

Stanford's Smoke-Free Initiative: An Ethical Debate

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Part I: History, Background & Key Concepts

A petition known as the Smoke-Free Initiative, established by Stanford's Colleges Against Cancer (SCAC), an on-campus student group concerned with cancer awareness, has recently been proposed and is under consideration by Stanford University's president John Hennessy. As of June 12, 2009, the petition had garnered 526 signatures from the student body. Before discussing the specifics of the petition, this essay will first examine Stanford's current policies.

Stanford's current stance toward the use of tobacco is fairly restrictive—which is par for the course for college campuses. The current policy stipulates that the smoking of tobacco products is prohibited in enclosed buildings and facilities and during any indoor or outdoor events. It further stipulates that for those who do choose to smoke, they must do so no closer than 20 feet from any building. The primary aim of this ordinance is to minimize the chance of secondhand smoke inhalation by those inside University buildings, as well as by passers-by.

Additionally, on September 1, 2007 the Stanford Medical School declared its entire campus a completely tobacco-free zone, with absolutely no smoking allowed. This completely smoke-free declaration is similar to that made by the University of Rochester's Medical Center.

The Smoke-Free Initiative proposes a complete prohibition of the sale, marketing, and promotion of tobacco products on campus; an entire campus that is "smoke-free except for a few sufficiently remote locations where those who choose to smoke can do so" ("Support," n. d., para. 9); and the promotion and providing of quality tobacco cessation programs and products for those who wish to quit.

Of the petition's three parts, the most controversial is the creation of the aforementioned smoking locations, "sufficiently remote" so as not to disturb the non-smoking portion of the community. This proposal will be the focus of this essay.

This proposal has a substantial ethical component to it. The arguments being made by SCAC and its supporters hinge on a number of presuppositions, many of which are based on empirical facts whose validity is not absolute. Beyond that, and most important to the central

ethical debate of this proposal, is that the petition explicitly calls for a coercive limitation of liberty. Accordingly, there is much at stake for both parties, and each party has several persuasive and logical arguments defending its respective position.

Since the SCAC is actively attempting to restrict the liberty of others, its actions must be called into question, and examined with scrutiny. In other words, it must prove that its actions are ethically sound. Stanford Professor of Science, Technology, and Society Robert E. McGinn, has developed a system with which to make such determinations. The core element of this system is the Liberty Limiting Principle—a legitimate method by which a governing body may coercively limit the actions of a subject.

As defined by McGinn, the system consists of six Liberty Limiting Principles (LLPs). (These LLPs will be explained in detail in later sections; for quick reference, Table 1 below succinctly summarizes each of them.) The petition put forth by the SCAC attempts to make use of five of these six. In other words, the SCAC has a lot of ammunition with which to make a case against the smoking community, whose backs are up against the proverbial wall. This means that the burden of proof lies with the SCAC, and that the only real way the smoking community can defend itself is to systematically debunk the SCAC's use of each individual LLP. For this reason, I present the SCAC's arguments first in Part II, and then the rebuttals of the smoking community in Part III. My analysis in Part IV looks at both sides of the argument, and ultimately synthesizes the high-points of each with my own insights.

TABLE 1. Liberty Limiting Principles, Condensed and Explained

LLP Number	Name of Principle	The coercive restriction of an agent's liberty may be justified in order to...
1a	Private Harm	...prevent the agent's action from causing unjustifiable injury or harm to an "other."
1b	Public Harm	...prevent the agent's action from causing unjustifiable injury or harm to institutions or to "common goods" putatively in the public interest.
2	Offense	...prevent behavior that is offensive to others.
3	Legal Paternalism	...prevent the agent from harming him/herself.
4	Extreme Paternalism	...help the agent realize a certain benefit B.
5	Legal Moralism	...prevent or punish his/her act of "sin" or "grave moral transgression."
6	Welfare/Benefit to Others	...benefit others.

Part II: The SCAC's Five Avenues of Argumentation

As mentioned in Part I, the petition put forth by the SCAC has three main points, the boldest and most controversial being the institution of a completely smoke-free campus, except for “a few sufficiently remote locations” yet to be designated. What makes this stipulation so controversial is that it requires an act of limiting the liberty of a select group of people, i.e., smokers. I will elucidate the SCAC's argument by examining each LLP involved, first in general and then specifically with regard to this petition. However, before beginning, it is necessary to see the SCAC's argument in a more holistic manner. The sheer number of LLPs potentially employed by the petition gives it a much higher chance of success. Each successive LLP after the primary one can be seen as a sort of fail-safe for the one before—so if the first line of argument fails, the second will be applied, and so on until the final LLP is exhausted.

The Harm (to Others) Principle (LLP 1), articulated by John Stuart Mill, is the first line of argumentation used by the SCAC in defense of its proposed campus-wide smoking ban. LLP 1 has two sub-principles, the Private Harm Principle (LLP 1a) and the Public Harm Principle (LLP 1b). LLP 1a allows for the “coercive [restriction] of an agent's liberty... if doing so is reasonably necessary to prevent the agent's action from causing unjustifiable injury to or harming an ‘other’ OR from creating an unreasonable risk of doing so” (McGinn, 2009a, p. 3). LLP 1b differs slightly, in that instead of a singular “other,” it is concerned with the protection of “institutions or... ‘common goods’ [that are] in the public interest” (McGinn, 2009a, p. 5).

The SCAC has made the case that the conditions necessary to enact both sub-principles of LLP 1 have been satisfied. The first and most important condition is whether the action in question, in this case, smoking tobacco, can cause unjustifiable injury or harm to an “other.” According to the American Cancer Society, “secondhand smoke is classified as a ‘known human carcinogen’ (cancer-causing agent) by the U.S. Environmental Protection Agency (EPA), the U.S. National Toxicology Program, and the International Agency for Research on Cancer (IARC), a branch of the World Health Organization” (American Cancer Society, 2009). This seems like substantial enough evidence to fulfill LLP1a. LLP1b is satisfied as well, if one considers secondhand smoke to be a threat to the integrity of an environment's air quality (with clean air being the “common good”).

The Social Welfare or Benefit to Others Principle (LLP 6) states that “coercive restriction of an agent's liberty may possibly be justified if doing so is reasonably necessary to benefit others” (McGinn, 2009b, p. 5). This is an interesting principle, especially when considered in the context of this case. It seems that if LLP 1b—the Public Harm Principle—is satisfied, then LLP 6 should be satisfied as well. They do differ slightly, however, as one is not the exact contrapositive of the other. What distinguishes LLP 6 is that, in order for it to be satisfied, the intended

benefit must be a significant collective societal good, whose status as such must be agreed upon by societal consensus.

The SCAC would argue that even though smokers choose to smoke (or at least chose to begin to smoke and are now addicted), very few if any smokers would claim that smoking has positive health benefits. A campus-wide ban on the sale of tobacco products as well as strict limitations on smoking would therefore eliminate a means by which the collective health of the community could be diminished, and could therefore be considered a collective societal good.

The next two Liberty Limiting Principles, like LLPs 1 and 6, seem to function symbiotically as a pair. Both of these principles incorporate the notion of *paternalism*, meaning an external source of authority makes a decision on behalf of an agent for the agent's own good, even if the decision goes against the agent's own wishes.

The Principle of Legal Paternalism (LLP 3) can be invoked in order to prevent an agent from harming him/herself (McGinn, 2009b, p. 1). In order to be able to justifiably limit an agent's liberty via LLP 3, the harmful action must be one considered harmful even if it were not self-inflicted. LLP 3 also requires a distinction between direct and indirect self-harm. The SCAC would argue that smoking cigarettes falls into the latter category: the intent of the physical action of smoking tobacco is not to cause cancer to oneself, it is simply to enjoy the euphoric, calming effects of the intake of nicotine into the bloodstream, or possibly to "look cool," to socialize, or as one student put it in a recent article in the *Stanford Daily*, to earn one's rite of passage within a certain professional arena (Serna, 2009). In such cases, LLP 3 requires that the action being done be proven "unreasonably risky" in order to be invoked. Here, SCAC would return to the oft-cited data as proof that smoking does indeed qualify as unreasonably risky, given all of the well-known and well-reported information linking smoking to cancer. One need look no further than the actual cigarette box itself, which in the US must carry a visible message from the Surgeon General warning smokers of the hazards of tobacco use.

As previously mentioned, the two LLPs involving the basic concept of paternalism are complementary. The Extreme Paternalism Principle (LLP 4) allows for "coercive limitation of agent A's liberty...if doing so is reasonably necessary to A's realizing a benefit B" (McGinn, 2009b, p. 3). As with LLP 6, there are several qualifying statements that accompany this limitation of liberty. Basically, the benefit being forced on the individual must be consensually considered to be a significant positive benefit for the individual, the limiting action must be reasonably necessary to achieve such a benefit, and it must be assumed that the agent is incapable of pursuing this benefit on his own due to his own ignorance or naïveté (McGinn, 2009b). In this case, the SCAC would argue that smokers on Stanford campus deserve the benefits afforded to those who live in a completely smoke-free environment, namely clean, odorless air and improved health conditions. They would also argue that those who

continue to smoke are largely incapable of seeking out these benefits themselves, as they are under the control of their own nicotine addictions.

Part III: Counterarguments and Rebuttals Given by the Smoking Community

Now that the arguments for the implementation of a smoke-free campus have been laid out, I will present a series of corresponding counterarguments that could be made by Stanford's smoking community and by those who support their points-of-view. As I mentioned earlier, the burden of proof falls on the SCAC, since it is the party attempting to limit the liberty of the campus' cigarette smokers. The defending arguments put forth by the smoking community would consist largely of point-to-point refutations of the arguments put forth by the SCAC. Since SCAC's implementation of LLP 1a and 1b is the strongest line of argument being made, I will start with the corresponding counterarguments.

Recall the Private Harm Principle, which, in order to be invoked requires that the coercive limiting action be reasonably necessary in the prevention of unjustifiable injury or harm to an "other." The first point of contention with SCAC's petition regarding LLP 1 is whether the creation of the campus-wide smoke-free zone is indeed a reasonably necessary measure to prevent harm to non-smokers on Stanford's campus. Smokers would strongly argue that it is not reasonably necessary, and that it is in fact an egregious over-reaction. Assuming a situation in which the already stipulated 20-foot-rule is periodically not a satisfactory buffer, that is, people inside buildings are still periodically bothered by outdoor cigarette smoke, then the most reasonable course of action, it seems fair to say, would be to ask the smokers to move further away from the building, or to change their positions relative to the building and wind direction so the smoke doesn't make its way inside. Smokers would argue that they are in no way attempting to bother anybody, and would be more than willing to comply with such requests.

Expanding this argument, let us now consider the smoking community's response to the potential use of LLP 1b, the Public Harm Principle. Their point of contention with this principle could be the debatable notion of an "unreasonable risk of harm" to a common good. The SCAC would argue that smoking in public spaces, such as the area around the Claw fountain, does indeed cause an unreasonable risk of harm to the safety of the people in the vicinity. Smokers could argue the relativist standpoint. In a public area such as the Claw fountain area, one could easily make the argument that passing cyclists, skateboarders, and golf cart drivers pose a much larger threat to the community's safety than the smoke from a smoker's cigarette. Though this may seem arbitrary, there is actually an important distinction to be made, the basis of which is *agency*. The distinction is that if a walking student sees a smoker, he/she can quickly and easily take action to avoid coming close enough to inhale the secondhand smoke—the agency is the student's, he/she has control of

the situation. However, a walking student is at the complete mercy of the awareness and control of any and all bikers, skateboarders, or cart—he/she is without agency in the situation, and because of this is at greater risk of harm.

Moving to SCAC's intention to use LLP 6, the Social Welfare or Benefit to Others Principle, another subtle yet important point of contention can be raised by the defenders of the smoking community. A key requirement of LLP 6 is that the intended benefit gained from the use of the coercive limitation of liberty be considered not simply a collective societal benefit, but one of considerable *significance*. Obviously, the notion of significance is highly subjective; however in this case there is a way of looking at it in a more concrete, quantifiable manner. The benefits to non-smokers gained by forcing smokers to use sufficiently remote locations for their smoking needs are small compared to the relative harms and discomforts caused to the smokers themselves. These harms include physical stress from travelling further to these designated areas, financial stress from taking more time travelling to and from these areas, and socio-emotional stress, from being further alienated from the "community" due to a habit they likely cannot control. The additional stress caused to smokers outweighs the debatable benefits of moving smoking areas from 20 feet away from buildings to specific further-away smoking areas.

The counter-arguments to the employment of LLPs 3 and 4 are more straightforward than those of the previous three. There is neither doubt nor dispute that smoking cigarettes is a self-harming action. Not even the most rabid anti-smoking-restriction advocate would say that. The justifiability of LLP 3, the Principle of Legal Paternalism, is contingent on the degree to which the self-harming action is voluntary. The SCAC's argument for LLP 3 hinges on the fact that the harm is not fully voluntary (i.e. addiction controls the smoker), and can therefore be alleviated via legal paternalism. The smoking community would make the argument that smoking cigarettes, though certainly addictive and by no means easy to quit, is nevertheless completely voluntary—a personal choice. If a smoker wants to quit, there are countless methods he or she can use to help with the weaning and withdrawal process. By submitting that smoking is in fact voluntary, smokers protect themselves against the use of legal paternalism as a means of liberty limitation, because voluntary action is defended by J.S. Mill's presumption in favor of liberty (McGinn, 2009b).

The smoking community can combat the Principle of Extreme Paternalism (LLP 4) very swiftly. Plainly put, the implementation of a smoke-free campus with sufficiently remote smoking zones is meant to appease the non-smoking majority, not to benefit the smokers by discouraging them from having to do extra work and subsequently forcing them to quit. This "benefit" to smokers is merely a secondary externality that occurs from appeasing the non-smoking Stanford majority (which, by national standards, is *extremely* large).

Part IV: Original Analysis

In the two previous sections, I outlined what I determined to be the major lines of argumentation used by each side of the smoking ban debate. In doing my own analysis of the issue, it is impossible for me not to consider the above arguments. Most of the arguments possess a great deal of validity. My analysis, therefore, will end up partially as a weighing of each argument against its counterpart, and siding with the strongest (though it is clear that certain arguments take precedence over others). This cannot account for my final decision entirely, because like everyone else, my method of analysis has a built-in personal bias from which it is impossible to separate*, though I made sure that my analyses in parts II and III were as fair as possible.

That being said, I will put forward my opinion of the matter as a whole by starting with LLP 1a, which I consider to be the most vital argument of the issue. In the end, and in this argument in particular, I side with the smoking community, though with a stipulation. I think the current distance of 20 feet from the building was arbitrarily drawn, which is why it has become such a cause for complaint. I believe that 20 feet is not far enough based on an experiment I did with a smoking friend. I think 50 feet would be more appropriate (and further if it is a particularly windy day), but an academic study of smoke dissipation would be a worthwhile venture if it meant arriving scientifically at an accurate distance. So, under the assumption that 50 feet is an acceptable distance for the appropriate amount of smoke dissipation, I think that if a smoker were standing a full 50 feet from a building and his or her smoke *still* bothered someone working inside, it should be up to the bothered party to ask the smoker to move. My reason for this is not that I am apathetic towards those bothered by smoke, but that I am sympathetic towards a minority already overly discriminated against. But even before sympathy comes into play, I think that one person's annoyance or discomfort (after the 50 feet, or whatever length at which scientific discovery deems secondhand smoke no longer dangerous) is outweighed by the alienation of an entire minority population. It is well known that the percentage of smokers in the Stanford community compared to other communities is shockingly low. People disparage smokers already, and now that it has become legally acceptable and therefore socially acceptable to restrict their liberty (as seen in bars and restaurants), a slippery slope has begun to form. Beyond the scope of the Stanford campus, I think the bottom line is that the rights of smokers need to be respected. To allow the creation of "sufficiently remote" smoking zones and to ban tobacco everywhere else on campus is to allow ourselves to turn a minority of smokers into a minority of second-class citizens.

* I am not nor have I ever been a smoker, and I do think all smokers should quit for health reasons, but only of their own volition.

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