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## **Obesity, Libertarian Paternalism, and Autonomy**

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### **Summary**

As the number of obese people rises and many obese people find it very hard to lose weight, discussion has emerged about the acceptability of state intervention in order to help people manage their weight. On the one hand, the wellbeing of obese individuals is likely to improve when losing weight. On the other hand, the state cannot brusquely intervene out of respect for the autonomy of individuals. Libertarian paternalism has been proposed as a way out of this dilemma, yet little attention has been devoted to the concept of autonomy in this political philosophy. This is remarkable, as designing the environment thus that people display desired behaviour seems to ignore people's autonomy. In this paper, this problem is addressed by focussing on the role autonomy plays in defending individuals against paternalism. I attempt to demonstrate why libertarian paternalism can be used to enhance, rather than surpass, people's autonomy in the case of obesity. This is done by discussing the reasons Mill has for defending autonomy. It becomes clear that while his practical reasons fail, he does have a strong theoretical defence of autonomy by defending autonomy out of respect for autonomy. I argue that in many cases, obesity is the result of 'autonomy gaps' (Anderson, 2008), i.e. situations in which people find it impossible to pursue their goals due to a demanding environment. Whether the state has a role in addressing these autonomy gaps depends on one's valuation of autonomy. Mill's view on autonomy is discussed in reference to two competing valuations of autonomy, after which there is reason to believe that libertarian paternalism provides, both theoretically as practically, an acceptable philosophy of state intervention in order to reduce obesity.

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## 1. Introduction

Throughout the last three decades, the number of obese people has shown a steady increase around the world (WHO, 2011). This increase has vast results as obesity is associated with personal and societal costs alike. It is demonstrated that obese run an increased risk at contracting diabetes, cardiovascular disease and various types of cancer at some point during their life (WHO, 2011). Substantial as these physical and psychological consequences are for the individual, society in its entire shares in the burden (Withrow & Alter, 2011). In fact, obesity is predicted to form a substantial, if not the biggest, strain on healthcare resources in most Western societies in the future (Lengerke & Kraut, 2011). Given that being obese generally results from people's lifestyle rather than unfortunate genetics (Ledikwe, Blanck, Khan, Serdula, Seymour, Tohill, & Rolls, 2006; Kerstens, 2013), the question arises why people do not simply change their lifestyle in order to reduce personal and societal costs. Due to the fact that people are highly susceptible to environmental influences (e.g. Papias & Hamstra, 2010), that the current environment has been described as 'obesogenic' due to the abundance of calories and absence of need to exercise (Egger & Swinburn, 1997), and that people are extremely habitual (Duhigg, 2012), it becomes apparent why people find it so hard to change their lifestyle by themselves. In order to reduce obesity substantially, there seems to be a need for collective action, for instance guided by the state.

People are, however, rather attached to their autonomy and do not like (the thought of) government intervention in their daily life. In addition, it seems unlikely that a country in which the state pervades every inch of citizen's life, prospers. Although the government is, in fact, omnipresent in daily life (e.g. enacting and enforcing laws, providing public goods), one only has to think of totalitarian regimes as Stalin's Soviet Union, Mao's People's Republic of China and Kim Jong-Un's People's Republic of Korea to realise that there should be limits to government interference with daily life. People's autonomy, freedom, or liberty, is something most people in Western societies value, which limits the extent to which a government (or society at large) can meddle with people's private life. This restricts the steps a government can take in order to reduce or prevent the occurrence of obesity, highlighting the tension between wellbeing and autonomy. On the one hand, valuing beneficence compels some people to help obese managing their weight, as this will, *ceteris paribus*, increase their wellbeing. On the other hand, we value autonomy and respect the choices people make and understand that, in principle, people have a right to live their life as they deem right. The struggle between these values permeates the current discussion and forms the starting point of this paper.

There are several strategies a government could use that might affect the prevalence of obesity. It might prohibit the sale of calorie-dense goods or restrict its number of selling points, it could tax products deemed ‘unhealthy’ more, while taxing products deemed ‘healthy’ less, reduce the compensation for unemployment for obese people, invest in cycle lanes and parks, etc. Not every strategy affects the same people or interferes equally with their autonomy. In addition, there is a difference between strategies that aim at preventing obesity among children, and strategies aiming to reduce obesity among adults. As both possibilities raise separate questions, investigating each would be beyond the scope of this paper. This paper aims only at investigating the extent to which government interference in the life of adults is warranted in order to reduce obesity. Reducing obesity among adults is pivotal to reducing obesity overall as they are likely to transmit their obesity-inducing habits to their children (Scaglioni, Salvioni, & Galimberti, 2008), thus increasing the prevalence of obesity.

Currently the most discussed strategy for changing people’s behaviour is ‘Libertarian Paternalism’ (Thaler & Sunstein, 2008). The strategy is based on findings indicating that many people find it extremely hard to live in line with their interests, despite knowing oftentimes very well which behaviour is, and which behaviour is not in line with their interests. In this way, it can happen that people consciously know that certain products make them obese, and fully believe that they should eat less of these, yet find themselves consuming exactly these products in vast amounts. At this point, people can use a ‘nudge’. A nudge is a way of structuring the environment in such a manner, that people feel inclined to behave in a particular fashion. To use the authors terms (p. 6), a nudge is:

*“any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives. To count as a mere nudge, the interventions must be easy and cheap to avoid. Nudges are not mandates. Putting the fruit at eye level counts as a nudge. Banning junk food does not.”*

Although nudging can take many forms, I specifically focus on the deliberate modification of the environment by the state in order to make people live more healthily. Albeit seemingly contradictory, this political philosophy is indeed libertarian in the sense that people are still allowed to choose, while at the same time being paternalistic in the sense that the state (or a company) aims at ‘nudging’ their behaviour for their own good. As companies and the state have different rights, obligations and responsibilities towards citizens, I focus on

one in order to focus this paper. Here, I only discuss the permissibility of the state in applying libertarian paternalism.

Unobtrusive as nudging might appear, it has been criticised on the basis of evading people's autonomy (Anderson, 2008; Anderson, 2010). Rather than treating people like sheep, the government should aim at increasing people's autonomy, i.e. people's capacity to pursue their own interests despite the changing and increasing demands of the environment (Anderson, 2008). Due to the central role autonomy plays in the discussion on the acceptability of paternalism in order to reduce obesity, this novel viewpoint merits attention as it highlights a concern with libertarian paternalism. For if we truly value autonomy, would it not be preferable to increase people's competencies to live an autonomous life, instead of changing their environment such that they only feel autonomous? In order to investigate whether the government may use libertarian paternalism in order to help people lose weight, or whether it is preferable help people controlling their weight by improving individual's autonomy through strengthening their autonomy competences, the following outline is used.

### **1.1 Outline.**

One of the most vehement opponents of government interference is John Stuart Mill, whose treatise 'On Liberty' (1859) remains pivotal to protect individual liberty from both government interference as the pressure exerted by the masses. As Mill's viewpoints remain influential to the present day, an attempt is first made to discover whether paternalism towards obese people can be justified by Mill's doctrine. In order to do so, Mill's view on paternalism and respect for individual liberty is discussed, after which it becomes clear that Mill would only allow for the provision of information. Although this is also seen as a nudge (Thaler & Sunstein, 2008: 243), it is unlikely that nudging in this way will substantially reduce the prevalence of obesity. However, and second, there are several remarks that can be made about the reasons Mill has for protecting autonomy. If Mill tried to protect autonomy in order to increase utility, he does not have a strong case against libertarian paternalism. However, if Mill tried to protect autonomy out of sheer respect for autonomy, his defence of autonomy is stronger. Still, it is helpful to understand what autonomy is. Third, a brief section is devoted to better understand autonomy. Fourth, the case is made that many obese people experience 'autonomy gaps' (Anderson, 2008). These are situations in which people find it hard, if not impossible, to live up to their goals. This does not mean that obese people are completely non-autonomous, but does suggest that they function different from what they desire. The fifth section is devoted to three different ways in which these autonomy gaps could be

approached, each from a different valuation of autonomy. In section six libertarian paternalism (influence decision-making through changing the environment) is contrasted with increasing individual autonomy through increasing people's competencies. In the seventh and final section, arguments underlying these valuations of autonomy are discussed. This suggests that libertarian paternalism has both theoretically as practically a strong argument in favour of utilizing choice architecture in order to reduce obesity, without violating people's autonomy.

## **2. On Liberty**

In his famous treatise 'On Liberty' (Mill, 1859), Mill sets out to demonstrate to what extent society can rightfully interfere with the freedom of the individual. Mill sketches the development from omnipotent rulers, whose interests were largely opposed to those of their people, to a more democratic system of governance in which government is composed of delegates of society. A government is thus in the process of serving, rather than ruling, its people. As Mill argues that people should not be protected against their own will, society as a whole should be relatively safe from unwarranted government interference with their lives. However, Mill realises all too well that individuals by themselves are not necessarily more protected than under authoritarian rule. He describes specifically the force prevailing customs can have in shaping people's thought and behaviour, aptly summarised as the 'tyranny of the majority' (3). People who deviate from the standards lived up to by the majority in a society are perceived as 'weird' and, through social pressure as well as governmental rule, forced into the straightjacket society sets both for conduct as thinking.

Mill believes wholeheartedly in the importance of critical individuals in promoting progress in society. Liberty should thus be promoted in order for deviant and critical thinkers to use their full capacities, in this way eradicating erroneous beliefs and increasing the stock of knowledge society possesses. However, Mill realises that prevailing opinions and customs change over time, determining thus what standards are to be complied with at any given moment. Accordingly, there might be periods in which individuals have a chance to voice dissenting opinions, while at other times society condemns dissenting thoughts, thus silencing whoever stands critical towards the prevailing mode of being. As the majority, by definition, is mediocre, critical minds who have the capacity to lift up society as a whole, are forced to conform to a mediocre standard of thought and behaviour.

In order to avoid this, Mill realises the need for an objective limit of government or societal interference with the liberty of the individual. Accordingly, he comes to the famous harm principle, stating that:

*“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. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.”* (Mill, 1859: 7-8 )

The harm principle is among the most famous principles any philosopher ever conceived of, and does not lack in clarity. Any interference with an individual’s liberty is illegitimate, as long as it is not done in order to avoid harm to others. Although at first sight appealing, what strikes one is the absolute character of this doctrine (Dworkin, 1972), as another person’s good never provides sufficient ground for interfering with his liberty. However, Mill does allow for exceptions to this rule. In the fifth chapter of his treatise, he discusses some applications of his harm principle and comes up with four more situations in which the government may interfere with the liberty of the individual without this individual directly harming someone else.

First, he puts forward the possibility of a man selling himself voluntarily into slavery. If the to be slave-owner would have used force, the harm principle would clearly allow for interference by the state as the slave owner interferes with the liberty of the to be slave against the latter’s will. However, the to be slave voluntarily concedes to giving up his liberty, and it is this voluntariness that would suggest that the harm principle does not apply, allowing the man to sell himself into slavery. And yet, Mill vehemently argues that this contract is illegitimate on the basis of the harm principle. This has puzzled many scholar (e.g. Dworkin, 1972; Arneson, 1980; Archard, 1990) and we will discuss this point further.

A second case in which Mill allows for interfering with the liberty of an individual is when someone is about to incur harm upon himself without intending this. The example Mill gives is that of a person who is about to cross an unsafe bridge. This person can be held back momentarily in order to inform him about the danger he is about to incur upon himself, without really infringing upon his liberty. For, as Mill points out, *“liberty consists of doing what one desires, and he does not desire to fall into the river”* (80). However, if this person

knows what the dangers are, he should not be detained from crossing the bridge, as he made a fully informed decision. Stopping him now would be an infringement upon his liberty.

A third case in which the harm principle allows for restricting people's liberty in order to hinder merely self-affecting conduct, is in the case of people who are not "*in the maturity of their faculties*" (8). People who are delirious, overly excited or not possessing full intelligence may be restricted when they detrimentally affect themselves. These people are not free as they are ruled by temporal whims, rather than guided by their stable and personal convictions (Feinberg, 1971).

A fourth case in which liberty can be restricted, is the incurring of indirect harm. Mill believes that liberty can be restricted in more instances than when individuals directly incur harm upon others. Mill allows for the use of risk analyses, employed in sanctioning conduct that is likely to be harmful to others, but are not. For instance, people who have been violently drunk may be punished when being drunk at another moment, just to discourage future violent behaviour (81). To be parents are not allowed to have children unless they can clearly indicate being able to support them (90), and simply causing offence in public by performing self-affecting behaviour that violates decency standards is to be discouraged as well (81).

It thus becomes clear that Mill allows for more restriction of liberty than one would guess on the basis of the harm principle. Specifically, Mill is able to give five cases in which interference with the liberty of an individual is legitimate. However, this does not, in any way, demonstrate that Mill would allow for the state's application of libertarian paternalism in order to reduce obesity. The following sections set out to investigate to what extent the five possible exceptions Mill gives to his argument against paternalism can be used to defend government interference in the life of people with obesity.

### **2.1 (Indirect) Harm to others.**

It could be argued that obese people cause (indirect) harm to others. In a country in which healthcare insurance is publicly arranged, everyone contributes to the amount of money available for providing health care, and everyone can use according to their needs. This situation can be pictured as a small boat on open water, in which the number of people in the boat determines both the amount of water that splashes in the boat as the amount of water that can be manually removed from it. If the number of people that is in the boat, yet does not help with the removal of water, increases, the boat will fill up with water and eventually sink. As health care is extremely expensive, and only very few people are capable of funding their own health care expenses, most people are in the same boat. In line with this metaphor, one could

imagine that as the number of obese people goes up, so does the amount of money everyone needs to pay for health care as the costs rise, while the revenues decrease. In this way, non-obese are 'harmed' by obese as they have to spend more on health care due to no fault of their own.

It remains to be seen, however, whether this metaphor applies. At least two studies (Baal, Heijink, Hoogeveen & Polder, 2006; Baal et al., 2008) have been able to demonstrate that it are actually people with a healthy lifestyle that use more health care (in euro's) than either obese people or smokers. Although obese people are more expensive than non-obese who do not smoke annually, it are especially the last years of a human life that are most expensive due to the extensive care facilities that the elderly use. As obese people generally live shorter than non-obese with a healthy lifestyle, healthy people incur more costs on the health care system than obese people do. Another study (Groot & Van Sloten, 2012) does claim that at least smokers are more expensive to society in general than non-smokers, but this is only the case when taking into consideration the fact that smokers contribute less to health care due to a loss in productive years. Although this study does not investigate obesity, it seems possible that a similar result can be found for obese people. However, most important to take from this (and as acknowledged by Baal et al., 2008), is that the findings on the topic of health care expenditure and lifestyle vary widely both within as between countries, suggesting that it remains unclear whether obesity has a significant impact on health care expenditure (cf. Lengerke & Kraut, 2011).

On the basis of these considerations, it seems impossible to defend libertarian-paternalist measures in order to reduce obesity on the basis of the harm principle. There simply is not enough empirical ground for maintaining that people with obesity harm others, not even indirectly.

At this point, it could be argued that the fast-food industry is harming individuals through the mass production of food produce containing 'empty' calories (Giamattei, Blix, Marshak, Wollitzer, & Pettitt, 2003). These are processed products that contain energy, yet in such a form that people do not feel satiated for long. People can consume substantial amounts of these products without receiving a signal from their body to indicate that they ate enough. In this way, it is easy to consume vastly more calories on a daily basis than necessary. As it are these products that are associated with obesity (Giamattei et al., 2003), and obesity is clearly harmful to one's health, it could be said that it are the fast food chains that harm individuals. However, it is important to note that if these products had been harmful in themselves they would not have been legally available in the amounts they are. Regular

consumption of these products as part of an overall unhealthy lifestyle is necessary for these products to become harmful, which goes for many products. In addition, many people know this, yet continue their consumption. And if people make an informed decision, they should not be stopped according to Mill, not even when their decision negatively affects them.

## **2.2 Unawareness.**

In the bridge example, Mill indicates that people are warranted to interfere with the freedom of an individual if the individual is likely to incur harm upon him- or herself without desiring to do so. As Mill puts it, "*liberty consists of doing what one desires, and he does not desire to fall into the river*" (80). It seems like Mill would allow for awareness campaigns on the dangers accompanying a lifestyle leading to obesity, so that obese people can make an informed decision on whether they want to continue with their lifestyle. What form this awareness campaign can take remains to be seen, as it does not make sense to target food in the way cigarettes are, by providing them with labels indicating what the consequences of (over) consumption may be. Food is simply not detrimental to our health in the way cigarettes are, and it is the overconsumption of certain foods that leads to obesity. Providing food with labels warning for the risks accompanying overconsumption is undesirable as well, for most people are not overweight and do not overeat.

At the same time, one might argue that awareness campaigns on the risks accompanying obesity is a form of illegitimate interference with the freedom of individuals. By indicating what the risks are of being obese, the state propagates what the 'right' way of life is, i.e. non-obese. People are likely to be affected by these campaigns, and change their lifestyle accordingly. People are thus not completely free to live their life. However, Mill's example of the man on the bridge indicates that people may be forced to reflect upon their choices when the outcome of these choices differs from what they likely desire. And as it seems safe to assume that most people do intent to live a happy, long, and healthy life and obesity is unlikely to contribute to these goals, information campaigns appear warranted on the basis of Mill's reasoning.

Moreover, health is unequally distributed within societies. People from lower socioeconomic classes are more likely to be obese, to smoke and to have an overall unhealthy lifestyle, leading them to die earlier than people from higher socioeconomic classes (Mackenbach & Kunst, 1997; Mackenbach et al., 2008). Especially when taking into consideration that people from lower socioeconomic classes are more likely to have a poorer understanding of factors affecting health, there is reason to believe that these people do not

make equally well-informed decisions regarding their health. Consequently, informing them about factors affecting obesity seems fully justified by Mill.

What might be problematic is that there are a wide variety of structural factors that lead to a decrease of life quality in the long run. In order to be consistent, the state should create awareness campaigns on all of these issues, which is unlikely to result in any substantial change in behaviour. Consequently, one might wonder why the state should aim specifically at awareness campaigns on the risks of obesity. The answer would be that obesity occurs widely, in different settings in society, across socioeconomic levels and is the result of a specific lifestyle. Obesity is thus a phenomenon that produces risks about which people can be informed easily. Whether obese people change their lifestyle as the result of these awareness campaigns is up to them, but informing them seems fully warranted by Mill.

### **2.3 Immaturity.**

Mill makes clear that those who are not “*in the maturity of their faculties*” (8) are exempted from his anti paternalistic doctrine. Examples are people who are (momentarily) deranged, drunk or have not reached adulthood yet. These people are not guided by their stable and personal convictions, but rather by temporal whims. They are thus not free in the way Mill perceived freedom (Feinberg, 1971). If it were to be shown that obese people are in some way deficient relative to non-obese, society might be in a position to infringe upon the liberty of obese individuals. However, it remains to be seen how one assesses the maturity of one’s faculties. Intelligence tests will not provide the solution, as intelligent people as well as unintelligent ones have the capacity to act in ways that are not very rational and might frustrate both short- as long-term goals. Clearly, some people seem more capable in designing a life plan from which they get more reward, yet how this reward is to be ascertained and whether this reward is to count as the objective standard people ought to strive for remains to be seen. It is my conviction, shared with many (e.g. Ledikwe et al., 2006), that obesity is not so much the result of an unfortunate genetic make-up, as it is an inevitable consequence of structural overconsumption of calories. People are extremely habitual (Duhigg, 2012), and obese people form no exception to this. Structural factors have created habits that lead them to consume more than they need for maintaining their body. It thus seems impossible to advocate interference with the freedom of obese individuals on the basis of them lacking in some faculty, other than living in an environment that fosters detrimental habits.

Children are in this respect a different case. Without going in to the measurement details, it seems obvious that children are not in the maturity of their faculties and may be

interfered with in order to promote their own good. However, this a different debate as this paper investigates adults only. When it comes to children, there are other values at stake than freedom and health, as is the case with adult individuals. When interfering with children, this means breaching the freedom parents have to raise their children. This is a different discussion that lies beyond the scope of this paper.

#### **2.4 Selling oneself into slavery.**

Several authors have tried to understand to what extent Mill allowed for paternalistic interference, specifically with regard to Mill's example of selling oneself voluntarily into slavery (e.g. Dworkin, 1972; Arneson, 1980; Archard, 1990). At first glance, it seems that Mill simply introduces a paternalistic measure against selling oneself into slavery, as he does not come up with a convincing argument against this practice that is non-paternalistic (Archard, 1990). However, there is disagreement on this matter between scholars, and the following paragraphs are devoted to obtaining a clearer understanding of what the slavery example means with respect to the current topic of state paternalism in order to reduce obesity.

One of the scholars who wrote on this topic is Dworkin (1971), who characterises paternalism as *'the use of coercion to achieve a good which is not recognized as such by those persons for whom the good is intended'* (69). In this way, Dworkin makes clear that not any state interference with individuals or society in general is paternalistic, as there are instances in which people desire to have their freedom restricted in order to obtain some good (e.g. workweek restriction to 40 hours maximum). But there are many instances in which government does restrict the liberty of individuals in order to promote their own good against their demand, and it is this paternalism that is the point of interest.

Dworkin distils two reasons that could be given by Mill against paternalism. The first one is a utilitarian argument, claiming that individuals always know their own interests best, and that any interference with them would necessarily result in a poorer outcome. Dworkin refutes this argument on the basis that many people do not know their own interests best, including those whom Mill would consider to be *'in the maturity of their faculties'* (cf. Conly, 2013). It thus simply is not true that paternalistic interventions would always produce a lesser result than non-intervention.

However, Dworkin realises that Mill has a second argument against paternalism, arguing that being an autonomous agent has intrinsic worth. It is this belief that leads him to

the dismissal of paternalistic interference with individuals on the basis of promoting their own good. Although it might be the case that an individual's good is objectively promoted by interference, the interference nevertheless constitutes a wrong to the individual as it denies his right to being an autonomous agent. It is this right to being an autonomous agent that does not allow a person to voluntarily sell himself into slavery, as this decision, albeit freely chosen, would forfeit his future existence as an autonomous agent.

This reasoning leads Dworkin (1972) to believe that the only times paternalism is warranted, is when it leads to the promotion of freedom. This is, of course, a highly paradoxical finding. It means on the one hand that utilitarian calculations are not decisive in prohibiting paternalism, while at the same time maintaining that when an intervention leads to a smaller loss in freedom than it is meant to gain, paternalistic intervention is warranted. This reasoning does thus not embrace the absolute value of human freedom, as a loss-gain calculation is in order. But in line with this argument, we might say that if obese people can be considered enslaved by their lifestyle, some steps are warranted in order to 'free' them from the chains of obesity. Moreover, given Mill's absolute ban on slavery, it seems that drastic measures are allowed in order to change the lifestyle of obese people if this were to increase their autonomy substantially.

However, people are not enslaved by their lifestyle as slaves are enslaved by a master. Although people oftentimes do not deliberately choose for a lifestyle and find it extremely hard to change it substantially, this does not necessarily mean that their autonomy is threatened. Still, that interventions could be permissible to enhance people's autonomy is an interesting point, which will be more extensively discussed in section six and seven

A second scholar who sets out to investigate to what extent paternalism might be warranted on the basis of Mill's writings, is Feinberg (1971). Mill's example of an ignorant man crossing an unsafe bridge provides Feinberg with a way to interpret Mill's anti-paternalistic doctrine. According to Mill, the man crossing the bridge may be stopped in order to inform him about the dangers of crossing the bridge. For, as Mill puts it, "*liberty consists of doing what one desires, and he does not desire to fall into the river*" (Mill, 1859: 80). Feinberg distils from this that it are not so much the consequences of an action that (do not) warrant paternalistic interference, but whether the person acts voluntarily. This he calls the 'standard of voluntariness', which means that when an action of an agent seems to pose a significant threat to himself, intervention is warranted in order to establish whether this agent actually is aware of the dangers he will incur upon himself and whether his action is

voluntarily. If the agent turns out to be aware of the consequences of his action and acts voluntarily, paternalism is not warranted and he should be allowed to go his course.

Feinberg seems to agree with Dworkin that the prohibition to sell oneself into slavery is a case of paternalism by Mill. By the voluntariness-standard, selling oneself voluntarily into slavery should be allowed, whereas Mill prohibits it without being able to provide a non-paternalistic defence of this prohibition. In sum, Feinberg suggests, on the basis of Mill's writings, that any action which is clearly voluntary should be permitted to be performed. If even the most voluntary actions are not allowed, the state exercises more power than it should. As long as obese voluntarily follow their lifestyle, the government has no business in changing their behaviour. Only if they indicate that they do want to change, yet do not manage, the government may come to their aid. This suggests that the government may interfere with the liberty of obese individuals if their lifestyle is non-voluntary (Feinberg) or if it is possible to increase people's autonomy through intervention (Dworkin).

### **2.5 Protecting liberty or autonomy?**

A third scholar who tried to understand to what extent Mill allows for restrictions on individual freedom is Arneson (1980). In this paper, Arneson makes two main points. First, that Mill did not set out to protect people's liberty, but rather their autonomy. Second, that Dworkin and Feinberg allow for much more governmental interference with individual's liberty than Mill allowed for in his treatise 'On Liberty'.

With respect to the first point, Mill offers several definitions of liberty, none of which provide a sufficient account against paternalism (Arneson, 1980). The 'individuality' Mill refers to, perceived as 'uniqueness', or 'being different', can perhaps be better ascertained by actively creating different people than to leave them free and decide for themselves how 'unique' they want to be. Individuality perceived as 'excellence' is certainly better attained by providing obligatory education and other stimulatory measures, rather than leaving people to themselves. Arneson seems correct when arguing that liberty so defined is not what Mill set out to defend. Instead, autonomy appears a more likely candidate.

An example by Mill, supplemented by a thought experiment of Arneson, indicates the difference between freedom and autonomy. Mill suggests that even if it were possible for everything to be produced by machines, it would still be better if goods were produced by men (1859: 49). It is not the end product that counts, but the way in which the product comes about. Arneson's thought experiment has the reader imagine small robots, unobtrusively flying around, that are programmed to maximize one's freedom. Every time someone makes a

choice that might threaten his future exercise of freedom, the robot unobtrusively coerces the actor in a different direction, thus ensuring that the actor lives in complete freedom. These robots might ensure that people stay out of prison, do not make too many agreements and live a long and healthy life, thus ensuring that they are as free as possible. And yet, people are not autonomous. Not even when the robots are randomly programmed to allow at times for freedom diminishing decisions, people's life would lack in autonomy, as it is not them who decide. These two examples together suggest that what produces the best result (whether it be goods or freedom) is not what Mill values most, but the way in which it is done. According to Arneson's interpretation of Mill, having the right to make mistakes weights heavier than wellbeing.

With respect to Arneson's second aim, he believes Feinberg to be too permissive in interfering with the liberty of individuals. According to Arneson, Feinberg attaches too much importance to rational action when applying his voluntariness standard. Actions which are deemed to be dangerous to the individual can be (temporarily) halted in order to inquire whether the actor actually voluntarily engages in them. If this turns out to be the case, these actors should be allowed to proceed, which suggests that Feinberg does allow for a wide range of self-defeating actions. However, Arneson believes that Mill argues against paternalism towards autonomous actions, and autonomous actions are not necessarily rational actions. When Mill states that "*his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode*" (Mill, 1859: 55), he indeed does not seem to include rational actions only. In fact, he makes explicit that the consequences of these actions are not to be used to determine the good of the choice; as long as the choice is autonomous, the choice has to be respected. This suggests that Feinberg has reasoned from a concern for other people's wellbeing when introducing the voluntariness standard. Arneson seems to have a point when arguing that Feinberg allows for too much interference with individual liberty by means of his voluntariness standard.

In addition, Arneson disagrees with Dworkin's conclusion that paternalism may be warranted in order to promote an individual's capacity to promote individual freedom (i.e. live a rationally ordered life). Arneson makes a similar argument as employed against Feinberg, as Mill set out to defend autonomous action rather than rational action. Dworkin thus allows for considerably more interference with individual liberty than Mill allowed for, as a wide range of actions are not necessarily rational. Moreover, Arneson argues that the list of measures that can be taken to enhance people's freedom (i.e. live a rational life) is sheer endless. Smoking, driving a car, drinking, using electrical devices, are all risky activities that

can lead to injury or death, suggesting that these should be restricted as well in order for people to live a longer life and thus be more free.

These arguments suggest that both Feinberg as Dworkin are too permissive of interference with the liberty of the individual when interpreting Mill. Although their line of reasoning is intuitively appealing, the issue indeed is that most of people's life is not necessarily rational and involves risky behaviour. Mill's whole point is, according to Arneson, that also these actions are to be shielded from paternalistic interference.

From these arguments, there is reason to believe that Mill is indeed highly susceptible of governmental interference with the autonomy of individuals and that there is no reason on the basis of his theory to interfere with the autonomy of obese individuals (except providing them with information). But would this also mean that choice architecture cannot be applied according to Mill? Successful nudges do not 'force' people in the way a police officer can. At the same time, successful nudging can affect people's behaviour strongly and given their inconspicuous nature, it is not apparent that individuals can easily avoid the influence of choice architecture (Anderson, 2008). Moreover, Mill is not in favour of a state that propagates the good life, for one day it might nudge people to be healthy, the next to buy products from a state-owned company. Due to the fact that nudges appear to be forceful instruments in designing behaviour, that they are in many instances more than remediating a lack of understanding and that obese do not cause (in)direct harm, libertarian paternalism, as well as other measures, appear not to be warranted on the basis of Mill's reasoning and Arneson's defence. This suggests that obese people should be left to their own accord as meddling with them in any other way than providing information would form illegitimate interference. However, there might be lines of argument that differ with respect to Mill's conclusion. As providing information alone will not suffice in reducing obesity, there is reason to see whether there are more compelling arguments that justify government interference to a higher degree than Mill does.

### **3. On autonomy**

Given the current investigation, the essential question with regard to Mill is: what does Mill want to achieve with his anti-paternalistic doctrine? On the basis of the arguments amassed above and my reading of Mill, protecting autonomy appears the most likely candidate. Two further questions spring from this. First, why would one want to protect

autonomy, and, second, what *is* autonomy? As understanding both questions is relevant to understanding Mill, both are addressed in turn.

### **3.1 Why protect autonomy?**

With respect to the reason Mill has for protecting autonomy, there are three objectives. (Mill, 1859; Dworkin, 1972; Gray, 1996). One is the promotion of flourishing individuals. Accordingly, people who are left to themselves promote more utility than people who are steered by the government. So if one aims at promoting utility, people should be free, i.e. autonomous, to conduct their own business. A second objective is the survival and flourishing of the human species. According to Mill, it has always been critical and deviant individuals that promoted development in societies. If it had not been for these individuals, society would not have reached the social and economic level of development it has. It is thus essential that these critical individuals are not restrained by the norms of their time, as these norms are, by definition, mediocre and there is a need for critical thought to show why these customs are mediocre, in this way promoting the advance of society in its entirety. A third is the objective mentioned by Dworkin, which is respecting autonomy not for attaining some external utility, but simply for the sake of respecting autonomy.

Although the first two objectives seemingly overlap, they are different in the sense that promoting thriving individuals is not the same as promoting the development of society. Society can progress without all individuals necessarily flourishing, in the same way as individuals can flourish without society to progress. However, Mill seems to suggest that both are in line, and that allowing people to live autonomously leads to flourishing individuals and the promotion of progress in society. This does not necessarily have to be true, as many people might not share in the progress of the few, leading to an overall less developed society. But irrespective of this side note, the question arises whether these considerations suffice for not intervening in the lives of individuals.

With regard to the promotion of individual flourishing, people do not necessarily perform better or feel happier as the amount of choices they have (assuming that this is a measure of autonomy) increases (for several examples, see Dworkin, 1988, pp. 62-81). When perceiving autonomy more abstractly, it can be noted that societies which value individual autonomy considerably less than do Westerners (e.g. China, Japan), are not necessarily less happy (Gray, 1996).

In respect to the promotion of society, it is not necessarily the case that intervention in each domain halts progress of society, or that abstaining completely from intervening allows

society to progress. In fact, Mill himself believed that schooling is essential for people's development, which, in turn, is essential for the development of society overall. There is a difference in leaving people to themselves with respect to their hobbies (i.e. one person likes football, another visiting museums) as in regard to their quest for knowledge. In order for society as a whole to develop, scientists should have freedom to determine hypotheses and test these, without government officials determining what is, and what is not open to investigation. In addition, China and Japan, not known for their appreciation of individual autonomy, do well from an economical perspective. China is developing at unprecedented rates and Japan remains one of the largest economies in the world despite its adherence to communal values (Gray, 1996). Interestingly, also groups of Chinese migrants in Western countries are able to develop well exactly because they endorse a community spirit that allows them to rely on each other for help (Gray, 1996). Consequently, there is reason to believe that not intervening in, or appreciating less, the autonomy of individuals, does not necessarily lead to less flourishing of individuals or society as a whole.

This suggests that if autonomy is protected in order to generate more utility, government intervention with the lives of obese individuals should be allowed if this were to generate more utility than not intervening. However, Mill, or other advocates of autonomy, might not aim to protect autonomy on the basis of utility, but out of a basic respect for autonomy (Dworkin, 1972; Arneson, 1980). In order to understand better what defending autonomy on this ground means for state intervention in the lives of people with obesity, we need to understand what autonomy is.

### **3.2 What is autonomy?**

In respect to the second question, it is unclear what autonomy exactly is. Although autonomy literally means 'self-rule' or 'self-government', increasing evidence suggests that autonomy is not so easily defined. Over the years, a vast literature has emerged on autonomy, without rendering a clear understanding of what it is meant to entail. In the following paragraphs, several points are mentioned to illustrate the complexity of defining autonomy.

People have desires, goals and attitudes that are assumed to guide them in life. Autonomy as self-rule seems to imply that people set their goals, form their attitudes and live in accordance with these. Someone who likes football visits football matches, someone who dislikes concerts is unlikely to visit Rihanna's performance. People's autonomy is measured by the extent to which they are able to balance conflicting desires when striving for the goal that appeals most. However, one could wonder whether trying to attain goals differs from

what a computer does when it is directed to open a new document. And as a computer is generally not considered an autonomous agent, there is reason to believe that it is necessary for autonomy that an agent is capable of setting its own goals (e.g. Shoemaker, 2003). However, the ultimate cause of an individual's goal will always result from some factor external to the agent (Wijsbek, 2000). I have the goal to eat, because I am hungry. Yet my hunger is the result of too little food consumed this morning, which is the result of me having forgotten that the supermarkets are closed this day, which is the result of me not paying enough attention to the sheet with opening hours at the entrance of the supermarket, which is caused by me being in a hurry, which... Still, now I am hungry, there are probably several possibilities available to me, and it seems intuitive to perceive autonomy as the capacity to balance different options and choose the one that seems best given the circumstances.

Differently, it could be argued that one needs to be at least able to critically reflect on one's desires, goals and attitudes in order for the actions that come from them to count as autonomous (Christman, 1991; Mele, 1995). In this way, people should not be able to set their goals autonomously for their actions to count as autonomous, but rather be able to evaluate the goals they have. In Christman's view (1991), an action is autonomous if the desires or goals that underlie this action have arisen under circumstances that the actor would ascribe to if it were in a sufficiently reflective and non-manipulated state. This avoids the regress problem described in the previous paragraph, in which it is impossible to call any action autonomous as the circumstances that caused it are infinite and beyond the agent. Of course, it remains to be seen how we are to ascertain that an agent is not manipulated and sufficiently reflective. Assuming that this can be established, it seems possible to label certain actions as autonomous and others not. In practice, Christman points out that for actions to be autonomous it is necessary that people are able to minimally reflect on their desires. Factors that limit this reflective capacity on one's own state, i.e. 'Reflection-Constraining-Factors' (p. 19) should be taken into consideration before labelling an action autonomous. Reflection-constraining influences that allow desires to evade consciousness, thus steering the agent without the agent being able to critically reflect on them. Examples are a lack of concentration or unconscious advertisement.

At this moment, one could wonder whether a fan of FC Barcelona or a religious zealot are autonomous, as they might have no desire whatsoever to critically reflect on their commitment to either their team or God. In principle they have the reflective capacity to do so, yet in practice they are unwilling to use it. Would this mean that visiting matches of Barcelona and attending church are non-autonomous actions? That seems counterintuitive, as

intuitively it seems part of autonomy that one decides for oneself what to question. What this question is meant to show, together with the preceding points, is that defining autonomy is tremendously difficult when going beyond the literal definition and investigates what it means to apply this concept in practice.

In this brief sketch of autonomy, substantial attention is devoted to understanding whether goals should or should not be autonomously chosen, and whether people should be able to critically reflect on their goals. Without claiming that this goal-centeredness is the only approach to autonomy, being aware of, or even able to critically reflect on one's goals seems pivotal to autonomy. In what is to follow, some evidence from the field of psychology is amassed in order to have a better understanding of the importance of goals in people's daily life, and the way in which they are formed.

Increasing attention has been drawn towards the role of unconscious goal pursuit in people's daily life. Unconscious goal pursuit refers to the tendency people have to perform an action, without having the conscious desire to perform this action (e.g. Bargh & Chartrand, 1999; Bargh, Lee-Chai, Barndollar, Gollwitzer, & Trötschel, 2001; Custers & Aarts, 2010). An example is the diffusion of a vague scent of cleaning liquid, inducing people to start cleaning their surroundings (Holland, Hendriks & Aarts, 2005). Another study showed that the sheer presence of a picture depicting a library sufficed to lower people's conversational volume (Aarts & Dijksterhuis, 2005). Interestingly, research has indicated that this unconscious goal pursuit can lead people to pursue a certain goal that is not necessarily in line with their own standards (Custers & Aarts, 2010). A study unconsciously exposing people to hedonic words, let them to indulge in a subsequent food tasting task relative to a group that had been unconsciously exposed to neutral words (Adriaanse, Weijers, De Ridder, De Witt Huberts, & Evers, 2013). This led people who were unconsciously exposed to hedonic related words not only to eat more, but also to attribute their behaviour to a likely cause when being on a diet (Adriaanse et al., 2013). This is remarkable, as it shows people's capacity to rationalize their behaviour after it's unintended occurrence, thus leaving them with the feeling of being rational actors after all. Rather than being a rational animal, humans have been dubbed a 'rationalizing animal' in order to accommodate for this universal tendency in humans (Aronson, 1988).

This empirical work is by no means meant to indicate that people are not autonomous. Rather, it demonstrates that a substantial number of the short-term goals people *mindlessly* pursue are not autonomous in the sense that people developed these goals in a vacuum and consciously reflect on them. In addition, it indicates that people's short-term goals can be

opposed to their long-term goals if their environment induces them to behave in a way that is not in line with their long-term goals. My claim is that if people have the goal to be healthy, yet live in circumstances that influence them greatly to live unhealthy, people experience an ‘autonomy gap’ (Anderson, 2008). The following section elaborates on this.

#### **4. Autonomy Gaps**

An autonomy gap is defined as a situation in which people do not make the choices they would desire to make because they lack the autonomy-competencies to deal with this situation (Anderson, 2008). This requires some explanation. When I strongly desire to live healthily, yet live in a neighbourhood in which there are few and expensive healthy products and an abundance of less healthy products that are cheap, it is not so easy to live up to my goal to live a healthy life. If I have been raised to eat healthily, and have developed a thorough understanding of how to live healthily, it will be easier for me to live healthily in this neighbourhood than if I was raised not to eat healthy, to snack all day and lacking a proper understanding of what constitutes a healthy diet. In the former case, I have a bigger chance of manoeuvring between advertisements and price incentives towards the healthy products than in the latter case, in which I eat the cheap foods out of habit and do not quite understand how detrimental this lifestyle is for my health. Importantly, and given the evidence provided above on unconscious goal pursuit, the differences in health are likely to occur despite both of us valuing our health. It simply is that in the first case, I am more capable of living a healthy life than in the second case.

As I understand it, this is what Anderson (2008) means with an autonomy gap. An autonomy gap occurs when people’s decision-making capacities have not kept up with the changing demands of their surroundings. This does not mean that everyone experiences the same autonomy gaps. As the example of the previous paragraph indicates, some people are simply more competent than others in attaining their long-term goals due to having better developed ‘autonomy competences’. Without going into detail, examples of these autonomy competences are rationality, the ability to form and adhere to personal principles, a level of self-efficacy and not being overly dependent on others (Anderson, 2013a). Although this does not do justice to the relevant remarks that can be made about each of these competencies, it seems fair to grant that people differ in their mental capacities and self-efficacy, partially due to their upbringing. An autonomy gap occurs when those who have less of these competencies are less, or perhaps not, able to live up to their long-term goals. The situation demands more than they can handle, resulting in poorer outcomes than if they had more developed resources.

I believe that most of adult obesity is the result of autonomy gaps. First, obesity occurs considerably more in certain neighbourhoods than in others, and the correlation between neighbourhood and obesity prevalence is substantiated by socioeconomic class, relative abundance of certain foods, safety of the neighbourhood and ability to move (Weight of the Nation). Specifically, obesity is most prevalent in neighbourhoods where people are of a lower socioeconomic class, the food products are high in calories and low in nutritional value, safety is an issue and where there exists less ‘green areas’ or cycle lanes. From this, a picture emerges in which people who understand less of how to live a healthy life are exposed to low-priced products containing empty calories, who do not like to go for a walk as they feel unsafe out of the house and where there is less space available for people to move. For these people, living a healthy life is simply not easy.

Second, I do believe people desire to live healthily. This is essential in viewing obesity as the result of an autonomy gap. The believe that also obese people desire to live healthily is based on various findings. First, in value-indexes, health tends to score among the highest values people endorse (Beuningen & Kloosterman, 2011; BNP Paribas, 2013). Second, lesser health means decreased mobility and reduced ability to live up to one’s goals. Given these drawbacks of not being healthy I am willing to assume that if people had the chance, they would prefer not to be obese given the detrimental health affects that accompany this condition.

As a result, I think there is reason to believe that obese people do want to live healthily, yet live in an ‘obesogenic’ environment (Egger & Swinburn, 1997) that makes it very hard not to become obese for many people. In line with this observation, a recent study indicated that almost seventy percent of obese people have repeatedly attempted to lose weight without success (Fagan, Diamond, Myers & Gill, 2008). I think there is good reason to consider the unequal distribution in health simply the unfair result of an unequal distribution of autonomy gaps across society. Whether the existence of autonomy gaps is sufficient reason for the state to intervene, and the extent to which the state may interfere with the daily life of people, depends on the ‘regime of autonomy’ one endorses. This is addressed in the following section.

## **5. Regimes of Autonomy**

How far the state can interfere with the autonomy of individuals, depends on which conception one has of autonomy. In a recent paper, Anderson (2013b) argues for stepping beyond trying to distil the components of autonomy, to a more fruitful overview of what

vision on autonomy is most applicable in a given context. Anderson comes up with three competing conceptualisations of autonomy, that each express a view on what is appropriate to expect from people, what society we want to live in and how society can be arranged in such a manner that we realize the values we endorse. Anderson distils the neoliberal, the solidaristic and the perfectionist regime of autonomy. For each regime, Anderson indicates what is required to be considered autonomous, and, once being considered such, being autonomous gets you. Although the three regimes are not applied to the current discussion of obesity and state intervention, I do think that Anderson's analysis can be used to better understand the current discussion. In the coming paragraphs, each regime of autonomy is discussed in reference to the present discussion, after which the assumptions prevailing in each regime are discussed in the next section.

According to the neoliberal regime of autonomy, there is a low threshold for being considered autonomous but people have a wide range of possibilities once they are considered such. The main aim is to avoid coercion and manipulation so that people may develop their own life with as little direct influence from others. In the current debate, proponents of this regime of autonomy argue that predictable differences in obesity rates are the result of people's individual choices as no one is forced to live in a particular way. Of course, it may be easier in some neighbourhoods to move than in others, yet everyone is free to take the bike to visit an adjacent neighbourhood and sport there. The state is not capable of changing differences in lifestyle, and if they were to intervene in one respect (e.g. health), then there would be no stopping and we will end up in a totalitarian state. For why not immediately intervene as well in hair colour? That is part of people's lifestyle as well, and if the state may propagate what is 'the good life' in one respect, why not in each? In addition, individuals know much better what is good for them than the state, so it would be highly paternalistic to try and change people's lifestyles. With respect to autonomy gaps, to the extent that neoliberals believe they exist, they will probably provide information only to reduce these gaps in order to avoid that people are deceived.

According to the solidaristic regime of autonomy, there is a lower threshold for being autonomous than in the neoliberal regime, yet what an autonomous agent is entitled to is considerably restricted. The guiding values are equality and fairness, while believing that people are more vulnerable than proponents of the neoliberal regime believe. Consequently, there is reason for the state to redistribute wealth and make sure that those who are considerably more competent do not take advantage of the less competent. In relation to predictable differences in obesity prevalence, I believe proponents of this regime will argue

that people are less autonomous than neoliberals assume and that there is a role for the state in ensuring that the less competent are not victims of the complex situations the more competent can handle. With respect to autonomy gaps, I believe proponents of this regime readily acknowledge their existence and allow the state to design situations in such a way, that one's level of competency does not strongly affect the quality of people's choices.

According to the perfectionist regime of autonomy, there is a high threshold for being considered autonomous, yet an autonomous agent is entitled to a lot. The underlying thought is that people should be free to develop their life as they deem appropriate, but that not everyone has the required autonomy competencies. Proponents of this regime disagree with neoliberals that people are practically by default competently autonomous, and disagree with the solidaristic proponents that people should be protected by for instance designing situations such that choosing the 'best' option is equally accessible to everyone. Instead, perfectionists will argue for increasing the autonomy competencies of individuals in order to overcome autonomy gaps. For the current discussion, that would probably mean providing training for obese people from lower socioeconomic classes in order to increase their resilience in situations with difficult choices.

## **6. Valuing regimes of autonomy**

Each regime of autonomy specifies the extent to which a government should and can interfere with the autonomy of individuals. Even when believing that autonomy gaps exist, adherents to each regime will suggest different ways of overcoming this. Importantly, each regime has several underlying values and assumptions. In the coming paragraphs, these are analyzed in order to develop a better understanding of the theoretical underpinning of applying each regime to the current debate.

The neoliberal method, of which Mill seems a clear proponent, strongly values autonomy. Consequently, neoliberals will not quickly go further than providing information to obese from lower socioeconomic classes, afraid as they are of interfering with their autonomy. To this, I have three points of critique. The first is that people are not autonomous in the way neoliberals like to believe. It became clear from the empirical data on unconscious goal pursuit that people are highly influenced by their surroundings, generally without them knowing this. To me it seems that the neoliberal adherence to autonomy is like sowing similar seeds in either high or low-quality soil, while maintaining that the difference in growth results from the plants' choosing. Of course, they could still value autonomy in the sense of

respecting people. However, if you know that seeing autonomy like this is an ideal that does not correspond with reality, it is unclear to me how they could maintain this ideal.

The neoliberals have, in addition, several arguments against government interference with the autonomy of individuals. The first argument is that the state should be neutral. The state should not tell people how to live their life, but should only prevent coercion. People's autonomy is cherished, and it is up to them to fill it in. In this way, no one is forced in the position they are, the argument goes, and possible inequalities in health or wealth are the result of people's choices. A first criticism to this argument is that the state is never value neutral, as 'laissez-faire' is in itself a value, now promoted by the state. A second criticism is that this laissez-faire leads to an active market-intervention with daily life. This liberalism leads to the wealth of few, without necessarily generating spoils for the many. As a result, people's chances to flourish become dependent on one's birth, as richer people have more room for self-development than poorer people. Consequently, people do not seem equally autonomous in choosing their life course.

A second argument the neoliberals could employ against state intervention is that allowing the state to intervene with people's autonomy is likely to lead to a totalitarian state. According to the argument, the state starts, with a friendly face, to intervene with those who deviate in some way from the norm. To use the present examples, the state starts, with the best intentions, with interventions in the life of obese. As these measures might turn out to be half measures only, or that chronic stress at work poses considerably higher burdens to personal health than previously thought, the state steadily increases the amount of interventions in order to condition everyone into the straight-jacketed of acceptable conduct. However, this is a slippery slope argument, and given that there is no logical nor empirical substantiation of this argument in the present case, it can be discarded as a fallacy.

On the basis of these arguments, I think that the neoliberal model is too restrictive in protecting people's autonomy. What they protect is an ideal, that does not materialize in autonomy gaps. Modifying this ideal by going further than providing information to those who are in an autonomy gap does not result in a tyrannical state nor is necessarily worse than leaving individuals to be guided by the market.

The solidaristic regime of autonomy emphasizes equality and inclusion. If there are situations in which more competent people will significantly choose better than less competent people, the state has an obligation to intervene. Living a healthy life should be made easy, and if the market is unwilling or unable to create situations in which differences in

competences do not affect the quality of the outcome substantially, the government may interfere. As the solidaristic regime uses a low threshold for autonomy, most people are considered autonomous. The state should not overly interfere with people's lives, but can make sure that environments are designed in such a way that also the less competent will make the right decision. In this way, the state has a role to design environments in such a way, that autonomy gaps are less likely to occur. This approach is taken by those advocating libertarian paternalism (see Thaler & Sunstein, 2008).

Given that a predictable (i.e. obesogenic) environment results in predictable groups of people experiencing an autonomy gap, I think the solidaristic model has good reason for emphasizing equality more than autonomy. I do not think it is fair in any way that some people suffer from their environment, only because they are less rich and/or educated. Although we could still respect people's autonomy when knowing how our surroundings influence our behaviour, and out of this respect leave them be or provide them with information only, it does not hold. For if we seriously respect people's autonomy, then we should see to it that also those who find it hard to take certain decisions, are provided either with the tools or with the circumstances in which they, too, may reliably choose the best option. And in the case of health, the best option is an overall healthy lifestyle.

Those supporting a perfectionistic regime of autonomy value that people can control their lives, i.e. be autonomous, while realising that being autonomous is not equally easy for everyone. The state may take steps in order to increase the autonomy of the less competent. The problem is to evaluate who is autonomous and who is not, which is done in two ways. First, by means of assessing people's autonomy competencies, and second, by assessing which goals people can strive for autonomously. Although many people will realise that some people simply lack the competencies to live a healthy lifestyle in an obesogenic environment, this only forms an autonomy gap when believing that these people really want to live a healthy life. The question is what authority the state has to ascertain that people really want to be healthy, while in fact their lifestyle is unhealthy. In the case of health, I think that there is sufficient reason to believe that people value their own health tremendously. First, they indicate so (Beuningen & Kloosterman, 2011; BNP Paribas, 2013) and second, all people feel better in a healthy body than an unhealthy one, as our mind and body are so integrated that problems in the body have substantial influence on how we feel mentally (Panksepp, 1998). Consequently, I do not think that the government is overly paternalistic when assuming that

people value their health. The question is whether the government can actively encourage programs to reduce the autonomy gaps leading to obesity.

Those advocating the perfectionist regime of autonomy are likely to answer this question positively. They truly value autonomy, and I think they are right in doing so. Out of a sense of respect for other people, we appreciate their desire to live their life in a way that they deem right, in the same way as we appreciate it when others do not overly interfere with our life projects. On the basis of this valuation of autonomy, they are in a position to increase autonomy in situations where autonomy seems lacking (i.e. in the case of autonomy gaps).

It is interesting to see that although both in the neoliberal and perfectionist regime autonomy plays a central role, those supporting a perfectionist regime go considerably further than neoliberals in ensuring that people also make autonomous decisions. I believe this to be the result of a better understanding of what autonomy is in daily life, rather than protecting an ideal. Moreover, in the case of health I think a perfectionist is right in assuming that we can know what the individual wants, even when this individual lives a very unhealthy life. Consequently, the perfectionist regime appears to have a theoretically more stable base in the current discussion than neoliberals.

## **7. Changing surroundings or changing people?**

On the basis of the arguments presented and discussed in the previous section, I think there is reason to believe that the solidaristic and perfectionist regime of autonomy are to be preferred over the neoliberal regime in the current discussion. First, if the neoliberal model, as presented by Mill, defends autonomy on pragmatic grounds, it presents a limited case. Respecting people's autonomy to the extreme does not lead to more utility overall as Mill seems to assume, while interfering with the autonomy of individuals does not necessarily result in a totalitarian state. In addition, autonomy as defined in relation to awareness of goals leaves a considerable part of daily-life non-autonomous. Rather than coming up with a new definition of autonomy in order to accommodate for these findings in psychology, neoliberals would better acknowledge the predictable shortcomings of human reasoning and action. It is my opinion that when neoliberals try to defend non-interference in the case of obesity by means of a practical account of autonomy, they reveal a limited understanding of what autonomy actually means in daily life.

Second, when defending autonomy on ideal grounds, i.e. simply on the basis of respecting other people, neoliberals overly attach to the value of autonomy. Mill allows only for the provision of information when people experience autonomy gaps in order to respect

people's autonomy. As providing information will not remove the autonomy gaps many obese experience, this approach will not help. Well-being is an important value as well, and for those who are ruled by detrimental habits in an obesogenic environment probably more valuable than autonomy. Again, people are habitual (Duhigg, 2013) and find it extremely hard to lose weight as shown by repeated unsuccessful attempts (Fagan et al., 2008). Not helping obese in an obesogenic environment on the basis of valuing autonomy more than wellbeing is to ignore the vast influences of our environment on our behaviour.

For these reasons, we may go further in helping people to lose weight than merely providing them with information. On the basis of the discussion of regimes of autonomy, there are two strategies left. Either we advocate the solidaristic regime, which would mean subscribing to choice architecture and state-designed surroundings, or we opt for perfectionism, which aims at bolstering the autonomy of the individual instead of applying choice architecture. Each regime has its own vision on autonomy, rendering autonomy the core element of a comparison between the two.

Anderson amasses one argument against the solidaristic approach, one in favour of the perfectionist approach, and one in favour of the solidaristic approach. As these are relevant arguments, each of them is addressed in turn. The first argument Anderson makes against the solidaristic approach, is that libertarian paternalism, an example of a solidaristic measure, surpasses people's autonomy (Anderson, 2008; Anderson, 2010). By using choice architecture to make people behave in the desired way is to treat them like sheep, irrespective whether the environment is framed by the government or the market. This makes sense, until we realise that an essential component of an autonomy gap is that people are not capable of behaving the way they desire; for instance when they feel they should eat healthy, yet continuously fail to do so. When living healthy is made easier by structuring the environment in a health-promoting way, people will feel more in control as they are able to live up to their goal to be healthy. Although I understand Anderson's concern, the way we treat autonomy gaps suggests that there are two ways to close this gap, and one is by changing the situation. This would be an example of the solidaristic regime of autonomy, which I believe to be libertarian paternalism.

A second way to close an autonomy gap is to 'autonomize' people (Anderson, 2008). Autonomizing individuals means that they develop the required competencies to deal with situations in which they would experience an autonomy gap without these competencies. This is the second argument Anderson puts forward in defending the perfectionist approach to

autonomy to be preferable to the solidaristic regime. However, when defying choice architecture on the grounds of surpassing individuals' autonomy and advocating a perfectionist approach to autonomy instead, Anderson makes a questionable statement. While the increasing evidence of people's judgments and cognitions suggest that people are less rational or conscious of their actions than we commonly assume (e.g. Gilbert, 2006; Damasio, 1994; Ariely, 2008; Thaler & Sunstein, 2008), Anderson considers this account of human action 'ahistoric' and 'decontextualized' (Anderson, 2008: 5). In fact, he judges that as human functioning has always been an interplay between humans and their environment, we should not believe that humans will always be so irrational. Consequently, we should not aim at changing the environment, but rather attempt to improve people's individual autonomy.

The belief that people can be 'autonomised' with respect to unconscious goal pursuit is hard to substantiate. Although that does not mean that it is thereby refuted, I would not know any evidence in support of it and Anderson does not provide it either. For now, we know that people are ruled by emotions (Damasio, 1994), without which they can be highly rational, yet fail to plan as much as an appointment. It are emotions that make people act, and they greatly reduce the deliberation time we would otherwise need (Damasio, 1994). Given that our feelings are steered by the eldest parts of our brain (Panksepp, 1998), it seems unlikely how this influence of emotions will decrease in the near future. Our actions can thus be expected to be guided by them. And as we know to what extent our behaviour is guided by automatic processes (e.g. Bargh & Chartrand, 1999) and that this unconscious goal pursuit also steers us through emotions (Aarts, Custers & Marien, 2008), it is unclear to me how we will become more reflective in the future. Perhaps by assuming that people will develop their introspective capacity into their mental processes, which is currently very poor (Nisbett & Wilson, 1977; Wilson, 2002). However, to my knowledge there is no evidence for this, rendering the idea that we will be more autonomous in the future unfeasible.

An objection would be that people could be raised differently or receive better education in order to increase their capacity to handle a demanding environment. This is probably what Anderson has in mind when advocating the autonomization of people. Still, there are two problems related to this belief. First, education will not change the effects of unconscious goal pursuit, due to the fact that this affects us through a different way of processing than what is influenced by education. As this unconscious goal pursuit forms a substantial part of people's daily behaviour, I wonder how much more autonomous additional education will make us. Second, teaching people healthy habits and providing them with techniques to resist temptation are ways in which people can avoid entering an autonomy gap,

yet at which age should they be taught these? Generally, we learn them during childhood and this a good point to teach them to children who might otherwise not, or minimally, have these competencies. Yet the current investigation focuses on adults, and nothing in Anderson's argument reveals he is aiming at children instead. If these techniques and habits are to be disseminated in those neighbourhoods where relatively many people live who experience autonomy gaps, that might constitute a substantial interference with their daily life. Probably bigger than by gradually changing the choice environment. Consequently, apart from doubting whether autonomization can be achieved in people, let alone in adults, one risks imposing substantial burdens on people where smaller interferences (i.e. choice architecture) would suffice.

Third, Anderson (2008) gives an argument in favour of the solidaristic approach. This argument focuses on the intrinsic contradiction in enacting laws that will result in autonomy gaps. In a democracy, people ideally enact laws they subscribe to. In this way, people are ruled, but by laws they personally desire, thus leaving them autonomous while restricting their freedom. Anderson realises that when people enact laws, that will lead to a substantial number of people to experience an autonomy gap, they are contradicting themselves. In fact, we can doubt whether this legislation is democratic at all, as the essential element of self-legislation is missing due to the fact that those who experience an autonomy gap, are not ruling themselves. Rather, the environment prevents them from being in charge of their life. Although this is an impressive argument, Anderson is referring clearly to the state. At the same time, the autonomy gaps we are concerned with here are created by the market. It is not the government that provides salty, fatty and sugary products against low prices while increasing the price of more nutritional products. In the same way, it is not the government that advertises sweetened drinks and builds fast-food restaurants. This is done by the market, and citizens do not directly steer the behaviour of companies. They can do so indirectly through enacting laws (e.g. banning advertising to children), yet this would mean limiting the autonomy of the entrepreneurs rather than enhancing the autonomy of citizens. Consequently, this seems, if anything, a clear argument in favour of a solidaristic approach. And as I believe that this argument is correct, the solidaristic approach appears to have both theoretically as practically the strongest ground.

## **8. Conclusion**

In the preceding sections, evidence is presented that Mill only allows for the provision of information to people who are obese. Although this is an example of libertarian

paternalism, Mill prohibits the state to go further in designing the environment in such a manner that people by themselves start displaying the desired behaviour. I believe that Mill considers this an interference with people's autonomy that cannot be justified on the basis of the harm principle. Arguments were presented, indicating that Mill's utility-maximizing principle does not present a strong case against libertarian paternalism by the state in order to reduce obesity. However, Mill does have a strong argument against these measures out of a sheer respect for autonomy.

As a result, an attempt was made to describe what autonomy is. A brief section indicated that being aware and able to critically reflect on one's goals is generally considered essential for being considered autonomous. Research from the field of unconscious goal pursuit suggests strongly that a substantial part of people's daily actions are not the result of conscious deliberations. Moreover, the environment influences people strongly, while people find it very hard to correct for these influences. This introduced what Anderson (2008) has called 'autonomy gaps', i.e. situations in which people find it very hard to pursue their goals due to not being able to deal with the surroundings. Obesity, it is argued, is in many cases the result of people experiencing an autonomy gap.

Whether autonomy gaps provide compelling reason for the state to intervene depends not so much on what autonomy is, as the way autonomy is valued. Three different ways of viewing autonomy were presented and analyzed (Anderson, 2013b). Arguments in favour of each valuation of autonomy were presented and discussed. The neoliberal valuation of autonomy, which Mill endorses, appeared a poorer valuation than the solidaristic and the perfectionist valuation of autonomy. Finally, discussing the respective merits of both the solidaristic and the perfectionist valuation of autonomy suggested that the solidaristic valuation of autonomy has the strongest underpinnings. Consequently, the solidaristic regime of autonomy, of which libertarian paternalism is the example, appears theoretically warranted as a strategy for reducing obesity, while respecting autonomy.

In conclusion, and probably superfluous, endorsing libertarian paternalism does not mean that the state may prohibit junk food or aggressively tax fatty, sugary and salty products. If people want to become obese, and happily maintain their excessive kilo's, the state may only inform them about the risks, but not take further action. However, there is strong reason to believe that in the vast majority of cases, obesity is not the result of an intentional effort to gain weight, but a gradual increase in kilo's due to an unhealthy-habit inducing environment. As these obese people still desire to be healthy, or at least prefer not to be obese, the state can help them unobtrusively by designing the surroundings such, that healthy eating and regular

exercise become easier. In this way, people's daily behaviour is more likely to be in line with their ultimate goals, and thus more autonomous.

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