

Should smoking be
banned? j.s mill's
harm principle



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Should Smoking Be Banned? Discuss In Relation to J. S Mill's Harm Principle

Smoking has held a social stigma for many years, yet has generally been protected from being prohibited due to the principle of a freedom to smoke. However, freedom comes in many forms and means different things to different people, and with some concepts of freedom it may be seen that smoking should be banned. This essay will focus on one particular idea of freedom, J. S Mill's Harm Principle, and will look in depth at how this relates to smoking. The essay will look at whether smoking should be banned, either partially, as is the case in Britain today or completely. The essay will also look at ideas such as Paternalism and consent and how this relates to J. S Mill's Harm Principle and a smoking ban and concludes on whether smoking should be banned.

J. S Mill's Harm Theory is an idea based on the instrumental value of freedom. Instrumental value of freedom is concerned with the outcome, as opposed with the intrinsic value which is more concerned with freedom itself being fulfilled, the outcome desired usually being one with the most utility. Mill's Harm Theory is the principle that a person should be restricted from committing an act that will cause harm. There are however restrictions to this rule. Acts are divided into two categories, 'other regarding' and 'self regarding'. Other regarding cause harm to others, such as assaulting another person, self regarding only harms the actor. Mill's argues that only other regarding actions should be prohibited. N. Barry states 'the only grounds for interfering with an individual is to prevent harm to others; over action that affect only himself the individual is sovereign.'¹ Thus, under Mill's Harm Principle actions that affect only the actor should not be prohibited. Mills did <https://assignbuster.com/should-smoking-be-banned-js-mills-harm-principle/>

not think that all self-regarding acts are morally indifferent, and the principle supports persuasion against 'self regarding' acts that are deemed immoral, however it is not persuasion, and coercion, that should be used. 2

The reasoning behind Mill's principle is that he believed in maximum freedom of the person. With regard to expression and thought, Mill's Harm Principle does not place the same restrictions he places on actions. 'Other regarding' actions that only cause offence and not injury should not be prohibited, no matter how much offence is caused. Clearly Mill's had placed restriction on 'other regarding' actions, as causing injury to others should not be defended in the name of freedom. None the less J. S Mill's clearly thought that 'state authority should be markedly limited so as to leave as much room for liberty.'³

The Harm Principle can be applied to the concept of smoking; however there are several interpretations and criticisms of this. Smoking in public is generally seen as an 'other regarding' action as it causes harm to others. Second hand smoke (SHS) contains 4000 toxic chemicals⁴ and the Smoking in private however is usually seen as a 'self regarding' action as the only harm caused is to the smoker. Thus, following the J. S Mill's Harm Principle smoking should be banned in public places, but not banned entirely. The UK government introduced a ban on smoking in all public places in 2007⁵ and this seems like the appropriate action if you were to follow J. S Mill's Harm Principle.

There are however many criticisms of the Harm Principle that actually suggest a ban on smoking in public places does not go far enough. It can be

argued that smoking privately in your own home is not merely a 'self regarding' action. Political theorists, notably James Fitzjames Stephen and Lord Delvin, have argued that there is not such thing as a 'self regarding' action as all actions have some effect on others. Garner summarises this argument stating 'that there is no such thing as private immortality in the sense that even our private behaviour will have public consequence.'⁶ It seems unlikely that even the most trivial private action would affect society, however there is a strong case that smoking does. Firstly smokers are likely to have their health affected later in life due to their smoking, which could ultimately lead to seriously health problems or death. It is argued that this would cause financial harm, through funeral costs or being left without a financial provider, and emotional harm to the smoker's family. It is also argued that smokers harm society as tax payer money is spent on providing NHS treatment or social benefits if the smoker is left unable to work due to his habit. ⁷ It can be argued then that smoking privately is not a 'self regarding' action, is in fact an 'other regarding' action, and thus following J. S Mill's harm principle should be banned completely. D. D Raphael states however that this 'objection is not to the principle of Mill's position, but to its unreality, it's lack of application.'⁸ In theory there are 'self regarding' actions, but in reality they rarely, if at all, exist.

Paternalism counters J. S Mill's idea that a 'self regarding' act, presuming they exist, should be allowed. Paternalism, with regard to smoking, would argue that 'the state ought to be concerned with the moral welfare of the individual agent.'⁹ Paternalism would support the state prohibiting smoking in order to protect the individual, and thus would support an absolute ban on

smoking. This is the same principle behind that of controlled drugs, of which the consumption is illegal if done so privately. Mill would obviously reject this principle as it goes against what is set out in the Harm Principle. Mill

advocated the freedom of action, even if it is self harming as he believed it was both character forming, and humans are the best judge of their actions.

10 Professor H. L. A Hart was a keen supporting of the idea that 'criminal law is to prevent harm to other people' however even Hart 'accepted that the propriety of some 'paternalistic' legislation e. g on the control of drugs'.

11 Smoking is as harmful clearly harmful to the user, with 25% of smokers dying from the habit¹², then surely it is the states responsibility to prohibit

the action. This is certainly the paternalistic viewpoint. Goodin makes an

interesting point in 'The Ethics of Smoking'. A supporter of Mill's may argue

Paternalism prohibition of smoking stops the individual from being free.

However, if the smoker is trying to quit then by banning smoking completely,

'we are simply using coercion to enable people to carry out their own

goals.'¹³

Consent is an issue that is commonly found when discussing the banning of

smoking, and has been used by both pro and anti ban theorist. It may be

argued that non-smokers choose to visit public places where smoking is

prevalent such as pubs or clubs. The harm they receive then from second

hand smoke has been consented to as they choose to visit said public place.

This would seem to conclude that smoking in public is only an 'other

regarding' action if it has been consented to, and therefore that smoking

should be allowed freely in all public places. However, non-smokers if they

sought to visit non-smoking pubs and clubs would have very limited choice.

Even more importantly individuals who work in areas where smoking is allowed will suffer even greater health risks due to their constant interaction with second hand smoke. Goodin argued that passive smoking 'generally occurs as unavoidable consequence of being in proximity to smokers' and thus they are 'involuntarily smoking.'¹⁴ Therefore, it can be argued, there is actually no consent, so this cannot be used as a defence against ban of smoking in public places.

If consent is not an argument for allowing smoking in public places, then it is certainly used when countering a complete smoking ban. Anti-Smoking ban individuals state that they have consented to smoking, and thus to the harm itself. Therefore they did not require any paternalistic state intervention.

Dworkin summarises this stating 'the incurring of harm requires the active co-operation of the victim.'¹⁵ This supports Mill's idea that an individual is the best judge of their own actions, and they want to smoke and know the consequences it is their right to do so. However Goodin makes an interesting contradiction. As tobacco is addictive due to chemicals such as nicotine then the individual only consents to the first cigarette, as they cannot help but smoke after this. Goodin argues 'if the product is truly addictive, then we have no more reason to respect the person's voluntary choice (however well informed) to abandon his future validation to an addiction than we have for respecting a person's voluntary choice (however well informed) to sell himself to slavery.'¹⁶

There are more practical objections to a complete ban on smoking however. Barry, amongst others, points out a utilitarian view supporting smoking. If smoking was to be banned, and tobacco was to be made an illegal substance

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society would see many negative consequences. There would be an increase in crime, both of the users and dealers of tobacco, and a gangster culture would develop around tobacco just as it has with controlled goods. As tobacco would be very expensive to (illegally) purchase, crime rates would increase that way as users may commit crime to fund their expensive habit.

17 This can easily be related with the criticism of Mill's Harm Theory that smoking is not an 'other regarding' action due to its cost to society. If smoking was to be banned completely the increase in crime because of this would have a larger detrimental cost than would be saved through the decrease in NHS and social spending.

The question remains, should smoking be banned? Strictly following the Harm Principle it would seem that smoking should be banned in public, but in private, as then it is only harming the user. However, this is only the case if you agree that smoking in private is a 'self regarding' action. We have seen arguments both for and against classify smoking as a completely 'other regarding' action and if this is the case then in theory smoking should be completely banned. Smoking should also be banned completely if you believe the state should play a paternalistic role in protecting its citizens from the harm of smoking. Consent obviously plays a role in this topic and we have seen how it has been argued that a smoker who consents to the harm should be allowed to continue smoking, although there have even been contradictions to this. Practicality should not be forgotten, and a complete ban in smoking raises some serious concerns about the social effect this would have.

It seems then that a compromise is needed in order to decide whether smoking should be banned. A ban in public places seems to be best solution to the problem; it protects passive smokers yet eliminates the danger to society that would occur if smoking was completely banned. Of course, some would argue we are still letting individuals harm themselves, however adult humans know the risk of smoking, and on a whole the cost to the individual is less than the possible cost to society. It seems J. S Mill's Harm Principle is ideal for addressing the question of a smoking ban, and a ban on public smoking, as seen in the UK and states around the world is the best solution.

1 N. Barry, *Modern Political Theory* 4th ed. (Basingstoke; Macmillan Press Ltd, 2000) p. 211

2 *Ibid.* p. 211

3 D. D. Raphael, *Problems of Political Philosophy* 2ND ed. (London; Pall Mall Press Ltd, 1990) p. 78

4 <http://smokefree.nhs.uk/why-go-smokefree/secondhand-smoke/> accessed December 5 2009

5 R. Garner, *Introduction to Politics* (Oxford; Oxford University Press, 2009) p. 100

6 Garner (2009) p101

8 Raphael (1990) p. 66

9 *Ibid.* p66

10 Barry (2000) p. 101

11 Rapheal (1990) p. 81

12 R. E Goodin, ' The Ethics of Smoking', Ethics, Vol. 99, No. 3, (1989) p. 588

13 Goodin (1989) p. 586

14 Ibid. p. 586

15 Goodin (1989) p. 579

16 Ibid p. 586

17 Barry (2001) p. 219