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# TO BAN OR NOT TO BAN?

A critique of paternalism

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# Summary

- A ban on opening a new supermarket is evidence that people want a new supermarket, for if they did not there would be no need for a ban. The same is true of chlorinated chicken, gambling machines and many other products and activities that we are told need to be banned or restricted.
- It is true that government should stop people doing certain things. It is also true that government should not impose restrictions upon other activities. In the classical liberal view, restrictions can only be justified when there is harm to third parties. If there is no third-party harm, then the restriction on liberty is mere paternalism or protectionism.
- This paper presents a clear and precise set of rules for deciding whether a curtailment of liberty is legitimate or not. The argument is illustrated through a series of current examples, including climate change, gambling, high street retail, obesity and the green belt.

# Introduction

The desire to insist on how others must live their lives is an entirely human one. To give into the urge only when it is truly necessary is to be a liberal. This leaves open the obvious question of the meaning of 'necessary'. We no longer, publicly at least, insist that sloth, gluttony or gambling the family fortune away are sins to be banned for the salvation of souls. Other reasons for imposing restrictions must therefore be found.

Persuading people that something is a bad idea is not what is at issue here. It could be that the purchase of carbon credits is simony against Gaia but we all do and all should have the freedom to argue this either way. Our question is when do we or our rulers (where that is not us in the collective) have the right to forcibly dissuade? When, in essence, is it righteous that our lifestyles are controlled rather than just argued about?

The answer is when there is third-party harm. This is not, to put it mildly, how public policy is decided these days. Thus we should examine some of the arguments made currently and check them for their accordance with this prime canon of liberality. Only if harm is being done to someone who is not party to the decision or activity is there the justification for a policy response. The unfortunate truth about how we are ruled is that many arguments are made in favour of control using claims about third-party harm which do not withstand that examination.

As examples, this paper looks at a number of issues: supermarkets, chlorinated chicken, and other exemplars of the same point. The banning of these is an acknowledgement that consenting adults would rather like to indulge their consumer preferences in that manner. True, if they do so this will change the economics of production of things to higher standards. But that means that the banning itself creates third-party harm. You may

not have a supermarket so that I may have a high street. You may not have American chicken so that I may have higher animal welfare standards. I am imposing that third-party harm – you may not have what you wish – in order to achieve my goal.

With gambling, the opposition is couched in terms of third-party harm again. People lose money, others profit - how can this not be a harm? Adults doing as they wish with their own resources is not such a third-party harm. It is a private cost when they lose, not something imposed upon others.

Climate change, however, lies on the other side of the ledger. Assuming that the wider claims are indeed true then your emissions are indeed imposing harm on others not party to your decisions. That's a good example of where management of the issue is valid. This does not mean that all claims about how to manage are correct, just that the existence of the harm to others justifies action. Which action depends upon efficiency rather than the morals we're using to justify some. That economic science suggests imposing a carbon tax instead of retreating to the early modern age is interesting but not quite the point here.

There are possibly marginal cases. There are always going to be some rules over who can build where. That the green belt and similar highly restrictive British laws are the wrong balance between the competing interests is true but that there is going to be some system is obvious.

One current claim is that certain lifestyles cost the National Health Service money. That's the third-party harm that allows righteous management of people's smoking, eating and drinking. It is possible to argue that this is too diffuse or distant a harm, having to pay taxes for other people's treatment. But there is a stronger point to make: early death saves lifetime health care systems money so there isn't in fact third-party harm to justify action in the first place. Given this, action on sugar in soda pops, or on the location of fast-food shops, is not justifiable.

If we insist that it is only third-party harms that justify our putting aside our natural liberal inclinations and managing the lives of others, we must be able to identify specific harm to that third party. We must also check that claims of such are in fact true, for we do sometimes, in the course of people's lust for illiberal power over us, find that claims of harm turn out to be no such thing. Thus, obviously enough, policies justified on the basis of their existence can and should be rejected.



Our freedom to swing our fists is indeed limited, justly and righteously, but we do have to make sure that the claimed nose is there and also that it will be damaged. Current formulation of public policy does not do that. It should.

## To ban a supermarket is to admit that people want a supermarket

These days campaigns and petitions against the building of a supermarket seem to be remarkably thin on the ground, a change from a decade or more ago when they were a regular feature of the public sphere. The very archaism is thus useful as an example – without annoying those currently partaking – of the logical horror at the heart of the idea. For to insist upon banning the arrival of a supermarket is to insist that the people, in aggregate, would like there to be a supermarket.

Consider the usual case put forward. There is currently a thriving high street, something which provides a sense of community to the town or village. The arrival of a supermarket would mean the end of that communal experience. For the supermarket would be cheaper than the independent shops – they are more efficient in their use of both land and labour after all – and this would erode the ability of those smaller retailers to survive. Thus the high street would enter a spiral of deterioration and finally disappear.

Let us assume that this is indeed what would happen, as it certainly does at times. But what is the claim at the heart of it? That the people themselves prefer the supermarket to the high street, obviously so.

We might also say, as some do, that the supermarket will destroy jobs because of its greater efficiency in deploying labour. Yet if it is the jobs-light version of retailing that consumers would prefer we are back at this same insistence. We're admitting, agreeing, that we do not want the supermarket to exist precisely because people would prefer it.

If the community of independents were preferred then people would continue to shop in them. The supermarket would open its doors and, regardless of its prices, find itself bereft of custom. This would rapidly lead to its closure and the corporate capitalists would be left nursing their losses. This has also obviously happened at least on some scale – no one at all believes that every shop ever opened has managed to attract sufficient custom to be successful.

The claim that the supermarket will rip the heart out of the community is thus the claim that people want to shop at the new store. For if they didn't then they wouldn't, would they?

We can be a little more precise here and perhaps we should. For of course some will prefer the old ways, some the new. The claim is thus a little more limited but to the same effect. Not enough people will prefer the old ways to pay the overheads of their preference. There is, after all, a set of costs that must be paid simply to keep a retail operation open. If gross margins drop below this number then the shop is making a loss and, eventually, will close (at least, in the absence of a non-profit interested moneybags it will do so). The loss of some part of previous custom might well trigger this spiral into eventual bankruptcy.

Indeed, that's the lighter and more usual claim. Enough people will be attracted by the lower prices of the international conglomerate on the edge of town for a certain core set of high street shops to lose enough trade to be driven out of business. This then diminishes the appeal of the remainder and the spiral starts into the wasteland of charity shops and bookmakers.

Yet the insistence is still the same. It may only be partial, but it is indeed the same. Some people will prefer the new arrangements. This makes the old uneconomic and thus the new replaces the old. A ban on the new is simply replacing, by fiat, the choice of preferences with an insistence that no picking and choosing can be allowed. Or as we could put it, those doing the banning want to insist that those who desire the change not only shouldn't be allowed it, they must pay the costs of the preferred choice of those doing the banning. The high street will only survive if all are corralled into using it, to contribute to those overheads and minimum necessary revenues. None can be allowed to escape to the supermarket for fear of losing the share of their money supporting those old ways.

That is, to claim that a supermarket cannot be allowed because it will ruin the high street is to insist that enough of the local population would actually desire a supermarket. Enough of them would change their shopping decisions, and thus the economics of the high street, if one were available.

There is also that old favourite: we cannot allow supermarkets because that would destroy jobs, they employ fewer people for the same volume of sales than do independent shops. This is true but to complain about it is rather to miss the point of economic development. Its purpose is to destroy jobs. We positively lust after producing the same output – here some volume of retail services – with the use of less human labour. This makes us all richer after all. We get the same aggregate amount of production with the enjoyment of more aggregate leisure. We are richer. Or, as usually happens, we get more of one good or service with the use of less scarce labour, which frees up humans to go and produce something else. We are richer collectively by that new production.

It is often claimed that renewables are a better energy source because they create more jobs per unit of energy produced. The more jobs part is true - which is exactly why fossil fuels are preferable. Greater efficiency is defined by using fewer resources to gain the same output. Human labour is a resource and using less of it is an increase in efficiency.

At which point it is worth asking whether people realise that they are being quite that selfish when signing petitions. You must continue to pay for their choices? Really?

Now to move from that historical series of stories to one with relevance today. It is entirely true that internet shopping is ripping the heart out of many high streets. That we have some 20 per cent of retail property empty and some 20 per cent of retail spending online is not a coincidence. These days we are not quite getting the call for a ban. The head of steam in the general population seems too great for that. But we are seeing calls for radical changes in taxation, in order, once again, to preserve the high street.

One objection is the claim that business rates are an unfair tax and should be alleviated. Quite how a tax on property use being a tax upon the use of property is unfair is not explained. Nor is the point that rates are incident upon landlords, not tenants - whoever signs the cheque – made clear. The public claim is simply that this form of retail pays lots in rates, while that form of retail does not, therefore we must change this by shifting the

tax burden from the old to the new - thus calls for measures such as an online or digital sales tax.

Those who do not care about the high street – those delighted to be shopping online – must be taxed in order to pay for those who prefer the old ways. The very call for the new tax is an insistence that some substantial number of people prefer the new. So, why should they have to pay the costs of the old? It is not, as with the existence of a supermarket, a ban, but it is the same underlying argument. They cannot live like that, for if they do I will lose their subsidy to my lifestyle: a very common political argument but not an attractive one.

## Chlorinated chicken

The arguments about whether and how to Brexit are outside the scope of this paper. But it is amusing to see two claims made together - that food is going to become more expensive and also that all the farmers are going to go bust - at the same time, from the same cause. The suspicion is that only one of the two can be correct.

We have here another example of a ban being argued for precisely because there is a fear that people do not want a ban. The specific might be referred to as chlorinated chicken, perhaps just an example of the wider subject of animal welfare and food quality.

The argument has been made vociferously that we must not have a free trade agreement with the United States after any putative Brexit because US agribusiness interests will insist that Britain allows the import of foodstuffs produced to American standards. Mentions are made of hormone-fed beef, GM crops and so on, but the headline always seems to involve chlorinated chicken.

The observation is that US chicken is washed in a light chlorine solution to reduce infection from the likes of salmonella. European chicken doesn't have this, the insistence being that it doesn't need to, given higher standards throughout the production chain. Food poisoning numbers are banded back and forth. There is - no doubt - some element of the demonisation of the devil chlorine common in some environmentalist circles. A useful retort is the observation that nearly all European bagged salad is similarly washed in a chlorine solution which does not seem to cause any heartache - nor gastrointestinal trouble.

There is very little examination of the underlying claim being made, which is that if the British had access to chlorinated chicken, they would eat it.

This must be so. Those who would ban it cannot be arguing that Americans be protected from wasting their time and money in offering something no stout European would ever purchase or eat. The ban must therefore be to stop people having what they would happily buy – and thus, through the miracle of revealed preferences, prevent them from having what they want.

It is possible to move up a layer in generality. British farmers must be protected from that competition because our indigenous producers must meet higher, and more expensive, standards of animal welfare and husbandry. Quite possibly so, but the retort uses the usual logic. If, when given the choice, consumers will happily purchase the imported, lower production standard, foods then they are not interested in – interested in the sense of being willing to pay for - the extra costs of those higher standards. To insist upon that native production being protected by the ban is therefore to insist that consumers do not really want those standards. For being unwilling to pay for them is, by the usual standards of revealed preferences, proof that they are not really wanted. So the ban is only being suggested because those who support it know that people want what is to be banned. This is not a liberal argument.

Fortunately, we have a way of dealing with this conflict. In a liberal polity people get to do as they wish subject only to direct third-party harm. Indirect harm – the shop will close unless you are forced to use it – does not suffice, which is, of course, why so many of those who would ban or control claim direct third-party harm from the freely chosen activities of consenting adults.

## Simple paternalism isn't enough

There is of course the claim that life would be better, whatever the people living it happen to think on the matter, if they did not do as they wish. With the supermarket issue, for example, a thriving high street engenders some greater sense of community which all benefit from. Or perhaps all should prefer the higher costs of greater animal welfare instead of the cheapness of the chlorine wash of the chicken carcass. It is even possible that these claims are true. They are also out and out paternalism.

We informed and concerned know more than you children and you should just live the way we tell you to. It is unattractive when applied even to children – the why is an important thing to explain to them – and it is a denial of liberty when forced upon consenting adults.

An example of that pure paternalism is a report from the Institute for Public Policy Research (IPPR) titled *Cards on the Table* (Thorley et al. 2016). In it, the authors note that there are costs associated with gambling. This is true of course. There are costs associated with everything. They then go on to claim that said costs merit the restriction of gambling, but this is not necessarily so. It depends upon who is bearing those costs. If the costs are being willingly borne by those gaining the benefits from having gambled, then what?

To ban or restrict in these circumstances is to be paternalistic over life choices. In the absence of costs to those not taking the voluntary decision to gamble then what justification do we have for doing that, other than the desire to tell others how to live their lives?

For example, we are told by the IPPR that one of the costs of gambling is that those who do it – perhaps to excess – might suffer financial hardship. Indeed they might, losing the wages on backing the 3.30 at Kempton Park



might do that. But that is not a societal loss, it is an individual and private cost. As such it is not a justification for telling people they may not bet on the jumps, nor, even, for limiting their ability to do so. It might well be a justification for educating people about gambling: the house wins and that is just how it is set up to work.

There is also a basic logical error in their headline claim: 'Problem gamblers could cost Britain up to £1.2 billion a year'. The incorrect assumption being made is that the country is the government, we are the Treasury. The presumption is that money paid out from the tax revenue to aid those with the aforementioned financial hardships is a cost to 'the country'. It is entirely true that the government's bank account is the common pot we pay into in order to gain government, but that is not the same thing as 'the country'. This is before we pick up on the other number they give us, that gambling as a whole contributes over £10 billion as Gross Value Added to the UK economy.

There is then the usual attempt to finagle the argument into a 'moral case' (their phrase) for restricting the ability of consenting adults to act as they wish. This is where the paternalism of the moralistic meets the correct restrictions upon such insinuations in a liberal polity.

The liberal aim – to be distinguished from the progressive one – is that all are able to live their lives as they wish to the maximum extent possible, or to use the economists' phrase, to maximise their utility as they themselves define their own utility. Lifestyle choices are thus things to be decided upon individually, not to be imposed by those who claim to know better.

The restriction upon this – sadly this is a second best world so there is going to be a restriction – is when such choices limit the similar ability of others to choose for themselves. That is, when the one choice imposes costs upon another who is not a party to that choice. Or, again with the economists, where the pursuit of utility maximisation diminishes the ability of another to pursue the same goal.

All of which means that to gain that moral authority to limit the activities – the lifestyles – of the one we have to be very sure that there are costs being imposed upon the other. That an activity leads to costs to those who undertake it is not enough. There are costs, as with benefits, to everything. Football causes crocked knees, rugby cauliflower ears - these are problems that afflict those who voluntarily play the games, not the spectators nor the random passer-by.

The identification of the costs is thus the justification, the proof that there are third-party costs being suffered. If third-party costs are being generated and regulation will reduce them, there may be a reasonable, even reasoned justification for action. Thus the righteousness of the interference depends upon the correct identification and allocation of those costs.

## Third-party costs

Contrary to popular conception, economists have studied this idea of costs to other people extensively. The concept arises at least as early as Marshall, in the 1890s, and Arthur Pigou – the man who taught Keynes his economics – is generally agreed to have delved deeply by the 1920s. We have thus at least a century of concentrated effort at understanding the concept.

The idea is that if you or I do something and we also bear the associated costs then that is fine. But what if our action or transaction creates costs that have to be carried by someone else? Someone who isn't part of that transaction, and has not consented to it, still gets affected by it. They are the third party and the effects – or some of them – fall upon them.

The most obvious example is simple pollution, but the understanding is now much wider than that. For a start we also have to consider that there are positive benefits to third parties from some transactions. The general economic agreement is that the existence of third-party effects potentially justifies government intervention, although this is dependent upon the benefit or harm to bystanders. Those that are beneficial should be encouraged for example, those harmful presumably curtailed.

Another name for a type of positive externality is a public good. The specific jargon is that a public good is non-rivalrous and non-excludable. My consumption of some does not reduce the amount available to you, and it is not possible to stop either you or me from said consumption. An obvious example is knowledge, such as Newton's equations. NASA's use of them to get to the Moon did not reduce the supply available to those swotting over their physics homework.

That people cannot be excluded, nor supply diminished, means that it is very difficult to make a profit out of the production of public goods. We thus think that they are under-provided and perhaps we'd like to do something about this. The standard example used in all too many textbooks is the provision of lighthouses, although this rather stumbles upon the historical fact that they were in fact privately provided for profit. Even so, the lesson taken is that government should intervene here - perhaps alter laws, perhaps subsidise, possibly even provide directly.

The creation of copyrights and patents is an example of intervention. There is no property right to knowledge, therefore anyone can copy it. But it is naturally something freely copyable, thus is non-rivalrous and non-excludable. The perceived problem is that people will not invest in such knowledge (or arts, creative activities in general perhaps) if they cannot profit from doing so (or perhaps just not as much as we might desire). So, governments have intervened to create intellectual property rights to new knowledge – patents and copyrights. We now have excludability, profit can be made, and we have solved the problem of under-provision.

Another oft-used example is vaccination and here it is incorrect as well. For clearly if my child gets vaccinated that particular dose cannot be re-used. We can also simply not vaccinate some so we've both rivalry and excludability. It's actually the herd immunity of the population that comes from vaccinations rates up at 95 per cent or more that is the public good. And thus the NHS pays for and provides directly the vaccinations which lead to the general immunity.

It is important, when a public good is claimed, to actually examine the details of the claim. Only with proper analysis is it possible to craft sound policy. The US generally doesn't have the government paying for vaccines, nor providing them directly, but it achieves much the same end result by insisting that children cannot attend school until vaccinated.

A public good might justify government intervention but there are many more ways of doing that than subsidy or provision. The details of the case tell us the best manner of intervention. This is not, by the way, merely a digression, it is a useful logical building block for when we come to negative third-party effects. The question of what we do about them depends upon the details.

Those negative third-party effects are what we more usually think of as externalities. Some interaction between you and I leads to costs to some third person. Pollution is the obvious example, as discussed above. Dependent upon the details, intervention may be required and it might be in the form of the opposite of subsidy, taxation. Pigou reached this answer in the 1920s, hence Pigouvian taxation. Intervention could also be in the form of regulation or, as Ronald Coase pointed out, perhaps the market alone will solve it.

But as with those public goods we have to be very careful indeed in our analysis. There must actually be a cost, obviously enough. We then need to consider the best manner of dealing with it if it exists. Different solutions will work dependent upon those details. There is no a priori possible insistence upon one solution.

# Climate change

To take the grand example of our times, climate change. Emissions of CO<sub>2</sub> (and other greenhouse gases) are held to produce climate change. Let's leave aside entirely the arguments, whatever they are, that they do not. Further, let us not get involved in how quick or bad this is going to be despite the actual science from the International Panel on Climate Change not supporting the more extreme hysteria.

The central problem, as William Nordhaus explained to gain his Nobel, and Nick Stern his peerage, is that actions by one or more people have those third-party effects. The use of petrol in a car engine produces CO<sub>2</sub> which then warms the planet. This harms millions – obviously the one car doing so only infinitesimally – but the emitter is not carrying those costs. Things that are cheaper than they should be happen more often than things which are properly priced, that being a central insight of economics. Thus intervention is justified. We have those third-party costs.

Various ideas are bandied about over what we should do about this, but assuming that the initial diagnosis is correct we do have that justification. Possible interventions include bans on some things, such as CFCs, corrections of market failures on others, such as the taxation of emissions through a carbon tax, and even subsidies to emergent technologies to deal with the problem. But the justification itself relies upon there being those third-party effects.

Action is justified, even on climate change, only if this voluntary action over here is having costs on people unrelated to the transaction over there. If emissions only warmed up those making them then we would simply leave people to stew – or sweat – in their own juices.

## Green belt housebuilding

Sometimes this all works the other way around and it is not market failure which imposes these third-party costs but regulation. As an aside, market failure does not mean that markets in general fail; it is a piece of technical jargon meaning that in this particular instance markets unadorned are not dealing with the problem of efficient resource allocation, efficiency in resource allocation being the justification for markets in the first place. We must thus – perhaps – adjust markets using regulation or possibly some other method. But market failure is not a claim that markets suitably adjusted will not be the cure, only that unadjusted they are not.

An example of regulation imposing those costs is the Town and Country Planning Act 1947 and its successors. The impetus for the law(s) was the observation that when left to its own devices the market would build 300,000 houses a year, the amount both then and now thought necessary. But it would build them in those ribbon developments around the big cities where people demonstrably wish to live, as it did in the 1930s before the restrictions of the Act. We can prove that again today: those 1930s semis and detacheds in the Home Counties are where people will happily pay a million pounds or more to be at the end of a dodgy rail connection into London. People actively desire to live in such places.

The idea that housing should be built of a type and in a place that those who would live in it actively desired was such anathema that a law had to be passed against it. So it was that the Act created green belt that cannot be built upon. True, there is a certain aesthetic to this but it is the imposition of one, with obvious third-party effects. Those who would happily live in semi-rurality cannot. House prices inside the belt are very much higher than they would be if the belt did not exist. The green belt has been a subsidy to landlords who own property within it.

The argument deployed was that if the suburbs stretched forever then the green countryside would become ever further from those who live in the middle of the city. This is not an argument that is ultimately satisfying as the green belt is not in fact parkland, but is agricultural industry and is close to the city at the cost of ever longer commutes. We could have a system in which people work out what it is they prefer: leave them alone, do not ban things, then see what they do.

And there are other costs. The absence of that privately developed housing has meant the requirement for substantial tax funded building and subsidy: tens of billions a year on housing benefit, yet more on varied forms of council and social housing.

As another aside, it is not possible to state that government housebuilding covers its costs for it doesn't. The cash outlay might be recouped over time but that is an accounting definition of cost coverage. Council and social landlord housing is let at below market rates. That is an opportunity cost. The loss is the difference between the revenue received and what would have been if full market price had been charged. If we decide to ignore opportunity costs we could be doing many things but it will not be economics. The very difference between market and social letting costs is an economic loss.

The regulation is imposing costs on people unconnected with those who benefit from the same regulation. This is no different – even if the opposite – from our pollution example above. Those who have imposed the green belt get, well, they get the green belt. Perhaps it is the joy of being able to tell people where and how they must live, or that the green vistas they so enjoy are preserved at the cost of people having a house. But it is regulatory failure leading to third-party cost, is it not?



## The costs of lifestyles to the NHS

It is not necessary to read around all that far to find that lifestyle choices cost the National Health Service money. That is a third-party harm, an externality, and therefore it is righteous and just that government intervenes to control lifestyles - in order, obviously enough, to reduce those third-party harms. At which point the usual panoply of possible interventions plus some new ones is deployed. Taxes should rise on certain items, regulation must be increased, even bans instituted - all of those being, obviously enough, agreements and admissions that people like doing these things. But as there is that third-party harm the desire must be choked off, or at the very least managed downwards.

Such insistences obviously depend upon the details. The problem here is that the initial claim is not correct. Take, as an example, smoking. This was the official position of Public Health England in 2015: '£2.6 billion was the total smoking-related cost to the NHS in 2015' (PHE 2015).

Having identified third-party harm – for non-smokers have to pay for the health care of those who are smokers – it is possible to create the plan to reduce it: 'These analyses were undertaken by Public Health England (PHE) to support the development of the new Tobacco Control Plan for England'.

The logic is impeccable as long as the initial calculation of the costs is correct - which it is not. Smoking saves the NHS money, not costs it. We have therefore got not a negative externality here, but a benefit to the public finances, which changes our economic reaction, or should, from one of taxation to stamp it out to, at the extreme, a subsidy to increase its prevalence.

No, that is not a serious suggestion but it is where the logic takes us.

## Healthcare costs of lifestyles

The intuition should be – but sadly is not in the public sphere – obvious. The National Health Service is a lifetime one. It claims at least to care for us from birth to death, from cradle to grave. Those of us who actually are the Prophet Elijah can take that fiery chariot, everyone else will die. Not only die, but enjoy end of life healthcare as well. The problem is that there is no evidence that the varied lifestyle diseases cost more to treat than anything else that kills us.

But the NHS is a lifetime health care service. If the costs at the end of that life are about the same on average (which they are) then it will be the number of years that the health care is offered which determine total lifetime cost. The longer the life, the greater the cost. One empirical study states that obesity saves some 15 per cent of lifetime health costs, smoking 30 per cent or so (van Baal et al. 2008).

We would therefore intuit that healthier people, who live longer lives, cost the NHS more; more than those who die from, say, lung cancer as a result of having smoked for 40 years. Intuition can be a dangerous thing. The world is more complex than the human imagination realises. But this particular claim is true: those who die early reduce their demands upon the health service. Thus smoking does not cost the NHS money, it saves it.

## PHE's claim

What Public Health England has done is count up the cost of treating smoking related diseases. But what needs to be done to get to the net cost of smoking is to deduct from that the treatment not given because someone has died early as a result of smoking. It is, of course, entirely true that the treatment of a smoking related disease is a cost. But to a lifetime health care system it is the net cost which matters, treatment given minus treatment not. Quite how many years of life a smoker, on average, loses, varies according to who is doing the estimate. But the net cost is whatever extra it costs to fail to treat lung cancer, say, minus that number of years of hip replacements, dementia care and so on.

We do actually have empirical, as well as logical, evidence here (van Baal et al. 2008), the results of which were, that if we start at age 20, lifetime medical costs will be: Healthy: €281,000; Obese: €250,000; Smokers: €220,000. The PHE claim is based upon a misconception, at best.

It is also possible, as Phillip Morris regretted doing (Little 2000), to go further. If we extend our analysis of public finances beyond simple health care costs and to the wider money flows, government as a whole makes a significant profit from smoking - this before any amount that is received in taxation as well.

Again, the intuition is obvious enough. Years of life lost to tobacco or other lifestyle decisions come at the end of the lifespan. The years lost to the most common such lifestyles tend to be fewer than the average retirement span. So, the lost years happen after the taxation to pay for pensions has stopped and before the full pension has been drawn. That difference is indeed a significant saving to the public purse.

While noting that, the argument presented here does not depend upon it. Rather, we are simply stating that smoking does not cost the NHS money. Thus the argument that it must be curbed in order to reduce such costs does not work, either in logic or empirically. Smoking cessation is going to increase the bill for paying for the health care service. This will be true of any lifetime health care system.

This is also true, as that same study found, of obesity. Therefore PHE's insistence on taxing sugar and reducing food portion sizes, fails on the same grounds. It is not true that a slimmer population will cost the NHS less money. Therefore we cannot argue for enforced slimness on those third-party cost grounds. While not empirically proven in the same manner, this would logically apply to alcohol as well. For the avoidance of doubt there are other costs that apply to alcohol. The violence those who have partaken sometimes indulge in certainly has costs to others. Many of the deaths from chronic alcohol abuse occur before retirement age and thus can – at a stretch – be said to deprive the Treasury of revenue. But it is still true that the specific costs which land on the NHS budget for treatment are reduced by those shortened lifespans. This applies to any lifestyle choice that limits life span in which the lost years typically slip away after the usual retirement age.

What irks about PHE's stand is that this is well known. This is not some invention for the purpose of this paper; it is a commonplace finding. For example, van Baal et al. (2008):

Despite the higher annual costs of the obese and smoking cohorts, the healthy-living cohort incurs highest lifetime costs, due to its higher life expectancy.

Gravelle (1998):

In general, smokers do not appear to currently impose net financial costs on the rest of society.

Lee (1995):

There is simply no evidence that smokers impose costs on others by making more use of medical care than do nonsmokers.

Leu and Schaub (1982):

The results imply that lifetime expenditure is higher for nonsmokers than for smokers because smokers' higher annual utilization rates are overcompensated for by nonsmokers' higher life expectancy.

## Public costs and private costs

That there are no third-party costs being carried by those uninvolved in the decision to pursue a particular lifestyle may be true. But that does not, of course, mean that there are no costs. Our very proof that there are not those health care costs which must be picked up by the general taxpayer is that lifespans are shortened. Other than those who commit suicide – a fairly extreme refutation of this general point – humans tend not to welcome death and actively look to prolong life. Thus the loss of some years of life is a cost. So too are any years of ill health brought on by specific behaviour – inevitable as it may be that some years of life will be spent being treated for something or other.

We can even reach an estimate of this cost by reverse engineering a common rubric. It is not accurate to do this but it is usefully indicative and we've not invented anything nor made dubiously unsupported assumptions.

NICE is the National Institute for Health Care and Excellence. It is also the rationing body for health care under the NHS. Except in exceptional circumstances – usually to be defined by whether or not the mob will rise up in sufficient numbers to complain – treatments that cost more than £20,000 to £30,000 per Quality Adjusted Life Year (QALY) will not be approved for general use in the NHS.

Some form of rationing simply must happen in a free at the point of use health care system and this is the one used in the UK - the argument being that, as is true, resources are scarce and they must be deployed to best effect. It is not true that if it is worth £30,000 to create a year of good life then the loss of a year of life is a cost of £30,000, but it is a useful yardstick. We could say that the four years of life that the 70-year-old smoker is going to forsake (from our study of smoking and obesity health care costs above) is a cost to him of £120,000. Or we can use the usual

valuation to the individual of a QALY, rather than what the NHS will pay to gain one for us, of £60,000 and call those four years a cost of £240,000. That is a high cost. It is also a private cost, not a public one. There is no third party carrying of those costs nor an argument for government intervention because of who is paying the bill.

There is indeed the argument that smokers, or the obese, heavy drinkers, or those engaged in any other unhealthy lifestyle choice do not appreciate the costs they are racking up for their future selves. That may be an excellent argument for educating them. We humans are prone to hyperbolic discounting, which is the argument in favour of using a lower discount rate when considering climate change or, indeed, in any public consideration of events more than perhaps 30 years out into the future - an argument for public health campaigns, for example, even for exhortation and propaganda. It is only when both costs and benefits are known and chosen that we can say that free will is being fully exercised. There is a role for the modern form of public health campaign, but the limitation has to be that such are advisory. If people still decide, when in possession of the facts, to indulge in behaviour that shortens their lifespans then that's that. The fully informed public is doing as it wishes.

## The banning of fast-food shops near schools

It is a common enough insistence these days that fast-food shops should not be near schools because of childhood obesity, or that councils should rule that new takeaway shops should not be allowed to be opened - a subject well covered by Christopher Snowden in *Killjoys* (Snowdon 2017). We shall use this example to pull matters together.

If obesity imposes third-party costs – for example, NHS costs upon the general taxpayer – then there is a justification for a regulatory or taxation correction of that market failure. If that is not so then the paternalistic justification is merely that there are private costs being imposed upon consumers, in this case children who know not what they are doing as they eat the fried chicken.

We need to walk through the claims in order to work out what public policy should be. As discussed, there is not that NHS cost to begin with, because obesity, like smoking, saves the NHS money. Thus the initial claim fails. For the second, the damage to children, we have the problem that child obesity is not even being measured in the UK at present, it is being assumed. But even if it were being properly assessed we would still have the question of who the children are the wards of - their parents or the state? The answer in a liberal polity has to be the parents. Responsibility for children's eating habits lies with them, not the government.

There is also the claim that fast-food establishments frequent the poorer areas of town. Some claim that this is an imposition upon the poor who are tempted by what is on offer. The obviousness of the contention becomes clearer when we consider that fast food retailing is a low-margin occupation with low barriers to entry. This being so, it is unsurprising that



fast-food shops tend to locate in the poorer areas of town, where rents are lower.

Thus on close examination we end up with no justification for that control of fast-food outlets – other than the normal public health matters of general phytosanitary inspection and so on. There is no third-party harm which it is the responsibility of the state to correct. That some in Rutland argue against the creation of a McDonald's in the county is true (Pittam 2019). But that they do so is clearly an acknowledgement that others in the same place would patronise the establishment.

## Banning obesity is like banning a supermarket

To ban obesity, or any other lifestyle choice, is like banning our original example of a supermarket. We are told that the aim of the interference with our diets is to reduce that firmness around the waistband. It is possible to think that some of the more purse lipped among those doing the insisting gain more from the thought that supersized meals are to be banned, or fizzy pop consumption reduced, than from the effect upon body weight. But that would be to accept that cynical definition of a puritan, one overly concerned that someone somewhere might be having fun. Even if we take the claimed justification, obesity, we still end up with the same argument. We are only instituting a ban because we know that people actually desire what it is that we'll not allow them to have. There are times when this is entirely reasonable. Some desire to murder and there is a significant third-party cost to that soon-to-be-corpse to consider. But if there is no such third-party cost, no externality, then what can be the moral justification for such a refusal to allow? A consenting adult, by definition, is to be left to run her life as she wishes absent that cost to the ability of others to do likewise.

A common claim is that lifestyle choices and the diseases they cause are a cost to the public purse, thus a cost to other taxpayers who must foot the bill. This is not so. In fact the argument empirically runs the other way. The use of the logic there, added to the facts, implies subsidy of such activities leading to early death, not constrictions upon them.

There is indeed the argument that people do not know and therefore they must be informed. But wider measures to ensure conformity cannot be justified by anything other than the simple insistence that people cannot be allowed to do that. But in a liberal polity it is not our business to stop people doing as they wish. Therefore we should not be doing so. For

people want these things and absent their consumption affecting other people why shouldn't they have them?

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