

Equality and a Complete Ban on the Sale of Cigarettes

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ABSTRACT

In the last two decades it has become increasingly common to advocate for a complete ban on the sale of cigarettes. One reason in favor of such a ban is egalitarian: differences in the prevalence of smoking between socioeconomic groups go a long way in explaining health inequality, and a complete ban might be effective in reducing this inequality. However, a complete ban might also be objectionable on egalitarian grounds if issued with a *discriminatory intent* or if it is *selectively paternalistic*. This paper argues that a complete ban is likely to be guilty of both, especially when one of its aims is to reduce unequal rates of smoking between groups. A complete ban on the sale of cigarettes thus exhibits a curious feature: in aiming to reduce inequality it threatens to be inequalitarian. This is characteristic of a wider class of public health policies that deserves further attention by egalitarians.

KEYWORDS: egalitarian constraints; discriminatory intent; health inequality; paternalistically egalitarian policies; selective paternalism; smoking

1. Introduction

During the last two decades, it has become increasingly common to propose “end-game” strategies to deal with the smoking epidemic, such as a complete ban on the sale of cigarettes (Berrick 2013; Borland 2012; Callard et al. 2005; Daynard 2009; Hall and West 2008; Khoo et

al. 2010; Malone 2010; Proctor 2013; Thomson et al. 2012; Walters and Barnsley 2015).¹ In 2004, Bhutan was the first country to adopt such a policy, although in 2021 it was partially rescinded in order to deal with the smuggling of tobacco products into the country (Ping 2021). In 2016 it was reported that a similar ban was introduced in Turkmenistan (Broomfield 2016). New Zealand recently announced that it will be gradually introducing a ban on the sale of cigarettes, such that children born after 2008 will not be able to (legally) buy cigarettes (BBC News 2021). Similar proposals have been considered in other countries (International Business Times 2012; Pidd 2011).

A complete ban has been argued for on egalitarian grounds (Grill and Voigt 2016; Mackenbach 2011). Unequal rates of smoking between socioeconomic groups (henceforth ‘smoking inequality’) have been identified as a major contributor to unequal health outcomes between these groups (Hiscock et al. 2012; Huisman et al. 2005; Östergren 2021). Suppose that a complete ban will reduce smoking inequality and consequently health inequality between socioeconomic groups. There would then be an egalitarian reason in favor of such a ban.

Reduced health inequality is not the only nor even the most important goal that a complete ban would aim to achieve. A decrease in overall morbidity and mortality would presumably be the main goal of a complete ban on the sale of cigarettes, and it might even be the main goal of any public health policy (Kass 2001: 1777–8). However, the egalitarian justification of a complete ban is unique in addressing smoking as a problem of justice. As Voigt (2010: 91) points out, participants in the debate over tobacco-control measures have largely neglected the

¹ “Cigarettes” is used here as a shorthand for “cigarettes and other tobacco products.”

justice-related aspects of such measures.² Moreover, while certain popular alternatives to a complete ban, such as qualified public smoking bans or increased taxation of tobacco products, successfully reduce overall rates of smoking, they often fail to reduce the unequal incidence of smoking between socioeconomic groups and may even exacerbate smoking inequality (Franks et al. 2007; Sandoval et al. 2018). If a complete ban succeeds where other policies failed, there is a uniquely egalitarian reason to implement it.

However, to evaluate the egalitarian merit of any law or policy we need to consider not only the equal outcomes that they will bring about but also the *deontic egalitarian constraints* they might violate. Where deontic constraints apply, there is a powerful (even if not decisive) moral objection to acting in a certain way, even if acting in this way would promote a desirable end state. As the term is used here, deontic constraints need not be absolute. Achieving a *very* desirable end state or avoiding a grave catastrophe can justify the violation of certain deontic constraints. But deontic constraints are *robust* in the sense that for a wide variety of desirable end states, their pursuit does not justify the violation of a deontic constraint.³ A *deontic egalitarian* constraint expresses deontological egalitarian commitments regarding how individuals ought to be treated. For example, many egalitarians endorse Dworkin's view that the state ought to treat

² Some notable exceptions include Dinno and Glantz (2009); Grill and Voigt (2016); Heaton and Nelson (2004); and Voigt (2010).

³ This notion of a deontic constraint is weaker than Nozick's notion of a side-constraint (Nozick 1974: 29), as it allows for certain consequentialist considerations to justify violating deontic constraints. Also, the notion of a deontic constraint, unlike Nozick's notion of a side-constraint, need not correspond to a right.

its citizens as equals or with equal concern and respect (Dworkin 1977: 180).⁴ This common view can be naturally described as a deontic egalitarian constraint on public decision-making. The idea is that there is a strong moral presumption against laws and policies that fail to treat citizens with equal concern and respect, even if such laws and policies are expected to bring about certain desirable end states.

If the ideal of equal concern and respect places a deontic egalitarian constraint on public decision-making, the evaluation of policies by egalitarian standards is more complicated than often assumed. Public health policies that fail to treat citizens with equal concern and respect can be objectionable on egalitarian grounds even if they brought about positive outcomes, including the positive outcome of greater health equality. Since it is at least possible for a public health policy to decrease health inequality while failing to treat citizens with equal concern and respect, egalitarian dilemmas can arise in relation to public health policies. Indeed, it is possible for a public health policy to fail to treat citizens with equal concern and respect *because* it aims to reduce health inequality. A complete ban on the sale of cigarettes, I will argue, is an example of such a policy.

Admittedly, it is not entirely clear what the duty to treat citizens with equal concern and respect requires. When evaluating public health measures, it is useful to unpack this abstract duty. I propose to do so with two more specific deontic egalitarian constraints: a constraint

⁴ See (Parfit 1997: 207) for the distinction between telic and deontic egalitarianism. Roughly, telic egalitarianism aims to promote a more equal end state, while deontic egalitarianism aims to treat people equally or as equals. I regard “treating people as equals” and “treating people with equal concern and respect” as equivalent.

against *discriminatory intent*, and a constraint against *selective paternalism*. While these constraints do not exhaust the ideal of equal concern and respect, they express important aspects of it.

One way in which a public policy or law can be objectionably discriminatory is by being issued with the intention of restricting the freedom of certain social groups but not others (Huq 2019; Strauss 1989). There are various reasons to object to policies that have discriminatory intent, but the ethical and political ideal of equal concern and respect offers a plausible rationale (Hellman 2008). As for paternalism, not all philosophers find it objectionable, but even friends of paternalism would probably concede that a public health policy that treats paternalistically only the members of some religious, racial, ethnic, sexual, or socioeconomic group would fail to treat all citizens with equal concern and respect. Quong (2011: 101) claims that some paternalistic behaviors show a comparative form of wrongness, by treating the paternalized as having inferior moral status than the paternalist. A natural extension of this claim would say that actions that treat members of some groups (but not members of other groups) paternalistically fail to treat the paternalized as having equal moral status as those who are not paternalized. Hence policies that are *selectively* paternalistic, as I shall call them, appear to violate the state's obligation to treat all its citizens with equal concern and respect.

For our purposes, we may define paternalism as interference with an individual's choices or available options for her own good.⁵ Paternalistic policies thus have an "action" component

⁵ This definition is controversial, but it fits nicely with paradigmatic examples of paternalism. Some authors argue that limiting freedom is not necessary for paternalism (e.g., Quong 2011: 75; Shiffrin 2000: 213). If this view is correct, then my critique of a complete ban on the sale of

(typically, the restriction of someone’s freedom), and a “reason,” “motive”, “rationale,” or “judgment” component: citizens’ freedom is restricted *for their own good*, or because they are judged to be incompetent to make the right decision (Grill 2018: 47; Husak 2005: 389; Quong: 80–3; Shiffrin 2000: 215).⁶ A paternalistic policy can be selective either in its action or in its reasons. A policy that restricts the freedoms of some group of people for their own good (but does not restrict the freedom of some other group) would be selectively paternalistic because its action component is applied selectively rather than universally. A policy that is implemented with the intention of restricting the freedom of some group of people for their own good (but has no similar intention regarding some other group) would be selectively paternalistic because its reason component is selective rather than universal. The two components can converge, in which case a selectively paternalistic policy will restrict the freedom of members of those groups that it aims to benefit. But this need not always be the case. As will be argued below, it is possible for a policy to equally prohibit all citizens from engaging in a certain activity but to be implemented with the intention of restricting only certain people from engaging in that behavior for their own good. A complete ban on the sale of cigarettes, I will argue, is an example of a policy of this kind.

cigarettes might apply to noncoercive tobacco-control measures as well. In any case, a complete ban on the sale of cigarettes clearly limits certain freedoms, so for our purposes, we need not decide whether actions that do not limit freedom can be paternalistic.

⁶ The issue here is the paternalist’s actual motivation or judgment, not the normative reasons that could justify her actions (see also de Marneffe 2006: 70–2).

Every selectively paternalistic policy is likely to be guilty of discriminatory intent, but not every policy that is guilty of discriminatory intent is likely to be selectively paternalistic. Many policies with discriminatory intent do not aim to benefit those whose freedom they restrict. For this reason, the discussion will proceed in two stages. It will first be argued that a complete ban on the sale of cigarettes is likely to be issued with discriminatory intent. It will then be argued that such a ban is also likely to be selectively paternalistic. If the second argument fails but the first succeeds, a complete ban on the sale of cigarettes would be objectionable for having discriminatory intent, but not for being selectively paternalistic.

Since it has become increasingly common to propose a complete ban on the sale of cigarettes, it is important to get clear on the egalitarian merit of such ban; but there is also broader theoretical interest in understanding the egalitarian credentials of a complete ban. A complete ban is an example of a wider class of public health policies, which we may call *paternalistically egalitarian policies*. Such policies aim to reduce health inequality by interfering with the freedom of members of disadvantaged social groups for their own good. These policies deserve further scrutiny in debates about equality in public health policies. One aim of this paper is to bring this class of policies into view.

The paper proceeds as follows. Section 2 introduces the egalitarian argument in favor of a complete ban. Grill and Voigt (2016) offer a particularly clear and compelling presentation of this argument, and their discussion serves as the reference point for the rest of the discussion. Section 3 presents some examples to illustrate and motivate the deontic egalitarian constraints against discriminatory intent and selective paternalism. Section 4 further clarifies and defends the constraint against selective paternalism. Section 5 argues that a complete ban is likely to

violate both constraints. Section 6 considers the implications of the argument. Section 7 offers some remarks regarding the class of paternalistically egalitarian policies. Section 8 concludes.

2. The Egalitarian Argument in favor of a Complete Ban

Egalitarians are likely to hold the view that health inequality between socioeconomic groups is unjust, and that reducing such inequality will promote social justice. Suppose that a complete ban would be effective in reducing smoking inequality and that this would result in greater equality in health outcomes between social groups. Grill and Voigt (2016) argue that there would then be a justice-based egalitarian reason in support of a complete ban.

There is room for egalitarians to question this claim. Doubts can be based on two views: *moral individualism*, according to which justice should be concerned fundamentally with individuals rather than groups (Temkin 2001), such that health inequality between groups is not in itself a problem of justice; and *luck egalitarianism*, according to which inequality is objectionable only when not due to choice (Arneson 1989, Cohen 1989). According to the latter view—at least in its strict form—if health inequality between groups is due to different prevalence of the decision to smoke, the resulting health inequality between these groups is not unjust.

While these objections to the thesis that smoking-related health inequality between groups is unjust deserve further consideration, they are not decisive. Moral individualism can be questioned (Loury 2002). Furthermore, even if one accepts moral individualism, group inequalities may be evidence of inequalities between individuals (Phillips 2004). Luck egalitarianism has been criticized on several grounds, including its harsh treatment of choice-based inequality (Anderson 1999: 295-302). And luck egalitarianism has resources for avoiding

the implication that health inequality between smokers and non-smokers is not a problem of justice, for example, by doubting the voluntariness of the decision to smoke.⁷ Therefore, in the following discussion it will be conceded that smoking-related health inequality between groups is unjust, and if a complete ban would be effective in reducing health inequality between groups, there would be a justice-based reason in its favor.

However, as Grill and Voigt (2016: 298-300) point out, there are also egalitarian reasons that count against a complete ban on the sale of cigarettes. They mention two of them. The first concerns the distress involved in quitting. If a greater proportion of lower-income individuals smoke, then a greater proportion of them will experience distress when a complete ban is introduced. A complete ban might thus result in greater inequality in at least one dimension of wellbeing. The second reason concerns the possibility that a complete ban will further stigmatize and marginalize smokers. If a greater proportion of lower-income individuals smoke, then a greater proportion of them will suffer from the resulting stigmatization and marginalization.

Grill and Voigt weigh the equal outcomes of a complete ban in terms of health against its unequal outcomes in terms of some aspects of wellbeing, stigmatization, and social standing. They argue that greater equality in health outweighs greater inequality in certain aspects of wellbeing, stigmatization, and social standing. They also point out that a complete ban can be modified to reduce some of its unequal outcomes. For example, it can be introduced gradually, by allowing those who will suffer from quitting to continue buying cigarettes for a while (perhaps with a special permit) while prohibiting newcomers to smoking. Grill and Voigt

⁷ For doubts about the voluntariness of smoking, see Conly (2013: 169–172); Goodin (1989: 16–30); Leventhal (1987: 93–4); Voigt 2010: 93–94).

reasonably conclude that, on balance, a calculation of outcomes recommends a complete ban for egalitarian reasons. I agree with their conclusion, insofar as outcomes are concerned.

However, there is a type of egalitarian objection to a complete ban that Grill and Voigt leave out of their discussion. A policy can promote outcomes that are, on balance, recommended by egalitarian considerations, while violating certain deontic egalitarian constraints, such as the constraint against discriminatory intent and the constraint against selective paternalism. In such a case, there would be a powerful (even if not decisive) egalitarian reason that counts against implementing the public. Let us consider these constraints.

3. Two Deontic Egalitarian Constraints

A historical example may help illustrate and motivate the two deontic egalitarian constraints that are the focus of this discussion. In 1604, King James I imposed additional taxes on tobacco products. The taxes were probably motivated by both health and moral concerns about the use of tobacco (Harrison 1986). The taxes did not violate formal equality or citizens' equality before the law, as no citizen was legally prevented from purchasing tobacco products and anyone who wished to buy tobacco products paid the same taxes on them. However, historian Larry Harrison remarks that "the imposition was designed to price tobacco out of the reach of the lower classes, while leaving sufficient supplies for those of the 'better sort,' who would smoke in moderation" (Harrison 1986: 555). If Harrison is correct, then even though the taxes applied to all equally, they were issued with a discriminatory intent. For this reason, these taxes would probably be considered wrongfully discriminatory nowadays. Furthermore, even if it was discovered that the taxes did not have significant unequal impact—that could happen, for example, if the consumption of tobacco products is insensitive to price—the *motivation* behind the taxes would

probably suffice to condemn them as wrongfully discriminatory. Thus, it seems that King James's taxes are intuitively morally objectionable not (only) for consequentialist reasons. Indeed, even if we discovered that King James's taxes had some positive impact (say, on morbidity or on health inequality), our concern with the discriminatory intent with which they were issued would not simply disappear. Considerations of this kind make the idea of a deontic constraint against discriminatory intent on public decision-making highly suggestive. And if discriminatory intent is objectionable because it fails to treat all citizens as equals, this deontic constraint can be described as egalitarian.

Harrison's comment suggests a further failure of equal concern and respect. It appears that King James was paternalistic toward members of the lower class but not toward members of the upper class. According to Harrison, King James questioned the ability of members of the lower class to make prudent decisions but did not have similar doubts about the ability of members of the upper class to do so. In Quong's terminology, the taxes seem to be wrong in the comparative sense: some competent adults are paternalized while others are not. Even if paternalism is generally unproblematic in relation to smoking—for example, if it violates no autonomy right—treating only the lower class paternalistically would intuitively fail to treat all citizens as equals.

In other words, there is something intuitively objectionable about policies that are issued with discriminatory intent or that are selectively paternalistic, and our objection to such policies does not seem to be merely consequentialist. Rather, it points in a deontic direction: discriminatory intent and selective paternalism seem to violate the state's duty of treating all citizens with equal concern and respect. Thus, the idea that these are valid deontic egalitarian constraints is suggestive, and it is worthwhile to examine what follows from accepting the

validity of these constraints. In what follows, it will be assumed that these are indeed valid deontic egalitarian constraints on policymaking.

Suppose that we add the following detail to the story: public health experts discover a few years later that the taxes were effective in reducing smoking inequality. As a result, health inequality between the two social classes has been reduced. Egalitarians should be happy with these results. However, since the taxes also violate the mentioned constraints against discriminatory intent and selective paternalism, then egalitarians will have reason to object to King James's taxes. Desirable outcomes, including decreased inequality, do not simply silence deontic constraints. At the very least, one should weigh the egalitarian merit of the taxes (the reduction in smoking inequality) against their failure to treat citizens with equal concern and respect. The idea of deontic egalitarian constraints is presented to emphasize that a calculation of outcomes alone would not fully reveal what is objectionable from an egalitarian perspective about King James's taxes.

Consider one final hypothetical scenario. Suppose that King James is himself an egalitarian: He is genuinely worried about the health inequality between members of the lower class and members of the upper class. His experts tell him that higher incidence of smoking among the lower class contributes significantly to this inequality. Instead of taxes, King James proposes a campaign to encourage more members of the upper class to smoke. If successful, this campaign will reduce smoking inequality. His experts advise against this campaign, as it would result in more morbidity and mortality. King James then proposes a *selective* ban, one that would prohibit selling tobacco products only to members of the lower class. If successful, this ban will reduce smoking inequality. His experts advise against such a ban too, as it would violate citizens' equality before the law. King James then proposes a *complete* ban on the sale of cigarettes. Such

a ban would not violate citizens' equality before the law. Would it violate the constraints against discriminatory intent and selective paternalism? The important thing to note at this point is that it *might*. It is at least possible for King James to issue a complete ban because he wants to prevent only members of the lower class from smoking, having concern only for their health. While a complete ban might end up equally preventing everyone from smoking, it can be issued with a discriminatory intent, and it can be selectively paternalistic. The question is whether that is likely to be the case in societies like ours. In section 5 I will argue that it is, but before doing so, it is worthwhile to say a few more words about the constraint against selective paternalism.

4. The Constraint against Selective Paternalism

Some philosophers have argued that paternalistic interventions often fail to treat people as equals (Quong 2011: 102; Shiffrin 2000: 220). Defenders of paternalism reject this claim. They stress that in paternalistic interventions “no assumption is made about the superiority of one group of people over another” (Conly 2013: 37). This defense of paternalism implies an egalitarian constraint against selective paternalism: to avoid the charge of inequality, paternalistic interventions should avoid making assumptions about the superiority of members of one group over another. For this reason, I think that (egalitarian) friends of paternalism have reason to endorse a deontic egalitarian constraint against selective paternalism.

Suppose that the self-harming choices made by members of some group (call them the As) are typically less voluntary than the self-harming choices made by members of some other group (call them the Bs). One might then want to say that selectively paternalistic policies toward the As are unproblematic. However, we should note that in relation to paternalism, interpersonal differences in voluntariness are not interesting in their own right. We gain little insight into the

permissibility of paternalism by being told that one person's choice was more voluntary than another's. Rather, we are interested in determining whether a certain choice was *sufficiently* voluntary or not (e.g., Feinberg 1986: 104–5). We should thus distinguish between three cases:

- 1) The self-harming choices of the As are insufficiently voluntary while the self-harming choices of the Bs are sufficiently voluntary.
- 2) The self-harming choices of both the As and the Bs are sufficiently voluntary.
- 3) The self-harming choices of both the As and the Bs are insufficiently voluntary.

How should we assess policies that are paternalistic toward the As but not toward the Bs in these three cases? In (1), selective paternalism toward the As might indeed be unproblematic. Even anti-paternalist philosophers often concede that it is legitimate to interfere with one's freedom for one's own good when one's self-harming choices are insufficiently voluntary (e.g., Feinberg 1986: 98–142). This explains why policies that are selectively paternalistic toward children are typically justifiable. But selective paternalism is much harder to justify in (2) and (3). If the choices of both the As and the Bs are sufficiently voluntary (or if the choices of both are *insufficiently* voluntary), it is hard to see how a policy that is paternalistic toward the As but not the Bs would treat all citizens with equal respect.

This observation is important because it has been argued that lower-income individuals smoke more than higher-income individuals due to differential exposure to advertisements of tobacco products, differential information about the dangers of smoking, and differential exposure to peers who smoke (Voigt 2010: 94-96). One might then argue that in relation to smoking, lower-income people face greater freedom-undermining influences than higher-income people. But this claim is consistent with any of the following claims:

1*) In general, when lower-income people choose to smoke, their choices are insufficiently voluntary, but when higher-income people choose to smoke, their choices are sufficiently voluntary.

2*) In general, when lower-income people and higher-income people choose to smoke, their choices are sufficiently voluntary.

3*) In general, when lower-income people and higher-income people choose to smoke, their choices are insufficiently voluntary.

If either 2* or 3* are the case, then a policy that is intended to restrict smoking among lower-income people for their own good (but is not intended to restrict smoking among higher-income people for their own good) would be objectionable for being selectively paternalistic. To my knowledge, no advocate of a complete ban on the sale of cigarettes has yet provided evidence that 1* rather than 2* or 3* is the case. Moreover, some of the freedom-undermining influences that arguably influence primarily lower-income people—advertisements, peer example—are not usually considered to be so powerful as to turn a sufficiently voluntary choice of a competent adult into an insufficiently voluntary one. This puts further pressure on 1*.

In sum, even friends of paternalism should accept a constraint against selective paternalism if they want paternalism to be consistent with an ideal of equal respect. Selective paternalism might be unproblematic when directed at those whose self-harming choices are insufficiently voluntary, but advocates of a complete ban on the sale of cigarettes have not provided evidence that this is the correct description of lower-income people. I will assume, then, that *if* a complete ban would be paternalistic primarily toward lower-income people, it would be objectionable on egalitarian grounds.

5. A Complete Ban on the Sale of Cigarettes

We can finally evaluate the proposal to completely ban the sale of cigarettes vis-à-vis the two egalitarian constraints. Suppose that a complete ban would be effective in reducing smoking-related health inequality between socioeconomic groups, and that it is issued partly for that reason. Would it violate the mentioned constraints against discriminatory intent and selective paternalism? Let us discuss these constraints in turn.

We should begin by noting that establishing intent or motivation in the case of institutions and groups is notoriously difficult (Grill 2018: 47; Husak 2005: 390–1). For one thing, it is not entirely clear what it means to attribute intentions to institutions, nor is it clear how we can determine the motivation of a group whose individuals differ in their motivations. Even in the case of individuals, attributions of intentions and motivations are somewhat speculative, because the intentions and motivations of another person are not directly observable, and some intentions and motivations are not consciously accessible even to the agent performing the action. That does not mean that we should not inquire into the intentions and motivations of policymakers. Indeed, if we object to discriminatory intent and selective paternalism, we *must* engage in this inquiry. Several ways have been proposed for doing so. We may examine previous statements made by public officers, assess available evidence regarding possible disparate impact, consider the past treatment of certain groups, and so on (Huq 2019). Whether evidence of this kind suggests that a complete ban will be issued with discriminatory intent is yet to be determined. But putting this type of evidence aside, we have reason of a more “philosophical” kind to believe that, when one of the aims of a complete ban is to reduce smoking inequality, it would be issued with the intention of preventing primarily lower-income people from smoking. This is because certain intentions are implied by one’s criteria of success, which are determined, in turn, by one’s

aims. Suppose that I read an entire book with the aim of finding some quote. Reading the entire book is something I do intentionally, but I read the entire book with the intention of finding the quote, not with the intention of reading the entire book. This is implied by my criteria of success: reading the entire book without finding the quote would be a failure. And if I find the quote, my action would be successful not because I managed to read the entire book, but because I managed to find the quote.

Suppose that a complete ban on the sale of cigarettes has two aims: to reduce overall morbidity and mortality, and to reduce smoking-related health inequality. After a few years, public health experts examine the ban's outcomes and the results fit one of two possible scenarios:

Scenario A. It is discovered that the ban did not reduce smoking among higher-income individuals, but did reduce it among lower-income individuals. This might be because higher-income smokers have access to cigarettes on the black market.

Scenario B. It is discovered that the ban did not reduce smoking among lower-income individuals, but did reduce it among higher-income individuals. This might be because lower-income smokers have access to cigarettes on the black market.

In relation to the aim of reducing overall morbidity and mortality, the ban was equally successful (or unsuccessful) in both scenarios. (We may assume, for example, that the number of people who violate the ban is the same in both scenarios). However, in relation to the ban's aim of reducing smoking-related health inequality, the ban was successful in *Scenario A* and failed in *Scenario B*. This is the case even though in both scenarios the ban legally applied to all citizens, that is, it prohibited selling cigarettes to any citizen. Arguably, this tells us something about the intention with which the ban was issued. Insofar as the ban is aimed to reduce smoking-related

health inequality, it is intended to prevent only lower-income individuals from smoking. If so, the ban violates the constraint against discriminatory intent.

Scenario B does not merely fail to reduce smoking inequality. In *Scenario B*, the inequality is *exacerbated*. Reduction in smoking among higher-income individuals is *counterproductive* to the aim of reducing smoking inequality. By contrast, any reduction in smoking among lower-income people would reduce smoking inequality. Thus, when the ban is successful in reducing smoking inequality, it is because smoking among lower income people has decreased, not because smoking among higher-income people has. This is important for the attribution of intention. An agent should not be presumed to intend all the foreseeable aspects of her action, but she should be presumed to intend the aspects of her action that render it a means to her ends (Bratman 1999: 158). Insofar as a complete ban aims to reduce smoking-related health inequality *by* preventing lower-income individuals from smoking, it is intended to prevent primarily lower-income individuals from smoking. We thus have reason to believe that a complete ban that aims to reduce smoking-related health inequality would violate the constraint against discriminatory intent. More generally, the intentions with which an agent acts are not entirely up to her. One's criteria of success or the means-end chains found in one's actions imply certain intentions.⁸ Policymakers cannot simply choose to not intend to prevent primarily lower-income individuals from smoking while also intending the ban to reduce smoking-related health inequality.

What about the constraint against selective paternalism? As mentioned, a complete ban is selectively paternalistic if it is (a) intended to restrict the freedom of some people but not others, and (b) it does so for their own good. The discussion so far suggests that when one of the aims of

⁸ See also Anscombe (2000: 37–47).

a complete ban is to reduce smoking-related health inequality, it is intended to restrict the freedom of some people but not others. Condition (a) is thus fulfilled, but one could argue that condition (b) is not. For example, one could argue that even if a complete ban aims to reduce health inequality, it need not be motivated by the aim of benefiting lower-income people. It can just be motivated by a desire to reduce health inequality. Reducing inequality can be understood as a non-person-affecting ideal (Temkin 2002). On this view, a more equal state of affairs is an improvement in terms of justice even if it benefits no one. If policymakers are motivated by a non-person-affecting ideal of equality, the ban they would issue would not be selectively paternalistic.

But this objection fails to take account of the fact that not all of one's aims when acting are *ultimate* aims. Suppose that the ultimate aim—or one of the ultimate aims—of tobacco-control policies is to reduce smoking-related health inequality and that there are several ways to achieve this aim. The state can, for example, encourage higher-income people to smoke. In choosing a complete ban rather than this alternative action, the state aims to reduce health inequality by reducing smoking among lower-income individuals, thus improving their health up to a point that is closer to the level that higher-income people already enjoy. If health inequality will be reduced by a complete ban, it is because the health of lower-income individuals has been improved, not because the health of higher-income people has deteriorated. We can then say that the ban aims to improve the health of lower-income individuals even though that is not its *ultimate* aim (which is to reduce inequality). In other words, it is possible for the ban to have a non-person-affecting ultimate aim (the reduction in health inequality), while also having the person-affecting aim of improving the health of lower-income people in particular. By choosing a complete ban as means of reducing smoking-related health inequality, the intention to improve

primarily the health of lower-income individuals is implied. (This is another instance of the claim made above, that the intentions with which an agent acts are not entirely up to her). If so, condition (b) is also fulfilled, and a complete ban on the sale of cigarettes would be selectively paternalistic.

It should be noted that a complete ban may have several ultimate aims, not all of which would make it vulnerable to a charge of discriminatory intent or selective paternalism. Suppose that a ban has two ultimate aims: to reduce morbidity/mortality and to reduce health inequality. Since reducing health inequality is one of the ban's ultimate aims, it would violate the constraints against discriminatory intent and selective paternalism. This claim is not undermined by the fact that the ban also has another ultimate aim—namely, reducing morbidity/mortality—that does not imply discriminatory intent or selective paternalism.⁹

6. Reassessing the Egalitarian Argument for a Complete Ban

The conclusion of the previous section does not imply that a complete ban on the sale of cigarettes should not be issued or even that an egalitarian argument for a complete ban fails. A reduction in morbidity and mortality as well as reduction in health inequality may be significant enough to override the egalitarian constraints against discriminatory intent and selective paternalism. My conclusion does imply, however, that there is a forceful egalitarian objection to a complete ban when one of its aims is to reduce smoking-related health inequality. By aiming to

⁹ For the problem of multiple rationales when assessing a policy as paternalistic, see (Grill 2018: 48; Husak 2005: 392).

achieve more equal health outcomes, a complete ban on the sale of cigarettes is vulnerable to the charge that it violates certain egalitarian constraints.

There are two ways to avoid violating the mentioned constraints: 1) not issue a complete ban, or 2) issue a complete ban without the aim of reducing smoking-related health inequality. Advocates of a complete ban would not support the first option. But those who support a complete ban for egalitarian reasons should also find the second option unappealing, for two reasons. First, for policymakers with egalitarian inclinations, it can be difficult—perhaps even impossible—to avoid intending to reduce health inequality when issuing a complete ban. If some egalitarian policymaker wants to reduce health inequality and she also foresees that a certain policy will be successful in doing so, there is at least a strong presumption that she intends to reduce inequality when issuing the policy.¹⁰

Second, intentions influence practical reasoning in ways that help agents achieve their goals (Bratman 1999). For example, suppose policymakers issue a complete ban on the sale of cigarettes with the aim of reducing smoking-related health inequality. They would then have reason to monitor the ban's influence on rates of smoking in different social groups; they would have reason to not issue policies that conflict with the ban's aim of reducing inequality; they would have reason to try and cancel policies that hinder the ban's ability to achieve this aim; and they would have reason to supplement the ban with other actions that would help it achieve its egalitarian aim. However, if policymakers do not have the aim of reducing smoking-related health inequality when issuing a complete ban, they would not have such reason to engage in the

¹⁰ Of course, not all policymakers are egalitarian, but for those who are not, the egalitarian argument in favor of a complete ban is irrelevant to begin with.

relevant behaviors. They may even have reason to *not* engage in them, to make it publicly clear that reducing smoking-related health inequality is not one of the ban's aims. But refraining from engaging in such behaviors would risk the ban's effectiveness in reducing smoking-related health inequality. Those advocating for a complete ban for egalitarian reasons would probably want the ban to be as effective as possible in reducing health inequality, and so would have reason to include the reduction of health inequality among the ban's aims.

Thus, issuing a complete ban without the aim of decreasing smoking-related health inequality is unlikely to appeal to those who advance an egalitarian argument in favor of such a ban. Presumably, they advance an egalitarian argument so that policymakers will issue the ban. They want to *inform* policymaking, so they would probably want policymakers to regard the reduction of health inequality as a reason for implementing the ban. And if that means that certain deontic egalitarian constraints will be violated along the way, so be it. This is not an implausible position because, as mentioned, deontic constraints are not absolute and can be overridden by the prospects of certain consequentialist improvements. But the threshold of what counts as a sufficient consequentialist improvement should be set quite high when deontic constraints are at stake. And even if consequentialist considerations justify violating deontic constraints, there is a moral cost to violating them. It is morally regrettable that deontic constraints are violated in the process of creating a better world, and we should be aware of this moral cost.

7. Paternalistically Egalitarian Policies

The discussion so far suggests several general points that are worth keeping in mind when evaluating public health policies from an egalitarian perspective. First, one should be careful to

not assess only the outcomes of policies, even when one includes decreased inequality among the desired outcomes. One must also determine whether a public health policy is likely to violate certain deontic egalitarian constraints, such as the constraint against discriminatory intent and the constraint against selective paternalism. One should also not assume that just because a policy equally prohibits all citizens from engaging in a certain behavior, that it does not violate the mentioned deontic egalitarian constraints. A policy that equally prohibits everyone from engaging in a certain behavior may have discriminatory intent and may also be guilty of selective paternalism.

The more surprising claim made in the discussion is that a public health policy may violate certain deontic egalitarian constraints *because* it aims to reduce certain objectionable health inequalities. This claim is made here in relation to a complete ban on the sale of cigarettes, but it is likely to apply to other public health policies as well.¹¹ These policies have three features. First, they aim to reduce some objectionable or unjust form of health inequality. Second, the inequality is explained in part by different patterns of behavior found in different social groups. More specifically, the inequality is explained by the fact that members of disadvantaged communities are more likely to make choices that are bad for their health than members of more privileged communities. Third, the policies in question aim to reduce health inequality by aiming to prevent primarily members of disadvantaged communities from engaging in the relevant kinds of behavior. Policies that have these three features can be called *paternalistically egalitarian policies*.

¹¹ Consider, for example, public health measures intended to decrease the consumption of soda drinks in disadvantaged communities.

Anyone who believes that the state ought to treat its citizens with equal concern and respect should be worried about paternalistically egalitarian policies. Paternalistically egalitarian policies are morally puzzling because they have a valuable egalitarian aim—reducing health inequality—but they are also likely to violate deontic egalitarian constraints. Such policies might not be problematic if they single out for paternalistic treatment individuals whose self-harming choices are insufficiently free. But it is unlikely that any racial, socioeconomic, ethnic, religious, or sexual group falls under this description.

To avoid the impression that paternalistically egalitarian policies disrespect disadvantaged people, advocates of such policies are likely to stress the external conditions that make it difficult for disadvantaged people to make prudent choices. Focusing on external circumstances conveys the message that it is not disadvantaged people’s “fault” that their decisions are not as prudent or voluntary as the decisions of more fortunate people. Such emphasis on external circumstances is supposed to block the inference from selective paternalism to unequal respect. One problem with this strategy of justifying paternalistic egalitarian policies is that it might overestimate the extent to which the self-harming choices of lower-income or disadvantaged people are insufficiently voluntary. Another problem is that it might overestimate the extent to which self-harming choices of higher-income people are sufficiently voluntary. Finally, without solid evidence that self-harming choices made by lower-income people are generally insufficiently voluntary while the self-harming choices made by higher-income people are sufficiently voluntary, this justification of paternalistic egalitarian policies is not compelling. It does not address the charge that the policies in question fail to treat lower-income and higher-income people with equal respect. That self-harming choices made by lower-income people are *less* voluntary than similar choices made by higher-income people—*if* they are indeed less voluntary—does not indicate that

these choices are not sufficiently voluntary, nor does it indicate that similar choices made by higher-income people are sufficiently voluntary.

One might worry that if my criticism of a complete ban on the sale of cigarettes is applicable to other public health measures, its reach will be too wide. “Surely,” the thought goes, “public-health authorities should be allowed to aim at the reduction of health inequality, and presumably, public-health policies are (and ought to be) paternalistic. If public health authorities should not use paternalistically egalitarian measures, their hands would be unjustifiably tied when trying to reduce health inequality.”

This worry is legitimate, but it is important to not overstate it. Even in relation to a policy that I believe to be selectively paternalistic—a complete ban on the sale of cigarettes—my conclusion is not that such a ban is, on balance, condemned on egalitarian grounds, let alone condemned when all the relevant public health reasons are considered. The worry that concerns about egalitarian paternalism will be too restrictive is not persuasive once we realize that in each case we must weigh reasons for and against the policy in question, and that we cannot tell in advance what the results of such deliberation will be. My argument aims to identify certain reasons that should go into deliberation, not to determine its conclusion.

In sum, paternalistically egalitarian policies present a dilemma for egalitarians, an uneasy tradeoff between promoting equal outcomes and refraining from violating certain deontic egalitarian constraints. This dilemma deserves further attention by authors who evaluate public health policies from an egalitarian perspective.

7. Conclusion

Decreasing health inequality between socioeconomic groups is a desirable goal and a complete ban on the sale of cigarettes might be effective in achieving it. However, a complete ban is subject to an egalitarian objection when imposed with the aim of reducing smoking-related health inequality. The objection is that the ban would violate the deontic egalitarian constraints against discriminatory intent and selective paternalism. Since these deontic constraints are not absolute, this objection to a complete ban is not decisive, but we should not assume without further argument that reducing health inequality justifies the violation of the mentioned constraints. The egalitarian case against a complete ban is much more serious than egalitarian advocates of a ban have hitherto recognized, and some version of it may resurface in relation to other public health policies.¹²

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