I. THE PROJECT OF RECONCILIATION

Many people think paternalism is wrong: that it is wrong for the government to limit our liberty for our own good. Some government policies that seem paternalistic, however, also seem morally permissible, at least to many of us, seatbelt laws, for example. For this reason some philosophical opponents of paternalism seek to show that no widely supported policy is really paternalistic, by identifying a good nonpaternalistic justification for the seemingly paternalistic policies that most of us endorse. In this way they aim, as Joel Feinberg puts it, “to reconcile our general repugnance for paternalism with the seeming reasonableness of some apparently paternalistic regulations.”

This project of reconciliation would be important if paternalism were always wrong, but I see no good reason to think so. Paternalism seems repugnant because it seems infantilizing. In limiting our liberty for our own good, it seems that the government treats us like children or that it impedes our development into fully mature adults, but there is no reason to think this is true of every paternalistic policy. Some liberties have a special value in symbolizing the status of adulthood within our society, the freedom to marry, for example. Having this freedom also provides an important kind of control over the shape and direction of our lives, and creates important opportunities for deliberation and choice. So it makes sense to think the government would treat us like children if it were to make our marital decisions for us. Not every liberty, though, has this kind of significance: the freedom to drive without a seatbelt does not. So there is little reason to think that every paternalistic policy is infantilizing in this way.

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Paternalism may be disrespectful on some other ground, but I do not think it always is, and in what follows I explain why. My goal here is not to defend any particular paternalistic policy, but to challenge the general presumption against paternalism that I believe distorts our thinking. Some government policies, such as drug and prostitution laws, strike us as paternalistic, I think, because the paternalistic reasons for these policies strike us as the most compelling, at least when our antipaternalistic guard is down. If, however, a general principle of antipaternalism is valid, then we should evaluate these policies by evaluating whether or not there is sufficient nonpaternalistic reason for them. In this way a principled antipaternalism requires us to ignore the reasons that initially strike us as the most compelling. Of course these reasons may not be the strongest, and they may in any case be too weak. Nonetheless I believe that our evaluation of such policies will be more sensitive to the relevant considerations if we freely consider the paternalistic reasons in their favor and conclude that they must be justified nonpaternally only after we conclude that the paternalistic reasons are too weak to justify the specific burdens these policies impose.

I should say at the outset that it is wrong in my opinion for the government to limit certain basic liberties such as freedom of political expression for paternalistic reasons. My claim here is only that paternalistic interference with some liberties may be justifiable. I will not attempt to defend a general theoretical distinction between those liberties that may be limited for paternalistic reasons and those that may not be, but I assume that a nonarbitrary distinction can be defended. I also assume that the government has a general moral obligation to recognize and protect against paternalistic interference a sufficiently wide range of important life-shaping decisions to ensure that we have adequate control over our lives, enough to achieve genuine autonomy and independence. My position is that since some paternalistic policies are compatible with this general obligation, there is no compelling reason to think that paternalism is always wrong.

II. WHAT’S TO AVOID?

The project of reconciliation is to show that there are good nonpaternalistic justifications for the seemingly paternalistic policies that many of us endorse. A recent example is Seana Shiffrin’s nonpaternalistic
defense of the unconscionability doctrine in contract law, according to which the courts are justified in refusing to enforce unconscionable contracts by the fact that a government has no general obligation to facilitate agreements that its citizens regard as exploitive or seriously immoral. Another recent example is Elizabeth Anderson’s nonpaternalistic defense of compulsory contributions to health insurance and retirement programs, according to which the government is justified in taxing us to fund these programs by the fact that we have a general obligation to secure the conditions of everyone’s freedom as a democratic citizen and a person who is sick or impoverished in old age cannot participate fully in the democratic process. Whether these arguments can establish, however, that the relevant policies are not paternalistic depends partly on what paternalism is.

We commonly say that a policy is paternalistic if it limits a person’s choices “for her own good,” where this is to limit her choices for a certain kind of reason: that this policy will promote her welfare or improve her situation in some other way. What is it, though, for the government to limit a person’s choices “for” a reason? A natural answer is that the government limits a person’s choices for a reason if and only if it adopts this policy because (and only because) those in the relevant political process (legislative, judicial, or administrative) count this reason in its favor. This suggests a motivational interpretation of paternalism: a policy that limits a person’s choices is paternalistic toward that person if and only if the government adopts this policy because those in the relevant political process count the fact that it will benefit this person as a reason in its favor.

This interpretation of paternalism fits poorly, however, with the project of reconciliation. To see why, consider a tension in Shiffrin’s position. Her article aims to show that the unconscionability doctrine need


not be "defended on paternalist grounds or applied in a paternalist way"\textsuperscript{5} by presenting a plausible nonpaternalistic rationale for this policy.\textsuperscript{6} If, however, Shiffrin's "motive-based characterization of paternalism"\textsuperscript{7} is correct, it is, strictly speaking, not necessary to provide a plausible nonpaternalistic rationale for this policy in order to show that it need not be paternalist, since the mere psychological possibility of a nonpaternalistic motive, no matter how feeble a justification it provides, suffices to show this.\textsuperscript{8} Furthermore, if Shiffrin's motive-based characterization of paternalism is correct, then the nonpaternalistic rationale for the unconscionability doctrine that she proposes does not actually show that this policy is not paternalist, even if it provides a fully adequate justification, since the availability of a fully adequate nonpaternalistic justification for a policy does not entail that government officials are not paternalistically motivated in adopting and applying this policy.\textsuperscript{9}

It is tempting in view of this tension to characterize paternalism without reference to motive, but characterizations of this kind have odd consequences. Suppose we say that a policy is paternalistic toward A if

\textsuperscript{5} Ibid., pp. 207, 236.
\textsuperscript{6} Ibid., pp. 221–36.
\textsuperscript{7} Ibid., pp. 212, 218.
\textsuperscript{8} A related observation is that if a paternalistic motive is required for a policy to be paternalistic, as Sunstein and Thaler suggest (p. 1162), then it is not true, as they contend, that some forms of paternalism are "impossible to avoid" (p. 1166). They are right that agencies must often choose policies that will frame the decisions of others. To use one of their examples, employers must sometimes decide whether or not to make savings for retirement the default rule, so that employees will save unless they choose not to. If employers choose this policy because they believe that their employees are more likely to save as a result, then this policy is paternalistic on the motivational interpretation. But if the employer is indifferent to the welfare of his employees and he chooses this policy by flipping a coin, simply because he needs some policy, then the policy is no longer paternalistic on this interpretation.
\textsuperscript{9} According to Shiffrin "paternalism by A toward B may be characterized as behavior (whether through action or through omission) (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." Since conditions (a) through (d) might be met by policies that can be fully justified by nonpaternalistic reasons alone, identifying a nonpaternalistic justification for the unconscionability doctrine does not actually establish that the doctrine is not paternalistic given Shiffrin's own motivational characterization of paternalism.
and only if it can be justified only by paternalistic reasons (understanding paternalistic reasons as those that cite some benefit to A that A does not want). It follows from this analysis that every paternalistic policy is justifiable (since if a policy can be justified only by paternalistic reasons, then it can be justified by these reasons, from which it follows that it is justifiable), and no one wants to claim that every paternalistic policy is justifiable. Suppose we say instead that a policy is paternalistic toward A if and only if it cannot be fully justified unless paternalistic reasons are counted in its favor. From this it follows that every unjustifiable policy is paternalistic (since if a policy cannot be justified, then it cannot be justified unless paternalistic reasons are counted in its favor), and no one wants to claim that every unjustifiable policy is paternalistic. These problems can be avoided by holding that a policy is paternalistic toward A if and only if (a) this policy cannot be fully justified without counting any paternalistic reason in its favor, and (b) this policy would be fully justified if paternalistic reasons were allowed to count in its favor (which they might not be). But this interpretation also has odd consequences. It implies, for example, that, if the benefits of drug prohibition to potential drug abusers are too small to justify this policy, drug prohibition is not paternalistic even if it is adopted in order to protect potential drug

10. Gerald Dworkin writes, “By paternalism I shall understand roughly the interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced.” See “Paternalism,” in Paternalism, ed. Rolf Sartorius (Minneapolis, Minn.: University of Minnesota Press, 1983), pp. 19–34, at p. 20. The phrase “justified by reasons” is ambiguous in this context, however. It might mean that only paternalistic reasons can justify this policy; or it might mean that this policy is adopted only because those in the relevant political process count paternalistic reasons in favor of this policy or publicly defend it by these reasons. Dworkin in a more recent article seems to shift back and forth between these two interpretations. See “Paternalism,” in The Stanford Encyclopedia of Philosophy (2002), ed. Edward N. Zalta, available on the internet at <http://plato.stanford.edu/archives/win2002/entries/paternalism>. Robert Nozick writes, “We might elliptically call an arrangement ‘redistributive’ if its major (only possible) supporting reasons are themselves redistributive. (‘Paternalistic’ functions similarly).” See Anarchy, State, and Utopia (New York: Basic Books, 1974), p. 27. Since there are nonpaternalistic reasons of some weight in favor of any seemingly paternalistic policy, this characterization seems to entail that no policies are paternalistic, but the phrase “only possible supporting reasons” is better read here to mean the only reasons that could actually justify this policy, which suggests the definition now under consideration.

11. Assuming that “unless” has the same truth conditions that “or” usually has.

12. Since Nozick’s general theory of liberty suggests that paternalistic reasons are not permitted to count, this seems like the best interpretation of his characterization of paternalism (Anarchy, State, and Utopia, p. 27).
abusers who do not want to be protected in this way and even if this policy cannot be justified in any other way. More generally, this interpretation entails that no policy is paternalistic if, as a matter of fact, paternalistic reasons are never strong enough to justify government policies, as some opponents of paternalism might argue.

In light of these difficulties I believe the project of reconciliation is best understood to presuppose a hybrid characterization of paternalism that combines both motivational and justificatory elements. An example of this approach is that a government policy is paternalistic toward A if and only if (a) it limits A's choices by deterring A from choosing to perform an action or by making it more difficult for A to perform it; (b) A prefers A's own situation when A's choices are not limited in this way;

13. This policy would be paternalistic on another two-part analysis according to which a policy is paternalistic if and only if (a) this policy cannot be fully justified without counting any paternalistic reason in its favor, and (b) there is a paternalistic reason in its favor. But this analysis entails that if there is a paternalistic reason in favor of an unjustifiable policy, then this policy is paternalistic even if no one has counted paternalistic reasons in its favor, or even if everyone has counted only (insufficient) nonpaternalistic reasons, which also seems wrong.

14. Feinberg suggests that a policy is paternalistic if its “implicit rationale” is paternalistic (p. 17). He does not, however, clearly explain the notion of an “implicit rationale.” On one possible interpretation, a reason for a policy is its “implicit rationale” if political support for this policy is best explained psychologically by the belief that this reason is sufficient. On this interpretation, Feinberg's proposal is a version of the motivational interpretation, and so presents the problem identified in the text to anyone engaged in the project of reconciliation. On another possible interpretation, the “implicit rationale” is the reason that provides the best or strongest argument for the policy. This is different from any of the interpretations considered in this paragraph, but it is open to a related objection, which is that, if paternalistic justifications are illegitimate, as some antipaternalists surely believe, then the “best rationale” will never be paternalistic, and therefore no policy will be paternalistic according to this account. Husak makes a similar point in “Legal Paternalism,” p. 392.

15. I will assume throughout that a person who has never thought about a policy prefers her situation without it in the relevant sense if she would prefer her situation without it were she to think about it. Richard J. Arneson, “Mill versus Paternalism,” Ethics 90 (1980): 470–89, at p. 471, also holds that a policy is paternalistic toward a person only if she does not want it, and this appears to be Dworkin’s considered position as well. Thus although he initially defines paternalism more broadly in “Paternalism” (Sartorius, p. 20), he then suggests, in discussing legal limits on work hours (p. 23), that only unwanted policies are genuinely paternalistic, which is also the position he takes in the Stanford Encyclopedia article. Note that it follows from condition (b) that seatbelt laws are not paternalistic if they can be fully justified as benefiting those who want them, such as those of us who believe we are better off wearing a seatbelt and who do not believe we will be adequately motivated to wear one unless this is legally required.
(c) the government has this policy only because those in the relevant political process believe or once believed that this policy will benefit A in some way;\(^6\) and (d) this policy cannot be fully justified without counting its benefits to A in its favor.\(^7\) The project of reconciliation makes sense, then, because if there is sufficient nonpaternalistic reason for a policy,\(^8\) then it is not paternalistic. But this proposal also avoids the undesirable implications that every paternalistic policy is justifiable and that every unjustifiable policy is paternalistic. Finally, this proposal leaves open the possibility that some policies are genuinely paternalistic even if paternalistic reasons are, as a matter of fact, always too weak to justify the government in limiting a person's choices in ways that he or she does not want.

Not everyone will be satisfied with this particular characterization of paternalism. Imagine the government makes free psychotherapy available to gays and lesbians to help them change their sexual orientation, and that it does so with the aim of helping them to lead happier, more satisfying lives, and that this policy cannot be justified in any other way. Some may think that if the intended beneficiaries do not want this policy, then it is objectionably paternalistic even if it does not, strictly

\(^6\) How many in the relevant political process must count a paternalistic reason in favor of a policy in order to render it paternalistic? In my view, what is relevant to the paternalism of a policy is the truth of the counterfactual that it would not be the government's policy had some government official not counted a paternalistic reason in its favor. So it seems to me that if a policy would not exist but for the vote of one official and that official is motivated by paternalistic reasons, then the policy is paternalistic. Readers who find this implausible are welcome to specify a higher number of government officials who must support the policy for paternalistic reasons in order for the policy to be paternalistic.

\(^7\) Shiffrin holds that a policy might be paternalistic toward a person even if it is intended to benefit someone else (pp. 215–18), but she acknowledges that this position is nonstandard, and I do not share her intuitions about the cases she discusses. Note that it follows from condition (d) that the New York law limiting bakers' hours struck down in the notorious Lochner v. New York, 198 U.S. 45 (1905) was not paternalistic, even if it was intended to benefit all bakers, including those who did not want it, if this law was fully justifiable by its benefits to those bakers who did want it because they thought this policy would protect their health while securing their jobs.

\(^8\) By a "nonpaternalistic reason" for a policy I mean a reason that is not paternalistic. Given the characterization of paternalism stated in this paragraph, a reason for a policy is paternalistic toward A if and only if (a) this policy limits A's choices in some way; (b) A would prefer her own situation without this policy; and (c) this reason is constituted by some way in which A would be benefited by this policy or her situation improved by it. Note that different characterizations of paternalism would give rise to different characterizations of a paternalistic reason.
speaking, limit anyone’s choices. Or imagine someone who wants the government to make his marital decisions for him because he thinks he is bad at choosing a suitable mate. Some may think this policy is paternalistic, even though this person wants the government to adopt it, in virtue of the role the government would thereby play in guiding this person’s life. Each of these objections might be addressed by characterizing paternalism in a different way, but I doubt that any characterization will match all our intuitions since I suspect we have different and conflicting intuitions about what policies are paternalistic. So I will simply assume that the four-part characterization stated in the previous paragraph is correct in order to focus the discussion that follows. This characterization identifies fewer policies as paternalistic than other possibilities do, but policies that meet this characterization are among those that critics of paternalism have found most troubling. It thus makes sense to focus on these policies here given that my aim is to challenge the view that paternalism is always wrong.

Because our intuitions about paternalism are unsettled Shiffrin aptly observes that “clarifying what paternalism is involves considering why paternalism matters.” Since she believes that paternalism matters primarily because paternalistic motives are insulting, she is drawn to a motive-based characterization of paternalism. But one might think

19. Some might object that my four-part characterization misses what critics have found the most troubling about government paternalism, since it does not make it a condition of a policy being paternalistic toward an adult that in adopting this policy the government treats this person like a child. Perhaps policies that satisfy my four conditions have been thought paternalistic only on the assumption that the government treats someone like a child when it adopts policies that satisfy these conditions. If so, and if, as I argue below, the government does not necessarily treat an adult like a child in adopting a policy that satisfies these conditions, one might conclude that policies that satisfy my four-part characterization are not necessarily paternalistic in the morally relevant sense. I should therefore make clear that what matters to me in this article is not what policies are most appropriately identified as “paternalistic,” but whether Millians are right that it is always wrong for the government to limit the liberty of adults for their own good against their will, which Feinberg, Dworkin, Arneson, and others have taken to constitute a rejection of something called “paternalism.” See John Stuart Mill, On Liberty, ed. Elizabeth Rapaport (Indianapolis, Ind.: Hackett Publishing Co., 1978), p. 9; Joel Feinberg, “Legal Paternalism,” in Rights, Justice, and the Bounds of Liberty (Princeton, N.J.: Princeton University Press, 1980), pp. 110, 116; Dworkin, “Paternalism” (Sartorius), p. 19; and Arneson, “Mill vs. Paternalism,” pp. 470–71.

20. Compare Shiffrin’s remarks at p. 221.
21. Ibid., p. 212.
22. Ibid., pp. 212–18.
that paternalism matters primarily for a different reason. Government policies that limit our choices in ways that we do not want stand in need of justification. So it is important to identify the kinds of reason that can justify the government in adopting policies of this kind. If the fact that a person is benefited by a policy cannot justify the government in limiting her choices in a way that he or she does not want, the justifiable exercise of government power is to this extent limited. Paternalism matters, then, because the moral limits to government authority over our choices matter.

If this is right, then reflection on why paternalism matters will support a hybrid characterization of paternalism at least as well as it will support any purely motivational characterization. Assuming, then, that some hybrid characterization is sound, government paternalism is always wrong if and only if at least one of two other principles is valid, a justificatory principle of antipaternalism and a motivational principle of antipaternalism. The precise content of these principles will depend on which version of the hybrid approach is best. Assuming, though, for the sake of argument that my four-part characterization is correct, these principles can be stated as follows. The justificatory principle of antipaternalism: if there is a policy that limits A’s choices in some way and A would prefer her situation without this policy, then it is wrong for the government to adopt this policy unless it can be fully justified without counting any benefit to A in its favor. The motivational principle of antipaternalism: if there is a policy that limits A’s choices and A would prefer her situation without this policy, then it is wrong for government officials to adopt this policy with the aim of benefiting A. If neither of these principles is valid, then “our general repugnance” toward paternalism is unwarranted. So my aim in this article is to challenge the validity of these two principles.23

III. THE SENSE OF INSULT

Recent endeavors to reconcile widely accepted government policies with the principle of antipaternalism presuppose that paternalism is

23. Feinberg concedes that it is an “undefended presupposition” of his discussion of paternalism that “the spontaneous repugnance toward paternalism (which I assume the reader shares with me) is well-grounded and supportable,” “Legal Paternalism,” p. 111, n. 2. My aim here is to argue to the contrary that this presupposition is ill-grounded and unsupportable.
insulting, demeaning, or disrespectful in some way. If paternalism is insulting in virtue of its motive, as Shiffrin contends, then success in the project of reconciliation does not directly address what is objectionable about it, since government officials might have paternalistic motives even if there is a good nonpaternalistic justification for the policies they endorse. Success at reconciliation would still be of indirect value, though, since it would show how government officials might justifiably support the same policies they now support without having the insulting attitudes toward other citizens that paternalistic motives are thought to involve. What I question in this section is whether there is any good reason to think that paternalistic motives are inherently insulting, in order to challenge the validity of the motivational principle of antipaternalism.

When a government official adopts a policy that someone does not want in order to benefit this same person, she assumes this person has an interest in this policy, or that there is good reason for this person to prefer his own situation under this policy. In supporting an unwanted policy for a paternalistic reason, government officials therefore support this policy from the same general concern to protect or advance individuals’ interests that might properly motivate them to support any government policy. What is insulting about this?

Shiffrin suggests that paternalism is insulting because in limiting a person’s liberty against his will for his own good, the government “substitutes its judgment” about what is good for this person for his own judgment about what is good for him. The government, however, commonly “substitutes its judgment” for the judgment of others when it adopts an unwanted policy, whether this policy is paternalistic or not. When the government imposes speed limits, for example, it limits the liberty of those who think they should drive faster than the speed limit allows, and so limits their liberty against their will. In so doing, the


26. Ibid., p. 213.
government substitutes its judgment that motorists should not drive faster for the judgment of those motorists who think they should drive faster. When the government imposes a speed limit paternalistically it acts on the judgment that the reasons of safety for a motorist to drive slower outweigh the reasons of efficiency and amusement for this same motorist to drive faster, and so substitutes its judgment about the relative weight of these reasons for this motorist’s own judgment that the reasons of efficiency or amusement for her to drive faster outweigh the reasons of safety for her to drive slower. But when the government imposes a speed limit nonpaternalistically, it also substitutes its judgment for a motorist’s own. It acts on the judgment that the reasons of safety for other motorists to want this person to drive slower outweigh the reasons of efficiency and amusement for her to drive faster, and so substitutes its judgment about the relative weight of these reasons for her own judgment that the reasons to drive faster outweigh others’ reasons against it. In both cases, the government limits a person’s liberty on the basis of a judgment about the relative weight of reasons that she rejects and so “substitutes its judgment” for hers. Why, then, is paternalistic substitution in judgment insulting assuming that nonpaternalistic substitution is not?

Some may suggest that it is inaccurate to claim that the government substitutes its judgment for the judgment of motorists in adopting speed limits for nonpaternalistic reasons. They may think that a driver in deciding to drive fast is simply making a judgment about what is best for him, and it is therefore a misdescription to say that the government is substituting its judgment about what is best all things considered for his judgment about what is best all things considered. One might say the same thing, however, about speed limits that are adopted for paternalistic reasons. In deciding to drive fast a driver is not making a considered judgment about what is best for him, one might say; he is simply attending to the advantages of driving fast, and not really thinking about the possible risks. If so, then the government in adopting speed limits for paternalistic reasons is not substituting its considered judgment about what is best for this driver for his own considered judgment about what is best for him. It is true that this driver might be acting on the basis of a considered judgment about what is best for him, in which case the paternalistic regulation would involve a substitution in judgment. But we are justified in believing this only on the assumption that his
decision to drive fast has resulted from a deliberative process in which the most relevant prudential reasons have been given some weight (perhaps unconsciously). Since in the abstract we are no more justified in assuming this than we are in assuming that a driver’s decision to drive fast has resulted from a deliberative process in which the most relevant nonprudential reasons have been given some weight (perhaps unconsciously), it follows that if we are justified in holding that paternalistic speed limits generally involve a substitution in judgment, we are also justified in holding that nonpaternalistic speed limits generally do.

Shiffrin suggests that an insulting substitution in judgment takes place whenever the government exercises its authority over an area of choice that is properly left to the individual,27 and on this interpretation nothing is assumed about the character of the deliberations of the agent whose liberty is limited. But if the imputation of an insult depends in this way on judgments about what choices are properly left to the individual, then, for any seemingly paternalistic policy, it is possible to address the charge that it is insulting by arguing that it is a morally justifiable and legitimate exercise of government authority.28 If, then, as I suggest below, some paternalistic reasons are sufficient to justify the government in limiting a person’s liberty against his will, the government in adopting a paternalistic policy does not necessarily substitute its judgment in this sense and so insults no one in doing so.

The limited claim so far is that both paternalistic and nonpaternalistic policies involve a kind of “substitution in judgment.” But one might think a paternalistic substitution in judgment is especially insulting because the capacity to make judgments about what is best for oneself is more fundamental to the capacity for practical reasoning than the capacity to make judgments about what is best all things considered, so that the judgment that a person is wrong about what is best for himself imputes a greater degree of practical incompetence to him than the judgment that he is wrong about what is best all things considered. There is no reason to agree, though, that the capacity to make judgments about what is best for oneself is more fundamental, and in any case erroneous judgments about what is best for oneself do not always betray a greater degree of practical incompetence. Thus the neglect of children in one’s

27. Ibid., pp. 216–18.
28. I think Shiffrin would agree, given her remarks at ibid., pp. 218–19.
care ordinarily betrays a greater degree of practical incompetence than the decision to engage in some moderately self-destructive activity.

Of course a person may feel insulted by what he perceives to be a paternalistic restriction of his liberty, and this may contribute to the sense that paternalistic substitution in judgment is especially insulting. A person's feelings, though, are not enough to justify the conclusion that the government insults him by adopting a policy. Thus, although some segregationists may have felt insulted by the federal policy of public school desegregation, it does not follow that the federal government insulted anyone by adopting this policy. The government insults someone in adopting a policy only if government officials actually express an insulting belief or attitude toward someone in doing so.

Anderson writes that when the government limits a significant liberty of citizens against their will for their own good it is "effectively telling citizens that they are too stupid to run their lives, so Big Brother will have to tell them what to do."29 Since government officials need not say this to anyone, the thought must be that, however polite and civil their demeanor, government officials express the insulting belief that someone is too stupid to run his own life whenever it limits a significant liberty against that person's will for his own good. Anderson does not claim that paternalistic interference with "trifling" liberties is insulting in this way, but her remarks nonetheless suggest a way in which all paternalistic policies might be insulting.

In supporting a policy that limits a person's liberty against his will for his own good a government official must assume that someone is less able than she is to judge what is best for this person with respect to a particular decision, such as whether or not to wear a motorcycle helmet. This supposition may appear to express the belief that this person is stupid. Errors in practical judgment are normal, though, whether they are about what is best for oneself or about what is best all things considered. So the supposition that someone is wrong about what is best for him with respect to a particular decision does not imply that he is stupid. It implies only that his rationality is imperfect, and so is open to the kinds of error we all are.

Acting on paternalistic motives may be disrespectful in some other way. It would be disrespectful if paternalistic reasons were always much

too weak to justify the government in limiting a person's liberty against her will, because on this assumption an official in acting on these reasons would thereby show an objectionable disregard for a person's legitimate interests in liberty. Acting on paternalistic motives would be disrespectful in a different way if, regardless of their weight, counting paternalistic reasons were to violate some principle the validity of which partly constitutes our moral status as independent persons. 30 So in the next section I will question whether paternalism is disrespectful in either of these ways. This will continue the argument against the motivational principle of antipaternalism started in this section and begin the argument against the justificatory principle of antipaternalism, since the issues now begin to overlap.

IV. ARE PATERNALISTIC REASONS ALWAYS TOO WEAK?

Given the way I have characterized paternalism, there is always a reason of self-direction against any paternalistic policy, which consists in the fact that someone would prefer her situation when her choices are not limited in this way. Since personal autonomy is of great value, it is natural to think that reasons of self-direction always have great weight. If these reasons were always to outweigh paternalistic reasons, 31 this would explain why paternalistic policies are always wrong.

There are at least two reasons, though, to doubt that reasons of self-direction always outweigh paternalistic reasons. First, personal autonomy involves more than not having one's choices limited in ways that one does not want. It also involves having adequate control over one's life as a whole and acting on the basis of independent reflection on what is true, right, and good. These aspects of autonomy provide reasons for government policies that limit choices and not only for policies that protect choices. They provide reasons for policies that discourage activities that will kill us, for example, or that will leave us mentally and physically disabled and so unable to think for ourselves or heavily dependent on others. Reasons of this kind are arguably sufficient to justify the


31. See n. 18 for a gloss on paternalistic reasons.
government in limiting a person's choices when these choices are not themselves essential for autonomy, and they are arguably sufficient even when a person does not want his choices to be limited in this way. So appeal to the value of personal autonomy alone does not explain why reasons of self-direction always outweigh paternalistic ones.

The second reason for doubt is that reasons of self-direction are sometimes outweighed by nonpaternalistic reasons that seem weaker than paternalistic ones. To illustrate, consider the policy of a western city to prohibit hikers from hiking in its mountain parks after sunset. Some hikers are opposed to this policy, but this policy benefits city officials, and by extension the citizenry at large, by reducing the number of times they are faced with the undesirable choice of ordering an expensive and dangerous nighttime rescue or seeming callous in refusing to order one. This is not a bad reason, but it seems weaker than the paternalistic reasons for this policy. This is because the goal of deterring an inexperienced hiker from a recreational activity that may cost him his life or leave him permanently disabled seems more important than the goal of reducing the number of times city officials face the undesirable choice just described, especially since the nighttime rescues might be conducted only by trained volunteers and since the cost to the city of performing these rescues might be defrayed by billing whomever is rescued. So if this nonpaternalistic argument is strong enough to justify this policy, it seems the paternalistic reasons must also be strong enough.

Consider in this connection a familiar exchange over motorcycle helmet laws. The permissibility of paternalism is demonstrated by this policy, some contend, because it is both permissible and paternalistic. Antipaternalists respond that this policy is not really paternalistic since it functions to reduce the cost of health care to the rest of us by reducing the number of people who need expensive hospital care due to brain damage. Suppose for the sake of argument that motorcycle helmet laws can be fully justified in this way. The amount by which this policy reduces the costs of health care to any one of us is so small as to be virtually negligible, and so this nonpaternalistic reason to require motorcyclists to wear helmets is relatively weak. If this reason can nonetheless justify the government in adopting a policy that some motorcyclists strongly oppose, then obviously reasons of self-direction do not always have such great weight when weighed against nonpaternalistic reasons. But then it seems arbitrary to hold that reasons of self-direction always
have great weight when weighed against paternalistic reasons since the paternalistic reasons for this policy seem stronger than the non-paternalistic ones. That is, it seems more important from the moral point of view that the government reduce a person's risk of death or brain damage than that it reduce anyone's health care costs by a few cents a year.

Perhaps paternalism is always wrong because reasons of self-direction silence paternalistic reasons, and not because they outweigh them.\footnote{Although he does not use the term “silence,” the relation between reasons that I have in mind here is described by T. M. Scanlon, What We Owe to Each Other (Cambridge, Mass.: Harvard University Press, 1998), pp. 51, 156–57.} Perhaps paternalistic reasons are nullified by some principle that partly constitutes our moral status as independent adults.\footnote{See n. 30.} I think we are justified in rejecting such claims when it seems to us that a reason has some weight and there is no plausible story to explain why it is silenced or nullified. But sometimes a plausible story can be told. It makes sense to hold, for example, that the reason to skip an appointment that it is mildly inconvenient to keep is silenced by the fact that one has promised to be there because the practice of making promises would be unable to provide the kind of assurance that is its purpose if reasons of minor inconvenience were to count against keeping one's promises.\footnote{See Scanlon, What We Owe to Each Other, p. 200, for a sketch of a story along these lines.} The question, then, is whether a plausible story of this kind can explain why paternalistic reasons are silenced.

It is not the government's business to protect us against ourselves, it is commonly said, but only to protect us against others. We might think, however, that the purpose of government is to establish justice and to promote the general welfare, consistent with respecting individual rights and other principles of fairness. Assuming, then, that some paternalistic policies promote our welfare without violating our rights, we might think it is the government's business to protect us in this way. Some may argue that the only legitimate purpose of government is to establish justice, but some government policies, such as health and safety regulations, environmental protection laws, and policies advancing the arts and sciences, seem morally defensible even when they are not plausibly construed as requirements of justice. Assuming, then, that it is the
government’s business to promote our welfare in these ways, why is it not also the government’s business to promote our welfare by adopting some paternalistic policies?

One answer is that the relationship between government officials and citizens is too much like the relationship between parent and child if paternalistic reasons are allowed to count. This, however, is unconvincing. To see why, imagine that every government official accepts and conscientiously observes the following general principle of liberty: paternalistic interference with the basic liberties of freedom of thought and expression, freedom of worship, freedom of movement, and political liberty is impermissible, and paternalistic interference with any other liberty is impermissible unless it protects goods that are essential to our future well-being or continued autonomy. Not only would conscientious observance of this principle secure the social conditions necessary for personal maturity and independence, it would create a very different relationship between government officials and other citizens than the typical relationship between parent and child. It is true that if government officials were to understand their official duties to include a general responsibility to oversee the activities of other adults, to direct and encourage their education, to intervene in any activity likely to threaten their health or safety, this would create an objectionably parental relationship between government officials and other citizens. It is certainly not necessary, though, for any government official to have this view of her responsibilities in order to support a policy for a paternalistic reason. She need only judge that this reason is strong enough to justify the policy and that she should therefore support it for this reason. Since nothing in this judgment alone creates an objectionably parental relationship, especially not if the official endorses the general principle of liberty stated above, it does not seem that our status as independent adults is undermined if some paternalistic reasons are allowed to count.\(^{35}\)

Perhaps some other story can explain why paternalistic reasons are

\(^{35}\) Tamar Schapiro writes that to treat someone like a child is to interact with her “on the basis of more paternalistic standards than those which apply to adult–adult relations,” in “What Is a Child?” *Ethics* 109 (1999): 715–38, at p. 729. From this it follows that one does not treat someone like a child if one interacts with her on the basis of paternalistic principles or reasons that do (properly) apply to adult–adult relations. So if some paternalistic policies are justifiable, as I believe, it follows from this analysis that the government does not treat anyone like a child in adopting these policies.
silenced by reasons of self-direction, but I think we are warranted in setting this argument against paternalism aside until a plausible story has been told.

V. DOES PATERNALISM VIOLATE OUR RIGHTS?

It is the government's business, I have just suggested, to promote human welfare consistent with fairness and respect for rights, but some may think that paternalism is wrong precisely because it does violate our rights. It is not possible to answer this objection without assuming some conception of what rights are and how they are justified. There are many different conceptions, and my aim here is not to survey the literature on rights or to offer my own theory. So I will simply adopt one familiar conception of rights and explain why I do not think that paternalism violates our rights on this conception.

Rights against the government, on this conception, are valid principles, or sets of such principles, that function to constrain government policy by identifying certain reasons that may not be taken as part of the justification for government policies. The right to freedom of political expression, for example, is a set of principles that includes among others the principle that the government may not prohibit us from expressing our political opinions for the reason that this expression will lead other citizens to form incorrect political beliefs. What makes a principle of this kind valid is that there are good reasons for someone to prefer his or her situation when the government observes this principle and these reasons have greater moral weight than the reasons for anyone to prefer his or her situation when the government does not observe this principle.


37. In saying that the government may not prohibit us from doing something "for a reason" I mean here that the government may not prohibit us from doing it unless this policy can be fully justified without counting this reason in its favor, which is a nonmotivational interpretation of acting for a reason.

38. This method of justifying rights is implicit in Scanlon's contractualism as presented in "Contractualism and Utilitarianism," The Difficulty of Tolerance, pp. 124–50, at p. 132. For the method of justifying rights that would fit into Scanlon's contractualism with some minor changes, see Scanlon, "Rights, Goals, and Fairness," in The Difficulty of Tolerance, pp. 26–41, at pp. 34–35.
Given this conception of rights, I do not believe that there is a general right against paternalism because I believe that the reasons for at least one of us to prefer his or her situation when the government does not observe the justificatory principle of antipaternalism have greater moral weight than the reasons anyone has to prefer his or her situation when the government does observe this principle. In holding this belief I assume that there are some policies of which the following is true: there are good reasons for S to prefer his own situation under this policy even though S does not want the government to adopt it (which I assume is the case whenever this policy benefits S significantly); these reasons have greater weight than the reasons for anyone to prefer his or her situation without this policy; and this policy can be justified if and only if the reasons for S to prefer his own situation under this policy are counted in its favor. If this assumption is false, then paternalism is not worth defending even if it violates no one’s rights. But if it is true, then the reasons for someone to want the government not to observe the justificatory principle of antipaternalism have greater weight than the reasons anyone has to want the government to observe it and the justificatory principle of antipaternalism is invalid.

This abstract argument adds little of substance to the arguments of the previous section, but it does show how one may coherently hold that some forms of paternalism are permissible while taking rights seriously on at least one familiar and plausible conception. It also provides a theoretical framework within which to examine some well-known arguments against paternalism.

Consider, to begin with, Mill’s claim that the principle of antipaternalism is grounded on “the permanent interests of man as a progressive being.”39 Mill holds that these permanent interests include our interests in developing individuality, or uniqueness in personality or way of life. Individuality is valuable, according to Mill, both because our capacity for individuality is one of our higher human capacities and because it is necessary for the full development and exercise of other higher human capacities, such as intellectual and artistic creativity. Mill suggests that our interests in individuality will be inadequately protected unless the government observes a general principle of antipaternalism because

paternalistic policies stifle individuality.\textsuperscript{40} And if every paternalistic policy were to stifle individuality, then someone's reasons to prefer his situation when the government observes the justificatory principle of antipaternalism might outweigh everyone's reasons to prefer his situation when the government does not observe this principle.

It seems unlikely, though, that every paternalistic policy stifles the kind of individuality that Mill cared most about, or, more generally, that it poses a significant threat to human development. Some choices, activities, and pursuits are necessary for individuals to develop their higher human capacities in the ways best suited to their particular temperaments and abilities, and are therefore necessary for individuals to develop and exercise their capacities fully. Some choices, activities, and pursuits also constitute “experiments of living,” or distinctive ways of life that give us new information about what lives are most worth leading.\textsuperscript{41} Not every paternalistic policy, though, threatens choices, activities, and pursuits that are valuable in these ways. Consider a law that prohibits swimming at beaches with lethal currents. Although someone might see this activity as an essential part of the kind of life he wishes to lead, this policy does not deprive anyone of the opportunities he needs to develop and exercise his capacities fully because this policy leaves ample opportunities to orient one's life around swimming in rough waters and to take other dangerous risks. Nor does this policy deprive us of valuable information about what kinds of life are most choiceworthy. Some safety regulations like motorcycle helmet laws arguably remove opportunities to express a distinctive message about freedom and risk to a wide audience, but the legal freedom to swim in lethal currents does not appear to create opportunities of this kind. So although this policy may discourage an activity that is important to someone, it does not pose a substantial threat to human development. On the other hand, we need to be alive in order fully to develop and exercise our higher human capacities, including our capacity for individuality. So assuming this policy can be fully justified only by paternalistic reasons, a principle that allows this form of paternalism would seem to advance “the permanent interests of man as a progressive being” at least as well as a principle that does not, even once the important role of individuality in human development is taken into account.

\textsuperscript{40} Ibid., pp. 53–71.
\textsuperscript{41} Ibid., p. 54.
Is a more exclusive principle of antipaternalism nonetheless warranted by the difficulty of drawing a principled line between justifiable and unjustifiable forms of paternalism? Both Mill and Feinberg suggest that it is, but in truth there is no greater intellectual difficulty in drawing defensible distinctions between justifiable and unjustifiable forms of paternalism than there is in drawing defensible distinctions between justifiable and unjustifiable nonpaternalistic policies. Consider here Feinberg’s position on defamation, that the government should not allow artists to recover damages from newspapers for defamatory statements by artists or by art critics, but that it ought to allow private citizens to recover damages from neighborhood papers for defamatory statements by gossip columnists. Feinberg defends this position by holding that our interests in newspaper critics having the freedom to defame artists and their work are more important than our interests in local gossip columnists having the freedom to defame private individuals. If, however, one may rely on such judgments about the relative importance of interests in distinguishing these two nonpaternalistic policies, as Feinberg does, one can rely on similar judgments in distinguishing two paternalistic policies. For example, one can distinguish a paternalistic law that prohibits swimming at beaches with lethal currents from a paternalistic law that prohibits medical marijuana use by holding that our interests in having the freedom to swim in lethal currents are less important than our interests in having the freedom to use marijuana for medical purposes, or by holding that the safety interests promoted by swimming prohibitions are more important than the health interests protected by marijuana prohibitions, or by holding both.

42. Ibid., p. 84, and Feinberg, *Harm to Self*, pp. 24–25. Mill writes: “The people of all southern Europe look upon a married clergy as not only irreligious, but unchaste, indecent, gross, disgusting. What do Protestants think of these perfectly sincere feelings, and of the attempt to enforce them against non-Catholics? Yet, if mankind are justified in interfering with each other’s liberty in things which do not concern the interests of others, on what principle is it possible consistently to exclude these cases?” (Mill, *On Liberty*, p. 84). Evidently it did not occur to Mill that we might exclude these cases on the grounds that freedom of worship and marital choice are especially important liberties. Nor evidently did it occur to him that we might exclude these cases on the grounds that mere prejudice fails to constitute a good reason for a coercive government policy whether or not the reason appears to be paternalistic.

A different but no less familiar argument for antipaternalism is that government officials are never justified in believing that a sane adult will be benefited overall by a law that limits his liberty against his will. Thus Mill maintains that since we know our own situations better and care more about our own welfare than anyone else does,44 “the odds are” that another person is mistaken in his belief that we will be benefited overall by a law that limits our liberty against our will.45 If so, and if as a consequence government officials are never justified in believing that paternalistic interference is warranted, even if it sometimes is, this provides an epistemic basis for a general right against paternalism.

There is no reason to agree, however, that we are never justified in believing that another adult will be benefited overall by a policy that he opposes. To see why, consider how government officials are justified in supporting a nonpaternalistic policy that someone opposes, an antidiscrimination law, for example. A government official is justified in supporting this policy if she is justified in believing that the reasons in its favor outweigh the reasons against it, including whatever good reasons there are for those who oppose this policy to oppose it. A government official is justified in believing this if (a) she is justified in believing the relevant factual propositions, and (b) this judgment about the relative weight of reasons withstands her critical scrutiny: it continues to seem correct to her upon further reflection and to be consistent with other judgments about the relative weight of reasons that she is unwilling to surrender. If this process of reflection can justify a government official in supporting a nonpaternalistic policy that someone opposes, it might also justify a government official in supporting a paternalistic policy, since an official might be justified by the same process of reflection in believing that the reasons for someone to prefer his situation under a policy that he opposes outweigh the reasons for him to prefer his situation without this policy. To be sure, if an adult is sane and well-informed, then the fact that he does not believe that a policy is to his overall advantage is a reason of some weight to doubt that it is. There is no good reason, though, to insist that this reason for doubt is always decisive or that it can never be overcome by further reflection given the relevant information.46

45. Ibid., p. 81.
VI. THE POSSIBILITY OF RECONCILIATION

The primary aim of this article is to question whether paternalism is always wrong and so to question the importance of providing a nonpaternalistic justification for every seemingly paternalistic policy that is widely endorsed. I have not, however, questioned whether reconciliation of this kind is possible, and if it were, this would provide the basis for a pragmatic argument against paternalism. If government officials accept and act in accordance with the justificatory principle of antipaternalism, they are less likely to support policies that limit our liberty for insufficient reason (since some paternalistic reasons are insufficient). If, then, no policy we endorse is ruled out by the justificatory principle of antipaternalism, which would be true if reconciliation were possible, it seems that government officials should accept and act in accordance with this principle. My challenge to antipaternalism would therefore be strengthened if I were able to show that reconciliation of this kind is not possible.

There are at least two reasons, though, why I am not in a position to show this. First, we do not all endorse the same policies, and so we lack a common basis on which to assess the possibility of reconciliation. Second, it is possible to show that a policy cannot be justified by any nonpaternalistic reason only once we have a complete theory of the kinds of nonpaternalistic reason that can justify government policies in general, and no one has convincingly identified a comprehensive theory of this kind.47 For this reason the most one can do by way of questioning the possibility of reconciliation is to explain why policies that many of us endorse seem difficult to justify on nonpaternalistic grounds given the constraints on nonpaternalistic reasons that we accept. In this final section, then, I consider just one policy that is widely supported and will explain why I do not think this policy can be fully justified on nonpaternalistic grounds alone.

I have already mentioned the nonpaternalistic rationale for motorcycle helmet laws that this policy functions to keep the costs of health care down, and I argued that if this reason is strong enough to justify the

47. Joel Feinberg, The Moral Limits of the Criminal Law (New York: Oxford University Press, 1984–88) presents a comprehensive view of the kinds of nonpaternalistic reasons that can justify criminal laws, but not all laws are criminal laws and not everyone will be convinced by the principles that Feinberg presents here.
Avoiding Paternalism

government in limiting the liberty of motorcyclists against their will, then so is the paternalistic reason that this policy deters risky behavior on the part of motorcyclists. I now add that in my opinion this nonpaternalistic rationale cannot possibly justify this policy, given how strongly some motorcyclists wish to ride without a helmet. If it is unfair to make taxpayers and insurance holders bear the relevant costs, then the government and insurance companies should refuse to pay for any expensive long-term health care that results from motorcycle accidents in which the rider was not wearing a helmet, and hospitals should refuse to provide it. The callousness of this policy suggests that motorcycle helmet laws might be justified as protecting nonmotorcyclists from having to choose between living in a society with heartless hospitals and a heartless government, on one hand, and contributing to extended health care for severely injured motorcyclists, on the other. But if it is bad for us to live in such a heartless society, this is sufficient reason for us to contribute given that we can contribute our fair share without bearing a significant burden.

Motorcycle helmet laws might also be defended as protecting drivers from the experience of having killed or disabled another person, but I do not think this justifies the policy, largely because it is within the control of each driver how safely he drives around a motorcycle. If a driver chooses to exercise extra caution around motorcycles, then the likelihood that he will cause a motorcyclist’s death or serious brain injury is low, and in any case he will have no reason for remorse if he accidentally kills or disables one. If, on the other hand, a driver drives less cautiously, it seems reasonable to expect him to bear the burden of whatever remorse is warranted by his having caused a motorcyclist’s death or serious brain injury. To be sure, an antipaternalist might make the same kind of argument against helmet laws: if a motorcyclist decides not to wear a helmet or to drive unsafely, then it is reasonable to expect him to bear the consequences. But there is an important difference, which is that the motorcyclist loses much more by losing his life or by becoming seriously disabled than the motorist who kills or disables him by accident loses by feeling remorse or by having good reason to feel it. If a driver protests that he does not wish to assume the risk of injuring unprotected motorcyclists whenever he drives, whereas some motorcyclists do wish to assume the risk of not wearing a helmet, we can point out that he voluntarily assumes the risk of injuring other people
whenever he gets into his car and starts to drive and that the presence on the road of motorcyclists who do not wear helmets does not increase this risk by much.

Motorcycle helmet laws might also be defended as protecting parents from the experience of having their children severely injured in a motorcycle accident. At some point, however, parental bonds cease to generate reasons of sufficient weight to justify legal restrictions on the liberty of their adult children. In fact if one is worried about the insulting character of paternalism, it seems one should be at least as worried about the message sent by this nonpaternalistic rationale as about the message sent by the standard paternalistic one.

For these reasons it seems to me that the nonpaternalistic arguments commonly given for motorcycle helmet laws fail to justify them, and that the policy of requiring an adult to wear a helmet is therefore justifiable only on paternalistic grounds, if it is justifiable at all. I suspect the same is true of other government policies: laws forbidding swimming at beaches with lethal currents, laws prohibiting the purchase of therapeutic drugs without a prescription, laws prohibiting the recreational use of some drugs like heroin altogether, prostitution laws, laws against dueling, and laws against suicide. Obviously I have not demonstrated that there is no good nonpaternalistic argument for any of these policies; nor have I shown that these policies would be justifiable nonetheless, since nothing I have argued here establishes that any particular form of paternalism is justifiable. All I have done is raise doubt about whether the motivational and justificatory principles of antipaternalism are valid, in order to question whether a general presumption against paternalism is warranted.

As I said at the outset I believe this presumption distorts our thinking about government policy. Consider the way in which some feminist opponents of legalizing prostitution challenge the assumption that prostitution is fully voluntary, on the grounds that it is exploitative or that the background conditions against which a person decides to do sex work are less than ideal. This challenge makes strategic sense if the kind of antipaternalism that Feinberg endorses is widely assumed to be valid.
since Feinberg makes a crucial distinction between "hard" and "soft" paternalism. *Hard paternalism* is paternalistic interference with choices that are fully voluntarily. *Soft paternalism* is paternalistic interference with choices that are not fully voluntary.49 If Feinberg is right that hard but not soft paternalism is always wrong,50 then one must deny that prostitution is fully voluntary if one is to oppose legalization on the ground that prostitution harms the women who engage in it (assuming they would prefer their own situations if prostitution were legalized). Taken as a whole, however, the testimony of prostitutes suggests that prostitution is generally voluntary.51 The case against legalization is therefore weakened when it appears to depend on denying this. Furthermore, when the debate over legalization is focused on the extent to which prostitution is typically voluntary, attention is drawn away from understanding the ways in which prostitution is actually harmful to those who engage in it, and so away from estimating the extent to which prostitution laws in some form might reduce the number of people who are harmed in this way.52 This would be no mere distraction if hard

49. Feinberg, *Harm to Self*, p. 12. Note that Feinberg uses the terms "hard" and "soft" in *Harm to Self* to mean what he uses the terms "strong" and "weak" to mean in "Legal Paternalism." Note, too, that Feinberg's distinction between "hard" and "soft" paternalism differs from Dworkin's distinction between "strong" and "weak" paternalism in the *Stanford Encyclopedia of Philosophy*. As Dworkin uses the terms here, "weak paternalism" limits a person's legal options in order to discourage him from taking certain means to ends he has on the grounds that these means are worse than other means he might take, whereas "strong paternalism" limits a person's options in order to discourage a person from pursuing certain ends that he has.


52. For a persuasive account of the psychological harm caused by prostitution, see Hoigard and Finstad, *Backstreets*, pp. 50–84, 106–17, 186–87. For their reasons to think that more women would suffer this harm if prostitution were legalized, see ibid., pp. 182–83, 199–202.
paternalism were wrong in principle, but if it is not, then the general presumption against paternalism distorts the debate over legalization by focusing our attention on the wrong issues.

I have not here defended prostitution laws, or drug laws, or any other seemingly paternalistic policy. There are many different forms that such policies might take and the case for and against these policies in their various forms is extremely complex, both normatively and empirically. For this reason I doubt that anyone is presently justified in feeling certain one way or the other about whether drug and prostitution laws are justifiable in some form. Some may believe that these policies are wrong in principle even if some forms of paternalism are permissible because paternalistic interference with basic liberties is wrong in any case and the basic liberties of freedom of thought and sexual freedom include the freedom to buy and sell drugs and sexual services. The assumption, however, that these liberties are basic in a way that rules out paternalistic reasons requires defense, and in any case it does not entail that drug and prostitution laws are wrong in principle since these policies might not be paternalistic in the relevant sense. Perhaps they can be fully justified as benefiting minors who would prefer their situations with these policies in place: children, for example, who are more likely to be neglected by drug-addicted parents if drugs are legalized or girls under eighteen who are more likely to be sexually exploited if adult prostitution is legalized. For all these reasons the justifiability of drug and prostitution laws does not depend solely on the permissibility of paternalism. If, however, there is no compelling reason to accept a general presumption against paternalism, then we should reject this presumption in evaluating these policies, and allow that paternalistic reasons might be sufficient to justify them.