

Limited Paternalism and the Salesperson: A Reconsideration

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ABSTRACT. Any paternalistic obligation a salesperson might have toward a client is *not*, as was previously argued, determined or grounded in his/her being in a position of superior knowledge. Rather, the obligation stems first and most basically from the principle of non-maleficence. Beyond that, however, the particulars of any such obligation: who is vulnerable to being harmed, the harm(s) that might occur and even the kinds of actions that can reasonably be taken to protect a client from such harm, all flow from the fact that the salesperson-client relationship is fundamentally one of dependency and trust.

Various reasons are given to support this view and to indicate both the comprehensiveness and the fruitfulness of this way of perceiving the sales situation. In particular, the argument rules out of consideration what would, on analysis, be self-defeating or contradictory behavior on the part of the client and it helps explain why a salesperson is not obligated to certain behaviors.

James Ebejer and Michael Morden wrote an interesting and provocative article a few years ago dealing

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with the issue of the appropriate ethic for the sales situation.¹ This article was later responded to by Kerry Walters in a delightfully written piece in which he argued for some additional conditions to be added to Ebejer and Morden's prescription.²

Basically, Ebejer and Morden argued that a duty of limited paternalism applies in those situations:

when an individual in a position of superior knowledge has an active duty to explain the consequences of a decision (p. 338).

And they later qualify this "superior knowledge" by claiming that it is of:

information that only an expert would know . . . [and] which a non-expert could not be expected to know (p. 338).

There are two difficulties, as I see it, with their position. The first is that it is unclear from their account where exactly the source or basis for this "active duty" lies. Does the active duty derive from the salesperson being "in a position of superior knowledge" or from some other, unnamed, source? Even more important, however, is that they unnecessarily restrict their prescription to those situations in which the salesperson is in "a position of superior knowledge." In doing this, they would seem to exclude those many sales situations where the knowledge had by the salesperson is *not* technical nor such that "only an expert would know." It may be that Mr. Ebejer's experience in marketing complex and technical computer systems unduly influenced the authors' view of the normal sales situation.

A more adequate as well as a more useful analysis of the sales situation would be one that does take into account the fullest possible range of sales activity. The effort in this paper will be to do just that. I will not be arguing against Ebejer and Morden's

recommendation of a limited paternalism which is, I think, fundamentally correct. Rather, I will attempt to show where its true basis lies and how that basis supports and directs the moral obligations of the salesperson in any sales situation.

I will argue that the fundamental reality in the sales situation, that which determines how the salesperson ought to behave, is the relationship established between the client and the salesperson. And I'll argue further that the pivotal feature of that relationship is the trust placed in the salesperson by the client/customer. The client in almost every sales situation is depending on the salesperson to some greater or lesser degree, to watch out for his (the client's) welfare. This may be because the salesperson knows more about the product or service, but it could be for other reasons as well, e.g., the salesperson's position, her access to goods, her skills, etc. For whatever reason(s) the client decides to do business with this salesperson, it is my contention that in doing so he shows some degree of trust that the salesperson will not knowingly steer him wrong or neglect his welfare. By the same token, the salesperson, in accepting the client's business, is agreeing (albeit tacitly) to accept the corresponding obligation and in equal degree. It's as if the client were saying: "I'm buying this from you on the assumption that you would not knowingly harm me or allow me to make a self-harmful decision." And the salesperson, in accepting the business is, in effect, saying "that's correct, I will not."

Before I lay out the reasons for adopting this view, it's important to be clear about what the view is and is not claiming. I take it that the fundamental obligation on which any legitimate paternalism is ultimately based, is the obligation not to cause unnecessary harm and to prevent it from happening if one can reasonably do so. This is often referred to as the principle of non-maleficence.³ This fundamental obligation is *not* dependent on the salesperson-client relationship. The salesperson would, under this principle, be obliged to act this way toward anyone with whom she came in contact. This, I take it, is the fundamental, though unstated, obligation from which Ebejer and Morden derive their "active duty."

Rather, what the sales relationship does is to specify for this particular time and place the person(s) toward whom the salesperson now has the obligation of non-maleficence and it specifies the

particular "harm" that ought to be avoided, *viz.* the client buying an ill-suited, or shoddy, or over-priced, or . . . product or service and the consequences to the client from so doing. (In fact, as we'll see later, this relationship also operates to specify the client/customer's obligations in this same manner.)

I want to argue further, that the client proffers some degree of trust in dealing with the salesperson and that this proffering (and its acceptance by the salesperson) determines the degree of paternalism that can rightly be exercised in the situation. Put another way, it determines or helps to determine what will count as "reasonable" action on the part of the salesperson to prevent harm from happening.

A summary statement of the view being proposed might be helpful at this point. I am saying that the basic reality of the sales situation, from a moral point of view, is the dependency and trust that the client assumes toward the salesperson and which the salesperson accepts (tacitly); that this reality operates to specify the person toward whom the salesperson is obligated as well as the kind of harm that is involved; and, finally, that the degree of trust on the part of the client corresponds to and determines the degree of paternalism allowed or, as I would rather say, the kinds of activities that can be considered "reasonable" in preventing harm from happening to the client.

What reasons are there for adopting such a view? The first such is based on this relationship's similarity to other relationships in our lives where some degree of paternalism is allowed or even expected. In fact, there are any number of "relationships" we establish with other people on a daily basis in which we become dependent on them in some way or other and to some degree or other. When we do so, we are implicitly indicating our trust in that other person and in how she'll carry out her office, profession or job. The doctor and patient, the subway driver and passengers, the police officer and citizen, the auto mechanic and customer — in all of these situations, one person is in some way dependent on the other and by putting himself in that position, indicates some trust that the other will behave as she is expected to behave, will not take advantage of the dependent person, will act reasonably to prevent the harm peculiar to that situation from happening. Thus, when someone in the service- or product-providing position does not act as expected, but

actually acts to harm or to let harm befall the dependent person, we say he has “betrayed our trust.” (Granted that, in many such cases, the “trust” referred to is that of society, which has licensed the principal actor or put her in a position of public service, but it is also the trust of the client, patient, or customer who has actually chosen to use those services.)

The sales situation is similar to these other situations in the same critical way (critical for determining proper moral behavior). The salesperson is in the position of the provider of some service or product. The client/customer is dependent on the salesperson to provide that product or service. For the client/customer to act on the basis of that dependency is for him to trust that the salesperson will not act to harm him or to knowingly let harm befall him. Further, entering into this dependency-trust relationship does the same thing in the sales situation that it does in those other situations referred to above: it specifies the people that are involved and it specifies the “harm” that is to be avoided.

The first reason, then, for adopting this analysis of the sales situation is its similarity to other relationships in our lives in which this same kind of analysis applies. By so doing, we place the moral analysis of the sales situation firmly in line with the same moral analysis we apply to many other transactional relationships in our daily lives.

A further reason for adopting this analysis is its ability to take into account the widest range of sales situations. Ebejer and Morden apparently want to base the salesperson’s obligations in the sales situation on her having superior and technical or expert knowledge. Or, perhaps they only mean to say that the reason an individual places himself in the dependent position of a client/customer in a sales situation is that he assumes superior knowledge on the part of the salesperson. But, as I’ve indicated above, I think this too narrowly construes the sales situation and in doing so excludes a wide range of situations where basically the same moral analysis applies.

There are many sales situations, from selling hi-fi’s and cars to selling stocks and mutual funds, where the client may know as much or more about a particular product than the salesperson but is still in a position of dependency either because of time constraints, licensing, supply, ability, skill, or office.

In other words, there may be many different bases because of which the client decides to depend on or trust, the salesperson. Superior knowledge is one of these, but only one.

Moreover, the basis on which such trust is given is not as important as the fact of the trust being given and accepted. It is this latter that operates to specify the obligation in the situation to be toward this person and to be about these harms.

Here, it is worth considering an apparent problem with the position I’ve outlined, for it is one which, on fuller analysis, actually reveals some additional reasons *for* adopting this position. It might appear from the initial statement of the position (*viz.* that the degree of paternalism to be exercised in a situation is dependent on the degree of trust given and tacitly accepted) that any obligation the salesperson has toward the client is entirely dependent on this tacit agreement or contract between them. Or, alternatively, it might be argued that one could conceive of a sales situation in which no trust is proffered and hence (?) no obligation incurred.

The first apparent conclusion above I have already rejected by indicating that the basic obligation in the situation is actually based on the principle of non-maleficence and that the tacit agreement between salesperson and client only acts to specify the people and the harm that is involved in the situation.

The second objection is more troubling. Our original statement does seem to imply at least the possibility of zero degrees of paternalism required. But further reflection dispels this perception.

Under the supposed objection, the client would have to take a position something like the following: “I have absolutely no trust that you will watch out for my welfare, or steer me from harm’s way, and yet I will adopt a dependent (and trusting) position with respect to obtaining this product or service from you.” This would be a decidedly odd position for anyone to take. It has a kind of self-contradictoriness to it. Having *some* degree of trust that another person is not going to harm you would seem to be a precondition of rationally choosing to deal with that person. The position I’m espousing does not countenance such a possibility (rationally and freely choosing to deal with someone in whom you place absolutely no trust); it does assume and imply some degree of trust. But I take it as a strength of the position that it rules out or can’t explain self-con-

tradictory positions. Our moral theory, after all, is meant to explain and throw light on our lives as lived. It does indeed presume some degree of rationality and freedom. I do not take it, then, as a weakness of the theory if it does not comprehend the self-contradictory or the irrational.

There are still other reasons for adopting the view proposed. They fall under the category of what I would call the “fruitfulness” of this way of conceiving things: the theory’s ability to comprehend or raise other aspects of the sales relationship and make sense of them.

I’ve argued above that *some* degree of trust on the part of the client/customer is presumed on pain of its opposite (putting oneself in a dependent position with someone in whom you have no trust) being an irrational act, a kind of self-contradictory act. I think there are still other presumptions in the sales situation, understood by both sides, which also help to define what counts as “reasonable” action to prevent harm in this situation or which lay out the boundaries of the obligations involved. One such presumption is that the situation is supposed to be a win-win situation. Both parties expect to get something of what they want from the situation, and both parties agree (albeit tacitly) to the other doing so.

This presumption reinforces and supports the earlier presumption of some trust being involved, for if one had absolutely no trust in the other person, he could certainly not *expect* that it would be a win-win situation. But this presumption goes beyond that to highlight also some of the client/customer’s obligations in the situation. Thus, for example, it would be wrong for the client to pay for the product or service with a phony check, or in some way to “stiff” the salesperson. The possibility of harm in this situation is not only one-sided, and the tacit agreement between salesperson and client works to define the harm in both directions.

Another presumption of this situation is that it is the client’s responsibility to do any price shopping. Ebejer and Morden ground this responsibility rather in the fact that such information is neither technical nor such that only an expert would know it (p. 338). Though that is often true I can’t see how this fact, by itself, can be a ground for any obligation or lack of it. When they say that in their limited paternalism “the consumer is protected from an uninformed decision that could be detrimental to him” (p. 338), it cer-

tainly seems that not knowing of a cheaper price across the street *would* be detrimental to him. If the standard quoted above were all that was involved, and I was the client or customer, I certainly would feel that I had not been protected from an uninformed decision that was detrimental to me. Their way of ruling out any obligation on the salesperson’s part to provide this information seems *ad hoc*. Suppose, for example, that the customer was in from out of town, had very limited time, was not familiar with other stores in town, etc., etc. In that case, he could not “easily find out” about alternative prices. Would it then be the salesperson’s responsibility to provide him with the information? And one can easily imagine other, similar cases, where a competitor’s price would not be at all easy to find out. It is not clear how Ebejer and Morden would exclude these situations from the salesperson’s responsibility to “protect [the client] from an uninformed decision that would be detrimental to him.”

On the analysis I’m proposing here, the salesperson is relieved of any obligation to provide that information by the parameters of the situation which are *understood and tacitly agreed to* by both parties. The client enters into a sales relationship knowing that comparative price information is up to him to find out. Indeed, it can be seen as part of his effort to decide how much the salesperson’s service is worth to him, how much he is willing to pay for her help, information or advice.

By seeing the sales relationship, then, as fundamentally involving dependency and trust on the part of the client/customer, we are enabled to understand the paternalism and the degree of it that is required of the salesperson in that situation. But this way of viewing things — as a relationship structured both by the market and by custom — also directs our attention to some of the other defining characteristics of the situation.

One final benefit of this way of viewing things is that it can take into account the variability of behavior between different sales situations and different customers/clients. Some clients place a great deal more trust in the salesperson than do others. Some situations call for more careful and scrupulous attention to helping the client than do others. When this occurs, when the salesperson accepts that level of trust, she usually does feel and behave in an even more protective way, is even more wary of misguid-

ing or misleading the client. And, I am arguing, she is correct in doing so, she is adjusting her determination of “reasonable” action to prevent harm in accordance with the client’s indication of dependency and trust.

I can see at least two objections to this general way of viewing things. The first has already been mentioned above, but it is worth reiterating the position. The objection is that it can seem, at a glance, that this proposal grounds any and all the obligations in the sales situation on the (tacit) agreement between the salesperson and the customer/client. I don’t think that is the case and, in fact, would be a mistake since it would make what is to count as moral behavior in a situation entirely dependent on what the parties involved happen to agree to. I have tried to make clear that the basic obligation derives from the principle of non-maleficence and is not dependent on the agreement between salesperson and client. Rather, what is dependent on that agreement is the determination of who is involved and the kind of harm that is to be avoided or prevented.

The second objection is that in this view, since the agreement is largely tacit or presumed, it falls to the salesperson to determine how much trust the client is placing in her. And that, of course, opens the door for self-deception or self-serving interpretation on the part of the salesperson.

My response is twofold: the first is that determining or becoming clear about the degree of trust involved is more often done through a mutual give-and-take process — both sides offering information, asking questions, weighing responses and forming their own conclusions on how much trust to give and even how much to take on. Ultimately, of course, the salesperson does make a judgment about the degree of trust present and (ideally) guides her actions based on that judgment. But is there any way of avoiding at least that much freedom without thereby compromising the very moral agency of the salesperson herself? I think not.

What is being presented, then, is a different way of grounding and specifying the moral obligations present in the sales situation. This is done by seeing

the situation as fundamentally a relationship of dependency and trust, and one of varying degrees. Then, within certain limit conditions, one determines the level of paternalism allowed by the level of trust present. I argued that this way of looking at things is not only more in line with the way we commonly conceive of other dependency-trust relationships in our lives, but that it also allows us to encompass in our explanation the widest variety of sales situations and provides a fruitful platform from which both to explore and explain other aspects of the sales situation.

Notes

¹ Ebejer, J. M. and M. J. Morden: 1988, ‘Paternalism in the Market-place: Should a Salesman be His Buyer’s Keeper?’, *Journal of Business Ethics* 7, pp. 337–339.

² Walters, K. S.: 1989, ‘Limited Paternalism and the Pontius Pilate Plight’, *Journal of Business Ethics* 8, pp. 955–962. Walters adds three conditions to Ebejer and Morden’s limited paternalism to form what he considers a necessary and sufficient set of conditions for ethical behavior by the salesperson. The conditions he adds are meant to guide the salesperson through the tricky waters of competing obligations when there is a clash between her professional, role-specific code of behavior and her personal ethical code, a clash he refers to as the “Pontius Pilate Plight.” The focus of my article is not to further refine the limited paternalism Ebejer and Morden prescribe but rather to uncover the more basic ground for such an obligation and to suggest where other obligations in the sales situation spring from. Neither of these tasks depends on or necessarily conflicts with Walters’ added conditions and therefore I will not consider his argument at this time.

³ I am aware that the second clause of this principle as stated here, is considered by some not to be part of the principle of non-maleficence as such but rather to be an extension of the basic principle. Whether it is part of the principle or only an extension of it is not critical to the argument presented here.

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