



The Necessity of Tobacco Regulation

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The Necessity of Tobacco Regulation

Ken TANAKA*

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I. Introduction

In Japan, problems related to tobacco smoking have traditionally been perceived as problems of preference, such as whether tobacco use is a nuisance, is bothersome, or is enjoyed by others. These perceptions persist till date. Thus, the majority of people believe that problems concerning tobacco use should be addressed as issues that deal with “smokers’ manners.” Therefore, nonsmokers have neglected to demand legal and governmental rules or regulations concerning tobacco smoking.

However, are smoking problems truly limited to manners or preferences? Can problems related to tobacco use be effectively resolved by smokers’ manners alone? In addition, is it unreasonable for nonsmokers to demand legal rules and smoking regulations?

In this study, I examine the defining characteristics of smoking problems in section (II) and elucidate why regulations on smoking are a necessity in section (III).

* Professor, Faculty of Law, Kansai University.

II. Defining Characteristics of Problems regarding Tobacco-Smoking

In this study, I demonstrate how smoking problems are characterized based on the following two essential concepts: First, these problems are not an issue of preference, such as whether tobacco use causes a nuisance, is bothersome, or is enjoyed by others; instead, they are an issue of health and livelihood (and consequently, one's right to life). Second, problems related to tobacco use should not be resolved through "manners," but through legal rules and regulation.

1. Problems regarding tobacco use are not related to preference but to health and livelihood

Japan Tobacco International (JTI) indicates problems regarding tobacco use as being related to preference, such as whether tobacco use is a nuisance, is bothersome, or is enjoyed by others¹⁾. However, tobacco is essentially a "package of toxins," known to "be exceedingly difficult to quit for those who use it relatively consistently²⁾". The effects of smoking tobacco are not just limited to harming smokers themselves: Use of tobacco produces environmental tobacco smoke (ETS³⁾), and various diseases are caused by passive inhalation of this secondhand smoke. The meaning of the word "nuisance" may differ according to personal opinion; however, secondhand smoke extends to a dangerous level because it can lead to deterioration of one's health.

Based on the information above, problems regarding tobacco use certainly extend beyond preferences; moreover, tobacco use poses a threat to health and livelihood (and consequently, to one's right to life). Hence, it is imperative that these issues not be perceived as problems of preference. To prevent such a perception, words such as *aienka* (a person who takes pleasure in smoking) and *kenenka* (a person who greatly dislikes smoking) should not be used because whether people like or dislike tobacco creates an opportunity for a discussion to be overly influenced by emotion. To avoid discussing problems regarding tobacco use from a subjective perspective (i.e., maintaining a composed discussion), neutral words such as "smoker" and "nonsmoker" should be used instead of the more subjective *aienka* and *kenenka*⁴⁾.

1) For example, see JT Website, available at <http://www.jti.co.jp/corporate/enterprise/tobacco/responsibilities/recognition/index.html>, <http://www.jti.co.jp/corporate/enterprise/tobacco/responsibilities/responsibility/coexistence/index.html> (last visited October 16, 2015).

2) For more on tobacco, see *Smoking and Health, Report of the Committee on Smoking and Health Problems [New Edition] ((Shinpan) Kitsuen to Kenko, Kitsuen to Kenko Mondai Ni Kan Suru Kentokai Hokokusho)*, 2002, Hokendojinsha, p.35ff.

3) For more on ETS, see *Smoking and Health, Report of the Committee on Smoking and Health Problems*, *supra* note 2, p.175ff.

4) See Yohei Murata, 2012, *Environmental Study of Second-hand Smoke (Judo Kitsuen no Kankyogaku)*, Sekaishissha, p.179ff.

2. Problems regarding tobacco use should not be resolved through manners, but through legal rules and regulation

The idea that nonsmokers should not wantonly evoke their rights without reason, that problems regarding tobacco use are essentially moral or related to manners, and that they can be resolved through social consideration is widely held. However, these problems cannot be resolved through morals and manners alone, thus giving nonsmokers no choice but to evoke their rights⁵⁾. Relying on smokers' morals and manners to resolve problems regarding tobacco use equates to admitting the current state and consenting to oppression by smokers. Furthermore, nonsmokers can only complain about the damage it causes them. Certainly, this indicates that manners and morals cannot resolve any aspect of problems related to tobacco smoking.

If tobacco problems cannot be resolved by manners, then how should they be resolved? One can easily conclude that the answer is "through legal rules." However, when considering the complex ways in which these problems favorably and adversely affect different parts of society, configuring these rules is yet another issue. In modern Japanese society, laws (or regulations and ordinances) can be established by a majority opinion in the National Diet (or congress) after debates by elected delegates on a national or civil level and can be further revised to accommodate society's complexities. This being said, such laws should be citizens' written consensus nationally or locally, and tobacco-related problems should be resolved in accordance with them.

III. The Necessity of Tobacco Regulation (Legal restrictions on tobacco smoking)

Based on the problems related to tobacco smoking mentioned in section II, I now further examine the necessity of legal regulation on tobacco smoking.

In governmental regulation, many questions are decided based on "paternalism" in countries throughout the world, including Japan, for regulation that extends beyond questions of protection of intrinsic human rights. The root word of paternalism⁶⁾ is pater, Latin for father; in this concept, the government and its laws intervene in private citizens' lives and activities, similar to the way in which a father intervenes in his children's lives.

In this section, I examine why regulation of tobacco use, that is, legal restrictions on smoking tobacco, is deemed necessary through the perspective of (1) "freedom to smoke"

5) See Murata, *supra* note 4, p.22ff. And See Question 20 from "47 prefecture-wide opinion poll about second hand smoke," a study conducted by Pfizer in 2012 concerning the condition of damages caused by secondhand smoke in Japan, available at <http://www.pfizer.co.jp/pfizer/company/press/2012/documents/20120525.pdf> (last visited October 16, 2015).

6) As for paternalism, see Hideki Shibutani, 2013, "Paternalism and Review of Unconstitutionality (Paternalism to Ikenshinsa)", Yasuo Hasebe et.al. eds., *Aspects of Modern Constitutionalism 2 (Gendai Rikkensyugi no Syoso (Gekan))*, Yuhikaku, p.70ff.

and (tobacco) regulations based on protecting intrinsic human rights, as well as (2–8) (tobacco) regulations based on paternalism.

1. Preventing harm to others (internal constraint of “freedom to smoke”)

All kinds of civil liberties are justly subject to restriction in order to prevent harm to other people’s health or livelihood. Thus, we must be cautious of “the right to smoke,” because this “right” operates on the assumption that it does not cause harm to others’ health or livelihood. In other words, although one may claim “the right to smoke” on the grounds that it does not cause harm to others’ health or livelihood, the fact is that smoking does cause harm and can be justifiably restricted to prevent such harm.

Tobacco smoke is more than a nuisance to nonsmokers who are exposed to it. In fact, secondhand smoke is linked to a variety of health ailments, including eye and throat pain, lung damage, and brain damage through exposure via the bloodstream. Because tobacco smoking causes damage to surrounding people’s health, it can be justifiably regulated by government legislation.

Thus, from the perspective of preventing harm to nonsmokers’ health, “secondhand smoke prevention measures” are entirely justifiable⁷⁾.

2. Balancing the interests of smokers and nonsmokers

In modern society, conflicts are not limited simply to those between government and citizens; conflict between individuals in terms of their freedoms and interests is quite common. To prevent such conflicts, the government is responsible for defining the limits of individual freedoms and preventing people from taking actions that exceed those limits⁸⁾.

In fact, since conflicts are not limited to those between government and citizens, the government is entrusted with regulating the complex system of society’s opposing interests. Similar to environmental rights or the right to free access to information, regulations on tobacco use pose conflicts of interest. Regulations based on administrative law serve an important purpose as they are established after these opposing interests are considered. Furthermore, the very purpose of administrative law is to prevent disputes and damages; in other words, to promote a better society⁹⁾. If this is the case, administrative

7) For more on secondhand smoke prevention measures, see Ken Tanaka, 2012, “A Study of Tobacco Regulation (3) (Tabako Kisei no Ho Shisutemu to Kongono Hoseiteki Kadai (3.Kan))”, *The Law Review of Kansai University*, Vol.62, No.3, p.177ff.

8) See Makoto Kojo, 1989, “Paternalism and The Regulation by the Government (Paternalism to Seihu Kisei)”, *Hogakukyoshitsu*, No.101, p.61ff.

9) 1) Prevention and straightforward resolution of disputes and damage; 2) control of disorder and the improvement of society; and 3) the direct provision or the securement of the provision of the services needed for daily life can be considered as three reasons for the existence of administrative law. For more on the reasons for the existence of administrative law, see Yasutaka Abe, 1997, *The Administrative Law System [New*

regulations should be established for preventing disputes and damages related to tobacco use before such damages occur, thus promoting a better society.

Among various types of regulations on tobacco use, secondhand smoke prevention measures, in particular, require strident administrative legal regulation because that is where smokers and nonsmokers' interests are most clearly and directly in conflict¹⁰. However, such regulations must be configured to accurately address the essence of this conflict of interest, namely that smokers use tobacco voluntarily (i.e., for personal pleasure), whereas nonsmokers are indiscriminately exposed to tobacco smoke. In other words, nonsmokers are forced to smoke tobacco against their will. Moreover, the situation is biased because nonsmokers' health is damaged by secondhand smoke, and there is no merit in enduring exposure to tobacco smoke. Furthermore, there is no way for the offender (smoker) and victim (nonsmoker) to take one another's place in this conflict. Thus, the essence of the conflict of interests between smokers and nonsmokers is clearly not one wherein mutual cooperation will suffice, but the weaker party must be protected. Therefore, regulation on tobacco use must certainly restrict freedom to smoke¹¹. A society that forces a nonsmoker to simply endure exposure to smoke cannot, be considered an egalitarian society. Since this is currently the case, public spaces shared by smokers and nonsmokers, particularly indoor spaces, should be ruled as "non-smoking areas" via strict administrative regulation.

In Japan, the majority of nonsmokers do not live in environments where clean air is common and exposure to polluted air is not that frequent. The air in workplaces, restaurants, cafes, and other areas is polluted by tobacco smoke. Ashtrays are commonly found at the entrances of buildings, where tobacco smoke easily drifts inside. Even outside, the level to which nonsmokers are exposed to tobacco smoke is surprising. Furthermore, several people—children and the physically infirm—may experience many adverse health effects from even minor exposures to secondhand smoke. If no action is taken to regulate tobacco use despite these circumstances, the situation equates to acceptance of "oppression" by smokers. From this perspective, secondhand smoke prevention measures can be justifiably enacted.

Edition] (*Gyosei no Ho Shisutemu (Shinpan)*), Yuhikaku, p.2ff, Yasutaka Abe, 2008, *Interpreting Administrative Law* (*Gyoseiho Kaishakugaku*), Yuhikaku, p.2ff.

10) See Yasutaka Abe, 1980, "The Rights of Smokers and Nonsmokers, Regulation of Tobacco Smoking, Vol. 2 (Kitsuenken, Kenenken, Tabako no Kisei (Ge))", *Jurist*, No.725, p.109ff.

11) "Mutual cooperation" is limited to cases where the two parties can exchange places with one another. In cases where this is not applicable, one party is always the offender and the other party is always the victim. This requires "protection of the weaker party" rather than "mutual cooperation," and the assailing party's rights must be restricted. From this perspective, to what extent civil rights are to be limited requires regulation via policy measures. See Noriho Urabe, 2006, *Constitutional Law [2nd. Edition]* (*Kenpogaku kyoshitsu*), Nippon Hyoron sha, p.80.

3. Protection of individuals who lack the ability to make decisions for themselves

Because some individuals lack the ability to make decisions for themselves, legal regulations to protect their interests are enacted on their behalf. While based on paternalism, these laws are more easily understood as restrictions that actually protect individual interests. That individuals are best equipped to make decisions about their interests holds true if the concerned individual is a legal adult and possesses a normal mental state that allows sound decision-making. Thus, minors and those with mental illness or disabilities are frequently incapable of making important decisions about their interests. In these cases, limitations of freedoms must be imposed on such individuals as a means of protecting their interests¹²⁾. Some conventional examples include restrictions of certain actions and responsibilities of individuals with limited capacity (e.g., minors, adult wards, persons under curatorship) in civil law, as well as physical protection of mentally unstable people, regardless of their will or intentions; for example, Article 3 of the Police Official Duties Execution Act.

The “right to decide” refers to individuals’ right to make decisions about their lives, but this right requires that the individual possess the autonomy to do so¹³⁾. In cases where individuals lack sufficient ability to make decisions, intervention is justifiable¹⁴⁾.

From this perspective, the passage of administrative measures preventing minors from smoking tobacco is justifiable¹⁵⁾.

4. Protection of the right to information

Because tobacco smoking is a self-harming activity, it gives rise to the question of whether consenting individuals should have the freedom to partake in it. The crux of the problem is to what extent the government is able to exert paternalistic intervention for people who partake in self-harming activities. This extent is determined by whether individuals can make decisions based on complete and accurate information, with no influence from others¹⁶⁾. That is, if one is not provided with accurate information, one cannot make an accurate decision. Concerning tobacco smoking, if consumers are not provided with accurate information, then it can be argued that their choices are limited¹⁷⁾. Thus, when individuals are making decisions without access to necessary information, administrative regulation by the government is justifiable.

In terms of providing consumers with accurate information about tobacco, making notifications mandatory about harm from tobacco products through administrative

12) See Kojo, *supra* note 8, p.58ff.

13) See Joseph Raz, 1986, *The Morality of Freedom*, Oxford University Press, pp.371-373.

14) See Yoshiyuki Koizumi, 2007, “ Self-Determination and Paternalism (Jikokettei to Paternalism)”, *New Developments of human rights theory (Jinkenron no Shin-Tenkai)*, Iwanami Syoten, p.175.

15) As for administrative measures preventing minors from smoking tobacco, see Tanaka, *supra* note 7, p.201ff.

16) See Hideki Shibutani, 2013, *Japanese Constitutional Law [2nd. Edition] (Kenpo)*, Yuhikaku, p.190ff.

17) See Yoshio Isayama, 1999, *The Modern Tobacco War (Gendai Tabako Senso)*, Iwanami Shoten, p.12ff.

regulation is justifiable¹⁸⁾. Moreover, such a statement¹⁹⁾ as “Tobacco is essential for a change of pace and stress relief” is not an example of providing accurate information to consumers; this can be avoided through administrative regulation²⁰⁾. Additionally, tobacco products of the JTI that bear words such as “mild” and “light” in their names promote the misconception among consumers that these products pose a reduced risk to their health; however, they do not. Such misinformation could also be justifiably regulated by administrative measures²¹⁾.

Currently, important information regarding tobacco is not being conveyed to consumers; for instance, the harm and risk of dependency (or addiction) that tobacco smoking possesses. The major reason is that the tobacco industry as a whole is involved in manipulating available information to conceal the truth from consumers²²⁾. Thus, strict regulation requiring the availability of accurate information is of utmost importance.

5. Protection of individuals who lack the ability to make decisions for themselves

Recently, administrative regulation concerning individuals who lack the ability to make decisions for themselves has been widely adopted, particularly in consumer protection and safety regulations. Against the background of administrative regulation is the fact that, although individuals receive the necessary and accurate information they need to make a decision, they might also lack the ability to determine if the information is accurate²³⁾. Thus, justification for administrative regulations concerning individuals who cannot make decisions for themselves in the real world is broadly defined.

This raises the following question: Do smokers possess the ability to make decisions for themselves? In general, smokers tend to focus on short-term enjoyment in the present, and they do not generally try to avoid dangers in the future²⁴⁾. Coincidentally, studies show that individuals who focus on pleasure in the present moment and have a low rate of danger avoidance tend to smoke tobacco, be heavy drinkers, and participate in various gambling activities such as pachinko and horse racing²⁵⁾. In the end, smokers choose to

18) As for making notifications mandatory about harm from tobacco products through administrative regulation, see Tanaka, *supra* note 7, p.228ff.

19) See the website of JT, available at <http://www.jti.co.jp/corporate/enterprise/tobacco/responsibilities/responsibility/dependency/index.html> (last visited October 16, 2015).

20) As for the administrative regulation on advertising of tobacco, see Tanaka, *supra* note 7, p.209ff.

21) As for the administrative regulation on product name of tobacco, see Tanaka, *supra* note 7, p.232ff.

22) See Philip J Hilts, 1996, *Smokescreen: The Truth behind the Tobacco Industry Cover-up*, Addison Wesley Reading. And see ASH (Action on Smoking and Health). 1998. *Tobacco Explained*, available at http://www.ash.org.uk/files/documents/ASH_599.pdf (last visited October 16, 2015).

23) See Kojo, *supra* note 8, p.62.

24) See Kazuhiro Arai, 2012, *The Health Economics of Smoking and Nonsmoking: Human Nature Revealed by Tobacco (Kitsuen to Kinen no Kenko Keizaigaku: Tabako ga Akasu Ningen no Honsho)*, Chuo Koron Shinsha, p.43ff.

25) See Takanori Iba and Rei Goto, 2009, “Interdependency among Addictive Behaviours and Time./ Risk

ignore the dangers of addiction and continue smoking, losing the ability to stop. It can also be indicated that smokers do not perceive and plan for their potential future expenses²⁶⁾.

The majority of smokers begin smoking when they are still minors, and most cite their original motive as “curiosity” or “no particular reason”²⁷⁾. In other words, these minors reached for their first cigarette without considering the dangers of addiction (or by neglecting these dangers if they did consider them), optimistically believing that they would not become addicted. The result is certainly addiction brought about by continual use and an inability to quit when desired. This indicates that accurate information concerning tobacco addiction is not available to a sufficient degree.

“Characteristics of smokers” discussed above suggest that smokers lack the ability to make decisions for themselves, and if this is the case, then administrative regulation by the government is justifiable.

6. Support for overcoming weakness of will

Within the framework of intervention through “strong paternalism,” distinguishing between “will paternalism” and “critical paternalism” is helpful²⁸⁾. Will paternalism addresses problems of weak will, which can be overcome through intervention. An example is how wearing a seat belt is deemed mandatory when driving an automobile. Seat belts are an effective security measure; however, putting them on presents a temporary inconvenience, and thus some will choose not to wear them. However, if an accident occurs, these same people will surely regret their choice. In other words, the usage of seat belts being made mandatory is a form of intervention that helps people overcome weak will. Will paternalism essentially creates an incentive for individuals to take actions of which they are already aware and for which they understand the reasons²⁹⁾. On the other hand, in cases where a person’s intended way of life is damaging, critical paternalism acts to restrict freedoms to protect their “true” interests. This line of thought, for example, can be applied to restrictions on homosexuality or on viewing pornography. Although such restrictions result from feelings of disgust that individuals have because they perceive the aforementioned acts as immoral or unpleasant, prohibition of

Preferences: Discrete Choice Model Analysis of Smoking, Drinking, and gambling,” *Journal of Economic Psychology*, vol.30, pp.608-621.

26) See Ernst Fehr and Peter K. Zych, 1998, “Do Addicts Behave Rationally?,” *Scandinavian Journal of Economics*, vol.100, pp.643-662.

27) See Hiroshi Kawane, 2004, “Nonsmoking Education (Kin’en Kyoiku),” *The Journal of the Japanese Respiratory Society*, No.42, p.601ff.

28) See Ronald Dworkin, Isao Kobayashi et al. trans., 2002, *What is the Equality? (Byodo toha Nanika)*, Bokutakusya, p.364.

29) See Will Kymlicka, Shin Chiba & Seiki Okazaki trans., 2005, *Contemporary Political Theory [New Edition] (shinpan) Gendai Seiji Riron*, Nihon Keizai Hyoronsha, pp.397-398.

homosexuality and pornography use as punishment can at times be justified through critical paternalism.

As mentioned in section 8, will paternalism can also be justified to balance the overall interests of society at large, such as measuring public costs related to traffic accident management in the case of the compulsory seat belt use. However, regarding critical paternalism, unless a certain activity causes direct harm to others, an individual's freedom to perform it should not be restricted³⁰⁾.

Incidentally, for the majority of smokers, the effectiveness of efforts at self-restriction is limited. Thus, it can be argued that higher levels of quitting (or decreasing the use of) tobacco would be achieved if smokers are not the only party regulating themselves and if other entities act to support their self-restraint. The most appropriate entity for conducting this support is the government through administrative regulation³¹⁾. Restrictions on tobacco use that can be expected to produce results may include limiting smokers' access to smoking areas in public and the workplace, as well as raising taxes on tobacco products.

7. Implementation of minimal social morality

Administrative regulation exists to enforce a minimal level of social morality. Foolish acts or conduct against social morality is not beneficial to the perpetrator and may be a nuisance to others. Restrictions that deal with these concepts are divided into two categories³²⁾.

The first refers to restrictions on abandonment of life and liberty, in terms of, for instance, "death with dignity" (euthanasia) and human trafficking. Regulating one's life and liberty is recognized as valid. Life and liberty are defined as inalienable rights, and their disposal is strictly regulated without regard for an individual's ability or inability to make decisions³³⁾. Thus, consensual disposal of one's life is punishable as murder, and any agreements to dispose off one's life are viewed as invalid.

The second category refers to legislation that prohibits immoral conduct even in the absence of an injured party, such as prostitution, drug use, pornography, and gambling. In these cases, individual decisions to partake in these activities are thought to lack proper reasoning and are thus disregarded. The hallmark examples of pornography, gambling, drug use, and an individual's choice to partake is assumed to signify lack of ability to make decisions due to weak ethics.

As stated earlier, the idea that nonsmokers should not wantonly evoke their rights

30) See Koizumi, *supra* note 14, p.175ff.

31) See Arai. *supra* note 24, p.178.

32) See Kojo, *supra* note 8, p.59, 62.

33) However, many constitutional scholars hold the opinion that "it is necessary to legally admit 'death with dignity' or euthanasia as exceptional cases in order to guarantee a self-decision by the person in question and to preserve human dignity." See Koji Tonami, 1999, *Constitutional Law [3rd. Edition] (Kenpo)*, Gyosei, p.186ff, see Shibutani, *supra* note 16, p.190ff., see Koizumi, *supra* note 14, p.186.

without reason, that issues related to tobacco use are essentially moral/manners' problems, and that they can be resolved through social consideration is widely held. Certainly, there is no better case than one in which this is true; however, this is simply not a reality. In the end, relying on smokers' morals and manners alone to solve problems related to tobacco use solves nothing and leaves nonsmokers with no other choice than to complain about the damage it causes them. Thus, perceiving problems related to tobacco use as moral issues results in exclusive support of the smoker and offers no understanding of the nonsmoker's plight.

Based on "Guidelines for the Advertising of Tobacco Products" in Japan, tobacco-related advertising allowed on broadcast media might serve only to increase public awareness of smoking manners. In other words, "manners development commercials" are currently permitted in Japan. Notably, however, by addressing problems related to tobacco use as manners' problems, information about issues concerning secondhand smoke, environmental tobacco smoke, the harmfulness of tobacco, and the risk of dependency is not fully conveyed to the consumers. Furthermore, this places responsibility for solving problems related to tobacco use entirely in smokers' hands³⁴.

Certainly, differentiating between the realms of morality and law is a difficult problem in itself; however, when morality does not offer an adequate solution to a problem, legal regulation is the only option³⁵. Thus, to implement a minimal level of social morality, administrative regulation can be justifiably applied to the issue of tobacco use.

8. Reducing the burden on society

In a departure from the concept that the results of an individual's mistaken judgment or choices are borne by the concerned individual alone, individual choices are limited by government intervention when they burden society or when the government must clean up after individual mistakes. In the example of mandatory use of seat belts, since seat belts are designed to protect drivers and passengers of vehicles, there is certainly an argument for leaving the decision of whether to wear a seatbelt to the driver and passengers themselves. However, the inconvenience of being obligated is significantly outweighed by the social benefits, such as seat belts' contribution to injury prevention in accidents, reduction of the burden on victims, and reduction of costs associated with accidents (e.g., car repair, medical bills, and temporary or permanent physical handicaps)³⁶. Just as the enforcement of wearing seat belts is justified by its correlation to reduced traffic-related

34) See Kazuhiro Nagao, 2009, *Let's change a life in a non smoking (Kinen de Jinsei wo Kaeyou)*, Kabushiki Gaisya Epokku, p.148.ff. As for Prohibition of CM of tobacco companies, see Tanaka, *supra* note 7, p.209ff.

35) See Yasutaka Abe, 1980, "The Rights of Smokers and Nonsmokers, Regulation of Tobacco Smoking, Vol. 1 (Kitsuenken, Kenenken, Tabako no Kisei (Jo))", *Jurist*, No.724, p.46ff.

36) See Takao Yamada, 1987, *Private Business and Law's Business (Shiji to Jiko Kettei)*, Nippon Hyoronsha, p.113.ff., see Abe, *supra* note 9, *The Administrative Law System [New Edition]*, p.90.ff., see Kojo, *supra* note 8, p.62ff.

public costs, administrative regulation is justified when it reduces a burden on society at large³⁷⁾.

Furthermore, not only does tobacco use cause problems from a health perspective—increased rates of disease and death in smokers and those exposed to environmental tobacco smoke—but it also causes problems at a different social level; for instance, causing fires and their related economic and environmental burdens. At the very least, the cost of damages associated with tobacco greatly exceeds tax revenue produced by their sales; thus, it can be argued that tobacco products are very cheap³⁸⁾. Strangely, despite available scientific evidence, the government has chosen not to enact tobacco regulations and has instead chosen not to avoid the dangers associated with tobacco³⁹⁾.

From this perspective, raising taxation on tobacco products by administrative regulation in order to balance the burden tobacco use places on society is entirely justifiable⁴⁰⁾.

IV. Conclusion

First, I would like to consider the constitutionality of regulations on tobacco use (administrative regulation of tobacco use).

Smoking tobacco not only negatively impacts smokers' health but also significantly impacts nonsmokers' health. According to the WHO "Framework Convention on Tobacco Control," "scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability" (Article 8, Clause 1), thus indicating the damage of secondhand smoke. In today's international community, harm from secondhand smoke is treated as a self-evident truth. Additionally, several examples of significant economic losses can be noted in society; for instance, medical costs associated with diseases caused due to tobacco use in smokers and nonsmokers and decreased productivity due to such diseases. With such serious health risks facing the populace, especially the contraction of smoking-related diseases, the government should have a vested interest in addressing this issue.

Based on this, without disregarding the constitutionally recognized "right to smoke," appropriate regulations on tobacco use can also exist within the reaches of the constitution as long as they apply to publicly shared spaces (e.g., public transportation, the workplace, and other areas) and operate according to reasonable methods in appropriate situations⁴¹⁾.

37) See Koizumi, *supra* note 14, p.177.

38) See Sijbren Cnossen and Michael Smart, 2005, "Taxation of Tobacco," Sijbren Cnossen ed., *Theory and Practice of Excise Taxation*, Oxford University Press, pp.33-46.

39) See Hiromu Nishiuchi, 2013, *Statistics is the Strongest Academic (Tokeigaku ga Saikyo no Gakumon de aru)*, Daiyamondosya, p.144ff.,

40) As for the administrative regulations on price increases of tobacco tax, see Tanaka, *supra* note 7, p.219ff.

41) See Hideyuki Osawa, 1994, "Anti-Smoking Rights Litigation (Kenenken Soshu)," *Jurist*, No. 1037, p. 183.

Moreover, regarding restrictions on the use of tobacco from a public health perspective, it is essential to alter views on the issue in order to produce stronger regulations. In the United States, regulations on smoking tobacco in public spaces, particularly the workplace, are universally recognized as constitutional. While “the right to smoke” and “nonsmokers’ rights” come into conflict, smokers use tobacco voluntarily (for personal pleasure), whereas nonsmokers are indiscriminately exposed to tobacco smoke. Moreover, the situation is prejudiced because nonsmokers’ health is damaged by secondhand smoke, and there is no merit for enduring tobacco exposure. Thus, the essence of the conflict of interests between smokers and nonsmokers is clearly not one wherein mutual cooperation will be sufficient, but the weaker party must be protected by limiting smokers’ freedom to smoke. Additionally, if freedom to smoke is treated as an intrinsic right on the grounds that it does not cause harm to others’ health or livelihood, then freedom to smoke equals “the right to subject others to secondhand smoke.” Currently, in Japan, one cannot possibly say that smokers are appropriately considering manners since nonsmokers are being exposed to tobacco smoke, along with its negative health effects, in their daily lives. Considering all such situations, it can be concluded that hereafter, more stringent administrative regulation of tobacco use is in order.

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