‘The Costs and Benefits of a Cigarette Ban’, forthcoming in *Journal of Medical Ethics*

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Introduction

The death toll from tobacco is staggering: it might contribute up to *one billion* premature deaths over the course of the 21st century.[1] This makes the search for policies to reduce or eliminate tobacco use a pressing one. In “The case for banning cigarettes”, Kalle Grill and Kristin Voigt argue for a complete ban on cigarettes.[2] Their argument takes seriously the restrictions on autonomy that such a ban would involve, and claims that the substantial health and equality gains of a ban would justify those restrictions.

Despite this nuanced approach, however, the argument fails to justify a ban on cigarettes. At the root of the problem are two simplifications. First, the authors assume that a ban on cigarettes would be completely effective. Second, they compare a completely effective ban to the status quo, rather than to a range of policy alternatives. Grill and Voigt claim that these simplifications “bring into focus the fundamental normative issues” (ref. 2 at p. 293). Far from bringing the normative issues into focus, however, the simplifications serve instead to obscure them.

The argument

Grill and Voigt’s argument takes the form of a cost/benefit analysis. This form of analysis is

often associated with consequentialist moral reasoning, but one virtue of the Grill and Voigt's argument is that it extends beyond the claim that such a ban would have better overall consequences for well-being.

The authors make four important claims. First, the potential gains in well-being are significant: the prevention of 5-6 million premature deaths a year and a nearly 10-year increase in life-span for potential smokers.[1] These benefits are large enough to justify some restrictions of individual autonomy. Second, a ban would increase the autonomy of the many current smokers who would prefer not to smoke. Third, the costs to autonomy would decrease over time, while the well-being benefits would increase. This is because the primary autonomy cost would be to the current generation of smokers, while the health benefits would continue to accrue indefinitely. Fourth, a smoking ban would have significant egalitarian consequences. Smoking rates are higher in low-income groups, and so an end to smoking would disproportionally benefit members of disadvantaged groups.

Each of these claims reflects the way in which the authors recognize that good social policy should aim to promote both autonomy and equality. Despite its virtues, however, the argument fails to provide anything like a justification for a total ban on cigarettes.

Assuming complete effectiveness

The root of the problem with the argument is the simplifying assumption that the ban would be perfectly effective, which the authors admit is unrealistic. The first problem with this idealizing assumption is that it significantly overstates the benefits of the ban, since it assumes that all of the well-being losses and premature deaths from tobacco would be avoided. A ban that cut global tobacco use in half— which would be a dramatic achievement!— would still leave 2.5 to 3 million deaths a year.

A more significant problem with the idealizing assumption of a perfectly effective ban is it ignores the ban's most dramatic costs. Being convicted of a crime carries a much higher autonomy cost than being denied the opportunity to smoke, and vigorously pursing a ban in a way that would come anywhere near complete effectiveness would likely require extensive criminal enforcement. The current enforcement of drug prohibition provides a relevant example of the costs of such enforcement.

In 2015, there were close to 300,000 people incarcerated in America for drug crimes,[3] and another 947,000 on probation,[4] for a total of more than 1.2 million people with autonomy significantly restricted because of drug prohibition. Nor do the autonomy costs represent the full cost of enforcing prohibition. Black markets increase the risk of violence. Indeed, there is considerable evidence that "gun violence and the enrichment of organized crime networks appear to be the natural consequence of drug prohibition."[5] The potential harms to the victims of black market violence should be counted among the costs of a ban on cigarettes.

The authors argue that a ban on cigarettes is partly justified on equality grounds, since it would disproportionately benefit members of underprivileged groups. Enforcement would also disproportionately *harm* such groups, however. For example, African Americans make up 13.3% of the US population, but 38.3% of those in federal prison on drug changes.[7] African Americans are *nine times* as likely as white Americans to be in federal prison on a drug conviction. These racial disparities in drug incarceration exist even though African Americans and whites *use* drugs are the same rate.[6] Given the ways that racial discrimination is endemic to the criminal justice system, it is likely that a cigarette ban would also disproportionately harm members of racialized groups. These harms are significant, and must be balanced against the equality gains of a reduction in smoking-related diseases.

Far from highlighting the normative issues at play, then, Grill and Voigt's just stipulate

that the benefits would dramatically outweigh the costs, and so fail to shed light on the question of whether the *actual* trade off of costs and benefits would come close to justifying a ban.

A lack of comparisons

A second problem with Grill and Voigt's approach is the lack of comparison to alternative policies. A cost/benefit argument in favour of a policy that does not consider potential alternatives cannot be an argument that the policy is *justified,* and so cannot show that "the case for a complete and effective ban on the sale of cigarettes is very strong" (ref. 2, p. 300).

Instead, even granting them their idealizing assumption Grill and Voigt merely shows a complete and effective ban would be *better than the status quo*. But that is just the first and easiest step in what would need to be a much larger argument. Justification of a policy through cost/benefit analysis requires *counter-factual* analysis. It is not sufficient (though it is necessary) to show that the benefits of a policy outweigh the costs. It is *also* necessary to show that the net benefits of the policy outweigh those of plausible alternatives. Even if policy A achieves a significant net benefit, it is not justified if alternative policy B achieves the same or higher net benefits and avoids Policy A's most significant costs.

This point is particularly important given that the main costs Grill and Voigt consider are restrictions in autonomy. Consider instead a regime of increased regulation and public education. This could involve smoking licenses,[7] or could simply be an intensification of the status quo model in many jurisdictions: taxes, limits on venues for smoking and sales, and public education. If we add the idealizing assumption that such a policy would be perfectly effective, it would have a significant advantage over an effective ban. It would achieve the same overall health and equality benefits, but it would have much higher *net* benefits, since it

would achieve them without the autonomy restrictions imposed by a ban. So if we extend Grill and Voigt's' idealizing assumption to other policies, the justification for a ban disappears. It is only by neglecting to compare an idealized ban to other idealized policies that the argument in favour of a ban can get traction.

The place of idealizations

There is an important place in moral philosophy for idealizing assumptions. John Rawls' *Theory of Justice*,[8] for example, is rife with unrealistic idealizations, and yet it helps us to understand the demands of justice and the policies that we ought to implement to achieve it.

Such idealizing has its limits, however. Once we are in the realm of public health harm reduction policies, we have left ideal theory far behind. So despite the Grill and Voigt's claim, the debate about tobacco control policy is not advanced by considering "the principled argument for a perfectly effective ban" (ref. 2, at p. 293). In effect, that argument simply comes down to the claim that it would be better if no one smoked even if some people still wanted to. While that is true, it is also not in dispute. What is in dispute is the best way for accomplishing this goal, and answering that question requires, not unrealistic idealizations, but hard thinking about very real costs and benefits of a range of alternative policies.

1 Jha P. Avoidable deaths from smoking: a global perspective. *Public Health Rev* 2011;33:569–600.

2 Grill K, Voigt K. The case for banning cigarettes. *J Med Ethics* 2016;42:293–301.

3 Carson E and Anderson E. Prisons in 2015. *Bureau of Justice Statistics* Dec. 2016. Available at: https://www.bjs.gov/content/pub/pdf/p15.pdf

[4] Kaeble D and Bonczar T. Probation and Parole in the United States, 2015. *Bureau of Justice Statistics*. Dec. 2016. Available at https://www.bjs.gov/content/pub/pdf/ppus15.pdf

[5] Werb, D. et al. Effect of Drug-Law Enforcement on Drug-Related Violence: Evidence From a Systematic Review. *International Centre for Science in Drug Policy.* 2010. Available at http://www.icsdp.org/Libraries/doc1/ICSDP-1_-_FINAL_1.sflb.ashx.

[6] Mitchell O and Caudy M. Examining racial disparities in drug arrests. *Justice Quarterly* 2015;32:288-313.

[7] Halliday D. The ethics of a smoking license. *J Med Ethics* 2016;42: 278-284

[8] Rawls J. *Theory of Justice*. Cambridge, MA: Harvard University; 1971.