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Upon what basis could a rational position on tobacco advertising be based? In this paper, I wish to propose six grounds, and to discuss their relative merits. I conclude that the ban on tobacco advertising must be rejected no matter which one of them is chosen. Considered under this rubric are utilitarianism, sovereignty, logical consistency, free speech, economics, and health.

2. Utilitarianism

At first blush, utilitarianism would not appear to be a fertile field for the determination of what is essentially a civil liberties oriented public policy. After all, the former is the study of which conditions, or policies, are most likely to maximize utility, while the latter is concerned with the enhancement of those liberties which are part of the civil order. There would thus appear to be no necessary connection between the two.
However, there are at least two notions of utility, iind one of them, at least,
is compatible with the civil liberties vision. For want of better established terminology, I shall describe these two positions as ‘want regarding’ and
‘ ideal regnrding.’s
In the first perspective, utility is maximized by allowing any and all acts between consenting adults. This classical statement of the civil liberties posi-tion enhances utility because mutually agreeable activity not only demon-strates enhanced utility,‘ but is the only form of human inlernclion whicli can do so. That is, when people engage in voluntary trade, or gift giving, or consensual sexual activity, or any other such mutually agreeable endeavor, we are entitled to deduce from that fact alone that both expected an improvement in their positions, compared to the situation in which they did not so act. Further, in this view, only such actions can estikblish increiised welfilre or utility positions. Any coercive behaviour, such as taxes, or forced income transfers, paternalistic protections against smoking, etc., restrict a person’s options, and harm at least one individual. If they did not, violence, or the threat thereof, would not need to be employed. For example, if we ban smoking, we reduce the utility of at least one person, the individual who would otherwise have engaged in this practice. But suppose a majority of the people favor such a course. Since it is not possible to make an interpersonal comparison of utility, we cannot unambiguously conclude, as we could in the previous (voluntary) case, that human happiness has increased.
Let us now consider the ‘ideal regarding’ approach to utilitarianism. Here, the analyst posits that the agent has full (or the best possible) information concerning the choice he is about to make; he then asks what decision would be arrived at under such circumstances.

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With regard to the issue under consideration, the ‘ideal regarding’ utilitarian could mull over the fact that cigarette smoking has been strongly linked with various deadly diseases. with increased public health costs, with coughing, shortness of breath and other such suffering, and with eventual physical debilitation. He could then conclude that despite the wishes of thousands of smokers, they, and indeed. society as a whole, would be better off if the practice were banned. Since the prohibition of tobacco advertising is seemingly a step in this direction, the conclusion might well be that this, too, is justified on utilitarian grounds.
But this conclusion contains elements of arbitrariness. Different ‘ideal’ utilitarians can come to diametrically opposite conclusions on any such issue. To be sure, one could conclude that the infringement on commercial free speech rights is justified on this basis; but one could as readily conclude the very opposite; that the best policy, on ideal utilitarian grounds, is for the state to mind its own business, and allow citizens freedom to smoke, and freedom to advertise this product.
To the extent that we have evidence on this matter, it could easily be inter-preted in opposition to such infringements. For example, without advertising, it will be that much more difficult to notify smokers of any future health improvcinent~ incigarettes. If it is allowed, and to the extent that smokers villtie longevity compared to pleasures to be derived in the present, advertise-ments may play a vital role in the promotion of ~ell-being.~
It is illogical to deduce that just because smoking has been linked with cancer, it IS necessarily destructive of utility (even in this sense) to continue with this practice. Consider the case of rational people who are nevertheless ! confirmed and long time cigarette smokers. When pressed as to the advis- ; ability on utilitarian grounds of giving up this ‘vile habit’, they reply most ’ convincingly thiit in any determination of utility, it is for each individual to weigh the present benefits of smoking as against the possible future losses in
1 terms of good health, life expectancy, etc. Further, they adamantly state that

j they know full well all the attendant dangers and risks.
j The point is, once we remove ourselves from the ‘want regarding’ notion, 1 we are like at sea without a rudder. Anything goes. In ideal regarding utilitar-i ianism, we have no grounding in the voluntary choices made by consenting parties; instead, we are forced to speculate about how such persons would choose, under the unknown and essentially unknowable conditions of full information.*

Based on the continuation of tobacco consumption amongst the public - , in the face of a high profile public campaign that goes so far as to force
tobacco companies to place a warning message on every cigarette box and every advertisement (a clear violation of free speech rights if ever there was

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one)9 - we can deduce that many of their fellow citizens share the utilitarian
calculation of rational but nevertheless confirmed cigarette smokers.
It may be objected that cigarette advertising affects young people, who
have not yet reached the age of discretion at which point they become capable
of making such a utilitarian calculation in their own behalf. Perhaps, on this
ground, there is a case for restricting the placement ofutdoor displays which feature cigarettes from the vicinity of schools; even, perhaps, for prohibiting such advertisements from kiddy t.v. shows and the like. But the law itself cannot be justified in this way without great injustice. After all, ideal utilitar-ianism cannot justify treating all of us, adults included, like children, in order to protect young people.
But there are further difficulties with the facile conclusion that the ideal utilitarianian must necessarily oppose smoking. For one thing, the modus operandi employed here is that of a contrary to fact conditional. The analyst asks not how people presently evaluate their own utilities, but how they would do so, under conditions of full or vastly improved knowledge. One appropriate response to any such claim is to deny that the analyst can ever know for sure precisely how such a person would choose, even under these stipulated conditions.”
For another, we must confront the implicit premise in this philosophical view that lack of full (or greater) information is necessarily irrational; i.e., the idealist utilitarian notion that the best vantage point from which to make a decision is one of full(est) information. Economics Nobel Prize Winner
George Stigler has been instrumental in debunking such assertions.’ ’ Briefly,
his argument is that knowledge has costs, which usually increase as more is obtained. As well, the benefits of an additional bit of information begin, at some point, to enter an area of diminishing returns. Eventually a situation is reached where the cost of a extra day of seeking information is likely to be greater than the probable benefits. Engaging in further information search under such conditions will make the economic actor worse off, not better. This is an economic explanation of why it is rational to stop the search; i.e., that the optimal amount of knowledge is not infinite, or even indefinitely large. Thirdly, the idealist utilitarian has no way of confronting the essential subjectivity of what the economist calls time preference or time discounting.’2 Some people live for the present, and heavily discount what the future will bring. Smoking feels good to them, now. They may be as fully cognizant as anyone else of the fact that eventually the bill for such activity may have to be paid, in the form of increased physical debilitation; it is just that that day seems far off to them, and remote. As a result, they all but ignore this prospect. Others only slightly discount the future. They live in the future almost as much as at present. They may be extremely parsimonious at present, out of a

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keen concern for a future which seems ever-presento them. The difference between the two lifestyles has absolutely nothing todo with knowledge or information or intelligence. Indeed, these may be identical for the person with high and low time preference. The distinction has only to do with different subjective evaluations of the importance and significance of time. Neither can be shown objectively to be ‘right’ or ‘wrong’. And yet the idealist utilitarian takes a very long run view of the significance of present events: he discounts the future only slightly.
In the face of all this evidence, the idealist who persists in stating that, contrary to the expressed wishes of the chooser, his ‘real’ or ‘ideal’ choice is as the utilitarian states it, e.g., to refrain from smoking, opens himself up to the charge of disingenousness at the least, and totalitarianism at the worst. For the analyst merely ruminates about an event, and then determines, based on no more than his subjective estimates ofthe likes and dislikes of the agent under extremely exotic conditions, whether an act, or a rule, will increase or decrease utility. ‘He taketh too much upon himself’ might be a poetic statement of such a procedure, but it has strong elements of truth in it.

3. Committee of sovereigns

According to one theory currently popular amongst political theorists and legill scholars, in a democracy all citizens, whether they know it or not or appreciate it or not, are sovereigns. Government, and politicians and civil servants are just that - servants of the people. It is up to us, all of us, to hire and fire them at will, at least during elections.
This being the case, it is crucial that we the people, and all subcommittees thereof, keep the channels of information open. Hence the justification for the rights of free speech, the importance of a free press, of book publication untrnmmelcd by government, of uncensored import and export of magazines, etc.

The interpretation placed upon these remarks in some legal-philosophical circles is that there are really two classes of free speech rights.13 For the first, the political, is reserved the lion’s share of the protections. It is only when the entire society is under the most dire and serious of threats, that political free speech rights come into question. But in normal times these are sacrosanct; they are considered to be so in order that we the people, as sovereigns, may be able to make our own determinations on matters that concern society as a whole.
Non political speech, in sharp contrast (e.g., advertising and other commer-cial speech) is accorded a far lower priority. Here, interferences are justified as long as are far less stringent test is passed: the preponderance of utilities

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must indicate that society would be better off were such free speechurtailed. The presumption is always in favor of free speech, even for the businessman in the marketplace, but if there are reasonably important ‘public goods’ to be obtained by squelching such rights, then, according to this doctrine, they

The increased health which will be attained by the citizenry if only noxious cigarette advertizing can be forbidden, is more than enough justification for riding roughshod over commercial speech rights, at least in the minds of some advocates of this position.I4
There are, however, difficulties with this view. It is important to realize that the Meiklejohnian perspective may constitute a partial or even sufficient justification of civil liberties, but it is by no means a full or necessary one. That is to say, there are other groundings for freedom in general. and for free expression in particular. For example, in some traditions, free speech is based on private property rights, our private property rights in our~elves.’~ Here, the right of free speech of whatever kind is intrinsic, not instrumental. Nor is there any distinction whatsoever made on the basis of typology of speech; for example, political and economic or commercial speech are all accorded precisely the same rights.
It is possible, however, even on the Meiklejohnian theory, to make the case that commercial free speech ought to be considercd on ;I par with its political counterpart. After all, advertising, no matter for which product, provides information.16 It may be difficult for some people to see how knowledge of the sort provided by the tobacco advertisers will help us ;is sovereigns, and therefore some people may be tempted to employ different critcria in their justification, but this is a complete misreading of what it means to be a sovereign. True sovereignty implies the right for each of us to make up our own minds with regard to the value of any information flows which may reach us. Prohibitions of tobacco advertising, as in the case of all censorship, is thus a denigration of our sovereignty as citizens. It may seem sensible to some people to cut ourselves off from flows of commercially inspired information, but if these people, even a majority, are allowed to prohibit such free speech, they thereby denigrate the sovereignty of the rest of us.
Informational arteriosclerosis, moreover, is an ever present danger. We must always be vigilant to combat all incipient tendencies of government, which is after all no more than our hired agent according to this theory, to retard the flow of inf~rmation.’~
Buttressing this case is the slippery slope argument. If precedent is set for eliminating one source of data, it will be easier, later on, for others to be eliminated. Knowledge is a rare, precious and fragile flower: history is replete , with numerous bouts of censorship. It ill behooves our role as sovereign to

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allow the cloven hoof of censorship to once again enter through the front door, at our own invitation.
Nor is it as if anything else must be weighed or balanced against this instance
of conimercial free speech. Any negatives have already been considered, under the heading of utilitarianism. On grounds of knowledge and sovereignty, there must be at least a strong presumption in favor of free speech, and nothing that can trump it.

4. Consistency

Another defense of tobacco advertising consists of the criticism that the advocates of censorship are internally consistent.
Consider, in this regard, the stance of civil liberties organizations on the question of government interferences with voluntary consensual homosexu-ality. To the eternal credit of this movement, it has taken a firm stand against any such policies. But suppose government launched a new initiative, not to ban such practices, merely to forbid advertising them. Under this provision. there could be no personals columns in newspapers where gays advertiseo meet one another; lioiiiosexual organizations would be illegal, since this is a forni of advcrtising (equivalent to tobacco companies sponsoring sports and cultural events and institutions). Even gay bars could easily run afoul of the law, since one could argue that this was a disguised form of communicating knowledge about Iioniosexuality. And of course books, magazines, newspa-pers, bookstores (such as Little Sisters in Vancouver) which catered solely or mainly to the homosexual community, would be proscribed. l8
1 lomosexuality, pe se, would still be tolerated under this regime. But legis-lation of this sort would drive homosexuals ‘back into the closet’, and with a vengeance. For knowledge is the lifeblood of this (or any other) community, and to deprive them of advertising is to deny them vitally needed information. What would be the response of civil libertarian organizations to such mon-strous and repellent injustices? Ifthey were at all deserve the honorific ‘civil liberties’ in their names, they would have to oppose them with all their power. However, let us remind ourselves that what is being proposed here, for argu-ment’s sake, is not any interference with homosexual practices, merely with their adverfisemenf. Therefore, it must be concluded that if consistency with one’s own principles is logically required, civil libertarians, at least, must oppose legal restrictions on the advertisement of tobacco products.
The same point might be made with regard to prostitution, drugs, pomog-raphy, or any of the other socially stigmatized groups, products, services or practices which civil liberties organizations have defended. Per se legalization is not enough. Not by half. Were any of these institutions as legal as the pure

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white newly driven snow, they could still not exist were advertising in their
behalf prohibited. The defense of prostitution, pornography, drugs, etc., is
virtually meaningless unless it is coupled with a justification for the relevant
advertising. Without the advertising, too, the defense would not amount to
very much at all.”
As well, the identical issue occurs with religious freedom. All people of good will certainly support the right of all citizens to the religion of their choice. But were a bill being considered which allowed ‘freedom of religion’ but prohibited religious organizations from advertising. this would be, and be widely seen to be, a travesty of religious freedom. Surely civil libertarians would have to support both religious freedom and the right of religious groups to make known their views through advertising.

5. ‘Pure’ free speech rights

According to the doctrine of what might be called ‘pure’ free speech rights (a distinct from what we have been called the argument from the sovereign’s need for information), people have an absolute2’ right to free speech apart from their participation, or not, in a democracy. Even in a state of nature, or under anarchy, itwould still be wrong for one person to interfere with the free speech rights of another.
However, we must he clear on thc question of what, cxactly, is constituted by such rights. Properly protected, in this view, is only the right to engage in free speech on, with, or within one’s own private property. For example, you have no right to break into my living room, and begin haranguing me on the subject of, say, poetry, and then when I offer to toss you out on your ear protest that in so doing I would be violating your free speech rights. You simply have no free speech rights in my living room, apart, of course, from those I grant you as an invited guest. Just as you have no right to be in my living room in the first place, you have no right to harangue me there.
The only intractable free speech problems which arise, according to this analysis, are situations where there is either no private property at all, or it is undefined, or ill defined. For example, consider the Nazi march in the town of Skokie, Illinois. There were several thousands of elderly Jews living there, many escapees from Hitler’s concentration camps. To say that they objected to the march would be to put the matter very mildly. Nevertheless, the American Civil Liberties Union defended the Nazi’s right to march, on civil liberties and freedom of speech grounds, even though they anticipated a great loss in public support, which actually came to pass. They take the free speech issue very seriously, it would appear, even when there is little or no question of the people as sovereign or to their right to information.

The issue was so difficult to analyze, however, since the march took place on ;I street, that is, on public property. Other people, too, have a right to use the street. Thus, rights can clash under such a system, and there is no clear nntl obvious answer to the question ‘Who had the right to use the street at that particular time, the Nazi’s, their (mainly Jewish) opponents, or ordinary street traffic?’ But suppose that the march were scheduled to take place on a private street, or, if this is too difficult to imagine,21 on a privately owned field, or in a privately owned stadium, airport, parking lot, warehouse, or any other such place. Under such conditions, given that the Nazi Party is a legal entity in the U.S., it is hard to imagine that any free speech issue would arise, let alone be difficult to solve. Of course the Nazis could have marched, or engaged in whatever other free speech activity that seemed desirable to them.22 There would not have been any public outcry, or objection, even on the part of the Jewish victims of concentration
In the case of cigarette advertising, likewise, no real issue of freedom or speech rights can arise. The issue is open and shut, at least on the grounds we are now considering. There is no question of public property, here. The tobacco companies advertise on radio, t.v., magazine and newspaper space they have rented or purchased. In like manner, when they support sports or cul-tural organizations, they do so with their own funds, so again no philosophical difficulties come to the fore.

6. Economics

At first blush, it might seem incongruous to even mention the dismal science in connection with our present undertaking. After all, what could economics possihly have to do with free speech?
It is a basic premise of economics, and only a matter of common sense, that while advertising may help all firms, it is especially advantageous to new entrants. If all advertising were stopped tomorrow, we should still remem-ber McDonalds, Campbell Soup, IBM, Heinz, Toyota, Cadillac, IKEA, and dozens of other ‘households’ brand names. Similarly, were all advertising banned 20 years ago, the firms in existence then would have been given a comparative advantage vis a vis those that were formed afterward. For exam-ple, IBM would have been strengthened at the expense of the relatively recent arrival, Apple Computer. How, in a world without advertising, would we have ever heard of Apple, let alone been induced to try this product?
Such laws, then, will strengthen the extant tobacco firms, and protect them against the inroads of newcomers, especially those which have not yet been created. Were this all there were to the matter, it would be exceedingly difficult to account for the opposition of the tobacco companies to this type

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of legislative enactment. For there is certainly strong evidence attesting to the fact that commercial interests will use the power of law to cement their iidvantages. As well, the profit motive might be expected to lead to the same

There is, however, another matter which must be considered. And that is that we do not live in an economic vacuum. Bill C-5 1 may well stop Ccrndi-an tobacco companies from advertising, but it will simply not apply to U.S. firms; and the same situation applies to the US., in reverse. Under legislation of this sort, cigarette advertisements will still come beaming down into Cana-dian (U.S.) households, courtesy ofU.S. (Canadian) radio and t.v. stations, newspapers, magazines, etc. This legislation will thus hurt new Canadian (U.S.) entrants vis a vis extant firms in the other country, but it will also give a competitive advantage toU.S. (Canadian) based companies, to the detriment of their northern (southern) counterparts.
And what are the implications of this economic analysis? One should oppose prohibitions on tobacco advertising unless one favors the large tobacco firms vis a vis the presently non existent newcomers, which might one day enter the industy. Internationally, the proponents of economic development in each country respectively, should oppose advertising prohibitions imposed by their own government, since this will only help the tobacco industry in other nations. (With this goal in mind, however, it would be rational for each to welcome such bans, but only when they emanante from other countries.)

7. An objection

Let us now consider the objection that tobacco causes death when ‘used exactly as intended’. This phraseology seems to have garnered almost reli-gious or mystical powers within the community pressing for an advertking ban. Based on a reading of that side of the debate, one would think that all that need be done is to enunciate this complaint loudly and clearly enough, and all opposition must cease.
But this rhetorical tool will simply not suffice. There are other products, and activities which also cause death, even when ‘used exactly as intended.’ For example, hang gliding, race car driving, eating chocolate, putting out fires, bomb defusing, boxing, test piloting rocket ships - the list could be extended to include just about all dangerous activities - all sometimes cause death, even when carried out in the safest manner compatible with accomplishing these tasks, in other words, even when engaged in ‘exactly as intended’. Are we to ban (advertising for) all of these dangerous endeavors?
Let us suppose, however, just for the sake of argument, that the only product in the history of the world to have caused death when ‘used exactly as

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intended’ was tobacco. Would it logically follow that tobacco advertising should be prohibited? Not a bit of it. The presumption, in a free society, is that iidults will be able to interact in any mutually agreeable manner. It is totally irrelevant to this principle, whether or not death follows when the product is ‘used exactly as intended’. Take another example. The activities of the Hemlock Society not only lead to death when followed ‘exactly as intended’, they aim purposefully at such a conclusion, in a way that no one even contends -even the most fervent detractor - is true for cigarettes. Does it follow that the Hemlock Society ought to be banned, or at least prohibited from advertising its services? Not under the principle of mutual interaction between consenting adults.
Another difficulty with this essentially paternalistic argument is that it is completely incompatible with our democratic institutions. If people are so stupid as to avail themselves of tobacco products (they are so considered by proponents of the advertising ban), then how can it be justified to offer them the right to vote in political elections? And if somehow they were offered this political opportunity, it would be impossible for them to elect leaders smart enough to prohibit cigarette advertising. But in plain point of fact, the electoral process has lead to just such inhibitions. Does this mean that the average citizen is not as stupid as thought to be by the paternalists? Ifso, why chnractcrize their choice to smoke as stupid in the first place?

8. Conclusion

Obstructing tobacco product advertising is a free speech issue. As such, it is simply inconceivable that people dedicated to the protection and enhancement of free speech rights would fail to oppose such legislative enactments. Laws of this sort prohibit a certain type of communication between freely consenting adults. When and ifgovernment continues down the road it is now travelling, and goes past a ban on cigarette advertising on to full prohibition, on that day we may or may not be faced with a civil liberties issue. But it is clear that as far as today is concerned, we are.
That being the case, there is only one possible stance for civil libertarians to adopt with regard to such laws: total and unwavering opposition. It is appalling and disgraceful that several organizations ostensibly devoted to the protection free speech - no matter how unpopular - have stood by quietly while such inroads were made. Free speech is an integral part of civil liberties. If groups such as the BCCLA are to deserve the honorific appellation ‘Civil Liberties’, it is incumbent upon them to rethink their position and to resist this law with all their intellectual, moral and legal force.

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Were it given that bill C-51 has already passed into law in Canada, the next logical move would be for government to outlaw advertising for other ‘harmful’ products, such as beer, wine, alcohol, hang-gliding, chocolate, the reader is invited to add his own candidates to this list. To allow the state to

continue down this path, not only with no opposition from the civil liberties community, but with its active or tacit support, is a travesty of its self claimed mandate.

If such a situation continues, it could only be explained on the grounds that their hatred for matters commercial was greater than their passion for free speech and civil liberties.

Notes

* The author wishes to express a debt of gratitude to Dale Beyerstein of the Philosophy Department of U.B.C. and the B.C. Civil Liberties Association for making numerous helpful comments to an earlier draft, and for his support and wise counsel on this topic.
All responsibility for remaining errors, however, are of course the author’s.
In Canada, the passage of Bill C-51 into law has accomplished this purpose. In the U.S., various states and local jurisdictions has enacted similar infringements upon the right of tobacco companies to advertise their product. And where this situation has not obtained de jure, it has been accomplished de facto. For example, several clergymen in Harlem, the section of that city with a highly concentriited black population, have ken openly and publicly whitewashing outdoor billboards advertising tobacco and other products deemed dangerous to health (e.g., alcohol). Although these destructions of private property have Ixcii wiilcly visible, tlic pdicc Iiiivc coriliiictl ~liciiisclvt-s 10 ol)wrv;ilioii. OIIC wo~iclcrs whether the government incities which allow such behwior will return to the tobacco (and alcohol) producers lhat part of their taxes which would Ixivc ohxwise Ixcii ;illollcd to the protection of private property rights.
There is also the goal of increasing public health and well-txing, iintl the desire 10 control the lives of other people, even if only ‘for their own good’.
It niay not be strictly at issue, but there is of course a connection between the harm done by tobxco products. ;ind the attempt to prohibit their xlvcrtising. This niay be understood in terms of what the economist calls the ‘econoniics of second best’. In this view, the proponents of tobacco ;idvertising bans really wmt, in their heart of hearts, to prohibit cigarettes outright; but they cannot do this (because the electorate would not put UP with such prohibitionism, because it would not work anyway. etc.) Therefore, they resolve to at least make it as hard as possible for people to indulge themselves in this habit. But this is really at bottom a dishonest policy. If cigarette smoking is really the evil it is made out to be, it should be presumably be prohibited. Those who believe this to be the case ought not to prevaricate, to compromise with ‘second best’ solutions, if they wish to remain true to their own position. They ought to have the courage of their convictions, and follow them to their logical conclusion. On the other hand, if they do not wish to take this extreme step, they should not legally interfere, even in minor ways, with the rights of people to engage in smoking; it is wrong to prohibit the advertising or discussion, on free speech grounds, of any activity not legally prohibited.
5. See Brian Barry, Political Argument, London: Routledge Kegan Paul, 1965, pp. 39-60; John Rawls, A Theory of Justice, Cambridge, Mass: Harvard University Press, 1971, pp. 325-32. See also Richard Posner, Econonzic Analysis of Law. Boston: Little, Brown, 1972.

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6. It does so in the exante, not the exposi sense. That is, people only make a choice with the expectation that iwill render their satisfaction higher than it would otherwise have been in the absence of such a choice. To be sure, they may later come to regret their own choices, from a later perspective. See Murray N. Rothbard, Toward a Reconstruction of Utility and Weljhre Economics, New York Center for Libertarian Studies, 1977, Occasional Paper No. 3.
7. A similar result would attend the prohibition ofadvertising of alcoholic beverages, but not their manufacture, sale, and use. That is, any improvements in the product would be more difficult to communicate. As well, if our experience with alcohol prohibition is at
all relevant, when the advertising ban takes hold fully, there is arisk that there will be a decline in the quality control of tobacco products.
8. See Ludwig Lachmann. ‘The Role of Expectations in Economics’, in Capital, Expecta-tions and the Market Process, Kansas city: Sheed, Andrews and McMeel 1977; idem., ‘Methodological Individualism and the Market Economy’, in Roads to Freedom: Essays
in Ifonour ofFriedricb A. von Huyek, Erich Striessler, ed., London: Routledge and Kegan Paul, 1969.
9. Many people hold that free speech rights (and all other rights as well) are defeasible. In the view of the present writer, this is a linguistic mistake: if something is truly a right,
it is not over-ridable by other considerations. And if it is defeasible, it is not really a right. See Walker Block, The U.S. Bishops and Their Critics: An Economic and Ethical I’erspective. Vancouver: The Fraser Institute, 1986, pp. 5-1 6.
10. One possible ploy is to assert a correlation between intelligence and non smoking behav-iour; that is, to claim that the more knowledgeable is a person, the less likely he is to smoke. As far as I know, this has never been attempted, much less proven. But suppose we stipulate such a correlation. Still, itby no means follows that across sectional correlation (one which holds at a moment in time, across different individuals) can be translated liolus bolus into ;I time series correlation (one which holds for a given individual as he increases his knowledge through time). In other words, even if smarter people smoke less than others, it does not necessarily hold that agiven person, as he obtains more iiil‘oriiiiiiioii (as iissuiiictl hy (tic itlcnl utililiiri;iri) will rcducc his pckrence for tobacco.
I 1. See his ‘The Economics of Information’. Jorrrnal of I’olitical Economy, 69, June 196 I.
12. See Mario J. Kizzo “l’inie Preference, Situational Determinism, and Crime’, Assessing /he Criniinnl. Randy Barnett and John Hagel, eds., Cambridge, Mass: Ballinger, 1977; Murray Rothbxd, Man. Economy und Stute, Los Angeles: Nash, 1970.
13. See Alexander Meiklejohn, ‘Free speech and its relation to self government’, Political /rcwloni. Oxford. Oxford LJniversity Press, 1965; see also, idem., Education Between 7ivo Workls, New York: Atherton Press 1966 (1942); idem., What Does America Mean, New York: Norton 1972 (1935; idem., The Experinren/ul College, Washington, D.C.: Seven Locks Press, I98 I (1 932).
14. The British Columbia Civil Liberties Association, for example, is on record as favoring the ban on cigarette advertising as provided for in Bill C-51. See the minutes of the BCCLA, 14 March 1988.
15. For the libertarian (as opposed to the civil libertarian) case in behalf of free speech rights. see for example Murray Rothbard, The Ethics of Liberty, Atlantic Highlands, N.J.: Humanities Press, 1982; idem, For a New Liberty, New York: Collier, 1978; Robert Nozick, Anarchy, State and Utopia, New York: Basic Books, 1974: David Friedman, the Muchinery of Freedom, New York: Harpe and Row, 1973; Hans Hoppe, ATheory of Sociulism nnd Capitalism, Boston: Kluwer, 1989.
16. For a defense of the view that advertising provides information, even when it is limited to showing ‘The Marlboro Man’ sitting on a horse and smoking, see Israel Kirzner, Compe-tition and Entrepreneurship, Chicago: University of Chicago Press, 1973, especially pp. 151-162. See also Walter Block, Defending the Undefendable. New York: Fleet Press, 1976.

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17. If commercial free speech is denigrated on the grounds that it is relatively unimportant, the tobacco companies will still be free to urge governmento give subsidies. bailouts, tariff protections, special commercial privileges, etc. They will even be able to engage
in advertising campaigns to this end! The only thing they will be unable to do is to try
to convince their fellow citizens to voluntarily purchase their product. In other words, the tobacco interests will be able to raise funds through coercive means (by utilization of
the tax-subsidy system), but not voluntarily. through the market, based on the consensual choices of consumers.

18. The British Columbia Civil Liberties Association has gone much further than merely opposing government restrictions on the advertisement of homosexual organizations. States the ‘B.C. Civil Liberties Association Update’ (November 1987, p. 2): ‘Incidentally,
the BCCLA was successful this year in persuading the Yellow Pages to accept an ad from Little Sisters which notes that it is a “gay and lesbian bookstore.”’ In the view of the present writer, this was an improper interference with the free speech rights of the firm which publishes Yellow pages. (It is a violation of their property rights - free speech rights to publish whatever they please - limited only by the natural law prescription to refrain from fraud and threats of violence - and to refrain from publishing whatever displeases them.) But it is at least clear from the BCCLA initiative that this organization not only highly values the rights of gays to engage in voluntary consensual adult behaviour, it also cherishes their rights to advertise their concerns to the general public. Such a stance is clearly and unequivocally inconsistent with a refusal to uphold the advertising rights of other groups held in general disrepute, such as tobacco companies.
19. Surely, it would be extremely difficult to defend any of these practices on grounds of the citizen’s sovereign need for information. We simply do not need to engage in any of them
in order to maintain a democratic government, And, while it would be easy to defend any
of them on ‘demonstrated preference,’ or ‘want-regarding’ utilitarian grounds. it would
be all to easy to reject them on the basis of ‘ideal-regarding’ utilitarianism. After all, the majority of people do not engage in homosexual practices, and any weighting of utility, which allows for interpersonal comparisons, would be inclined against theni.
20. In the libertarian philosophy, the only ‘speech’ that is illegitimate is fraud (equiv;ilent to theft) or threat, as in ‘If you don’t give me your money. I’ll blow your head off.’ niit these activities are not even, typically, considered speech; rather, they are usually seen as threats, or fraud. For the libertarian defense of blackmail, see Walter Block, ‘Trading Money for Silence,’ University of IIawaii Law Review, Vol. 8, No. I, Spring 1986. pp. 57-73; idem, ‘Extortion and the Exercise of Free Speech Rights: A Reply to Professors Posner, Epstein, Nozick and Lindgren,’ Loyoka of Los Angeles Low Krview, Vol. 19, No. I, November 1985. pp. 37-54; for the libertarian defense of Yelling ‘Fire!’ in a Crowded Theater, see idem, Defending the Undefendable, New York: Fleet Press, 1976, pp. 80-83; for the libertarian defense of libel, see ibid., pp. 59-62; also Rothbard, For a New Liberty, pp. 95-96; for the libertarian defense of incitement, see ibid, p. 95.
21. One example would be the avenue in a shopping mall, which is privately owned by the shopping mall owner.
22. The proper answer to the question of whether the Nazis should have been allowed to march on the public streets of Skokie is that there should not be any public streets, anywhere, and hence the problem will never arise. For an economic and moral defense
of this proposition, see Walter Block, ‘Public Goods and Externalities: The Case of Roads,’ The Journal ofLibertarian Studies, Vol. VII, No. I, Spring 1983, pp. 1-34; idem., ‘Theories of Highway Safety,’ Transportafion Research Record, #9 12, 1983, pp. 7-10; idem., ‘Congestion and Road Pricing,’ The Journal of Libertarian Studies, Vol. IV,
No. 3, Fall 1980, pp. 299-330; idem., ‘Free Market Transportation: Denationalizing the Roads,’ Journal of Liberfarian Studies, Vol. 111, No. 2, Summer 1979, pp. 209-238.
23. This is shown by the fact that no such brou-ha-ha takes place when the Nazis meet on strictly private property.

24. The best economic-historical documentation of this tendency was written by the Marxist theoretician Gabriel Kolko. See his The Triumph ofConservarism, Chicago: Quadrangle Books, 1968. In his analysis, such legislation as the turn of the century Meat Inspection Acts, and the Pure Food and Drug Laws, can best be explained not as the successful attempt of do-gooders and early Naderite precursors to improve the lot of the consumer, but rather as a naked and not at all hidden power grab on the part of the large meat packers and pharmaceutical firms to restrict their smaller but growing competitors.