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MORAL PATERNALISM

(Accepted 9 February 2004)

...is a distinction being drawn between a man’s physical good and his moral good? Is Professor Hart, so to speak a physical paternalist and a moral individualist? I believe that one would have the answer to this if only one knew exactly what the distinction was between paternalism and legal moralism.

Lord Devlin

I cannot do good to anyone according to my conception of happiness (except to young children and the insane), but only according to that of the one I intend to benefit.

Kant

I.

There are a number of well-known liberty-limiting principles used by theorists in discussion of the limits of legitimate state coercion. Joel Feinberg lists the main contenders as follows:

(1) Harm Principle (HP). Preventing harm to persons other than the one prohibited from acting.
(2) Offense Principle (OP). Preventing serious offense to persons other than the actor.
(3) Legal Paternalism (LP). Preventing harm to the person being prohibited from acting.
(4) Legal Moralism (LM). Preventing inherently immoral, though not harmful or offensive, conduct.
(5) Moralistic Legal Paternalism (MP). Preventing moral harm (as opposed to physical, psychological, or economic harm) to the actor himself.3

1 Devlin, The Enforcement of Morals, p. 133.
2 Kant, Doctrine of Virtue vii 453.
3 Feinberg, Harm to Others, p. xii. There are stronger versions of the harm, paternalism, and moralistic paternalism principles which involve substituting “bringing about a benefit” for “preventing harm.”
In this essay I wish to concentrate on the fifth principle which I shall call Moral Paternalism. I want to understand how exactly MP differs from LP and LM. This has at least two distinct aspects. The first is how it differs conceptually from the other two principles. What makes an interference one that is purportedly justified by MP rather than LP or LM? Are these mutually exclusive categories? Is one a sub-set of the other? The second concerns the nature of the justifications in question. Are there good arguments which support some of these positions but not others? Even if none turn out to be legitimate, this may be for different kinds of reasons. In this essay I shall mainly be concerned with the conceptual issues. I believe that becoming clearer about these will throw light on the normative issues but I shall comment only indirectly on these.

II.

We can take as our starting point the famous passage by Mill where he tells us what cannot serve as a justification for coercion.

His own good either physical or moral is not a sufficient warrant. He cannot rightfully be compelled to do or to forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise or even right.\(^4\)

In this paragraph Mill already confuses the issue. Although the first sentence suggests that anti-paternalism is at issue here, he seems to introduce the idea of LM in the last clause. LP is represented by “his own ... physical good”; MP by “his own ... moral good”; but it seems a distinct ground of coercion to make reference to what others think would be “right.” The second sentence is then most naturally understood so that what it is “better” for him to do is what is morally better for him, what will make him “happier” is what is psychologically better for him to do, and what is “right” is what is morally right. One other point worth noticing is that Mill only relativises LM, not moral paternalism. He does not speak of what “in the opinion of others” would be better for him, or would make him happier – only what would be wise or right. Whether he is in effect making the

\(^4\) J.S. Mill, On Liberty, p.?
distinction between “positive” and “critical” morality, or is evidencing some concession to relativism is not clear.  

Why does Mill seem to slip between LP and LM, and what is the difference between LP and MP? The difference between LM and paternalism, whether moral or legal, is fairly straightforward. Those who invoke LM as a rationale for legal restriction seek to prevent immoral acts, where the immorality of the acts is independent of their connection with harm, thought of as a setback to the interests of others. The claim is that certain conduct (prostitution, dwarf-tossing, surrogate motherhood) is intrinsically bad. The world is a worse place for containing such conduct, and this is so without bringing in the harmful effects of such conduct either on the person being restrained or others.  

But a state of affairs can be a better state of affairs without any particular person being made a better person. So if an evil dictator dies the world may be a better place but it does not follow that any person is a better person. The dictator is certainly not, being dead, and it may be that no other person improves morally as a result of the death. MP appeals not just to the world being a better place morally speaking if certain changes are made, but to particular persons being morally improved. If, say, a person is not allowed to engage in dwarf-tossing, then it could be argued that the person is morally improved.  

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5 It is clear that many of the arguments he advances against paternalism will apply equally to either moral or non-moral. That a person knows their own interests better than others; that a person can only develop their character by making their own mistakes; that the government is likely to be wrong and to over-reach in its efforts to protect individuals against harms to themselves; that a realm of autonomy with respect to self-regarding acts is essential to regarding a person as an equal moral agent—all these apply independently of the kind of harm that is involved. Whether a person puts their health at risk by not wearing a helmet when driving a motorcycle or puts their character at risk by not taking part in civic obligations, such as voting, Mill’s objections seem relevant and important.

6 For extended discussion of this issue see my “The Enforcement of Morality: Some Preliminary Considerations.” (unpublished)

7 This could be held even if the person herself is not in any way changed. She would prefer to go on dwarf-tossing, resents being interfered with, etc. But, as proponents of the moral luck view believe, at least the person is not responsible for some bad event occurring, and this fact reflects favorably on the person.
So far, then, we have two ways in which states of affairs can be better or worse. One is impersonal (the world is better) and the other personal (the person is better). But there is a third way in which something can be better, namely being better for an individual.

The world might be a better place for the fact that an individual changes in certain ways without it being a good thing for that individual that she is so changed. So, for example, it may be a good thing that a vicious person reforms and no longer attacks others without it being a good thing for the criminal. Now a change in character may be thought of as purely an instrumental good, say, in terms of protection of others. But even if one believes that getting rid of some vice is intrinsically good it still may not be good for the criminal. It is a distinct claim, and one made by Plato and Epictetus among others, that improvement in one’s moral character is a good for the person.

It is this last claim that differentiates MP from LM. It is the claim that we are entitled to interfere with persons on the grounds that they will be (1) in a morally improved state and (2) that such a state will be better for the individual in question. But how better? After all it might be the case that people who abandon certain moral vices live longer. It is better for them that they are virtuous, better because they live longer. Although the change is in moral character, the improvement is along the dimensions of welfare – the dimension that LP has invoked. What differentiates MP from LP is the idea that a person’s welfare can directly involve, and therefore be increased by, changes in their moral character and actions – changes which do not necessarily result in their being happier or healthier, etc. A person can be better off just because they are morally better, just as they can be better off just because they are happier.

III

Because MP deals with moral, rather than physical, goods there is an interesting line of argument which deals with the question of the impossibility of MP. Now such impossibility claims play a role in arguments against LP as well. It is a good reason for rejecting some proposed change to be brought about by paternalistic measures that we cannot, in fact, bring about the change in that fashion. One cannot, say, make people healthier by forcing them to exercise, perhaps because they make up for it by eating more fatty foods.
In the case of MP however the argument is conceptual or normative rather than empirical. It is claimed that a proper understanding of the nature of values and moral ideals will show that the very idea fails to make sense. One such argument has been advance by Ronald Dworkin in his Tanner Lectures *Foundations of Liberal Equality* (henceforth FLE).

Dworkin begins by making a distinction between *volitional* and *critical* well-being.

Someone’s volitional well-being is improved, and just for that reason, when he has or achieves what in fact he wants. His critical well-being is improved by his having or achieving what he *should* want, that is, the achievements or experiences that it would make his life a worse one not to want.\(^8\)

Thus, for me to improve my second serve, is an improvement in my volitional well-being. I want to be a better tennis player. But I do not think that my life would have been a worse one if I had, say, wanted to be a better chess player instead. On the other hand I do think my life would have been a worse life if I had never achieved any success in some intellectual pursuit. Given my set of interests and abilities, I would regard my life as a less good one without some such measure of success. Such success, therefore, is part of my critical well-being.

The next distinction he makes is between the *additive* and *constitutive* view of what adds value to a person’s life.

The *additive* view holds that we can judge his life a good or bad one without consulting his opinions about its value . . . . He may have a very good life in virtue of experiences and achievements he does not endorse, though not so good a life, perhaps, as if he had endorsed them.

The *constitutive* view, on the other hand, argues that no component may even so much as contribute to the value of a person’s life without his endorsement. So, if a misanthrope is much loved but disdains the love of others as worthless, his life is not more valuable for their affection. . . . The constitutive view is *not* the skeptical view that someone’s life is good or bad in the critical sense only when and because he thinks it good or bad. The constitutive view denies only that some event or achievement can make a person’s life better against his opinion that it does not.\(^9\)

\(^8\) FLE, p. 43. One might dispute the notion of volitional well-being. Is my welfare really improved by my drinking this cup of urine that I want to drink? But for my purposes this is not relevant.

\(^9\) FLE, p. 51.
Note that there are two possible readings of this view. The first says (and it is suggested by the language just quoted) that it is value itself which requires the person’s endorsement. The life is not more valuable when it is not endorsed. The second says the life may be more valuable but the person’s life does not go better, her well-being is not increased, if endorsement is not forthcoming. This reading is suggested by the following passage: “my life cannot be better for me in virtue of some feature or component I think has no value.” Another way of putting the point is what is endorsement a necessary condition for? Is it for value per se, or value contributing to welfare? I believe the latter is the most plausible reading and it is the one I shall be concerned with.

Let us assume, for the moment, that the endorsement thesis is correct. How does MP fare under this assumption?

The endorsement thesis seems to ground an objection to the possibility of moral paternalism. An essential premise of MP is that some intervention can improve the quality of a person’s moral life or character, and as a result his life go better for him. But according to the endorsement thesis if genuine endorsement is not forthcoming, then the person’s life cannot be improved by paternalistic intervention. If a person is prevented from living the life of an addict, and genuinely regrets not being able to live that life (regards their “straight” existence as shallow and unchallenging), never endorses the value of the drug-free life, then, on the view we have assumed, his life is not better for him. His increased autonomy, his ability to achieve goals that would otherwise be impossible for him, his greater contact with reality, are not things which make his life a better one for him. Dworkin accepts this inference.

The challenge view… is suspicious of critical paternalism because it rejects its root assumption: that a person’s life can be improved just by forcing him into some act or abstinence he thinks valueless.\footnote{FLE, p. 77.}

Notice that in principle this argument also applies to ordinary paternalism. If the would-be suicide is prevented from committing suicide, but does not welcome the life he is forced to lead, then on the
endorsement view we cannot say that his welfare had been increased. The reason the argument has less interest in this case is that in most cases it is agreed by those being interfered with that the ends being pursued are valuable ones. Few smokers deny that cancer makes their life go worse; few motorcyclists value being brain-damaged. They simply insist on their right to engage in unhealthy activities which do not harm others, or assert that the cost-benefit ratio is favorable. It should be noted, however, that there is an argument which is parallel to the one we are considering. This is the claim that since autonomy, the ability to determine for oneself what to do, is itself a necessary condition of well-being, one cannot be made better off against one's will.

What makes MP distinctive is that it is precisely the evaluation of the activity being interfered with that is controversial. Homosexuals do not think they are engaging in immoral activities. Atheists do not think that they are living a life of sin. Those who watch pornography do not think they are being corrupted. A fortiori they do not think that a life without these activities is a morally superior life.

It is also true that many racists do not see anything wrong with their racism. Dwarfs who engage in being tossed may not see anything degrading in their participation in such activity. In all these cases one has to give an argument why the activity in question is immoral. One cannot simply assume it. Still, the point remains that since MP takes place in a context in which normally those being paternalised do not see themselves as being engaged in immoral activity the Dworkin argument seems to have some force. If we cannot improve another person’s life when the person himself does not endorse the change as an improvement, the key premise of MP is inapplicable.

The moral paternalist argues that we can make a person’s life better by coercing him into doing (or refraining) from various actions. It is important to see that even accepting the endorsement thesis does not rule out moral paternalism on conceptual grounds alone. For even if, say, forced prayers cannot by themselves contribute any value to the person’s well-being (on the assumption that a life of religious devotion is a good for a person) it may still be that as a result of praying the person comes to see the value of prayer and its attendant way of life.
As I. B. Singer observes in exactly this context:

Why is “Thou Shalt not Covet” the very last of the Ten Commandments? Because one must first avoid doing the wrong things. Then, later on, one will not desire to do them. If one stopped and waited until all the passions ceased, one could never attain holiness. And so it is with all things. If you are not happy, act the happy man. Happiness will come later. So also with faith. If you are in despair, act as though you believed. Faith will come afterwards.\(^\text{12}\)

A similar thought occurs in Hadrian, speaking of imposing the rule of law on people used to war as a means of settling disputes.

It mattered little to me that the accord obtained was external, imposed from without and perhaps temporary: I knew that good like bad becomes a routine, that the temporary tends to endure, that what is external permeates to the inside, and that the mask, given time, comes to be the face itself.\(^\text{13}\)

Of course, the endorsement must be genuine, and not manipulated or itself coerced, but there is no reason why this is ruled out.

Dworkin accepts this limitation on his argument.

\[\ldots\] the defect it finds in paternalism can be cured by endorsement if the paternalism is sufficiently short-term and limited that it does \(\text{[not?–GD]}\) significantly constrict choices if the endorsement never comes.\(^\text{14}\)

But he does not seem to accept a distinct line of argument used by some in the context of ordinary paternalism. This argument relies not on what the person (eventually) actually endorses but on some form of hypothetical endorsement. Perhaps, after all, when the state forces someone to save for their old age through social security that person actually dies before retirement. He never gives up his firm view that being forced to save is an illegitimate role for the government. Nevertheless, some paternalists argue that if we have good reasons to suppose that this particular person would have seen the wisdom of this forced saving had he lived to retirement then we are justified in acting as we did. Why can’t the moral paternalist make a similar claim? Perhaps this person never endorses the value of a drug-free life, or one that renounces certain sexual outlets. But we believe that we can account for


\(^\text{14}\) p.78
this fact by reference to certain specific factors which prevent him from thinking clearly and carefully about this matter. And the evidence for this is not that he disagrees with us about the goodness or badness of his life as it is now. On Dworkin’s view this hypothetical endorsement does not count when we consider whether the person’s life goes better now. I will return to this argument when I examine the constitutive view as opposed to what follows from it.

There is a second exception to the use of this view against MP. Dworkin does not notice that even on his view there is a way in which MP can be effective. Namely, that although there may be some fact about the person that he does not value or endorse, e.g. that he is loved by others or is courageous, this fact may have consequences for other aspects of the person’s life that he does endorse. This could be the case in two ways corresponding to LP and MP. For example, the person who is loved may, in spite of his lack of endorsement, benefit from that fact. He may, for example, be more confident and therefore successful in achieving his goals. And given that he does endorse the idea of success he is benefited by the existence of the fact in question, even if he does not recognize the fact that there is this causal connection. This would be a case of LP because the good in question is not moral. But the corresponding case could hold for moral goods as well. For example, a loved person being more secure may be more courageous or honest as well and he may endorse these virtues.

There is also the complication that a person could be mistaken as to what are moral goods and what are not. So, for example, a racist might believe that racism is wrong but not believe he is a racist. Preventing him from acting as a racist, i.e. not selling his house to a black person, would be something he would endorse were he to recognize it as a racist act.

Finally, there is the possibility of weakness of the will. This is not an objection to the claim that the endorsement thesis is inconsistent with paternalism since in these cases the agent does endorse the value in question. It is just that he cannot bring himself to act in accordance with his judgment. Hence, by providing him with additional incentives via sanctions, we enable him to do what he recognizes makes his life better. The corresponding case for moral paternalism would be cases where the person being restricted does see their current life as degrading, but cannot change on their own. By forcing them to change, we do improve their life according to their own lights.
So far we have been assuming the truth of the endorsement thesis. Before looking at the arguments for it let me briefly turn to an argument of Feinberg’s which parallels Dworkin’s.

IV.

In *Harm to Others* Joel Feinberg considers the extension of his technical sense of *harm* to the case of *moral* harm. For the purposes of his discussion of the limits of the criminal law Feinberg defines A Harms B as

1. A sets back B’s interests, and
2. A does this in such a manner as to violate B’s rights.

Interests are what a person has a stake in, and these are either basic (ulterior), or welfare interests, i.e. those that normally contribute to the satisfaction of ulterior interests. So the question of whether moral harm exists is the question of whether a person has a “stake” in their moral welfare. Feinberg’s answer is that

... the implications of our own analysis of harm in terms of set-back of interests are clear. If a wicked person has no ulterior interest in having a good character, and if such a character is not in his (other) interests, then his depraved character is no harm to him...and even if he becomes worse, he does not necessarily become worse off.\(^{15}\)

The parallel here with Dworkin is clear. Since Feinberg accepts a want-regarding theory of what is in a person’s ulterior interests, he accepts the view that it is a necessary condition of something being good *for* a person that the person either desire it, or desires something to which it contributes.\(^{16}\) This is simply a non-cognitive version of Dworkin’s endorsement thesis – with “desire” substituted for something like “believe good.”

\(^{15}\) Harm to Others, p. 66
\(^{16}\) This presumably explains why he says that “…in respect at least to welfare interests, we are inclined to say that what promotes them is good for a person *in any case*. Whatever his other interests may be a person’s interest in health, for example, would in fact be one of his interests, even if he mistakenly believed the contrary, and even if he desired ill health and decay instead of good health and vitality.” p. 42. The idea is that whether he values health or not many of his ulterior interests which he does value could not be achieved without good health.
V.

Let us consider the core of the view that Feinberg and Dworkin share. They both accept the idea that a person’s life cannot be better for him, if it possesses some characteristic which he does not endorse, or desire, or see as valuable. What are their arguments for this view.

Dworkin’s argument for the endorsement thesis depends in part on what he calls the challenge view of ethical life. On this view ethical life is like the creation of an artistic performance and intention is part of that performance.

Just as

... a painter’s artistic performance is not improved when a master pushes his hand across the canvas... the misanthrope’s life is not made better by the friendship he thinks is pointless.

But this is a metaphor and by itself it just begs the question. If a painter were about to alter the painting in such a way as to make it much worse, and a master stays his hand, the painter’s performance, i.e. the painting, could be better as a result. And if the painter is coerced into adding some feature, against his sense of what is called for, again the painting may be improved, although the painter gets no credit for the improvement.

Let us look more closely at the example of the misanthrope. This person has many good and loving friends, but does not regard friendship as a good thing or as valuable. He would prefer that they cease being friends and ignore him. It is clear that both the defender and opponent of the endorsement view think that something is amiss here. Their diagnosis is different. Those who deny the endorsement view believe we have an unfortunate situation because the misanthrope does not take pleasure and satisfaction in the fact that his life is made valuable by the presence of good friends.

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17 It is important to note here that this claim is not equivalent to the claim that the person, or his life, cannot be made better if he does not endorse the change. Our view of what a better life is can be quite objective with the person’s own view of the matter not counting at all, or not counting for much. It is the difference between “better” and “better for her” that is essential here.

18 p. 77
On the endorsement view we have a bad situation because the misanthrope’s life is not made a better one because of his friendships when all that he needs to add value to his life is to see that friendship is a good.

One way of trying to settle this is to look at the symmetric situation, i.e. the case where the person is despised and hated by all but doesn’t see this as a misfortune. The endorsement thesis is faced with a dilemma. Either the view is only supposed to hold of what contributes value (a life is not made better by something unless the persons endorses it as a value) but not disvalue (a life is made worse by something even if the person does not endorse it as a disvalue) – the asymmetry view. Or if the view is held symmetrically, i.e. a life is not made worse by something unless the persons endorses it as a disvalue, in which case the view is committed to the despised person’s life not being made worse by his being held in contempt by all.

In the first case the asymmetry seems arbitrary. If the analogy is with artistic performance then failures seems as relevant as successes. But the second horn seems to be strongly counter-intuitive. What could be worse than a life in which one is universally despised, and knows that one is universally despised? To take another example, that of a person’s character, why should courage not be a good for the person unless he recognizes it as such but spitefulness be bad for the person whether or not he sees spitefulness as something bad for him?

To use Dworkin’s analogy, just as the artist’s performance is not improved by pushing his hand across the campus, so it is not diminished when it is defaced by pushing his hand. Notice in both cases we can speak of the painting being improved or diminished.

In a letter in response to this objection, Dworkin says Yes, someones life can be worse in virtue of a feature that he doesn’t think makes it worse... The asymmetry is explained, among other way, by the more general idea...[that] living well is an activity: leading an appropriate life out of the conviction that it is appropriate. That is a complex activity that may fail in one of two ways. In the case you describe it fails because the life is a bad one, not because its goodness is unappreciated. But it can’t be improved by forcing the despised person to live against the grain, i.e. by acting as if he wanted to be loved though he doesn’t.

So D. does accept the asymmetry claim. Although a persons life cannot be better in virtue of a feature that he doesn’t think makes it better, it can be made worse in virtue of a feature that he doesn’t think makes it worse. Living well = life better for him only if (1) life is better (2) he recognizes (1).
One possible defense of the symmetry thesis is that it seems to be wrong because our intuitions about the despised person reflect the fact that we find it hard to imagine a person who did not consider universal contempt something of disvalue. But if there were really such a person his life would not be made worse by the contempt. The problem with this explanation is that it could just as well apply to the added value case. We may find it plausible that the misanthrope’s life is not made better by his many friendships because we find it hard to imagine a person who did not value friendship but if there were really such a person his life would still be a better one because of his friendships.

Let me suggest some further difficulties for the asymmetric position. As I mentioned earlier it doesn’t seem to matter on Dworkin’s view whether or not the lack of endorsement is well-founded or not. Presumably Dworkin thinks the misanthrope’s views about friendship are not well-grounded; that friendship is an important good. Further it should not matter whether the misanthrope’s views would disappear under certain hypothetical conditions, e.g. if he were not so busy making money or if he were suddenly faced with a crisis and an absence of friends. For such a hypothetical change in attitude cannot overcome the fact that the actual attitudes, the one that he has currently, do not endorse the good of friendship.21 Elsewhere Dworkin is quite concerned about the conditions under which endorsement or choices are made.22 Again the asymmetry seems unmotivated.

As we have seen Feinberg also accepts the endorsement thesis but he doesn’t seem to have an argument. He does make the claim that his view “saves the appearances.”

When a remorselessly wicked person appears to be flourishing, and there appear to be no reasons to suppose he is not, then I “assume” that he is indeed profiting from his wickedness, and try to fashion my theory of harm and benefit to save the appearances.23

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21 If such a change were to occur tomorrow, on Dworkin’s view when does friendship make the misanthrope’s life go better. Only from tomorrow on? Can it make it have gone better retrospectively?
22 Cf. his discussion of paternalism, the discussion of equality of resources, etc. in FLE.
23 Harm to Others, p. 67.
But, as the well-known examples of the contented slave or the happy housewife illustrate, we do not want to save the appearances at the cost of being prevented from being able to criticize the status quo from a normative standpoint. Indeed Feinberg himself brings up the case of the contented moral defective but says consistently

... his faults cause no harm to himself. He is both evil and well-off, and his evil character does not detract from his well-offness...[T]he moral corruption or neglect of an unformed child, then, is not direct harm to him...⁴⁴

Perhaps Feinberg doesn’t argue hard for his view because he believes, I think rightly, that

To a certain extent, the conflict between the two accounts of interest is entirely academic. That is because most forms of excellence, most of the time, tend to promote want-based interests.⁵⁵

But the issue still remains as a possible case and deciding about it is important when we are considering arguments for MP. I see no way of resolving the issue, short of having a general view about the nature of value – something I do not myself possess. I conclude then that we are only justified in accepting the Scottish verdict – not proven.

VI.

Let me summarize what we have shown so far. An essential premise in the justificatory argument for MP is that it is possible to improve a person’s moral welfare by imposing changes which the person does not endorse. We have seen, however, that even accepting the endorsement (Dworkin) or want-based (Feinberg) view of a person’s good leaves considerable scope for such changes, i.e. the unrecognized connections with values the person does endorse. And whether the view itself is correct has not been demonstrated.

Finally, it should be noted that even if the endorsement thesis were correct, and the truth of this view put limitations on what kinds of MP were justified, there remains the following possibility. The fact that various changes are good, although not good for the person, allows for a new liberty limiting principle. We are entitled to interfere with persons not to improve their welfare but simply to make them

⁴⁴ HTO, pp. 69–70.
⁵⁵ HTO, p. 68.
better persons morally speaking. For nothing in the above arguments shows that the proposed changes do not make the person a better person, or their life a morally better life. If, for example, a life as a prostitute is morally degrading, then preventing a person from engaging in that occupation prevents her from leading a morally degrading life. Our justification for certain kinds of interference, then, would not be justified by concern for the person’s welfare, but, out of respect for them as persons. Forcing a drug addict to get over his addiction may not be better for him, on the assumption that he prefers his addicted life to his new one, but our justification would be that her new life is a better one nevertheless.

We seem then to have a position intermediate between LM and moral paternalism. Unlike LM we are not simply interested in forbidding acts on the grounds that they are inherently immoral. It is not like the argument against surrogate motherhood that there are certain things which it is wrong to commodify. Unlike moral paternalism, we are not trying to make the person’s life go better for her. What we are trying to do is make her life morally better.26

I have not tried to determine in this paper whether there are plausible arguments for using coercion to make a person’s life morally more valuable. Whether this principle, which we might call moral legalism, avoids the problematic features of MP and LM, or simply inherits them remains to be seen.

The problems for justification seem easier and harder. Easier, vis-a-vis legal moralism, because the improvement is not just in states of affairs but in the lives of persons. Harder, vis-a-vis moral paternalism, because we cannot appeal to anyone’s life being better for them.27

26 Since Dworkin accepts the asymmetry of value he cannot object that this is impossible. He, of course, would have other objections similar to his objections to legal moralism.

27 I would like to thank Shelly Kagan, Michael Smith, Colin McCleod, Joseph Raz, John Skorupski and three anonymous reviewers for Law and Philosophy for helpful comments.