

THE PEOPLE VS. PATERNALISM

Building a consumer-led movement against
lifestyle regulation

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Summary

- Mancur Olson explained in *The Logic of Collective Action* (1965) that the free rider problem and the paradox of participation discourage rational consumers from taking collective action to oppose policies that disadvantage them.
- The lack of grassroots opposition to ‘nanny state’ policies from vapers, gamblers, drinkers, etc. seems to bear out this analysis.
- Proponents of government paternalism have overcome the problems Olson identified by securing funding from state agencies or by offering selective incentives to their supporters.
- Since consumers are unlikely to mobilise to fight for collective benefits, a grassroots movement opposing lifestyle regulation must rely on selective benefits, but this avenue has not been adequately explored by policy entrepreneurs.
- This paper outlines what such a grassroots organisation would look like and how it could be established.

Foreword

Suppose I opened a stall where I sold 100 pints of home-brewed beer to 100 people, for a price of £5 per pint. If these people's maximum willingness to pay is, on average, £10 per pint, the average customer realises a consumer surplus of £5 (the difference between what they would have been prepared to pay, and what they actually pay). Total consumer surplus in this 'economy' is £500.

If my reservation price (the price below which I would not be prepared to sell) is £2.50, I realise a producer surplus of £2.50 per pint: the difference between the price I am actually paid, and my reservation price. My total producer surplus is £250.

If the government forcibly shut down my beer stall, I would be worse off, because I lose my £250 in producer surplus. But that is not the only, and not even the largest economic effect of this sales ban. The main effect is the destruction of the consumer surplus that 100 people would otherwise have enjoyed. In aggregate terms, the main victim of this ban is not the producer/seller, but the buyer/consumer.

Now, there may well be legitimate reasons for closing down a beer stall. But it would be fundamentally dishonest if an opponent of the beer stall claimed that shutting it down would only hurt the seller, while leaving consumers unaffected. There are at least two sides to every economic transaction, and provided the transaction is voluntary, each side involved must gain from it, or at least believe that they will. So it would be impossible to impede voluntary, mutually beneficial transactions in a way which only hurts one side of the bargain.

Yet public health campaigners typically act as if doing so were not just possible, but the norm. They present the sale of goods and services they disapprove of as an activity which only benefits the seller. The consumer is sometimes presented as a passive victim who is tricked into buying things against their will – but more commonly, the consumer is simply airbrushed out of the transaction altogether. There are no consumers in the world of public health. There are only sellers. To whom they sell remains a bit of a mystery. They just sell.

If only the seller benefits from a transaction, then logically the seller is the only one who gets hurt if the transaction is impeded. Thus, public health campaigners do not see themselves as paternalists who wish to tell other people how to live their lives. They see themselves as campaigners against ‘the industry’. Their typical framing of the debate is ‘industry vs public health’. The consumer is notable by their absence. They appear later, when the negative side-effects of the goods and services in question are discussed, but they are not there when the economic transaction takes place. They only exist in their role as NHS patients.

By shifting all the emphasis onto the seller, and eliminating the consumer, public health activists are able to tap into a powerful popular resentment: anti-capitalism. Authoritarian paternalism may not be popular, but anti-capitalism definitely is.

This is a problem for classical liberals. Classical liberals believe that consenting adults should be free to live their lives as they please, provided that they are not harming anyone else. As John Stuart Mill said in his seminal book *On Liberty* (1859):

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it [...]. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs

not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences.

Public health activists do not usually try to argue against this notion. What they do instead is frame the debate in such a way that Mill's argument does not fit in. Mill talks about '*a person's conduct*', but in the standard public health rhetoric, there is no 'person' whose conduct could be legitimate or illegitimate. There are just 'the industry', and 'public health'. You are either on one side, or the other. There is no third option. You cannot be 'on the side of consumer sovereignty', because there is no consumer. If you oppose public health measures, you are on the side of 'the industry'. And why would you do that? Why would you defend 'the industry', and its profits? The only possible explanation is that you must be a gun-for-hire, a paid shill in the industry's service.

If John Stuart Mill were alive today, he would no doubt also be accused of being a paid shill in the service of Big Tobacco, Big Alcohol, Big Food, etc.

'The industry vs public health' is a wholly inadequate way of framing public policy debates on lifestyle-related matters, and a deeply disingenuous rhetorical trick (although, sadly, an effective one). The correct framing is consumer sovereignty vs paternalism. And yet unfortunately, when it comes to the actual policy formulation process, 'the industry vs public health' seems a lot more appropriate. The people who participate in public policy consultations really will often be either public health activists, or industry representatives. And the latter will have a financial stake in the policy outcome they seek: they are not necessarily modern-day followers of John Stuart Mill.

Consumers are not usually represented at the policy-making stage. As Dr Christopher Snowdon shows in this Discussion Paper, this is not because consumers are unaffected or indifferent. It simply follows from basic Public Choice economics. Consumers are a large, heterogeneous and dispersed group, so much so that they are not really a 'group' at all. They are thus hard to organise politically.

Public Choice economics often stops at this stage. It can tell us why some groups are politically better represented than others, but it then just takes these constraints as given. Dr Snowdon goes beyond the confines of conventional Public Choice economics. He shows us that it is possible to break out of the Public Choice trap, and how this has been done before.

Hopefully, it will be done again, whether in the way Dr Snowdon suggests or in some other way.

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The depressing logic of collective action

Mancur Olson's analysis of pressure groups in his 1965 book *The Logic of Collective Action* explained why small, concentrated interest groups often prevail over large, diffuse interest groups (Olson 1971). A textbook example is the trade association that wants tariffs to protect its members from competition. Members of the trade association stand to make significant gains from the tariffs, and are therefore highly motivated to lobby for them. Millions of consumers will be disadvantaged by the resulting higher prices, but the costs are widely dispersed, and so they do not *as individuals* have a strong enough incentive to incur the costs of mobilising in their collective interest. Moreover, if a political entrepreneur decides to form a lobby group to represent the interests of consumers,¹ individual consumers will benefit from its existence regardless of whether they participate or not. Unless the group is very small, the participation of any given individual will make little difference to its prospect of success and the individual will have little control over the group's strategy; thus, the larger the group becomes, the less incentive each individual has to join. This leads to *the paradox of participation* in which 'rational actors will not participate in collective action to achieve common goals' (Whiteley 1995: 212). By contrast, members of small interest groups are likely to mobilise because the benefits of a change in policy are worth

1 Individuals have an incentive to form such organisations since they will be enjoy the social benefits of being a leader, but there are fewer incentives to be a follower (Salisbury 1969).

more to them and their participation will have a material effect on the group's prospect of success.

Olson's book became a classic text in the Public Choice literature and largely overturned the conventional view of interest group politics most often associated with David Truman (1951), which viewed civil engagement in a pluralist democracy as a self-correcting system in which latent groups would mobilise if opposing factions got too strong or made outrageous demands. Power might switch this way or that way, but equilibrium would always be restored. Olson's theory suggested that this was not necessarily so and his second book, published in 1982, argued that the growing dominance of small interest groups led to national decline (Olson 1982).

A Public Choice account of pressure groups most obviously applies to the kind of small, financially self-interested groups that were the focus of George Stigler's seminal paper 'The Theory of Economic Regulation' (Stigler 1971), which heavily influenced scholars such as Peltzman (1976) and Becker (1983). In the UK, it helps explain the existence of industry-funded groups such as the British Soft Drinks Association, the Food and Drink Federation, the Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST), the Betting and Gaming Council and the Scotch Whisky Association. It does not, however, explain why these groups have tended to lose the policy battles they have fought in recent years, such as over the sugar tax, smoking ban, plain packaging, food advertising and minimum unit pricing, nor does it explain – on the face of it – the existence of paternalistic 'public health' groups who have successfully lobbied for such policies despite having no obvious collective benefits for which to fight.

The existence of paternalistic policy entrepreneurs such as Action on Smoking and Health (ASH) and Alcohol Focus

Scotland can, in fact, be explained by self-interest insofar as they are typically funded by the state (Snowdon 2012).² These groups are not only incentivised to win their political campaigns but, because their funding depends on continuous activity, they are driven to find new campaigns to fight – thereby leading to permanent disequilibrium in the area of lifestyle regulation. As Olson might have predicted, neither grassroots paternalists nor grassroots consumers are actively involved in any significant way in political activism on either side. Campaigns for ‘nanny state’ policies in the UK can be broadly characterised as being fought between two small, concentrated interest groups: industry on one side and professional ‘public health’ activists on the other. This suits the ‘public health’ side since they can portray their opponents as being interested only in profit and it appeals to a bias that Kristian Niemietz calls ‘anti-producerism’.³ Niemietz asks us to consider the following hypothetical survey questions, both relating to the same policy:

Do you think politicians have a right to tell us what we are, and what we are not allowed to eat and drink? Or do you think we should be free to make our own choices, even if this means that some of us will make choices that are bad for our health?

And...

Do you think multinational food and drink corporations should be allowed to make unlimited profits by aggressively marketing unhealthy products, fuelling an obesity crisis and bankrupting our NHS? Or do you think governments should sometimes prioritise the nation’s health and well-being over private profit interests?

2 See *The Logic of Paternalistic Collective Action*, Christopher Snowdon (forthcoming).

3 ‘The case against anti-producerism’, *IEA Blog*, 4 March 2024 (<https://iea.org.uk/the-case-against-anti-producerism/>).

By and large, the public will give a more sympathetic hearing to the second (anti-producer) framing than the first (anti-consumer) framing. As Joseph Schumpeter (1954: 234) once observed, there is an 'ineradicable prejudice that every action intended to serve the profit interest must be antisocial by virtue of this fact alone'. This framing, along with the lack of collective action from consumers, gives paternalistic pressure groups a significant political advantage.

A new hope

For all the ‘people versus profit’ rhetoric, millions of people are disadvantaged, to a greater or lesser extent, by policies which make their lifestyle choices more expensive, less attractive and less convenient. And yet a Public Choice analysis suggests that so long as a small cadre of paternalistic pressure groups, supported by activist-academics, can maintain their funding, they will chip away at the freedom of adults to eat, drink, vape, smoke and gamble almost without end and that consumers, despite being many in number, will barely lift a finger in protest.

For those who support individual freedom and free markets, this is not a happy conclusion to reach. However, Olson’s theory also offers a glimmer of hope. Although he argued in *The Logic of Collective Action* that individuals will not generally mobilise in large numbers to fight for collective benefits, ‘a separate and “selective” incentive will stimulate a rational individual in a latent group to act in a group-oriented way’ (Olson 1971: 51 – emphasis in the original). If a group offers benefits to its members – and to its members *only* – it can overcome the free-rider problem. Such selective incentives may have no direct connection to the political cause the group fights for, and some who join the group to acquire the exclusive benefits of membership may have little interest in the cause itself. They are nevertheless incentivised to pay their dues, not so much for what the group can do for them as members of a collective than in service of what it can do for them as individuals.

For example, the small, concentrated public health groups that lobby for lifestyle regulation are supported by much larger organisations, such as the British Medical Association, the

Royal College of Physicians, the British Dental Association and Cancer Research UK. Religious groups such as the Salvation Army and the Evangelical Alliance have supported campaigns against gambling and alcohol. The groups that spearhead such campaigns are invariably very small and are usually funded by the state or by one wealthy individual, but they make a conscious effort to build a coalition of civil society organisations to create a ‘swarm effect’.⁴ The broader coalition is made up of groups that have a significant number of grassroots members (or donors) but which were not formed to lobby for lifestyle regulation. The British Medical Association is a trade union. Cancer Research UK is primarily a medical research organisation. Professional bodies such as the Royal College of Physicians offer their members networking opportunities, advice, insurance and access to specialist resources. Charities attract donations, in part, by offering the ‘warm glow’ that comes from acting philanthropically (Andreoni 1990). As Olson observed, such virtuous feelings are not available to free riders and can therefore be viewed as selective incentives (Olson 1982: 20, note). Many charities also offer their members or donors exclusive opportunities (for example, the Evangelical Alliance promises to ‘introduce you to like-minded Christians from across the UK’ for £3 a month).

For the leaders of these groups, joining a campaign for minimum alcohol pricing or banning disposable vapes is an adjunct to their work. Political activity of this sort is essentially a sideline made possible by the resources generated from offering their primary service to members or donors. In most cases, a group’s participation in the campaign will not extend much beyond signing a joint letter or responding to a public consultation, but there is strength in numbers, and they can tell policy-makers, with

4 ‘Smoke and mirrors’, *Guardian*, 19 July 2006 (<https://www.theguardian.com/society/2006/jul/19/health.healthandwellbeing>).

some justification, that they represent hundreds or thousands of people. Such organisations benefit from this political activity, usually at low cost, by gaining publicity and speaking out about issues that may be close to their members' hearts.

Selective incentives in action

It is more difficult to find civil society groups who *oppose* paternalistic lifestyle regulation. Although *ad hoc* coalitions against certain policies have been known to spring up, they tend to involve industry bodies defending their professional interests. For example, plain packaging for tobacco was opposed not just by the tobacco industry but by the Association of Convenience Stores, the European Carton Makers Association and the Intellectual Property Lawyers' Association. It would come as no surprise to a Public Choice economist to see these small, concentrated lobby groups mobilising in their own self-interest.

Larger, grassroots opponents of the nanny state are fewer in number. One partial example is the Campaign for Real Ale (CAMRA). Formed in 1971 to promote traditional brewing, it now has over 100,000 members. Although it has lobbied for lower beer duty in the on-trade and against some pub licensing restrictions, it attracts members through offering selective incentives, such as discounted copies of its *Good Pub Guide*, free copies of *BEER* magazine, £30 of real ale vouchers and discounts on beer festivals. Beer drinkers may be entirely apathetic about the group's political agenda and still find it worthwhile to pay their subscription. CAMRA is by no means a libertarian organisation (it supported the smoking ban and has been flaky on minimum pricing⁵), but it has been an ally of liberals against paternalism on several issues pertaining to beer and pubs.

5 It initially supported minimum pricing, but changed its mind in 2013 after members voted against it. Its current position is that if a minimum price were to be introduced it should be at a rate of no more than 50p per unit.

Beyond paternalistic public health issues, there are several examples of large membership organisations whose income relies on selective incentives defending the interests of consumers. The Consumers' Association, a charity formed in 1957, is mostly funded by the sale of *Which?* magazine and campaigns against scams, dishonest advertising and other sharp practices by businesses. The Automobile Association (AA) and the Royal Automobile Club (RAC) attract members by offering motorists roadside assistance, but also have public affairs teams that have campaigned for lower fuel duty and more funding for pothole repairs. The British Association for Shooting and Conservation (BASC) is a more straightforward lobby group, but it does not rely on straightforward donations. Its 150,000 members pay a subscription to receive a bi-monthly magazine, free entry to events, exclusive offers, expert advice, discounted insurance and other perks.

By contrast, *collective incentives* appear to be insufficient to generate grassroots activism against coercive paternalism on any scale, as a Public Choice economist would expect. Drinkers' Voice, founded in 2017 as 'a grassroots organisation representing people who enjoy drinking alcohol as part of a healthy lifestyle'⁶ has reported no income and no employees for several years and appears dormant. People Against Sugar Tax, founded in 2015, also appears to have been dormant since 2020. WeVape, formed in 2020 to represent e-cigarette users, has a 'very small budget', according to its website.⁷ The New Nicotine Alliance, an independent charity for people who use safer alternatives to cigarettes, reported an income of £2,618.43 in 2022/23.⁸ Freedom2Choose, a smokers' rights organisation formed in 2007,

6 <https://x.com/drinkersvoiceuk>

7 <https://we-vape.org/donate/>

8 <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/5052176/accounts-and-annual-returns>

currently has an annual income of less than £100.⁹ Despite the real threat of greater regulation and taxation faced by drinkers, vapers and smokers in the past decade, very few consumers have been prepared to give their time or money to the handful of grassroots organisations that are prepared to stand up for them.

While this could be interpreted as revealing a lack of opposition to paternalistic lifestyle regulation, ‘public health’ groups have been no more successful in attracting donations from the public, as an economist might expect from organisations that have neither collective nor selective incentives to offer. In 2021/22, voluntary donations to ASH, Alcohol Focus Scotland and Consensus Action on Salt, Sugar and Health (more commonly known as Action on Sugar) amounted to £5,809, £2,545 and £7 respectively. Scottish Health Action on Alcohol Problems, the Institute of Alcohol Studies and ASH Wales received no donations from the public at all. The National Obesity Forum declared an income of £12 in 2015/16, £0 in 2016/17 and was removed from the charity register in 2018. The UK Health Forum, Smokefree Southwest, Alcohol Concern, and the UK Public Health Network were all disbanded when government grants were withdrawn.

Most of these groups have only ever been able to function thanks to government funding, including from the devolved administrations.¹⁰ It is unlikely that more liberal pressure groups would be given money by the state and so, in the absence of wealthy benefactors or industry funding, how could selective incentives be used to mobilise drinkers, vapers and other groups of people who are threatened with greater regulation

9 Personal communication.

10 The exceptions are the National Obesity Forum (which received grants from the pharmaceutical industry), Consensus Action on Salt, Sugar and Health (which has received large donations from from the Marcela Trust) and the Institute of Alcohol Studies (funded by the Alliance House Foundation, a temperance group that leases property in central London).

and taxation? It is safe to assume that the median consumer is not highly ideological. The most politically engaged individuals might be persuaded to join a pressure group if they were offered the opportunity to meet likeminded people or receive regular emails, but the experience of organisations such as Freedom2Choose and Drinkers' Voice show the limitations of this as a means of recruitment and fundraising.

A more fruitful approach would be to emulate CAMRA, the BASC and many other organisations by offering financial incentives in addition to exclusive social gatherings. Take vaping, for instance. If a politically engaged individual chose to form The Vapers' Association, they could contact e-cigarette manufacturers and retailers, requesting that they give their members a discount of 10 or 20% off their stock (or off selected items from their range). The annual savings to an individual who takes full advantage of this deal would exceed the annual membership fee of, say, £50. The companies would benefit from the deal since it would encourage loyalty to their brand, encourage consumers to switch from other brands and help them promote certain products. Businesses offer targeted discounts all the time for these reasons. Looking at my mobile banking app, I see that I can currently take advantage of 62 cashback offers for everything from rental cars to theme parks. In principle, there is no reason why the hypothetical Vapers' Association should limit itself to offering deals only on vaping products, but they are the obvious place to start.

The Drinkers' Union could be run along similar lines. Members would be charged an annual fee which could effectively be recouped with interest by taking advantage of discounts on beer, wine and spirits offered by participating pubs, clubs and manufacturers. This is already the successful model of CAMRA, albeit restricted to deals on real ale. Members could be given a selection of vouchers when they start or renew their membership,

to be used in participating retailers in the on- and off-trade, or they could be sent regular discounts by email or via an app over the course of the year.

The Gambling Society could follow a similar model, offering discounts on race days to members, plus exclusive perks such as VIP seats offered at random or as part of competitions. Likewise, a society for people who like eating food (The Food Club?) could focus on the out-of-home sector, with discounts in restaurants and takeaway outlets. Such offers are already widely used in this competitive industry and there may be opportunities to offer vouchers on certain products in supermarkets, subject to negotiations.¹¹

In addition, each of these organisations could offer newsletters, magazines, exclusive social events and anything else that an enterprising and innovative leader can think of. It is not my aim here to offer a detailed plan for what each group could do to attract members. The point is that with selective incentives it should be possible to create a self-sustaining grassroots consumer group that is independent of both industry and government. An organisation with 10,000 members paying £50 a year would have a budget of £500,000. That would be enough to retain a small, full-time staff to carry out its day-to-day business and to engage in public affairs on issues of interest to the membership. Among those 10,000 members there would doubtless be some who never engage in political activity at all, but there would be others who would respond to the invitation to email their MP or sign a petition, and there would be a few who would be keen to take a more active role.

11 Discounts on multiple purchases of food deemed to be high in fat, sugar or salt will soon be illegal, but price discounts on single purchases will not.

Practical considerations

It bears repeating that while the leadership of such an organisation is likely to be politically engaged, the membership is likely to be less ideological. The political purpose of the organisation would be to push back on paternalistic lifestyle regulation, and that will be enough to put some consumers off from joining since many people are comfortable with a certain degree of nannyism. But other consumers will be broadly opposed to such regulation or lukewarm or apathetic. It is important, therefore, that whoever leads the organisation picks their battles carefully and is not a fanatic or extremist. They should not get involved in political issues beyond the organisation's remit and should not be aligned with any political party. On the other hand, the organisation should be explicitly pro-liberty and its constitution should be written in a way that ensures that it does not drift in a statist direction, which has unfortunately been the fate of the Consumers' Association, the European Consumer Organisation, and Liberty.

Among the issues that any leader of such an organisation will have to grapple with is how to provide selective incentives to users of potentially risky products in a socially responsible way. VIP clubs for gamblers already exist and are not uncontroversial. It is legal to offer gamblers free bets, but these would need to be handled carefully, if at all, to avoid the accusation of encouraging problem gambling. The first, obvious step would be to ensure that all members of the group are aged 18 or over. A further step would be to agree a code of conduct that all partners are happy with. The organisation and its partners must live up to the highest standards if they are not to sully each other's reputation.

Since it is illegal to offer price discounts on tobacco products, I see no way of providing financial selective incentives to members of a smokers' rights group. I have omitted a cannabis users' pressure group from this paper for a similar reason.

A further consideration involves the role of industry. Offering price discounts necessarily requires negotiation and some degree of partnership with business. This should be mutually beneficial, but industry should play no part in the running or financing of the organisation. Since 'public health' paternalism mostly involves controlling consumers via the regulation of industry, the interests of consumers and industry are often aligned, but not always. For example, much of the licensed trade is in favour of minimum unit pricing, and elements of the tobacco industry are in favour of restrictions on e-cigarette flavours. Any organisation that speaks out against the nanny state is liable to be portrayed as an industry 'front group' by unscrupulous journalists, as has happened to WeVape¹² and the New Nicotine Alliance¹³ (neither of which has received industry funding), but such smears can be minimised by maintaining full financial independence. The kind of consumer organisation I have in mind should accept no donations or grants from industry and should have no one from industry on its board. Business dealings with companies who have a stake in the organisation's political agenda should be limited to the kind of transparent financial transactions that would be open to any firm, such as sponsorship of events or advertising in the group's magazine.

Finally, there is the question of how to begin. This is perhaps the most difficult issue of all. Assuming that there are individuals

12 <https://www.theguardian.com/society/2023/jun/18/lobbyists-with-links-to-big-tobacco-fund-pro-vaping-facebook-campaigns>

13 <https://www.thebureauinvestigates.com/stories/2020-03-20/public-health-england-paid-group-linked-to-big-tobacco/>

who are sufficiently engaged and energetic to take the job, setting up a large membership organisation would require them to work for free in the short term. Creating a website, negotiating with businesses and letting the public know about the new group will require non-trivial resources before a penny can be collected in membership fees. It is possible that the idea will never take off, or that membership never reaches the critical mass required for the organisation to become a going concern. The prize would be leadership of a significant civil society organisation, but the endeavour is not risk-free and it would require somebody who is prepared either to accumulate debt in the short term or find a generous donor (from outside the related industry) to provide seed funding.

Conclusion

There are practical obstacles to overcome in harnessing selective incentives to create a consumer-led movement against lifestyle regulation, but none is insurmountable. The aim of this paper has been to use the lessons of Public Choice theory and the experience of other pressure groups to show that creating a grassroots movement in opposition to coercive paternalism is possible and that the voice of a large, latent group of consumers need not go unheard.

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