

PATERNALISM — THE JEWISH DIMENSION

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Paternalism has been most recently discussed in both the context of social welfare, social work and ethics.¹ It is to a large degree another element of the broader issue of the role of values in social work. This inquiry focuses on paternalism from a Jewish dimension and points to the challenges and complexities inherent in paternalistic acts and policies.

PATERNALISM DEFINED

The basic term paternal has been defined as "limiting freedom and responsibility by well meant regulations."² The concept as a social policy dates back to ancient times when Aristotle argued in his *Politics* (Fourth Century) that some degree of paternalism is justified when members of society are more learned than others. Social philosopher John Stuart Mill took a clear negative stance of its interfering in the lives of others.³ In his work on *Liberty* he notes:

The sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self protection. . . . The only purpose for which power can be rightfully exercised over any member of a civilized community is to prevent harm to others.⁴

Mill took an anti-paternalistic stance arguing that since restraint is an end, the burden of proof is on those who propose such restraint.

It should be noted that while paternalism is a limiting factor, that limit may be an inherent "good" or an inherent necessity. Dworkin has put it succinctly. He notes

There are "goods" such as health which any person would want to have in order to pursue his own good—no matter how that good is conceived . . . education for children . . . and other goods which have this character. One could agree that the attainment of such goods should be promoted even when not recognized to be such at the moment by the individuals concerned.⁵

Mills' argument, quoted above, has, however, to be coupled with the more contemporary dilemma presented by Jordan who suggests

The notion of intervention into the lives of others can be looked at as an interference with other's freedom; it can also be looked

1. Note in particular Frederic G. Reamer, "The Concept of Paternalism in Social Work," *Social Service Review*, Vol. 1, No. 1, June 1983, pp. 254-269; Gerald Dworkin, "Paternalism," Richard A. Wasserman (ed.), *Morality and the Law*. Wadsworth Publishing Co., 1971, pp. 107-126; Berbard Gert and Charles M. Culner, "The Justification of Paternalism", *Ethics* 89 (1979), pp. 199-210; Willard Gaylin, Ira Glasser, Steven Marcus and David J. Rothman, *Doing Good: The Limits of Benevolence*, New York: Pantheon Books, 1978.

2. *The Oxford Dictionary of Current English*. Oxford University, 1985.

3. John Stuart Mill, "On Liberty," *The Utilitarians*, Anchor Books, 1972.

4. *Ibid.*, p. 484.

5. Gerald Dworkin, "Paternalism," *The Monist* Vol. 56, 1972. p. 78. From a somewhat different dimension, but very much related, is the Jewish view that only those who are preoccupied with Torah are free.

at as an obligation on every citizen as part of the web of reciprocal social duties.⁶

Intervention in the lives of others, furthermore, always limits both parties to some degree; the person who helps make himself responsible to others in need, and the recipient who makes himself answerable to the person seeking the welfare of others.

While dilemmas will continue to face persons who seek the welfare of others there are growing numbers of social and moral philosophers who advocate paternalism. Carter, for example, suggests that a paternalistic act is justified when "the protection or promotion of a subject's welfare is the primary reason for attempted or successful coercive interference with an action or state of that person."⁷ Carter bases her central thesis of interference on the notion of consent—more specifically consent prior to paternalistic interference. This principle incidentally permits social workers to intervene in the lives of clients for their betterment. But Carter also suggests that paternalism is justified without consent—when there is deliberate dissemination or misinformation, for example—and where the alleged justification of interference is for the good of the person.

Dworkin views the notion of consent as the "only acceptable way of trying to delimit an area of justified paternalism."⁸ But Dworkin also puts forth a wide range of arguments and rationale for paternalism where consent is not a criteria for intervention. Thus Dworkin notes⁹ intervention "should be promoted even when not recognized to be such at the moment by the individual concerned." Dworkin incidentally provides a rather broad defini-

tion of paternalism in which he refers "to the welfare, good, happiness, needs, interests, or values of the persons being coerced."¹⁰ The variety of paternalistic acts is broad indeed.

Feinberg, addressing himself to legal paternalism, has observed that from the legal dimension, "paternalism justifies state coercion to protect individuals from self-inflicted harm or in its extreme version, to guide them whether they like it or not toward their own good."¹¹

Finally, within the more specific social work context there are a number of common features which permeate paternalistic acts. It is suggested that these actions are based on and for the clients' own good. It is also assumed that professional intervention suggest the ability to make judgments about what is the client's welfare, and this protection justifies interference with his or her intentions, actions and emotional state.

THE JEWISH VIEW

It is the thesis of this paper that paternalism is inextricably bound in Jewish thought. The biblical injunction found in the Book of Leviticus (19-17) teaches fellow man "Thou shall not hate thy brother in thine heart" with the obligation of instructing man of his or her wrongdoing. In the majority of cases to reprove fellow man suggests bringing him to some unpleasant knowledge or to convince him of some logical error.¹² Samson Raphael Hirsh¹³ in his commentary on the bible

6. Bill Jordan, *Freedom and the Welfare State*. London, Routledge and Kegan Paul, 1976, p. 79.

7. Rosemary Carter, "Justifying Paternalism," *Canadian Journal of Philosophy*, 7, 1977, pp. 133-145.

8. Gerald Dworkin, "Paternalism," *op. cit.*, pp. 64-84.

9. *Ibid.*, p. 78

10. Gerald Dworkin, *Paternalism in Morality and the Law*, in Wasserstrom (ed.). Bellmore, Calif.: Wadsworth Publishing Co., 1971, pp. 106-107.

11. Joel Feinberg, "Legal Paternalism," *Canadian Journal of Philosophy*, Vol. 1, No. 1, 1971, pp. 105-124.

12. Note Proverbs 3:14 "Happy is the man that findeth wisdom and the man that obtaineth understanding," *found* refers to learned wisdom.

13. Samson Raphael Hirsch, *The Pentateuch*, Leviticus 19:17, London, 1958.

suggests that the root *h'eak* from the word *Hob'eak*—to rebuke, admonish—is related to parallel roots whose meaning is to induce thought and knowledge. This is a teaching dimension to imbue others with understanding of one's actions.

But the concept of *Hob'eak Tohi'akh* goes a step further and teaches us that to reprove is not only permitted, but it is a duty imposed upon us that, if slighted by others, by either word or deed, we express these feelings. It also suggests the obligation of instructing others if they stray from the paths of equity and justice. In a sense then, the first dimension is an educational one enabling the person who has not followed a righteous path to be told so.

It should also be noted that paternalism is not a voluntary act but a precept which binds man to fellowman with mutual responsibility as the axis. The rabbis suggest that he who could have kept the members of his household, his fellow citizens, as even the whole world, from sinning and refrained from doing so is held individually responsible for their collective guilt.¹⁴

The Talmud explicitly states that there is a moral obligation to alert one's fellow man of wrongdoing.

Whence do we know that if a man sees something unseemly in his neighbor, he is obliged to reprove him? Because it is said thou shalt surely rebuke.¹⁵

The repetition of the word *Hob'eak Tohi'akh* indicates the obligation to repeat the act of reproving when it is not accepted initially. In essence, then, paternalistic acts tie both parties and hold them mutually responsible, binding them into a mutual relationship.

There are interesting psychological dimensions for the parties involved when

dealing with paternalistic actions. Bearing ill will without sharing one's views can only strain relationships further. A salient illustration can be found in the book of Samuel¹⁶ where Absalom is reticent to admonish Amnon for the shame he brought upon their sister Tamar. The text is striking in its silence:

And Absalom spoke unto Amnon neither good nor bad; for Absalom hated Amnon, because he had forced his sister Tamar.

Absalom's silence must have appeared ominous to Amnon who would have preferred to have the matter dealt with immediately, rather than see Absalom nurse his hatred. To admonish is a duty which is incumbent upon fellowman and to be silent can bring on more dangerous consequences as was the outcome of Absalom's pursuit of Amnon.

When there is reproof, it must be clear, succinct and instructive. Eli the Priest in the book of Samuel serves as a case illustration. The text tells us of Eli's inability to be forceful with them. On the verse "why do you such things?" (2-23) the commentators suggest that Eli's rebuke was so gentle that he reserves the reproach "and he rebuked them not" (3-13) Either he did not rebuke them severely enough or as David Kimche (1160-1235) suggests, Eli rebuked them too late when he was old and his rebuke was ineffective.

PATERNALISM AND COERCION

As mentioned above, paternalism and coercion have a close affinity and in Jewish thought this view is dominant. Maimonides in his laws pertaining to the poor specifically uses the term *Kofin* (force, compel) upon members of the Jewish community to fulfill charitable obligations. For example, if a person resides in

14. Tractate Bavli: Sabbath 54:b and 55:a.

15. *Arakin* 16:b.

16. Samuel II—13:22.

the Jewish community thirty days he is required to give charity to the poor; if he resides three months he is obligated to support the communal kitchen; after a six month period he is required to clothe the poor and after nine months he is forced to provide funds for burial services.¹⁷

The concept of *Kofin* coercion is obviously not limited to communal responsibility. The Talmud presents numerous examples where a person must intervene for others at great personal risk. The Talmud is succinct on this point. The Rabbis ask

Where do we know that if a man sees his fellow drowning, mauled by beasts, or attacked by robbers, he is bound to save him?¹⁸

From the verse "Thou shalt not stand idly by the blood of thy neighbor."¹⁹ But where do we know that the person must risk *his own* life to save another? Here the Talmud gleans evidence from an inference by *ad minori a fortiori* reasoning, suggesting that if a betrothed maiden who has been dishonored, by Torah decree may yet be saved by the life of her ravisher, then how much more so does this hold good for one who pursues his neighbor to slay him?²⁰

Finally, the Talmud relates the classic issue of paternalism and suicide. Where do we know, the Talmud queries, that one must save his neighbor from the loss of himself? (*Avda Gufo Minyan*) And the Talmud points to the biblical injunction "And thou shalt restore him to himself."²¹

The passage refers to restoring a neighbor's lost property. Talmudic logic suggests that if when a person has lost an article or money it is incumbent on the

finder to return it, then certainly when a human being is about to take his life, the dictum of "return" is no less worthy of action.

THE COMPLEXITY OF ADMONISHING

Reamer cautions:

Paternalism which implies that one's actions are motivated by an altruistic interest in a client's welfare can be and has been used as a camouflage for actions that in fact are inspired by individual or organizational self-interest.²²

In Jewish thought intervention in the lives of others or paternalistic acts are the most complex of activities. Rashi's commentary on rebuking clearly points to the great sensitivity of this act. "Through rebuking him thou shalt not expose him to shame."²³ (lit., make his face grow pale).

In the words of the Talmud, admonishing has a dual complexity. Rabbi Tarfon states "I wonder whether there is any one in this generation who accepts proof" and Rabbi Azariah notes "I wonder if there is anyone in this generation who knows how to reprove."²⁴ Indeed, there is some question among rabbinic scholars whether the precept of rebuking one's neighbor can be enacted at all because of the complexity of admonishing others without shaming them. Rabbi Goren insightfully suggests²⁵ that the precept of *Hobeach* is introduced to complement the precept of love of neighbor. The former is juxtaposed with the cardinal precept of "thou shalt love thy neighbor as thyself."²⁶ The verse in

17. Maimonidis *Laws of the Poor*, Chapter 9:12.

18. Talmud *Bavli*, Sanhedrin 43:b.

19. Leviticus 19:15.

20. Sanhedrin 73:a.

21. Deuteronomy 22:1.

22. Reamer, *op. cit.*, p. 268.

23. Leviticus . . .

24. Talmud *Bavli Eruvin* 15:b.

25. Rabbi S. Goren, "Kol Israel Aravim Ze Bazeh," *Machanaim*. 49 Tishre 1961, pp. 8-18 (Hebrew).

26. *Leviticus*. 19:19.

Proverbs points to an interesting linkage. "For whom the Lord loveth He correcteth. Even as a father the son in whom he delighteth."²⁷

One should point out that the person who is criticized is to be viewed as *Abicho*, one's brother, compounding the difficulty of criticizing one who is close to you. In the Aramaic translation of the verse "thou shalt rebuke thy neighbor," Onkeles translates the term *Amit* not only as neighbor, but as friend.

It is interesting that in Jewish thought even the most righteous are cautioned against performing paternalistic acts. The classic example relates to Joseph and his brothers and his failure to admonish them correctly.¹ If Joseph was unable to succeed in guiding his brothers what can be expected from the common man? This has brought the rabbis to conclude that one who admonishes correctly and with sincerity brings the world closer to peace.²⁸

Because of the difficulty of admonishing others the commentator *Kle Yakar* suggests that the *Mitzvah* is limited to persons who possess a rational mind and not to the wicked, fools and scorners. The rational ones, because they will feel shame; the scorners, because they mock moral principles, willfully ignoring them in their own conduct; and the fools, because they are insensitive to moral truth and without regard for others.²⁹ On the other hand, the responsibility of paternalism according to one of the distinguished interpreters of the Talmud falls upon the leaders of the community. The 13th Century scholar the *Meir*³⁰ states:

Judges, the wise and the leaders of the community have to examine constantly the behavior of their flock. They don't have to apologize when they discover the acts of the community. It is their task to investigate even after the covert behavior of its members. . . . For all Israel is responsible one for another.³¹

Here we find the issue of paternalism directly related to the leaders of the community, the precept inextricably tied to the dictum of *Kol Israel Arevin Ze Beseh*—All Israel is responsible for one another.³²

The responsibility which falls upon the leaders of the community is saliently noted in the tract of *Shabbat* where the Talmud tells us of Rav Judah who:³³

was sitting before Samuel when a woman came and cried before him (about a wrong done to her) but he ignored her. Said he to him. Does not the Master agree (that) whoso stoppeth his ears at the cry of the poor, he also shall cry, but shall not be heard? O keen scholar he replied. Your superior (will be punished) with cold (water) but your superior's superior (will be punished) with hot.

From this Samuel deduced that only the leader, with whom lay the real power, would be punished. It appears then that the leaders of the community have special responsibility to their members to guide and direct them in the path of correctness.

Rabbi Goren suggests that the issue of admonishing and rebuilding is tied to the more global concept of mutual responsibility with its source in both biblical³⁴ and Talmudic texts³⁵. Admonishing, he

27. *Proverbs* 3:12.

28. Sifri *Deuteronomy Piskah* 2.

29. The *Kle Yakar* plays on the first three letters in Hebrew which R-eschaim, C-eselim and L-ezin add to RCL—tale bearer. (Rakel).

30. Rabbi Menahem Meir—referred to as "the Meir"—was born in 1249 and wrote the classic interpretation on the Talmud referred to as *Bet Habchira*.

31. Meir on Talmud *Sanhedrin* 43:b. Rabbi Goren in his article quotes the Yerushalmi in Tract *Sotah* Chapter 7 that from the period of Yavneh (*Arevut*) mutual responsibility are only for overt and not covert actions.

32. Talmud *Bavli Sanhedrin* 27:b.

33. Talmud *Bavli Shabbat* 55 a.

34. Note *Deuteronomy* 29:28.

35. *Sotah* 37:b and *Sanhedrin* 27:b.

suggests, is not exclusively within the realm of leadership particularly when the latter are themselves guilty of transgression. If that be the case, Rabbi Goren suggests then:

if the leaders have failed in fulfilling their obligation the responsibility falls upon all Israel and not just the leaders.³⁶

While there may be some reservation of this position as pointed out in the Talmud³⁷ it is clear however that even if the mainstream of Jewish society cannot carry out the precept of admonishing, the responsibility falls upon the heads of the Jewish community.

IMPLICATIONS AND DISCUSSION

In Jewish thinking intervention in the lives of others is not fraught with the vast

ethical dilemmas as presented in social welfare thought. Rather it is seen as one's responsibility rooted in the ethics of the Jewish people. Paternalism and its close affinity to coercion are clearly articulated in biblical and Talmudic texts and viewed as normative behavior. But coercion should not only be seen as one of corrective experiences for the individual. The responsibility of admonishing others also relates to a person's role as a member of the Jewish community and his obligations to that community. One would expect that every member of the Jewish community would be obligated to further the services that enable the group to function and perpetuate itself. Whether this falls upon all of Israel or is exclusive to its leadership is a source of polemics in the Talmud. It is clear however that regardless of where responsibility lies, the crucial factor is the art of rebuilding and admonishing. The art of admonishing requires heightened self-awareness, sensitivity, and love of neighbor. If these are not present, then it is best to practice the art of silence.

³⁶. *Kol Yisrael Arevin Ze Bezev*, *op. cit.*, p. 17

³⁷. Sanhedrin 43:b.