

Mill, advocacy and the tobacco endgame.

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Worcester Cathedral from the River Severn



Malvern hills looking north



Plan for presentation

1. A bit of a review of Mill's harm principle
2. Claim that in the case of smoking there has been a move (in hospitals) away from other regarding reasons for prohibition towards self regarding reasons
 - a) Legal case of Rampton smokers
 - b) NICE guidelines and Trust policies
 - c) The tobacco endgame
3. Consideration (and discussion) of the role of health professionals and their role as advocates.

Mill's harm principle

[...] the only purpose for which **power** can be rightfully exercised over any member of a civilised community, against his **will**, is to prevent **harm** to others. His own good either physical or moral is not a sufficient warrant.

And problems...

1. Political philosophy and (just) politics – Nuances in Mill's formulation are advocated in journals but...
2. Power – what does this consist of: For smoking criminalisation, restrictions on sale, tax...
3. Will Problem is whether individuals have sufficient 'capacity'. Familiar from MCA in relation to consent but insights from social psychology also important for Nudges and thoroughgoing paternalism (Only – Against autonomy)
4. Harm. What counts as harm? Physical harm? Offense?

Smoking in public places

‘The justification for the principle of a ban is straightforward: workers have a right to be protected from SHS’

Indirect benefits...’these expected changes provide secondary arguments but do not in themselves justify a ban.

House of Commons Health Committee
Report

The Rampton smokers

Health Act 2006 introduced a ban on smoking in public places in enclosed or substantially enclosed areas

Care homes, hospices, prisons exempt. Mental health units given a temporary exemption for one year.

After 1st July 2008 smoking indoors became illegal at Rampton, and local NHS policy and security considerations prevented smokers from going outside. NHS policy banned smoking.

There is a *de facto* ban on all smoking. Patients sought
Judicial review

European Convention on Human Rights. Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the **rights and freedoms of others**.

The Rampton Smokers They lost!

1. Consideration of general rather than individual rights
2. Move away from Mill. Ban justified because of 'health benefits'... 'public health'
3. Regarding smoking as 'self harm'
4. Lack of democratic mandate for the move from a permanent exemption to a temporary one

Scotland – State hospital, Carstairs

Article 8(2) ECHR authorises interventions which are “necessary in a democratic society [...] for the protection of health or morals”: it is not a warrant for lifestyle fascism

He lost on appeal

NICE guidance (Nov 2013)

Benefit people of all ages who smoke and who use, or work in...

Comes close to an is/ought error (Policy as '*effective support to stop smoking*' / normative expectation / quasi-legal requirement)

'Strong leadership and management...no exceptions for particular groups, no staff supervised or staff facilitated smoking breaks'

Policies should '**prohibit** breaks...**facilitate** compliance.

People who are unable to leave a secondary care setting, for example when detained under the MHA or because mobility is restricted – will have to abstain from smoking'

Trust Policies

Exceptional circumstances: detained, mobility, end of life (1, 2)

Staff will not be permitted to assist patients who wish to smoke. Staff must not accompany patients who wish to smoke, and any member of staff who does so will be subject to disciplinary action...(3) If a patient leaves a ward without permission, the patient will be wholly responsible for anything that may occur (3). If a patient persists in smoking their Consultant or Nurse Manager should consider discharging the patient.

Trust Policies

Themes

- Self-regarding, exercise power for patient's own good.
- Some have exceptions (generally mobility, end of life) but...
- Staff are not allowed to assist on pains of disciplinary actions. (Note difference between allow / facilitate)

The tobacco endgame

Initiatives designed to change or permanently eliminate the structural political and social dynamics that sustain the tobacco epidemic so as to achieve within a specific timeframe and endpoint for the tobacco epidemic

Support for ban in 5 – 10 years

UK, 49% never 41% ex , 33% current

Aus 53%, all adults

HK 68% never, 59% ex 45% current

The smoke free generation

Ban cigarette sales to those born after 2000

Doctors back cigarette ban to those born after 2000

24 June 2014



Cigarettes will be banned to anyone born after the year 2000, if doctors secure legislative support for a radical new policy they have backed.

Advocacy

You must act as an advocate for those in your care, helping them to access relevant health and social care, information and support (NMC Code).

nurse actively supporting patients in relation to their rights and choices, clarifying their healthcare decisions in support of their informed decision-making and protecting basic human rights such as autonomy (Cole et al., 2014, p. 2).

Advocacy problems (Grace 2001)

- (1) Constraining power prevents them advocating for their patients
- (2) Conflicts of interests between patients.
- (3) 'Seriously impinges' on another's rights
- (4) Conflicts between individual issues and wider social issues?
- (5) Advocacy related to individual or relational autonomy
- (6) Advocating against the ends of nursing

Advocacy (i) individuals

Your patient wants to smoke. Do you
(a) facilitate, (b) fail to prevent it

Advocacy (ii) policy

Medical / Nursing organisations supported the ban
at Rampton.

The tobacco endgame?

Supported by BMA, nothing yet by nurses...

Conclusion

Lists of factors can guide decisions, but case studies and the decisions they provoke speak fundamentally to individual and professional values. So, do you advocate for 'health' or choice?

References

- (1) Manchester Mental health and Social care Trust
- (2) West London Mental Health NHS Trust
- (3) Tameside Hospital NHSFT