

**University of Alberta**

Smells in the Library: A Moral Perspective on Homeless People and  
Library Policy

by

Sara Marie Kundrik

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This thesis is dedicated with love to my grandfather Peter Hanhart.

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## Abstract

The issue of homeless persons as patrons of public libraries is not a new one, having generated much literature in the field of library science and information studies. Most of this work, however, deals with the social and legal implications of the presence of homeless people, and the policies that can arise when attempting to deal with the unique problems they bring. This thesis will attempt to ethically analyze policies for controlling offensive behaviours or states, specifically odours, that disproportionately affect homeless people. Concerns about welfare, responsibility, and social liberties and rights will be used to argue that the expulsion of homeless persons from public libraries because of smell or similar offensive, but not seriously harmful, behaviours or states is immoral. My conclusion will be that the harm these policies cause to homeless people, both to their welfare and to their rights, will outweigh the possible benefits to other patrons

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## 1. Introduction

Today, there are more and more homeless people using public libraries, and they bring with them a special set of problems for librarians and other patrons<sup>1</sup>, such as panhandling, odor and pest problems (like lice and bedbugs), intoxication, and large numbers of possessions. The Joint Free Public library of Morristown, New Jersey attempted to deal with an escalating problem with homeless patrons by creating a new list of policies to bar some of the more problematic behaviours and conditions, including offensive body odour. One of the homeless men these policies were trying to deal with, Richard Kreimer, ended up suing the public library in 1991, and won (before the public library appealed).

In this thesis I intend to examine the moral permissibility of the types of policies that the Morristown public library was seeking to enact. I will be considering policies concerning smell as a prime example of policies that seek to address a behaviour (or condition or state) that is not seriously harmful, but is still disruptive enough to perhaps warrant interference. However, my moral analysis of behaviours or states in the library and the ethical permissibility of various policies for dealing with these behaviours or states is by no means limited to those concerning smell. The most important focus of this thesis is the moral impermissibility of library policies that attempt to restrict behaviours or states that are not harmful, but still a nuisance, when the behaviours or states are exhibited

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<sup>1</sup> The current convention is to call people who use the library “customers” as opposed to the older term “patrons.” Since my argument is partially premised on the library being one of the few institutions where one’s ability to pay does not affect the service one receives, unlike a business, I will be using the older convention of “patrons” to keep this key difference in mind (Wagner).

by patrons who cannot change easily or at all. Unpleasant smell is a good, and fairly well publicized, example of a problem state that library policies seek to address, though other behaviours or states, such as noise, are subject to my type of analysis.

I will, more specifically, be evaluating policies against nuisance behaviours or states that disproportionately disadvantage homeless patrons of libraries. Though they are not the only patrons who smell poorly or engage in other nuisance behaviours or states, and by no means do all homeless patrons create problems, homeless individuals are of special concern because their social position leaves them especially vulnerable to discrimination, and their situations often render them unable to curtail their own unfortunate behaviours or states. Just as my moral analysis can be used to look at behaviours other than smell, so can it be applied to other patrons who are not homeless. I choose to focus on policies that disproportionately disadvantage homeless people because they are an example of the type of citizen to whom I believe we will most wish to guarantee library access, so they are among those we must be most concerned about banning through policies. The particular case study of homeless people and smell policies is merely one of many situations that I could be using to illustrate my concerns about library policies.

This thesis is not a look at any particular library policy, because my interest is in the broader moral issues surrounding discriminatory policies that prohibit nuisance behaviour that may not be avoidable. Neither will I be collecting, comparing, or critiquing large groups of policies, nor looking at

professional codes of ethics for library science. I will draw on library science literature to initially provide some sense of the ethical principles and intuitions already being used in the discussion. The bulk of the content will be philosophical theories and ideas I will use to evaluate library policies. The sort of philosophical ethical analysis in which I am engaged seeks to find plausible, basic ethical principles (such as the golden rule) and then evaluates the policies at hand in terms of its adherence to the ethical rules I will present as being plausible and useful. Plausible ethical rules are those that can fit with our moral intuitions (so not leading to it being morally permissible to randomly and savagely attack strangers for example) and can withstand outside scrutiny, which usually consists of applying the rules to various theoretical situations to make sure it is logically consistent and does not end up condoning any moral horrors. Much evaluation of moral theories tends to be very abstract.

Similarly, this is not meant as an attack or criticism of library staff, or the library boards that set policy. It is merely a suggestion of some other types of considerations, and the reasoning behind them, that could be of interest to those wanting to ensure that their library policies are just and ethical.

I will be arguing that the makers of library policies should be concerned with the particular importance of libraries for certain patrons who engage in behaviours, or exhibit states, that could be found irritating, and to the difficulty these patrons might have in avoiding the irritating states. I will be looking at general ethical principles concerning how to treat the welfare and rights of individuals, particularly when they conflict with others', which address such

questions as what role Egalitarian notions and concerns about responsibility should have in ethical thought. I will be arguing that such principles should make us wary of making strong policies against annoying behaviours and states of people when it is primarily the disadvantaged who will be displaying them, and when there are patrons who cannot help but display the offending behaviours or states.

I will end up concluding that policies that do not take these concerns into account are likely to be immoral. For the particular case of smells, this means that the policies should be sensitive to the fact that not all citizens will be able to help the way they smell, and that those offenders without access to showering or laundry facilities may be among those who need the library the most.

Just because I conclude that certain kinds of smell policies will be immoral for reasons given here does not mean that I think it is always wrong to try and control nuisance behaviour in a library with policies that ban patrons. If consideration were given to the concerns brought up here, it may even be possible to construct an ethical policy trying to control smell. I am not making a blanket statement about the permissibility of all policies; I am trying to shed light on the type of reasoning we should use to determine the permissibility and shape of library policies. My particular conclusion for smell policies that are not sensitive to whether patrons are in a position to conform to them in particular will end up being that the harm these policies cause to homeless individuals, both to their welfare and to their rights, will outweigh the possible benefits to other library patrons.



## 1.1 Ethics and Policies

The reason the Kreimer case was successful in court was not a matter of the perceived unfairness or immorality of banning<sup>2</sup> someone based on their smell, but of the vagueness and subjectivity of the policies that were put in place to deal with the problem. In particular, there were three rules that were found to be too vague to “pass constitutional muster” (Conable 31).

Rule number one: “Patrons shall be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, study, or using library materials shall be asked to leave the building” (Conable 31).

Rule number five: “Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by staring at another with the intent to annoy that person, by following another person about the building with the intent to annoy that person, by playing Walkmans or other audio equipment so that others can hear it, by singing or talking to oneself or any other behaviour, which may reasonably result in the disturbance of other persons” (Conable 31).

Rule number nine: “Patrons shall not be permitted to enter the building without a shirt or other covering of their upper bodies or without shoes or other footwear. Patrons whose bodily hygiene is so offensive as to constitute a nuisance to other persons shall be required to leave the building” (Conable 31).

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<sup>2</sup> The duration of the banning will vary from institution to institution, and will depend on the severity of the offense. Some bans may be for a day, a year, or a permanent suspension (Daily Mail Reporter; Remback). My work will cover bans of all duration.

All three rules were found to be too vague, unreasonable, and subjective for an enact-able policy. What Robert W. Geiszler concludes from looking at the Morristown case is that the “purposes of the Morristown Library may have been perfectly acceptable. It was the means of accomplishing these purposes that was unacceptable. The real lesson is that in the drafting of policies and rules, the language employed must be clear” (Geiszler 65).

So while the Morristown court case brought some concerns over the presence of homeless people in public libraries to light, it was not a ruling that tried to explain when it is *moral or not* to ban those whose smell is offensive. It warns public library policy makers against vague wording in policies, but the debate over the moral implications of the issue remains undecided. Already there are suggestions in the library literature on ways to appropriately word policies that would ban the offensive patrons without the legal problems of Morristown, such as agreeing on a set number of patron complaints that would allow a ban, or specifying a radius in which the smell would need to be easily detectable by a large number of people (Willis 59).

The Morristown Public library’s policies immediately bring up questions around the ethics of policies that 1) are specifically targeting, or have the side effect of disproportionately affecting, a certain group of people and 2) end up barring access to a public institution that is noted for its inclusiveness. To deal with both these concerns, I will be using various ethical theories to develop a framework that will highlight the moral concerns tied up in making and evaluating library policies of a certain type as described above. While I will be

using smell and policies concerning smell (the “smell policies”) as the primary examples in this piece, the framework I will develop can be applied to any annoying behaviour in the public library that is not covered in the criminal code of Canada (which prohibits such behaviours as physically attacking other patrons), or covered in city bylaws (which deal, for instance, with panhandling).<sup>34</sup> So, while my concerns and conclusions will not be limited to policies that deal with smell, I will be concentrating on smell as a primary example of a discriminatory policy that has the effect of, or at least the great potential to, disproportionately disadvantage a vulnerable group.

## 1.2 Review of Professional Library Literature

Before going directly into the ethical analysis of the policies, I will give a general overview of the professional literature in the library and information science community. This will illustrate some of the moral thinking already taking place concerning policies of the type I am interested in and the need for the systematic analysis I propose. While these pieces are not couched in the technical philosophical language of professional ethicists, they will give us a good general

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<sup>3</sup> My framework could even be used to evaluate bylaws and laws that end up being discriminatory, it is just that the scope of this piece does not allow me to tackle existing legislation. My focus will be on library and library policy, but could be used to assess legal systems and rules as well.

<sup>4</sup> Other behaviours that are similar are noise complaints, the displaying and viewing of offensive materials and sleeping. All of these behaviours have the ability to be irritating and distracting, but are not illegal. Policies that prohibit them have the potential to discriminate against groups of people and are susceptible to the type of analysis I am engaged in. I am not committed to saying that all of these behaviors are immoral to ban from the library, but we can certainly assess them in the same way we are assessing smell.

idea of what moral concerns and intuitions are being evoked in these discussions, and of the interests of those, besides the irritated patrons themselves, who are most affected by the policies. Because these articles lack the structured character professional ethicists can impart, they often make conclusions that are hard to support, or avoid making any definite pronouncements altogether. This thesis will set their concerns within already established ethical frameworks, and mediate between conflicting ideas and desires in the library community, such as the desire to keep the library fully accessible and the need to keep it orderly and usable. Librarians cannot keep every patron perfectly happy, and they will have to choose to prioritize some needs and not others. This thesis will give suggestions about ethical principles that can be used to determine what to prioritize.

The Morristown court case was certainly noticed and taken very seriously within the library science community, as it emphasized a growing problem in libraries across North America (Quinn and Rogers 15). During the 70's, there was a deinstitutionalization of the mentally ill in hospitals across America, leaving many vulnerable individuals to fend for themselves (Murphy). Some, without anywhere else to turn, ended up on the streets, and have remained there ever since. The recent economic recession has also tipped some of those living on the edge of poverty over into the ranks of those unable to afford housing, forcing them out into the streets (Falvo 3-4, 20). Libraries, as one of the few truly publicly accessible buildings left in North American society, have lately seen an increase in the amount of homeless using them (Submission 55). Library policy makers, caught between wanting to make the public library as accessible as possible to

everyone, and wanting the majority of patrons to feel comfortable spending time in the space, have struggled with appropriate measures and rules to control certain patron behaviours (or states) that the general public deems offensive (Berman 104).

The literature tends to be split into two camps, those who agree that banning the disruptive homeless could be ethical, and those who want to keep the public library as accessible as possible to those at the bottom of the social ladder, even to the discomfort of the rest of the patrons. All writers, however, agree that there is a growing and troublesome problem around the number of people who are homeless, and the lack of places and services available for them.

### 1.2.1 Pro-Banning

Felicia Carparelli takes a very hard-line pro-banning stance against those who cause disruptions in the public library environment, arguing that the needs of the majority of patrons outweigh the needs of disruptive homeless patrons, who, she feels, do not treat the “library and librarian as friend, teacher, and continuing education source” (Carparelli 212). Librarians are not trained to be “social workers and high-priced baby sitters” and should not be required to compensate for holes in the health-care and social service systems (Carparelli 212). Libraries are not the cure for all of society’s ills, and if they try to become so, they will miss out on fulfilling their main function, that of promoting intellectual freedom and access to information. Libraries have a certain role to play in society, and homeless shelter and mental hospital are not it. Those who use the public library

properly deserve to have it as a resource and patrons that disrupt the majority should not be welcomed.

This concern about the usability of the library is a very important part of the pro-banning argument. The purpose of the library is to serve the public, and if much of the public does not want to come into the library, the function of the library is compromised. Libraries are supposed to promote literacy, but if people are scared of visiting, then the library cannot do what it is supposed to do. The presence of irritating homeless individuals, in large enough quantities, may have the effect of rendering the public library completely ineffective as the type of social good it functions as now.

Will Manley also argues from a position seeking to narrowly define the role of the public library. The public library, for Manley, fulfills a certain niche in society, that of providing a safe, comfortable place for study and education. According to Manley there is no reason why those who cannot conform to the norms of society should be able to disrupt this sanctuary for everyone else. And while he does admit that it may not be the fault of the homeless persons that they smell the way they do and that their expulsion is regrettable, “[i]t is even more heartbreaking for us to see a few irresponsible and antisocial library patrons make our institutions unsafe and unpleasant for the vast majority of our citizens” (Manley).

So the pro-banning selection of literature seems to mostly be arguing from either identity claims about the proper nature and place of a public library, or from more utilitarian notions about the rights of the many to benefit from the public

library outweighing the benefits that the few who are banned would get from the library.

### 1.2.2 Pro-Access

There are numerous articles that support the inclusion of homeless persons into the library. While many librarians can, and certainly do, express frustration at the problems caused by homeless patrons, many also support possible solutions apart from policies that would result in their expulsion.

Sanford Berman argues that homeless patrons are often misunderstood or unfairly stereotyped, with actual incidences of really bothersome smells and activities being few and far-between and that many homeless use the public library for perfectly traditional library appropriate activities, such as job-searches, staying in touch with family and friends through email, and reading (Berman 105-106). This is important partly in response to the type of arguments presented above that focus on the conflicting rights to and uses of library spaces. If the irritating behaviours or states present less of a problem in the library space than originally thought, the impetus for having provisions for banning people engaged in them is likewise lessened.

Stuart Comstock-Gay points out that the public library may be the only access point many impoverished patrons have to information many of us take for granted, such as newspapers and the Internet. This makes it a very valuable service that we cannot easily justify taking away (Comstock-Gay 1-2).

Many librarians feel that libraries should be as inclusive as possible.

“Libraries have a responsibility to contribute to a culture that recognizes diversity and fosters social inclusion. Libraries strive to deliver inclusive service”

(Canadian Library Association, Diversity and Inclusion). While there can be a lot of stress surrounding issues regarding homeless persons for librarians, much of the literature does not recommend banning patrons unless they are harming or seriously disrupting others. (This may or may not include smell, and part of my job in this thesis will be to figure out how ethically significant smells in the library are when compared to other things, such as rights to or welfare from being able to access the library). Just as librarians seem to dislike banning materials, so are they similarly cautious about banning patrons (Berman and Comstock-Gay are representative of this viewpoint).

### 1.3 The Thesis (finally)

Two considerations that come up in much of the professional library literature are the importance of the utility<sup>5</sup> that the library provides to homeless patrons (as in Comstock-Gay) and the rights of other patrons to use the public library and its services (as seen in Manley). These concerns about the rights of two groups to use the library are often conflicting, and I will be attempting to develop a framework for adjudicating between them. I will begin by analyzing the goods that the public library provides for both homeless people and other patrons, and then look to see when policies of banning nuisance behaviours or states will

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<sup>5</sup> Something that has instrumental value in achieving a goal that is valuable for its own sake (I will be neutral here about what types of goals fit this description).



give us the best overall outcome. I will examine this question from the standpoint of Utilitarianism, a theory that identifies the best outcome as the outcome with the greatest amount of good for all concerned. But I will also be looking at concerns about the distribution of the goods the library provides, and how the position of homeless individuals should impact our conclusions about how important it is that they receive these goods. I will be drawing upon ethical theories that focus on the importance of the social position of disadvantaged members of society, both in terms of their absolute welfare level and their relationships with the rest of society (known as Prioritarianism and Democratic Egalitarianism respectively) when figuring out how to divide the goods in a society. My framework will emphasize the need to take account of the special value of the library for homeless persons and the special importance of attending to their position in determining which outcomes are best. Taking these values into account, I will argue that policies that ban homeless people for nuisance behaviours or states that they cannot easily help are unlikely to maximize utility, and that considerations of priority for the least advantaged and the value of social equality solidify the case against banning nuisances like smells when they cannot easily be helped.

Even if we get a better overall outcome from avoiding policies that have the effect of disproportionately excluding homeless people, we may still wonder why the rest of us have to put up with behaviours or states that we find unpleasant if it should be the responsibility of homeless people to comply with the regulations like the rest of us. In order to evaluate whether it is fair to assign homeless individuals a responsibility for complying with the relevant

regulations, I will examine ethical standards for when it is legitimate to assign responsibilities not to engage in behaviours or exhibit states that are annoying but not seriously harmful. In John Stuart Mill's philosophy, serious harm to others is the only acceptable justification for restricting someone's conduct, which might make it difficult to justify restraining behaviours or states that simply annoy. There are reasons, however, to think that we can sometimes be justified in prohibiting behaviours or states that are not seriously harmful if they are annoying or offensive enough to others. I will look at Joel Feinberg's work on how the law should treat nuisances, and identify a plausible ethical principle concerning when it is permissible to prohibit someone from engaging in nuisance behaviour. I will argue that this principle does not support policies that ban library patrons for smells and other closely related behaviours or states when they cannot easily avoid them.

While it might be one thing to ban nuisance behaviours or states for everyone in open public places (like sidewalks or parks), nuisances that occur in connection with special resources like libraries might seem to raise complications. In order to examine the question of how to fairly distribute access to this special resource, I will turn to Rawls' social contract theory, which addresses the question of what types of rules we should run our society by if we wish to take the freedom of all into fair account. I will argue that the library protects certain rights that are covered by the rules endorsed by Rawls' theory and that those rights should be protected for everyone, especially homeless patrons. Since the bans against smells and other nuisances in the library that homeless patrons cannot easily help have

the effect either of severely limiting the practical use of some liberties for homeless individuals or completely stripping these liberties away, I will argue that considerations of fairness give us a final set of reasons to think that many such bans are morally impermissible.

My thesis will be primarily that, when setting policies that deal with irritating behaviours or states, we need to look at 1) the value of the library for, 2) the economic and social position of, 3) the difficulty of complying with the policy for, and 4) the basic rights of those the policy might end up affecting. My framework will run through the types of analyses and justifications we should use to determine whether or not enacting policies is moral, and I will be using policies around smell and the banning of homeless patrons to bring out the nuances of this reasoning. My argument will be that there are many reasons, from utility to rights, to want to keep the library as accessible as possible, so any policy that seeks to restrict library access on the basis of merely irritating or offensive behaviours or states must be very carefully considered and justified.

My conclusion for the smell situation will be that it would be morally wrong to enact anti-nuisance policies that end up discriminating against homeless individuals in the library because the welfare value of the services to the homeless individuals, combined with the right to library resources that all citizens can claim, will outweigh the possible disruption to other patrons. I will argue that this holds even if the homeless patrons are to some degree responsible for their offensive behaviour. Near the end of this thesis, I will look at the particular

policies of my local public library and make practical suggestions on the way to change policies to adhere to the moral considerations I will bring up in this work.

## 2. Consequentialist Considerations

### 2.1 Equality, Welfare and Utilitarianism

(Act) Utilitarianism is part of a larger group of moral theories that comprise Act Consequentialism, the idea of which is that the morality of an action is solely dependent on its consequences. Consequentialists usually start from the idea that happiness (or other forms of welfare for some Consequentialists other than Utilitarians)<sup>6</sup> is a good thing to achieve and that pain is a bad thing to have come out of actions. Once that is established, it is surmised that it would be a positive thing to have as much happiness and as little pain as possible.

To try and maximize happiness, we must figure out whose happiness we should be trying to increase and whose we can attach a little less importance to. Answers will vary depending on which Consequentialist theory we are looking at. Utilitarians plausibly suggest that everyone who can have preferences should have

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<sup>6</sup> Consequentialists can have different opinions about what's good for individuals, from straightforward positive sensations, to fulfillment of preferences, to some teleological end of perfection. The idea behind most Consequentialist views is that we should maximize the overall good, which is some kind of function of what is good for individuals. The different views about what is good for individuals will not be relevant here though. In this thesis, I will call the good to be maximized 'general utility', which can include physical sensations of pleasure, happiness, preference satisfaction or any other understanding of welfare. I will be using all of these terms fairly interchangeably. This is partly because they tend to be causally connected enough (preference satisfaction can lead to pleasure, pleasure can cause happiness, happiness can lead to increased perfection etc.) that using all four loosely should not cause any great confusion. The difference in the theories that I am interested in is the way to go from individual satisfaction to overall good.

their preferences considered equally. So, they conclude, if you have a preference, it is not any more important than the same preference of the person sitting next to you. The welfare of the Prime Minister is no more important in itself than the welfare of the single mother living out of a shelter. With this fundamental equality in mind, Utilitarians conclude that we can try to increase happiness equitably by choosing to do what will bring about the greatest total amount of welfare or preference satisfaction. This is known as sum-ranking and is (for my purposes at least) the important feature of Utilitarianism that distinguishes it from other forms of Consequentialism. All of the happiness that comes from an action is added up and compared against the happiness of another action. Whichever action leads to the most overall happiness is, according to Utilitarianism, the best, without any considerations of whose happiness is being increased or how the happiness is being distributed.

Other forms of Consequentialism put intrinsic weight on how the welfare itself is distributed. Some Consequentialists, like Prioritarians, argue that those with the least amount of happiness should be considered first when figuring out how to maximize happiness. The welfare of the less well-off in society is held by Prioritarians to be a priority, even if it means that the overall level of utility is less than it would have been if we had been straightforwardly maximizing.

I will begin my Consequentialist evaluation of discriminatory library policies with Utilitarianism and leave the other Consequentialist considerations until section 2.6.

## 2.2 Libraries as a Good

To begin the discussion about what sorts of policies of banning nuisance behaviours or states Utilitarianism will support, we must first evaluate the public library as a good to be argued about. The most obvious use of the public library is its primary function: the organization and dissemination of information to anyone in the population who wants it. As education and information become more and more crucial to success in modern civilization, the value of having a free or inexpensive service that connects anyone to large amounts of knowledge is incredibly important. Having a staff of persons specifically trained to help navigate the often-confusing labyrinth of information is also important, and a service that is unavailable anywhere else. For students who are unfamiliar with database searching or Boolean operators, or the elderly who do not know how to use an online search engine, the presence of professional librarians makes the search for specific data much easier.

Libraries also provide entertainment, in the form of audiovisual material, novels, and even lending toys to children. Libraries often have movie screenings, story times and puppet shows, and provide space for activities planned by community groups.

It is also possible to make good use of the library remotely. Many libraries offer reference services online or through the phone. Bookmobiles will deliver books to local neighbourhoods. Materials can be checked out and taken home immediately. The public library can set materials aside for patrons so no browsing in the stacks is necessary. Ebooks and audiobooks can be downloaded and

database access is available online. As the world and information become more and more digitized, there is less reason for many people to have to set foot in a physical library to be able to benefit from it.

Other services that public libraries can provide are classes on languages and technology, reading groups and clubs, and homework help and reading buddy programs for kids and teens. Libraries are also places that foster community feeling and relationships. Single mothers can connect with other parents during child-centered activities. Tutoring and teen reading programs can give adolescents the opportunity to find and communicate with peers who have similar interests. Seniors can use the public library as a safe place to read newspapers and play chess.

For homeless patrons, the public library also provides a warm place to sit in winter, and an air-conditioned space in summer. It offers restroom facilities and water fountains, and an escape from the elements. It is one of the few public places where the homeless patrons, as long as they are not harassing other patrons, can sit, check email messages, read the local paper, and otherwise relax under the vigilant eyes of the librarians (Submission 56, 61).

Libraries, as a broad social institution, contribute to more general social goods that we recognize as fairly central to our society. Democracy, if it is to function, must have a somewhat informed citizenry. People must have some sort of idea of the way democracy functions, and the issues and candidates on the table. Libraries are an institution that disseminates information to the general public, including newspapers and Internet services, so even the most

disadvantaged persons in the society will have a chance to inform themselves and to participate fully in their democratic process (Kargbo 397). For some people, the public library is the only way to get this type of information.

The utility of the public library is multifaceted and generally available to everyone, with the American Library Association even making special recommendations for bettering service for the poor (American Library Association, *Poor*). This makes it a rare occurrence in a society where money and appearance are large factors in gaining access to services and goods.

What is also of interest to this discussion of the good that the public library provides is the actual use that these services are put to. While any data on Canadian libraries and their use by homeless persons seems to be unavailable<sup>7</sup>, there is some data from the United States which, while not ideal, should give us some broad idea of the data in Canada, as both countries are sufficiently similar in structure as to have somewhat similar rates of homelessness. In 1994, Charles Miller-Huey sent surveys about homeless patrons, and the services offered to them to 60 downtown libraries in large metropolitan areas in the United States. 37 libraries completed the survey. One of the questions asked, based on staff opinion, was about how many homeless patrons made daily use of the public library. “Answers ranged from 5-10 to 250 per day” (Miller-Huey 32; italics omitted). More than half of the libraries offered public library cards to patrons without a permanent address, indicating homeless patrons expressing interest in using

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<sup>7</sup> As Jean McKendry explains, the disputed nature of a definition of homelessness, the difficulty in identifying homeless persons and the fact that libraries do not keep statistics on library users (Harris & Simon 26) makes collecting actual data incredibly difficult (McKendry).



public library materials (Miller-Huey 32). Almost half provided “reading materials in centers for the homeless[,]” and “[w]ork[ed] with community agencies or been a part of a community task force concerning the problem of homelessness[,]” and “sponsor[ed] or participate[ed] in... literacy programs for homeless persons” (Miller-Huey 32). There is more evidence of the use and importance of libraries to homeless persons, though it is anecdotal, scattered throughout the literature on libraries. Beth Lawry writes of an incident involving a homeless woman having her backpack stolen and, out of all of the possessions in it, including medications, the one the woman was most worried about losing was her public library card (Lawry 200). One homeless patron of the San Francisco Public library estimates that about 30% of the users of public access computers are homeless (Flagg 38).

The Master’s thesis of Aisha Harvey from the University of North Carolina involved personal interviews with five homeless men about the role that the local public library played in their lives. All five reported being very frequent public library users, going at least twice a week (Harvey 19-22). The study participants described the types of activities they usually engaged in when in the library, such as reading books and magazines, checking email, and job searching (Harvey 22-27). One man mentioned his caseworker’s promise to teach him how to use the public library computers with enthusiasm (Harvey 29). Another man described the library’s effect on his situation: “[w]hen I go to the library I learn about life in general. Outside of the reading and writing skills and the grammar, I look for books on life, basic life. I learn other things. Libraries open up a whole

new world to me” (Harvey 39). For most of the men interviewed, the library was seen as a quiet, safe haven, a refuge from the worries and stresses of their lives (Harvey 40-41). They describe the dignity of being treated like a regular patron and being helped: “A lot of times when I first started going to the library, I would ask them (library staff). They would not hesitate. They are nice people. A couple of them understand my dyslexia and they told me, ‘Don’t be ashamed,’ and that they know people that are like that. I’m not the only one. As soon as I opened up I would call on them a lot. At first I was ashamed but now I am not because they are good people and they help me. I’ll call on them, I will, especially if I get stuck looking for some literature on a specific topic. I call on them. They are right there for me” (Harvey 32). The public library is also mentioned as a place where these men can continue to learn and educate themselves. Harvey indicated “the library was also used to combat drug use. While most of the informants said that the library collection held nothing to help them stay clean, some informants said that because the library is free from the pressure to use drugs that they encountered on the streets, that it was an agent of sobriety in their lives” (Harvey 50-51). All participants indicated that the public library was a very important part of their lives. As one surveyed man said: “I’ve got a library card and I honor it. The people at the library are a great asset to this community. They are good people and they care. It is like a new world to me. It has opened up other worlds to me. Since I have a reading or learning disorder, it helps me to grasp reality” (Harvey 46).

There are other indications that librarians and libraries are focusing on the needs and welfare of homeless individuals specifically. Many writers who are also professional librarians recommend policies and services that have the unique service challenges of homeless patrons in mind. Anne Turner, in *It Comes With the Territory: Handling Problem Situations in Libraries*, recommends making contacts with local charity and aid organizations so that, if a homeless patron seems to be struggling with a problem, there are other resources to recommend (Turner 31-32). Working with homeless shelters, mental health facilities and the police force can turn the public library into a safer, more usable space for everyone. Patrick Grace notes several different successful programs that have been implemented in the United States, such as developing reading rooms in homeless shelters, running literacy programs and having special attention paid to materials that aid in job searches (Grace 55). Allowing homeless patrons to borrow materials and having specialized training sessions in dealing with homeless patrons and their special needs can also help integrate homeless users into the larger library community (Murphy).

### 2.2.1 Benefits of Enacting Ban Policies

The main driving force behind policies that seek to control access to the public library is the worry that small groups of patrons are making the public library unusable for everyone else that wishes to use it.

The argument is that, by their disruptive presence, certain homeless people make the public library less usable for other patrons. This may be through odour,

strange appearances, or behaviours or states that cause patrons to be concerned for their own safety. Mothers do not want their story times interrupted by a man talking loudly to himself. Seniors do not want to sit too close to the woman who has not bathed in months. The physical space of the library should be an inviting one, in order to promote community support and involvement and to invite patrons in to use the materials and the services. Despite all of the other ways to access libraries, for users unfamiliar with the other access points, the physical space of the library will be the first access point they will think of. If that access point becomes too uninviting, it could disincline citizens to use the library. If people start to see their community library as a place they would rather not use, despite the value in doing so, the utility of the library as a social institution devoted to intellectual freedom and literacy will be seriously decreased, as well as the negative effects to the utility of the now-unserved patrons who are afraid to visit their library.

To get a very rough estimate of the number of homeless persons, in 2005 the National Homeless Initiative estimated there were around 150,000 homeless persons in Canada. Other sources estimated somewhere around double that number (Laird 4). Since our population is around 30 million, homeless people are around half to one percent of the population. Since Utilitarianism is a sum-ranking, welfare-maximizing theory, in order for a policy that has the effect of disproportionately excluding homeless people from the library to be condemned by Utilitarianism, the welfare that those individuals (homeless or not) who would be excluded by the policy gain from not being excluded must be greater than the

welfare that the other library patrons would gain from their being excluded. Given this incredibly large ratio between homeless persons and the rest of society, even if all homeless individuals were to use the library, all of them smelled poorly, and only a fraction of the larger population were using the library, the utility that the homeless patrons gain must be very large in order to compensate for the drop in utility of so many other library patrons from their disruptive presence. Especially since not all homeless patrons will exhibit the problem behaviours or states, it might seem highly implausible that the utility lost by those who are excluded is greater than the utility that others gain from their exclusion. But I will argue presently that, because of the social position of homeless individuals and the great utility that the library can give them, the good it does for homeless patrons who might be excluded is still greater than the benefits that banning problem behaviours or states of the homeless would bring to others.

### 2.2.2 Costs of Enacting Policies

The public library is useful to both homeless and non-homeless groups of citizens, but I think it is fair to say that, for homeless citizens, the public library has an importance that it does not have for many other groups. Because of their marginalization and their poverty, the public library is going to be one of very few, if not the only, means of access this group has to resources and services that more financially well-to-do groups take for granted. Homeless individuals often cannot afford personal reading material or subscriptions to magazines and newspapers, and they certainly do not have the money or the storage space with

which to provide themselves with audio-visual material, computers, or Internet connections. Having limited access to these materials only through the library, they may also lack the necessary skills to properly operate this technology, which is why public library classes on anything from running a word processor to Internet searches are important for building job skills, and the public library may be the only place that these skills can be acquired. While many patrons at libraries are able to afford private access to the types of materials that they access at the libraries, homeless individuals are not, making it a more valuable resource to them in this respect than it is to most others. Just as a glass of water is more valuable to a man in a desert than it is to someone next to a faucet, so is there more value in a public library for those who have nowhere else to learn and read. A further reason why their presence at the public library is so important is because the physical space is the only way for homeless patrons to access the library. Some libraries do not offer public library cards for those who do not have an address, and those without a computer and Internet cannot take advantage of all of the online resources offered. Consequently, while most people can take books and materials home and download e-books, homeless people cannot.

In the case of homeless patrons and the public library we are looking at the utility of the services and spaces being more valuable for homeless patrons and poor patrons because it is the single way that many of them can access the types of resources and services libraries offer. For those who can afford their own materials, the public library will tend to be a less valuable resource than for those who cannot. Because of this, the negative utility that these people cause for others

in the space will have to be larger than it would need to be in order to justify banning most patrons who are not homeless; since the utility that homeless patrons get from the library is greater, it is harder for the utility of others to outweigh the loss of this utility. When a policy bans a homeless person from the library, it not only bans her from a safe, warm place, but also effectively bans her from accessing goods that most people take for granted.

Of course, there are people who are in between homeless individuals and the economic and resource-rich middle and upper classes, for whom the physical space of the library is also a very valuable resource. Some people may have a home, but are unable to afford a computer and Internet connection with which to access the online resources. There also may be other reasons outside of economics that make the presence of certain patrons in the library incredibly important, such as a newly arrived immigrant taking part in a language class, or an elderly woman getting help using a computer from a librarian. Some children may feel safer at the library than at home, and the utility gained by people from social activities in the library is only present when people gather in the physical space of the library. For these people, the option to take advantage of the library's services from a distance is not feasible, and so the presence of the smell in the library is going to affect their utility more than that of other patrons. There being a fair number of these patrons who have to tolerate the nuisance caused by offending persons in order to access library services also weakens the argument that the presence of the offenders is not actually that troublesome.

On the other hand, the presence of non-offending patrons for whom the physical library is extremely important does not lessen its importance to the offending homeless patrons. Still using the Utilitarian calculus, even if there are other patrons who are put off by the smell while using the library, I believe that the decrease in utility for other patrons from having to put up with the nuisance is going to be smaller than the decrease in utility for the patrons who get banned because of their smell. In other words, there is still more good in allowing all patrons access, despite some of them being put off by odours, than the good that would be generated from some of the patrons being able to use the library without bother because of the expulsion of others.

One way of seeing this is to think about whether it would be overall better were we to expel someone from the library because of various similar states or behaviours that other patrons find irritating. If we found a small number of patrons were dressed so garishly that it annoyed the rest of us to have to look at their day-glo t-shirts, would it be better overall to bar them from the library? Similarly, if someone was unintentionally mumbling just at the threshold of hearing would that be enough sensory irritation for it to be better overall if we were to take away the utility they get from the library? Furthermore, if it looked extremely unlikely that any of these patrons could stop the behaviour, if the t-shirt looked to be part of a very limited wardrobe, if the mumbling was caused by a mental disorder, would it be better overall to bar them from the resource? I believe that most people would not want to ban patrons under these



circumstances, given the minor character of the sensory nuisance, the position of the offending individual, and their own utility gained by being in the library.

Going back to the problem of the number of homeless people being extremely slight next to the number of other citizens, the costs of policies that ban homeless patrons for smell will outweigh the benefits just in case the welfare that homeless individuals lose in being banned is large enough to match or overcome the amount of welfare generated by all of the other patrons using a space free of the smelly homeless patrons. In light of the considerations I have raised, I think this is highly plausible. Because other patrons can often move away from the smelly offenders, the presence of these homeless patrons in the library is going to cause a very small dip in utility for the rest of the library patrons. When this is compared to the great amount of utility for the homeless patrons, since this is their only access to these resources, it becomes very likely that the good homeless people generate from library use is going to outweigh the utility of the rest of the patrons should they have a more comfortable library with no smelly homeless patrons.

There are other cases where the behaviour may not be so mild that the calculations of good will still condone the presence of the perpetrator in the library. It is somewhat easy to move away from smells, or to ignore them. If someone is shouting loudly, even if it is a symptom of a mental illness and uncontrollable for the patron, then the utility of other patrons who need to use the physical space may very well be disrupted enough that rules which control that

behaviour, however regrettable it may be, may be necessary, and for most libraries which already have them, moral.

In some cases, such as smell and the shouting example mentioned above, the policies will result in a permanent ban, no matter what language it ends up being couched in, because the individual may not have the available resources to conform himself to our standards. Because homelessness and mental illness come in a variety of severities (slight paranoia vs. severe delusion, working poor who couch surf vs. sleeping under a bridge), the ability to put on the appearance of normalcy enough to be acceptable to other patrons in the public library is also going to wildly vary. The lack of available options for homeless individuals to gain the resources the library provides from other sources and the staggering difficulty of avoiding the situations that made them run afoul of the policies make it doubly important to not institute rules to which they cannot conform.

### 2.3 Utilitarian conclusions

In conclusion to the thoughts on Utilitarianism, as a morally distinct entity from other forms of Consequentialism in that it focuses particularly on the sum-ranking of happiness, we find several things. First, that there is a fairly large amount of utility tied up in the unique entity that is a public library. Second, that this utility is not tied as exclusively to the physical space as one might think for those patrons that have access to technologies such as the Internet. Third, many of the people who may be banned are the ones that most need the physical access, and fourthly, it is much more of a drop in utility for one library patron to be

banned from the space if they need it than it is for another patron to have to use that space with irritating odours present.

From these I draw the conclusion that the public library is too important a resource to be taken away lightly. I believe that the utility gained by homeless patrons from their library access will outweigh the slight drop in utility from the other patrons being inconvenienced by their smell.

This may not hold true of other behaviours or states, though. If the behaviour in question is extremely bothersome, such as very loud music, or very inescapable, such as a patron following other patrons around, then the disutility of the majority of the patrons is likely going to outweigh the benefits gained by the offending parties, even if they are homeless.

A looming worry for my Utilitarian case against banning offensive smells and other relatively minor or avoidable nuisances is that if the number of homeless patrons who are actually disadvantaged by the policy is only a small percentage of the total number of homeless patrons, then the utility gained by each other patron from the ban, however small, still has the potential to overwhelm the massive amount of utility lost by each of the small number of homeless individuals who are banned. In the next section I will deal with some other Consequentialist ideas that will enable me to respond to this type of objection, and reinforce my conclusion that, under a plausible impartial Consequentialist scheme that seeks to treat everyone's interests equally in determining the best outcome, the cost to homeless patrons of being banned from the library for smelling badly will outweigh the benefits of doing so.

## 2.4 Non-Utilitarian Welfare Considerations

A very important concern with Utilitarianism and its emphasis on sum-ranking is that the needs of the few can be implausibly drowned out by relatively insignificant benefits for members of larger groups. If it would create more happiness overall to have a small portion of the population function as slaves to the rest, this could be permissible as long as the happiness it caused the people being served outweighed the unhappiness of the slaves. Some other forms of Consequentialism attempt to deal with this problem by focusing on questions about the distribution of happiness.

Some ethical theorists may wish to put independent moral weight on Egalitarianism, preferring to have less utility distributed equitably to more distributed very unequally. It seems preferable for 5 dollars to be given to a poor person than 20 to a rich person, and to many of us it seems better for the less fortunate to be benefitted even at a slight cost to the richer (e.g. by imposing a 5 cent tax on coffee that goes towards eradicating malaria in the developing world). Part of why this view is intuitively appealing is that small increases in resources are going to mean much more to people with less than they will to people already well off. A sandwich going to the man who has not eaten all day is going to do more good than that sandwich going to the man who eats large regular meals, despite it being the same sandwich. We can get more good from the same resource expenditure if we focus on the poorest and least well off in society first. But there is also something appealing about Egalitarianism at its very core. There are really no defensible reasons for the vast global inequalities that we see today.

Simply being born in one place or another should not make the difference between abject poverty and great wealth. There are no good reasons for people to have radically different chances of being healthy and happy. Consequently, it seems plausible that trying to spread the resources around more equitably is going to end up being more important than just increasing welfare or happiness, regardless of its distribution. This supports Egalitarianism, according to which equality itself is a priority.

A typical example of Egalitarian intuitions are those that can be generated by considering Thomas Nagel's example involving two children, one normal and one painfully disabled. Their family is planning on moving, but they have two choices. They can move to the city, where the disabled child will have access to therapy, but the welfare of the entire family will be somewhat reduced because of the unpleasant neighborhood into which the family would have to move. The second choice is to move to the suburbs where the normal child will have a better life and the family will have more pleasant living conditions than in the city. In the example, the normal child and the rest of the family will gain more from moving to the suburb than the disabled child will gain from moving to the city (Nagel 123-124). Plausibly, the family should still move to the city because the position of the disabled child should afford her special consideration.

Another example is Derek Parfit's "divided world." In this the population of the globe is equally divided into two sections, neither of which has contact with, or can influence, the other half. Suppose that we measure each individual's welfare on a scale from 0-500 (0 being death and 500 being the best existence

imaginable). Now consider two possible ways the world might be in this situation. One is where everyone in both sections of the world has a welfare level of 145. The other possibility is that everyone in one section of the world has a welfare level of 200, and everyone in the other half has a welfare level of 100 (Parfit 206). Utilitarianism would tell us that the second situation is the better because the overall level of utility is higher. But it is plausible to think that the first situation would be better; even though it contains less utility, since there is something about the way the utility is distributed that makes it seem best.

Telic Egalitarianism is the position that inequality in welfare is, in itself, a bad thing (Parfit 208). The problem with Telic Egalitarianism is that it would end up favoring the utility of those at the top to be lowered, perhaps not an inconsiderable amount, *even if it did not benefit those at the bottom*. At the very least, Telic Egalitarianism would suggest that, because it would lead to a more equitable situation overall, this loss of utility to those at the top would be good in a respect. But it can seem absurd to want or in any respect be glad about a loss of welfare or even goods for those with much if it does not actually benefit anyone with less. Suppose that, in Parfit's divided world, everyone in the better off section of the world started at a welfare level of 300, and everyone in the worse off section started with a welfare level of 100. Suppose, then, that something bad were to happen in the better off section, which had absolutely no impact on the worse off section (say, for instance, that everyone got sick or broke a leg), lowering their welfare from 300 to 250. It seems crazy to think that there is something good about this just because – completely unbeknownst to the worse

offs and in a way that will never affect their lives – this brought the welfare level of the better offs down closer to the level of the worse offs. Parfit calls this objection to Telic Egalitarianism, which points out that it would implausibly deem such “leveling down” good in a respect, the “leveling down objection” (Parfit 211; italics omitted).

Parfit suggests, however, that there is a way to justify our Egalitarian intuitions about Nagel’s normal and disabled children and his divided world without running into the leveling down objection. Rather than holding that there is intrinsic value in everyone having the same level of welfare, we might simply say that it is an intrinsically better thing that someone’s welfare is improved the worse off she is (Parfit 213). This view is known as “Prioritarianism.”

Prioritarianism seeks to address inequality by more highly valuing the potential utility of those that have less utility, before concentrating on the utility of those that have more. In other words, “the worse off a person is, the greater the importance attached to that person's level of welfare” (Hooker).

Prioritarianism tries to deal directly with inequality by affecting the valuation of increases in the utility of different persons. Increases in my utility may count for very little next to increases in the utility of a starving child, simply because I already have so much more utility. Thus, it’s better for the family in Nagel’s example to move to the city and for everyone in Parfit’s divided world to be at 145, not because it’s a good thing that everyone have welfare levels that are closer to each other, but because it’s intrinsically more important to increase the welfare of the worse off disabled child and people who are at 100 than it is to

increase (or not to decrease) the welfare of the better off gifted child and people who are already at 200. Since a dead weight loss on the part of the better off that moves them from 300 to 250 does nothing to benefit the worse off, Prioritarianism plausibly entails that it is bad and in no way good (just not as bad as if the worse off had fallen from 100 to 50).

The Prioritarian idea that we should attach greater intrinsic value to increases in the welfare of the worse off thus seems highly plausible. In the context of public library policies and services, Prioritarianism would mean that special emphasis should be given to the needs of underprivileged public library patrons. Those patrons that have the lowest level of welfare would be the most important to provide for and accommodate when it comes to making decisions in the library. The less well-off the patron, the harder it will be to justify banning him from the library, because the utility that he is gaining counts for so much, even outside of all other arguments about exclusivity of access and other concerns.

Even if both the offending and offended parties have the same, or similar, welfare levels and socio-economic positions, Prioritarianism will still favour there being small nuisances for many offended people over large losses to a few offenders. Prioritarianism cares not only about the amount of welfare that gets given or taken, it also prefers that the losses in welfare get spread out as much as possible, preferring many small losses to a large group to a few huge losses to a couple individuals. If we truly attach special importance to the welfare of the individuals who are made worse off by our policies, then we should want policies



that will result in the greatest amount of welfare for those who are worst off under those policies. Policies that split up the losses in welfare so no one person is saddled with a massive drop in their welfare result in more welfare for those at the bottom more than policies that concentrate the losses on an unlucky few. For library policy, this means that many people being slightly inconvenienced is preferable to a few people being very disadvantaged. Since those who are mainly going to be banned under a library smell policy are already operating at a decreased level of welfare, even if those who are irritated by the smell are also at a similarly decreased level of welfare, the drop in utility should be borne in the smallest quantities by the greatest amount of people, which means that most patrons being slightly inconvenienced by smell is preferable to a very few being banned and suffering greatly for it. As with the example from Nagel, we should spread the losses of welfare around as much as possible even if it results in less overall utility

As plausible as Prioritarianism is, there are reasons to think that it is not the whole story about how we should be intrinsically concerned about the distribution of welfare or resources. On reflection, it was important that Parfit cast the leveling down objection in the context of the two causally isolated sections of the divided world. There can, in fact, seem to be something intrinsically good about the leveling down of resources or abilities within a single causally integrated society. If an entire society is at a fairly low state of welfare, but that is all they know and everyone is fairly equal, that may be a more desirable

state to be in than to exist at a slightly higher state of welfare, but to be at the bottom of a very unequal society.

As I suggested, it can seem *unfair* that some people in a society are so much better off than others. Such a difference in welfare or resources can lead to unequal power distributions, which not only lend themselves to harmful abuses, but also seem objectionable in themselves. One thing it seems to make sense to want in society is for individuals to be able to relate to each other *as equals*, or as individuals who have equal amounts of power over one another. Stratification within a society into unequal positions can seem to be an intrinsically bad thing. Let us call this view, according to which living as equals with equal amounts of power over one another is an intrinsically good thing, ‘Democratic Egalitarianism’ or “Democratic Equality” (Anderson 313).

In the case of library policy, Democratic Egalitarianism will translate into a case for allowing everyone access to the same privileges and information available in the public library. It will, moreover, support giving special consideration to those who have the least ability to defend their interests, and to do what we can to lift their social position closer to that of others. Homeless individuals are in grave danger of being marginalized and treated as inferiors by the other members of society. As such, there may be an independent reason to prefer treatment and rights for homeless individuals that help restore them to a position of equality. In the case of library policy, this will mean that banning homeless people from the public library for the effects of their social inequality (poor hygiene) will be particularly undesirable. Such bans will only help to

sustain a system of already existing inequality. The public library gives the poor the ability to use technology and read books and newspapers that the more affluent sections of society can have easily. Taking that away will just continue to perpetrate the inequalities in the access to information resources that already exists. The public library is a very cheap way to give everyone a chance to take the first step towards the literacy, education, and community involvement that they need to be able to stand up as equals. Since it is access, not comfortable irritation-free access, that is really what is needed to increase social equality, democratic Egalitarian concerns will deem it better if other patrons, even those that are also disadvantaged, put up with some irritation in order to guarantee access to as many patrons as possible, so as to move things further in the direction of all members of society having the resources they need to relate to each others as equals.

There are, then, two distinct and mutually supporting reasons to place special value on the effects that library policies have on homeless patrons. The first is the Prioritarian idea that, because homeless individuals are among the worst off individuals in society, we should intrinsically prioritize increases in their welfare over increases in the welfare of the better off. Prioritarianism holds moreover that, among the worst off, we should intrinsically prefer policies that result in a small loss (having to put up with smells) to many individuals over policies that result in a large loss (no library access) to a few individuals. The second is the Democratic Egalitarian idea that, because relating as equals is an intrinsically good thing, we should value the role of the library in raising

homeless individuals up to a position of equality in society, quite apart from the effect it has on their welfare. It is through access that homeless patrons have a chance to put themselves on more equal footing with others. The working poor and other non-offending homeless also need access, but not perfect access without slight disturbances. The presence of irritating smell in the library will not affect anyone's chances at bettering their relative social standing, whereas banning certainly will.

### 2.5 Consequentialist Conclusions

So apart from the purely Utilitarian considerations of maximizing the total amount of welfare, we also have reasons connected to Prioritarian and Egalitarian concerns to convince us to be wary of library policies that exclude homeless individuals. The library can be part of a broader social scheme to improve the lives of the least fortunate, whose welfare we should be particularly concerned with if we are persuaded by the arguments in favour of Prioritarianism and Egalitarianism. While a Utilitarian scheme can lead to problems of trivial benefits to the majority outweighing the needs of the few, Prioritarianism and Egalitarianism ensure that those at the bottom of the welfare scale will be adequately considered when deciding the distribution of goods in society.

There was already a purely Utilitarian case for thinking that discriminatory policies will make the overall utility of a society worse because of the enormous benefit the library brings to disadvantaged populations, the alternatives available for many other patrons, and the much greater loss of utility in losing library access

entirely when compared to merely putting up with a nuisance like smell. What the other Consequentialist theories do is illuminate concerns about priority and equality that we should have about homeless individuals, and add that weight to the Utilitarian case against anti-nuisance policies that disproportionately ban the homeless. While it is possible that the welfare of the worst off will not always, in all circumstances, take complete priority, among the straightforward Utilitarian calculations, the Prioritarian concerns about the welfare of the least-advantaged and the need to spread welfare losses out as much as possible, and the Egalitarian concern about the social position of the underprivileged, there is a very strong case to be made that a Consequentialist scheme will not allow discriminatory smell policies.

For other nuisances and policies prohibiting them, the concerns raised by Prioritarians and Democratic Egalitarians should give us extra pause when looking at the people that the policy is most likely to affect. If there are disadvantaged people likely to be further disadvantaged by the policies, then the Egalitarian concerns may count against these policies and to determine whether they do, we should examine the damage that the policies could do to the equality and social standing of certain people.

### 3. Responsibility, Harm and Offense

If we do not buy into the Consequentialist scheme, we may not feel that we should have to put up with the inconveniences homeless individuals bring into the library even if it would make the world a better place. We may think that their

behaviour is their own responsibility and that being banned from the library for annoying others is just a fair consequence of their choices. We saw this above somewhat in Manley's argument about those that cannot obey the rules not being allowed to disrupt the sanctity of the library for everyone else. If homeless individuals are choosing not to conform to the library's code of conduct, or to make a nuisance of themselves outside of the boundaries of written rules, then expulsion may seem to be a fair consequence to impose, as it is for other offenses like damaging materials or threatening staff.

Dr. Isobel Dalali comments, "[t]hose people may be inadequate on one level, depending on what their psychiatric diagnosis is, but you and I would have to study long and hard to know how to work the system like they do. You have to remember that they are *functional*. They manage to cross streets. They obey red lights. They dress themselves and go to the store... They know how to preserve themselves. So if they're breaking the library rules, you have to ask yourself: How have I given them permission to do so?" (Easton 488). The idea is that the same rules should apply to all patrons, and since most homeless individuals are functional enough to operate in society at large, they should also be able to responsibly function in the library.

### 3.1 The (Lack of) Responsibility of Homeless Individuals

Looking at whether homeless individuals have the ability or not to conform to the standards of other library patrons is directly tied in with their lifestyle as a whole. The ability to smell nicely is directly affected by one's ability

to bathe, wash clothes, and groom. These are all functions of a person's larger life situation, such as whether they have a home in which to perform these tasks.

Since we still do not have a concrete idea of whether or not homelessness is usually the fault of the individual, it is difficult to assess whether or not it is fair to hold homeless individuals responsible for their situations when they cause the rest of us discomfort. For those who think the state of homelessness is self-inflicted, the idea of homeless individuals being able to make the library less usable for the rest of the patrons may seem irksome. For those others who see homelessness as the symptom of mental illness and societal neglect (such as a lack of proper mental health care facilities), it will seem more difficult to hold homeless individuals responsible for being unable to comply with the rules.

Fortunately there has been some research conducted as to the causes of homelessness. As the degrees of severity differ, so will the reasons for homelessness. Lack of employment opportunities, substance abuse, and lack of affordable housing options are three of the largest contributors in the United States (The United States Conference of Mayors 13). In Canada, poverty, lack of affordable housing, and gaps in social services are noted causes of homelessness (Pye). The availability of work and the housing market are not under the control of the individual, so there is reason to believe that, when these are the causes of homelessness, the individual is less than fully responsible for their state. It could be argued, however, that prior decisions in the lives of homeless individuals have led them to be unable to adjust to bad markets. If they have chosen not to educate themselves enough to get a steady job, then it is in a way their fault when they

cannot gain employment during difficult times. The exact causes and grounds for responsibility for substance abuse are still debated. Some think that it is entirely a personal choice to start using addictive substances; others put the causes down to factors like lack of education, peer pressure and general life environment.

It seems safe to say, however that there are several mitigating factors that should make us think that the condition of homelessness is not entirely the fault of the individual. Since the formative years of childhood are so crucial to the development of the individual, homeless persons that come from lower-income families may not have received the proper nutrition or support to make later education, or even successful functioning, possible. Mental illness, especially if untreated and undiagnosed, can make even simple social functions a struggle. Parental and peer drug use can normalize risky behaviours in childhood.

Still, if we go too far in the direction of insisting that homeless individuals are not responsible for their situation and their behaviour, there is a threat that we might start to legitimizing extreme paternalistic interventions in their lives, such as forcing homeless individuals into shelters when it gets cold, or mandating long-term hospitalization. We may not feel that it is permissible to take control of the lives of grown adults in this way, since most of them are competent enough to find enough food, clothing, and shelter to stay alive (something that characterizes competent, adult behaviour), and some of them might have legitimate reasons for choosing this lifestyle over others. Moreover, the view that homeless individuals are not responsible for the types of choices that lead to homelessness, such as drug use or not taking medication for a mental illness, may also suggest that others are



not responsible for their conditions, leading to a breakdown of many of the types of moral connections between behaviours and results that we find particularly plausible. We clearly do not want this wide-scale lack of accountability for risky behaviours, so we want to assign some responsibility to homeless individuals for their behaviour. Given the mitigating factors mentioned above, such as mental illness, it would be hard to make the case that all of homeless individuals are completely responsible for their situations. We still do not understand the mechanisms of child development and addictions well enough to say that everyone is responsible for every bad decision they make. It seems reasonable to operate, then, on the assumption that homeless individuals are somewhere in the middle, that they are partially responsible for their behaviour.

Given that assumption, we need to figure out what types of responsible behaviours or states can be legitimately controlled by society and what types of behaviours or states should be within the purview of the individual, regardless of the potential disapproval of others. For the library this means looking at how much of patrons' behaviours or states the library can, or should, attempt to control. The library, as a public institution that has a specific mandate, must insist on a higher level of control over the behaviour of its patrons, more than would be needed for the same people on the street or in their own homes. Allowing a garage band to practice in the library would clearly disrupt the purpose of the library, despite their being nothing intrinsically wrong with garage bands and that activity being perfectly allowable in other circumstances. Because of the function of the library, and that function being tied in with the welfare and presence of patrons,

there are some behaviours or states that are going to need to be prohibited that would not otherwise be controlled in other situations. What we need, then, is a discussion of the type of behaviour smelling badly is, whether that type of behaviour can be banned, and if so, for what reasons and under what circumstances.

To start this discussion we will turn to John Stuart Mill, one of the first thinkers on the legitimate control exercised by a society over the individuals that constitute the society.

### 3.2 Restrictions on Liberties

John Stuart Mills' work On Liberty is a piece dedicated to describing the personal freedoms that individual citizens of a society should be entitled to and provides some guidelines as to the circumstances in which the society will be justified in restricting the personal freedoms of its people. Since Mill, as we shall see presently, places a premium on individual liberty, he maintains that the justifications for restrictions shall have to be likewise weighty.

Under a Millian scheme, a freedom to choose is of utmost importance to society, as it allows all citizens to determine, for themselves, what will most make them happy, and the best way for them to obtain it. Individual liberty is very important because, aside from some very obvious cases, like the need for clean drinking water and sufficient food, there is great variety in the kinds of things that people find will make them happy. What one person finds makes her happy, another may despise and be made miserable by. Liberty is needed so that the

individual, who has the best idea of his or her own personal needs and wants, may pursue them in the way that makes the most sense to that individual. Restrictions on liberties are essentially restrictions on the ability of people to choose and pursue their own individual forms of happiness.

It is obvious that some restrictions are going to be needed, however, since what makes one person happy, such as the possession of someone's car, may make someone else very unhappy, such as the person to whom, until very recently, that car belonged. There are plenty of conflicts that are going to come up in a situation where everyone is busily trying to pursue their own ends, and toes are going to get stepped on if someone's pursuit of their own goods interferes or diminishes another's ability to do the same. To this end, Mill came up with the "Harm Principle": "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill 14).

According to Mill, everyone in society is bound by a social arrangement in which equal members of the society owe each other certain types of conduct by not injuring the interests of the other members (Mill 96-97, start of Chapter 4 paragraph 3). But it seems that almost anything we do that others do not like could count as 'harming' them in this sense. Behaviour that offends or irritates could be considered injurious of the interest to be free of offending sights, smells, etc. Mill, however, in the same sentence goes on to say that the interests each person must not injure are those that should be considered rights, either through some legal institution or tacit understanding (Mill 96). Mill defines a serious harm, which is

what his Harm Principle will be talking about, as follows: “[t]he most marked cases of injustice, and those which give the tone to the feeling of repugnance which characterizes the sentiment, are acts of wrongful aggression, or wrongful exercise of power over some one; the next are those which consist in wrongfully withholding from him something which is his due; in both cases, inflicting on him a positive hurt, either in the form of direct suffering, or of the privation of some good which he had reasonable ground, either of a physical or of a social kind, for counting upon” (Mill 230). There is (and presumably there should be) a legal institution that says we have a right to walk safely down the street without being murdered, so the violation of that right will be a harm that is serious in the relevant sense, it is wrongful aggression. There is certainly a legal right of all persons to use the library, and a legal right to do so without fear of harm, but there is no law, or even a social understanding, that people have the right to use the library completely free of irritation. It seems clear, moreover, that there should not be any such general law or understanding.

So, according to Mill’s Harm Principle, state intervention in the pursuit of happiness of an individual is going to require a very good justification because of the priority of liberty.<sup>8</sup> It requires that the intervention needed is to stop a serious,

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<sup>8</sup> Mill has the following to say on social censure of behaviours that fall below the threshold of serious harm: We do not have to like him (the offending person), or even spend time with him, “but he suffers these penalties only in so far as they are the natural, and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment” (100). We also do not have a right to “parade the avoidance” of his company (100). Acts which are “injurious to others” can merit more punishment, but in cases where it is not “we may express our distaste, and we may stand aloof from a person... but we shall not therefore feel called on to make his life

rights-violating harm. In the case of library policy this may suggest that people who are seriously harming others in the library can be ethically stopped under the Harm Principle. Since most, if not all libraries attempt to stop serious harms, this seems fine. The Harm Principle does not mention offenses or irritations, so merely irritating others is not a legitimate ground for coercively interfering with her under the Harm Principle. The basic idea, which may well be plausible, is that the ability of those who do irritating things to run their own lives, even when this is irritating to others, outweighs the loss that others experience from being annoyed.

Mill's Harm Principle can be supported both by certain kinds of Consequentialist considerations and non-Consequentialist ideas about rights. Mill is himself generally thought to be making a Utilitarian point about the good of individuals being maximized by a scheme that allows maximum liberty, constrained only by the requirement that they not harm others. This can be understood either as a view that the welfare of individuals will in all specific situations be maximized if we enact policies in accordance with the Harm Principle or, more likely, a view that the good of society will on the whole be increased if we follow the Harm Principle as a general rule for enacting policies, even if in some situations it is not the best option. The idea that the former determines what we should do is Act Consequentialism (or Utilitarianism) and the view that the latter determines what we should do is Rule Consequentialism (or Utilitarianism). "Act-utilitarianism is the view that the rightness or wrongness of

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uncomfortable" (102). "We shall reflect that he already bears, or will bear, the whole penalty of his error; if he spoils his life by mismanagement, we shall not, for that reason, desire to spoil it still further" (102). "[W]e shall not treat him like an enemy of society" (102).

an action is to be judged by the consequences, good or bad, of the action itself. Rule-utilitarianism is the view that the rightness or wrongness of an action is to be judged by the goodness or the badness of the consequences of a rule that everyone should perform the action in like circumstances” (Smart and Williams 9).<sup>9</sup>

The idea that we should always follow the Harm Principle is more plausible if we accept Rule Consequentialism than if we accept Act Consequentialism. Mill seems to be saying that humanity as a whole is better off if we *generally* follow the Harm Principle. “Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest” (Mill 18, Chapter 1 11<sup>th</sup> paragraph). There are many paternalistic cases where it seems that the welfare or good of a person would be increased if someone interfered with their ability to direct their own lives, going against the harm principle. Under Rule Consequentialism, the Harm Principle can be correct even if it allows some people to lower their own welfare when we know we could make things better on the whole by preventing them from doing this. As long as policy makers in general following the Harm Principle as a rule brings about better consequences than their making decisions in other ways (say because it’s the best way of ensuring that they respect the fundamental liberty to self-direction that Mill, and many others, feels is crucial for welfare and happiness). Rule Consequentialism requires us to follow it even if we know that we in particular could do better in a particular case by violating it. One of the

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<sup>9</sup> Utilitarianism here is the type of view we would now describe as Consequentialism, but this piece was written when the distinction between the two was just being made.

weaknesses of Rule Consequentialism is that it can lead us to make less than ideal choices because of the moral impetus to follow rules, even when we know that they are not ideal. If it is good consequences that we want, following rules in situations where it leads to less-than-ideal consequences seems counter-intuitive, and is a problem for the theory.

There is room, however, also to consider Mill's Harm Principle as most plausible if it is taken as justified by a basic right to individual liberty without necessarily needing a Consequentialist justification. The right to direct one's own life may simply be a fundamental right for beings who are capable of reflecting on how they should live. This can be seen when we consider what types of paternalistic interventions are allowed, and when. We think it is fine to prevent children from making very harmful decisions where we would resent the same interference with an adult, even if the decision were equally self-destructive. It is not just a matter of age though, but of some higher concern about the value of autonomy to the person, and their ability to recognize and use that autonomy. We still think strong and immediate intervention for the severely mentally ill is permissible when it is not for more psychologically typical people of the same age. We mostly acknowledge the right of people to self-determination even when it is detrimental to their welfare, which is why we allow adults to forego lifesaving medical treatments and resuscitation.

The Harm Principle, then, is derivable as a way to best protect that right while living in society: that we each have this basic right to live our own lives as we see fit. The right to control over the self, as well as the right to be unharmed,

may be a basic right that need no other justification. The Harm Principle can thus be thought of being derivable from deontological<sup>10</sup> theories that include principles that assign basic importance to respecting the personal autonomy of others.

While the Harm Principle seems plausible in many ways, one important problem with it is that there are things other than serious harms that it seems perfectly legitimate to control as a society. Certain kinds of conduct that are sufficiently annoying, like having a factory that emits pervasively bad smells, seem to be legitimate targets for regulation, even if they do no serious harm. One might, indeed, argue that the bad odors and other problem behaviours or states of homeless individuals fall into this category: behaviours or states that are not seriously harmful, but legitimate targets of library regulations on account of being sufficiently annoying. For plausible principles about when it is justifiable to ban non-seriously-harmful behaviours or states of this kind, which lie outside the scope of Mill's harm Principle, we must turn to another source.

### 3.3 Offense and Nuisance as Justifications for Restriction

Joel Feinberg, in his series on *The Moral Limits of the Criminal Law* sets out to find if there can be moral justifications for the intervention of authorities in the behaviour of individuals. In other words, he tries to find under what conditions

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<sup>10</sup> Deontological ethical theories are duty-based ethical theories, according to which the permissibility of an act is not solely dependent upon what will bring about the best consequences. They differ from other non-consequentialist theories in that (unlike Particularists) they hold that there are certain correct moral principles (like, say, the harm principle), and that (unlike Virtue Ethicists) they hold that the correctness of these principles is not a derived from things like what would be most virtuous to do.



it is moral for the law to limit the liberties of people. Throughout his 4-volume set, he examines harm to others, offense to others, harm to self, and harmless wrongdoings all as possible candidates for justification of liberty-limiting rules. Since our focus here is on nuisances, it is the second volume that will be of interest. Feinberg starts with a Millian justification and the Harm Principle, but wonders if there are other “coercion-legitimizing principles” (Feinberg, *Offense* ix). Feinberg comes up with 10 “Liberty-limiting principles” (Feinberg, *Offense* xiii) that detail the different types of reasons we may wish to coercively prevent certain forms of behaviour that we may wish to defend ourselves, or society, against. The Offense Principle is the second mentioned, and states that “[i]t is always a good reason in support of a proposed criminal prohibition that it is probably necessary to prevent serious offense to persons other than the actor and would probably be an effective means to that end if enacted” (Feinberg, *Offense* xiii).

Before we go any further, it should be mentioned that, while Feinberg is dealing with the criminal law, we shall see below that he draws on more general ethical criteria about when society should intervene in cases where what is being dealt with is not seriously harmful, but is still undesirable. There is no reason that the medium of control to which these ethical criteria are applied cannot be social elements other than an explicit legal code. Many social interactions and expectations are managed by institutions or even by the mere force of social disapproval and condemnation. The library and its policies are merely an extension of a culture-wide method of managing behaviour and social relations.

While Feinberg focuses on legal and specifically criminal prohibitions, we shall see that his moral reasoning about the conditions under which it is acceptable to limit liberty have applications to any government institution or even person wishing to try to control or limit the behaviours of others.

Nuisances are a type of behaviour that we may wish to control. Central to Feinberg's project is his search to find a line between nuisances that are allowable and ones we can or should ban (his Offense Principle uses the term "offense", but I will be using the term nuisance.) Offense is a disliked, caused mental state, whereas nuisance is more of a legal term and has two specific definitions, as will be explained below. Offenses and nuisances are the same in that they are both of a severity below actual serious harms, but irritating enough that we may wish for some sort of intervention. Offense is different in that it has this added element of disrespect. Mosquitoes are a nuisance, but they do not offend me because they are not disrespecting me. Similarly, the smelly homeless in the library are a nuisance but, I will argue, not offensive. For banning behaviours, it is not going to be justifiable to ban all nuisances, whether through legal means or institutional policies. It is part of living in a society with other persons that we will find some of their behaviours or states annoying. But neither do (or should) we allow everything that does not lead to serious harm to be practiced at all times in all places. We have restrictions on dress (shirts and shoes in most establishments, no public nudity in most public places), restrictions on noises and smells (municipal noise legislation, placement of large industrial spaces relative to residential areas) and restrictions on public displays of intimacy.

Feinberg deals with nuisances fairly early in his second volume, *Offense to Others*. He differentiates between private and public nuisances, the latter deals with a sort of “minor criminal offense” while the former is part of tort law (Feinberg, *Offense* 5). “Private nuisances inconvenience specific individuals in the possession of their land, whereas public nuisances inconvenience random assortments of people (‘the public’) in the exercise of rights common to all citizens” (Feinberg, *Offense* 5-6). Public nuisance is closer to the type of inconvenience that smells in the library cause in that it interferes with the ability of citizens to access their library, not in the use of private property. Feinberg is concerned with the use of criminal law (or in our case institutional policies) to restrict nuisances in public places, such as the library, but does not think that the mere fact that something is annoying should be sufficient justification for a prohibition against it (Feinberg, *Offense* 10). Instead, there are many different factors that must be taken into consideration when considering what types of offenses and nuisances can be banned. He suggests a schema similar to that already employed in tort law (Feinberg, *Offense* 10).

One horrible result avoided by this more sophisticated analysis of nuisances is the acceptance of bigotry and intolerance as grounds for prohibition. The inclusion of the reasons for the nuisance and the interests of the community sidestep some potential difficulties. If it is in the interest of the community to allow a behaviour, then there is less reason to prohibit that behaviour for the comfort of just a few. If the nuisance is part of a socially necessary or unavoidable

behaviour by an individual, it is going to be harder to justifiably police because it is going to be very difficult for an individual to cease.

To go back to Mill for a moment, Feinberg ties into his discussion with the need for protection against nuisances with the right to privacy (Feinberg *Offense* 22). The right to privacy includes what Elizabeth Beardsley calls the right to autonomy, which is violated by “conduct by which one person A restricts the power of another person B to determine for himself whether or not he will perform an act X or undergo an experience E” (Feinberg *Offense* 23). This is where conflicts start. The right to autonomy is going to include the right of some patrons to smell how they will, as part of their right to self-direction which Mill sets up as central to human happiness. Autonomy also, however, is the right to experience or not experience certain states; to control (insofar as you are able) what types of things you come into contact with. For some library patrons, this is going to include unpleasant smells, and part of their autonomy is going to be being able to choose whether they wish to experience that or not. So what we have are two different liberties that are conflicting. There is the liberty of the offending individual to engage in his behaviour, or exhibit her state, as she sees desirable. Then there is the liberty of the offended individual to go about their business without being irritated, to not have to experience certain unpleasanties.

Feinberg gives us a series of criteria set up by William Prosser to examine the seriousness of nuisances as a way of determining their worthiness as targets of intervention, originally regarding tort law, or private nuisances (Feinberg, *Offense* 7). The criteria do not merely ask how annoying a piece of conduct is found by

others, but are designed to take many factors into consideration (Simester & von Hirsch 271). Following Prosser, Feinberg considers the severity of the nuisance, the ease with which it can be escaped by the offended party (we find nuisances much worse when we are “trapped by them” (Feinberg, *Offense* 5)), the reason for the behaviour and the interests of the community as a whole. If the nuisance can be very easily avoided, such as avoiding a particularly ugly billboard by driving down another street, then it is not so crucial that an authority intervene. If the nuisance cannot be avoided at all, then it is much more important that it be banned. Similarly, the more severe the nuisance, the more we will want to ban it, and the worse the behaviour is for the community the more reasons we will have to want to control the behaviour.

Prosser’s analysis of the severity of a nuisance and thus its candidacy as something to restrict is as follows:

1. The seriousness of the inconvenience depends on
  - a. The extent, duration and character of the interference...
  - b. The social value of the use the plaintiff makes of his land...<sup>11</sup>
  - c. The extent to which the plaintiff can, without undue burden or hardship, avoid the offense by taking precautions against it...
2. The reasonableness of the defendant’s conduct depends on
  - a. The social value of its ultimate purpose...

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<sup>11</sup> This wording comes directly from Feinberg and is a tad unclear, but the meaning in this context is going to be that this is the social value that the offended individual is going to get from the interrupted activity. In the case of the library, it is going to be the social value of the use of the library without irritation to the irritated patron.

- b. The motive of the defendant...
  - c. Whether the defendant, by taking reasonable steps, can avoid or reduce the inconvenience to the plaintiff without undue burden or inconvenience to himself...
3. The interest of the community or the public at large... (Feinberg, *Offense* 7-9 italics have been removed).<sup>12</sup>

Feinberg's project is to figure out when and where it is appropriate to limit liberties and to figure out how to balance the two competing liberties. He proposes the Prosser criteria as an embodiment of various plausible ideas about how to weight the various liberty interests against one another. They give us an idea of how much each person's liberty is going to be impacted and how important that liberty is by looking at the severity, type and duration of the nuisance behaviour. They will help us measure how much each person's autonomy is going to be impacted by having certain liberties curtailed. Section 1 will give us a measure of how much the liberty of the offended person is going to be impacted, by letting us know how bothered the person is by the irritant (1a), what type of activity it is interfering with and the value of that activity (1b), and the ability of the individual to avoid the irritant and still be able to do the activity (1c). Section 2 gives us an idea of how much the offender's liberty is going to be curtailed should we decide to limit their ability to behave in a certain way or

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<sup>12</sup> The defendant, in our case, will be the irritating homeless and the plaintiff will be the irritated patron. I will be leaving 1b and 3 out of my discussion because they have both already been discussed at length elsewhere in the Consequentialism section, where the value of the library to patrons and to the overall community was made clear.

exhibit a certain state. It lets us see how valuable the activity is to the individual and how much they will lose by not being able to perform it (2a). It allows us to know for what reasons the person is choosing to use their liberty to perform such actions (2b) and determines how much of an imposition on liberty is needed to stop the behaviour or state in question (2c). The third criterion gives us the ability to take into account wider social consequences should we choose one way or another. Altogether, these criteria add plausibility and definition to Feinberg's Offense principle. Without them, the Offense Principle is too general to be of any real use, and could allow us to interfere with anything we found remotely bothersome, or not interfere even when interference is greatly needed. The Prosser criteria let us determine to which offenses the Offense Principle will apply, and how much interference it warrants and morally justifies.

Feinberg does not seek to be too exact with his justification of his ethical conclusions. "Technical philosophers too may find the approach in these volumes skewed, although in a different direction. They will find no semblance of a complete moral system, no reduction of moral derivatives to moral primitives, no grounding of ultimate principles in self-evident truths, or in 'the nature of man,' the commandments of God, or the dialectic of history. It would be folly to speculate whether the moral theory implicit in this work is utilitarian, Kantian, Rawlsian, or whatever" (Feinberg, *Harm* 16).

Feinberg could be appealing to both Consequentialist and Deontological intuitions by going beyond the Harm Principle for justifications for criminal prohibitions'. The rules that he lays out, especially the Offense Principle, could

be utility-maximizing rules to run a society with. Preventing people from annoying each other too much, while at the same time not imposing too much regulation on anyone, does seem like it would lead to an overall increase in welfare for everyone. On the other hand, a case could be made that Feinberg is appealing to a rights-based system where rules are set up to guard people's basic freedoms and outline our duties to one another as citizens. Since being irritated by others can seem to interfere with our running our lives as we choose, but regulations on irritating behaviours or states can threaten the autonomy of those they regulate, striking a balance between too little and too much regulation of nuisances would also seem important for adjudicating between basic concerns about the rights of both irritators and the irritated to self-determination. Feinberg's offense principle could thus be motivated by a respect for the autonomy of other people, and the desire to allow all citizens as large amounts of personal freedoms as possible before rights start to conflict.

In order to properly balance conflicting liberties "the offense principle must be formulated in a very precise way, and supplemented by appropriate standards or mediating maxims" (Feinberg, *Harm* 26). The Offense Principle, thanks to the evaluating standards provided by Prosser, has now turned from a general ethical principle to a useable tool we can now apply to the specific case of smells in the library.

The character of the nuisance caused by homeless people is going to largely vary from case to case, as well as from area to area. In libraries, large urban branches are going to see far more offensive behaviour than a library in a



tight-knit community of 500 people. Smaller communities do not have the problems with homelessness that large cities do, so they will have less of the accompanying issues. In a similar vein, downtown branches will see more activity than branches out in the suburbs. Since smell (and generally anti-nuisance) policies will be made in the branches that see the most activity, we can focus our attention there, and assume that the locations that have less of a problem can use the rules we deem to be reasonable in modified or truncated versions.

Let us assume that there is a noticeable problem with those who smell in the downtown branch of the public library. The first thing that we are going to have to ask concerns the extent of the nuisance, or how often the problem occurs. Is there only one person complaining about the smell, or several? Is the defendant at the public library extremely frequently, or rarely? The second thing that we are going to have to ask is how easy it is for other patrons to avoid this nuisance. Do the other patrons have anywhere else they can move too to avoid the smell?

I believe that the severity of the olfactory nuisance is usually not great. With respect to the issue of the avoidability of the nuisance, public library branches that are large enough and in a central enough location to attract a transient population, the main offenders in this type of discussion, are usually large enough to allow patrons room to escape from more unwashed patrons. The severity of the nuisance is lessened by the nature of the public library itself. And any nuisance that homeless people create does not exclude many people absolutely from accessing the resources of the library, since, as I have emphasized, materials can be taken home and accessed online, or patrons can move elsewhere in the physical

space. Some patrons, those that need the physical space, may have to put up with slight discomfort or irritation.

As to the extent or frequency with which the problem of smelly patrons occurs in the first place, there are conflicting reports. “[T]he director of the San Luis Obispo library himself has declared: ‘In twelve years, I can think of less than half a dozen incidents where people smell so bad that you can’t get within ten feet of them’” (Berman 105). On the other side of the argument “the *Washington Times* recently quoted an ALA official, who reputedly said: ‘Body odor is an enormous problem.’ And a branch manager in Maryland allegedly confirmed this: ‘We have trouble with poor hygiene.’” (Berman 105). So reports on the extent of the nuisance seem to differ, perhaps due to the subjectivity of bad smells. One account given reports that one library patron smelled so bad it caused vomiting (Thompson). In another, there were enough people complaining about the odour of one particular man over the course of a year that he ended up being banned (Anonymous, Daily Mail).

It appears, then, that the severity of the nuisance, under Prosser’s criteria, is going to be somewhat dependent on the individual situations that occur. Let us, then, move onto the second set of criteria, which deal with the “reasonableness of the defendant’s conduct”(Feinberg, *Offense* 8).

The first criterion for the reasonableness of the conduct in question is, essentially, the social value of the behaviour. The smell of the defendant does not have any social value. Unlike factories, which may smell nauseating, the body odours of patrons are not a side effect of a useful, or even necessary, process. It

has no value, and so the conduct of the defendant now looks to be fairly unreasonable right off the bat.

The second criterion of the reasonability of the defendant conduct is the defendant's motive. Part of the reason some patrons can be annoyed at homeless people with particularly bad smell is the perception of disrespect or lack of sufficient respect for others, of the kind discussed by A.P. Simester and Andrew von Hirsch. Disrespect comes into play in offenses when someone is aware of the social conventions in place and is aware of the discomfort that his behaviour will cause in others, but does not take that into consideration in his decisions or does not let it dissuade him. This lack of consideration is a lack of respect for the feelings of those around him, and is characteristic of offenses (Simester and von Hirsch 277-278).

While the perception of the problem may be that homeless people show insufficient consideration of the interests of others in choosing to have poor hygiene, I believe this is a mistake. It makes much more sense to suppose that homeless people in the public library would prefer to be left alone in peace, rather than harassed and embarrassed because of their appearance and hygiene, just as everyone else would rather not be taken to task on their personal appearance or smell in a public place. On the off chance that we have a homeless person, or anyone else for that matter, who has allowed himself to become olfactory offensive for the sole purpose of disgusting and offending others, or even by not having enough respect or concern for those around him to take the easy steps to avoid smelling badly, then perhaps we will be justified in banning him. But since

this is almost never the actual situation of homeless people, this crucial justification for banning them on account of their unpleasant odor is absent.

To my mind, the most important issue in determining whether it is legitimate to ban the problem behaviors of homeless people on grounds of nuisance is the third criterion of the reasonability of the defendant's conduct (2c), which concerns the ease with which the defendant can avoid engaging in the annoying conduct. In our context, the question is how easy it is for homeless people to change their appearance or behaviours. Feinberg mentions that it is important whether the defendant can stop his offending behaviour "without undue burden or inconvenience to himself" (Feinberg, *Offense 9*) In this case, it might actually be *impossible* for the defendant to change, not merely inconvenient for him to do so. At the very least, it will be extremely difficult for homeless people to avoid certain of their conditions and behaviours that are annoying to others, like their smelling badly.

Let us go back over the application of the Prosser-Feinberg criteria to determine whether it is legitimate to ban the nuisance conditions and behaviour of homeless people in public libraries, particularly that of bad smell. The seriousness of the inconvenience is going to depend on the individual situation, both because of the variability in the annoyers' appearance and behaviour, and the public library in question may or may not have enough room to allow other patrons to move away from the offending person. Because the annoyed parties are using the library, which is an important social resource, and the behaviour of homeless people can be so bad as to interfere with their use of it, the seriousness of the

inconvenience can end up, in a worst-case scenario, being fairly severe. Being seriously burdened in accessing a public place that everyone has a right to patronize is not a small inconvenience. Public places are meant to be for the public, and when the public cannot use them in peace, something is wrong. We will put the severity, then, of the nuisance below an actual serious harm, but still fairly significant. This means that, to counteract this annoyance and a policy that bans the offending behaviour, some criteria in the reasonableness of the defendant's conduct is going to have to be fairly important.

I believe that considerations of the motives of homeless people (2 b) and the difficulty homeless people face in avoiding the annoying conditions and behaviours or states (2c) are indeed that important.<sup>13</sup> The motives of homeless persons are going to be benign. It is stretching credulity to imagine that homeless people have decided to forego showers in order to annoy the rest of us, and given the near impossibility of keeping themselves clean, it is almost as absurd to think that their failure to bathe is due to a lack of sufficient concern for the interests of others.

One other consideration, before we go on to the conclusions, is the role that the need for physical access plays in this discussion. This mostly concerns the avoidability, both for the ability of the offended to avoid the smell (1c), and the

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<sup>13</sup> Again, 2a, the purpose of the behaviour, is also important, but has already been explained. The only new addition here will be that, though the behaviour or state might not have any intrinsic value for the person performing it, the person's ability to choose to perform or not to perform the behaviour, regardless of its value for them, could still be important. We may not want to dress a certain way, it could even harm us if we did, but the ability to choose for ourselves to do so is still an important liberty.

ability of the offender to avoid offending (2c). Both groups have both rights-based (as we will see in Rawls) and utility-based (as we saw before) claims on the space. Both have the potential to need the physical space as their way to access their library. If the space were a large outdoor park, the smell issue would not be nearly so pressing, as there would be plenty of room for either party to easily distance themselves from one another. In the enclosed space of the library, it becomes more difficult to either move the person or the smell to a non-offending distance that still allows both parties to use the needed resource. Moving becomes more of a burden and an inconvenience. I still do believe that the burden will be more on the side of the homeless person who offends because the burden of avoiding the library, and thus ceasing to irritate, is very high, as we saw in the utilitarianism section. The need to be in a contained space does make a difference in the analysis in that it both increases the seriousness of the inconvenience and makes the defendant's conduct more reasonable, as neither can easily change the situation in which they find themselves.

### 3.4 Harm and Offense Conclusions

While most of our intuitions about the permissibility of restricting actions start with serious harms to others, we have seen reasons to have a category of actions that are less severe than serious harms, but still legitimately controllable by society. These reasons can be Deontological, concentrating on the conflicts between the rights and autonomy of individuals, or Rule Consequential, looking at rules for policy design that will increase the overall welfare of society. Not

allowing people to irritate one another at their leisure can be justified with both an appeal to the autonomy of an individual and their ability to choose the situations in which they find themselves, and the overall good of society when people are not irritated with each other. Prosser's framework around nuisance evaluation and Feinberg's talk of permissible societal intervention in personal liberties provides a great tool to distinguish between what we may wish to ban and what we should not. Because of issues of lack of control and responsibility, the relatively easy avoidability of the nuisance by others, the difficulty for homeless people of avoiding the nuisance, the good that homeless people gain from the library, and the differing severity of the offense itself, while society may wish to control some offenses and irritants, the smell of homeless people in the library should not be morally considered as a candidate for interference. It seems that the Prosser-Feinberg criteria will deem it impermissible to ban homeless, or other, people for offensive odors if they cannot help the way they smell. The offense is not great enough or unavoidable enough to compensate for the harm it would do to an already vulnerable percentage of the population, who are neither failing to show sufficient respect nor in any kind of position to avoid their annoying conditions and behaviours or states. Private community events in the space can exclude whomever they wish. What banning will do is exclude homeless people that are deemed a problem absolutely, or at least until they rid themselves of their economic hardships. This is a large burden to place on individuals who cannot change their behaviours and appearance without immense trouble.

As was mentioned in the beginning of this thesis, there are other sorts of behaviours or states similar enough to the smell issue that we can analyze them in a similar way using these criteria that Prosser through Feinberg has given us. One of the most obvious contenders is going to be complaints about noises. From people talking on their cellphones, to noise coming from group conversations, to a person quarreling with herself, noise in the library can disrupt concentration and enjoyment very quickly. It is similar to smell because it is a nuisance that is proximity dependant, as well as varying in intensity. The main difference, which will make all of the difference I think, is that, while homeless people have very few, if any, options for changing their smell, conversations can easily be carried on in different areas, voices can easily be lowered and cellphones can be turned off. The only exception to this rule, which is going to more closely resemble the application of the criteria to the smell issue, is noise that is caused by mental illness. A man with tourettes syndrome who cannot help occasionally shouting out in the library is in the same position as homeless people. The behaviour is involuntary, so it is harder to justify banning this person from the social resource.

Another issue subject to the Prosser criteria that should bring out our intuitions about nuisance is viewing offensive material in the library. There is a certain area in which the offense can occur (in this case the viewing radius), the severity of the offense can differ from mild disgust to true repulsion, and there can be various reasons for the behaviour. A medical student viewing an instructive video of a surgery may be as disgusting as another patron viewing hard-core pornography, but we may be willing to put up with the former where we will not



tolerate the latter, because of the former's value to society. There will also be a question around how easily it can be avoided. If the pornography is in a book sitting on a shelf, then someone who wants it has to go looking for it, whereas someone watching it on a computer in a busy public area will be much less avoidable. Like smell, the details of the individual cases will make all the difference in the moral analysis, but it is certainly subject to similar considerations.

#### 4. Rawls, Freedom, and Fairness

I have thus argued that the welfare that homeless people gain from the library is more important than the inconvenience of the other patrons and that, while there are legitimate reasons to control behaviours or states of responsible individuals that are not seriously harmful, the difficulty homeless people have in controlling their nuisance behaviour and the avoidability and minor nature of the nuisance disqualify the smell of homeless people from being a legitimate ground for banning. We may still have some concerns, however, about having to go out of our way to provide library services to homeless people, apart from our already existing burden of tolerating their smell in public. Should they be allowed to use a space and resources that the rest of us have paid for if they are going to be a nuisance? Do they have a right to this social resource that they have not helped to fund if their using it will make it harder for those who do fund it to use it?<sup>14</sup> We

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<sup>14</sup> With sales tax in Canada, there is very, very little chance that there is a person that has not paid any taxes whatsoever. I intend to show, however, that *even should* such an unlikely person exist, he is still entitled to use the library. There

will look at the difference between positive and negative liberties in the context of libraries, but first, we will examine the general ethical concerns surrounding the liberties embodied in the function of libraries.

#### 4.1 Equality and Freedom: Rawl's Justice as Fairness

There has been some talk before in this essay about library use as a right, and how much of the conflict we see around this issue concerns the competing rights of two groups to use the space, the services, and the resources the library provides. We have yet to look, however, at what type of right the right to the library might be, how we should go about conceptually defending this right, and how we should place it in a schema with other rights and liberties we wish to have. A plausible way to do this is to turn to the work of John Rawls, a famous social contract theorist, who envisioned a society where rules and rights are based on a fundamental idea of fairness and respect for the autonomy of individuals.

Rawls' seminal work on social contract theory, *A Theory of Justice*, attempts to outline the fundamentals needed for a just society using a non-Utilitarian conception, turning to the tradition laid down by Locke, Kant, and Rousseau (Rawls, *Original* viii). He starts from the acknowledgment that a society needs rules in order to regulate behaviour. With no rules, no one is safe from anyone else and living in any group becomes very dangerous. What Rawls

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could also be concerns about the amount contributed by different citizens to the library that could affect their right to access the resource. Unfortunately, if amount paid in taxes is even roughly equivalent to right to use or access services, then use of roads and sidewalks will have to be divided up, with those with higher incomes, and thus higher income taxes, allowed to walk and drive more than the rest of us.

wants to focus on, in contrast to the welfare scheme of Consequentialism, is personal liberty and the autonomy of the individual. His scheme is not to bring about the best possible outcome but to ensure fairness and the maximal opportunity for individuals to live their lives as they desire.

This is certainly a laudable goal, but the practical work of forming fair rules is more difficult than might be initially thought. Regardless of good intentions, there is always going to be the risk of the individuals disproportionately favoring liberties that are important to one group over those favored by another. Rawls' answer to this is the "veil of ignorance" (*Original* 136). Behind the veil of ignorance, the observer is stripped of all knowledge of his identity, like age, sex, and economic status, which would cause him to create biased rules. When ignorant of these basic facts about his personal identity, the observer is asked which rules he would like to make the guiding principles of society, simply out of concern for his own freedom. Because there is nothing now in the observer to cause him to favour one group, or a certain group of liberties important to one group, over another, he will now desire society to be set up in such a way that, whomever it is that he actually ends up being in the world, he will be treated fairly and justly. The veil of ignorance is a tool that allows us to see what types of rules are unfair because they allow us to theorize a situation that is perfectly unbiased in that no one's interests or projects are held before anyone else's. If, behind the veil, you would prefer a rule about a liberty, say the right of every citizen to vote, that is different than the actual rule in place, say that only white people are allowed to vote, then we can see that the rule in place is unfair

because no one behind the veil - in a position that is not biased towards freedoms that benefit some individuals more than others - would endorse the latter. The only things that people are allowed to know behind the veil are the “circumstances of justice” and very basic facts about human behaviour and society (Rawls, *Original* 137). From this point of view, the basic rules that people would agree to behind the veil will be constitutive of what fair rules for running a society would be.

Two rules that Rawls believes would be generated by the people behind the veil are:

The first: “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others” which include “political liberty...; freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure” [‘The Principle of Equal Liberty’](Rawls, *Original* 60-61).

The second: “social and economic inequalities are to be arranged so that they are both: (a) reasonably expected to be to everyone’s advantage [‘The Difference Principle’], and (b) attached to positions and offices open to all [‘The Principle of Fair Equality of Opportunity’]” (ibid).

Rawls argues that the first principle will be chosen from behind the veil because in that position one will try to guarantee the maximum amount of liberty to himself, whoever he will end up being when the veil is lifted. This ends up respecting the autonomy of every person, as they are given as much personal

control over their own lives as is possible when trying to maximize personal control for everyone. One person's liberties cannot be traded for increased liberties on the part of another because basic liberties are more important than the ability to pursue costly projects. Since inequalities in society can potentially breed troublesome disparities in power that can lead to abuses and eliminations of liberties for those not so well off, this goes a long way to ensuring the autonomy and freedom of those at the bottom of society.

According to the second principle, the material goods and opportunities of society are divided up to be to the greatest advantage to everyone, and the positions of power are promised to be open to everyone. Behind the veil of ignorance, this rule can be thought of as a way to protect fundamental rights and autonomy of people from not having enough goods or opportunities to choose their projects and pursue them and to guarantee a certain level of consideration to the poorest in society should the person behind the veil turn out to be in that position (This is a type of maximin reasoning, where the emphasis is on having the best worst-case scenario possible. This makes sense behind the veil, as you might be the one in the worst position in society, and from the standpoint of concern with your personal freedom it is much more important to preserve a basic ability to pursue your projects than it is to gain a great deal of power to do so). We are not allowed to benefit ourselves economically at the expense of those at the very bottom of the economic scale, again because behind the veil the caution of preserving the basic liberties is more important than the risk of trying to gain large amounts of wealth and power.

Rawls also explains that the first rule is to take precedence over the second (Rawls, *Original* 61). Whatever distribution scheme we figure out for the goods in society, it cannot be inconsistent with the liberties that we are guaranteed with the first principle. We cannot put together a system in which people give up their basic liberties for an increase in material goods. The rationale for this is again that from the standpoint of personal freedom it is much more important to preserve basic abilities to pursue our projects than it is to obtain substantial powers to pursue certain goals. Because of this, I will be focusing on the first principle as the motivation for library access for everyone, since unlike considerations stemming from the second principle, it cannot be overridden by other considerations (like having to pay less taxes for the library).<sup>15</sup>

This lexical difference between the two rules comes from a certain amount of caution that Rawls feels is important while establishing the ground rules for society. His main interest is in ensuring people have sufficient liberty to be able to evaluate, re-evaluate, and change their goals and priorities.

I assume that the parties view themselves as free persons... Very roughly the parties regard themselves as having a highest-order interest in how all

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<sup>15</sup> I will be focusing on the first of Rawls' principles to argue against discriminatory social policies, but there are also some other arguments that could be run from the second of Rawls' principles about the division of social and economic inequalities. The inequalities must be to everyone's advantage and any remaining inequalities must be to the advantage of the worst off. Banning people from the library would certainly be an inequality and is not to everyone's advantage (the banned patrons would argue that it is not), so the inequality that is created would have to be to the advantage of the worst off which, if it is discriminating against homeless people, is not the case. It may also be the case that the library ends up providing the education and information that ends up making certain positions truly open to all with the appropriate talent. Some parts of these arguments have already been covered in the Consequentialism section.

their other interests, including even their fundamental ones, are shaped and regulated by social institutions. They do not think of themselves as inevitably bound to, or as identical with, the pursuit of any particular complex of fundamental interests that they may have at any given time, although they want the right to advance such interests... Rather, free persons conceive of themselves as beings who can revise and alter their final ends and who give first priority to preserving their liberty in these matters. Hence, they not only have final ends that they are in principle free to pursue or to reject, but their original allegiance and continued devotion to these ends are to be formed and affirmed under conditions that are free" (Rawls, *Revised* 131-132).

So basic liberty is needed, not only to pursue projects and ends that are important to us at the time, but is crucial to the fundamental ability to change our minds, explore other possibilities, and freely choose to change and mature as people. While economic goods may help us pursue certain objects and projects once we have fixed our sights on them, it does not give us this higher order ability to form projects in the first place, an ability more crucial and needed than anything economics can provide.

#### 4.2 Justice as Fairness and Public Library Access

Rawls does not specifically mention a right to libraries covered by the lexically prior Principle of Equal Liberty, but I think that using the library is an indispensable way to achieve both the freedom of assembly (especially as the

public library is a just that, a *public* place) and the freedom of thought. The Canadian Library Association makes explicit their commitment to freedom of thought and to equality of access in their statement on intellectual freedom:

All persons in Canada have the fundamental right, as embodied in the nation's Bill of Rights and the Canadian Charter of Rights and Freedoms, to have access to all expressions of knowledge, creativity and intellectual activity, and to express their thoughts publicly. This right to intellectual freedom, under the law, is essential to the health and development of Canadian society.

Libraries have a basic responsibility for the development and maintenance of intellectual freedom.

It is the responsibility of libraries to guarantee and facilitate access to all expressions of knowledge and intellectual activity, including those which some elements of society may consider to be unconventional, unpopular or unacceptable. To this end, libraries shall acquire and make available the widest variety of materials.

It is the responsibility of libraries to guarantee the right of free expression by making available all the library's public facilities and services to all individuals and groups who need them. (Canadian Library Association Executive Council, Intellectual Freedom).

By allowing the most information possible to be accessible, the library gives citizens the greatest possible opportunity to form their beliefs and opinions, helping to preserve the people's freedom to form and hold beliefs. The library is



also part of the ability to form and revise projects and interests so crucial to Rawls in his lexical ordering of his principles and is of primary interest to him because of its fundamental importance. The library also provides access to the Internet and other forums where citizens can “express their thoughts publicly” and preserve their freedoms of speech and information. By allowing all citizens the ability to access the library, the person behind the veil of ignorance guarantees herself, whomever she may end up being, the preservation of the rights that the library seeks to enshrine.

Part of Rawls’ scheme, as seen in the first rule, is to allow the most liberties to as many people as possible. Obviously, some liberties, such as my right to bodily safety, mean some restrictions on the liberties of others, *vis-à-vis* their ability to hurt me. Having a right to property means less freedom to take whatever I want from others. For the most part, people are willing to give up freedom for protection against the unbridled freedom of others. Interesting problems will start to crop up, however, when two liberties collide. A famous example of this type of problem are the clashes between freedom of thought and speech and personal safety. Canada’s Hate Speech legislation is an example of an attempt to deal with some friction that can arise between the liberty of allowing everyone to freely express their ideas and beliefs, no matter how hateful or racist they might be, and the right of the objects of some of those beliefs and ideas to feel safe and secure in society.

A similar clash appears to be happening in the modern public library. The right to the public resource and the rights that it embodies should be applied to

everyone, especially under a Rawlsian framework. But the application of rights to everyone may mean that a very small group of people becomes slightly disadvantaged, such as the “intolerant sect” of a religion that Rawls’ uses as an example in § 35 (*Original* 217). Here he is discussing the methods with which citizens in his ideal society, living under the rights and liberties afforded to them by his principles, should deal with persons who try to suppress or ignore the liberties of others. This situation is not exactly the same as the one we are dealing with, since homeless people in libraries cannot (at least for the vast majority of cases) be said to be trying deliberately to interfere with the rights of others to use the library. But because the problem behaviours or states of homeless people are making it more difficult for some people to exercise their basic rights to the library, we can perhaps extrapolate and apply Rawls’s principles for dealing with intolerant sects. Rawls has a strong answer to the question of intolerant sects fairly immediately. “[F]reedom should be restricted only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger” (Rawls, *Original* 220). This is a consequence of Rawls’ first principle. The intolerant sects are allowed as much liberty as possible until they start infringing on the rights of others.

I do not think this applies to the library, however, since for the most part, the use of the library is not very impacted by the presence of offending odours, so the rights of the majority of patrons are not being infringed upon. Some patrons can still use the library, remotely or physically, even with someone who smells

poorly. Slight irritation in the physical space is no complete bar to access, and does not at all affect access digitally or in other removed ways.

As mentioned above, there may be some worries about duties being entailed on the taxpayer to help provide a service in the form of the library to homeless people, above and beyond merely tolerating their behaviour outside the library and not interfering with their lifestyle. We must, therefore, make a distinction between positive and negative liberties that is important in talks about rights. When someone has a right to something, say a political right to vote, there are two ways to conceive of that right. One is that the person has a negative right, which means that they are to be free from interference from others, in this case, that the government or other private citizens cannot try and prevent the citizen in question from voting. The right is not to be interfered with. In contrast, a more positive duty approach to something like the right to vote is that the government or other private organizations have a duty to the citizen to help promote that right of voting, so the government might have to do its best to make its citizens aware of upcoming election, voting registration opportunities, and polling locations. If it were just a negative duty to the citizen, the government is forbidden from outlawing voting, but not necessarily duty-bound to any other aid, such as information. Some rights, such as the right to healthcare and schooling, clearly put positive duties on the government to provide certain services. Others, such as freedom of association, might seem to require only the negative duty of non-interference from the governing body and other citizens.

Most of the liberties in Rawls' first principle look very much like negative

liberties. Freedom of speech is put in place to prevent government censorship. Security of persons and property merely requires others to not try to harm you or yours. The guarantee of these liberties could easily be thought of as a guarantee of non-interference from other citizens and the government itself.

Proponents of the exclusion of homeless persons who engage in nuisance behaviours or exhibit nuisance states from the public library might be inclined to argue that the freedom of speech and liberty of thought, which are the main rights in a Rawlsian framework that the public library can be thought to be protecting, are rights and liberties that only entail a negative duty of non-interference instead of a positive duty on the part of the government (and tax-payers) to provide libraries to the public. Then, since there is no right to the public library as an essential service, the rights of homeless people are not being trod upon. The government is not interfering with their right to believe what they will and express those thoughts because the government is not arresting these people for thinking or speaking. They are merely being removed from an institution that the government is under no obligation to provide, and therefore no one has a right to. It is perhaps nice that the government has decided to build a library, but they did not have a duty to, and no one has a right to it.

Rawls, in *A Theory of Justice*, does not directly answer the question of whether his theory of rights to basic liberties entails positive duties on the government, or merely a duty of non-interference. He does tend to talk in terms of non-interference fairly heavily (see *Original* § 32), but he adds a caveat at the end of the section about the possibility of poverty and ignorance interfering with the

use of rights given under a system (Rawls, *Original* 204). While Rawls does not think that this type of interference would count as a restriction on the liberty, he does think that the “worth” of the liberty is affected negatively. The “worth of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines” (Rawls, *Original* 204). If, behind the veil of ignorance, we want to guarantee ourselves as much good and liberty as we can, we will tend to value more positive duties on the part of society. While the well-off may not need government assistance to make full use of all of their rights, since education, legal advice and knowledgeable parents can be hallmarks of the upper class, homeless people and other disadvantaged groups may need assistance if certain liberties are going to be manifested in their lives. The right to an education can mean nothing if, while no one is banning someone from school, that person cannot afford the fees or even the time to attend. With all of the possible roadblocks to rights that can appear in the lives of those unable to provide themselves with advantages and even basic needs, it is in the best interest of the adjudicators of society’s rules from behind the veil of ignorance to ensure that liberties are provided for those that cannot provide for themselves. This ties in with the caution that Rawls feels is important while setting up rules behind the veil. It is going to be more important to guarantee the basic freedoms for everyone than to take the risk of having less freedoms if you end up being in the lower portion of society for the gain of possibly having a little more money if you end up in the more well-off section. The basic freedoms are more ethically important than the power to fulfill all desires and complete all projects.

It can be argued, therefore, that restrictions on the ability of homeless people to educate and inform themselves using the public library is going to negatively impact many of their basic rights and liberties because their ignorance and lack of information can negatively affect their ability to pursue their own ends. If, through not having access to a local paper and the internet, a homeless man does not have any information on the local election, the issues, or the locations and times of the polling stations, his right to vote has, in some very significant way, been lessened. If, through ignorance, the same person does not know his basic legal rights and has no way to inform himself, he cannot protect himself in legal encounters with both police authorities and other individuals. His legal rights have been lessened because he cannot make use of them. Rawls also explicitly states that “each person is to *have* an equal right” (*Original 60 italics added*), not that each person has the opportunity to provide himself with rights. Rawls’ phrasing seems to indicate a fairly robust notion of possession of rights, that in a real sense the person should have the rights in a way that can benefit him, not just a vague notion that may or may not have an opportunity to manifest itself.

In setting up the rules of a society behind the veil of ignorance, we might, at first, want to opt for a non-interference policy, as it would lessen the financial burdens on tax-payers, and be less of a headache when it comes to tricky questions around allocation of government resources. With the threat of poverty and homelessness held over the heads of the veiled decision-makers, I believe that they should opt for more positive duties on the part of the government in order to make the most out of the liberties given. If positive duties, such as ensuring

proper education through schools and libraries, will help increase the worth of liberties, and the ability of individual citizens to knowingly pursue their own ends, then that seems the obvious choice for those deciding what types of rules the society will be run by. The library is directly responsible for the preservation of some of the liberties guaranteed by Rawls' first principle about equality of liberty and is part of a system that allows people to form and freely choose their goals and interests. When everyone has the same access to the library, they have a way to make the most of their liberties guaranteed to them. Without the library, it cannot be said that the first principle is being upheld because there will be too many rights that have no practical use to their bearers.

#### 4.3 Rawlsian Conclusions

Rawls attempts to create a tool that will give us fair rules for our social institutions by coming up with the veil of ignorance, a tool that should strip individuals of potentially discriminatory characteristics before asking them to decide how to run society in the interests of their own freedoms. Behind the veil, people should want rules that allow them the maximum amount of personal autonomy possible and some way of splitting the social and economic goods so that no one is unfairly disadvantaged. I have argued that the right for every citizen to use the library is entrenched in the first of the rules Rawls believes will be generated behind the veil, and that, for rights like the right to freedom of information or freedom of conscience to be protected in an ethically important way, there are some positive duties that are entailed upon the society as a whole to

provide, such as funding for public libraries. If we wish for homeless people to have rights and liberties and autonomy, which seems to be the case under a Rawlsian scheme, then we are under a positive obligation to provide services which ensure that those liberties mean something. Since the importance of basic liberties overrides economic concerns, the financial cost of ensuring liberties by supporting public libraries should not be an issue, and the primacy of basic liberties should mean that they are guaranteed to even the socially disadvantaged homeless individuals.

For other nuisance behaviours or states, the veil of ignorance should certainly give us grounds to consider not banning those who cannot help their behaviours or states, as we would want the same consideration extended to us were we in that position. Further application of Rawls may lead to a fairly strong position against banning any nuisance behaviour, as the right to use the library as an important social liberty is paramount. But if we draw back behind the veil of ignorance, I do think we would have policies that are moderate about banning some nuisances and not others, especially looking at avoidability issues. Behind the veil, we would certainly not want our library time interrupted with any behaviour or state that people may wish to perform or display in public, even if it is not seriously harmful. And if we knew we would be able to easily avoid engaging in or exhibiting the nuisance behaviour or state, and would have ample opportunities to engage in or exhibit it elsewhere, we wouldn't have cause to be very worried about a policy that requires us to avoid engaging in that nuisance behaviour or state in the library. Principles moderated under Rawlsian thinking



will respect the fact that libraries embody important rights and allow people to make fuller use of their liberties and will pay close attention to what types of policies will be fair and just to all concerned.

## 5. Conclusions

Before going into my final conclusions, I will give an example of the practical application of this research by looking briefly at a real library policy on patron behaviour, and making suggestions as to the ways it could be mended to be made more acceptable. The following are excerpts from the policy of the Edmonton Public Library:

“Disruptive conduct by an individual or by small groups may include: smell that is highly offensive to customers and staff” (Edmonton Public Library, *Conduct 1*).

“Disruptive or inappropriate conduct should be addressed. Each situation is different. Staff must use judgment and common sense when dealing with disruptive customer conduct or complaints about customer conduct. What may be disruptive to one individual may not be disruptive to another. If questions arise, staff are to speak with a colleague or a supervisor to determine the scope of the concern” (Edmonton Public Library, *Conduct 1*).

It is interesting to note that the library is already addressing one of the concerns embodied in the Prosser criteria. They acknowledge that the conduct, or in this case state, can differ from time to time, so that must be taken into account when dealing with the disruption. What is missing, however, is any sort of

concern for the cause and avoidability of the disruption, since no mention of leniency given to mitigating circumstances is mentioned. No suggestions are given for allowance for the personal circumstances that lead to the state or behaviour are given, such as dealing with patrons with mental illness. Neither is any mention given about the unique nature or value of the library for some patrons. While I do not expect a long essay on the nature and place of libraries in policies, it would be nice to have an acknowledgment of the role the library plays in peoples' lives explicitly mentioned or alluded to, so that Prioritarian, Democratic Egalitarian and Rawlsian concerns about banning certain people can be kept in mind.

The Edmonton Public Library does have a statement of shared values that states: "We accept everyone and adapt to unique needs and situations" (Edmonton Public Library, *Shared Values we are open*). They do not go into any more specific detail though, and their statement "[w]e believe in total and unfettered access" (Edmonton Public Library, *Shared Values we are open*) is even more ephemeral and runs contrary to even having any code of customer conduct. While they may support adaptability on paper, their specific policy on smell does not make any guaranteed allowances for circumstances.

What will be a real tripping point for the types of allowances I wish to be considered is that they depend on a fairly intimate knowledge of the offending person's personal situation that would result in issues around privacy. The right to privacy and confidentiality is already important for libraries, and is enshrined as one of the "Core Values of Librarianship" (American Library Association, *Core*

*Values.*) To ask patrons about their ability to clean themselves has the potential to be very embarrassing, and could potentially lead to legal trouble, especially if there were records kept about various patrons.

Other suggestions of ways to deal with the problem of smell without resorting to banning would be to start working intimately with homeless shelters, non-profit organizations and government agencies so as to direct homeless patrons to resources they might not otherwise be aware of, to help them into a social and financial position where hygiene would no longer be an issue. Coupons to places where cheap showers could be taken, such as local swimming pools and the YMCA could be provided were the nuisances strong enough.

Ultimately, what I would like to see in more library policies is concern given for the relative social positions and importance of the library for various library patrons. If libraries could have policies that are more flexible when applying rules, I believe it would go a long way to making libraries an even more usable and important social institution in the lives of the poor and underserved.

I have argued from Consequentialist welfare considerations that library access for homeless people engaged in minor nuisance behaviour that they cannot avoid without significant trouble is the best way to maximize their utility and, from Democratic Egalitarian and Prioritarianism concerns, that the intrinsic value of equality and the priority of the interests of the least well off should clinch the conclusion that tolerating smells and other similar behaviours or states in the library will lead to the best outcome. I looked at the role of personal responsibility in the situation of homeless people, and I looked at Mill for an exploration of the

importance of individual autonomy. I examined the role of both harm and nuisance in the justification of societal interference with personal liberties, with the smell of homeless people being found too minor, and other factors in the situation being found to extenuating (such as their personal situations, the easy avoidability by others, their lack of ability to rid themselves of their odour) to allow policies that permit banning homeless people on grounds of smell when they cannot easily avoid smelling, although there is justification for some irritants to be banned even when they are not easily avoidable. Finally I looked at the role of libraries in the preservation of certain fundamental liberties that should be protected for all citizens in order to have a just and fair society and concluded that the library allows the full use of certain liberties to be realized, so library access is a crucial step in the maintenance of fundamental liberties and cannot be traded for economic gains. Generating social rules behind a veil of ignorance to come up with the fairest rules possible gives us a rule that allows maximum personal liberties and requires us to arrange economic inequalities so as to maximally benefit the least advantaged. I argued that, because of the importance of personal liberty and the need for the benefits from libraries to fully utilize liberties, rule-makers in a position behind the veil of ignorance would disallow the banning of non-harmful smells when patrons cannot easily avoid them.

The situation of homeless people makes them especially vulnerable to abuses of power by others, and the staggering roadblocks on the way out of homelessness make any changes in their lifestyles or personal habits very difficult. While we may prefer our public building and our streets to be clear of

these disruptive, often smelly and loud persons, I believe, and have argued, that there are many compelling reasons why the very valuable resources of the public library should be kept open and welcoming to this section of the population.

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