



QUT

Medical Treatment and the Limits of Autonomy

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Making a difference to health law

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Limits on Autonomy

- Autonomy has been described as ‘the **paramount** moral principle in modern bioethics’:
 - Barbara Secker, ‘The Appearance of Kant’s Deontology in Contemporary Kantianism: Concepts of Patient Autonomy in Bioethics’ (1999) 24(1) *The Journal of Medicine and Philosophy* 43
- It has also been criticised as the ‘mantra’ of bioethics: a ‘verbal spell ... or mystic formula used devotionally...**uncritical and uncriticised**’.
 - HE Emson, ‘Rights, Duties, and Limits of Autonomy’ (1995) 4(1) *Cambridge Quarterly of Healthcare Ethics* 6.
- Autonomy cannot be absolute, but coherent accounts of the legitimate limits of autonomy are hard to find.

Limits on Autonomy

Others-regarding limits	Self-regarding limits
Harm to others	Soft paternalism
Common good	Hard paternalism?
Justice	Preserving future autonomy

Others-Regarding Limits

1. Harm to Others

Autonomy can be limited to prevent harm to others.

Equity: preserves a sphere of autonomy for all equally.

Examples include:

- Consent to surgery
- Disclosure of genetic information
- Involuntary mental health treatment
- Quarantine measures during infectious disease outbreaks.

2. Common Good

Autonomy may be restricted in the public interest

Social contract: reciprocal obligation in view of benefits conferred by society.

Examples include:

- COVID vaccination mandates
- mandatory infectious disease notifications
- Mandatory screening for certain diseases
- Opt-out model of organ donation

3. Justice

The principle of justice can justify limits on autonomy.

Equity: to ensure fair distribution of healthcare resources

Examples include:

- Hospital beds/ ventilators during COVID
- Priority in vaccination to vulnerable populations
- Decisions concerning subsidies for expensive medications/ surgery
- Discontinuing futile treatment

Self-Regarding Limits

1. Soft Paternalism

Deciding for others where a person lacks understanding of the decision

Based on autonomy as 'authentic goals and desires'

This is generally accepted where a person:

- lacks *competence* to consent to medical treatment
- is not making a *voluntary* decision

More contested suggested limits include:

- delusions/ false beliefs
- misinformation from deception
- lack of information or ignorance

Issues with soft paternalism



How do we know what a person's authentic goals and desires are?



Would this standard result in too many patients being non-autonomous?



What level of harm would justify interfering with a person's choices?

2. Hard Paternalism

Justifies intervention to prevent significant harm to the individual, even if the person is competent.

Welfare or wellbeing is distinct from autonomy – some objective ideas of what is ‘good’ and ‘harmful’ to persons

Justification may be based on:

- Preventing harm to the future self that it would be wrong to do to others (Wilkinson)
- Human irrationality and weakness, acting contrary to their life goals (Conly)
- Fiduciary relationship of fidelity and trust between doctor and patient (O’Neill)

Issues with hard paternalism



Undermines the principle of self-determination



Is there an objective understanding of the 'good'?



What level of harm would justify interfering with a person's choices?

3. Preserving Future Autonomy

Justifies interventions to protect a person's future autonomy or restore current autonomy

Examples:

- override decisions to prevent death or catastrophic injury
- coercive treatment for mental illness to restore capacity

'Paternalism for the sake of autonomy'

- M Sjostrand et al, 'Paternalism in the Name of Autonomy' (2013) 38(6) *Journal of Medicine and Philosophy* 710, 711

Conclusion

Autonomy can justifiably be restricted to:

Prevent harm to others

- Limited to physical harm
- Least restrictive option
- Balance individual and minority interests against public benefit

Prevent harm to self where lack capacity or not voluntary

- Proportional to harm
- Minimally invasive
- For the shortest effective period.

Prevent harm to self with capacity

- Hotly contested
- Serious harm or death only

Protect autonomy or restore autonomy

- Justified by intrinsic value of autonomy
- Global autonomy (persons) over local autonomy (decisions)