

Are There Any Ethical Barriers to Effective Antismoking Measures?



See also Morain and Malek, p. 1401.

The tobacco industry and its allies often attack tobacco control measures as paternalistic efforts that violate smokers' rights and interfere with individual liberty. Although these arguments have no constitutional or other legal basis, they still have considerable rhetorical and persuasive power. Those who resort to "nanny state" and "health Nazi" name-calling likely cannot be turned. But logic and rational analysis can prevent others from accepting these ethics-based attacks as valid. That is why articles that clearly and convincingly rebut these arguments, such as the one in this issue by Morain and Malek, are so helpful and important.¹

The article carefully and respectfully considers the claim that those aged 18 to 20 years have some kind of ethical right or liberty interest to purchase and consume tobacco products. But it then explains why raising the minimum age for legal sales of cigarettes and other smoked tobacco products from 18 to 21 years is still fully appropriate, not just to promote public health, but also from an ethical perspective that values individual liberty and personal autonomy.

That is as far as the article itself goes, although its implications reach much further. The article's analysis directly supports a reasoned conclusion that much more aggressive antismoking measures—such as minimizing nicotine levels in smoked tobacco products or raising their minimum sales age

annually by an additional year until their legal market disappears—also would not unduly restrict individual liberty and would be ethically appropriate.

CONSIDERATIONS FOR ETHICAL ANALYSES

Although the article uses more qualified and tentative language and has a more limited scope, it suggests the following considerations in any ethical analysis of whether an intervention to reduce smoking harms might excessively restrict individual liberty.

1. Individual liberty can be ethically restricted to prevent significant harms to others—and smoking causes enormous harms to others. Beyond the harms from secondhand smoke, distracted driving, and increased health care costs mentioned by the article, smoking causes serious worker productivity losses and other business costs, shifts resources away from more productive purposes, and causes other economic and social harms that hurt everybody. In addition, smoking during pregnancy causes serious pregnancy and birth complications and ongoing harms to offspring, and adult smoking, by example, increases youth initiation and future smoking harms.

2. Because of its addictive power, smoking significantly limits the ability of smokers to act as they would like, thereby seriously restricting their individual liberty. Accordingly, any restrictions on liberty from measures to prevent smoking initiation or to prompt cessation by smokers must be weighed against the serious addiction-based liberty restrictions they prevent or remove. Moreover, the extent to which an intervention can restrict a smoker's liberty to choose to continue smoking is limited when those choices are largely controlled by addiction rather than an exercise of free will.

3. Individual liberty can be ethically restricted by paternalistic measures to prevent people from harming themselves if the harms are significant (as from smoking) and the person is immature or otherwise incapable of making autonomous decisions. And initial decisions to start smoking are rarely made by adults or mature individuals, and are seldom, if ever, made in a fully informed, rational way that weighs all the major consequences (including addiction liberty losses) against any actual benefits.

4. Individual liberty also can be ethically restricted by

paternalistic measures to prevent people from harming themselves if the harms are great (as with smoking) and the liberty interest or the restriction of that interest is minor. As the article explains, the individual liberty to smoke is not a "valued liberty" necessary to preserve one's ethical independence (such as the right to marry or to vote). Nor is it an otherwise important liberty, as smoking confers few benefits to smokers beyond the pleasures from feeding their addiction. In many cases, a tobacco control measure will not even interfere with any significant liberty interest because the vast majority of adult smokers want to quit or wish they had never started, and some will welcome the intervention to help them stop.

5. Tobacco control interventions that directly restrict or regulate only tobacco product businesses pose a much weaker threat to individual liberty than measures that directly restrict smoker behaviors. For example, prohibiting retailers from selling tobacco products to those under a certain age (without subjecting underage buyers to penalties) does not directly infringe on anyone's individual liberty to obtain, possess, or use tobacco products. It just makes it more difficult for those under the minimum age to buy or

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otherwise obtain commercial tobacco products.

6. Given the many fully ethical tobacco control measures available, it is not ethical for governments to allow the enormous harms caused by smoking to continue, especially the many harms to youths and nonusers.

By themselves, these considerations indicate that almost any effective measure to reduce smoking harms directed solely at the tobacco industry would not excessively or unethically infringe on individual liberty. But Morain and Malek suggest that it might be ethically inappropriate to seriously impede the ability of people already addicted to smoking to obtain the smoked tobacco products they desire to feed their addictions (e.g., by abruptly increasing the minimum sales age instead of phasing it in). This ethical concern should largely disappear, however, if the anti-smoking measures leave smokers with other readily available legal ways to obtain and consume the nicotine they crave that are attractive or at least acceptable to smokers (e.g., via e-cigarettes or

other products for inhaling nicotine).

The article also states that a tobacco control measure that restricts individual liberty might not be ethically appropriate if there is “a less restrictive alternative that could achieve a similar public health benefit.”^{1(p1404)} This standard works well to the extent that it means that the measures should be modified to minimize any liberty restrictions whenever that can be done without significantly reducing the health gains they secure. But its broader literal application could be unethical. For example, if an otherwise ethical tobacco control measure that restricted individual liberty would reduce smoking harms by 10%, and a different, less-restrictive measure would also secure a 10% reduction, it would not be ethical to replace the first with the second. The most ethical approach would be to implement both measures to maximize overall health gains. It would be ethical to substitute the less-liberty-restricting tobacco control measure for the other only if implementing both were not necessary to minimize smoking harms as quickly as possible.

GOVERNMENT INACTION

Currently, very few, if any, governments worldwide are actively considering new tobacco control measures that would quickly minimize smoking harms. Consequently, any antismoking intervention that qualifies as ethically appropriate under the previously discussed considerations should satisfy any ethically valid less-restrictive alternative test as well.

Even if understandable for political reasons, the failure of governments to implement more aggressive, ethically appropriate measures to reduce the enormous harms caused by smoking is itself unethical. To date, however, ethical analyses have primarily focused on the ethics of different tobacco control interventions. Although these analyses are important, they are largely defensive. Tobacco control ethics should also go on the offensive and provide new ethical critiques of government inaction.

THE TOBACCO INDUSTRY

New ethical analyses of the tobacco industry are also needed. So far, tobacco industry product development, marketing, and sales practices have rarely been held to any ethical standards. By detailing how tobacco companies continue to act unethically, thereby causing enormous amounts of preventable death and destruction, new ethical analyses could increase support for more active tobacco control efforts. They could also prompt the development of new strategies and proposals designed to make the companies act more responsibly and comply with the same ethical standards that have been inaccurately used to attack minimum age increases and other effective tobacco control measures. **AJPH**

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Successes and Continued Challenges of Electronic Health Records for Chronic Disease Surveillance



See also Klompas et al., p. 1406.

For many years, the Behavioral Risk Factor Surveillance System (BRFSS) has been a mainstay of public health surveillance for chronic diseases. This telephone survey generates national and state-specific estimates of the prevalence of the major chronic

diseases and risk factors, including behaviors, that make up many indicators in *Healthy People 2020* and state and local public health improvement plans. Recent innovations in BRFSS methods have been responses to evolving surveillance needs: adding mobile

telephone numbers to the sample, imputing measures for the 500 largest cities,¹ and fielding

follow-up surveys to gather clinical care information for conditions such as asthma. However, BRFSS is limited by the number of questions that can be asked, the self-reported nature of the data, the lack of clinical data, declining response rates, and reductions in funding.

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