

**Why Even a Liberal Can Justify Limited  
Paternalistic Intervention in Anorexia Nervosa**

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Most (but not all) adult persons with anorexia satisfy the existing criteria widely used to assess decision-making capacity, meaning that incapacity typically cannot be used to justify coercive intervention. After rejecting two other approaches to justification, Professor Radden concludes that it is most likely not possible to justify coercive medical intervention for persons with anorexia in liberal terms, though she leaves it open whether some other framework might succeed. I shall assume here that the standard approach to assessing decision-making capacity is adequate.<sup>1</sup> The question then is whether (*contra* Radden) we can justify—within a liberal framework—*coercive intervention with the decision of a competent adult for the sake of that adult's welfare*.<sup>2</sup>

I believe we *can* justify a *limited* amount of paternalism in liberal terms.<sup>3</sup> Of course, much turns on what 'liberal' means. I take 'liberal' to describe a moral/political framework that focuses primarily on individuals: their choices and their welfare as subjectively conceived. It accords great weight to individual rights, particularly freedoms. And it views competent individuals as moral equals who are generally able to run their own lives, who are "self-rulers."

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<sup>1</sup> There are a variety of challenges that have been made to the standard framework, some of which I am quite sympathetic to. For an overview of these debates see Jennifer Hawkins and Louis C. Charland, "Decision-Making Capacity", *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/fall2020/entries/decision-capacity/>>.

<sup>2</sup> To be clear (since 'paternalism' is used in a variety of ways), in this paper 'paternalism' always and only refers to coercive intervention with the choice of a competent adult for the sake of that adult's welfare.

<sup>3</sup> I am by no means the first to argue that interference with competent persons with anorexia is sometimes ethically permissible. See e.g. Giordano 2019. My focus is on whether such justifications can be *liberal*.

Though a limited justification is possible, I wish to emphasize that coercive intervention with the choices of persons with anorexia is *only rarely justified*. This is extremely important, because I do not wish to provide arguments for those whomight misuse coercive power. Coercive intervention is only rarely justified in anorexia because it is only rarely plausible to think that it would be in the overall best interests of such patients. Liberalism can sometimes justify paternalistic intervention, but only if genuine benefits are likely.

Persons with anorexia jeopardize their lives by restricting food intake to the point where their starved bodies are prone to various types of malfunction. If, having reached such a point, they continue to restrict they will die. And it is worth remembering that a significant number of patients do, in fact, die of this illness.<sup>4</sup> Coercive intervention in the form of forced weight gain therefore looks most appealing to third parties (family members, therapists, judges) when a patient is dangerously underweight and death is an imminent possibility.

However, mere continued biological life is not necessarily in the best interests of persons with anorexia.<sup>5</sup> Coercive intervention is justified therefore only if it is plausible that the patient could, if restored to a safer weight, overcome anorexia and go on to live a life free of the distresses and misery characteristic of chronic anorexia. Given the complexities of prediction, the requirement is best stated negatively: *one should not coercively intervene if one has reason to think full recovery unlikely*. Research reveals that the longer a person has anorexia, the less likely she is to fully recover (Von Holle et. al. 2008; Treasure et. al. 2011; Treasure et al. 2015). Moreover, given that coercive intervention itself tends to reduce the

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<sup>4</sup> The Academy of Eating Disorders states: "Anorexia nervosa has one of the highest overall mortality rates and the highest suicide rate of any psychiatric disorder. The risk of death is...twelve times higher than in the general population. Up to 10% of women with anorexia nervosa may die due to anorexia-related causes." <https://www.aedweb.org/resources/about-eating-disorders/fast-facts>. Accessed October 6, 2020.

<sup>5</sup> It is a familiar idea in bioethics that treatment to maintain life should only be undertaken, and can only be justified if, a decent quality of life is a likely outcome. However, it is still not widely accepted in the treatment of AN. This is also emphasized by Giordano 2019, 324.

effectiveness of other modes of therapy, which are the only means of full recovery (Schreyer et. al. 2016), it should always be a last resort.<sup>6</sup>

It is against this backdrop that we must consider the liberal case for limited paternalism. To properly explain the justification, I begin by presenting several key assumptions often neglected in the bioethics literature.<sup>7</sup> First, I assume welfare is *real*, meaning there are objective facts (whether or not we know them) about which choices are better or worse for people. There are better and worse ways for a life to go. Second, such a claim is entirely compatible with a sophisticated form of subjectivism about welfare, according to which something cannot be good for someone at a time unless at that time she either (a) enjoys it, or (b) sees value in it.<sup>8</sup> This view holds, however, that when a person wants something but doesn't yet "have" it, we cannot know for certain whether it would be good for her to get it. Whether it would or not depends on what her own response to it would be once it is "in" her life.

This brings me to the third point, which is that this form of subjectivism is compatible with recognizing that people can (and frequently do) make choices *that fail to serve their own interests subjectively construed*. Individuals can be wrong about their own welfare, but then, so can third parties. Let us say a *prudential mistake* occurs whenever a person chooses something that will leave her with a level of welfare far less than what she would have had, had she chosen differently. One common aim of personal decision-making is to avoid prudential mistakes. However, in different situations there may be more or less evidence to support the claim that a particular choice would be a prudential mistake, and in different

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<sup>6</sup> Coercive intervention in anorexia is also associated with greater risk of future suicide (Ramsay et. al. 1999; Ward et. al. 2015).

<sup>7</sup> A more detailed defense of bringing "mildly objective" assumptions about welfare into practical ethical discussions can be found in Hawkins, "Theory without theories: well-being, ethics and medicine, *Journal of Medicine and Philosophy*, forthcoming.

<sup>8</sup> Because I allow more than enjoyment to count, this view does not assume hedonism.

situations different parties may be more or less well placed to give proper weight to that evidence.

Against this backdrop we can better understand the moral issue at the heart of paternalism. Only once we treat welfare as real and grasp that subjects can be wrong about their own welfare, do we recognize that the following kind of case, though rare, is possible. This is a case where a subject S wishes to choose X, but where there is good evidence for thinking the choice of X would be a prudential mistake (subjectively construed) for S. Moreover, in this case, the consequences of mistake are both dire and irreversible, and there is also good reason to think coercive intervention could bring about a better result. Yet for whatever reason, S is not in this case properly responding to the evidence. These are the kinds of cases where paternalism is most tempting.

Why then, from a liberal perspective, is paternalism thought to be bad? One influential argument comes from Kant (1993 [1785]). It appeals to the idea that we must respect autonomy, i.e. the capacity for self-rule, in others. The primary thought is that we, as rational agents, must always avoid paternalism because in treating someone paternalistically we by-pass her capacity for self-rule. Interestingly, however, it is an argument that makes *no appeal whatsoever* to what it might be like for the subject to be interfered with. It does not appeal to the *value* of free choice for the person who has it. It ultimately locates the wrongness of paternalism in a kind of irrationality on the part of the would-be paternalist. I confess, I do not find this persuasive, precisely because it fails to focus on *what matters to individuals*. If paternalism is wrong it must be because of how it affects those who are treated paternalistically.

A second liberal approach identifies two values important for individuals: free choice and welfare. There is great value for individuals in being free to make their own significant life choices. Moreover, free choice is usually conducive to welfare. However, precisely because prudential mistakes are possible, free choice can sometimes conflict with the value of welfare, i.e. the value of living a life that one finds value in. Some theorists insist that of these two values free choice is more important, with the result that conflict should *always* be resolved in its favor

(Feinberg 1989, 61). Paternalism is wrong because it falsely assumes that welfare matters more than it does.

In certain cases, however, this is hard to swallow. Granted that free choice is very important, must a liberal say that it is *always and in every case more* important? This is hardest to accept where a person is (though he doesn't see it this way) plausibly viewed as throwing away many years of life that would likely be years high in quality of life *as measured by his own standards*. In such a case, a single coercive interference could salvage a great deal of welfare—many years of it—while still allowing the life in question to contain a great deal of free choice, and while still ensuring that the life is almost entirely shaped by the person whose life it is.

A third kind of argument against intervention has its origins in Mill (1962 [1859]). It begins with the same two potentially conflicting values but grants more importance to welfare than the previous argument. Paternalism is still seen as wrong, however, because it is self-defeating: despite aiming to promote a subject's welfare, paternalists almost never succeed in doing so, and therefore shouldn't try. Mill offers reasons for thinking this (subjects are more likely to be right about their welfare (84-85), coercive intervention is often resisted in ways that undermine the realization of any good (92), etc.) but it is not clear that these reasons hold in all cases. If not, then limited paternalism *may* be justifiable within a liberal framework. We may build an argument for limited paternalism by turning Mill's argument on its head.

Most of the time it is probably either true that a subject is the better judge of her own welfare or at least that there is no clear reason to think that someone else would be better. But in a limited number of cases the epistemic situation may shift. Some cases involving anorexia are like this. There is evidence that many of those who *recover from anorexia* after coercive treatment are glad to have recovered and view their past treatment as justified (Tan et. al 2003; Westwood and Kendal 2012). Radden refers to, and rightfully dismisses, arguments that appeal to future gratitude *as a way of arguing for consent*. I agree with her that future gratitude is not consent. However, future gratitude among many people who have undergone X *is good evidence* that a relevantly similar individual undergoing X will also be grateful in

future. Acting on such evidence—evidence about how most (but not all) react, can be justified even though we know prospectively that we will sometimes be wrong. What matters is that we are significantly less likely to be wrong than we are to be right. In short, sufficient data about gratitude *would* give us good reason to suppose that in cases where recovery has not become unlikely, refusal of food to the point of death is a prudential mistake. It is moreover, a mistake that coercive intervention *may* in certain limited cases rectify, therefore salvaging a great deal of welfare (subjectively construed) at relatively minor costs to overall lifetime freedom. We also have a good explanation for why the subject is ignoring the evidence. For persons with anorexia are characterized in part by a narrow mental focus on food and weight. We can make use of this knowledge, even while allowing that their thought processes are good enough that they have decision-making capacity. Here what we know about how persons with anorexia think and the existence of strong evidence for prudential mistake help to explain why this may be a rare case of justified paternalistic intervention.

This is a distinctively liberal position. It places individuals—their choices and their welfare—at the center of focus, and welfare is subjectively construed. It views all individuals as moral and epistemic equals, albeit allowing that they are not epistemic equals in all situations. Still, there is no assumption that anyone is reliably and in all cases better placed than others to make correct decisions about welfare. Moreover, it is rare that a third party would have the kinds of reasons for thinking intervention would be good that are present in this particular case. Finally, this view values free choice highly and is compatible with insisting that people be able to live lives largely shaped by their own decisions. This is a very moderate defense of paternalism, but still a coherently *liberal* one.

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