

Abstract

Paternalistic practices are of growing concern today because of the need to protect children's rights and the threat posed by intervention in student affairs by school authorities. My thesis is that despite the importance of safeguarding children's rights — and I review and reject the positions of John Holt and Richard Farson — five types of paternalistic practices, which I explain, are warranted. I define a paternalistic act as attempted or successful coercive interference with an action or state of a person for the subject's welfare.

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Paternalistic Schools and Children's Rights

John Holt¹ and Richard Farson² generally believe that children should have the basic rights as adults. Thus children would have the right to do what adults legally do. But, says Holt, what we have done instead is to create an army of people to tell the young what they have to learn and to make them learn it. Compulsory education, he asserts, "is such a gross violation of civil liberties that few adults would stand for it. But the child who resists is treated as a criminal".³ Farson, too, opposes compulsory school attendance and claims that schools function not to educate but to maintain the system through indoctrination and other techniques.⁴ Thus Farson would abolish compulsory schooling and with it indoctrination, while Holt would allow young people "to decide if, when, how much, and by whom, they want to be *taught* and the right to decide what they want to learn in a school and if so which one and for how much of the time".⁵

Holt and Farson are two of the more militant advocates in the children's rights movement. The goals of the movement are to extend some adult rights to children and improve government programs for children.⁶ The movement has been concerned with freedoms of expression and religion, school desegregation, procedural due process, school discipline, and the right to an education. During the past decade courts have generally been sympathetic with extending or protecting children's interests,⁷ even though children's rights advocates are not satisfied with overall progress and therefore press for abolition of corporal punishment in school, recognition of the right to an education as well as other reforms.

What, then, are the limits in the allocation of rights to children? To ask this question raises the issue of paternalism. Paternalism is an important issue in this context because it involves making a decision whether education authorities are justified in interfering or coercing students for the students' educational welfare. Education authorities, rather than parents, are the focal point for paternalism throughout because of the article's concentration on organized schooling.⁸ Paternalistic practices are of greater concern today because of the children's rights movement and a wider recognition of the system of controls exercised by education authorities. My thesis is that despite the importance of safeguarding children's rights, certain paternalistic practices can be justified. I shall explain the conditions where paternalism is warranted.

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Paternalism and Human Development

A paternalistic act, according to R. Carter, is one in which “ the protection or promotion of a subject’s welfare is the primary reason for attempted or successful coercive interference with an action or state of a person”.⁹ Such an act is done in the person’s best interest whenever the person is incapable of performing the act for himself. Paternalism does not necessarily involve indoctrination (as Farson’s remarks may suggest) if by indoctrination is meant the instilling of doctrines, dogmas, or partisan opinions. It is true that some paternalistic practices have employed indoctrination, just as some classroom instruction has lapsed into indoctrination. But just as instruction can be conceived apart from indoctrination, so, too, can paternalism. One can be paternalistic by restraining a child and later giving a child an explanation for the interference. Or the adult may use rewards or punishments to interfere without actually indoctrinating.

The following laws, rules, and practices are usually paternalistic, depending upon the context: compulsory school attendance laws; school safety regulations; federal subsidized lunch program; school health check-ups; rules for using equipment in science laboratories, home economics, and shop courses; certification of education personnel; and censorship of textbooks and library materials. Some of these practices are not clear cases of paternalism; they may be enforced to protect the public interest or rights of certain groups rather than the student’s interest. Compulsory attendance, for instance, is usually claimed to be in the public interest (the need for an educated citizenry in a democracy) as well as in the student’s interests. Others, such as certification and health check-ups, also involve a larger public interest. Some also protect property rights (rules governing the use of school equipment) as well as the student. One aspect of paternalism is to prevent needless harm or suffering; therefore safety regulations, rules for equipment use, and censorship fall under this category.

If Holt’s and Farson’s positions on children’s rights are accepted, then paternalism is unnecessary. They would grant self-determination and accord children essentially the same rights as adults — the right to choose their home environment, the right to vote, the right to work, the right to manage their own education, etc. In an age that sometimes places unnecessary restrictions on children, it is understandable to opt for greater freedom. But can paternalism be eliminated without serious consequences? One reason for paternalism is the immaturity of children and youth — in terms of inexperience with life in general and underdeveloped rationality — as well as their inability to judge soundly what is in their best interest and to protect themselves from needless harm and suffering. Some authorities generally assume that minors are incompetent to make final decisions on critical matters affecting their welfare, though authorities differ on the amount of participation and feedback minors should be given in such decision making. Hillary Rodham,¹⁰ representing a more moderate position than Holt and Farson, contends that all procedural rights should be extended to children, including legal representation whenever their interests are at stake. “There are certain children at certain ages in certain circumstances who can and should exercise responsibilities. The task is to determine what those conditions are. The first thing to be done is to reverse the presumption of incompetency and instead assume all individuals are competent until proven otherwise.”¹¹ This is one approach that would discourage the proliferation of over-solicitous paternalistic practices; however, it does not address the findings from biological, social and behavioral sciences that children are not miniature adults, they lack, in some cases, both the experience and the moral and intellectual judgment to make wise decisions about their welfare.

Howard Cohen, another children’s rights advocate, tries to solve the problem by introducing the notion of “borrowed capacities.”¹² Just as adults may at times call upon legal, financial, or medical experts for advice in exercising their rights, children can do so as well. Children, by relying on

agents, could exercise their rights without harming themselves or others and without harming the system of rights and liberties.

But Cohen's borrowed capacities, to be other than a paternalistic relation, would need to assume a rough equality between the agent and child in intelligence, moral judgment, and experience for the child to make warranted decisions on the basis of the specialized knowledge. Note, too, that Cohen believes that the child will do no harm and therefore it is not necessary to talk about responsibility for acts. However, rights usually are either not granted or are abrogated when the agent cannot assume responsibility. It may well be that in their enthusiasm to emancipate children, such reformers as Holt, Farson, and Cohen may sacrifice the welfare of children for their presumed rights because they overlook the developmental differences between children and adults. Adult constraint, says Diana Baumrind, is a precondition for self-determination.¹³ No child psychologist would contend that the child is equal to the adult in experience, intelligence, and moral competence. And not even the child liberators can deny the immense differences in knowledge, experience, and power separating the child from the adolescent, the adolescent from the adult. These differences, she adds, do not stem from adult exploitation but from laws of nature which are not revokable. Thus the child liberators ignore the facts that children are inferior to adults in their ability to survive, and that self-determination is a product of growth and maturation which is fostered by adult authority exercised in early years.

At any age level there is an optimum range of parental control where too much may lead to submissiveness or later to rebelliousness and too little may result in immaturity and irresponsibility.¹⁴ Certain types of child rearing conditions seem to support the development of greater self-determination. Supportive conditions are parental warmth and concern, and consideration and consistency in rule enforcement.¹⁵ Autocratic or very lenient parents usually have children who are low in self-confidence and either dependent or rebellious.¹⁶ Thus the growth of independence and self-reliance are more likely to occur in homes with democratic controls where rules are consistent and adequately enforced.

Since it would seem, then, that paternalism cannot altogether be avoided, perhaps certain practices are nonetheless unwarranted. What types of paternalistic practice and be justified, and on what grounds?

Paternalism and Freedom

The chief reason why paternalism offends is that it interferes with the individual's freedom; and since democratic societies recognize freedom as a basic right, it should not be restricted without just cause. Freedom has been defined both negatively and positively. It is conceived negatively as an absence of restraint or coercion so that any restrictions on the individual would be an abrogation of that person's freedom. The greater the area of non-interference the greater the individual's freedom. Yet human beings do not automatically harmonize their purposes and activities with one another and therefore freedom must be curtailed to prevent interference in another's affairs that would result in harm, suffering, or a violation of rights. Other values, such as equality, justice, or security, may also conflict with freedom.¹⁷

Freedom in the positive sense holds that one is not fully free to do something without the ability to perform an act; that is, to be free to do X not only means an absence of restraint but includes the ability, power, and means to do X. Thus a pauper is not free to take an overseas holiday, though in the negative sense of freedom nobody is restricting him from doing so. Paternalism, as we shall show later, tends to restrict the negative side of freedom but, in some instances, may expand (in the future) the positive side; that is, the paternalistic interference in the individual's present freedom is

for the sake of preventing harm or promoting the student's long-term welfare or educational development.

Generally there is a presumption in favor of freedom so that interference with it cannot be arbitrary and capricious but is expected to be based on justifiable grounds. It is thought that freedom is essential for the improvement of democratic societies because it permits the individual to choose and thereby cultivates his or her intellect and character. As John Stuart Mill noted: "The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference are exercised only in making a choice . . . The mental and moral, like the muscular, powers are improved only by being used."¹⁸ But Mill and modern day observers have recognized that freedom is not an absolute right, that there are many situations where individual freedom must be restricted: whenever it conflicts with the need for security or with the rights of others, organizations, or corporations; and to promote equality (as in cases of enforced busing, special minority admissions programs, and the like).

The heart of my argument is that if it can be shown that some forms of paternalism lead to necessary states of well-being, then a negative interference with freedom is acceptable. By so interfering the probability is that the positive side of freedom will subsequently be expanded.

Acceptable Forms of Paternalism and Their Justification

The objectives of paternalism in education are to prevent harm and/or promote welfare. Preventing harm is the negative side; welfare is the positive side. Preventing harm obviously consists of avoiding danger to life and limb; yet it might also include serious dangers of mental and emotional harm. Thus harm would be those conditions under the school's aegis which endangers well-being by rendering one temporarily or permanently incapable of benefiting from an education. Examples are safety restrictions on the use of certain power tools in machine shop courses (even though students believe that the restrictions are unnecessary and abridge their freedom) and quarantining students who have contagious diseases.

Paternalistic acts for the purpose of welfare are designed to achieve educational goals. Preventing harm is a necessary but not a sufficient condition to welfare. Protecting life and limb removes impediments; welfare, however, provides specific opportunities and programs to achieve educational goals. Compulsory school attendance laws and a compulsory curriculum would be examples of welfare.

But if the long range purposes of paternalism are to prevent harm and promote the student's welfare, not all acts given the name of paternalism can be justified. It is assumed in arriving at the conditions where paternalism may be justified that it is best for students to enjoy an absence of restraint whenever they are capable of performing an act without harming themselves or others or without violating other's rights, since there is a presumption in favor of negative freedom. By imaginatively envisioning the generic conditions that arise in schooling that may possibly warrant the interference with negative freedom the following conditions are identified under which school paternalism may be justified.¹⁹

1. Mental handicap
2. Immaturity
3. Lack of essential knowledge
4. Serious emotional disturbance or mental illness
5. Safety

Since the mentally handicapped as a group are usually slow in learning to walk and exhibit a general developmental retardation during the growing years, teachers and other education authorities will have to provide special help and support even though the child may balk or resist. Visual

and hearing impairment and language and speech retardation are also characteristic of the mentally handicapped and thereby require special treatment. Thus paternalistic intervention is more frequent with the handicapped than the normal student. Student consent, though desirable when the student is capable of granting it, is not required in a paternalistic act. Evidence is needed that a particular act is likely to prevent harm or promote the student's welfare before intervention is warranted. Care must be observed in not restricting the student's freedom unnecessarily so that if she is able to perform the act (even though less ably than the teacher) and is willing to do so, then no intervention is required.

Many paternalistic acts are performed because of immaturity; but as we saw earlier, some children's rights advocates believe that this ground has been abused. Perhaps some education authorities have been overly rigid in assuming the student must reach a certain chronological age before certain decisions can be made widely; they generally believe that a certain level of cognitive development must first take place. Yet Francis Schrag notes that even by using Piaget's stage of formal operations (at about age 12) as the formal dividing line, such logical operations are not necessary and sufficient conditions for adopting paternalistic rules because the person may not act on his conclusions.²⁰ Intellectual precocity is no assurance either, Schrag believes, because the child may lack experience. Also, some children, such as wartime orphans, may lack these logical abilities but are sufficiently canny to survive. Nevertheless, this does not mean that the task is insuperable but only that some commonly accepted formulas, taken by themselves, may be insufficient. Undoubtedly a combination of cognitive, social, and experiential measures needs to be applied and each student should be looked at individually before a particular paternalistic practice is undertaken. And in situations where the evidence is not compelling, the student should be given the freedom to act independently of education authorities so long as serious injury or harm is not likely to result.

A third ground for paternalism is the lack of essential knowledge. Here the reason for the lack of knowledge is not mental retardation or immaturity. Even older, more mature students lack essential knowledge, for otherwise education would not be important in their lives. Such knowledge may include more advanced ideas about physical and mental health, marriage, child care, personal finance, careers, and the like. Consent may not always be forthcoming because of a required curriculum and other restrictions on student choices. The knowledge required is not for the public's interest but the student's (though the two may overlap or coincide in certain respects, such as knowledge about health and child care). Whenever educators believe paternalistic acts are required to provide essential knowledge, they need to be able to show how such acts are ultimately in the student's interests.

Parenthetically, certain interests of the larger society frequently override student interests and paternalism. For instance, the student may be required by law to gain military training and enter a critical wartime situation in which his chances of survival are slight. It is beyond the scope of this article to explore this conflict fully, but certainly one principle is whether such laws and regulations allegedly in the public interest are consonant with democratic and constitutional principles. *Public*, as opposed to *private* is that which has no relation to a particular person or persons, but concerns all members of the community without distinction. Whenever individual interest and the public interest conflict, the individual can attempt to change public opinion through collective action, legal measures, or civil disobedience.

A fourth reason for paternalistic intervention is emotional disturbance or mental illness. Since the only school intervention likely with mental illness is to refer the student, with parental consent, to mental health authorities, the chief school concern here is whether the student's judgment is sufficiently clouded by emotional disturbance that she is likely to make decisions which endanger the individual's educational welfare or poses a threat of serious harm. The disturbances may only be temporary and once overcome the student's freedom is thereby restored. Whatever the student's

behavior — aggressiveness, withdrawal, defiance — the important point is that a compelling case needs to be made that it actually is a case of emotional disturbance and the disturbance requires intervention to protect the student's best interest or to prevent serious harm to others. Educators, however, must guard against classifying as emotionally disturbed disruptive students or those who relate to others differently than the norm. Thus the cause of the disruptive behavior needs to be identified, teachers cannot prescribe drugs for hyperactive children, and shy students who constantly fantasize need to be given greater understanding and encouragement.

Safety is a fifth reason warranting paternalism. If a student is in serious physical danger and is either incapable of protecting herself or fails to perceive an imminent danger, then educational authorities are warranted in intervening. Such dangers as school violence, handling dangerous electrical tools or chemicals, and the spread of contagious diseases are examples where intervention is needed.

In conclusion, children's rights advocates have made some important points, but children cannot be granted all of the same rights as adults; therefore, to prevent harm and to promote the student's educational welfare, paternalistic practices may possibly be justified under certain conditions in cases of mental retardation, immaturity, lack of essential knowledge, emotional disturbance or mental illness, and safety.²¹

Notes

- ¹ John Holt, *Escape from Childhood* (New York: E.P. Dutton, 1974), p. 18.
- ² Richard Farson, *Birthrights* (New York: McMillan, 1974), p. 5.
- ³ Holt, *Escape*, pp. 241-2.
- ⁴ Farson, *Birthrights*, ch. 7.
- ⁵ Holt, *Escape*, p. 240.
- ⁶ Peter Edelman, "The Children's Rights Movement" In Beatrice Gross and Ronald Gross, eds., *The Children's Rights Movement: Overcoming the Oppression of Young People* (Garden City, N.Y.: Anchor Books, 1977), pp. 203-06.
- ⁷ See: David Schimmel and Louis Fischer, *The Civil Rights of Students* (New York: Harper & Row, 1975).
- ⁸ This is not to deny the vital role of the family but only to acknowledge that this large topic is beyond the scope of this article. I have, however, dealt with the family's role at some length in my *Discipline and Authority in School and Family* (Lexington, Mass.: Lexington Books, 1982), ch. 6.
- ⁹ Rosemary Carter, "Justifying Paternalism," *Canadian Journal of Philosophy* 7 (March 1977): 133.
- ¹⁰ Hillary Rodham, "Children's Rights: A Legal Perspective". In Patrick A. Vardin and Ilene N. Brody, eds., *Children's Rights: Contemporary Perspective* (New York: Teachers College Press, 1979), pp. 21-36.
- ¹¹ *Ibid.*, p. 33.
- ¹² Howard Cohen, "Equal Rights for Children" (Totowa, N.J.: Littlefield, Adams & Co., 1980), ch. 5.
- ¹³ Diana Baumrind, "Reciprocal Rights and Responsibilities in Parent-Child Relations", *Journal of Social Issues* 34 (Spring 1978): 182-4.
- ¹⁴ Urie Bronfenbrenner, "The Changing American Child: A Speculative Analysis", *Journal of Social Issues* 17 (No. 1): 6-18.
- ¹⁵ Urie Bronfenbrenner, "Some Family Antecedents of Responsibility and Leadership in Adolescents". In L. Petruccio and B. Bass, eds., *Leadership and Interpersonal Behavior* (New York: Holt, Rinehart, & Winston, 1961), pp. 239-71.
- ¹⁶ E. Douvan and J. Adelson, *The Adolescent Experience* (New York: Wiley, 1966); and G.H. Elder, "Structural Variations in the Child Rearing Relationship", *Sociometry* 25 (1962): 241-62.

¹⁷ Other shortcomings of negative freedom are presented in Isaiah Berlin, "Two Concepts of Liberty" in his *Four Essays on Liberty* (New York: Oxford University Press, 1958).

¹⁸ John Stuart Mill, *On Liberty* (Indianapolis: Library of Liberal Arts, 1956), p. 71.

¹⁹ The list, however, cannot be considered exhaustive because widespread changes in educational institutions may bring to light the need for other types of paternalistic practices or a decrease in paternalism, depending on the learners' maturity, institutional purposes, and related factors.

²⁰ Francis Schrag, "The Child in the Moral Order", *Philosophy* 52 (April 1977): 171-2.

²¹ I wish to thank Joseph L. DeVitis and Robert Roemer for their helpful critical comments on an earlier version of this article.