

Debate

Can paternalism be modernised?

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Author's abstract

The contention that paternalism can be modernised in such a way as to avoid the usual criticisms is examined and dismissed. The alleged 'modernisation' consists simply in going through the motions of achieving the patient's free consent, while leaving the ultimate decision to the physician. Paternalism in this form is no better than the more old-fashioned variety, since it still takes away from patients the fundamental human right to make decisions about their own fate.

In his article, *Paternalism modernised*, in the December 1985 issue of this journal (1), Professor Gary B Weiss argues that critics of medical paternalism base their objections on an outmoded conception of what the practice of paternalism involves. Changes in paternalistic practice, to give greater weight to patients' values, mean in his opinion that a much stronger case can now be made for the paternalistic model. Paternalism, he argues, is perfectly compatible with, for instance, informing patients in certain circumstances of their diagnosis, with involving patients actively in their own treatment, with taking account of differences between individual patients, and with taking some account of the patient's own values and interests. To criticise physicians for failing to do these things is therefore not to criticise them for being paternalistic, but for having an inadequate understanding of what paternalism requires. Equally, changes in medical practice which have resulted in increased information being given to patients and increased involvement of patients in their own treatment are not necessarily moves away from medical paternalism.

All this is true and worth saying. In so far as philosophical and other critics label such things as the failure to inform cancer patients of their diagnosis as 'paternalism' and base their criticism of paternalism on such examples, they betray confusion and their objections lose force. The guiding principle of paternalism gives no instructions about the amount of

information to be given to patients or the extent of patient involvement in treatment: that principle is, as Weiss rightly says, 'that the physician decides what is best for the patient and tries to follow that course of action'. If we are going to criticise paternalism, it is this principle which needs to be examined.

The modern paternalist, according to Weiss, in deciding what is best for the patient, takes account of the patient's values and interests as well as the physician's own. He does not, however, allow the patient's values and interests to be ultimately decisive if they conflict with his own, since this would be to abandon the principle of paternalism. Weiss implicitly acknowledges this by saying that, in paternalism, 'patient's freedom is lessened for the patient's ultimate benefit'. If the patient's freedom is lessened, then it cannot be the patient's values and desires which determine in the last resort what will actually happen to that patient. On the other hand, if the patient's values and desires are allowed to be decisive only when they are in harmony with the physician's view of what is best, we might wonder why they should be taken into account at all. The only reason which Weiss himself appears to suggest is that it may assist in patient control to *look* as though one is taking the patient's values and wishes into account. Thus he writes: 'If the patient will do better believing he is in control the physician should encourage this belief and indirectly facilitate the right choice of action'. The 'right' choice is presumably the one the physician wants the patient to make, so that this belief is more or less illusory: the patient is not really in control, but is being subtly manipulated by the physician by being given the feeling of being in control. This, however, obliterates Weiss's distinction between paternalism and authoritarianism. 'Lessening freedom for the patient's ultimate benefit' does not seem any different from 'lessening freedom for the physician's power'.

This is the crucial issue: the debate between the principle of paternalism and the principle of patient autonomy is precisely a debate about power. Who should have the final say in decisions about treatment: the physician or the patient? Weiss, to his credit, recognises this towards the end of his article, and presents a number of arguments in favour of paternalism seen in this way. First, he says, 'many

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patients choose immediate gratification over possible long-term benefits, even though they realise that the latter course is better for them'. The example he cites is that of a young man who might choose to avoid the severe nausea associated with chemotherapy even if that was necessary to cure his testicular cancer. 'This situation', Weiss goes on, 'requires the physician's encouraging, or, if necessary, coercing the patient to complete the therapy'. This seems to me to be an extraordinary statement. In what sense is the physician morally 'required' to *coerce* the patient in such a situation? The principle of beneficence might well be held to require the physician to make every effort to convince the young man of the need for such treatment and to take seriously the consequences to himself of refusing it. But that principle could not 'require' the physician to coerce someone who was a free moral agent and who must therefore be allowed to make such ultimate decisions about his life for himself. The only possible cases in which that might be allowable would be those of a very small child, not yet old enough to be able to decide such questions (the whole point of the idea of 'paternalism', after all, is that it involves treating adults as if they were small children, still in need of parental guidance); or, more doubtfully, those psychiatric patients whose condition might be held to prevent their making genuinely autonomous decisions about such questions (what is more doubtful about this, of course, arises from the suspicion that there may not be any such mental conditions). At all events, it is unlikely that a mentally normal adult human being would have the kind of preferences suggested by Weiss's example: and, if he did, it seems perfectly clear that, if persuasion failed, the physician would be morally obliged to let him go to Hell in his own way. However foolish the physician may think the choices of a mentally normal adult, he is most certainly not entitled to override them. He is in exactly the same position from a moral point of view as a garage mechanic who has pointed out to me the dangerous state of my car's brakes and their urgent need of repair, and whose advice I have rejected because, say, it would be inconvenient for me to be without my car for the day or two required to repair them. If we do not think the garage mechanic would be morally entitled to take my car in without my knowledge and to do the repair without my consent, then we should no more think that the physician is entitled to impose treatment on the young man against his will.

Weiss's second argument is that physicians 'are trained in problem-solving', whereas patients are not. The physician may therefore be in a better position to decide what is best for the patient than the patient himself (even in terms of the patient's own values). In some senses this is patently correct, but it lends no support to paternalism. The physician is a trained person, with a knowledge of medical science which the patient is unlikely to possess (unless the patient is himself a physician or an expert in some relevant field of science). In this sense, *only* the physician can 'decide

what is best' for that patient in his or her present condition: that is, only the physician is in a position to be able to decide on the most effective treatment (from the point of view of curing or relieving the condition), the chances of success of different treatments, the possible side-effects of different treatments, and so on. It does not follow, however, that the physician is the one to decide what is best in the sense of deciding whether, for example, the possibility of a cure by means of a certain course of treatment is sufficient to justify the unpleasantness of any side-effects which it may entail. It is the *patient's* life or health which is at stake, not the physician's; and it is the *patient*, not the physician, who will have to suffer the side-effects. So it must be the patient, not the physician, who must be allowed to decide whether the game is worth the candle. It is not paternalistic, nor is it objectionable, for the physician to make every effort to explain what is involved in various modes of treatment in terms which are as intelligible to the patient as possible. But it is both paternalistic and objectionable for the physician to make the patient's decisions for him, even if only in the sense of putting pressure on the patient to decide in a certain way by presenting what is essentially a value judgement as justified by medical expertise. Once again, it might well be that the patient's decision would be considered foolish by one committed, as the physician must be, to certain conceptions of what is medically desirable: but it must be the right of every grown human being to be foolish if that is what he or she chooses to be.

The final argument for paternalism presented by Weiss is that 'the physician is likely to be more objective about the patient than the patient will be about himself'. The difficulty here is to know what, if anything, this claim means. The physician is likely to know better than the patient what the patient's chances of survival or recovery are, and it may well be that the patient, being more emotionally involved since it is his own fate which is in question, will be either more optimistic or more pessimistic about those chances than the facts would suggest. In this sense, perhaps, the physician is likely to be more objective than the patient. But if he is, then it is his responsibility to correct the patient's over-optimism or excessive pessimism, so that the patient can make a better-based decision. So far from being an argument for paternalism, this is an argument for autonomy: the patient must still make the decision, and the physician's responsibility is simply to provide the best possible factual basis for that decision. On the other hand, if the physician is supposed to be 'more objective' than the patient in the sense of having a better insight into the objective goodness or badness of certain conditions, then Weiss's argument is based on two highly questionable premises: first, that there are objective values (for example that prolonging life by painful methods of treatment is objectively better than dying); and secondly, that members of the medical profession, because of their training and knowledge,

have better insight into these objective values than lay people. Both of these doctrines, and especially the latter, would seem not only questionable but untenable to many of us, thus weakening the force of Weiss's third argument.

We have now reached the heart of the argument against any form of paternalism, however 'modernised'. Medical paternalism is the doctrine, first, that 'doctor knows best', not only about technical and scientific matters, but about what is 'good for' the patient; and, secondly, that this justifies the physician in making the patient's decisions for him. Paternalism is to be rejected, both because the question of what is good for or bad for a particular individual is not an objective question, but one to be decided only by the individual himself or herself; and because no one else is therefore entitled to make my decisions on such questions for me. If I would sooner die rather than submit to the severe nausea induced by chemotherapy, then the physician, no matter how foolish he may think that decision, is morally bound to accept it. Medicine exists to care for individuals, and therefore presupposes the value of individuality and human autonomy. To advocate paternalism is in effect to say that patients exist for the sake of medicine, rather than that medicine exists for the sake of patients, since paternalism rests on the claim that the goods which medicine pursues are determined by the medical profession rather than by the patients who make use of their services. This is as true of Weiss's 'modernised'

paternalism as of the old-fashioned variety. The greater concern with ascertaining the patient's values and involving patients in their own treatment which seem to be the hallmarks of this modernised paternalism are, if this is genuine paternalism, merely a sham, since it is still the physician who makes the ultimate decisions about the patient's fate. On the other hand, if they are not a sham but a genuine concession to patient autonomy, then what Weiss is advocating is not the modernisation but the abandonment of medical paternalism.

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References

- (1) Weiss G B. Paternalism modernised. *Journal of medical ethics* 1985; 11: 184-187.

Editor's note

A response from Dr Weiss has been invited and is expected in due course.

(See also articles beginning pages 127 and 131)

(continued from page 126)

- (13) Weiss G B. Paternalism modernised *Journal of medical ethics* 1985; 11: 184-187.
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