


Role of Tobacco Regulatory Symbolism: A Comparison of U.S. and Canadian Cigarette Warning Label Requirements


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Introduction

- Since Ronald Reagan, advocates of neo-liberalism have argued private market most efficient approach in meeting societal needs
- Occurs through
 - Privatization
 - Deregulation
 - Cutting funding for social programs


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- Neo-liberals have argued centralized governmental regulatory approaches (examples of which include tobacco control programs such as clean indoor air laws) are
 - Costly
 - Inefficient
 - Inflexible
 - Intrusive
 - However, social constructionist scholars have noted role symbolic linguistics, discourse, language, and policies have played in regulatory policymaking

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- For instance, political scientist Murray Edelman argued in 1960 symbolic regulatory language often enacted to immobilize political opposition
 - Murray also argued symbolic legislation is often necessary to maintain and bolster profits
 - Proposition tested in this study by analyzing public health effectiveness of Canadian and U.S. warning labels on cigarette packs



Methodology of Study

- Analysis included side-by-side statutory comparison of U.S. and Canadian warning labels requirements up to 2006 analyzing whether they included:
 - Color pictures or graphics depicting all major diseases associated with smoking
 - Warning label placement in front of cigarette pack
 - Warning label covering 30% or more of pack
 - Clear and direct health warning messages


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- In addition, political context of statutes, policymaking strategies, rationales, and tactics researched by analyzing:
 - Previously secret tobacco industry documents obtained in legal settlement of *State of Minnesota, et al. v. Philip Morris, et al.* (No. C1-94-8565, 2nd District, Minnesota and subsequent court cases
 - LexisNexis newspaper articles
 - Web sites
 - Peer reviewed journal articles




Results

■ Canada


- 1988 Legislation--Tobacco Products Control Act required
 - Strongly worded, prominent, and rotating health warnings
 - Covers 20% of back and front of pack
 - Un-attributed warning that smoking is cause of lung cancer, heart disease, decreases life expectancy, and causes pregnancy complications
- In September 1988, RJR-MacDonid and Imperial Tobacco sued in Quebec Province
- In 1991 Quebec Superior Court ruled violation of Canadian Charter of Rights and Freedoms
 - Ruled act was violation of right of tobacco industry

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- In 1993, Quebec Court of Appeal overruled deciding government had a right to regulate
 - While case appealed to Supreme Court, Health Canada Minister in 1993 announced agency would require even stronger warning labels
 - Unattributed health warnings on 25% of top of pack
 - Eight rotating and more direct anti-tobacco messages
 - In September 1995, Canadian Supreme Court ruled law was unconstitutional
 - Court ruled no direct evidence that showed link between advertising ban and decrease in tobacco consumption
 - Court also ruled unattributed warnings left unfair impression tobacco industry was making statement

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- In reaction to ruling, Health Canada issued guideline similar to before ruling except required warning labels attributed to Health Canada

 - In 1997, The Tobacco Act enacted
 - Same as Tobacco Products Act except warning messages attributed to Health Canada


 - In 1999, Health Canada issued new report entitled: "Proposed New Labelling Requirements for Tobacco Products"
 - Provided rationale and evidence of link between warning label and reduced tobacco consumption

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- Final regulations announced by Health Canada in 2000 required
 - Warning messages covering 50% of front of pack
 - Smoking cessation and disease information in insert
 - Direct color graphics illustrating five major diseases associated with tobacco use
 - In 2000, Imperial Tobacco, JTI-Macdonald, and Benson and Hedges sued--final ruling still pending
 - Health research indicates, due to warning label, Canadian smokers quite likely to identify five major diseases and more motivated to quit than smokers in Australia, U.S., and U.K.





■ United States

- In 1964, U.S. Surgeon General report linked lung cancer, lip cancer, laryngeal cancer, and chronic bronchitis to smoking
- In reaction, Congress passed Cigarette Labeling and Advertising Act of 1965, required
 - Mostly non-direct health warning statements covering 6% of pack
 - Preempted states from requiring stronger warning labels
 - Annual report by FTC on effectiveness of new law
- In FTC's first report to Congress in 1967, it wrote: "There is virtually no evidence that the warning statement on cigarette packages has had any effect."
- In 1968 and 1969, reports, FTC reiterated this finding

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- Since enactment, no significant changes in font size, size, typographical layout of warning labels
 - Warning message has been changed two times
 - In a 1984, Brown & Williamson document, one reason for tobacco industry support of this law being attributed to the Surgeon General was due to “... a matter of great importance to the manufacturers because of gratuitous prejudice that could result to them in product-liability litigation from non-attribution.”

Source: Pepples Jr. Letter to Honorable Charles Rose, Brown & Williamson legal document produced in the case of *State of Minnesota, et. al. v. Philip Morris, Inc., et. al.*, No. CI-94-8565, 2nd District, Minnesota, Minneapolis, Minnesota Tobacco Document Depository, May 29, 1984, Bates 521052386, 521052392.

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- Also in 1984 memo, industry concerned warning label would not be admissable as defense in product liability trials
 - Finally, Brown & Williamson document noted: "Because of the Federal Trade Commission's demonstrated proclivity for excessively broad interpretation of its legislative mandate, the industry considered it to be of first order importance that the Commission not be given administrative enforcement authority over the substantive labeling requirements which are spelled out in great detail in the legislation and which do not require administrative interpretation."

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- Taken as whole, the memo argued that U.S. warning label law was very necessary defense in product liability lawsuits
 - However, in 1992 U.S. Supreme Court decision of *Rose D. Cippollone v. Liggett Groups et al.*, court ruled tobacco industry could be sued under state product liability laws if engaged in deliberate misrepresentation regarding health dangers of smoking

Comparison of 2006 Canadian With United States Cigarette Pack Warning Label

Requirements That Promote Cessation

Key Requirements That Promote Tobacco Cessation	United States	Canada	Analysis of Effectiveness of United States Requirements
Color Pictures or Graphics of Health Effects of Smoking?	No	Yes	United States requirements do not effectively and vigorously promote tobacco cessation.
Warning Label on Front of Cigarette Package?	No	Yes	United States requirements do not effectively and vigorously promote tobacco cessation.
Covers 30% or More of Cigarette Package?	No	Yes	United States requirements do not effectively and vigorously promote tobacco cessation.
Direct and Clear Messages?	Yes and No. Some required language directly attributes smoking to disease and death and other required language uses qualitative or vague language such as "Cigarette Smoke Contains Carbon Monoxide O	Yes	While some warning language is direct other language is not. A primary concern of the tobacco industry has been that this language can also be used as a legal defense.

Sources: Cigarette Labeling and Advertising Act, United States Codes Annotated, Title 15, Section 1333; United States Code of Federal Regulations, Title 16, Vol. 1, Section 0.4; The Tobacco Act of 2000, and Tobacco Products Information Regulations, Regulation June 2000, TJS-601413



Conclusion

- U.S. warning label is weak and symbolic
 - Protects market sales and profits of tobacco industry at expense of public health
- Canadian warning label law is effective in promoting public health
- Neo-liberals incorrect that regulation does not protect and enhance private profits
- Social constructionists correct that language and communication matter and can coopt in regulation
 - So far, health groups like Campaign for Tobacco-Free Kids, American Cancer Society, American Lung Association, American Heart Association, and American Public Health Association have not been effective in overturning weak U.S. labeling law.
 - Opportunity recently presented itself with recent Enzi amendments to proposed FDA legislation, which they initially opposed as "poison pill"



Resources

- For more details or further discussion on the comparison of U.S. and Canadian warning label requirements, see:
- Givel, Michael. 2007. "A Comparison of the Impact of U.S. and Canadian Cigarette Pack Warning Label Requirements on Tobacco Industry Profitability and the Public Health" *Health Policy*, Vol. 8 Issue 2, pp. 343-352.
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