Ending the War on Tobacco: Moving Toward a Tolerant Public Policy

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Executive Summary

Liberty includes the ability to choose one's own consumption pattern. It is something valued but often taken for granted. This nation has a rich tradition of protest when liberties are questioned or restricted. Over 200 years ago Samuel Adams and John Hancock found themselves protesting an obtrusive government in Boston–the "Tea Party" was a revolt against excessive excise taxes on tea.

Currently government is taxing tobacco at rates no longer aimed at revenue generation. "Sin" taxes are directed at behavior modification, not revenue generation. In recent years, government has taken a more proactive role in our lives–legislating health, safety, and morals. The hazards, risks, and potential addictiveness of tobacco are well documented. This paper does not dispute these established facts. With respect to one's daily life, there are choices to be made with risks and consequences. However, informed consenting adults should have the opportunity and ability to determine their own consumption patterns free of government coercion. The fundamental question that must be addressed is to what extent should government regulate how one lives his life?

The production and consumption of tobacco products are at the forefront of public policy. Leading the movement to restrict tobacco use and the tobacco industry have been public health officials and organizations, the state attorneys general, local, state and national legislators, and private citizens concerned about health issues. Responding to this movement have been the tobacco industry, organizations and think tanks who support liberty and marketplace solutions over government intrusion and paternalism, and private citizens who wish to retain the right to make a personal choice.

Smoking, once seen as glamorous and a sign of maturity, is now portrayed as deadly and unattractive. Smoking rates have declined and have stabilized at about 25 percent of the general population. There is a concern, however, that adolescents are targeted as the new or "incoming" consumers to replace the old or "outgoing" consumers. As such, counterinformation, education campaigns, and restrictions on advertisement have been used in an attempt to decrease adolescent consumption of tobacco.

Prior to the Master Settlement Agreement (MSA) in 1998, the tobacco industry successfully defended itself against liability litigation. With the decisions from (*US v. Zolin*) (491 US 554) and (*Burton v. RJ Reynolds*) (167 FRD 134), the tobacco industry was unable to use the doctrine of contributory negligence as a defense and the states' attorneys general had access to previously unattainable information from within the tobacco industry. As a result of the MSA, the tobacco industry will provide $206 billion over the next 25 years to the governing agencies in 46 states, five territories, and the District of Columbia. In addition, the tobacco industry has agreed to other non-economic issues such as limitations on advertisements and promotions and to provide information concerning health issues to the public.

A premise of the MSA was the cost that taxpayers had borne for smoking-related illnesses provided through Medicaid. Economic analysis, however, reveals that the impact upon Medicaid from smoking related illnesses is no greater than that by non-smoking related illnesses. The greatest expenditure for Medicaid, in fact, is nursing home care.

The policy response of the government has been to introduce restrictions and bans on smoking in public places and to impose high tax rates on tobacco in an attempt to decrease the demand for the product. Although an increase in price suggests a potential decrease in demand, there is a point at which the high cost will bring a decrease in demand vis-a-vis the legal sales of tobacco and create an underground economy. The government must then deal with the unintended consequences of an underground economy.

Policy proposals include adjustments to tax policy; allowance for dual markets to emerge; application of MSA monies for appropriate purposes; institution of counterspeech policies relating the harmful effects of tobacco use; and a uniform and aggressive enforcement of regulation as applied to minors.

Part 1

Introduction

"Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." ~ Benjamin Franklin

Not a day goes by when one does not read and hear about tobacco. Either on the news or on the front page of our daily newspaper one is constantly bombarded with sensational stories headlined by tobacco. The hazards, risks, and potential addictiveness of tobacco are well documented–this paper does not dispute these established facts.

For years our government has been fighting a "War on Drugs." Unable to declare victory, the focus has shifted to a more domestic "threat." The War on Tobacco, the new war, has inundated our political and personal lives–invoking an all out zero-sum game on smokers and tobacco companies alike.

Tobacco has become the latest punching bag of society. Much like alcohol was in the twenties and thirties, tobacco has become the unfashionable habit of the day–it is now taboo to smoke. Demands for tougher legislation, ordinances, regulation, and higher "sin" taxes are all aimed toward the common goal of prohibition.

Soon after society determined that alcohol prohibition was a valid public policy, it was retracted. "We all lose something if we allow the government to penalize people for unfashionable habits." Most people do not perceive enough of a benefit from smoking to make it worth the potential health risk. However many people, including smokers, would have difficulty understanding the popularity of bungee jumping, sky diving, or countless other "extreme" sports. Generally speaking, people do not necessarily ask others to share in their risks, only that they tolerate them.

It is widely established that smoking carries with it several risks and dangers. Yet it is perceived that no benefits generate from smoking. This belief has been spearheaded by the anti-tobacco campaign but economic principles dispute this proposition. "Value, is observed in choice–if we look at how real people behave with regard to their own lives, we find that they make trade-offs–many smoke even though they believe that smoking reduces life expectancy." Other benefits must exist for smokers to continue to spend their money to purchase cigarettes and continue to smoke despite the health risks and hazards involved. Furthermore, many smokers continue to smoke even though nicotine patches, gum, and other smoking cessation devices are readily available. This "fact alone suggests that there’s something more to smoking than chemical dependence...smokers like to smoke."

One can imagine the following situation: an average American awakes on an average day. The first thing on their mind is to get their "fix." On the way to work, they get their "fix." Several times throughout the day, they take breaks to get their "fix." It would be easy to presume that this person is a smoker. Actually their "fix" consists of the drive or desire for a cup of joe, java, or coffee–filled with nutritious caffeine. This example presents an interesting conundrum. When the pejorative connotation of tobacco is removed, the issue is placed in its proper context. It really elevates the conversation: to what extent should government regulate how we live our lives? you want government telling you how to live your life?

In recent years government has taken a more proactive role in our lives. Seat belt laws, helmet laws, and Prohibition are just three examples of paternalistic government regulation. Throughout history, government has been in the business of legislating health, safety, welfare, and morals. Most of these cases represent a "tyranny of the majority," where a majority invokes their tastes and preferences on a minority. However, "the mark of a free society is how it treats not its most but its least popular members."

The anti-smoking crusade that has intensified in the last few years is especially fanatical in its moral denunciation of smokers, whom it increasingly treats as social outcasts. Economist James Buchanan captures the essence of the activist mindset with the phrase "meddlesome preferences." Whereby, "the…elitist, who somehow thinks that his or her own preferences are ‘superior to,’ ‘better than,’ or ‘more correct’ than those of others, to control the behavior of everyone else, while holding fast to his or her own liberty to do as he or she pleases."

In essence, by removing liberty (choice) from the equation of smoking, removal from all equations may not be far away from the "slippery slope." "These provisions [against tobacco] could be just the tip of the iceberg, of course, with tobacco merely the first and easiest victim. Right around the corner are similar restrictions on alcohol, coffee, diet drinks, dairy products, red meat, fast food, sugar, sporting equipment, cars, you name it." Although this may be said in jest, it confronts the question: where does government draw the line?

The danger of this view, economist Ludwig von Mises once said, that:

> [O]nce the principle is admitted that is the duty of government to protect the individual from his own foolishness, no serious objections can be raised against further encroachments…and why limit the government’s benevolent providence to the protection of the individual’s body only? Is not the harm a man can inflict on his mind and soul even more disastrous than any bodily evils? Why not prevent him from reading bad books and seeing bad plays, from looking at bad paintings and statues and from hearing bad music? If one abolishes man’s freedom to determine his own consumption, one takes all freedoms away. The naïve advocates of government interference with inquisition, intolerance, and the persecution of dissenters.

Part 2

Background

"Liberty means responsibility. That is why most men dread it." ~ George Bernard Shaw

Trends in Smoking

Once a fashionable trend associated with maturity and glamour, smoking is now seen as an addictive habit that is strongly correlated to certain illnesses and can, in some cases, bring about death. Once, smoking was permitted most everywhere. Now, several municipalities and states have enacted smoke-free ordinances restricting smoking in public places.

According to the Center for Disease Control, the overall smoking rate in 1965 was 42 percent and by 1994 had dropped to 25 percent. According to the US Department of Health and Human Services, the proportion of youth between the ages of 12 and 17 that smoke declined from 29.4 percent in 1985, to 22.4 percent in 1990, to 20.2 percent in 1995.

States around the nation are raising taxes on tobacco. On March 1, 2000, the State of New York raised their excise tax to $1.19 a pack–the highest in the country. On March 3, 2000, California voters went to the ballot boxes and voted down Proposition 28 which sought the repeal of Proposition 10 and a 50 cents a pack excise tax.

States also are heightening their regulation and ordinances of smoking and tobacco. For example, California instituted a smoking ban in all public buildings, including restaurants and bars.

Settlement

For four decades the tobacco industry did not pay out a single dollar for damages from a smoke-related injury. All has changed in recent years with the massive tobacco settlement in November 1998. A 25-year, $206 billion settlement was reached between the tobacco industry and 46 states, 5 territories, and the District of Columbia.

The settlement was predicated on the reimbursement of Medicaid costs from tobacco related illnesses. However, states around the country see the windfall of money as an opportunity to fund programs other than Medicaid and smoking cessation and education programs. With the aid of Attorney General Mike Moore, the State of Mississippi views itself as $3.67 billion richer than before, and is now "trying to decide how to spend the first $170 million installment from the tobacco settlement." Los Angeles Mayor Richard Riordan proposed the use of settlement funds earmarked for Los Angeles and related local government agencies, to pay for coming litigation resulting from a police scandal in the LAPD's Rampart Division. The Ventura County (CA) Board of Supervisors voted in February 2000 to use their apportioned tobacco settlement funds to bring financial security to the County after a miscalculation of revenues caused a $5 million deficit in their general operating fund.

A Florida jury awarded $750,000 to a victim of lung cancer in August 1996. More recently in February 1999 a San Francisco jury awarded Patricia Henley $51.5 million, more than three times what her lawyers were asking. It appears that juries replaced individual responsibility with a vengeance against tobacco companies.

FDA

On March 21, 2000, the Supreme Court determined that Congress did not properly delegate the FDA with the jurisdiction to regulate nicotine, the key ingredient in tobacco products. The Court's decision does nothing to hamper Congress' authority to regulate tobacco products through legislation, it simply dictates that the FDA lacks the authority to implement regulations on its own. The Supreme Court's decision directs Congress to specifically indicate its explicit involvement in the regulation of tobacco through the deliberative process where public discussion is encouraged, as opposed to the settlement, which only invited a select few to create long-standing regulations on an issue of such important public concern.

Philip Morris executive, Steven Parrish, called for a comprehensive, national tobacco policy that allows for a transition in the tobacco industry that will result with a decline in the demand for tobacco products. Although Philip Morris no longer disputes the addictive properties of nicotine, it believes that tobacco should remain a legal commodity for adults.

Advertising

In 1969 the Federal Communications Commission issued a ban on television and radio advertising of tobacco products–the tobacco industry did not dispute this ban. Concerned that the tobacco industry was targeting youth, the settlement of 1998 severely restricted and diluted tobacco advertisement, raising potential commercial speech questions.

Part 3

The "Social Tone"

"If one abolishes man’s freedom to determine his own consumption, one takes all freedoms away." ~ Ludwig Von Mises

If someone is denied the opportunity to smoke, whether through prohibition, regulation, or taxation, that someone has lost the enjoyment of one part of their life. Over 200 years ago Samuel Adams and John Hancock found themselves in a similar circumstance at the Boston Tea Party. Disenchanted with obtrusive government dictating their consumption of tea through an overly burdensome excise tax, both notable figures lead a protest justified in protection of their liberty.

Experience should teach us to be most on our guard to protect liberty when the government’s purposes are beneficial. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greater dangers to liberty lurk in insidious encroachment by mean of zeal, well meaning but without understanding.

The Boston Tea Party symbolizes society’s dissatisfaction to government intervention without legitimate justification. "The public good is in nothing more essentially interested than the protection of every individual’s private rights." Individuals who are unpopular or the target of derision and scorn whether because of their habits or for any other reason are in the greatest need of protection. Thus, current excise tax levels are designed to sway public opinion and promulgate government’s moral will.

Should we allow the individual to decide for themselves what constitutes a benefit in their life regardless of the negative externalities? The founders of our nation asserted that if the individual had the relevant information, then they should be able to make the decision themselves as to what benefits they derive from their action. What role, Mill asked, should governments have in protecting people against those risks? Some, he concluded, but not much. "When there is not a certainty, but only a danger of mischief, no one but the person himself can judge the sufficiency of the motive which may prompt him to incur risk:" in this case therefore he ought only to be warned of danger; not forcibly prevented from exposing himself to it. Therefore, governments do have an interest in protecting their citizens’ general welfare–by ensuring that the public receives adequate nonmisleading information regarding the potential risks. The government’s interests stop there. In other words, government should warn people about the risks of their behavior, but if an informed person still chooses to do something risky, that is their decision.

If we are to remain a nation of free people then we must allow people to make decisions by themselves about themselves. As Thomas Jefferson said, "I know no safe depository of the ultimate powers of the society but the people themselves: and if we think them not enlightened enough to exercise their control with wholesome discretion, the remedy is not to take it from them, but to inform them."

Part 4

Economic Analysis

"Liberty is the best of all things." ~ William Wallace

axation of cigarettes and tobacco-related products may be for the purposes of raising revenues, reducing tobacco production, reducing tobacco consumption or a combination thereof. If tax rates are so high that tobacco is priced out of the consumer's ability to purchase, two potential outcomes are a reduction in the legal purchase of tobacco or a reduction in the rate of smoking. In the first case, government experiences a decline in tax revenues and must bear the costs of increased regulation, monitoring and enforcement to stop smuggling, and related underground market activities.

It is estimated that a price increase of ten percent on a pack of cigarettes reduces the demand by approximately four percent. Cigarettes and tobacco products cannot be taxed out of existence. In other words, there will be a point where a rise in the tax rate will not bring about the desired reduction in production or consumption. As a result an underground economy will surface, with all its accompanying anti-social and legal problems.

Recent legislation at the state level has increased taxation rates in an attempt to both reduce the demand for tobacco, and to increase tax revenues (vis-à-vis "sin" taxation), to create programs for children, health, and quality of life. There are two objectives to this taxation policy. The first objective–a reduction in the supply and demand of tobacco. The second is to raise revenue to implement social programs.

State and local excise tax rates range from 2.5 cents per pack of cigarettes in Virginia to a dollar in Alaska with an average state excise and sales tax of 32.7 cents per pack (18.2 percent of total price). In addition, a federal excise tax of 24 cents per pack is levied (13 percent of the total price) with all taxes accounting for 31.2 percent of the total price per pack.

The residents of California passed Proposition 10 in 1998. It levied a "sin tax" of 50 cents per pack to create the California Children and Families Commission which provides programs for early childhood development and to fight smoking. Proposition 10 generates $700 million of revenue. Questions about the legitimacy of such taxes have emerged, highlighted by Proposition 28 that would have repealed Proposition 10.

This tax and settlement use policy is a far removed from the initial cigarette tax policy of the 1960's. Senator Maurine Neuberger proposed legislation that "called for education of adolescents and adults about the health problems smoking could cause, expanded research about tobacco, reform of cigarette advertising, and warning labels on cigarette packages. The reforms should be funded … with an increase in cigarette taxes."

In order to understand the argument in favor of using taxation as a means to reduce the supply and demand of tobacco related products, one must first look at the concepts and assumptions underlying this model.

The model is based upon the following assumptions:

- Demand: the willingness and ability of consumers to purchase different quantities of a good at different prices.
- Law of Demand: as the price of a good rises, the quantity demanded of the good falls, and as the price of a good falls, the quantity demanded of the good rises (all other things held constant).
- Change in Demand: may be caused by any of the following factors;
  - Income.
  - Preferences.
  - Prices of related goods.
  - Number of buyers.
  - Expectation of future price.
- Change in Quantity Demanded: there is a decrease in the quantity demanded of a good as the price increases, and an increase in the quantity demanded of a good as the price decreases.

Thus, government may reduce the quantity of tobacco demanded through artificially increased prices through the imposition of higher taxation.

Thus, government may reduce the demand of tobacco premised upon changing consumer preferences, such that consumers prefer not to smoke or use tobacco products and therefore do not.

Methods that may and have been used to change consumer preference in regard to tobacco are:

- Bans on advertising and promotions in favor of cigarettes and tobacco products.
- Information measures opposed to cigarettes and tobacco products.
- Consumer advertising (the anti-smoking campaign).
- Health warning labels.
- Publication and dissemination of research findings.
- Education campaigns in public schools.

- Nicotine replacement and cessation therapies.
- Supply: the willingness and ability of sellers to produce and offer to sell different quantities of a good at different prices.
- Law of Supply: as the price of a good rises, the quantity supplied of a good rises, and as the price of a good falls, the quantity supplied of the good falls (all other things held constant).
- Change in Supply: may be caused by any of the following factors;
    - Prices of relevant resources.
    - Technology.
    - Number of sellers.
    - Expectation of future price.
    - Taxes and subsidies.
    - Government restrictions.
- Change in Quantity Supplied: there is an increase in the quantity supplied of a good as price increases, or a decrease in the quantity supplied of a good as price decreases.

Thus, government may act to take a stance against the supply of tobacco through restrictions. These may range from prohibiting the growth, the manufacturing, and the distribution of tobacco, to quotas being placed upon imports, exports, and levels of local production of tobacco, cigarettes, and tobacco-related products.

Government may choose to tax (excise or value added) the production of tobacco at such a high rate that the market could not bear the price increase, thus reducing the supply. Government may also offer a subsidy to encourage the substitution of activity on the part of tobacco growers, cigarette manufacturers, or distributors of either.

Benefit-Cost Analysis in the Reduction in the Supply and Demand of Tobacco

In benefit-cost analysis, one compares the benefit of a program or action against the cost of a program or action. Each factor is assigned a monetary value, thus allowing for a quantitative comparison. This is a difficult task as some factors are intangible, such as "peace of mind" and therefore difficult to assign a quantitative or dollar value. More complicated factors may be introduced into the analysis such as inflation variables and present value discounting. If the benefits outweigh the costs, then the program is considered viable for implementation.

Benefits:

- Improve public health.
- Decrease in tobacco related deaths.
- Decrease in health care costs of individuals with tobacco related illnesses.
- Decrease economic impact on economy caused by loss of wage earners due to tobacco-related illnesses and death.

Costs:

- Increase in unemployment from tobacco related industries as business is restricted or wanes. However, this effect is mitigated as new employment opportunities become available in other business areas, the displaced workers will find new employment.
- Economic impact upon struggling economies centered around tobacco production. This may be a moderate impact as experienced by the tobacco growing states in the US, or may be a severe impact as would be experienced by the 170 counties in the Southern tobacco growing states whose economies are primarily based upon tobacco production.
- A decrease in tax revenues will occur such that the increased tax rates per capita are less than the reduction in demand for tobacco.
- Increases in the cost to regulate, monitor, and enforce tobacco reduction programs, with the potential for large costs associated with underground market activities.
- Increases in the regressivity of tobacco taxes.

The Dollar Valuation of Tobacco Related Heath Care

Undoubtedly, tobacco use imposes costs upon a health care system. However, looking strictly at an economic valuation, several different outcomes are possible. This is not a justification or a moral argument. It is a descriptive analysis of monetary values to the cost of the provision of health care services apart from any normative position to the social or humanitarian costs of tobacco related illnesses.

In a system where health care is purely a function of private responsibility, costs are borne by the individual and his family (costs are internalized). In a health care system that subsidizes care for all members of society, costs are borne by all for all (costs are externalized). In a health care system that subsidizes care for the elderly, the poor, or a combination of both, costs are borne by all for some members of society. In the US, the health care system is a hybrid, consisting of individual responsibility and in the circumstances of the elderly and the poor, a social responsibility for health care.

An analysis of costs must include an evaluation of the net lifetime health care costs of each individual. In this evaluation, it has been found that smokers can actually have a lower net lifetime health care cost than non-smokers (See Appendix C for Regression Analysis). Cumulative health care costs increase with time, and as people age, health care costs rise at increasing rates. People over the age of 84 use health care services2.5 times as often as do people in their 60’s. People in their 60’s use health care services 3.5 times as often as middle aged people. Thus, in general, a healthy individual who lives longer, will have a greater cumulative health care cost than a similarly healthy individual who dies young as well as an unhealthy middle aged person who suffered an untimely death. Overlying this concept is the subsidized health care system that extends certain costs to all of society.

In the US, health care is subsidized for senior citizens (age 65) through Medicare and for poverty-level citizens through Medicaid. Thus, citizens who smoke, but die prior to reaching age 65 would impose a cost of "0" upon the Medicare system. Likewise, citizens who smoke and qualify for Medicare, but who also die early into their eligibility due to smoking-related illnesses, may impose a lesser net health care cost on the system of public funding, than do non-smoking citizens who live much longer, thus accumulating a higher net health care cost over time.

It is important to note that a similar economic analysis of net health care does not apply in the case of Medicaid. As such, the Tobacco Settlement of 1998 hinged upon the health care costs borne by the public with regard to tobacco related illnesses of smokers covered by Medicaid. The settlement included financial recovery for 46 states and 5 territories in the amount of $206 billion with payments beginning in 1998 and ending in 2025.

The Congressional Research Service estimated that the external medical cost per pack of cigarettes (1993) was 33 cents, while the purchaser (smoker) was paying an average of 53 cents per pack in taxes. This represented an economic benefit of 60 percent more than the estimated external costs associated with cigarette smoking. This calculation included the use of a five percent present value discount to ensure that the case of the external cost benefit was not being overstated.

Economic analysis of the benefits and costs of tobacco consumption go beyond the debate of health care costs. An estimation of economic benefits and costs per pack of cigarettes may include savings to social and other services due to untimely death, which more than offsets the economic costs to social and other services caused by the consumption of tobacco. According to a 1993 benefit/cost analysis by W. Kip Viscusi, a Duke University economist, there was a net economic benefit of 58 cents per pack of cigarettes when savings from social and other services not used coupled with tobacco excise taxes were calculated.

Table 1

Benefits		Costs	
Nursing home savings	$0.23	Medical care	$0.55
Pension & Soc. Sec. Savings	$1.19	Sick leave	$0.01
Excise taxes	$0.53	Group life insurance	$0.14
		Second hand smoke	$0.25
		Fires	$0.02
		Taxes on earnings	$0.40
Total	*$1.95*	*Total*	*$1.37*

When evaluating the basis of the Tobacco Settlement (1998), there is the sense that taxpayers (nonsmokers) carry the burden for the health care costs of indigent smokers (through Medicaid) suffering from tobacco related illnesses, while the tobacco industry has profited with impunity.

The tobacco industry has indeed profited, but has also paid significant taxes. The total federal, state, and local excise tax from tobacco products in 1997-98 were $5,607,000,000, $7,975,000,000, and $196,000,000 respectively, for a total of $13,779,000,000 paid. The indigent smoker, who may depend upon the Medicaid program for health care, has also paid significant sales taxes. The total state sales tax paid for 1997-98 was $1,977,000,000 (See Table 2). Furthermore, Tobacco companies pay significant corporate taxes every year.

Employment and Market Implications of the Tobacco Industry

US consumers spent $48.7 billion on tobacco products in 1995. US grown tobacco leaf used for domestic production and importation was valued at $2.6 billion. Commercial tobacco is grown on 124,000 farms in 20 states. Although tobacco production is thought of as a southern agricultural crop, states such as Wisconsin, Missouri, and Pennsylvania produce tobacco as well. Tobacco production, however, is concentrated in Kentucky, Virginia, Tennessee, North Carolina, Georgia and northern Florida. Tobacco manufacturing is concentrated in Richmond, Virginia, Winston-Salem, North Carolina, and Louisville, Kentucky.

It is estimated that the "chain of tobacco farming, manufacturing, wholesale and retail trade and transportation generates over 500,000 jobs." These jobs represent both directly and indirectly related employment. There were 25,600 jobs directly related to making cigarettes, 156,000 jobs directly related to farming tobacco, and a majority of the remaining employment related to the wholesale and retail trade of tobacco and tobacco related products (See Figure 1). Employment indirectly related to the tobacco industry, such as fertilizer manufacturing for tobacco farming, or the production of paper and cellophane used in cigarette production (inter-industry transaction) account for 1.2 million jobs.

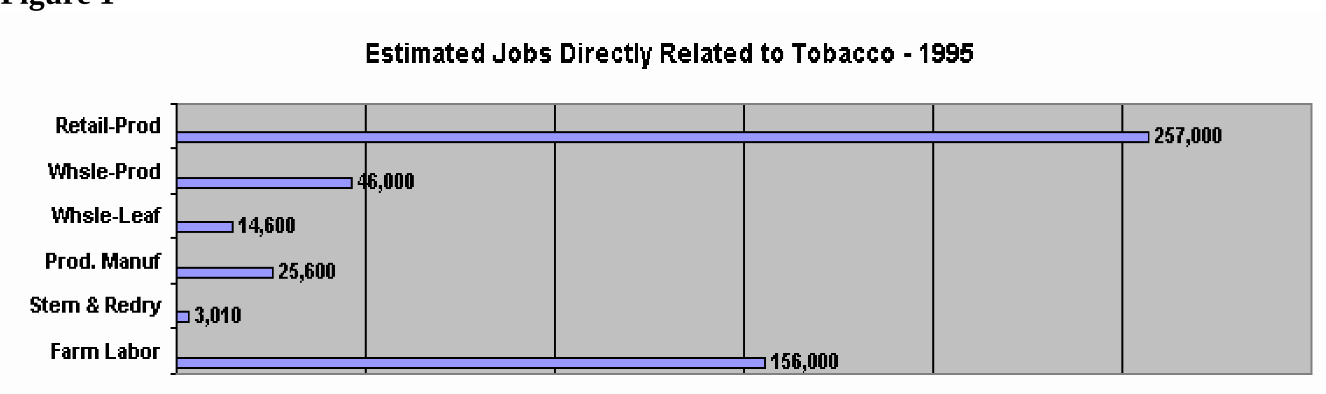
Table 2–Governmental Revenues from Tobacco Products, 1987 - 1998

Year	**Fed. Excise Tax** **(In millions)**	**State Excise Tax**	**Local Excise Tax**	**State Sales Tax**
1987-88	4,522	4,879	195	------
1988-89	4,290	5,114	192	1,417
1989-90	4,123	5,594	192	1,508
1990-91	4,816	5,958	198	1,469
1991-92	5,110	6,132	194	1,996

1992-93	5,602	6,272	188	2,042
1993-94	5,714	6,778	185	2,005
1994-95	5,833	7,250	182	1,995
1995-96	5,795	7,608	181	1,998
1996-97	5,864	7,676	177	2,000
1997-98	5,607	7,975	196	1,977

www.econ.ag.gov/briefing/tobacco/Tobacco/Table23.htm

Figure 1



www.econ.ag.gov/briefing/tobacco/dollars.htm

It is estimated that for every 100 jobs directly related to the tobacco industry, there are 27 indirect and 91 expenditure related jobs. However, most of the expense of tobacco products is a result of large value added in the manufacturing and distribution of the products. This value-added accounts for 38 cents for each dollar spent on tobacco products, with 27 cents accounted for in wholesale and retail marketing and 26 cents accounting for state, federal, and local excise taxes (See Figures 2 and 3). Only 15 percent of the value added expenditure goes to employment directly related to the production, distribution and sales of tobacco products.

Figure 2

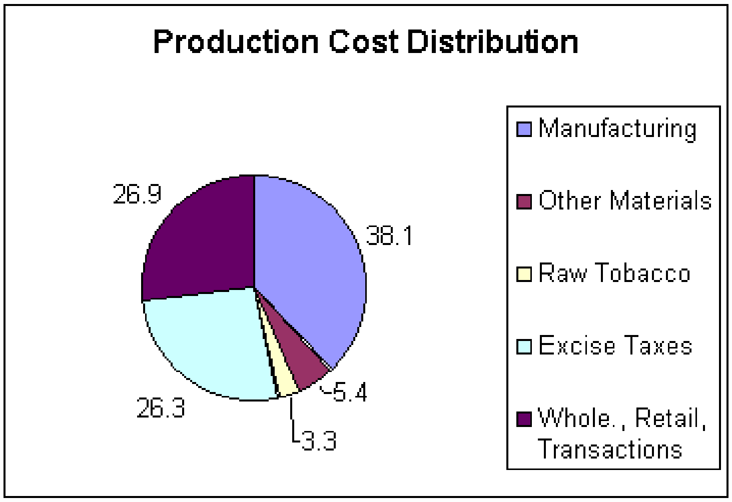
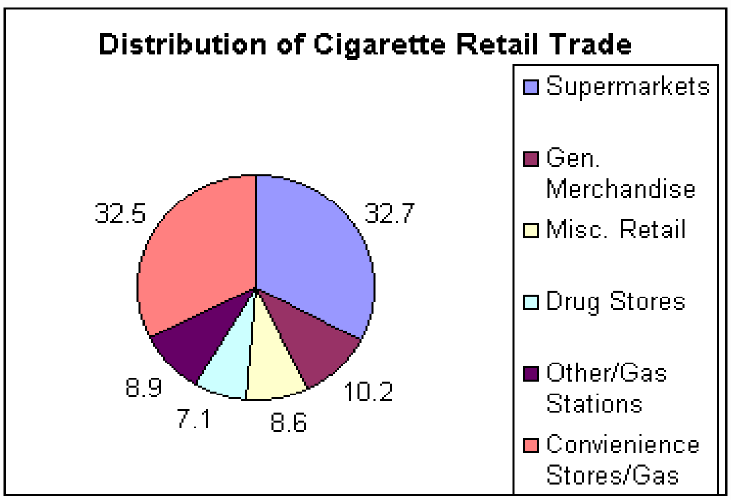


Figure 3



Thus, a resulting regional economic impact would be moderate in the short run, with a minimal effect in the long run as the market place evolves to replace its tobacco related activity to other goods and services.

It must be understood, however, that there would be a tremendous immediate impact upon those regions within the United States where the tobacco industry is heavily based both agriculturally and in manufacturing. Using an equation that compares the growth of local personal income and tobacco related gross receipts, it is estimated that there will be 170 counties located in the southern states that would be severely impacted by the complete restriction of the tobacco industry.

In determining a potential impact, the equation

$$\boldsymbol{TIRQi = \frac{DLPIi}{TOBINCi}}$$

where *TIRQi* equals the tobacco income replacement quotient and *DLPi* equals the annual growth in inflation-adjusted local personal income, and *TOBINNCi* equals the tobacco gross receipt; is used.

Because of this regional hardship, states such as North Carolina have begun to legislate policies that will assist in the transition from the tobacco industry to new industries and to transition to a global market strategy from a domestic market strategy. A portion of the Tobacco Settlement included an agreement between the tobacco companies and the attorneys general of tobacco growing states to distribute $2 billion over the next 12 years to help ease the transition of those persons and small businesses dependent upon the tobacco industry into other emerging opportunities.

Tobacco producers are experiencing both a decline in the demand for US grown leaf and a 35 percent reduction in the tobacco quota. In 1964, tobacco income accounted for 46 percent of the gross farm income in North Carolina, whereas in 1999-2000 the percentage is estimated to be in the low teens and will move into the "single digits." For example, a declining reliance on tobacco crops is shown in Table 3.

Table 3

Year	All Crops	Tobacco	Tobacco as a % all crops
	Cash receipts in millions		
1988	71,603	2,069	2.89
1989	76,892	2,410	3.13
1990	80,256	2,733	3.41
1991	82,001	2,881	3.51
1992	85,662	2,962	3.46
1993	87,102	2,949	3.39
1994	91,562	2,645	2.89

1995	100,700	2,548	2.53
1996	106,757	2,796	2.62
1997	112,097	2,886	2.57
1998	112,097	3,049	2.97

www.econ.ag.gov/briefing/Table24.htm

The Price System and Tobacco

Economic activity is organized through voluntary exchanges via private markets. The "market" relies on the price system to coordinate activities and to produce an efficient allocation of resources. The price system allows an economist to measure what benefit is received from a good. "The height to the market demand curve is thus a measure of the goods marginal importance to customers." This is troubling for some that may deplore the fact that the market allocates resources to the production of cigarettes and other disliked goods. But these goods are produced only because some people are willing to pay for them.

The only avenue that one has who dislikes others' preferences is to persuade them that better ways exist for them to spend their money. Attempts to tax, out-price, and prohibit/regulate tobacco and smoking all have this chilling effect (on people's preferences). "On the other hand, a price system preserves individual freedom. People can choose what jobs to perform and how to dispose of their incomes," including the use of tobacco.

Table 4 – Elasticity of Demand

Price Increase	**Percentage Change**
\$2-\$3	-7
\$3-\$4	-15
\$4-\$5	-20
\$5-\$6	-23.3
\$6-\$7	-25.7
\$7-\$8	-27.5
\$8-\$9	-28.9
\$9-\$10	-30

Table 4 represents the change in quantity demanded for each additional dollar increase in price of Tobacco, assuming the elasticity is (-.4). For example, a price change from $2 to $3 reduces quantity demanded by seven percent.

Part 5

Policy Issues – Defined

"If you protect a man from folly, you will find you have a nation of fools." ~ William Penn

A. Federal Taxes

From 1993 to 1999, the tax on a pack of cigarettes was 24 cents, resulting in revenue of approximately $13.5 billion a year. On January 1, 2000, the tax was increased to 34 cents. The tax is scheduled to increase again to 39 cents on January 1, 2002, however President Clinton has proposed that the increase take effect on October 1, 2000. Additionally, Clinton's proposal includes another increase of 25 cents that will take effect in 2001 raising the federal tax to 64 cents. Ultimately the plan's design is to incorporate a $1.50 tax.

Moreover, starting in 2004 the plan will assess a $3,000 penalty on cigarette manufactures per smoker under the age of 18 if youth smoking is not cut in half, and will continue until this goal is achieved. Revenue generated by the tax is earmarked for cessation programs aimed at Medicaid recipients. Currently, the federal government does not provide funds for prescription cessation drugs. However, the new plan provides for these funds, which along with the settlement money aims to drastically reduce the burden imposed on the states. One major problem with this plan is the inability to accurately determine how many smokers are under the age of 18. It is a foregone conclusion that government and the tobacco companies will calculate drastically different numbers.

In addition to the President's plan, legislation was introduced in 1998 by Senator McCain that attempted to raise the federal tax to $1.10 per pack. However, it was sent back to committee by a vote of 53-46, and ultimately defeated. It is obvious that future tax increases are on the horizon.

The underlying purpose of tax increases is to drive up the price of cigarettes to a level where the nation's youth and the financially disadvantaged are priced out of the habit. In conjunction with more severe penalties on manufacturers and sellers of cigarettes the tax increase will lead to a massive reduction in the number of people that start smoking or casually smoke. Major drawbacks include the likelihood of large-scale smuggling and extensive unemployment in the Southeast tobacco corridor.

B. State Taxes

States have a long history of taxing cigarettes. In 1921 Iowa enacted the first major cigarette tax at two cent per pack. The tax has gradually increased to 36 cents per pack resulting in over $90 million in 1999. Over the next couple of decades several states followed Iowa's lead. The tobacco tax is easy to collect: the driving force behind the proliferation of legislation. Packs generally hold a uniform number of cigarettes (20). They are sold in places already set up to collect sales taxes.

Tobacco taxes are a massive revenue generator. Receipts run from the tens of millions for smaller states to two-thirds of a billion dollars for a state such as California. While one would expect a wide variance in the total number of dollars collected from state to state due topopulation distribution, the more curious analysis occurs when looking at the wide disparity in tax rates per pack in individual states–see Table 5.

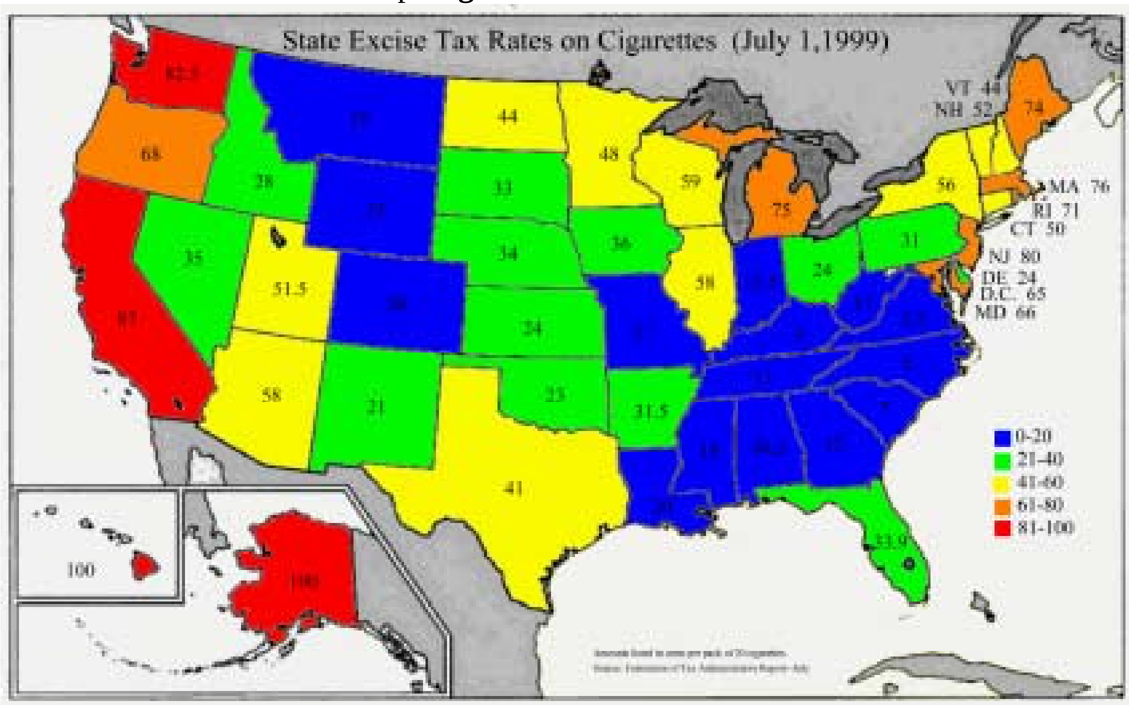
Table 5 – State Excise Tax Rates on Cigarettes

State	Tax Rate (cents/pack)	State	Tax Rate (cents/pack)
Alabama*	16.5	Nebraska	34
Alaska	100	Nevada	35
Arizona	58	New Hampshire	52
Arkansas#	31.5	New Jersey*	80
California	87	New Mexico	21
Colorado	20	New York*	56 (119 as of 3/1/00)
Connecticut	50	North Carolina	5
Delaware	24	North Dakota	44
Florida	33.9	Ohio	24
Georgia	12	Oklahoma	23
Hawaii	100	Oregon	68 (58 as of 1/1/00)
Idaho	28	Pennsylvania	31
Illinois*	58	Rhode Island	71
Indiana	15.5	South Carolina	7

Iowa	36	South Dakota	33
Kansas	24	Tennessee*#	13
Kentucky#	3	Texas	41
Louisiana	20	Utah	51.5
Maine	74	Vermont	44 (37 in 1999)
Maryland	66	Virginia*	2.5
Massachusetts	76	Washington	82.5
Michigan	75	West Virginia	17
Minnesota	48	Wisconsin	59
Mississippi	18	Wyoming	12
Missouri*	17	District of Colombia	65
Montana	18	U.S. Median	34.0
U.S. Average	40.1	Mode	24

Cities and Counties are allowed to charge an additional tax on packs of cigarettes. In AL, 1-6 cents; IL, 10-15 cents; MO, 4-7 cents; TN, 1 cent; and VA, 2-15 cents. # Additional tax is charged to dealers for administration and enforcement. In KY, 0.1 cent per pack; TN, 0.05 cent per pack; AR, $1.25 per 1000 cigarettes. Source: Federation of Tax Administrators Report—July 1999.

In order to make some sense out of the wide variation in tax rates; observe how the distribution breaks out on a map–**Figure 4**



It is apparent that the tax increases as one moves farther away from tobacco producing states. For example, in Kentucky there is a 3 cent per pack tax, where tobacco makes up one quarter of the agricultural cash receipts, or about $800 million a year. As one moves farther west and north from Kentucky, tobacco production becomes less significant. Therefore, it is no great surprise that Alaska and Hawaii each tax at the rate of a dollar a pack–where politicians are not beholden to tobacco growers or cigarette manufacturers. The Rocky Mountain States of New Mexico, Colorado, Wyoming, and Montana are exceptions due to their rural and independent mindset. These states were the last to conform to drinking age and helmet law requirements.

Tax increases, while prevalent, do not represent an overwhelming sentiment across the nation. For instance as of January 1, 2000, Oregon’s cigarette tax decreased from 68 to 58 cents per pack. Moreover in California, failed Proposition 28 represented a movement to repeal the additional 50-cent per pack tax hike passed last year. A number of states plan on making major increases over the next few years. The rationale is largely predicated on information from a 1997 study of Alaska’s latest tax increase. The tax increased from 29 cents per pack to a dollar on October 1, 1997. The tax on other tobacco products increased from 25 percent to 75 percent of the wholesale price. Three observations of the study provide valuable information to other states considering similar increases:

- After the "post-stockpiling period," there was a 17 percent decrease in the taxable consumption of cigarettes, and a 6 percent reduction in the consumption of other tobacco products.

- While the sale of tobacco products increased on military bases and Indian reservations, it did not represent a significant percentage of the total sales (about 0.5 percent).
- After the "post-stockpiling period," there was a drastic increase in the revenue collected (190 percent) from tobacco taxes.

States will use this information as a justification for similar tax increases. However, additional factors must be considered.

First, Alaska is isolated, preventing citizens from "stockpiling" cigarettes by driving to another state with lower taxes. Citizens of Alaska cannot travel to Canada and expect to find cheap cigarettes as citizens of California, Arizona, New Mexico, and Texas can do with Mexico. Maryland and Michigan, with relatively high taxes already, plan a similar increase. One major problem is that Maryland borders Virginia, which has the lowest state tobacco tax in the country. Michigan lies just above Indiana where a 15 1/2 cents tax is levied. The inherent smuggling problem drew the attention of the General Accounting Office in a report to the Senate Task Force on Tobacco in 1998. The GAO found that the states with higher taxes (Washington, California, Massachusetts, and New York) lost tens and even hundreds of millions of tax dollars every year from residents crossing the border into states with lower taxes. The $90 million New York loses annually becomes $50 million in revenues for Pennsylvania. Likewise, the $52 million vacating Washington translates into $17.6 million in revenue to neighboring Idaho. Imagine if Maryland increased their tax to $1.50 from its current rate of 66 cents per pack. The only way to prevent interstate "smuggling" would be to set up roadblocks at every highway coming in from Virginia, not to mention the Metro stations.

On March 1, 2000, the state tax on a pack of cigarettes in New York rose to $1.19. New York anticipates a revenue increase of $270 million in the first year. However, millions will be lost to smugglers, the costs of law enforcement to catch them, and the natural decrease in revenue that occurs over time as people stop smoking in the years to come.

Table 6

	Jun 97	Jul	Aug	Sep	Oct	Nov	Dec	Jan 98	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Cigarettes	1	1.8	1.9	3.1	1.4	1.5	2.2	2.4	2.3	3.0	3.3	3.9	4.3	4.1	3.8	3.9	3.5
Smokeless	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.5	0.5	0.4	0.4	0.4
Total	1.7	2.0	2.1	3.4	1.7	1.8	2.6	2.7	2.6	3.4	3.7	4.3	4.7	4.5	4.3	4.3	3.9

Numbers represent millions of dollars. Source: Alaska Department of Revenue

One other factor is the revenue collected from tobacco sales. While there was a drastic and immediate increase in the dollars collected after personal stockpiles dwindled, that trend did not last. The Alaska study viewed the revenue change over 17 months, from June 1997 to October 1998 (see Table 6). One can observe how the revenue collected spiked in September 1997 as citizens stockpiled cigarettes the month before the new tax rate went into effect. As stockpiles dwindled revenue increased. However, revenues from the sale of cigarettes began to wane after reaching their peak in June 1998. The National Bureau of Economic Research explains this effect in a 1996 working paper, which states that, "youths and young adults are much more sensitive to price, as the estimates…indicate, then sustained real increases in cigarette excise taxes will initially lead to large increases in revenues…but would eventually decline over time."

Fact or Fiction: Most tobacco tax dollars go directly to anti-smoking education campaigns and research on smoking-related illnesses?

Fiction. Most tax dollars from the sale of cigarettes go into the general funds of the various states making it difficult to trace tobacco tax dollars. However, a growing number of states specify where the money is allocated.

Arizona is the exception rather than the rule. In Arizona, the citizens passed Proposition 200 in 1994 which raised the "luxury tax" on cigarettes to 58 cents per pack. Aside from the increase, the measure contained two important facets. First, provisions were put into place for taxing the sale of tobacco products on Indian reservations through a stamp system. This reduced the ability of citizens not registered to a tribe to visit one of the many reservations and stockpile cigarettes. The other portion of the proposition designated the tax revenue for health care purposes are divided into three separate funds. The state health department is responsible for appropriations from these funds for the construction or renovation of facilities or new education programs.

Many taxes, including sin taxes, are aimed at altering unpopular activities. With cigarettes in particular, these taxes have a greater economic impact on poor to middle income individuals who experience difficulty in quitting. The National Bureau of Economic Research reports that these taxes, even at severe levels, will not significantly reduce smoking in older adults or even pregnant women. As a result, the poor and the middle class pay a larger percentage of their total income than a more well off person for the same product. The Center on Budget and Policy Priorities voiced this trend best in a 1997 study:

> …states have not reversed the increases in sales and excise taxes that took place in the earlier years. While sales and excise taxes–the most burdensome taxes for lower income families–were increased $12.0 billion in the early 1990's, there has been a net reduction of only $0.1 billion in sales and excise taxes in the 1994-97 period.

Taxing tobacco accomplishes only one goal in the long run, reducing the number of people who smoke. Short run gains in revenue will occur. However, all indicators point to large drop-offs in revenue over time as smokers either quit or seek alternative means of acquiring their habit. There seems to be little concern on the federal and state level of the impact of large tax increases on persons of middle to lower income. In an effort to tax young people out of smoking, heads of poor households who smoke are placed in the position of having to choose between packs of cigarettes or food and clothing for their family. This situation does not arise in wealthy households. The government regulates many personal activities, but policies do not discriminate on the basis of income.

C. State and Local Regulations

There are many different forms of tobacco control laws that have been implemented to effectively curb either access or use of tobacco products. Ordinances have been passed that restrict smoking in restaurants, bars, nightclubs, workplaces, hospitals, prisons, and schools. A major impetus behind these ordinances is the potential health hazards associated with second-hand smoke. Other ordinances have been implemented for the sole purpose of curbing or eliminating smoking such as excise taxes and tobacco advertising restrictions.

"State Ordinances"

- CDC found that 41 states and Washington DC have laws restricting smoking at government work sites. "Twenty states limit smoking to designated areas; two either ban smoking or require designated smoking areas with separate ventilation; and eleven completely ban smoking."
- Twenty states and Washington DC, have laws restricting smoking at private sector work sites.
- Thirty states and Washington DC, have laws restricting smoking in restaurants. The only states that completely prohibit smoking in restaurants are Utah, Vermont, and California.
- Thirteen states restrict advertising and promotion of tobacco products. For example, in California tobacco billboards must be more than 1000 feet away from schools or playgrounds.
- Fewer than ten states restrict smoking in bars, shopping malls, prisons, hotels, and motels.

"Local Ordinances"

- As of last year 1, 296 communities across the nation had tobacco control ordinances.
- Sixty-two communities have ordinances restricting tobacco advertising. Forty-two of these require location and zoning of tobacco advertisements, twenty have retailer restrictions.
- Seventy-six communities have smoke-free restaurant ordinances, and 148 communities have smoke-free ordinances in workplaces, including restaurants. Another thirty-five communities have smoke-free workplace ordinances, excluding restaurants. Ordinances that regulate smoking in restaurant and

freestanding bars are in place in twenty-nine communities. Seventy communities have restaurant-bar ordinances.

"Impacts on Restaurant Industry"

- Researchers at the University of North Carolina, Chapel Hill, assessed the economic impact on smoking ordinances on sales. They examined restaurant sales data for 1990-1997 in ten counties, five with strict smoking ordinances and five similarly situated counties without ordinances. No differences were found in restaurant sales between the two groups.
- The year after New York City's ordinance took effect, taxable sales from eating and drinking establishments in New York City were up 3.6 percent. A second population-based, cross-sectional telephone survey of 434 owners/managers of restaurants in NYC supported these findings. The researchers found no evidence to suggest that the smoke-free law had a detrimental effect on the city's restaurant business.
- A study on Beverly Hills and Bellflower, California found no drop in sales in either city when a smoke-free ordinance was in place. After they repealed the ordinances, there was an increase in restaurant taxable sales.
- In San Luis Obispo, researchers found no significant effects on the profitability of the restaurants and bars as measured by tax revenues. The results, however, did show that a significant number of smokers and non-smokers are frequenting different restaurants and bars.

"Impacts on Bar Industry"

- A study of 300 bars connected to a restaurant/hotel, or stand-alone bar/tavern, and nightclubs were examined in order to assess the economic impact of smoke-free ordinances on these entities. The majority of establishments experienced a decrease in business (59.3 percent) while 30.3 percent experienced no effect. The 178 establishments that experienced a decrease in business had a 26.2 percent decrease in sales. Of those that experienced a decrease in business, 89 percent experienced a decrease in weekday customer traffic and 81.5 percent experienced a decrease in weekend customer traffic. Connected establishments reported a decrease in business of 44.8 percent, as opposed to 81.3 percent for stand-alones and 66.7 percent of the nightclubs. Smoking bans appear to have had the following negative impact on the respondents' operations: 50.4 percent of the respondents indicated an increase in customer complaints/fights; 65.0 percent indicated a loss of regular customers; 59.0 percent indicated a loss of tips/gratuities for the bar and/or serving staff. Furthermore, 3.7 percent of the respondents did not actively enforce the ban, while an additional 22.6 percent indicated that customers simply ignored the ban. Thus, smoking still occurs in approximately one out of every four establishments.
- The studies that have been conducted of the bar and restaurant industry have found that restaurants have not been negatively impacted by the ordinances and

> have sometimes benefited from them. Conversely, the same studies have found that bars have been adversely affected by the ordinances.

Apart from the restaurant and bar industries, other industries have also been affected by smoking ordinances. A study published in the Journal of the American Medical Association looked at California, Utah, and Vermont and the cities of Boulder (CO), Los Angeles, Mesa (AZ), New York, and San Francisco. The study did a comparison of hotel revenue and tourism rates before and after passage of smoke-free ordinances. There were no adverse effects on hotel industry revenues and tourism was either unaffected or increased following implementation of smoke-free ordinances.

On January 1, 1998, California was the first state to implement an indoor smoking ban in all public places. The law was passed in 1995 however, the legislature gave a three-year extension for bars, lounges, and restaurants to comply with the ban. The law was passed in response to increasing concerns regarding cigarettes' negative effects on health and the dangers of second-hand smoke.

Since the smoking ban in California has only been in effect for approximately two years, there is little hard data on the effect it has had on California's economy. A survey reported in the *Los Angeles Times* indicated that there has been a reduction of bars located within restaurants. When compared to 1997, there were one hundred fewer bars within restaurants, while there has been an increase in the number of restaurants. A study by the National Smokers Alliance (NSA) reported that on average, bars have had to reduce employees by ten percent.

"Enforcement"

The RAND Corporation studied state and local enforcement of ordinances, such as license removal, fines, etc., and concluded that ordinances are self-enforcing." Ordinances in Chicago, Suffolk and Chatauqua Counties (NY) rely solely on complaints for enforcement. Therefore, ordinances are not systematically enforced.

The NSA reports that over 40 percent of freestanding bars have failed to comply with the indoor smoking ban in California. The Los Angeles Times reported that 25 percent of California smokers have smoked in a bar since the ban went into effect. Furthermore, the *Sacramento Bee* has reported that the low compliance with the smoking ban has "attributed to confusion about the new law, confusion about which agency should enforce the ban, and confusion as to how the enforcement should be handled."

There are two major barriers to effective implementation and enforcement:

- People are not interested in the subject. There are just too many other policies with a higher priority. When it comes down to it there just isn't the time.
- A lack of resources to enforce local and state ordinances. This means that state and local communities have "undertaken no systematic and/or proactive measures

> to enforce tobacco control laws, but rather have relied on ‘systems’ that are almost exclusively complaint driven."

The Health department is responsible for enforcement, except in California. The ordinance remands enforcement to the local governing body. Mark Gozawa, of the Los Angeles Fire Department, is one of two fire department officials responsible for enforcing the regulations. The "program is complaint driven, the inspectors do not go randomly into bars and restaurants." Interestingly, most calls are by restaurant owners who complain about restaurants next door that are allowing their customers to smoke. A citation is issued and individual fines increase with each successive offense. However, if inspectors repetitively cite individuals, then the business owner is fined. Furthermore, restaurants and bars are required to clearly post signs, "1-800-333-0730 (NO SMOKING)," or they are fined.

If non-smoking ordinances are not strictly and evenly enforced, businesses are hesitant to implement them.

Toronto’s Experience

A study of the food services and hospitality industries in Toronto, Canada reported that a smoking ban would cause a reduction of annual industry revenues up to $325 million. The study also predicted that the numbers of business and employment related to the industries would decline by over 10 percent."

Dual Market System

In a market economy, theory holds that given supply, demand will follow. The invisible hand works in mysterious ways, but it works. Recent non-smoking ordinances can be likened to social reengineering. However, its ultimate function removes the ‘market’ from the market economy. In essence, businesses lack the necessary incentives to provide non-smoking establishments.

Our society has found value in non-smoking establishments, most notably bars, taverns, and restaurants. However, some entrepreneurs have not. Fortunately, we live in a market economy that is responsive to our tastes and preferences. Thus, the incentive structure is well established. Mechanisms do exist that will signal to entrepreneurs that a "market" exists.

In a dual market system one can imagine constant migration between bars as customers are allowed to follow their personal preference and enjoy the different atmospheres they favor. This scenario reflects the fact that businesses will, on their own, follow the personal preferences of people and the market demands, allowing for both smoking and non-smoking establishments to exist. If individuals prefer to go to a smoke-free bar, the market will accommodate and reflects those preferences. If individuals like to smoke in bars, they still have the ability and should have the choice to go to those bars without government deciding for the customers and bar owners what their preference should be.

It is well documented that a majority of Americans do not smoke. In theory, these people would prefer a non-smoking establishment to a smoking one. Clearly a demand exists–a demand that will support a ‘dual’ market economy.

In this system two markets can thrive. Non-smoking and smoking establishments will coexist, giving consumers a choice, allowing them to act on their tastes and preferences–free of government or majority coercion.

In terms of equity, the ‘dual’ market approach is the only system acceptable to this standard. Furthermore, this also meets the standards of individual freedom and liberty.

D. Suing "Big Tobacco" - The Master Settlement Agreement

For years, individuals sought damages in court for various illnesses caused by years of smoking cigarettes. These measures proved unsuccessful until the 1990’s. Litigation against cigarette manufacturers changed from individual cases to a state action. The tobacco companies had out spent the parties seeking relief in court, but they met their match with the states.

In November 1998, the Attorneys General of forty-six states, Washington DC, and five US territories settled a lawsuit with the four major tobacco manufacturers to recoup losses for monies paid out through Medicaid for smoking related illnesses. As a part of this agreement, states will collect millions of dollars a year (adjusted annually for inflation) in perpetuity. It is referred to as a $205 billion dollar settlement, a separate and much smaller agreement was reached regarding smokeless tobacco, which adds another $25 billion dollars in payments through 2025.

The four states that settled prior to the MSA came away with similar deals to the states included in the larger settlement. Minnesota settled for $6.6 billion over twenty-five years (with further payments in perpetuity), Florida settled for $11.3 billion, Mississippi for $3.4 billion, and Texas for the largest settlement of the four at $15.3 billion. The character of the MSA was derived from these for settlements, which occurred in the year leading up to the larger settlement. The restrictions on advertising and divulgence of information and documents became essential parts of the MSA.

The largest and most immediate impact will appear in state spending programs. As a part of the agreement, the state legislatures were required to approve the settlement and then decide on a means of spending the money. As many political processes go, several states created committees to determine how the money will be spent. Thus far, states are tentatively placing money in funds for a wide variety of projects and programs. Delaware plans on using half of its money to fund the expansion of health care to those without it. In the states where tobacco is grown, Governors and state legislatures are placing funds in insurance programs for farmers who will be affected by the decline expected as a result of the settlement.

California has the most difficult task. The state government must figure out how to spend over $25 billion in the first twenty-five years of the settlement. Rather than maintaining state control, it was decided that the state government would keep half of the money from each settlement payment, and the other half would go to local government bodies. Out of the local government cut of $12.5 billion, the counties will proportionally divide 90 per cent. The remaining 10 per cent of that sum will be divided between the cities of Los Angeles, San Diego, San Francisco, and San Jose. No restrictions were placed on how the money must be spent, which has resulted in some controversy. As mentioned in the background, Mayor Riordan of Los Angeles has proposed to use the city's funds to settle lawsuits arising from the LAPD/Rampart scandal.

The National Governors Association reports that one major concern of legislatures in the appropriation of funds is the uncertainty of future settlement payments. As part of the deal, payments to the states will decrease if smoking decreases. Several factors suggest this occurring. The economic analysis portion of this report explains how increased taxes result in a decrease in the number of smokers. Additionally, the predicted increase in the pre-tax price of cigarettes that the FTC and the tobacco industry place at between 57 and 79 cents per pack will have the same effect as a tax increase. If and when decreases in tobacco sales do occur as a result of the higher prices, a complex "volume adjustment" formula will be used to determine the new amount distributed to the states. As it stands, after the inflation increase is added, a payment decrease of 10 percent the first year, 3 percent the second, 2.5 the third, and 2 percent every year after with the effects of each decrease being cumulative over time. These percentages then form a "base volume" from which further increases or decreases may be made. If the math behind tax and price increases hold true, the states stand to lose billions in settlement dollars over time.

E. The Settlement and Advertising

The agreement required tobacco manufactures to reimburse the participating states for the Medicaid costs of treating smoking related illnesses. Moreover, the agreement provides for specific marketing and advertising restrictions to reduce underage smoking. In return, the tobacco manufacturers receive limited liability from subsequent lawsuits. Without going deep into the intricacies of the "agreement," it is important to realize how it conceptually circumvents and delegitimizes the democratic process.

Unelected trial attorneys, working under the auspices of state attorneys general, supplanted the role of the legislative process. The contribution of public debate in coming to a resolution on an issue of such national concern was prohibited. Regardless of the validity and appropriateness of the restrictions placed on the tobacco industry, the agreement placed an enormous amount of power in state attorneys general: a body whose chief concern is in enforcing existing law, not in making potential First Amendment restrictions.

Tobacco restrictions achieve the purpose of swaying the debate regarding tobacco's health effects, individual choice, and government responsibility. The restrictions sway public discourse and inhibit the free flow of truthful consumer information through restrictions placed on tobacco advertisement. Tobacco advertisement restrictions potentially run counter to the First Amendment and existing Supreme Court precedent.

In legal jurisprudence, commercial advertisements fall under the Supreme Court created doctrine of commercial speech. Unlike traditional pure First Amendment speech, commercial speech is afforded limited First Amendment protection. As a result, the Supreme Court has laid out a four pronged test to assess the validity of commercial speech abridgements. If these are satisfied, the government abridgement is valid and deemed constitutional. If they are not satisfied, the restriction is an unconstitutional abridgement of the First Amendment.

1. *Commercial Speech Analysis*

The four pronged framework utilized by the Supreme Court in assessing the constitutionality of abridgements on commercial speech originates from *Central Hudson & Electric Corp. v. Public Service Commission*. The analysis asks:

- Whether the speech at issue is not misleading and concerns lawful activity;
- Whether the government's interest in regulating such speech is substantial; (if both prongs are answered in the affirmative, then the Court must ask),
- Whether the government’s regulation directly advances the government's interest. Specifically, under the third prong, the Court has maintained that the government must prove that the speech restriction materially advances their "substantial interests." This burden is not satisfied by mere speculative assertions, but rather it is achieved by showing "that the harms it recites are real and that its restrictions will in fact alleviate them to a material degree." The Court must then consider,
- Whether the regulation is no more extensive than necessary in effectuating the government's interest. Specifically, under the fourth prong, a direct extension of the third, the Court has maintained that the government must show that their restriction is no more extensive than necessary to satisfy the government’s substantial interests. The Court has maintained that this connection does not dictate that the government employ a policy that is the "least restrictive means conceivable," but rather a policy that is reasonable and in proportion with the government’s interest

2. Commercial Speech Restrictions More Difficult

Seven months after the Master Settlement Agreement, the Supreme Court handed down a decision that hinders the ability of the government to interfere with commercial speech, thus strengthening the four prong test created by *Central Hudson*. The case involved the federal government’s attempt at restricting lawfully operating casinos from broadcasting advertising: *Greater New Orleans Broadcasting Association v. United States*. The Court maintained that simply because the government had the authority to regulate the underlying conduct of gaming, it did not have the similar authority to abridge advertising of such conduct. In particular, the Court strengthened prong four of the *Central Hudson* test in stating that government restrictions on speech must be a last response. In effect, the government must consider less intrusive, non-speech oriented policies to effectuate their substantial interests before resorting to an abridgment of the first amendment.

3. The Impact on Tobacco Advertising

The strengthening of the *Central Hudson* test through *Greater New Orleans* is a potential resurrection for tobacco advertising. The Court laid to rest claims that because tobacco was considered a "vice," tobacco advertisements received less First Amendment protection as opposed to other products or services.

Noting that the government's interest in tobacco advertisements has been centered on the notion that they are "not good," the government must heed to the Court's determination that the primary reason for restricting commercial speech is to ensure that advertisements are not misleading. Cigarettes are indeed a lawful product and certainly consumers could benefit from knowing the nicotine and tar content in making a purchase decision.

The government has maintained that it has an interest in protecting minors in the case of tobacco advertising. However, the Court has maintained that restricting commercial speech should be the last response in any regulatory scheme, even when it pertains to a vulnerable group.

> It is true that we have repeatedly recognized the governmental interest in protecting children from harmful materials. See Ginsberg v. New York, 390 U. S., 629, 639 (1968), Federal Communications Comm'n v. Pacifica Foundation, 438 U. S. 726, 749 (1978). But that interest does not justify an unnecessarily broad suppression of speech addressed to adults. As we have explained, the Government may not "reduc[e] the adult population . . . to . . . only what is fit for children." Denver Area Educational Telecommunications Consortium, Inc. v. Federal Communications Comm'n, 135 L. Ed. 2d 888 (1996) (internal quotation marks omitted)(quoting Sable Communications of California, Inc. v. Federal Communications Comm'n, 492 U. S. 115, 128). Id. at 913. "[R]egardless of the strength of the government's interest" in protecting children, "[t]he level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox." Bolger v. Youngs Drug Products Corp., 463 U. S. 60, 74-75 (1983).

Following the logic of the *Greater New Orleans* decision, under the third prong of *Central Hudson*, the government's interest in protecting minors must be real and materially advance the government's interest. Tobacco companies have long claimed that the advertising is aimed at changing existing smokers' preferences. The government, on the other hand, has offered no evidence showing that restricting tobacco advertising will materially advance their interest in preventing minors from smoking. The government has proven that youths recognize and respond to tobacco advertisements, but the government as required under *Central Hudson*, has been unable to substantiate the casual link between advertising and youth consumption. There is no doubt that there exists an interest in protecting minors. The government, however, may not advance that interest through broad regulations that impair the free flow of truthful information to adults.

Moreover, *Greater New Orleans* dictates, under the fourth prong of *Central Hudson*, that the government address the root of any problem before restricting speech. In determining whether the restriction is no more extensive than necessary, the burden on speech is unacceptable if less restrictive alternatives are as effective in achieving the abridgements legitimate underlying purpose.

Thus, before government can assert a commercial speech abridgement, government must at lease attempt alternative enforcement–more direct non-speech related regulatory methods of addressing the problem. Restricting the sale of tobacco to minors and strong enforcement of existing laws by states are more appropriate measures and do not impinge on First Amendment rights. In addition to direct regulation, government may advance its interest through the marketplace of ideas and through public service announcements to proffer nonmisleading information regarding the effects of tobacco. Thus, public education efforts, aimed at increasing youth awareness about the harm of tobacco and problems of addiction, could offer a more acceptable and constitutional solution.

Although *Greater New Orleans* has strengthened the ability of government to abridge commercial advertising, prohibiting the tobacco companies from challenging the settlement agreement is the fact that tobacco companies have "voluntarily" agreed to many advertising restrictions and to waive their First Amendment rights in exchange for limited liability. Although the tobacco companies have "voluntarily" agreed to waive their First Amendment right, the constitutionality of tobacco advertising may not be a moot issue. Tobacco companies would have to prove that they were coerced into waiving their First Amendment right by utilizing the unconstitutional conditions doctrine. Such a challenge could get the tobacco industry back into court to challenge the constitutionality of the restrictions placed on them through the agreement.

F. Children and Tobacco

Prevention is a major public health goal in the US because many smokers begin smoking before the age of 18 years. The American Cancer Society estimates that 90 percent of new smokers are children and teenagers. Three thousand plus teenagers begin smoking everyday, and 33 percent will die of a smoking-related illness." While most tobacco-related deaths occur later in life, the statistics make smoking one of today’s most alarming pediatric problems. The American Lung Association, American Cancer Society, Centers for Disease Control and Prevention (CDC), and the National Center for Health Statistics (NCHS), state that:

- Nine out of ten American smokers will begin before the age of nineteen.
- The average smoker begins smoking at age 12.5.
- By age fourteen, the average smoker is a daily user.
- One in five eighth graders smoke regularly.

- Cigar use was the second most preferred tobacco product used by middle and high school students.
- Children and adolescents consume more than one billion packs of cigarettes a year (Final Report of the National Commission on Drug Free Schools).

Reasons for adolescent smoking include use by other family members and friends, peer approval, low socioeconomic status, poor academic achievement, and poor self-image. Most commonly, adolescents first try cigarettes because of other adolescent smokers.

Cigarette smoking by children and teenagers in the US is a major public health problem. Evidence shows that those who begin smoking before the age of twenty have the highest incidence and earliest onset of both coronary heart disease and hypertension. Cigarette smoking during childhood and adolescence produces significant health problems: "cough and phlegm production, an increase in the number and severity of respiratory illnesses, decreased physical fitness, an unfavorable lipid profile, and potential retardation in the rate of lung growth and the level of maximum lung function."

Most anti-tobacco campaigns are specifically targeted at adolescents. However, most have limited success, in part due to the attempt to use arguments relating to tobacco’s long term health effects, which have limited impact on the adolescent mentality. The American Heart Association, American Cancer Society, the CDC, the National Center for Tobacco-Free Kids, and the FDA support legislation that seeks to restrict or prohibit tobacco advertising, promotion and marketing to young people, minorities or women. In addition, the CDC developed "Guidelines for School Health Programs to Prevent Tobacco Use and Addiction." These guidelines are:

> All schools should: a) develop and enforce a school policy on tobacco use; b) provide instruction about the short and long term negative physiological and social consequences of tobacco use, social influences on tobacco use, peer norms regarding tobacco use, and refusal skills…"

Part 6

Policy Proposals

"I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it." ~ Thomas Jefferson

A. Taxes

Trends suggest taxes on Tobacco at both the federal and state levels will continue to increase. Effectively pricing significant portions of people out of a legal activity–denying them their personal liberty.

- **Proposal**: Remove "sin" from taxation policy–taxation is for revenue generation, not behavior modification.

Losses in tax revenue result from differing tax rates among states in the same region, resulting in smuggling across state lines.

- **Proposal**: to minimize this effect implement a regional tax policy. A regional agreement on a tax rate between 35 and 45 cents would reduce smuggling between neighboring states. The southeastern states have a situation similar to this already.

B. Regulations

Currently, more states and municipalities are enacting smoke-free ordinances in public places. In order to provide an option, some compromise will have to be reached. Essentially the tradeoff is between liberty and inefficient economics.

- **Proposal**: rather than issue a broad ban, government can offer tax breaks or incentives to entrepreneurs that will open and operate non-smoking bars, restaurants, nightclubs etc. In this "dual market" alternative, the entrepreneur and ultimately the consumer determine the availability of non-smoking establishments. Rather than circumventing the "invisible hand" of the market economy, government would only 'help' or guide it in the direction society desires.

This proposal is feasible; several options exist. For example, but not limited to:

- Lower business license fees;
- Reduced property tax;

- Reduced business tax; and/or
- Provide business assistance to entrepreneurs willing to open/operate non-smoking establishments.

A dual market approach accounts for hazards associated with second-hand smoke. Consumers are given the choice as to which establishment they frequent. Those that patronize smoking establishments assume these risks while others avoid them.

Some safeguards will have to be put into place. City councils and planning boards are largely responsible for permitting and zoning. The dual market system will not work if these agencies fail to be objective in that they only permit non-smoking establishments to pursue their preferences.

C. Settlement

Most likely tobacco companies will not challenge the conditions reached in the "voluntary" agreement. However, states should act responsibly.

- **Proposal**: use settlement money for education, smoking cessation, and health care programs, rather than funding unrelated projects.

D. Advertising

The rationale behind advertising restrictions has been for the protection of today’s youth. However, states have not wholeheartedly exhausted enforecement measures, and these should be addressed as a principal matter.

- **Proposal**: step up enforcement via existing and new laws (see proposal E for deails).

The government has the opportunity and power through the "fairness doctrine" to inundate all that listen to the dangers of smoking. The government undoubtedly may protect the public health from harmful activities such as smoking through the distribution of information outlining the potential risks.

- **Proposal**: more effective use of "counterspeech," the anti-smoking campaign.

The government cannot constitutionally impose broad unsubstantiated sweeping abridgemnts on advertising. In the long run, it may be better and more effective to warn minors of the dangers of tobacco use rather than simply shielding their eyes.

E. Children

Enforcement procedures could be met not only through existing law, but in creating penalties for minors caught using tobacco products. Everything from taking away minors’ drivers licenses to mandatory counseling on the dangers of tobacco use could serve as useful penalties.

- **Proposals**:
    - Continue to uphold, enforce, and maintain the FDA regulations restricting the access of tobacco products to children and adolescents.
    - Heighten and stiffen penalties to those who violate FDA regulations.
    - Continue anti-tobacco campaigns geared towards children.
    - Liken tobacco to alcohol for minors–enact legislation restricting possession and consumption (not just purchasing).

Part 7

Concluding Remarks

"We must remember that a right lost to one is lost to all." ~ William Reece Smith Jr.

Liberty encompasses the freedom to choose, including the freedom to engage in an activity that one derives pleasure. The government's obligation is to ensure its citizens are provided with truthful, nonmisleading and accurate information regarding goods and services offered in the marketplace. Information equips citizens with facts concerning the potential consequences of anticipated actions. Further action by the government results in unnecessary interference in the private lives of citizens. Turning personal decisions over to the government results in the erosion of freedom. Through personal responsibility, there is a safeguard of individual liberty and choice in the future.

The underlying goal of an anti-tobacco policy is to reduce smoking in the general population and to prevent smoking in the adolescent population. Taxation policy, regulation, and prohibitions must be directed to achieving this goal. Policy should not be used for social engineering or instituting the preference of a majority.

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Appendix A

International Implications

"Liberty is the right to choose. Freedom is the result of the right choice." ~ Anonymous

Worldwide, there are 1.l billion people who smoke–one out of every three adults. Eighty percent of those people live in developing and third world nations and account for eighty-five percent of the tobacco consumed worldwide. Hand rolled cigarettes known as "bidis," a less expensive alternative to manufactured cigarettes, are the preferred cigarette of these nations. The majority of tobacco related disease and death, until recently, was a phenomenon of industrial nations. In 1999, one out of every ten deaths worldwide was attributed to tobacco, with a shifting of occurrence from the industrial nations, to the developing and third world nations. It is estimated that by 2020, seven out of every ten tobacco related deaths will occur in developing and third world nations.

Cigarette manufacturers and tobacco farmers continue to search for new markets as American citizens become more informed about tobacco illnesses and litigation has been successful against the tobacco industry.

Many governments, however, are not responding aggressively to inhibit the increasing sale of cigarettes and tobacco related products believing that, "reduced sales of cigarettes would mean the permanent loss of thousand of jobs; that higher tobacco taxes would result in lower government revenues; and that higher price would encourage massive levels of cigarette smuggling."

As trade has liberalized and cultural norms have shifted, the global economic and social patterns of Tobacco use have changed. Smoking, once a practice of adult males in the industrialized nations, is now popular among women and teenagers, and is taking hold as a social norm in developing and third world nations. As the smoking rate of adult males in industrialized nations declines, the smoking rate of women, children, and peoples of developing and third world nations increases.

Although the concept of choice and responsibility is valid in industrial nations, there is need for discussion about developing and third world nations making informed decisions about Tobacco use. For example, a survey in China (1996) revealed that 61 percent of the respondents believed tobacco had "little or no harm" to their health. In India (1997) the smoking prevalence among the illiterate male population was 64 percent, whereas, the smoking prevalence among Indian males with more than twelve years of education was 21 percent.

However, if smokers make a conscious and informed decision to smoke, and are acting as rational beings; their government and the world community should not prohibit them from smoking on the grounds that they are poor, uneducated, or do not respond as industrialized citizens do. Citizens from developing and third world countries have as much a right to personal self-determination as do citizens of the US.

In regard juvenile smokers residing in developing and third world nations, we must assume a similar position to that taken in the US. Tobacco products should not be purchased, possessed, or used by persons under the age of 18.

Table 7

Cigarettes: US Exports & Imports

(Tax Exempt / In billions of cigarettes)

Year	Exports	Misc. *Shipments*	Imports
1988	118.5	10.2	1.2
1989	141.8	7.3	1.5
1990	164.3	14.5	1.4
1991	179.2	14.5	4.7
1992	205.6	7.4	6.6
1993	195.5	6.5	11.5
1994	220.2	11.4	3.5
1995	231.1	19.8	3.0
1996	243.9	16.8	2.7
1997	217.0	15.0	3.2
1998	201.3	11.2	4.3
1999	150.0	25.0	8.0

Misc. shipments include overseas armed forces, ship stores and shipments to Puerto Rico & other U.S. possessions.

Table 8

Smoking Tobacco: US Exports & Imports

(Millions of pounds)

Year	***Exports***	***Imports***
1988	**0.5**	**3.8**
1989	**0.4**	**3.2**
1990	**0.8**	**2.9**
1991	**1.4**	**5.6**
1992	**1.2**	**5.7**
1993	**0.4**	**6.8**
1994	**0.5**	**3.9**
1995	**0.4**	**4.0**
1996	**0.7**	**4.2**
1997	**0.8**	**4.3**
1998	**1.1**	**4.3**
1999	**1.1**	**4.5**

Source: Reports of the ATF & Bureau of the Census

http://www.econ.ag.gov/briefing/tobacco (Table1.htm & Table3.htm, respectively)

Table 9

U.S. cigarette exports to leading destinations
July 1998 – June 1999

Country	*Billions of pieces*
Azerbaijan	5.0
Belgium-Luxembourg	34.9
Cyprus	5.3
Hong Kong	3.2
Israel	4.4
Japan	70.6
Kuwait	1.7
Lebanon	8.9
Mexico	0.3
Morocco	1.2
Netherlands Antilles	0.2
Panama	0.6
Paraguay	1.5
Russia	3.0
Saudi Arabia	8.9
Singapore	4.6
South Korea	1.9
Taiwan	2.0
Turkey	0.1
Ukraine	1.4

United Arab Emirates 1.7

Other countries 20.4

Total 176.8

Source: http:www.econ.ag.gov/briefing/tobacco/Table5.htm

Appendix B

State Laws/Regulations Tables

Table 10 – State Laws and Ordinances in the Private Sector

	Type of	Written policy	Enforcement	Penalties for first violation		Signage	Rating
State	Restriction	on smoking	Authority	To business	To smoker	required	
California	3+	No	No	Fine up to $100	Yes	Yes	6
Connecticut	2	No	No	No	No	Yes	3
Delaware	2	Yes	Yes	Fine of $25	Yes	Yes	7
Florida	2@	Yes	Yes	Fine up to $100	Yes	Yes	7
Illinois	2@	No	No	No	Yes	Yes	4
Iowa	2	No	Yes	Fine of $25	Yes	Yes	6
Louisiana	2	Yes	No	No	No	Yes	4
Maine	2	Yes	Yes	Fine up to $100	No	No	5
Minnesota	2	No	Yes	No	Yes	Yes	5
Missouri	2	No	No	Infraction	Yes	Yes	5

Montana	2	No	Yes	Fine up to $25	No	Yes	5
Nebraska	2	No	Yes	No	Yes	Yes	5
New Hampshire	2	Yes	No	Fine of at least $100	Yes	Yes	6
New Jersey	2	Yes	Yes	No	No	Yes	5
New York	2	Yes	Yes	Fine up to $2,000&	Yes	Yes	7
Pennsylvania	2	Yes	Yes	Fine up to $50	Yes	Yes	7
Rhode Island	2	Yes	Yes	Fine of $50-$500	No	Yes	6
Utah	2	No**	Yes	Fine up to $100	Yes	No	5
Vermont	2	Yes	Yes	Fine of $100	Yes	No	6
Washington, D.C	2	Yes	Yes	Fine up to $300	Yes	Yes	7
Wisconsin	2	No	No	No	Yes	Yes	4
Total++	**21**	**11**	**14**	**14**	**15**	**18**	**115**

Legend: 1 = no restrictions, 2 = designated smoking areas required or allowed, 3 = no smoking allowed or designated smoking areas allowed if separately ventilated, 4 = no smoking allowed (100% smoke free). + Whereas most state laws stipulate areas in which smoking is restricted, California's law designates places and circumstances under which smoking is allowed. @ Restricts smoking in work sites but does not specify private-sector work sites. ** If 10 or more employees, written policy required. ++ Total number of state laws that have restrictions, enforcement, penalties, or signage (i. e., sign is posted indicating where smoking is prohibited).

Table 11 – State Laws by Restriction (Location/Type)

	Gov. work sites	Pvt. work sites	Restaurants	Other sites	Advertising	Totals
Alabama						0
Alaska	x		x	x		3
Arizona	x			x	x	3
Arkansas				x		1
California	x	x	x	x	x	5
Colorado	x			x		2
Connecticut	x	x	x	x		4
Delaware	x	x	x	x		4
Florida	x	x	x	x		4
Georgia				x		1
Hawaii	x		x	x		3
Idaho	x		x	x		3
Illinois	x	x	x	x	x	5
Indiana	x			x	x	3
Iowa	x	x	x	x		4
Kansas	x		x	x		3
Kentucky					x	1
Louisiana	x	x		x	x	4

Maine	x	x	x	x		4
Maryland	x		x	x		3
Mass	x		x	x		3
Michigan	x		x	x	x	4
Minnesota	x	x	x	x		4
Mississippi						0
Missouri	x	x	x	x		4
Montana	x	x	x	x		4
Nebraska	x	x	x	x		4
Nevada	x		x	x	x	4
NH	x	x	x	x		4
New Jersey	x	x		x		3
New Mexico	x					1
New York	x	x	x	x		4
NC						0
North Dakota	x		x	x		3
Ohio	x			x		2
Oklahoma	x		x	x		3
Oregon	x		x	x		3
Pennsylvania	x	x	x	x	x	5
Rhode Island	x	x	x	x		4
SC	x			x		2
South Dakota	x			x		2
Tennessee				x	x	2
Texas				x	x	2
Utah	x	x	x	x	x	5
Vermont	x	x	x	x		4
Virginia	x		x	x		3
Washington	x		x	x		3
Wash DC	x	x	x	x		4
West Virginia				x	x	2
Wisconsin	x	x	x	x		4
Wyoming	x					1
Total	**42**	**21**	**32**	**45**	**13**	**153**

Table 12 – State Laws by Restriction "Other Sites"

		Shopping	Grocery	Enclosed	Public			Hotels	
State	**Bars**	**malls**	**Stores**	**arenas**	**Transportation**	**Hospitals**	**Prisons**	**and motels**	**Rating**
Alaska	1	1	2	1	2	4	2	1	14

Arizona	1	1	1	1	2	2	1	1	10
Arkansas	1	1	1	1	1	2	1	1	9
California&	3	3	3	3	3	3	1	2	21
Colorado	1	1	1	2	2	2	1	1	11
Connecticut	1	1	2	1	2	2	1	1	11
Delaware	1	1	2	1	4	4	1	1	15
Florida	1	1	2	2	4	2	1	1	14
Georgia	1	1	1	1	4	1	1	1	11
Hawaii	1	1	2	1	2	2	1	1	11
Idaho	1	1	2	2	2	2	1	1	12
Illinois	1	1	2	2	2	2	1	1	12
Indiana	1	1	1	1	1	2	1	1	9
Iowa	1	2	2	2	2	2	1	2	14
Kansas	1	1	2	2	4	2	1	1	14
Louisiana	1	1	1	1	4	2	1	1	12
Maine	1	2	2	2	2	2	1	1	13
Maryland	1	1	2	1	4	4	1	2	16
Massachusetts	1	1	4	1	2	2	1	1	13
Michigan	1	1	2	2	2	3	1	1	13
Minnesota	1	1	2	2	2	4	4	2	18
Mississippi	1	1	1	1	1	1	1	1	8
Missouri	2	2	2	2	2	2	1	1	14
Montana	1	1	2	2	2	2	1	1	10
Nebraska	2	1	2	2	2	2	1	1	13
Nevada	1	1	2	1	2	2	1	1	11
New Hampshire	1	2	2	2	4	4	2	2	19
New Jersey	1	1	4	1	4	2	1	1	15
New York	1	1	2	2	4	2	1	1	14
North Dakota	1	1	1	1	2	2	1	1	10
Ohio	1	1	1	1	2	2	1	1	10
Oklahoma	1	1	1	2	2	2	1	1	11
Oregon	1	1	2	2	1	2	1	1	11
Pennsylvania	1	1	1	2	2	2	1	1	11
Rhode Island	1	1	2	1	4	2	1	1	13
South Carolina	1	1	1	2	4	2	1	1	13
South Dakota	1	1	1	1	2	2	1	1	10
Tennessee	1	1	1	1	1	2	1	1	9
Texas	1	1	1	1	2	2	1	1	10
Utah	1	4	4	4	4	2	1	2	22
Vermont	2	2	2	2	2	2	1	2	15
Virginia	1	1	2	2	4	2	1	1	14
Washington	1	2	2	2	2	2	1	1	13
Washington DC	1	1	2	1	4	2	1	1	13

West Virginia	1	1	1	1	4	1	4	1	14
Wisconsin	1	1	2	1	2	4	1	1	13
Total	4	8	30	23	41	43	4	7	589

Legend: 1 = no restrictions, 2 = designated smoking areas required or allowed, 3 = no smoking allowed or designated smoking areas allowed if separately ventilated, 4 = no smoking allowed (100% smoke free).

Table 13 – State Laws Restricting Advertising

		Banned on state	Restriction on public		Restrictions on other		
State	**Any restriction**	**property**	**transportation**	**Near schools**	**specific locations**	**Other restriction**	**Rating**
Arizona	Yes	No	No	No	Yes*	No	1
California	Yes	Yes	No	Yes+	No	Yes	3
Illinois	Yes	No	No	No	No	Yes@	1
Indiana	Yes	No	No	Yes**	No	No	1
Kentucky	Yes	No	No	Yes++	No	No	1
Louisiana	Yes	No	No	No	No	Yes&&	1
Michigan	Yes	No	No	No	No	Yes@	1
Nevada	Yes	No	No	No	Yes*	No	1
Pennsylvania	Yes	No	No	No	No	Yes&&	1
Tennessee	Yes	No	No	No	Yes*	No	1
Texas	Yes	No	No	Yes@@	Yes@@	No	2
Utah	Yes	No	Yes	No	No	Yes@***	2
West Virginia	Yes	No	No	No	No	Yes	1
Total	13	1	1	4	4	7	17

Legend: + Advertising of tobacco products on outdoor billboards must be located 1,000 ft. away from schools or playgrounds. @ Advertising of smokeless tobacco on printed materials must have warning labels. ** Advertising of tobacco products on outdoor billboards must be located 200 ft. away from schools. ++ No larger than 50 square feet and not less than 500 ft. away from a school. && Lottery tickets. @@ Advertising of tobacco products on outdoor signs must be located 1,000 ft. away from schools or churches. *** Banned.

Table 14 – Combined Weighted Totals by Size

	Table 11	**Table 11**	**Table 10**	**Table 10**	**Table 12**	**Table 13**	**Table 13**	**Totals**
	Un-Weighted	**Weighted**	**Un-Weighted**	**Weighted**	**Un-Weighted**	**Un-Weighted**	**Weighted**	**By State**
State	**Totals**							
California	5	25	6	18	21	3	21	103

Utah	5	25	5	15	22	2	14	97
Pennsylvania	5	25	7	21	11	1	7	82
Delaware	4	20	7	21	15		0	74
Florida	4	20	7	21	14		0	73
New York	4	20	7	21	14		0	73
NH	4	20	6	18	19		0	72
Wash DC	4	20	7	21	13		0	72
Rhode Island	4	20	6	18	13		0	69
Illinois	5	25	4	12	12	1	7	68
Minnesota	4	20	5	15	18		0	68
Iowa	4	20	6	18	14		0	67
Missouri	4	20	5	15	14		0	67
Vermont	4	20	6	18	15		0	65
Maine	4	20	5	15	13		0	63
Nebraska	4	20	5	15	13		0	63
Montana	4	20	5	15	10		0	60
Wisconsin	4	20	4	12	13		0	57
Connecticut	4	20	3	9	11		0	55
Michigan	4	20		0	13	1	7	55
Louisiana	4	20	4	12	12	1	7	54
Nevada	4	20		0	11	1	7	53
Alaska	3	15		0	14		0	47
Virginia	3	15		0	14		0	47
Idaho	3	15		0	12		0	45
New Jersey	3	15	5	15	15		0	45
Hawaii	3	15		0	11		0	44
Kansas	3	15		0	14		0	41
Oregon	3	15		0	11		0	41
Oklahoma	3	15		0	11		0	38
Maryland	3	15		0	16		0	37
Massachusetts	3	15		0	13		0	37
North Dakota	3	15		0	10		0	37
Washington	3	15		0	13		0	37
Texas	2	10		0	10	2	14	34
Arizona	3	15		0	10	1	7	32

Indiana	3	15		0	9	1	7	31
West Virginia	2	10		0	14	1	7	31
Tennessee	2	10		0	9	1	7	26
South Carolina	2	10		0	13		0	23
Colorado	2	10		0	11		0	21
Ohio	2	10		0	10		0	20
South Dakota	2	10		0	10		0	20
Georgia	1	5		0	11		0	16
Arkansas	1	5		0	9		0	14
Kentucky	1	5		0	0	1	7	12
Mississippi	0	0		0	8		0	8
New Mexico	1	5		0	0		0	5
Wyoming	1	5		0			0	5
Alabama							0	0
North Carolina	0	0		0			0	0
Total	**153**	**WT of 5**		**Wt of 3**			**Wt of 7**	

Appendix C

Regression Analysis

A premise of the case brought against the tobacco industry by the states in the Master Settlement Agreement (1998) was that while the industry was making exorbitant profits, taxpayers were bearing the economic costs of treating smoking related illnesses of the indigent who received treatment through Medicaid. The assumption of this premise is that the indigent, if not for smoking, would not have imposed a cost upon the Medicaid system. The question emerges: Does the smoking Medicaid population impose a greater cost upon the system than does the non-smoking Medicaid population?

According to Senator Tom Harking (Iowa), smoking related illnesses impacted the Medicaid system by $3 billion in 1994. The total Medicaid expenditures for 1994 was over $108 billion. Thus, the impact of smoking-related illnesses upon Medicaid expenditures was approximately 3 percent in 1994. Adjusting for categorical expenditures not related to disease and illness, (mental health services, nursing facilities, dental, practitioners other than physicians, and family planning) the 1994 expenditure of $3 billion represents only 4.95 percent of total applicable expenditures.

Hypothesis:

Health care costs among Medicaid patients treated for smoking-related illnesses are no greater than health care costs among Medicaid patients treated for other than smoking-related illnesses.

Ho : B nsmk < 0
Ha : B nsmk > 0
Ho: B nf < 0
Ha : B nf > 0

where: B nsmk = Medicaid expenditures (adjusted) for non-smoking related illnesses.
B nf = Medicaid expenditures for nursing facilities.

In calculating:

H Mcaid = Bo + B nsmk + B nf + E

The results show that the impacting categories of non-smoking related illnesses and nursing facilities upon total Medicaid expenditures are statistically significant. Thus, the hypothesis cannot be rejected.

Results:

Means, Variances, and Correlations
Sample Range 1990 - 1998

Variable Mean Standard Deviation Variance

Y 103548.8 22052.78 4.86325E+08
NSMK 53593.89 11418.02 1.30371E+07
NF 25994.11 4814.017 2.31748+07

Correlation Coefficient

Y,Y 1.00 NSMK,Y 0.995611
NSMK,NSMK 0.991907 NF,Y 0.997298
NF,NF 1.00

Ordinary Least Squares
Coefficient Standard Error T-Score
CONST. -9423.814 3647.527 -2.583618
NSMK 0.764939 0.332547 2.300243

NF 2.768954 0.788744 3.510582

R-Squared 0.997132 Mean of Dep. Variable 103548.8
Adj. R Sqr. 0.996176 Std. Dev. Dep. Variable 22052.78
Std. Err 1363.54 Residual Sum -1.59389E-10

of Regress.
Durbin-Watson 1.597545
F-Statistic 1043.273

Durbin-Watson
du = 1.48
dl = .77

T-score
5% level of significance = 1.943

F- statistic
5% level of significance = 5.14

Data:

Observ. Y NSMK NF (In millions)

1990 64859.00 32537 17693
1991 77142.00 39533 20272
1992 89425.00 47210 22851
1993 101709.0 54231 25431
1994 108270.0 57523 27095
1995 120141.0 61726 27052
1996 121685.0 62617 29630
1997 123551.0 62555 30504
1998 125157.0 64431 31419

Data Source:

Statistical Abstract of the Untied States 1996 and 1999
U.S. Department of Commerce, Economics and Statistics Administration
Bureau of the Census
Table No. 170 (p.118 - 1996)
Table No. 179 (p. 124 - 1999)