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Stay out of the Sunbed! Paternalistic Reasons for Restricting the Use of Sunbeds

The use of tanning beds has been identified as being among the most significant causes of melanoma and non-melanoma skin cancer. Accordingly, the activity is properly seen as one that involves profound harm to self. The paper examines paternalistic reasons for restricting sunbed usage. We argue that both so-called soft and hard paternalistic arguments support prohibiting the use of sunbeds. We make the following three arguments: (i) an argument from oppressive patterns of socialization suggesting that the autonomous nature of the conduct in question is questionable; (ii) an argument from so-called evaluative delusions in which individuals attach incorrect weights to some of their values; (iii) a strictly hard paternalistic argument appealing to the harm in itself (as opposed to failures of rationality or agency) pertaining to the use of sunbeds.

Keywords sunbeds • paternalism • autonomy • oppressive patterns of socialization • evaluative delusions

Introduction

The use of tanning beds is among the most significant causes of melanoma and non-melanoma skin cancer (Bonniol *et al.*, 2012; Doré and Chignol, 2012; Olsen and Green, 2012; Wehner *et al.*, 2012; [Wehner et al., 2014](#)). Indeed, the World Health Organization regards sunbeds as a so-called ‘group 1 carcinogen’, alongside tobacco smoking and asbestos (El Ghissassi *et al.*, 2009). Accordingly, the activity is properly seen as one that involves profound harm to self. The paper examines paternalistic reasons for restricting sunbed use; that is, roughly, reasons related to the interests or well-being of the person whose behaviour is circumscribed. A number of countries have already imposed various types of restrictions on the use of sunbeds: Brazil (total ban); France, Spain, Portugal, Germany, Austria, Belgium, The United Kingdom, parts of Australia, Canada and the United States (legislation prohibiting use by persons under age 18) (Olsen and Green, 2012: 2). We argue that both so-called soft

and hard paternalistic arguments support prohibiting sunbed usage. We make the following three arguments: (i) an argument from oppressive patterns of socialization suggesting that the autonomous nature of the conduct in question is questionable; (ii) an argument from so-called evaluative delusions in which individuals attach incorrect weights to some of their values; (iii) a strictly hard paternalistic argument appealing to the harm in itself (as opposed to failures of rationality or agency) pertaining to the use of sunbeds.

We proceed as follows. First, we provide a sketch of the existing knowledge of the harm associated with using sunbeds. Second, we set the stage for our analysis by outlining the notion of paternalism we rely upon, and the important distinction between so-called hard and soft paternalism. Against this background, we consider the following questions related to the justifiability on paternalistic grounds of restrictions on sunbed use: Are sunbed users aware of the health risks involved? Do they voluntarily accept the risk involved? Can the use of sunbeds be traced to oppressive norms of socialization? Do users of sunbeds operate under an evaluative delusion? Does the harm in itself pertaining to the use of sunbeds justify imposing restrictions on the activity?

Harms of Sunbed Use

In a recent comprehensive meta-analysis, Mathieu Boniol and colleagues confirm previous findings of a significant association between sunbed use and melanoma (Boniol *et al.*, 2012; cf. Gandini *et al.*, 2011). They report that ‘ever use of sunbed was associated with a summary relative risk of 1.20 (95% confidence interval 1.08 to 1.34)’ (Boniol *et al.*, 2012: 1).

Moreover, they find that ‘first use of sunbeds before age 35 years was associated with a summary relative risk of 1.87 (1.41 to 2.48)’ (Boniol *et al.*, 2012: 1). The latter, remarkable result replicates the finding of Gandini *et al.* (2011), who report that ‘individuals who had their first exposure to indoor tanning before the age of 30 ... have a 75% increase[d] risk of

developing melanoma than individuals who had no exposure to indoor tanning’ (Gandini *et al.*, 2011: 362). While melanoma is less common than other skin cancers, it is more aggressive and has higher mortality (Olsen and Green, 2012; Wehner *et al.*, 2012). [According to the National Cancer Institute, melanoma of the skin is, compared to other types of cancer, ‘fairly common’. In the US ‘Approximately 2.1 percent of men and women will be diagnosed with melanoma of the skin at some point during their lifetime, based on 2010-2012 data’ and ‘In 2015, it is estimated that there will be 73,870 new cases of melanoma of the skin and an estimated 9,940 people will die of this disease’ \(National Cancer Institute, 2015\). According to a review and meta-analysis by Wehner *et al.* each year more than 10,000 cases of melanoma in US, Europe and Australia are attributable to indoor tanning \(Wehner *et al.*, 2014: 390\).](#)

The association between tanning bed use and non-melanoma skin cancer has also been the subject of a recent meta-analysis (Wehner *et al.*, 2012). Non-melanoma skin cancer is the more common type, and although less aggressive and with lower mortality than melanoma, its treatment is associated with morbidity. Moreover, given its prevalence [\(according to Wehner *et al.* 2014, 390, more than 450,000 cases each year in the US, Europe and Australia are attributable to indoor tanning\)](#) treatment is a significant burden on health care systems (Olsen and Green, 2012; Wehner *et al.*, 2012). The meta-analysis finds a significant relation between tanning bed use and non-melanoma skin cancer. It reports that ‘[a]mong people who reported ever using indoor tanning compared with those who never used indoor tanning, the summary relative risk for squamous cell carcinoma was 1.67 (95% confidence interval 1.29 to 2.17) and that for basal cell carcinoma was 1.29 (1.08 to 1.53)’ (Wehner *et al.*, 2012: 1). Wehner and colleagues also find that the ‘use of indoor tanning before age 25 was more strongly associated with both squamous cell carcinoma (relative risk 2.02, 0.70 to 5.86) and basal cell carcinoma (1.40, 1.29 to 1.52)’ (Wehner *et al.*, 2012: 1). [Overexposure to UV radiation also](#)

plays an important role in the development of various eye conditions, premature skin ageing, and it suppresses the immune system (Diehl *et al.*, 2013; WHO, 2003).

The use of tanning beds is not, however, exclusively associated with adverse health effects. For example, it is a source of vitamin D and might prepare the skin to exposures to the sun (giving users a ‘pre-vacation tan’). The beneficial effects, if any, of a pre-vacation tan are disputed, however, and the former, while true, should be seen against the background of the availability of alternative sources of vitamin D—sources without the serious negative side-effects of artificial tanning (Olsen and Green, 2012. Cf. Culley *et al.*, 2001; Levine *et al.*, 2005; Spencer and Amonette, 1995).

As we have seen, tanning bed usage is associated with significant and costly harm, including other-regarding harm (i.e., basically, costs to the health care system). Here, however, the focus is on arguments propelled by the importance of preventing self-regarding harm; that is, paternalistic arguments. Liberals traditionally regard such arguments as controversial. In our view, however, paternalistic interventions may be justified in some cases, including sunbed use.

Paternalism, hard and soft

In this paper, we rely upon a conception of paternalism with roots in Joel Feinberg’s seminal criticism of ~~legal paternalism or~~ hard paternalism (1986), although the vocabulary he uses there is arguably slightly misleading. Feinberg’s master distinction runs, roughly, between, on the one hand, self-regarding harmful conduct of a *voluntary* or substantially voluntary nature, and, on the other, similar conduct of a *nonvoluntary* kind (e.g., Feinberg, 1986: 12). Hard paternalism, in a nutshell, countenances interferences to prevent harm flowing from the former kind of conduct, whereas soft paternalism is restricted in its writ to prevent harm pertaining to the latter kind of conduct.

Essentially, however, Feinberg seems to be concerned with distinguishing between, on the one hand, an arguably innocuous or soft form of paternalism which protects an *autonomy* right or an ideal of personal sovereignty, that is, the right of a person, or her current self, to conduct herself as she sees fit in self-regarding matters, taking responsibility for the foreseeable consequences of her acts, including severely harmful ones (Arneson, 1980; 2005; Dixon, 2001). Interventions in the self-regarding harmful conduct of this person are only warranted in case that the conduct in question is not, in the relevant sense, *her* conduct or does not reflect her stable preferences or values.¹

Hard paternalism, on the other hand, *infringes* the right of autonomy, that is, curbs the individual's self-direction in her self-regarding matters, imposing a conception of the good that is foreign to the person on her or restricts her actions by reference to an alternative assessment of the worthwhileness of the goal that makes her incur a given harm or to shoulder the risk of incurring such a harm.

When do we infringe people's autonomy (for their own good)? On a broad account of what constitutes an infringement of autonomy, we do so when we attempt to influence people and their choices for their own good by the use of means other than rational persuasion, and do so without their consent. This includes even the application of non-coercive or non-manipulative measures, such as incentives and 'shaping' or nudging,² and of course, *a fortiori*, for example, coercion and deception. When we act in this way we bypass the will of the intended beneficiary of our act. We do not engage him as a rational agent or respect his 'control over his own decision-making' (cf. Hausman and Welch, 2010: 128-130; Quong, 2011). On a narrower conception of what amounts to an infringement of autonomy, the mentioned non-coercive or non-manipulative measures, such as incentives and 'shaping' or nudging,³ even if not consented to, and although they influence the agent in other ways than

~~by rational persuasion,~~ are not affronts to autonomy (Scoccia, 2008: 353, 355, 358). Only the use of unsavory means such as coercion and deception constitutes such an affront.

The use of measures other than rational persuasion for people's own good *with* their consent (or, on the narrow view, of incentives and/or nudges even without people's consent) does not infringe autonomy and is hence a form of soft paternalism, if, of course, these measures are applied in the interest of their targets. Soft paternalism, thus conceived, may, as indicated above, be seen as an innocuous form of paternalism, if it should be regarded as a form of paternalism at all; according to Feinberg, it is more appropriately seen as a notion of anti-paternalism or denial of hard paternalism (Arneson, 2005; Feinberg, 1971: 112; 1986: 12). Genuine, autonomy-infringing, paternalism is thought by some liberal always to be wrong. However, recently a number of liberal authors have argued that in some circumstances even hard paternalism might be justifiable. This is roughly so when the self-regarding harm at stake is significant and the restriction of liberty required to prevent it limited (see, e.g., De Marneffe, 2006, 2010; Schafer-Landau, 2005; Scoccia, 2008; 2013).

~~The~~ We follow Danny Scoccia (2008) in conceiving of the consent or authorization that may make conduct that would otherwise be autonomy-infringing not so as being of either of the following two forms: ~~take one of the following three forms:~~ (a) prior consent as in Odysseus type cases (Dworkin, 1971: 119-120; 1988: 14-15; Regan, 1983); (b) hypothetical consent. The latter may be understood either along the lines of ~~current consent as in the case of a group of individuals accepting mutually beneficial constraints (e.g., working time regulations, curfews, prohibition of duelling and so forth)~~ (Arneson, 1980: 471; Dworkin, 1971: 112; Feinberg, 1971: 123; Le Grand and New, 2015: 21); (c) immediately forthcoming consent (e.g., the consent that would presumably be forthcoming from a man we shove out of harm's way, for example an oncoming truck or, or from a man we restraint with the purpose

of preventing harm befalling him, for example, when we keep him from entering an unsafe bridge or from sprinkling arsenic on his eggs in the belief that it is salt) (Arneson, 1980: 471).

—The appropriate circumstances in which the relevant kind of consent is rendered and by whom (i.e., the relevant features of the persons or parties granting a consent of a kind that would make an otherwise autonomy-infringing conduct not so) is disputed. Donald VanDeVeer distinguishes between two principles in this regard, to wit, the so-called *Principle of Hypothetical Rational Consent* and the *Principle of Hypothetical Individualized Consent* (VanDeVeer, 1986: 70ff.; Scoccia, 2008: sec. III). The former appeals to the consent of “fully rational” individuals aware of the relevant circumstances and echoes Gerald Dworkin’s idea of hypothetical consent put forward in his immensely influential 1971 paper. The latter concerns the consent of a specific person aware of the relevant circumstances and where his or her ‘normal capacities for deliberation and choice’ are not ‘substantially impaired’ (VanDeVeer, 1986: 75). This implies, as Danny Scoccia has it, ‘that we take the person’s preferences and values as given, “warts and all”’ (Scoccia, 2008: 359), including potential irrational features or quirks (cf. Arneson, 1980: 474).⁴

The two conceptions agree in important respects on the kind of cases in which consent would be forthcoming and where, consequently, the interventions in question would be merely soft paternalistic. For example, they do not differ with regard to the cases mentioned in (a)–(c). Moreover, they would presumably agree on the appropriate treatment of two parties cases in which B enters an arrangement with A that is harmful to B’s interest, for example involving B becoming a slave of A or A mutilating B in various ways, where the agreement in question is coercive or involves undue pressure: intervening in the agreement on B’s behalf would presumably be something that B would assent to on both conceptions of consent.⁵

However, ~~the two conceptions~~ principles might come apart ~~differ~~ with respect to at least two important cases with the “fully rational” standard implying a more extensive account of what

people might consent to and hence of soft paternalism. The first case concerns the so-called phenomenon of the weakness of the will. Roughly, a person with a weak will believes that he has good reasons for taking a certain course of action, for example the prudent one of fastening his seat-belt, but fails, for various reasons, to act in accordance with his own consideration of the relevant reasons in play. Proponents of the “fully rational” standard would not hesitate to subsume this case under the set of interventions that would be consented to and which should accordingly be seen as soft paternalistic. This appears to sit well with the general account given of soft paternalism, according to which it enjoins, and only enjoins, interventions with the purpose of implementing the settled values and preferences of the person. However, if we take seriously, as the second conception of consent suggests we should, that the person in question is disposed to act in a way that he himself recognizes as being unreasonable or imprudent, his consent to acts blocking his action would not be forthcoming, and interventions would on this view count as hard paternalistic.

Second, take the case of so-called evaluative delusions where people assign an arguably irrational or faulty weight to some of their competing values (for example, to the value of avoiding the inconvenience of driving with their seat-belt fastened) in circumstances in which their ‘normal capacities for deliberation and choice’ cannot plausibly be held to be ‘substantially impaired’. Here the two conceptions of consent differ again, and do so along lines similar to those pertaining to the first case: according to the “fully rational” standard people would consent to interferences aimed at correcting evaluative delusions, whereas such interferences would not achieve hypothetical individualized consent.

The resulting competing views on soft paternalism or on the appropriate extension of this view are more or less ascribable to Dworkin and Feinberg respectively. Regarding Dworkin’s extensive view on soft paternalism one may ask whether it leaves any interesting category of hard paternalism. It does so, Dworkin submits, in the sense that we may with

respect to some acts find no flaws of rationality or autonomy—the acts in questions being a truthful expression of the underlying values and preferences of the person in question, this person making no mistakes in his or her assignment of weight to his or her competing values—whilst they, at the same time, involve serious or grave self-regarding harm. Responding to that harm in itself amounts, according to Dworkin, to hard paternalism (Dworkin, 1988. Cf. Grill and Voigt, 2015). It sets aside the person’s own conception of his good or imposes a conception of good foreign to her on her. (Proponents of the less extensive version of soft paternalism mentioned above would say something similar about cases in which we intervene in people’s conduct on the ground that they attach irrational weight to certain of their competing values.)

Consent is, as emphasized above, pivotal to both conceptions of soft paternalism: interventions are justified, roughly, when consent is in place. However, the question whether or not hypothetical consent is plausibly forthcoming to a given intervention is partly dependable on the magnitude of the harm involved. In Dworkin’s rationalistic version, for example, protections in the form of paternalistic strictures are held to be especially pertinent when the decisions in questions are ‘far-reaching, potentially dangerous and irreversible’ (Dworkin, 1971: 123); and something similar, *mutatis mutandis*, may hold true of the individualist consent model.

Summing up the results of this section we may say that: (i) Hard paternalism infringes a person’s autonomy for his own good, whereas soft paternalism promotes a person’s good or prevent harm from befalling him in a way that does not infringe autonomy; (ii) autonomy is infringed when, and only when, A uses means other than rational persuasion to affect B’s conduct (in B’s interest in the paternalistic case) without B’s consent (incentives and nudges, however, do not on a narrower view of what counts as autonomy-infringement count as such, even if the measures in question are not consented to); (iii) B’s consent is either (a) his prior

consent or (b) his hypothetical consent. ~~concerns his prior, current, or immediately forthcoming consent; and (iv) The latter~~ should be understood either in accordance with the *Principle of Hypothetical Rational Consent* or the *Principle of Hypothetical Individualized Consent* (with accompanying differing views on the appropriate writ of soft paternalism)-; and (iv) the question whether hypothetical consent obtains or is forthcoming is partly dependable on the magnitude of the harm involved.

A few remarks to foreshadow the analysis to follow are in place. The use of sunbeds may involve factual mistakes or wanting understanding or awareness of the risk involved. Moreover, the activity may be addictive which would call in question the degree to which people engage in the conduct on a continuous basis in the absence of being subjected to *controlling influences* (cf. Faden *et al.*, 1986: chap. 7). That is, people may not accept the risk involved on a voluntary basis or grant their continuous consent to it (Feinberg 1971: 106-107). Voluntariness is here regarded as an aspect of informed consent which itself may be seen as a special kind of autonomous action (Faden *et al.*, 1986: chap. 7-8). If sunbed users are not aware of the risk involved in the activity or do not accept it voluntarily, interferences in the activity to prevent the harm pertaining to it would arguably achieve hypothetical individualized consent and, a fortiori, hypothetical rational consent. ~~on both conceptions of consent mentioned above not infringe autonomy (cf. (c) above and the point on coercion in two party cases). That is~~ Accordingly, the interventions in question would be unambiguously soft paternalistic. We analyse these two factors in the next two sections.

The use of sunbeds is obviously, at least to some extent, related to people's outer appearance and norms pertaining to such. This brings in plays considerations regarding potentially controlling influences from oppressive patterns of socialization. Would people consent to interferences averting harm pertaining to the conduct influenced by such patterns? This is controversial, but the argument we consider giving an affirmative answer to this

question is closely related to concept of autonomy relied upon by Dworkin and others (or provides an immanent criticism of this) which is why we consider it to be relevant to at least his version of soft paternalism.

Also related to Dworkin's view, we focus on so-called evaluative delusions—delusions which may, we claim, just as is the case of people's non-use of seat-belts, be at work in people's use of sunbeds, and hence may call for paternalistic interventions (~~whether we conceive of these as being hard or soft~~[interventions that on Dworkin's view would count as soft paternalistic, whereas on Feinberg's view they would be hard paternalistic](#)). In addition, we consider the strict hard paternalistic rational alluded to above.

Are Sunbed Users Aware of the Health Risks Involved?

It is possible to distinguish between at least the following two grounds upon which it may be claimed that sunbed users are sufficiently aware of the risks involved in the activity, namely that they have been appropriately warned of the dangers involved and that knowledge of the risks can reasonably be presumed on their part (cf. Goodin, 1989: 16–21).

Regarding the first ground, studies suggest that tanning facility users are appropriately warned of the potential risks involved by the means of legible, accessible and correct danger labels and other exposure labels (Culley *et al.*, 2001). Moreover, tanning facilities generally act in accordance with protective eyewear regulations and regulations pertaining to the duration of tanning sessions (Culley *et al.*, 2001). On the other hand, tanning salons tend to flout maximum tanning frequency recommendations, promoting unlimited tanning in the form of unlimited tanning packages (Culley *et al.*, 2001; Kwon *et al.*, 2002). Furthermore, the tanning industry makes claims of a doubtful scientific validity regarding the potential health benefits of tanning, including claims that it offers protection against sunburns that one might otherwise experience from exposure to naturally occurring ultraviolet radiation. As indicated

above, the benefits of a so-called pre-vacation tan are disputed; it offers virtually no photoprotection and leads to harmful practices of people refraining from using sunscreen, acting on the false belief that their pre-vacation tan offers efficient protection (Levine *et al.*, 2005).

This evidence regarding the kind of information offered to prospective or current sunbed users appears to justify a claim similar to the one Robert Goodin makes regarding the information given to smokers (Goodin, 1989: 20): it is at best of a conflicting nature. What is suggested by the various warnings labels with which customers are confronted is taken back or undercut by information to the effect that the activity is in various ways beneficial to people's health. Accordingly, the first ground for asserting that people are sufficiently aware of the risk involved in the use of sunbeds—that is, that they have been informed about the danger involved in an appropriate manner—is of a questionable strength.

However, the other 'reasonable person'-ground may seem more promising. As with smoking, it is by now fair to say that there is a general public awareness of the potential dangers involved in excessive tanning. Although concluding that '[m]any individuals were not aware of potential risks' of sunbed use, a recent article reports that approximately 70% of the respondents (the study builds on a representative sample of 4851 individuals) declare themselves in agreement with claims such as 'Regular use of sunbeds causes skin cancer' (Diehl *et al.*, 2013: 291, 294). Obviously, it is difficult to determine what exactly warrants claims to the effect that a 'reasonable person' knows or may fairly be presumed to know the dangers involved or risked in a certain activity, but on the basis of the presented evidence it does not seem unfounded to claim that ordinary people know and can reasonably be expected to know, in broad terms, the potential risks involved when using sunbeds. And this claim is likely to be further vindicated as the medical professions and health authorities increasingly strive to raise awareness of the risks involved. To the extent this is true, it seems as though we

have compelling grounds for claiming that sunbed users are generally aware of the risks involved, shouldering them with their eyes open, so to speak.

Do Sunbed Users Voluntarily Accept the Risks Involved?

Given that people are sufficiently aware of the risk in question do they accept it on a voluntary basis? An important consideration here is that some activities are of such a nature that once persons have engaged in them they are very difficult and costly, bordering on the impossible, to give up. People become addicted to them. This is plainly seen with smoking, for example. On the presumption that consent implies the possibility of doing otherwise, this undermines claims to the effect that people consent to the harm in question, at least on a continuous basis (Goodin, 1989: 29). The addictiveness of a substance or an activity is, however, compatible with one's decision to begin in the first place being sufficiently voluntary; and if the latter holds true, one must arguably bear the adverse consequences of one's own choices, as the consequences were reasonably foreseeable.

However, the initial choice of performing a self-regarding harmful and addictive activity, such as beginning to smoke, is sometimes made by individuals below the age of consent, who are incapable of consenting to the risk in question, both in the legal and moral sense. With smoking, this may even *typically* be the case (Goodin, 1989: 30). If this is so, there are sound soft paternalistic reasons for curtailing smoking by measures such as outright prohibitions or taxes. Such measures would not amount to infringements of people's voluntary, self-regarding harmful, activities—the kind of interventions soft paternalists condemn; rather, they would amount to protecting individuals against decisions that are in a relevant sense not really their own (i.e., involuntary, self-regarding harmful choices).

Are similar considerations applicable to people's tanning behaviour or apparent consent to use tanning beds? Indeed, a number of studies suggest that it is plausible to claim

that some people suffer from so-called ‘tanning dependency’ or are effectively addicted to exposing themselves to ultraviolet radiation from artificial sources (Nolan *et al.*, 2009). However, other studies seriously dispute these claims (Schneider *et al.*, 2015). Whereas addiction is ‘associated with constant craving for the addictive substance (alcohol, nicotine) and/or withdrawal symptoms’ (Schneider *et al.*, 2015: 166), sunbed users scoring high on dependency in the mentioned studies did not report using tanning beds on a regular basis. Hence, it is at best uncertain whether a rationale similarly to the one Goodin proposes with respect to smoking holds any merit in the case of sunbed use.

Can the use of sunbeds be ascribed to oppressive patterns of socialization?

By canvassing and extending an influential structural conception of autonomy proposed by Dworkin and others, authors have developed an alternative so-called relational conception of autonomy, emphasizing, *inter alia*, oppressive patterns of socialization. Among the latter are norms regarding outer appearance which are of obvious interest for our topic. One may, as indicated above, by appeal to the controlling influences at issue, build a case for paternalistic interventions related to Dworkin’s account of soft paternalism. We begin by considering the structural conception of autonomy and its focus on first- and second-order autonomy against the background of which the so-called relational view, or aspects of this pertaining to patterns of socialization, are developed.

When we engage in certain activities, we do so partly because we desire to do so. In order for such a desire to be voluntary or autonomous—to be an authentic desire reflective of our will—it is of crucial importance that the desire in question is reflective of a second-order desire. We actually want the want or to have and act on the want in question. So for example, if my (first-order) want to smoke is to be voluntary or autonomous, I must want—or at least it

must not be the case that I do not want—the want in question: like the reluctant addict, it cannot be the case that I disidentify with the want in question. Moreover, in order to be autonomous or to be enjoying a free will, I must somehow be controlling my first-order preferences; for example, it must be the case that I could, if I would, want another want and make it effective in my motivational structure (cf. Frankfurt, 1971; Watson, 1975; Dworkin, 1988; Goodin, 1989: 27–28).⁶

Wanting the want in question and somehow controlling it are only necessary, not sufficient, conditions for it being an autonomous wish of mine. In addition, my second-order preference or reflection must satisfy certain conditions of procedural independence. That is, my second-order preferences or reflections must not be ‘influenced by other persons or circumstances in such a fashion that we do not view those evaluations as being the person’s own’ (Dworkin, 1988: 18). One problematic source of influence in this regard is arguably the fact that our second-order preferences are possibly the result of oppressive and unjust patterns of socialization. Apart from rendering certain preferences of individuals subject to it ~~in~~non-autonomous, these patterns put some groups at a significant disadvantage. In a number of papers, Paul Benson has cast light on such patterns (Benson, 1991, 1994, 2000; cf. MacKenzie and Stoljar, 2000; MacKenzie, 2008; Westlund, 2009). Of particular relevance to our concerns in this paper, Benson has drawn attention to a set of morally problematic norms requiring women to pay relatively more attention to their physical appearance than men and assess their personal worth (and be assessed by others) primarily in terms of their attractiveness to men. Studies confirm that such norms play an important role in the motivation to tan among women (Stapleton *et al.*, 2008: 940–941, 943–944; Schneider *et al.*, 2013: 46–47). The norms in question have been internalized by women, Benson argues, to the extent that not only do they want to appear attractive to men, and act accordingly, they actually want this want:

‘[A] thoroughly feminized woman’s desire to be an appealing sight for men need not motivate her independently of her higher-order wants. She has been taught to want to want this, and, because she has incorporated this instruction into her self-conception, she wants to look attractive (partly) because she wants the desire to motivate her behavior’ (Benson, 1991: 391).

Hence, women go through ‘prolonged efforts of plucking, painting, toning, tanning, starving, and meticulously scrutinizing their bodies’ (Benson, 1991: 386).⁷ To the extent that women’s desire to tan and to undertake other beautifying behaviour involving non-trivial harm is traceable to the mentioned oppressive norms it seems fair to question whether the conduct in focus is truly the person’s own and the harm involved one that she genuinely consents to absorb. If this is not the case, the soft paternalistic strategy appears to have some leverage. We realize that this argument, if sound, would apply to several instances of beautifying behaviour, as long as they imply non-trivial self-regarding harm, but are inclined to think that this does not necessarily constitute an objection; indeed, averting nonvoluntary self-regarding conduct of a harmful nature is always, according to the soft paternalistic rationale, a good (although not necessarily decisive) reason for intervening in the conduct.

What about men? It seems to be established that sunbeds are primarily used by women (Altsitsiadis *et al.*, 2012; Stapleton *et al.*, 2008), but there is no reason to believe that patterns of socialization do not affect male sunbed users or their second-order preferences in a way that is morally problematic. An ideal of health, youth and attractiveness may, for both women and men, be what generates the desire for a tanned appearance despite eventual health consequences (Haluza *et al.*, 2014: 128-129). Moreover, some social conceptions motivating a desire for a tanned appearance apply only to men. In general, men pay less attention to their health than women do. This is related to a social conception about masculinity, which results in men having less positive attitudes towards sun protection and a lower perceived vulnerability to skin cancer than women (Walsh and Stock, 2011: 432-433; Haluza *et al.*, 2014; Reilly and Rudd, 2008: 196). In relation to tanning behaviour ‘...by avoiding health

care or sunscreen use, men are able to show masculinity by being consistent with the messages that men should not care about their health...' (Walsh and Stock, 2011: 433) and at the same time masculinity reduces the impact of sun protection interventions (Walsh and Stock, 2011: 433). Simultaneously, a tan may highlight muscles. This is used by bodybuilders, and therefore a tanned appearance becomes a predictor of masculinity (Reilly and Rudd, 2008:197). Moreover, in some subgroups such as sexual minority men a tanned look is a cultural appearance standard, compliance with which makes it in part acceptable to compromise health (Reilly and Rudd, 2008: 196; Mansh *et al.*, 2015). Among homosexual men a tanned appearance is considered to constitute an attractive feature of a person (Reilly and Rudd, 2008: 200-201). Accordingly, men's second-order preferences to appear masculine or attractive may be no less innocuous than women's second-order preferences. That is, we may justifiably question the authenticity of the evaluations in question, and find reasons to discourage the self-harming conduct in various ways. In our account of Benson's argument we have emphasized the idea that second-order preferences which were supposed to underwrite the autonomous nature of first-order preferences may themselves be subjected to oppressive norms of socialization. It is clear, though, that the claim that the norms in question are false and unjust plays an important role in Benson's view. However, strictly speaking this is irrelevant on the soft paternalistic analysis in that it is not concerned with the reasonableness or worthwhileness of the goals or preferences involved but with whether or not they are truly reflective of the person in question, that is, whether or not they are genuinely his or hers (Feinberg, 1986: 12). The claim about the dubious nature of the values involved plays an important role, however, in the hard paternalistic argument considered later in the paper. ~~emphasizes, the norms in question are false and constraining, narrowing in an unacceptable way the facets on the basis of which the worth of women, according to society's prevailing view, are to be assessed, and, through their effect on the deep motivational~~

structures of women or their second-order preferences, implying a one-sided self-conception and notion of self-respect and self-esteem. Second, some of the kinds of activities mentioned by Benson as vehicles for satisfying the norms of appearing attractive or 'fixed up' are self-regarding harmful. As we have pointed out, tanning is one such self-regarding harmful activity, starving another, and various kinds of cosmetic surgery (e.g., breast implants) may also fall into this category (cf. Chambers, 2004).

To the extent that the pedigree of women's second-order preferences to appear attractive to men and to assess their own worth primarily in terms of their success in this regard can be traced to false and constraining norms, they are arguably due to 'circumstances in such a fashion' that lead us justifiably to question whether the evaluations they express are 'the person's own'. Moreover, they, or some of the activities, including tanning, required for their fulfilment, are, as mentioned above, of a self-regarding harmful nature. Nonautonomous self-regarding harmful activities may, as noted above, legitimately be discouraged in various ways by the state on soft paternalistic grounds. The upshot of these considerations then is that they add support to one or several of the policy measures discussed below. At least as concern the tanning behaviour of women.

Do sunbeds users operate under an evaluative delusion?

Sometimes we attach incorrect weights to some of our values, partly because we lack a vivid understanding of some of the values or disvalues involved: we may comprehend the risks involved intellectually but fail to appreciate them 'in an emotionally genuine manner'—to 'feel them in our guts' (Dworkin, 1971: 121; Goodin, 1989: 24; Le Grand and New, 2015: e.g. 90–97). By exercising our imagination in a certain manner, we may partly correct our sentiments in this regard or revise our initial incorrect calculations. Take Dworkin's case of a driver who is familiar with 'the statistical data on the probability of being injured when not

wearing seat-belts in an automobile and knows the types and gravity of the various injuries' (Dworkin, 1971: 121). He insists, however, that 'the inconvenience attached to fastening the belt every time he gets in and out of the car outweighs for him the possible risks to himself' (Dworkin, 1971: 121). Were this person now to be involved in an accident unprotected by a fastened seat-belt and be severely injured, Dworkin points out, 'he would look back and admit that the inconvenience wasn't as bad as all that' (Dworkin, 1971: 122). That is, he would reassess or weigh differently the inconvenience in comparison with the risk to himself. Why? Because at that point he would appreciate in a vivid way, or truly understand, the nature of the risk involved or the badness of its realization. The fact that he would in such circumstances reassess the risk involved suggests that his present balancing of values is faulty. It is clouded by his lack of a genuine understanding of the nature of the risk involved. In brief, the person in question is operating under a sort of 'evaluative delusion' (Dworkin, 1971: 122).

An argument of a similar kind is alluded to in the beginning of J. David Velleman's article on voluntary euthanasia (Velleman, 1999). In brief, it goes like this: Some smokers, or others on their behalf, argue that we have a right to 'live and die smoking' rather than 'merely surviving'. Velleman suggests, however, that this evaluation is partly due to the fact that those making it do not truly appreciate the badness of the consequences risked, such as lung cancer and other types of cancer. Were they to suffer cancer and experience first-hand its consequences, they would see things differently. Specifically, they would vividly appreciate the badness of the outcome risked, and the prospect of 'mere survival', which they previously tended to slight, would appear much more attractive (i.e., as in the case of seat-belts, the scales would tip in favour of accepting certain inconveniences or abstaining from certain pleasures to avoid the risks to oneself involved).

Now consider tanning bed usage. We believe that, *mutatis mutandis*, the indicated argument also applies to this case. As seen above, like drivers resisting the use of seat-belts

and smokers, sunbed users may be aware of the potential harms involved in their activity but insist that the benefits of looking tanned and attractive and the intrinsic pleasures attached to sunbed use (e.g., the warmth of the tanning bed and the energy boost some users experience after exposure to artificial ultraviolet radiation) outweigh the potential risks to themselves described above. Were they in fact to attract one of the forms of cancer that they risk by virtue of their activity, it seems plausible that they would revise their judgment. They would admit that looking tanned and/or the other benefits associated with artificial tanning do not outweigh the potential risk of getting cancer. As in the cases of the driver and the smoker, they are subject to an evaluative delusion. The argument sketched here regarding tanning bed usage is vividly displayed in a recent Danish public health campaign (The Danish Cancer Society, 2013) in which people with skin cancer are talking to their former selves, wishing that they could persuade them to refrain from using tanning beds.

Paternalistic restrictions on the kind of behaviour exemplified above may serve in part to correct for the reasoning failure involved. The latter pertains, as we have seen, especially to people's limited imagination regarding the badness of the harm risked. The problem is arguably of particular relevance for activities that 'result in a harmful effect that only manifests itself a long time in the future (unhealthy eating, smoking, failure to provide for a pension)' and those activities that 'have a very small chance of an immediate catastrophic outcome (driving without a seat belt or riding a motorcycle without a helmet)' (Le Grand and New, 2015: 179). Imposing various paternalistic restrictions on such activities may seem well founded. Is this true as well for high risk sports which certainly in some cases carry a 'small chance of an immediate catastrophic outcome', even given the observance of various safety precautions? Not necessarily in that the goal that makes people undertake such risks is arguably more important to them than it is to avoid the inconvenience of the seat belt or the

[helmet. Hence they may indeed want to shoulder it even with a clear view on the badness of the eventual realization of the harm risked by engaging in the activity.](#)

Does the harm in itself pertaining to the use of sunbeds warrants imposing restrictions on the activity?

At least some users of sunbeds may not experience any of the abovementioned shortcomings. Still they persist with their activity. Just as some bikers may genuinely prefer to feel the wind in their hair and perhaps the thrill of dangerous living when blasting down the highway on their motorcycles to the protection offered by a crash helmet (the bikers in question appreciating the true nature and magnitude of the risk of harm involved), some users of sunbeds may feel that the benefits of looking tanned outweigh the risk of getting skin cancer or justifies the risk in question. Besides the well-being associated with a tanned appearance they may believe, for example, that having such an appearance is crucial to finding a suitable partner.

Despite the fact that we *ex hypothesis* can find no reasoning or rationality flaws in the considerations of the individuals in such cases, the self-regarding harm or risk of harm itself appears to have some intuitive pull on us, giving us reasons (although not necessarily decisive ones) for interference. It does so especially, we think, when (a) the magnitude (i.e. the seriousness and likelihood) of the risk of harm is profound; (b) the goal that makes the agent assume the risk is not worth a risk of that magnitude; (c) the infringement of liberty involved in averting the harm in question is not significant or fundamental (which is typically the case if the worthwhileness of the goal that makes the agent assume the risk (cf. (b)) is dubious).

We take (a) to be securely established above. Moreover, we argue below that (c) is true partly because, roughly, banning tanning beds would leave sufficient and reasonably

available alternatives to achieving the goals that make people use tanning beds, whilst still reducing harm overall. Add to this that the goal of achieving a tan (cf. (b)) or, in general, an attractive outer appearance is at least open to challenge on the grounds indicated above when discussing Benson's point about oppressive patterns of socialization. Accordingly, it is arguable that the goal for the sake of which people shoulder the (profound) risk in question is dubious, and that interfering in its achievement (to the extent that banning tanning beds does so) through curbing the means to its achievement which put people in harm's way, is not something that would blight people's lives.

Policies

Having considered soft and hard paternalistic reasons for imposing restrictions on sunbed use, we turn to discuss the appropriate nature of such restrictions. *Publicity* is the most uncontroversial measure. Informing people about the dangers involved is one way in which the government may try to keep its citizens out of harm's way (Feinberg, 1971: 116; Goodin, 1989: 595). As already indicated, however, in light of the recalcitrant nature of the norms pertaining to tanning and the irrational assessments of competing values involved, providing information is unlikely to suffice (cf. Altsitsiadis *et al.*, 2012: 18); its effects on those who are disadvantaged with regard to their choice-making and choice-following talents and/or in terms of the social background conditions they have for exercising those capacities are known to be limited (Arneson, 1997: 239; Conly, 2013: 149-150; Niederdeppe *et al.*, 2008; Voigt, 2010: 4).

Taxation is another familiar instrument used to try to curtail people's consumption of a harmful substance or product (Goodin, 1989: 594–595; Simester and von Hirsch, 2014: 112). In tandem with *regulations* (Simester and von Hirsch, 2014: 194–197) pertaining to the frequency of use, taxation may reduce the frequency with which people use tanning devices

and, hence, the harm involved. While taxation is a popular tool with which to regulate other carcinogens, especially tobacco (Goodin, 1989: 594), it has not been widely applied, if at all, to artificial tanning. Frequency regulations are also rarely adopted, and where they are, they are often not effectively policed, and the industry fails to comply with them (Culley *et al.*, 2001; Kwon *et al.*, 2002). Hence, to the extent that the activity in question is allowed to proceed, pushing for effective regulations would seem appropriate. Another relevant regulatory item requires protective glasses when tanning. Such restrictions are in fact widely adopted in many countries and generally complied with by the industry (Culley *et al.*, 2001). One thing to consider regarding the measures of taxation and regulations is that whilst the health benefits they are likely to generate accrue primarily to the disadvantaged groups which tend to be the most frequent users, eventual costs, such as financial costs and the inconveniences associated with the measures, are also borne primarily by these groups (Voigt, 2010). With respect to smoking, for example, this may be an important consideration speaking against the adoption of the measures in that, in light of the addictive nature of smoking, they only serve to make the habit more expensive for those who already have little. In light of the availability of alternatives (as elaborated on below) and the fact that tanning is arguably not addictive, such concerns are, however, arguably less pressing in the case of tanning beds, and the real inconveniences and costs involved in such policies may plausibly be outweighed by their health benefits.

While taxation and regulations may go some way towards reducing the harm produced by the activity, they fail to prevent the significant harm associated with the sunbed usage. There is, recall, a significant increase in the risk of getting melanoma and non-melanoma skin cancer associated with ever use of tanning beds. Hence, the policy of *prohibition or criminal sanction* seems worthwhile to consider. The policy we have in mind prohibits both tanning salons and the use of tanning devices in private. *Age restrictions* prohibiting tanning bed use

among those below 18 or 21 years of age is an alternative measure that might appear appropriate given the harm involved. As we have seen, the harm is especially related to sunbed use by youth and adolescents, and, important from the perspective of soft paternalism, the voluntariness of their actions, at least below a certain age, is questionable. Measures of prohibition—whether applied across the board or to certain age groups—raise a number of issues, some of which are considered below.

~~We initially consider a problem that is unique to the soft paternalistic controlling-social norms rationale for the adoption of such a measure. A~~ The first problem—a problem pertaining to a soft paternalistic rationale—is that although the use of sunbed is typically related to reasoning failures and oppressive social norms this need not always be the case: some people engage in the activity without suffering from reasoning failures and while not being under the sway of social norms. Measures of prohibitions would accordingly be unjustifiable with respect to this group. it may serve to prevent women from incurring involuntary harm, it may involve infringing on the rights of some users or potential users, especially men. There might be some people who ~~Men are arguably not under the sway of the norms discussed above; hence, the voluntariness of their sunbed use is not vitiated in the same manner as with women. In a sense, the problem might be limited in that sunbeds are used primarily by women (Altsitsiadis *et al.*, 2012; Stapleton *et al.*, 2008). Still, the problem is a real one.~~ It seems to us, however, that even taking the interests of this group into consideration would not make a general measure of prohibition unjustifiable. The burden imposed on this group ~~men~~ by a policy of prohibition seems to us not to be of the same magnitude as is the burden experienced by women under those who would engage in the self-regarding harmful conduct due to reasoning failures or social norms under a policy of permission (cf. De Marneffe, 2010: chap. 4; Scanlon, 1998: chap. 5). This is especially so in light of the fact that alternatives to artificial tanning are, as we emphasize below, relatively

easily available., meaning that men, although deprived of the opportunity to voluntarily engage in a dangerous activity that they find useful (which is a real cost), have viable alternatives. Moreover, one may hold, with Feinberg, that avoiding that a person is wrongly permitted to undergo a certain harm (i.e., allowing the person to undergo a harm although he or she does not want to or in fact incurs it on an involuntary basis) takes priority to avoiding that a person is not wrongfully denied undergoing a harm of the same magnitude (i.e., to deny him or her the freedom to undergo the harm in question, although he or she in fact wants to or incur it on a voluntary basis) (Feinberg, 1971: 11). Finally, on the presumption that some people women are subject to factors that impair their choice-making or choice-following capacities or the exercise of these capacities in certain regards, egalitarian considerations speak in favour of paternalistic regulations of the kind in question. Such regulations would serve to prevent certain bad choices and the accompanying disadvantages (Arneson, 2005: 275).

Another problem related to the effects of measures of prohibition on various groups is similar to the one mentioned in connection with taxation and regulation—the consideration that the eventual burdens involved will fall on disadvantaged groups, that is, on the primary potential users of tanning beds. However, a similar consideration regarding the availability of alternatives seems pertinent here. Moreover, the fact that the real cost of prohibiting the activities in question falls predominantly on the mentioned groups is plausibly outweighed by the fact that the benefits of the measures in question—that is, to keep potential users out of harm's way—accrue primarily to the same groups.

We turn now to a more general problem pertaining to the use of criminal sanctions. By their very nature, they constitute a drastic intervention in an activity and the values attached to it. (As Sarah Conly aptly points out, however, we should not overestimate the seriousness of coercive interventions vis-à-vis apparently less restrictive measures. Prohibitions may

sometimes be preferable to constantly being hectored to choose the right thing (Conly, 2013: 151).) In anticipation of the argument to follow, however, it appears to us that whatever real value or benefit may attach to the activity could be realized either by less dangerous activities or by activities the performance of which is just as dangerous but where, as opposed to prohibiting sunbed usage, disallowing or severally curtailing the activity in question (or at least some instantiations of it) would be intolerably intrusive; and even with alternatives present, it is meaningful to prohibit the activity, that is, prohibiting tanning beds would serve to reduce harm.

As noted above, one benefit associated with artificial tanning is that it is a source of necessary vitamin D. As pointed out above, however, there are far less dangerous and equally efficient alternative sources of vitamin D. Another benefit claimed on behalf of sunbed usage—perhaps the most important one (although controversial as we have seen above)—is how it provides its users with what may be seen as a healthy, sporty or otherwise attractive physical appearance; in brief, a tan. But a tan (in some geographical areas more than others admittedly; but in light of our increased mobility and an increasingly competitive flight industry, few are barred from natural sources of radiation) is achievable by exposing oneself to natural sources of radiation (the sun) the activity in question involving similar kinds of risks (Olsen and Green, 2012). And crucially, we submit, that for all practical purposes, it would be intolerably intrusive to prevent people from exposing themselves to the sun or to regulate, in any systematic and comprehensive manner, the frequency with which people expose themselves to the sun.

Hence, the central value held to be realized by tanning bed usage might be achievable by other means. This rebuts the challenge to outlawing tanning beds, saying that such a measure would eradicate the central value attached to using sunbeds.

However, it immediately generates another challenge concerning the point in banning artificial tanning if people, at relatively low transaction costs, may substitute the (equally dangerous) natural source for its artificial counterpart: the measure would not, it seems, serve to reduce self-regarding harm from exposure to ultraviolet radiation. In reply, a ban on artificial tanning at least gets rid of one source of serious harm, and although there are alternatives of an equally worrisome nature, it is not a given that tanning bed users would, when denied access to a tanning parlour, automatically, or to the same degree, expose themselves to natural radiation. For example, they may refrain from doing so in light of what they consider to be inconveniences involved in making use of the natural source of radiation. These may include having to go to the beach, getting one's clothing, towel and shoes sandy, having to put up with noisy kids and other obnoxious sunbathers and so on. Moreover, while people residing in parts of the world where they see little sun may have the financial opportunity to go abroad in the pursuit of sunnier areas, finding the time to do so may be difficult. Furthermore, banning artificial tanning on the grounds that radiation (artificial or natural) is harmful might send a powerful signal to people about the harmfulness of the activity in question and perhaps affect norms about the attractiveness of being tanned—a signal that may have some influence on how people are inclined to expose themselves to radiation. In these and other ways, a ban on artificial tanning may serve to reduce the harm pertaining to radiation overall. Analogously, the fact that banning smoking in some areas will leave other areas within which people may perform the activity does not render such local restrictions obsolete or ineffectual. It might serve to reduce people's smoking (Velleman, 1999: 619; Simester and von Hirsch, 2014: 197).

Conclusion

We have canvassed various soft and hard paternalistic rationales for imposing restrictions on sunbed use and argued that they come out in favour of a prohibitive policy. Given that the harm in question is significant and is moreover often either involuntarily incurred or incurred on the basis of considerations that fail to attach appropriate weights to the values involved, it is justifiable—perhaps even mandatory—for the state to attempt to prevent the harm in question. Doing so is most plausibly done by the use of criminal sanctions, which tend not to eradicate the values involved in artificial tanning to an intolerable degree.

Notes

¹ People may sometimes, it should be noted, with perfect voluntariness, act out of character or in disaccord with their settled preferences or values (and such actions should, according to the soft paternalistic standard, also be immune to interventions) (Arneson, 1989: 424; Feinberg, 1986: 117).

² 'Shaping' or 'nudging' may be seen as 'the use of flaws in human decision-making to get individuals to choose one alternative rather than another' (Hausman and Welch, 2010: 128).

³ ~~'Shaping' or 'nudging' may be seen as 'the use of flaws in human decision-making to get individuals to choose one alternative rather than another' (Hausman and Welch, 2010: 128).~~

⁴ It is arguable that hypothetical consent, whether individualized or rational, is not genuine consent at all and hence that the paternalism involved is hard not soft (see, e.g., De Marneffe, 2010: 99-103). While this is a reasonable and widespread view, it is subject to the following challenge (a challenge that we believe to be plausible, but can only sketch here). In brief, hypothetical consent may be seen against the background of a Rawlsian well-ordered society in which full publicity and autonomy are realized implying, *inter alia*, that citizens endorse the principles of justice and the reasoning leading to these, including the hypothetical consent construct. In this way, citizens arguably authorize in a genuine sense the liberty-constraint system of society including its paternalistic features. If true, the paternalism in question is soft, not hard.

⁵~~The consent in question, one might add, might be conditional on the intervention not landing B with an outcome that is even worse than the one he was trying to avoid by accepting the deal in the first place. See, Radin, 1987: 1921–1922; Le Grand and New, 2015: 73).~~

⁶ Enjoying free will may not, however, be necessary for being morally responsible (see Frankfurt 1971; 1969). To the soft paternalist, however, substantive responsibility—that is, holding people responsible for a certain outcome in the sense of them being required to bear certain costs or harms—is predicated on autonomous conduct on their part or on having exercised their will.

⁷ The nature of the desire of ‘a thoroughly feminized woman’ is dependent on prevailing norms and may, or may not, include the desire to appear tanned. However, it may include other desires the achievement of which would require engagement in various kinds of acts of a self-regarding harmful nature and as such be problematic from the point of view of the soft paternalistic analysis pursued here.

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