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Public Policies of Tobacco Control: The Process of Evolution of a Social  
Contract

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# Public Policies of Tobacco Control: The Process of Evolution of a Social Contract

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Abstract: Social contract model though originally envisioned for justifying state control over citizens being recently explored as a model of morality, especially morality in business. It stands merit over other moral theories primarily because it ensures (at least hypothetically) consent of all rational participants. So the process of moral reasoning is democratic and takes into account the pre contract discord in our 'original state of existence' and aims to provide a solution for the existing conditions of dissension and disparity. More importantly, this contract is specific to the moral domain. However, its applicability may have limitations determined by the specificities of a particular domain characterized by either issues, participants, time etc. The authors think that a social contract theory, known as the Integrative Social Contracts Theory (ISCT), is an emerging theory, which has the promising potential to deal with many of the ethical questions of not only the artificial institution of business, but also issues in the wider areas of socio-political living, namely public policy. The emphasis on extant contracts of relevant community, and the test of the authenticity and legitimacy of the community norms that are the outcome of these extant contracts, are unique to the features of ISCT. Public policies formulated by the Governments of various democratic nation states undergo certain phases of evolution of rage and resistance to acceptance and implementation. The challenge has always been the fairness of principles that treats everyone's interest equally. Rawls' "veil of ignorance" is a fantastic method for working out fair principles but cannot be executed in actuality. Rationality is a more practical tool and helps achieve a plausible fairness. Democracy is the most adhered system of governance because it is based on the human values of equality and freedom. Contract, as a framework as well as a procedure entails best results when it occurs among free and equal individuals. Hence, both democracy as a system and contract as a tool has certain mechanisms and objectives in common. This paper examines the process of introduction, change, renewal of public policy and the underlying social contract.

## 1.0 Introduction

Public policy is not a fixed set of regulation or legislation. As society and nation states keep on evolving, so does the public policy, which is particularly true in democratic nation states. In democratic nation states, framing public policy is a difficult task and

basically involves a tradeoff of interests of various affected parties. We make an attempt here to provide a contractarian justification of the ban on promotion of tobacco, even when manufacturing and marketing of tobacco and related products are still lawful till date. We are fascinated to exploit the contractarian reasoning since the contract model originally developed in the political domain as early as the sixteenth century. The initial postulation of the social contract model (Hobbes) aimed at establishing state power over citizen's behavior, thus making the state Leviathan. The underlying argument was that everyone is better off in the state of 'state control' than in a 'state of nature'. Though Rousseau recognized the expansive nature of a sacrosanct state power, he also recognized the inescapable nature of such power. However, the way Locke postulated the contract, it limited the state power in violation of the individual's rights. One very important observation made by Wempe is that "in the case of classical social contract theories, the contract was used to specify the conditions of legitimate political authority, but not any concrete legislation" (2008, p.707). Contract theories basically remained silent about the content of the law. Modern contract theorists, like Rawls, used the model to "identify criteria which the basic structure of society should meet in order to ensure social justice" (Wempe, 2004, p.333). Rawls modeled the thought experiment more precisely with the device of 'veil of ignorance'. However, the underlying mechanism of all modern as well as classical social contract theory is to engage in thought experiment. These thought experiments establish "objective background standards" (Donaldson & Dunfee, 1999, p19) to settle pre contract conditions. Similarly, ISCT models the thought experiment to bring out background standards of economic interaction. While ISCT does build upon the earlier contracts, at the same time, it is much more ambitious in modeling background conditions for economic interaction. It builds upon the already existing political institution of liberal democratic state and its allied institutions. The rational contractors of ISCT are not limited to any natural group bounded by territory of a nation; rather they are global contractors.

ISCT as a contractarian theory of business ethics is criticized by many including Wempe (2008) on the ground that it is not self disciplined, nonargumentative, and not task directed. However, we wish to cash on these features of ISCT and argue that the postulation of the ISCT not only models business interaction but also public policies relating to business interaction with society. As Donaldson and Dunfee argue "the normative authority of any social contract derives from the assumption that humans, acting rationally, consent – or at least consent hypothetically – to the content of the contract" (2008, p.707).





themselves<sup>4</sup> (emphasis added) (Donaldson and Dunfee 1994, p.273). In this context, they

the right and the good'. They are mostly abstract principles and understanding. Hence, they are not specified by the ISCT theorists. They do not evolve out of the procedure of structural hypernorms,

are necessary

3. The more extensive or more global the community, which is the source of the norm, the greater the priority which should be given to the norm.
4. Norms essential to the maintenance of the economic environment in which the transaction occurs should have priority over norms potentially damaging to that environment.
5. Where multiple conflicting norms are involved, patterns of consistency among the alternative norms provide a basis for prioritization.
6. Well-defined norms should ordinarily have priority over more general, less precise norms.

### 3.0 Evolution of Tobacco Control Policies and the Underlying Social Contract

#### 3.1 Evolution of Policies of Tobacco Control

Tobacco appeared in mass manufactured form only during the 19th century though it was prevalent much before, and was chewed or smoked in pipe. Thereafter, manufacturing, marketing, and smoking cigarettes have expanded in a massive scale. Later phases of commercialization created huge markets for tobacco by targeting teenagers and also positioned tobacco related products by associating the brands with life styles. Today, according to the World Bank report, more than 1.1 billion people worldwide smoke and are subject to wide variety of diseases including the dreaded disease of cancer. A century ago, we as a society were not even aware that tobacco could cause such health hazards. Today, medical science has extensively researched and established facts about the ill effects of tobacco on human health. The effects are not limited to smokers alone but to non-smokers who are affected by environmental tobacco smoke, which is one of the major reasons for lung cancer and respiratory tract infections.

In the initial years of human civilization, the socio economic order was not extant. The economy was not structured as in stock market economy today; but it was street economy. Since human beings inherited the nature of their primitive living, the law of the jungle predominated during initial years of civilization. Many were poor and oppressed; and they were unhappy with their conditions and the social order. Apart from the threat from nature, the second greatest threat was the threat to their security of life and possession from the co-living beings. In this context that Hobbes postulated a contract between these citizens to empower a state with supreme power (Leviathan) which will have the sole authority to control individual's behavior for a possible coexistence and world order. Individual action and behavior is regulated by state – in whatever form it is manifested. Hobbes' notion stands merit and relevance even today, though the concept of power and means of acquiring power have undergone vital changes. After human beings started living in a civilized manner, they cultivated their special knowledge, skill, and ability to perform many creative endeavors, shifting focus from minimal security and gathering food for living to enterprise, art, entertainment and



culture. They started cultivation, took interest in art, culture, music and other avenues of entertainment and amusement. The industrial revolution slowly changed the face of human existence and living.

as superior and better and in demand in a perfectly competitive market. Generating a handsome profit out of it is argued extensively as a legitimate business goal. That notion gave rise to increase use of promotion of products. Hence, tobacco was extensively advertised using all means of persuasion for consumers to develop smoking behavior. Especially, teenagers were the targeted audience of these promotions.

In the subsequent stage of economic growth and societal development, there was increase concern about the various 'stakeholders' business; a concern that became more prominent through the writings of Freeman. The unintended effects of even cultured human action on others became prominent. Development and findings of medical science about tobacco related diseases were established. There was increased awareness of the misuse and ill effects of tobacco. In the 20<sup>th</sup> century, various activist groups stood against tobacco and its production and promotion, in the continued attempt for a more perfect world order. Clearly, this is the critical era when the communities are ever widening. Also, there arises the conflict of interest among a large number of communities. Conflict is inherent; coexistence is a necessity; hence the role of contract. The communities now involved in the issue of tobacco range from tobacco farmers, tobacco industries, smokers, nonsmokers, interest groups, environmental groups, ideology groups, policy makers, to territorial and national governments. This is a time when it is recognized that everybody around can have a stake in the activities of a particular group or organization. With the increase in number of communities, the conflict of interest is more fastidious. With the environmental protection group demanding a complete ban of such products, the liberals are demanding a free choice for the consumers. A complete ban would not only be an infringement of free choices and rights but may be a cause of loss of livelihood for the tobacco farmers. Hence, a compromise ban on production and distribution of

ban on tobacco related products is an example of evolving social contract in the pursuit of maintaining a better world order. This evolving consensus is possible because of the following reasons: the communities who are for its production and use are either not having the norms which are both legitimate (not having consensus) and authentic (not confirming to hypernorms) or these communities are subservient to some other broader communities (arrangements of priority rule). Let us illustrate why and how contemporary public policy for tobacco control evolved through time. To do so we need to focus more on the authenticity and legitimacy of the norms of the communities that have evolved in recent times.

## 3.2 Communities

Let us make an attempt to identify the communities that somehow concerns the business of tobacco and they are also communities per the definition of ISCT. In an ambitious attempt the author believes that all the following groups can be identified as communities: the tobacco industry (the business people), tobacco users, civil society, government, consumer activists, consumer sovereignty ideologists group, and supporters of free market. Some of these communities have overlapping norms. We would try to club them wherever possible.

### 3.2.1 Tobacco business community

The tobacco industry deals with the economic aspects of Tobacco. Tobacco is one of the largest cash crops, hence, encourages business investment. There are giant multinationals in this industry as well as local firms. They support government's policy of employment, contribute revenue to the government. The best thing that any business takes care of is undoubtedly profit. It requires more investment in producing, manufacturing, and marketing of tobacco. However the changing business requirement is profit within the confines of law, morality and responsible business. The emergence of social responsibility of business necessitated business to focus on the social and environmental impact of its activity apart from the economic impact. This is an acceptable principle and practice of the message. Though the control on production and promotion of tobacco will adversely impact its economic impact in terms of loss of jobs, and loss of government revenue but these are no longer the only thing that matters for business. A complete ban is possible will too hasty leading to other evils like smuggling as long as the demand exist. Hence the most viable option available is interventions to reduce its demand in the market. Reducing demand may not be achieved by reducing supply alone and reducing supply not be possible unless production and

one among the greatest cause of preventable and premature deaths. The expected consequences of tobacco control are more promising for the world order than allowing it in free market. The fears related to its economic aspects, that detection, may have been unfounded. "Policies that reduce the demand for tobacco, such as a decision to increase tobacco taxes, would not cause long-term job losses in the vast majority of countries. Nor would higher tobacco taxes reduce tax revenues; rather, revenues would climb in the medium term. Such policies could, in sum, bring unprecedented health benefits without harming economies" (World Bank report). Hence the contract drawn here supports control of both demand and supply of tobacco.

Moreover, as a society we have already reached a stage where social institutions and corporate are not only expected to achieve appropriate balance between efficiency, equity and ethics, but there is also a requirement to be concerned with transcendental values of protecting the environment.

### 3.2.2 The Community of Smokers and the Consumer Sovereignty Advocates

Advocates of consumer sovereignty group believe in free choice of consumers. Modern economic theory holds that consumers are the best judges of their own consumption. This view is quite clearly influenced by the free market theory of Adam Smith. However, this principle of consumer sovereignty influenced by the morality of free market is based on certain assumptions which may not hold very strong grounds.

By the beginning of 21<sup>st</sup> century, we have seen many instances where the free market principle of efficiency has failed terribly. Let us examine it from the point of view of a consumer. Let us examine the incentive to consume and further examine whether the choice to smoke is like their other consumption decisions. Do smokers know the risk of smoking?

Consumer sovereignty group argues that consumers make rational and informed choices. Researches show that many smokers are not at all aware of the high risks associated with the smoking behavior. Those who are aware about the risk they perceive it to be minimal. Smoking eventually forms habit and it usually starts in adolescence. Assuming that these people take a rational choice about their consumption behavior would be a grievous mistake. Either these smokers do not know the risk, or if they know they underestimate the risk. There is no rational benefit analysis they involve in. World Bank report says most "societies generally recognize that adolescent decision-making capacity is limited, and restrict young people's freedom to make certain choices; for example, they are denied the vote or to marry until a certain age". Similar, strategies should be adopted for smoking and society cannot be so open about smoking.

### 3.2.3 The Community of Civil Society and Consumer Activists

The civil society norm is usually the good matter society in general understanding. It is the civil society which influences the public decision to a great extent. Good life, good health, good facilities ... and all that which brings order harmony peace to societal

existence. Anything, which causes a visible and significant distortion to general health, is to be avoided to the extent possible. The consumer activist group focuses that the consumers should not be lured into false prices. They must get proper information and proper value for their money in the market exchange process.

#### 4.0 Control on the Use of Tobacco

Health is a not only an individual but also shared responsibility of the society. A collective defense against transnational threats like tobacco related diseases is probably a hypernorm in pursuit of world order. In the case of the governments' intent on improving health, control on tobacco is an inescapable choice. Actions to control smoking can include implementation of higher taxes on advertising and promotion to restrictions on smoking in public places.

Any failure on the part of any community to respond to these hard social norms in broader socio-political communities may result in subsequent stringent implementation of legislation. Such legislations may also further public policy changes and deteriorate public relations for the organizations concerned. The evolving authentic norms of broader community (society as a whole) typically require aggressive changes in the way in which the organizations act and present themselves. It is best to adopt proactive strategy and seek to keep ahead of the change. More often this does not appear to have been the chosen strategy, leading to outrage in society.

"Consent is the justificatory linchpin of a social contract method", either hypothetical or real and it is valid only when it is "uncoerced and informed" (D& D, 1999, p. 48). ISCT theory holds that the consent of community social contracts must be informed by broader principles of societal hypernorms, and participants' consent. So, contractualism promotes reciprocal cooperation among persons who seek to treat one another as free, equal, reasonable and rational. The concern here is reasonableness and fairness of actions or arrangements. This kind of transaction is envisioned only in a liberal democratic or communitarian society. The contract helps business interests and all other individual and communal goods function in decision-making along with the interest to justify decisions to others. So, we are capable not only of having a national good but also of regulating and justifying our actions according to reasonable principles that all can accept.

The Integrative Social Contracts approach is "designed to take existing artifactual institutions and business practices into consideration, thus providing the essential context for rendering normative judgments concerning economic behaviors" (ibid, p. 42). On the one hand, the context specificity in contractual ethics, say Donaldson and Dunfee, may constitute an ideal source of normative standards for the actual process of stakeholder management. On the other hand, this social contract theory being empirically based will be able to isolate the "boundaries of general public expectations concerning obligations to stakeholders" (ibid, p. 50) What is important is to articulate and/or reveal the responsibility in question. Without such an articulation, the responsibilities again would be clouded by the general public expectations. Integrative Social Contracts Theory has the

potential to articulate the boundaries of stakeholder interests and the limits of social and moral responsibility. Even regulations/laws “are most likely to be effective when they are consistent with the most generally accepted social norms, and reflect the collective morality of society”( [http://en.wikipedia.org/wiki/Public\\_policy\\_doctrine](http://en.wikipedia.org/wiki/Public_policy_doctrine)).

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