

Summary of doctoral dissertation written by Katarzyna Grotkowska
entitled: "*Axiological justification of paternalistic regulations
in contemporary Polish law*"

The word "paternalism" comes from the Latin word "pater" ("father") and means treating someone in the same way as the father treats his children. One can talk about paternalism in relation to any relationship in which one subject restricts the freedom of the other subject in order to prevent him from causing harm to himself. Hence, in almost every area of life in which there are relationships between subjects, one can talk about paternalism, e.g. in medicine, economics, international relations or company management. For me, the most interesting is the paternalism of law, i.e. the situation where the legislator knows better what is good for the citizens.

Paternalism, due to the fact that it is a kind of interference in the freedom of a person¹, is regarded prima facie as something negative², paradoxically, it does not mean that anyone (perhaps except for some extreme liberals) would postulate the complete elimination of paternalistic institution from the legal system³. Examples of paternalism in literature are given among others drug prohibition, gambling restrictions, and compulsory driving seat belts, helmet, compulsory social security, alcohol restrictions, minimum wage.

C. Coons and M. Weber believe that the discussion on paternalism does not seek an answer to the question whether paternalism is problematic, but to what extent it is⁴. In the entire spectrum of paternalism, there are less problematic cases, such as compulsory education, and

¹ D. VanDeVeer, *Paternalistic Intervention. The Moral Bounds of Benevolence*, Princeton University Press 1986, s. 22; J. Murphy, *Incompetence and Paternalism*, ARSP vol. 60 (1974), s. 465; T. Pietrzykowski, *Etyczne problemy prawa*, Katowice 2005, s. 116, D. Groll, *Paternalism, Respect, and the Will*, Ethics vol. 122 July 2012, nr 4, s. 695, J. Feinberg, *Legal Paternalism*, Canadian Journal of Philosophy vol. 1 nr 1(1971), s. 105.

² "Paternalism is seen as illiberal, coercive, arrogant and patronising; it is thought to destroy autonomy and freedom, to display a lack of respect for people, and to violate sacred consumer sovereignty. A paternalistic government policy is beyond the pale, out of the reach of the logical discourse provided by rigorous economic analysis" P. Burrows, *Patronising Paternalism*, Oxford Economic Papers 45 (1993) s. 542.

³ T. Pietrzykowski, *Etyczne problemy prawa*, Katowice 2005, s. 126, D. Gruszewska, *Ochrona dobra prawnego na przedpolu jego naruszenia. Analiza karnistyczna*, Warszawa 2012, s. 197.

⁴ C. Coons, M. Weber, Introduction: *Paternalism – Issues and trend* [w:] C. Coons, M. Weber (red.), *Paternalism. Theory and Practice*, Cambridge 2013, s. 2.

more problematic ones, such as the use of paternalism towards adults. Only the latter category is of interest in this work.

Legal paternalism has not yet been the subject of comprehensive research in Polish literature⁵. The issue of deciding what makes an institution paternalistic has also not been the subject of analysis so far. Certain regulations were classified as paternalistic (but no one explained why they considered a regulation as a paternalistic one) e.g. restrictions on gambling, the obligation to vaccinate children, prohibition of drug possession, etc. The subject of a very careful analysis was whether paternalism in general as an interference with freedom could be justified. Several models of such justifications have been developed (C. Lanuza, J. Kleinig, J. Feinberg, D. VanDeVeer), the most important of which are the theory of protection of interests, the theory of consent (past or future) and the theory of protection of autonomy (or integrity). The functioning of a given institution has not been studied, nor has the axiological arguments supporting the establishment of such and not another regulation been verified.

Some authors - C. Sunstein and R. Thaler - analyze paternalism beyond the negative connotations related to the interference with freedom. According to these authors, paternalism is a kind of tool used to guide the choices made by people. Therefore, they regard paternalism as legitimate as it serves a good purpose - to make people's decisions easier. Determining how the legislator facilitates or hinders the making of certain choices will allow for the verification of the adequacy of the measures taken to the goals achieved.

The main problems discussed in this paper focus on two themes, the first of which is the concept of paternalism and its methodological status.

There are many definitions of paternalism in the literature, so it is necessary to develop a concept that would be a useful tool for further analysis. In terms of the methodological status of the concept of legal paternalism, it is advisable to verify or define of a classifying nature is sufficient to describe the entire spectrum of various paternalistic institutions. The second problem discussed in this paper concerns the qualitative analysis of arguments justifying selected paternalistic institutions and determining at what point in the decision-making process

⁵ See. D. VanDeVeer, *Paternalistic Intervention*, Princeton 1986, s. 96 – 102, C. Lanuza, *The Justification of Paternalism*, *Rechtstheorie* 30 (1999) s. 437 – 445, D. VanDeVeer, *Paternalistic Intervention*, Princeton 1986, s. 45-92.

of a person paternalistic intervention takes place. The work systematics adopted above tells about the goals set.

The first chapter deals with the concept of paternalism in terms of liberal thought. The chapter is descriptive, its purpose is to collect and systematize the functioning in the literature, the definition of the concept of legal paternalism. The result of the considerations carried out in the first chapter there is a construction of the definition of legal paternalism as a classifying concept, which is to serve as a tool for the study of paternalism, in particular to determine whether binary treatment of institutions as paternalistic or devoid of this feature is adequate for the entire spectrum of paternalistic institutions.

Chapters two and three contain an analysis of the justification of paternalism from the perspective of the social teaching of the Catholic Church and from the perspective of leftist thought. There is no doubt that paternalism is viewed as a "problem" only by liberals, but it is nevertheless valuable to discuss how paternalistic institutions are justified from a perspective other than the liberal one. Arguments raised, for example, in the social teaching of the Catholic Church on the protection of "true freedom" in a slightly changed form are also discussed among liberals.

Chapters four, five and six analyze the following institutions: compulsory social security, restrictions on gambling, alcohol, seat belt driving, helmet driving, drug possession, tobacco advertising, alcohol and gambling. The purpose of the analysis is not so much to check whether institutions are paternalistic, but to answer the question how much they are. I am primarily interested in the argumentation of the paternalistic justification, as well as whether the paternalistic justification can be clearly read from the available sources.

The considerations carried out in chapters IV - VI allow to distinguish two types of justifications: evaluative and utilitarian.

The seventh chapter contains the characteristics of the distinguished types of justifications and the analysis of the choice architecture used by the legislator in the framework of the discussed paternalistic institutions (the concept and its understanding I have adopted after C. Sunstein). The use of paternalism by the legislator shapes the conditions in which the society makes a choice, which is why I considered it right to present the relationship between the type

of measures that interfere with freedom and the purpose which this interference is to serve. The chapter concludes with the analysis of the concept of legal paternalism as a typological concept with the presentation of a series of typological paternalistic institutions.

The work will end with a summary, which will include conclusions on the axiology behind the justification of paternalistic institutions and on the use of paternalism as a tool of choice architecture.

Katowice, 7 czerwca 2021r.
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