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Moral Status and the Wrongness of Paternalism

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Abstract

In this paper, I consider the view that paternalism is wrong when it demeans or diminishes the paternalizee's moral status (the Moral Status Argument). I argue that we should reject the Moral Status Argument because it is both too narrow and too broad. It is too narrow because it cannot account for the wrongness of some of the most objectionable paternalistic interventions, namely strong paternalistic interventions. It is too broad because it is unable to distinguish between wrongful paternalistic acts that are plausibly considered more wrong than other wrongful paternalistic acts.

According to many liberal philosophers, a number of laws are objectionable on the grounds that they are paternalistic. Paternalistic laws include the requirement to wear seatbelts and motorcycle helmets, and the taxation of unhealthy food and drink in order to improve public health. Although these laws are plausibly labelled paternalistic, it is important to evaluate the wrongness of paternalistic behaviour.¹ According to the dominant view, paternalism is wrong when it interferes with a person's autonomy.² For example, suppose that I throw away your cream cakes because I believe that eating them is bad for your health. This paternalistic action is wrong when it interferes with your autonomous decision to eat cream cakes. On this view, paternalistic behaviour is not necessarily wrong when it does not interfere with a person's autonomy.³

There are two distinct autonomy objections to paternalistic interferences with a person's autonomy. The first objection is that paternalism is wrong because autonomy is a significant part of a person's good. Paternalistic interventions that are contrary to the paternalizee's autonomy do not benefit the paternalizee, and so are self-defeating. The second autonomy-based objection to paternalism is that paternalistic interventions are wrong when they violate the paternalizee's right to autonomy, even if the interference benefits him.⁴

Despite the dominance of these autonomy-based views of the wrongness of paternalism, in recent years they have been subject to criticism from a growing number of philosophers.⁵ As a result, an account of the wrongness of paternalism that is not grounded by autonomy would be attractive. In *Liberalism Without Perfection*, Jonathan Quong rejects both of these autonomy objections to paternalism, and provides a novel understanding of the wrongness of paternalistic behaviour.⁶ He rejects the first objection because it requires that we accept an overly narrow account of a person's good, and many reasonable people do not share it.⁷ For a political liberal like Quong who, following Rawls, holds that political power is only legitimate if it can be justified to reasonable people, this would be unacceptable.⁸ He provides two arguments to reject the second objection.⁹ The first argument is that the autonomy view is too permissive. If the wrongness of paternalistic intervention is based on

frustrating the autonomy of the object of the paternalism, it cannot account for the wrongness of paternalistic interventions that protect the object of the paternalism's capacity for autonomy.¹⁰ Yet many seemingly objectionable paternalistic interventions protect the capacity for autonomy by increasing the paternalizee's lifespan, such as paternalistic interventions that ban fatty food and cigarettes. The second argument is that many reasonable people do not hold that autonomy has significant value independent of what is chosen. Rather, what matters to them is that the chosen ends are valuable. Consequently, this autonomy objection to anti-paternalism cannot be justified to these reasonable people.

Quong then proposes that paternalistic behaviour is wrong when it demeans or diminishes the paternalizee's moral status.¹¹ I call this the Moral Status Argument. Although Quong's Moral Status Argument circumvents the problems with autonomy-based views, in this paper, I argue that we should reject the Moral Status Argument because it is simultaneously both too narrow and too broad. It is too narrow in that it fails to account for the wrongness of a number of paternalistic interventions that are commonly considered the most objectionable, namely, strong paternalistic interventions. It is too broad in that it is unable to distinguish between wrongful paternalistic acts that are plausibly considered more wrong than other wrongful paternalistic acts.

I

Before I proceed to criticise the Moral Status Argument, I begin by fleshing out the content of the account. Following John Rawls, Quong claims that individuals possess two moral powers, namely "a capacity for a sense of justice and a capacity for a conception of the good".¹² According to Quong, it is the second moral power that explains the wrongness of paternalism, namely "the capacity to form, revise, and rationally pursue their own conception of the good".¹³ Quong claims that wrongful paternalistic behaviour involves one or more persons treating a person as if one or more persons have this capacity.¹⁴ In doing this, the moral status of the paternalizee is demeaned or diminished.¹⁵

Now, I should set out what it means to treat a person as if he lacks the second moral power. I understand Quong to hold that A treats B as if he lacks the second moral power when A's behaviour towards B is "motivated by a negative judgement about B's ability (assuming that B has the relevant information) to make the right decision or manage the particular situation in a way that will effectively advance B's welfare, good, happiness, needs, interests, or values".¹⁶ It is important to note that when a person lacks relevant non-evaluative information about the situation, intervention is not treating a person as if he lacks the second moral power. So A providing B with information in order to advance B's welfare is not treating B as if he lacks the second moral power.

We can summarise Quong's Moral Status Argument as follows:

1. It is wrong to treat a person as if he has a demeaned or diminished moral status.
2. Treating a person as if he lacks the capacity to form, revise, and rationally pursue his conception of the good (the second moral power) treats a person as if he has a demeaned or diminished moral status.

3. Many cases of paternalistic behaviour treat a person as if he lacks the capacity to form, revise, and rationally pursue his conception of the good (the second moral power).
4. Therefore, it is wrong to behave paternalistically when it treats a person as if he lacks the second moral power.

Before I criticise the Moral Status Argument, I should make a clarification concerning a common distinction between types of paternalistic behaviour. It is important to note that some types of paternalistic behaviour are generally considered more wrong than others. For instance, we should distinguish between strong and weak paternalism, and the former is typically considered more wrong than the latter.¹⁷ While both strong and weak paternalism are intended to benefit the object of the intervention, the crucial difference is that weak paternalism is an interference with a person's choices or actions on the grounds that the object of the paternalism is taking an ineffective means to his ends, whereas strong paternalism is an interference with a person's ends on the grounds that the object of the paternalism's ends are defective or irrational.¹⁸

I should also clarify that I have reformulated Quong's argument to make it more attractive in two ways. First, I have enabled the account of the wrongness of paternalism to be compatible with a variety of definitions of paternalism. Quong holds that all paternalistic behaviour is wrong. This claim is plausible because Quong holds a narrow definition of paternalistic behaviour. For example, on Quong's view, it is not paternalistic to interfere in cases where the object of the interference lacks relevant information.¹⁹ So, according to Quong it is not paternalistic to prevent a tourist from crossing a bridge, if the tourist is unaware that the bridge is rotten. However, we could disagree with Quong about his definition of paternalism, and hold that interferences in cases where the object lacks information can be paternalistic, but agree with him that the wrongness of paternalism relates to the treatment of a person as if as if he lacks the second moral power.

Consequently, a better formulation of the Moral Status Argument would be one that does not require us to accept his definition of paternalistic behaviour. We can hold that paternalistic behaviour is wrong when it treats a person as if he lacks the second moral power, but allow for the possibility that not all cases of paternalistic behaviour do this. Once we make this move it follows that if paternalistic behaviour does not treat a person as if he lacks the second moral power, then it is not wrong. For example, it seems plausible to hold that a preventing a tourist from crossing a rotten bridge is paternalistic, but because it does not treat the tourist as if he lacks the second moral power, it is not a case of wrong paternalistic behaviour.

The second reformulation relates to the nature of the wrongness of paternalism. While Quong is clear that his argument concerns only the *prima facie* wrongness of paternalism, he also claims that he holds an undefended view that paternalistic actions are *pro tanto* wrong.²⁰ To clarify, I understand that an action is *prima facie* wrong when it has the appearance of a wrong action, but it might not be wrong at all. Whereas a *pro tanto* wrong action is an action that is genuinely wrong in at least one respect, but it could be outweighed by other considerations.²¹ Throughout this paper I will refer to Quong's position as deeming that paternalism is wrong, without reference to whether this is a *pro tanto* or *prima facie*

wrong. This does not misrepresent the Moral Status Argument, as its weaknesses are the same regardless of whether its claims are the *pro tanto* or the *prima facie* wrongness of paternalism.

2. Moral Status Argument: Too Narrow

In this section, I argue that the Moral Status Argument is too narrow an account of the wrongness of paternalism. This is because premise 3 of the Moral Status Argument is false and it is susceptible to a fatal objection, namely, the Moral Status Argument cannot account for the wrongness of a number of paternalistic interventions that are frequently considered the most objectionable, namely, strong paternalistic interventions. As a consequence, the Moral Status Argument results in the conclusion that a number of controversial interventions are not wrong. I suggest that this is a mistake, and it should result in the rejection of the Moral Status Argument.

Before I proceed to the main argument of this section, I should note one possible objection to the Moral Status Argument. By claiming that wrongful paternalistic behaviour treats a person as if he lacks the capacity to form, revise, and rationally pursue his conception of the good, this account appears to make the fallacious inference that if a person does not perform an action, it entails that the person *cannot* perform the action. To illustrate this, imagine that Paternalizer intervenes with a person named Jonny, because Jonny is failing to pursue rationally his own conception of the good. While it is true that the fact that Jonny rationally pursues his own conception of the good entails that Jonny has the capacity to pursue rationally his conception of the good, the reverse is not true. The fact that Jonny fails to pursue rationally his own conception of the good does not entail that Jonny cannot pursue his own conception of the good. Rather, it only suggests that, in this instance, Jonny fails to pursue rationally his conception of the good. As a result, it is possible that Paternalizer could intervene in Jonny's pursuit of his conception of the good without treating Jonny as if he lacks the capacity to pursue rationally his conception of the good. Paternalizer could plausibly claim that he agrees that Jonny has the capacity to pursue rationally his own conception of the good. Nonetheless, the reason for his intervention is the fact Jonny is not currently doing it. Therefore, if paternalism is wrong because it treats a person as if he lacks the second moral power, it follows that Paternalizer's intervention would not be wrong. Yet it seems likely that a proponent of the *Moral Status Argument* would want to claim that Paternalizer's interventions is wrong.

One response would be to suggest that I have misunderstood the meaning of capacity. Rather than holding that a person cannot ϕ if he lacks the capacity to ϕ , we could hold that a person who is *unlikely* to ϕ lacks the capacity to ϕ . To clarify this view, suppose that I have never received any training with a rifle, and so 99 times out of 100, I will miss the target when shooting with a rifle from 100 yards. However, given that I will hit the target 1 time out of 100, it is clear that it is physically possible for me to hit the target with a rifle from 100 yards. Nevertheless, we could claim that I lack the capacity to hit the target to an extent because it is unlikely that I will hit the target. In order for the Moral Status Argument to get off the ground, we should understand the term capacity in this way. Once we accept this view of capacity, someone who hits the target 90 times out of 100 possesses the capacity to

hit the target to a somewhat greater extent than someone who hits the target 80 times out of 100. Therefore, when Paternalizer intervenes with Jonny because Jonny is failing to pursue rationally his own conception of the good, this is treating Jonny as if he lacks the capacity to pursue his own conception of the good to some extent.²²

I will now proceed to my central objection to the claim that paternalistic behaviour is wrong when they treat a person as if he lacks the second moral power. Recall that the second moral power is the capacity to form, revise, and rationally pursue one's own conception of the good. For ease of exposition, I will refer to this view of the second moral power as the *Original Second Moral Power*:

The Original Second Moral Power – the capacity to form, revise, and rationally pursue one's own conception of the good.

I claim that the paternalistic interventions that are frequently considered the most objectionable, namely strong paternalistic interventions, do not treat a person as if he lacks this capacity. I will illuminate my argument with the following example:

Grass Counter – Imagine that Jack holds the conception of the good that involves counting blades of grass. Jack does not want to change his conception of the good. Paternalizer judges that counting blades of grass is valueless, and without Jack's knowledge, Paternalizer performs a paternalistic action on Jack that results in Jack giving up grass counting, and instead moves Jack to pursue the activity of political philosophy.²³

In this case, has Paternalizer treated Jack as if he lacks the capacity to form, revise, and rationally pursue his own conception of the good? Given that Jack's conception of the good consists of counting blades of grass, Paternalizer has not necessarily treated Jack in such a way to doubt Jack has this capacity. This is because Paternalizer can accept that Jack has the capacity to form his grass counting activity; he can accept that Jack could revise his aim to count grass, and furthermore, Paternalizer can accept that Jack could rationally plan to count blades of grass. Moreover, Paternalizer could accept that Jack would continue to pursue his conception of the good indefinitely and successfully if it were not for Paternalizer's intervention. Therefore, it would be mistaken to claim that Paternalizer's actions necessarily treat Jack as if he lacks the *Original Second Moral Power*. This is because Jack's capacity to pursue *his own* conception of the good is not Paternalizer's concern. Rather, Paternalizer doubts the value of Jack's pursuit, and it is Jack's failure to pursue a valuable activity that motivates the paternalistic intervention. In short, we can perform strong paternalistic actions without treating the person as if he lacks the ability to pursue his own conception of the good. Unless the proponent of the Moral Status Argument wants to deny either that strong paternalistic actions are paternalistic or that strong paternalistic actions are wrong, this should lead us to doubt this account of the wrongness of paternalism.²⁴

Now, in order to emphasise the implausibility of this implication of the Moral Status Argument, imagine that Paternalizer did not act paternalistically in order to change Jack's conception of the good, but instead paternalistically helped Jack to succeed in grass counting, without Jack wanting the help, or being aware that Paternalizer has helped him. According to the Moral Status Argument, this is wrong as it treats Jack as if he lacked the

second moral power. But this would constitute a weak paternalistic intervention, and would commonly be considered less objectionable than the strong paternalistic interferences that seem to be permitted by the Moral Status Argument. Those who object to paternalism are typically more troubled by actions that aim to interfere with a person's ends, than with the means he is pursuing to achieve those ends. The fact that the Moral Status Argument deems weak paternalistic interventions as wrong, while apparently permitting strong paternalistic interventions is a surprising, and unintended conclusion.²⁵

In order to ensure that strong paternalistic behaviour treats a person as if he lacks the second moral power, the proponent of the Moral Status Argument could make the following revision to the second moral power employed in premise 3:

The Valuable Second Moral Power – the capacity to form, revise, and rationally pursue a *valuable* conception of the good.

Once we make this revision that we can show that Paternalizer's intervention treats a person as if he lacks the second moral power. By definition, strong paternalistic interventions treat a person as if he lacks this capacity. When Paternalizer performs a paternalistic act on Jack, he is treating Jack as if he lacks the capacity to form, revise and rationally pursue a valuable conception of the good. Paternalizer believes that Jack is not pursuing a valuable conception of the good and so treats Jack as if he lacks the *Valuable Second Moral Power*. It is this act that treats Jack as if he has demeaned or diminished moral status.

However, this revision is also insufficient. For instance, Paternalizer could hold that Jack's conception of the good of counting blades of grass has *some* value, but it is not as valuable as political philosophy. As a result, Paternalizer intervenes with Jack in order to move him to take up the more valuable activity of political philosophy. This would not treat Jack as if he lacked the Valuable Second Moral Power, because Paternalizer does not deny that Jack has the capacity to pursue a valuable conception of the good. Rather, Paternalizer denies that Jack has the capacity to pursue the most valuable conception of the good. Yet, this is a strong paternalistic intervention, and so it would be a weakness of the Moral Status Argument to be unable to account for the wrongness of this intervention.

In order to ensure that strong paternalistic behaviour treats a person as if he lacks the second moral power, the only plausible remaining move available for the proponent of the Moral Status Argument is to make the following revision to the second moral power employed in premise 3:

The Most Valuable Second Moral Power – the capacity to form, revise, and rationally pursue the *most valuable* conception of the good.

Any interference by the Paternalizer that held that it would be better for the paternalizee to pursue a different conception of the good would treat a person as if lacks the Most Valuable Second Moral Power.

This clarification is important, as it exacerbates a weakness in the Moral Status Argument. Given that real people differ in terms of their capacity to realize the two moral powers, there is an apparent oddity to require that we should treat people as if they are equally capable of

realizing the moral powers.²⁶ Once we employ the *Most Valuable Second Moral Power* this oddity is compounded. For people could be mistaken about the extent of the value of their conceptions of the good in addition to making mistakes about the means to successfully pursue their conceptions of the good. Thus this modification opens up a new sphere of potential mistakes.

Moreover, it is likely that individuals will hold conceptions of the good, the value of which is incompatible with other individuals' conceptions of the good being valuable. Disagreement over the correct conception of the good makes it probable that some parties to the disagreement lack the capacity to form valuable conceptions of the good. Suppose that Group A holds that P is a valuable conception of the good, whereas Group B holds that P is a disvaluable conception of the good. Given the understanding of capacity set out above, this means that at least one of the groups has not successfully formed a valuable conception of the good, as P cannot be both valuable and disvaluable. Even if both groups believe that with the right type of encouragement, the other group could revise their views, and eventually agree about the value of P, it remains the case that either Group A or Group B lack the capacity to form a valuable conception of the good. Given the likelihood of such cases, it is probable that a number of people will lack the second moral power. So, why is it wrong to treat people as if they are not equally capable of realizing the moral powers, even if we know that in fact they are not equally capable?

Quong's response to a similar objection is to claim that treating a person as if he lacks the second moral power is wrong because it undermines one of the most important primary goods that parties in the original position would want to secure, namely the social bases of self-respect.²⁷ Now, it is true that paternalistic behaviour can undermine a person's self-respect. For example, Paternalizer's intervention in *Grass Counter* is likely to make Jack doubt that his grass-counting plan of life has value. Similarly, if Paternalizer acted paternalistically towards Jack in order to improve Jack's success at grass counting, this could also undermine Jack's belief that he has the ability to successfully carry out his life plan. Therefore, if we hold that an action that treats a person as if he lacks the second moral power is wrong when it undermines a person's self-respect, it follows that a number of paternalistic interventions are wrong.

However, if we determine that it is wrong to treat a person as if he lacks the second moral power, even when he does lack the second moral power, on the grounds that it results in the diminution of self-respect, this can only account for the wrongness of *some* paternalistic interventions, namely, the interventions that the paternalizee is aware of. This is because it is clear that Quong holds that self-respect is something that one experiences. Quong states that the self-respect involves the following:

- a. The belief that one's plan of life has value.
- b. The belief that one has the ability to successfully carry out one's plan.²⁸

I will call this the experiential condition of self-respect. If we accept that self-respect has this experiential condition, it is clear that it would be a mistake to hold that self-respect can account for the wrongness of paternalistic interference. After all, this view fails to account

for a number of paternalistic interventions that could occur without the paternalizee's knowledge. In order to illustrate this, consider the following two examples: Paternalizer could employ subliminal hypnosis in order to get Jack to revise his grass-counting conception of the good. Due to Paternalizer's intervention, Jack then decides that grass counting is not right for him, and then proceeds to pursue political philosophy, unaware of Paternalizer's action. Or imagine Paternalizer slipping harmless cognitive enhancers into Jack's cereal in order to aid Jack's ability to count blades of grass, without Jack's knowledge. Due to the cognitive enhancers, Jack has incredible success in pursuing this conception of the good. In both cases, Jack would be unaware that the paternalistic intervention has taken place, and so neither of Paternalizer's actions would diminish Jack's self-respect. If we hold that the reason why paternalism is wrong is because it undermines self-respect, then these instances of paternalistic actions would not be wrong. Yet this is likely to be unsatisfactory for the proponent of the Moral Status Argument. Quong is likely to hold that an adequate account of paternalism would need to account for the wrongness of these interventions, and so by his own lights his argument is likely to be too narrow.

One response available to Quong would be to note that even if a person's *self-respect* is subjectively determined by his beliefs, the *social bases* of self-respect are objective, and could be undermined even when a person is unaware that they have been undermined. To clarify, the social bases of self-respect are the social institutions related to an individual's self-respect. Rawls describes the social bases as "things like the institutional fact that citizens have equal basic rights, and the public recognition of that fact".²⁹ These are objective conditions that can be present independent of a person's beliefs about their presence. Consequently, a paternalistic law could be wrong on the grounds that it would undermine the social bases of self-respect, even if the paternalizee were unaware that he was the object of the paternalism.

However, this is not a satisfactory response, as it still leaves the Moral Status Argument too narrow an account of the wrongness of paternalism. This is because many instances of paternalistic behaviour do not undermine the social bases of self-respect. Although a law that required paternalistic behaviour could plausibly undermine the social bases of self-respect, it does not account for the cases of paternalistic behaviour not performed by social institutions. For example, it cannot account for the wrongness of paternalistic behaviour where an individual behaves paternalistically towards another individual. It is difficult to see how Paternalizer employing subliminal hypnosis on Jack undermines the social bases for self-respect, given that this is not a case of a social institution endorsing paternalism. Instead, this case of paternalistic behaviour concerns the action of one individual towards another. Yet, it is likely that Quong would want to claim that Paternalizer's intervention is wrong. Indeed, it would be a significant weakness of the Moral Status Argument if it could only account for the wrongness of paternalistic government policies. This is particularly noticeable given that it was intended to supplant the autonomy-based view of the wrongness of paternalism, which attempts to account for the wrongness of both state and individual paternalistic behaviour.

3. Moral Status Argument: Too Broad

I will now proceed to argue that, in addition to being too narrow, the Moral Status Argument is too broad an account of the wrongness of paternalism. I argue that it is problematic to claim that behaviour that treats a person as if he lacks the second moral power is wrong, as it restricts our ability to distinguish between wrongful paternalistic acts that are plausibly considered more wrong than other wrongful paternalistic acts.

In order to demonstrate this, in addition to previously discussed case of *Grass Counter*, let us consider a further case that involves a person being treated as if he lacks the second moral power.

Fatal Enhancers – Jack is frustrated by his limited ability to count blades of grass. He persistently forgets the number of blades he has reached, and has to start again at the bottom of the garden repeatedly. However, he sees an advert in the local paper for cheap cognitive enhancers for sale, which claim to enhance a person's short-term memory. Jack's doctor warns that the cognitive enhancers would have a fatal effect, whereas Jack's eccentric aunt says that the cognitive enhancers will be great for Jack's health and his grass counting pursuit.³⁰ Nonetheless, due to an admiration of his aunt and a general distrust of medical science, Jack takes the advice of his aunt, and purchases the cognitive enhancers. Robert (Jack's neighbour) is alarmed by Jack's decision to follow the advice of his aunt, and so, when he sees Jack picking up the tablets to be consumed, he knocks them out of Jack's hand, and they fall down the drain.³¹

Both *Grass Counter* and *Fatal Enhancers* involves a person who is treated as if he lacks the second moral power, but it would be imprecise to view both interventions as equally wrong.³² The proponent of the Moral Status Argument should be able to explain how intervention in one case is worse than the other. Yet, it cannot do this.

One possible solution would be to determine the wrongness of each intervention by the degree to which it treats a person as if he lacks the second moral power. If intervention A treated a person as if he lacks the second moral power to a greater extent than intervention B, it would follow that intervention A is more wrong than intervention B. However, when we consider the above cases it is not clear that one case treats a person as if he lacks the second moral power to a greater extent than the others. For instance, it is not clear that the intervention in *Grass Counter* treats a person as if he lacks the capacity to form, revise, and rationally pursue the most valuable conception of the good to a greater extent than the intervention in *Fatal Enhancers* treats a person as if he lacks the capacity to form, revise, and rationally pursue the most valuable conception of the good. Therefore if both interventions treat a person as if he lacks the second moral power to the same extent, both interventions are equally wrong. However, this is a controversial view, and it is unlikely that a proponent of the Moral Status Argument would want to be committed to the view that it is worse to intervene in cases such as *Grass Counter* than it is in *Fatal Enhancers*.

One possible solution for the Moral Status Argument could be to claim that the second moral power can be divided into separate components; for instance, the second moral power

could be the capacity (a) to form the most valuable conception of the good, (b) to revise a conception of the good, and (c) to pursue rationally a conception of the good.³³ Once we divide the second moral power into these components, we could stipulate that it is a greater diminution of a person's moral status when we treat a person as if he lacks capacity (a), rather than capacity (c).³⁴ Therefore, it would be worse to intervene in the case of *Grass Counter*, because it treats Jack as if he lacks the capacity to form the most valuable conception of the good (capacity (a)), whereas the case of *Fatal Enhancers* treats Jack as if he lacks the capacity to pursue rationally his conception of the good (capacity (c)).³⁵

This would not be a satisfactory solution for the proponent of the Moral Status Argument. It is doubtful to think that it is always more wrong to treat a person as if he lacks the capacity to form the most valuable conception of the good than it is to treat a person as if he lacks the capacity to rationally pursue his conception of the good. For instance, consider the following two cases. First, imagine a person without a valuable conception of the good, and who also lacks the capacity to form the most valuable conception of the good. Let us call him Andy. Imagine that we could press a button that would painlessly enable him to have the capacity to form the most valuable conception of the good. Pressing this button would necessarily treat him as if he lacks the capacity to form the most valuable conception of the good, and so it would be wrong according to the Moral Status Argument. Now contrast this with the practice of denying a woman the vote on the basis that women are incapable of voting for their own best interest. When we deny her vote for this reason, we treat her as if she lacks the capacity to rationally pursue her conception of the good. This instance of treating her as if she is incapable of rationally pursuing her conception of the good is more wrong than the paternalistic behaviour in case of Andy. This establishes that there is no clear ranking of the components of the second moral power, and this forces the Moral Status Argument back to square one in facing my charge that it is incapable of discriminating between the wrongness of various cases of interventions.

I have shown that the Moral Status Argument cannot distinguish between the wrongness of intervention in these two cases. Thus by treating these interventions as the same, Moral Status Argument is too broad an account of the wrongness of paternalism.

4. Conclusion

Although Jonathan Quong's Moral Status Argument circumvents problems with the autonomy-based views of the wrongness of paternalism, I have argued that we should reject the Moral Status Argument. We should reject it because it is both too narrow and too broad. It is too narrow because it cannot account for the wrongness of some of the most objectionable paternalistic interventions, namely strong paternalistic interventions. It is too broad because it is unable to distinguish between wrongful paternalistic acts that are plausibly considered more wrong than other wrongful paternalistic acts.³⁶

References

1. These laws are paternalistic according to standard definitions of paternalism. For instance, it is generally accepted

2. For this view see: Arneson, Richard J. Mill vs. Paternalism. *Ethics*. 1980:470–480. ; Dworkin. *Paternalism*. ; Feinberg, Joel. *The Moral Limits of the Criminal Law: Harm to Self*. Vol. 3. Oxford University Press; Oxford: 1986. ; Kleinig, John. *Paternalism*. University of Manchester Press; Manchester: 1984. ; VanDeVeer, Donald. *Paternalistic Intervention: The Moral Bounds of Benevolence*. Princeton University Press; Princeton, New Jersey: 1986.
3. Of course, whether a specific case of paternalistic behaviour interferes with a person's autonomy depends on one's account of autonomy, and I unable to set out these numerous accounts here. For an excellent discussion on when paternalistic behaviour is contrary to an individual's autonomy, see: Scoccia, Danny. *Paternalism and Respect for Autonomy*. *Ethics*. 1990; 100:318–334.
4. One could also hold this view about the wrongness of the paternalistic intervention without being committed to claims about rights. Instead, it could be argued that there are weighty autonomy-based reasons of non-interference, and that wrongful paternalistic interventions are actions contrary to these reasons.
5. For a selection of arguments against the autonomy account of the wrongness of paternalism see: Brock, Dan W. *Paternalism and Autonomy*. *Ethics*. 1988; 98:550–565. ; Arneson, Richard. Joel Feinberg and the Justification of Hard Paternalism. *Legal Theory*. 2005; 11:259–284. ; De Marneffe, Peter. *Avoiding Paternalism*. *Philosophy & Public Affairs*. 2006; 34:68–94.
6. Seana Shiffrin provides a similar account of the wrongness of paternalism that holds that paternalism demonstrates insufficient respect for the capacities of the paternalizee. See: Shiffrin SV. *Paternalism, Unconscionability Doctrine*. *Philosophy and Public Affairs*. 2000; 29:205–250. Quong provides a compelling argument to reject Shiffrin's view: Quong, J. *Liberalism Without Perfection*. Oxford University Press; Oxford: 2011. p. 79-80. However, it is beyond the scope of the paper to address these arguments here. Jeffrie G Murphy provides an account of the wrongness of paternalism that appears similar to Quong's, as he notes that paternalism demotes the status of the paternalizee. Despite this apparent similarity, for Murphy, the wrongness of paternalism is not the demotion of status of the paternalizee, rather he holds an autonomy-based view of the wrongness of paternalism. Specifically, he argues that incompetence is a necessary condition of justified paternalistic interference, and he argues for this on the grounds of the Millian view of the importance of liberty. See: Murphy. p. 179n 2
7. See: *ibid.* p. 98.
8. Rawls, John. *Political Liberalism*. Columbia University Press; New York: 2005.
9. See: Quong. *Liberalism Without Perfection*. p. 99-100.
10. *Ibid.* p. 98.
11. *Ibid.* p. 101.
12. Rawls. *Political Liberalism*. p. 19
13. Quong. *Liberalism Without Perfection*. p. 101
14. Quong also proposes a second way in which a paternalistic act is wrong, namely, the paternalizer treats the paternalizee as having inferior moral status to himself. However, I do not discuss this argument in this paper, as Quong notes, paternalistic interventions do not necessarily treat a person as if he has inferior status relative to other people since the interventions could apply to all, including the paternalizer. See: *ibid.* p. 101.
15. I will not consider one initial objection to the Moral Status Argument, namely that it is unlikely that one's treatment of another could diminish his moral status. Perhaps it would be possible to diminish another's moral status if, say, people have moral status due to the capacity for rational agency, and one destroyed another's capacity for rational agency. In such a case the subject without the capacity for rational agency may no longer have moral status. But this is not what Quong understands as diminishing a person's moral status. I will assume that the Moral Status Argument is claiming that treating a person *as if* he lacks the second moral power treats a person as if he has diminished moral status, and this is wrong.
16. Quong. *Liberalism Without Perfection*. p. 80 To clarify, this is taken from Quong's definition of paternalistic behaviour, rather than a passage setting out what it means to treat a person as if he lacks the second moral power. However, it is the clearest statement of his view.
17. Dworkin, Gerald. *Stanford Encyclopedia of Philosophy*. Stanford; 2010. *Paternalism*. Accessed: 4/2/2013

18. It is important to note, however, that an intervention could be an instance of both strong and weak paternalism. Imagine that a paternalistic intervention forced the object of the paternalism to adopt more effective means to his ends. This would be an instance of weak paternalism. However, imagine that the object of the paternalism holds the view that it is better to take less effective means to his ends, than be the object of a paternalistic intervention. As a result, the intervention would also be an interference with his ends, and so it would also be a case of strong paternalism. Strong and weak paternalism are not mutually exclusive. I thank an anonymous reviewer for this helpful example.
19. Quong. *Liberalism Without Perfection*. p. 82
20. *Ibid.* p. 100 n. 66.
21. For this understanding see: Kagan, Shelly. *The Limits of Morality*. Clarendon Press; Oxford: 1989. p. 17
22. In order to take into account this view of capacity, henceforth when I refer to a person being treated as if he lacks the capacity to form, revise, and rationally pursue his own conception of the good, I am assuming that he is treated as if he lacks the capacity to at least *some* extent.
23. I leave the nature of the paternalistic action vague in order for the example to be compatible with a variety of definitions of paternalistic behaviour.
24. An anonymous reviewer has noted that my Too Narrow objection also has the implication that the Moral Status Argument cannot adequately account for the wrongness of many weak paternalistic interferences, *mutatis mutandis*. For example, when Paternalizer performs a weak paternalistic interference with a paternalizee's means to his ends, he is likely not to be treating him as if he lacks the capacity to choose any means ends to his ends, rather it is likely that he is treating him as if he lacks the capacity to choose the best means to his ends. I do not pursue this point here because for many anti-paternalists, weak paternalistic interventions are not necessarily wrong, and so it would not be a flaw of the Moral Status Argument that it fails to account for the wrongness of these weak paternalistic interventions.
25. I should clarify why this shows that the Moral Status Argument is too narrow, and not too broad. My aim here is to emphasise that the Moral Status Argument provides an incomplete picture of the wrongness of paternalism. It fails to account for the wrongness of some plausibly wrong paternalistic interventions, namely strong paternalistic interventions. The above is intended to emphasise the implausibility of this incompleteness. The Too Broad objection has the distinct aim of demonstrating that the Moral Status Argument fails to distinguish the extent of the wrongness between two *wrong* interventions.
26. Quong attributes a similar objection to Haksar, Vinit. *Equality, Liberty, and Perfectionism*. Oxford University Press; Oxford: 1979. p. 184-6. See: Quong. *Liberalism Without Perfection*. p. 102
27. Quong. *Liberalism Without Perfection*. p. 103
28. Quong p. 103.
29. Rawls, John. *Justice as Fairness: A Restatement*. The Belknap Press of Harvard University Press; London: 2001. p. 60
30. To clarify, Jack's aunt has no medical training, and Jack is aware of this fact.
31. Quong discusses a similar example, in which a person believes his eccentric aunt is a better source of medical information than his doctor. He stipulates that in such a case, intervention would be paternalistic and wrong. Quong. *Liberalism Without Perfection*. p. 82-83.
32. To clarify, when I say equally wrong in this section, I am claiming equally wrong qua paternalistic behaviour. I am setting aside the wrongness of other non-paternalistic considerations that could be present.
33. Capacities (a) and (b) concern a person's ends, whereas capacity (c) concerns a person's means to his ends.
34. For present purposes, I will not discuss capacity (b).
35. I should clarify that when I state that the intervention treats Jack as if he lacks the capacity to pursue rationally his conception of the good, I understand this to indicate that it treats Jack as if he chooses (to some extent) bad or ineffective means to his ends.
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