Since the beginning of man, selfishness has been the ultimate tool of survival.

Even acts of charity, benevolence, and selflessness are rooted in selfish desires of recognition, compensation, or guilt.\(^1\) By the same token, when we perform acts with the intention of preventing harm to an agent or do so with the intention of providing benefit to him/her. These acts also derive from selfish motivations—motivations stemming from the idea that others should do what we believe is in *their* best interest. Yet, should good intentions trump ideas of the selfish natures and justify these acts? When can one human being attain the power to limit the liberties of another out of good intentions of preventing harm or more simply stated, or perform acts of paternalism. In this paper, I will attempt to address the level at which paternalism can be approved or even justified. To evaluate whether or not the acts can be justified, I will use the following criteria: prevention of harm to the agent\(^2\) or others, communication, and compromise—all terms and concepts that will be explained momentarily. Anne Fadiman’s work titled, *The Spirit Catches You and You Fall Down* illustrates a unique and tragic example of paternalism. The criteria I have chosen to evaluate paternalism is applied to the Lee family in the Fadiman text and I will extrapolate several examples from Fadiman’s work to substantiate my argument. Much of my argument will surround the act by Dr. Neil Ernst to pull Lia from the custody of her parents—the most controversial act of paternalism in *The Spirit Catches You*. Based on the criteria that I have selected to evaluate paternalistic acts, Dr. Ernst’s decision, although seemingly reasonable with good intentions, is not justifiable.

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2. Agent—In the context of this paper, the “agent” refers to the person(s) refusing to act on the professional or scientific knowledge
Criteria in Justifying Paternalism

John Stuart Mills believed that the only circumstance in which society may possibly limit a person’s liberty is when doing so is reasonably necessary to prevent harm to others or prevent unreasonable risk of harm.\(^3\) I believe that Mills’ liberty limiting principle is applicable when justifying grounds for paternalism. I do not, however, believe that this “harm principle” can be the exclusive factor in this determination. In addition to Mills’ principle, I also believe that a reasonable effort must be made by the profession or scientific knowledge party\(^4\) to convey to the agent the reasoning behind their motivations, actions, or preferences. In return, they must also allow the agent to delineate his/her justification for refusing to act on the given knowledge. After communicating both preferences to each other and confirming that both parties have understood both preferences, there should be a reasonable attempt by the professional/scientific party to reach a compromise. If complete non-compliance could result in harm to the agent or to others, then the professional party must find avenues to reduce the risk of harm and maximize satisfaction from both parties. This should lead to a greater utilitarian outcome than the potential of a complete non-compliance by the agent or a rash push by the opposing party to advance with a paternalistic action that could potentially lead to greater harm.

Before explaining the criteria, I also wish to interject and clarify specific aspects of paternalism. I am choosing to evaluate paternalism in terms of a concept that may limit individual liberty to prevent harm to him/herself or others. I believe that this may differ from what I choose to call extreme paternalism in which actions taken to limit...
one’s liberty are done so for what is believed to be for the benefit of the agent. In this paper, I focus more on the previous aspect of paternalism (although both are addressed) since I believe that justifying extreme paternalism is tantamount to justifying when good intentions should overrule all acts of service. Good intentions should be a vital aspect in paternalistic decisions, but I also echo Ivan Illiach’s response to good intentions (although to a significantly lesser degree of rancor and disdain) when reasoning that good intentions are not the only qualification in providing service successfully. Clearly, there are examples when good intentions have served interests well, but realistically, great harm has also resulted from services rendered from this seemingly innocuous concept of good intentions.

Summary, my criteria for justifying paternalism is founded on three concepts: prevention of harm to the agent or to others, demonstration of effort to convey reasoning and insurance of understanding by both parties, and finally, demonstration of an effort to reach a compromise. If all three concepts are executed and the agent still refuses to budge, then paternalistic actions are justified. All three concepts must be met and served before paternalism can be justified.

Harm Principle

Mills’ liberty-limiting principle states that an agent’s action may be coerced, restricted or limited if reasonably necessary to prevent harm to the agent or others. However, there is a caveat regarding the concept of “harm.” There is no universal understanding of the term, harm, therefore, the interpretation by both parties greatly influences decisions of paternalism. The standard definition of harm is “the violation,

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4 The professional and/or scientific party represents the side that obtains the knowledge and is attempting to persuade the agent to concede.
invasion, setting back or disadvantaging of an affected party’s interest” whereby interest is when someone in the party has a genuine stake.\textsuperscript{5} When applied realistically, however, this definition is subjectively modified. For instance, in Fadiman’s \textit{The Spirit Catches You}, the Merced Community Medical Center (MCMC) physicians, Dr. Neil Ernst and Peggy Young, define harm in terms of the biological state of the patient’s physical body. In this case, the patient we will be referring to is Lia Lee, the young Hmong child with severe epilepsy. Thus, per the physicians, the act of harm occurs if Lia’s epileptic symptoms are exacerbated or her physical well-being and her life are endangered, particularly if their medical protocol in caring for a severe epileptic patient is not followed systematically. The physicians believed that Lia needed several medications for her disease and they attributed her lack of progress in “recovery” to the “non-compliance” of the Lia’s parents in following the drug regimen instructions. Fadiman indicates that the Lee’s had a hard time persuading Lia to take her medication especially without restraining her. However, even when she was cooperative, they would still refuse to give certain medications such as Dilantin since they believed it changed “Lia’s spirit” and made her face “look different.” Foua and Nao Kao also seized to give her Phenolarb because they insisted that it gave her diarrhea shortly after it gave her diarrhea shortly after administration of the drug.\textsuperscript{6} By not giving Lia the prescribed drug regimen, her physicians felt that her seizures could not be controlled and monitored, thereby not only endangering her health but also preventing them from providing optimal care for her. In this respect, Neil and Peggy believed that Lia’s parents were causing harm to Lia’s physical health.

\textsuperscript{5} \textit{Merriam-Webster’s Dictionary} 1998.
However, the Lee’s non-compliance did not stem from being obstinate. They refused to accept the drug regimen because they believed that the MCMC physicians’ strict and complicated regimen was the cause of harm to their daughter, thereby allowing them to override the professional beliefs in the best interests of their daughter’s physical and spiritual well-being.

Foua and Nao Kao believed that the medications would cause strange behaviors in their daughter and alter her spirit. Compliance usually follows trust and the Lee’s had a difficult time trusting the physicians that put restraints on their daughter or allowed Lia to fall out of her crib under their supervision. In the Lee’s perspective, the MCMC care for their daughter was “inexplicably sadistic.”

Yet, in defense of the physicians, one needs to understand that physicians must prioritize the biological well-being of the patient first. As Fadiman noted, this facet of American medicine is medicine at its best but also at its worst where Lia was “reduced from a girl to an analyzable collection of symptoms and the physician is thereby able to husband his energies.” A priore is the patient’s life—you can’t let people die. Unfortunately, from the Lee’s perspective, because the physicians were so focused on Lia’s biological well-being, the physicians were endangering her spiritual health which they believed to supersede the physical state.

These two contradictory explanations of harm force us to decide which should be given more weight in this circumstance. I have decided to use the physician’s definition of harm in this argument for two reasons. First, in attempting to justify paternalism, I wish to be able to justify this care from a physician’s perspective in demonstrating the

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7 Fadiman. Pg. 44
8 Fadiman. Pg. 147
fact that this criterion alone does not bolster enough support to justify paternalism.

Secondly, the Lee’s understood that the physical well-being of their daughter was in
danger which is precisely the reason why they brought her into MCMC. They were not
unfamiliar with epilepsy as the Hmong culture attributed these symptoms to a level of
sacrality. However, they did not want their daughter to suffer in pain and by abiding to
her parents’ wishes, I believe there is a reasonable acceptance of the fact that the
anticonvulsant medication would be fairly effective in minimizing Lia’s convulsions. By
doing so, they could reduce her physical pain and possibly reduce the risk of sustained
seizures that could incur further brain damage.

Thus, in this regard, the criterion of trying to prevent harm to others (preventing
Lia’s parents from harming her biological well-being) is met as one qualification in
justifying paternalism.

Communication

Despite meeting the harm principle criterion, I believe that the tragedy of Lia’s
case lies in the failure of the second criterion: communication. In the second
qualification of justifying paternalism, both parties must convey their reasoning to the
opposing party and be ensured that both wholly comprehend the opposing party’s
reasoning. By doing so, the intentions, goals, and foundation for their decisions can be
elucidated.

Lia’s physicians prescribed numerous medication in conjunction with directions
filled with medical jargon. However, even when simplified, the routines were so
complex and “underwent so many revisions that keeping track of it would have been
monumental for a family that *could* speak English.*" This regimen was not only daunting but completely incomprehensible for the Lee’s.

Lia’s parents knew that their daughter’s health required the necessity of the harsh regimen but I do not believe that the explanation behind the prescription of the medications was ever conveyed. The Lee’s should have been given clear and concise oral instructions in their native tongue (since neither parent could read nor write) and efforts to find translators should have been made to convey the use and significance of each medication. By providing such explanation, the Lee’s could understand what aspects or symptoms of their daughter’s disease they were treating or alleviating with each medication. The simplicity of the phrase, “take as directed” is useless and inane when reflecting on the Lee’s circumstance.

On the night of the “Big One”, Lia had been seizing for over two hours and was rushed to Valley Children’s Hospital in Fresno. In an unfamiliar medical setting, forbidden to enter the emergency room, Foua and Nao Kao were left to be uninformed of their daughter’s status. Fadiman notes that “no one had said a word of explanation” to the parents throughout much of the night. One can hardly blame the Lee’s for their lack of trust in American medicine. They didn’t trust it because they never knew what it actually was and what it was accomplishing for their daughter. The jargon, complexities, and lack of communication prevented the Lee’s from easily complying to the specified regimen.

On the flip side, the Lee’s were never able to convey their beliefs and reasonings to the physicians. The MCMC staff were constantly wrapped up in Lia’s condition and

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9 Fadiman. Pg. 45
10 Fadiman. Pg. 45
failed to understand the reasoning behind the Lee’s actions [of not providing certain medications] and why maintaining their child’s spiritual well-being was such a vital aspect of their existence. When asked about the affect of his decision to remove Lia from the custody of her family, Dr. Ernst recalled that he would get “so singleminded about a child’s welfare that you can pretty effectively suppress any kind of feelings you have about the parents.” Aside from Jeanine Hilt, perhaps one of the most effective characters in attempting to bring the two worlds together, the physicians never fully understood the Hmong culture well enough to comprehend the severity of the consequences for affecting Lia’s. Fadiman presupposes possible answers to Arthur Kleinman’s “Eight Questions” at the end of her work—questions that could have been directed to the Lee’s in allowing them the opportunity to explain their perspective of Lia’s disease. No attempt to listen and comprehend the Lee’s viewpoint was made and no effort was made to ensure that the Lee’s truly understood the medication regimen.

In this regard, I believe that a reasonable effort to provide clear communication between the parties was not established. Thus, the second criterion of justifying paternalism was not met by the MCMC physicians, more importantly, Dr. Neil Ernst.

Compromise

The third criterion in evaluating the justification of paternalism is demonstrated in compromise. Jeremy Bentham’s philosophy of maximizing mutual benefits and utility is applicable in this final criterion as it serves to explain the need in trying to best meet all the interests to maximize satisfaction.

11 Fadiman. Pg. 79.
Once it appears that the agent may risk harming him/herself or others and communication by both parties has been demonstrated, then it is the responsibility of both parties, particularly the professional/scientific party, to find various avenues in which the risk of harm is negated and/or minimized. Following, an attempt to accommodate as many interests from both parties as possible without endangering or exacerbating the harm to the agent or others should ensue. I believe that the professional party has a greater burden to initiate the compromise as they are likely more technically well-informed and represents the side of persuasion for the agent to concede to some degree. In Lia’s case, the MCMC physicians should have shouldered a greater responsibility in attempting to reach a level of compromise with the Lee’s in some manner.

Physicians should not always have to be fully informed of all the cultures in the world, but I do strongly believe that they should appreciate the various differences and furthermore, make a small gesture of trying to understand the cultures that are most prevalent in their patients. Perhaps, if the MCMC physicians had become more familiar with Hmong culture (a significant population percentage of their patients), the physicians could be better “trained” in understanding the Hmong perspective of medicine and disease, which in turn could allow for an atmosphere fostering greater cooperation and optimal care. This cross-cultural barrier does not appear to be so impossible when examining the success of Jeanine Hilt, the Lee’s social worker, in establishing trust with the Lee’s and successfully persuading them to follow the drug regimen for Lia.

Clearly, this final criterion will likely encounter the most difficult barriers, but that should not mean that an effort should not be made. In Lia’s care, both the Lee’s and the MCMC physicians remained relatively inflexible in their views and neither appeared
willing to concede or make way for resolving the differences for the Lia’s benefit. The art of compromise stems from communication, thus, in a sense, the failure of the second criterion will likely result in the failure of the compromise criterion as well—a consequence reflected in Lia’s case.

Given the standard/criteria that I have selected, the actions of the MCMC physicians met the “qualification” of the first criterion as it seemed generally understood that Lia’s physical health may be endangered. However, a demonstrated effort to foster an open exchange between the two parties and insurance of comprehension was not accomplished between the Lee’s and the physicians which resulted in the failure of the third criterion to compromise. Because all three aspects were not met, I do not believe that Dr. Neil Ernst’s Young’s action in removing the child form the custody of her parents was justified at the time.

Had Dr. Ernst chosen to let Lia remain with her family, I cannot assert that her epilepsy could have been treated better or that the tragedy of this story could have been prevented. However, I do believe that paternalism is a complex creature of a concept where benevolence can lead to harm—a concept that forces us to take pause and consider paternalistic acts when performed on an individual or even federal level.