

Philosophy 104, Ethics, Queens College, Spring 2005
Russell Marcus, Instructor
email: philosophy@thatmarcusfamily.org
website: <http://philosophy.thatmarcusfamily.org>
Office phone: (718) 997-5287

Lecture Notes, April 18

I. Mill's Harm Principle

Mill's Harm Principle states that the only acceptable restrictions on individual liberty are those that prevent harm to others.

It rejects any paternalistic laws.

The harm principle does not apply to children, or uncivilized peoples, pp 359-60.

We have to educate them.

After that, they are on their own.

If they behave in poor ways (are lazy, irresponsible, drunk, etc.) they will suffer.

Only if they harm others are they punishable, p 364.

Given the harm principle, what may we do with someone who is a bad influence?

We may encourage others to avoid them.

We may smear their reputations, to a limited extent.

We may use some social pressures against such people, but we can not ostracize them completely.

We may not, as a society, prevent them from being who they choose to be.

What about drugs, and other clear cases of bad habits for the individual?

We may talk about the harm, show why such behavior is harmful, discourage it through words or actions.

But we can not make such behavior illegal or punish the person, p 360.

II. Goodin and Anti-Smoking Laws

From Mill, and further back, the presumption against paternalistic laws has been significant.

Still, drug laws are an area where there has been a great deal of emotional support for paternalism.

Goodin supports paternalistic laws against smoking.

Note that the anti-smoking law in NYC is a workplace law, consistent with the harm principle.

It is hard to justify paternalistic anti-drug laws, when the user seems to be freely taking the drug.

One might argue that a drug impairs the user's good sense.

This tends to rest on a pharmacological argument about addiction.

Shapiro calls this 'the standard view,' p 516.

The argument that the heroin user has lost his free will has some plausibility.

We are willing to think of the user in the grip of his/ her addiction.

The drug in fact impairs judgment, as with cocaine, and hallucinogens.

This is the point of the drug.

Of course, most users are not usually under the influence of the drug.

This argument, that the user has no free will, is harder to make in the case of cigarettes, which don't impair judgment in the same way.

Goodin argues that the standard view extends even to cigarettes, since they, too, are addictive.

III. Utilitarian considerations concerning anti-smoking laws

The cost of hospitalization and treatment is high (\$52-62 billion/year in America, according to Goodin, p 511).

But smokers die anyway, and more quickly, at a younger age.
And they don't deplete social security.

Economic considerations have to be balanced by utilitarian considerations of utility of smoking.
These are difficult to determine, though economists have tools.
Usually, we can tell by how use reacts to price fluctuations (raising sin taxes).
But smoking remains relatively consistent.
Either people really like it, or they're really addicted.

Put these aside.

IV. Back to the paternalistic argument, and the doctrine of informed consent.

The doctrine of informed consent is widely accepted in medicine.
It says that a patient should be informed of all treatments, so that he can make a rational decision about his treatment.
Note that this doctrine opposes paternalism.
Doctors should provide information, and let patients decide how to proceed.
Paternalism is only justified if the danger is great.
The smoker seems to have given his informed consent to smoke, knowing the health risks.

Goodin, defending paternalism, has to show that the smoker has not given informed consent, pp 506-507.
He argues that smokers do not really know the risks.
The tobacco companies have obscured and misinformed, giving weak warnings, and unclear messages.
They advertise, for example, smoking combined with danger sports.

Further, smokers do not voluntarily accept the risks, since they suffer from cognitive defects, p 508.
E.g. wishful thinking, anchoring, time-discounting.
Users have to appreciate the bad effects in an emotional way, p 508.

Goodin argues that no one would rationally smoke.
Therefore if one smokes, it must be because one's rationality has been impaired.
Therefore paternalism is justified.

This is a weak paternalism, working within the individual's own theory of the good, p 508.
In other words, I want to be healthy.
I may perform actions which I mistakenly think will not affect my health.
So, I need help to achieve a goal that I already accept.
Contrast this weak paternalism with a strong paternalism which enforces principles I do not accept.
For example, enforced allegiance to a political doctrine like communism.