being of society's children, they are nevertheless paternalistic in that they basically say: We cannot trust that you (i.e., the parents) will make the best decisions for your children, so we must step in and make these decisions for you.

In his article, Merry illustrates the difficulty in balancing the benefits of paternalistic laws (i.e., they can protect the welfare of children) with the harms they can impose (i.e., they can and often do limit individual liberty). His analysis of the problem of paternalism, particularly in the case of laws aimed at protecting children from the health risks of obesity, is important and astute. His suggestions for resolving the conflict between safeguarding society's children and avoiding the harm of paternalism, however, lie solely within a paternalistic framework. Perhaps what is needed is to step outside of paternalism and approach this issue from an alternative viewpoint. The question of how we as a society can best deal with the risks of obesity while avoiding the harms of paternalism is, therefore, examined from a maternalistic framework in the last section of this article. The aim in this last section is to offer a fresh perspective on the issues Merry raises and present new insights and possible solutions that will further Merry's analysis and inquiry.

Merry's concern over paternalism from the government is that it limits individual liberty. He suggests, "paternalism entails interference with the liberty of another for the purposes of promoting some good or preventing some harm" (p. 2). Certainly such rules and laws as named above interfere with a person's liberty in a certain sense. That is, parents are not free to allow or force their children to work on the family farm rather than attend school; they are not at liberty to make money by putting their children in a pornographic film; they cannot send their children to purchase alcohol or cigarettes for them. The government has, in Merry's words, "interfered" with the parents' decision-making power by making certain decisions for them, and most people agree with government intrusion in these areas.

But what of obesity? Obesity is an interesting case for a couple reasons. One, as Merry points out, it is currently the top concern of the World Health Organization. Two, addressing the concerns of obesity is, at least in some ways, more complex than addressing problems of underage smoking or drinking. Unlike cigarettes and alcohol, areas identified as significant health risks to children for which governments impose paternalistic rules and regulations, children cannot simply *not* eat, whereas they *can* completely go without cigarettes and alcohol. Banning tobacco and liquor to minors is fairly straightforward. And while prohibiting food is straightforward, it is an absurd answer to obesity. Yet banning unhealthy food, or unhealthy eating habits, is anything but clear-cut. How can we be sure that what is healthy for Johnny is healthy for Susie, or what is healthy for Maria when she is relatively sedentary is healthy for her once she starts gymnastics?

While there are healthy ways to lose weight, there are also many unhealthy fad diets being advertised and promoted in the media. How can parents and children know which ones to avoid

and which to follow? While asking one's doctor for advice is often preferable to following the latest diet craze, doctors cannot always be relied upon as infallible experts. As Merry states, "attempts to prevent harm also entail risk, and those with medical degrees are not immune from criticism" (p. 4). Doctors have been known to employ what we now believe to be morally reprehensible "treatments," such as eugenic sterilization, defining homosexuality as a psychological illness, and "the banning of children with disabilities from school" (p. 4). Relying on experts or the state to determine how and what a child eats does not guarantee that the best interests of the child are being met. Further, as Merry explains, it requires far more intimate and complex intrusions than simply banning a particular product (i.e., banning unhealthy food is far more complex and intrusive a matter than is banning tobacco and alcohol). Thus, Merry's question about how we can best avoid paternalism in public policy while still addressing the very serious problem of childhood obesity is a provocative and important one because it raises difficult questions about how to best balance the protection and promotion of healthy and safe children with the liberty of individual choice and family intimacy.

Paternalistic acts are often well-intentioned. However, they do, as Merry rightly argues, run the risk of infantilizing and diminishing the individual liberty of those whose well-being is in question. Merry says that the "moral aim of paternalism is to act on behalf of the interests of others who presumably lack sufficient information or the resolve to inform and guide their actions" (p. 2). This brings to mind Charlotte Perkins Gilman's short story "The Yellow Wallpaper," in which the husband of the main character acts paternalistically when he insists that his wife rest and not strain herself by writing (1899/1997). As a doctor, he feels he knows better than does his wife what is best for her, and he overrides her own belief that she will improve if she is given time to write. Her liberty to choose for herself what is in her best interest is taken away by her husband who does what he truly feels is best for her, though we as readers know he is harming his wife. This is an interesting example because it shows how wrongheaded and, indeed, harmful paternalism can be even when the intent is to be kind and beneficial. It would be easy to imagine this same physician/husband dictating his wife's or child's diet in order to avoid obesity; after all, he is the husband, the man, the father, and a doctor. Who better to decide for his family members what will best promote their health and well-being?

The problems arise, Merry points out, when we consider that paternalism may incur more risks than would the risks of the targeted behavior: "risks to privacy, risks to family intimacy, risks to free choices over an individual's own leisure time, etc." (p. 4). He thinks that determining "how to balance the liberty interests of ordinary citizens against what many feel is a public health concern is very complex" (p. 2). In cases of obesity which "are not morally different from many other cases involving health risk" (p. 4), Merry posits, we must attempt to "balance state paternalism against the special privileges and relationships parents have with and toward their own children" (p. 3). Additionally, Merry argues that we must look at the risks state paternalism poses in validating and thereby strengthening the stigma attached to obese children. Labeling

obese children as being at risk “often carries moralizing baggage that contributes to the perceived risk” (p. 3). Children labeled in schools as *at risk* for any reason are too often “recipients of condescending treatment and lowered expectations” (p. 3), and those who statistically are most at risk of obesity are poor or belong to certain minority groups. Thus, labeling obese children as at risk, Merry says, may lead to “targeting the poor generally and specific ethnic minorities in particular” (p. TK).

Merry rightly argues that we should pay very close attention to *all* of the risks associated with state paternalism. While we as a society may agree that state intervention in promoting the health and welfare of children in some cases or with particular health risks may be beneficial, Merry urges us to always examine the risks associated with acting paternalistically. I would like it to go without saying that all risks ought to be examined when taking any course of action, particularly those that interfere or disrupt the liberty of others; however, it does not go without saying. Too many people—and we must worry most about those in positions of power and authority over many others—approach decisions with a one-sided view and do not look at all of the risks associated with their decisions. Thus, Merry poses a very important question: When is paternalism appropriate and when does it carry with it too many risks? Put another way, when does paternalism risk more than the actions it is trying to avert?

Universal Approaches to Addressing Childhood Obesity that Avoid Paternalism

When the risks of acting paternalistically outweigh those incurred by the targeted concern, we may need to look at alternative ways of addressing that concern. Merry suggests several alternatives to state paternalism in addressing the growing problem of child obesity. He asks that we consider putting warning labels on unhealthy and addictive foods, providing subsidies for nutritious and healthy food, taxing junk food, holding advertisers accountable for promoting unhealthy eating, and providing sound nutritional information to students and parents so they may make more informed choices. According to Merry, these are policies and practices that can be applied to the general public that address the risks of childhood obesity without incurring the risks associated with state paternalism.

While I agree that Merry’s alternatives do a lot to limit interference with parents and children as well as the intimacy of the family, they seem to interfere with the liberty of corporations and advertising agencies. To varying degrees, all rules, laws, regulations, and expectations imposed on people, groups, organizations, or firms interfere with the liberty of those for whom they are targeted. Given that the laws, regulations, and so on are designed to promote the health and well-being of people, they are all paternalistic in some sense, according to Merry’s definition. So, the questions then become: When do we impose rules, upon whom should the rules be imposed, and what sort of rules should they be? Is it more acceptable to interfere with the freedom of corporations than that of individuals? As small-business owners, my husband and I must follow more and more state and federally mandated rules and regulations every year, and it’s to the point where it is nearly

impossible, without having to pay the exorbitant price of a full-time lawyer, to even know or keep up with all the new rules. Such interference in the liberty of businesses and corporations is indeed an interference in my family’s ability to earn a living. Thus, limiting the liberty of corporations indirectly limits the freedoms of individual people. The state steps in and, in effect, says to business owners and corporate CEOs that it cannot trust us to look after the welfare of our employees so the government must impose rules.

When we operate within a paternalistic framework, as Merry’s article does, trying to find universal rules and regulations that look out for the health and well-being of citizens, we run into some very tricky questions about whose liberty we should protect in any given situation, the extent to which we should regulate people’s and organizations’ behaviors, and how we should balance the rights of people to live in freedom with the rights of people to live healthy and protected lives. Merry’s article, being limited to a paternalistic view, may not offer a broad enough perspective from which we can address these questions. The problem, as Merry argues, is not just obesity but paternalistic solutions to obesity. The answer to Merry’s concerns, then, may not lie within the standpoint of paternalism. Perhaps if we adopt an alternative framework, one that cannot impose the dangers of paternalism, we may shed some new light on how we can approach the problem of childhood obesity as well as other health risks children face, and this may enable us to further the important inquiry and analysis Merry begins.

Maternalism as an Alternative Framework

To understand how a maternalistic framework may be useful here, it is helpful to look at maternalism as it contrasts with paternalism. When we are being paternal, we are taking charge, making decisions for others, and having the attitude that our decisions are better than those for whom we are caring because they are not intelligent, informed, caring, or worldly enough to make the best decisions for themselves. Maternalism connotes a more nurturing approach to addressing a concern or problem. Traditionally, fathers were seen as decision makers for the family, mothers as caretakers. Traditional fathers’ roles called for fathers to help their children by making decisions for them, while mothers helped by trying to get their children to feel happy, safe, comforted, and loved. Paternal is more authoritative while maternal is more supportive. Of the two, then, paternalism is more limiting to the child’s liberty than is maternalism; it says to the child: I know what is in your best interests better than do you, and therefore you should give over your decision making (at least in certain areas) to me. Maternalism says to the child: If we work at this together, we can come up with a solution that meets all of our needs.

It is this attitude of “I need to step in because I know better than you what is best for you” that bothers many of us about governmental paternalism, because the government does *not* always know what is best for individuals or organizations, regardless of how well-intentioned the state may be. Just as the husband does not know what is best for his wife in “The Yellow Wallpaper,” having the best intentions and even some expertise does not mean that one will make the best decisions for others. Yet individuals and corporations also do not always know what is

in their own or others' best interests, nor can they always be trusted to act in ways that serve the interests of themselves or others. So what is the answer?

Some answers may come from approaching this problem in a more maternalistic framework. Susan Dodds (2000) claims that the risks of paternalism in the medical community continue to be addressed with the altered "image of the doctor-patient relationship from the presumed beneficent paternalism of the doctor, acting on the best (medical) interests of the compliant patient, to a contract between patient-consumer and doctor-service provider" (p. 213). The doctor's role is no longer one of imposing her will on the patients who submissively comply. Rather, the doctor-patient relationship is one of mutual respect where the doctor is recognized as an expert in medical affairs and thus qualified to give advice, make suggestions, and offer a plan of action, and the patient must use the advice and information to make his own choices about what is best for him.

Simply having the doctor offer advice, information, and suggestions, however, does not necessarily avoid paternalism. As McLeod and Sherwin (2000) argue, medical information oftentimes is complex and difficult to explain clearly and simply: "Even the most independent and self-reliant patient often feels overwhelmed and is inclined to defer to medical authority when facing serious health matters" (p. 267). Thus, a suggestion from a doctor may have the effect of a directive rather than merely one among several viable options from which the patient may choose. McLeod and Sherwin raise very interesting issues regarding liberty and oppression. One cannot simply escape the risks of paternalistic interference by calling on people in positions of authority and power to make suggestions rather than demands or rules. While the length of this paper does not allow for a discussion about how oppression makes the issue of paternalism far more complex than is shown in Merry's paper, it is worth looking into how *caring*, as defined and explained by Nel Noddings (2002), may provide some valuable insights into addressing the issue of paternalistic interference even for people who are oppressed in a society.

Noddings's ethic of care is a relational ethic; it requires that there is a caregiver and a carereceiver. This relational notion has powerful implications for our purposes here. If we approach the issue of childhood obesity with care, we must, by definition, recognize the fundamental and dynamic role of the carereceiver as part of the solution. One does not help a child in a caring manner if one does not first truly listen to the needs, feelings, experiences, and goals of the child. A caregiver does not impose her will on a child. Rather, a caregiver offers advice and information based on her ongoing and developing understanding of the child, not just on her own expertise, goals, and beliefs. According to Noddings (2002), paternalism need not be a concern if we treat the child with care or "attentive love [that] listens, it is moved, it responds, and it monitors its own action in light of the response of the cared for" (pp. 136–137). Doctor or parents, then, would not simply tell an obese child what to eat; they would instead take the time to identify the needs and feelings of the child and then offer the sort of help the child requires (and because each child will have different needs and experiences, each child will require a unique plan of treatment).

If the state mandates certain diets or treatment plans for obese children, such paternalism certainly runs the high risk of interfering with the liberties of the child and the parents, as Merry points out. If we keep caring in mind, the state could require that pediatricians take childhood obesity seriously as a health concern. It could also offer informational workshops on healthy eating and nutrition. It is then up to the parent, as well as the physicians, to use the information provided by state agencies and other sources to help the child only after establishing and maintaining a caring relation with the child.

The ethic of care recognizes that humans are social beings, interdependent upon one another. Thus, caring does not seek liberty through complete independence and self-sufficiency. Rather, according to Virginia Held (1993), caring seeks to promote "relations of empathy and mutual intersubjectivity" (p. 60). Addressing concerns of obesity with children in a caring manner, then, avoids paternalism because it includes the children in a genuine and loving way in determining what the best approaches are to helping them. The children's liberties are not threatened because from a feminist, caring framework, *liberty* is not defined as complete separation and independence from the parent. Children's liberties are enhanced and nurtured when they are loved, cared for, listened to, and understood, and they respond to the care not only by participating in the decisions about what is best for them but also by caring for themselves and adopting the practices and actions necessary to address their problems of obesity.

Merry raises very important concerns about paternalism when governments step in to try and protect the health and welfare of children. His entire discussion, though, operates within a paternalistic framework. Although he offers some interesting and, I think, worthy solutions, we may get even further by looking at this issue from a more feminist framework. The ethic of care offers promising insights into this issue, insights that may lead us even further in our understandings of the risks of paternalism and the possible ways we may avoid it while looking out for the welfare of our children.

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