Non-Idealized Dignity and Paternalism:  
A Reformulation of Nussbaum’s Capabilities Approach  
Stephanie Sheintul

Abstract: This paper has two main purposes: (1) argue that states following the capabilities approach are morally permitted to engage in paternalism once one adopts a more plausible account of dignity and (2) establish which kinds and forms of paternalism should be morally permitted by a state following the capabilities approach. At the outset of the paper, I present what seems to be a dilemma about state paternalism. It goes as follows. On the one hand, it may be that a state’s intervening on behalf of its citizens’ flourishing impermissibly undermines their dignity. So states should not be permitted to intervene paternalistically. But, on the other hand, it may be that its citizens will flourish less than they would if a state were to intervene. So states should be able to intervene paternalistically. But, is this truly a dilemma? I argue that the dilemma about state paternalism is not a true dilemma because our having dignity does not preclude government intervention on behalf of individuals’ flourishing. I argue that the proper conception of human dignity is what I term non-idealized dignity as opposed to what I term idealized dignity. I argue that Martha Nussbaum holds the latter conception, which leads her to strictly limit paternalism in liberal democratic regimes following her capability approach. By laying out the theses of non-idealized dignity and arguing that they better pertain to humans as we are, I conclude that paternalism is morally permissible for states following a cogent capabilities approach. Once I establish that paternalism is morally permissible, I offer a way to categorize different kinds of paternalism and go on to argue which kinds and forms are permissible given a non-idealized conception of our dignity. In the end, I argue that the cogent capabilities approach be more welcome to paternalistic action.

Introduction
You wake up and drive to work, and, by law, are mandated to wear your seatbelt. After work, you decide to smoke a cigarette. You go to buy a pack and realize that the tax has increased since the last time you purchased one. This fact frustrates you. And, your frustration is only exacerbated by the fact that you would rather smoke marijuana than a cigarette. But, recreational use of the former is forbidden by your state.

We are regularly surrounded by instances of paternalism. You encountered seat belt laws and drug laws, in particular. In this paper, I am specifically interested in the moral permissibility of state paternalism. I understand state paternalism as interference by a government with the behavior of an individual for the sake of promoting that individual’s good.1 Many times, however, the good that a government is concerned to promote is its citizens actual flourishing, and it is the moral permissibility of paternalistic action for the sake of this good that I am concerned with in this paper. From here on out,

unless I specify otherwise, when I speak of ‘promoting individuals flourishing,’ I am referring to their actual (as opposed to mere opportunity for) flourishing. And, when I speak about the moral permissibility of paternalism, unless otherwise specified, I am really speaking about paternalistic action that seeks to promote individuals’ actual flourishing.

Prima facie, it may seem that state paternalism impermissibly undermines our freedom. For instance, it may seem that you should be able to smoke marijuana after work if you desire to do so and if it does not harm others. In this paper, I understand freedom as a “condition under which proper social/environmental conditions are in place for individuals to set and pursue their ends with little impediment.” It may also be that state paternalism undermines our ability to live a life worthy of our dignity. This concern, in particular, leads Martha Nussbaum to strictly limit state paternalism in liberal democratic regimes following her capability approach.

However, upon reflection, it seems intuitively troubling to dismiss paternalism because paternalism helps enhance individuals’ flourishing. And, the fact that it helps enhance individuals’ flourishing seems to offer state paternalism some legitimacy. Given these two views about paternalism, we run into a seemingly problematic dilemma. Let us call it the dilemma about state paternalism. On the one hand, it may be that a state’s intervening on behalf of its citizens’ flourishing impermissibly undermines their dignity. So states should not be permitted to intervene paternalistically. But, on the other hand, it may be that its citizens will flourish less than they would if a state were to intervene. So states should be able to intervene paternalistically.

But, is this truly a dilemma? Some may bite the bullet and say that it is not. They may hold the following view. If protecting dignity requires a state to protect a maximal amount of freedom for its citizens to set and pursue their ends (unless those ends impermissibly harm others), then paternalism is unacceptable, regardless of whether paternalistic state action can promote its citizens’ flourishing. Respect for dignity rules out paternalism.

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In this paper, I argue against this position. I also argue that the dilemma about state paternalism is not a true dilemma, but I do not bite any bullets. I argue that our having dignity only requires some freedom be protected for individuals in the setting and pursuit of their ends. I argue that the extent to which state paternalism will be morally permissible will also depend upon the effect that citizens’ pursuit of their ends has on their flourishing. Respect for dignity, then, is compatible with a state paternalistically promoting its citizens’ flourishing. And, since this is the case, I show that state paternalism is permissible.

Moreover, I should make clear that this paper seeks to delineate how, in particular, a state following a cogent capabilities approach would handle the apparent dilemma of state paternalism. I argue that Martha Nussbaum holds the first view that I introduced, namely that our having dignity requires the state to protect a maximal amount of freedom for individuals to set and pursue their ends. I call this conception of dignity *idealized dignity*. And, given this conception of dignity, she concludes a cogent capabilities approach to be one that strictly limits paternalism.

In contrast to Nussbaum, I argue that a cogent capabilities approach would not strictly limit paternalism. In place of Nussbaum’s view of dignity, I defend what I call *non-idealized dignity*. Humans as we are have non-idealized dignity. Protecting that dignity allows a state to intervene on behalf of its citizens’ flourishing. And, since this is the case, states following a cogent capabilities approach are permitted to engage in paternalistic action.

The last part of my argument concerns the kinds and degrees of paternalism that states following the capabilities approach may engage in. I draw a distinction between *sanctions oriented* paternalism and *cognitive* paternalism and argue that a cogent capabilities approach permits both. I also argue that the appropriate kind and degree of paternalism that a state may engage in should depend on the consequences for its citizens’ flourishing.

The overall structure of my argument comes in two parts. In the first part, I argue that states following the capabilities approach are morally permitted to engage in paternalism once one adopts a more plausible non-idealized notion of dignity. The second part then discusses the kinds of paternalism that states following the capabilities approach are morally permitted to engage in. I conclude that there are
instances in which states are morally permitted to engage in both sanctions oriented paternalism, and cognitive paternalism.

I: The Moral Permissibility of Paternalism for States Following the Capabilities Approach

Nussbaum’s Capabilities Approach is an approach to social and global justice that answers the question asking what individuals can do and be. The answer refers to individuals’ capabilities, where a capability is defined as “a zone of freedom or opportunity that an individual has to achieve or not achieve a plurality of associated functionings.” On the Capabilities Approach, the provision of combined capabilities is required for societies to be considered at least minimally just. Why is this the case? The answer stems from two important concepts: dignity and the flourishing life. I will offer a brief interpretation of Nussbaum regarding each concept.

In order to understand the concept of dignity, it may be helpful to distinguish between what grounds our dignity and what is required or demanded of others based on our having dignity. Nussbaum draws from Aristotle and Marx to inform what grounds our dignity. She states, “the basic idea in my own version of this [Aristotelian/Marxian] tradition is that human beings have a worth that is indeed inalienable, because of their capacities for various forms of activity and striving.” I interpret this claim as our inalienable worth, i.e. our dignity, is grounded upon our capacities for activity and striving.

In order to understand the concept of a combined capability, we must introduce the three different kinds of capabilities that Nussbaum sets forth, namely basic capabilities, internal capabilities, and combined capabilities. Basic capabilities can be defined as “the innate equipment of individuals that is the necessary basis for developing the more advanced capabilities.” (Women and Human Development, 84). Nussbaum states that these capabilities are generally not sufficient for functioning; they must be developed. Internal capabilities are the developed capabilities; unlike basic capabilities, these capabilities are sufficient for functioning. For example, most individuals who learn how to speak have the internal capability for the freedom of speech. (CC, 21) This brings us to the last kind of capability, namely a combined capability. Nussbaum defines a combined capability as “an internal capability plus suitable external conditions for the exercise of functionings.” (Women and Human Development, 85) In the case of the person with the internal capability of the freedom of speech, he/she would be said to have the combined capability of the freedom of speech if and only if the proper material conditions were provided, e.g. constitutional law protecting freedom of speech that governments properly secure. From here on, I will refer to the ten central combined capabilities as the ten central capabilities.

There are other conceptions of human dignity that I will not address in this paper. Kant develops an account of dignity and in “Human Dignity and Political Entitlements,” Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics (Washington D.C., March 2008), 351-80. Nussbaum also presents the Stoic conception of human dignity. For more information on these interpretations, see Kant (Groundwork of the Metaphysics of Morals) and Nussbaum (Human and Dignity and Bioethics).

Martha Nussbaum, “Human Dignity and Political Entitlements,” Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics (Washington D.C., March 2008), 351-80, Nussbaum does not explicitly mention which forms
Moreover, Nussbaum believes that our capacities for activity and striving must be evaluated because “not all capacities that inhere in nature are the source of moral/political claims.”\(^7\) She also goes on to state that “this evaluative task is slippery and delicate, because we are moving back and forth between thinking of capacities and thinking of a flourishing life…”\(^8\) Nussbaum appears to be claiming that the capacities that ground our having dignity must be evaluated by appealing to an idea of the flourishing life. Dignity, then, seems to be grounded upon the set of capacities for activity and striving that are evaluated to be important parts of individuals’ flourishing.

Nussbaum uses a general conception of the flourishing life to determine which capacities for activity and striving ground our dignity and, in turn, are sources of moral and political claims. She emphasizes that, unlike Aristotle, “[the] idea of human flourishing [which figures] into the approach…is not a single idea of flourishing…but rather [is] an idea of a space for diverse possibilities of flourishing.”\(^9\) This conception of flourishing also helps inform what is required by our having dignity. Our having dignity requires that we be respected as ends. And, to be respected as an end, Nussbaum argues that government must provide its citizens with the opportunity to develop and exercise the capacities that were evaluated to be important parts of individuals’ flourishing.

In sum, I take Nussbaum to hold that our dignity is grounded upon our capacities for activity and striving and requires that we be respected as ends. To properly respect us as ends, governments must make it possible for us to develop and exercise the capacities that have been evaluated to be significant parts of our flourishing. In order to secure this possibility, government must provide its citizens with the ten central combined capabilities.\(^10\)

Guaranteeing individuals the opportunity to develop and exercise the ten central capabilities requires a government to protect a requisite degree of freedom for its citizens to develop and exercise their important capacities. But what is the requisite degree of freedom that governments must protect for

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\(^7\) Ibid.
\(^8\) Ibid.
their citizens? The answer to this question will depend upon the conception of human dignity that a
government holds. The reason is that a government’s conception of dignity will inform what degree of
freedom it must protect for its citizens in the development and exercise of their capacities in order to
respect them as ends. And, given this information, a government’s conception of human dignity will
enable it to determine whether or not it can also promote individuals’ flourishing and engage in
paternalism without impermissibly curtailing its citizens’ central capabilities.

Let me introduce two possible conceptions of our dignity: an idealized conception and a non-
idealized conception. Nussbaum relies on an idealized notion of dignity. By idealized, I do not mean
better: the sense in which I understand idealized is exaggerated and false. Idealized conceptions of human
dignity are falsified because they do not pertain to humans as we are.

I take idealized accounts of human dignity to hold the following two theses:

1. Freedom Thesis: To respect an individual as an end, one must provide an individual with maximal freedom to set and pursue her/his ends, unless those ends impermissibly harm others.\(^{11}\)
2. Paternalism Thesis: To protect maximal freedom for an individual to set and pursue her/his ends, governments must strictly limit paternalistic action.

Non-idealized accounts of human dignity hold the following two theses:

1. Freedom Thesis: To be respected as an end, one must provide an individual with some freedom to set and pursue her/his ends.
2. Paternalism Thesis: Paternalistic action is permissible iff it protects some freedom for an individual to set and pursue her/his set ends.

The two main differences between each conception of dignity concern the amount of freedom that
it takes to respect an individual as an end and the corresponding permissibility of a state engaging in
paternalistic action. The first difference, however, is in need of more clarification. It is important to flesh
out what maximal freedom requires so that the demands of both theses will become clearer.

I take the concepts of autonomy and ability to fall under the umbrella concept of freedom. Let us
examine each in turn. As Arpaly shows in Unprincipled Virtue, autonomy is understood in multiple

\(^{11}\) I take idealized conceptions of dignity to be informed by Mill’s Harm Principle. Mill’s Harm Principle states that “the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.” http://socserv2.soecsci.mcmaster.ca/econ/ugcm/3113/mill/liberty.pdf
ways. To avoid confusion about the sense in which I understand autonomy, it is important to make clear the sense of autonomy that is the concern of this paper. I understand autonomy in the sense that Arpaly calls ‘normative,’ namely as “the one invoked when people ask to be allowed to make their own decisions and to be free from paternalistic intervention.”

I understand the main motivation behind this sense of autonomy to be the protection of an individual’s ability to set and pursue ends that she reasoned to by her own lights. So ‘full autonomy’ would require that the state protect an individual’s ability to set and pursue the ends that she reasoned to by her own lights, i.e. without any paternalistic governmental interference.

In addition to autonomy, ability falls under the concept of freedom. This paper is only concerned with an individual’s external ability to pursue his/her end. That is, this paper understands ability as space given to an individual by another individual (in this case, a government) to pursue her set end. Maximal freedom, then, (1) requires that full or near to full autonomy be protected for an individual to set and pursue his/her ends plus (2) a high degree of ability to actually pursue his/her end. The first thesis of idealized dignity, then, should technically read as follows:

1. **Freedom Thesis**: To respect an individual as an end, one must provide an individual with maximal freedom to set and pursue her/his ends, unless those ends impossibly harm others.

   a. **Autonomy sub-thesis**: To respect an individual as an end, full autonomy or near to full autonomy must be protected for an individual to set and pursue his/her ends.

   b. **Ability sub-thesis**: To respect an individual as an end, a high degree of ability must be protected for an individual to set and pursue his/her ends.

Getting clear on maximal freedom and the demands of an idealized conception of dignity should also make the first thesis of a non-idealized conception of dignity clearer. Non-idealized dignity requires that an individual must only have some autonomy and some ability to set and pursue his/her ends. This means that non-idealized dignity does not require that full or near full autonomy over the setting and pursuit of an individual’s ends be protected for an individual. It also means that non-idealized dignity

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14 I understand ability as the second required condition for having a combined capability, namely a space in which individuals “can achieve a plurality of associated functionings.” Martha Nussbaum, *Creating Capabilities: The Human Development*, 20.
15 I take idealized conceptions of dignity to be informed by Mill’s Harm Principle. Mill’s Harm Principle states that “the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.” John Stuart Mill, *On Liberty*, (Kitchener: Batoche Books, 2011) http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/mill/liberty.pdf
does not require that an individual face little impediment by others (have a high degree of ability) in the
actual pursuit of his/her ends. The first thesis of a non-idealized account of dignity should read as follows:

**Freedom Thesis:** To respect an individual as an end, one must provide an individual with *some freedom* to
set and pursue her/his ends, unless those ends impermissibly harm others

*a. Autonomy sub-thesis:* To respect an individual as an end, some autonomy must be protected for
an individual to set and pursue his/her end.

*b. Ability sub-thesis:* To respect an individual as an end, an individual must have some ability
(could be more than a low degree of impediment by others but must be less than total impediment
by others) in the actual pursuit of his/her ends.

Non-idealized dignity does not require any *exact* amount of autonomy and ability to be protected for
individuals to be respected as an end, but instead requires that the amount of autonomy and ability that
must be protected fall within an acceptable range. The autonomy that must be protected for individuals
must be greater than zero and may be less than 1 (where 0 is no autonomy and 1 is full autonomy) and the
ability that must be protected also must be greater than 0 and less than one (where 0 is no ability and 1 is
total ability) to set and pursue their ends.

Nussbaum holds an idealized conception of human dignity, which informs the task that she gives
governments following her capabilities approach. Nussbaum’s task for governments following the
capabilities approach can be boiled down to the following two claims:

1. Governments must guarantee that their citizens have the opportunity to develop and exercise
   all ten central human capabilities and have the opportunity to flourish and
2. To do this, governments must protect individuals’ choice to develop and/or exercise or not
develop and/or exercise their capabilities, with the qualification that intervention may be permitted
   *iff* individuals’ practices significantly threaten the maintenance of their capabilities.  

I interpret task (a) as being informed by thesis one of an idealized conception of human dignity
because Nussbaum demands that citizens’ actual functioning be left up to them alone. Three passages
provide textual support for my claim that Nussbaum holds thesis one of an idealized conception of
dignity.

not functioning is the appropriate political goal. This is so because of the very great importance the approach attaches to practical reason, as a good that both suffuses all the other functions, making them human rather than animal, and figures itself as a central function on the list. It is perfectly true that functionings, not simply capabilities, are what render a life fully human, in the sense that if there were no functioning of any kind in a life, we could hardly applaud it, no matter what opportunities it contained. Nonetheless, for political purposes, it is appropriate that we shoot for capabilities, and those alone. Citizens must be left free to determine their own course after that.  

2. In that sense, my approach is highly attentive to the goal of functioning, and instructs governments to keep it always in view. On the other hand, I am not pushing individuals into the function: once the stage is fully set, the choice is up to them. The reason for proceeding this way is, quite simply, the respect we have for people and their choices.

3. In a wide range of cases, moreover, a focus on dignity will dictate policy choices that protect and support agency, rather than choices that will infantilize people and treat them as passive recipients of benefit.

These passages show that a salient political goal, given the conception of human dignity that I take to Nussbaum hold, is the provision of choice in areas that are fundamentally important for a good human life. This choice is meant to protect what seems like an individual’s full autonomy over the setting and pursuit of her ends and it is also meant to protect her ability to pursue her autonomously set ends. So it seems plausible to attribute idealized thesis one to Nussbaum.

I also take Nussbaum to hold thesis two of an idealized account of dignity, given her limitation of paternalism. Passage one supports this interpretation, given that she rejects nudging and that she excludes individuals’ functioning as a legitimate political goal of governments. This seems to be due to the idea that intervening on behalf of individuals’ functioning as it relates to their flourishing impermissibly curtails individuals’ freedom. And, since paternalism has to do with individuals’ flourishing, and flourishing occurs when individuals achieve a certain set of functionings, it follows that governments have no business engaging in paternalistic action on behalf of individuals’ actual flourishing.

I should make clear, however, that Nussbaum does leave room for governmental paternalistic intervention, in the few cases where an individual’s capability is significantly threatened. For Nussbaum, paternalism is permissible only when the good being protected is individuals’ freedom rather than the good being individuals’ flourishing. The following passages support this interpretation:

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17 Martha Nussbaum, Women and Human Development: The Capabilities Approach, 87.
18 Ibid., 88.
19 Martha Nussbaum, Creating Capabilities: The Human Development 30.
1. In general, the more crucial a function is to attaining and maintaining other capabilities, the more entitled we may be to promote actual functioning in some cases, within limits set by an appropriate respect for citizens’ choices.\textsuperscript{20}

2. In short: we may sometimes have reasons to protect capability by requiring a limited degree of functioning, at least when a person is exercising a responsible social function.\textsuperscript{21}

As we can see from the above passages, Nussbaum is not averse to governmental intervention on behalf of its citizens’ good \textit{if} it is for the sake of preserving their freedom of choice. And her acceptance of this justification for paternalistic action is consistent with her view of dignity, namely that to be treated as an end, maximal freedom must be protected for individuals to set and pursue their ends. In sum, then, the view of dignity that I take Nussbaum to hold demands that a government following the capabilities approach protect maximal freedom for its citizens to set and pursue their ends and that paternalistic intervention (for the sake of promoting citizens’ flourishing) is strictly limited.

If Nussbaum holds an idealized conception of dignity, is this account of dignity correct? I believe that it is not. I argue that such a conception of our dignity is mistaken because I disagree with each thesis of idealized dignity. Let us start with the first thesis. To reiterate, the first thesis of an idealized account of dignity maintains that in order for others (and in our case, a government) to respect individuals as ends, a government must protect maximal freedom for its citizens to set and pursue their ends. But, is there anything about the concept of dignity, upon analysis, that \textit{actually} demands that in order to respect individuals as ends, \textit{maximal} freedom must be protected?

I do not see any good reason to think that it does. As I stated above, dignity, for Nussbaum, is grounded upon our capacities for activity and striving. To be respected as an end, we must be able to set and pursue ends corresponding to our important capacities. Freedom, which is composed of autonomy and ability, is a necessary condition for individuals to be able to set and pursue their ends because without it, individuals could not be said to have a genuine \textit{opportunity} to set or pursue an end. If this were the case, we would not be respected as active, striving, end setting beings. But, when analyzing dignity, there

\textsuperscript{20} Martha Nussbaum, \textit{Women and Human Development: The Capabilities Approach} 92.
\textsuperscript{21} Ibid., 93.
is nothing that the concept tells us about the degree of freedom that is required for us to be treated as an end.

The view that dignity does require a government to protect maximal freedom for its citizens to set and pursue their ends is not without merit. The concern, it seems, is to make sure that individuals who have a variety of conceptions of the good be treated with respect. And, to do this, governments that respect the pluralism of individuals’ values will make available the ability for individuals to set and pursue different ends, without much interference. The justification behind maximal freedom, in the end, will trace back to dignity. But, despite the merit of the above position, I still find nothing about the concept of dignity that demands that government protect such a high degree of freedom for individuals to set and pursue their ends.

As for the second thesis of idealized dignity, I find it to be problematic for two distinct reasons. The first is simple: I believe that it gets off on the wrong foot by discussing how paternalism relates to protecting maximal freedom for individuals to set and pursue their ends. As I just argued, I do not believe that dignity requires a government to protect such a degree of freedom and, therefore, discussing how paternalism relates to the protection of such a high degree is already a misguided thesis.

But, even if we accept the thesis at face, I still think that it is incorrect. The second thesis of an idealized account of dignity states that in order to protect maximal freedom for individuals to set and pursue their ends, governments must strictly limit paternalistic action. I believe, however, that this dismissal of paternalism is overly simplistic. I agree that there are certain kinds of paternalism that do curtail individuals’ freedom to set and pursue their ends, and that these kinds are ruled out by thesis two of an idealized conception of dignity. But, there is a kind of paternalism that does not take away from maximal freedom and this kind of paternalism is nudging.

Cass Sunstein has a multitude of work that discusses nudging as a kind of paternalism. According to Sunstein, nudges are “...initiatives that maintain freedom of choice while also steering

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22 Ibid., 88.
people’s decisions in the right direction (as judged by themselves).”23 In practice, a large body of work by behavioral economists has shown that humans have an array of cognitive biases that interfere with our ability to achieve our set ends. For example, people are loss adverse. We do not like to lose something that was once ours: strong, negative emotions tend to accompany loss.24 In addition to being loss averse, we are also prone to a salience bias. Salience is a human psychological bias, whereby items that are advertised or are made clearly visible tend to attract more individuals’ attention than items that are hidden.25

We also have cognitive biases that directly impact our will. Humans can be weak willed, and this is due to the fact that we are very prone to temptation and mindlessness. Sunstein and Thaler describe the state of temptation as a ‘hot state.’ Hot states can be described as states of high arousal. For example, one is in a hot state when one is hungry and smells enticing aromas of food. When we are in these states of high arousal, we tend to consume more of something than we would if they were not tempted.26 We are also mindless. Mindlessness occurs when we go into “automatic pilot” mode, and do not pay attention to what we are doing.27 And, when we do not pay attention, we can be steered away from meeting our ends.28

Given that we have an array of cognitive biases, we are often susceptible to error.29 This is because we are regularly manipulated by different institutional forces, and as a result, are pushed away from achieving our set ends. For example, you may set the end of eating healthy. But, to get to the grocery store you must pass a deli that consistently advertises a two-dollar bacon, egg, and cheese on a croissant--your weakness. And, given that the sandwich is made salient to you, the deli successfully exploits your salience bias, you purchase the sandwich, and you fail to achieve your end of eating

25 Ibid., 100-101.
26 Ibid., 41.
27 Ibid., 43.
28 Ibid.
healthily. The proper social and environmental conditions were in place for you to go the grocery store and buy healthy food, but due to your cognitive bias, you failed to do so.

The way that governmental nudging could protect maximal freedom for you to achieve your end, but steer you in a better direction, is to try and counteract some of the extra-governmental sources of manipulation. Now, I should qualify that in circumstances for which individuals are not acting autonomously, namely instances when their cognitive biases take control, a government cannot protect full or near to full autonomy for them (since they do not have it!). But, what it can do is protect individual’s ability to choose from a set of options that will better meet their autonomously set end. All that a government does when it nudges is rearrange individuals’ options in a way that aligns their set ends with their cognitive biases. For example, let’s say that you still have the end to eat healthy. You work for the government and are on lunch break. You decide to go to the cafeteria and, made very clear to you, is an array of healthy lunch options. Behind these options, in the back of the cafeteria, is a dessert stand, but it’s not made immediately visible to you. You buy one of the healthy lunches that are made salient and successfully meet your end of eating healthy. The takeaway point is that when a government nudges us, it does not take away our freedom in any way, all it does is align our biases with our set ends.

Now, someone who holds an idealized conception of dignity may still put forth the following argument against nudging. The idea may be that a government should not exploit our cognitive biases in a way that aligns with our ends because it is impermissibly undermining autonomy, i.e. an individual’s ability to set and pursue ends that she reasoned to by her own lights. Freedom to set and pursue our ends does not just require a high degree of ability to set and pursue, but also requires that a state not take away from the autonomy that its individuals have to set and pursue their ends.

There are two things to say about this argument. First, if the argument takes for granted that individuals are always autonomous, then it is just false. For, as stated above, we have an array of cognitive biases that lead us to act in ways that take us away from our autonomously set ends. In this

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case, a government is not taking away from the autonomy that its individuals have because, sometimes, there is no autonomy that is to be taken away from its citizens.

And, moreover, when individuals are acting autonomously, nudging does not take away from that autonomy because it only operates on individuals’ cognitive biases. If an individual recognizes his/her cognitive biases, then he/she should be able to recognize a corresponding nudge. If this is the case, then an individual can choose to ignore the nudge. Either way, then, nudging does not take away from any autonomy that individuals have. So nudging is still consistent with protecting maximal freedom.

The way that the above example challenges thesis two of an idealized account of dignity is by showing that a government can engage in paternalism (again, for the sake of promoting its citizens’ flourishing) while protecting maximal freedom (when possible) for its citizens in the setting and pursuit of their ends. If this is the case, then governmental paternalism, in the form of nudging, is permissible. And, if nudging is permissible, then thesis two of an idealized account of dignity is false. Thus, to relate this argument back to the capabilities approach, Nussbaum should allow governments to engage in nudging.

At this point I’ve given two arguments against an idealized conception of dignity. But, this does not yet show that we have good reason to adopt a non-idealized account. I must now argue for each thesis of a non-idealized account to show that it is the kind of dignity that actually pertains to humans as we are. Let us start with thesis one of non-idealized dignity.

Thesis one of a non-idealized conception of dignity states that to be respected as an end, some freedom must be protected for an individual to set and pursue her/his ends. Governments are required to protect some freedom for their citizens to set and pursue their ends because, as I stated above, individuals could not be said to have a genuine opportunity to set or pursue an end, and thereby be respected as active and striving individuals, without some freedom. I also believe that when it comes down to the setting and pursuit of ends, dignity is not the only concept to look toward to determine permissible or impermissible paternalistic governmental action; the setting and pursuit of ends also seems to fall under the domain of flourishing. The extent to which governments are morally permitted to intervene with the setting and
pursuit of individuals’ ends, then, is also informed by the effect that the end has on individuals’ flourishing.

And, given that I take it to be the case that individuals’ flourishing also informs the permissibility/impermissibility of paternalistic governmental intervention, I support thesis one of non-idealized dignity since it is compatible with this view. It is compatible because the constraints that freedom places on governments promoting flourishing are relaxed under thesis one of non-idealized dignity, such that a government can both respect some of its citizen’ freedom while still curtailing some of it to help promote their flourishing. In sum, then, dignity demands that individuals have some freedom to set and pursue their ends, but flourishing determines the degree of freedom that individuals must have to set and pursue each particular end.

Moreover, I also agree with thesis two of non-idealized dignity. Thesis two states that certain kinds of paternalism are permissible that may curtail an individual maintaining maximal freedom in the setting and pursuit of her/his set ends. I agree with this thesis because I agree that governments are morally permitted to intervene on behalf of their citizens’ flourishing and that dignity only requires that individuals have some freedom over the setting and pursuit of their ends. Since this is the case, it follows that governments can curtail some of the freedom that individuals have over the setting and pursuing of their ends by engaging in paternalistic action on behalf of promoting their flourishing.

I hope to have shown that there is good reason to support a non-idealized conception of human dignity. The implication of accepting this view of dignity is that we do not have to bite any bullets when faced with the dilemma of state paternalism. If we accept a non-idealized conception of dignity, a government can both respect the dignity of its citizens and take the promotion of their flourishing as a legitimate political goal. And, if the promotion of flourishing is a legitimate political goal, then governments following the capabilities approach can also legitimately engage in certain kinds of paternalism. Now that we’ve established that governments following the capabilities approach are permitted to engage in paternalism, we should consider which kinds of paternalism are permissible.
In *Why Nudge*, Sunstein proposes two different ways of thinking about paternalism. He first offers the idea that paternalistic action can be placed on a continuum. One end of the continuum represents hard paternalistic action and the other end represents soft paternalistic action. According to Sunstein, hard paternalism means that interventions pose high costs on choosers, whereas soft paternalism means that interventions pose low costs on choosers.\(^{31}\) Conceived of in this way, all costs, both material and nonmaterial, have a place on the continuum. For example, a small cost monetary fine and a large cost graphic campaign would fall along the same continuum: the former would be considered a soft form of paternalism and the latter would be considered a hard form of paternalism. And, given this understanding of paternalism, the permissibility of a particular paternalistic intervention would depend upon the intervention’s place on the continuum and if that degree of paternalism was permissible.

Although Sunstein states that there are “significant advantages in seeing a continuum here rather than a categorical distinction,” he also offers another way to categorize paternalism. He suggests that if we want a categorical distinction between hard and soft paternalism, then we should separate them by material cost. Hard paternalism would refer to “actions of government that attempt to improve people’s welfare by imposing material costs on their choices.”\(^{32}\) And, soft paternalism would refer to “actions of government that attempt to improve people’s welfare by influencing their choices without imposing material costs on those choices.”\(^{33}\)

I do not find either of these ways of conceptualizing paternalism to be fully adequate. Let me start with the latter, since I find the continuum more promising. The problem with the categorical distinction between hard and soft is that the terminology obscures the degree that the effect of the paternalism may have on individuals. For example, a scary ad about the effects of smoking may affect individuals’ beliefs about smoking more than a nudge that mandates stores to sell cigarettes behind the counter instead of in the window. Yet, both of these forms of paternalism would be considered ‘soft forms,’ given that they do

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\(^{32}\) Ibid., 58.

\(^{33}\) Ibid.
not impose any material costs. The term ‘soft’ seems to track ‘degree of cost’ more than ‘kind of cost,’ e.g. material/nonmaterial and a similar concern can be made about hard paternalism. Therefore, I (along with Sunstein, but for different reasons) take this specific way of categorically separating soft and hard paternalism to be inadequate.\textsuperscript{34}

As for the suggested continuum, I think that it properly separates hard paternalism from soft paternalism. The suggestion that hard forms of paternalism impose large costs on choosers and soft forms of paternalism pose low costs on choosers seems correct. But, I still find two problems with the continuum that Sunstein suggests. First, I don’t believe that including both material and nonmaterial forms of paternalism on the same continuum gives us the most conceptual clarity. This is because the kinds of costs between these two forms of paternalism, and not just the degree of the cost, is different. And, I also believe that we can muddle our conceptual clarity about paternalism by separating different kinds of paternalism based on cost. This is because the efficacy of certain kinds of paternalism are not directly based on the cost that they impose on choosers.

To avoid both of these problems, I first suggest that we make a categorical distinction between forms of paternalism based upon their \textit{source of efficacy}. By source of efficacy, I mean the source \textit{in virtue of which} the paternalism is supposed to work. I suggest that we call kinds of paternalism whose source of efficacy predominantly lies in the costs that are presented to choosers as \textit{sanctions-oriented} paternalism. For example, if governments impose a fine for speeding, the paternalism is driven by the \textit{quantitative cost} of the fine. This can be seen in the following case. If an individual decides to refrain from speeding given that there is a fine, the efficacy of the paternalistic action just lies in the cost that the fine imposes on an individual. It is important to note that costs do not only have to be monetary, but that they can also include time costs or social costs.

Aside from sanctions-oriented paternalism, I suggest that we call kinds of paternalism whose source of efficacy lies in exploiting, counteracting, or changing individuals’ psychological biases/states \textit{cognitive} paternalism. For example, a default setting that is meant to steer an individual in the right

\textsuperscript{34} Ibid. Sunstein’s reasons for rejecting this categorical distinction can be found on page 59.
direction exploits our status quo bias. The source of the efficacy of the paternalistic intervention in this example just is the exploitation of our cognitive bias.

My second organizational suggestion is that we think of each of the above kinds of paternalism as having their own continuum. Sanctions-oriented paternalistic action is on a continuum: there are small costs that can be imposed on individuals and large costs. For example, governments can impose low quantitative costs on choosers, e.g. a fifty-dollar fine for an individual of average socioeconomic standing in the United States, to high quantitative costs, e.g. a one-thousand dollar fine for an individual of average socioeconomic standing in the United States. We can stick with the terminology of soft and hard paternalism and say that the former fine is a soft form of sanctions-oriented paternalism and the latter is a hard form. And, of course, there will also be instances of paternalism that fall in between these extremes.

Moreover, as I noted above, there are different kinds of sanctions-oriented paternalism. It may be the case that soft monetary forms of sanctions oriented paternalism have a different effect on individuals’ behavior than soft time forms of sanctions oriented paternalism. For example, a punishment for not fastening one’s seat belt may be 3 days worth of community service. And this may have a different effect on individuals’ subsequent behavior than would a small monetary fine for not fastening one’s seat belt. Nevertheless, I believe that grouping different forms of cost-driven paternalism under one category provides more conceptual clarity than putting them on one spectrum with other kinds of paternalism whose source of efficacy is not cost driven.

Now, let’s shift our focus back to cognitive paternalism. It is crucial to note that, again, the source of the efficacy of cognitive paternalism does not directly lie in the cognitive costs it imposes on choosers, but on the fact that the some psychological bias/state of ours is being interacted upon. But, with this in mind, it still makes sense to discuss low cost and high cost (soft/hard) forms of cognitive paternalism. It seems plausible that, on the one hand, low cost cognitive interventions would have very little impact on

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35 One common cognitive bias, coined by William Samuelson and Richard Zeckhauser, is the “status quo bias.” This bias represents the powerful tendency that humans have to stick with their current situation. Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New York: Penguin Books, 2009), 34.
our cognitive states, namely our beliefs, preferences, and desires. On the other hand, it seems that high
cost cognitive interventions would have a large impact on our beliefs, preferences, or desires (one, two, or
all three of them depending on the particular intervention).

According to Sunstein, nudging is a low cost cognitive intervention. This is because nudges
“preserve freedom of choice.”\textsuperscript{36} Sunstein is not explicitly clear about whether nudges exploit our cognitive
biases or counteract them, but he does note that he prefers the latter term.\textsuperscript{37} Nevertheless, the point is that
whether nudges exploit our cognitive biases or counteract them, they are so subtle that individuals, most
of the time, do not even know that they are being nudged. And, it is rare that individuals’ beliefs,
preferences, and desires are significantly altered by nudges. For example, take a nudge that has to do with
the way that items are displayed. Say, a government placing carrots near the cash register in the cafeteria,
rather than a brownie. By making carrots more visible to choosers than a brownie, it helps prevent
individuals whose end is to eat healthily from choosing to eat a brownie.

This is a low cost form of paternalism because it (1) preserves individuals’ choice to purchase the
brownie and (2) does not seek to change individuals’ beliefs, preferences, or desires. If an individual sets
an end that does not align with the end that the nudge is influencing, that individual still has the option to
ignore the nudge. So, in the case above, if an individual knows that he wants the brownie with lunch, all
that he has to do is grab one. All that the nudge of putting carrots near the cash register does is prevent
our cognitive bias of salience and our weak wills from influencing us to eat something that we did not
intend to eat, if our intention is to eat healthy. But, if the end that an individual sets for himself is to eat
the brownie, display nudges do not prevent him from doing so.[29] Nudges, then, are low cost forms of
cognitive paternalism.

There can also be high cost cognitive interventions. These are typically seen as interventions that
seek to change our beliefs, desires, or ends (although it is not necessary that they seek to).\textsuperscript{38} An example

\textsuperscript{36} Cass Sunstein, \textit{Why Nudge}, 19.
\textsuperscript{37} Ibid., 59.
\textsuperscript{38} Sunstein notes that there can be high cost means oriented paternalism, but these interventions are less common. For example, a
graphic image on a cigarette case can technically be taken to prevent individuals whose end is to be healthy from acting upon
their immediate desire to smoke. But, this is a higher cost cognitive intervention because it is much more likely to have an affect
of a high cost cognitive intervention would be a graphic smoking campaign that is meant to scare
individuals away from holding the end of smoking.\textsuperscript{39} The source of the efficacy of the paternalism is
based on some change in an individual’s beliefs and/or desires toward smoking, and the cost is high
because it is more prone to alter our cognitive states.

To sum up, I take there to be two main kinds of paternalism: sanctions-oriented paternalism and
cognitive paternalism. These are distinct in kind because the source in virtue of which the paternalistic
intervention is meant to work is different; for the former it just is the cost imposed, whereas for the latter
it is the impact that the intervention has on our cognitive biases/states. Moreover, within each category,
the paternalism can come in degrees. There are soft and hard forms of both sanctions oriented paternalism
and cognitive paternalism. With this taxonomy is mind, we should now explore under what circumstances
a government following the capabilities approach should be able to engage in each kind.

To reiterate, I understand paternalism as interference by a state on behalf of its citizens’
flourishing. Up until this point, however, I have left out a discussion about the way that I conceive of the
flourishing life. Before discussing how non-idealized dignity interacts with both kinds of paternalism,
then, it is important to say something about the flourishing life. And, this is because the conception of the
flourishing life will impact the permissibility or impermissibility of paternalistic action for governments
following a cogent capabilities approach.

Along with Nussbaum, I adopt a \textit{general conception} of the flourishing life, born out of an
Aristotelian internal essentialist methodology. This methodology has the following three important
features:

1. \textbf{Near Universality}: functions chosen are meant to be nearly universal, born out of cross-cultural
dialogue.
2. \textbf{Humanity}: functions chosen are seen to be constitutive of a human life; absent these functions, we
would not recognize a life as specifically human.
3. \textbf{Historical}: functions chosen are informed by studying “different self understandings of people over
time,” via stories, art, etc.\textsuperscript{40}

\textsuperscript{39} Ibid., 57.
\textsuperscript{40} Martha C. Nussbaum, “Human Functioning and Social Justice: In Defense of Aristotelian Essentialism,” \textit{Political Theory},
The conception of the flourishing life that is born out of this methodology is a vague, general, nearly universal, conception of the good. And, the list of functionings that, as of now, seem to have wide, cross-cultural support are Nussbaum’s list of the ten central capabilities. Because of this, the functionings that I take a government following the capabilities approach to be permitted to promote are those functionings that correspond to the ten central capabilities.

With a working conception of the flourishing life, we can now examine how non-idealized dignity interacts with sanctions oriented and cognitive paternalism. In order to determine the permissibility of either kind of paternalism, we need to ask whether and to what extent the functioning in question affects individuals’ flourishing. Once we determine this, we must decide whether the form of paternalism in question impermissibly undermines individuals’ autonomy and ability to set and pursue their ends. The choice of a permissible form of paternalism will hinge on whether a government can engage in it without undermining our dignity, and if it can, whether it is an effective form of paternalism to engage in for the particular case at hand. Perhaps multiple kinds and degrees of paternalism will be morally permitted in a given case.

Let us look at an example that will demonstrate how governments seeking to engage in paternalistic action should proceed. Let us assess the moral permissibility of paternalistic state action designed to discourage individuals from smoking cigarettes. To start, it is pretty unanimously agreed upon that cigarettes affect individuals’ flourishing. The area of flourishing that they affect the most is individuals’ health. Cigarettes have a negative effect on our health: they cause heart disease, lung disease, etc. Moreover, the CDC reports that smoking “causes more deaths each year than the following causes combined: HIV, illegal drug use, alcohol use, motor vehicle injuries, and firearm-related injuries.” (CDC).

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42 “Health Effects of Cigarette Smoking.” Centers for Disease Control and Prevention (CDC) last modified October 1, 2015, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/.
Cigarettes may be bad for our health, but how bad are they? The degree to which they negatively affect our health is high: smoking “increases both men’s and women’s risk of dying from all causes.”\textsuperscript{43} (CDC) For example, it increases the risk of getting cancer, respiratory disease, cardiovascular disease, and may negatively affect pregnancy in women.\textsuperscript{44} The degree to which smoking negatively impacts each individual will depend upon a variety of factors, such as frequency, age, amount of pleasure they gain from smoking etc., but the overall effects of long-term use are very poor for most individuals’ health.\textsuperscript{45} And, since the nicotine found in cigarettes makes them addictive, it is even more likely that individuals will use them more often that not.

Given that cigarettes are so harmful to our health, I believe that both low-moderate cost forms of sanctions oriented paternalism and low cost forms of cognitive paternalism are permissible. I start with these forms because they are less controversial (though still controversial) than high cost forms of either kind. I think it is plausible that each of these degrees and kinds of paternalism are morally permissible for two reasons. First, they preserve enough of our autonomy and ability to smoke cigarettes such that our dignity is not violated. Second, the extent to which cigarettes harm our health makes each of these particular kinds and degrees of paternalism permissible. Let me elaborate on the justifications for engaging in these kinds of paternalism by looking at a potential policy.

One policy that falls under sanctions-oriented paternalism is a low-moderate cost cigarette tax. How does a tax impact individuals’ autonomy and ability to set and pursue their ends? Let us start with autonomy. It is plausible that a tax lessens our autonomy to set our ends by our own lights, given that a government is in control of the input that goes into our reasoning about our ends. Say that an individual has a set end to smoke and that this end is inconsistent with his end of being healthy. Taxing cigarettes lessens his ability to reason on his own and may make it harder for him to maintain his end of smoking cigarettes. This is because a cigarette tax may present a disincentive for him to not smoke, which enters

\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
\textsuperscript{45} I concede that for some individuals, smoking may be a good thing. In cases where individuals receive an extremely large amount of pleasure or in cases where an individual takes some pleasure in smoking and something else will kill them before the cigarettes have a harmful effect. But, in the majority of cases, smoking is against individuals’ good (by their own lights) and is bad for individuals’ health.
into his reasoning about his ends. If he adopts the end to not smoke in virtue of this disincentive, he has not fully chosen his end to not smoke by his own lights. As for ability, a low-moderate cost tax makes it a bit harder for an individual to purchase cigarettes, but does not drastically change an individual’s ability.

Though a low-moderate cost tax on cigarettes may lessen an individual’s ability to act autonomously and may make it harder for an individual to purchase cigarettes, the extent to which the tax lessens individuals’ autonomy and ability is not great enough to undermine their dignity. This is because it seems plausible that an individual still has some (and a pretty large amount) of autonomy to set her end to smoke, despite a government placing a tax on cigarettes. An individual’s reasoning may be influenced and shaped by the introduction of a tax, but that individual is still free to reflect about the tax and decide, by his own lights, whether he still holds the end of smoking. I suggest that persuasion, which can come in multiple forms, e.g. dis(incentivization), manipulation, etc. does not impermissibly undermine our autonomy so long as an individual, upon reflection, can choose her original end. It seems that autonomy can be protected even with external influence. The autonomy that dignity is concerned to protect, then, is not an individual’s ability to reason by her own lights by prohibiting governmental interference, but protecting an individual’s ability to choose her original end by her own lights despite interference. In sum, if a government makes it such that it is very difficult for an individual, upon reflection, to choose or maintain her original end without punishment or threat, it seems that an individual’s autonomy has been impermissibly violated.46

As for ability, if an individual chooses to keep her set end, she is still able to purchase cigarettes. If she does not, then nothing happens to her ability to purchase them again if she changes her mind. So I propose that so long as an individual is able to reflect about her options and come to a decision about them without threat of being punished or bullied into adopting some end, and she still has the real world opportunity to pursue that end, then her dignity is not undermined. Maximal freedom should be replaced by the above limits on freedom.

46 My suggestion about when autonomy is violated is similar to Sunstein. On page 138 of Why Nudge, Sunstein writes “so long as freedom of choice is maintained, and government does not impose significant costs on those who seek to go their own way, autonomy is not undermined.”
Moreover, nudging, as a low-cost form of cognitive paternalism, is also permissible. For example, moving cigarettes from store windows to behind the counter in order to make cigarettes less salient is morally permissible. And, again, the justification is that many times individuals are not acting autonomously when their cognitive biases are exploited (so nudging does nothing to undermine autonomy) and individuals still have the ability to purchase them, if they so choose.

More controversial, however, is high cost forms of both kinds of paternalism. Are cigarettes bad enough for our health (and thereby, our flourishing) such that a high tax or a graphic campaign against smoking would be morally permissible? I argue that they are bad enough to warrant such forms of paternalism. Even if this is the case, do high cost forms of both kinds of paternalism undermine our dignity? I believe that in some cases each may. A variety of policies would need to be considered against the conditions I set out above, namely that individuals be able to reflect about their options and come to a decision about them without threat of being punished or bullied into adopting some end, and they also must have the real world opportunity to pursue that end.

Certain high cost forms of sanctions oriented paternalism, such as bans, fines, or jail time do seem to impermissibly undermine an individual’s ability to autonomously set or maintain the end of smoking cigarettes.\footnote{I should be clear that I do not believe that all bans or fines are impermissible: only high cost ones. Jail time, however, is more controversial because most of the time, it seems to pose a high cost to choosers.} For example, if a government were to ban cigarettes and the punishment for breaking the ban were a steep fine, it would be very hard for an individual to keep the end of smoking cigarettes along with her other ends, e.g. not breaking the law. If the reason why an individual adopts the end to not smoke is due to her fear of getting caught breaking the ban, or due to some moral disposition she has toward not breaking the law (etc.) and it is made very difficult for her to re-adopt her original end of smoking, then it is plausible to say that her autonomy has been impermissibly undermined. In this case, moreover, it is plausible that her dignity is undermined. This is because the government does not protect enough of her autonomy or ability to pursue smoking cigarettes.\footnote{I do not believe that there is a hard and fast way to precisely determine the threshold below which individuals’ freedom is lessened to the extent that their dignity is undermined (or, I don’t currently have it precisely worked out), but I do believe that conversation and intuition can steer us to a plausible place.}
In short, given the demands of our dignity bans, steep fines, and jail time, as instances of high cost, sanctions oriented paternalism, should be off limits for governments engaging in paternalistic action. This is because, as bad as it is for individuals to undermine their flourishing, dignity demands that individuals have some freedom protected for them to set and pursue their ends. A government may make it very hard for an individual to obtain an end that seems very aversive to his/her flourishing, but it would be a breach of individuals’ dignity if, for paternalistic reasons, if it forbid or severely reduced certain options (of course, it is still possible that governments may be able to engage in these practices for non-paternalistic reasons.)

Lastly, let us look at high cost cognitive forms of paternalism. Say, for example, that a government places a vivid, uncomfortable, and generally disturbing picture of an individual going through the negative effects of smoking on the front of a cigarette box. This action by the government is more than a nudge because it is making an image salient to individuals who hold the end of smoking, which makes it a higher cost form of cognitive paternalism (this is because it is meant to change an individual’s end.) Is this instance of paternalism action impermissible? This case is a tough call because it rests on information about how easily an individual can control her affective responses. It seems plausible that the graphic picture lessens individual’s autonomy to decide to smoke because the picture may frighten individuals into adopting another end. This seems to impermissibly undermine individuals’ autonomy because it is seems plausible that it would be very difficult for an individual to reflect and re-adopt her end of smoking, given that she cannot simply ‘un-see’ the picture. However, it is also the case that an individual could reflect and understand that the source of the fear is simply the image’s exploitation of his/her salience bias, and that she could decide for herself whether or not the information portrayed will influence her to change her end, by her own lights, or not.

I lean toward the latter position, because it is plausible that individuals should still be able to reflect on their own and choose to still smoke despite a graphic picture. Unlike a ban, which makes it very hard for an individual to maintain or adopt the end to smoke (given the punishment that is associated with
the end), a disturbing picture simply exploits an individual’s cognitive system; she still has control over how her affective and reflective system work together, and there is no punishment (other than from the potential consequences of smoking) that she faces. Intuitively, then, it seems that this particular high cost cognitive measure is permissible, but there may be cases given for which it is not permissible.

**III: Conclusion**

You wake up and drive to work, and, by law, are mandated to wear your seatbelt. After work, you decide to smoke a cigarette. You go to buy a pack and realize that the tax has increased since the last time you purchased one. This fact frustrates you. And, your frustration is only exacerbated by the fact that you would rather smoke marijuana than a cigarette. But, recreational use of the former is forbidden by your state.

We started this paper with the same tale, and questioned whether or not paternalism by the state was morally permissible. At this point, I hope that the way to go about answering this question has become clear. Now having established the kind of dignity that we have, and the demands that it places upon governments, we can ask whether each of the policies in the above tale properly respects that dignity. And, if states following a cogent capabilities approach are morally permitted to engage in such paternalistic interventions.

Seat belt laws and cigarette laws (as I argued above) are morally permissible paternalistic interventions, according to the view of dignity proposed. Seat belt laws are permissible because not wearing one’s seat belt can have a very negative effect on one’s flourishing if one gets into an accident. However, I should qualify that the mandate to wear one’s seatbelt is only permissible if the punishment for breaking the mandate is low. If the punishment were high, then seat belt laws would not be permissible (for the same reason that high cost bans/fines are not permissible). And as we saw with cigarettes, the damaging effect that they have on individuals’ health is enough to warrant a tax.

Yet, the ban on marijuana is much more controversial. But, according to my view of dignity, it seems that the ban on marijuana is morally impermissible. And this is because the ban does not protect enough of the freedom that individuals have over the pursuit of their ends, given that the costs associated
with breaking the ban are typically high. This paper has hopefully shown that a cogent capabilities approach would permit paternalistic action, understood as action by the state that is taken on behalf of individuals’ flourishing. An important continuation of the project would be to ask whether a state *ought* to engage in paternalistic action. Because, of course, even if a state is permitted to engage in paternalistic action, it doesn’t necessarily follow that it ought. But, for now, I believe that the most cogent version of the capabilities approach is one that permits a wide variety of paternalistic action.
Bibliography


