

Freedom-based considerations for withdrawing, withholding options: The example of tobacco control and nudging policies

July 19 2016, by Heather Zeiger



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(Medical Xpress)—Smoking would likely never pass the U.S. Food and Drug Administration's standards today. In 1964, the U.S. Surgeon General released the results of the Advisory Committee on Smoking and

Health, which said that cigarette smoke is [a cause of lung cancer and is a key cause of chronic bronchitis](#). Since then, there has been a fifty-year campaign to decrease, and eventually eliminate, smoking in the United States.

In the July target article for the *American Journal of Bioethics* Andreas Schmidt of Princeton University addresses whether there is a difference, from a freedom-based perspective, between withdrawing an option a person already has and withholding an option a person could have. Schmidt takes into account several considerations that can then be applied to [public policy](#). He shows that while there are freedom-based reasons for withdrawing an option to require more justification than withholding an option, this does not mean that in some cases, such as cigarette smoking, a ban would be objectionable. This reasoning can then be applied to demonstrate that nudging policies are not necessarily an infringement on people's freedoms.

An important question for bioethicists is how to limit a product that is currently legal but poses a public health risk, such as smoking cigarettes. Some argue that maintaining status quo takes priority because removing an option from the status quo would be a stronger infringement on people's freedoms than never allowing that option to enter the status quo in the first place. This is known as nonequivalence. Schmidt explores several considerations in consumers' and patients' freedoms and whether these considerations justify giving the status quo some kind of special moral status.

He begins by considering whether one can quantitatively argue for nonequivalence in the case of cigarette smoking. While one can empirically consider the number of [options](#) a person has in a particular space at a particular time and how those options can breed more options, according to Schmidt, it does not necessarily follow that the status quo can take moral priority on purely empirical terms.

He then considers the quality of the options available. This requires a way to ascribe value to those options. One metric is to consider preferences. An option is more valuable if it is something that a person wants to do, and, in general, people prefer the status quo options as opposed to options that they never had. Schmidt argues that the biggest problem with a preference-based justification for nonequivalence is that when it comes to something like cigarette smoking, because of its addictive nature, people tend to have incoherent desires. Smokers desire to smoke, but the majority also desire to quit but cannot do so.

Schmidt makes the case for nonequivalence from an objectivist view of values and from a consideration of status freedom. The objectivist view looks at those things that a particular individual or community would require to flourish. While this may be different for different societies or individuals, there are certain features that must be available so that they can freely pursue their notion of the good life. These include activities that have become part of a community's tradition or a person's identity, some kind of stability and predictability in future options so that a person may shape and determine his or her life, not invoking transitional costs that could occur from withdrawing an option from the status quo, and finally, some options may still exist because individuals find them valuable.

Status freedom considers whether one person has dominance over another because of unequal status. From this perspective, the withdrawing and withholding options are no different as long as they are not arbitrarily decided. However, because people tend to have stronger preferences for existing options, a case can be made for nonequivalence.

While Schmidt identifies considerations that can make nonequivalence the case in public policy, he argues that these considerations are not strong enough in the case of cigarette smoking to maintain the status quo. And, perhaps, in the case of cigarette smoking, good public policy

would be to help people transition from smoking to not smoking.

The considerations laid out by Schmidt can be applied to other health-related policies. In particular, they can be used to make a case for nudging. Nudging involves changing the way choices are presented so that the "healthful" choice seems more desirable than the "unhealthful" choice. He cites Thaler and Sustein's example of a buffet line. People tend to choose food at the beginning of the line and at eye level. Nudging might mean placing healthier foods at the beginning of the line and at eye level to encourage those options. This does not necessarily involve removing options as much as changing the "choice architecture."

Some argue that nudging infringes upon people's freedom and autonomy. Others say that nudging always happens, so why not nudge people toward better decisions. Of Schmidt's considerations, only status freedom may offer an objection to nudging policies, but if nudging policies are transparent and democratic, this will mitigate the potential for status abuses.

Several of the peer commentaries in the *American Journal of Bioethics* appreciate Dr. Schmidt's perspective but wish to expand upon certain points. William Paul Kabasenche's commentary expands upon the concept of autonomy based on identify formation, and reinforces Schmidt's argument that nudging does not interfere with people's freedoms. Stephanie Morain's commentary addresses the Tobacco 21 laws and how resistance to raising the age of tobacco sales is an example of status quo bias. Timothy Houk, Russell DiSilvestro, and Mark Jensen's commentary analyzes the consequences and considerations of nudging policies. Luc Boven's commentary makes a stronger case against withdrawing current options available to people than Schmidt does. Sarah Conly's commentary addresses the issue of status freedom when restricting what someone consumes. And, Karola V. Kreitmair's commentary notes that by using the distinction "withholding" and

"withdrawing" Schmidt is employing terms that are often used in the clinical setting to distinguish between end of life decisions, which she says is a very different set of criteria.

More information: Andreas T. Schmidt. Withdrawing Versus Withholding Freedoms: Nudging and the Case of Tobacco Control, *The American Journal of Bioethics* (2016). [DOI: 10.1080/15265161.2016.1180442](https://doi.org/10.1080/15265161.2016.1180442)

Abstract

Is it a stronger interference with people's freedom to withdraw options they currently have than to withhold similar options they do not have? Drawing on recent theorizing about sociopolitical freedom, this article identifies considerations that often make this the case for public policy. However, when applied to tobacco control, these considerations are shown to give us at best only very weak freedom-based reason to prioritize the status quo. This supports a popular argument for so-called "endgame" tobacco control measures: If we believe that cigarettes would and should be withheld from entering markets in hypothetical scenarios in which they do not yet exist, then we also have reason to seek their abolition in situations, such as ours, in which cigarettes do exist—if necessary by banning their sale. The same considerations are then used to disarm objections that have recently been raised to using nudges in public policy.

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