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Basic Income, Cash Transfers, and Welfare State Paternalism

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Much of the discussion concerning the permissibility of government paternalism has focused on laws and policies that either (1) ban or mandate the use or purchase of particular products;¹ or (2) structure choice contexts to “nudge” people to make one choice rather than another.² Examples of the former include existing laws that mandate the use of seatbelts or ban the possession of marijuana, cocaine, and heroin; as well as proposed laws to ban cigarettes or prohibit the purchase of sugar-sweetened beverages greater than 16 oz. An example of the latter includes opt-out retirement savings plans which make the “best” choice the default choice, thus taking advantage of people’s status quo bias.

¹ Joel Feinberg, *Harm to Self* (New York: Oxford University Press, 1986); Sigal R. Ben-Porath, *Tough Choices: Structured Paternalism and the Landscape of Choice* (Princeton: Princeton University Press, 2010); Sarah Conly, *Against Autonomy: Justifying Coercive Paternalism* (New York: Cambridge University Press, 2013); and Julian Le Grand and Bill New, *Government Paternalism: Nanny State or Helpful Friend?* (Princeton: Princeton University Press, 2015).

² Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008); Riccardo Rebonato, *Taking Liberties: A Critical Examination of Libertarian Paternalism* (New York: Palgrave Macmillan, 2012); Mark D. White, *The Manipulation of Choice: Ethics and the Libertarian Paternalism* (New York: Palgrave Macmillan, 2013); Jason Hanna, “Libertarian Paternalism, Manipulation, and the Shaping of Preferences,” *Social Theory and Practice* 41 (2015): 618-643; Richard J. Arneson, “Nudge and Shove,” *Social Theory and Practice* 41 (2015): 668-691; Cass R. Sunstein, *The Ethics of Influence: Government in the Age of Behavioral Science* (New York: Cambridge University Press, 2016); and Daniel M. Hausman, “Behavioural Economics and Paternalism,” *Economics and Philosophy* 34 (2018): 53-66.

However, commentators have also suggested that governments act paternalistically in the design of their welfare programs. Some claim that welfare programs that place conditions on the receipt of cash transfers or in-kind benefits – e.g. work, training, and/or substance abuse screening requirements – are paternalistic insofar as they direct citizens to lead ‘traditional bourgeois lives.’³ Others point to proposed and existing policies that place restrictions on the types of goods recipients can purchase with their in-kind benefits, for example, proposed policies to prohibit people from using their “food stamps” to purchase sugar-sweetened beverages.⁴ Still others argue that the mere provision of in-kind benefits rather than cash is paternalistic since it

³ Lawrence M. Mead, “The Rise of Paternalism,” in *The New Paternalism: Supervisory Approaches to Poverty*. ed. Lawrence M. Mead (Washington, D.C.: Brookings Institution Press, 1997): 1-38; Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (New York: Oxford University Press, 2003), 147-149; Elizabeth Anderson, “Welfare, Work Requirements, and Dependent-Care,” *Journal of Applied Philosophy* 21 (2004), 249; Bernd Schubert and Rachel Slater, “Social Cash Transfers in Low-Income African Countries: Conditional or Unconditional?” *Development Policy Review* 24 (2006), 573; Ariel Fiszbein and Norbert Schady, *Conditional Cash Transfers: Reducing Present and Future Poverty* (Washington, DC: The World Bank, 2009), 51-59; Matt Zwolinski, “The Pragmatic Libertarian Case for a Basic Income Guarantee,” *CATO Unbound: A Journal of Debate*, August 4, 2014. Available at: <http://www.cato-unbound.org/2014/08/04/matt-zwolinski/pragmatic-libertarian-case-basic-income-guarantee>; and Anders Molander and Gaute Torsvik, “Getting People into Work: What (if Anything) Can Justify Mandatory Activation of Welfare Recipients?” *Journal of Applied Philosophy* 32 (2015), 382-384.

⁴ Nicole M.V. Ross and Douglas P. MacKay, “Ending SNAP-Subsidized Purchases of Sugar-Sweetened Beverages: The Need for a Pilot Project,” *Public Health Ethics* 10 (2017), 65-67.

rests on the judgment that citizens cannot be trusted to use cash transfers wisely to promote their own interests.⁵ Matt Zwolinski nicely summarizes these concerns:

The conditional welfare state is not only invasive, it is heavily *paternalistic*. Restrictions on eligibility are imposed in order to encourage welfare recipients to live their lives in a way that the state thinks is good for them: don't have kids out of wedlock, don't do drugs, and get (or stay) married. And benefits are often given in-kind rather than in cash precisely because the state doesn't trust welfare recipients to make what it regards as wise choices about how to spend their money.⁶

The anti-paternalistic nature of cash transfers, Zwolinski and others argue further, is a strong reason in favor of a basic income guarantee, as opposed to the provision of in-kind benefits.⁷

In this paper, I explore the claim that governments often act paternalistically in the design of their welfare programs. I first provide a definition of *welfare state paternalism* and suggest that welfare policies are not necessarily paternalistic simply because they offer recipients in-kind benefits rather than cash or place conditions on the receipt of benefits. I then investigate whether welfare policies that satisfy the definition of welfare state paternalism are objectionably

⁵ Robert E. Goodin, *Reasons for Welfare: The Political Theory of the Welfare State* (Princeton: Princeton University Press, 1988), 318-320; Guy Standing, "How Cash Transfers Promote the Case for Basic Income," *Basic Income Studies* 3 (2008), 7-9; Zwolinski, "The Pragmatic Libertarian Case for a Basic Income Guarantee;" and Philippe Van Parijs and Yannick Vanderborght, *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (Cambridge, MA: Harvard University Press, 2017), 12-13,

⁶ Zwolinski, "The Pragmatic Libertarian Case for a Basic Income Guarantee."

⁷ Standing, "How Cash Transfers Promote the Case for Basic Income," 26; Zwolinski, "The Pragmatic Libertarian Case for a Basic Income Guarantee;" and Van Parijs and Yannick Vanderborght, *Basic Income*, 13.

paternalistic and so therefore impermissible. I argue that they are not and provide a framework policymakers may use to determine when such policies are morally permissible and when they are not.

The principal conclusion of my paper is that welfare policies that provide in-kind benefits or place conditions on the receipt of benefits are neither as paternalistic, nor as objectionably paternalistic, as some commentators might think. The charge of paternalism is thus not always a reason in favor of unconditional cash transfers or a basic income guarantee. Whether proposed or existing welfare policies are objectionably paternalistic requires careful empirical and normative analysis.

1 What is Welfare State Paternalism?

To make sense of the claim that many welfare policies are paternalistic, we need an account of paternalism. Unfortunately, there is no consensus amongst scholars regarding the necessary and sufficient conditions of paternalism. Indeed, the question “what is paternalism?” is currently the subject of a lively debate. In what follows therefore, I shall not provide an account of welfare state paternalism by first identifying the *correct* account of paternalism, and then applying it to the context of welfare policies – fully defending a particular definition of paternalism is simply beyond the scope of this paper. I shall instead formulate an account of state paternalism that (1) is theoretically consistent and reasonable, and (2) can explain the judgment mentioned above that many welfare policies are paternalistic. My aim, in other words, is to present the argument for the paternalistic nature of welfare policies in its best light. Proceeding in this way will not allow us to render final judgments regarding the paternalistic nature of

particular welfare policies, but it will allow us to get much clearer on the nature and force of the argument for the claim that certain welfare policies are paternalistic.

1.1 State Paternalism

According to what is arguably the most prominent understanding of paternalism in the philosophical literature, X acts paternalistically towards Y by doing (omitting) Z if and only if:

1. Z (or its omission) interferes with the liberty or autonomy of Y.
2. X does so without the consent of Y.
3. X does so only because X believes Z will improve the welfare of Y (where this includes preventing his welfare from diminishing), or in some way promote the interests, values, or good of Y.⁸

This definition can explain why *prima facie* paternalistic laws such as drug bans or seatbelt mandates are paternalistic. However, since it includes interference with liberty as a necessary condition, it is hard to see how most – if any – *welfare programs* can be understood to be paternalistic on this definition. The problem is that welfare policies typically involve the *provision of goods or services to citizens* – e.g. health insurance, housing vouchers, and cash assistance – not the restriction of their liberty.

⁸ Gerald Dworkin, *Paternalism*. Stanford Encyclopedia of Philosophy, 2014. Available at:

<http://plato.stanford.edu/entries/paternalism/> (accessed August 17, 2016). See also

Gerald Dworkin, “Paternalism,” *The Monist* 56 (1972), 65.

One might argue that welfare programs satisfy this definition since people are entitled to cash transfers, not the provision of in-kind goods and services. By implementing welfare policies that provide people with in-kind goods and services rather than cash therefore, governments restrict people's liberty in the sense of refusing to provide them with a resource to which they are entitled. By analogy, if I owe you \$50, I arguably limit your liberty if I repay you with a \$50 gift card for the local bookstore rather than cash. In both cases, one agent is interfering with another agent's liberty by failing to give her the resources to which she is entitled.

In response, consider first that it seems wrong in this case to say that the government is interfering with citizens' liberty *through its welfare policies*. It's not the welfare policies that interfere with people's liberty, but rather the government's failure to provide them with a cash transfer to which they are entitled. Similarly, it's not the act of giving you a \$50 gift card that limits your liberty, but rather my failure to give you \$50 cash. Second, this understanding of welfare policies as paternalistic presupposes that citizens are entitled to cash transfers, not in-kind goods and services. This premise is not only highly controversial but is also the claim that some basic income proponents are trying to establish by arguing that welfare policies are paternalistic. On this understanding of paternalism therefore, the anti-paternalism argument in favor of a basic income turns out to be circular, presupposing as a premise the very claim it seeks to establish.

Fortunately, to formulate an account of welfare state paternalism, we need not rely on such a restrictive definition of paternalism. A number of scholars have argued that interference

with people's liberty is not necessary for paternalistic action.⁹ For example, suppose my sister and her children are coming to visit for a week. I know that my sister heavily consumes soda and allows her children to do the same.¹⁰ Because I don't trust my sister's ability to make good decisions regarding her own soda consumption or that of her children, I purposefully don't stock the fridge with soda, though I do stock the pantry with foods I know they like. By doing so, some scholars argue, I act paternalistically towards my sister, even though I do not interfere with her liberty. My actions are paternalistic, these scholars argue, because they are *motivated* by the judgment that my sister's self-governance abilities are deficient with respect to some sphere of choice.¹¹

Nicolas Cornell argues that my actions in this case can be paternalistic even absent this motivation. It is enough that my actions *express* the judgment that my sister's self-governance abilities are deficient.¹² To use one of his examples, suppose I buy a business suit for my daughter, thinking she will enjoy it. Suppose further that my daughter has no need for such a suit

⁹ See Seanna Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," *Philosophy and Public Affairs* 29 (2000), 213; Danny Scoccia, "In Defense of Hard Paternalism," *Law and Philosophy* 27 (2008), 352-353; Jonathan Quong, *Liberalism Without Perfection* (New York: Oxford University Press, 2011), 75; Daniel Groll, "Paternalism, Respect, and the Will," *Ethics* 122 (2012), 697-699; George Tsai, "Rational Persuasion as Paternalism," *Philosophy & Public Affairs* 42 (2014), 86-87; Le Grand and New, *Government Paternalism*, 8-16; and Michael Cholbi, "Paternalism and our Rational Powers," *Mind* 126 (2017), 123-124.

¹⁰ This claim is true of neither of my sisters.

¹¹ Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," 218; Quong, *Liberalism Without Perfection*, 80; Groll, "Paternalism, Respect, and the Will," 718; Tsai, "Rational Persuasion as Paternalism," 86-87; Le Grand and New, *Government Paternalism*, 22-23; and Cholbi, "Paternalism and our Rational Powers," 127.

¹² Nicolas Cornell, "A Third Theory of Paternalism," *Michigan Law Review* 113 (2015):1316.

and does not aspire to have a life in which she would have need for such a suit. My actions are paternalistic, Cornell argues, since they express a negative judgment about my daughter's ability to make good life choices – a judgment that does not motivate my gift.¹³

For these reasons, some scholars argue that (1) is not a necessary condition of paternalism, suggesting that it is only necessary that an action or law is motivated by or expresses a negative judgment regarding people's self-governance abilities. This revision is helpful with respect to our goal of showing the anti-paternalism argument in its best light since it allows us to make sense of the claim that many welfare policies are paternalistic. After all, one reason that policymakers might have for providing citizens with in-kind goods and services rather than cash transfers is that citizens' self-governance abilities are deficient in some respect – i.e. that they cannot be trusted to use cash transfers 'wisely.'

Seanna Shiffrin has also argued that (3) is not a necessary condition of paternalistic action. According to her, agents can act paternalistically even if they do not intend to improve the welfare or good of those targeted by the action.¹⁴ As Shiffrin argues, a park ranger who refuses to permit a climber to ascend a dangerous mountain path out of concern for the welfare of the climber's spouse, not the climber, still acts paternalistically.¹⁵ In this case, she argues, the

¹³ Ibid, 1312.

¹⁴ Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," 217-219. See also Danny Scoccia, "Autonomy and Hard Paternalism," in *Paternalism: Theory and Practice*, edited by Christian Coons and Michael Weber (New York: Cambridge University Press, 2013), 76-77; and Daniel M. Haybron and Anna Alexandrova, "Paternalism in Economics," in *Paternalism: Theory and Practice*, edited by Christian Coons and Michael Weber (New York: Cambridge University Press, 2013), 162;

¹⁵ Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," 217-218.

park ranger treats the climber as a child who cannot be trusted to govern her own life. As in the case of my visiting sister, Shiffirin argues that the park ranger's action is paternalistic since it is motivated by the judgment that its target's self-governing abilities are deficient in some respect.¹⁶

Shiffirin's claim that actions or policies can be paternalistic even if they do not aim to improve the good of agents targeted by them is *prima facie* plausible and deserving of greater investigation. If the defining feature of paternalism is one agent's treatment of another as a child, that is, as an agent whose self-governance abilities are deficient in some respect,¹⁷ then it would seem to follow that agents act paternalistically towards others simply when they treat them as such, regardless of the aim of their action. The park ranger's treatment of the climber is thus paternalistic since it mirrors the way in which parents direct the actions of their children. Parents often restrict the actions of their children for the benefit of *others*, for example, when I stop my daughter from destroying my son's most recent 'Lego creation.'

¹⁶ Shiffirin argues further that paternalistic action is limited to action that is directed at matters that are legitimately within an agent's control, that is, decisions the agent has an autonomy right to make. *Ibid*, 217-219. I reject this further condition for two reasons. First, as Christian Coons and Michael Weber make clear, this introduction of normative assumptions regarding rights within a definition of paternalism implies that all forms of paternalism are *pro tanto* wrong – a controversial claim. Christian Coons and Michael Weber, "Introduction: Paternalism – Issues and Trends" in *Paternalism: Theory and Practice*, edited by Christian Coons and Michael Weber (New York: Cambridge University Press, 2013), 5-6. Second, and relatedly, Shiffirin's definition also seems to imply that parents cannot act paternalistically towards their young children since young children have very limited autonomy rights – if they have such rights at all.

¹⁷ Shiffirin, "Paternalism, Unconscionability Doctrine, and Accommodation," 218; and Quong, *Liberalism Without Perfection*, 81.

However, for the purposes of this paper, I think there are two good reasons not to revise the above definition of paternalism in accordance with Shiffrin's suggestion. First, Shiffrin's claim is highly controversial, and I simply do not have the space in this paper to fully explore it.¹⁸ In particular, expanding the definition of paternalism in the direction Shiffrin suggests may imply that nearly *all* state laws and policies governing the interaction of private parties are paternalistic. That is, if paternalistic laws are understood to include those that are (1) motivated by or express a negative judgment regarding people's self-governance abilities; and (2) aim to promote the wellbeing of either those targeted by the law or others; then many laws could count as paternalistic. For some scholars after all the reason for coercively enforcing laws is that people lack the self-governance abilities – e.g. discernment and motivation – necessary to reliably treat others appropriately.¹⁹

Second, I think it is methodologically useful to continue to use the concept of paternalism in a more restricted way. Within the liberal tradition, laws and policies that concern self-regarding choices are rightly understood to face a special justificatory burden. Laws and policies concerning other-regarding choices, by contrast, are much easier to justify. The concept of paternalism, understood to concern self-regarding choices, thus serves a valuable methodological function in identifying a set of highly controversial laws and policies.

¹⁸ Ibid, 79; and Gerald Dworkin, "Defining Paternalism," in *Paternalism: Theory and Practice*, edited by Christian Coons and Michael Weber (New York: Cambridge University Press, 2013), 34-38;

¹⁹ For example, see H.L.A. Hart, *The Concept of Law*, second ed. (New York: Oxford University Press, 1994), 193-200; and John Rawls, *A Theory of Justice*, rev. ed. (Cambridge MA: Harvard University Press, 1999), 211.

For these reasons, I shall define paternalism in a way that accommodates the first revision but not the second. Since my focus in this paper is the actions of the state, the following is a definition of *state* paternalism:

State Paternalism: Government A acts paternalistically towards citizen B by implementing law or policy C if and only if:

1. C aims to improve B's good or wellbeing;
2. C is implemented without B's consent; and,
3. A's implementation of C is motivated by and/or expresses a negative judgment about B's self-governance or decision-making abilities.

This definition of state paternalism, I suggest, allows us to correctly identify a wide range of prima facie paternalistic laws and policies as examples of state paternalism – e.g. drug bans, seatbelt laws etc. In addition, since it does not include interference with liberty as a necessary condition, it also allows us to explain the claim that many welfare policies are paternalistic. Finally, this definition of state paternalism is consistent with the views of a number of scholars that agents can act paternalistically even in cases when they aim to influence people's action through the giving of reasons or the provision of information. As George Tsai argues, there are ways of giving reasons and providing information that may reflect a negative judgment about people's self-governance abilities, for example, when an effort of rational persuasion is premised on an "attitude of distrust in the other's capacity to canvass and weigh reasons."²⁰

Before turning to the question of welfare state paternalism, it is important to clarify three aspects of the above definition. First, what does it mean for a law or policy to be *motivated by* a

²⁰ Tsai, "Rational Persuasion as Paternalism," 91.

negative judgment about people's self-governance abilities? Second, what does it mean for a law or policy to *express* such a judgment? Finally, what does it mean for citizens to *consent* to a policy?

With respect to the first question, it is extremely unlikely that any law or policy is ever motivated by *one* consideration. Legislators often have multiple, differing reasons for supporting particular laws or policies. If we understand the motivation requirement to mean that a negative judgment about people's self-governance abilities is the single motivation for a particular law or policy, then no law or policy will satisfy the above definition. It also seems odd to claim that a law or policy is motivated by such a judgment if this judgment is simply one among many motivations legislators have for supporting it. At the same time, we do seem to speak sensibly about principal or central motivations or justifications for laws and policies. For example, it seems accurate to say that a principal motivation or justification for legislators' continued support of seatbelt laws is that they don't trust drivers to buckle up absent coercive penalties.

To make sense of this, I suggest that a law or policy is motivated by a negative judgment about people's self-governance abilities if this judgment makes a significant and decisive contribution to an agent's endorsement of the law or policy in question. A judgment makes a significant contribution to an agent's endorsement of a law or policy, I suggest, if it is a principal reason for supporting it; a judgment makes a decisive contribution to an agent's endorsement if absent this judgment, the agent would not endorse it. For individual legislators and policymakers therefore, a law or policy counts as paternalistic if a negative judgment about people's self-governance abilities makes a significant and decisive contribution to their support for the law or policy. For legislative bodies, a law or policy counts as paternalistic if such a judgment makes a

significant contribution to a significant number of legislators' support for it, and if the law or policy would not pass absent this judgment.

I recognize this account is vague and that it may prove very difficult in practice to identify laws and policies that satisfy it. My aim here is only to motivate the claim that it is not unreasonable to refer to motivations for laws and policies.

To answer the second question, we need to provide some account of when laws or policies express a negative judgment about people's self-governance abilities. One possibility is a subjective account, according to which a law or policy expresses such a judgment if and only if someone or some number of people interprets the law or policy to express such a judgment. This account is problematic however since people's interpretations of laws and policies need not be reasonable ones. A better account, I suggest, holds that a law or policy expresses a negative judgment about people's self-governance abilities when a reasonable and informed person would judge it to do so.

Importantly, as Cornell makes clear, the meaning that a particular law or policy expresses is often dependent on the justifications for it.²¹ That is, to determine whether a particular law or policy expresses a negative judgment regarding people's self-governance abilities, it is useful to consider the possible reasons legislators might have had for enacting it. Since laws and policies can have multiple justifications, I would suggest that a law or policy expresses such a judgment when a reasonable and informed person would judge that this judgment constitutes a significant and decisive contribution to the law or policy's justification.

²¹ Cornell, "A Third Theory of Paternalism," 1318-1319.

Importantly, in cases where legislators are motivated to support laws and policies on the basis of substantive reasons, rather than say, who has contributed to their campaign, the answers to the questions of motivation and expression will be the same. Thus while ‘motivational’ and ‘expressive’ accounts of paternalism are often treated as distinct in the philosophical literature,²² these accounts may not lead to different characterizations of laws and policies in many cases. Laws and policies that are motivated by a negative judgment of people’s self-governance abilities will in many – if not most – cases also express this same judgment.

Finally, under what conditions can we say that a citizen *consents* to a particular law or policy? This is an important feature of the definition of state paternalism since consent makes what would otherwise be a paternalistic act non-paternalistic. This is so since the defining feature of paternalistic action lies in one agent’s treatment of another as a child, and it is by interacting with others in consensual ways that we recognize their status as competent, self-governing decision-makers.²³ If my sister requests that I not stock the fridge with soda for her visit because she doesn’t trust her own decision-making in this sphere, I don’t act paternalistically by complying with her request.

In the context of law and policy, I think it is wrong to say that a citizen consents to a law or policy simply when they obey it or accept its benefits. Instead, the target of the policy must *authorize* the ways in which it regards and treats her. Only if citizens authorize a law or policy can the law or policy be said to be a rule or set of rules they are imposing on themselves through an act of self-government. Since I may obey a law simply because I fear the penalty for not

²² Ibid, 1297.

²³ Cholbi, “Paternalism and our Rational Powers,” 132.

doing so or accept welfare benefits simply because I have no choice, neither obedience nor acceptance of benefits implies such authorization.²⁴

Citizens consent to a law or policy – understood here as authorization – when they voluntarily agree to it by means of a public act. The underlying idea here is that to consent to some act or policy, it is not enough that one is favorably disposed to it. Rather, one must make an explicit act of authorization – i.e. give a token of consent.²⁵ I shall not provide a comprehensive account of what counts as a token of consent in this context. However, it strikes me as reasonable to claim that citizens give a token of consent to a policy when they vote in favor of it in a referendum, or, vote for a political representative explicitly promising to work to implement it if elected. It may also be sufficient to publicly support a particular policy, for example by writing an op-ed in support of it or working in other ways to generate popular support for it.²⁶ By contrast, citizens do not give a token of consent when they are simply in favor of it or would consent to it if asked in a referendum. It strikes me as too big a stretch to understand expressing support in an opinion poll as an explicit act of authorization. Similarly, my telling a clinical investigator friend in casual conversation that I would like to join her research study is not the same as consenting to participation.

1.2 Welfare State Paternalism

²⁴ I am grateful to MC for discussion of this issue.

²⁵ Ruth R. Faden and Tom L. Beauchamp, *A History and Theory of Informed Consent* (New York: Oxford University Press, 1986), 274-275.

²⁶ Thanks to an anonymous reviewer for this suggestion.

Welfare state paternalism, I claim, is a specific type of state paternalism that governments employ in the context of their welfare policies. By welfare policies, I mean policies and programs aimed at raising citizens' standard of living or quality of life above what they could otherwise enjoy as a result of their, or their family members', participation in the labor market. Welfare policies are thus redistributive, and they are often targeted at low-income citizens. Typical examples of welfare policies thus include cash transfers, housing subsidies, food stamps, and subsidized health care. Welfare policies are thus different from the two types of policies I mention in the introduction which traditionally attract the charge of paternalism: (1) policies that restrict people's liberty for their own good; and (2) policies that design choice contexts so as to nudge citizens to make better choices.²⁷

Given this understanding of paternalism and welfare policies, we can formulate a definition of welfare state paternalism:

Welfare State Paternalism (WSP): Government A acts paternalistically towards citizen B by implementing welfare policy C if and only if:

1. C aims to improve B's good or wellbeing;
2. C is implemented without B's consent; and,
3. A's implementation of C is motivated by and/or expresses a negative judgment about B's self-governance or decision-making abilities

Although the account of state paternalism this definition relies on allows us to classify a broader range of policies as paternalistic compared to the mainstream account, not all welfare policies satisfy this definition. First, unconditional cash transfers or basic income guarantees do

²⁷ Though policymakers may design welfare policies with coercive actions or nudges as components.

not satisfy it since these policies are not generally motivated by or express a negative judgment about their recipients' *self-governance abilities*. Instead, they express the judgment that recipients lack the *external resources* necessary to secure a certain standard of living. Second, even welfare policies that provide recipients with in-kind benefits are not necessarily examples of WSP. Whether they are depends on whether they are motivated by or express a negative judgment about citizens' self-governance abilities; and, it is possible to justify these policies without appealing to such a judgment.

First, some welfare policies may be justified by appeal to the state's duty to meet the basic needs²⁸ or capabilities²⁹ of its citizens, to fulfill their human rights,³⁰ or to secure social equality.³¹ Since the fulfillment of this duty, understood in these different ways, requires that citizens have access to particular types of goods and services – e.g. food, housing, education, and health care – there is nothing necessarily paternalistic about the state providing its citizens with access to in-kind goods and services rather than cash. If governments owe their citizens adequate housing, their decision to implement a housing voucher program to fulfill this obligation need not be justified by a negative judgment regarding their citizens' self-governance abilities.

Second, some welfare policies that aim to realize certain outcomes for citizens – e.g. in the domains of health, income, housing, or even happiness – might also not be examples of WSP.

²⁸ See David Braybrooke, *Meeting Needs* (Princeton, NJ: Princeton University Press, 1987); and John Rawls, *Political Liberalism*, ex ed. (New York: Columbia University Press, 2005), 7.

²⁹ See Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011).

³⁰ See James Griffin, *On Human Rights* (New York: Oxford University Press, 2008).

³¹ Elizabeth Anderson, "What is the Point of Equality?" *Ethics* 109 (1999), 314-321.

Governments might choose to provide citizens with in-kind goods and services to realize these outcomes since the use of such goods and services is more *cost-effective* than the use of cash. Alternatively, governments might choose to provide in-kind goods and services rather than cash on the grounds that doing so is the only way to realize the outcomes in question, perhaps because there are significant problems with the country's markets.

Finally, some conditions on access to public assistance may also be motivated by the value of reciprocity – i.e. the view that recipients have a civic obligation to bear their fair share of the burdens of social cooperation in return for receipt of the benefits. For example, the U.S. federal government requires that all able-bodied recipients of food stamps (the Supplemental Nutrition Assistance Program) younger than 50 and without children work, take classes, or volunteer for at least 20 hours per week. Temporary Assistance for Needy Families (TANF) requires recipients to participate in the labor force. One possible, non-paternalistic justification for such conditions is that these activities are all ways in which able-bodied citizens can fulfill the above-mentioned civic obligation.³² Welfare policies that take the form of social insurance schemes – e.g. Social Security and Unemployment Insurance – are clearly based on this justification.³³ People only have access to the benefits of these schemes if they've contributed to them, and the amount of benefits people are owed is sensitive to the size of their contribution.

The point that many traditional welfare policies need not be examples of WSP should not be overstated however. Many welfare policies can be understood as examples of WSP. If

³² See Anderson, "Welfare, Work Requirements, and Dependent-Care," 243-249; and Paul Bou-Habib and Serena Olsaretti, "Liberal Egalitarianism and Workfare," *Journal of Applied Philosophy* 21 (2004), 263-267;

³³ Elizabeth Anderson, "Optional Freedoms," in *What's Wrong with a Free Lunch?* Ed. Joshua Cohen and Joel Rogers (Boston: Beacon Press, 2001), 72-73.

governments understand themselves to have a duty to redistribute income to low-income citizens, but instead provide them with in-kinds good and services on the grounds that they cannot be trusted to use such transfers wisely, then such policies are paternalistic. Welfare policies are also paternalistic if governments aim to realize certain outcomes for citizens – e.g. outcomes relating to health, nutrition, housing, and happiness – by providing in-kind benefits and services rather than cash on the grounds that citizens will do worse with respect to these outcomes if given cash due to their poor judgment. Depending on the motivations of government, examples of these policies may include single-payer health insurance, food stamps, and housing vouchers, but also programs that place conditions on access to benefits, whether in-kind or cash. Examples of the latter may include conditional cash transfers which require people to satisfy certain conditions in order to receive the transfer, and requirements that recipients of public assistance pass a drug test.

2 Is Welfare State Paternalism Pro Tanto Wrong?

By claiming that some welfare programs are paternalistic, some commentators seek to establish that these programs are morally objectionable and therefore impermissible. In this part of the paper, I examine whether paternalistic welfare policies are ever pro tanto wrong. I argue that they are when directed at competent agents. In the following part of the paper, I consider the factors that affect the *degree* of pro tanto wrongness of paternalistic welfare policies, and propose principles for determining when paternalistic welfare policies, though pro tanto wrong, are on balance permissible.

As I note above, welfare policies need not be liberty-limiting to satisfy the definition of WSP. Many commentators may therefore conclude that there is nothing morally objectionable about paternalistic welfare policies. However, proponents of non-liberty limiting conceptions of paternalism argue that paternalistic actions and policies are morally objectionable even if they do not limit people's liberty. For these scholars, whether such actions or policies are liberty-limiting or not, they are pro tanto wrong since they are disrespectful of citizens qua equal autonomous agents.³⁴ These scholars develop this general point in different ways and to different extents. In what follows, I provide an account of the pro tanto wrongness of paternalistic laws and policies that systematically develops this general idea in a defensible way.

People are autonomous agents, I suggest, insofar as they have the capacity to rationally deliberate about which actions to perform, that is, which goals to set and which means to take up; and to choose and carry out actions on the basis of this rational reflection. People therefore exercise their autonomy by reasoning about what to do and acting in accordance with the conclusions of their practical deliberation. People are equal autonomous agents, I suggest, insofar as they possess autonomous capacities that fall within a range, where this range is defined on the lower end by the familiar concept of competency. People fall within this range therefore if they are competent agents, that is, if with respect to the day-to-day choices they face they possess capacities for understanding, appreciation, reasoning, and choice, and also possess a set of values

³⁴ Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," 212-220; Quong, *Liberalism Without Perfection*, 100-106; Groll, "Paternalism, Respect, and the Will," 711-720; Tsai, "Rational Persuasion as Paternalism," 86-87; Cornell, "A Third Theory of Paternalism," 1317-1318; and Cholbi, "Paternalism and our Rational Powers," 126-128.

to guide their choices.³⁵ Thus, although people may differ, for example, in their possession of capacities for practical deliberation, above the threshold of competency, people are understood to be equally autonomous agents. To the extent that people are owed respect qua autonomous agents therefore, they are owed *equal* respect, or, alternatively, are owed respect qua *equal* autonomous agents.

The underlying idea here is that autonomy is a *range property* wherein some item possesses the property in question if it falls within some range on a scale.³⁶ On this understanding, people count as autonomous if they possess autonomous capacities that place them above the threshold defined by the concept of competency. People are therefore equally autonomous if they are competent agents, having the capacities to understand their world, appreciate the nature of the decisions they must make, engage in practical reasoning, and carry out their decisions.

For proponents of non-liberty limiting conceptions of paternalism, people's status qua equal autonomous agents is valuable and governments appropriately recognize this value by

³⁵ See Allen E. Buchanan and Dan. W. Brock, *Deciding for Others: The Ethics of Surrogate Decision Making* (New York: Cambridge University Press, 1990), 18-29; and Louis C. Charland, "Decision-Making Capacity," *The Stanford Encyclopedia of Philosophy* (Fall 2015 Edition), edited by Edward N. Zalta, available at: <https://plato.stanford.edu/entries/decision-capacity/>.

³⁶ Jeremy Waldron, *One Another's Equals: The Basis of Human Equality* (Cambridge, MA: Belknap Press, 2017), 118-119.

adopting an attitude of respect towards them.³⁷ For these scholars therefore, autonomy is primarily valuable in a deontic sense, as what Stephen Darwall calls a “demand,” where this involves the “right, claim, or authority that persons have to demand that they be allowed to make their own choices and lead their own lives.”³⁸ On this account then, autonomy is not merely valuable as a “benefit,” that is, as a contributor to people’s wellbeing, but as an entitlement to be treated as a self-governing agent.³⁹ Qua equal autonomous agents therefore, people possess an *equal dignity* that demands respect from other agents.⁴⁰

In the most basic terms, governments respect people qua equal autonomous agents by acting in ways that are consistent with a full recognition of people’s status as such. As Waldron puts it, we respect another “when we acknowledge and recognize him, when we take seriously his status as a thinking, reasoning moral being.”⁴¹ Governments ought not therefore to act in ways that affront or are incompatible with the equal dignity of their citizens.

The problem with paternalistic policies is that they, by definition, are motivated by and/or express the judgment that their targets lack the self-governance abilities necessary to make good decisions regarding their wellbeing. As such, these policies fail to regard their targets as equal autonomous persons and, in so doing, *insult* or *demean* them, affronting their equal dignity. First,

³⁷ Shiffrin, “Paternalism, Unconscionability Doctrine, and Accommodation,” 220; Quong, *Liberalism Without Perfection*, 100-106; Tsai, “Rational Persuasion as Paternalism,” 86-87; Cornell, “A Third Theory of Paternalism,” 1317-1318; and Cholbi, “Paternalism and our Rational Powers,” 144-149.

³⁸ Stephen Darwall, “The Value of Autonomy and Autonomy of the Will,” *Ethics* 116 (2006), 267-268.

³⁹ *Ibid*, 265-266.

⁴⁰ *Ibid*, 268; and Waldron, *One Another’s Equals*, 106-111.

⁴¹ *Ibid*, 51.

such policies disrespect their targets qua *autonomous* agents since they treat them as children, implying that they do not have the autonomous capacities necessary to make good decisions regarding their wellbeing. As Shiffrin puts it, “even if no distinct autonomy right is violated, the paternalist’s attitude shows significant disrespect for those core capacities or powers of the agent that underwrite and characterize his autonomous agency.”⁴² Second, paternalistic policies also disrespect their targets qua *equal* autonomous agents since, in aiming to improve their target’s wellbeing, they also imply that the governance capacities of the paternalist are superior to those of their target. As such paternalistic policies also undermine the equal status of persons, suggesting that the will of the paternalist ought to replace or stand in for the will of the target, at least with respect to the sphere of action in question.⁴³ Tsai puts the point this way:

The paternalist sees herself as better suited to judge or implement that which is in the target’s interests (with respect to some deliberative domain or situation) than the target. Autonomous agents have reason to resent the paternalist’s distrust of their agency, insofar as their agency is being undervalued or disrespected. They have reason to find the paternalistic action insulting insofar as the paternalistic action conveys that they are insufficiently capable of advancing their own interests.⁴⁴

To capture these two distinct ways in which paternalistic policies fail to respect people qua equal autonomous agents, Jonathan Quong suggests that they involve both a *comparative* and *non-comparative* wrong. The comparative wrong lies in the paternalist’s treatment of their

⁴² Shiffrin, “Paternalism, Unconscionability Doctrine, and Accommodation,” 220.

⁴³ Ibid; Tsai, “Rational Persuasion as Paternalism,” 86-87; and Cholbi, “Paternalism and our Rational Powers,” 127-128.

⁴⁴ Tsai, “Rational Persuasion as Paternalism,” 86-87.

target as having an inferior status, thus failing to accord them equal status.⁴⁵ The non-comparative wrong lies in the paternalist's treatment of their target as a child, that is, as lacking the self-governance abilities to safeguard their wellbeing.⁴⁶

Now, paternalistic policies wrong their targets in these ways whether they interfere with their autonomy or not. It is sufficient that these policies are motivated by and/or express a negative judgment regarding their target's self-governance capacities and so insult their equal dignity. For example, if policymakers aim to ensure low-income people's basic needs are satisfied by providing them with in-kind goods and services rather than cash on the grounds that people cannot be trusted to use cash wisely, they act paternalistically but they do not interfere with people's exercise of their autonomy. Similarly, as Tsai points out, there are ways of giving reasons and providing information that still reflect a negative judgment about people's self-governance abilities.⁴⁷ Thus, a policy may satisfy the definition of WSP even if it does not employ forms of non-rational influence, but only provides information in a disrespectful way. We might say that in cases where governments enact policies that satisfy the conditions of WSP but do not interfere with their targets' autonomy, they commit a *dignitary* wrong.

⁴⁵ Quong, *Liberalism Without Perfection*, 101.

⁴⁶ Ibid. Cholbi concurs with Quong on this point. Cholbi, "Paternalism and our Rational Powers," 128. Shiffrin also claims that paternalistic actions and policies threaten the values of both autonomy and equality. Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," 220. For critiques of these accounts however see Peter de Marneffe, "Avoiding Paternalism," *Philosophy & Public Affairs* 34 (2006), 76-81; Sarah Conly, *Against Autonomy*, 33-42; and Jason Hanna, *In Our Best Interest* (unpublished manuscript), chapter 3.

⁴⁷ Tsai, "Rational Persuasion as Paternalism," 89-101.

Some paternalistic policies however may also interfere with their target's autonomy through the use of non-rational forms of influence. In these cases, governments fail to respect their citizens qua equal autonomous persons in an additional way. Respect for people qua equal autonomous agents also requires that governments recognize the value of people exercising their autonomy and so governing their own lives. Governments ought not therefore to interfere in people's exercise of their autonomy and so should show "deference" to their decision-making.⁴⁸ As Michael Cholbi puts it, "in the case of rational agency, its proper valuation seems to consist in honouring boundaries between agents" and that "to honour such boundaries is to show *respect* for what resides on the other side of the relevant boundary."⁴⁹ Darwall similarly argues that respect for autonomy involves the recognition that people have the authority to demand that "they be allowed to make their own choices for themselves."⁵⁰ Because autonomy is valuable in

⁴⁸ Ibid.

⁴⁹ Cholbi, "Paternalism and our Rational Powers," 145.

⁵⁰ Darwall, "The Value of Autonomy and Autonomy of the Will," 268. This understanding of the value of people qua equal autonomous agents also helps explain why autonomy ought to be understood as a range property. As Waldron notes, whether capacities such as autonomy ought to be conceived of as range properties or not is largely context dependent. Waldron, *One Another's Equals*, 155. In some contexts therefore, it may be appropriate for agents to focus on the differences in competent agents' autonomous capacities, for example, when employees' self-control is particularly important to an employer. In the context of governments' treatment of their citizens however, what matters most is whether they possess the status that is deserving of respect, that is, possess the autonomous capacities necessary to govern their own lives and so meet the threshold of competency. If they do, government must adopt the above-mentioned attitude of respect, refraining from interfering in their decisions. Whether citizens who meet the threshold of competency also vary in their autonomous capacities is thus largely morally irrelevant since it the meeting of the threshold – the ability to govern one's life – that triggers the attitude of respect. For an

this way as a demand and not merely as a benefit, governments fail to fully respect people qua equal autonomous agents when they interfere with their decision-making using non-rational means, even when doing so can be expected to improve their wellbeing. Call this additional way of disrespecting people qua equal autonomous agents an *interference wrong*.

Importantly, because autonomy consists in action on the basis of reasons, not all ways of influencing people's actions should be understood as interferences with people's exercise of their autonomy. Governments do not interfere with people's autonomy when they reason with them, for example, by providing them with information, but only when they adopt *non-rational* ways of influencing people's actions. By employing non-rational forms of influence, governments aim to influence people's actions not by engaging their rational capacities, that is, persuading them, but instead by limiting their options or corrupting their deliberative processes. Non-rational forms of influence therefore include coercion, the use of force to direct people's choices, but also ways of bypassing or countering people's rational capacities, for example "nudges" that exploit people's cognitive biases.⁵¹

Paternalistic welfare policies are thus pro tanto wrong insofar as they commit a complex dignitary wrong against their targets, committing what we might call a *comparative dignitary wrong* and a *non-comparative dignitary wrong*. While paternalistic welfare policies need not

alternative justification for understanding autonomy as a range property, see Ian Carter, "Respect and the Basis for Equality," *Ethics* 121 (2011), 550-560.

⁵¹ For a useful categorization of the different ways in which agents may influence people's actions through non-rational means, see J.S. Blumenthal-Barby, "Between Reason and Coercion: Ethically Permissible Influence in Health Care and Health Policy Contexts," *Kennedy Institute of Ethics Journal* 22 (2012): 345-366.

interfere with people's autonomy to be pro tanto wrong, many paternalistic welfare policies will do so and so commit an additional pro tanto wrong, an *interference wrong*.

Importantly, whether paternalistic actions are *in fact* disrespectful of their targets depends on whether the targets are autonomous, competent agents.⁵² If paternalistic welfare policies are principally objectionable because they are disrespectful of people qua equal autonomous agents, such policies are not morally objectionable if their decision-making capacities are sufficiently impaired, rendering them incompetent. WSP is therefore pro tanto wrong when it is directed at citizens who are competent decision-makers with respect to the sphere of action targeted by the policy – e.g. nutrition, education, health care, or housing. WSP is not pro tanto wrong when it is directed at citizens who are not competent decision-makers with respect to the sphere of sphere of action targeted by the policy.

To express this important distinction, I shall use the term *soft* WSP to refer to policies that target individuals whose decision-making capacity with respect to the sphere of policy in question is significantly impaired. Such impairments may be due to a lack of information, deficiencies in the cognitive abilities to understand and/or reason about central features of the decision in question, or deficiencies in the ability to carry out a chosen plan of action. I shall use the term *hard* WSP to refer to policies or laws that target individuals whose decision-making capacity is not significantly impaired in these ways. I stipulate here that for a policy to count as an example of soft WSP, *all* people targeted by the policy must exhibit significantly impaired decision-making abilities with respect to the sphere of policy in question. Similarly, for a policy to count as an example of hard WSP, *all* people targeted by the policy must exhibit no

⁵² Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," 220.

significantly impaired decision-making ability. An implication of these stipulations is that very few – if any – paternalistic welfare policies will be examples of either soft or hard WSP. Instead, most policies will be mixed, targeting both competent and incompetent people.

3 The Permissibility of Welfare State Paternalism

Non-soft paternalistic welfare policies are pro tanto wrong insofar as they are disrespectful of their targets considered as equal autonomous persons. In this part of the paper, I aim to specify the conditions under which such policies, though pro tanto wrong, are permissible. I first explore the factors that affect the *degree* of pro tanto wrongness of paternalistic welfare policies. I then propose principles for determining when paternalistic welfare policies, though pro tanto wrong, are on balance permissible.

3.1 Degrees of Wrongness

Any number of factors may affect a policy's degree of wrongness. I consider here the factors that are most likely to affect the wrongness of paternalistic welfare policies, given: (1) the distinctive wrong these policies involve qua paternalistic policies; and (2) the general shape that these policies tend to take. The following discussion is thus not intended to be exhaustive.

To begin, it is important to distinguish two dimensions along which a policy's wrongness might vary. First, the wrongness of a policy depends on the number of people wronged. A wrongful policy is morally worse the greater the number of people who are subject to it. Call this the *horizontal* dimension. Second, the wrongness of a policy depends on the intensity of the

wrong the policy inflicts on those individuals subject to it. Call this the *vertical* dimension. I discuss each in turn.

3.1.1 The Horizontal Dimension

We have already discussed the two factors that affect a policy's wrongness along the horizontal dimension. First, because citizen consent can render an otherwise paternalistic policy non-paternalistic, the wrongness of a particular policy depends on the number of people subject to the policy who have authorized it. For those who have authorized it, the policy is not paternalistic in the first place, and so not wrong for that reason. The wrongness of a welfare policy that would otherwise satisfy the conditions of WSP therefore depends on the number of citizens who have authorized it.

Second, because non-soft paternalistic welfare policies are pro tanto wrong for the reason that they are disrespectful of competent autonomous agents, the wrongness of such policies also depends on the number of people targeted by the policy who are competent agents as opposed to incompetent agents. Since incompetent agents who are subject to a paternalistic welfare policy are not wronged by the policy, the degree of wrongness also therefore depends on the number of competent agents who are subject to it.

3.1.2 The Vertical Dimension

The factors along the horizontal dimension tell us which individuals have been wronged by a paternalistic welfare policy: competent agents who did not authorize it. The following

factors along the vertical dimension affect the *degree* to which these individuals are wronged – i.e. the intensity of the wrong. To identify these factors, I appeal to the discussion above of the ways in which paternalistic welfare policies wrong their targets. Recall that paternalistic welfare policies involve a comparative dignitary wrong since they treat their target as having an inferior status, and they involve a non-comparative dignitary wrong since they treat their target as a child. As I show below, paternalistic welfare policies can be more or less wrong along these comparative and non-comparative dimensions. In addition, paternalistic welfare policies also wrong their targets in an additional way when they interfere with their exercise of their autonomy, committing an interference wrong. As I discuss below, this factor also affects the pro tanto wrongness of paternalistic welfare policies.

First, non-soft paternalistic welfare policies are pro tanto wrong because they are disrespectful of their targets qua equal autonomous agents, resting on the judgment that their decision-making capacities are deficient. It is reasonable to think however that the degree of this pro tanto wrong depends on the *accuracy* of this judgment regarding people’s decision-making capacities. Since competency is a threshold concept and since it is reasonable to think that competency does not require the complete absence of any defect in decision-making capacity, competent agents can exhibit different levels of capacity with respect to different spheres of action. For example, we may judge the vast majority of adults in the U.S. competent to make decisions regarding food choice and retirement savings while still recognizing that these decisions are heavily influenced by cognitive biases.⁵³ It is more disrespectful – and therefore pro tanto wrong to a greater degree – to act paternalistically towards an agent exhibiting *no*

⁵³ See Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008).

defects in decision-making than toward an agent who is exhibiting *some* defects in decision-making, even though they are competent. In cases where the targets of a paternalistic policy exhibit such defects – e.g. systematic cognitive biases – the non-comparative dignitary wrong is lessened to some degree since the targeted agents, though still above the competency threshold, are closer to this threshold with respect to the choice in question. The pro tanto wrongness of paternalistic welfare policies therefore depends on the decision-making capacity or self-governance abilities of those targeted by the policy with respect to the choices in question.

Consider an example. Numerous policymakers, scholars, and public health advocates have argued in favor of prohibiting beneficiaries of the Supplemental Nutrition Assistance Program (SNAP) from using their benefits to purchase sugar-sweetened beverages – a clear example of WSP.⁵⁴ It strikes me as reasonable to think that the pro tanto wrongness of this proposal depends in part on the degree to which SNAP recipients’ decision-making regarding sugar-sweetened beverage purchases and consumption is deficient – i.e. influenced by cognitive biases, aggressive marketing campaigns, lack of information, and lack of self-control. While the targets of this proposal are competent to make decisions regarding the use of their benefits, the proposal is less disrespectful of them qua equal autonomous agents if their decision-making capacities with respect to this sphere of action are deficient to some extent.

Importantly, the fact that the targets of a paternalistic policy exhibit deficiencies in their decision-making capacity does not erase the pro tanto wrong of the policy in question. Provided people are competent agents with respect to the choice in question, they are owed respect as such, and so governments act wrongly to some extent by implementing a paternalistic policy. My

⁵⁴ Ross and MacKay, “Ending SNAP-Subsidized Purchases of Sugar-Sweetened Beverages,” 62.

point is rather that the decision-making capacity of the targets of the policy is relevant to the policy's degree of pro tanto wrongness.

Sarah Conly would no doubt object to this claim. Why think it is wrong at all for governments to implement paternalistic welfare policies targeting citizens who, while competent, are nonetheless subject to systematic and widely shared deficiencies in decision-making – e.g. cognitive biases? As she puts it:

Realism cannot be degrading, and treating people in accordance with their actual abilities is not insulting or disrespectful. Recognition of our actual status is all respect can call for.⁵⁵

One problem with Conly's position is that it is not clear what it means for a policy to treat people in accordance with their actual abilities. If people are incompetent with respect to some decision, it is permissible for an appropriately designated surrogate decision-makers to decide for them. But, if people are competent but simply subject to cognitive biases, what form of treatment is appropriately responsive? Contra Conly, it strikes me as a mistake to think that coercion is appropriately responsive and so therefore permissible in such cases.⁵⁶

More importantly for our purposes, a second problem with Conly's position is that it presupposes that people's autonomous capacities are only deserving of respect when they can be trusted to exercise them without flaw. By recognizing people as competent agents, we judge them to possess the requisite autonomous capacities to govern their own life, rather than to have their life governed by others. Competent agents are thus deserving of respect as equal

⁵⁵ Conly, *Against Autonomy*, 42.

⁵⁶ *Ibid*, 32-33.

autonomous agents, and their choices are deserving of respect even if they sometimes rest on poor information or are the result of cognitive biases.⁵⁷ The underlying idea here is that autonomy is not only valuable if and when its exercise can be expected to promote people's wellbeing – i.e. as a benefit. Rather, people's status qua equal autonomous agents is also valuable as a demand to be free to govern their own life, even if that sometimes means making poor decisions. My position recognizes this, holding that governments act wrongly to some extent by implementing paternalistic policies even if they rest on good evidence regarding deficiencies in their targets' decision-making capacities. There is a moral cost to such policies since they chip away at people's status qua equal autonomous agents, suggesting their self-governance abilities are suspect and so not to be fully trusted. Conly's position, I worry, fails to recognize that there is any value in people governing their own lives, even when this involves making mistakes.

Second, non-soft paternalistic welfare policies differ in terms of whether they concern people's goals or values, or just the means people choose to realize their goals or values. The former – *ends* non-soft WSP – is more disrespectful of people than the latter – *means* non-soft WSP – since the choice of ends is more central to people's identity as autonomous agents.⁵⁸ The choice of ends is a value-laden choice, expressing a person's judgment of which sorts of activities are worth doing and which goals are worth pursuing; the choice of means, by contrast, is simply a matter of instrumental reasoning. Central to our identity as self-determining autonomous agents is thus the ability to decide which goals are valuable and worth pursuing. As Cholbi puts it, our rational powers of *recognition* and *discrimination*, that is, our powers to

⁵⁷ See also Cholbi, "Paternalism and our Rational Powers," 144-149.

⁵⁸ See Conly, *Against Autonomy*, 43; and Cholbi "Paternalism and our Rational Powers," 137-141, 149-150.

identify ends as choice-worthy and to rationally deliberate among them, are more central to us qua autonomous agents than our power of *satisfaction*, the ability to exercise instrumental rationality:⁵⁹

While our practical identities – the goals, values, or concerns we identify with – are no doubt influenced from many directions, the ultimate determination of our practical identities should largely be left up to us. Paternalism is wrong because, and to the degree that, the paternalist regulates the rational powers through which we fashion our identities.⁶⁰

I thus disrespect you more as an autonomous person by forcing you to *attend* a particular house of worship than by forcing you to take a particular *route* to the house of worship of your choosing.

Ends non-soft WSP is thus particularly insulting to equal autonomous agents, implying that they cannot be trusted to make the decisions that are most important to them qua self-governing agents. This form of WSP is thus more wrong along the non-comparative dimension of WSP's wrongness since it impugns people's capacities that are most central to their status as autonomous agents. For any particular individual therefore, the pro tanto wrongness of a paternalistic welfare policy depends on whether it is an example of ends paternalism or means paternalism.

Importantly, a paternalistic welfare policy need not be an example of means or ends paternalism for all citizens. Some citizens may share the goal of a paternalistic welfare policy,

⁵⁹ Ibid, 133-134.

⁶⁰ Ibid, 139.

while others may not. Additionally, policy-makers must be very careful in claiming that any particular policy is an example of means paternalism for any particular person. The fact that a policy promotes a goal that is shared by citizens targeted by that policy does not mean that it is an example of means paternalism. The reason for this is that some welfare policies may not only judge that a particular goal is good or worth pursuing, but also judge that it possesses a particular level of value, one that not all citizens targeted by the policy share. For example, suppose I am a single parent receiving TANF benefits, a program that generally requires that I work 20 hours per week. I may agree that a good life involves participation in the labor market but think that the 20 hour per week requirement places too much weight on the value of work at the expense of engagement with one's children. Although I therefore share the goal of participation in the labor market, the work requirement is an example of ends paternalism (for me) since I disagree with the policy's weighting of participation in the labor market compared to other ends.

Third, the pro tanto wrongness of paternalistic welfare policies also depends on the extent to which they *single out* particular populations as being deficient in their decision-making.⁶¹ For example, the use of a drug test to screen applicants for access to a form of public assistance only used by low-income individuals is morally worse – at least in one respect – than the use of such a test to screen applicants for access to a form of public assistance used by all (or nearly all citizens). The former policy singles out low-income citizens as being uniquely deficient in their decision-making with respect to drug use, whereas the latter does not. As Cornell puts it:

When a democratic government enacts a general paternalistic policy – for example, seatbelt laws – then at least all citizens are treated the same. And if the government

⁶¹ Cornell, "A Third Theory of Paternalism," 1326-1332.

generally respects the autonomy of its citizens, then one or another discrete exceptions may be seen as simply a recognition of certain limited failings that we all have. But when a government policy singles out a certain group for regulation, then the risk of expressing an objectionable lack of respect is significantly higher. This is especially true when the group is already disadvantaged or marginalized.⁶²

By singling out particular populations in this way, governments not only express the judgment that the self-governance abilities of citizens generally are deficient compared to those in government, but also that the self-governance abilities of some group of citizens is deficient compared to the abilities of other groups of citizens. Policies that single out particular populations thus publicly judge members of these populations to not only be unequal with respect to government, but also other groups of citizens. Such policies are therefore worse along the comparative dimension of the wrongness of paternalistic welfare policies since they undermine the equal status of citizens in an additional way, suggesting that those subject to the policy are in some sense less deserving of their status as equal autonomous citizens than those not subject to the policy.

Fourth, the degree of a paternalistic welfare policy's wrongness depends on the degree of support for it among the targeted population. Recall from above that if citizens consent to a welfare policy that would otherwise satisfy the definition of WSP, the policy in question is not a paternalistic policy and so not pro tanto wrong for that reason. When governments implement a policy that citizens have authorized, they act in accordance with their citizens' act of self-governance, thus treating them as competent adults, not children. When governments implement

⁶² Ibid, 1327.

a policy that is *supported* by the targeted population, they do not secure citizens' actual consent to the policy, but they do secure citizens' hypothetical consent – i.e. it is a policy to which citizens would consent if asked to explicitly authorize it. I suggest that the enactment of a paternalistic welfare policy to which the targeted population would consent is more respectful of them qua equal autonomous agents than the enactment of a policy to which the targeted population would not consent.⁶³ In the former case, although the targets of the policy have not authorized it, the policy is responsive to their autonomous preferences. As such, it is less wrong along the non-comparative dimension of paternalistic policies' wrongness, implicitly recognizing that people's autonomous preferences have moral weight with respect to policymaking. A policy that is supported by the target population is also less wrong along the comparative dimension of paternalistic policies' wrongness since there is less of a gulf between the wills of policymakers and the wills of those targeted by the policy. By acting in accordance with the preferences of the target population, there is less of a sense in which policymakers replace the will of the target population with their own.

The degree of wrongness of paternalistic welfare policies also depends finally on the degree to which they infringe people's autonomy rights, that is, influence people's exercise of their autonomy rights through the use of non-rational means. Although paternalistic welfare policies need not infringe people's autonomy to be pro tanto wrong, many such policies will do so and are thus additionally wrong for that reason.

First, welfare policies may influence people's exercise of their autonomy rights by restricting their choices, that is, by limiting the choices they are entitled to perform. For example,

⁶³ I am grateful to MG for discussion of this issue.

suppose that all U.S. citizens have a right to food and that the U.S. government possesses a duty to fulfill this right. The current SNAP policy of requiring childless adults younger than 50 to work, volunteer, or take classes for 20 hours per week in order to access SNAP benefits would seem to restrict the choices of SNAP recipients. If U.S. citizens have an unconditional right to SNAP benefits, such conditions are coercive, attaching a sanction to the choice not to work, volunteer, or take classes for 20 hours per week.⁶⁴

Paternalistic welfare policies may also infringe people's autonomy by influencing their exercise of their autonomy rights through non-rational means other than coercion. Such policies may employ nudges, that is, ways of designing choice situations that alter people's "behavior in a predictable way without forbidding any options or significantly changing their economic incentives."⁶⁵ By arranging the choice architecture in particular ways, policy-makers can take advantage of people's cognitive biases, influencing them to make one choice rather than another. While nudges don't restrict people's choices, many scholars have argued that they nonetheless infringe people's autonomy since they corrupt people's deliberative processes, constituting a form of manipulation.⁶⁶ Policies may also infringe people's autonomy by using negative incentives in order to make certain choices more costly.

⁶⁴ Robert E. Goodin, "Support with Strings: Workfare as an 'Impermissible Condition,'" *Journal of Applied Philosophy* 21 (2004), 297.

⁶⁵ Thaler and Sunstein, *Nudge*, 6.

⁶⁶ Daniel M. Hausman and Brynn Welch, "To Nudge or Not to Nudge," *The Journal of Political Philosophy* 18 (2010): 123-136; and T.M. Wilkinson, "Nudging and Manipulation," *Political Studies* 61 (2013): 341-355; and Douglas MacKay and Alexandra Robinson, "The Ethics of Organ Donor Registration Policies: Nudges and Respect for Autonomy," *The American Journal of Bioethics* 16 (2016): 3-12.

I am inclined to think that the degree of pro tanto wrongness of these different ways of infringing people's autonomy is a function of the extent to which the form of non-rational influence in question controls people's choices. In cases where the form of non-rational influence in question directs an individual to choose an option they do not prefer, this form of influence controls their choice if it is the determining factor of their choice of this option – i.e. absent the influence in question, they would have chosen their preferred option. In cases where the form of influence in question directs an individual to choose an option they prefer, this form of influence can be understood to control their choice if it would have been the determining factor of their choice had their preferences been different.

A policy's *degree of controllingness* can be understood as the likelihood that the form of non-rational influence it employs will control its target's choice. Policies that are more likely to control their target's choices are thus pro tanto wrong to a greater extent than policies that are less likely to do so. Although it is beyond the scope of this paper to construct a deployable measure of controllingness, there are a number of proxy measures that are prima facie reasonable. For policies that employ coercion it seems reasonable to think that their degree of controllingness is a function of the severity of their sanction. For policies that employ negative incentives it seems reasonable to think that their degree of controllingness is a function of the monetary cost imposed on the choice in question. For policies that use nudges it seems reasonable to think that their degree of controllingness is a function of the nudge's effectiveness.

The degree to which policies control people's choices matters morally since autonomy is valuable and so deserving of the government's respect. Since people exercise their autonomy by reasoning about what to do and acting in accordance with the conclusions of their practical deliberation, paternalistic welfare policies are more disrespectful of people's autonomy to the

degree that they are likely to inhibit people's ability to exercise these capacities. A highly effective nudge is thus morally worse than a moderately effective nudge; a coercive restriction of people's choices is worse than a small negative incentive. Importantly, paternalistic welfare policies do not infringe people's autonomy when they merely employ rational persuasion or provide factual information. As I note above, giving reasons and information, after all, engages rather than bypasses people's autonomous capacities.

To sum up, the degree to which particular non-soft paternalistic welfare policies are pro tanto wrong depends on a number of factors. Along the horizontal dimension, the degree of such a policy's wrongness depends on (1) the number of people subject to the policy who did not authorize it; and (2) the number of competent people targeted by the policy. The intensity of the wrong done to competent non-consenting subjects of the policy depends on five factors along the vertical dimension: (1) the target's degree of decision-making capacity; (2) whether the policy is means or ends paternalism; (3) the policy's degree of singling out; (4) whether the target population supports or opposes the policy; and (5) the policy's degree of autonomy infringement. I turn next to the question of when, if ever, paternalistic welfare policies are permissible.

3.2 When is WSP Permissible?

Given the pro tanto wrongness of paternalistic welfare policies and the myriad factors that affect their degree of wrongness, one might argue that such policies are always morally objectionable. Indeed, proponents of basic income policies seem to think that the paternalistic nature of many welfare policies is a decisive reason against them.

This conclusion does not follow however. First, as I note above, there is nothing morally objectionable about soft paternalistic welfare policies. Such policies only concern people who are incompetent with respect to the sphere of action in question and so the government does not disrespect their autonomy by acting paternalistically towards them.

Second, with respect to non-soft paternalistic welfare policies, although such policies are pro tanto wrong to some degree, this does not mean that they are wrong on balance. A paternalistic welfare policy may disrespect its target population to some extent, but this pro tanto wrong may be outweighed by competing considerations.⁶⁷

Since the purpose of paternalistic welfare policies is to improve the welfare, interests, values, or good of those subject to them, the relevant outweighing consideration will be the degree to which the policy can be reasonably expected to improve the lives of its target population on net. To determine whether a non-soft paternalistic welfare policy is permissible therefore, we ask whether its reasonably expected net benefit outweighs its pro tanto wrongness. Answering this question for any particular policy will obviously be very difficult and require a good deal of judgment; but the considerations identified above should help policy-makers approach it in a systematic fashion. Obviously, only very rough judgments will be possible. After all it is not clear whether the pro tanto wrongness of a policy along one of the dimensions noted above is better or worse than its wrongness along one of the other dimensions. Still, I expect this framework is useful for coming to some judgment of a paternalistic welfare policy's degree of

⁶⁷ Russ Shafer-Landau, "Liberalism and Paternalism," *Legal Theory* 11 (2005): 181-191; De Marneffe, "Avoiding Paternalism," 81-89; Scoccia, "In Defense of Hard Paternalism," 363-374; Le Grand and New, *Government Paternalism*, 147-151; and Cholbi, "Paternalism and our Rational Powers," 125-126.

wrongness for the purposes of determining whether the policy is on balance permissible, given its expected benefits to people's lives.

Finally, I want to emphasize that the list of factors affecting the degree of pro tanto wrongness of paternalistic welfare policies is not intended to be exhaustive. There may be other factors that affect the pro tanto wrongness of such policies that are not directly tied to their paternalistic nature, and these need to be included in any determination of their on balance permissibility. For example, as a number of scholars point out, traditional welfare programs are not only often paternalistic, but also *invasive*, requiring applicants to reveal intimate details about themselves and their circumstances in order to show that they qualify for different kinds of assistance.⁶⁸ Ian Carter convincingly argues that when such programs require applicants to reveal the quality of their agential capacities – those capacities for rational thought and planning that are central to moral personality – governments fail to respect their citizens as agents.⁶⁹ Paternalistic welfare policies that require applicants to reveal such information about themselves may also therefore be pro tanto wrong insofar as they are invasive, not merely paternalistic.

Conclusion

⁶⁸ Zwolinski, "The Pragmatic Libertarian Case for a Basic Income Guarantee;" and Van Parijs and Vanderborght, *Basic Income*, 7.

⁶⁹ Carter, "Respect and the Basic of Equality," 550-571. For similar criticisms of the use of some types of conditions in the design of welfare policies, see Jonathan Wolff, "Fairness, Respect, and the Egalitarian Ethos," *Philosophy & Public Affairs* 27 (1998), 113-115; and Anderson, "What is the Point of Equality?" 305-307.

Is the “paternalistic” nature of in-kind welfare programs and conditional cash transfers a reason to favor unconditional cash transfers and basic income guarantees, as some scholars suggest? Sometimes. Many such welfare programs are not actually paternalistic. Others may be paternalistic, but not morally impermissible on balance. As I hope to have shown above, determining whether in-kind welfare policies or conditional cash transfer programs are objectionably paternalistic requires a good deal of careful empirical and normative analysis.

In addition to having implications for the above-mentioned anti-paternalist arguments for unconditional cash transfers and basic income guarantees, my paper also has implications for the evaluation of traditional welfare policies. The framework I develop above is not only useful for determining whether the welfare state should be replaced by a basic income guarantee, but also for evaluating more minor changes to welfare policies. In the U.S. for example, policymakers are currently deliberating about proposed revisions to existing welfare policies, for example, the addition of a work requirement to Medicaid. My paper provides a framework for determining whether such revisions, qua paternalistic policies, are morally justifiable or not.