

Liberty – Trump or one value among many?

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Outline of talk

- Public health & the presumption in favour of liberty
- 3 problems with liberty as trump
- Better approach: balancing values

Diminishing liberty

- Public health policy can entail:
 - Restriction of options
 - Imposition of costs
 - Conflicts with preferences
 - Legal sanctions
 - (Effects on private matters)
- Example: Product safety (some products illegal to use, others unavailable)

Presumption in favour of liberty – Four interpretations

- 1) Liberty is a superior value and so trumps other values.
- 2) Liberty trumps other values except under certain conditions (=criteria for justified paternalism)
- 3) When there is uncertainty as to the gains and losses, liberty should take priority as a rule of thumb (“err on the safe side”).
- 4) Liberty has value and so should be diminished only when this leads to gains of higher value.

Criteria for justified paternalism

- Adopts the language of principle: “Paternalism is justified only if...”
- Cannot be morally basic.
- May aim at simplifying the balancing of values, but if so must not lose touch with these values.

Presumption in favour of liberty – Two main interpretations

- 1) Liberty is a superior value and so trumps other values.
 - a) Always
 - b) Except under certain conditions
 - c) Under uncertainty
- 2) Liberty has value and so should be diminished only when this leads to gains of higher value.

Liberty as trump

- Joel Feinberg (1986):
 “The most promising strategy for the anti-paternalist is to construct a convincing conception of personal autonomy that can explain how that notion is a moral trump card, not to be merely balanced with considerations of harm diminution in cases of conflict, but always and necessarily taking moral precedence over those considerations.”

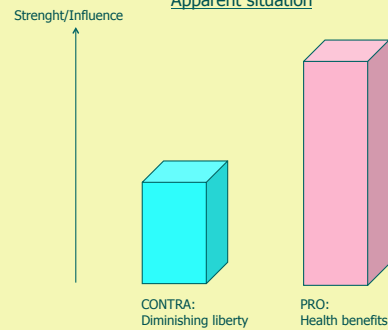
1st problem with trumping: Wrong conclusions

- If a policy's positive effects are trumped they have no influence on its moral status.
 ⇒ A policy can be morally wrong even if it has large positive effects that are not balanced out by negative effects.
- For example: Prohibition of heroin. Assume:
 - Small restriction of liberty
 - Large health benefits

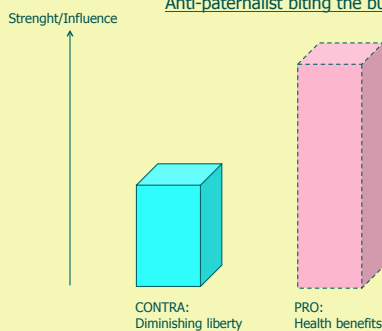
The “not liberty” strategy

- Apparent diminishing of liberty is not really so...
 - Because not really against preferences
 - Because the net effect on liberty is positive
 - Because trivial interferences are not real interferences
- However: Liberty-like values that we should care about are sometimes less important than health benefits

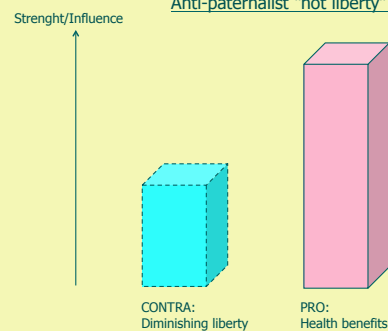
Apparent situation

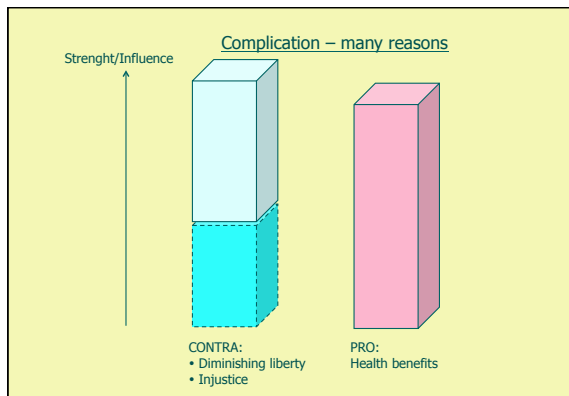


Anti-paternalist biting the bullet



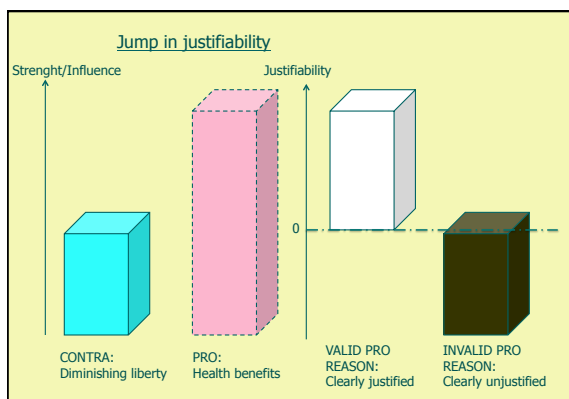
Anti-paternalist “not liberty” strategy





2^d problem with trumping: Jumps in justifiability

- The stronger the reasons for an action, the more justified the action
- Trumping qualities (like voluntariness) come in degrees
- ➔ Trumping gives rise to peculiar jumps in justifiability at threshold levels



3^d problem with trumping: Excludes the less capable

- Do we have reason to protect the liberty of less capable people who act with low degrees of voluntariness? How strong reason?
- For example: What about the liberty of 15-yearolds?
 - 1) Liberty is a trump and so if it is threatened other concerns must stand back.
 - Unreasonable.
 - 2) Apparent liberty is not really liberty.
 - Mysterious.
 - 3) We have reasons to protect liberty but there is no trump.
 - Very reasonable but why not true for all?

Summing up: 3 arguments against trumping

1. Wrong conclusions
 - Reasons “come and go”.
2. Peculiar jumps in justifiability
 - Small differences in e.g. voluntariness gives rise to great differences in justifiability.
3. Excludes the less capable
 - Different principles for e.g. minors uncalled for.

Balancing values

- Different kinds of liberty may have different value, as may different kinds of health benefits.
- Intra-personal and inter-personal trade-offs.
- Difficult to find general principles, but thoroughly explored values can form the basis for sound case by case decisions.

Fruitful and honest debate

- Arguing with principles
 - Disagreement may “falsify” the principle and leave one at a loss
 - Principles must be justified
- Arguing with values
 - Disagreement does not preclude insights into the nature and importance of various goods
 - No need for further justification (though values may be incorporated into complex systems)
 - May be complemented with check-list principles for everyday use.

Example: Seatbelts

- Principle
 - Rational people would have agreed ex ante
 - People actually value health more
 - Trivial interferences don’t count
 - ...
- Values
 - The health benefits are more important than the liberty to drive without a seat belt.

Thank you!