

# The Assault on Intellectual Property: The Australian Plain Packaging Experience

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SP 2016

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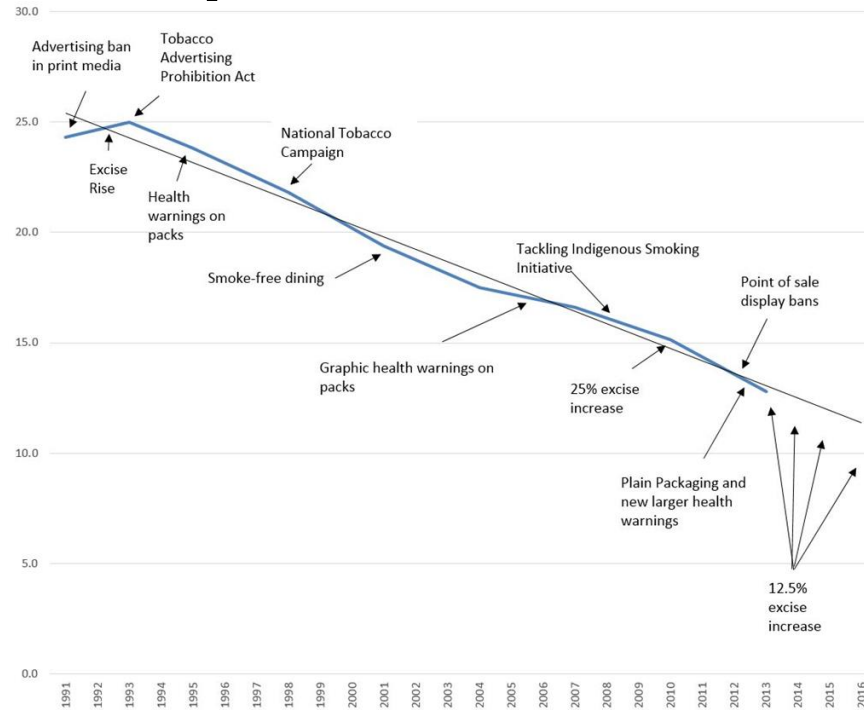
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# Recent History of Tobacco Control



# Plain Packaging



- Source: Scollo, Bayly and Wakefield 2015

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# What the courts have said

- Australian High Court:
  - “While the imposition of those controls may be said to constitute a taking in the sense that **the plaintiffs' enjoyment of their intellectual property rights and related rights is restricted**, the corresponding imposition of controls on the packaging and presentation of tobacco products **does not involve the accrual of a benefit of a proprietary character to the Commonwealth** which would constitute an acquisition.” Chief Justice French.
- UK High Court:
  - “I accept that the Regulations do **substantially limit and restrict the use of those rights** but they do so for entirely proper and legitimate reasons and they do so striking **a fair balance between the right to property and opposing public health interests and rights**. I have in this regard rejected the contention that the tobacco companies should be entitled to any compensation at all. I cannot see any logical or rational basis for imposing upon the State a duty to pay compensation to the tobacco companies for ceasing to engage in an activity which **facilitates a health epidemic and imposes vast costs upon the state.**” Justice Green.

# Take home messages

- Plain packaging is not (just) about smoking.
- Plain packaging is bad for your business, it is bad for all business.
- Government (and its cronies and minions) will mislead, confuse, and obfuscate.

# Plain Packaging Objectives

- To improve public health by:
  - discouraging people from taking up smoking, or using tobacco products.
  - encouraging people to give up smoking, and to stop using tobacco products.
  - discouraging people who have given up smoking, or who have stopped using tobacco products, from relapsing.
  - reducing people's exposure to smoke from tobacco products.
- Mechanisms to achieve those objectives:
  - reduce the appeal of tobacco products to consumers.
  - increase the effectiveness of health warnings on the retail packaging of tobacco products.
  - reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

# Plain Packaging Outcomes

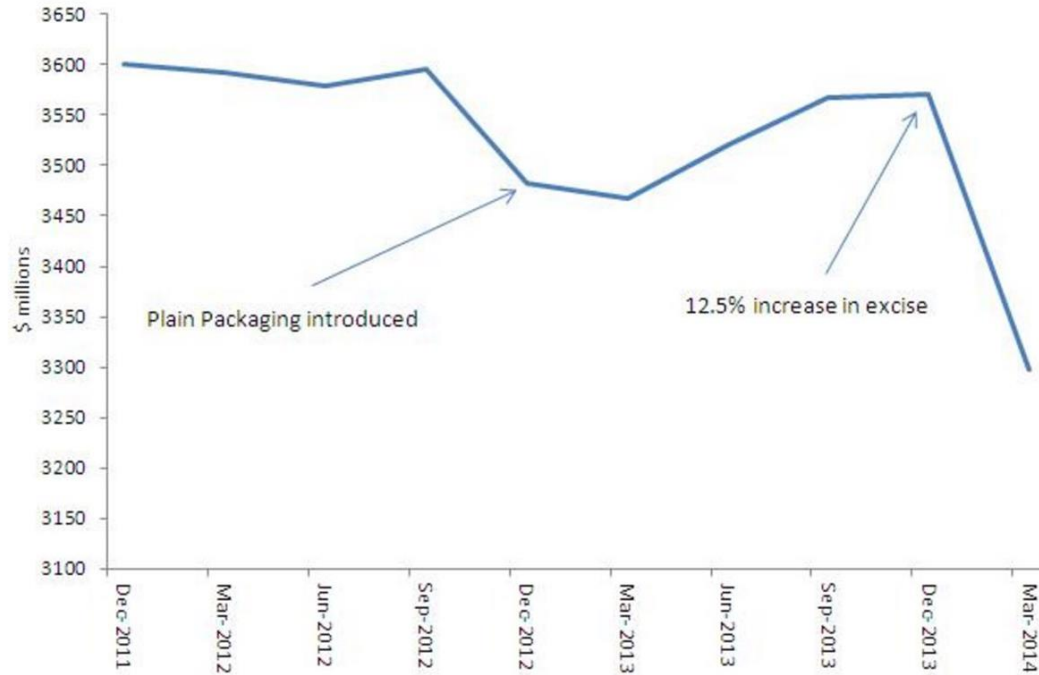
- Department of Health and Aging:
  - “Treasury has advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012.”
- Stephen Koukoulas (economic advisor to PM Julia Gillard when decision was announced):
  - “The figures from the [Australian Bureau of Statistics] show that total consumption of tobacco and cigarettes in the March quarter 2014 is the lowest ever recorded – and this with the series starting in 1959. This is extraordinary. It is a Great Depression for tobacco sales.”



# Plain Packaging Outcomes

- Department of Health and Aging:
  - “Treasury has advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012.”
  - BUT ... that claim has been rubbished after a Freedom of Information request required Treasury to release the data.
  - Tobacco Clearances ROSE by 0.5% in the year after the introduction of plain packaging.
- Stephen Koukoulas (economic advisor to PM Julia Gillard when decision was announced):
  - “The figures from the [Australian Bureau of Statistics] show that total consumption of tobacco and cigarettes in the March quarter 2014 is the lowest ever recorded – and this with the series starting in 1959. This is extraordinary. It is a Great Depression for tobacco sales.”

# Plain Packaging Outcomes



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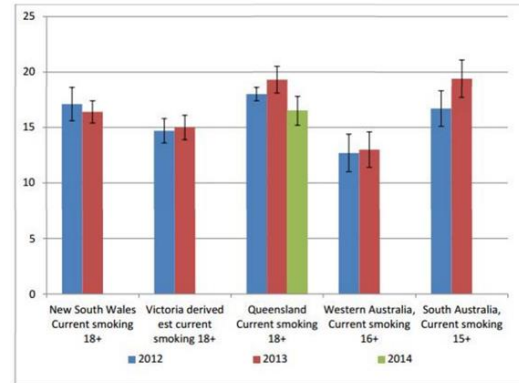
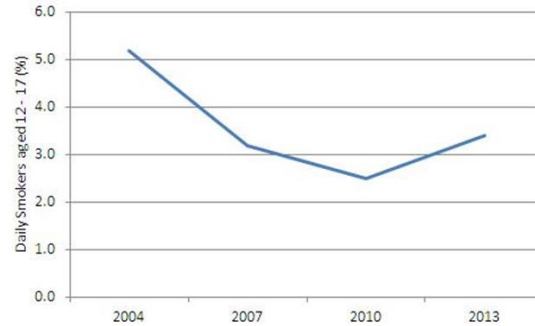
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# Plain Packaging Outcomes

- At best we can determine the plain packaging policy introduced in December 2012 has not reduced household expenditure of tobacco once we control for price effects, or the long-term decline of tobacco expenditure, or even the latent attributes of the data.
- To the contrary, we are able to find instances where household expenditure of tobacco has, ceteris paribus, increased.
  - Davidson and de Silva (2014)

# Plain Packaging Outcomes

- Youth smoking rates
- State based evidence



# The Wakefield Tracking Study

- The federal government commissioned a A\$3 million tracking survey to monitor the impact of plain packaging introduction.
- Results published in 2015 Tobacco Control.
- Other government funded survey studies published in same issue.
- Conclusions:
  - “Plain packaging in Australia has been **a casebook example of effective tobacco control** – a policy measure driven by **evidence**, carefully designed and implemented, and now **rigorously assessed**”. Hastings and Moodie (2015: ii2)

# The Wakefield Tracking Study

- But in the face of criticism from Davidson and de Silva (2016) the Victorian Cancer Council now claims ...
  - The NTPPS was **quite explicitly *not* designed to assess quitting success or change in smoking prevalence** but rather focussed on the **immediate impact** of the legislation on perceptions of the pack, effects of health warnings and understanding of product harmfulness.

# The Wakefield Tracking Study

- That's a good thing too ...
  - The analysis shows no immediate impact “on perceptions of the pack, effects of health warnings and understanding of product harmfulness”.

# The Wakefield Tracking Study

- Three important studies:
  - Responses to health warnings (Wakefield et al.).
  - Quitting behaviours (Durkin et al.).
  - Linking responses to behaviours (Brennan et al.).



# The Wakefield Tracking Study

- Why three separate studies?
  - CV padding?
  - Avoiding a single set of referees?

# The Wakefield Tracking Study

- Problems (Davidson and de Silva 2016):
  1. Data mining.
  2. Data snooping.
  3. Different data across studies.
  4. Different time periods.
  5. Different variables.
  6. No diagnostics.

# The Wakefield Tracking Study

- All the (inconsistent) methodological choices made in the studies work to demonstrate that plain packaging was successful.
- When you untangle those choices, the results are not robust.

# Wakefield Study and Quitting Behaviour

Table 4 Associations between appeal, health warning effectiveness, perceived harm and enjoyment/concern variables measured at baseline, and quit attempts measured at 1-month follow-up among baseline cigarette smokers

	Initial models (N=2726 to 3116) OR (95% CI)	Multivariable model (N=2964) OR (95% CI)
Appeal variables		
Dislikes pack	0.89 (0.66 to 1.20)	–
Lower pack appeal	1.04 (0.83 to 1.30)	–
Lower quality	1.22 (0.96 to 1.56)	–
Lower satisfaction	1.12 (0.87 to 1.45)	–
Lower value for money	1.03 (0.83 to 1.29)	–
Believes brands <i>do not</i> differ in prestige	0.79* (0.64 to 0.98)	0.88 (0.70 to 1.10)
Health warning effectiveness variables		
Notices GHW first when looking at pack	1.05 (0.83 to 1.33)	–
<i>Does not</i> believe dangers of smoking are exaggerated	0.98 (0.78 to 1.23)	–
Attributes much more motivation to quit to GHWs	2.31*** (1.73 to 3.09)	2.15*** (1.59 to 2.91)
Concealed pack in past month	1.20 (0.94 to 1.52)	–
Requested different GHW in past month	2.04*** (1.43 to 2.89)	1.88*** (1.30 to 2.71)
Perceived harm variables		
Believes brands <i>do not</i> differ in harmfulness	0.78* (0.62 to 0.99)	0.86 (0.68 to 1.09)
Balance between enjoyment and concern		
More enjoyment	1.00	–
Balance	0.98 (0.72 to 1.34)	–
More concern	1.40 (0.99 to 1.99)	–

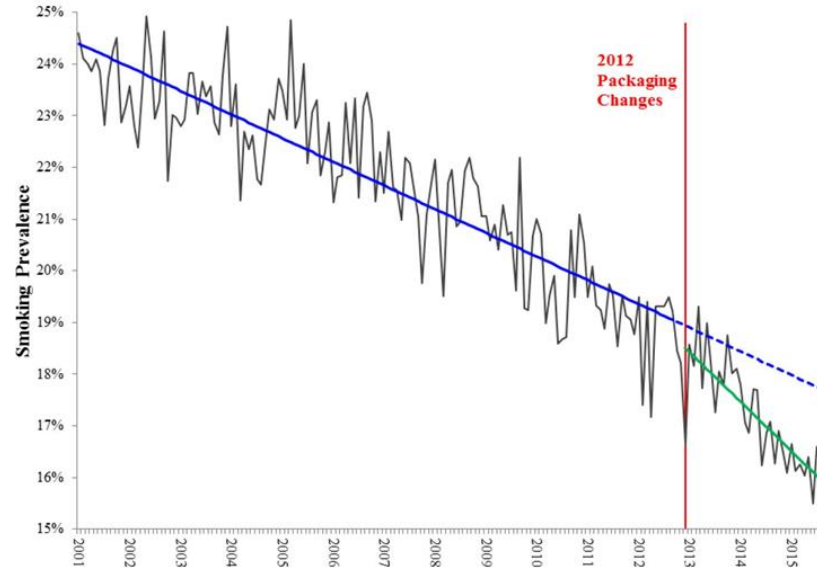
# Wakefield Study and Quitting Behaviour

Table 10: Including actual attempts to quit

Actual Quit Attempt	Brennan Method			Expanding the Time Frame				
	PP Year 1	Pseudo R2	N	Pre-PP	Roll Out	PP Year 1	Pseudo R2	N
<b>Appeal variables</b>								
Dislikes pack	0.94 (0.71 to 1.25)	0.1108	2961	0.78 (0.58 to 1.06)	1.09 (0.75 to 1.59)	0.95 (0.64 to 1.41)	0.1063	5228
Lower pack appeal	1.05 (0.84 to 1.30)	0.1102	2956	0.72 (0.45 to 1.65)	1.01 (0.53 to 1.90)	1.12 (0.77 to 1.62)	0.1053	5229
Lower quality	1.16 (0.92 to 1.46)	0.1108	3069	1.18 (0.79 to 1.78)	2.12 (1.22 to 3.67)	1.21 (0.83 to 1.77)	0.1072	5395
Lower satisfaction	1.18 (0.92 to 1.50)	0.1097	3070	1.14 (0.73 to 1.78)	1.78 (0.92 to 3.43)	1.22 (0.83 to 1.81)	0.1043	5396
Lower value for money	1.08 (0.88 to 1.33)	0.1100	3069	0.79 (0.58 to 1.05)	0.75 (0.51 to 1.11)	0.92 (0.63 to 1.34)	0.1048	5390
Believes brands do not differ in prestige	0.84 (0.68 to 1.04)	0.1103	2982	0.87 (0.65 to 1.17)	0.99 (0.67 to 1.48)	0.92 (0.62 to 1.36)	0.1043	5256
<b>Health warning effectiveness variables</b>								
Notices GHW first when looking at pack	1.11 (0.89 to 1.38)	0.1094	3073	1.23 (0.90 to 1.67)	1.54 (1.05 to 2.27)	1.16 (0.80 to 1.67)	0.1047	5400
Does not believe dangers of smoking are exaggerated	1.11 (0.89 to 1.37)	0.1089	3070	1.07 (0.78 to 1.46)	1.11 (0.75 to 1.65)	1.12 (0.74 to 1.69)	0.1025	5391
Attributes much more motivation to quit to GHWs	2.75 (2.07 to 3.67)	0.1282	3066	3.36 (2.08 to 5.42)	2.76 (1.57 to 4.87)	2.62 (1.71 to 4.00)	0.1224	5392
Concealed or covered pack in past month	1.26 (1.00 to 1.59)	0.1104	3072	1.66 (1.18 to 2.34)	1.61 (0.98 to 2.62)	1.41 (0.95 to 2.10)	0.1065	5398
Requested different GHW in past month	1.98 (1.40 to 2.79)	0.1155	3049	2.28 (1.06 to 4.89)	1.46 (0.63 to 3.37)	2.08 (1.32 to 3.29)	0.1082	5365
<b>Perceived harm variables</b>								
Believes brands do not differ in harmfulness	0.87 (0.70 to 1.08)	0.1101	2982	0.74 (0.55 to 1.01)	0.77 (0.53 to 1.12)	0.83 (0.55 to 1.25)	0.1051	5247
<b>Balance between enjoyment and concern</b>								
More Concern	1.93 (1.57 to 2.38)	0.1230	3070	1.86 (1.38 to 2.50)	1.67 (1.12 to 2.51)	1.95 (1.33 to 2.86)	0.1141	5393

# The Post-Implementation Review

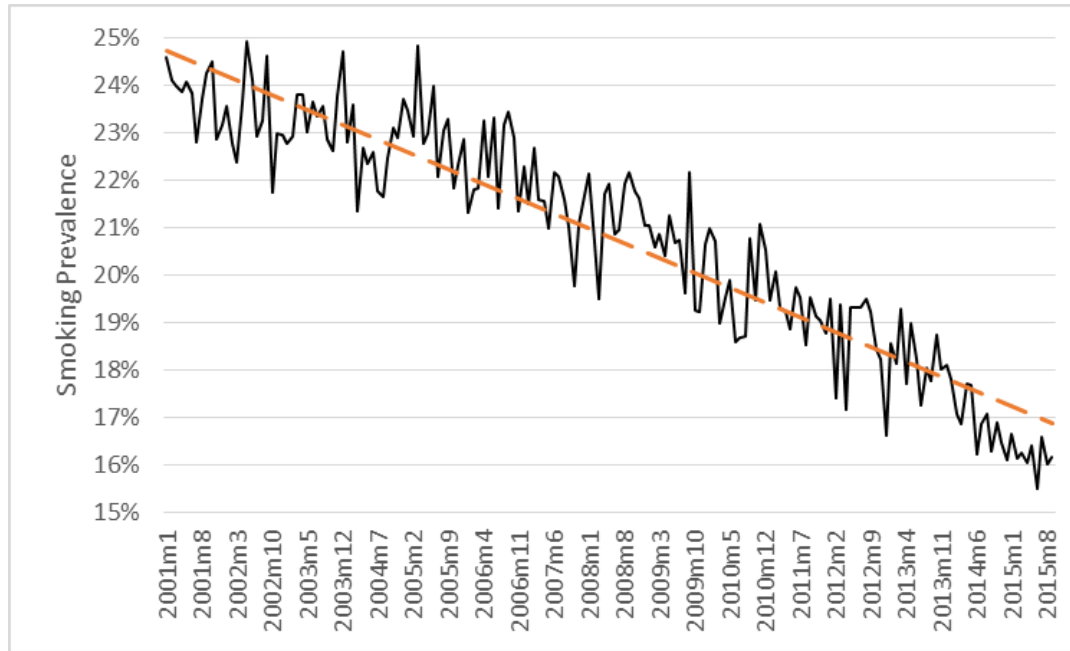
Figure 1: Overall Smoking Prevalence



Note: Data are weighted using the population weights in the RMSS data.

Source: RMSS data (January 2001 – September 2015).

# The Post-Implementation Review



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# The Post-Implementation Review

- Model has 800,000 observations and 52 explanatory variables – but not price.
  - Lindley’s paradox (large N makes it easier to find statistically significant variables at conventional levels).
- Unusual model base:
  - an unmarried, Australian born, 14 – 17 year old, male, with a tertiary qualification, employed full time, but with an income less than \$6000, and living in Victoria.



# The Post-Implementation Review

- 0.55% decline in tobacco consumption can be attributed to plain packaging.
  - Sample error is 0.6%.
  - Not a cohort analysis.
  - Not peer reviewed.
  - Data not publicly available for replication.

# Consequences

- Non-price competition was replaced by price competition only.

	2015 %	2013 %	% change
<b>Cigarettes Mainstream</b>	42.0	50.4	-17%
<b>Cigarettes Premium</b>	16.6	23.2	-28%
<b>Cigarettes Sub Value</b>	28.4	11.6	145%
<b>Cigarettes Value</b>	4.5	8.4	-46%
<b>Roll Your Own</b>	7.5	5.4	39%
<b>Other</b>	1.0	1.0	0%

Table 3: Tobacco Market Share.

Source AACS 2015, pg. 26.

# Consequences

- Increased criminality

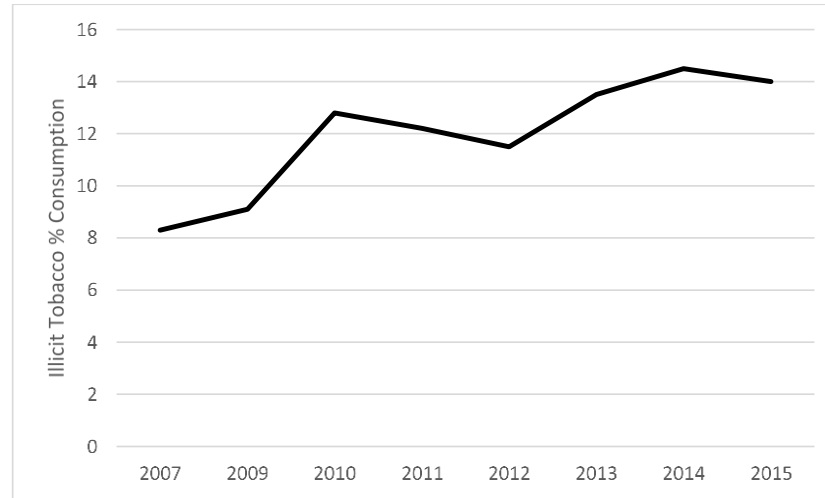


Figure 16: Illicit Tobacco as a share of consumption.

Source: KPMG (2016).

# Consequences

- Criminality is a “gateway drug” to further criminality
  - Criminals do not pay taxes.
  - Criminals do not pay dividends.
  - Criminals engage in violence (kidnapping attempt).
  - Criminals increase insurance costs.
  - Criminals subvert societal institutions.
  - Criminals compete unfairly with legal business.

# Consequences

- Alliance of Australian Retailers:
  - Small business retailers like those we represent are already under additional pressure due to **excessive tobacco regulation**. In addition to ensuring all tobacco products comply with far-reaching retail regulations, our members are **exasperated by the consequences of plain packaged products** and extreme tax rises that has led to illicit tobacco being so easily sold. Threatening not only the safety of our local communities, the **barefaced sale of illicit tobacco** encourages customers away from legitimate retailers on the basis of price and within the environment of the now **undistinguishable differentiation of tobacco products**.
- Australian Retailers Association:
  - There is no evidence that recent plain packaging moves have worked and consumers have sought **illegal product** instead with the **loss of brand loyalty** the illegal market has grown to the magnitude of 14.3% of consumption.

# This is just the beginning

- This is an assault on all intellectual property and investment:
  - Alcohol
  - Children's toys
  - Computer games
  - Fast food
  - ...

# Wrapping it up

- Government has taken control over the entire marketing mix of an entire industry.
- Public Health activism is anti-business.
  - \_\_\_\_\_ is the new smoking.
- The role of evidence:
  - UK High Court ruled peer review evidence is definitive:
    - Replicability crisis in all social sciences.
    - Corruption of peer review.

# How to find me

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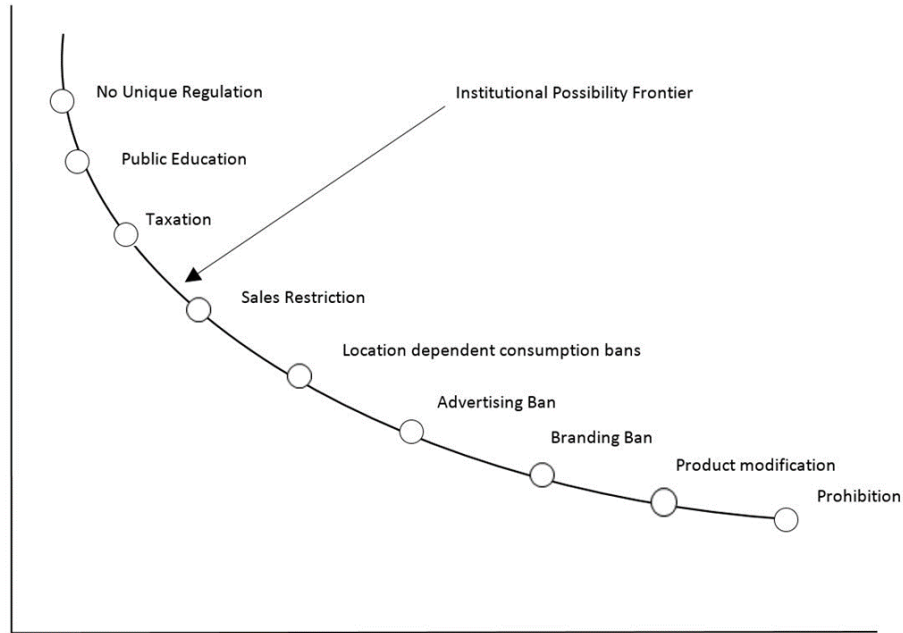


# The Theory of Tobacco Control

- Medical Perspective:
  - Smoking is single largest cause of premature death.
  - Smoking should be treated as a disease and eradicated.
  - “Optimal” level of smoking is zero.
- Economic Perspective:
  - Smoking has an asymmetric information problem.
  - Public education.
  - Smoking has an externality problem.
  - Pigouvian taxation.
  - “Optimal” level of smoking is not zero.

# The Theory of Tobacco Control

Social losses due to private expropriation (Disorder)



Social losses due to state expropriation (Dictatorship)

# Government control of the Marketing Mix

- Government has taken control of entire marketing mix
  - Price – excessive taxation
  - Product – control over tobacco products, ban of menthol, filters, etc.
  - Place – when and when tobacco can be consumed
  - Promote – total ban on promotion/advertising
  - People – control over consumers and marginalisation of smokers
  - Process – making it difficult for retailers and consumers to interact
  - Physical evidence – replacement of trademark with plain packaging