

Conceptions of Freedom in the Regulation of Junk Food and Tobacco

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Abstract

This paper examines the regulatory disparities between the junk food and tobacco industries in the UK, focusing on the underlying conceptions of freedom that shape public policy. While both industries contribute significantly to public health challenges, tobacco is subject to far stricter regulations. Through an analysis of parliamentary debates within the House of Commons, the paper explores the application of positive and negative freedom in discussions of junk food and tobacco. I find that the presence of addiction in tobacco discourse is used to apply a positive conception of freedom, leading to more stringent regulations. Conversely, junk food discussions emphasise individual choice, aligning with a negative conception of freedom and resulting in softer regulatory approaches. This paper argues that these differing narratives on freedom contribute to the observed regulatory differences and suggests that emphasising the addictive nature of junk food could shift regulatory perspectives.

Keywords: Conceptions of freedom, Obesity Discourse in the UK, comparing discourse between junk food and tobacco, positive and negative freedom in discussions of tobacco and obesity, obesity regulation

Introduction

Smoking and [obesity](#) have caused significant health challenges in Western societies. However, while the tobacco industry has experienced far-reaching regulation, the [junk food](#) industry, which has significantly contributed to the obesity epidemic, has received far less regulatory attention.

More than a decade ago, obesity overtook smoking as the leading cause of preventable death in the UK (Ho *et al.*, 2021). Around a third of all deaths from cancer and cardiovascular diseases (Dubois, Griffith and Nevo, 2014) and around 10 per cent of all hospitalisations (Humphreys, O’Flaherty and Ambrosini, 2023) can be directly attributed to poor diet and the over-consumption of so-called ‘junk foods’ (Boaz and Temple, 2023). These numbers have surpassed the estimated 15 per cent of all deaths (NHS, 2023) and the estimated 5 per cent of hospitalisations caused by smoking (NHS, 2020). Further, both smoking and obesity rates are highest among socially [disadvantaged groups](#) (Azétsop and Joy, 2013; Hiscock, Dobbie and Bauld, 2015), thereby making them the two most prominent drivers of [health inequalities](#) (Adams, 2020). The parallels between the two industries further extend into the literature on market failure. Both industries create large externalities through public health costs and productivity losses, estimated at around GBP14 billion a year caused by tobacco (ASH, 2023) and as high as GBP65 billion a year caused by obesity (Griffith, 2023). These large externalities and other distorting practices, such as [asymmetric information](#) – which is especially problematic within the junk food industry (Cawley and Wen, 2018) – give way to a broad consensus within the literature classifying both industries as cases of market failure, which necessitate government intervention (Feliu *et al.*, 2019; Gilmore, Branston and Sweanor, 2010; Lobstein, 2008).

The improvement of public health outcomes, the reduction of health inequalities and the prevention of market failure are three prominent criteria governments use when deciding on potential regulation (Friel,

2021; Mercer *et al.*, 2021; Wallis and Dollery, 1999). However, despite satisfying these three criteria to a similar degree, tobacco is regulated much more strictly than junk food, with age limitations on cigarette purchases, rules on where adults are allowed to smoke, high taxes and even proposals on complete bans for coming generations (ASH, 2021; Franks, 2024). Meanwhile, most regulations on junk food have followed a much softer approach, with interventions being limited to subtle taxes, information campaigns in schools, and minor interventions on advertising aimed at children (Metcalf and Sasse, 2023). This raises an interesting question on why tobacco is so much more strictly regulated than junk food.

When it comes to more restrictive regulatory policy, the issue of freedom is often discussed as a constraint on what policymakers can legitimately enact, both within the public attitude and the theoretical literature (Christensen, 2021; Dawson, 2016; Diepeveen *et al.*, 2013; Morphet *et al.*, 2023). For the remainder of this paper, I will, therefore, explore whether the differences in regulatory attitudes between junk food and tobacco are informed by different [conceptions of freedom](#). I begin by outlining the concepts of positive and negative freedom, the assumptions underlying them, and how they differ as a constraint for policymakers. I then go on to analyse the debates on junk food and tobacco within the House of Commons to determine how each industry is narrated and which conception of freedom policymakers apply. Here, I argue that the presence of addiction leads policymakers to apply a positive conception of freedom within tobacco discourse while applying a negative conception of freedom to junk food. I find that this difference in conceptions of freedom aligns with the difference in regulation.

Conceptions of freedom in policymaking

Within [liberal democracies](#), policymakers are constrained by individual freedom due to legal frameworks and societal values prioritising personal autonomy (Dworkin, 2015). However, the degree to which this serves as a constraint depends on the conception of freedom that policymakers adopt. As first argued by Isaiah Berlin in his 1958 lecture, we can broadly distinguish between two different conceptions of freedom – a negative conception of freedom and a positive one.

Negative freedom refers to the freedom the individual has from any form of external interference by other human beings (Berlin, 2002). The key assumption here is that individuals know their own interests best due to having a special insight into their own good that no other actor possesses and are capable of advancing them (Christensen, 2021). To possess freedom in this conception is to be free from constraints (Collignon, 2018). Within this conception of freedom, permissible government intervention tends to be based on Mill's harm principle (Christensen, 2021), which posits that it is only permissible to restrict individual freedom to preserve the freedom of others (Mill, 2011). Policies that restrict individual freedom on the grounds of advancing that same individual's own health are viewed as unjustified under this principle. Think of a law to wear a seatbelt. Here, the subject is mandated to engage in a security measure that aims to protect the same individual that is mandated to do so, thereby violating Mill's harm principle. They are therefore argued to be overly 'paternalistic' – a term used where the state proscribes certain behaviours to its citizens, which are often argued to fail at treating people as agents capable of making their own choices (Dworkin, 2015).

Broadly speaking, there are two categories of [paternalism](#). 'Soft paternalism' refers to policies that aim to guide individual behaviour through information and small nudges, whereas 'hard paternalism' refers to policies that outright prohibit or prescribe certain behaviours, denying individual choice (Lund and Saebø, 2024). Within a negative conception of freedom, soft paternalism can be justified with adequate reasoning, whereas hard paternalism is impermissible (Sunstein, 2014).

The second conception of freedom that Berlin describes is that of positive freedom, which he defines as the individual's capacity to lead a self-determined life that aligns with their 'true self' (Berlin, 2002: 185). Within this conception, freedom requires more than simply the absence of external restrictions; it also necessitates the presence of certain characteristics – usually set by a collective, such as the state or the church – that society as a collective wants to strive towards (Berlin, 2002). An individual's choices and momentary desires are viewed as fallible, so they must at times be 'rigidly disciplined if [they are] ever to rise to the full height of [their] "real" nature' (Berlin, 2002: 179). Contrary to the negative conception, therefore, positive freedom often requires the state to intervene so that citizens can act in their higher, real or longer-term interest. Here, paternalism is not only less problematic; it might even be necessary for the state to force citizens to act in certain ways that they otherwise would be unable to do on their own. For example, think of a law that mandates compulsory education for children. While a child might prefer not to attend school due to the lack of immediate interest, the state enforces education to cultivate their long-term potential and ensure they develop essential skills and knowledge. This intervention reflects a positive conception of freedom, where the state guides individuals towards their higher self, enabling them to develop into autonomous adults. Although some critiques have been made to this model – most prominently the discussion about the omission of the role of enabling factors such as money in how individuals can acquire freedom (Cohen, 2015) – these do not obstruct the analysis of this paper as this research utilises Berlin's model as a theoretical lens to understand different perceptions of freedom and does not discuss the truth values of it.

I have now introduced the negative and positive conceptions of freedom. In the following section, I will go on to analyse the debates within the House of Commons to determine which conceptions of freedom are used within the debates on junk food and tobacco. Discourse informed by a negative conception of freedom will emphasise individual choice and freedom from external restrictions, often arguing for policies limited to soft paternalism or based on Mill's harm principle. In contrast, discourse informed by a positive conception of freedom highlights the concept of 'true' interest, critiquing individual choices and advocating for more restrictive policies, including those classified as hard paternalism.

Tobacco and junk food discourse in the UK

Consequently, it is possible that some of the regulatory differences are informed by different conceptions of freedom. In this section, I will analyse the discourse surrounding tobacco and junk food legislation within the House of Commons over the last decade. As the primary arena where health policy is shaped and debated while providing detailed transcriptions, it provides the ideal basis for analysing the regulatory attitudes within the UK. My analysis will draw from all the debates within the last decade related to the keywords 'smoking' and 'tobacco' and those related to the keywords 'junk food', 'obesity' and 'sugar' that explicitly discussed the issue of junk foods. I will consider debate contributions by all Members of Parliament, giving special weight to statements made by key actors within the policymaking process, such as the Secretary of State for Health. Not counting minor mentions and brief statements, within this timespan (2014-2024), there were 32 debates on tobacco and 19 related to junk foods, making smoking a more salient topic than obesity, despite the declining numbers of smokers and the growing cases of obesity (Baker, 2023; Revie and Mais, 2023). I will begin by analysing how each issue is discussed before then comparing them and analysing possible reasons for their differences.

Between 2014 and late 2019, tobacco discourse largely centred around the negative health outcomes and [social costs](#) associated with smoking. Out of the 17 debates within this period, 16 began by highlighting the deaths, health inequalities and social costs caused by tobacco, with these being the main criteria used to

advocate for government intervention. However, the broad consensus among MPs was that if people know about the risks associated with smoking, then it should be left 'up to them' (Hansard HC Deb., 13.10.2016). The government should only step in to enable citizens to make an 'informed choice' (Hansard HC Deb., 19.10.2017). Policies that went beyond informative measures were justified along the lines of Mill's harm principle, where intervention is justified to ensure the protection of another person's freedom (Sunstein, 2014). For example, the prohibition of smoking in cars carrying children was justified based on protecting children from second-hand smoke (Hansard HC Deb., 13.10.2016), and high taxes on tobacco were regularly justified by referencing the indirect harm that smoking has on others in taking up the NHS capacities that could have otherwise helped other people (Hansard HC Deb., 30.10.2018). This argumentation aligns with a negative conception of freedom, which places high value on individual choice and only views restricting it as legitimate when it causes harm to others. Despite already some MPs invoking a positive conception of freedom, mentioning addiction as a reason why the government must enact stricter measures (Hansard HC Deb., 19.07.2018), these were infrequent and were not mentioned in the argumentation of key government actors.

However, in late 2019, the structure of tobacco discourse changed. Whereas the previous discourse began by outlining the negative health outcomes and social costs, now each of the 15 debates on tobacco began by emphasising addiction or nicotine, with the previously focused health outcomes and social costs being reframed as a cause of this dependency. Further, the presence of addiction is increasingly used to undermine the framing of tobacco consumption as a free choice, stating that 'nobody chooses to smoke 60 cigarettes a day. Addiction forces them to do so' (Hansard HC Deb., 16.04.2024) and that 'there is no choice because one is addicted' (Hansard HC Deb., 09.05.2024). Policymakers also frequently referred to statistics such as 'three-quarters say that if they could turn back the clock, they would not have started' (Hansard HC Deb., 16.04.2024) to highlight tobacco consumption as something that goes against the citizen's 'true' interests, which would be to not smoke and to never even have started. These are clear denials of the assumptions that underlie a negative conception of freedom, namely of individuals' capability to pursue their own best interests. The Secretary of State for Health even framed government intervention in the tobacco market as offering those affected the 'freedom to live longer, healthier and more productive lives' (Hansard HC Deb., 16.04.2024). This is an application of a positive conception of freedom, where the government must step in to advance the individual's 'true' interests, thereby achieving real freedom for them. Freedom here is not the absence of restrictions but instead has a positive connotation where freedom requires the presence of certain things deemed valuable by society – in this case, health and the capacity to make free choices; things that smoking and nicotine are said to take away (Hansard HC Deb., 16.04.2024).

On the other hand, for the entire duration of the junk food discourse, policymakers applied a negative conception of freedom, emphasising individual choices and the need to preserve personal freedom. Similarly to the tobacco discourse before 2020, debates began by emphasising the health detriments that junk foods and obesity can create, combined with the social costs such as loss of productivity and public health costs that are associated with it. The subsequent discourse on policy intervention then centres around how the government can encourage or help individuals to make 'better' or 'healthier' choices, with the Under-Secretary of State for Health arguing that the government's goal is to 'ensure that people can make the healthy choice' (Hansard HC Deb., 13.04.2021). Propositions of more restrictive policies are only made infrequently, and mostly by opposition members. Within the argumentation or proposals of central government actors, they are completely absent. Like the tobacco discourse before 2019, discussions of hard paternalist policies were limited to arguments around protecting children (Hansard HC Deb., 16.01.2018). For adult members, however, the extent of intervention that policymakers deemed acceptable besides providing

information was to make ‘the best choice the easiest one’ (Hansard HC Deb., 07.02.2018). This focus on individual choice and the opposition to restrictions that go beyond information and slight nudges reflect a firmly held negative conception of freedom within the discourse on junk food.

These two different conceptions of freedom align with the different regulations that are made between the two industries. Between 2014 and 2019, when the discourse surrounding tobacco was informed by a negative conception of freedom, the legislative output that can be classified as hard paternalism was only aimed at preventing harm towards children, while legislation affecting the general population was limited to information campaigns, nudges and support for people wanting to quit (ASH, 2021). The shift towards a positive conception of freedom then aligned with the proposal of the smoke-free 2030 agenda set to prohibit the sale of tobacco products to all citizens born after 2009 (Balogun and Harker, 2023), which marks a shift towards a hard paternalist policy attitude even for the adult population. Meanwhile, the legislative output regarding junk food, such as information campaigns and minor tax policies aimed at nudging individuals to make better choices and other proposed policies, such as providing more information in schools, informative apps that teach healthy eating and more funding for sports clubs (Hansard HC Deb., 27.02.2024) entirely consists of soft paternalist policy. As the two conceptions of freedom align with the differences in regulation, they provide a possible explanation for these discrepancies.

Conclusion

Junk food and tobacco have both been shown to have similarly strong negative health effects while also inflicting large social costs on society. Yet, tobacco is regulated much more stringently. Within this paper, I explored how the curious regulatory disparities between junk food and tobacco are connected to underlying conceptions of freedom and government intervention. Through an analysis of the discourse within the House of Commons debates on junk food and tobacco, I found two things. First, that a positive conception of freedom is indeed associated with more stringent regulation; and second, that the application of a positive conception of freedom in the case of tobacco is largely connected to its addictive characteristics. Interestingly, while junk food has also been linked to addiction (Cawley and Wen, 2018; Garber and Lustig, 2011), this is only highlighted in the case of tobacco, whereas junk food discourse remains centred around individual choice. Although the addictive potential of nicotine is clearly absent in the case of junk food, there are numerous other factors, such as economic barriers (Azétsop and Joy, 2013) or the physical lack of healthier local options (Janatabadi, Newing and Ermagun, 2024) that go against junk food consumption being a free choice. The findings of this research, therefore, suggest that if we want to advance interventions in the junk food industry, it may be valuable to place greater and more salient emphasis on the addictive potential of junk food, thereby warranting a shift towards a positive conception of freedom. Future research might explore how this change in discourse might be achieved by looking into the reasons behind the change in discourse that occurred within the tobacco industry.

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Glossary

Asymmetric Information: A situation in economic transactions where one party has better information than the other, leading to an imbalance in decision-making. This often results in market inefficiencies, such as consumers being unaware of the health risks associated with the purchase of products such as junk foods.

Conceptions of Freedom: a>Different philosophical conceptions of what it means to be free. The most prominent distinction is between positive freedom (freedom to) and negative freedom (freedom from).

Disadvantaged Groups: Populations that experience social, economic or political disadvantages and which therefore often face additional challenges in health, education and employment.

Health Inequalities: Avoidable and non-genetic differences in health status experienced by different population groups, due to factors such as socioeconomic status, ethnicity or gender.

Junk Food: Foods that are high in calories but low in nutritional value, typically containing excessive and unhealthy amounts of salt, sugar, unhealthy fats and additives. This usually includes processed snacks, sugary beverages and fast foods.

Liberal Democracies: A form of government that combines representative democracy with the protection of individual rights and freedom. The latter constrain leaders in their ability to impose policies that infringe on these personal freedoms without special legal justification or consent.

Obesity: A medical condition characterised by excessive body fat accumulation and typically defined as by a Body Mass Index (BMI) of 30 or higher.

Paternalism: Derived from the Latin word pater, meaning "father", it refers to a policy approach where governments limit individual autonomy or make decisions on behalf of individuals in the name of their good, often justified by the belief that it protects or benefits them, even if it goes against their personal preferences.

Social Costs: The total cost of an economic activity, including both private costs incurred by producers and consumers and external cost borne by external parties not directly involved in the transaction. Examples often include negative social impacts such as environmental pollution or private health issues that incur costs on society as a collective.

To cite this paper please use the following details: Knoth, D. (2024), 'Conceptions of Freedom in the Regulation of Junk Food and Tobacco', *Reinvention: an International Journal of Undergraduate Research*, Volume 17, Issue 2, <https://reinventionjournal.org/index.php/reinvention/article/view/1701/1369>. Date accessed [insert date]. If you cite this article or use it in any teaching or other related activities please let us know by e-mailing us at Reinventionjournal@warwick.ac.uk.