

The Crusade for Politically-Correct Consumption

by Thomas J. DiLorenzo

Neo-puritanism seems to be running amok in the United States. The federal excise tax on alcohol was doubled in 1991; many states have sharply increased tax rates on tobacco products and have enacted myriad smoking bans; the *Washington Post* reports a growing movement to ban the wearing of perfume in the workplace; and the *New York Times* recently promoted the idea of imposing new “sin taxes” on high-fat foods. In the past year, “reports” issued by various Washington-based, neo-puritanical political activists have condemned hot dogs, Chinese, Italian, and Mexican food, beer, steak, milk(!), and even golf courses (too many lawn chemicals).

The various nonprofit organizations that are promoting politically-correct consumption, such as the American Cancer Society (ACS), the American Heart Association (AHA), the American Lung Association (ALA), and the Center for Science in the Public Interest, all describe themselves as “public interest” advocates. Despite their altruistic rhetoric, however, these organizations benefit financially from their attack on smoking, drinking, and general consumer enjoyment. They typically lobby for “sin taxes” that earmark revenues to *them* so that they can continue to hector the public into adopting “politically-correct” life-

styles. There is much evidence, moreover, that the expenditure of these funds has done nothing to improve public health, and may even have been harmful to it in some cases. A case in point is California’s tobacco tax.

California’s Tobacco Tax Pork Barrel

California voters passed a referendum in 1988 (Proposition 99) that increased the state’s cigarette tax by 25 cents a pack and earmarked the funds for anti-smoking education in schools and communities, hospital and physician treatment of indigent patients, research on tobacco-related diseases, and “environmental concerns.” The last category was apparently established to buy the political support of environmental groups. Over \$500 million per year was initially raised from the tax.

The way in which the new tax was promoted—as a constitutional amendment—illustrates that the main priority was always to create a revenue source for neo-puritanical political activists, not to deter smoking.

A lobbyist for the California Medical Association, for example, proclaimed that “the principal reason for the tax is not to raise money. The principal reason is to stop smoking.” And, “if a tax were imposed and it raised nothing, we would be delighted—that would mean nobody would be buying

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cigarettes.”¹ The facts, however, present a very different picture.

The proposed cigarette tax increase could have been approved by the California legislature if the coalition’s only objective was to reduce the incidence of smoking by raising the price of cigarettes—a straightforward application of the economic law of demand. There was a “problem” however, in that in 1979 California voters passed Proposition 4, a constitutional amendment that limited state spending. If the state were to reach its spending limit, then tax revenues from cigarette taxes *would have to be refunded* to smokers in particular and to the public in general. The ACS, ALA, AHA, and the California Medical Association would get nothing, even though the tax’s supposedly salutary effects on cigarette consumption, which the coalition claimed were its only concern, would still prevail.

The coalition could not countenance such an outcome, so it pushed for a statewide referendum, Proposition 99, that would add another constitutional amendment. This strategy was necessary, according to state assemblyman Lloyd Connely, the coalition’s legislation “connection,” because of “the so-called Gann spending limit passed by voters in 1979.” Without a constitutional amendment, “the legislature could be forced to refund the tax if the state reaches its spending limit.”² Thus, the main objective of the coalition was *to capture the revenue from the cigarette tax*, not to discourage smoking.

A Pork Barrel for Neo-Puritans

Proposition 99 created a giant pork barrel for a vast network of public-health bureaucrats, public schools, and nonprofit political activists under the umbrella group, “Americans for Nonsmokers’ Rights” (ANR) whose spokesman, Glenn Barr, has stated his goal as to “force [smokers] to do the right thing for themselves.”³

The law has showered the public schools and local chapters of the American Cancer

Society, American Lung Association, and American Heart Association with more than \$150 million ostensibly to teach children to be nonsmokers. But in reality much of the money has simply been squandered on student “gift” programs that give away backpacks, gift certificates, movie tickets, compact discs, radios, sports equipment, and even lottery tickets as “rewards” for a promise to quit smoking.⁴

Some school districts used the funds for pool parties, carnivals, trips to Yosemite National Park, and to sponsor “outrageous stunt” contests that award prizes to whoever performs the weirdest feat to shock a loved one into stopping smoking. Past winners include a girl who consumed an entire can of Mighty Dog dog food.

Since no serious effort is made to verify whether students have taken up smoking or not, the program is simply a giant giveaway of tax dollars and another make-work program for nonprofit sector “activists,” government health department bureaucrats, and public school administrators. A survey by the California Department of Health Services failed to detect any decline in adolescent smoking, and some health researchers believe the program may actually have *increased* teenage smoking by making it such an official taboo.⁵ A state-funded evaluation of the anti-smoking education efforts by University of California professor John P. Pierce concluded that they had “no effect on tobacco use.”⁶

Proposition 99 forbids the use of tax funds “to promote partisan politics or candidates” or “to promote the passage of any law.” But the tax-funded political activists have blatantly flouted this law from the beginning by lobbying for hundreds of anti-smoking ordinances. For example, Contra Costa County published minutes from a public meeting in which it promised to “play a crucial role in mobilizing community support” for a proposed ordinance.⁷ Sacramento County sent out flyers urging voters to pass an anti-smoking ordinance, and government employees from Butte County spent work time lobbying for an ordinance there.⁸ Government officials and political

activists have gotten away with violating the laws prohibiting tax-funded politics by claiming that the funds are used for "education," not politics.

Most of the "research" funded by Proposition 99 is so useless that even the legislative sponsor of the law, state assemblyman Philip Isenberg, demanded a reallocation of funds away from research and toward indigent and prenatal care in 1994. He became skeptical of the value of "research" on how quickly one's teeth turn yellow from smoking or "discovering" that teenage "troublemakers" tend to smoke.⁹ Some of the research money is used for political intelligence gathering and "doesn't deserve to be classified as research," according to former California Assembly Speaker Willie Brown. Brown was referring to the more than \$4 million in grants given to University of California at San Francisco Professor Stanton Glantz for his work "tracking tobacco industry activities in California," which Brown says is what politicians do to each other when running for re-election and has nothing to do with disease research.

The California state assembly defunded Glantz and diverted the money (and other "research" money) to indigent care, prenatal care for poor women, and medical care for people with inherited diseases. Under the umbrella of Americans for Nonsmokers' Rights, of which he is president, Glantz then sued California for devoting too much money to medical care for indigents and too little for his political spying operation.

In addition to suing the California legislature because of his apparent belief that his research grants from the state should be considered an entitlement, Glantz applied for and received federal grants for his "research." According to Freedom of Information Act information received by the author, the National Cancer Institute (NCI) awarded Glantz \$223,214 in 1994, the first installment on a three-year grant.

NCI is using taxpayers' funds to pay Glantz to spy on both the producers and consumers of cigarettes. Among the items listed on his proposed research agenda:

- Collecting data on campaign contributions by the tobacco industry since 1975;
- Studying "the role of coalition politics" in passing tobacco excise taxes so that more taxes can be passed in other states;
- Producing "how to lobby" manuals for other neo-puritanical political activists;
- Conducting "opposition research" and spying on various "smokers' rights" groups that have sprung up.

"Preliminary research" has revealed that these groups seem to rely on arguments related to freedom, individual rights, liberty, the U.S. Constitution, and the paternalistic nature of government. They also seem to encourage tolerance, respect for others, peaceful coexistence, and good will toward others, according to Glantz's grant application.

One purpose of Glantz's tax-funded research is to try to discredit all these principles and to construct counterarguments, utilizing his "extensive database of media contacts," which he says includes all the major television networks.

Glantz and other anti-smoking zealots from California have already proven that they care little for civil liberties in their crusade for politically-correct behavior. For example, they used taxpayers' money in California to pay (other people's) children to conduct "sting" operations against convenience store owners, an activity condemned by local police as "vigilantism." The teenagers were paid to try to buy cigarettes to "spotlight" the illegal sale of cigarettes to minors. When the practice was criticized by law enforcement officials, the activists justified the "sting" operation by saying, "a lot of people [other activists, presumably] agree with what we're doing."¹⁰ What a lesson to be teaching children: the ends justify the means as long as "a lot" of people agree with them.

Coercion and Elitism

Federal, state and local governments have funded an entire industry of anti-smoking crusaders, but smoking is just the first target of these neo-puritans. As ANR

vice-president Julia Carol told the *Washington Post*, if tobacco disappeared, they'd "simply move on to other causes."¹¹

The neo-puritan movement is composed of elitists who seek to use the coercive powers of the state to express their pet peeves and to force others into politically-correct consumption patterns. In the case of smoking, all the restrictions, bans, and taxes are justified on two basic grounds: so-called second-hand smoke is a health hazard; and smoking imposes a financial burden on the rest of society by increasing health care costs. Both rationales are bogus.

There is no scientific evidence that second-hand smoke causes cancer, period. And researchers at the Rand Corporation and elsewhere have pointed out that the costs that smokers may impose on others is more than counterbalanced by the taxes they pay and by the fact that, because they have a higher chance of dying earlier because of cancer or heart disease, they require lower pension and Social Security benefits.¹² Smokers subsidize the rest of society.

But there is more than economics at stake, as nineteenth-century writer Lysander Spooner showed in *Vices Are Not Crimes*.¹³ On the matter of criminalizing such activities as taking a puff on a cigarette in one's own private office, which is now illegal in Maryland and a number of other states, Spooner pointed out that "it is a maxim of the law that there can be no crime without a criminal intent; that is, without the intent to invade the person or property of another. But no one ever practices a vice with any such criminal intent. He practices his vice for his own happiness solely, and not from any malice toward others."

Thus, the criminalization of the pet peeves of neo-puritanical elitists turns one of the most important maxims of the law on its head. Unless we make this very important distinction between vices and crimes, moreover, then "there can be on earth no such thing as individual right, liberty, or property." For every human being has his or her vices. And "if government is to take cognizance of any of these vices, and punish them as crimes, then, to be consistent, it

must take cognizance of all, and punish all, impartially." The consequence would be that "everybody would be in prison for his or her vices," whether they be "gluttony, drunkenness, prostitution, gambling, prize-fighting, tobacco-chewing, smoking, and snuffing, opium-eating, corset-wearing, idleness, waste of property, avarice, hypocrisy, etc., etc."

Ludwig von Mises added, some 70 years later, that once government determines man's consumption, the question becomes, "why limit the government's benevolent providence to the protection of the individual body only?" Why not prevent us, Mises continued, from "reading bad books and seeing bad plays, from looking at bad paintings and statues and from hearing bad music?" If one abolishes one's freedom to consume, Mises concluded, then one takes all freedoms away. "The naïve advocates of government interference with consumption delude themselves when they neglect what they disdainfully call the philosophical aspect of the problem. They unwittingly support the cause of censorship, inquisition, religious intolerance, and the persecution of dissenters." □

1. Richard Paddock, "Health Care Groups Join to Push Cigarette Tax Hike," *Los Angeles Times*, February 2, 1987.

2. Sandra N. Michiouku, "Health Coalition Urges 35-Cent Cigarette Tax," *United Press International*, February 23, 1987.

3. From the transcript of a three-day conference, "Revolt Against Tobacco," held in Los Angeles in September 1992.

4. Examples are published in Stanislaus County (Ca.) *Tobacco Control Education Incentive Plan* (Stanislaus County, Ca., 1992).

5. California Department of Health Service, *Tobacco Use in California, 1992* (San Diego: University of California, San Diego, 1992).

6. *Ibid.*

7. Lisa Mcilink, "Is it Education or Lobbying," *Paradise (Ca.) Post*, March 17, 1992.

8. *Ibid.*

9. University of California, *Tobacco-Related Disease Research Program* (San Diego: University of California at San Diego, 1990.)

10. Kate Taylor, "Use of Teenagers in Cigarette-Buying Sting Upsets Novato Police," *San Francisco Chronicle*, January 11, 1994, p. A-18.

11. John Schwartz, "California Activists' Success Ignites a Not-So-Slow-Burn," *Washington Post*, May 30, 1994, p. 1.

12. Jane Gravelle and Dennis Zimmerman, "The Marlboro Math," *Washington Post*, June 5, 1994, p. C-1.

13. Lysander Spooner, *Vices Are Not Crimes: A Vindication of Moral Liberty* (Cupertino, Ca.: TANSTAAFL, 1977).

14. Ludwig von Mises, *Human Action: A Treatise on Economics* 3rd ed. (Chicago: Henry Regnery, 1966), pp. 733-34.

Legislation and Law in a Free Society

by N. Stephan Kinsella

Libertarians and classical liberals have long sought to explain what sorts of laws we should have in a free society. But we have often neglected the study of what sort of legal system is appropriate for developing a proper body of law.

Historically, in the common law of England, Roman law, and the Law Merchant, law was formed in large part in thousands of judicial decisions. In these so-called “decentralized law-finding systems,” the law evolved as judges, arbitrators, or other jurists discovered legal principles applicable to specific factual situations, building upon legal principles previously discovered, and statutes, or centralized law, played a relatively minor role. Today, however, statutes passed by the legislature are becoming the primary source of law, and law tends to be thought of as being identical to legislation. Yet legislation-based systems cannot be expected to develop law compatible with a free society.

Certainty, which includes clarity of and stability in the law, is necessary so that we are able to plan for the future. Often it is thought that certainty will be increased when the law is written and enunciated by a legislature, for example in the civil codes of modern civil-law systems.

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As the late Italian legal theorist Bruno Leoni pointed out, however, there is much more certainty in a decentralized legal system than in a centralized, legislation-based system. When the legislature has the ability to change the law from day to day, we can never be sure what rules will apply tomorrow. By contrast, judicial decisions are much less able to reduce legal certainty than is legislation.

This is because the position of common-law or decentralized judges is fundamentally different from that of legislators in three respects. First, judges can only make decisions when asked to do so by the parties concerned. Second, the judge’s decision is less far-reaching than legislation because it primarily affects the parties to the dispute, and only occasionally affects third parties or others with no connection to the parties involved. Third, a judge’s discretion is limited by the necessity of referring to similar precedents. Legal certainty is thus more attainable in a relatively decentralized law-finding system like the common law, Roman law, or customary law, than in centralized law-making systems where legislation is the primary source of law.

Negative Effects of Uncertainty

Legislation tends to interfere with agreements that courts would otherwise have enforced and thereby makes parties to contracts less certain that the contract will