

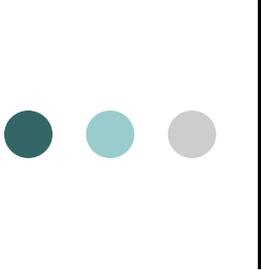
# Public Health Interventions: Liberal Limits and Responsible Stewardship

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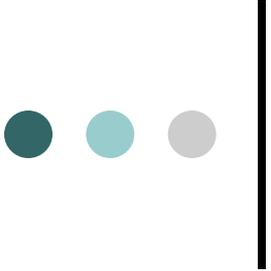


# Introductory Remarks

Approach in Nuffield Council on Bioethics, *Public Health: Ethical Issues* (2007) relies on:

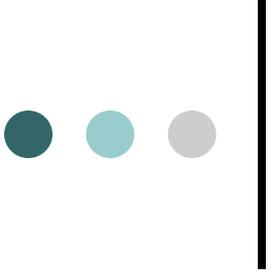
- a liberal ethic glossed with a notion of stewardship; *in conjunction with*
- an “intervention ladder” running from no intervention to elimination of choice.

Broadly speaking, while the liberal ethic militates against the use of coercion and the restriction of choice, stewardship justifies the guidance of choice (climbing the ladder).



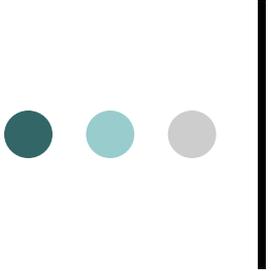
# Context

- Smarter regulatory approaches that utilise the full range of regulatory instruments (including “design” in products, places, and possibly people)
- A more sophisticated understanding of the significance of regulatory defaults and tilts
- The promise of a better public health intelligence to be derived from biobanking projects.



# Questions

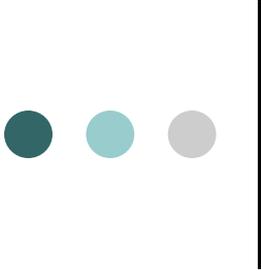
- (1) In this context, what limits does a liberal ethic set with regard to regulatory interventions for public health purposes?
- (2) How does stewardship redefine (if at all) such limits?



# Outline

1. Liberal limits.
2. Some test cases (from New York and elsewhere).
3. Stewardship responsibilities.

Paper does not deal with (i) impact of *all* changes in the regulatory environment; or (ii) responsibility of agents to one another where healthcare resources are limited.



# 1. Liberal Limits

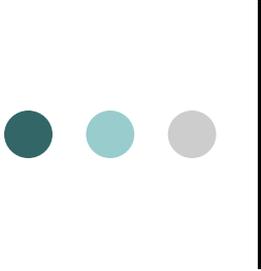
Mill's harm principle (Nuffield).

What counts as “harm”; who are the “others”?

***Focus on coercive forms of regulation.***

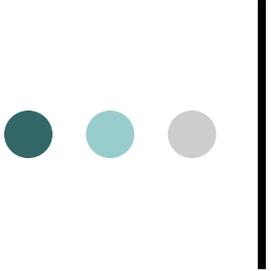
What about interventions that are not coercive (e.g., defaults and incentives)?

What about interventions that reduce the practical possibility of certain actions, or that use design, architecture, or coding so that they are not possible?



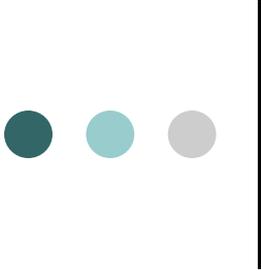
# Reformulating the Liberal Ethic

- Core claim is that regulators should respect the interest of competent adults in making their own prudential judgments (I should be permitted to decide what is in my best interest).
- Regulators should not try to channel regulatees towards particular (conformist) model of healthy living.



## 2. Some Test Cases

- Requirement that restaurants print the calorie count of meals on their menus.
- Customers remain free to make their own (now better informed) choices: hence, no violation of liberal principle.
- If regulators published such information, no problem for liberals; but, where the requirement is on an intermediary, is there a problem? Is non-disclosure a relevant harm? Do we need to rely on stewardship?

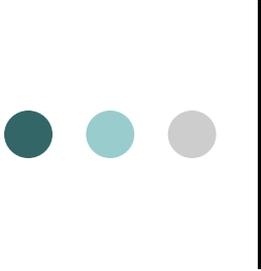


# Another test case: smoking bans

Arguably, a clear case: smoking in closed places is harmful to (non-consenting) others; prohibition backed by sanctions is justifiable. Zoning is a smart response.

If the harmfulness (to others) of smoking is in doubt, and if zoning is not practicable, we have a problem of 'prudential pluralism' (smokers/non-smokers, compare fliers/non-fliers).

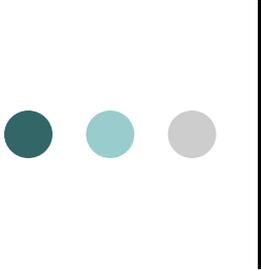
Where prudential judgments cannot co-exist, regulators must act on best view of 'acceptable risk'.



# Cases involving positive loading

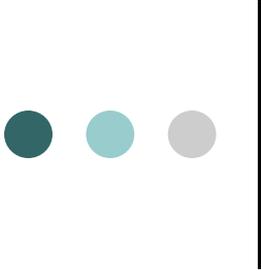
Financial incentives (eg tax breaks for cyclists) and support (eg free fruit in public places), bear on prudential calculation in a way that tries to channel regulatees towards a conforming (healthy) option. This is benign regulatory loading.

Regulatees can take or leave the loaded option without loss. If they decline the healthy option, there is no detriment to their ex ante situation. If they accept, it can be viewed as the price to be paid (by regulators) for a change of regulatee position.



# Cases involving negative loading

- Financial disincentives (eg tax on fast foods, alcohol, tobacco, and so on) are cases of negative loading.
- Some regulatees might de facto lose the option; they are priced out of the product; others retain the option but they are worse off.
- This violates the liberal principle.

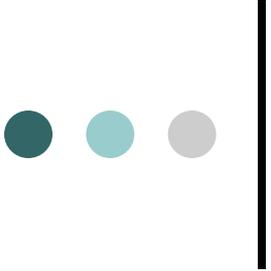


# Nudges

Defaults can be set so that they tilt or nudge regulatees towards the conformist option (eg in screening programmes, restaurants, building design etc). Opt out is the option. Liberals should ask:

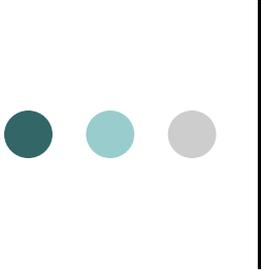
(i) is the opt-out option reasonably practicable; and

(ii) is the setting of defaults this way in line with public prudential preferences (another case of prudential pluralism)?



# Cases of techno- management

- Where regulators eliminate choice so that the only (practicable or possible) option is the approved healthy one.
- Fluoride in the public water supply. Nuffield reasoned that decision should be a local one (best response to prudential pluralism).
- Genetic fixes and slippery slopes.

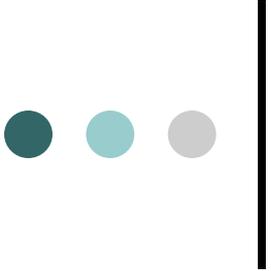


## 3. Stewardship

Many different takes on stewardship. For example, Nuffield includes (among other things):

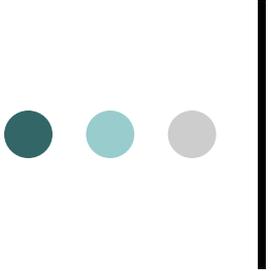
- Securing basic environmental conditions (clean drinking water, basic housing)
- Securing access to medical services
- Protecting and promoting the health of children and the vulnerable
- Reducing unfair health inequalities.

Is this compatible with liberal ethic?



# Stewardship: the Core Idea

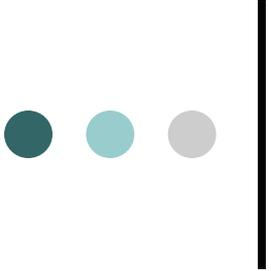
- I take the core idea of stewardship to concern securing the basic conditions (the essential infrastructure) for health.
- This would include clean water, housing, and medical services in the Nuffield list.
- No problem about protecting children and the vulnerable...or, is there?
- Liberal stewardship also compatible with tackling *unfair* inequalities.



# Protecting children

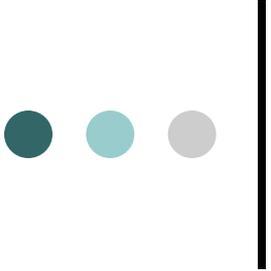
Arguably, NYC's programme to tackle obesity in children is compatible with liberal principles---and, indeed, required by paternalistic stewardship. But:

- (i) Who is the best judge of a child's best interests (physical and moral)?
- (ii) What if the measures have a collateral (illiberal) impact on adults? Can regulators plead a defence of double effect?
- (iii) At what age should children be left to make their own prudential decisions? (See HGC report on *Increasing Options, Informing Choice*, 2011).



# Operationalising Stewardship

- Arguably, the stewardship jurisdiction should be placed outside ordinary politics; regulators should be permitted to act in a rational, but precautionary, way to prevent infrastructural catastrophes; and they should be permitted to use non-normative regulatory designs.



# Summary

- In complex modern regulatory environments, the liberal ethic should focus, not on coercion, but on regulatory measures aimed at steering competent adults towards an approved healthy life.
- ‘Stewardship’ is not a convenient exception. Its focus should be on the responsibilities of regulators, particularly with regard to the protection of the infrastructure for health.
- Communities should participate in setting defaults and in determining acceptable risk.