



Who May Harm Whom?

Smoking has been one of the hot controversies of our time. Many people find tobacco smoke annoying, smelly, and just plain dirty and unpleasant. Some smokers themselves agree. But today's smoking restrictions, not to mention the attack on smokers and extortion of tobacco companies, could not have been engineered simply on the grounds that tobacco smoke is unpleasant. We needed another reason. So the Environmental Protection Agency (EPA), using bogus science, literally manufactured the finding that second-hand smoke is a class A carcinogen causing death and illness for tens of thousands of non-smokers. The major news media, along with anti-tobacco zealots, convinced us of the wisdom of the EPA report. They downplayed or ignored findings of outright EPA fraud.¹

The EPA "proved" that smoke harms other people. Preventing harm to others, especially children, is something most Americans support. Thus all manner of smoking regulations descended upon the nation, including bans in airplanes, airports, restaurants, bars, and workplaces, and even open-air stadiums.

Let's pretend that the EPA's bogus science is legitimate and examine this business about harming others. First, we should acknowledge that we live in a world of harms. The second-hand smoke from my cigarette might harm you. However, your preventing my smoking harms me, since I will have less enjoyment.

Walter Williams is the John M. Olin Distinguished Professor of Economics and chairman of the economics department at George Mason University in Fairfax, Virginia.

We cannot say whose harm is more worthy of being avoided because it's impossible to make interpersonal utility comparisons. In other words, there is no scientific way of deciding whose well-being is more important.

The impossibility of interpersonal utility comparisons is applicable to most situations. Suppose a beautiful lady is pursued by Jim and Bob. If Jim wins her hand, Bob is harmed, and if Bob wins her hand, Jim is harmed. We cannot scientifically determine whose harm is more worthy of being avoided.

In a socialistic society, conflicting harms are resolved through government intimidation and coercion. In a free society, conflicting harms are settled through the institution of private property rights. Private property rights are owners' rights to keep, acquire, use, and dispose of their property as they deem fit, so long as they do not violate the property rights of another.

Who Owns the Air?

In a free society, whether smoking harms others or not is irrelevant. The relevant issue is who owns the air? It is clear that if you own it, you have the right to decide how it is used. If you do not want tobacco smoke in your air, that is your right and the government should protect it. By the same token, if I own the air, I also have the right to decide how it is used. If I want to have tobacco smoke in my air, I have every right to do so and the government should protect my property rights just as it protects yours.

Most people will agree that for all intents and purposes the air in your house belongs to you. That being the case, other people do not have the right to use your air in ways that you do not approve. Similarly, the air in my house belongs to me and other people do not have rights to use my air in ways that I do not approve (like keeping it smoke-free). Most Americans probably agree that people have the right to decide whether smoking is permitted in their own homes, but that is where the agreement ends.

A majority of Americans approve of laws prohibiting smoking in restaurants, bars, airplanes, factories, offices, and other "public" places. But why should their wishes be indulged through force of law? Are those places publicly owned? No. For the most part, they are private property simply doing business with the public. As such, the institution of private property rights should resolve any conflict over smoking. The owner of a restaurant or bar has the right to decide whether smoking is permitted on his premises. Customers have the right to decide the terms on which they patronize the restaurant. If the owner does not permit smoking, then people who wish to smoke during dinner can decide not to go there. Similarly, an employer who wishes to permit smoking in his offices should have the right to do so. People who wish to work in a smoke-free office environment can simply choose some other place of employment where the owner prohibits smoking.

There is absolutely no moral argument for using the power of the state to force a restaurant owner who does not want smoking in his establishment to accommodate smokers. Likewise, there is no moral argument for using the power of the state to force a restaurant owner who permits smoking to prohibit

it. This is true for a free society; however, so much of mankind exhibits a generalized contempt for the principles of liberty. We succumb to the temptation of using the state to forcibly impose our preferences on others. In doing so, we establish dangerous precedents that have dire implications for liberty. After all, if health concerns become the reason for violating private property rights and forcibly overruling people's preferences, where does it end? There are people who want high taxes on so-called junk food, with the proceeds used to build hiking and biking paths. There are people who want to regulate caffeine in coffee, sodas, and chocolates. There are people who want to regulate the size of meals in Chinese and Mexican restaurants because they are deemed too large and contribute to the nation's obesity problems.²

Health concerns can be used to justify control of a considerable part of our day-to-day lives, from what time we go to bed to whether we exercise. Some might claim that such a concern is overly alarmist and that kind of government control is impossible. But back in the 1960s, when anti-tobacco zealots were simply asking for nonsmoking sections on airplanes, who would have predicted what we have today? Had the zealots revealed their true and complete agenda when they started out, they never would have gotten those first nonsmoking sections. □

1. In July 1999, U.S. District Court Judge William L. Osteen found reason to nullify the EPA's 1992 report that claimed second-hand smoke to be a class A human carcinogen and cause of lung cancer. He found that the EPA knowingly, willfully, and aggressively put out false and misleading information.

2. Michael Jacobson, director of the Center for Science in the Public Interest, says about large food servings, "It's high time the [restaurant] industry begins to bear some responsibility for its contribution to obesity, heart disease and cancer." Dr. Ronald Griffiths at Johns Hopkins University, concerned about coffee addiction says, "If health risks are well-documented, caffeine could be catapulted in public perception from a pleasant habit to a possibly harmful drug of abuse." Along with Jacobson, he wants the FDA to regulate caffeine content in soda, coffee, tea, and chocolate.