

BOOK REVIEWS

In Our Best Interest: A Defense of Paternalism, Jason Hanna. Oxford University Press, 2018, xiii + 271 pages.
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As Gerald Dworkin (2019) has observed, philosophical approaches to the issue of paternalism tend to divide up into two quite distinct camps, depending on how the initial burden of proof is assigned in assessing these policies or actions. On the one hand, paternalistic actions interfere with the liberty of those who are targeted by them, which might be thought to put the burden of proof on those who seek to justify paternalism. On the other hand, paternalistic interventions are intended to promote the good of those who are targeted, which would seem to put the burden of proof on those who would like to prohibit such actions. After all, what could be wrong with promoting the good of others?

Jason Hanna fits squarely in the second camp. Although his book is presented as ‘a defense of paternalism’, he is inclined to regard the basic ‘pro-paternalist’ position as, if not self-evidently correct, then at least requiring very little in the way of supporting argument. (As he puts it, ‘although obviously controversial, it wears whatever appeal it has on its sleeve’ [5]). Thus the book is focused almost exclusively on defending paternalism against its critics. There is a great deal of detailed, and in many cases quite clever argumentation in this discussion. Most of the philosophical work, however, is done by Hanna’s initial set-up of the argument – the specific way that he defines the pro-paternalist position, and the way that he apportions the burden of proof between its defenders and critics.

There are two components to Hanna’s pro-paternalist position. The first is a claim about reasons, viz. that ‘it is a valid reason in favor of intervening in someone’s affairs that doing so would advance some interest of hers’ (4). This reason is *pro tanto* and may be defeated by other considerations. Hanna therefore defines the agent’s ‘best interest’ as the one that is favoured on the balance of reasons. This leads him to the second major component of the pro-paternalist position, which is a claim about what is justified, viz. that ‘intervention in a person’s affairs is justified if it is in her best interest’ (4), which is another way of saying that a paternalistic intervention is justified if it advances some interest of the person targeted, and this reason is not defeated by other considerations (including harms to other persons).

Hanna’s objective in all of this is to show that there is nothing distinctive about paternalism. Such an action should be assessed in exactly the same way that any other putatively moral action should be assessed – as an attempt to do good by advancing the interests of others. Thus the entire category of ‘paternalistic action’ is one that Hanna would be happy to dispense with, since these actions require no special treatment or criteria of assessment. The challenge is for critics of paternalism to show that there is something distinctive about this class of actions,

which would explain why they should be treated differently from ordinary actions. The bulk of the book consists of Hanna's attempt to show that these efforts fail.

Before getting to this, however, there are several points worth noting about Hanna's definition of paternalism. First of all, there is his characterization of paternalism as a type of 'intervention' in an individual's affairs. This term blurs the distinction between legal and moral paternalism in a way that is presumably intentional (since Hanna does not view the distinction as an important one). Those who were schooled on the classic 20th century debates over paternalism – such as Lord Devlin's exchange with H.L.A. Hart over the enforcement of morality – may find this surprising, and perhaps off-putting, since those debates were very much focused on state coercion. The question, in particular, was whether it could be legitimate for the state to *punish* someone, on the grounds that doing so would advance that person's presumptive interests. Many opponents of legal paternalism at the time would have been surprised to discover that anyone thought there was something wrong with *moral* paternalism. After all, morality is commonly thought to contain a fair number of 'duties to self' (such as the old Catholic list of venial sins, most of which are self-regarding), and ethics is often described as being organized around a 'conception of the good life'. Either view implies that moral judgement will have a strongly paternalistic flavour. And so, for example, many people thought that non-procreative sexual acts were sinful (e.g. degrading, 'self-abuse', etc.), which was a paternalistic moral judgement, and yet also maintained that the state should not be rounding people up and throwing them in prison for engaging in them.

Hanna, however, sees the distinction between individual and state coercion as essentially a pragmatic one: 'There are some contexts in which the government is uniquely suited to intervene: the government can effectively regulate areas of life that individuals cannot. There may also be some contexts in which individuals are uniquely suited to intervene ...' (24). When one person sets out to murder another, for instance, this generates a reason for others to intervene. Whether an agent of the state should act on this reason, or a bystander should, is determined by our background theory of coercion (which in the standard case specifies that 'certain ways of deterring or preventing people from harming others ... generally ought to be left to the state' [25]). Similarly, when a person acts contrary to his own interests, this generates a reason for others to intervene. Whether someone should act on this, and if so who, is determined by the same background theory, which is not, strictly speaking, of any concern to the pro-paternalist. Thus in principle one could have a theory of coercion according to which government ought never intervene to promote the individual's own interest, while nevertheless being committed to the pro-paternalist position that there are reasons that support some sort of intervention.

The second point worth noting about Hanna's definition of paternalism is that he considers intervention to be justified only when it is *actually* in the person's best interest. Critics of paternalism sometimes define a paternalistic policy as one whose justification appeals to the interests of the person being coerced. Typically this reference to 'interests' is *de dicto*, in the sense that the ascription of interests could turn out to be mistaken. Hanna, by contrast, uses the language of interests *de re*, in the sense that he is only concerned with the interests that individuals actually have. This is part of a more general propensity on his part to think

about these issues in realist terms. He is interested in determining what reasons there are to act in one way or another. The fact that some intervention would advance some person's interests generates a reason in favour of that intervention, which in the absence of countervailing considerations, makes it the case that the intervention is justified. This is, in Hanna's view, simply a statement of the normative facts.

This realism (along with frequent use of realist locutions, such as 'actually' or 'really') winds up doing a considerable amount of work immunizing Hanna's claims against many of the usual objections to paternalism. For instance, it allows him to set aside entirely the concern that the person doing the intervening might be mistaken about where the person's interests lie. If the person doing the intervening is mistaken about these interests, then the pro-paternalist will be just as opposed to the intervention as the anti-paternalist. Hanna is also not inclined to give individuals any special authority or deference when it comes to defining their own interests. He claims that, 'In general, it does not seem that we are required to weigh the burdens (or benefits) a person would receive from a liberty-limiting act or policy in the same way that he himself would ... [T]he relevant question is whether the policy actually would impose major burdens on anyone, not whether anyone sincerely (but mistakenly) *claims* that the policy would impose major burdens on him' (97). Similarly, in the only discussion of religion that occurs in the book, Hanna entertains the suggestion that, when it comes to deciding whether Jehovah's Witnesses can be forced to receive blood transfusions, their peculiar interpretation of the Bible can be ignored if their underlying commitment is to live in accordance with 'the moral injunctions that are *actually* included in the Bible' (113).

The impact of Hanna's framing assumptions can be seen in the fact that, on his construal, John Stuart Mill winds up being classified as a pro-paternalist. On Hanna's view, 'Pro-paternalism is a moral view about the reason-giving status of paternalistic rationales. It is not an institutional rule that tells us how the government should be arranged or how government officials should be legally permitted or encouraged to conduct themselves' (37). Mill, of course, was almost exclusively concerned with the latter set of issues. His most important objection to paternalistic laws was that state officials are typically in a poor position to determine where the best interests of an individual lie, and so are likely to get it wrong more often than they get it right. This may be so, Hanna observes, but it does not 'threaten the *truth* of the pro-paternalist view' it only challenges the '*practical import* of pro-paternalism'. 'If it is virtually never reasonable to believe that intervention in the self-regarding affairs of a (nonconsenting) adult would be in his best interest, then pro-paternalism, even if true, may be insignificant at the level of practice' (31–32). Similarly, Mill's concern over autonomy, and his claim that the goodness of an outcome is in part constituted by its being freely chosen, merely suggests that in such cases intervention would not actually be in the person's best interest. In such cases, the pro-paternalist can happily embrace the conclusion that intervention would be unjustified.

Thus Mill's two well-known arguments against paternalism are not actually objections to pro-paternalism as Hanna conceives of it, since they do not 'identify any objectionable feature of *successful* or *effective* paternalistic intervention' (36). Furthermore, to the extent that one takes Mill's utilitarianism seriously, he would

appear to be committed to the two central tenets of pro-paternalism: first, that the interest of the person targeted provides a reason in favour of intervention, and second, that in the absence of countervailing considerations this reason justifies intervention (i.e. that the permissibility of the action can be deduced from the goodness of its consequences). Indeed, Hanna defines pro-paternalism in a way that would appear to make it a logical consequence of any consequentialist view that takes the satisfaction of interests to be in any way good. As a result, anti-paternalism winds up becoming exclusively the province of deontologists (12).

Of course, there has never been any shortage of deontologists willing to claim that, even if paternalistic intervention has good consequences, it is nevertheless impermissible. It is these views to which Hanna dedicates most of his discussion, and it is here that his arguments begin to hit their stride. He considers three distinct families of anti-paternalist views, dedicating a chapter to each: first, those that object to paternalism on the grounds that it is an insult or an affront to the autonomy of the person targeted; second, those that consider it a violation of liberal neutrality, or think that it involves the imposition of particularistic values on someone who does not share them; and third, those that object to it on the grounds that it violates the rights of the person targeted. He follows this with two chapters making difficulty for the traditional distinction between 'soft' and 'hard' paternalism. This is based on the insight that deontological anti-paternalist views are plausible only to the extent that they have coherent grounds for making exceptions (e.g. in the case of children, or those who are clearly acting in error). Hanna's strategy is to undermine these arguments, in order to take away the middle ground between pro-paternalism and an implausibly strict anti-paternalism.

The arguments in these chapters are all quite detailed, and cannot be summarized in a useful way here. Hanna's standard approach is to take each position in turn, point out some vagueness in its formulation, then offer a series of precisifications, working through the deficiencies of each. This is, in a sense, an invitation to further dialogue, since defenders of these positions will no doubt want to offer their own reformulations of their views, ones that they hope will be immune to Hanna's sometimes rather narrow objections.

There are, however, some larger points that Hanna makes, over the course of the discussion, that raise more profound difficulties. For instance, in his discussion of theories that prohibit paternalistic intervention on the grounds that it involves some 'insult' to the person targeted, Hanna points out that interventions aimed at avoiding other-regarding harm are in many cases equally insulting, and imply similar doubts about the person's judgement or capacity (85). Denying someone access to a weapon on the grounds that they might use it to commit suicide is not intrinsically more insulting than denying them access on the grounds that they might commit infanticide. That this point has not been more widely appreciated is, Hanna suggests, a consequence of the widespread tendency to treat paternalistic actions as a natural kind, subject to a unique set of principles. This is in many cases question-begging. If the goal is to show that there is something *distinctively* objectionable about paternalism, the set of principles used to establish this must provide, not only grounds for thinking that paternalistic actions are objectionable, but also that non-paternalistic actions are not objectionable. This second point, Hanna observes, is often overlooked.

With respect to rights-based views, Hanna again has a number of very detailed arguments. Perhaps his most striking observation is that, to the extent that these conceptions of rights rely upon Rawls's 'separateness of persons' objection to utilitarianism, they should have a lower threshold of justification for paternalistic than for non-paternalistic action. Respecting the separateness of persons means that we should be reluctant to impose costs upon one person in order to benefit others. But since paternalistic intervention aims to benefit one and the same person, there should be no such reluctance (127).

Finally, Hanna has a very effective argument, in his discussion of soft paternalism, against anyone who takes the rather extreme view that a person's own interest fails to provide any reason at all in favour of intervention (i.e. those who deny the first of Hanna's two postulates that make up the pro-paternalist position). The fact that we make an exception in the case of children suggests that there must be some reason at work in all of the cases. It is highly doubtful that, say, only children have reason to avoid playing with guns, but that adults don't. It is more likely that everyone has a reason to avoid playing with guns, but that in the case of adults we (often) have reasons to refrain from intervention that are absent in the case of the child.


These arguments are just some that stood out in my reading, as being either fresh or unusually effective. Others will no doubt find much else that is challenging or worthy of consideration. As co-editor of the recently published *Routledge Handbook of the Philosophy of Paternalism* (Grill and Hanna 2018), Hanna has an easy command of the literature and a willingness to engage with all perspectives on this issue. Thus the book will no doubt be pivotal in future discussions.

That having been said, there are two complaints that I would like to register. The first has to do with the examples Hanna uses throughout the book to illustrate paternalistic interventions. There is basically no mention of any of the paternalistic policies that engendered significant social conflict in the past. Religion is mentioned only once, and most surprisingly, there is no discussion at all of sexuality or the regulation of sexual conduct. Hanna's view, one can only suppose, is that the problem with the criminalization of sodomy, or contraception, is not that these laws were paternalistic, but that they were merely mistaken about where the best interests of their intended beneficiaries lay. This will strike many people as begging a number of important questions, which may be one reason that Hanna is reluctant to discuss the topic.

Instead, the example that Hanna turns to, again and again, is cigarette smoking. (The dust jacket of the book even features a large photograph of a cigarette being stubbed out.) The problem with this example is that it is not a point on which many pro-paternalists and anti-paternalists disagree, since most anti-paternalists are inclined to treat addictive behaviour as a special category, exempt from the standard restrictions on paternalistic intervention. Hanna, however, treats smoking as an ordinary example of people making a poor trade-off between pleasure and long-term health. The fact that it is addictive, and that this might raise special issues, is not even mentioned until the final chapter. In that same chapter, in which he discusses applications of his view, the three examples that he presents of legal regulation that follow from pro-paternalism are tobacco control policies, excise taxes on alcohol (again, an addictive substance), and the 'mandate' to purchase health insurance. In other words, at the end of a book-length defence of

paternalism, the practical consequence of the view, we are told, is not a legal and cultural revolution, but rather something that very much resembles the status quo in America circa 2015. The fact that, both culturally and legally, the contemporary United States is probably the least paternalistic society in the history of the world, suggests that Hanna could profit from some more serious reflection on the practical implications of his philosophical views.

Finally, it should be mentioned that a great deal of current interest in paternalism was sparked by the ‘libertarian paternalism’ defended by Richard Thaler and Cass Sunstein, and popularized in their book *Nudge* (2008). Those who come to Hanna’s book hoping for engagement with these issues will be disappointed. He does include a chapter discussing the topic, but it is all rather perfunctory. Libertarian paternalism is of interest only because of the claim that it identifies a set of strategies, which states can pursue, that despite being superficially paternalistic, nevertheless do not violate the traditional strictures against paternalistic intervention. But if these strictures are not worth defending, as Hanna suggests, then there is no reason to confine oneself to being a ‘libertarian’ paternalist. Thus Hanna focuses instead on the complaint, made by some, that the ‘nudges’ recommended by Thaler and Sunstein are manipulative in an objectionable way. But again, Hanna’s view on this question is too obvious to need stating. Anyone who sees no special problem with the state coercing its citizens in order to promote their interests is unlikely to see any problem with the state manipulating them to the same end.

Joseph Heath 

Philosophy, University of Toronto, Toronto

Email: joseph.heath@utoronto.ca

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Joseph Heath is a Professor in the Department of Philosophy at the University of Toronto. His research focuses on theories of practical rationality, critical theory, and economic philosophy. He is the author of several books, both popular and academic. His most recent, *The Machinery of Government*, is forthcoming from Oxford University Press.

Where Economics Went Wrong: Chicago’s Abandonment of Classical Liberalism, David Colander and Craig Freedman. Princeton University Press, 2019, xii + 267 pages
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David Colander (1992; Colander and Su 2018) has been writing about ‘the lost art of economics’ for years now, calling economists to task for rejecting two key