



Legality and Limitation of Administrative Emergency Powers Through the Lens of Legal Paternalism

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Abstract

Administrative emergency powers, characterized by extra-legal authority, concentrated decision-making, and procedural simplification, often disrupt the regular legal order, raising questions of legitimacy and legality. As an interventionist model, legal paternalism aligns closely with the core features of emergency powers and holds the potential for embedding within and legitimizing these powers. However, the inherent lack of democratic accountability in legal paternalism, limited risk perception and decision-making scope, and tendency toward expanded intervention call for caution. To ensure the reasonable exercise of emergency powers, it is essential to establish clear boundaries by applying the proportionality principle, developing effective risk communication frameworks, and upholding the inviolable principle of human dignity.

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1. Introduction

Due to its impact on the regular constitutional structure and its restrictions on citizens' fundamental rights, administrative emergency power has long been a focal issue in public law research. In a risk society, there is a tension between constitutional order and administrative emergency power. On the one hand, the unpredictable risks of complex modernity necessitate moving beyond the unchanging absolutism of constitutional norms, making extra-legal emergency powers more acceptable (Li, 2021; Qi, 2004; Teng, 2011). On the other hand, safeguarding constitutional order and values requires stringent restrictions on these powers, enforced through a lifecycle approach: ex-ante regulatory frameworks, in-process procedural controls, and ex-post remedial safeguards. The emergency rule of law approach has become the primary strategy in many countries for regulating the relationship between administrative emergency powers and constitutional governance. From a doctrinal legal research perspective,

laws such as the *Emergency Response Law* and the *Law on Prevention and Treatment of Infectious Diseases* grant administrative emergency powers legality in statutory form; however, they still fall short in addressing the legitimacy of these powers. In modern society, legitimacy is largely expressed through legality. However, legitimacy cannot be entirely substituted by legality alone, as “legality without legitimacy may devolve into a mere tool of political rule (Liu, 2008).” Strengthening and expanding the legitimacy foundation of administrative emergency powers is essential to reinforcing the entire administrative emergency legal system while fostering effective coordination between constitutional law and emergency administrative law.

The core concept of legal paternalism involves the exercise of public authority as a form of coercive care, where citizens’ freedoms and rights are restricted in the interest of protecting both individual and public welfare. This principle is widely embedded in criminal, civil, and social law and appears in public law regarding emergency powers; however, China’s domestic scholarship has yet to examine administrative emergency powers from the perspective of legal paternalism. This study adopts a legal paternalism framework to explore two main questions: First, how does legal paternalism, as a model of legal intervention, justify the legitimacy of administrative emergency powers? Second, what limitations should be imposed on administrative emergency powers under legal paternalism to prevent public authority from evolving into “hyper-paternalism” and autocratic tyranny? In addressing these questions, this study provides a theoretical contribution toward the normative improvement of administrative emergency power by examining its legitimacy through the lens of legal paternalism.

2. A New Approach to Justifying the Legitimacy of Administrative Emergency

Powers—Legal Paternalism

2.1 Traditional Approaches to Justifying the Legitimacy of Administrative Emergency Powers and Their Limitations

Administrative emergency powers are characterized by their extra-legal nature, authority centralization, expansiveness, and procedural simplification (Qi, 2006). The exercise of such powers inevitably entails restrictions and reductions in citizens’ fundamental rights. Why would individuals accept the burden imposed on fundamental rights by such a system? In other words, how can we understand the legitimacy of administrative emergency powers? This is a foundational question in the construction of an administrative emergency power framework. Traditional theories primarily address this issue from the perspectives of national sovereignty, substantive rule of law, and national self-defense.

2.1.1 Sovereignty Supremacy Theory

Bodin’s concept of sovereignty diverged from the medieval belief that monarchs governed within the bounds of the law, meaning they were subject to divine and natural laws (Andrew, 2011), which renders sovereignty both supreme and exclusive. In an emergency where values of different levels are all at risk, sovereignty’s supreme status should prioritize its preservation. Thus, in protecting sovereignty, limiting values of a lower level may be justified. While the emergency rule of law advocates integrating emergency powers into the legal framework whenever possible, the inherent unpredictability of risks in a modern risk society means that emergency powers will often exceed the bounds of the legal system, taking on an extra-legal character (Beck, 1992). Since law is subordinate to sovereignty, the consolidation of sovereignty theory partly justifies the legitimacy of emergency powers possessing such extra-legal characteristics. However, under

social contract theory, the state is established through the rights ceded by the people; its authority fundamentally derives from the people, and the law, created by the general will, acts as a contract between the state and its citizens (Rousseau, 2016). This indicates that the foundation of sovereignty is ultimately citizens' rights. Therefore, when emergency powers restrict civil rights to reinforce sovereignty, this foundational principle is likely to be undermined.

2.1.2 Substantive Rule of Law Theory

Traditional administrative rule of law requires administrative authorities to act in accordance with the law, exercising power only within the bounds of legal authorization and refraining from actions outside the law. Administrative actions must not contradict existing legal provisions and must follow due process. When administrative agencies meet these requirements, they are considered to be acting under the rule of law. However, this concept of the rule of law is rooted in legal positivism that excludes values like natural law and morality (Coleman & Leiter, 2010). As society has developed and political ideologies have evolved, the role of government has shifted from a passive role of risk exclusion to an active role of service. Public law theories have also moved from laissez-faire to interventionism (Hu, 2023). The standard for evaluating the rule of law has shifted from merely adhering to the minimum legal requirement for administration to whether administrative actions can achieve good governance, which centers on effective governance and maximizing public welfare. Values such as justice, efficiency, and human dignity have been reintegrated into the rule of law, transitioning from formal to substantive rule of law. Regarding emergency responses, the substantive rule of law demands that the government, when faced with a public crisis, not only act according to legal norms, such as the *Constitution* and *Emergency Response Law*, but also make full use of administrative powers to safeguard citizens' property to the greatest extent possible. This provides a theoretical basis for the expansion of administrative power and the legitimacy of emergency powers. However, abandoning the formal rule of law principles may not necessarily improve the substantive rule of law. Moving away from a clear positivist legal framework to embrace moralistic concepts of natural law poses similar risks. As Hayek argues, the so-called state of emergency has often been a pretext for eroding personal freedom protections. Once these protections are suspended, those in control of emergency powers will likely extend the emergency indefinitely (Hayek, 2022).

2.1.3 Theory of National Emergency Self-Defense

Emergency self-defense refers to the right of an individual to break legal constraints in an urgent, life-threatening situation when no public remedy is available by causing harm to another legal interest to protect a different legal interest (Chen, 2021). The theoretical foundation of this doctrine lies in the natural law concept of self-help. According to Hobbes, the natural state is a "state of war of every man against every man" (Hobbes, 2003), where natural law's foundation is that "peace should be sought when attainable, and when peace cannot be achieved, one should seek aid in war (Hobbes, 2003)." Self-help arises from the self-preserving actions of individuals in the state of nature, a condition of mutual conflict and insecurity. Locke further argued for the necessity of retaining self-help after the natural state, asserting that although individuals transitioned from the natural to the political state through a social contract, this transition does not guarantee the continuous presence of a judge or public remedies in every aspect of the political society. Partial natural states still exist, so self-help remains necessary in specific situations (He, 2007).

Just as individuals possess the right of self-defense or emergency defense as a form of private remedy, in line with the fundamental principles of social contract theory, the state is an organic

community formed by individuals. In receiving the rights that individuals have ceded, the state also absorbs the individual's right to emergency self-defense, thereby legitimizing the state's emergency self-defense rights. Both the state's and the individual's emergency self-defense rights share a common characteristic of being extra-legal, rooted in the concept of private remedy. Administrative emergency powers are the state's primary means to exercise its emergency self-defense rights. When the state faces a major crisis, administrative emergency powers emerge in the form of a natural right.

Although the theory of national emergency self-defense has been widely accepted in academia, it still presents certain risks for the modern rule of law states. First, there is a potential conflict between the individual right to self-defense and national self-defense in emergencies. For example, during the COVID-19 pandemic, although China did not declare a state of emergency, administrative actions during this period took on the characteristics of extralegal administrative emergency powers. When citizens were forced to leave their homes to seek help due to severe illness or food shortages, they effectively exercised their right to emergency self-defense. However, the theory of national emergency self-defense fails to address how to manage the tension between the citizen's exercise of their emergency self-defense right and the state's exercise of its emergency powers for epidemic control purposes. Second, how to ensure the necessity of exercising administrative emergency powers, meaning that the disruption of legal order and the infringement of individual rights during such exercises must not outweigh the benefits they are meant to protect; otherwise, this could lead to a destabilizing risk for the overall rule of law, which is a critical question that the theory of national emergency self-defense must address.

2.2 Legal Paternalism and Its Role in the Administrative Emergency Legal Framework

2.2.1. Concept, Characteristics, and Classification of Legal Paternalism

Legal paternalism refers to using public power to protect citizens' rights by restricting their freedom or autonomy in certain situations and areas. Some scholars have described this as the government's compulsory love of its citizens (Sun & Guo, 2006), while others characterize it as a legal model in which freedom is limited to maximize individuals' interests (Huang, 2010).

Despite scholars focusing on various aspects of legal paternalism, some key consensus points can be summarized: First, the purpose of intervention is to promote the realization of the rights of the individuals being interfered with, but it may also result in outcomes that benefit public welfare. Second, the scientific and rational foundation for the intervention takes precedence over democracy, with the authority of public power assumed to be more resourceful and rational, holding the power to decide on intervention. Regardless of whether citizens, as the subjects of intervention, possess rational decision-making abilities, as long as the public authority determines that citizens' actions may harm their rights and interests, intervention may be initiated (Kleinig, 1984; VanDeveer, 1986). Third, the legitimacy of legal paternalism has both empirical and normative dimensions. On the one hand, it legitimizes public intervention based on behavioral law and economics, assuming individuals are the average person. On the other hand, it draws on the state's moral and capability advantages over citizens, proposing the ideal model of necessary intervention to maximize citizens' rights (Christman, 2014). Fourth, the interference with and reduction of citizens' rights through legal paternalism must be limited. These limitations apply to the scope of intervention, the individuals targeted, and the methods of intervention, including ethical constraints and doctrinal legal frameworks (He & Qi, 2010).

In addition, legal paternalism can also be classified based on whether public authorities are

willing to interfere with citizens' autonomy. This leads to two types: soft legal paternalism and hard legal paternalism. In the paradigm of soft legal paternalism, public authorities intervene only when a citizen's actions are not made out of voluntary choice or genuine intention. This may include actions made under fraud, coercion, or severe information asymmetry. On the other hand, hard legal paternalism advocates that public authorities can intervene in an individual's rights, disregarding the person's true will, in order to protect the individual's interests from harm (Feinberg, 2015). Examples include mandatory seatbelt laws for drivers and requiring construction workers to wear helmets.

2.2.2 The Application of Legal Paternalism in the Emergency Legal Framework

Legal paternalism is evident in positive law across various legal domains. For instance, in civil law, the *Civil Code* of China's provisions on the cooling-off period for divorce in the marriage and family section (Peking University Law, 2021); in administrative law, the *Administrative Litigation Law*'s prohibition on mediation in administrative cases (Peking University Law, 2017) and the *Administrative Compulsion Law*'s provisions for administrative compulsory measures, all reflect the legislator's intervention in individual autonomy from a paternalistic stance to protect citizens' rights. Compared to legal paternalism in other branches of law or in non-emergency administrative law, its manifestation in the administrative emergency legal system is particularly prominent.

The first manifestation is presented at the constitutional level in a macro sense. The *Constitution* provides two critical reasons for limiting citizens' fundamental rights. First, it allows for restrictions on individual rights to protect the interests of the larger community. Article 51 of China's *Constitution* provides a general provision for limiting and reducing citizens' fundamental rights in certain situations, stating that individual rights can be limited to protect national interests, public interests, and the rights of others (The State Council, 2019). Although the exercise of administrative emergency powers may limit certain rights, it protects the lives and property of larger groups, thereby safeguarding the collective rights of the community. This aligns with the objective outcome of promoting public welfare under the legal paternalism intervention model. Second, the limitation of rights is based on protecting citizens' rights, rather than solely focusing on protecting public or others' interests. Article 33 of the *Constitution* states, "the state shall respect and protect human rights." Article 13 of the *Constitution* states, "Citizens' lawful private property is inviolable (The State Council, 2019)." To fulfill the constitutional mandate to safeguard citizens' fundamental rights and property, and to reduce the loss of life and property in emergencies, the state has enacted laws to limit citizens' rights under the legal framework of these constitutional provisions. The purpose of such limitations is to more effectively respond to emergencies and resolve the state of emergency as quickly as possible. In other words, the state seeks to protect citizens' rights by temporarily restricting their autonomy (Han, 2005), embodying the "limitation of rights for protecting rights" logic central to legal paternalism, which is ultimately human-centered in its values.

The second manifestation is presented at the emergency response law level in a meso sense. The *Emergency Response Law* divides the activities for responding to emergencies into stages such as prevention and preparedness, monitoring and early warning, emergency response and rescue, and recovery and reconstruction (Peking University Law, 2024). The core of legal paternalism in this law is reflected in its legislative purpose, which includes imposing an obligation on citizens to participate in emergency response work and establishing responsibilities for citizens who violate its provisions. First, Article 1 of the law, which states, "to protect the

safety of people's lives and property,” reflects the essential purpose of legal paternalism in protecting citizens' rights. Second, Articles 23, 98-102 clearly outline citizens’ obligation to participate in emergency response work and their responsibilities if they violate emergency regulations (Peking University Law, 2024). Imposing legal obligations and responsibilities turns public participation in emergencies into a mandatory duty. Citizens cannot remain passive when facing emergencies; they are required to actively engage in risk mitigation under the organization of public authorities, providing support in the form of human, material, and financial resources (Gao, Gao, & Liu, 2012), reflects the essential purpose of legal paternalism in protecting citizens’ rights. This, in turn, objectively limits citizens’ autonomy in the face of disaster, aligning with the intervention elements within the scope of legal paternalism. Meanwhile, establishing legal obligations and responsibilities is intended to achieve the legislative goals of the law better. It also reflects the logical relationship between the intervention goals and approaches in the legal paternalism intervention model.

The final manifestation is presented at the level of emergency plans and other emergency legal norms in a micro sense. As an important component of China’s “One Plan, Three Systems” emergency management framework, many scholars believe that emergency plans have the effect of administrative normative documents (Yu, 2020; Lin, 2009). *China's National General Plan for Emergency Response to Public Emergencies* establishes the working principle of “people-centered, reducing harm, effectively fulfilling the government’s social management and public service functions, prioritizing the protection of public health and the safety of lives and property, and minimizing the casualties and damages caused by emergencies.” establishes the working principle of “people-centered, reducing harm, effectively fulfilling the government’s social management and public service functions, prioritizing the protection of public health and the safety of lives and property, and minimizing the casualties and damages caused by emergencies (Xinhua News Agency, 2006).” Article 1 of China’s *Law on the Prevention and Treatment of Infectious Diseases* states, “This Law is enacted to prevent, control and put an end to the outbreak and spread of infectious diseases and to ensure the health of the people and public sanitation.” The legislative intent behind protecting individual rights in this law aligns closely with the intervention objectives of legal paternalism, which aims to protect individuals’ rights through intervention. In terms of intervention behavior, Article 39(2) (3) of the *Law on the Prevention and Treatment of Infectious Diseases* stipulates that suspected patients are to be isolated individually at designated locations until diagnosed; close contacts of patients or carriers are to be monitored at medical facilities with necessary preventive measures (Peking University Law, 2013). Those refusing isolation treatment or leaving prematurely without approval may be subject to enforced isolation by public security. The forced isolation treatment of patients is not only to prevent the spread of infectious diseases but also to protect the life and safety of others. This measure objectively limits personal freedom, reflecting the intervention means of the legal paternalism model. (Table 1)

Table 1. Chinese Legal Norms with Paternalistic Characteristics

Type	Name	Article Number
Private Law	Civil Code of the People’s Republic of China	1077
Procedure Law/Public Law	The Administrative Litigation Law of the People’s Republic	60

	of China (2017 Revision)	
Public Law	Administrative Compulsion Law of the People's Republic of China (2012)	2
Public Law	Constitution of the People's Republic of China (1982)	13, 33, 51
Public Law	Emergency Response Law of the People's Republic of China (2024 Revision)	1, 23, 98-102
Public Law	Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases (2013 Amendment)	1, 39
Emergency Plan	National General Plan for Emergency Response to Public Emergencies (2006)	1.5

2.3 Legal Paternalism as the Theoretical Foundation of Administrative Emergency Powers

2.3.1 Risk Society and the Limitation of Citizens' Autonomy in Risk Management

During the period of the liberal rule of law state, the dominant view of risk was a proactive one, which held that individuals are autonomous in the face of risk, have the right to choose whether to accept it and, in doing so, gain the opportunities that come with it, thus enabling the maximization of individual welfare (Steele, 2004). However, the nature of modern societal risks has undermined the legitimacy of the liberal risk concept of self-burdened risk: the scope of risks has become increasingly global; the potential consequences of risks are immeasurable, and the complexity of risks continues to deepen. In this context, individuals find it difficult to fully understand the potential consequences of their actions and the systemic risks their choices and activities might impose on society as a whole. As a result, individual autonomy in risk management not only fails to yield ideal returns, but may also lead to catastrophic consequences that are difficult to predict or imagine. The legitimacy of self-burdened risk begins to break down. The shift in reality calls for the state to take on the role of a “parent,” limiting citizens’ autonomy in managing risk in order to effectively regulate overall risk and ensure just distribution of that risk. This provides a practical foundation for the state’s intervention. On this basis, administrative risk regulation with paternalistic features gradually replaces criminal and civil regulatory methods, becoming the primary means of managing risk. It is important to note that the distinction between risk and danger is relative. In the era of new technologies, the likelihood of harm from certain risks has become increasingly apparent, transforming many risks into specific and clear dangers (Liu, 2021). Emergencies often represent complex crises where abstract risks and real dangers are intertwined (Zhu & Peng, 2020), requiring both administrative risk regulation and emergency powers to intervene. Due to the close alignment of objectives and the overlap of methods between risk administration and emergency administration, the paternalistic intervention logic of

administrative power in risk management is equally applicable to the intervention logic of emergency powers in emergency administration. Therefore, within the framework of risk society theory, legal paternalism becomes a crucial basis for the legitimacy of administrative emergency powers.

2.3.2 Administrative Counterparties — Bounded Rational Individuals in Need of Paternalistic Protection

Classical liberal theory is built on the assumption of the rational individual from classical economics, which posits that individuals enjoy a high degree of freedom from state interference in most areas because they possess complete rationality, cognition, and autonomy. Their actions are driven by self-interest maximization, allowing them to achieve personal welfare, so the law need not restrict their autonomy to protect their rights. However, the extent to which individuals possess high levels of rationality has been widely questioned across various disciplines. In public administration, Simon was the first to introduce the concept of bounded rationality. He argued that the assumption of a fully rational individual with complete information and comprehensive knowledge capable of making decisions that maximize their interests amidst overwhelming information is unrealistic. This is due to the conflict between the complexity of decision-making processes and individuals' limited ability to process information (He, 2018). Building on this, behavioral economics and law and economics have proposed the concept of the real individual, which assumes that individuals, as typical members of society, possess three characteristics: bounded rationality, limited willpower, and limited self-interest. First, cognitive biases and distortions lead individuals to have bounded rationality. Second, even if individuals are aware of the potential consequences of their actions, they may still make poor decisions due to a lack of self-control. Finally, while pursuing their own interests, individuals also seek values such as justice and public good, making their decisions occasionally altruistic (He & Qi, 2010). The shift in understanding of individuals from “rational” to “real” provides the theoretical foundation for legal paternalism. In order to prevent individuals from making decisions that harm both their own interests and the public good due to bounded rationality, legislators may impose restrictions on their autonomy to help them make more rational decisions.

Compared to the bounded rationality individuals exhibit under normal conditions, their decision-making rationality is further diminished in emergencies. For instance, stampedes are often triggered by an initial incident (e.g., a fire or explosion), which may cause minimal direct harm. However, the primary cause of injuries in stampedes arises from panicked crowds rushing to escape, creating dangerous congestion in bottleneck areas (Peng, 2020). This indicates that people generally navigate spaces without causing stampedes under ordinary circumstances. However, panic sharply reduces their rational decision-making abilities in emergencies, driving them to act on instinct, often resulting in serious accidents. By contrast, public authorities are positioned to access more information in emergencies. Democratic legislative bodies and expert-led administrative agencies are thus equipped with higher decision-making rationality than individuals in such scenarios.

3. Restrictions on Administrative Emergency Powers under Legal Paternalism

3.1 The Potential Risks of Administrative Emergency Powers Justified by Legal Paternalism

Although administrative emergency powers rooted in legal paternalism may appear justified from the perspectives of risk society theory and behavioral law and economics, specific characteristics of legal paternalism itself suggest that, without appropriate constraints, emergency

powers justified under its principles could expand unchecked. This may result in a distortion of standard legal order under the guise of emergency authority, eroding individuals' fundamental rights. Ultimately, such unchecked powers could deteriorate into authoritarian control marked by an "ultra-paternalistic" approach. This risk is inherent in the specific characteristics of the interventionist model within legal paternalism.

First, as a cognitive model, legal paternalism has distinct anti-democratic characteristics in risk perception and decision-making. There are two common risk perception models: the first emphasizes the objective physical nature of hazardous events, defining risk as the probability of occurrence multiplied by the potential damage, known as the scientific-technical model (Lupton, 2006); the second focuses on the social, psychological, and cultural factors that contribute to risk, viewing it as socially defined and constructed, known as the constructivist model (Qi, 2009). Since the state authorities of legal paternalism—the state public power agencies—rely on expert opinions from specific fields when regulating risks and drafting emergency legislation and plans, the risk perception is highly rationalized, often focusing on the physical characteristics of risk causes and countermeasures. Therefore, the risk perception model underpinning legal paternalism's risk regulation and emergency administration favors the scientific-technical model. While this model has the advantage of science and rationality, it excludes the views of diverse stakeholders, with expert rationality dominating the decision-making process, significantly undermining the democratic nature of risk perception. On the decision-making level, the decision-making body under legal paternalism—the state public power agencies—seems to have democratic legitimacy based on representative government. However, some scholars have pointed out the falsity and formality of parliamentary legislation. They argue that the true legislators in parliament are the party leaders and various committees. In this context, legal paternalism's interference with individuals' autonomy through legislation does not enhance the democratic nature of such interventions. This intervention model still fundamentally represents a "sovereign state—expression of will (law)" structure based on the will of a single authority (Zhang, 2017).

Second, as an intervention model, legal paternalism has a tendency and risk of being expansively interpreted. Legal paternalism is reflected in various areas of law, including constitutional, criminal, civil, administrative, and social law. The broad scope of its application is mainly due to the simplicity and vagueness of its intervention model, which combines the goal of maximizing citizens' interests with the methods of restricting citizens' rights and autonomy. Any legal norm that incorporates these goals and methods of intervention can be interpreted as embodying legal paternalism. This undesired broadening of its scope makes it increasingly difficult to regulate. Furthermore, this simple intervention model allows any action restricting citizens' rights to be justified with the rationale of protecting citizens' interests, thereby granting it legitimacy. This, in turn, poses a severe risk to protecting fundamental rights. In particular, administrative emergency powers, which are inherently extra-legal, have broad intervention targets and deeply affect citizens' fundamental rights. If their legitimacy is indiscriminately justified solely by legal paternalism, this could lead to more severe power abuses and violations of rights.

3.2 Pathways to Restricting Administrative Emergency Powers Through the Lens of Legal Paternalism

3.2.1 Ensuring that the exercise of administrative emergency powers adheres to the principle of proportionality

In the context of legal paternalism, administrative emergency powers emphasize that government authorities protect citizens' rights by restricting certain freedoms and autonomy during crises. However, in exercising these powers, it is essential to balance the values of the rule

of law with the needs of emergency management. Specifically, the principle of proportionality serves as a critical analytical tool to assess the legitimacy of the intervention's objectives, the appropriateness and necessity of the methods, and the balance between the intended benefits of the intervention and the actual harm caused to affected individuals (Engle, 2012). For instance, consider the restrictions on freedom of movement and personal liberty imposed during the Covid-19 pandemic. The government implemented extensive lockdown measures to protect individual and public safety during the pandemic, including city-wide closures and restricted access to residential areas and buildings (Lau et al., 2020). They needed to pass proportionality testing before legal paternalism could justify such measures. This involved evaluating whether the lockdown measures had a legitimate purpose in halting the virus's spread, as opposed to facilitating rent-seeking behavior or providing monopolistic advantages to individuals with close connections to authorities, such as certain vendors in lockdown zones. Another test of proportionality was determining the appropriateness of the lockdown approach. In the case of a highly infectious virus like COVID-19, would lockdown measures effectively curb the spread? Proportionality also requires examining necessity: for instance, if isolating individual households could suffice, there should be no need to restrict entire building floors, let alone entire buildings. Lastly, assessing the balance between methods and objectives was crucial. While lockdowns aimed to safeguard life and property, many such measures prevented individuals with preexisting health conditions from accessing essential medical care, posing an immediate risk to their health. In such cases, the principle of proportionality supports lifting lockdowns for those requiring urgent medical attention.

3.2.2. Establishing Risk Communication Mechanisms Across Different Risk Perception Models in Legal Paternalism

As discussed above, risk perception and decision-making under legal paternalism typically align with a scientific-technical model characterized by a strong focus on scientific rationality and objective physical data. However, risk regulation and emergency administration cannot be entirely viewed as value-neutral activities. In the case of food safety regulation and responses to food safety incidents, the perception of risk in food ingredients arising during production, processing, transport, and sale often depends on individual lifestyles and fragmentary knowledge about food ingredients—insights that experts may find difficult to fully address (Qi, 2011). Moreover, the scientific-technical model in risk perception and decision-making lacks democratic elements, which limits its perceived authority and legitimacy and makes it challenging to gain understanding and trust from the administrative counterparty affected by regulation. Conversely, a constructivist model allows various stakeholders to contribute to risk understanding from multiple perspectives, fostering a more democratic and equitable risk view. However, the constructivist model has limitations as well. The diversity of perspectives can lead to value conflicts and a lack of unified standards, resulting in regulatory and administrative uncertainty. To address these contradictions and enhance the democratic aspects of risk perception and decision-making within legal paternalism, a collaborative institutional framework is needed. For instance, in food safety risk regulation, this framework should include core mechanisms such as consultative participation systems, risk assessment committees, food safety communication councils, participatory risk management, and proposal systems. Supporting mechanisms would include information transparency and accountability systems. Technical mechanisms should facilitate consensus-building meetings among the general public, expert workshops and hearings, and three-party consensus meetings among experts, stakeholders, and the public (Qi, 2011).

3.2.3 Establishing Boundaries for Emergency Powers Based on Human Dignity

Legal paternalism is not an all-encompassing theory or principle; its application has situational limits, particularly when embedded as a core justification within the exercise of administrative emergency powers. Although administrative emergency powers may restrict individuals' freedom or autonomy to protect their rights better, such restrictions must not infringe upon human dignity,

which both theoretical and regulatory foundations support. Guo Chunzhen argues, “Legal paternalism involves a mild restriction of autonomy, grounded in respect for citizens’ dignity and individuality, aimed at their well-being.” He also asserts that “human dignity is the core concept that legal paternalism must prioritize (Guo, 2010).”

The degree of intervention under legal paternalism may vary by context, but it must always uphold the fundamental principle of treating individuals as ends in themselves; otherwise, intervention lacks justification. Human dignity is central to this principle. The degree of intervention under legal paternalism varies in urgency across different contexts. However, such interventions must not violate the fundamental rationale of “treating individuals as ends in themselves”; otherwise, they lack any legitimacy. Moreover, human dignity is one of the core means through which individuals realize their intrinsic value. Furthermore, Article 38 of the Constitution of China provides that personal dignity of citizens shall not be violated (The State Council, 2019), establishing the highest norm for constraining emergency powers under legal paternalism.

During the COVID-19 pandemic, authorities in Jingxi County, Baise City, Guangxi Province, publicly paraded criminal suspects accused of illegal border crossing and smuggling, intending to deter such acts and reduce cross-border COVID-19 risk (Zhao, Burgess, & Wires, 2021). However, this extreme emergency measure failed the proportionality review and severely violated the suspects’ dignity, lacking any legitimate justification from the standpoint of legal paternalism. In summary, administrative emergency powers justified by legal paternalism must be bounded by respect for human dignity. These powers should be exercised with restraint, respecting individuals as ends in themselves and avoiding undue encroachment on their rights by public authorities in a parental role.

4. Conclusion

This study critically examines the legitimacy of administrative emergency powers through legal paternalism, presenting a justification for their use in exceptional circumstances and outlining the necessary limitations to safeguard against potential abuses. Legal paternalism, as an interventionist model, advocates for state action in cases where individuals may be unable to act in their best interests due to limited rationality, vulnerability, or other constraints. While this can justify the exercise of administrative emergency powers, it is crucial to emphasize that the scope of such powers should not exceed what is necessary for protecting public interests and individual well-being. However, the legitimacy of various elements within the legal paternalism framework requires ongoing debate and refinement. Ensuring that the intervention does not violate the fundamental principle of treating individuals as ends in themselves, with human dignity at the core of all state action, is essential. Legal paternalism must, therefore, prioritize methods that are both cautious and proportionate to the situation’s needs, avoiding any form of overreach or unnecessary coercion. Moreover, this intervention model must be carefully balanced with other ethical and legal justifications for administrative emergency powers, such as protecting public safety and national security and preserving order during emergencies. Only through this reconciliation can the legitimacy of these powers be fully established, ensuring that they are not only necessary but also justifiable in the eyes of the law and society. By carefully aligning legal paternalism with broader legal principles, it is possible to safeguard the rights and freedoms of individuals while still enabling effective and responsible state action in times of crisis. Ultimately, the goal is to maintain the integrity of both the state’s power and individual autonomy, preserving the delicate balance between state intervention and personal liberty.

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