



CARL FOX 

WHAT'S SPECIAL ABOUT THE INSULT OF PATERNALISM?

(Accepted 28 February 2019)

ABSTRACT. A common assumption is that paternalism generates a special, and especially grievous, insult. Identifying this distinctive insult is then presented as the key to unlocking the concept and determining its moral significance. I submit that there is no special insult. It is, rather, a particular form that a lack of recognition respect can take. Attempting to capture the special insult has led us into confusion. In particular, it has led theorists to abandon the idea that paternalists must act for the sake of the individual whose agency they supplant, and even the notion that paternalistic action requires a distinctive motivation at all. I argue that paternalistic actions must come from a place of care and concern for the paternalised agent and show that this explains the moral significance of paternalism since it tempers the general insult that such actions deliver and provides a partial defence when paternalism is misguided.

KEYWORDS: Paternalism, Insult, Respect, Agency, Autonomy

I. INTRODUCTION¹

Here are two questions: what behaviour should we count as paternalistic, and why should we care about delineating a distinct category for paternalism at all? These questions are closely connected. Deciding which actions (and omissions) fall into a category will clearly have to do with why we think it is worth having that category in the first place. In this paper I will take issue with a line of

¹ For detailed comments on various drafts of this paper, I am especially grateful to Jessica Begon, Jimmy Lenman, and Jonathan Parry. I would also like to thank my various anonymous reviewers. Finally, this paper owes a great deal to questions raised by audiences at the University of Sheffield, the University of Leeds, and the Society for Applied Philosophy Annual Conference in St. Anne's College Oxford in 2014, and by the members of the White Rose Early Career Ethics Research Group.

thought that leads some 'motivational' accounts of paternalism astray. More particularly, I will criticise accounts that identify paternalistic actions as those motivated by a particular negative judgment about another person. Actions that spring from such judgments are held to be normatively significant because they are supposed to deliver a unique, and especially grievous, insult to rational agents.

Pursuing the logic of the special insult approach to paternalism leads to some odd results. First, it generates 'motivational' accounts that are built around judgments, and not motivations. Second, it drives its proponents to abandon the familiar intuition that paternalistic actions are undertaken for the good of the recipient. And, third, it eventually pushes them to explicitly renounce the importance of what a potential paternalist is actually thinking and focus instead on what it would not be unreasonable to suppose that they might have been thinking.

There is no special insult of paternalism. My diagnosis is that the insult in question boils down to nothing more than an acute lack of recognition respect for the individual whose agency is compromised. This insult is not unique to paternalism; there are lots of ways we can fail to show adequate respect to each other. However, since this analysis does away with an intuitively appealing story that purports to explain why paternalism matters, we shall have to return to the question of why we should care about paternalism and whether there is any value in persisting with a special category of paternalistic actions.

I offer two grounds for thinking that paternalistic interventions do indeed have a distinct normative significance, one familiar and one novel. First, paternalistic action intrudes on areas that are typically under the control of independent agents. When we get things wrong we therefore violate the autonomy of individuals. This explains why the bar for justifying paternalism should be set high. Second, the insult generated by a lack of recognition respect is actually tempered in the cases I want to identify as paternalistic since the actions come from a place of care and concern. If I am right that the insult is moderated by genuine fellow-feeling, then there is an interesting moral difference between cases of paternalism and other cases where recognition respect is absent. Paternalists have something to say in their own defence. Even when their interference was ultimately

unwarranted, they are entitled to a partial excuse that renders them less blameworthy. However, in spite of the mitigation that this offers, we should be wary of allowing ourselves to be swept up in our own good intentions. Paternalistic interventions are often self-defeating because they can undermine the status of the person about whom we care in the first place, and thus do more harm than good.

I will begin by sketching the important moves in the literature before explaining how building a motivational account of paternalism around a negative judgment sets a trap for the unwary in Section 3. Section 4 will ask what sort of insult we typically associate with paternalist behaviour, whether it is unique, and if it can serve to distinguish paternalistic actions. Section 5 will pick up the question of why paternalism is normatively significant and discuss how care and concern renders a paternalist less blameworthy in the event that their action constitutes an impermissible autonomy violation. Before concluding, I will also consider why paternalism can feel so insulting and distressing to the agent on the receiving end, even though it is coming from benevolent motives. My response will be that we often feel the sting of disrespect more keenly when it threatens not only our basic status as moral agents, but thereby the kinds of valuable relationships that prompt feelings of care and concern in the first place.

II. A RECENT TREND

Seana Valentine Shiffrin's influential account of paternalism is prompted by the deficiencies of previous theories.² In particular, she is concerned to extol the virtues of an account that places the emphasis on the motives of paternalists over those that concentrate on some problematic effect of paternalistic actions, such as the

² I will not attempt to give a taxonomy of the many different definitions in the literature. For useful overviews see: Joel Feinberg, *The Moral Limits of the Criminal Law Volume 3: Harm to Self* (Oxford: Oxford University Press, 1989); Gerald Dworkin, 'Defining Paternalism', in C. Coons and M. Weber (eds.), *Paternalism: Theory and Practice* (Cambridge: Cambridge University Press, 2013), pp. 25–38; and Jessica Begon, 'Paternalism', *Analysis* 76 (2016): pp. 355–373.

restriction of an agent's freedom.³ She argues, correctly, that this approach is better equipped to fit with our conviction that paternalism matters.⁴ We can see why if we consider a simple example.

Angus decides to quit smoking. However, his brother Malcolm is well aware that Angus has failed in the past and that without assistance he is unlikely to succeed this time either. Angus tends to give in when he sees his favourite brand of cigarettes and is particularly prone to temptation in his first week of abstinence. Malcolm figures that if Angus can last a week he will have a much better chance of kicking the habit for good. Malcolm, therefore, visits all of Angus's local shops first thing every morning and buys up all the cartons of his favourite brand. Making a series of purchases in this way certainly violates no right or liberty of Angus's and, if anything, may add to his overall freedom since it will help him to satisfy his higher-order preference and perhaps even open up a range of new opportunities.

In spite of that, it still seems to be a clear instance of paternalism. The most worrying feature of the example is that Malcolm treats Angus like a child. He distrusts his ability to follow through on his chosen course of action and instead of engaging him in a discussion simply bypasses Angus's critical faculties. For Shiffrin, '[b]ehavior may be paternalist if the motive behind it is simply that the (putative) paternalist knows better than the agent, or may better implement, what the agent has authority for doing herself.'⁵

It is worth noting that our intuitive grip on paternalism does not presuppose a moralised definition that analytically disallows this kind of behaviour. We should reject a moralised account because it seems

³ It is important to note that not all motivational accounts are committed to the notion that there is a special insult generated by paternalism or to the further commitment that this is what explains its normative significance. For instance, see: John Kleinig, *Paternalism* (Manchester: Manchester University Press 1983); David Archard, 'Paternalism Defined', *Analysis* 50 (1990): pp. 36–42; Cass R. Sunstein and Richard H. Thaler, (2003) 'Libertarian Paternalism Is Not an Oxymoron', *The University of Chicago Law Review* 70 (2003): pp. 1159–99; Kalle Grill, 'The Normative Core of Paternalism', *Res Publica* 13 (4) (2007): pp. 441–458; and Emma C. Bullock, 'A Normatively Neutral Definition of Paternalism', *The Philosophical Quarterly* 65 (258) (2015): pp. 1–21. I will return to the thought that a more pared-back motivational account achieves extensional adequacy in Section 5.

⁴ Seana Valentine Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation', *Philosophy & Public Affairs* 29 (2000): p. 212.

⁵ *Ibid.*, p. 216.

plausible that there might be cases when paternalist intervention is justified.⁶ However, we also want an account of paternalism that explains why we ought to be wary of actions or laws that strike us as paternalistic. Emma Bullock,⁷ updating David Archard's normatively neutral definition of paternalism,⁸ argues that it is a mistake to stack the deck in favour either of paternalists or anti-paternalists.⁹ She is right to hold that the question of the permissibility of paternalism cannot be settled by definition, but a good account of paternalism will still provide us with a *prima facie* reason for stopping in our tracks and thinking seriously about whether any particular paternalistic course is, in fact, justified.¹⁰

Shiffrin offers the following explicit characterisation of paternalist behaviour by an agent A. It is behaviour:

- (a) aimed to have (or to avoid) an effect on B or her sphere of legitimate agency
- (b) that involves the substitution of A's judgment or agency for B's
- (c) directed at B's own interests or matters that legitimately lie within B's control
- (d) undertaken on the grounds that compared to B's judgment or agency with respect to those interests or other matters, A regards her judgment or agency to be (or as likely to be), in some respect, superior to B's.¹¹

She thinks that earlier theories of paternalism have been too restrictive in the criteria they employ. Indeed, she does not believe that paternalist behaviour must aim to promote the agent's own interests.¹² I shall refer to accounts of paternalism that do not require the putative action to be performed for the sake of the other agent as broad accounts. Conversely, narrow accounts stick to the idea that

⁶ For an example of a moralised definition see Bernard Gert and Charles M. Culver, 'Paternalistic Behavior', *Philosophy & Public Affairs* 6 (1976): pp. 45–57.

⁷ Bullock, 'A Normatively Neutral Definition of Paternalism'.

⁸ David Archard, 'Paternalism Defined'.

⁹ On this point, see also Kleinig, *Paternalism*, pp. 4–14.

¹⁰ *Prima facie* here is to be distinguished from *pro tanto*. On the face of it, paternalism should always give us pause, but it might be fully vindicated. If, say, my friend is feeling particularly blue then the right thing to do is simply to lock away his brandy and firearms. It strikes me as peculiar to be worried about, say, tragic remorse in such circumstances. For an account of tragic remorse see Stephen De Wijze, 'Tragic Remorse – The Anguish of Dirty Hands', *Ethical Theory and Moral Practice* 7 (2005): pp. 456–458. I thank Pete Caven and an anonymous referee for helpful discussion on this point.

¹¹ Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation', p. 218.

¹² *Ibid.*, p. 214.

paternalists must be impelled by a concern for the other person. Of course, broad accounts allow that a paternalist may be principally concerned about the other person but, since they need not be, it is not a necessary condition. On Shiffrin's characterisation, it is paternalistic behaviour toward parents for social services to intervene in a struggling household and take their children into care. The social workers are primarily concerned with the welfare of the children but because raising children is ordinarily part of the legitimate sphere of agency of parents and the authorities have made a negative judgment about the abilities of the parents it qualifies as an instance of paternalism.¹³ The social workers have supplanted the parents and substituted in their judgment and agency. There is indeed an insult here but it is not at all obvious that it is a case of paternalism. Another example that she uses may clarify the issue further.¹⁴

Imagine the discussion session following a talk at a philosophy conference. An audience member is butchering a really important question that cuts right to the heart of the matter. Another philosopher recognises the importance of the question and fears that it will not be addressed unless it is asked properly. She, therefore, cuts across the bungling questioner and asks the question in a much clearer way.¹⁵ The articulate questioner also turns out to be paternalistic on Shiffrin's account because she judges her colleague to be unable to achieve his goal and hijacks his conversation with the speaker. There is certainly another insult here, but once again it seems odd to call it a case of paternalism.

Jonathan Quong duly criticises Shiffrin for casting her net too widely. He wants to preserve the intuition that the intentions of the paternalist must be focused on the person who is elbowed aside, but, crucially, he agrees that actions are paternalistic 'when motivated by a negative judgment about the ability of others to run their own lives', and it is this negative judgment that he thinks 'captures the

¹³ I will return to the idea of a legitimate sphere of agency in Section 4. For a helpful discussion of the relationship between paternalism and self-sovereignty, see Peter de Marneffe, 'Self-Sovereignty and Paternalism', in C. Coons and M. Weber (eds.) *Paternalism: Theory and Practice* (Cambridge: Cambridge University Press, 2013), pp. 56–73.

¹⁴ See Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation', p. 217, for the original example.

¹⁵ Shiffrin stipulates that the bungling questioner is still entitled to the floor. He hasn't gone on too long or otherwise violated the conventions that govern our behaviour in these contexts.

distinctive nature of paternalism'.¹⁶ He identifies two necessary conditions in his definition:

1. Agent A attempts to improve the welfare, good, happiness, needs, interests, or values of agent B with regard to a particular decision or situation that B faces.
2. A's act is motivated by a *negative judgment* about B's ability (assuming B has the relevant information) to make the right decision or manage the particular situation in a way that will effectively advance B's welfare, good, happiness, needs, interests, or values.¹⁷

However, Quong's definition turns out to be another broad one because rather than distinguishing between concrete motives, he elects to focus on the stipulation that the paternalist is driven by a negative judgment about someone else's abilities. The articulate questioner again comes out as a paternalist. She aims to improve an interest of her floundering colleague since both share the end of getting an answer from the speaker on a specific point. It is perfectly possible to aim at someone's good without caring one iota about them. Imagine a completely impartial utilitarian who travels around interfering with people in order to ensure that overall utility is maximised. Such an agent may interfere in my life to increase my happiness, but fail to have any concern for me as an individual.¹⁸

This may seem too quick. There is a more charitable way to read Quong's definition, in which 'attempting to improve' someone's interests means attempting to improve those interests because they are held by that person, but why should we think this? The second part of the definition explicitly tells us what he thinks the motivation for the action is. Even if we grant him a more complicated story about motivation, Quong still chooses to place the focus on the paternalist's negative judgment. He is committed to developing a 'judgmental definition'.¹⁹ As we shall see, this move is a costly one because it generates pressure to abandon the motivational component entirely.²⁰

¹⁶ Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2011), p. 73.

¹⁷ *Ibid.*, p. 80

¹⁸ I thank Jimmy Lenman for this example.

¹⁹ *Ibid.*

²⁰ See Section 4.

This idea, however, that what makes paternalism distinctive is the presence of a negative judgment, has become commonplace in the literature. Daniel Groll plays up the significance of a belief that an individual will fail to exercise sound judgment,²¹ Nicolas Cornell starts from ‘the idea that paternalistic actions or policies implicitly express something about the other party, and that this expression can be disrespectful’,²² and David Enoch describes it as ‘a feature that seems to many to be central to the vague, murky family of normative phenomena that are often thought of as cases of paternalism’.²³ Before I explain the attraction of the negative judgment line, I want to pause and show how it can lead an unwary motivational theorist astray.

III. AN UNHELPFUL AMBIGUITY

Shiffrin (deliberately) introduces an ambiguity into her definition, when she says that paternalist behaviour is behaviour ‘undertaken *on the grounds* that compared to B’s judgment or agency with respect to those interests or other matters, A regards her judgment or agency to be (or as likely to be), in some respect superior to B’s’.²⁴ This suggests that A behaves in the way that she does because she *believes* B to be limited or deficient in some way. Quong relies on a similar picture of motivation for his account: ‘I think it is best to simply say that the paternalizer *believes* that the paternalizee lacks the necessary level of rationality, or willpower, or emotion management to effectively advance his or her own welfare, values, needs or interests in the particular context’.²⁵

However, it is wrong to say that we can be motivated by a negative judgment of somebody’s capacities if this means that we can be motivated by a belief with the content that he lacks some important capacity. This is a factual belief and we are not directly motivated by our factual beliefs. I believe, for example, that the Earth is round. On its own this belief does not constitute motivation for any action at all. For that we must add at least one other con-

²¹ Daniel Groll, ‘Paternalism, Respect, and the Will’, *Ethics* 122 (2012): p. 718.

²² Nicolas Cornell, ‘A Third Theory of Paternalism’, *Michigan Law Review* 113 (2015): p. 1336.

²³ David Enoch, ‘What’s Wrong with Paternalism: Autonomy, Belief and Action’, *Proceedings of the Aristotelian Society* 116 (2016): p. 21.

²⁴ Shiffrin, ‘Paternalism, Unconscionability Doctrine, and Accommodation’, p. 218, my emphasis.

²⁵ Quong, *Liberalism without Perfection*, p. 83, my emphasis.

sideration. We must add what philosophers traditionally call an end. Since my goal is to sail to India, my belief that the Earth is round will shape my preparations and navigation in all sorts of important ways. Factual beliefs certainly form part of the story about why any of us act in the way that we do, but they do not directly motivate us.

Now, we might be more charitable and take 'on the grounds' to mean 'for the reason that,' but this only leads us to a deeper mystery. Why should we think that one person's suspect judgment or agency provides a reason for anyone else to intervene? Take the example of the bungling questioner. If I am the prospective paternalist then let's say that I believe that he is incapable of asking his question well, but why do I intercede? Couching this in terms of ends, there are two kinds of end that might induce action on my part. My contention here is that they come apart. We can intervene:

1. For the sake of the questioner himself, or;
2. For the sake of an independently-held end

I want to claim that there is a significant difference between being moved to pursue somebody's good for his own sake and being moved by an independent desire to see that his ends or projects are realised.²⁶ Perhaps the interventionist thinks that the questioner is mangling the question, indeed let's say that she believes, given his cognitive capacities and terrible history of public speaking, that he could do nothing other than mangle the question. This is not sufficient to spark action. If she also feels embarrassed for him and wants his ordeal to be over then this desire, coupled with her negative judgment that the task is beyond his abilities, may well be sufficient. Similarly, if she thinks that the question must be properly addressed for the general edification of the audience then this desire, coupled with her negative judgment, could also be sufficient. If we run these types of end together then the articulate questioner comes out as paternalistic even if she does not care about the bungling questioner and only happens to share his aim of pressing the speaker on that point.

Most conceptions of paternalism are, or at least aim to be, narrow. In order to avoid sleepwalking into a broad account, a motivational theory should explicitly discriminate between motives. In

²⁶ I intend good to be broadly specified. This includes, for example, welfare, interests, and values.

addition to a belief that an agent is deficient with respect to one or more important capacities, it should include a necessary condition to the effect that the paternalist acts for the sake of the individual concerned.²⁷ But what is the explanation for all of this loose talk about judgments and motivations? The root lies in a thought that feels right, Shiffrin's idea that 'paternalist doctrines and policies convey a special, generally impermissible, insult to autonomous agents'.²⁸ Negative judgment theorists are primarily trying to capture this insult. They take it to explain why we care about paternalism because they hold that the delivery of this insult is normatively distinct.

IV. RECOGNITION RESPECT AND THE INSULT OF PATERNALISM

So, what then is the special insult associated with all, and only, instances of paternalism? Shiffrin says that a paternalistic action 'evinces a failure to respect either the capacity of the agent to judge, the capacity of the agent to act, or the propriety of the agent's exerting control over a sphere that is legitimately her domain'.²⁹ Quong concurs. He offers two parallel ways in which paternalistic actions are presumptively wrong. First, the paternalist treats the other party as if she has an inferior status to him and, second, paternalistic actions 'involve treating an adult as if he or she (at least temporarily) lacks the ability to rationally pursue his or her own good... in this way their moral status is demeaned or diminished'.³⁰ Once again, we have the idea that a paternalist disregards another agent's core capacities and her claim to possess some level of moral standing. Before we can ascertain whether one, or a conjunction of both, of these conditions furnishes a good candidate for explaining the normative significance of paternalism, we need to take a step back and look in more detail at the notion of an insult.

²⁷ Grill, 'The Normative Core of Paternalism', p. 442, points out that motivation is complex and that actions usually have mixed rationales. Kleinig, *Paternalism*, p. 12, has a similar thought and distinguishes between 'pure' and 'impure' paternalism. I will follow Kleinig in specifying that so long as a concern for the recipient is partly motivating the action (or omission) in question, then it is paternalistic to that degree.

²⁸ Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation', p. 217.

²⁹ *Ibid.*, p. 220.

³⁰ Quong, *Liberalism without Perfection*, p. 83.

Archard characterises insults as expressive acts that say something about some particular person or group.³¹ Typically, they aim to denigrate the target and thereby assert the superior status of the person delivering the insult. As Jerome Neu puts it, insult 'is about humiliation and the assertion of superiority, the assertion or assumption of dominance'.³² Archard rejects Joel Feinberg's view that the wrongness of insults lies in the offence that they cause.³³ The taking of offence does not mean that a genuine insult has been delivered, nor does the lack of offence guarantee that one has not been given. 'Offence *may* be taken at what is said, but it is the saying of what is said – the giving of insult – that is the putatively wrongful act'.³⁴ Moreover, for an expressive act to count as an insult it must be reasonable to be offended by it. Without such a condition in place we would be hostage to the holders of any and all idiosyncratic beliefs.

The morally problematic element of insults is that they amount to a lack of what Stephen Darwall calls recognition respect.³⁵ Recognition respect is the respect that is owed on the basis of having some status, such as the status of being an autonomous moral agent. By contrast, appraisal respect is respect that accrues on account of some excellence or aptitude. Serena Williams is much better at tennis than I am and so it is fitting to have additional respect for her in that context. However, since we have the same standing as moral agents we are both owed the very same rights, liberties, moral consideration, and so on.

The reason why we should emphasise an agent's legitimate sphere of control is because this is what is required for an individual to be the author of her own life. We secure one another's status *as agents* by drawing some borders around the decisions that are exclusively ours to make. To interfere in a context where I ordinarily have the right to be the one in charge is to call my status into question. This is why there is a serious insult in the case of the bungling questioner. Even though his colleague has her eyes on the

³¹ David Archard, 'Insults, Free Speech, and Offensiveness', *Journal of Applied Philosophy* 31 (2014): p. 128.

³² Jerome Neu, *Sticks and Stones: The Philosophy of Insults* (Oxford: Oxford University Press, 2008), p. 4.

³³ Joel Feinberg, *Offence to Others* (Oxford: Oxford University Press, 1985).

³⁴ Archard, 'Insults, Free Speech, and Offensiveness', p. 135.

³⁵ Stephen Darwall, 'Two Kinds of Respect', *Ethics* 88 (1977): pp. 36–49.

content of his question, rather than his right to the floor while he asks it, she still errs by neglecting to treat him in the appropriate manner. Her behaviour towards him is a pure form of insult. One agent usurps another, thereby creating doubts about the ways in which he ought to be respected as a matter of right.³⁶

Of course, our control is bounded by conditions of legitimacy that we may fail to meet. Sufficiently bad parents forfeit the right to be the ones making decisions for their children just as sufficiently unintelligible and interminable questioners forfeit their right to the floor. It should, however, be clear that to take those children away reflects badly on the agency of the parents, even though in such a case it is their own failings that bring their standing into question. The action indicates that they are not entitled to established forms of recognition respect and is offensive for that reason.³⁷

So, paternalism is insulting because one agent treats another as something less than a full moral equal and thereby calls her status as an equal into question. But why should we think that there is a *special* insult here? And why should we accept that paternalism is distinctively wrong on account of it? If a burglar breaks into my home and steals my television then he is disrespecting me by dismissing the idea that I am a moral agent with certain rights. That disrespect is offensive. Of course, my initial responses are likely to be fear, insecurity, or anger, but, if you stop to think about it, it is hugely insulting that someone deliberately broke into *your* home and helped themselves to *your* stuff.³⁸ Adam Smith said that '[w]hat chiefly enrages us against the man who injures or insults us, is the little account which he seems to make of us, the unreasonable preference which he gives to himself above us, and that absurd self-

³⁶ Archard, 'Insults, Free Speech, and Offensiveness', pp. 136–137, points out that an insult does not automatically reduce its target's moral status. For that to occur, he thinks that the insult must be accepted. However, the controversy is itself a threat.

³⁷ Our expectations and assumptions about what behaviours are respectful and appropriate will necessarily be different when it comes to children or to adults who, temporarily or permanently, lack the requisite capacities for full competence. I will set aside the difficult, but important, question of what forms recognition respect should take in such cases.

³⁸ This is an example of what Alan Wertheimer, *Exploitation* (Princeton: Princeton University Press, 1996), p. 15, calls 'the problem of occlusion'. When an action is wrong in more than one way, our attention is often drawn to the most serious offence at the expense of the less serious, though conceptually distinct, wrongs that have also taken place. In this case the violation of my rights is patently more serious than the insult the burglar delivers, but the insult is also wrong.

love, by which he seems to imagine, that other people may be sacrificed at any time, to his conveniency or his humour'.³⁹ We have no obvious reason to think that paternalism is insulting in a new and interesting way when the insulting part can be distilled to a straightforward failure of recognition respect.

In response, the proponents of a special insult might suggest two lines of thought. First, interventions undertaken for our own good could deliver a special insult because looking after our own welfare is not just another sphere of control, it is the most important sphere of control. On this view, it is the magnitude of the disrespect that distinguishes paternalistic actions from other violations of our spheres of agency. One problem with this is that varying the intensity or severity of the insult does not plausibly change its character. For instance, I can insult your intelligence using more or less abusive language but the nature of the insult remains the same. Another problem is that as we can tweak the severity of a paternalistic insult, so too can we tweak the severity of other insults. If we can match the severity of an insult that is clearly non-paternalistic to one that clearly is paternalistic, then the severity of the insult cannot be used to distinguish between them. I see no reason to think that this is impossible.

The second response seeks to identify an additional insult in paternalistic actions arising from a distinctive combination of a lack of recognition respect and a lack of appraisal respect since there is, after all, a factual belief about the deficiencies of the agent in question, the core capacities referenced by Shiffrin and Quong. But this line also faces a serious objection.

Enoch takes aim at the idea that one person can wrong another simply by making and endorsing the judgment that that other is deficient in some way. His claim is that we are not morally entitled to demand that others think well of us. They have an epistemic decision to make and they had best make it on epistemic grounds. He is concerned to examine the idea that the presumptive wrong in paternalism is explained by the holding of a morally objectionable belief.⁴⁰ In this paper I am interested in the idea that a paternalistic action generates an insult and that it is this insult that explains its

³⁹ Adam Smith, *The Theory of Moral Sentiments* (London: Penguin, 2009), p. 115.

⁴⁰ Enoch's considered view is that we sometimes have exclusionary reasons not to act on beliefs about another's deficiencies, but it remains the action that is wrong – when it is unjustified.

normative significance. Nonetheless, Enoch's contribution is enlightening here.

As in his conclusion, appraisal respect is just not the sort of thing to which you can have a moral entitlement. If I refuse to acknowledge that Serena Williams is a great tennis player then I am certainly mistaken, and she is perfectly within her rights to think that I am either ignorant, or a few strings short of a racket. She is not, however, within her rights to be insulted or to demand any of the remedial actions that can resolve a case of insult.⁴¹ Of course, it is quite true that I ought to respect her abilities, but the relevant ought is not a moral one. A lack of appraisal respect might add to the subjective unpleasantness of the insult that is taken, but it does not add to the insult itself.

A different version of this objection might hold, as Rosa Terlazzo does, that it is not appraisal respect at all, but rather a discrete kind of recognition respect to view individuals as authoritative on the subject of their own good.⁴² The thought would then be that a failure of this particular kind of recognition respect might deliver a singular insult.⁴³ However, Terlazzo's claim is that we should stop making global judgments about whether individuals are autonomous or not because thinking about one another as 'faulty or damaged creatures who cannot be trusted to determine for themselves what is in their best interest', can lead us to dismiss some individuals as less than full equals.⁴⁴ The reason why she counts 'secondary' recognition respect as a kind of recognition respect is that a failure to proffer it undermines our moral standing, and it is this that remains the basis and substance of the insult.

There is a sense in which every insult is unique, set apart by tone, context, wit, and so on, but in a deeper sense all insults are exactly the same. This is what Neu means when he says that all insults have 'to do with what we believe ourselves to deserve in the way of

⁴¹ There is an important exception to this claim which I cannot properly discuss here. One form of discrimination involves discounting the achievements and credibility of target groups. Epistemic injustice is a moral wrong and should be treated as such. See Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2009).

⁴² Note that this could not be the special insult that Shiffrin cites since she offers a broad account of paternalism.

⁴³ I thank an anonymous referee for pressing me here.

⁴⁴ Rosa Terlazzo, 'Conceptualizing Adaptive Preferences Respectfully: An Indirectly Substantive Account', *The Journal of Political Philosophy* 24 (2) (2016): p. 209.

attention, respect, and treatment'.⁴⁵ Even simple name-calling is a disruption of expectations, a challenge to an existing status quo in which the target has a claim against being belittled.⁴⁶ To transgress this boundary is to dispute the target's right to be protected by it. Every insult implies that the recipient does not matter, or, more precisely, that she does not matter enough to be immune from the disrespect currently being shown to her. This is what makes insults insulting, and this is what makes them presumptively wrong.⁴⁷

Drilling deeper into the thought that paternalism matters because it delivers a unique insult leads us to a further problem. This approach pushed Shiffrin away from the common intuition that paternalists must be moved to action by their concern for the other agent, but there is internal pressure to take one more step. Cornell picks up the baton and takes the idea to its inevitable conclusion by denying that paternalists have to have any particular intention at all. He presents his expressive account of paternalism as a departure from, and advance on, the motivational line, arguing that paternalism can be unintentional and so it cannot be tied to a particular motivation. He offers the example of a park ranger who erects a sign that forbids climbing on some choice rocks.⁴⁸ The ranger's concern is to protect rare and delicate lichens growing on the rocks, but Cornell points out that climbers who see the sign might well perceive it to be indicative of an attitude of 'I know better' from the authorities and feel insulted. In these health and safety-conscious times, this is not an unreasonable inference to draw, and so the expressive content of the sign, Cornell concludes, is objectionable: '[p]aternalistic actions imply that the actor knows better than the subject with regard to a matter within the subject's sphere of control, and, paternalistic ac-

⁴⁵ Neu, *Sticks and Stones: The Philosophy of Insults*, p. 34.

⁴⁶ See *Ibid.*, pp. 57–82, for a discussion of friendly exchanges of insults.

⁴⁷ Insults too can be fully justified, however, since they may serve to force people to confront truths to which they may be blind, or find uncomfortable. Indeed, in satire insults can play an indispensable political role in a healthy democracy. Take, for instance, Michelle Wolff insulting Sarah Huckabee Sanders at the 2018 White House Correspondents' Association dinner. By deliberately violating norms of politeness and thereby bringing Sanders' standing into question in her performance, Wolff was directly holding Sanders to account for her complicity in various wrongs, but also inviting both Sanders and the wider audience to reflect on whether her behaviour merited the withdrawal of some particular forms of recognition respect. The decision to insult Sanders seems fully vindicated to me, rather than merely all-things-considered justified in spite of being wrong in at least one respect. Of course, deliberately or foreseeably insulting another person may misfire and should be approached carefully. See *Ibid.*, pp. 17–18 & 227–231.

⁴⁸ Cornell, 'A Third Theory of Paternalism', p. 1311.

tions are impermissible insofar as this expression is offensive. That is, paternalism is impermissible to the extent that it expresses something insulting'.⁴⁹

I will not examine Cornell's account in the detail it deserves here, but I will make the observation that it comes with costs that are only worth bearing if you are convinced that there is a special insult generated by paternalistic actions. The park ranger in his example illustrates just how broad an expressive account becomes. Any action that can be reasonably interpreted as paternalistic by someone with no knowledge of the prospective paternalist's motivations and intentions simply is an instance of paternalism. On my analysis, this conceptual inflation is unnecessary and, therefore, I propose a different strategy. Instead of searching for the special insult of paternalism we can accept that the insult isn't special, but the way that it is generated is. On this view, the possibility opens up that the concern for the agent involved actually moderates and lessens the insult. This may seem deeply counter-intuitive. After all, what could be more insufferable for independent individuals than to be condescended to and patronised? A complete absence of consideration, I will argue, is worse. In the next section I'll explain how the general qualification of a serious insult goes some way towards establishing why paternalism merits its own category.

Let's briefly take stock of where we are. I have been arguing against the idea that paternalism is normatively significant because paternalistic behaviour delivers a special insult to autonomous agents. I agree that paternalistic behaviour is insulting insofar as it denies the recipient's presumptive status as an equal. However, any action that fails to show recognition respect ultimately conveys the same insult. The insult of paternalism is, therefore, a bad candidate for explaining the normative significance of paternalism and an unhelpful guide to which actions should count as paternalistic. This means that we are back where we started, we still need to determine which actions are paternalistic and explain why it is worth having a special category for paternalistic actions.

In the end, I think that the most important reason to be concerned about paternalistic actions is that they constitute intrusions into individuals' spheres of autonomous agency. Notice that even

⁴⁹ Ibid, p. 1315.

when a paternalistic intervention is justified we will still get the presumptive wrong of the insult for free. However, while these points give us reason to think that individual paternalistic interventions are normatively significant, they do not explain why the *category* of paternalism itself matters. A more traditional motivational approach can succeed here because it stipulates the presence of care and concern for the recipient. That care and concern tempers the insult because it implicitly recognises that she does have moral status. It also provides a partial excuse for the paternalist when the intervention is all-things-considered unjustified.

V. TEMPERING THE INSULT

George Bernard Shaw wrote that the worst sin towards our fellows is not to hate them, but to be indifferent to them. That is the essence of inhumanity.⁵⁰ If disrespecting the agency of a human being delivers a deep insult to her, then my thought is that it is partially mitigated if it comes from a place of fellow-feeling and concern.⁵¹ This suggestion goes against the grain of the recent literature which operates on the assumption that paternalism is an uncommonly grave insult. It is normatively significant that intrusions undertaken for the sake of another person implicitly acknowledge not only the value of that person, but also the value of her agency because they focus either on helping her to achieve her own ends or protecting her from harms that would restrict her future options. This is how we treat children; as imperfect, developing agents in need of assistance.

Paternalists are less blameworthy than other agents who culpably fail to have sufficient recognition respect in two ways. First, demonstrating care and concern provides evidence of good character. We come down less hard on individuals who can show that they act for generally laudable motivations and are generally good people. Possession of benevolent motives gives the rest of us some reason to think that the culprit can learn from the experience and make moral

⁵⁰ This idea is expressed by the noble parson Anthony Anderson at the beginning of Act II of *The Devil's Disciple*. See George Bernard Shaw, *The Bodley Head Bernard Shaw: Collected Plays With Their Prefaces Volume II* (London: The Bodley Head, 1971).

⁵¹ Of course, the overall severity of an insult will depend on the particular circumstances. A well-intentioned but seriously misguided paternalist may commit a much greater offence than a callous agent who only does something trivial. What I am arguing here is that there is something general that we can say about actions motivated by care and concern, i.e. that this is itself a mitigating factor.

progress as a result of it. To the degree that they do, they are less likely to reoffend, or to commit other offences. Second, the widely-accepted idea of a general duty of benevolence commits us to thinking that, other things being equal, care and concern is the appropriate way to relate to other human beings. Now, a duty of benevolence puts ethical pressure on us to pitch in when others appear to be having a hard time. Being human, though, we sometimes make mistakes. Sometimes we think people are in trouble when they are not. Sometimes we think that people are in more trouble than they really are. And sometimes we get our rough and ready calculations wrong when we try to weigh up the costs and benefits of intervening. These sources of error are compounded by the reality that we cannot always wait until we're absolutely sure that an intervention is warranted. Combining ethical and more prosaic pressures provides a partial excuse for losing sight of the boundaries of another's sphere of agency.

This point is clearer in the case of a close personal relationship such as friendship or the parent-child relationship. Imagine a concerned father rushing to help his child, who has grown more independent and resilient than the father realises, when the latter is struggling in some endeavour. The father's interference is overbearing, but his duty of care requires that he keep a watchful brief and be prepared to step in when the child needs assistance. The father is mistaken this time, but we should treat him less harshly because his duty, coupled with the burdens of judgment, compels him to run this and similar risks.

Doesn't this apply across the board to all wrongful actions motivated by benevolent motives? If so, then we would again struggle to distinguish distinctively paternalistic actions.⁵² If our burglar from earlier was a modern day Robin Hood who devoted the proceeds of crime to the poor and downtrodden then wouldn't that mitigate the insult in the very same way? Although it may constitute a partial excuse, it will not mitigate the insult. When the action is undertaken for the sake of the person whose status is undermined, then it asserts something significant, i.e. that they have an important moral status as the kind of thing that ought to be assisted for their own sake. The recipient of paternalism thus has a reason to be less

⁵² My thanks to an anonymous referee for raising this objection.

insulted that does not apply to the victim of a benevolent action directed at the good of a third party.

Why, then, do we find paternalism so objectionable? If a friend came to the defence of the bungling questioner, chastised his eloquent usurper, and handed back the floor it would hardly be surprising if the questioner felt even more aggrieved and patronised at this interference than the original intrusion. Perhaps the insult generated by paternalistic interventions is actually aggravated in the context of a caring relationship since the parties involved should know better.⁵³ The trouble with this thought is that recognition respect is owed to all agents equally, irrespective of each individual's merits or the more concrete relationships that happen to exist between us. Additional emphasis on such a basic obligation does not plausibly make me more culpable if I fail to discharge it. It would be no defence if the articulate questioner defended herself by exclaiming: 'I have no relationship with that bumbling fool! What is he to me?'

The strength of the response in cases where there is a pre-existing relationship has more to do with the damage done, or feared, to valuable human connections than it does with the nature of the insult suffered. People worry that respect has been replaced by pity and they can no longer look one another in the eye as equals. Good relationships are built on a foundation of mutual respect and will not survive long if that breaks down. Even though paternalism is not the worst kind of intrusion into our legitimate spheres of agency, it is the kind most likely to occur in genuinely caring relationships and is potentially lethal to those relationships. The level of offence that we sometimes take reflects other values that we hold dear and does not provide a good reason for thinking that care and concern cannot mitigate the insult. If I am right, then this gives us at least some reason for treating paternalism as a distinct class.

Shiffrin holds that we should have the same normative reaction to all cases where one agent makes a negative judgment and then impedes on another's legitimate sphere of agency.⁵⁴ Her strategy is to extend the meaning of paternalism to accommodate additional instances where a lack of recognition respect generates an insult. I

⁵³ I thank Charlotte Alderwick for this thought.

⁵⁴ Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation', p. 218.

disagree; there is a better way to achieve extensional adequacy given a core element of the general understanding of paternalism: that it treats adults like children or, as Feinberg points out, children like smaller children.⁵⁵ For one thing, treating someone as a child ought to include some care and concern unless we want to drop that metaphor or drastically change our thinking about how we ought to relate to children. For another, the question of the value of paternalism as a distinct category of intrusions into spheres of agency brings out the important possibility that even benevolently-motivated individuals may undermine the status of the very people that they are trying to help. Since the recipient's good will also include her subjective sense of well-being, her social standing, and the quality of her relationships, we must acknowledge that all of these may be subtly damaged by superficially successful interventions and guard against the tendency to get swept up in our eagerness to help. I have mainly been concerned with interpersonal paternalism, but this point also holds true on a state level. Governments can easily become preoccupied with safeguarding the well-being of their citizens and reach for overweening powers well beyond what they need to discharge their real responsibilities.⁵⁶

Of course, not everyone will perceive that they have been insulted and the bungling questioner might be grateful for any assistance, no matter if it betrays a lack of respect. It is also important to see that some caring relationships will have permissions for interventions written into the rules, so to speak. It may be understood between two friends or partners that certain kinds of intervention are welcome and in these circumstances it might actually be callous to stand off and watch somebody flounder when they would welcome help. On some ideals of love, the idea is precisely to stop being an individual and become part of a new and completely joint entity. However, I think it is more common to want to preserve at least some individuality within a friendship or romantic relationship, and this will mean establishing some boundaries that each party must

⁵⁵ Feinberg, *The Moral Limits of the Criminal Law Volume 3: Harm to Self*, p. 5.

⁵⁶ Moving from interpersonal to institutional paternalism introduces a raft of new considerations that I cannot adequately address here. We might, for instance, raise the sad fact that many states have claimed to interfere with the liberty of minority or underrepresented groups 'for their own good' while displaying precious little in the way of care and concern towards them. Since these justifications generally ring hollow I think it is unhelpful to characterise such policies and laws as institutionally paternalistic. They are simply oppressive. I thank an anonymous referee for pushing me on this point.

respect. It is when they are not respected that relationships become stifling or oppressive. There is a very fine line here and the complexities only serve to emphasise how important it is to be sensitive to the demands of recognition respect.

Note that the story I have offered undermines the rationale for switching from a narrow to a broad motivational account, or to Cornell's exclusive focus on expressive content. With no need to capture a unique insult we are free to return a more stripped-down motivational approach. Paternalists interfere in decisions that would ordinarily be another agent's to make, but they do so because they have a very particular end in mind, i.e. the agent's own good, and for her own sake. In doing so they treat that agent as something less than a moral equal.

VI. CONCLUSION

There is no unique or special insult in cases of paternalism, and trying to capture it leads us astray. Once we acknowledge that the insult of paternalism arises from a lack of recognition respect and reinstate a necessary condition to the effect that the paternalist must be motivated by a concern for the good of the agent involved then we can preserve our intuitions in a theoretically satisfying way. Paternalism treats adults like children and it is customary to care about children. To be viewed merely as an obstacle and dispassionately sidelined is not to be treated as a child.

This still leaves us with the question of why paternalism matters and merits its own category. I have offered the familiar thought that paternalistic actions, when mistaken, constitute impermissible intrusions into an individual's sphere of autonomous agency. I have also argued that it makes sense to hive off paternalistic actions as normatively distinct by refocusing our attention on the paternalist rather than the insult given to the recipient of the paternalist's intervention. The presence of care and concern provides a partial excuse when paternalism goes wrong, tempering the insult and rendering the paternalist less blameworthy. Finally, it is important to keep our eyes on the ball. Paternalistic interventions, when we restrict our meaning to actions that are performed for the sake of the agent affected, run a very high risk of being self-defeating. Even when we are trying to help it will not do to lose sight of the sig-

nificance of recognition respect and the constraints that it places on our dealings with other autonomous moral agents.

OPEN ACCESS

This article is distributed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made.

*Inter-Disciplinary Ethics Applied (IDEA) Centre,
University of Leeds, 17 Blenheim Terrace, Leeds, LS2 9JT, UK
E-mail: ca.fox@leeds.ac.uk*

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.