

## **Tobacco policy: A matter of principle**

The anti-tobacco phenomenon has become the world's most recent and ominous manifestation of fanatical puritanism and intrusive authoritarianism.

A recently proposed Bill in South Africa (*Tobacco Products Control Amendment Bill*, 1998) has all the elements that characterise fascist excesses of dictatorships. It is reminiscent of such aberrations as witch hunts, liquor prohibition, extreme censorship, prohibition of gambling, and the prohibition or curtailment of countless other substances and pastimes throughout history. (See e.g. Thomas Szasz: *Ceremonial Chemistry*, Learning Publications, 1995.)

Indeed, the Bill is hauntingly similar to laws implemented by one of the world's most celebrated anti-tobacco activists – and one of its most despicable monsters – Adolph Hitler, in Nazi Germany. At that time such draconian measures were considered too despotic for free societies. It is one of history's bitter ironies that “nico-nazism” is now being considered in the western democracies.

The arguments advanced in support are also similar to those of the nazi regime: that such extreme measures are justified in order to protect supposedly innocent, unsophisticated and gullible people from the consequences of their own stupidity, ignorance and inability to protect their own rights.

South Africa needs quite the opposite if it is serious about transformation and the liberation and emancipation of its people. Enduring transformation from state paternalism and oppression can be achieved only if people's choices and areas of personal responsibility are enhanced, rather than inhibited as envisaged by the Bill.

The central issue in the great tobacco debate is not whether smoking is unhealthy, but how best to protect people's rights and interests.

### **The scientific evidence**

Voluminous evidence on health and other implications of smoking can be presented by both pro- and anti-tobacco interests. Predictably, both sides purport to be presenting an accurate reflection of objective truth. However, the evidence generally presented is selected very carefully and sanitised – and some of it will probably be distorted, exaggerated or falsified – in order to advance the cause of the lobby concerned. For this reason, two crucial points need to be stressed at the outset:

1. Both sides – not just the tobacco interests – are formidable vested interests with powerful incentives to present a biased view.
2. It is simply impossible for legislators to consider even a small fraction of the relevant empirical evidence.

This means that parliamentarians cannot possibly reach an informed conclusion on the scientific debate. They therefore have no real alternative but to disregard all or most of the scientific evidence. Consequently, they are left with only one defensible option: to base conclusions on *principles*.

There is a great risk that, as in some other countries, the effect of lobbyists overwhelming legislators with mountains of empirical evidence might be to deflect their attention from the principles that should inform tobacco policy. I urge South African legislators not to fall into this trap.

The matter of principle to be resolved by the Committee, regardless of what the scientific truth might ultimately turn out to be, is therefore not whether tobacco advertising should be allowed, regulated or

banned, or where, when and how people should be allowed to smoke, but ***by whom* such decisions should be made.**

### **Whose rights should prevail?**

In order to legitimise anti-smoking legislation, its protagonists have popularised a false dichotomy: that there is an inherent conflict between the rights of smokers and anti-smokers. There is no conflict. Paradoxically, a law that truly protects one inevitably and equally protects the other. Conversely, laws that violate the rights of smokers and proprietors, as proposed in the Bill, *necessarily* violates the rights of anti-smokers.

It is well-known in law that measures intended to protect people often have the opposite effect. One of the most common examples is consumer protection. Consumer laws often “protect” consumers by prescribing costly minimum standards or conditions of contract, which means that they lose their right to lower prices.

The superficial knee-jerk assumption that those who do not want others to smoke ought to welcome this legislation, and that smokers ought to oppose it, is fundamentally flawed because “freedom is indivisible”.

What really divides people on this issue is not what they think about smoking, but what they think about freedom. The question confronting participants in the debate is: To what extent is it legitimate for some to use force to impose their will on others? The question confronting politicians is: To what extent are they willing to do the dirty work of people who have no respect for the rights of others?

Everyone who believes in and understands the nature and problems of a free society, including those who do not want smoking allowed in places they want to frequent, should oppose this Bill.

### **Under conditions of equal freedom, who should decide?**

All people of good will who want to live in a free society – whether or not they oppose smoking – ought to agree on at least one seemingly obvious fact: that there are basically four parties who can decide whether smoking is to be allowed in a given place: proprietors, employees, consumers and government. Of these, government is obviously the odd one out. Its sole legitimate contribution is to provide a legal framework to resolve disputes between the other three.

To this end, various reforms are necessary, such as the repeal of existing anti-smoking laws, and reforms to make the courts accessible and affordable. This is not the place for an elaboration of this point. But it is necessary to make the point that Parliament passes many well-intentioned laws that are ineffectual or counter-productive because the judicial system is, for practical purposes, inaccessible to ordinary citizens.

Smokers and anti-smokers have perfectly adequate rights under existing common and statutory law, but the failure of the judicial system to protect these rights creates the illusion that increasingly draconian laws are necessary.

What is wrong, therefore, with the proposed legislation is not so much that it is based on contentious science, which it is, or that it is likely to lead to counter-productive results and increasingly costly and draconian measures to enforce it, like similar legislative excesses of the past, but that it violates the rights of ordinary people needlessly.

Whilst the government should not, as a rule, interfere with decisions about where people smoke, there is one exception, namely where government is the owner or proprietor of the place concerned. In such cases it can ban or allow smoking legitimately, not because it is the government, but for the same reasons, and under the same law, as any other proprietor. It can, for instance, justify banning smoking on SAA flights because it owns the airline, but it is an abuse of its law-making power to ban smoking on its competitors' flights.

By analogy, the government should be free to decide whether to allow the advertising of tobacco products in its publications, but should not resort to censorship by prohibiting or restricting advertising elsewhere.

One of the anti-smoking movement's most pernicious deceptions is that it succeeded in getting even its enemies to call private places "public" places. This extraordinary corruption of language has been achieved by assuming that once the public is allowed onto private property it is no longer private. Most places defined as "public" in the draft law are in fact and in law *private*. The Committee should not condone or perpetuate this deception, especially not at a time when historically deprived South Africans are being allowed and encouraged by the state to become entrepreneurs and property owners for the first time in their lives.

### **Protecting consumers, employees and proprietors**

Decisions about where people may smoke can and should be resolved under existing laws, which are perfectly adequate.

Consumers, for instance, have ultimate control over where smoking is allowed by virtue of their "consumer sovereignty". They vote with their Rands in a perpetual economic democracy for and against places that do or do not suit them. Beyond that consumers have no right to impose their individual preferences on other consumers, or on proprietors and workers.

Consumers are and should be entitled only to that for which they have contracted explicitly or implicitly, such as the supply of serviceable goods, accompanied by whatever safety disclosures and warnings may be necessary. Whether tobacco products are unsafe, or as unsafe as is alleged by anti-tobacco fanatics, and what, if any, warnings there should be, should be a matter for the courts to decide in a given context. There is absolutely no need for special laws. Mercifully, there are no laws (yet) prescribing statutory warnings on such obviously dangerous products as cars, liquor or knives. Likewise, there should be no special law in respect of tobacco products.

Turning to employees, the situation is much more simple and self-evident. Employee rights are protected adequately by way of employment contracts and labour law. Employees directly or through their unions may and sometimes do negotiate smoking regulations with each other and with their employers. This is all they need. The Bill would abolish the right of workers to decide for and amongst themselves what should happen where *they* work.

Finally, proprietors: their rights are protected by being allowed to make offers to consumers and employees. They may decide to offer smoke-free buildings, smoke-free areas within buildings, or, if they are sufficiently daft, even places where smoking is obligatory.

### **The thin edge of the wedge**

It is crucial to note that **none of this implies that those in control should or should not allow smoking or tobacco advertising**. No outsider knows what should be done in every case, and all who pretend to know, or who want to impose their will on others uniformly and coercively, are

misguided. It is probably true that the most profound characteristic of freedom is that it is not prescriptive. Additionally, freedom tolerates – actually thrives on – the kind of rich diversity and innovation that the proposed law would stifle. It does not allow for the kind of demand-driven and people-centred solutions the state is encouraging in other contexts.

Just as *Readers Digest* and many other companies are and should remain free to prohibit smoking on *their* premises, and tobacco advertisements in *their* publications, so should others be free to allow smoking and tobacco advertisements.

Anti-smokers who, short-sightedly, condone a measure such as the proposed law, should be encouraged to recognise that they are condoning the sacrifice of *their own* freedom both directly and indirectly.

Of course, not all anti-smokers are “nico-nazis”. Many are enlightened and progressive. They do not fall for the seductive temptation, whilst the tide happens to be running in their favour, to support conceptually bad laws.

Those who remain silent when the rights of others are violated in ways that happened to suit them at the time, cannot object when it is their turn to be victims. It should not surprise anyone if, in a few years, smokers are regarded as a victimised minority – which, all too rapidly, they are becoming.

The principle that informs this Bill is that it is legitimate for the government to force people to do on *their* property what it thinks, for the time being, they should do. Under a new, equally credible fad, the same authoritarian law could be used to “protect smokers’ rights”. Then proprietors of so-called “public” places might be forced to *allow* smoking.

To condone a law of this kind is to gamble away the right to choose for smokers and anti-smokers alike. If implemented, the Bill would also legitimise countless authoritarian laws in other contexts. Before the ink dried on draconian anti-tobacco legislation in the USA, a particularly ominous example surfaced: the proposed prohibition of perfumes and deodorants in so-called “public” (i.e. private) places, supposedly to protect people (like the present author) who suffer from Multiple Chemical Sensitivity (MCS). The principles and values embodied in this Bill would justify any number of other prohibitions or restrictions, on such matters as the right to buy and use supposedly “unhealthy” food, or to engage in recreations considered, for the time being, to be harmful.

Ultimately there is and can be no such thing as a “tobacco products control policy”. South Africans should have learnt this by now from their experience with agricultural control boards, which purported to control everything from dry beans to mohair. However, there never was, except in name, such a thing as, for instance, an Egg Control Board. It did incredibly dumb things with eggs, like throwing them into the sea, but it did not *control* them. Fortunately, eggs never get out of hand and do not need to be controlled. What the board controlled was *people*. All controls are people controls.

The Bill, if adopted, would be a people control bill. The idea is to control or criminalise what people do in the normal course of their lives. Specifically, it contemplates doing so by way of extreme invasions of their basic rights. Attention is diverted from the true nature of the measure by creating the impression that the measure is targeted at an inanimate nefarious product, tobacco.

## **Discretionary power**

In addition to the inappropriate nature of the specific proscriptions and prescriptions in this Bill, it would be bad law jurisprudentially in that it envisages an inordinate and unnecessary degree of discretionary power. Good law is law, *inter alia*:

- that complies with the Constitutional requirement that there should be a separation of powers – that substantive law should be made by legislatures and not the executive branch of government, and
- that does not create discretionary power needlessly – that is objective and equally applicable to all.

This Bill would grant inordinate power to the Minister. The law-making function would not only be transferred improperly from the legislature to the executive, but it would enable the Minister to apply the law in discriminatory ways.

Legitimate power for the Minister would be the power to make procedural regulations for the *implementation* of the law.

### **True science *versus* ideological science**

Whilst this paper does not seek to resolve the scientific debate, and whilst it argues that the health debate ought to be of secondary relevance, there are disturbing aspects of the debate that the Committee should bear in mind. The first is that anti-smoking fanaticism has become so widespread that manifestly implausible anti-smoking claims go unchallenged. Promoters of draconian anti-smoking laws feel increasingly free to proclaim whatever exaggerations, distortions, cover-ups and lies they wish. They are on the side, for now, of the angels. They are presumed, mistakenly, to be motivated exclusively by concern and compassion for their inadequate fellow beings.

When I challenged one of the leading anti-tobacco activists about the conspicuously misleading nature of much of their propaganda, he insisted that it was both necessary and justified because the public would be confused by a more complex message. What the public needs is to be shocked to the point where it will submit to “tough” anti-smoking laws, and where smokers will stop smoking. The public, according to this patronising and demeaning view, must be shocked maximally by simple, shocking and unambiguous messages, regardless of how factually accurate they might be. The end, he insisted, justifies the means where the end is sufficiently virtuous.

What follows is a very brief summary of a few illustrative examples of the frightening extent to which pseudo-science has been allowed to define the debate.

1. Anti-smoking propaganda perpetuates the self-evidently absurd pretence that smoking has no benefits. Of course it has benefits. A moment’s sober reflection should make this obvious. It is extremely improbable that something so widely practised by normal people would be devoid of redeeming features.
2. Benefits of smoking have been identified in numerous studies, including “psychological, psychotechnical, physiological, neuroelectrical, and pharmacological tests” (Tage Voss, *Smoking & Common Sense*, Chapter 4, “The Beneficial Effects of Smoking”, Peter Owen, 1992, London). Precisely *what* the benefits are, is less important than the fact that the established view is that there are none.
3. This fact alone should encourage responsible people to treat anti-smoking propaganda with circumspection. There is something inescapably sinister about a movement characterised by the deliberate concealment or denial of readily available countervailing evidence.
4. Anti-smoking activists never disclose the threshold below which tobacco consumption would be harmless, despite the fact that it has been known since ancient times, according to the Law of

Paracelsus, that “the poison is in the dose” – which means that nothing is toxic *per se*; everything is fatal above a certain quantity. If they were truly concerned about the well-being of smokers they would make them aware of the diverse effects of different levels of consumption. They would, for instance, argue that smoking-related effects can be avoided by smoking less, by not inhaling, by using filters, or by smoking mild cigarettes.

5. The obligatory warning on cigarette packets to the effect that nine out of ten lung cancer patients are smokers is at best meaningless and at worst calculated to deceive. For the statement to have any meaning it would have to be accompanied by information on how the figure compares with the proportion of the public defined as “smokers”, which, incidentally, changes as it seems to suit the objectives of anti-smoking propaganda.

6. When the anti-smoking lobby wants to argue that giving up smoking is beneficial, or that the prohibition of advertising is effective, “smokers” are defined as people who smoke regularly at present. But when they want to argue that there is a correlation between smoking and lung cancer, “smokers” are conveniently redefined so as to include everyone who ever smoked – regardless of how few cigarettes, for how many years, how long ago, or whether they inhaled. For some purposes “passive smokers” are included, whilst for others they are excluded. This is “necessary” to sustain some of the propaganda claims.

To argue that there are substantial advantages for people who stop smoking, “smokers” have to be defined as people who no longer smoke. To argue that smoking causes lung cancer, “smokers” include people who used to smoke. To argue that “passive” smoking is bad, reformed smokers have to exclude from the definition of smokers. To show a correlation between “passive” smoking and lung cancer, only intense “passive” smokers are included. To sustain the case for draconian anti-smoking laws, “passive” smokers are defined as constituting almost the entire population.

In truth, the case for excessive and obsessive anti-smoking legislation has more to do with smoke and mirrors than with smoking.

7. The Centre for Disease Control (CDC) arbitrarily defines “passive” smokers as being just about everyone. One of their internet publications claims that nine out of ten people are passive smokers. Add to this their own estimates of the number of smokers and we have well over 100% of the population defined as smokers.
8. Note that, if nine out of ten of the public smoke, and nine out of ten lung cancer patients are smokers (which tobacco companies are forced to say on cigarette packets) logic would require us to conclude that smoking does *not* cause lung cancer. If smokers are, were, say, eight per cent of the population, the figure would mean that, at worst, smoking *might* cause no more than one in ten lung cancer incidents. In other words, correctly understood, the compulsory warning suggests that smoking is safe.
9. “Passive” smokers inhale such a minute proportion of the smoke inhaled by smokers, less than one half of one percent, that, given the impact on smokers even under the most exaggerated assumptions, it is extremely improbable that it does them any harm.
10. The list of research publications published by the world’s most prestigious authority, the CDC, on its web site is carefully censored to exclude studies that do not support its tobacco thesis. In particular, it excludes what it regards as being funded by the tobacco industry, regardless of its scientific or objective merit. This sort of censorship is so common that even well-informed experts are unaware of the substantial body of countervailing evidence.
11. To cite just one example, South Africa’s most respected anti-smoking expert, Dr Salojee, who gave widely-publicised evidence to the Parliamentary Portfolio Committee, said when we met to debate these matters on a television program that he had never seen the published proceedings

of the “McGill Conference”. Over eighty scientists from many countries gathered at one of the world’s most prestigious universities to review all the literature on “passive” smoking. They found that the evidence contradicted the passive smoking hypothesis. Yet the record of proceedings, which was published for commercial distribution by one of the world’s leading publishing houses, and thus readily available to anyone interested in the matter, had not been consulted by the county’s most celebrated expert on the subject. When I asked him why he was not interested in this book, or any of the many other publications on the other side, he said that it was of no relevance because it had been funded by the tobacco industry. The implicit insult to the reputations and integrity of the eminent scholars involved, and the quality of their scholarship, is self-evident.

12. There are many books and papers indicating the flaws and falsifications that characterise the anti-smoking phenomenon. The content and significance of all this literature is denied or trivialised in the promotion of anti-smoking fanaticism.
13. The insistence that smoking “causes” smoking-related diseases, and that there is conclusive “proof” to this effect is unscientific. The scientific method does not “prove” things and smoking does not “cause” lung cancer. These are lay deliberately person’s misconceptions promoted by distorting recasting and repackaging of the facts for propaganda purposes. It is very important in this debate to have a clear understanding of what the evidence really tells us.

Firstly, science tests hypotheses, such as the proposition that smoking causes lung cancer, by seeing whether there are exceptions. Since most cancer sufferers are not smokers, and since most smokers do not have lung cancer, smoking cannot be said to “cause” lung cancer. It is a co-factor. It is “associated” with the relative presence of certain cancers – and, which is overlooked, the relative absence of others. Association is not cause. That there is a correlation between being a male flight attendant or an actor and being gay does not mean that flying or acting cause homosexuality.

The scientific method is concerned with *disproof*. Hypotheses are tested by seeing whether there are exceptions. The theory that all swans are white would be disproven by finding a single black swan. Thus, the fact that all cancers occur in non-smokers means disproves the theory that smoking causes cancer.

The profound importance of this insight is that, if there is a genuine desire to combat “smoking-related” diseases, research resources and public information should address the full picture holistically and honestly. It should be made clear, for instance, what the other co-factors are, and what can be done about them. In particular, a responsible health policy would inform the smoking public that the evidence suggests that living a generally healthy lifestyle reduces the risk of contracting “smoking-related” more than smoking increases it. Smokers should be made aware of the considerable advantages of vitamin C, regular exercise, weight management, modest alcohol consumption, a balanced diet, and the like.

14. One of the most disturbing and readily testable facts is the supposed integrity of the phone number tobacco companies are forced to put on all cigarette packets. This is held out as the number anyone can call to get more information. It easy for all members of the Committee to test the claim for themselves by phoning the number. When my researcher and I telephoned the number on various occasions to ask for scientific sources for the mandated anti-smoking warnings, they could not supply a single source. We were told to just trust them, “because all the experts agree”.
15. There are many more concealed facts that contradict the tyranny of the established view, such as the fact that countries with higher incidences of smoking often have much lower incidences of smoking-related diseases, and that life expectancy is higher in many countries with higher rates of tobacco consumption.

16. The definition of “addiction” used in anti-tobacco propaganda is contrived. Unlike real addiction, most smokers can and frequently do stop smoking, periodically or for ever, without serious “withdrawal symptoms”; smoking does not render smokers socially or occupationally dysfunctional; tobacco is not required in ever-increasing doses; tobacco does not have the psychoactive impact of “drugs”, nor the economic impact of, say, gambling addiction, and so on. The claim that tobacco is an addictive “drug” comparable with other recreational drugs is indefensible.
17. There is no direct correlation between the prohibition of tobacco advertising and the national incidence of tobacco consumption. Studies that supposedly suggest that there is overlook crucial contradictions and anomalies.
18. Popularly quoted statistics intended for maximal impact are almost always “cherry picked” from studies that show the most extreme and therefore least plausible correlations.
19. One reason why only statistical correlations are relied on is that controlled experiments, for instance extremely cruel experiments on many thousands of laboratory animals, tend not to support such studies.
20. Anti-smoking propaganda ignores “co-factors”, the most obvious ones being lifestyle, and the physiological and psychological predispositions of smokers. Everyone knows that smokers are more likely to be people who “need” to smoke, such as people who suffer from stress, depression or social insecurity. Smoking behaviour is more likely to coincide with such lifestyle factors as an inclination towards obesity (and the use of smoking as a weight-management aid); an inclination towards alcohol consumption; a tendency to have less exercise, and so on.
21. Many people are likely to extend their life expectancy if they smoke such as, to mention one example, people who travel long distances and use smoking as an aid against drowsiness or falling asleep at the wheel. The benefits for certain smokers of being less obese, less stressed, maintaining more sustained levels of concentration, and the like, exceed the disadvantages of smoking.
22. Two of the most frequently quoted studies on “passive” smoking – by Hirayama and Trichopoulos – were exposed as containing falsified data, which, when exposed, were claimed by the authors to be mere typographical errors. (*Health, Lifestyle & Environment: Countering the Panic*. Social Affairs Unit, Manhattan Institute, pp 61-64. 1991.)

There are enough additional examples of this kind to fill a book. The point is that the information tyranny enjoyed for now by the anti-tobacco movement denies the public and their elected representatives effective access to crucial evidence needed to make informed policy decisions.

When confronted with the scientific anomalies, contradictions and distortions that characterise the anti-smoking liturgy, anti-smoking apologists avoid having to explain themselves by saying that countervailing facts cannot be taken seriously because they come from nefarious tobacco industry sources. Consequently, there is an alarming state of affairs where uncomfortable facts are dismissed solely on account of their source. It is like a Kafkaesque court case where the defence evidence is rejected for no reason other than that it is the defence evidence.

### **Countervailing evidence**

One of the most obvious contradictions inherent in the anti-smoking phenomenon is that liquor abuse is, in every conceivable sense, at least as hazardous as tobacco abuse, especially for innocent third parties and for the economy. If so-called “passive smoking” really is a health hazard, which is doubtful, then “passive drinking” must be regarded as infinitely more pernicious.



Whilst there is doubt about whether second hand tobacco smoke harms third parties, there can be no doubt about the third party effects of alcohol abuse. Alcohol consumption is associated with violent behaviour, dangerous driving, occupational and social dysfunction, unambiguous addiction, child abuse, impotence, and much more. None of this is true of smoking. Yet smoking is being singled out for special treatment. Why? Because alcohol prohibition has been tried and found, after many lives were lost, crime syndicates promoted, and vast resources wasted, to be both impractical and immoral. Do we really want to repeat the liquor prohibition nightmare with tobacco?

The warning that tobacco prohibition of the kind envisaged by this Bill is as morally and jurisprudentially flawed in every sense as liquor prohibition (which lasted for black South Africans until the 1960s) was, should be taken seriously by South Africa's legislators.

Regarding the debate on the constitutionality of the Bill, the government should not regard the Constitution as a nuisance. It should not sail as close to the Constitution wind as it can get away with. What it should be doing is implementing policies that not only comply with the Constitution legally, but epitomise and legitimise the spirit of the Constitution.

### **How to protect third parties and children effectively**

The reinstatement and effective protection of common law rights would be an adequate, more just and more effective way of achieving the Bill's objectives.

Modern anti-smoking propaganda legitimises draconian laws by relying on two central deceptions:

- the misclassification of *private* places – such as factories, restaurants, taxis, cinemas, air craft and hotels – as “public”, and
- the far-fetched notion that “passive smoking” is (a) passive and (b) materially harmful.

Without such misclassifications, misnomers and anomalies anti-smoking authoritarianism would not succeed.

The *Tobacco Products Control Amendment Bill* is itself, as we have seen, a misnomer, as are the titles of all laws that purport to control products whilst actually controlling people. A free society is one where people enjoy more freedom and less control.

One does not have to be the proverbial rocket scientists to predict that this sort of legislation will lead to such phenomena as smuggling and the emergence of tobacco crime syndicates, with all that this implies. Laws of this kind beget more laws to cope with the problems they cause, in a vicious spiral of ever-intensifying draconian measures appropriately called “nico-nazism”.

The argument that smoking costs society money is flawed for two reasons. Firstly, as studies have shown, smokers contribute more than they cost, even on the most exaggerated assumptions. They subsidise non-smokers. Secondly, the fact that social policy is to offer people subsidised health care does not justify the removal of their freedom. It does not, for instance justify, obligatory exercise and dietary routines, which would be the logical extension of the notion

### **Smoking and children**

One of the most bizarre anomalies of the proposed law is that one of the only places where people will be free to smoke is where children are effectively incapable of protecting themselves from the real and supposed effects of “passive” smoking, in the home, whereas smoking will be banned or curtailed where adults are perfectly capable of looking after themselves.

Needless to say this is not to suggest that smoking be banned in private homes. But it does expose the consummate irrationality of the obligatory curtailment of smoking in so-called public places. If smoking is to be allowed at home, there can be no rational basis for banning it where people go infrequently, and then by making a selection out of numerous alternatives.

## **Conclusion**

When one considers the liturgy of dubious interpretations of data, the non-sequiturs and contradictions in pro-prohibition propaganda, the propensity to ignore countervailing evidence, and the prevalence of falsifications and cover-ups that have become characteristic of the anti-smoking movement – and the legitimacy it enjoys – the only reasonable conclusion is that the anti-smoking phenomenon is a modern aberration of the most dangerous kind. South Africa's law makers should proceed cautiously, ensuring that they do not end up legitimising junk science and mass hysteria unwittingly.

There is a tendency to believe that “that sort of thing” would not happen now, that we have now reached an “advanced state” of knowledge, and that despotic laws are a thing of the past. This is greatly mistaken. People looking back from fifty years hence at the errors and aberrations of modern times, will look back on much of what we do now with the same sense of disbelief that we tend to look at what was done fifty years ago. I appeal to the Committee not to be fickle. It should rise above popular delusion and fanatical hysteria, and do the right thing. It should preserve and enhance liberty. It should adopt laws that work in the real world and that can stand the test of time.

There is no urgency in this matter. The government should either abandon or shelve the proposed law until the issues raised above have been addressed satisfactorily. The evidence is inconclusive, and existing law is adequate to protect the legitimate rights of anti-smokers.

The Bill should not be implemented, whether revised or at all. It is fundamentally flawed and constitutes a needless concession to a shamelessly authoritarian movement. It contradicts the letter and spirit of the Constitution, and the demands of transformation. It is particularly inappropriate for South Africa at this time, when there are so many serious priorities facing the nation.

## **Further reading**

Reekie, WD (1996) *Smoking*, FMF Briefing Paper No. 2.

*This Briefing Paper was written by Leon Louw, Executive Director of the Free Market Foundation, as the basis of his submission to the Parliamentary Portfolio Committee on Health examining the text of the proposed Bill.*