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Responsibility and Children's Rights: The Case for Restricting Parental Smoking

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This chapter has two parts, the first part conceptual and the second applied. The conceptual focus of the chapter outlines the nature and content of the responsibilities that adult members of a society have toward children. The subsequent applied part of the chapter looks at the issues of responsibility for children in the context of parental smoking. We are interested in two questions. First, what responsibilities do we have toward children given their status as bearers of rights? Second, does a commitment to children's rights entail a responsibility to ensure that children enjoy a smoke-free home environment? This chapter argues that given certain reasonable and compelling assumptions, there are *prima facie* grounds for undertaking to protect children from second-hand smoke, including limiting parental smoking. We expect that most people will find this conclusion surprising and that many people will disagree with it. However, given how compelling we find the initial assumptions to be, we find ourselves driven to this controversial conclusion. We invite readers who strongly disagree with the conclusion to consider which of our initial assumptions might be given up, or on what grounds our *prima facie* case for restricting parental smoking might be defeated.

Children's Rights and Adult Responsibilities

We are interested both in parental responsibilities for particular children and in state responsibilities for children in general. In addition, we are

interested in the responsibilities that apply to adults as members of communities—whether or not they are parents—that are separate from the responsibilities of the state (although we see that the responsibilities held by individual adults are connected to the responsibilities of the state). This chapter will assume that children have rights and will explore the question of responsibilities for children that follow once we think of children as the bearers of rights. For example, one of the implications of thinking about children as rights bearers is the transformation of parental rights from property rights to stewardship rights—rights that are constrained by the good of the interests of the child.¹

This chapter will restrict itself to the plausible assumption that children have rights. The views in it do not rely on any further moral or political views. We will not assume that there are moral obligations to promote the overall good, to provide a minimum level of income or welfare for all citizens, or to redistribute the overall wealth to promote a more egalitarian society. Instead, we are interested in seeing what responsibilities we have for children when we begin with a fairly minimal set of moral commitments such as those specified by rights against harm.

The Direct Duty Not to Infringe Rights

One kind of obligation we all have toward children is not to infringe their rights. This is a simple matter of what follows from having a right. If a child has a right not to be harmed, then you have a corresponding obligation not to harm the child. It is hard to see how this right differs, in any interesting way, from that of the adult right not to be harmed, morally speaking.

When we think about the standard counter-examples to consequentialist moral reasoning, our intuitions do not change with children occupying the spot of the potential victim. Thus, if we had a version of Judith Thomson's famous transplant case (in which we are asked to consider the moral permissibility of killing one person to save four others) that featured a five-year-old boy as the potential involuntary organ donor, it is not as if we would all agree that, in this case, it would be okay to proceed, to chop up one very young person to save four others.² In fact, many people would think it is worse to kill one person to save four others if the one were a child. There are a variety of explanations for the intuition that it is worse. We might worry that the child has parents who will suffer, or we might think the child has more at stake in terms of the amount of life he has left to live—but we will not explore that issue in any detail here. What is relevant for our purposes is the idea that it is not a different *kind* of case because a child is involved. Further, the explanation of what would make the act

wrong does not seem that different. It is part of common-sense morality that there are constraints that protect persons from acts of harm, even when the acts could bring about more good overall. Rights are the basis of these constraints. Thus, if children have rights not to be harmed, then the simplest and easiest way to demonstrate the responsibility we have toward children is the duty not to infringe these rights. I have this responsibility to my own children, but it is also owed to children generally. But do my rights-based responsibilities to children end here? We do not see quite how this can be so. In subsequent sections of this chapter we look at some more interesting and controversial implications of children's rights, including a look at children's exposure to second-hand smoke as an instance of a violation of the right against harm.

The Responsibility to Educate Children about Their Rights

The rights of children generate at least two distinct sorts of moral obligations. The first is the most obvious. It is the obligation we all have to refrain from violating those rights. The second are the duties that at least some people have to protect and promote those rights. Where the first sort of duties apply equally to all persons, the second sort of duties may be less evenly distributed, generating stronger obligations, for example, for those in a direct custodial or stewardship role. Here we are thinking not just of parents but also teachers, grandparents, community leaders, and so on. This second sort of obligation follows from the ways in which children as right bearers differ from fully competent adult right bearers. One difficulty with children as rights bearers is that they may not know that they have rights. What a right amounts to is the justification of a moral claim or demand upon others. But if a right bearer is unaware that she has a right, she is not in a very good position to make claim (even if she would be justified in doing so). Thus, we would argue that if children have rights, then it follows that we have an obligation to educate children about rights. This aspect of moral education falls primarily on parents. But since parents can fail to educate children, the task cannot be left to parents alone. Teachers and community leaders (or, when a child is not in the custody of his parents, the representative of the state—likely the child's social worker and/or foster parents) must educate the child regarding her rights to bodily integrity and autonomy. For example, the Ontario Association of Children's Aid Societies (oacas) undertakes to see that children in its care are aware of their rights. There is a list of the rights children in care have and the list is available in a few different formats and levels, so that the description of the rights matches the ability of the child to understand.³

But educating children will not be enough. Sometimes these efforts will fail. We may tell children about their rights, but they might forget or fail to understand. Other times a child may know his rights are being violated but not know what to do. Finally some children may be too young to understand or to stand up for their own rights. What follows, then, is a third-party moral responsibility to pay attention to when children's rights may be being violated.

The Third-Party Moral Responsibility to Pay Attention to Infringements

We also have duties to see that the child's rights are not infringed. This falls again primarily on parents as part of the stewardship task, but as parents are, sadly, most likely to infringe children's rights, it cannot be left to them alone. We argue that we have a shared responsibility to interfere when we see a child's right being violated.

The oacas lays out the grounds on which citizens ought to report suspected abuse or neglect of children.

A person who has reasonable grounds to suspect that a child is or may be in need of protection must make the report directly to a children's aid society and that people who work with children who suspect that a child is a victim of child abuse or neglect must report these suspicions to the cas; failure to do so could subject the person to a fine. The Act defines the term "child in need of protection" and sets out what must be reported to a children's aid society. This definition (cf sa s. 72(1)) is set out in detail on the following pages. It includes physical, sexual and emotional abuse, neglect and risk of harm.⁴

This legal obligation bears most directly on those who work closely with children, but as a moral obligation its reach extends much further. Whatever the legal upshot, surely it seems morally right to think we have an obligation to report suspected infringements of children's rights. Most often we discharge this shared responsibility by means of the state through agencies such as the Children's Aid Society and empower that group to act when they have compelling evidence of neglect and/or abuse. But this cannot discharge our responsibility entirely. Now, it could if we employed a vast army of social workers to visit families and check up on children—and some people seem to think we ought to move in just that direction. However, it would make for a fairly unpleasant society and it is hard to imagine how this would be consistent with even a small degree of family autonomy. Insofar as we favour less government in some areas, it is because we think we have very strong moral responsibilities. In political philosophy



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there is a tendency to think that we must choose between justifying a society that adopts a large state apparatus as a means of seeing that our collective or shared responsibilities are met or settling for a society in which each person decides for him- or herself whether and how to help others. There exists a space between government and autonomous family units, and it is at the level of community. One answer to the question of how we discharge our shared responsibilities is that we contract out some of this work to an agency that will be more efficient at seeing that accusations of child abuse are properly investigated and that alternative housing arrangements can be made for children who must be removed from their family homes. But we do not get rid of all of our responsibility in this way. Some remains attached to individuals. Thus, those who see children suffering at their hands of their parents but who wait for the authorities to step in are making a serious moral mistake.

In conclusion, we have argued that from the claim that children have rights three further duties follow. First, we have a direct duty not to infringe the rights of children. Second, we have a duty to educate children about their rights. Third, we have a further duty to protect children from having their rights infringed. In the following section we explore the practical implications of these duties in the case of children's rights and the harm that follows exposure to second-hand smoke.

The Case of Children's Rights and Second-Hand Smoke

We will now move to consider what follows from adult responsibilities for children's rights in the case of childhood exposure to tobacco smoke. This is a useful example because our views as a society have changed as we have become increasingly aware of the dangers of second-hand smoke. If I have a right not be harmed, or subjected to a significant risk of harm, and inhaling second-hand smoke poses such a risk, then that harm makes permissible rules restricting the smoking behaviour of others. Thus, you may not smoke in restaurants in many, or most, North American cities unless the restaurants provide a separately ventilated enclosed smoking area. However, there is nothing to prevent you from inviting a large group of smokers into your home and keep all the windows closed while children are present. Likewise, you may subject children to long car trips (all the while securely buckled in) while smoking for the duration of the trip. It is difficult to see what would justify imposing such a risk of harm on children if children are protected by the right not be harmed and if legislation to protect

adults from environmental tobacco is justified. If harm is the basis for the justification of restrictions in the case of adults, then it seems such grounds ought to extend to children. There are three ways in which the case for legislating to protect children is stronger than the case to protect non-smoking adults. These are as follows:

1. Children typically have less autonomy than adults in terms of controlling their own movements. Where tobacco use is allowed, children often have no way of protecting themselves from exposure to second-hand smoke. Young children cannot leave the house alone while the parent smokes.
2. Children, especially very young children, are usually less aware than adults of the dangers of second-hand smoke. Further, even those children who are aware of the dangers may not be able to successfully argue against their parents' wish to smoke in the home.
3. The risk of harm from exposure to smoke is greater in the case of children. We will address this third point in some detail.

The Harmful Effects of Exposure to ETS on Children

Since the mid-1970s, the negative effects of second-hand smoke, or Environmental Tobacco Smoke (ets), have been documented and reported to the general public.⁵ Second-hand smoke may be defined as "the smoke that individuals breathe when they are located in the same air space as smokers."⁶ It includes the smoke the smoker exhales, the smoke emitted by the cigarette when it is not being actively smoked by the smoker, and the smoke that emits from the cigarette while the smoker draws on it.⁷ More than forty components of second-hand smoke are known to cause cancer.⁸

Although there is little doubt about the negative effects of ets, the exact causal relationship between ets and the harms associated with it are sometimes unclear. However, there is sufficient evidence to establish ets exposure as a causal factor for some serious health problems, such as increased asthma-related morbidity in children, infections of the lower respiratory tract, increased fluid in the middle ear, reduced lung function, and reduced oxygen flow to tissues.⁹ For other risks, the causal link between ets exposure and the health problems associated with it are less certain.

Children are vulnerable to ets exposure through the air, but ets also holds risks for them when they are exposed in utero, either because the mother smokes or because she is in an environment in which others are smoking. The effects on a fetus when the mother is exposed to ets are

somewhat less well understood than effects of the mother herself smoking, but both are known to carry notable hazards for the fetus. When the mother smokes during her pregnancy, she is at greater risk for miscarriage or still-birth, or for other complications during her pregnancy.¹⁰ In infants of both mothers who smoke and mothers who are exposed to second-hand smoke, the same pathological arterial change that causes arteriosclerosis (hardening of the arteries) has been seen in their umbilical arteries.¹¹

Also, babies whose parents smoked (either their mothers or their fathers) while they were in utero are at greater risk for being born underdeveloped and/or with low birth weight (1bw).¹² Neonates exposed to ets are at a greater risk for succumbing to sudden infant death syndrome (sids) before the age of one.¹³ There is also increased risk for infants exposed to smoke in utero to be born with underdeveloped lungs.¹⁴ Because of their diminished oxygen and nutrient supplies, which have been compromised by ets exposure, intellectual deficits and behavioural problems may become apparent over time in these infants.¹⁵

Toddlers who are exposed to ets are at greater risk for increased fluid in the middle ear, ear infections and hearing problems, tonsillitis, meningococcal infections, upper respiratory tract irritations and infections, which result in cold symptoms and sore throats, hoarseness, wheezing, headaches, fussiness, and greater difficulty recovering from colds.¹⁶ Exposure also increases children's risk for lower respiratory tract infections such as bronchitis and pneumonia, and reduces lung function.¹⁷ Children's risk for asthma is also greatly increased, and in children who do have asthma, the incidence and severity of attacks increase with ets exposure, requiring more visits to the hospital for treatment.¹⁸ The risks for health problems such as lung cancer and other childhood cancers and leukemia, for heart disease due to unfavourable cholesterol levels and initiation of arteriosclerosis, and cataracts also increase for children who are exposed to ets.¹⁹ The reduced lung function observed in some children who have been exposed to ets results in reduced oxygen flow to tissues, the effects of which are comparable to observed effects of anemia, cyanotic heart disease, or chronic lung disease.²⁰ Overall, the Ontario Medical Association reports that "exposure to second-hand smoke represents a serious pediatric problem which has been estimated to double the risk of infection and death in children."²¹ For adolescents, exposure to ets carries not only the risks of the above health problems but also the greatly increased risk that they will start smoking themselves.

Exposure to ets holds many health risks for anyone who is exposed to it, but the risks are greater for children because of their smaller body mass.

Because of their smaller size, it takes less exposure to absorb more toxins than a fully grown adult,²² although there is no evidence of any level of second-hand smoke being safe.²³ In addition, young children may be at increased risk for harm from ets because their immune systems are less protective.²⁴

How widespread is the problem? According to Physicians for a Smoke Free Canada, in 1996–97 nearly 1.6 million Canadian children under the age of twelve were regularly exposed to tobacco smoke at home. This amounts to one-third of all children in this age group. What do these organizations recommend? According to the Ontario Medical Association, given the known and serious health impacts of second-hand smoke on children and adolescents, and also to the child in utero, steps must be taken to eliminate smoking in all places frequented by pregnant women, young children, and adolescents. The Ontario Medical Association concludes:

Elimination of exposure to second-hand smoke in infancy is especially important as early lung development appears to be a critical determinant of respiratory health. Children of parents who use tobacco may be exposed to second-hand smoke levels in the home which may approach the levels found in bars, creating exacerbated respiratory hazards for them. The only suitable control measure is tobacco use outside the home. Parents must not ignore their responsibility to protect their children from involuntary exposure to second-hand smoke, especially exposure which will increase the children's risk of second-hand-smoke-related death in the future. Based on current information on ventilation systems, second-hand smoke can persist indoors for many hours after tobacco use. Parental tobacco use in another room in the house is therefore similar to having urination allowed only in the deep end of a pool.²⁵

The Ontario Association of Children's Aid Societies requires all fostering and adoptive parents to sign a pledge promising that the home will be smoke free. The rationale is based on the known health dangers of second-hand smoke exposure, especially for children under two years of age, as well as the known risk for sids, which is increased twofold when the caring adult smokes. Corresponding to the responsibilities discussed in the first section of our chapter, we can see there are three categories of responsibility adults have toward children regarding exposure to second-hand smoke: the direct obligation not to smoke in front of children, an obligation to prevent others from doing so, and an obligation to educate children both about the dangers of second-hand smoke and their rights.

In the following section we examine legislation and policies regarding smoking in the home.

Legislation and Policies Prohibiting Parental Smoking in the Home

Legislation limiting smoking in public places has become widely accepted and endorsed over the past two to three decades. The effort to make anti-smoking measures acceptable to the public began with educating the public first about the harms of second-hand smoke (as well as the harms to those actually smoking), and then implementing legislation incrementally, gradually including more and more public places where smoking often occurred. People seem largely to agree that legislation against smoking is justified on the basis that those who choose not to smoke ought not to have to suffer the harmful effects of smoking because of those who do. Couched in terms of rights, the rights of non-smokers are thought to take precedence over the rights of others to smoke, on grounds that the former group has a right to health that the freedom to smoke does not override. But although the decision to implement legislation against smoking in public places for others' protection is widely accepted, it seems that people generally do not agree with moving legislation into the home. Here we examine the arguments for and against legislating against smoking in the home.

A primary reason for suggesting that we ought to legislate against smoking in the home is to protect children who will be exposed to second-hand smoke. Proponents argue that given how harmful we know ets is for children, and since they rarely are given the choice of whether or not they remain in an environment that exposes them to these risks, someone else should step in to protect their interests when their parents will not. The parents are viewed as failing to live up to an obligation they have to their children. Presumably, people hold that the courts ought to be the one to do this because there are few others with the authority to dictate to parents how they raise their children.

Generally, both in Canada and the United States, courts do not address the issue of parental smoking around their children unless the issue is explicitly brought before them by one of the parents. Most often, the situation is brought before the courts by a parent who is filing for custody and who argues that the child ought to be placed in a home where she will not be exposed to ets. This argument has been received in various ways by judges to whom it has been presented. Some have allowed the fact that a parent smokes to weigh heavily on their decision; others have warned that it could have an effect on subsequent decisions about custody, if the parent continues; and still others have ruled that they will not base their decision on the fact that a parent smokes at all. Taking a position that is viewed as more radical, one judge in Cleveland independently raised the issue of parental smoking without its having been raised by either of the parents.²⁶

Opponents of this position rarely deny the risks that smoking poses to children's health but argue that these risks do not give the state the right to invade the privacy of people's homes and interfere with the way that people choose to raise their children. Especially in North America, people are reluctant to get involved in the upbringing of other people's children, perhaps because there is a wide variety of opinions about how children should be raised. For example, some prefer to school their children at home, rather than send them to public schools; some refuse certain kinds of health care for their children, on religious grounds. But we do limit other sorts of harms that parents can impose on children.

An argument that is advanced for greater court intervention is that parents' choice to expose their children to ets is similar to child abuse.²⁷ Eric LeGresley notes that an important distinction between child abuse and smoking is that child abuse is a criminal offence, whereas smoking in the presence of children is not.²⁸ However, the argument may be strengthened if proponents are taken to mean that choosing to expose one's children to ets is a form of child abuse in that it is making a conscious decision to do something that one knows is harmful to one's children.

LeGresley points out the difference, in the eyes of the courts, between child abuse and smoking in that the former is categorized as a case for criminal law, while the latter would be an act against civil law and would thus be couched in terms of negligence. The child or someone on the child's behalf would have to demonstrate that the parent failed to fulfill a duty of care owed to the child, that this failure resulted in some harm to the child, and that, furthermore, there was no good reason to excuse the parent's failure to meet the duty owed to the child.²⁹

This points to a problem for those who wish to see judges become more proactive about preventing children's exposure to ets in the home. That is, someone has to bring the case to the courts, since it is unlikely the children themselves would. Typically, family members are reluctant to litigate against each other except in extraneous circumstances, such as custody battles, and people outside the family generally do not involve themselves in other families' private affairs. Currently, although people seem to feel strongly enough to endorse legislation against smoking in public places, studies have shown that they do not support legislating for change inside the home.

When the matter is brought before the courts, judges who refuse to give the matter of ets exposure any weight at all hold a distinction between the *risks* of ets exposure and the actual harm that results from ets exposure. On the basis of this distinction, the judge requires not only that there

be a risk from ets exposure but that there be good evidence that ets exposure *will* in fact result in some demonstrable harm to the particular child in the particular case at hand.³⁰ There is a great deal of evidence to support the risks that ets exposure holds for children, in general. But some argue that given the impact of the judge's decision, and the many other important factors that must be considered when determining whether a child should/not be permitted to be with her/his parents, such as the effect on the family's emotional well-being, judges ought not to base their decision on a mere *risk* of harm. The judge should take into account ets exposure only if it can clearly be shown that it does in fact negatively impact on the health of the child in the case in question, for instance, if the child has asthma, which is known to be aggravated or exacerbated by ets exposure.

Another factor that seems to affect the weight judges are willing to give to ets exposure is whether it is visitation or custody that is at stake. Judges generally seem much more willing to deny visitation rights to a parent because of his inability to refrain from smoking in the child's presence than to refuse him custody rights on that basis. Two possible reasons have been suggested for this difference.³¹ One is that there are more factors to be considered in custody cases, and so the weight of the parent's smoking is lessened. Another is that given the relatively small period of time parents applying for visitation would have to refrain from smoking, refusal may be given a much more negative weight by the courts than if the parent who has primary custody cannot refrain from smoking, since it is a larger undertaking for her not to expose the child to it.

Although judges do not take a firm and consistent stance on the issue of parental smoking in the home, legislators and policy-makers have begun to take measures to prohibit it in places such as adoptive parents' homes and foster homes. Britain has recently passed legislation making smokers ineligible to adopt or provide foster care to children.³² In Canada, regulations are much less stringent. For example, according to the Children's Aid Society of Eastern Ontario, smoking would not rule a person out as a potential foster parent, although the person may be required to restrict her/his smoking to certain areas of the house, maintaining others as smoke-free.³³

Opponents often raise issues related to individual adult rights and freedom. In the case of children the relevant rights are the autonomy rights enjoyed by parents. However, once we think of children as also protected by rights against harm, then the parental smoker's right does not include the right to smoke in the home or car or to take the child into other smoke-filled environments. Some may worry about state intervention in the home, yet the concept is not a new one. The homes that we live in and the cars that

we drive are strictly regulated. There are building and electrical codes, regulations banning the use of certain products such as cribs painted with lead-based paint, regulations that determine who can and cannot drive an automobile, and laws against domestic violence and child abuse. In addition, the often-invoked spectre of “smoke police” knocking on the doors of family homes need be no more real in this case than it is in the case of legislation requiring child safety seats, smoke detectors, or fences around backyard swimming pools.

Is this position on a child’s right to be free from second-hand smoke fundamentally anti-liberal? We do not think so. It is no different from the justification for the many restrictions we impose on adults smoking because of our belief that second-hand smoke is dangerous to other adults. No public health rationale exists for providing less legal protection from environmental tobacco smoke (ets) exposure in the home than in public places.

The more we are convinced that we ought to treat adult persons with as much autonomy as is consistent with maintaining a minimum level of good across the board, the more we are convinced that we need to pay significantly more attention to children. One might argue in the opposite direction. For example, one could conclude that heavy income redistribution is required in a just society given that it would be too intrusive in family to guarantee equal starting points. But if the requirements regarding the treatment of children are rights-based, then paying them back after the fact through redistribution of wealth misses the mark in two different directions. First, it is not clear what amount of money would make up for a miserable childhood—the goods may be not very commensurable. Second, if one has a choice between violating a right and paying restitution versus not infringing it in the first place, the far better choice is not to infringe.

So far we have argued that a child’s rights to not be harmed can ground restrictions on parental smoking, though we leave open what form those restrictions might take. From a child’s right not to be harmed follows obligations on adults not to smoke around children and obligations to see that other adults also fulfill their obligations. In what follows we discuss obligations that fall on the general public regarding children’s rights to a smoke-free environment.

*Obligations on the General Public to Provide Children
with a Smoke-Free Environment*

While policy-makers and legislators have been somewhat reluctant to invade the privacy of people’s homes to protect children from ets exposure, much progress has been made to protect their interests outside their homes.

Legislation has been passed in many Ontario municipalities prohibiting smoking in many places children are likely to occupy.

Regulations against smoking in public places began with restricting smoking in the workplace, as that was identified as the place non-smokers were most exposed to second-hand smoke.³⁴ In many cases, restricting smoking in the workplace also served to reduce the amount of smoking by employees and resulted in some people's choice to stop using tobacco products altogether. Indirectly, then, workplace smoking restrictions are credited with reducing children's exposure to ets because of their effects on smokers' use of tobacco products, overall.³⁵ Measures that have had a more direct effect on children's exposure to ets are policies and legislation that regulate smoking in public places where children are likely to be. The Tobacco Control Act (1994) prohibits smoking in such places as hospitals and health care facilities, pharmacies, nurseries, schools/colleges/universities, bus shelters, enclosed shopping malls and retail establishments, and video amusement arcades.³⁶ Eating establishments of any kind were omitted from the Tobacco Control Act, and the decision to allow smoking or not in them has been left to municipalities. Perhaps most notably in Ontario, Toronto has amended its bylaws to make all restaurants and entertainment facilities non-smoking unless they can provide separately ventilated enclosed areas, which are not to exceed 25 percent of the restaurant or bar seating area,³⁷ a choice many municipalities have followed. Other places—among them Waterloo, Ontario—have chosen to make their eating establishments 100 percent smoke-free. The disadvantage to allowing a ventilated area to remain is that there may be no restrictions on who may enter the smoking area. So if a parent, for example, brings his or her child into a restaurant to eat and chooses to sit in the smoking area, there is nothing to prevent him or her from taking the child in too. Thus, although the separate area protects the other patrons, it does not help children who are there with a smoker. Even in smoking areas that restrict access to adults, there may be little enforcement, because we are often reluctant to interfere with parental choices. Another way the problem has been addressed is to make the establishment smoke-free until a certain hour of the day, after which time children are unlikely to be there.

The approach to limiting the amount of ets children are exposed to has largely been through public policy, which has become increasingly restrictive about where people can smoke. Besides taking a prohibitive approach to address the problem of second-hand smoke, public policy measures have also heavily relied on public education, although there seem to be few studies to test the accuracy of people's beliefs, and more specifically

those of smokers, about the severity of the effects of second-hand smoke on people's health.

Conclusion

We have argued that there are grounds for limiting parental smoking around children and these grounds are connected to the responsibilities adults have toward children that derive from a child's right not to be harmed. These grounds form a *prima facie* case against parental smoking and in favour of legislation, but we do not suggest here how these grounds might be balanced against competing considerations. We have not considered all relevant objections nor have we examined or endorsed specific forms of legislation in this area. Even so, our conclusions may strike some readers as clearly incorrect. If so, we invite those skeptical of legislating against the exposure of children to second-hand smoke to reconsider some of our starting assumptions. One may decide in the end that children do not have a right not to be harmed after all. Or one could argue that an adult's right not to be harmed does not extend to exposure to environmental tobacco smoke and that laws prohibiting smoking in bars, restaurants, workplaces, etc., are similarly unjustified. All we have shown is that given a commitment to children's rights and the belief that legislation against environmental tobacco smoke to protect adults is justified, it follows that legislation to protect children can be similarly justified.

Notes

- 1 See Samantha Brennan and Robert Noggle, "The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice," *Social Theory and Practice* 23, no. 1 (1997): 1-26, for some discussion of this idea.
- 2 Judith Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 135.
- 3 See the Winning Kids website, sponsored by the Children's Aid Foundation, at www.fosteradoptwinningkids.com/website/eng/index.php.
- 4 **[Please add reference for note (see p. 100) and for bibliography.]**
- 5 "Ontario Medical Association position paper on second-hand smoke," oma Committee on Population Health (November 1996), <http://www.oma.org.phealth/2ndsmoke.htm>; "Cigarette smoke and kids' health," Physicians for a Smoke-Free Canada (n.d.), http://www.smoke-free.ca/Second-Hand-Smoke/health_kids.htm.
- 6 "oma position paper on second-hand smoke."
- 7 Ibid.



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- Please supply date and publication details where indicated missing in bold.
- Notes with bold numbers are not in the biblio. Please fill in publication details and add.

- 8 Ibid.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 "May 2001: Second-hand smoke kills. Let's clear the air. World Tobacco Day 2001." [Date/Pub?]
- 14 Ibid.
- 15 "Cigarette smoke and kids' health," Physicians for a Smoke-Free Canada.
- 16 "Environmental Tobacco Smoke: A danger to children," American Academy of Pediatrics. [Date/Pub?]
- 17 Ibid.
- 18 Ibid.
- 19 Ibid.
- 20 Physicians for a Smoke-Free Canada.
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- 25 "oma position paper on second-hand smoke."
- 26 Associated Press, "Not around kids, you don't," *The Globe and Mail*, September 13, 2002.
- 27 "Protecting children from passive smoking: The risks are clear and a comprehensive strategy is now needed," *British Medical Journal*, 5 August 2000. [Author?, volume?, page?]
- 28 LeGresley, Eric, "Smoking in the home: Social and legal implications." [Date/Pub?]
- 29 Ibid.
- 30 Ibid.
- 31 Ibid.
- 32 "Smokers rejected as adoptive parents," *The Journal* 7 (1993): 3. [Author?/pub details.]
- 33 "Foster Care Frequently Asked Questions," *Winning Kids*, Children's Aid Society of Eastern Ontario. <http://www.fosteradoptwinningkids.com/website/eng/foster/questionsd.php>.
- 34 "oma position paper on second-hand smoke."
- 35 Ibid.
- 36 Tobacco Control Act (1994), Province of Ontario, 9(1).
- 37 "oma position paper on second-hand smoke."

