

Don't Mess with My Smokes: Cigarettes and Freedom

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Open Peer Commentaries

“If somebody invented cigarettes today the government would not legalize them,” says actress and antismoking activist Loni Anderson in an interview with *Ability Magazine* (Anderson 2013–14). In two *Lancet* articles, David Nutt and colleagues (Nutt et al. 2007; Nutt et al. 2010) rank 20 drugs on various harm indicators and find that tobacco ranks in the top 10—far more harmful than illegal drugs such as cannabis, LSD, and ecstasy. If Nutt and colleagues are right about this, then it would be less objectionable to bring in substances that are currently illegal rather than bringing in tobacco. But cigarettes are part of our social landscape and the question is not whether we should bring them in, but rather whether we should institute policies of various types aiming to take them out. Suppose that we would indeed have sufficient reason not to bring them in, that is, to withhold them. Does that mean that we also have sufficient reason now to take them out, that is, to withdraw them? That is the core question of Schmidt’s article (Schmidt 2016).

The nonequivalence thesis states that though we have sufficient reason not to bring a product into the market, this does not imply that we have sufficient reasons to take it out of the market. Schmidt grants that various considerations of freedom may support the nonequivalence thesis for certain products, including drugs. But for cigarettes, he argues, such considerations only have very weak force and he has little sympathy for the nonequivalence thesis. Reasons to withhold cigarettes transfer readily into reasons to withdraw cigarettes and do not face much opposition from freedom considerations.

Schmidt’s article makes an important contribution to the debate. Too often, arguments are presented that if an existing product were newly proposed and, given today’s health and safety concerns, it would not get approval, then it is just plain irrational that we do not withdraw the product from the market. But this is not right. Withdrawing a product that is embedded in society may involve substantial costs and there may be strong reasons against withdrawal, whereas if the product had never been introduced in society it would be perfectly reasonable to regulate against it.

My disagreement with Schmidt is merely a matter of degree. He believes that freedom-based reasons against withdrawal of cigarettes are weak at best. I point to some features that do carry some weight against withdrawal. I fully agree that we should persist with policies that

aim to reduce cigarette smoking. But I think that there are freedom-based considerations that should make us cautious about the mode and the pace of withdrawal.

In private conversation, Schmidt tells me that he thinks somewhat differently about alcohol. For alcohol the freedom-based considerations against withdrawal are stronger because something of value would be lost by instituting certain alcohol policies. Alcohol is embedded differently in different societies even within the Western world. I just focus on England here. (It may sound strange not to focus on the United Kingdom, but UK alcohol policy is devolved.) When new alcohol policies are under discussion in England, the objection is often heard that England does not want to become Sweden. Indeed, much of socializing in England happens in pubs over a (few) pint(s), and to make alcohol in the pubs substantially more expensive would disrupt this particular style of socializing. For many people a pint after work is part of a way of life, and policies that threaten pub culture are met with much resistance. It would indeed interfere with people's freedom in that something that they value in life would be lost.

This is entirely consistent with public health legislation that would block promoting English-style pub culture and drinking in countries that do not have it. So for alcohol policy within England, concerns that touch on freedom would support the nonequivalence thesis: that is, although we might support withholding the introduction of venues and products that enable a particular style of alcohol consumption, this does not mean that we support withdrawing measures, that is, measures that would destroy the pub culture in England. Of course, this does not mean that the status quo is ideal: It is still a good idea to promote more subtle changes that reduce the harmful effects of the lifestyle in question (Bovens 2015).

Could one not make the same argument for smoking? Writers talk about the joy of late-night writing sessions over cigarettes, with the nicotine providing the right focus and clarity to produce good work. In the bar there is nostalgia for the good old days before the smoking ban, with the refraction of the neon light in the clouds of smoke over the pool table. Smokers who are trying to quit ask what good it does that quitting increases life expectancy by 10 years, since it's not clear that life is worth living at all without smoking. Quitting smoking, an ex-smoker once told me, is as if you are to take a pill that takes care of all your nutritional needs. You won't feel hungry and there is just no need to eat anymore. But what you would miss is the conviviality of having joint meals with loved ones. It is the conviviality of smoking with friends that is the hardest thing to lose. And of course it is well known that transition costs are substantial—it is just not easy to quit.

This anecdotal evidence suggests that the case of smoking is not unlike the case of drinking. Something of value is lost and people fill in what is lost in different ways. It is about doing the things they enjoy doing while the drug puts them in a particular mental state. It is not any different from the joys of chatting with friends over a few beers. You might do it over mint tea, but it's just not the same. Relaxing, writing, socializing, it can all be done with vanilla-scented candles, but, again, it's just not the same.

However, there are a few respects in which messing with a person's pint is more worrisome than messing with a person's smokes.

First, although alcohol actually scores higher than tobacco in both of David Nutt and colleagues' studies on harm indicators (Nutt et al. 2007; Nutt et al. 2010), the variance in use is much greater for alcohol. We find people drinking at all kinds of levels—ranging from

occasional drinkers to light, moderate, and heavy drinkers. However, most people who smoke at all smoke more than enough for the habit to wreak substantial havoc with their health and life expectancy. This is due to the addictive quality of cigarettes and to the fact that negative health effects are already substantial at relatively low dosage (Schane et al. 2011).

The consequence of this is that legislation withdrawing or reducing accessibility to cigarettes would affect mostly users whose consumption is problematic. Something of value may be lost for them, but since most of them are users who pay a price in the way of expected health consequences, they gain a benefit as well. But withdrawing or reducing accessibility of alcohol products is much more problematic, since there are many consumers who would lose something of value—say, the conviviality of a pint with friends after work—but have little to gain since their alcohol consumption is sufficiently low not to have substantial negative health consequences.

Second, we gave a voice to misgivings that smokers have about quitting. Now, one may object that these misgivings are typically *pro tanto*—that is, relative to some of the things they value, but they are not all things considered—and they are typically expressed *ex ante* or during the time of quitting. All things considered, many smokers would like to quit but are not able to. And *ex post*, once they have properly quit, they tend to think that something is indeed gained in their smoke-free new life and that the transition costs were worth it.

In this respect the situation is very different from interference with pub culture. When legislation affecting alcohol consumption causes pub closures, then something is lost in the social life of villages and neighborhoods, and this sense of loss is all things considered and *ex post*. Of course, there may be some alcoholics for whom the pub closure was a good thing and who acknowledge as much. But I think that it is not implausible to say that legislation interfering with smoking brings about change that consumers tend to value all things considered and *ex post*, much more so than legislation leading to pub closures.

Where does this leave us? The situation is complicated. On the one hand, for some drugs the nonequivalence thesis does hold: In some social contexts, policies that withdraw alcohol do interfere with freedom because something of value is lost—for example, the place that the English pub has in social life. Similar arguments can be made about smoking, but the case is admittedly much weaker, both because, first, there are few “innocent smokers”—that is, smokers whose consumption is so low that it does not affect morbidity and life expectancy—and second, ex-smokers are more likely to think that little of value was lost, all things considered, and that transition costs were worth the benefit gained.

Schmidt also considers whether policies interfering with smoking would hamper freedom following a republican conception of freedom. Republicans ask: Are such policies exercises in arbitrary power? Do smokers feel that these policies put them at the whim of others, do they make them feel inferior, and do they reinforce their position on the bottom of the social hierarchy? Schmidt does not think so. As long as the policies are conducted in a democratic, transparent and accountable manner, there is no reason for concern.

I do think that the differential effects of smoking policies on different target groups do raise some republican concerns about what and how antismoking policies should be implemented.

First, smoking persists disproportionately in lower socioeconomic status groups, at least in developed countries, which Schmidt (2016, n. 11 with reference to Voigt 2010)

acknowledges. Why is it harder for the poor to quit? This may be because their attention is being consumed by juggling many other things in challenging lives, because they do not have access to smoking cessation programs, because information about the hazards of smoking does not get through to them, or because they may have few other joys and outlets in their lives and they may defend smoking as the one thing that you cannot take away from them. Taxation can act as a strong motivator for them, considering that they are on low incomes. But if it fails, then it cuts heavily into their spending power as a form of regressive taxation, and reduced spending power can become a spiral, making smoking cessation even more difficult.

Second, the incidence of smokers is much higher in high-stress environments such as mental hospitals and prisons.

Smoking has already been banned in all mental health hospitals in England and Wales since 2007. Now some hospitals are also bringing in a ban on smoking on the grounds of their premises. This raises various questions. When people are at their lowest point in life, is this the time to force them to quit smoking? Is it wise to drive patients who are prone to suicide off the grounds? Will patients in need of treatment not be hesitant to seek help, considering that they will be facing a smoking ban? Will they be eager to check themselves out prematurely? On the other hand, there is also evidence that smoking cessation can improve mental health problems (Hawkins 2015; Booth 2015).

A ban on smoking is currently being rolled out in some prisons in England and all prisons in Wales (Shaw 2015; “Prison smoking ban to begin in 2016” 2015). The question is how effective such a ban will be, considering that there already is an active black market in prisons for drugs. And banning cigarettes may have contributed to riots in a Melbourne (Australia) prison (MacInernie 2015).

There are no ready answers here. We should not assume that one size fits all. Policies for smoking cessation need to be responsive to the needs and sensitivities of target populations. Are the health benefits of quitting smoking communicated properly to them? What might help them in realizing their desire to quit smoking? Does pricing constitute a barrier for nicotine patches or e-cigarettes? Do they have proper access to smoking cessation programs? What are the reception and effectiveness of taxes and bans on smoking in targeted areas? To answer these questions will require consultations with target populations. For a policy to be nonarbitrary it is not sufficient that it is backed up by legitimate concerns of public health, but it also needs to go through procedures of deliberative democracy. And this is also the only hope for such policies to be effective.

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