Legislation or Self-Regulation: Opinions on Anti-Smoking Measures

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When seeking to control or reduce potentially harmful behaviours, governments have several options available to them, including legislation, education, self-regulatory measures, or some combination of these. This article examines the philosophical debate over which of these options is most appropriate in the context of the Smoke Free Environments Act. Results from a survey of the general population's view on the smoking legislation are also presented, and the unexpected deviation from the pattern of self-interest is discussed. Finally, some suggestions about the policy implications of these findings are presented.

Keywords: tobacco advertising, cigarette, sponsorship, regulation, legislation

Introduction

In New Zealand, as in many other countries, public debate over smoking, the extent to which tobacco promotions initiate and encourage smoking, and the measures government should take to curb tobacco consumption, have received detailed attention in recent years. As the evidence attesting to the harmful effects of tobacco consumption accumulates, both health groups and the tobacco industry have mounted vigorous campaigns designed to sway government and public opinion.

Until 1990, a voluntary code, formulated by representatives of the advertising industry and designed to avoid the need for legislative curbs, regulated tobacco companies' promotions in New Zealand. Like similar codes operating in Australia and the United Kingdom, this voluntary code specified the size and content of advertisements, the media in which they could be placed, the audience at whom they could be directed, and the health warnings manufacturers were obliged to display on packets and in promotions. However, during the 1980s the Code came under increasing attack from interest groups who argued that promotions undertaken by tobacco companies, while conforming to the letter of the code, exploited ambiguities that contravened its spirit (Romanos 1991). Furthermore, these groups claimed that medical evidence attesting to the effects of smoking on both smokers and non-smokers was sufficiently unambiguous to justify further restrictions on cigarette advertising.

Advocates of legislation cited arguments from key medical and consumer groups, including WHO, World Health Assembly, International Union Against Cancer, and the International Organisation of Consumers' Union, which claimed to have identified a causal relationship between tobacco and a range of fatal and disabling diseases. They used this evidence to support their view that New Zealand should follow the example of countries such as Norway and Italy, which have imposed complete bans on tobacco advertising (see Carr-Gregg & Gray 1989).

In response to this pressure, and despite the strong counter lobbying from advertising and tobacco groups, the New Zealand government introduced legislation, now the Smoke Free Environments Act, 1990. Among other things, this required the provision of smokefree areas in workplaces, and banned the advertising and sponsorship of tobacco products. The latter provision represented an unparalleled departure from voluntary self-regulation of tobacco

promotions and, according to spokespeople from the advertising and tobacco industries, constituted a blatant erosion of free speech. Opponents of the restrictions claimed the central issue was not product safety, but one of fundamental democratic rights. In addition, they challenged the view that agarette advertising increased primary demand by enticing non-smokers to commence smoking.

In this article we explore the philosophical debate surrounding direct government intervention in issues previously regarded as matters of personal choice. Within this context, we report the results of research exploring New Zealand consumers' perceptions of the role government should play in such matters and their reactions to the restrictions on tobacco promotions in New Zealand. Finally, we discuss the policy implications of our findings.

Freedom of Speech and Action

Modern western societies subscribe to the belief that individuals and groups are free to express the ideas they choose to hold, and to receive information from sources they choose to accept. Governments and other ruling bodies play a key role in protecting these rights, and some argue that, although they may have extensive power to perform this protection function, their power should not extend beyond this point (see Den Uyl 1986, for a summary of the arguments supporting this view). However, other theorists have advocated a contrasting approach where governments act to prevent people from harming themselves and others. In an extreme version of this, governments have the power to guide people toward their own good, no matter whether they actually desire this (Feinberg 1971). Since this theory was first elucidated, Wikler (1978) differentiated between actions which specifically block consumers' access to a specified source of harm and those which seek to educate consumers about the consequences of certain choices, but ultimately leave them to make these choices.

In the area of commercial enterprise, governments have acted in two ways. First, where issues of safety are involved, they have intervened directly to set standards; for example, the drug approval procedures, and have required licensing of specific occupational groups, such as doctors and lawyers. As far as marketing behaviour is concerned, governments have typically attempted to ensure fair information is available and so have acted to enable informed choice rather than to restrict commercial activities. Any constraints applied to commercial practices have tended to occur in response to strong medical and consumerist arguments, and have generated considerable controversy.

The debate over whether freedom of speech protection should extend to all marketing communications, including the advertising of potentially harmful products, further complicates the issue of government intervention to limit or control commercial activities. While some take the stance that advertising plays a critical role in ensuring consumers have ready access to market information, others argue that information provided through advertising is biased and possibly misleading, and thus requires regulation rather than special protection.

Rotfeld (1982) summarised the anti-control view when he described such protection as

"not so much a guarantee that advertisers can talk freely about products as a protection of consumer sources of information" (p. 143).

Others go further, suggesting that restrictions on commercial information ultimately disrupt marketplace processes, and so affect not just individual freedoms, but economic efficiency. Thus Boddewyn (1986) wrote:

"advertising is particularly linked to freedom of information - both to give it and to receive it - because its lack hinders effective economic choices, both personal and social" (p.318; see also Den Uyl 1986; Littlechild 1986).

Others, commenting specifically on tobacco promotions, have taken a directly opposing view, arguing that the quality of some commercial information means it should not merit special status or freedom of speech protection (see Warner, Ernster, Holbrook, Lewit, Pertschuk, Steinfeld, Tye & Whelan 1986). In outlining a case for further controls on cigarette advertising under the First Amendment of the American constitution, Blasi and Monaghan (1986) launched a scathing attack on the quality of information disseminated through tobacco promotions:

"Given what the cigarette advertising does portray, what it fails to say, and the vast public ignorance of the dangers and addictive quality of smoking ... it is plain to us that this kind of advertising can be proscribed as deceptive and misleading" (p. 506).

Similarly, Walsh and Gordon (1986) in their discussion of measures taken to curb consumption, argued that

"governments have intruded much less on the consumers' sovereignty to make a truly informed, autonomous and uncoerced decision about the wisdom of smoking cigarettes than has the tobacco industry." (p. 147, see also Warner et al. 1986).

In complete contrast to calls for a free flow of all commercial information, regulated only by market forces, these authors suggested government regulation was necessary to control potentially dangerous misinformation.

Seeking to establish some kind of compromise, Meenan (1976) called for a balance "between the value we place on health and that which we place on the freedom to make certain choices" (p. 45). He argued that, to attain a higher order good, it is sometimes necessary to sacrifice some individual rights. According to his view, debate should not focus on the absolute protection of rights, but on establishing a satisfactory trade-off.

Green and Gerken (1989) and Dixon, Lowery, Levy and Ferraro (1991) suggested people's trade-off regarding smoking depends heavily on the amount they stand to gain or lose. Thus, instead of some contemplation of the overall good, they suggested consumers' immediate self-interest has a significant relationship with their attitudes to smoking restrictions. Few of those arguing over the philosophical complexities of advertising regulation in general, or debating specific tobacco promotion restrictions, have included details of the public's views in their cases. Presumably if New Zealanders viewed advertising restrictions as encroaching on their right to receive commercial information, the tobacco and advertising industries' claims would be strengthened. However, if the public saw the restrictions as inconsequential,

or supported them, the health lobbyists would have a stronger case. The remainder of this paper details research conducted to explore this question.

Method

Procedure and Sample

A mail survey of 506 New Zealanders, selected at random from the 1990 electoral rolls, was conducted between October and December 1990. All sample members received an initial mailing which contained a questionnaire, a reply-paid envelope, and a covering letter, signed by the researchers, which enjoined their co-operation. Two weeks later, non-respondents were sent a similar package, differing only in the content of the covering letter; after a further two weeks, remaining non-respondents received another mailout, again identical except for the covering letter. After six weeks in the field, 333 completed questionnaires had been returned, 15 sample members declined to participate in the study and 39 questionnaires had been returned "gone - no address", or on behalf of sample members who were ineligible to compete the survey (i.e., deceased or overseas). This represented a 71.3% response rate (333/(506-39)) and, after careful screening for data quality (i.e., satisfactory item completion), 325 (69.4%) questionnaires were coded and analysed.

In order to test how respondents' current behaviour related to the views they expressed, the sample was divided into four groups:

Non-smokers who dislike smoke (n=166) Non-smokers who tolerate smoke (n=88) Smokers consuming fewer than 10 cigarettes a day (n=27) Smokers consuming more than 10 cigarettes a day (n=41).

The analysis is broken down across these groups.

Instrument

The questionnaire examined New Zealanders' attitudes to advertising, their current television and video viewing behaviour, their views on the government's restrictions on tobacco promotions, their own smoking behaviour, and their demographic profile.

Results

Perceptions of Government Intervention

When asked whether, in principle, they thought the government should act to reduce the number of smokers, respondents showed a high level of support for this idea, and nearly two thirds endorsed it. Overall, as Table 1 shows, respondents' level of support for government action bore a strong relationship to their own smoking behaviour.

Table 1. Support for the principle of government deterrence

	Support for Deterrence			
Smoking Behaviour of Respondent	Support	Unsure	Oppose	
	%	0/0	%	
Non-smoker, dislike smoke (n=166)	77.1	10.2	12.7	
Non-smoker, tolerate smoke (n=88)	50.0	12.5	37.5	
Smoke < 10 per day (n=27)	51.9	25.9	22.2	
Smoke > 10 per day (n=41)	39.0	14.6	46.3	
TOTAL $(N = 322)^1$	62.7	13.0	24.3	

Note. $X^2 = 40.1$, d.f. = 6, p < .0000

Predictably, non-smokers who disliked smoke showed the highest level of support for government intervention, and more than three quarters supported the notion that the government should act to curb smoking. Light smokers and tolerant non-smokers also displayed overall support for the idea, although tolerant non-smokers registered a higher level of opposition than did light smokers, who displayed a higher level of ambivalence to the proposal than any other group. Only heavy smokers proved more opposed to than supportive of the idea, though the difference between them and other groups was not great.

A question examining respondents' support for the Smoke Free Environments Act revealed similar response patterns. Heavy smokers again displayed strong opposition to the Act, while non-smokers who disliked smoke showed the highest level of support (see Table 2).

As Table 2 shows, a higher proportion of light smokers than tolerant non-smokers supported the legislation. Instead of displaying overall support for the Act, tolerant non-smokers were more opposed to than supportive of its provisions, while light smokers contradicted the expected pattern by displaying the lowest overall level of opposition to the Act. These differences between groups were found to be significant at the .07 level (Kolmogorov-Smirnov's D (one-tailed) = 5.395, d.f. = 2, p < .07).

This near significant deviation from the expected linear relationship suggests the relationship between respondents' self-interest and attitudes may be more complex than previously suggested. To assess whether this unexpected finding could be due to variations in the composition of the groups, we used ANOVA to examine the extent to which support was associated with levels of age, sex and education.

^{1.} Due to some item non-response, fewer than the total 325 cases were used in this analysis.

Table 2. Support for the Smoke Free Environments Act

	Level of Support for Act					
Smoking Behaviour of Respondent	Strongly Support	Support	Neutral	Oppose	Strongly Oppose	Mean Level of Support
	%	%	%	%	%	
Non-smoker, dislike smoke (n=166)	57.2	10.2	11.4	10.2	10.8	4.00
Non-smoker, tolerate smoke (n=88)	20.5	11.4	25.0	17.0	26.1	2.83
Smoke <10 cigarettes per day (n=28)	32.1	10.7	39.3	3.6	14.3	3.43
Smoke >10 cigarettes per day (n=40)	7.5	7.5	17.5	35.0	32.5	2.22
TOTAL $(N = 322)^2$	38.8	10.2	18.3	14.6	18.0	3.41

Note. Kolmogorov-Smirnov D =5.295, d.f.=2, p < .07

While the means for both age and gender showed no differences at the .05 level of significance, there was a marked and significant increase in support for the restrictions as respondents' education level increased (F=3.5, p= 0.02). We therefore regressed respondents' attitudes to the Act against their education level and examined the relationship between the residuals and respondents' smoking behaviour. The purpose of this was to assess whether, after eliminating the effect of education on respondents' attitudes to the legislation, a nonlinear relationship between self-interest (represented by respondents' own smoking behaviour) and their attitudes still existed. Even after the removal of the effect of education level, the non-linear relationship remained and displayed the same pattern as that found initially (see Table 3).

Table 3. Regression of residuals and smoking behaviour

Smoking Behaviour	В	S.E.B	Sig. T.
Non-smoker dislike smoke	-0.52	.11	.0000
Non-smoker - tolerate smoke	1.05	.31	.0000
Smoke <10 cigarettes per day	0.42	.08	.1461
Smoke >10 cigarettes per day	1.61	.31	.0000

^{1.} The higher the mean score, the greater the level of support for the Act.

^{2.} Due to some item non-response, fewer than the total 325 cases were used in this analysis.

Examining the relationship between support for government intervention in principle, and support for the specific legislation, revealed an expected consistency (see Table 4). Over two thirds of those who supported the notion of government intervention also supported the advertising restrictions set out in the Smoke Free Environments Act. Those expressing uncertainty about the principle of government deterrence showed balanced levels of support and opposition to the advertising restrictions. However, whereas only 10% who opposed intervention actually supported the legislation, nearly 20% of those who supported government intervention opposed the Act.

Overall, 63% of respondents supported government deterrence of smoking and 49% approved of the measures contained in the Act. With nearly 50% of the sample supporting the measures, they clearly have strong community endorsement. However, it is also possible that respondents may see other measures, not examined in this study, such as education programmes, as more appropriate or effective.

Table 4. Relationship between abstract and actual support for government intervention

	Level of Support for Government Deterrence of Smoking			
Level of Support for Smoking Restrictions	Support	Neutral	Oppose	
	%	%	%	
Strongly Support (n=125)	55.9	22.5	3.8	
Support (n=33)	11.9	10.0	6.4	
Neutral (n=59)	13.4	37.5	19.2	
Oppose (n=47)	9.4	7.5	32.1	
Strongly Oppose (n-58)	9.4	22.5	38.5	

Note. Chi-square =102.49, d.f.= 8, p<.0000

Discussion

Over 60% supported the principle of government deterrence, while nearly 50% of respondents supported the provisions contained in the Smoke Free Environments Act. Not withstanding the arguments for protecting the freedom of commercial speech put forward by Rotfeld (1986); Boddewyn (1986); Den Uyl (1986) and Littlechild (1986), these respondents appeared quite willing to forgo their access to information formerly conveyed via the restricted promotions. This finding implies these respondents either do not see tobacco commercials as providing them with important information, or they do not believe commercial speech merits the same protection as individuals' free speech. Similarly, respondents' support for government intervention indicates that the public does not share Den Uyl's (1986) belief that government powers should be circumscribed. Instead, many appear to subscribe to what Feinberg (1971) described as "soft paternalism", where governments act to prevent people from harming themselves.

The lower level of support among respondents for the actual restrictions suggests the importance of Wikler's (1978) distinction between explicit intervention and enabling more informed choice. Thus increased emphasis on restoring autonomy through, for example, widespread public education programmes, may have proved more popular than the specific legislation which effectively blocked respondents' access to specific promotions. The discrepancy in support for the two proposals also provides evidence for the compromise Meenan (1976) suggested, as respondents' answers often reflected the effect the proposals would have on their behaviour or environment.

Green and Gerken (1989) and Dixon *et al.* (1991) suggested a strong relationship between the extent to which respondents smoked and their views on regulations designed to curb smoking. This study produced some similar results; both heavy smokers and confirmed non-smokers displayed the highest levels of opposition and support, respectively, for both questions. However, instead of identifying a steady decline in support and increase in opposition as respondents' level of smoking increased, light smokers showed more support for, and less opposition to, the proposals than did tolerant non-smokers.

A variety of reasons may explain this apparent discrepancy, although, since these were not examined specifically in this study, they remain speculative. First, light smokers may be more willing to attempt to give up smoking and may actually welcome regulations that encourage them to do so. More incorrigible smokers would presumably have greater difficulty in relinquishing their habit, hence their stronger opposition to the legislation. However, while this may explain the difference between light and moderate or heavy smokers, it does not explain why "tolerant" non-smokers displayed greater opposition to the restrictions than light smokers. One explanation for this phenomenon is that "tolerant" non-smokers may have stronger views on government intervention in individuals' lives. Given the forceful public relations campaign carried out by opponents to the legislation, this group may have felt swayed by the argument that the Act eroded civil liberties and thus gave less support to what they perceived as an instance of unwarranted intervention. This interpretation does not contradict Green and Gerken (1989) or Dixon et al. (1991), but it does suggest other variables may be mediating the relationship between self-interest and policy preference. These findings also raise the possibility that respondents' immediate interest may not be in maintaining their present behaviour pattern, and provide tentative evidence that respondents consider and arrive at the compromise Meenan (1976) suggested. That is, they may relinquish their right to an unpolluted environment in the belief that this is preferable to government assuming control over issues they consider should belong within individuals' jurisdiction.

Conclusions

While New Zealanders appear to support the concept of legal paternalism when used to address the problem of tobacco consumption, they demonstrated less support for the specific measures introduced to achieve this end than for the general principle of government intervention. Nor were the relationships detected straightforward, as respondents' self-interest did not bear a monotonic relationship to their support for the legislation.

One possible interpretation of these results is that legislation, or other enforced restrictions, may not be as successful as a combination of regulatory action and education. In other words, more explicit efforts to restore consumers' autonomy may have elicited higher levels of support for the Smoke Free Environments Act, with its explicit intention of blocking consumers' exposure to harm. Furthermore, the government could have recognised and

appealed to the self-interest of the various groups to ensure that the benefits of its intervention were more widely communicated.

Overall, this research suggests that a substantial proportion of the public will willingly relinquish some rights to receive commercial information in the interests of a greater public good. However, even when the benefits of direct government intervention are apparently very great, public policy makers cannot overlook the civil rights issues involved. If the public is not convinced about the trade-off between democratic freedoms and the responsibility of government to protect its citizens, there is little chance of implementing policy based legislation.

References

- Blasi V & Monaghan H (1986). The first amendment and cigarette advertising. *Journal of the American Medical Association*, 256, 502-509.
- Boddewyn JJ (1986). Tobacco advertising in a free society. In Robert Tollison (ed.) *Smoking and Society*, Toronto, Lexington.
- Carr-Gregg M & Gray A (1989). Tobacco advertising: Why all the fuss? *New Zealand Medical Journal*, 102, 405-406.
- Den Uyl D (1986). Smoking, human rights and civil liberties. In Robert Tollison (ed.), *Smoking and Society*, Toronto, Lexington.
- Dixon R; Lowery R; Levy D & Ferraro K (1991). Self-interest and public opinion toward policies: A replication and extension. *Public Opinion Quarterly*, *55*, 241-254.
- Feinberg J (1971). Legal paternalism. Canadian Journal of Philosophy, 1, 106-124.
- Green D & Gerken A (1989). Self-interest and public opinion toward smoking restrictions and cigarette taxes. *Public Opinion Quarterly*, 53, 1-16.
- Littlechild S (1986). Smoking and market failure. In Robert Tollison (ed.), *Smoking and Society*, Toronto, Lexington.
- Meenan R (1976). Improving the public's health some further reflections. *The New England Journal of Medicine*, 294, 45-47.
- Romanos J (1991). Sports sponsors with no butts. New Zealand Listener, 130, 28-32.
- Rotfeld H (1982). The compatibility of advertising regulation and the first amendment another view. *Journal of Public Policy and Marketing*, *1*, 139-146.
- Toxic Substances Board. *Health or tobacco: An end to tobacco advertising and promotion*. Wellington, Department of Health, 1989.
- Walsh D & Gordon N (1986). Legal approaches to smoking deterrence. *Annual Review of Public Health*, 7, 127-149.

- Warner K; Ernster V; Holbrook J; Lewit E; Pertschuk M; Steinfeld J; Tye J & Whelan E (1986). Promotion of tobacco products: Issues and policy options. *Journal of Health Politics, Policy and Law, 11*, 367-392.
- Wikler D (1978). Persuasion and coercion for health: Ethical issues in government efforts to change life-styles. *Health and Society*, *56*, 303-338.

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