




# Sex, Love, and Paternalism

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## Abstract

Paternalistic behaviour directed towards a person's informed and competent decisions is often thought to be morally impermissible. This view is supported by what we can call the Anti-Paternalism Principle (APP). While APP might seem plausible when employed to show the wrongness of paternalism by the state, there are some cases of paternalistic behaviour between private, informed, and competent individuals where APP seems mistaken. This raises a difficulty for supporters of APP. Either they need to reject APP to accommodate our intuitions in these cases, or provide grounds for thinking that paternalistic behaviour between certain private individuals is different in a morally relevant sense. In this paper, I explore several possible morally relevant differences, and find all of them unsatisfactory as grounds for maintaining the plausibility of APP.

**Keywords** Sex · Love · Paternalism · Consent · Associative duties

Paternalistic behaviour directed towards a person's informed and competent decisions is often thought to be morally impermissible. For instance, it is commonly thought to be impermissibly paternalistic for me to swap the sugar in your tea for a low-calorie substitute against your will, with the intention to benefit your health (Sugar Swap). It is impermissibly paternalistic to employ hypnosis to get you to change your career to one I think is better for you, against your will (Career Hypnosis). It is also commonly accepted that it is impermissible to administer paternalistic life-saving medical treatment to a person who has made an informed and competent decision to refuse it, even if the treatment would confer a significant benefit to that person (Medical Treatment).<sup>1</sup>

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<sup>1</sup>This principle is reflected in the law in many jurisdictions. For example, in the USA, see *Schloendorff v. Society of New York Hospital* 211 NY 125 (1914). In England and Wales, see *Re B (Adult, refusal of medical treatment)* [2002] 2 All ER 449.

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This view is supported by what we can call the Anti-Paternalism Principle (APP). According to APP, regardless of the weight of B's wellbeing reasons that count in favour of the paternalistic behaviour towards B's competent and informed decision, it is impermissible for A to behave paternalistically towards B's decision, against B's will.<sup>2</sup> APP has been defended by many philosophers, including Arneson (1980), Feinberg (1986), VanDeVeer (1986).<sup>3</sup> John Stuart Mill's Liberty Principle is also sometimes thought to reflect this view (1859 [2016]: 12).<sup>4</sup>

Typically, much of the literature on the wrongness of paternalism has not been concerned with *who* is behaving paternalistically towards *whom*. The central focus of the discussion on paternalism often concerns the permissibility of the state enacting paternalistic laws, such as compulsory seatbelt legislation, or a tax on the sale of sugary soft drinks. But an underexplored issue concerns the wrongness of paternalistic behaviour performed by private individuals towards other individuals, such as a stranger towards a stranger, a parent towards her adult children, a friend towards another friend, or, as will be the focus of this paper, a person towards someone who is in love with her.<sup>5</sup>

To an extent, this omission is understandable. Consider what makes paternalism wrong. According to one view, paternalistic behaviour is wrong when and because it involves an interference with the paternalizee's autonomy (Arneson 1980; Feinberg 1986; VanDeVeer 1986; Dworkin 1983). A different view is that the motives and intentions of the paternalizer are disrespectful towards the paternalizee, and it is this disrespect that makes paternalistic behaviour wrong (Shiffrin 2000).

On both of these views, whether or not it is a state or a private individual behaving paternalistically, paternalistic behaviour is wrong either when it interferes with the paternalizee's autonomy, or when it involves disrespectful motives and intentions.<sup>6</sup> But this raises a potential problem. While APP might seem plausible when employed to show the wrongness of paternalism in cases where the state is involved, there are some cases of paternalistic behaviour between private, informed, and competent individuals where APP seems mistaken. This raises a difficulty for supporters of APP. Either they need to reject APP in order to accommodate our intuitions in these cases, or provide grounds for thinking that paternalistic behaviour between certain private individuals is different from paternalism by

<sup>2</sup> For a similar statement of APP, labelled as Strong Anti-Paternalism, see: Birks (2018: 139)

<sup>3</sup> Arneson has subsequently changed his view (2005).

<sup>4</sup> This is H. L. A. Hart's interpretation of Mill's Liberty Principle (1982: 101–3).

<sup>5</sup> One notable recent exception has been provided by George Tsai (2018). Tsai provides grounds for holding that paternalism between those in intimate relationships can be sometimes justified, while remaining at least presumptively wrong between non-intimates. I do not contend with Tsai's arguments here, in part, due to constraints of space, but mostly because the grounds he suggests cannot accommodate the permissibility of paternalism in the cases considered in this paper.

<sup>6</sup> Public reason liberals might be able to distinguish paternalism between private individuals and paternalism administered by the state. This is because the central view in public reason liberalism is that institutions, laws, and policies need to be justified to those affected by them, where justification is understood to require accounting for their actual beliefs and values in some respect. See, for instance, Rawls (2005). This public justification requirement prohibits paternalism in cases where those paternalistic policies and laws could not be justified to the paternalizees. For example, it might not be possible to justify a ban on fatty foods to a person who believes that a shorter life filled with hedonic pleasure is better than a longer life. As a result, the argument of the paper does not undermine a public reason-based version of APP. However, my argument might still be of interest to public reason liberals. After all, even Jonathan Quong, one of the few influential public reason liberals who explicitly discusses the wrongness of paternalism, provides an argument that explains the *prima facie* wrongness of paternalism, and these grounds are independent of the fact that many paternalistic policies and laws would not be publicly justified (2011: 73–107).

the state, in a morally relevant sense. In this paper, I explore several possible morally relevant differences, and find all of them unsatisfactory as grounds for maintaining the plausibility of APP.

The paper proceeds as follows. In Section 1, I introduce two cases that raise problems for APP. Then, in Section 2, I consider whether we can accommodate the permissibility of paternalistic behaviour in these cases by appealing to the fact that paternalism is not always wrong, namely, in cases where people are mentally incompetent, or lack sufficient relevant information. I show that neither incompetence nor the lack of relevant information can adequately account for the permissibility of paternalistic behaviour in these cases. In Section 3, I then consider whether a morally relevant distinction between paternalistic doing and paternalistic allowing could accommodate the permissibility of paternalistic behaviour in these cases. I argue that on two accounts of the wrongness of paternalism, this distinction is unsatisfactory. Following this, in Section 4, I consider the possibility that associative duties could explain the permissibility of paternalistic behaviour in these cases. I argue that they cannot. In Section 5, I contend with the view that paternalistic behaviour is permissible when it prevents oneself from inflicting harm on the paternalizee. I argue that this move is not satisfactory. Finally, in Section 6, I conclude by suggesting that these cases of paternalistic behaviour between private individuals provide us with further grounds to reject APP.

Before I begin, I should first provide a couple of clarifications. For the purposes of this paper I hold that A behaves paternalistically towards B when and only when:

- (1) A intends to promote B's wellbeing and this is A's sole, or primary reason for acting; and
- (2) A substitutes her judgment or agency for B's "on the grounds that compared to B's judgment or agency regarding those interests, A regards her judgment or agency to be (or as likely to be), in some respect, superior to B's".<sup>7</sup>

I hold this definition of paternalism to be a linguistically plausible understanding of term, compatible with our everyday usage. It is beyond the scope of the paper to provide a discussion of the various merits of a variety of definitions of paternalism, and this has been debated at length elsewhere.<sup>8</sup> While my argument is successful on other definitions of paternalism, it is likely to be incompatible with some.<sup>9</sup> However, I should explicitly note that this choice of definition is deliberately broad in order to capture a wide range of cases, such as the following.<sup>10</sup> Imagine that I see you are looking for your melatonin gummies, and I don't tell you because I believe they are bad for your health (Melatonin Gummies).<sup>11</sup> Even though

<sup>7</sup> This definition is adapted from Fahmy (2018: 96). Fahmy helpfully revises Seanna Shiffrin's definition to narrow the scope of what constitutes paternalism, but the grounds for this revision should not concern us here. For the sake of simplicity, I have also excluded a further condition provided by Fahmy and Shiffrin, that A intends to her behaviour to have an effect on B, or B's sphere of legitimate agency. As nothing in my argument rests on this part of the definition, I omit it in order to avoid possible confusion, and to avoid a discussion of what is meant by a sphere of legitimate agency. While Fahmy uses the language of interests, this should be understood as synonymous with wellbeing. The quotation included is Shiffrin as quoted in Fahmy (2000: 218).

<sup>8</sup> For a recent discussion on definitional disputes on paternalism see Jason Hanna (2018: 21–24). See also: Grill (2015: 55) Shiffrin (2000: 212), and Quong (2011: 74–83).

<sup>9</sup> We might doubt that my argument would be successful if we held Gerald Dworkin's definition, where paternalism necessarily involves an interference with the liberty or autonomy of the paternalizee (2020). I discuss below in Section 3 whether a paternalistic omission such as that in Melatonin Gummies could be understood as an interference with the paternalizee's autonomy.

<sup>10</sup> For example, my argument is compatible with Jonathan Quong's definition of paternalism (2011: 80).

<sup>11</sup> A similar example is given by Dworkin (2020).

you do not ask me where they are, by not telling you, I intend to promote your wellbeing, this my sole reason for not telling you, and I think my judgement about whether or not you should take the gummies is superior to yours. This is a plausible instance of paternalistic behaviour.

## 1 Two Cases

With these clarifications in hand, let's now consider a case that could make us doubt APP:

**Distancing** - Suppose that B is in love with A.<sup>12</sup> While A greatly enjoys B's company and would like to spend time with B, A does not love B, and believes she will never love B. A repeatedly tells B this, but B continues to want to spend time with A in hope that she will change her mind. A believes that B's feelings are not good for B, and eventually, in order for B to move on with his life, A ignores all communication from B.

A's behaviour towards B is clearly paternalistic, and both conditions of paternalistic behaviour are met. A intends to promote B's wellbeing and this is her primary reason for acting; and she substitutes her judgment or agency for B's. She believes that B is mistaken to think that he would be better off remaining in contact with A, or that A would ever feel differently about B. A holds that her judgement in this regard is superior to B's.

If we hold APP then A's behaviour toward B is impermissible. This does not mean that we should forcibly require A to remain in contact with B. It is plausible that A has a right to associate with whoever she chooses. But even if we accept A has this right, we can say that APP suggests that she acts impermissibly towards B. It is a case of impermissible behaviour, even if A has a right to behave wrongly.<sup>13</sup>

Now, compare Distancing to a different case, where C is in love with A. A also does not love C, but wants to ignore all communication from C for a different reason, namely, she finds C creepy. A's behaviour towards C is identical to her behaviour towards B, in the sense that in both cases A ignores communication from B and C. However, there is a difference in terms of the intention and motivation for A's behaviour. The former is paternalistic, whereas the latter is not. APP does not say anything about the wrongness of A's behaviour towards C, and it seems clearly permissible.

Despite the fact that A behaves paternalistically towards B, it is plausible to hold that A's behaviour toward B is not wrong at all. Indeed, one might hold the stronger view that A has an obligation to behave paternalistically towards B. She would be doing something wrong if she remained in contact with B.

This reveals a problem for those who hold APP. For either they reject APP in order to permit paternalistic behaviour in cases such as Distancing, or there needs to be a morally

<sup>12</sup> My argument is compatible with many definitions of love, but for the purposes of the paper I mean romantic love, defined by Robert Nozick as a mental state with two stages: (i) The state of "almost always thinking of the person; wanting constantly to touch and to be together; excitement in the other's presence; losing sleep; expressing one's feelings through poetry, gifts, or still other ways to delight the beloved; candlelit dinners; feeling that short separations are long; smiling foolishly when remembering actions and remarks of the other; feeling that the other's minor foibles are delightful..." and so forth; and (ii) the state of "Wanting to form a *we* with that particular person, feeling, or perhaps wanting, that particular person to be the right one for you to form a *we* with, and also wanting the other to feel the same way about you" (1989: 69–70).

<sup>13</sup> For a discussion of a right to do wrong see (Waldron 1993).

relevant difference between Distancing and the cases where paternalistic behaviour is typically thought to be wrong, such as Sugar Swap, Career Hypnosis, and Medical Treatment.

I accept that for some, holding paternalistic behaviour in Distancing to be impermissible might not initially seem problematic. Indeed, it is possible that some readers think that we do not need to reject APP or show a morally relevant difference. But this comes at an intuitive cost, for at least two reasons.

The first is the extent of the harm to B if A does not behave paternalistically towards him. It is plausible to think that B will be miserable for a lengthy period of time if he remains in contact with A. This misery might affect B's employment, and his friendships. Moreover, B may be unable to have relationships with others because of his feelings for A. This could be significantly harmful. Suppose B has always wanted to have biological children, but holds out on waiting to have children with A, then it is possible by wasting his time with A, he will be unable to ever have children. By behaving paternalistically, A can make B's life go significantly better, and APP prohibits doing so.

Of course, this is likely not to matter for a staunch proponent of APP. After all, APP prohibits paternalism even in cases where it would prevent the paternalizee's death, and so even if A's failure to behave paternalistically results in B having a very bad life, it is not as harmful as death. As a result, prohibiting paternalism in Distancing is not, in comparison, a particularly big bullet for a proponent of APP to bite.

The second intuitive cost of holding that A behaves impermissibly in Distancing is that it has implausible implications for other cases. We can imagine the following alternative scenario:

**Anti-Paternalistic Sex** - D has deeply held anti-paternalistic convictions, and is an avid proponent of APP. D thinks that it is always impermissible to behave paternalistically towards fully informed competent adults against their will. Now, D and E are acquaintances, and suppose E is in love with D. While D greatly enjoys E company and would like to have sex with E, D does not love E. D knows that it would be better for E if D did not have sex with E given that D believes he will never love E. D repeatedly tells E that he in fact will never love E, but E hopes that one day D will change his mind. Knowing that paternalistic behaviour is impermissible, and that refusing to have sex with E for E's benefit would be paternalistic, D proceeds to have sex with E. D holds that it simply would be wrong not to have sex for paternalistic reasons.

It would have been paternalistic for D not to have sex with E because D would have been intending to promote E's wellbeing and this would have been his primary reason for acting; and he would have substituted his judgment or agency for E's, given that D held that it would be better for E not to have sex with D.

Now, if one holds that paternalistic behaviour is impermissible in Distancing, unless there are other arguments forthcoming, it would also have been impermissible in Anti-Paternalistic Sex. Yet, it seems implausible to think that it would have been *impermissible* for D to behave paternalistically towards E. In fact, it seems more plausible to think that it was at least permissible (and possibly even obligatory) for D to have behaved paternalistically and not have sex with E. But it is difficult to reconcile that judgement with APP as it stands. Distancing and Anti-Paternalistic Sex are two instances of a similar sort of situation, and the purpose of introducing the latter case is to illuminate a further type of harmful behaviour that follows as a result of acting in accordance with APP.

Before we proceed to consider some possible solutions for a proponent of APP, let's now consider an immediate objection. It could be thought that a natural way to circumvent the problem of these cases would be to modify the definition of paternalism, rather than rejecting APP.<sup>14</sup> We could hold that there is nothing paternalistic about A's behaviour towards B when A regards her judgement to be (or likely to be), in some respect, superior to B's when the judgement pertains to features of A herself. A's behaviour is based on the belief that B is mistaken with regard to at least one fact about A, namely, he would be better off remaining in contact with A, or that A would eventually feel differently about B. As such, APP does not apply to cases such as Distancing, simply because it is not paternalistic.

What could be said in response to this? I can think of at least two replies. The first is to test whether such a definition of paternalism is plausible in other cases. I suspect it is not. Consider the following case:

**Portrait Painter** - G wishes to paint F in order to win the coveted prize of best portrait in a competition. F, however, believes that he is too unattractive to be the subject of a prize-winning portrait, and tells G this. G disagrees. F refuses to be G's portrait model because he wants G to win the competition.

F's refusal is purely to benefit G. It is not due to F feeling he has better things to do with his time, or because of feelings of insecurity. Rather, F's refusal is solely intended to promote G's wellbeing, and F regards his judgment to be superior to G regarding how G is most likely to win the competition. It would be curious to consider F's behaviour towards G not to be paternalistic, even though the object of F's judgement pertains to features of F.

A second response to this challenge is to doubt that there is a justified basis for revising the definition of paternalism this way. Why should the fact the judgement pertains to features of the purported paternalizer herself make any difference to whether the resultant behaviour is paternalistic?

One reason it could be thought to make a difference is that when A regards her judgement to be (or likely to be), in some respect, superior to B's, and the object of A's object of judgement pertains to features of herself, A really might know best about these matters. This disparity of information between A and B could be why A's behaviour is not paternalistic towards B.

Nevertheless, on many definitions of paternalism, a lack of relevant information does not affect whether an interference should be labelled paternalistic.<sup>15</sup> This is even the case if the purported paternalizer has access to information the paternalizee does not. A lack of relevant information does, however, make a difference with regard to whether paternalistic behaviour might be permissible paternalism or not. We will consider this view in Section 2 below, where I will argue that a lack of relevant information does not render paternalism permissible on APP in Distancing and Anti-Paternalistic Sex. So, unless there are other grounds to do so, we should not make this modification to the definition of paternalism.

<sup>14</sup> I thank an anonymous reviewer for raising this objection.

<sup>15</sup> One exception is Quong's definition of paternalism, which excludes cases where a person blamelessly lacks relevant information concerning a decision (2011: 80, 82–3).

## 2 Competence and Sufficient Relevant Information

Let's now consider a few possible solutions for a proponent of APP. The first possible solution concerns the fact that not all paternalistic behaviour is impermissible. Much paternalistic behaviour is only *prima facie* wrong, but in fact, is not wrong at all.<sup>16</sup> After all, APP only applies to competent and informed decisions.<sup>17</sup> If we could show that the paternalizee either lacks competence or lacks sufficient relevant information, then we can maintain APP, without holding that paternalistic behaviour is impermissible in the cases of Distancing and Anti-Paternalistic Sex. But as I will now argue, it seems unlikely that either of these factors can explain the permissibility of paternalistic behaviour in these cases.<sup>18</sup>

Let's consider a couple of standard examples of permissible paternalism when the paternalizee lacks competence. Suppose a person is very drunk, and thinks it is a good idea to try to climb up a steep wall to get into a roof top bar. A proponent of APP might think that we can paternalistically interfere with this decision, because the alcohol has rendered the paternalizee incompetent to make these decisions. Or suppose a person has a type of schizophrenia that involves auditory hallucinations instructing her to harm herself. Again, the decision to harm herself may be incompetent due to the hallucinations, and therefore, a paternalistic interference to prevent her from harming herself might be permissible, even if one holds APP to be true.

Returning to the cases of Distancing and Anti-Paternalistic Sex, could we show that B and E are incompetent? Now, it might seem plausible that they are. One might think that B and E's feelings for A and D render them incompetent relative to the decision whether or not to remain in contact with A and D. In which case, paternalism would not be impermissible. It is often said how some forms of love are similar to mental illness.<sup>19</sup>

But holding that love renders one incompetent to make decisions would have curious consequences. Imagine a wedding. Two people, deeply in love are about to marry. If love rendered a decision incompetent, then it could be permissible to interfere paternalistically to stop the wedding.<sup>20</sup> Whereas, if the couple weren't in love, and perhaps only mildly liked each other, then interference would be impermissible according to APP.

Or imagine a couple, deeply in love, who are about to have sex. Now, if love renders a decision incompetent, then their decision to have sex would be incompetent. This has significant implications if one holds that valid consent to sex requires all parties to be making competent decisions.<sup>21</sup> It would mean that consensual sex could only be between those who not in love with each other.<sup>22</sup> Given the wrongness of non-consensual sex, the only form of

<sup>16</sup> Following Kagan, I hold that behaviour is *prima facie* wrong when it appears to be wrong, but it might not be wrong in any respect. Behaviour is *pro tanto* wrong when it is in fact wrong in at least one respect, but it might still be permissible because its wrongness could be outweighed by other considerations (Kagan 1989: 17n).

<sup>17</sup> For a clear account of these exceptions, see Feinberg (1986: 113–124).

<sup>18</sup> Throughout the paper, when I write that we will consider whether paternalistic behaviour is permissible in Distancing and Anti-Paternalistic Sex, or whether certain morally relevant differences permit paternalistic behaviour in these cases, I mean that we will consider whether it is permissible for A to behave paternalistically towards B, and whether it *would* have been permissible for D to behave paternalistically towards E by refusing to have sex with E for E's benefit. I am aware that no paternalistic behaviour takes place in Anti-Paternalistic Sex, but this omission makes the prose less cumbersome.

<sup>19</sup> One of many examples from popular culture is Beyonce's song, *Crazy in Love*.

<sup>20</sup> I say that it is only *could be* permissible, because whether it would be in fact permitted depends on other factors, such as whether the benefit conferred is sufficiently great to justify the paternalistic behaviour.

<sup>21</sup> For a discussion of the information requirement for permissible sex, see: Lazenby & Gabriel (2017).

<sup>22</sup> Indeed, some hold that rape should be defined as non-consensual sex. See for instance Archard (2007).

permissible sex would be where the individuals involved were not in love. As a result, loveless sex in one-night-stands could be permissible, but if feelings of love developed in either person, sex would become impermissible. This is counterintuitive to the extent that we should doubt love renders a decision incompetent.

Perhaps it would be more promising to consider whether a lack of relevant information could render paternalism permissible in Distancing and Anti-Paternalistic Sex. The classic example of permissible paternalism due to a lack of relevant information is given by Mill, where a person is about to cross a bridge, unaware that it is rotten (1859 [2016]: 70). If that person steps on the bridge, he will plunge to his death. Given that the person lacks relevant information about his decision to cross the bridge, it would be permissible paternalism to interfere and stop him from crossing it. Or suppose that I have a glass of clear liquid and I think it is water, whereas it actually contains arsenic.<sup>23</sup> Because I lack information about the contents of the glass, paternalistically interfering with my decision to drink the liquid would be permissible.

How could this permit paternalistic behaviour in Distancing and Anti-Paternalistic Sex? Both B and E lack the relevant information that A and D will not change their minds in the future. But perhaps if they knew that in fact A and D will never change their mind, they would want A and D to behave paternalistically, in which case the paternalistic behaviour could be permissible on APP.

Nevertheless, it is dubious to understand the information requirement this way. There is an important distinction between relevant information about facts that exist now, and those in the future. If we restrict the information requirement of APP to only facts that exist now, then both B and E have sufficient relevant information to prohibit paternalism on APP.

For example, imagine a person has the aim to be Prime Minister, and proceeds to take steps to achieve this aim, such as working long hours campaigning for a political party, and working in unpaid political internships, and so forth. The chances of becoming Prime Minister are very small, and the costs of pursuing this aim could be great. Even so, a proponent of APP would be unlikely to think the decision to pursue this aim lacks information to the extent paternalistic interference with the decision could be permitted. This would result in potentially permitting of a far greater number of paternalistic interferences than typically supposed.

We can make sense of this by noting that the fact whether that person will be Prime Minister is something that will be determined in the future. If she has the information that the chances of success are small, then this is sufficient relevant information to prohibit paternalism on APP. Whereas the information about Mill's rotten bridge is not something that is determined in the future. It is a fact that if that person steps on the bridge now, he will plunge to his death.

Also, consider a person who buys a lottery ticket with the aim to win the jackpot, despite the very small chance of winning. It would be odd to think that the information requirement of APP would prohibit paternalistic interference in all cases apart from ones where the person would in fact win the lottery. Rather, we think people should ordinarily be allowed to take their chances, as long as they know their chances are small.<sup>24</sup>

<sup>23</sup> A similar example to make this point is given by Feinberg (1986: 104).

<sup>24</sup> We might question whether paternalistic interference with gambling could ever be permitted. It is possible that a gambling addiction could mean that paternalistic interference is permissible, but this would be likely on the grounds that the addict lacks competence, rather than information.



With this distinction in hand, as long as B has the relevant information that the chances of success are small, even if there is only a one in several million chance that A will change her mind about B, we should not hold that B lacks information about the decision in a sense that could permit paternalism on APP, any more than those people who try to pursue careers with low chances of success, or those buying a lottery ticket lack information about their decisions. In short then, neither lack of competence, or a lack of relevant information are viable solutions to permit paternalistic behaviour in Distancing and Anti-Paternalistic Sex.

### 3 Doing and Allowing

Let's now consider some other possible solutions that could permit paternalistic behaviour in Distancing and Anti-Paternalistic Sex without requiring us to reject APP.

One way we could do this is to draw a distinction between paternalistic *doing* and paternalistic *allowing*. One example of the former is Sugar Swap, where A swaps sugar in B's tea for a low-calorie substitute. An example of the latter is where A does not tell B the location of B's melatonin gummies because he believes they are bad for her health.

Perhaps we could hold that APP forbids any paternalistic doing, while sometimes permitting paternalistic allowing. This is not tantamount to rejecting APP, as it would capture much of the intuitive importance of APP, while also permitting some cases of paternalistic behaviour towards competent informed adults in Distancing and Anti-Paternalistic Sex. After all, the cases where anti-paternalistic intuitions are strongest involve paternalistic doing, such as in Medical Treatment. Whereas, we might feel the intuition of the wrongness of paternalistic allowing such as in Melatonin Gummies is less strong (regardless of the differing amounts of harm they avert). Following much of the literature on doing and allowing harm, we might want to claim that while paternalistic doing is *always absolutely prohibited* regardless of the benefit conferred on the paternalizee, paternalistic allowing is only pro tanto wrong, and can be sometimes justified if the benefit conferred on the paternalizee is sufficiently great (Woollard 2015).

If we accept this view, given that both Distancing and Anti-Paternalistic Sex are cases of paternalistic allowing, we could hold that paternalistic behaviour is permissible on APP in these cases, while also holding that the paternalistic doing in Medical Treatment would be impermissible.

What should we make of this solution? There are at least two problems with it. Consider the two accounts of the wrongness of paternalism mentioned earlier. On the autonomy view of the wrongness of paternalism, it is likely to mean that either too few instances of paternalistic behaviour are impermissible, or too many are impermissible, and neither result would be satisfactory for a proponent of APP. Alternatively, if one holds an account where it is the disrespectful motives and intentions that make paternalism wrong, the solution is unacceptably ad hoc. Let me expand on each of these points in turn.

As noted above, some people hold that paternalistic behaviour is wrong when and because it involves an interference with that person's autonomy. In cases such as Medical Treatment, the paternalistic behaviour interferes with the paternalizee's autonomous decision not to

<sup>24</sup> We might question whether paternalistic interference with gambling could ever be permitted. It is possible that a gambling addiction could mean that paternalistic interference is permissible, but this would be likely on the grounds that the addict lacks competence, rather than information.

receive medical treatment. Whereas in the case of Distancing, the paternalistic behaviour is not an interference with the paternalizee's autonomous decision.

This might seem a promising basis for holding that Distancing is permissible paternalism, but Medical Treatment is not. Nevertheless, it is either a too narrow solution, or it is too broad. It would be too narrow because it cannot account for the wrongness of paternalistic allowing at all. For instance, cases such as Melatonin Gummies are plausibly paternalistic, but do not seemingly interfere with the paternalizee's autonomy. So, rather than simply justifying that paternalistic doing is morally worse than paternalistic allowing then, this solution means that paternalistic allowing is not wrong *at all*. Hence, the solution is too narrow.

Alternatively, it could be objected that paternalistic allowing *does* interfere with the paternalizee's autonomy. When I fail to tell you where your melatonin gummies are, I am interfering with your autonomous decision to take melatonin gummies in the sense that unless I act in a certain way, your autonomous desire to eat the melatonin gummies would be frustrated.

The worry about holding this broader understanding of what counts as an interference with autonomy is that it would mean an implausibly large number of actions and omissions would be significantly wrong. To see this, suppose that failing to help a person satisfy her autonomous desire constitutes an interference with her autonomy, and that interfering with autonomy is a significant wrong to the extent that it prohibits doing so even when we can confer enormous benefits to that person. Each time we fail to help a person satisfy her autonomous desires, we are significantly wronging her.

The problem is that with the exception of infants, and some severely mentally disabled persons, all people have many autonomous desires, and if we hold that we are wronging them when we are failing to help them, this would mean we are significantly wronging almost all people, all of the time. I suspect this implication is counterintuitive to the extent that we should reject the view that paternalistic allowing is an interference with autonomy. As a result, this solution is too broad.

Rather than holding the autonomy view, suppose that one holds that the wrongness of paternalism is based on the disrespectful motives and intentions. This also fails to adequately support the doing and allowing distinction for APP. This is because there seems to be no grounds to hold that paternalistic doing is any more disrespectful than paternalistic allowing. It is not clear in what sense paternalistic allowing involves less of a substitution of judgment of the paternalizee than paternalistic doing. Nor do they require the paternalist to view her judgement or agency to be any less superior than the paternalizee's.

Consider Medical Paternalism, where paternalistic doing prevents harm to the paternalizee by administering lifesaving medical treatment against his will. Now also consider a case where paternalistic allowing prevents harm to the paternalizee against her will, by refusing to tell her where the location of her suicide pills. I cannot see any grounds for holding that the paternalistic doing involves a greater substitution of judgment or viewing her judgement or agency to be any less superior than the paternalizee's than the paternalistic allowing.

As a result, unless there are grounds for holding paternalistic doing is more disrespectful than paternalistic allowing, we should not hold that one is morally worse than the other *qua* paternalism. I am unaware of any grounds for doing so.

## 4 Associative Duties

Let's now consider a different solution to show that paternalistic behaviour is permissible in Distancing, and Anti-Paternalistic Sex, while still holding APP. One possibility is to hold that A and D have associative duties towards B and E, because the latter are in love with the former.

Associative duties are “non-contractual duties owed in virtue of a valuable relationship” (Lazar 2009: 90). Typically, it is thought that these duties exist between friends and family. Some even hold that there are associative duties between compatriots, grounded on the value of a shared history and culture (Miller 1997). To see the force of one type of associative duty, imagine you are in a burning building, and you can either save your loving mother or a stranger. Many people would hold that in virtue of your valuable relationship with your mother you have an associative duty to save her, rather than the stranger. You would be wronging her if you did not.

Following this, one might argue that in virtue of the fact B and E love A and D, A and D have certain duties toward B and E. In the cases of A and D, the paternalistic behaviour could be permissible because the duty to those who love them excludes the reason not to behave paternalistically. This would be compatible with holding that paternalistic behaviour is *impermissible* in the typical cases covered by APP, such as Medical Treatment, Career Hypnosis, Sugar Swap, and Melatonin Gummies.

There are at least two problems with this move. First of all, even if we accept that there are some valuable relationships that generate associative duties, it might be difficult to accept that the relationship between A and B and D and E is of such value it creates these duties that permit paternalistic behaviour. It might be doubtful that the fact a person loves you is a sufficient condition for you to have an associative duty towards that person. Rather, we might think that love needs to be reciprocated to have the value required to create an associative duty. The cases of Distancing and Anti-Paternalistic Sex are cases where love is not reciprocated, and so it is doubtful that there are associative duties that permit paternalistic behaviour in these cases.

The second, more pressing problem with this move is that even if we accept that A has an associative duty towards B, and that D has an associative duty towards E, it is difficult to delineate the scope of permissible paternalistic behaviour due to the associative duty.

We might think that A and D are permitted to behave paternalistically in these specific cases due to the associative duty, but it is not clear how this associative duty would permit only this specific paternalistic behaviour. If it permits A and D to behave paternalistically in terms of cutting off contact, or refusing to have sex, why would it not also permit other paternalistic interventions? For example, perhaps the associative duty would also permit A and D hypnotising B and E to change their careers, if that would prevent the same amount of harm. It is difficult to see how the associative duties permit some instances of paternalism, but not others. A proponent of APP would be unlikely to want to accept the permissibility of paternalistic hypnosis in these cases. This suggests that associative duties, even if they exist in cases such as Distancing and Anti-Paternalistic Sex, are insufficient grounds to permit paternalistic behaviour in these cases.

## 5 The Source of Harm

The final possible solution I will consider is the thought that there is an exception to the wrongness of paternalistic behaviour, namely, when A's paternalistic behaviour toward B prevents A from inflicting harm on B. The idea is that, if one's paternalistic behaviour prevents oneself from inflicting harm on the paternalizee, it is morally distinct from paternalistic behaviour that merely confers a benefit. When A behaves paternalistically towards B, A is preventing harm to B that is being caused by A. Whereas in the other cases of paternalism considered, such as Medical Treatment, the paternalistic behaviour is preventing harm that is caused by someone or something else, such as the cause of the life threatening injury.

With this distinction, we could hold that APP permits paternalistic behaviour in Distancing, and Anti-Paternalistic Sex, because in these cases, the paternalizer is the source of harm prevented by the paternalistic behaviour, and also hold that APP prohibits paternalistic behaviour in the cases of Medical Paternalism, Sugar Swap, Career Hypnosis, and Melatonin Gummies, where the paternalizer is not the source of the harm prevented.

There is some degree of intuitive plausibility to this move. Consider the example of a boxing match, where Bruno is heavily defeating his opponent, Mike.<sup>25</sup> Mike wishes to carry on fighting, but Bruno does not want to inflict a serious, permanent injury on Mike. Mike demands that Bruno continues the fight, but Bruno knows that even if he holds back, Mike is likely to suffer a serious injury. As a result, Bruno refuses to continue to fight Mike. We might think that Bruno's behaviour is paternalistic towards Mike, but it is a case of *permissible* paternalism.

While this might seem a *prima facie* plausible distinction, it is difficult to see its theoretical justification. Regardless of the view one holds of the wrongness of paternalism, it seems irrelevant to our assessment of the wrongness *qua* paternalism whether the paternalistic behaviour prevents oneself from inflicting harm on the paternalizee, rather than confers a benefit. Certainly, if we hold that paternalistic behaviour is wrong when and because it interferes with the autonomy of the paternalizee, the fact that the paternalistic behaviour prevents the paternalizer inflicting harm does not make it any less of an autonomy violation.

What if we hold paternalistic behaviour is wrong due to the disrespectful motives and intentions?

It is plausible to hold that Bruno preventing himself being a source of harm involves a different type of motive and intention from those in Medical Treatment, Sugar Swap, Career Hypnosis, and Melatonin Gummies. But even so, it does not mean that APP entails that paternalistic behaviour is permissible in Distancing, and Anti-Paternalistic Sex, while impermissible in the other cases.

Suppose Bruno's intention and motive to stop fighting Mike is to prevent himself from being a source of harm. Bruno's primary concern could be himself, and what sort of person he wants to be, rather than being primarily concerned with the wellbeing of Mike. But this is distinct from the paternalistic motives and intentions in Distancing, and Anti-Paternalistic Sex.<sup>26</sup>

Indeed, we should doubt that one could intend and be motivated to prevent oneself from being the source of harm, and also have the necessary motive and intention for the behaviour

<sup>25</sup> I thank Paul Bou-Habib for pressing me with this objection, and providing the example.

<sup>26</sup> Shiffrin makes a similar point concerning a difference between paternalistic behaviour and being complicit with someone's detrimental plans (2000: 226–7).

to be paternalistic, namely that the sole or primary reason for acting is to benefit someone else. For example, in cases such as Bruno, where he chooses to stop fighting Mike, the primary concern could be himself, and what sort of person he wants to be, rather than being primarily concerned with the wellbeing of the beneficiary. Whereas in Distancing, A's primary motive and intention is a concern for the wellbeing of B, rather than being motivated in order to prevent herself being a source of harm.<sup>27</sup> The behaviour towards the beneficiary could either be paternalistic, or it could be motivated by a concern about oneself being a source of harm, but it cannot be both.

In summary then, an appeal to this exception to the wrongness of paternalistic behaviour does not enable a proponent of APP to hold that paternalistic behaviour is permissible in Distancing and Anti-Paternalistic Sex, and also impermissible in the other cases.

## 6 Conclusion

In this paper, I have considered several possible grounds for a proponent of APP to hold that paternalistic behaviour is permissible in Distancing and Anti-Paternalistic Sex. All of them were unsatisfactory. As a consequence, a proponent of APP is faced with a choice. Assuming there are no further arguments forthcoming, either we hold that paternalistic behaviour in these cases is impermissible, and so allowing us to maintain APP, or we accept that paternalistic behaviour is permissible in these cases, and reject APP. This gives us further grounds to reject APP and instead accept a more moderate view.<sup>28</sup> We might instead hold that sometimes the weight of B's wellbeing reasons that count in favour of paternalistic behaviour towards B's competent and informed decision can be sufficiently great to permit others, such as A, to behave paternalistically towards B's decision, against his will.<sup>29</sup> Distancing and Anti-Paternalistic Sex could be two such cases.

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<sup>27</sup> If we accept this distinction, it is possible that in Anti-Paternalistic Sex, D could permissibly refuse to have sex with E if he were motivated in order to prevent himself from being the source of harm to E, but this does not show that D's *paternalistic* refusal would be permissible.

<sup>28</sup> This lends further support to the literature defending the permissibility of paternalism against the paternalizee's will, such as: Conly (2013), Hanna (2018), Scoccia (2008).

<sup>29</sup> I defend this view in Birks (2018).

## Declarations

**Conflict of Interest** None.

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