

We will start
at 2 p.m. (EST)

Duration : **60 mins**
(+30 mins of
optional discussion)

How Can We (and Why Should We) Analyze the Ethics of Paternalistic Policies in Public Health?

Webinar | February 19, 2019

Teleconference:
1-866-827-6872
Code: 1952702#

Maxime Plante and Michael Keeling
National Collaborating Centre
for Healthy Public Policy



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To ask questions during the presentation

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Declaration of real or potential conflicts of interest

Presenters:
Maxime Plante and Michael Keeling



I have no real or potential conflict of interest related to the material that is being presented today.



The National Collaborating Centres for Public Health




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National Collaborating Centre for Healthy Public Policy (NCCHPP)

Our mandate

- Support public health actors in their efforts to promote healthy public policies

Our areas of expertise

- The effects of public policies on health
- Generating and using knowledge about policies
- Intersectoral actors and mechanisms
- Strategies to influence policy making



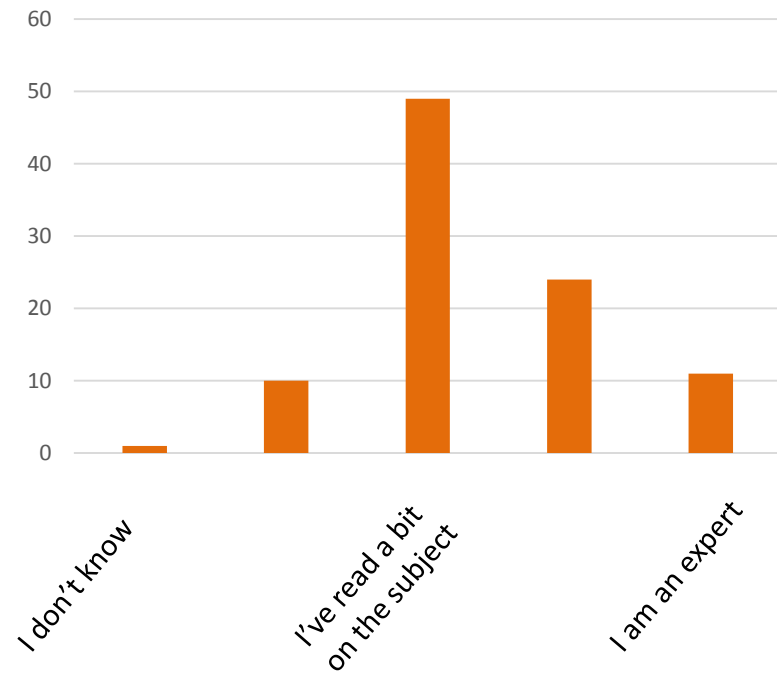
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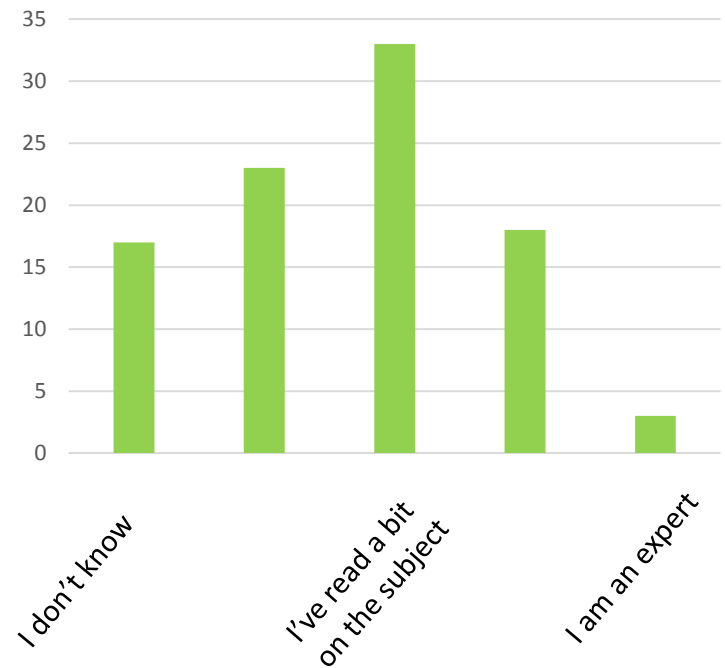
What you said...

- Poll results, briefly:

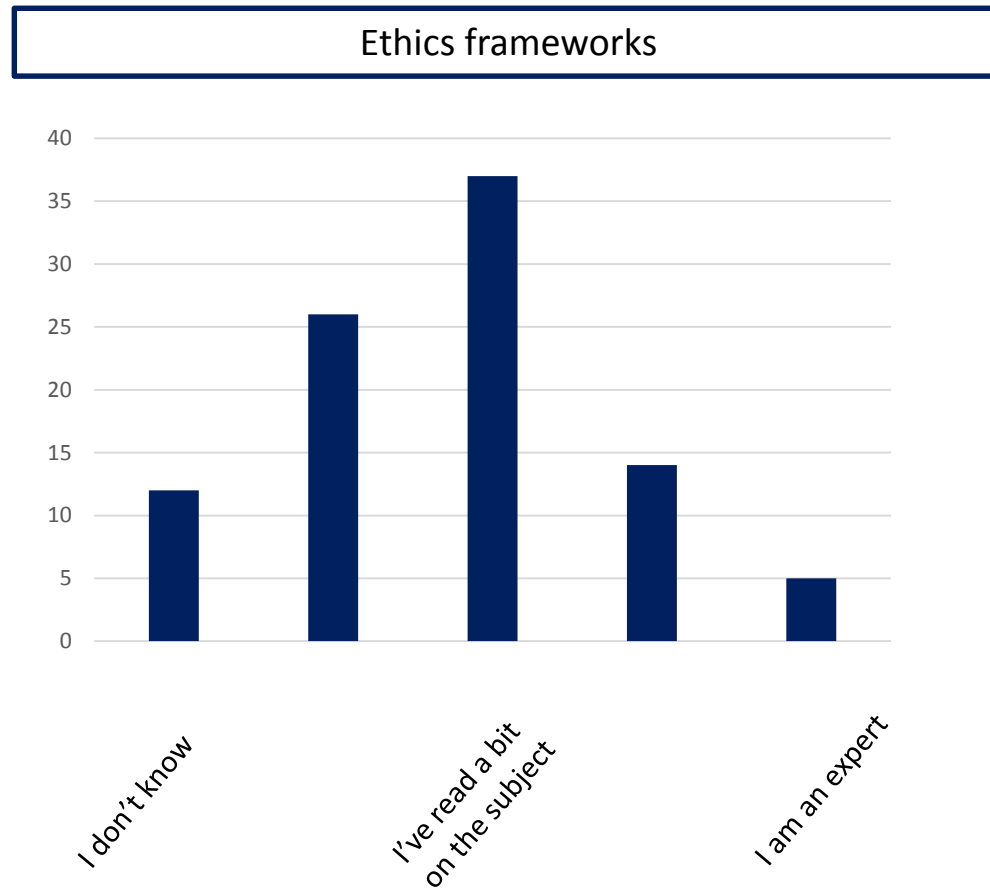
Public health ethics



Paternalism



What you said ... (cont.)



Outline

1st Part

Paternalism in public health: definition, relevance, issues

2nd Part

Approach and tools for the ethical analysis of paternalistic policies



Learning objectives

By the end of this webinar, participants will be ready to...

- Identify the main ethical issues associated with paternalism in public health;
- Distinguish different types of paternalism and assess the ethical burden that they impose;
- Use a clear and nuanced approach to support ethical deliberations on paternalistic policies in public health.

Paternalism: a definition

“Paternalism is the **interference** of a state or an individual with another person, **against their will**, and defended or motivated by a claim that the person interfered with will **be better off or protected from harm.**”

(Dworkin, 2017)



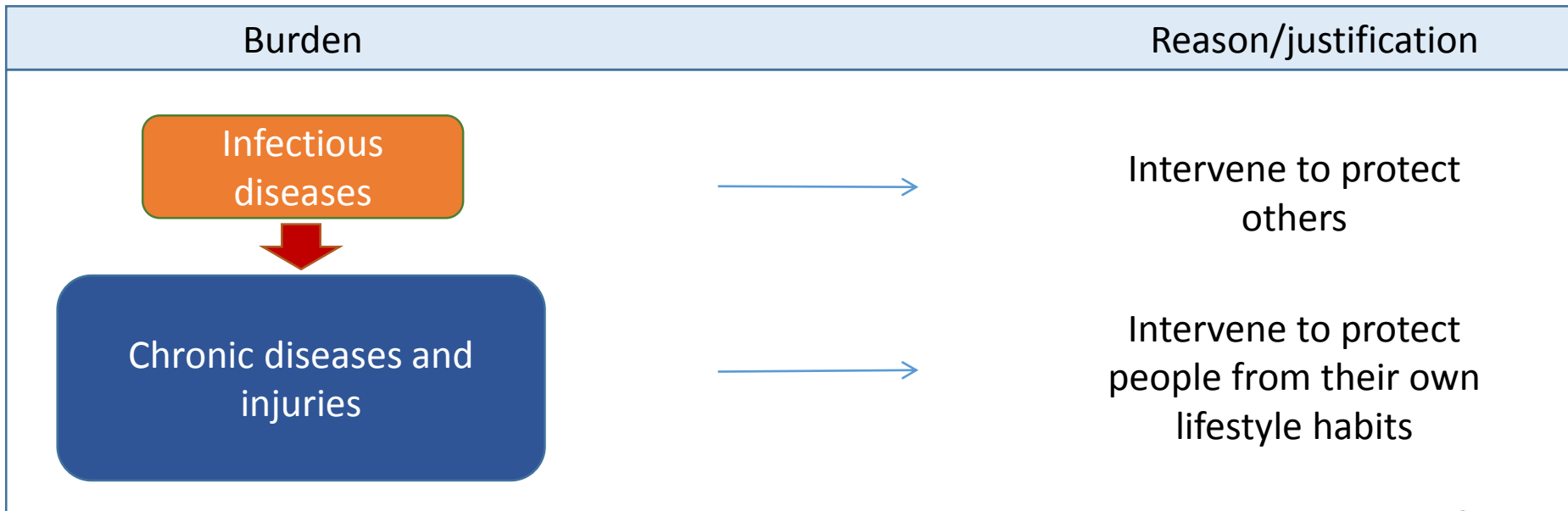
Examples of public health policies that have been called paternalistic

- Prohibition of the sale of cigarettes, alcohol, cannabis, etc. to minors.
- Mandatory seat belt use in cars
- Mandatory use of helmets for motorcycling
- Prohibition of swimming at public beaches in the absence of a lifeguard
- Limits on fast food restaurants around schools
- Taxes on sugary drinks, alcohol, cigarettes, etc.
- Fluoridation of drinking water

Paternalism in PH: relevance and issues (1)

Two reasons why we might be attracted to paternalistic policies in public health (PH):

1- Epidemiological shift (wealthy countries)



Paternalism in PH: relevance and issues (2)

Two reasons why we might be attracted to paternalistic policies in PH:

2 – they work better than ordinary interventions?

More effective?

- There are limits to what information campaigns can achieve

More efficient?

- Limiting options can be less costly

More equitable?

- Freedom of choice in the free market leads to health inequalities

Scenario (1)

“Scientific studies have shown that consuming sugary beverages poses a major risk in terms of chronic diseases.

In order to improve population health, the government has consequently decided to ban the sale of sugary beverages across the province.”

Are you in favour of this policy?



Scenario (2)

“Scientific studies have shown that consuming red wine poses a major risk in terms of several serious illnesses (cancer, etc.). In order to improve population health, the government has consequently decided to ban the sale of red wine across the province.”

Are you in favour of this policy?



Dangers and issues associated with paternalistic policies in public health

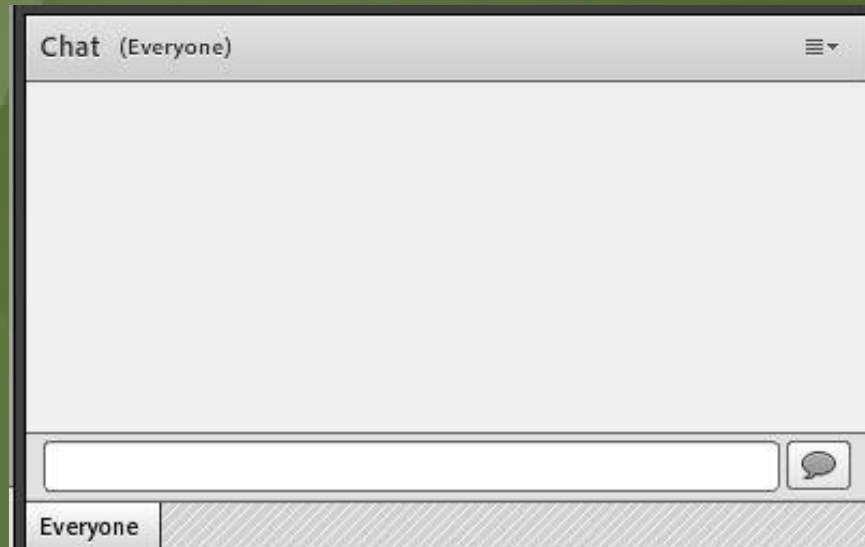
Paternalistic policies: a double-edged sword!

Policies that can conflict with the freedom and autonomy of individuals;

Interventions that raise the question of the reasonable limits of state actions.

Questions?

Please use the chat box



2nd Part

Approach and tools for the ethical analysis of paternalistic policies

3 steps:

1. Determine if the policy is actually paternalistic;
2. Identify the type(s) of paternalism in question and its (their) ethical burden (i.e., how problematic they are);
3. Expand your ethical analysis of the paternalistic policy.



Step 1

Determine if the policy is actually paternalistic

Goal: take a critical view and challenge status quo opinions

OPINION

The Liberals' new paternity leave is classic paternalism

The Globe and Mail,
February 28th, 2018

Is the sugar tax an example of the nanny state going too far?

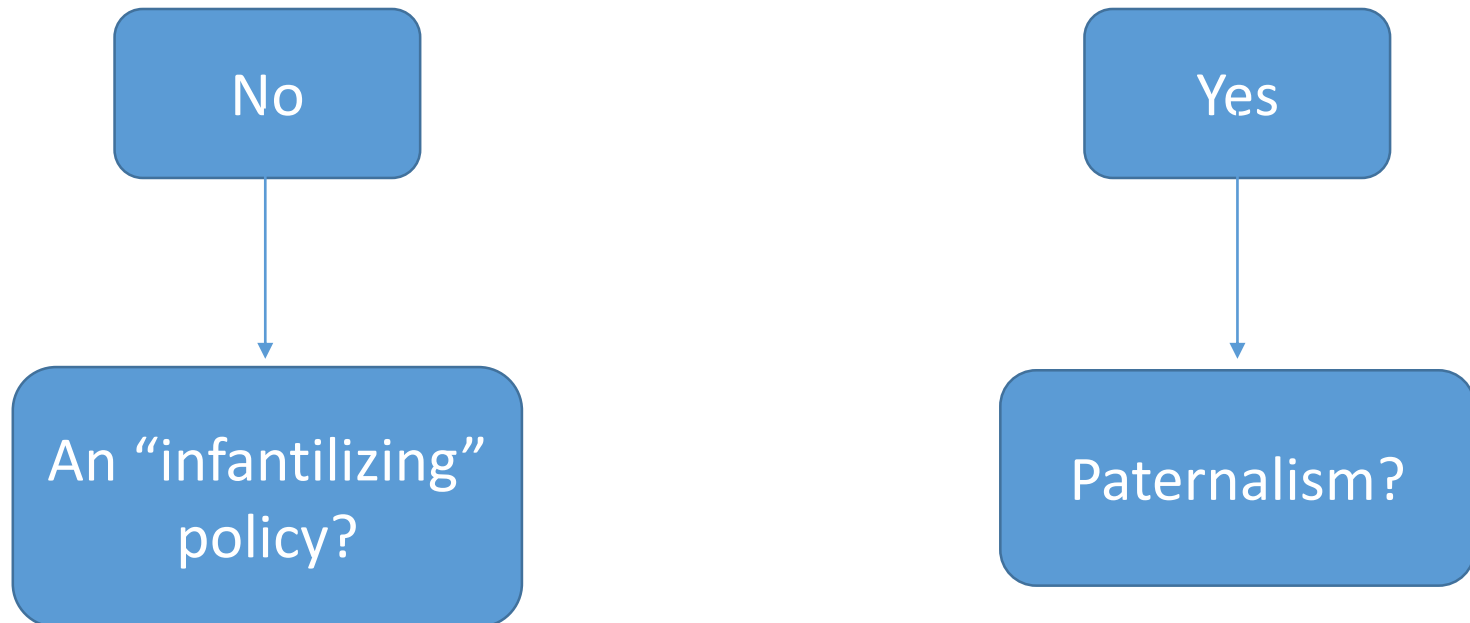
Financial Times, March
19th, 2016

We're being softened up for more paternalistic welfare policy. We must resist

The Guardian, April
24th, 2017

Determine if the policy is actually paternalistic (2)

Key question: Does the policy interfere with the freedom or autonomy of the people in question?



The harm principle

“...the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is **to prevent harm to others**. His own good, either physical or moral, is not a sufficient warrant.”

J. S. Mill, *On Liberty* [1859] (2001)

Key question: Does the policy interfere with someone for his or her own good or for the good of others?



Paternalism or the harm principle?

A public health case study

Legislative proposal on the sale of cigarettes (State of Hawaii, January 2019)

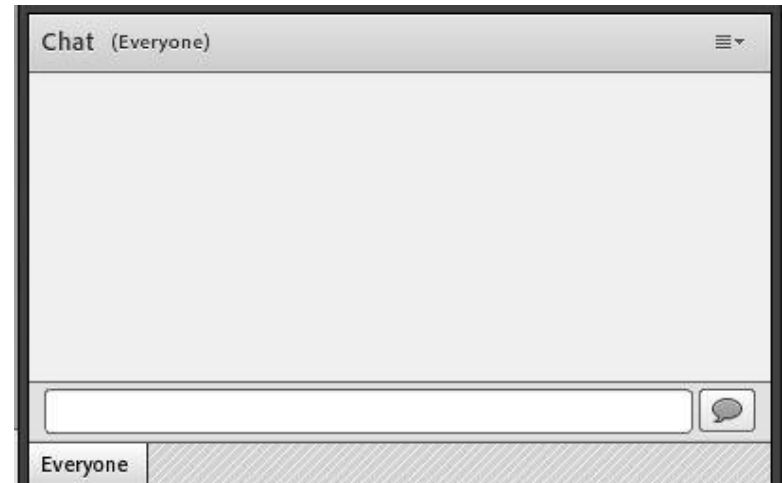
The purpose of this proposed law is to prohibit the sale of cigarettes by progressively, over five years, increasing the minimum age for legally purchasing them. Effectively, the law is intended to end the legal sale of cigarettes. The state justifies this intervention by appealing to its responsibility to save lives. “If we don’t ban cigarettes, we are killing people” (Rep. Richard Creagan).

<https://www.hawaiitribune-herald.com/2019/02/03/hawaii-news/creagan-proposes-cigarette-ban/>

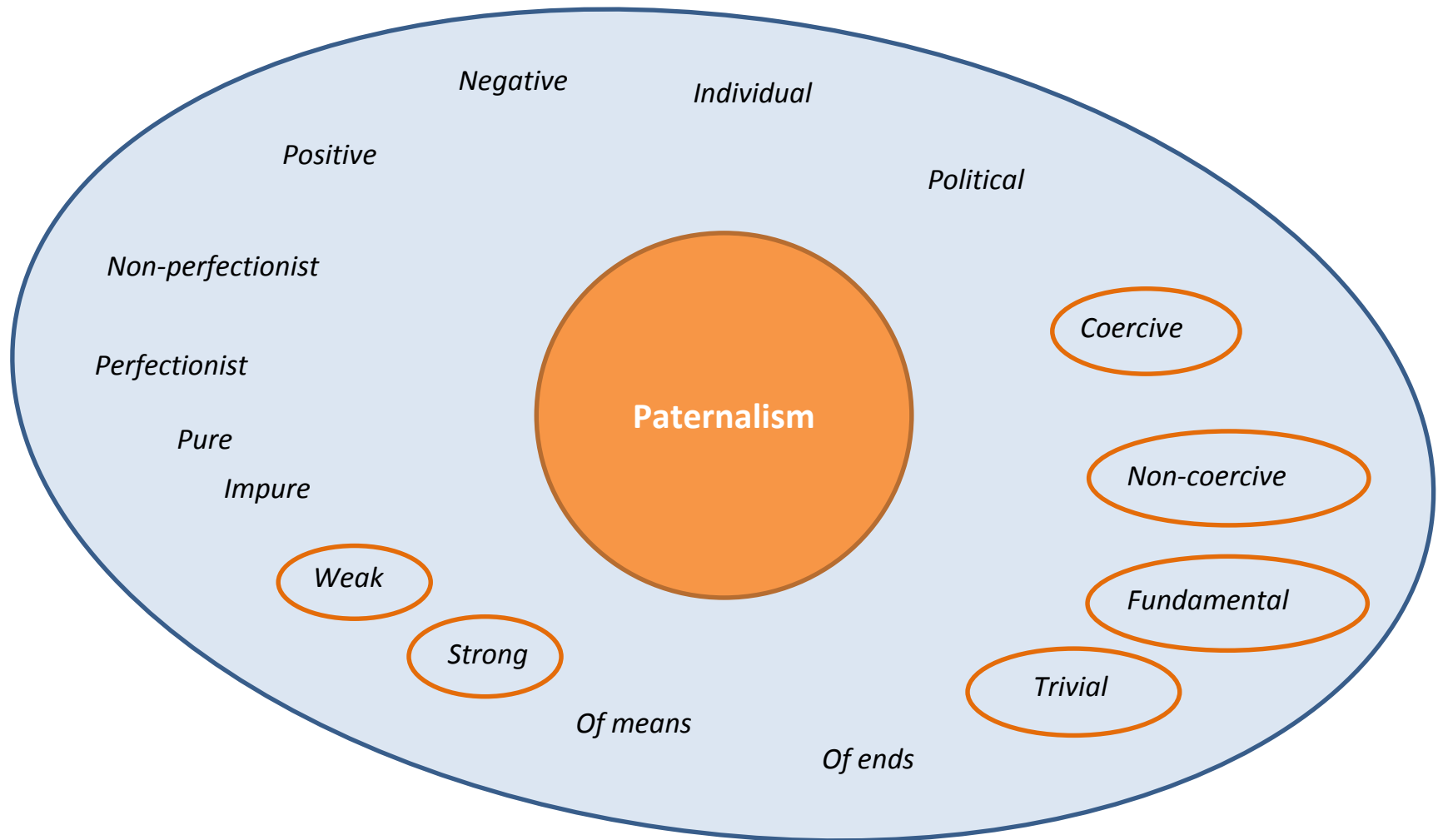
Paternalism or the harm principle?

A public health case study

Do you think that this proposed law is paternalistic or is it better justified by appealing to the harm principle?



Step 2 - Determine the type(s) of paternalism in question and its/their ethical burden

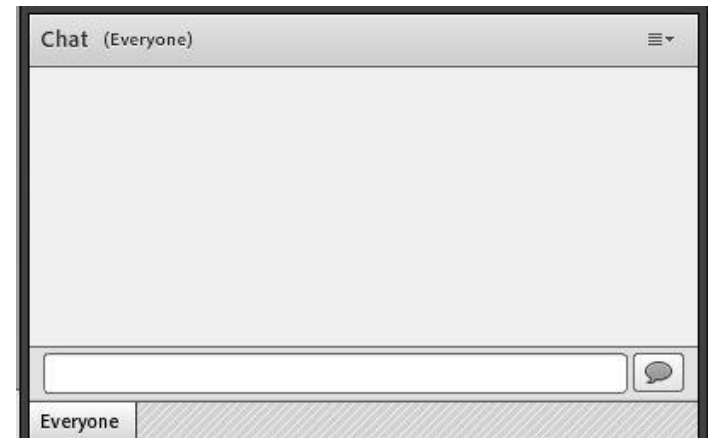


Weak or strong paternalism (1)

Key question: Does it interfere with free and informed choices?



« Cigarette Broken Unhealthy », Pixabay.com
Photo by : Alexas_Fotos
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Weak or strong paternalism (2)

Key question: Does it interfere with free and informed choices?

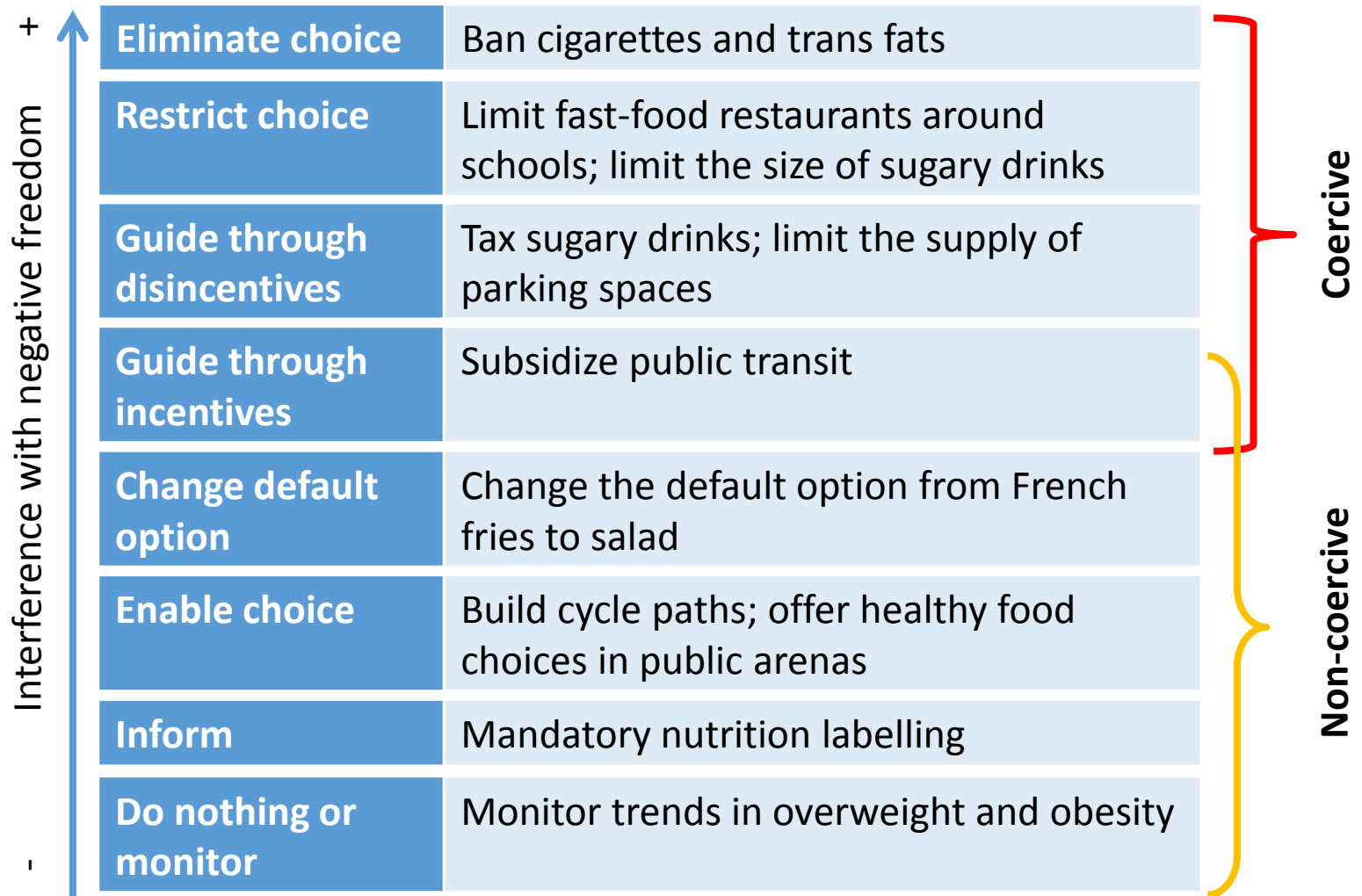
Two determining criteria:

- Are the people in question **autonomous**? (vs children, non-competent adults, etc.)
- Do the circumstances favour **informed decision making**? (addiction, intoxication, missing information, undue pressure, imminent risk, cognitive biases, etc.)



Coercive and non-coercive paternalism (1):

The Nuffield Council on Bioethics' (2007) intervention ladder



Coercive and non-coercive paternalism (2):

Griffiths & West's (2015) intervention ladder



Trivial and fundamental paternalism (1)

FUNDAMENTAL FREEDOMS

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

LIFE, LIBERTY AND SECURITY OF PERSON

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

(Canadian Charter of Rights and Freedoms, art. 2 and 7)

Trivial and fundamental paternalism (2)



'FREE THE BIG GULP!' Photo by : The All-Nite
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How far does a “right to liberty” extend?

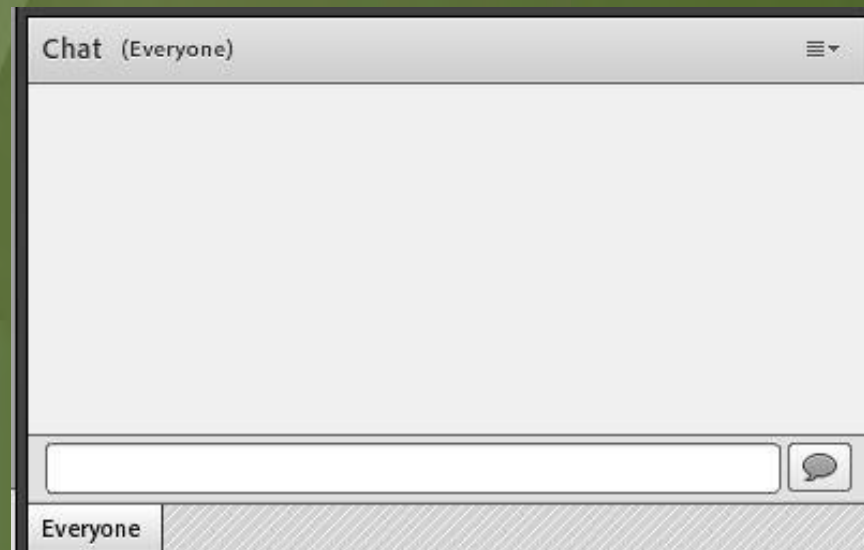
“the Constitution cannot be stretched to afford protection to whatever activity an individual chooses to define as central to his or her lifestyle”

Supreme Court of Canada, *R. v. Malmö-Levine*



Questions?

Please use the chat box



Step 3

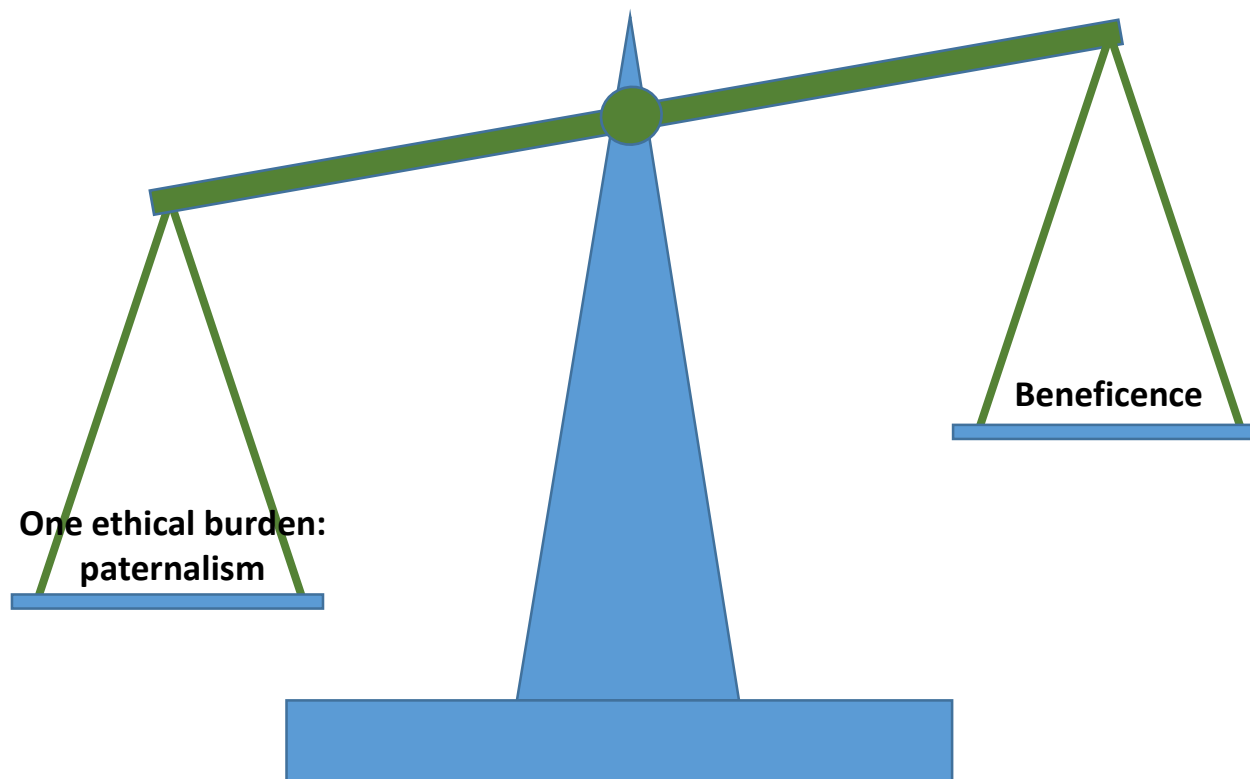
Expand your ethical analysis of the paternalistic policy

Goal: determine of the paternalistic policy can be justified ethically

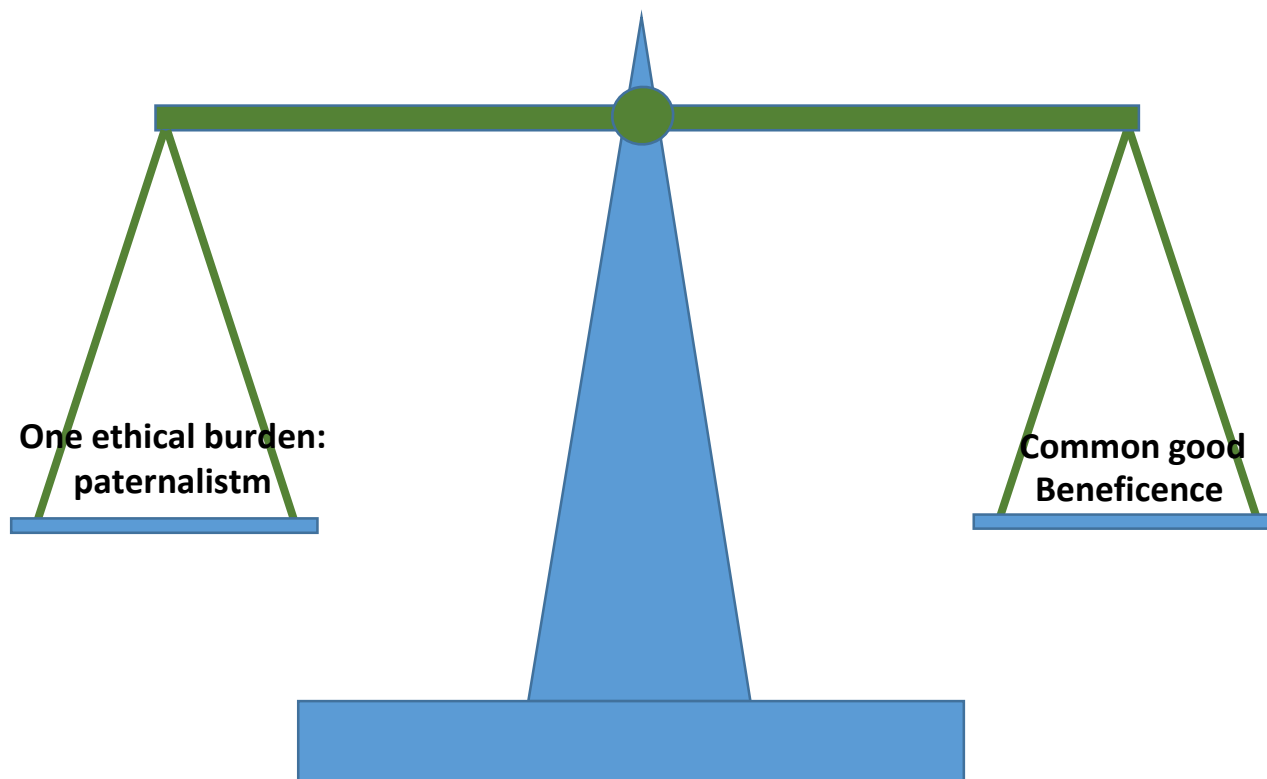
Issue: Avoid the trap of reducing your analysis to merely considering the values of individual freedom and state beneficence.



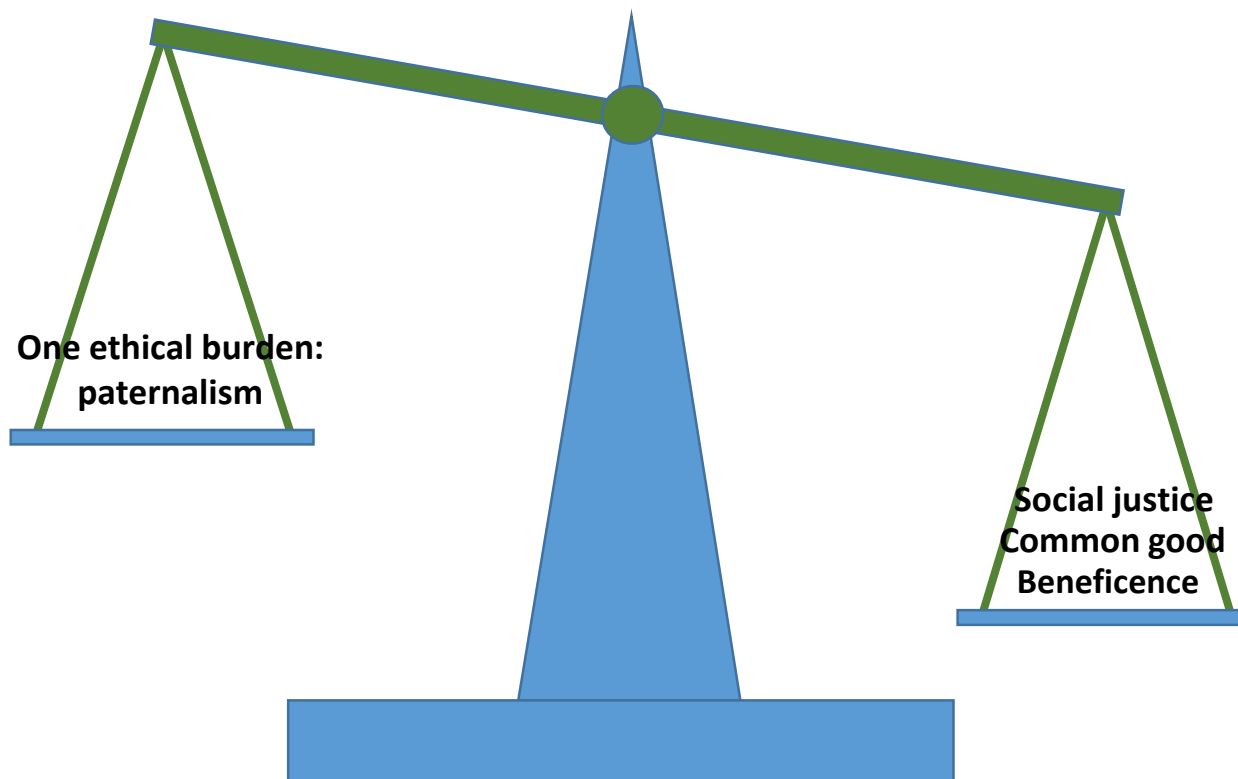
Integrate paternalism into a broader analysis



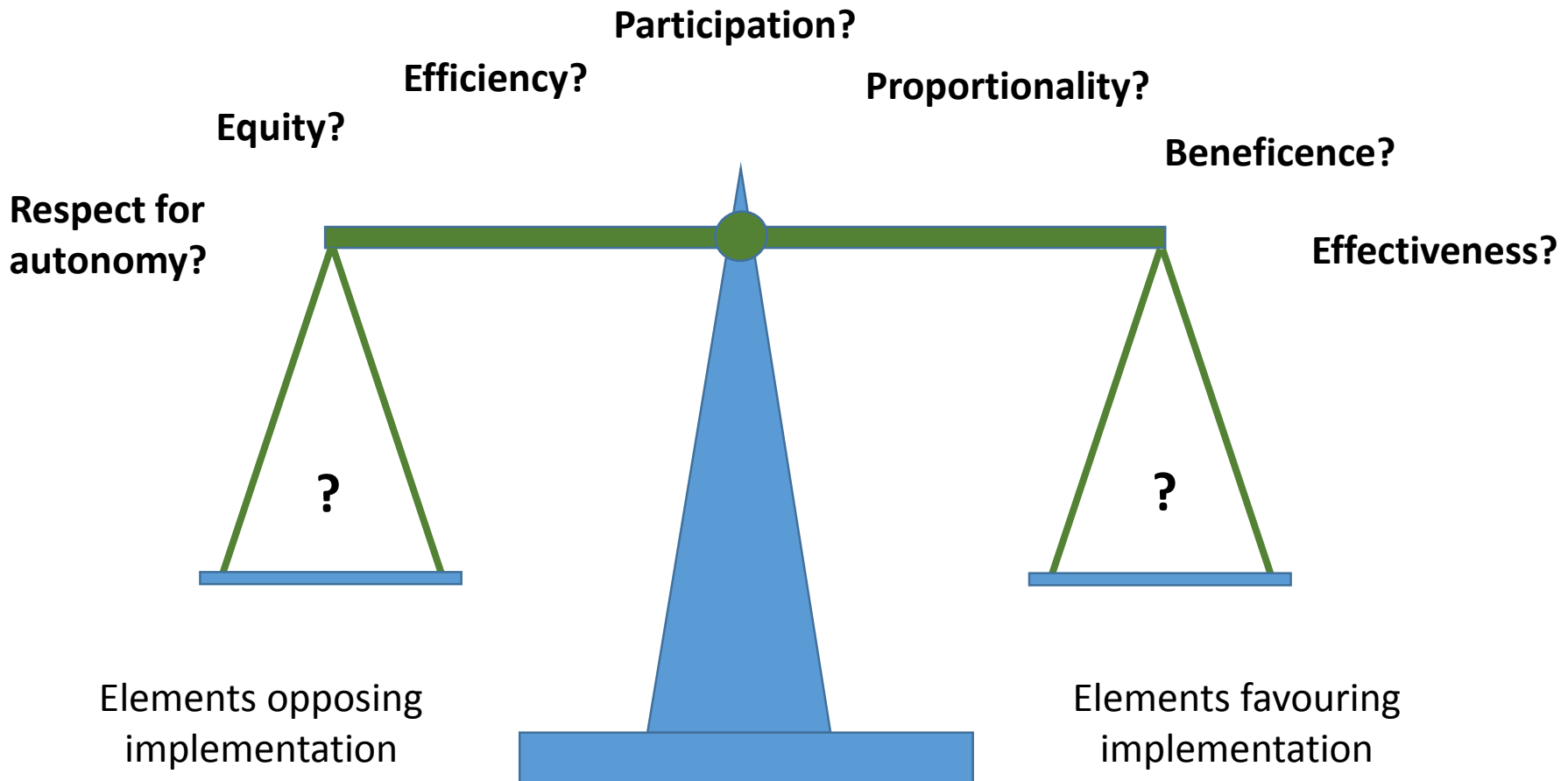
Integrate paternalism into a broader analysis



Integrate paternalism into a broader analysis



The act of “weighing” principles and values



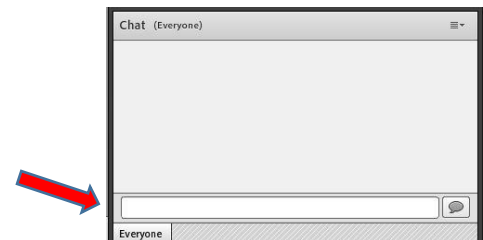
Can the Hawaiian legislation be justified?

Objective: Eliminate cigarette sales over a short time period.

The legislator's justification:

- That the prohibition should be seen as an effort to free smokers from a powerful dependence and not as a violation of individual liberty.
- That the state has a responsibility to protect the public's health. "If we don't ban cigarettes, we are killing people."
- That the interventions deployed to date (taxation, etc.) have been insufficient for tackling the health inequalities arising from cigarette use.

Are you for or against the implementation of this proposed law? Why?



To conclude...

Paternalism hits a raw nerve because it puts individual freedom and state beneficence in tension;

Paternalism, or being *labelled* as such, should not signal the death of a policy proposal: there are tools for analyzing the paternalistic (ethical) burden associated with a policy;

Integrating paternalism into a broader ethical enquiry allows you to more rigorously assess whether a policy can – or cannot – be ethically justified.



Resources



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Selected ethics resources

Repertoire of Ethics Frameworks for Public Health

The screenshot shows the website for the National Collaborating Centre for Healthy Public Policy (NCHPP). The main heading is "Repertoire of Ethics Frameworks for Public Health". Below this, there is a list of resources with brief descriptions and links. The resources include:

- Baum, N. M., Goliust, S. E., Good, S. D., & Jacobson, P. D. (2007).** Looking ahead: Addressing ethical challenges in public health practice. *Global Health Law, Ethics and Policy*, Winter 2007, 657-687. Available at: http://desublib.ub.unich.edu/bitstream/handle/2027.42/754786/1746_2007_00188.x.pdf?sequence=1&isAllowed=y
- Our adapted summary is available at:** http://www.ncchpp.ca/docs/2016_eth_frame_baum_En.pdf
- Baylis, F., Kenny, N. P., & Sherman, S. (2008).** A relational account of public health ethics. *Public Health Ethics*, 2008, 1-14. Available at: <http://monist.uchicago.edu/files/pdf/259.pdf>
- BC Centre for Disease Control (BCCDC). (2015).** BCCDC Ethics Framework and Decision-Making Guide. Available at: http://www.bccdc.ca/resource-gallery/Documents/Guidelines%20and%20Forms/Guidelines%20and%20Manuals/BCCDC_Ethics_Framework_Design_Making_Guide.pdf
- Bernheim, R., Gaare, Nieburg, P., & Bonnie, R. J. (2007).** Ethics and the practice of public health. In R. A. Goodman, R. E. Hoffman, W. Lopez, G. W. Matthews, M. Rothstein, & K. Foster (Eds.), *Law in public health practice*, pp. 110-135. Oxford: Oxford University Press. For information (paywall): <http://www.oxfordjournals.org/view/10.1093/acprof:oso/9780195301489.001.0001/acprof:9780195301489>
- Our adapted summary is available at:** http://www.ncchpp.ca/docs/2016_eth_frame_bernheim_En.pdf
- Canadian Nurses Association. (2009).** Public health nursing practice and ethical

http://www.ncchpp.ca/708/Repertoire_of_Frameworks.cnppts

Briefing note on the ethics of paternalistic policies in public health

The briefing note is titled "How Can We (and Why Should We) Analyze the Ethics of Paternalistic Policies in Public Health?" and is dated February 2018. It discusses the challenges in public health practice and policy, particularly regarding paternalistic policies. The document offers indicators to help public health actors determine whether a policy is actually paternalistic. It also proposes a nuanced approach to their analysis that involves distinguishing between different types of paternalism and taking into account the values that a policy promotes as well as those on which it impinges.

Introduction

In the view of certain authors, "public health is in essence paternalistic because it tends to use the power of the State to intervene on behalf of the health of individuals (even where this has not been requested)" (Royce-Bordonado & Román-Maestre, 2015, p. 3). This type of statement is problematic for public health, because paternalism often has a strongly pejorative meaning and is used to criticize, disparage or denigrate policies, interventions or actions characterized in this way without further assessment (Ewehalk, 2015; Feinberg, 1990; Orlin, 2013; Wajsb, 1978). As framed points out, even when a policy is not actually paternalistic, attaching this label to it is a formidable rhetorical and political weapon, because it "resonates with a public that distrusts government and values individual liberty" (Peters, 2016, p. 962). It follows, according to Sayer and Fardich, that one of the central challenges for public health ethics is to "define those moments when public health paternalism is justified and to articulate a set of principles that would preserve a commitment to the realm of free choice" in liberal democracies, including that of Canada (Sayer & Fardich, 2004, p. 492).

The purpose of this document is to equip public health actors to conduct a critical and nuanced ethical analysis of public health policies or population-based interventions accused or suspected of being paternalistic. This document offers indicators that will help public health actors determine whether a policy is actually paternalistic. Thus, they may become versed in arguments that can be used to refute unfounded accusations of paternalism and to reframe debate and analysis. For policies that, upon scrutiny, prove to be truly paternalistic, this document proposes a nuanced approach to their analysis that involves distinguishing between different types of paternalism and taking into account the values that a policy promotes as well as those on which it impinges.

The approach proposed in this document is rooted in a theoretical stance that fits broadly within the framework of political liberalism. **Political liberalism** refers to a set of political theories, which assign great importance to the value of individual freedom and autonomy, without necessarily granting absolute primacy to these values, in order to reflect generally held values for freedom and autonomy, in what follows we will, that the majority of authors discussing paternalism, propose adopting a generally one paternalist stance for the ethical analysis of policies or interventions. This position should not be interpreted to mean that paternalistic policies are to be rejected without further analysis. Rather, it implies that a paternalistic policy of intervention should immediately be viewed as potentially problematic from an ethical standpoint and that further analysis should be conducted to determine if the policy is ethically justifiable. In fact, it may be justifiable for very good reasons. We believe that, whatever their underlying political orientation, public health actors can benefit from familiarizing themselves with this very widespread theoretical position, even if they ultimately interpret paternalism from another theoretical standpoint. Once familiar with the liberal interpretation of paternalism, they will be better prepared to engage with those who adopt this interpretation, often implicitly.

http://www.ncchpp.ca/127/Publications.cnppts?id_article=1742



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References

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- Dworkin, G. (2017). Paternalism. *Stanford Encyclopedia of Philosophy*.
- Griffiths, P.E. and West, C. (2015). "A balanced intervention ladder: promoting autonomy through public health action". *Public Health*, vol. 129, n° 8, p. 1092-1098. Available at: <https://doi.org/10.1016/j.puhe.2015.08.007>
- Mill, J. S. (2001). *On Liberty*. Kitchener (ON): Batoche Books Limited.
- Nuffield Council on Bioethics. (2007). *Public health: ethical issues*. Cambridge : Nuffield Council on Bioethics. Available at: <http://nuffieldbioethics.org/wp-content/uploads/2014/07/Public-health-ethical-issues.pdf>
- *R. v. Malmo-Levine* [2003] 3 S.C.R. 571
- *R. v. Morgentaler*, [1988] 1 S.C.R. 30



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Discussion period – 30 mins – unrecorded

To ask your question(s)...

You can “raise your hand”



When we ask you to speak, don't forget to unmute your phone (#6).

or use the chatbox at any time



Thank you for joining us!

You're interested in this topic?
Visit us at ncchpp.ca for more resources

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