Prohibition
A bad idea that won’t go away

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About the author

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Summary

- The early campaigns against alcohol were in favour of temperance – that is, abstinence as a moral choice for self-improvement – rather than bans based on the assumption that governments know what is best for us.

- Prohibition of alcohol in the United States in the 1920s created a black market that enriched mobsters and encouraged law-breaking, bribery and corruption.

- Creeping prohibition is now a feature of the war on tobacco. Ten packs, smaller pouches of hand-rolled tobacco, flavoured rolling tobacco and menthol-flavoured cigarettes have all been banned. Taxation has also been used as a weapon to effectively prohibit the poor from smoking.

- Regulations applied to tobacco are increasingly being used as a template for any product considered ‘unhealthy’ by health campaigners.

- Banning products will not put an end to demand. The major beneficiaries of the ban on menthol cigarettes will be criminal gangs and illicit traders. Victims will include law-abiding consumers and legitimate retailers.

- The health risks associated with smoking are well known. In a free society adults must be allowed to make the ‘wrong’ choices. As long as we are not harming other people it is not for government to restrict our choices without very good reason.

- Prohibition robs adults of choice and, in an important sense, robs us of our humanity as well. Even those with little interest in the rights of smokers to choose what flavour of cigarette they smoke should be worried. After ten packs, flavoured rolling tobacco and menthol cigarettes, what will governments decide to ban next?
Introduction

For decades 'prohibition' was something of a dirty word. It conjured up images of America in the 1920s where the attempt to ban the sale of alcohol had merely brought widespread law-breaking, gangsterism, bribery and corruption. Prohibition with a capital 'P' isn't remembered for creating a clean-living society, it's remembered for Al Capone. A policy that was supposedly permanent and irreversible – it was baked into the US constitution, after all – lasted less than 13 years.

Yet the notion that the government can simply ban products that are in high demand has persisted and seems to have gained a new popularity among policy makers in recent years. The South African government even used the Covid-19 crisis to impose a ban on all cigarette and alcohol sales.

The theory is that if the supply of these products is taken away, the vast majority of law-abiding citizens will simply give up on any notion of accessing them. In reality the problems that bedevilled Prohibition America – and many other attempts to ban products we enjoy – remain. In the UK the latest example of prohibition is the banning of menthol and capsule cigarettes under the EU's revised Tobacco Products Directive (TPD) passed in 2014. The ban comes into force on 20 May 2020.

According to a multi-country study in 2018, for 12.4 per cent of smokers in England, their usual brand was menthol-flavoured, with a further 2.2 per cent of smokers choosing another flavour. On average, 'menthol cigarette smokers were younger, more likely to be female, better educated, had higher household income, and smoked fewer cigarettes'. According to this study, female smokers in England are twice as likely to choose menthols (17.5 per cent v 8.0 per cent).1

1 Characterising smokers of menthol and flavoured cigarettes, their attitudes towards tobacco regulation, and the anticipated impact of the Tobacco Products Directive on their smoking and quitting behaviours: The EUREST-PLUS ITC Europe Surveys, Tobacco Induced Diseases, December 2018 doi: 10.18332/tid/96294
However, industry data suggests that 25 per cent of cigarettes sold in the UK are either menthol or capsule cigarettes – that is, cigarettes that have a button in the filter that allows users to add a menthol flavour to the cigarette.

This paper looks at the justifications for the ban and the effects it is likely to have. Along the way, the paper will look at previous attempts at prohibition and what we have learned from them. One thing is clear: it sets a new precedent. While there have been a variety of attempts to discourage smoking, from public smoking bans to tax hikes and ‘plain’ packaging, this is the first time an entire class of cigarettes – those with a 'characterising flavour', to use the TPD's language – has been banned. Even those with little interest in the rights of smokers who choose to smoke flavoured tobacco should be worried. After all, what will governments ban next?
The return of prohibition

In 2013, during the discussions on the revised Tobacco Products Directive, the plan to ban cigarettes with a 'characterising flavour' – in other words, any flavour that is strong enough to mask the normal taste of tobacco – was justified as a way of discouraging people from taking up smoking. The principle behind the ban is that 'tobacco should taste like tobacco'. The assumption is that many people, especially teenagers, would be put off smoking by the taste of tobacco.

However, a preference for flavourings does not mean that it is reasonable to assume that banning flavours would result in some people never smoking at all. One paper in the British Medical Journal in 2004 notes that the key reason why people smoke is to obtain nicotine. Our smoking habits - how many we smoke, how deeply we inhale, our choice of brands and more - are, consciously or unconsciously, about getting a certain dose of nicotine. But, the paper adds: 'Social, economic, personal, and political influences all play an important part in determining patterns of smoking prevalence and cessation. Although drug effects underpin the behaviour, family and wider social influences are often critical in determining who starts smoking, who gives up, and who continues.' In particular, the paper notes: 'Smoking usually starts as a symbolic act of rebellion or maturity.'

At no point does the paper mention flavour as a determining characteristic in why people take up smoking. The influence of flavour is very likely to be trivial. If a young person is determined to smoke as a mark of maturity, independence or rebellion, that determination will in the vast majority of cases overcome any initial dislike of a particular flavour - much as we acquire a taste for a wide variety of things in life, from whisky to strong cheeses, that we might initially dislike.

As for why smokers continue to smoke, a survey conducted on behalf of Forest in 2016 found that the overwhelming majority of smokers do so for pleasure. For those smoking cigarettes, flavours were not a significant factor. Where flavours were important was if people were using e-cigarettes, because the ‘tobacco’ flavours produced for e-cigarettes are such a poor substitute for the real thing.3

In short, the justification for banning menthol cigarettes seems to have little basis in evidence. Another claim by some Euro politicians is that the Directive is about ‘market harmonisation’. That argument is particularly strange given that no EU country had previously banned menthols. It is more likely that the real justification is to remove choice for smokers, perhaps paving the way for prohibition of all cigarettes. In most parts of Europe menthol cigarettes are such a small part of the overall market that banning them would produce little backlash. The major exception was Poland, where one in five smokers uses menthols. The Polish government attempted to negotiate an exemption from the ban and, when that failed, took the matter to the European Court of Justice, losing the case in 2016. So a section of smokers with little power to object has effectively been told to switch or quit.

While the ban has been reported at various times in the media – particularly at the start of 2020 and in the weeks immediately preceding the ban – it will still come as a shock to many menthol users when they suddenly find they can no longer buy their favourite brands.

**Responses to the ban**

How people cope with the ban will vary. Most menthol users will simply switch to non-flavoured cigarettes. Perhaps a small number will take the opportunity to quit smoking or switch to alternative nicotine products such as e-cigarettes or heated tobacco which both offer menthol flavours.

But other options are available too. For example, Imperial Tobacco has launched Rizla Flavour Cards. The idea is that smokers can put one of the cards into a packet of cigarettes and leave it for an hour, during which time a menthol taste will infuse into the cigarettes. Naturally, anti-smoking campaigners Action on Smoking and Health (ASH) were outraged. The organisation’s director, Deborah Arnott, told *The Sun*: ‘It’s shocking that Imperial Tobacco plans to sell cards which can be inserted in packs to add menthol flavours to tobacco and get round the ban. We believe this breaks not just the spirit but the letter of the law and we’ve informed the Department of Health so they can stop it happening.’ (The flavour cards are still on sale.)

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3 Centre for Substance Use Research (2016) The Pleasure of Smoking: The Views of Confirmed Smokers
Another product innovation is JTI's Sterling Dual Capsule Cigarillos. These qualify as small cigars and are therefore not covered by the menthol ban. They can also be sold in packs of ten and are subject to fewer advertising restrictions.\(^4\)

But there will undoubtedly be illegal, black market alternatives too. With every ratcheting up of legal restrictions on smoking has come an increase in smuggling and counterfeiting. While the fact that menthols are banned across the EU's single market will make smuggling slightly trickier, bringing menthols in large quantities from further afield should not be too difficult. It may be from non-EU parts of eastern Europe or unfamiliar brands of cigarettes, mass produced in the United Arab Emirates, referred to as 'cheap whites'. With no tax to pay, the smugglers should do very well financially, while the UK Treasury loses out.

Thanks to the UK's 'plain packaging' laws, counterfeiting is particularly easy. Making cigarettes isn't difficult – machines can be purchased that produce thousands of sticks every minute – and with the packs now free of branding and uniform apart from the name of the product, even the boxes are easier to make. Smokers desperate for menthol cigarettes and tempted by black market options will end up buying cigarettes of doubtful quality, passed off as well-established brands.

In 2018 the \textit{Independent} reported on the rise of fake cigarettes, noting that 'clandestine factories have been found in Preston, Birmingham, County Durham and elsewhere in the UK, while in March Ireland debuted with one in Louth where an eastern European team laboured away in a remote farmhouse on machinery hidden behind hay bales. Inside, the police raid found 25 million cigarettes destined for the UK.' \(^5\)

Criminals will do very well out of the menthol ban, as has always been the case with prohibition. What is worse, previously law-abiding smokers will become criminals simply because they want to continue smoking a product they may have enjoyed for decades. 'Twas ever thus with prohibition.

\(^4\) The Loophole in the New Menthol Cigarette Ban, \textit{British Medical Journal 'rapid response'}, 24 April 2020 https://www.bmj.com/content/368/bmj.m518/rr-0
\(^5\) How counterfeit cigarettes containing pesticides and arsenic make it to our streets, \textit{Independent}, 7 August 2018
Prohibition in America

The most famous example of an attempt to ban a popular product, almost overnight, came in America. The attempt to prohibit alcohol is not just an historical curiosity, but the best-known and best-studied example of such a policy, revealing all the terrible consequences that have been repeated, time and again.

From the mid-nineteenth century there had been a variety of campaigns to have alcohol banned. Certainly, Americans' drinking habits were pretty serious two centuries ago. In 1830 Americans over the age of 15 were drinking, on average, 26 litres of alcohol per year. For comparison, the average consumption in England and Wales today is just 9.1 litres per year. Allow for the fact that women would have consumed far less than working men and it is clear that the horny-handed labourers of America were drinking quantities that would give the public health bureaucrats of today an attack of the vapours.

Alcohol consumption was therefore a significant social problem in America in the first half of the nineteenth century. That is very different to smoking in modern Britain where smoking has long been in decline. Moreover, alcohol is intoxicating, which is the point of it of course, and many of those campaigning against it were concerned about the anti-social behaviour associated with alcohol rather than the mere consumption of it. Smokers do not cause any wider social problem beyond occasionally annoying non-smoking bystanders so the basis for the prohibition of tobacco is far weaker in the sense of dealing with a serious social problem.

Temperance movements were centred on the Protestant churches. There was clearly some competition for hearts and minds. The saloons, boisterous as they were, provided the only alternative to home and church for many people as a place to be outside of work. While there had been some attempts at prohibition in individual states – for example, Maine banned booze from 1851 to 1856 – they were mostly short-lived.
In part that was because they were easily circumvented. For example, in 1844 a Massachusetts town banned the sale of alcohol. However the owner of one tavern decided to start charging his customers for the opportunity to see a striped pig. Having paid the entrance fee, the patrons were supplied with free drinks. The ban was soon dropped.

Campaigns more generally stepped up after the American Civil War which ended in 1865. Millions more immigrants came from Ireland, Italy, Germany and other European countries, bringing their beer-drinking habits with them. In response, the Women's Christian Temperance Union and, later, the Anti-Saloon League (ASL) campaigned first for people to choose to give up drinking, on moral grounds, but later for state-enforced teetotalism.\(^6\)

After years of building up support, two final factors helped the ASL get prohibition through. One was the introduction of income tax – freeing the government from the need to raise money through alcohol taxation. The other was anti-German sentiment around the First World War, which the ASL manipulated into anti-beer sentiment. The Eighteenth Amendment to the US Constitution sailed through Congress in 1917 and came into effect in January 1920.

The amendment stated that ‘the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all the territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited’ [my emphasis].

While supporters of Prohibition were celebrating, others were unsurprisingly working to circumvent the legislation. Smugglers rolled into action, bringing booze from Canada or by boat. Illegal stills were rife. The habit of hiding booze in the top of a tall boot, which had been around for many decades, gave rise to the term *bootlegger*. During Prohibition it became the catch-all term for anyone illegally producing or transporting booze.

It wasn’t the only piece of Prohibition coinage. A wealthy Massachusetts supporter of Prohibition launched a contest to find a word to describe those who continued to drink alcohol after the ban and the winning entries gave the world a new word: *scofflaw*. The specification that alcohol was banned for ‘beverage purposes’ left an exemption for medicinal uses. As a result, prescriptions for alcohol shot up under Prohibition.

Most important, organised crime received a significant boost, providing millions of Americans with the booze they couldn’t get legally and creating

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\(^6\) For an eloquent discussion of Prohibition and the temperance campaigns that led to it, see *The Art of Suppression* by Christopher Snowdon.
turf wars between different gangs, with brutal and bloody consequences. Sometimes, in the current war on drugs, there is an underlying assumption that it is the 'hardness' of those hard drugs that leads to the problems of gang violence. But it is actually the severity of the ban that leads to such things. As Prohibition-era America showed, an ordinary glass of beer or whisky can become the focus of enormous criminality in the circumstances of a state-wide, heavily enforced ban.

The severity of bans leads to another problem, what Richard Cowan, in relation to the development of 'crack' cocaine, called 'the iron law of prohibition'. In essence, the harder the crackdown, the harder the drug.7 Beer was bulky to transport, making concealment more difficult, so bootleggers favoured extra-strong spirits and fortified wines. Moreover, quality declined and adulteration increased. Even worse, in an attempt to enforce the ban in the late Twenties, poisons were added to industrial alcohol by the authorities to scare people away from using that to create contraband. The result was the state deliberately killing people in order to enforce the law.

After an initial large drop in consumption, boozing bounced back – one estimate suggests to 60-70 per cent of pre-Prohibition levels.8 Prohibition certainly didn't put an end to alcohol consumption. The law-abiding moderate drinkers may have cut their consumption but those are the very people for whom alcohol may have a health benefit or, at least, do no harm. The hardened drinkers carried on drinking as much, if not more, than before.

Criticism of Prohibition soon became widespread. The Democrat candidate in the 1928 presidential election stood on a platform including abolition. He was defeated, but more likely because he was a Catholic than because of his views on booze. When a Protestant, Franklin Roosevelt, stood for the Democrats in 1932, in the midst of the Great Depression, Prohibition's days were numbered. Once seen as irreversible, due in part to the difficulty of persuading so many states to ratify a change in the Constitution, Prohibition was swiftly abolished before the end of 1933.

7 Iron law of prohibition, Wikipedia
Prohibition revisionism

Despite the many problems caused by Prohibition, the assumption that banning things is good or worthwhile is very much alive and well. Indeed, one form it takes is the belief that Prohibition wasn’t so bad. Whatever other harms occurred, simply reducing alcohol intake must have done some good, right?

German Lopez, a reporter for Vox, sums up the new thinking well. The prohibitionists were driven by real problems of alcohol-driven domestic violence and crime as well as liver cirrhosis and other health problems. ‘Contrary to the conventional wisdom, the evidence also suggests Prohibition really did reduce drinking. Despite all the other problems associated with Prohibition, newer research even indicates banning the sale of alcohol may not have, on balance, led to an increase in violence and crime. It’s time to reconsider whether America’s “noble experiment” was really such a failure after all.’ ⁹

Lopez argues that the apparent failure of Prohibition has put America off restrictions on alcohol, to the detriment of public health. If anything, the legacy of Prohibition cuts the other way, with many states enforcing a minimum drinking age of 21 and demanding documentary proof, regardless of the would-be drinkers’ apparent age.

In The Times, David Aaronovitch marked the centenary of the 1919 Volstead Act – which enacted the Eighteenth Amendment to enforce Prohibition – with a column titled ‘Prohibition showed bans can be good for us’. ¹⁰

Your mental charge sheet against prohibition may well include the accusation that it didn’t get rid of drinking but sent it underground; that the resulting appetite for “bootlegged” liquor led to the rise of organised criminal syndicates, Al Capone, the mob and the St Valentine’s Day massacre; that it helped to make corrupt hypocrites out of public servants; that the rich were able to indulge while the poor were criminalised. And after just a few years the Americans saw what a disaster it was and repealed it. It may not improve your view of it to know that the Ku Klux Klan were very much in favour of prohibition.

Of course, Prohibition did indeed cut alcohol consumption. Most people want to obey the law, even if they disagree with it. Having to find an illegal ‘speakeasy’ to get a drink is substantially more inconvenient than simply going to a local, legal tavern or buying it off the shelf. But

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⁹ Prohibition worked better than you think, Vox, 13 June 2019
¹⁰ Prohibition showed bans can be good for us, The Times, 30 October 2019
what is remarkable is how small the effect turned out to be. By 1933, writes Aaronovitch, consumption was down by a third compared to pre-Prohibition levels.

This is hardly the killer point he thinks it is. To put it another way: after a sharp decline at first, sales of a banned product were running at two-thirds of the pre-ban level just over a decade later, despite often brutal repression. Prohibition failed dismally to stop drinking.

Boozing levels stayed below pre-Prohibition levels for decades – a sure sign, revisionists argue, that the drinking culture had been changed. And it was in some ways, such as the banning of rough-and-ready saloons and their replacement with rather more genteel drinking establishments.

But the Great Depression and another world war no doubt played a part too. In Britain, with the restrictions on drinking imposed during the First World War still in force, drinking levels also remained lower for decades, but without an outright ban.

Did the level of problem drinking improve? Aaronovitch writes: 'In 1911 the death rate for cirrhosis among American men was nearly 30 per 100,000. By 1929 that had been reduced by more than 30 per cent. Registered admissions to mental hospitals for psychosis linked to alcohol more than halved.' But maybe this was unconnected with Prohibition but rather reflected other changes. Similar falls were seen in other countries, too.

Despite what Aaronovitch claims, not only did homicide rates rise during the Prohibition era, but so did suicides. Organised crime thrives in periods where things get banned. Gangsters don't just run shops – they need something to be both in demand and illegal to make big money out of it. Merely demanding money with menaces doesn't get you very far. The war on drugs, another form of prohibition, has clearly been a godsend to mobsters. It is no wonder that homicide rates shot up again when the crackdown on heroin, cocaine and other drugs was ramped up.

This is not an academic history lesson. Twenties America exhibited all the problems of prohibition, in extremis. This is what happens when you take the world's most popular recreational drug and apply the force of the state to banning it. All other attempts at prohibition exhibit these problems, to one extent or another. Those who want to extend our ban-happy culture have to downplay or rewrite the problems of the past, but they simply refuse to go away.
The many forms of prohibition

Since the early 1960s, soon after the discovery of the link between active smoking and lung cancer, there have been moves to restrict the promotion and availability of cigarettes and other tobacco products. In the UK there was a ban on TV advertising of cigarettes from August 1965. However, apart from the voluntary addition of health warnings to cigarette packs in 1971, there were few other restrictions.

Nonetheless smoking rates fell steadily as the message about health risks became commonplace. In 1948 82 per cent of men smoked tobacco in one form another; 65 per cent of men smoked cigarettes. By 1974 the proportion of male smokers had fallen to 51 per cent, while 41 per cent of women smoked. By 2006, before the current wave of restrictions had kicked in, the smoking rate for adults had fallen to 22 per cent. There is little evidence that the smoking ban, the ban on tobacco vending machines, the ban on the display of tobacco in shops or the introduction of standardised packaging (which prohibited branding from cigarette packs) have made any significant difference to smoking rates. What has made a difference, since 2012, is the increasing popularity of e-cigarettes. In other words, choice not prohibition has driven smoking rates down.

One insidious form of prohibition that has crept in (without being credited as such) is the pernicious use of taxation to force people to quit smoking. Excise duty on cigarettes in the UK is based on the value of the pack plus an additional tax per 1,000 cigarettes. In 1992 excise duty was 21 per cent of the value plus £44.32 per 1,000 cigarettes (that is, 4.4 pence per cigarette). Ten years later that had risen to 22 per cent of value plus 9.4 pence per cigarette. As of March 2020 that had risen to 16.5 per cent of the retail value of the pack plus 23.7 pence per cigarette.

In addition, in the past few years, a minimum excise duty has been introduced so that even the cheapest brands face a certain minimum
level of taxation. From March 2020 that has been set at the equivalent of 30.5 pence per cigarette. Value Added Tax (VAT) is then added so even the cheapest cigarettes on the market must incur tax of 36.6 pence per cigarette. For most brands the tax is significantly higher because of the 16.5 per charge charged on the retail price.

A quick glance at the website of one of the cheapest major supermarkets (Asda) shows that the lowest priced cigarettes now cost £8.50 per pack. Tax makes up £7.32 of that price, or 86 per cent. An average, packet a day, habit would cost at least £59.50 per week. At the time of writing a more expensive brand such as Marlboro costs £11.85 per pack at Asda, or £82.95 per week for our typical smoker.

To put it another way, smoking 20 Marlboro cigarettes per day will now cost you over £4,300 per year. Even the cheapest brands cost over £3,000 per year. For almost everyone that would amount to a very sizeable chunk of their disposable income. For a great many smokers it is simply unaffordable.

This is a form of prohibition. It puts legally available cigarettes beyond the reach of many people in society. While most people would accept that governments need to raise funds and that taxing our pleasures has been an important way of doing so, it is quite clear that constantly raising taxes above the rate of inflation is designed to discourage us from smoking.

John Stuart Mill, in his famous essay *On Liberty*, is clear that this is an unacceptable interference in our free choice.

> To tax stimulants for the sole purpose of making them more difficult to be obtained, is a measure differing only in degree from their entire prohibition; and would be justifiable only if that were justifiable. Every increase of cost is a prohibition, to those whose means do not come up to the augmented price; and to those who do, it is a penalty laid on them for gratifying a particular taste. Their choice of pleasures, and their mode of expending their income, after satisfying their legal and moral obligations to the State and to individuals, are their own concern, and must rest with their own judgment.

Even if not done through taxation, Mill’s point stands. For example, the introduction of minimum unit pricing for alcohol by the Scottish government in May 2018 is actually more explicit in attempting to curb our ‘bad habits’. There is no fiscal benefit to this measure for the government. It leaves more expensive forms of alcohol untouched, since they already
cost more than the minimum price. It is simply designed to stop poor people drinking more than the government has decided is appropriate.

However, the past 20 years has seen a steady acceleration in prohibitions related to smoking. It's quite a list of illiberalism.

The Tobacco Advertising and Promotion Act 2002 banned general advertising of tobacco products and tobacco sponsorship of sporting events. The only visibility for cigarettes left was on the packs themselves, both individually and on display in shops.

By 2006 smoking in many public places and almost all workplaces was banned in Scotland, with the rest of the UK following suit in 2007. The UK versions of these bans were amongst the most draconian in the world, with both individuals and the owners of premises, like pub landlords, subject to fines and the possibility of imprisonment.

The Children and Young Persons (Sale of Tobacco etc.) Order 2007 raised the minimum age for purchasing tobacco to 18, although there is no minimum age when it is legal to smoke. Vending machines were banned in 2011, although pubs can still sell cigarettes from behind the bar.

In April 2012 a ban on displaying cigarettes in larger shops came into force, expanded to all stores by 2015. In a ban-packed year, smoking in cars where children are present was also banned in 2015.

By 2017 packs of ten cigarettes and pouches of rolling tobacco under 30 grammes were banned. In the same year tobacco branding all but disappeared with the implementation of plain packaging – that is, no branding, just the name of the brand in a standard font in a standard olive-green box with large and graphic health warnings – despite an initially successful campaign to stop the policy being introduced. This also meant the end of other kinds of packs, like the narrow, lipstick-style boxes used for slim cigarettes.

Which brings us to the present moment, when the final elements of the Tobacco Products Directive come into force, most notably the ban on cigarettes flavoured with menthol and other 'characterising flavours'. Despite the fact that the UK has formally left the EU, the ban will still go ahead on 20 May 2020.

In short, we have seen an unprecedented wave of bans and restrictions placed on tobacco products when, it should be emphasised, smoking remains entirely legal. Every attempt, short of a blanket ban, has been made to make cigarettes difficult and expensive to purchase, uninviting to look at, impossible to market, and greatly restricted in places where they can be used.
Now, all flavoured cigarettes and rolling tobacco have been banned too. (Flavoured cigars and cigarillos are exempt from the ban but are unlikely to become a significant part of the market.)

Two aspects of the TPD regulations seem to be targeting not just smokers in general but women in particular. First, the prohibition of slim packs was justified because they were marketed towards women. The assumption is that young women in particular will ditch smoking, or never take it up, because regular cigarette packets are unsightly in comparison. Second, because menthols are disproportionately smoked by women, there seems to be an underlying prejudice that women’s delicate palates are less likely to adapt to the unadulterated flavour of tobacco. Both assumptions are patronising and even sexist. They imply that women are more easily influenced than men by branding, appearance and flavour.

Commenting, in May 2012, about the ‘insulting campaign against cigarette packaging designed to appeal to women’, Claire Fox, director of the Academy of Ideas, wrote:

Women of the world unite: a sinister patriarchal plot is out to get us. Evil tobacco companies are conspiring to seduce us by wrapping up ‘our poison’ in shades of ‘pale or pastel colours’. There is concern in public health circles that the dark arts of design, armed with images denoting ‘femininity, style, sophistication and attractiveness’, will result in us losing our pretty little heads.

She concluded:

What lies at the heart of women’s liberation is FREEDOM. And yes – that means being free to choose pretty packets if we fancy and free to indulge in petty vices such as smoking if we choose. To ape the recent ‘gay bus’ advert furore: I’m a woman, I choose to smoke – get over it.

There is no doubt about the desired direction of travel. Anti-tobacco campaigners like to talk about an 'endgame' where smoking rates are reduced to under five per cent of the population. A variety of different target dates has been mentioned. For example, Scotland’s tobacco strategy suggests this should be achieved by 2034. For England the Westminster government is targeting a ‘smoke-free’ date of 2030.
An article in *Tobacco Control*, published in 2015, lists a variety of measures that could be considered to take things further, including:

- reducing the nicotine content so much that cigarettes become unattractive as a source of nicotine
- making the cigarette itself unattractive by making the smoke more unpleasant - for example, by making it more acidic and acrid.
- demanding that smokers have a licence, which may also have an annual limit on purchases. Alternatively, smokers would need a prescription to buy cigarettes, putting them on a par with heroin addicts
- an age cut-off point would be interested. One suggestion has been that no one born after 2000 would be allowed to buy cigarettes, creating prohibition for younger people
- restricting where cigarettes can be sold to specialist, licensed tobacconists
- a 'sinking lid' - where manufacturers would bid for quotas from a set maximum amount of tobacco products allowed to produced, with this maximum declining year-on-year

One way or another, all of these measures are forms of prohibition.

Banning any product, certainly one as popular as cigarettes, will not put an end to demand, as Prohibition has taught us. It will merely change the supplier – from a legal, well-regulated store selling good quality products to black market sources, providing products where quality is uncertain. Illicit booze has always been a potential danger, either because the purification process has been inadequate or because they have been laced with other substances like methanol, which is poisonous. Reports from the UK suggest that equally unpleasant and dangerous substances have turned up in counterfeit cigarettes.

But for all the unpleasant side-effects of this creeping prohibition, the biggest loss – as Claire Fox suggested – is freedom, for men as much as women. Adults should be free to make the 'wrong choices'. As long as we are not harming other people it is not for government to determine what are pleasures should be or to intervene to restrict our choices.

The impulse towards prohibition can even impact on the supposed goal of health promotion. E-cigarettes have been widely recognised as posing far fewer risks than traditional cigarettes, aka 'combustibles'. Yet health

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11 The tobacco endgame: a qualitative review and synthesis, *Tobacco Control*, August 2015 [https://tobaccocontrol.bmj.com/content/25/5/594.info](https://tobaccocontrol.bmj.com/content/25/5/594.info)
authorities in many jurisdictions have banned e-cigarettes or at least banned vaping liquids that contain nicotine. Attempts by the tobacco companies to produce safer 'heat not burn' alternatives to combustibles, devices that heat tobacco to produce a vapour instead of smoke, have also been mired in regulation and prohibition.

Moreover, creating an environment in which the principle of banning unhealthy products is widely accepted has led to many other forms of prohibition – mostly mild for now, but nonetheless creating precedents for more serious bans. For example, full-sugar soft drinks have almost disappeared from the UK market thanks to the 'sugar tax'. Only Coca-Cola and Pepsi Cola remain as common brands that have not cut sugar contents. Instead those companies have given consumers a choice of colas, including sugar free products. Consumers can therefore make their own choices, taking into account health messaging and other factors that matter to them, including taste and flavour.

More broadly, all sorts of foods have now been hit by government interventions to reduce their fat, salt and sugar contents, producing foods that either don't taste as good or offer less value because the size has been reduced. Regulations applied to tobacco are increasingly being used as a template for regulations on anything considered 'unhealthy' by health professionals and campaigners. Creeping prohibition is gathering pace.

This is in marked contrast to the nineteenth century. The early campaigns against alcohol were in favour of temperance – that is, abstinence as a moral choice for self-improvement – rather than bans based on the assumption that governments know what is best for us. Of course, it is entirely right that as individuals we talk to our friends and families about smoking. Where the potential costs outweigh the benefits many smokers have concluded that it is 'time to quit'. Consequently there are now twice as many ex-smokers as current smokers in the UK.

For others however the pleasure and solace from a cigarette outweighs the risk that smoking might one day kill us. Like it not, many people still conclude that the enjoyment of smoking is worth it even if it means we lose a few years of old age. This is one of many dilemmas we face every day and weighing these questions is part of what makes us human.

Prohibition attempts to rob us of these choices and, in an important sense, robs us of our humanity too. As William Wordsworth wrote, borrowing a sentiment from the American revolutionaries: 'We must be free or die, who speak the tongue that Shakespeare spoke.'