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### Smoking, progressive liberalism, and the law

Ken I. Kersch<sup>a</sup>

<sup>a</sup> Department of Politics, Corvinn Hall , Princeton University , Princeton, NJ, 08544 E-mail:

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*Ken I Kersch*



paternalistically inclined political activists and policy makers con-  
scripted the physical and social sciences to construct an alternative

of the danger of applying it to people whose minds are liberal

*Knowledge of Risk*

Despite centuries during which the ill effects of smoking on smokers' health have been widely understood, first due to common experience and later to meticulous, well-publicized scientific studies, it is an article of faith for many progressive liberals that the only reason people continue to smoke is that they are either misinformed or uneducated about the dangers of smoking; or that, once informed of these dangers, they are helplessly enslaved by an "addiction," and have lost all power to act on their knowledge as autonomous, self-determining individuals.

Nozick 1974, 73–78). Traditional forms of liberal theory, devoted to replacing anarchy with government and to justifying the rule of law, were risk-averse only in their fundamentals. Some influential modern variants, in a somewhat natural extension of these fundamentals, have broadened the scope of liberalism's concern for safety into a risk-averse public philosophy preoccupied with the formulation of an aggressively interventionist state that works to guarantee what progressive theorists have agreed are the preconditions of autonomy—a process helped immeasurably by the leftist conviction that many ills, including self-inflicted ones, can be traced in one way or another to capitalism and its agents.

Modern progressive liberals stand manifestly ill at ease in the company of many human types—like the entrepreneurial businessman and others—who promote, celebrate, engage in, reward, and profit from daring and passionate risk-courting (or gambling) and bold and creative individualism. *Classical and Modern Forms of Liberalism (Classical Liberalism)*

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analysis arise from his willingness to place survey data adduced by reform-minded, paternalistically inclined scientists on stage alongside research in other, seemingly unrelated but revealing areas. A case in point

not impressionable or deterable. What did have a significant effect on teen smoking was whether smoking was permitted at home. Studies have shown that teenagers who live in households where smoking is not allowed smoke only one-third to one-half as much as those who live in households where it is (Kersch 2008; Nicotri 2003, 18). There

*Slaves of Their Addiction*

Of course, it is possible to be fully aware of the dangers of smoking, to continue to smoke, and yet for that "choice" to be no real choice at all. Such would be the case if smoking were an addiction, a behavior

more addicted to cigarettes than they are to lawyers or the opera” (Viscusi 2002, 172).

The effect on demand of a unit price increase for cigarettes, as for other products, is greater for lower-income consumers and smaller for those with higher incomes. But when people want to cut back on their smoking, most are perfectly capable of doing so, and do so routinely

(Viscusi 2002, 168; see also Coadua 1980, 96; see Tallian and Wac



smoke in the workplace despite the absence of evidence about its harm, federal regulators massaged and manipulated the data. Lacking re-

culating the *net* financial injury (the relevant concern when determining damage awards) in these lawsuits was thwarted by the states' insistence that it is acceptable to take account of the financial costs of

vide college scholarships, build roads and bridges, improve jails, provide wheelchair access for sidewalks, and build parks in poor neighborhoods. A large portion of California's take of \$300 million went to pay for



ethics” of the modern liberal state has done just that. “Under some conditions,” he writes, “any and all conduct can produce harmful consequences. This means that liberalism has a tendency, *unless self-consciously restrained* to spread toward the entire society and all conducts

devoted to them are either ignored or mocked, and they founder (Kuhn 1996, 4, 16).

The production and uses of legal evidence at trial are socially determined in a similar way. This does not mean that “law” does not exist, any more than the narrative dimension of science means that the law of gravity doesn’t exist. The most crucial decision a trial lawyer makes in preparing for trial involves developing a “theory of the case,” or a story through which he evokes some of the understandings and prejudices of the surrounding culture and impresses others according to the firm in a

"politically correct" and "undesirable" systems." "A" and "B" are similar "C"

[REDACTED]

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rettes, paid by the companies agreeing to this settlement directly to the states, was imposed to offset the financial losses the states ostensibly suffered due to the choices made by their citizens. For initiating the suit

liberalism. This liberalism operates on the faith (despite all historical evidence) that it is normal and rational for human beings to avoid risks the only benefit of which is sensual, aesthetic, or social pleasure (Douglas 1992, 41; Jasanoff 1995, 13).

People know that smoking is dangerous. But they like to do it. And, for that reason, they do it despite the risks. How to deal with that? All of the wisdom of the tobacco was ultimately given back to the

tively easy to demonstrate that people act irrationally. Under these conditions, unless regulators and judges both acknowledge the potential seductions of paternalism, and, like Ulysses to the mast, self-consciously restrain themselves, the tendency of the state will be to become increasingly invasive. More significantly, perhaps, it will be able to do so with a technical proficiency that hides the fact that it is acting paternal





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