Global Constitutionalism (2012), 1:3, 485–521 © *Cambridge University Press, 2012*
doi:10.1017/S2045381712000135

International paternalism and humanitarian governance

MICHAEL N BARNETT

Elliott School of International Affairs, George Washington University, 1957 E St. NW, Washington, DC 20052

Email: barnett@gwu.edu

Abstract: This article argues that paternalism is an organizing principle of the international humanitarian order. The international community is increasingly organized to preserve, protect, and promote human life, reflecting an ethics of care and impulse to intervene for the greater good. This mixture of care and control is captured by the concept of paternalism, which Gerald Dworkin famously defined as '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'. Paternalism is either present or dormant in many (if not nearly all) interventions that are designed for the betterment of people and the good of humanity. This article has four goals: 1) to reassess and examine the analytical power of this much maligned and misunderstood concept; 2) to consider the dimensions upon which paternalism varies in order to develop the concept's value for empirical analysis; 3) to speculate how and why paternalism's form has moved from 'strong' to 'weak' over the last hundred years; and, 4) to consider whether, why, and when paternalism might be legitimate.

Keywords: humanitarianism; international ethics; international order; liberalism; paternalism

Introduction

Centuries in the making, there now exists an international humanitarian order dedicated to preserving and protecting human life. It includes: an interlocking set of norms, informal institutions, laws, and discourses that legitimate and compel various kinds of interventions to protect the world's most vulnerable populations; a surfeit of conventions and treaties that are designed to secure the fundamental right of all peoples – the right to life; a multitude of slogans and rallying cries – including 'never again' and the 'humanitarian imperative' – that accompany graphic and heart-wrenching photos of victims of violence; a metropolis of states, international organizations, non-governmental organizations, some of which are dedicated

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

to the goal of reducing suffering and others that will lend a hand under the right circumstances. These norms, laws, actors, and institutions are nestled in discourses of compassion, responsibility, and care, which, in turn, are attached to claims that the 'international community' has obligations to its weakest members.

This international humanitarian order has all of the elements of governance, to the point that it is possible to proclaim the existence of a 'humanitarian government ... [T]he administration of human collectivities in the name of a higher moral principle that sees the preservation of life and the alleviation of suffering as the highest value of action'.[1] As a system of governance dedicated to the highest moral value, it often appears to be beyond politics, living in the world of ethics, pure and simple. As a system of governance that gravitates toward the principle of impartiality, it has a global reach that stretches to all corners of the world. As a system of governance dedicated to the reduction of all aspects of human suffering, it underpins emergency relief, public health, development, and human rights. As a system of governance, it aspires to not only regulate what already exists – saving lives from immediate death, but also to transform what currently exists, including cultures, institutions, and social relations, in order to reduce vulnerabilities, improve human capabilities, and give individuals the capacity to live their lives as they (re)imagine them.

Humanitarian governance is a machine of intervention. To the extent that such interventions are welcome by the targeted populations, then humanitarian governance might be seen as operating on behalf of 'humanity', in the name of the 'people', and as committed to a politics of empowerment. In other words, the legitimacy of these interventions is generally defended on the grounds that they are consistent with the interests of the target community. Yet however much humanitarian governance is propelled by an emancipatory ethic and the siren of humanity, it also contains elements of domination.[2] There are innumerable instances in which those who aspire to improve the lives of others do so without knowing or even caring whether the beneficiaries welcome these 'gifts'. Those involved in post-conflict reconstruction, human rights, human development, civil society betterment, and democracy promotion often act without obtaining the consent of the 'people', perhaps because they assume that they are serving their interests or are confident that they know what is best for them. Frequently such acts of interference are done

[1] D Fassin, 'Humanitarianism: a Nongovernmental Government' in M Feher (ed), *Nongovernmental Politics* (Zone Books, New York, 2007) 151.

[2] MN Barnett, *Empire of Humanity: A History of Humanitarianism* (Cornell University Press, Ithaca, 2011).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

with a gentle hand, but sometimes it is with an iron fist. Humanitarian governance operates with an emancipatory ethic that can justify and even legitimate acts of domination.

A humanitarian governance defined by this mixture of care and control points to the presence of paternalism: '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'.[3] The humanitarian imperative to preserve and protect human life requires constant involvement in the lives of others. Sometimes that assistance is welcome. However, frequently it occurs without the consent or even against the will of the intended beneficiaries, and when it does, it is paternalism. Paternalism is not a rare occurrence. It is quite common and present wherever global compassion has become institutionalized. Indeed, unlike domestic governance, which often has explicit mechanisms that are intended to protect individuals from unwanted inference and ensure that they have a voice in decisions that affect their lives, humanitarian governance has a severe shortage of such institutional assurances. Nor did paternalism die out with colonialism. In fact, if humanitarian governance has grown, which it has, and if paternalism is alive and well, which it is, then paternalism is perhaps more prevalent today than it was during its presumed heyday during colonialism. Paternalism has been and remains central to the constitution of the global order.

By linking paternalism and humanitarian governance, my goal is to reassess the analytical, empirical, theoretical, normative significance of this neglected, reviled, and misunderstood concept. There are very few sustained treatments of paternalism in international affairs, and even fewer that suspend judgment in favour of an exploration of its analytical insights.[4] An exploration of paternalism is hardly a matter of historical curiosity, for the evidence suggests that it is an organizing principle of humanitarian governance. It is implicated in, and shapes how we think about, all forms of aid, democracy promotion, international law, and human rights. And humanitarian governance is not just a small corner of international order – it is a growing and increasingly prominent dominion.

[3] G Dworkin, 'Paternalism' (1972) 56 *The Monist* 64–84, esp. 70–76.

[4] However, see D Long, 'Paternalism and the Internationalization of Imperialism: JA Hobson on the International Government of the "Lower Races"', in D Long and B Schmidt (eds), *Imperialism and Internationalism in the Discipline of International Relations* (SUNY Press, Albany, 2005) 71–93; J Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760–2010* (Cambridge University Press, Cambridge, 2012); and T McCarthy, *Race, Empire, and the Idea of Human Development* (Cambridge University Press, New York, 2009).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

In short, the concept of paternalism might help us better understand how humanitarian governance operates and how the world hangs together.

Also, paternalism does not belong to any one theory of international relations but rather merits a place in each. Few theories of international relations explicitly consider paternalism, but at the centre of many of their arguments are practices that are paternalism in all but name. Realists typically argue that states do not and should not act in ways that help others, yet a prominent argument in classical realism is that Great Powers have great responsibilities, which include a willingness to steer others in directions that are in their interest and in the interest of international stability.[5] In addition to developing this theme of Great Power responsibilities and world order, English School theorists have also debated, through the guise of pluralist and solidarist conceptions of international order, whether and when the principle of non-interference can be suspended.[6] Scholars of the liberal world order have identified the struggle between the liberalism of interference and the liberalism of non-interference.[7] Neoliberal institutionalists treat international institutions and organizations as quasi-trustees, whose function is to keep states from acting on their short-term interest to the detriment of their collective welfare.[8] As constructivists have chronicled how principled actors, transnational movements, and non-governmental organizations have attempted to build law, institutions, and norms that will protect the world's most vulnerable populations, they have intimated that many moral entrepreneurs have paternalist tendencies.[9] Paternalism overlaps with

[5] C Reus-Smit, *American Power and World Order* (Polity, New York, 2004); J Nye, *The Power to Lead* (Oxford University Press, New York, 2010); G Sorenson, *A Liberal World Order in Crisis: Choosing Between Imposition and Restraint* (Cornell University Press, Ithaca, 2011).

[6] RH Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford University Press, New York, 2000); NJ Wheeler, *Saving Strangers* (Oxford University Press, New York, 2001).

[7] For statements on liberal empire and the liberal international order, see S Muthu, *Enlightenment Against Empire* (Princeton University Press, Princeton, 2003); J Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton University Press, Princeton, 2005); S Metha, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago University Press, Chicago, 1999); Hobson (n 4); GJ Ikenberry, *Liberal Order and Imperial Ambition* (Polity Press, London, 2006); Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton University Press, Princeton, 2011); and Sorenson (n 5).

[8] RO Keohane, *After Hegemony: Power and Discord in International Politics* (Princeton University Press, Princeton, 1984).

[9] ME Keck and K Sikkink, *Activists Beyond Borders* (Cornell University Press, Ithaca, 1998).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

feminist theories and the ethics of care: it both takes the discourse of care seriously and worries that such a discourse can legitimate new forms of interference.[10] And, lastly, critical theory and paternalism have a complicated relationship. There are critical theories, most closely associated with the work of Jürgen Habermas, which identify a strong relationship between civilizing processes, harm reduction, and emancipation, though without adequate attention to the power that exists between the giver and the recipient.[11] Conversely, Foucaldian-inspired theories, which extend the concept of biopower and governmentality to the international realm, typically see the global effort to improve humanity as less about emancipation and more about domination.[12]

If paternalism has not received the attention that it deserves, it is partly because of its radioactive nature. One of the goals of this reassessment, then, is to explore the concept's power for empirical analysis, holding at a distance its incendiary dimensions. But the concept of paternalism thunders what we know but often refuse to acknowledge about all theory – it has both analytical and normative dimensions. There are good reasons, all very well known, why no one wants to be accused of paternalism. Yet one of the curious features of modern international politics is that paternalism is not only a constant feature, but many theorists and practitioners defend practices that can be accurately characterized as paternalistic. If so, one possibility is that paternalism has its place.

This article has three sections. It begins with an overview of paternalism. The best place to learn about paternalism is from liberalism. Liberalism's militant concern with individual liberty has led it to dissect virtually all aspects of paternalism. Although liberalism has a well-earned reputation for condemning paternalism, it also makes exceptions to the principle of

[10] F Robinson, *Globalizing Care: Ethics, Feminist Theory, and International Relations* (Westview Press, Boulder, 1999). For statements regarding an ethics of care, see M Deveaux, 'Shifting Paradigms: Theorizing Care and Justice in Political Theory' (1995) 10 *Hypatia* 115–19; JC Tronto, 'Care as a Basis for Radical Political Judgments' (1995) 10 *Hypatia* 141–49; D Engster, 'Mary Wollstonecraft's Nurturing Liberalism: Between an Ethic of Justice and Care' (2001) 95 *American Political Science Review* 577–88.

[11] RW Jones (ed), *Critical Theory and World Politics* (Lynne Rienner, Boulder, 2001); A Linklater, *Critical Theory and World Politics: Citizenship, Sovereignty and Humanity* (Routledge, New York, 2007); A Linklater, *The Problem of Harm in World Politics: Theoretical Investigations* (Cambridge University Press, New York, 2011). For a sophisticated consideration of the tensions as they pertain to humanitarianism, see D Fassin, *Humanitarian Reason* (University of California Press, Berkeley, 2011).

[12] On governmentality in international relations, see I Neumann and OJ Sending, *Governing the Global Polity: Practice, Mentality, and Rationality* (University of Michigan Press, Ann Arbor, 2010).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

non-interference. What if individuals are unable, for whatever reason, to make informed decisions? Should we allow the principles of non-interference to justify indifference in the face of injustice, suffering, and oppression? Appalled by this implication, liberal political theorists have explored the conditions under which one actor might justifiably interfere in the lives of others. Although liberal approaches to paternalism have their strengths, one weakness is a neglect of the underlying social relations that generates the positions of superiority and inferiority and a sense of *noblesse oblige*. Accordingly, I briefly examine the insights of a structural approach, which helps us to better understand relations of paternalism between, for instance, the civilized and uncivilized in world affairs. Although the concept of paternalism is as insightful for analysing global social relations as they are interpersonal and domestic social relations, there is the immediate issue of the domestic analogy problem. Specifically, I consider how the distinction between 'state' and 'people' complicates the analysis of global paternalism, or, more precisely, whose consent is required, whose liberty is violated, and who is being paternalized.

Because paternalism is a blunt concept, the second section makes two moves in order to refine the concept for empirical analysis. Scholars of paternalism have identified a host of dimensions on which it might vary, but arguably four are most critical for interrogating paternalism in humanitarian governance: the tools used to restrict another actor's liberty (force vs information); the scope of the interference (wide vs narrow); the source of paternalizer's confidence (faith vs evidence); and the mechanisms of accountability (internal vs external). Building on these four dimensions, the second move is to posit the existence of two ideal types of paternalism, strong and weak. A strong paternalism exists when: force can be entertained, interference is wide-ranging, the paternalizer's confidence is metaphysical rather than epistemic, and the paternalizer's actions are immune to redirection by the paternalized. A weak paternalism exists when: force is severely proscribed, interference is relatively restricted, the paternalizer's confidence has epistemic roots, and the paternalized possess mechanisms that potentially allow them to make their views known and hold the paternalizer accountable. Paternalism might be a constant feature of international affairs, but it also exhibits considerable diversity in its form and practice. The paternalism of today differs markedly from the paternalism of yesteryear.

The third section explores the possibility that the institutionalization of liberalism has shifted the prevailing forms of paternalism in humanitarian governance from its strong to its weak variant. Although international liberalism comes in many flavours, its core values of equality, independence, sovereignty, self-determination, autonomy, and consent restrain acts of

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

interference in global affairs.[13] Yet alongside this liberalism of restraint is a liberalism of interference that sanctions actions that are intended to promote the welfare of those who are too weak, vulnerable, oppressed, or uneducated to defend themselves. In short, the contemporary global order is defined by a liberalism that simultaneously celebrates autonomy and permits, and perhaps even requires its fair share of interference. This tension within liberalism between abstinence and interference has played out in different ways historically, and key to understanding this variation is how really, existing global liberalism has shaped the politics and practices of global paternalism. It is beyond the limits of this article to provide a full exploration and defence of this claim, but my hope is that a comparison of humanitarian governance in the nineteenth and the twenty-first centuries might illuminate some central features of this changing relationship. Specifically, I will suggest that the growth of international liberalism has not eradicated paternalism but merely changed its forms and placed more justificatory demands and institutional restraints on international actors who desire to interfere in the lives of others for their own good.

The conclusion turns from paternalism's analytical power to its normative complexities. Paternalism is not just a category of analysis, it also is a category of ethics – most of it negative. There are good reasons why no one wants to be tarred with the brush of paternalism, especially in a post-colonial world that celebrates liberal political principles. Yet the very same liberal political theories that warn against paternalism also recognize that it might be defended under exceptional circumstances. Following the lead of liberal political theory, in the conclusion I use these exceptions to challenge international relations theorists and practitioners to identify more precisely the conditions under which interference is legitimate.

Paternalism

Although anti-paternalist sentiments circulated prior to the ascendance of liberal political theory in the nineteenth century, liberals can be credited

[13] For arguments regarding the variations in international liberalism, MW Zacher and RA Matthews, 'Liberal International Theory: Common Threads, Divergent Strands' in CW Kegley (ed), *Controversies in International Relations Theory: Realism and the Neoliberal Challenge* (St. Martin's, New York, 1995) 107–50; JL Richardson, 'Contending Liberalisms: Past and Present' (1997) 3 *European Journal of International Relations* 5–34; G Simpson, 'The Ethics of the New Liberalism' in C Reus-Smit and D Snidal (eds), *Oxford Handbook of International Relations* (Oxford University Press, New York, 2008) ch 14.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

with making paternalism something of a sin. Paternalism violates nearly every cherished principle of liberalism. John Stuart Mill, the patron saint of the anti-paternalism camp, famously wrote:

> The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.[14]

And the list of objections goes on and on. Autonomy and liberty are central to human dignity. No one can know better than us what we want and we can never know what is best for another. Even if individuals act in ways that appear to be irrational or demonstrating poor judgment, to stop them from acting on their perceived interests violates their dignity. It also denies them an opportunity to learn from their mistakes. Nor can paternalism be defended on the grounds that the interference improves the welfare of the individual – ends do not justify ends. Paternalism presumes that an individual is incompetent or inferior. Worryingly, the powerful often believe that they know what is best for everyone. We should be worried whenever actors become convinced of their generosity. Henry David Thoreau spoke for many when he exclaimed, 'If I knew for a certainty that a man was coming to my house with the conscious design of doing me good, I should run for my life.' Modern international history demonstrates the violence and suffering that has been levelled by those who think that they know best for others. The nineteenth-century European powers were so enlightened and cared so much about the colonial peoples that they convinced themselves that colonialism was a good thing.[15]

The liberalism of interference

Many of the same liberal political theorists who gave paternalism a bad name also worried that: some people just cannot handle freedom or act in their own best interests; and justice, progress, and emancipation might depend on a healthy dose of interference. There are many different definitions of paternalism to choose from, but Gerald Dworkin's classic definition works well: 'the interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good, happiness,

[14] JS Mill, *On Liberty* (WW Norton, New York, 1975) 10–11.

[15] U Narayan, 'Colonialism and Its Others: Consideration on Rights and Care Discourses' (1995) 10 *Hypatia* 133–40.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

needs, interests or values of the person being coerced'.[16] Paternalism has two critical features.

Paternalism is interference justified explicitly with reference to another's interests.[17] For many scholars and cynics, this feature of paternalism is difficult to accept for one simple reason: most actors do not put themselves out for others unless there is something in it for them. If this proposition about human nature is blindly accepted, then the concept of paternalism becomes, quite literally, inconceivable. But it also seems thoughtlessly prejudicial to dismiss the possibility out of hand. Instead, three objections must be met and discounted for the idea of other-regarding behaviour to be plausible.

The first objection is that actors are constantly presenting their private interests as in the public interest and for the benefit of others. Without a doubt, some other-regarding claims are more believable than others. States have a well-deserved reputation for caring most about their hard-core security and economic interests and showing little interest in being welfare workers to the world. The claim by humanitarian organizations that their primary purpose is to alleviate suffering is often accepted at face value. But before we demonize states and canonize aid workers, both groups of actors sometimes defy stereotype. Liberal empires sometimes wanted to make the world a better place and aid workers sometimes care most about making their world a little more secure. The liberal John Stuart Mill defended British imperialism in India on the grounds that it would help the Indians develop the mental capacities and social institutions to become free-thinking, reasoning peoples who were capable of self-governance (which would benefit the British).[18] His sentiments were hardly radical, for many colonizing peoples genuinely believed that colonialism could and should

[16] See (n 3) 64–84. For a sampling of the definitional debate, see DJ Thompson, *Political Ethics and Public Office* (Harvard University Press, Cambridge, 1987) ch 6; D Archard, 'Paternalism Defined' (1990) 50 *Analysis* 36–42; DJ Garren, 'Paternalism, Part I' (2006) 47 *Philosophical Books* 334–41; DJ Garren, 'Paternalism, Part II' (2007) 48 *Philosophical Books* 50–9; G Dworkin (n 3) 64–84; B Gert and CM Culver, 'Paternalistic Behavior' (1976) 6 *Philosophy and Public Affairs* 45–58; D Van De Veer, *Paternalistic Intervention: The Moral Bounds of Benevolence* (Princeton University Press, Princeton, 1986); LM Mead, 'The Rise of Paternalism' in LM Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution, Washington DC, 1997) 1–38; DN Husak, 'Legal Paternalism' in H LaFollette (ed), *The Oxford Handbook of Practical Ethics* (Oxford University Press, New York, 2003) 387–412; S Kelman, 'Regulation and Paternalism' (1981) 29 *Public Policy* 219–54; and K Grill, 'The Normative Core of Paternalism' (2007) 13 *Res Publica* 441–58.

[17] See Kelman (n 16); Grill (n 16); AI Applbaum, 'Forcing a People to Be Free' (2007) 35 *Philosophy and Public Affairs* 371.

[18] McCarthy (n 4) 175.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

benefit the colonized population. Indeed, accusations that colonial administrators and commercial elites were exploiting the colonial peoples could unleash a torrent of outrage by the British public on the grounds that Britain was failing its role of trustee.[19] Although aid organizations are supposed to decide which emergencies get their attention based on the severity of suffering, many are accused of caring most about those situations that capture the attention of potential donors. In general, rather than using profiling techniques to determine who is more or less likely to care about the circumstances of others, it is best to proceed on a case-by-case basis, accept that all actors have mixed motives, and examine whether that mixture passes a plausibility test.

A second objection is that even if actors sincerely believe that they are intervening for the benefit of others, they might be ignorant of either their true motives or how their actions serve the interests of the powerful. Historical evidence suggests that the missionaries and liberal imperialists of the nineteenth century genuinely believed that colonization was good for the native populations, a position that modern critics of colonialism chalk up to a healthy dose of ideology and rationalization. Mark Duffield's powerful analysis of humanitarianism offers a comparable portrait, nearly suggesting that aid workers are operating under the influence of self-medicating discourses that leave them unaware of how their actions are helping to reproduce global inequalities.[20] Yet the central issue is not whether individuals understand their 'true' motives, or even whether acts of caring might advance the interests of others; instead, it is whether actors sincerely believe that their actions might help the less fortunate.

A third and final objection is that good intentions might not necessarily lead to good outcomes. This is always possible, but it is irrelevant. Paternalism is based on a forward-looking consequentialist ethic. Although many who oppose paternalism do so on Kantian grounds – it is never right to interfere in the liberty of another, the ultimate defence of paternalism is that the action will improve the welfare of another relative to a decision made without that interference. But this is a consequentialism based not only on the actual results but rather on the intended outcome. In general, a necessary condition for paternalism is that one actor must justify explicitly her actions with reference to another's welfare, well-being, and interests. It is up to the observer to make the case that such a claim is credible.

[19] NB Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Harvard University Press, Cambridge, 2006).

[20] M Duffield, *Global Governance and the New Wars* (Zed Books, New York, 2001).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

Paternalism violates the principle of consent. Paternalism exists whenever an actor interferes in the affairs of another without his or her consent. In other words, not all acts of involvement count as paternalism. There are many instances when one actor acts in accord with the preferences of another. Actors can rationally delegate authority to another and create institutions that tie their hands in the future, as observed by institutionalist and principal-agent approaches. There might be times when consent can be reasonably inferred. Emergency room doctors must frequently act first and get patient consent later, and their actions would hardly be labelled paternalistic. Humanitarian intervention, at least from the perspective of the victims, is probably not paternalistic. In these and other instances, we are making the reasonable assumption that consent can be inferred from the circumstances, and that delaying action until consent can be acquired might very well mean waiting until it is too late (an outcome that the object of paternalism would hardly want). Moreover, in many situations, most evidently during humanitarian emergencies and mass refugee flight, aid workers must frequently make decisions without being able to canvas the views of the affected population. At these moments, then, international actors can act with implied consent. However reasonable in some circumstances, implied consent is a slippery slope, especially once the absence of a registered dissent becomes taken as an indicator of consent.

This is hardly a hypothetical situation. Consider, for instance, when the UN High Commissioner for Refugees (UNHCR) must decide whether or not to repatriate refugees to their homeland. Because international refugee law prohibits the repatriation of refugees to their country if they believe that they cannot return without exposing themselves to harm, UNHCR is expected to survey the refugees to ascertain their preferences. Such assessments are incredibly difficult to carry out, the validity of the responses is highly debatable, and it is often quite difficult to interpret the wishes of the refugees. Given this uncertainty, UNHCR often relies on its own judgment, issues a decision, and then assumes that if there is no major outcry from refugees then their decision is probably consistent with preferences of the refugee population. But there are lots of reasons why refugees might not vocally protest a decision that they believe puts them at risk, including the concern that they have no choice or the fear that UNHCR might engage in punitive action, such as cutting rations, if they do not comply. In general, it is because implied consent is such a slippery slope that liberals tend to err on the side of caution, insisting that consent must either be explicit or be easily inferred from what 'most' people would want under the circumstances.[21]

[21] G den Hartogh, 'Can Consent be Presumed?' (2011) 28 *Journal of Applied Philosophy* 294–307.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

The liberal principle of consent is intended to ensure that we respect the choices of others, but are individuals always the best judge of what is best for them? Although liberal political theorists worry that this very question is an invitation to unbounded interference, they also concede that not all individuals at all times are able to make the right decisions. Liberals have identified a host of exceptions to the rule of consent. An actor might choose a course of action that, from the perspective of a neutral and objective observer, is not in their best interests. There are times when we insist that no rational or 'right-minded' person would ever choose a particular course of action. Laws prohibiting suicide and elective amputation are based on the assumption that no sane person would ever choose to end their life or remove a healthy limb.[22] There are categories of people, such as children, who are deemed unable to act in their own best interests because they lack the moral or cognitive intelligence.

It is not just children who might not have the right judgment or knowledge – we all might be deficient, at least according to the literature on judgment and decision making.[23] Traditional microeconomics and welfare economics contain fairly restrictive assumptions, including the claim that individuals have stable and coherent preferences and that their choices largely reflect these already existing preferences. Accordingly, they take a fairly hard line against paternalism, arguing that there are few justifications for one person to violate the autonomy of another. But what if preferences are not stable or there are factors that break the connection between decision making and choice? Psychology, experimental economics, and behavioural economics offer considerable empirical evidence that individuals do not make choices as economic textbooks portray. There are various factors that might lead to impaired choice: preferences over options can be shaped by framing; preferences can be affected by individual's psychological state at the moment preferences are expressed; preferences might be affected by irrelevant information; and preferences might be different if experts had a chance to present the information. If so, then the question is not whether there are factors that interfere in an actor's

[22] R Shafer-Landau, 'Liberalism and Paternalism' (2005) 11 *Legal Theory* 169–91.

[23] See A Tversky and D Kahneman, 'The Framing of Decisions and the Psychology of Choice' (1981) 211 *Science* 453–58; Tversky and Kahneman, 'Judgment under Uncertainty: Heuristics and Biases' (1974) 185 *Science* 1124–31. For an explicit connection between this work and paternalism, see CR Sunstein and RH Thaler, 'Libertarian Paternalism Is Not an Oxymoron' (2003) 70 *The University of Chicago Law Review* 1159–1202; and S Ben-Porath, *Tough Choices: Structured Paternalism and the Landscape of Choice* (Princeton University Press, Princeton, 2010).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

choice but whether those factors can and should be influenced by a third party to produce an outcome that is both seemingly closer to the interests of the actor and Pareto-improving.

Liberal political theory's approach to paternalism not only identifies the conditions under which interference might be justified but also claims that the fortunate should offer a long-term commitment to help the less fortunate develop the capacity for reason and rationality – that is, to be deserving of autonomy and liberty. Liberal political theory can be applauded for introducing (for its time) the radical proposition that all humans have the capacity for rational thought and reason. Yet it also argued that this potential might not be realized because of a lack of development, education, or experience. The disjuncture between what is possible and what currently exists produces a tension between a 'moral legal standpoint' or moral universalism, and an 'anthropological-historical standpoint' or belief that human development happens unevenly.[24] Many liberals resolve this tension by justifying interference on the grounds that the trustee has a duty to help both with short-term shortfalls and with the longer-term goal of creating the conditions for liberty and the capacity for reasoned choice. 'As a result, historical events and tendencies that are unacceptable from a moral legal perspective' can be defended from a 'developmental perspective as a means to the perfection of our rational nature'.[25] This highlights an important difference between liberalism's view on paternalism and racism, patriarchy, and other discourses that generate relations of superiority and inferiority and a sense of *noblesse oblige*: whereas these latter approaches are doubtful that 'inferior' groups will have the innate capacity for rational thought and reason, liberal approaches imagine that all humans have that potential. Although Mill railed against nearly all forms of interference on the grounds that it violated a person's liberty, exceptions could be made in the cases of children and 'barbarians' because neither possessed the moral and cognitive skills to act in their own best interests. In the same way that parents have an obligation to lead children from dependence to independence, colonial powers have a responsibility to lead backward people toward civilization.[26] The League of Nations' mandatory system was premised on the idea that the international community has a responsibility to help the backward populations develop the skills for self-governance. Peace-building

[24] See McCarthy (n 4) 169; Mehta (n 7).

[25] See McCarthy (n 4) 170.

[26] D Habibi, 'The Moral Dimensions of J. S. Mill's Colonialism' (1999) 30 *Journal of Social Philosophy* 125–46.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

operations and trusteeship administrations use similar, but more politically-sensitive, language such as capacity-building.

Liberal approaches to paternalism focus on the central question of when interference is justified, but to the neglect of an equally intriguing question: why bother? Why would people inconvenience and even sacrifice themselves for others, especially given liberalism's other well-known attributes of individualism and self-interest? The explanation of last resort at these moments is some form of diffuse reciprocity. While this explanation might be plausible when discussing small-scale communities or societies that have an existing social contract, diffuse reciprocity stretches believability when considering most instances of transnational care and compassion. Do those from the West who donate to emergencies in the global South imagine that the recipients will reciprocate if the situation is reversed at some point in the future?

Accordingly, various non-liberal-sounding commitments and beliefs are often evoked to explain such other-regarding gestures. It might be because of blood and belonging, which is particularly pronounced when considering a sense of obligation one family member feels for another.[27] It might be because of a compassion gene that is functional for the preservation of the species. It might be because of a combination of enlightenment processes and cognitive development. It might be because of a sense of guilt, shame, and personal anxiety. Thomas Hobbes is reported to have defended giving to a beggar on the street on the grounds that he was trying to relieve not the distress of the beggar but rather his own. It can be because of a sense of humanity. It might be that those events that shock the human conscience are tests of our own humanity; the failure to respond represents a failure of our own humanity. Religion also might play a role. For many evangelical Christians democracy and proselytization was (and continues to be) a central part of political theology. Many religious doctrines have codes of charity and compassion, and to be a good Hindu, Jew, Christian, or Muslim requires caring for the less fortunate. The crucial point is that liberalism's individualistic ontology is generally insufficient to explain why people go out of their way to help others, sometimes at considerable hardship and risk to themselves, requiring the presence of discourses, beliefs, and senses of self that produce an ethics of care and compassion.

These explanations for why individuals might choose to sacrifice for others breaches the limits of individualistic approaches to paternalism and

[27] See Barnett (n 2) 42, for a survey of these sources of compassion.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

steps onto the terrain of structural theories.[28] Specifically, whereas liberal political theory assumes a transhistorical, unencumbered actor that is motivated by self-interest, sociological and critical theories are attentive to the discourses, institutions, and roles that produce relations of superiority and inferiority and generate a sense of obligation by some for others (and even when they do not ask for help or know they need it). The archetypical example of a paternalistic relationship, of course, is father–child, with the expectation that fathers are supposed to interfere in the lives of their children for their benefit. International relations theorists routinely explore the relationship between civilized and uncivilized states; sometimes this relationship leads to acts of inhumanity (they are not quite human and therefore can be treated differently) and sometimes it leads to a discourse of protection and care.[29] Structural approaches, in short, 'begin with political relations rather than unencumbered individuals, emphasizing that paternalism is an authority relationship based on unequal status and power'.[30] The social roles exist prior to the individuals that occupy them, producing actors that see themselves as having the authority to supervise and direct the lives of others, and the obligation to help the less fortunate develop the capacity to become a reasoning individual able to enjoy the responsibilities of liberty.

In addition to illuminating the underlying social relations that produce a self-understanding of oneself as caregiver and others as needing care, structural approaches offer two other advantages for conceptualizing paternalism in humanitarian governance. As we have seen, liberal approaches imagine that paternalism can be in the form of either momentary assistance or a long-term, broader, supervisory role with the intent of creating reasoning actors that are capable of wisely exercising their liberty. This latter instance of more involved and sustained oversight is often labelled 'projects' by those who favour structural approaches. Students of American paternalism, for instance, have explored at length how the American state has carried out campaigns to create citizens that were educated, civilized, disciplined, self-controlling, and capable of seeing liberty as demanding responsibility for oneself and for one's country.[31] International relations theorists, especially those who draw from Foucauldian-inspired concept of governmentality, develop similar

[28] The following discussion relies on J Soss, RC Fording, and S Schram, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race* (University of Chicago Press, Chicago, 2011) 24–5.

[29] HM Kinsella, *The Image Before the Weapon* (Cornell University Press, Ithaca, 2011).

[30] See Soss et al (n 28) 24.

[31] See Soss et al (n 28).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

themes.[32] The point is that whereas liberal approaches examine relations between discrete actors, structural approaches are attentive to underlying discourses that produce actors who see themselves as having a responsibility to shepherd other populations that require guidance.

Accordingly, structural approaches differ from liberal approaches to paternalism in the way they understand how power operates in social life. Liberal approaches to paternalism highlight a relationship between the paternalizer and paternalized that is immediate, direct, and visibly involves some form of coercion. Again, the father–child relationship is paradigmatic: a father who is worried about the trouble that his teenage son might get into after hours imposes a curfew that the son believes is unfair and degrading, and threatens to suspend his car privileges if he disobeys. Structural approaches, though, allow for the possibility that power can operate in a variety of ways that are less visible, immediate, and direct. The literature on power is informative in this regard. There are several kinds of power. Most famous, and most often used by scholars of international relations, is the ability of A to get B to do what B would not do otherwise.[33] Yet power also is embedded in institutions (that limit options), structures (that lead to gross inequalities) and discourses (that lead to intersubjective relations of superiority and inferiority). As such, paternalism can certainly be overt, direct, and coercive, but it also can operate through covert, indirect, and gentler mechanisms. In general, while liberal approaches to paternalism helpfully define, and identify what counts as, paternalism, structural approaches offer their own contributions.

States and peoples

International paternalism exists when one actor interferes in the affairs of another actor without its consent and justifies such interference on the grounds that it improves the subject's welfare, interests, or utility. The fact that we are discussing not simply paternalism but international paternalism raises the issue of the domestic analogy. Or, more precisely put, who is authorized to give consent? The legal and conceptual shorthand in international relations, of course, is the state. Because of sovereignty the state is authorized to give consent and it is the state's permission that is sought when international actors want to intervene in its domestic affairs. Yet precisely when is the state recognized as having this legal (and political)

[32] Neumann and Sending (n 12).

[33] See MN Barnett and R Duvall, 'Power in International Politics' (2005) 59 *International Organization* 39–75.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

authority? Although some scholars and practitioners insist that having control over a territory is sufficient, others argue that sovereignty and authority depends on domestic legitimacy, which, largely exists when the state can convincingly claim to represent the people (and most persuasively when it is democratically elected).[34] One implication of this reading is that illiberal states cannot convincingly speak on behalf of their people, are sovereignty-challenged, and in no position to refuse or give consent to external interference. This liberal position connects John Stuart Mill to John Rawls. For Mill, the principle of non-interference does not extend to barbarian peoples because they are not sufficiently educated and rational to have their choices respected. For Rawls, non-intervention can be suspended if states are not sufficiently 'well-ordered'. That is, while individuals are capable of reason, because they live in states that fail to provide adequate liberty or articulation of their interests they are unable to express their preferences. One contested implication is that it is possible to paternalize a people only after there exist legitimate political institutions; accordingly, paternalism is not a problem in situations in which those institutions do not exist.[35]

Distinguishing between people and states has two related implications. One, it is possible to paternalize a state without paternalizing a people. In other words, an international body might operate without the implicit or explicit consent of the state, but nonetheless assert that it is acting consistently with the interests of the people. The underlying claim, then, is that the international community is a better representative of the people than is the state. For many scholars this is dangerous talk that has no place in an international society of states.[36] After all, before the globalization of sovereignty, well-meaning (and not so well-meaning) imperialists, missionaries, and liberal humanitarians argued that they should intervene

[34] On modern international sovereignty and the conditions under which states might confer or expect recognition from other states, see M Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, New York, 2002); J Crawford, *The Creation of States in International Law* (2nd edn, Cambridge University Press, New York, 2006) 45–86; and A Osiander, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) 55 *International Organization* 251–87.

[35] See Applbaum (n 17).

[36] See Jackson (n 6) 412, cited in LM Søbjerg, 'Trusteeship and the Concept of Freedom' (2007) 33 *Review of International Studies* 475–88. Also see W Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (Oxford University Press, Oxford, 2003) 26, 173; W Bain, 'The Political Theory of Trusteeship and the Twilight of International Equality' (2003) 17 *International Relations* 59–77; and W Bain, 'In Praise of Folly: International Administration and the Corruption of Humanity' (2006) 82 *International Affairs* 525–38. However, see Søbjerg above.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

abroad because non-Western peoples were ruled by despots who did not have their interests at heart and whose societies were not competent to rule themselves.[37] International paternalists did not pretend that they were democrats, only that they were more likely to represent the interests of the people than was the home-grown potentate.

The other is that it is possible to paternalize a people without paternalizing the state. Those international actors that want to enter and work in a state must get the permission of the government. But the government might not adequately represent the preferences of the population, creating a situation where the state is able to give legal consent but the people have not given practical consent. This is a common critique of many international economic arrangements between Third World governments and international financial institutions, and the absence of consent from the local population became visible once it became clear that the government could not keep its agreement because key societal actors were not in accord. Consequently, many international aid agreements now actively seek out the views of local communities and critical constituencies, and some of the most prominent reforms of the international aid system, from Paris to Busan, pertain to partnership with local actors.[38] Even in those situations when presumably consent can be inferred, for instance, in natural disasters, there remains the question of whether consent is sought in all important dimensions of intervention. For instance, in January 2010 a devastating earthquake demolished Haiti and its densely populated capital, Port-au-Prince, levelling the city, leaving millions homeless, and killing hundreds of thousands. Many of the survivors were buried under rubble or had been hit by collapsing building, and, as a consequence, suffered appalling damage to their extremities, including broken bones and crushed limbs, which required immediate medical attention. The emergency medical teams that arrived in Haiti had to make the on-the-spot decision regarding whether to try and save a limb or amputate to avoid infection, gangrene, and death. In short, aid workers had to decide whether or not to amputate, and, in many cases, the patient was unable to provide consent. The rate of amputations quickly became a source of controversy, with some accusing doctors of being too quick to cut and others insisting

[37] D Zaum, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding* (Oxford University Press, Oxford, 2007).

[38] See, for example, 'The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action', available at <http://www.oecd.org/development/aideffectiveness/34428351.pdf > accessed 30 July 2012.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

that they were practising the best possible medicine in the desperate circumstances.[39]

In sum, paternalism occurs when one actor interferes in the choices of another without her consent and on the grounds that it is in her best interest. It is based on a consequentialist ethic, with the expectation that the act of interference will improve the subject's condition. It is premised on the assessment that an actor, for any number of reasons, is unable to make the right decisions and that others are justified in taking matters into their own hands. Much of the previous discussion relied on approaches to paternalism influenced by liberal theory, which helpfully identify what counts as paternalism and the conditions under which actors might justify interfering in the liberty of others. Structural approaches, though, look below and beyond the level of actors to consider how discourses produce social relations of superiority and inferiority, tied by expressions of care, which, in turn, generate broad patterns of interference for distinct projects. Both approaches to paternalism shed light on the workings of humanitarian governance.

Variations in international paternalism

Practices of paternalism vary analytically and historically. The effort to capture this diversity within unity has led scholars to identify paternalism's different dimensions and to consider how these dimensions might generate different kinds of paternalism.[40] These analytical exercises are essential for considering paternalism historically. The paternalism that characterized the relations between the state and the urban poor in nineteenth-century Victorian England differs from the 'new paternalism' in the contemporary American welfare state. The paternalism associated with the humanitarian governance in the nineteenth century differs from the prevailing forms of paternalism in contemporary humanitarian governance. Building on previous efforts to distinguish between forms of paternalism, and with the goal of marking the changing forms of paternalism in humanitarian governance, the following section considers how variations in the tools of interference (physical force vs information and knowledge), the scope of interference (wide vs narrow), the source of confidence (metaphysical vs

[39] David Brown, 'Surgeon seeks to prevent "unnecessary amputations" in Haiti's earthquake zone', *Washington Post*, 21 January 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/20/AR2010012004646.html> accessed 30 July 2012.

[40] See, for instance, Mead (n 16), Archard (n 16), and Van De Veer (n 16).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

evidence), and the source of accountability (internal vs external) can combine to produce either a strong or weak paternalism. I will subsequently suggest that the humanitarian governance of the nineteenth century is best understood as constituted by a strong paternalism, whereas the form of paternalism that evolved after World War II resembles the weaker kind. Why this change? Although grand historical shifts are always produced by a conjunction of structural and idiosyncratic factors, I explore the critical role of the institutionalization of global liberalism.

Strong paternalism

Strong paternalism is characterized by four elements. The first is a willingness to use force. As in all forms of power, the means of interference can vary from physical force to the existence of formal and informal institutions that limit (and might even preserve the illusion of) choice. A core feature of strong paternalism is that force is a viable alternative. During natural disasters states will physically remove individuals from their homes if they believe that they are in danger if they remain. UNHCR has joined with states to forcibly repatriate refugees on the grounds that it was in their best interests.[41] Imposition can vary in terms of scope: from wide-ranging supervision over all domains of life to more specific and limited areas of life. Strong paternalism allows for supervision and control over a broad spectrum of life. Liberal empires and contemporary peace-building operations often claim authority over a nearly limitless range of areas.

The third element of strong paternalism is a nearly unshakeable sense of confidence that one knows best. There are many sources of confidence. Sometimes it is age – live long enough and you must know what you are doing. Sometimes arguments about age are really claims about experience, a form of knowledge. Knowledge is based not only on lived experience but also on training, education, and credentialed learning. As discussed in the previous section, confidence can also be an effect of discourses of identity and difference – men claiming to know what is best for women, whites claiming to know what is best for blacks, civilized people claiming to know what is best for uncivilized, and so on. Sometimes it is a sense of the divine, a belief that they have God-given insights because of revelation or a certainty that comes from operating in the name of putative natural and universal rights. Although there are many sources of confidence, for the

[41] MN Barnett and M Finnemore, *Rules for the World* (Cornell University Press, Ithaca, 2004) ch 3.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

purposes of distinguishing between strong and weak paternalism, of considerable importance is whether the sources of confidence leave room for doubt.

Faith-based paternalism exists when confidence derives from preternatural commitments that leave little room for doubt, most obvious when claims to know better cannot be challenged by empirical evidence. These nearly foundational claims help orient the self in relationship to humankind and the cosmos. Religious theology has this characteristic. 'Theological propositions are unverifiable because the existence they posit – God, immortal souls, and so forth – do not, even if they exist, intrude on human experience in such a way as to provide compelling evidence for their verification'.[42] It is not just religion per se that has this quality, so, too, does all of religious experience, as defined by the American Pragmatists, because it demands that the self adjust to the conditions of existence.[43] Religious experience, according to John Dewey, can include what frequently passes for secularism. For instance, many statements regarding natural law and human reason are founded on non-verifiable commitments. In this way, Dewey linked religious experience to moral faith, a sense not only of how the universe is ordered but also how it should be ordered.[44] Such faith cannot be either proven or disproven but rather, in William James's famous saying, requires a 'will to believe'. In terms of its effects, then, belief in God is not that different from a belief in 'humanity' and the appeal to natural rights favoured by many in the humanitarian and human rights communities. Those who base their paternalism on faith, then, often refer to God, transcendental commitments, and humanity to justify their authority to intervene, backed by moral benchmarks and notions of human emancipation, enlightenment, and fulfilment.[45] In general, a confidence that derives from a belief system that is relatively immune to doubt is a central feature of strong paternalism.

Not only are faith-based paternalizers relatively immune to doubt, but they also are relatively indifferent to the views of the local population. The final distinguishing characteristic of strong paternalism is the lack of accountability mechanisms that give local populations some way to

[42] R Westerbrook, 'An Uncommon Faith: Pragmatism and Religious Experience' in SE Rosenbaum (ed), *Pragmatism and Religion* (University of Illinois, Urbana, 2003) 194.

[43] Ibid 192.

[44] Ibid 195.

[45] S Hopgood, 'Moral Authority, Modernity and the Politics of the Sacred' (2009) 15 *European Journal of International Relations* 229–55; and I Feldman and M Ticktin, 'Government and Humanity' in I Feldman and M Ticktin (eds), *In the Name of Humanity: The Government of Threat and Care* (Duke University Press, Durham, 2011) 1–27.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

restrain the actions of the paternalizers. The liberal empires of the nineteenth century might have been relatively attentive to their citizens, but they were deaf to the colonial peoples. It is a matter of considerable debate whether contemporary forms of interference are any better in practice, even if they do acknowledge the importance of partnership and accountability. Although contemporary humanitarians frequently shroud themselves in discourses of humanity, cosmopolitanism, and a global public, they are notably unencumbered by what the objects of their care have to say.[46]

Weak paternalism

Weak paternalism is characterized by the following elements. In contrast to strong paternalism that uses physical force, weak paternalism operates through institutions, information and knowledge. Formal and informal institutions are designed to limit choice by setting the agenda, removing some options from consideration, creating incentives and disincentives for some kinds of actions, and manipulating information. Their choice-constraining properties are justified on the grounds that they will improve individual and collective welfare. And institutions will be better able to perform this valuable function if they are relatively autonomous from the (most powerful) members. Simply put, institutions can function effectively and legitimately if they are free from the demands of principals that might not have the knowledge, discipline, and prudence to act in ways that are consistent with their individual and collective interests. For instance, drawing from the findings of behavioural economics, Thaler and Sunstein argue that preference incoherence justifies the need for a 'planner' who occupies a neutral standpoint and is able to structure choice in ways that improve the welfare of the individual and society.[47] As they forthrightly state:

> The paternalistic aspect consists in the claim that it is legitimate for private and public institutions to attempt to influence people's choices and preferences, even when third-party effects are absent. In other words, we argue for self-conscious efforts, by private and public institutions, to steer people's choices in directions that will improve their own welfare. In our understanding, a policy therefore counts as

[46] Ibid.

[47] See Sunstein and Thaler (n 23); CR Sunstein and RH Thaler, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale University Press, New Haven, 2008); RH Thaler and CR Sunstein, 'Libertarian Paternalism' (2003) 93 *American Economic Review* 175–79; and CR Sunstein, 'Preferences, Paternalism, and Liberty' (2006) 81 *Royal Institute of Philosophy Supplement* 233–64.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

> 'paternalistic' if it attempts to influence the choices of affected parties in a way that will make choosers better off.[48]

They call their approach 'libertarian paternalism' because it 'preserves the freedom of choice but ... encourages both private and public institutions to steer people in directions that will promote their own welfare'.[49] In a similar spirit, Ben-Porath has called for a 'structured paternalism'.[50] These forms of paternalism happen with considerable frequency in humanitarian governance. Many instances of global public health interventions do not allow for meaningful consent. While UNHCR does not possess the physical means to violently force refugees to repatriate against their will, it has manipulated information so that the refugees will 'consent' to return home; the agency defends such actions on the grounds that while the conditions at home might not have radically improved, the refugees' long-term interest is getting out of camps and returning to their villages as quickly as possible. These institutions, in other words, 'nudge' individuals and groups to make decisions that others might not. But at what point does influencing choice become giving the illusion of having choice? One does not have to be a radical or critical theorist to worry that formal and informal institutions might constrain or even constitute actors in ways that mock notions of informed consent and genuine choice.

Weak paternalism is distinguished by three other elements that place limits on the intensity, durability, and peremptory impulses of interference. In contrast to strong paternalism that permits interference in a wide range of areas, weak paternalism is characterized by more circumscribed claims. Contemporary humanitarian governance is distinguished by the existence of different professional fields, such as public health and development, each of which typically restricts its involvement to its area of specialization.

In contrast to the faith of strong paternalism, weak paternalism is dependent on evidence. Specifically, evidence-based paternalism exists when confidence derives from potentially verifiable claims that can be supported or challenged by empirical evidence. In other words, it rests on science in its broadest possible meaning: the systematic effort to organize, develop, and accumulate knowledge in the form of verifiable and testable

[48] See Sunstein and Thaler (n 23) 1162.

[49] Ibid 1201.

[50] See Ben-Porath (n 23). Concepts such as libertarian paternalism and structured paternalism exist in a grey zone between constraint and interference without consent, and, to my mind, probably lean closer to the former than the latter, and worryingly widen the meaning of paternalism to the point that it becomes indistinguishable from all forms of intervention that do respect consent.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

explanations and predictions. The ascendance of scientific knowledge in modernity also is associated with rationalization processes, the belief that the world can, in principle, be reduced to calculations, means–end reasoning, and cost–benefit analysis. Rationalization led to: the development of methodologies for calculating results, abstract rules to guide standardized responses, and procedures to improve efficiency and identify the best means to achieve specified ends; the creation of bureaucracies that contained specialized knowledge, spheres of competence, and rules to standardize responses and to drive means–ends calculations; and the emergence of professions that had specific knowledge, fixed doctrine, and vocational qualifications that derive from specialized training.

Scientific inquiry and rationalization processes have produced a new kind of actor that is central to contemporary evidence-based paternalism: the expert. The sociological category of expert is a modern creation, emerging in the late nineteenth century and with the expansion of capitalism, the growth of a more specialized division of labour, the heightened importance of services in the modern economy, and, ultimately, the emphasis of modernity on knowledge gained by formal training and education. Experts have specialized knowledge and skill, which, in turn, are dependent on education and credentials. Although not all recognized knowledge is general – sometimes referred to as 'local', or obtained through education – sometimes referred to as 'experiential' or 'practical', the presumption is that in modern society credentialed knowledge trumps local and practical knowledge.[51] Experts have authority and are trustworthy because of the perception that they are committed to scientific inquiry and act in the public interest.[52] And, last but hardly least, the discourse of expertise generates differential social capacities to those who occupy the role of expert and those who occupy the role of non-expert. In short, expertise is bound up with mechanisms of power as it creates hierarchies of superiority and inferiority. Experts almost always claim to know more than anyone else, especially those appearing to be illiterate, poor, and backward.[53] And, such claims are largely viewed as credible

[51] For various statements on these issues, see CR Sunstein, *Free Markets and Social Justice* (Oxford University Press, New York, 1997), 128–50; S Brint, *In an Age of Experts: The Changing Role of Professionals in Politics and Public Life* (Princeton University Press, Princeton, 1996); M Goldman, 'The Birth of a Discipline: Producing Authoritative Green Knowledge, World Bank-Style' (2001) 2 *Ethnography* 191–217.

[52] TL Haskell (ed), *The Authority of Experts: Studies in History and Theory* (Indiana University Press, Bloomington, 1984).

[53] JA White, *Democracy, Justice, and the Welfare State: Reconstructing Public Care* (Penn State Press, University Park, PA, 2000) 5; Soss et al (n 28).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

when they are backed by symbols of accreditation, prestige, and learning, and a sense of public spiritedness. Importantly, the belief that some people just know, and are willing to use their insights to help others, creates the space to interfere without their consent. In general, social processes that generate expert authority empower some and disempower others, are generated by discourses of science, and make interference without consent both permissible and desirable.

Much of contemporary international paternalism is carried out in modern bureaucracies that are staffed by experts who claim to be acting in the best interests of the international community. It is their public concern that makes technocracy potentially preferable to the rule by the elites, markets, or even the people.[54] This points to the classic dilemma of modern liberal governance: the presumed trade-off between democracy and technocracy. In democracy, the rule of the people, there is deference to respect the 'general will', the 'majority', and the 'will of the people' on various grounds, including autonomy, liberty, and the belief that the people know best. In technocracy, the rule of experts, there is deference to those who have the knowledge. Larson nicely captures this tension:

> The inevitable recourse to scientific and technical expertise is one more factor that reduces legitimate citizen participation in decision making. The average person is doubly excluded from the crucial areas of social decision-making: first of all, because the decision making power is either delegated to or contained within private or public administrations, it is effectively insulated from public debate and political conflict. Secondly, because such crucial decisions are both assisted by expert advice and esoteric technologies, and increasingly involved with matters of great scientific and technological complexity, the average person is also disenfranchised by his lack of expert knowledge.[55]

Experts, then, are not expected to always respect the preferences of the people but instead are supposed to use their presumably objective judgment.[56]

Weak paternalism, lastly, is characterized by the presence of accountability mechanisms. Liberal democracies are constituted by various

[54] See Sunstein and Thaler (n 23); Haskell (n 52) ix–xxxix. On professions and paternalism, see Thompson (n 16) 161–64.

[55] MS Larson, 'The Production of Expertise and Constitution of Expert Power' in TL Haskell (ed), *The Authority of Experts: Studies in History and Theory* (Indiana University Press, Bloomington, 1984) 39.

[56] Robert Sugden, 'Why Incoherent Preferences Do Not Justify Paternalism' (2008) 19 *Constitutional Political Economy* 229.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

institutions, rules, and principles that are designed to check those in power. In contemporary global governance the absence of anything resembling accountability has led to a campaign to establish institutional arrangements – everything from mandatory representation in transitional governments to ombudsman to inspectors general – that allow the beneficiaries to insert their views into the decision-making process and hold accountable those in positions of power.[57] Often overlooked are two additional ways that experts are held to account. Experts are often accountable to their professional associations, which sometimes have the authority to take away an individual's license to practice. Also, experts typically refer to evidence to justify their actions, which can have a constraining effect. Unlike God or humanity, which is infallible, numbers can be contested and refuted. In other words, although knowledge shifts power to the expert, knowledge, especially knowledge that is evidence-based, is open to debate and challenge. In this respect expert knowledge's objectivity provides some of its authority, but it also has a democratizing and constraining element. The insistence on evidence helped to debunk racism; to question the effectiveness of development assistance; and to unleash a debate on the quality of emergency aid.[58] And, in these latter two instances one of the results was a push to include the beneficiaries in the formulation, implementation, and evaluation of programmes that were carried out in their name and for their benefit.

Weak liberalism/strong paternalism and strong liberalism/weak paternalism

How might the widely-observed institutionalization of global liberalism have shaped the patterns and practices of international paternalism? The deepening of liberalism and the anchoring of its core values of liberty and consent is associated with a weaker form of paternalism – both at home and abroad. It is impossible within the confines of this article to fully develop this relationship in humanitarian governance. However, it is possible to take snapshots of humanitarian governance at two distinct

[57] A Ibrahim and E Weisband (eds), *Global Accountabilities* (Cambridge University Press, New York, 2007).

[58] On racism see McCarthy (n 4) 84, 230; E Barkan, *The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States between the Wars* (Cambridge University Press, New York, 1992). On development, see W Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (Penguin Books, New York, 2007).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

moments, before and after World War I, to probe the argument that changes in international liberalism have altered the paternalism in humanitarian governance.

The humanitarian governance of the pre-World War I period was dominated by liberal empires with civilizing missions. They might have been liberal to the extent that they were (somewhat) answerable to their societies and believed that they had a duty to spread liberal values. But they were empires, through and through, in terms of the relationship between the colonizers and the colonized. Discourses of civilization imprinted the entire era, producing categories of civilized states who believed that they had the responsibility to help uncivilized populations move from backwardness to modernity. In other words, the combination of the imperial context and civilizational discourses meant that there was no reason to ask the backward peoples for consent because they could not possibly know what was best for them. The great abolitionist leader William Wilberforce echoed these sentiments at a dinner in 1816 when he predicted that freed slaves would come to appreciate their protected position: 'Taught by Christianity, they will sustain with patience the suffering of their actual lot ... [and] will soon be regarded as a grateful peasantry'.[59] In general, if local populations welcomed foreigners and their reforms, so much the better, but no invitation or consent was required.

Although the backward peoples might be lacking reason and thus be incapable of knowing what was in their best interests, the humanitarian governance of the pre-World War I period contained ideologies of developmentalism that held out hope that they would become civilized.[60] What was holding them back? Liberals pointed to the absence of the right institutions, rationality, reason, and education. Evangelicals held that while natives were children of Christ and could be saved, they did not realize it because they had never had the chance to find God.[61] Liberals and missionaries might have disagreed about what the native populations were lacking, but they agreed that the civilized races, that is, white Christians, had a responsibility to improve their lot, and once they crossed an (undetermined) threshold of development, then these newly christened

[59] A Hochshild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves* (Mariner Books, San Francisco, 2006) 314.

[60] B Stanley, 'Christianity and Civilization in English Evangelical Mission Thought, 1792–1857' in B Stanley (ed), *Christian Missions and the Enlightenment* (Curzon Press, Grand Rapids, 2001) 170–71.

[61] See Stanley (n 60) 172.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

civilized peoples would be deserving of liberty and their choices could be respected.[62]

This period of a weak liberalism and a strong paternalism also helps account for the willingness to use force. During the nineteenth century many liberal imperialists argued that while force was unfortunate, it might be justified. Even liberal anti-imperialists such as JA Hobson acknowledged the possibility. Much like John Stuart Mill before him and many 'enlightened' socialists and liberals of his day, Hobson insisted that imperialism could be justified in those instances in which imperial control is used for the benefit of the world and the 'lower races'; there is a marked improvement of the welfare of the local population; and the intervening actor is not acting on its own but rather is the agent of a 'civilized humanity'.[63] Although Hobson did not advocate the use of force, he left it on the table.

The backward populations needed help, plenty of it, and in all areas of life if they were to develop the intelligence and institutions they needed to gain their independence. During this period of humanitarian governance there were very few restrictions on what colonial authorities could and could not do; indeed, if they were going to unleash civilization then very few areas were off-limits. Guided by a folk science and religious thought, the civilizing missions of the nineteenth century advocated wide-ranging interventions in religion, education, science, health and nutrition, household dynamics, politics, and economics.[64] When colonial rulers did create principles of non-interference it was largely because of a pragmatic decision to avoid particularly sensitive areas, including religion, custom, and gender, that might trigger colonial protest. In other words, if colonial authorities chose to avoid some areas, it was because of the pragmatism of rule and not the principles of respect and consent. Not all humanitarians exhibited such prudence in controversial areas of life. Missionaries, for instance, were not satisfied creating schools and health clinics, but also aimed to convert the populations to Christianity, the key path to civilization and salvation, a habit that often unnerved colonial administrators.

The West viewed its own phenomenal development as evidence of its natural superiority over the backward peoples, giving them a confidence that they knew best. The scientific and technological revolutions, according to them, were obvious indicators of their superiority, and such revolutions,

[62] For three excellent intellectual histories of the leading thinkers on the subject of the relationship between liberalism and imperialism, see Muthu (n 7), Pitts (n 7), and Mehta (n 7).

[63] See Long (n 4) 76–7.

[64] PA Varg, 'Motives in Protestant Missions, 1890–1917' (1954) 23 *Church History* 75–8.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

they further assumed, owed in no small measure to the blessings showered upon them by the Almighty.[65] The bible and the steam engine combined to create paternalizers brimming with a sense of superiority and confidence, which, in turn, informed their belief that they could and must operate without the consent or input of the local populations. Accordingly, liberals and missionaries were largely deaf to what the local populations said they needed or wanted, relying on their own judgment and conscience to guide them. And even the most horrific abuses, such as slavery and King Leopold's rapacious reign in the Belgian Congo, did not lead liberals and missionaries to imagine one obvious alternative to imperial rule – leaving them alone.

Whereas the weakly institutionalized liberalism of the nineteenth century led to a strong paternalism in humanitarian governance after World War I, the institutionalization of liberalism – evident in the rise of sovereignty, the principle of consent, and the discourse of human dignity – created a weaker form of paternalism in humanitarian governance.[66] To be sure, consent given did not mean that permission was given freely or without duress, but at the very least there was another step in the chain of interference.[67] And, there remained important exceptions to the principle of consent. A continuing strand of liberal thought holds that while consent is desirable, it is not required to intervene in illiberal societies. Emblematic of this liberally-minded position, the great political theorist John Rawls wrote that peoples should 'observe the duty of non-intervention', but only when it comes to 'well-ordered states' which have some unidentified measure of legitimacy and representativeness. Principles of non-interference do not apply to 'outlaw states', situations of grave violations of human rights, and less well-ordered states.[68] A related exception to consent in humanitarian governance is the declaration of an 'emergency'. In situations of natural and human-made disasters, when people are near death and representative institutions do not exist or break down, the presumption is that humanitarians cannot and should not wait for permission to enter.

[65] M Adas, *Machines as a Measure of Men: Science, Technology, and Ideologies of Western Dominance* (Cornell University Press, Ithaca, 1990).

[66] E Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford University Press, New York, 2009); GH Fox, *Humanitarian Occupation* (Cambridge University Press, New York, 2008) 1–16.

[67] See Fox (n 66) 59–69.

[68] J Rawls, *The Law of the Peoples* (Harvard University Press, Cambridge, 2001). For a discussion of this Rawlsian-centred analysis and the general question of interference in post-war situations, see S Recchia, 'Just and Unjust War Reconstruction: Just How Much Interference Can Be Justified?' (2009) 23 *Ethics and International Affairs* 165–87.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

International actors continue to play an important role in trying to produce 'well-ordered states'. Post-World War I developmentalist ideologies resembled the civilizing discourses of the nineteenth century and operated with similar conceptions of moral progress.[69] Perhaps the biggest change from the era of colonialism to the era of sovereign states is that paternalism became institutionalized and internationalized in large international and non-governmental organizations which now operated in the name of humanity.[70] In this respect, a line can be drawn from the League of Nations and its mandatory system, to the United Nations and its trusteeship system, to peacekeeping and peace building, to doctrines like the Responsibility to Protect. There is, of course, one obvious and non-trivial difference between the earlier civilizing missions and these more enlightened campaigns to create well-ordered states: those who were doing the ordering were expected to get the consent of those who were about to be ordered.

The institutionalization of liberalism has arguably made the use of force harder to justify except in instances of extreme threats to life, limb, and security.[71] Moreover, when force is deployed it requires both all kinds of justificatory rhetoric that often dovetails with the kinds of demands raised by liberal political theorists, and multilateral approval. And, when force is used, there are more restrictions on its deployment and an expectation that civilians, because they are to benefit from the intervention, should not be needlessly harmed. Although physical force is no longer as easily legitimated or as frequently used, the more readily available and exercised forms of influence work through institutions and discourses.

The institutionalization of liberalism also has narrowed the zone of acceptable interference.[72] The rise of liberal principles, most vividly evident

[69] However, Marxist ideologies also contained their own strands of developmentalism.

[70] See F Cooper, 'Modernizing Bureaucrats, Backward Africans, and the Development Concept' in F Cooper and R Packard (eds), *International Development and the Social Sciences* (University of California Press, Berkeley, 1998); M Duffield, *Development, Security, and Unending War* (Polity Press, Cambridge, 2007); MN Barnett (n 2); W Anderson, *Colonial Pathologies: American Tropical Medicine, Race, and Hygiene in the Philippines* (Duke University Press, Durham, 2006); MJ Connelly, *Fatal Misconception: The Struggle to Control World Population* (Harvard University Press, Cambridge, 2008); M Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press, Princeton, 2008); J Morefield, *Covenants Without Swords: Idealist Liberalism and the Spirit of Empire* (Princeton University Press, Princeton, 2005) 108–12.

[71] See M Finnemore, *The Purpose of Force* (Cornell University Press, Ithaca, 2004).

[72] See, for instance, Stefano Recchia (n 68); K Lidén, 'Can Self-Determination Be Promoted through Political Interference? The Principle of Representative Governance' unpublished manuscript (December 2011).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

in the globalization of sovereignty, means that outside parties require permission before becoming involved in domestic matters and states are less willing to give external actors carte blanche. Moreover, because humanitarian governance often hitches its authority to being 'apolitical', the 'no-go' areas have widened considerably.[73] The rise of liberal peacebuilding provides something of an exception that demonstrates the rule. Both the civilizing missions of the nineteenth century and the peacebuilding operations of today imagine transforming nearly all aspects of state, society, and economy in the name of progress.[74] Yet unlike the imperial presumption of interference without consent, contemporary peace-building operations cite law, negotiations, and agreements with the domestic authorities in order to legitimate their areas of involvement; such negotiations and references can have a restraining effect on what external interveners believe that they can do without running into trouble.[75]

Although faith-based paternalism continues to exist in humanitarian governance, present in religious and secular discourses of humanity, evidence-based paternalism has ascended.[76] Liberalism, pushed along by processes of rationalization, advanced the rule of the experts on the global scene; missionaries and colonial administrators departed the colonies, replaced by a growing number of experts in international and non-governmental organizations that governed the newly decolonized world.[77] Hands-on experience began to matter less than advanced training and professional credentials in the creation of knowledge communities. Even the relief sector, once defined by volunteerism and welcoming to all those

[73] RO Keohane, 'Political Authority after Intervention: Gradations in Sovereignty' in JL Holzgrefe and RO Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, New York, 2003) 275–98; S Krasner, 'The Case for Shared Sovereignty'(2005) 16 *Journal of Democracy* 69–83; S Krasner, 'Sharing Sovereignty: New Institutions for Collapsed and Failing States' (2004) 29 *International Security* 85–120; and JD Fearon and DD Laitin, 'Neotrusteeship and the Problem of Weak States' (2004) 28 *International Security* 5–43.

[74] Søbjerg (n 36) 479.

[75] On liberal peacebuilding see, R Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge University Press, Cambridge, 2004); RJ Ponzio, 'Transforming Political Authority: UN Democratic Peacebuilding in Afghanistan' (2007) 13 *Global Governance* 255–75; DC Chandler, *Empire in Denial: The Politics of State-Building* (Pluto Press, London, 2006); and M Duffield (n 20).

[76] For a compatible observation, see McCarthy (n 4) 181; J Morefield (n 70).

[77] KD Watenpaugh, 'The League of Nations' Rescue of Armenian Genocide Survivors and the Making of Modern Humanitarianism, 1920–1927' (2010) 115 *American Historical Review* 1315–39; T Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (University of California Press, Berkeley, 2002); MN Barnett and M Finnemore (n 41).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

with a good heart, has become increasingly dominated by those with advanced degrees and possessors of esoteric knowledge.[78] The post-war paternalists are not superior because they are closer to God, come from the right Western country, or have the right skin colour; instead, it is because they have the right kind of training, education, and knowledge.

Perhaps the most important change in the practice of paternalism in humanitarian governance is the increasing expectation that there exist both mechanisms of accountability to hold the paternalist in check and mechanisms of participation in order to give those affected by the interference the ability to have a say over the decisions that impact their lives. Until the late 1980s accountability and partnership were hardly discussed. A crisis of legitimacy was largely responsible for changing the conversation. The legitimacy of various forms of assistance and aid were being questioned because of their lack of effectiveness, and one explanation for these policy failures was the failure to integrate the views of marginalized populations. The legitimacy crisis also owed to the accusation that these top-heavy interventions were lacking a democratic spirit. These policy and normative critiques help explain the ascendance of the discourse of participation and the rising demand for accountability across different areas of humanitarian governance, from development, to human rights, to post-conflict peace-building, to emergency relief.[79] Whereas the transitional administrations of the pre-World War II period had few if any mechanisms of accountability or vehicles for local participation, the post-Cold War administrations and operations increasingly standardize such constraints and opportunities.[80]

Although some observers applaud this growing interest in accountability and participation as an important step in living the liberal principles that

[78] P Walker, K Hein, C Russ, G Bertleff, and D Caspersz, 'A Blueprint for Professionalizing Humanitarian Assistance' (2010) 29 *Health Affairs* 2223–30.

[79] A Cornwall and K Brock, 'What do Buzzwords do for Development Policy? A Critical Look at "Participation", "Empowerment", and "Poverty Reduction"' (2005) 26 *Third World Quarterly* 1043–60; A Wennmann, 'Aid Effectiveness between "Top-Down" and "Bottom-up" Statebuilding', *CCDP Working Paper*, Graduate Institute, Geneva, 2010. On peace-building, see CE Ford and B Oppenheim, 'Neotrusteeship or Mistrusteeship? The "Authority Creep" Dilemma in United Nations Transitional Administration' (2008) 41 *Vanderbilt Journal of Transnational Law* 55–105.

[80] R MacGinty, 'Hybrid Peace: The Interaction between Top-Down and Bottom-Up Peace' (2010) 41 *Security Dialogue* 391–412; S Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (Oxford University Press, New York, 2004); OP Richmond, *A Post-Liberal Peace* (Routledge Press, New York, 2012); C Sriram, O Martin-Ortega, and J Herman, 'Strategies of Peacebuilding and Accountability: An Assessment of Contemporary Trends in Practice', paper presented at the annual meeting of the International Studies Association, New York, 15 February 2009.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

underpin many external interventions, for others it has only exposed the limits of the current reforms. Participation has an elusive set of meanings. For some interveners, participation means capacity building and transferring knowledge to local populations; for others it means including the local populations in the implementation, but not the formulation, of decision making. The critique that these forms of participation are 'shallow' has led liberal and critical theorists to argue in favour of 'strong' participation, which would mean: permitting local populations to define for themselves what counts as suffering; building genuinely dialogic and democratic institutions to incorporate the views of the local populations; allowing for the possibility that such views might lead to practices that are not necessarily consistent with liberal principles (for instance, when matters of religion become salient); and opening the door to the possibility that the attitudes and visions of the paternalizer might change as a consequence of their engagement with local populations.[81] A similar set of concerns accompanies the rise of accountability. The aid community has introduced various accountability mechanisms, but they almost always favour the donors over the recipients. Although there is widespread agreement that these principles of participation are often more cosmetic than real, their mere presence and the very need of external interveners to refer to them is symbolic of an important change in the form of paternalism in contemporary humanitarian governance.

Paternalism is an enduring feature of international affairs. It is present in some dimension whenever one actor justifies its interference in the life of another on the grounds that such interference is for his or her own good. It permeates humanitarian governance. Yet the institutionalization of global liberalism has altered the patterns and shaped the acceptable practices of the paternalism in humanitarian governance. There is a difference in the kind of paternalism associated with the humanitarian governance of the nineteenth century and that associated with contemporary humanitarian governance, a change that owes much to the spread and deepening of liberal principles of autonomy, choice, and consent. The institutionalization of global liberalism might not have dampened the drive to interfere in the lives of others for their own good, but a major difference between the humanitarian governance of the past and the present is that there are more built-in restraints. Still, it is important to

[81] D Scott, 'The Traditions of Historical Others' (2012) 8 *Gender, Race, and Philosophy*; and B Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge University Press, New York, 2003).

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

remember that the rise of liberalism has not ended or discredited paternalism – instead, it has shaped its permissible forms.

Long live paternalism?

Two lines of normative inquiry have emerged in the study of humanitarian governance. One celebrates its evolution because it substitutes the realist-inspired portrait of a world locked into a never-ending battleground of violence between states with a more hopeful image of discourses of humanity creating a kinder and more compassionate world. The other, though, sees such discourses of humanity as substituting fairly explicit and visible forms of power with more subtle and perhaps more effective regimes of control. In other words, for some humanitarian governance suggests an uplifting humanization of politics, while for others it suggests a menacing politicization of humanity. The concept of paternalism exposes the artificiality of this binary view of humanitarian governance, and reminds those who see humanitarian governance as a sign of progress that they must also take into account overt and subtle forms of power, and alerts those who see humanitarian governance as nothing more than a confidence trick that there are moments when interference by the powerful might be defensible.

If so, then, paternalism might have its time and place. Thanks in large part to liberal political theory, the prevailing wisdom is that paternalism is a sin. Those with modern, liberal sensibilities, including the people and organizations that want to improve the lives of others, cower at the prospects of being accused of paternalism. Indeed, the argument against paternalism is so strong that those who care little for the circumstances of others, except when they are located in strategic lands, use sovereignty and anti-paternalistic rhetoric to argue against interference. In other words, anti-paternalist discourse can give a normative shine to indifference.[82] The inverse, though, might have an element of truth: an ethics of care might very well come with hints of paternalism. It is easy to respect someone's autonomy and choices when you don't care about them. It is much more difficult to watch your loved ones make decisions that you believe are not in their best interests. What is the greater sin, the occasional act of paternalism or the pledge of indifference? To state the case more positively, various political theories have a kind word or two for acts of paternalism.

[82] See, for instance, JJ Kirkpatrick, 'Global Paternalism: The UN and the New International Regulatory Order' (1983) *Regulation* 17–22.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

The very same liberal political theory that condemns paternalism also condones it under certain conditions. Critical theorists, notwithstanding their wariness of all forms of power, also imagine interference in the name of human emancipation. In this spirit, Richard Rorty challenged that while we want moral progress to burst up from below it often requires condescension from the top.[83]

If paternalism is both a moral danger and blessing, then the challenge is to reconcile the 'general repugnance for paternalism with the seeming reasonableness of some apparently paternalistic regulations'.[84] Liberal political theory and critical theory offer three insights for thinking about that reconciliation. The first is to be explicit about the outcomes that are valued and from where they originate. Most paternalistic thinking operates against a benchmark, sometimes transcendental and sometimes developmentalist.[85] This is certainly true of liberal and critical theory, which have fairly well established standards for judging which outcome is more desirable and why.[86] These moral benchmarks need to be made explicit and justified in relationship to alternative metrics – and whether and how they are consistent with the values of those who are supposed to benefit from the intervention.

The second insight is, in fact, a warning: no matter how well intended, paternalism can descend into an illiberal rule.[87] Paternalism, obviously, gives the paternalist a license to discount or disregard the views of those they intend to help; this sense of entitlement can owe either to a derogatory view of the people or a fear that respecting the 'people' means privileging those with power. For instance, those who staff peace-building operations sometimes argue that they cannot practice the democracy that they preach. War-torn communities do not have the institutions to debate and aggregate the preferences of all members of society; the result is that those with power continue to have voice, while those without are voiceless. If peace builders want to do more than reproduce the existing illiberal, anti-democratic order, then they will have to use their discretion to try and

[83] R Rorty, *Truth and Progress: Philosophical Papers* (Cambridge University Press, New York, 1998) 183. Also see HM Kinsella, *The Image Before the Weapon* (Cornell University Press, Ithaca, 2011) 45, where she attributes advances in international humanitarian law to gendered-notions of protection.

[84] J Feinberg, *Harm to Self* (Oxford University Press, New York, 1986) 25; cited in P de Marnefee, 'Avoiding Paternalism' (2006) 34 *Philosophy and Public Affairs* 69–94.

[85] McCarthy (n 4) 183.

[86] R Price, 'Moral Limit and Possibility in World Politics' (2008) 62 *International Organization* 191–220.

[87] McCarthy (n 4) 189.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

incorporate what they believe are the wishes of the silent majority and use their power to overcome any resistance from the existing elites. How can peace builders and other international paternalists further an emancipatory politics without sliding into despotism, regardless of how well intentioned? Certainly some mechanisms of accountability, including giving a public account, is important.[88] But liberal political theory also contains a strand of critique that advises the powerful to constantly question whether and how he knows what is best for others. In a similar spirit, much of critical theory recommends a deferral of certainty.[89]

Third, while it can be difficult to separate outcomes from process, such distinctions must be made. As Denis Thompson argues, 'To justify paternalism, we must identify some impairment that can be described independently of the end or good an individual chooses ... We should look for impairments that arise from social structures or affect large numbers of people in similar ways'.[90] Along these lines, Sigal Ben-Porath has argued that three other conditions are necessary for meaningful choice: autonomy needs to be developed and exercised, which include an awareness of one's options and a capacity to exercise them; freedom that is embedded in an institutional ethos and political structure that enables rights; and opportunity, which is best captured by TH Marshall's concept of social rights. If these three conditions are needed for meaningful choice, then we should be less concerned with individual choice and more concerned with the institutional environment that structures choice.

Love it or hate it, paternalism is an enduring feature of global life. It permeates the discourses, practices, and institutions that govern the past, present, and future world orders. Its presence must be accounted for when analysing and assessing the constitution of global order, and especially those features that intending to improve the world's condition. Although paternalism is a constant feature of international affairs, its forms, practices and tensions have altered over the years, at times creating new calls to intervene in the name of the greater good, and at other times creating new constraints on what do-gooders can do. How paternalism has structured world order, and particularly the relationship between the valiant and the victims of the world, needs to be understood on its own terms, suspending judgment in favour of empirical analysis. Yet if paternalism is an enduring feature of international life, there are probably reasons, some of them highly commendable, why it continues to exist and why nearly all

[88] See Chesterman (n 80).
[89] See McCarthy (n 4) 189.
[90] See Thompson (n 16) 156.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press

emancipatory-minded reformers cannot live with it and cannot live without it.

Acknowledgements

This argument has evolved considerably as a consequence of constructive criticisms over the years. I benefitted greatly from the reactions of participants at talks at the University of Texas, University of California-Irvine, George Washington University, Georgetown University, Graduate Institute of International Studies, University of Minnesota, School of Oriental and African Studies, University of Exeter, Norwegian Institute of International Affairs (NUPI), University of California, Berkeley, the University of British Columbia, and the 2012 annual meetings of the International Studies Association. Among the many who also have given me individual comments, I want to thank Deborah Avant, Peter Trubowitz, Alex Wendt, Duncan Snidal, Joe Soss, David Sylvan, Jennifer Brinkerhoff, Ron Krebs, Bud Duvall, Angelos Sepos, John Hobson, David Kennedy, and the reviewers and editors of *Global Constitutionalism*.

https://doi.org/10.1017/S2045381712000135 Published online by Cambridge University Press