How Can We (and Why Should We) Analyze the Ethics of Paternalistic Policies in Public Health?

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How can we perceive and address ethical challenges in public health practice and policy? One way is by using ethical concepts to shed light on everyday practices. This document is part of a series of papers intended to introduce practitioners, professionals and managers to some concepts, values, principles, theories and approaches that are important to public health ethics. The documents in this series are available at www.ncchpp.ca › Projects › Ethics.

Introduction

In the view of certain authors, "public health is in essence paternalistic because it tends to use the power of the State to intervene on behalf of the health of individuals (even where this has not been requested)" (Royo-Bordonada & Román-Maestre, 2015, p. 3). This type of statement is problematic for public health, because paternalism often has a strongly pejorative meaning and is used to criticize, disparage or dismiss policies, interventions or actions characterized in this way without further assessment (Elvebakk, 2015; Feinberg, 1986; Grill, 2013; Wikler, 1978). As Parmet points out, even when a policy is not actually paternalistic, attaching this label to it is a formidable rhetorical and political weapon, because it "resonates with a public that distrusts government and values individual liberty" (Parmet, 2016, p. 962). It follows, according to Bayer and Fairchild, that one of the central challenges for public health ethics is to "define those moments when public health paternalism is justified and to articulate a set of principles that would preserve a commitment to the realm of free choice" in liberal democracies, including that of Canada (Bayer & Fairchild, 2004, p. 492).

The purpose of this document is to equip public health actors to conduct a critical and nuanced ethical analysis of public health policies or population-based interventions accused or suspected of being paternalistic. This document offers indicators that will help public health actors determine whether a policy is actually paternalistic. Thus, they may become versed in arguments that can be used to refute unfounded accusations of paternalism and to reframe debate and analysis. For policies that, upon scrutiny, prove to be truly paternalistic, this document proposes a nuanced approach to their analysis that involves distinguishing between different types of paternalism and taking into account the values that a policy promotes as well as those on which it impinges.

The approach proposed in this document is rooted in a theoretical stance that fits broadly within the framework of political liberalism. **Political liberalism** refers to a set of political theories which assign great importance to the values of individual freedom and autonomy, without necessarily granting absolute primacy to these values. In order to reflect generally-held value for freedom and autonomy, in what follows we will, like the majority of authors discussing paternalism, propose adopting a generally antipaternalist stance for the ethical analysis of policies or interventions. This position should not be interpreted to mean that paternalistic policies are to be rejected without further analysis. Rather, it implies that a paternalistic policy or intervention should immediately be viewed as potentially problematic from an ethical standpoint and that further analysis should be conducted to determine if the policy is ethically justifiable; in fact, it may be justifiable for very good reasons. We believe that, whatever their underlying political orientation, public health actors can benefit from familiarizing themselves with this very widespread theoretical position, even if they ultimately interpret paternalism from another theoretical standpoint. Once familiar with the liberal interpretation of paternalism, they will be better prepared to argue with those who adopt this interpretation, often implicitly.

Briefing Note

For up-to-date knowledge relating to healthy public policy

Centre de collaboration nationale sur les politiques publiques et la santé

National Collaborating Centre for Healthy Public Policy

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To deepen understanding of paternalism and help public health actors conduct this type of ethical analysis, this document has been structured around five main questions:

- What is paternalism?
- What are some healthy public policies that have been *called* paternalistic?
- Why might we be attracted to policies or interventions that have been *called* paternalistic in public health?
- Why might (or should) we be reluctant to accept public policies that are *called* paternalistic?
- How might we conduct an ethical analysis of policies that are *called* paternalistic?

In the final, more practical, section, we offer a three-step approach to conducting a more nuanced ethical analysis of population-based policies or interventions that are accused or suspected of being paternalistic.

What is paternalism?

The term "paternalism," whose first use can be traced back to the end of the 19th century,[1] evokes the relationship between a father and his children through its Latin root *pater*, meaning "father" (Childress, 2013; Grill, 2011). Thus, paternalism is often first understood as referring to actions or interventions that are akin to the behaviour of a good father (or a good parent) towards his children. More specifically, paternalism refers to actions or interventions that are akin to those of parents who limit the freedom of their children or who make decisions for them, for their children's own good.[2]

There are many philosophical definitions of paternalism that detail and clarify this understanding based on the parental analogy. In this document, we will refer to Dworkin's much-quoted definition. We will also introduce a few distinctions proposed by various authors in the section *How might we conduct an ethical analysis of policies that are called paternalistic?*

According to Dworkin, "**paternalism**, is the interference of a state or an individual with another person, against their will, and defended or motivated by a claim that the person interfered with will be better off or protected from harm" (2014).

In other words, we are being paternalistic when we intervene to protect or promote the well-being of a person who does not desire such protection or assistance. Thus, "the normative core of paternalism," as stated by Grill, is "the conflict between on the one hand respect for liberty and autonomy and on the other hand the protection and promotion of well-being" (2013, p. 37). More specifically, "paternalism" refers to instances where the conflict between respect for autonomy or freedom and the principle of beneficence is resolved by privileging beneficence over individual autonomy and freedom (Grill, 2013). Thus, one is acting in a paternalistic manner when one infringes on the autonomy or freedom of people for their own good.

While paternalism exercised by the government or one of its representatives toward one or more populations is an important public health issue, the questions it raises nevertheless extend beyond the scope of public health action. Indeed, this type of paternalism – which we will refer to as "state paternalism" – more generally raises the question of where the boundaries lie of the areas in which a democratic government can legitimately intervene (Grill, 2013).

The issues associated with the limits of democratic legitimacy differ in several ways from the issues raised by the type of paternalism that can emerge between small numbers of individuals, such as physicians, their patients and their patients' relatives. This type of paternalism – which we will refer to as

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[1] To be more precise, according to *The Compact Oxford English Dictionary*, the first appearance in English of the term "paternalism" dates back to June 11, 1881 and is found in an article in the *Chicago Times.* According to the Centre national de ressources textuelles et lexicales, the term "paternalisme" was first used in French in 1894, in a book by J. Novicow, entitled *Les gaspillages des sociétés modernes : contribution à l'étude de la question sociale.*

[2] In fact, according to Grill, when the term became more common, "it was then mostly used to refer to more or less strategic benevolence in hierarchical relationships, such as that between King and subject, factory owner and worker, and owner and slave" (Grill, 2011, p. 1). This idea that paternalism implies a hierarchical relationship is probably connected to the visceral reactions that paternalism evokes in some persons. According to Smiley (1989), intervention that is truly paternalistic always takes place within the context of such unequal relationships where there is a risk of domination. This, according to Smiley, is one of the main problems with paternalism. We will revisit this idea.

"inter-individual paternalism"[3] – has been extensively discussed in the literature on bioethics in general, and more specifically in the fields of medical ethics and clinical ethics. One of the premises underlying the approach proposed in this document is that state paternalism varies sufficiently from inter-individual paternalism to require a different type of analysis. Moreover, this premise is widely accepted in the literature on public health ethics (Wilson, 2011).

If the term "paternalism" was not already well anchored in discourse to refer to actions or interventions that infringe on the autonomy or freedom of individuals for their own good, we might instead speak of "benevolent interference" or "benevolent restraint" (Grill, 2011). This way of speaking would have the advantage of avoiding some of the negative connotations that are almost automatically associated with the term "paternalism," which seems to cast the state, public health or physicians in the role of a father (or a parent), who lays claim to the moral superiority that allows him to decide what is good for his children, citizens or patients. Hence the frequent use of the term "Nanny state" to criticize and reject without further analysis government interventions that are *called* paternalistic (Magnusson, 2015). However, although this image and the reactions it provokes may impede discussion about policies or interventions, we believe that it is still better to use the word paternalism here to examine the phenomenon to which it refers in the literature. We therefore make use of it, while introducing distinctions that will lead to more nuanced analyses.

What are some healthy public policies that have been *called* paternalistic?

Many public policies are at times referred to as paternalistic in the media and in the literature on the subject, some of which is widely accepted in Canada. Given that the association of a policy with a form of paternalism is a powerful rhetorical weapon that can be used to frame debate and to try to dismiss a policy without further analysis, it is not surprising that some policies have been wrongly accused of being paternalistic. That said, to indicate the range of policies that have been *called* paternalistic, without passing judgment on the legitimacy of this characterization, here is a selection of such policies specific to the field of healthy public policy. Included are, for example, policies that:

- Prohibit the sale of cigarettes to minors;
- Require motorists to buckle their seat belts;
- Require motorcyclists or cyclists to wear a helmet;
- Require consumers to purchase cars with airbags;
- Prohibit swimming at public beaches or swimming pools in the absence of a lifeguard;
- Use zoning laws to limit the presence of fast food restaurants near schools;
- Limit the serving sizes of sugary drinks sold by fast food restaurants;
- Place a tax on sugary drinks, alcohol, cigarettes, etc.;
- Require the addition of fluoride to municipal drinking water;
- Require businesses to recall products that can cause various health problems;
- Empower public health inspectors to close restaurants or other facilities deemed unsanitary;
- Prohibit the sale of medications that have not yet been approved by regulatory authorities;
- Prohibit the purchase of certain medications without a prescription;
- Require workers to contribute to a public pension plan.

All these policies and many others have been characterized as paternalistic because they seem, at least at first glance, to force or to more or less strongly encourage some people to change their behaviour or to make certain choices to protect, or even improve, their health, in particular, or their well-being more generally. One may wish to impose a tax on sugary drinks, for example, so that consumers will drink them less, will drink water more and will, consequently, be healthier, whether they like it or not. That said, as shall be seen below, a more in-depth analysis can reveal that some of these policies are not paternalistic, that others are only partially so, and that they may be representing different types of

[3] Some authors, such as Désy (2009) and Dworkin (2014), use the expressions "broad" and "narrow" to discuss a similar distinction.

paternalism, some of which are easier to justify on ethical grounds than others.

However, before presenting our proposed approach to conducting such an analysis, we will outline the main reasons that public health actors can be attracted to paternalistic policies and the reasons they can also be reluctant to promote them. These reasons will help clarify the main issues related to paternalism.

Why might we be attracted to policies or interventions that are *called* paternalistic in public health?

This question merits attention because, as mentioned above, the term "paternalistic" is usually used to criticize and dismiss policies or interventions labelled as such, without further analysis. The literature on the subject presents three main reasons for the attraction that paternalistic policies and interventions can exercise in public health. All three focus on the positive side of paternalism, namely the protection or promotion of the well-being of those affected.

Because they can help reduce the burden of noncommunicable diseases and injuries

The first reason why we may be attracted to policies or interventions that are *called* paternalistic in public health stems from a shift in the causes of mortality and morbidity during the 20th century in high-income countries such as Canada. During this period, injuries and noncommunicable diseases (also called chronic diseases), which include cancer and some heart diseases, gradually replaced infectious diseases as the leading causes of mortality and morbidity (Lalonde, 1974, Omran, 2005, cited in Parmet, 2016).

In response to this epidemiological shift, public health increasingly became interested in policies and interventions aimed at changing people's lifestyles in ways that would protect or promote their health. We have increasingly focused on interventions which, for example, encourage or require people to eat healthier foods, to reduce, or even eliminate, the consumption of certain harmful substances, to be more physically active and to adopt safer behaviours. Many of these interventions are referred to as paternalistic because they mainly seek to protect people, sometimes against their will, from the negative effects their own choices can have on their health and well-being. According to Wikler (1978), the turning point that marks this shift in practices within Canada coincides with the 1974 publication of the report entitled, *A new perspective on the health of Canadians*, better known as the "Lalonde report."

Because they can be more effective or efficient

The second reason advanced to explain the appeal of some paternalistic policies is the effectiveness or efficiency with which they would (or could) improve population health as measured against the abovementioned epidemiological shift. It is possible, to take just one example, to pass a law requiring the labelling of trans fat content in foods so as to reduce the incidence of heart attacks and heart disease in the population. It seems likely, however, that one could further reduce the incidence of heart attacks and heart disease by completely prohibiting the addition of trans fats to foods (Brandt, 2017). Thus, the latter policy, which has been described as paternalistic, could help fulfill one of the two main aims often attributed to public health, namely that of improving the health of the population (Agence de la santé et des services sociaux de Montréal, 2012; Butler-Jones, 2008; Powers & Faden, 2006).

The appeal of some policies that are *called* paternalistic is sometimes strengthened when behaviour that public health action seeks to modify in the population is also the subject of intense marketing on the part of industry (Holland, 2007; Moore, Yeatman & Davey, 2015). This is the case, in particular, when it comes to eating habits, consumption of alcohol or tobacco products, or travel patterns. In these areas, companies sometimes spend large sums to sell their products, and this can prompt behaviour that is harmful to the population's health. Thus, public health actors trying to get their messages across very often have the impression that they are not fighting on equal terms. Given this context, paternalistic interventions that more or less directly regulate the behaviour of individuals are sometimes regarded as less expensive and, above all, more effective than information and awareness campaigns (Holland, 2007; Moore et al., 2015).

However, it should be noted that there are other nonpaternalistic ways to intervene in such contexts. One option would be to step up action on the social determinants of health by adopting more structural

policies that aim, for example, to reduce poverty and promote the accessibility of quality education. This type of intervention can, by improving the living conditions of individuals and the options to which they actually have access, lead to changes in behaviour that are made by choice and that are not imposed from outside, as is the case with paternalism (Buchanan, 2008). The apparent or real difficulties tied to the adoption of such structural policies in the short and medium term may partially explain the attraction exerted by certain paternalistic policies and interventions that aim instead to directly change or control the risk behaviours of individuals.

Because they can be more equitable

The other aim often attributed to public health is that of reducing health inequalities that are deemed unfair or inequitable (Agence de la santé et des services sociaux de Montréal, 2012; Butler-Jones, 2008; Powers & Faden, 2006). Thus, it should be noted that interventions aimed at informing people of the risks associated with their lifestyle, without interfering with their freedom to maintain or abandon unhealthy habits, do not always affect different population groups in the same way. In fact, the literature shows that once they have been informed of the consequences of their choice or the existence of voluntary assistance programs that can help them change their behaviour, people who are better-off socioeconomically are more likely to modify their behaviour than less advantaged people (Lorenc, Petticrew, Welch & Tugwell, 2012; Mechanic, 2002). Since these more advantaged people are generally already healthier, it follows that information campaigns and various types of voluntary support mechanisms can contribute to increasing inequalities in health within a population, even when they improve the overall health of this population.

Such an increase in social inequalities of health seems to have resulted, for example, from the campaign against tobacco use (Kunst, Giskes & Mackenbach, 2004; Public Health Ontario, 2013). In such a case, certain policies that are *called* paternalistic, such as a ban on cigarette sales, may therefore seem fairer, because they have the potential to improve the health of the population in general, while helping reduce inequalities in health (Grill & Voigt, 2015). As Grill points out, in certain cases like this one, "avoiding benevolent legal interference will tend to favor the better off at the expense of the worse off" (2011, p. 20).

Why might (or should) we be reluctant to accept public policies that are *called* paternalistic?

Despite the attraction that certain paternalistic public health policies or interventions can exercise, we should not forget, as Nys reminds us, that here also "the road to hell is paved with good intentions" (2008, p. 66). The literature on paternalism offers at least three main reasons why we might be (or should be) reluctant to make use of paternalistic policies or interventions. These three reasons are often threaded into a single argument. The first two articulate a principled opposition to paternalism with emphasis on its negative aspect, namely its interference with individual liberty or autonomy. The third instead challenges the veracity of the positive aspect of paternalism, questioning whether the well-being of those affected is actually being protected or improved.

Because competent adults should not be treated like children

The term "paternalism," as mentioned above, at once recalls the image of a father or of parents who decide what is good for their children, because they believe that children are not competent or mature enough to decide for themselves what is good for them in areas of activity often associated with private life (what they eat, what they buy, how they travel, how they have fun, etc.) (Conly, 2016; Feinberg, 1986; Grill, 2011; Nielsen & Landes, 2016). The objection here is that paternalistic policies would thus infantilize competent citizens, who would then be treated like children or like adults who are not competent to choose what is good for themselves (de Marneffe, 2006). The state, or the paternalistic person, thus lays claim to a kind of moral superiority and adopts a moralistic attitude toward those affected by the paternalistic intervention by substituting its decision for that of the persons affected (Conly, 2016; Feinberg, 1986; Shiffrin, 2000). As a rule, paternalistic interventions embody a lack of respect for the autonomy of the people affected. On the basis of this argument, they should therefore be avoided.

Implicitly, however, this criticism presupposes that it might sometimes be legitimate for the state to act in a paternalistic way toward those whose autonomy is not sufficiently developed for them to be considered

capable of making informed decisions, as for example with children or adults that are deemed non-competent (Parmet, 2016). It also implies that it might be legitimate to intervene in a paternalistic way with generally competent adults, but in circumstances where their autonomy might be compromised (e.g., in the absence of crucial information, when they are under pressure, etc.).

BECAUSE ONE SHOULD BE FREE TO DO AS ONE WISHES AS LONG AS IT DOES NOT HARM OTHERS

It is generally accepted that it is legitimate for the state to interfere with the freedom of competent adult citizens to prevent them from harming others (Kymlicka, 2002; Parmet, 2016). This is why people tend to agree that the state can legitimately establish various mechanisms to reduce the risk that people might hurt others when driving a car. These include lowering speed limits or installing traffic-calming measures around schools, for example. This is also why we think that the state can impose a quarantine period on carriers of a highly contagious and deadly virus or can ban smoking in some areas to limit the exposure of others to secondary or even tertiary smoke. The state is acting to protect each citizen from the risks associated with the behaviours of others. This role of the state is little disputed, at least in its broad principles.

On the other hand, many have doubts about the legitimacy of state interventions that interfere with the freedom of citizens mainly for the purpose of protecting them from the negative consequences of their own decisions or encouraging them to make choices that could improve their well-being. In other words, many have doubts about the legitimacy of paternalistic interventions that seem to infringe on a sphere of personal freedom that the state should instead be protecting (Grill, 2011).

In ethics, the idea that it would be legitimate for the state to protect citizens from others, but not from themselves is called the **harm principle**. Originally formulated by John Stuart Mill, this antipaternalist principle is often thought to lie at the core of the liberal approach to policy. The harm principle helps delineate a sphere of personal freedom within which each citizen has the right to act freely according to his or her conception of the good life (and even to make mistakes in pursuit of this conception of the good life) (Kymlicka, 2002; Rawls, 1997). Thus, by remaining neutral with regard to defining the good life, the state avoids what is called "legal moralism" or "perfectionism" (Kymlicka, 2002; Wikler, 1978). In other words, it avoids imposing or privileging one conception of the good life at the expense of others.

One of the important functions of the harm principle is to protect minorities or marginalized groups against the use of coercive state power to impose the values of the majority or of those in power. In particular, it protects marginalized groups from the type of paternalism called "**perfectionist paternalism**" because the latter imposes (often surreptitiously, sometimes less subtly) one conception of the good life on people, on the grounds that this "good life" will enhance their well-being. According to Thomas and Buckmaster, this type of paternalism has often "sought to control the lifestyles of the poor" (2010, p. 1) and, one might add, the lifestyles of those belonging to less-empowered or disempowered groups, including those composed of women, Indigenous peoples or racialized persons, for example. It is sometimes possible to identify this type of paternalism in public health by comparing activities or lifestyles presenting similar health risks, noting which are targeted by interventions and which are not (Wikler, 1978). Glantz (2016), for example, wondered why there is a push to limit the serving size of sugary drinks in fast food restaurants, but there is no talk of limiting the size of wine bottles in high-end restaurants.[4]

Although we reserve judgment concerning the validity of this example, the fact remains that respect for the harm principle and neutrality as regards the good life, which is often considered central to the liberal approach to policy, represents a way to take into account the plurality of conceptions of the good life in our multicultural societies and to protect a space where this plurality can be expressed. It follows that a liberal context is generally an antipaternalist one. Within such a context, paternalistic interventions are, on principle, initially viewed as ethically problematic infringements on the

[4] It is possible to observe here the tension that exists between, on the one hand, seeking to reduce health inequalities or inequities that are related to lifestyle and, on the other hand, wishing to avoid the perfectionist paternalism that targets people who are less advantaged in socio-economic terms, at least as regards interventions that are not aimed at changing the social structures that give rise to these social and health inequalities.

space reserved for personal liberty that the state is supposed to protect (Dworkin, 1971; Grill, 2011). This does not mean, however, that a more in-depth ethical analysis may not conclude that these interventions can be justified ethically.

Because no one is in a better position than me to know what is good for me

Added to the two aforementioned objections to paternalism is John Stuart Mill's view, to which some subscribe, that no one, and especially not the state (which makes decisions at a distance from individuals and using overarching mechanisms such as policies and laws), is in a better position than each competent adult citizen to know what is good for him- or herself (Childress, 2013; Goodin, 1990; Mill, 1990; Wikler, 1978). In other words, even though I may make mistakes, I am, in general, in a better position than anyone else to know what is good for me (Kymlicka, 2002). If someone else, or worse still, the state, were to intervene to influence or constrain my choices, they would risk being wrong most of the time and harming me instead of enhancing my well-being, in addition to infringing on my freedom or autonomy (Mill, 1990; Thomas & Buckmaster, 2010; Wikler, 1978).

This critique of paternalism is based on two empirical hypotheses, namely (1) that we are generally better placed than the state to know what is good for ourselves and (2) that our actions are more aligned with this knowledge when the state does not intervene than when it attempts to intervene. The general validity of these hypotheses has been called into question in recent decades by evidence derived from research on the social determinants of health and in the fields of psychology, behavioural economics and marketing. This research has demonstrated that our reasoning and our decisions are often influenced by a variety of factors without our knowledge (Conly, 2013; Heath, 2015; Kahneman, 2011; Thaler & Sunstein, 2008). Regardless of how far these hypotheses can be called into question, which cannot be explored here, the fact remains that this critique itself opens the door to the possibility that paternalistic policies or interventions could in fact be beneficial to the persons they affect, and could therefore potentially be legitimate. In other words, this critique can be interpreted as a call for evidence that a paternalistic policy or intervention is effective at improving or protecting the well-being of the people it affects (Thomas & Buckmaster, 2010).

This line of criticism is often strengthened by the formulation of a third hypothesis, one that is philosophical in nature, which holds that a subjective conception of well-being should be used to assess the merits of a policy or intervention (Grill, 2011; Wikler, 1978). In other words, according to this hypothesis, for an intervention to be beneficial to me, I must be convinced that it improves my well-being. Thus, the assessment is based on my value system and my conception of the good life, and not on the values of others, on those of a physician, or on a list of objective indicators (such as health status or life expectancy). With regard to health, this hypothesis implies that it would be illegitimate to assume that everyone wants to be healthy and, above all, that everyone assigns greater importance to health than to other values with which health may conflict (pleasure, family, friendship, religion, social status, etc.)[5] (Nys, 2008; Resnik, 2014). When practitioners forget that health is not always the most important value within the population and they try to impose it by means of interventions aimed at improving health (some of which are paternalistic), they stand accused of "healthism" (Cribb, 2010).

When well-being is defined subjectively, opposition from the person whose well-being an intervention is intended to improve or protect is perhaps the best indication that the intervention in question presupposes a conception of well-being to which that person does not subscribe (Grill, 2013; Rajczi, 2016; Wikler, 1978). The fact that it is possible to improve the health (objective) while diminishing the well-being (subjective) of someone who assigns greater value to something else is one of the reasons why free and informed consent is so important in the clinical world and why paternalistic interventions that do not meet with consent are viewed in such a poor light and are severely criticized in the context of relationships between caregivers and patients (Flanigan, 2013).

[5] The need to choose between health and other dimensions of well-being is difficult to understand and analyze when treating health as "a state of complete physical, mental and social well-being" (World Health Organization, 1946), because the concept of "health" is then broadened to include all aspects of well-being (Weinstock, 2015).

In public health, especially when analyzing interventions that are planned for and enacted at the population level, such as public policies, it is not always possible to tailor interventions to the specific needs of each affected individual, or to discover their preferences or obtain their free and informed consent, as is usually the case in clinical interventions (Grill, 2011; Wikler, 1978; Wilson, 2011). The differences between certain public health practices and typical clinical practices are considered by most authors writing about public health ethics to be significant enough to require separate sets of tools for analyzing public health issues and those that arise in a clinical setting.[6] To demonstrate this by way of absurdity, consider requiring informed consent from everyone who might be affected by a given public policy before it can be adopted. This would give every citizen the right to veto and would completely paralyze the government apparatus (Grill, 2009; Ortmann et al., 2016; Wilson, 2011). We turn now to our proposed approach to analyzing population based policies and interventions that are *called* paternalistic.

How might we conduct an ethical analysis of policies that are *called* paternalistic?

As noted above, certain public policies that are *called* paternalistic seem appealing because they can be effective, efficient or fair, particularly as a way of reducing the burden of chronic disease and injury or improving health and well-being more generally. At the same time, we may be reluctant to implement them because they can constitute a lack of respect for competent adults, interfere within the sphere of personal freedom that the state is supposed to protect and even negatively affect the well-being of some of the people they are, in fact, intended to help. How can the "pros" and "cons" of a paternalistic public health policy be assessed from an ethical standpoint to form the basis for an informed decision?

Among the normative positions represented in philosophical debates about paternalism, the most prevalent position in the contemporary literature in general, as well as in bioethics and public health ethics in particular, is to assume that "paternalism is morally wrong unless certain conditions are fulfilled" (Grill, 2013, p. 33). In other words, according to this position, if a public policy is paternalistic, this counts against it during an ethical assessment, because it infringes on freedom or autonomy for the wrong reasons. This, however, does not eliminate the possibility that other aspects of the policy (e.g., the extent of its benefits) could justify it (Grill, 2011 & 2013). This is the overall position that we also intend to adopt.

The literature on paternalism develops three main complementary strategies that can help public health actors reflect on public policies that are *called* paternalistic. We have summarized these and organized the information in the form of steps that can be followed to guide ethical analysis of policies accused or suspected of being paternalistic. The first step is to determine if the policy is actually paternalistic. The second step is to distinguish different types of paternalism and to separate the most problematic from the least problematic of these. Finally, the third step is to use a more general public health ethics framework to extend analysis to all of the values and issues raised by a policy and to further structure the ethical analysis and deliberation.

In this section, each of the steps is summarized in a green box. Included in other boxes are questions intended to stimulate reflection.

STEP 1 - DETERMINE IF THE POLICY IS ACTUALLY PATERNALISTIC

As was mentioned in the introduction, associating a policy with paternalism is a formidable rhetorical and political weapon which can be used to discredit and dismiss a policy without further consideration. It follows that policies are sometimes accused of being paternalistic for strategic reasons, even though the accusation turns out to be unfounded. The first step we propose in carrying out an ethical analysis of a policy accused or suspected of being paternalistic is, therefore, to determine whether or not the policy really is paternalistic.

To do this, two approaches have been proposed that are based on the definition of paternalism proposed by Dworkin (cited above) which states that interfering against a person's will is paternalistic if this interference is "defended or motivated" by the belief

[6] For a notable exception with respect to paternalism, written from a libertarian state perspective, see Flanigan (2013).

that it will protect or enhance the well-being of that person. The first approach focuses on identifying the reasons used to justify an intervention or policy (Grill, 2013), while the second approach focuses on identifying the motives or intentions of the policy's agents (physicians, legislators, etc.) (Shiffrin, 2000).[7]

As a way to assess public policies, or any intervention that is chosen and implemented by a set of diverse actors, the approach focused on analyzing the reasons that counted "for" and "against" a policy's justification seems more suitable than the approach focused on the motives of the actors involved (Grill, 2009; Grill, 2013; Wilson, 2011). The latter approach is potentially more appropriate in the case of actions attributable to specific individuals, as is more often the case in clinical situations (Grill, 2013).

Because policies are broad intervention tools, they tend to have different impacts on different groups and tend to pursue several goals at once. Therefore, they are generally justified by a range of reasons. For example, a policy that would make flu vaccinations mandatory for health workers could be adopted in order to:

- Improve the well-being of certain workers against their will (thus, through paternalism);
- Improve the well-being of certain workers with their consent (thus, through beneficence);
- Promote or protect herd immunity (thus, for a common good);
- Prevent workers from harming others by transmitting the virus to them (thus, by virtue of the harm principle);
- Protect the most vulnerable among us (thus, in support of justice, equity, solidarity, etc.);
- Prevent workers from imposing a burden on the community (thus, in support of justice, solidarity, efficiency, etc.);
- Etc.

When an approach focused on reasons is adopted, the central question during the first stage of an ethical analysis thus becomes the following: are one or more paternalistic reasons used to justify the policy? In other words, does the policy interfere with the population or groups within it against their will, in order to protect or improve their health or well-being?

It is important, in answering this question, to carefully consider all the groups that will be affected in one way or another by the policy, focusing special attention on the most marginalized groups which could, without this precaution, escape attention. It is also very important to consider the policy from their perspective, ideally by inviting them to participate in the policy's analysis.

To avoid confusing a paternalistic reason with another type of reason, it may be useful to briefly consider the differences between a paternalistic policy and:

- An infantilizing policy;
- A beneficent policy;
- A policy based on the harm principle.

A paternalistic or an infantilizing policy?

Even when they are not paternalistic, policies or interventions can be perceived by some people to be infantilizing. One example would be awareness-raising campaigns designed to communicate information about the benefits of physical activity or healthy eating to inform decision making. Such interventions may give some people the impression that they are being treated like children who are unable to independently choose what is good for themselves. It may be legitimate to criticize such interventions on these terms, but we cannot legitimately criticize them as a form of paternalism if they do not interfere with the freedom of the people they seek to protect or help.

> In summary, when determining whether a policy is actually paternalistic and not just infantilizing, it may be appropriate to ask the following question:
>
> - Does the intervention or policy actually interfere with the freedom of the people affected?

A paternalistic or a beneficent policy?

Certain policies that seek to promote or protect the health or well-being of the population are sometimes perceived as being paternalistic, when in fact they are simply beneficent. While beneficent and paternalistic policies may have the same overall goal – improving or protecting well-being –, only paternalistic policies interfere, against the will of

[7] For a hybrid approach, that examines both reasons and intentions, refer to de Marneffe (2006).

those affected, with the autonomy of these people and their freedom to pursue this same goal. It is therefore important to verify whether or not policies in fact involve unwanted interference.

To do so, it is at the very least necessary to define what is meant by "interference," by "freedom" and by "will." There exist numerous schools of thought regarding these three concepts and they are the subject of an extensive body of literature. We limit ourselves here to presenting two broad schools of thought, classified under the headings "negative freedom" and "positive freedom," which will illustrate how interference can be understood as an infringement on these freedoms.[8]

We begin by defining what we mean by **negative freedom.** It is characterized as negative because it is defined negatively, that is, as the absence of constraints or interference with individuals' choices (Berlin, 1969). One is free, in other words, when one is neither forced or induced to do what one does not want to do nor prevented or discouraged from doing what one wants to do. Thus, a policy interferes with negative freedom when it limits the options available, for example by banning the sale of cigarettes, or when it influences choice, for example by taxing sugary drinks.

In 2007, the Nuffield Council on Bioethics proposed a tool in the form of a conceptual ladder for assessing the degree of interference with negative freedom (see Figure 1). This ladder arranges interventions in order: at the bottom of the ladder are the options that interfere the least with negative freedom, such as monitoring or informing activities, and on the ladder's upper rungs are those that interfere the most with negative freedom, such as restricting or eliminating options. In other words, the higher a policy or intervention is located on the ladder, the more it interferes with negative freedom.

Interference with negative freedom (+ at top, - at bottom)

Intervention	Example
Eliminate choice	Ban cigarettes and trans fats
Restrict choice	Limit fast-food restaurants around schools
Guide through disincentives	Tax sugary drinks; limit the supply of parking spaces
Guide through incentives	Subsidize public transit
Change default option	Change the default option from French fries to salad
Enable choice	Build cycle paths; offer healthy food choices in public arenas
Inform	Mandatory nutrition labelling
Do nothing or monitor	Monitor trends in overweight and obesity

Figure 1 Assessing the degree of interference with negative freedom using the Nuffield Council on Bioethics' (2007) intervention ladder[9]

The ladder proposed by the Nuffield Council on Bioethics reflects a view of the state that corresponds to the stewardship model. According to this model, the state has a certain duty to promote and protect population health. However, when the ladder is extracted from the report in which it is presented and used as a stand-alone tool, it can be used for purposes other than those intended by its authors. Indeed, referring to the ladder alone, it would seem that the best thing the state can do for individual freedom is, simply, to do nothing. It seems to imply that every citizen is born free, that any state policy or intervention has the potential to interfere with this freedom, and that no policy or intervention could be necessary or favourable to the exercise of this freedom. Building bike paths, for example, to provide a safe alternative for people who would like to ride a bike instead of driving, appears on the ladder as a minor infringement on freedom, whereas it would perhaps be more appropriate to interpret it as an intervention that increases freedom of choice by improving the available travel options.

[8] It is important to note that other authors have discussed ways of understanding different types of paternalism based on other conceptions of freedom or autonomy. Carter, Entwistle and Little (2015), for example, propose an understanding of paternalism based on three dimensions of relational freedom: self-determination, self-governance and self-authorization. Pettit (2015) suggests that paternalism can be understood with reference to a neo-republican conception of freedom, where the latter is understood as non-domination. And, finally, Owens and Cribb (2013) and Wardrope (2015) propose an analysis of paternalism informed by an understanding of relational freedom and based on the capabilities approach.

[9] The ladder has been adapted so that the examples are relevant to the broad field of public policy.

To provide public health actors with a tool that reflects a more positive vision of the state and its policies, Griffiths and West proposed a different ladder in 2015 (see Figure 2). This ladder is based on what is referred to as **positive freedom**. According to this conception of freedom, policies that help individuals to make informed decisions or help make accessible a range of worthwhile options should be viewed as policies that promote, rather than interfere with, individual freedom. In other words, according to this conception of freedom, "freedom requires not merely the absence of constraints but also sufficient power and resources - material, social and psychological - to pursue one's own ends effectively" (Griffiths & West, 2015, p. 1095).

Based on this positive conception of freedom, Griffiths and West suggest an alternate way of classifying the interventions targeted by the Nuffield Council on Bioethics (and add three more categories). At the bottom of their ladder, they place interventions that interfere with freedom, namely, those that encourage, discourage, restrict or eliminate options. In the middle of their ladder are options that would have no impact on freedom, namely the absence of intervention, monitoring or the replacement of one default option with another. Finally, at the top of the ladder are interventions that would promote freedom by informing, educating for autonomy, ensuring an option is available, enabling choice and those resulting from collective self-binding. We will return shortly to this last intervention category.

Figure 2 **Assessing the effects on positive freedom using Griffiths and West's (2015) intervention ladder**

The idea underpinning this ladder is that some state interventions would protect or promote freedom, some would not affect freedom, and others would actually interfere with it. Since paternalism involves interference with freedom, only the latter interventions could thus be characterized as paternalistic; the others could be beneficent if they are intended to improve people's well-being or health, but they are not paternalistic.

It could be interesting to use these two ladders in conjunction, because they shed light on different aspects of individual and collective freedom. Indeed, when using only the Nuffield Council's ladder, it is easier to forget that some policies can enable choice or improve the range of available options without infringing on freedom. Conversely, when using only Griffiths and West's ladder, it is easier to forget that some policies can, for example, inform or educate people against their will, as is the case, for example, when certain communities oppose information campaigns for cultural or religious reasons.

At the very top of Griffiths and West's ladder (Figure 2) is an interesting proposal which lends substance to the idea that the same policy can have a different status depending on whether it interferes with the people it affects against their will or with their consent. Griffiths and West are proposing that certain policies that limit available options or that influence choice be conceived of as the expression of a fundamental collective freedom. This proposal has its roots in conceptions of policy that are more communitarian, republican or relational than liberal, but it is not necessarily incompatible with political liberalism (Buchanan, 2008; Carter et al., 2015;

Griffiths & West, 2015; Grill, 2009; de Marneffe, 2006; Nys, 2008; Owens & Cribb, 2013; Parmet, 2016; Pettit, 2015; Wardrope, 2015).

To illustrate this proposal, here is a similar case, but one which pertains to the individual level. In some jurisdictions in Canada, compulsive gamblers can voluntarily register on a casino exclusion list as a way to help themselves resist temptation. This acts as a sort of motivational crutch[10] that compulsive gamblers can set in place when temptation is not too strong to strengthen their resolve at times when temptation is stronger. Their action can be seen as interfering with their future negative freedom, because an option will not be available to them. But it can also be interpreted as an expression of their current positive freedom, because they wish to use this motivational crutch. They are agreeing, in a sense, to future interference.

Thus, Griffiths and West's ladder allows certain policies to be conceived of as collective tools that citizens may use to achieve their goals by eliminating options they do not want to have or that they deem less important than others. This opportunity to collectively set limits, to self-limit or self-govern, in a democratic context, falls legitimately within the scope of the mandate to protect the population given to government bodies responsible for public health, public safety, environmental protection, etc. (Bateman-House, Bayer, Colgrove, Fairchild & McMahon, 2017). In general, we do not want to be individually responsible for checking or having someone check the safety of food, medications or other products that we buy. It is much more efficient socially and individually to have a government agency take care of this, thus freeing up our time so we can devote our energy to making choices and doing things that are important to us (Conly, 2013). A similar argument can be advanced in support of the obligation to participate in a public health insurance system or public old-age pension systems, which are usually much more efficient and equitable than those the free market can offer.[11]

On both the collective and political levels, it is obviously much more complicated and delicate to determine if there is consent for interference than it would be on the individual level, because state intervention often involves many groups and persons who are affected differently and have diverse opinions about policies and interventions (Parmet, 2016; Wilson, 2011). Some authors maintain that the democratic origin of government policies and interventions is sufficient reason to assume the implicit consent of citizens (Nys, 2008), but such blind trust in democracy too quickly brushes aside the possibility that, when in power, certain groups can impose their preferences on minorities or marginalized groups (Holland, 2009; Nielsen & Landes, 2016; Parmet, 2016). Therefore, before concluding that a policy is not paternalistic because it embodies the will of a population to impose self limits, it is very important to ensure that the group wishing to impose limits is the same as the one that will be limited (Parmet, 2016).

In summary, when trying to determine whether a policy that is perceived as paternalistic should instead be understood as beneficent, it can be useful to reflect on the following questions:

- Does the policy actually interfere with the freedom of the individuals it is intended to help or protect?
- Should the policy instead be viewed as having a neutral or even a positive effect on the freedom of the people it affects?
- If the policy interferes with the freedom of certain persons, were the latter involved in the process of developing the policy or intervention? Given their level of involvement and their opinions, can they be thought of as having consented to this interference?
- Were the effects on individuals belonging to minorities or marginalized groups and the opinions of these groups thoroughly considered?

[10] The expression used to refer to this type of motivational or cognitive crutch is "environmental scaffolding" (Heath, 2015). The general idea is that we are constantly organizing our environment (physical, social, etc.) to improve our motivational and cognitive abilities. This is what we are doing, for example, when we decide to buy a small bag of chips instead of a big one or by not having sweets at home so we do not have to fight temptation on a daily basis.

[11] Some of the public policies described as paternalistic are state interventions that address what are referred to as "collective action problems" that the free market, in the best of cases, cannot solve efficiently or, in the worst cases, exacerbates. To learn more about collective action problems, see, for example, Heath (2001).

A paternalistic policy or a policy based on the harm principle?

Paternalistic policies are intended to protect people from themselves, not from the actions of other people. Policies that seek to protect individuals against the actions of others are based instead on the harm principle, a principle that is generally accepted. These two types of policies are sometimes confused, in some cases because it is difficult to distinguish between them, but in others because a deliberate effort is made to confuse them.

An example can serve to illustrate how it can be difficult to determine whether a policy is justified on the basis of a paternalistic reason or on the basis of the harm principle. The decision to eat junk food regularly can be viewed as a personal choice that the state should not interfere with because it only affects the person making this choice.[12] However, contrary to initial appearances, such a choice can potentially affect other persons (e.g., family) and the community (e.g., higher health costs). If it becomes evident that such a choice entails a cost to society as a whole, once all the costs (e.g., health care costs, loss of productivity, etc.) and all the savings (shorter public pensions, less health care needed for seniors, etc.) are calculated, then, it would be possible to formulate a nonpaternalistic justification for taxing junk food, so that those who generate these costs do not impose them on others (Heath, 2010; Wikler, 1978). Moreover, this is one of the arguments generally used to justify the taxation of various products, including cigarettes. A specific tax that would result in consumers directly paying for the costs they generate can be based on the harm principle, but any additional tax could be described as paternalistic if the goal is to improve or protect the health of consumers.[13] When the tax exceeds the direct cost, it could be partly based on the harm principle and partly paternalistic.

A policy based on the harm principle may also be presented as if it were a paternalistic policy for strategic reasons. Consider, for example, a policy that aims to protect consumers by requiring companies to meet quality standards. When consumers do not want this protection, the policy is said to be "indirectly paternalistic" (Dworkin, 2014; Feinberg, 1986), because it interferes with people's freedom to buy, for example, products that carry certain risks that they are willing to assume. Thus, the policy should be analyzed with respect to, among other things, this paternalistic component. However, when consumers want this protection, the policy protects them, rather than the shares of companies whose products are potentially harmful to health. In such a case, therefore, the policy would be better understood as being based on the harm principle and not as a form of paternalism (Griffiths & West, 2015; Mariner, 2014).

In summary, when trying to determine whether a policy that is perceived as paternalistic should instead be understood to be based on the harm principle, it can be useful to reflect on the following questions:

- With whom or what does the policy interfere? Citizens/consumers or businesses?
- Who does the policy seek to protect? The persons with whom it interferes, other persons or society in general?
- Who supports such protection and who opposes it?

Summary: Step 1

The central question: Is the justification for the policy based on one or even several paternalistic reasons?

It is important, in answering this question, to thoroughly consider all the groups that will be affected in one way or another by the policy, focusing special attention on more marginalized groups which could, without this precaution, escape attention. It is also very important to consider the policy from their perspective, ideally by inviting them to participate in the policy's analysis.

[12] We are leaving aside here the issue of whether framing this in terms of personal choice is justified in light of the literature on the social determinants of health.

[13] A discussion of this topic is beyond the scope of this document, but it is important to realize that the use of such arguments to justify certain taxes introduces the user-pay concept into discussions of the relationships between citizens, and between citizens and the state. It can also contribute to undermining the social solidarity that forms the basis, for example, of health insurance systems, by introducing the idea that people should pay for their own health care when they can be held responsible for their illnesses or accidents (e.g., by participating in a high-risk sport, like rock climbing). For a discussion of the idea of solidarity in public health, see Bellefleur and Keeling (2015).

To help determine if the policy is actually paternalistic, it may be relevant to reflect on the questions presented in the text boxes above, which are designed to prevent one from confusing paternalistic policies with those that are infantilizing, beneficent or based on the harm principle.

Once these questions have been answered, if the answer to the central question is "yes, the policy is being justified on the basis of one or more paternalistic reasons," then the policy is indeed paternalistic, and the paternalistic dimension of the policy should be analyzed in greater depth using steps 2 and 3.

Step 2 allows one to determine if the type of paternalism in question is problematic and to what degree.

Step 3 allows one to assess the relative weight of the paternalistic reason as compared to the other reasons that may weigh "for" or "against" the policy in the context of an ethical analysis.

If the answer to the central question is, "no, the policy is not really paternalistic," then the analysis of the paternalistic dimension of the policy can therefore stop here. An analysis of other ethical issues can then be carried out by skipping over step 2 and going directly to step 3.

STEP 2 - DETERMINE WHAT TYPE OF PATERNALISM IS AT ISSUE

The second step proposed for analyzing a policy that is *called* paternalistic is aimed at identifying the type of paternalism represented by each of the paternalistic reasons used to justify the policy. Identifying the particular type of paternalism represented by a reason can help, during ethical reflection or deliberation, to classify the reason as one that counts "for" or "against" the policy and to determine its relative weight (*strongly* "for" or *slightly* "against" a policy, for example).

A large proportion of the literature on paternalism consists precisely of proposing distinctions so that different types of paternalism can be discussed and debated. The aim of this exercise is usually to distinguish types of paternalism that are more acceptable from those that are less so. In this section, we present the three main distinctions that have been proposed, without claiming to provide a comprehensive review and without being able to recap the debates surrounding them.

First distinction: weak or strong paternalism?

The distinction between weak and strong paternalism (or soft and hard paternalism) is probably the most common distinction found in the literature on paternalism.[14] In general, weak paternalism refers to interference with substantially involuntary actions and strong paternalism refers to interference with substantially voluntary actions, with the aim of protecting people from themselves. The actions of a sleepwalker or a drunken person could serve as examples of actions that are substantially involuntary, as opposed to actions resulting from well-reasoned decisions, which would be considered substantially voluntary actions.

Most authors writing on the subject are in favour of weak paternalism (Grill, 2011 & 2013), to the point where some authors, such as Gostin and Gostin (2009), feel it is no longer necessary to defend weak paternalism, at least in its broad principles. What legitimizes weak paternalism, in their view, is that substantially involuntary actions cannot be regarded as expressions of individual autonomy or freedom, which, they agree, should be respected. Thus, weak paternalism does not, strictly speaking, infringe on individual autonomy or freedom, because it does not actually interfere "against anyone's will." This is why, according to Feinberg (1986), "it is not clear that 'soft' paternalism is 'paternalistic' at all" (p. 12). In a sense, it lies right at the border between beneficence and paternalism. Strong paternalism is more controversial, because it involves interference with substantially voluntary actions which generally merit

[14] Certain authors (Friedman, 2014; Pope, 2014) use this distinction instead to talk about the more or less coercive nature of the means used to influence the actions of individuals. This usage is especially common among economists (Grill, 2011). We will cover this dimension in the section on coercive paternalism and non-coercive paternalism. Holland (2007), for his part, interprets the weak/strong distinction by appealing to another distinction between real deep-seated preferences (e.g., to live a long, healthy life) that should be respected and superficial preferences (e.g., smoking) that we justify interfering with on the grounds that this can be classified as weak paternalism because it does not affect a true preference. By introducing the deep-seated/superficial distinction which is supposed to be drawn from outside, i.e., by someone other than the individuals in question, Holland re-introduces the spectre of perfectionist paternalism into the distinction between weak and strong (or soft and hard) paternalism. We believe that it is better to deal with these issues separately in order to avoid confusing them.

protection, as expressions of individual autonomy or freedom.

Once the distinction between weak paternalism and strong paternalism is accepted, it becomes important to clarify the difference between substantially voluntary actions or behaviour and those that are substantially involuntary, because the weak/strong distinction is based on this difference. There are two main complementary ways of doing this (Camerer, Isaacharoff, Loewenstein, O'Donoghue & Rabin, 2003; Elvebakk, 2015).

The first is to group together people whose autonomy is not sufficiently developed to enable them to make decisions about what is good for themselves, such as young children, adults with significant intellectual disabilities, etc.[15] (Feinberg, 1986; Grill, 2011), and to form a second group composed of individuals whose autonomy is sufficiently developed for them to be considered competent. All adults generally belong to this second group by default, unless there is proof of incapacity. Thus, the actions of people in the first group are considered substantially involuntary, while those of people in the second group are considered to be substantially voluntary. Interfering with people in the first group for their own good would therefore qualify as weak paternalism, whereas interfering with people in the second group for the same reason would qualify as strong paternalism. This is what explains, at least in part, the fact that, on the one hand, it is widely accepted for the state to act as a public trustee for people in the first group when they have no other legally-recognized guardian, and to require minors to wear bike helmets or bar them from buying cigarettes, alcohol, lottery tickets or tanning bed sessions, while, on the other hand, it is more controversial to extend such protections to people in the second group (i.e., competent adults).

The second way to distinguish substantially voluntary actions from substantially involuntary actions is to focus instead on the circumstances affecting the decision-making process of adults who are generally able to make informed decisions by themselves. In certain circumstances, competent adults are in fact less able to make informed decisions on their own (e.g., in the absence of crucial information, when under the influence of alcohol or drugs, when subject to high-pressure sales, when emotions are running high, when cognitive biases[16] greatly influence their reasoning, etc. [Grill, 2011; Rajczi, 2016]). In circumstances that are sufficiently unfavourable to the exercise of individual autonomy, an intervention aimed at helping people make good decisions or preventing them (often temporarily) from making decisions they might later regret would thus be considered weak paternalism. To take Mill's now classic example, it could be legitimate to exercise weak paternalism by interfering with persons who are about to cross a dangerous bridge to inform them of the danger and ensure they make a well-considered decision (even if it is necessary to physically detain them in order to inform them). Table 1 summarizes these two ways of distinguishing weak paternalism from strong paternalism.

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[15] One must, of course, always be careful about such categorization, as evidenced by the first justifications for paternalism which included in this category "idiots, minors and married women" (Camerer et al., 2003, p. 1213, citing Rogers v. Higgins, 48 III, 211, 217 (1868)). In Canada, it must be stated that a type of paternalism directed toward Indigenous peoples was justified on similar grounds, when they were assigned a legal status similar to that of minors.

[16] Cognitive biases are systematic errors of reasoning that occur in specific circumstances (Kahneman, 2011, pp. 3-4). They influence, often without our knowledge, our thinking, our decisions and our behaviour in a predictable way, most of the time when there are elements present in a decision-making context that seem unimportant. Many cognitive biases have been identified in the literature on social psychology, behavioural economics and cognitive science. We tend, for example, to think that our risk of dying from a given disease is lower than that of other people, even if we share the same risk factors (e.g., as a smoker). We are too quick to accept an option when it is available by default, even when it is less advantageous for us than an alternative option (e.g., French fries as the default at restaurants). We also tend to prefer what is placed at our eye level (e.g., at the grocery store). The discovery of cognitive biases that act against our interests or our health and the possibility of using these biases to modify decision-making contexts to improve our well-being and our health have given rise to a significant body of literature on paternalism following from the work of Thaler and Sunstein (2008), who introduced the concepts of the "nudge" and of libertarian paternalism to talk about this kind of beneficent influence. For a critique of this approach in public health, refer in particular to Ménard (2010).

Table 1 Distinguishing weak from strong paternalism based on whether people's degree of autonomy and the surrounding circumstances are favourable or unfavourable to informed decision-making

Circumstances / Persons	Favourable	Unfavourable
Autonomous	Strong paternalism	Weak paternalism
Non-autonomous	Weak paternalism	

Of course, the challenge is to determine what circumstances are sufficiently unfavourable to the exercise of autonomy to qualify the decision of a generally competent adult as substantially involuntary (Grill, 2011). Between, on the one hand, a substantially involuntary action based on a hasty decision made in the heat of the moment and in the absence of crucial information and, on the other hand, the substantially voluntary act of a competent, rational and knowledgeable adult who has thought carefully about the decision, there lies a continuum of more or less voluntary or involuntary actions.

To separate weak paternalism from strong paternalism, a line must be drawn somewhere. Kleinig (1984, cited in Conly, 2013, p. 44) suggests that, as a rule of thumb, we let ourselves be guided by our conception of moral responsibility. According to him, when we believe that we should be held morally responsible for an action, even when the decision to act was not made in ideal circumstances, this action should then be considered substantially (or sufficiently) voluntary. Thus, in a case of an action for which we would consider a person to be morally responsible under the circumstances, interfering with such an action to protect the actor against his or her will should, therefore, be considered a case of strong paternalism. Conversely, when we believe we should not be held morally responsible for an action, that action can then be considered substantially involuntary. Interfering with such an action to protect the actor against his or her will should, therefore, be considered a case of weak paternalism. Of course, relying on our intuitions about moral responsibility to determine whether or not an action is substantially voluntary means appealing to our conceptions of moral responsibility, freedom and autonomy, which are quite often implicit. It is therefore important to adopt a critical perspective when using such a test.

Other authors, such as Feinberg (1986) and Rajczi (2016), recommend also taking into account the significance of the risks being warned against when trying to determine where the border lies between substantially voluntary and substantially involuntary actions. According to these authors, the greater the risk that someone could suffer imminent serious and irrevocable consequences due to a choice, the more favourable the circumstances surrounding the decision-making process need to be for this choice to be considered substantially voluntary. In other words, the more risky a choice, or type of choice, for an individual, the more likely that interference with such a choice can be classified as weak paternalism. To take an extreme example, a suicide attempt has such a high risk of imminent serious and irrevocable consequences that most interventions that interfere with such a choice should be considered a form of weak paternalism.

In summary, when trying to determine whether interference should be classified as strong or weak paternalism and when assessing this interference, it can be useful to reflect on the following questions, in particular:

- Are the persons who will be affected by the intervention, in general, autonomous? Are they children, non-competent adults or generally competent adults?
- Are the circumstances surrounding the decisions with which one wishes to interfere favourable or unfavourable to informed decision making? If they are unfavourable, is it possible to make them favourable?
- Should the persons who will be affected by the intervention be considered morally responsible for the actions with which the intervention would interfere?
- What is the extent of the risk of harm that this type of action presents to those engaging in it (probability, severity, irrevocability, imminence, etc.)?

Second distinction: coercive or non-coercive paternalism?

A distinction between coercive paternalism and non-coercive paternalism is also frequently drawn in the literature on paternalism. This pertains to the strength of the means of interference or the degree of force used to influence or change people's behaviour, against their will, but for their own good. Some authors only distinguish between two categories of means: those that are coercive and those that are non-coercive. Others propose more nuanced approaches that allow for the consideration of multiple degrees of constraint between the least and most coercive means possible.

Regardless of how this distinction is drawn, the general idea is that it would be easier to justify a less coercive policy than a more coercive policy, all other things being equal[17] (Childress et al., 2002; Dworkin, 1971; Pope, 2014; Resnik, 2014; Thomas & Buckmaster, 2010). After all, paternalism is not criticized for improving well-being, but rather for infringing on freedom or autonomy to achieve this. Distinguishing more coercive means from less coercive means is one of the ways to measure the scope of this infringement on freedom or autonomy so it can be taken into account during ethical analysis.

To distinguish less coercive means from more coercive means, it may be useful to refer to the Nuffield Council on Bioethics' (2007) intervention ladder presented above (Figure 1). Here again we must recall the importance of maintaining a critical perspective when using such a tool, even if it is only being used to make sure that the intervention in question actually interferes with freedom. Figure 3 reproduces this ladder while, in addition, indicating where the limit between non-coercive and coercive interventions may be positioned. We have positioned this limit, in accordance with Childress (2013), somewhere between a slight deterrence, which might not be coercive in the case, for example, of a small tax, and a very significant incentive, which might prove coercive in the case, for example, of a very significant subsidy.

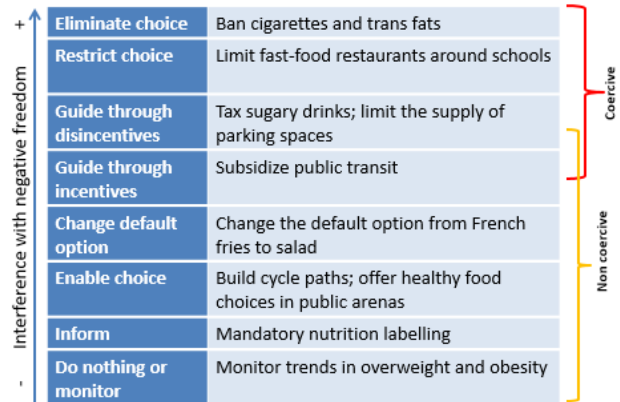

Figure 3 Distinguishing between coercive interventions and non-coercive interventions using the Nuffield Council on Bioethics' (2007) intervention ladder

In summary, when trying to determine whether interference represents a more or less coercive form of paternalism and when assessing this interference, it can be useful to reflect on the following questions, in particular:

- In which intervention category on the Nuffield Council on Bioethics' intervention ladder does the proposed policy or intervention belong?
- Is this intervention the least coercive means of achieving the desired results?

The two main distinctions between types of paternalism introduced so far can be combined to create a table for classifying paternalistic interventions (Table 2). The numbering of quadrants starts at the top left, with the easiest to justify interventions, and ends on the lower right, with the hardest to justify interventions, i.e., those which, for some, will always be unjustifiable and which, for others, will require a very good reason for being implemented (e.g., very great benefits, a significant improvement in equity, etc.).

[17] Often, as Dawson (2016) points out, when comparing different interventions, the "all things being equal" clause is not satisfied. It is important to treat this idea of a gradation in the coerciveness of means as a tool to facilitate reflection, but to remain critical. By itself, it cannot indicate if an intervention is justifiable or not. Only analysis, reflection and deliberation that take into account all of the factors and values that must be considered (including the intervention's degree of coerciveness) can lead to such conclusions.

Table 2 Four types of paternalism based on combinations of the weak/strong and non-coercive/coercive distinctions

	Non-coercive intervention	Coercive intervention
Substantially involuntary actions	1. Weak and non-coercive paternalism (Offer a glass of water as the default in school cafeterias)	2. Weak and coercive paternalism (Ban the sale of energy drinks to minors)
Substantially voluntary actions	3. Strong and non-coercive paternalism (Tax energy drinks)	4. Strong and coercive paternalism (Ban energy drinks)

- Problematic +

Third distinction: trivial or fundamental paternalism?

The third and final distinction which we will present between different types of paternalism indicates the significance of the infringement on personal freedom or autonomy resulting from a paternalistic intervention or policy. Whereas the distinction between coercive paternalism and non-coercive paternalism makes it possible to distinguish more restrictive means from less restrictive means, the distinction between trivial paternalism and fundamental paternalism makes it possible to classify the type of freedom with which an intervention or policy interferes.[18]

The general idea is that certain freedoms are more fundamental than others and therefore should be better protected. The most fundamental, for example, are usually protected legally by constitutions and charters, in particular, so as to protect individuals and minority groups from the will of the majority or of those in power. In a sense, these freedoms are even protected against democracy[19] or, at least, against a certain form of populism (Nielsen & Landes, 2016; Weinstock, 2016). From an ethical point of view, infringing on a fundamental freedom, such as freedom of thought, belief or movement, should be more difficult to justify than infringing on a more trivial freedom (e.g., that of not having to wear a seat belt in cars) (Carter et al., 2015; Childress et al., 2002; Conly, 2013; Friedman, 2014; de Marneffe, 2006; Parmet, 2016; Pope, 2014; Wilson, 2011). Rhetorical accusations of "paternalism" levelled at an intervention or policy often serve to obscure this distinction, so that all infringements on freedom, even the most mundane, can be rejected outright and with the same strength (Carter et al., 2015; Parmet, 2016).

The fact remains that while it may be easy to identify the major fundamental freedoms protected by the rights entrenched in constitutions and charters, trying to separate the most fundamental freedoms from the most trivial freedoms is a delicate exercise, particularly in pluralistic societies like Canada. We must not conclude too quickly that one freedom is less fundamental than another simply because it is exercised in a sphere of activity in which we (who are proposing the policy or conducting the ethical analysis) have little or no interest. It is relevant here to recall that paternalism has often been used by the more affluent classes and those with more political power "to control the lifestyles of the poor" and of minorities or marginalized groups (Thomas & Buckmaster, 2010, p. 1).

To our knowledge, there are no tools to guide the reflective and deliberative process of distinguishing the most fundamental from the most trivial freedoms, especially when the freedoms being assessed are not included among those protected by constitutions and charters. At the very least, one should try to imagine that the policy or intervention under analysis would change the options related to something one likes (e.g., wine) when it concerns options related to something in which one has little or no interest (e.g., sugary drinks). In the context of such an exercise, one should also try to imagine being affected to the same extent as those targeted by the intervention (by a higher tax, for example, if one's income is higher than that of the targeted population). Ideally, an attempt should be made during the ethical analysis and deliberation to hear the voices of the people whose freedom one seeks to limit for their

[18] This distinction appears less frequently than the previous two in the literature on paternalism. To our knowledge, no labels have been attached to this distinction. We propose here the use of the adjectives "trivial" and "fundamental" to refer to the types of freedom constrained.

[19] This, among other things, is what characterizes a *liberal* democracy. Some options are placed beyond the control of a simple majority (Weinstock, 2016).

own good, so they can express their expectations, concerns and reservations.

In summary, when trying to determine whether interference represents a more fundamental or more trivial type of paternalism, it can be useful to reflect on the following questions:

- Is the freedom with which the policy interferes a more fundamental freedom (i.e., one closely tied to the freedoms protected by constitutions or charters) or a more trivial one?
- Have you tried to put yourself in the place of those who will be most affected by the policy? Have you focused specific attention on people belonging to minorities or marginalized groups, or with less economic or political power?
- Still better, have you invited these people to take part in the deliberative process?

Combining the three distinctions that we have presented in a three-dimensional matrix produces a tool that can assist in the analysis of paternalistic policies or interventions by sorting paternalistic reasons into eight different categories (see Figure 4). All other things being equal, a non-coercive intervention affecting substantially involuntary actions and limiting a trivial freedom will be the easiest to justify ethically, whereas a coercive intervention affecting substantially voluntary actions and limiting a fundamental freedom will be the most difficult to justify. Between these two extremes, interventions or policies will be more or less easy to justify. The arrows along each axis indicate the least problematic pole ("-") and the most problematic pole ("+") from an ethical standpoint. The purpose of this tool is to guide reflection and deliberation; it should not be used as a decision-making algorithm, and there are at least three reasons for this:

1. The paternalistic reason that is under analysis usually isn't the only reason to consider during an ethical analysis.
2. When policy options are compared to determine which would be best, it is rare that they differ solely with respect to the type of paternalistic reason involved. In other words, it is rare that the "all other things being equal" clause is fulfilled. Therefore, a global analysis must be carried out, with other reasons being taken into account (see Step 3).
3. Although the arrows indicate the "least" and "most" problematic poles on each axis, they do not lead to the formation of a clear scale with eight levels ranging from the least to the most problematic reason. Therefore, in addition to identifying the least and the most problematic reasons underlying interventions, analyses should proceed on a case by case basis.

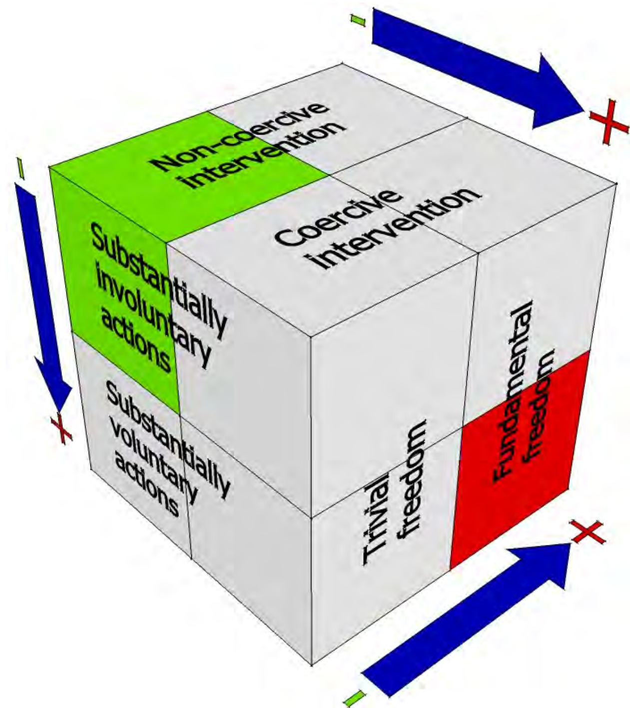

Figure 4 **This cube combines the weak/strong, non-coercive/coercive and trivial/fundamental distinctions to represent eight types of paternalism**

Summary: Step 2

The central question: What types of paternalism characterize this policy?

The goal of this step is to support a more nuanced analysis of paternalistic policies or interventions that takes into account the fact that certain forms of paternalism are more easily ethically justified than others.

To guide reflection, we have proposed three distinctions (weak/strong, non-coercive/coercive, trivial/fundamental) to consider. These are visually represented in the cube above (Figure 4). Each of

the eight particular types of paternalism is represented by one of the smaller cubes; when represented this way, some are evidently more problematic than others.

For each of the three proposed distinctions, we have presented questions to help guide deliberation.

Step 3 - Expand and structure analysis using a public health ethics framework

The ethical analysis of a paternalistic intervention tends to focus attention on two values, namely beneficence on the one hand and autonomy or freedom on the other, since paternalism involves a conflict specifically between these values. However, to determine if a policy is justifiable from an ethical point of view, it is necessary to take into account all the relevant values. Therefore, making an informed decision requires situating paternalistic reasons within a larger set of reasons and values. A public health ethics framework can be useful for accomplishing this.

According to Dawson, the primary role of an ethics framework is "to aid deliberation by making relevant values explicit," so that one can then use these values, "to guide or 'frame' decision making" (Dawson, 2010, p. 196). Since the publication of an influential framework by Nancy Kass in 2001, several other public health ethics frameworks have been proposed,[20] adopting various ethical and political perspectives (MacDonald, 2015).

Some of these frameworks mention the issue of paternalism and propose different ways of handling it based on their underlying ethical and political perspectives. Upshur (2002), for example, indicates that paternalistic interventions should at once be rejected on the basis of the harm principle. Other frameworks suggest that the underlying conflict between values at issue in paternalism should be handled in the same way as other conflicts between values and should be subjected to ethical arbitration without any particular justifying conditions (e.g., Filiatrault, Désy & Leclerc, 2015; Massé, 2003; Winnipeg Regional Health Authority, 2015). Finally, there are also frameworks that distinguish between a type of paternalism that is justifiable under certain conditions and a type of paternalism that is unjustifiable (or justifiable under conditions that are much harder to meet) (e.g., Anker, 2016; Childress et al., 2002; Conly, 2013; Parmet, 2016; Pope, 2014; Resnik, 2014; Thomas & Buckmaster, 2010). Most of the latter frameworks try to determine the conditions that would justify strong paternalism directed against sufficiently voluntary actions, by referring at times to the degree of coercion involved or the significance of the freedom being constrained.

The analyses presented by these authors greatly informed this document. However, we hesitate to recommend using just one of these frameworks to ethically assess policies and interventions whose justification is at least partially paternalistic. One reason is that most of them tend to focus on the two values whose conflict is at the core of paternalism, namely well-being (or health) and freedom (or autonomy), while disregarding other values which could be upheld or undermined by a given intervention (e.g., equity). The other reason is that it is unlikely that a single framework would be adapted to the varied needs of public health actors across Canada, to the various contexts in which they work and to their diverse ethical and political perspectives. Since a good ethical analysis should consider all of the values at stake, it seems more appropriate to use a more general framework, designed for public health.

If you do not already have a framework suited to your needs, we invite you to consult the following general frameworks:

- Kass (2001);[21]
- Filiatrault, Désy & Leclerc (2015);
- ten Have, van der Heide, Mackenbach & Beaufort (2012);[21]
- Marckmann, Schmidt, Sofaer & Strech (2015);
- Massé (2003).

Having adopted such a framework, if one needs to analyze a policy or intervention accused or suspected of being paternalistic, one can then add paternalism-specific considerations to that

[20] For our evolving repertoire of public health ethics frameworks, see: http://www.ncchpp.ca/708/repertoire-of-frameworks.ccnpps.
And to consult our adapted summaries of some of these frameworks, see: http://www.ncchpp.ca/127/publications.ccnpps?id_article=1525.

[21] An adapted summary of this framework is available on the NCCHPP's website at: http://www.ncchpp.ca/127/Publications.ccnpps?id_article=1525.

framework by using the questions, issues and conceptual guidance raised in the present document.

To further reflection guided by a public health ethics framework, we propose a few additional questions to supplement those found in the frameworks mentioned above. These questions encapsulate some of the issues raised in the first sections of this document:

- Is there a non-paternalistic way to achieve the policy's objectives?
- Is the proposed policy the most effective and efficient means of achieving the objectives?
- What is the scope of the policy's expected benefits? How does it compare to other options?
- How do the populations affected by this policy view these benefits and the potential negative impacts of the policy?
- Will the distribution of the expected benefits and of the potential negative impacts increase or decrease health inequities?

Summary: Step 3

The central question: What other ethical considerations, issues and values should be taken into account in the ethical analysis of the policy?

Once the types of paternalism have been identified, it is important to situate the issue of paternalism in a broader analytic context that integrates the other ethical considerations, issues, and values that may be raised by the policy or intervention under analysis. To do this, we suggest using a general public health ethics framework. If you do not already have a framework suited to your needs, we have suggested a few that can be supplemented through the use of the tools presented, the questions asked and the issues raised in this document.

Conclusion

In this document, we began by defining paternalism and providing an overview of the range of healthy public policies that are sometimes *called* paternalistic. We set out three reasons why some of these policies are considered attractive in public health: namely, because chronic diseases and lifestyle-related injuries are among the leading causes of mortality and morbidity in high-income countries like Canada, because such policies sometimes seem to be more effective or efficient at reducing the burden of diseases related to, among other things, lifestyle, and because they sometimes also seem able to lead to more equitable health outcomes than the other non-paternalistic options. We also presented three main reasons why we should nevertheless be reluctant to use them: namely, because they can reflect a lack of respect for competent adults, because they can infringe on a sphere of personal freedom that the state is supposed to protect, and because they can even negatively affect the well-being of some of the people they are intended to help.

Given this situation, we have proposed, like the majority of authors addressing this subject, that a generally antipaternalist stance should be adopted for the ethical analysis of policies or interventions. Adopting such a stance does not mean rejecting paternalistic policies without further analysis, because there may be very good ethical reasons that would justify their implementation. It implies, rather, that such policies are problematic from an ethical standpoint and that a more in-depth analysis should be conducted. We have proposed a three-step approach to carrying out this analysis. The first step is aimed at determining if a policy is actually paternalistic. The second step aims to support a more nuanced analysis of paternalism by introducing three main distinctions that point to eight types of paternalism, some of which are easier to justify from an ethical standpoint than others. The third step is to extend reflection beyond the issues related to beneficence and freedom or autonomy that underlie paternalism, using a general public health ethics framework. This document includes figures, tables and questions to help guide reflection. These can be used as add-ons to supplement a general public health ethics framework when analyzing a policy or intervention accused or suspected of being paternalistic.

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