PATERNALISM, HEALTH, AND PUBLIC POLICY
WORKSHOP 1: PATERNALISM AND PUBLIC HEALTH
14TH-15TH SEPTEMBER 2021 (ONLINE)

14th September

11:45-12:00 BST	**Welcome/Arrival**
12:00-13:00	John Coggon (University of Bristol) *Behavioural Interventions and Long-Game Regulation for the Public's Health: The Ethics of Avoiding Accusations of 'Coercive Healthism'*
13:00-13:30	**Lunch**
13:30-14:30	Jessica Flanigan (University of Richmond, Virginia) *Politics and Public Health: Medicalization as a depoliticized means of social control*
14:30-14:45	**Break**
14:45-15:45	Michael Da Silva (University of Ottawa) *Health Rights and Public Health (Ethics): Tension or Synergy?*
15:45-16:00	**Break**
16:00-17:00	James Wilson (UCL) *Nanny States, Neglectful States, and Paternalism*
17:00	**End**

15th September

8:45-9:00 BST	**Welcome/Arrival**
9:00-10:00	Angus Dawson (University of Sydney) *Why Paternalism is (Largely) Irrelevant to Public Health Policy*
10:00-10:15	**Break**
10:15-11:15	Kathryn McKay (University of Sydney) *Paternalism from the Perspective of Public Health Virtue Ethics*
11:15-11:30	**Break**
11:30-13:00	Roundtable on *The Nanny State Debate* Report for the Faculty of Public Health, by John Coggon Participants: [TBC]
13:00	**End**

ABSTRACTS

John Coggon (University of Bristol)

Behavioural Interventions and Long-Game Regulation for the Public's Health: The Ethics of Avoiding Accusations of 'Coercive Healthism'

This paper considers the role of behavioural sciences in advancing public health policy that is at once ethical and effective. It does so with regard to paternalism critiques in liberal political theory and public health ethics. The paper explores how and why behavioural interventions are advanced as benign or morally-neutral methods of regulation; of realising policy aims without being problematically paternalistic. The analysis uses the idea of *long-game regulatory approaches*, and explains how progressive public health agendas are well-viewed amongst these. Within the context of English public health law and policy, it is argued that evaluation of the ethical (im)permissibility of governance for the public's health is not coherently possible with a fixation on *formal* over *substantive* concerns about coercion. Equally, using ideas such as 'nudge theory' does not, it is argued, even in principle permit sound ethical evaluation of long-game regulation. Furthermore, relying on ideas such as 'nudge' perpetuates ideas about political morality that should be considered problematic from a public health perspective. It is therefore argued that public health approaches that rely exclusively or heavily on behavioural sciences may only apparently avoid anti-paternalist objections—encapsulated in accusations of 'nanny statism'—and may furthermore serve to endorse them. A more direct defence of (what may be framed as) paternalistic policy is required.

Jessica Flanigan (University of Richmond, Virginia)

Politics and Public Health: Medicalization as a depoliticized means of social control

In the past century public health scholars and officials have increased the scope of their claims about what constitutes public health. For example, the American Public Health Association lists gun violence, high school graduation, housing, transportation, and climate change as public health issues. Public health officials have also advocated for the medicalization of socially deviant behavior, such as substance use. Public health scholarship generally reflects an ideology that is amenable to regulations and policy interventions that aim to advance their conception of public health. So as the scope of public health expands, so too does public officials' ability to regulate and control citizens' behavior. I argue that the ideology of public health is unethical and that an expansive conception of public health magnifies the harms associated with this harmful ideology. Public health officials should not have the authority to enforce policies that promote their expansive conceptions of public health because such policies are disrespectful, paternalistic, and they are also often ineffective too.

Michael Da Silva (University of Ottawa)

Health Rights and Public Health (Ethics): Tension or Synergy?

The disciplines of 'health and human rights' and 'public health ethics' each developed partly due to concerns that traditional human rights and bioethics scholarship was insufficiently attentive to the importance of both individual and population-level concerns. Many early scholars in those disciplines accordingly (and rightly) called for 'synergy' between the fields. Yet increasing recognition of legal health rights and more recent theories of health rights are predominantly individualistic and engendered a critique of existing health rights on public health grounds. One solution to this problem is a proposed right to public health. Yet such a 'right' faces conceptual issues. This work suggests that the emphasis on healthcare in existing health rights theory and practice instead highlights the need to understand rights to healthcare in particular ways. Recognizing 'complex' healthcare-focused rights that necessarily implicate some population-level concerns will best re-establish 'synergy' between health rights and public health ethics.

James Wilson (UCL)

Nanny States, Neglectful States and Paternalism

As the use of non-pharmaceutical policies to control covid has made vividly apparent, there are a range of nonpaternalistic ethical reasons for state interference in the lives of competent adults to improve population health – including to reduce inequalities, prevent health systems from being overwhelmed, ensure that environments are made safe for the vulnerable, as well as to prevent harm to others. There are also many different points across risk pathways at which public health interventions can be made: for example, it will usually be possible to intervene upstream (e.g. to regulate food hygiene and nutrition standards) rather than downstream (e.g. to restrict what individuals can and cannot buy). One implication is that clear-cut cases where public health policies *are* paternalistic (or would need to be paternalistic to be effective in protecting and promoting population health) are surprisingly rare. As debates around mask-wearing have shown, what has really been at stake even for opponents of interventionist public health hasn't been paternalism, but a broader unease about the role of the state.

Thus, this paper argues that questions about the justifiability of paternalism are only of secondary importance in public health ethics. It is more fruitful to begin by addressing the broader question of the role of the state in protecting and promoting health, and then find a place for the ethics of paternalistic policies within this structure. I sketch an account of how to set up and resolve this broader debate, arguing that we should introduce, alongside the idea of the Nanny State, the idea of the Neglectful State. The Neglectful State is one that does not take easy steps that could have been taken to reduce risks to health,

and as a result allows significant numbers to come to harm or death. The ethical challenge of public health policy is therefore not the one-sided one of avoiding Nannying, but the more complex task of steering a course between Nannying and Neglect. Once the full implications of a Neglectful State come into view, then it may be that it is more ethically dubious and more politically dangerous, to err on the side of Neglect rather Nannying.

Angus Dawson (University of Sydney)

Why Paternalism is (Largely) Irrelevant to Public Health Policy

A focus on paternalism as a problem for public health policy is common but misplaced. I provide four reasons for this view. First, is a conceptual objection to the use of the term 'paternalism' in this context, as most accounts are built around defending individual liberties from encroachment by others. But public health policy is not, primarily, about individuals. Any objection here should instead be focused on the possible lack of legitimacy of public health decision making. For example, in a democratic society policy ought to be formulated on the basis of public support and relevant legal protections. Their absence is not paternalism, even if wrong. Second, is a conceptual objection built around the nature and aims of public health. Public health policy aims to protect us all from threats to our health. Often such threats to individuals and communities can be most efficiently, or in some cases only, tackled through collective action. Solidaristic action is the best way to ensure that individuals (and communities) can pursue their chosen plans. Third, objections to the second reason often focus on a requirement for the state to be neutral in relation to how individuals live their lives. However, such a requirement is deeply implausible and potentially highly costly, particularly for the vulnerable and disadvantaged in society. Fourth, and related to the third reason, any plausible moral and political theory will be pluralist in the values espoused. Unless you are a libertarian, in the sense of holding that liberty is the only relevant or always the most important value, the issue is about how we weigh different relevant considerations against each other when deliberating about policy. Appeal to paternalism, with its pejorative negative associations, defaults to giving priority to the liberty of individuals. Liberty is, of course, an important value and ought to be taken into account in formulating policy. But to prioritise it in all cases is just not compatible with a fair engagement with the aims of public health and is likely to result in poorer and unjust health outcomes. It would, in my view, be welcome if discussion could move on to seeking to establish the basis of formulating legitimate and democratic public health policy rather than continuing to obsess about the P word.

Kathryn McKay (University of Sydney)

Paternalism from the Perspective of Public Health Virtue Ethics

This paper extends some recent work on virtue in public health to consider questions around paternalism. A standard definition says paternalism occurs when one overrides

another person's autonomy for that other's own interests. It is controversial whether paternalism so defined describes much or any public health work. However, this definition of paternalism is particularly interesting to a virtue ethic perspective. Virtue ethics, with its emphasis on education, habituation, and character development could be described as paternalistic. This is because, ideally, a person is led to develop virtuous dispositions and habits from a very young age without explicitly agreeing to these, rather than opting into a system of virtues at a later state of full autonomy. If it is proposed that processes for the development of virtuous behaviour is paternalistic, we face options. One is to accept this proposal and thereby weaken the concept of paternalism as something particularly problematic, as it is involved in processes of socialisation and education. In this case, we might need a new category of 'problematic paternalism' to identify a different or more egregious kind of interference with a person's autonomy. Accepting the proposal would mean that public health promotion work that aims at education or empowerment of individuals, or structuring environments or systems, would all be considered paternalistic, but any other agency involved in these same activities would also be. In this case, paternalism reveals nothing special to us about public health work. A second option is to reject the proposal and say that engendering virtuous dispositions and habits in people is significantly different from what is usually meant by paternalism, and thereby save a particular role for paternalism as a bad-making feature of some cases. In the case of rejecting the proposal, then public health could avoid a charge of paternalism in health promotion-type work by explicitly linking this work to the development and propagation of virtues. A focus on developing the conditions in which virtues can be developed and practiced could open new avenues for justification of public health activities.