



LUDWIG-  
MAXIMILIANS-  
UNIVERSITÄT  
MÜNCHEN

INSTITUTE FOR PUBLIC POLICY AND LAW  
DR. CHRISTOPH KRÖNKE



# enhancing life through governmental paternalism

## Enhancing Life Course No. 1: “Nanny State” – Governmental Paternalism

- Original Title:** “Nanny State” – Der paternalistische Staat
- Course Type:** Basic Seminar (“Grundlagenseminar”)
- Semester:** Winter Semester 2015/16
- Instructors:** Professor em. Dr. Dres. h.c. Hans-Jürgen Papier,  
former President of the German Federal Constitutional Court  
Dr. Christoph Krönke

### Introduction

*“[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.” (John Stuart Mill)*

In a modern state with rules on compulsory wearing of seat-belts and ski helmets, extensive restrictions of gambling and governmental warnings against certain religious organizations, Mill’s famous critique of governmental paternalism sound like a dreamy whisper. Governmental attempts to enhance the lives of citizens increasingly result in paternalistic political agendas, i.e. agendas which interfere with the rights and freedoms of the persons concerned, regardless of their actual will, motivated and justified by the claim that these persons’ lives will be healthier, longer and better. These activities raise the following questions: Are we, more than ever, faced with a “nanny state”? What are the legal foundations and limitations of governmental paternalism?

The course “Nanny State – Governmental Paternalism” will seek to give profound answers to these questions. Starting with a brief history of thought of governmental paternalism and its critique since the era of enlightenment, the course will first focus on the constitutional basis of paternalistic policy, in particular the government’s duty to protect and promote the citizens’ human rights. Against this background, the legal limitations of governmental paternalism will be developed, taking account of its various forms (e.g. hard paternalism and soft paternalism, strict paternalism and libertarian paternalism). On the basis of this thorough legal analysis, the course will focus on and discuss certain fields of law which are

particularly concerned with the enhancement of human life. Accordingly, governmental paternalism can be found, for example, in social welfare law and public financing, consumer, health and data protection law as well as in delicate matters related to the beginning and end of human life, such as the regulation of euthanasia. Finally, from a theory of state point of view, even representative democracy itself has certain paternalistic tendencies. All in all, the seminar will provide a thick description and legal analysis of the enhancement of human life specifically achieved through governmental paternalism.

## Structure of the Course

The course will be taught as a basic seminar ("Grundlagenseminar"), eligible for second year law students. Within the first three months of the winter semester 2015/2016, each of the participants will prepare a written seminar paper (55.000 characters), dealing with one of the following specific sub-topics of governmental paternalism:

1. Legal Paternalism – A History of Thought
2. Constitutional Law as Legal Basis of Paternalistic Policy
3. Ethics Councils – Institutionalized Paternalism?
4. „Life, Liberty and the Pursuit of Happiness“ – Is there a Right to a Good Life?
5. Human Rights as Limitations to “Hard” Paternalism
6. “Libertarian” Paternalism: Harmless Nudging or Governmental Manipulation?
7. Paternalistic Welfare State
8. Paternalism in Public Financing
9. Paternalistic Consumer Protection
10. Paternalistic Health Protection
11. Paternalistic Data Protection
12. Euthanasia between Paternalism and Autonomy
13. Paternalistic Tendencies of Representative Democracy

The papers are due on 18 January 2016. The students have the opportunity to thoroughly discuss their topics with the course instructors. As the students deal with quite specific topics, there is no general mandatory reading list. It will form part of the rating of each paper whether or not the student has managed to cover the relevant scholarly writings and case law.

On 29 and 30 January, the students will give presentations on their topics in front of the entire class and the course instructors. There will be a plenary discussion of each presentation for about 30-45 minutes respectively.