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The Political Economy of Regulating Tobacco in a “Laissez Faire Heaven”: The Hong Kong Model

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Over the past five decades, smoking has come to be recognized as a source of multiple physical and psychological ills. An array of increasingly decisive policy responses has evolved to alleviate the problem. The affluent, knowledge-rich, and outward-looking Hong Kong has been relatively slow to acknowledge and confront the dangers of tobacco use. The explanation largely lies in the structural attributes of the territory’s governance regime. By establishing a link between these attributes and local strategies to curtail smoking and manage its effects, it is possible to shed further light on the dynamics of regulatory systems in general and in this issue-area, in particular.

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I. INTRODUCTION

The global battle against tobacco consumption is far from being won. Nearly 6 trillion cigarettes were smoked worldwide in 2014.¹ Moreover, tobacco use across the globe is growing, rather than moderating.² The meaningful reductions in smoking rates achieved in some key countries that have introduced restrictive regulatory measures have been offset by accelerated demand elsewhere. China, whose market currently absorbs more cigarettes than all other low- and middle-income countries combined, has proved the most policy defying area in this contradiction-ridden sphere.³

A number of geographic areas are looming increasingly large on the international smoking horizon. The World Health Organization's (WHO) Eastern Mediterranean Region (EMRO) presently experiences the highest growth rate in the cigarette market, seeing a rise in excess of 30% in cigarette consumption since 2000.⁴ Because of its healthy demographic profile and improved economic performance, the WHO's African region poses the greatest challenge in terms of future upward trend in tobacco use.⁵ Without decisive policy in the form of a vigorous prevention effort, the continent is at risk of losing millions of lives in the 21st century due to the persistence and spread of smoking.⁶

The problem is not confined to cigarettes alone. Consumption of other combustible tobacco products is also increasing.⁷ In the past decade and a half or so, global use of cigarette-like cigarillos has more than doubled, while the rise in consumption of both roll-your-own tobacco and pipe tobacco has exceeded 30%.⁸ This is partly attributable to the fact that cigarettes are taxed more heavily than the alternatives available, rendering the latter relatively more attractive from an economic perspective.⁹

In addition to cross-country differentials, patterns of tobacco use vary within countries. Consumption disparities inside individual jurisdictions are significant and tend to correlate with socioeconomic

1. *See Cigarette Use Globally*, TOBACCO ATLAS, www.tobaccoatlas.org/topic/cigarette-use-globally/ (last visited Feb. 3, 2018).

2. *See id.*

3. *See id.*

4. *See id.*

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

status, even in the low- and middle-income country domains.¹⁰ The prevalence of such inequalities implies that targeted regulatory initiatives may prove beneficial. For example, revenue generated via high cigarette taxes could potentially be channelled towards tobacco use prevention and cessation programs for disadvantaged segments of society.¹¹

There is ample and uncontroversial evidence that smoking inflicts great harm on both those who engage in the activity and those exposed to it indirectly.¹² Breathing a modest amount of tobacco can even have deleterious effects because of the more than 7000 chemicals it contains, at least 250 are considered to be noxious substances, including hydrogen cyanide, carbon monoxide, and ammonia.¹³ Smoking is known to damage virtually every bodily organ and organ system and to be detrimental to a person's overall health.¹⁴ It is a contributing causal factor in multiple cancers, heart disease, stroke, aortic aneurysm, chronic obstructive pulmonary disease (COPD), diabetes, osteoporosis, rheumatoid arthritis, age-related macular degeneration, cataracts, and asthma.¹⁵ Moreover, it is thought to be a source of inflammation and undermines immune function.¹⁶

Tobacco consumption further impinges adversely on both female and male fertility.¹⁷ A pregnant smoker faces a higher risk of miscarriage, experiencing an ectopic pregnancy, having a baby born prematurely and with an abnormally low weight, and giving birth to a baby with cleft lip and/or cleft palate.¹⁸ A woman who smokes during or after pregnancy aggravates the chances of her infant's death from Sudden Infant Death Syndrome (SIDS).¹⁹ On the male side, tobacco use raises the prospect of erectile dysfunction.²⁰ Across the age spectrum and gender divide, smoking is a cause of a worryingly large number of premature deaths.²¹

10. *See id.*

11. *See id.*

12. *See Harms of Cigarette Smoking and Health Benefits of Quitting*, NAT'L CANCER INST., www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet (last updated Dec. 19, 2017).

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See* Taymour Mostafa, *Cigarette Smoking and Male Infertility*, 1 J. ADVANCED RES. 179, 184 (2010); *Harms of Cigarette Smoking and Health Benefits of Quitting*, *supra* note 12.

18. *See Health Consequences*, TOBACCO ATLAS, <http://www.tobaccoatlas.org/topic/health-consequences/> (last visited Feb. 3, 2018).

19. *See id.*

20. *See id.*

21. *See id.*

Second-hand exposure (also commonly referred to as environmental tobacco smoke, involuntary smoking, and passive smoking) is a mixture of “side-stream” smoke (given off by a burning tobacco product) and the “mainstream” variety (exhaled by the smoker).²² It is authoritatively classified as a human carcinogen (cancer-causing agent).²³ There is solid support for the proposition that inhaling second-hand smoke is a source of lung cancer. Empirically derived estimates indicate that living a significant period of time with a smoker increases the likelihood of developing lung cancer by as much as 20% to 30%.²⁴ Nor is the harm confined to this specific type of cancer. Second-hand-induced health hazards span virtually the entire range highlighted earlier.²⁵ The medical benefits, both immediate and long-term, for oneself and others of quitting smoking are, thus, doubtlessly substantial.²⁶

The tobacco industry goes to great lengths to minimize the physical consequences of smoking and, instead, places emphasis on its societal contribution in the form of job creation and revenue generation, which apparently bolsters local and national economies.²⁷ The truth of the matter, however, is that this value-added is more than offset by not merely the health-related repercussions—the suffering, disease, and death wrought, but also the economic losses amounting to hundreds of billions annually, stemming from tobacco use.²⁸ The data on the impact on global healthcare costs is incomplete, but the figure (which may, in fact, be higher, if indirect and intangible components are taken fully into consideration) is believed to be uncomfortably high.²⁹ For instance, the annual expenditures (often accounting for 6% to 8% of total healthcare spending) for the United States, Germany, and Australia add up to approximately US\$81 billion, US\$7 billion, and US\$1 billion, respectively.³⁰

Smoking-related deaths result in lost economic opportunities estimated at US\$92 billion annually in the United States.³¹ This poses a

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.*

26. *See id.*

27. *See The Global Tobacco Crisis*, WORLD HEALTH ORG., http://www.who.int/tobacco/mpower/mpower_report_tobacco_crisis_2008.pdf (last visited Feb. 3, 2018).

28. *See id.*

29. *See* Victor U. Ekpu & Abraham K. Brown, *The Economic Impact of Smoking and of Reducing Smoking Prevalence: Review of Evidence*, 8 TOBACCO USE INSIGHTS 1, 3 (2015), www.ncbi.nlm.nih.gov/pubmed/26242225; *The Global Tobacco Crisis*, *supra* note 27.

30. *See The Global Tobacco Crisis*, *supra* note 27; Ekpu & Brown, *supra* note 29.

31. *See The Global Tobacco Crisis*, *supra* note 27.

particularly acute problem in heavily populated, developing countries—many of which constitute a vital element of the international manufacturing structure—because roughly half of all the deaths attributed to tobacco use occur during prime productive years.³² The burden borne by the developing world is already enormous and is expected to escalate sharply because it is in this vulnerable segment of the global economy where four out of five smoking-related deaths will likely take place by 2030. The annual toll worldwide is assumed to increase to about 8 million by then.³³

This configuration gives rise to distributive justice concerns. The inescapable reality confronting national and international authorities is that tobacco use worsens poverty. The industry's goal to expand its market harms the poor disproportionately.³⁴ As indicated earlier, the incidence of smoking is greater among the economically disadvantaged strata than among the affluent ones. Moreover, the gap in tobacco use between the two groups is largest in areas (at multiple levels) where average income is the lowest.³⁵ Members of the former are far more susceptible to illness and premature death than those of the latter, which is a phenomenon responsible for aggravating economic hardship and perpetuating the cycle of poverty.³⁶ Early deaths of primary wage earners have especially dire ramifications for families and communities.³⁷

Issues of intergenerational justice ineluctably surface in this context as well. The tobacco industry has consistently and systematically targeted youth as “replacement smokers” to fill the space left by consumers who quit or die.³⁸ This is the most effective strategy to ensure corporate survival and success.³⁹ While tobacco use may lead to nicotine dependence in any age category, people who do not begin smoking before they turn twenty-one are unlikely to ever pursue this path.⁴⁰ Adolescent experimentation with a highly addictive tobacco product vigorously promoted by vendors may easily culminate in lifelong dependency.⁴¹ The younger the children are when they indulge in

32. *See id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. *See id.*

37. *See id.*

38. *See id.*

39. *See id.*

40. *See id.*

41. *See id.*

smoking, the more likely they are to become regular users and the less likely they are to jettison the habit.⁴²

There is, thus, a compelling case, on both efficiency (by virtue of tobacco use qualifying as demerit good with negative externalities)⁴³ and equity grounds, for policy intervention designed to curtail smoking. The unanswered question is whether such an activist regulatory stance does not materially hinder the exercise of consumer sovereignty or freedom of choice, progressively eroding liberty, another pivotal public policy goal.⁴⁴ Indeed, this is how industry representatives frame⁴⁵ their arguments, both in general and in the courtroom, when they resolutely counter adversarial challenges.⁴⁶ Couching the problem, in terms of freedom of choice or the equivalent, is more palatable than invoking explicit notions of personal responsibility.⁴⁷

However, the underlying message almost invariably is that smokers are exclusively to blame for the damage they incur.⁴⁸ The “blame rhetoric” originated in the courtroom and has come to underpin the entire corporate defensive strategy and public relations campaign.⁴⁹ As concerns about the physical impact and economic costs of smoking have intensified, and litigation and policy risks have mounted correspondingly, the tobacco industry has stepped up its efforts to shift attention from business to personal responsibility, although predominantly and skillfully portraying this as a freedom of choice issue, one belonging to a moral realm where complexities, delicate trade-offs, and significant uncertainties abound.⁵⁰

Indeed, the notion of freedom of choice is inextricably intertwined with that of individual rights, which teems with ambiguities, conflicts,

42. *See id.*

43. *See* Magdalena Nawrot & Anna Para, Negative Externalities in Demerit Goods as a Cause of Market Failure—Case Study of British American Tobacco (unpublished conference paper) (Dec. 2014), https://www.researchgate.net/publication/272020790_Negative_externalities_in_demerit_goods_as_a_cause_of_market_failure_-_case_study_of_British_American_Tobacco (last visited Feb. 3, 2018).

44. *See generally* Charles Fried, *The Nature and Importance of Liberty*, 29 HARV. J.L. & PUB. POL'Y 3, 3 (2005).

45. Framing, in this context, “refers to the use of key concepts familiar to the listener that help guide the understanding of an issue.” Lissy C. Friedman et al., *Tobacco Industry Use of Personal Responsibility Rhetoric in Public Relations and Litigation: Disguising Freedom to Blame as Freedom of Choice*, 105 AM. J. PUB. HEALTH 250, 252 (2015).

46. *See id.*

47. *See id.* at 254.

48. *See id.* at 255.

49. *See id.*

50. *See id.* at 254.

and ethical dilemmas.⁵¹ The definition, as such, is not subject to sharp divergences since there is broad agreement that “individual rights are actions that society judges as moral entitlements of each of its members.”⁵² Moreover, the assertion that “[t]hese entitlements revolve around life, liberty, and use of property”⁵³ is seldom challenged. However, beyond that point, differences of opinion frequently and visibly manifest themselves. A public health perspective typically “looks at these rights in descending order of priority, namely, that rights to life trump those of liberty, which trump use of property.”⁵⁴ Yet, this value judgement, while enjoying wide support, is not universally embraced.⁵⁵

The claims regarding the right to life and liberty, which are partially at variance, have been outlined above, with an emphasis on the former, consistent with dominant public health posture. The contention that the right to property should not be overlooked in this context stems from the belief that one ought to be free to deploy one’s resources as one desires. This may extend to “producing, marketing, and using a commercial product such as tobacco.”⁵⁶ The corollary is that policies aimed at curbing smoking inevitably interfere with property rights yet are an attempt to safeguard other individual rights.⁵⁷ Such restrictive initiatives target primarily corporate bodies. Thus, it should be noted that while “[c]orporations are sometimes construed as entities with rights . . . , few would consider the rights of a corporation equal to those of a human being.”⁵⁸

As pointed out, values do not necessarily coexist in harmony, but this does not imply that they are not amenable to rank-ordering. The mainstream public health stance, rarely taken exception to by parties other than vested interests, reflects this relativist proposition by acknowledging the centrality of liberty in the value hierarchy, yet placing it below the right to life.⁵⁹ Property rights, particularly those pertaining to commercial property, are relegated to an even lower level.⁶⁰ It is postulated that, although commercial endeavors in some form are essential to modern society, “[they] . . . can exist only at society’s

51. See James E. Katz, *Individual Rights Advocacy in Tobacco Control Policies: An Assessment and Recommendation*, 14 TOBACCO CONTROL 31, 31 (2005).

52. *Id.*

53. *Id.*

54. *Id.*

55. *See id.*

56. *Id.*

57. *See id.* at 31-32.

58. *Id.*

59. *See id.*

60. *See id.*

sufferance.”⁶¹ As such, they may be, and usually are, subject to exogenous controls. Specifically, “[c]ommon commercial activities are regulated through positive regulatory steps and through torts; in contrast to political rights (life and liberty), property rights are generally much more narrowly construed by regulators, legislators, and the courts.”⁶² Moreover, it is noteworthy that, contrary to the picture painted by the industry, “tobacco is one of the least regulated dangerous substances.”⁶³

It may be instructive to examine the interplay between these normative forces in the intricate Hong Kong policy context. The territory has evolved into a leading “global metropolis.”⁶⁴ It constitutes a highly affluent and outward-looking conurbation, receptive to influences emanating from the developed world. At the same time, it is also undergoing rapid integration with Mainland China,⁶⁵ where smoking is deeply entrenched, and stubbornly so.⁶⁶ In addition, a factor, which may well qualify as the key component of the equation, Hong Kong accords great importance, comparatively speaking, to economic liberty and property rights. This pattern is captured succinctly by the Heritage Foundation freedom index⁶⁷ as well as elaborately by academic researchers.⁶⁸

The exploration begins with a survey of the relevant literature on public interventions purporting to reduce smoking. The focus is on the analytical underpinnings in order to provide a conceptual foundation for assessing the Hong Kong experience. The territory’s economic structure and *modus operandi* is, then, sketched with a view to bringing to the fore its distinct attributes, which may have become somewhat blurred over time, yet without materially receding. The third substantive section

61. *Id.*

62. *Id.*

63. *Id.*

64. *See generally* DAVID MEYER, HONG KONG AS A GLOBAL METROPOLIS 1-4 (2000); STEPHEN CHIU & TAI-LOK LUI, HONG KONG: BECOMING A CHINESE GLOBAL CITY (2009).

65. *See generally* YUN-WING SUNG, THE CHINA-HONG KONG CONNECTION: THE KEY TO CHINA’S OPEN-DOOR POLICY 4 (1991); YUN-WING SUNG, HONG KONG AND SOUTH CHINA: THE ECONOMIC SYNERGY (1998); YUN-WING SUNG, THE EMERGENCE OF GREATER CHINA: THE ECONOMIC INTEGRATION OF MAINLAND CHINA, TAIWAN, AND HONG KONG 48 (2005); Y.Y. KUEH, PAX SINICA: GEOPOLITICS AND ECONOMICS OF CHINA’S ASCENDANCE (2012).

66. *See Cigarette Use Globally, supra* note 1.

67. *See 2016 Index of Economic Freedom*, HERITAGE FOUND., <http://www.heritage.org/index/> (last visited Feb. 3, 2018).

68. *See generally* THE BUSINESS ENVIRONMENT IN HONG KONG (David Lethbridge ed., 1980); KUI-WAI LI, ECONOMIC FREEDOM: LESSONS OF HONG KONG 2 (2012); MIRON MUSHKAT, THE ECONOMIC FUTURE OF HONG KONG (1990); ALVIN RABUSHKA, HONG KONG: A STUDY IN ECONOMIC FREEDOM (1985); JON WORONOFF, HONG KONG: CAPITALIST PARADISE (1980); Milton Friedman, *The Hong Kong Experiment*, HOOVER INSTITUTION (July 30, 1998), <http://www.hoover.org/research/hong-kong-experiment>.

consists of an account and evaluation of Hong Kong's efforts to combat tobacco use. The principal aim is not to comprehensively identify policy flaws, but to furnish explanations for regulatory outcomes in a manner that would render them relevant beyond this specific context.

II. GENERAL SURVEY OF THE LITERATURE

The academic and professional studies on smoking and strategies to curtail it have multiple origins, within the scholarly and action-oriented communities, often have cross-disciplinary boundaries, and bring a wide array of perspectives to bear on the problem and its management. This renders thematic mapping a rather challenging task. Nevertheless, circumstance-driven filtering may allow the screening out of otherwise valuable information, whose relevance is not obvious in certain settings, and, thus, enable the imposition of a relatively simple conceptual structure on a highly diverse body of theoretical ideas, practical viewpoints, and empirical findings. Notably, given the broad policy orientation embraced here, it is appropriate to place emphasis on the macro side of the picture and largely overlook the micro-type insights emanating from sources, such as medicine, psychology, and social work.

The latter, of course, is not devoid of implications extending beyond the individual/group domain because formulating effective national/supranational responses to social issues is a bottom-up learning process, which requires a thorough grasp of ground-level behavioral patterns. However, not directly addressing them, where appropriate or convenient, is not necessarily a questionable practice since they are ineluctably reflected in macro-style policy discourse. The latter draws its inspiration more heavily from academic disciplines, such as economics, law, political science, and sociology, than those primarily concerned with conduct detrimental to individual/group well-being and ways to minimize harmful by-products.

Analytical and methodological diversity is observed on both sides of the divide, but, interestingly, it is less pronounced in the micro realm, where there is a greater convergence of research and professional foci and approaches. The macro sphere is characterized by a higher degree of heterogeneity, which manifests itself most visibly when the conceptual apparatus and toolkit of the "hard" social sciences and neighboring subjects (economics and its branches) are juxtaposed with those of their "softer" counterparts (law, political science, and sociology).⁶⁹ To

69. See generally Norman W. Storer, *The Hard Sciences and the Soft: Some Sociological Observations*, 55 BULL. MED. LIBR. ASS'N 75 (1967).

complicate matters, neither the former nor the latter, particularly the less “scientifically” grounded disciplines, are marked by a strong sense of common purpose and solid consensus regarding methodological pathways.⁷⁰

Conceiving policy making as an activity entailing the conversion of inputs into outputs or, better still, as an enterprise consisting of distinct phases, albeit ones that may overlap when stylized models are translated into operational systems, is a fruitful endeavor. The steps involved may prove helpful in accommodating the disparate elements bearing the imprint of minimally connected areas of scholarly and professional inquiry within a coherent framework. A widely relied upon textbook identifies five phases through which policy normally progresses:

agenda-setting refers to the process by which problems come to the attention of governments; *policy formulation* refers to how policy options are formulated within government; *decision-making* is the process by which governments adopt a particular course of action or non-action; *policy implementation* relates to how governments put policies into effect; and *policy evaluation* refers to the processes by which the results of policies are monitored by both [S]tate and societal actors, the outcome of which may be reconceptualization of policy problems and solutions.⁷¹

If looked at together, the four macro-centered fields of basic and applied research shed light, to varying degrees, on the entire multiphase venture and may, thus, be viewed as complementary in nature, despite their distinct paradigmatic underpinnings. Importantly, all accord considerable attention to the options for grappling with tobacco use and its consequences, which is a subject that falls under the rubric of policy content.⁷² Beyond that, economists and legal scholars tend to focus closely on the evaluation of those options, with the former following the quantitative route and the latter embracing the qualitative alternative. Political scientists and sociologists explore the whole range, but from a predominantly behavioral angle, in that they channel substantial resources into endeavoring to uncover explanations for why the policy machinery operates in one fashion or another at each step of the issue management cycle and overall. Accordingly, the literature review undertaken in this section is divided into three categories: policy content, evaluative perspective, and explanatory dimension.

70. See generally JOHN GERRING, SOCIAL SCIENCE METHODOLOGY: A CRITERIAL FRAMEWORK (2001).

71. MICHAEL HOWLETT, M. RAMESH & ANTHONY PERL, STUDYING PUBLIC POLICY: POLICY CYCLES AND POLICY SUBSYSTEMS 12 (3d ed. 2009).

72. See *id.* at 7, 9, 51, 103-07.

A. Policy Content

Like other forms of addictive propensities, notably alcohol and drug dependence, smoking has proven comparatively resistant to preventive and remedial measures.⁷³ Moreover, such steps have not been easy to implement because of opposition from adversely affected parties.⁷⁴ The latter obviously include tobacco growers, manufacturers, and sellers, particularly the large and resource-rich companies falling into the second category. These firms are typically embedded in sizeable politico-economic networks, and their tentacles extend over significant segments of the marketplace, across the globe rather than merely the domestic arena.⁷⁵ They are capable of shaping the direction, outcome, and pace of public policy.⁷⁶

To a lesser extent, smokers are also a component of this complex equation. They constitute a vast, but incohesive group—quantitatively substantial, yet unconnected. Smokers' associations⁷⁷ do exist, but on a modest scale.⁷⁸ Such bodies certainly do not enjoy the influence and prominence of groups representing gun owners.⁷⁹ Indeed, somewhat surprisingly, there may be fewer of them, and they may be less effectively organized, as well as less prone to embrace an activist stance, than nonsmokers' associations.⁸⁰ However, given the size of this constituency, the political repercussions of alienating it cannot be overlooked, at least in a democracy or a regime that is not oblivious to grassroots sentiment. Proceeding otherwise may be costly and problematic for public officeholders, which imposes constraints on policy makers.⁸¹

This partly explains—in conjunction with the analytical, ethical, and institutional intricacies confronted by strategists and managers in this sphere—the proliferation of policy instruments relied upon to one degree

73. See *The Influence of Big Tobacco*, TOBACCO ATLAS, <http://www.tobaccoatlas.org/topic/the-influence-of-big-tobacco/> (last visited Feb. 3, 2018).

74. See *id.*

75. See *id.*

76. See generally Yussuf Saloojee & Elif Dagli, *Tobacco Industry Tactics for Resisting Public Policy on Health*, 78 BULL. WORLD HEALTH ORG. 902, 902 (2000).

77. See, e.g., SMOKERS' ASS'N, <https://www.smokersassociation.org/> (last visited Feb. 3, 2018).

78. See *id.*

79. See *Why the Gun Lobby Is Winning*, ECONOMIST, <http://www.economist.com/news/united-states/21647627-prevent-gun-deaths-politicians-offer-more-guns-why-gun-lobby-winning> (Apr. 4, 2015).

80. See, e.g., NON-SMOKERS' RTS. ASS'N, <https://nsra-adnf.ca/> (last visited Feb. 3, 2018).

81. See Colin Irwin, *Ignore Public Opinion at Your Own Peril*, OPEN DEMOCRACY (Nov. 17, 2015), <https://www.opendemocracy.net/openglobalrights/colin-irwin/ignore-public-opinion-at-your-own-peril>.

or another in combating tobacco use. Some of these mechanisms are simply not highly politically sensitive by virtue of not provoking controversy and often being employed in a manner that renders them mostly invisible to the public and special interests. A relevant distinction is that between preventive and remedial programs. An adequate design and implementation of the former could make the latter less essential, even obsolete, enhancing human welfare and reducing social costs, but systematic prevention inevitably triggers intense pressures to contain it in this delicate context.

The wide range of policy means resorted to may be divided into five broad areas: regulation through legislation or voluntary agreements; finance; capacity building; education; and learning and information tools.⁸² These categories are not necessarily unique to the battle against smoking.⁸³ They feature in policy discourse generally, although not uniformly so.⁸⁴ The efforts to eradicate tobacco use and mitigate its consequences span the entire spectrum, which is characteristic of strategies targeting “public bads.”⁸⁵ Policies addressing alcohol and drug abuse tend to follow a similar pattern.⁸⁶ This may not be the case in other circumstances, where a different, more focused or selective, approach is called for. Economic strategies, on both the micro- and macro-level, offer a conspicuous illustration.⁸⁷

By the same token, the policy instruments available for the specific purpose of curtailing tobacco use and its effects are not ineluctably employed in the same fashion across the world, even the industrialized segment thereof.⁸⁸ For instance, Australia, the United Kingdom, and the United States, all members of the Anglo-Saxon “family,” pursue somewhat divergent paths on this front.⁸⁹ Nor is the fight against smoking static in terms of the preventive and remedial strategies utilized. On the contrary, it is marked by a reasonable degree of experimentation, fluidity, and innovation.⁹⁰ Knowledge accumulates, fresh perspectives

82. See PAUL CAIRNEY, DONLEY T. STUDLAR & HADII M. MAMUDU, *GLOBAL TOBACCO CONTROL: POWER, POLICY GOVERNANCE AND TRANSFER* 14 (2012).

83. See *id.* at 14-15.

84. See *id.*

85. See, e.g., Andrew J. Treno et al., *A Review of Alcohol and Other Drug Control Policy Research*, 17 *J. STUD. ON ALCOHOL & DRUGS (SUPPLEMENT)* 98, 98 (2014).

86. See *id.*

87. See, e.g., AGNES BENASSY-QUERE, *ECONOMIC POLICY: THEORY AND PRACTICE* 109 (2010).

88. See CAIRNEY, STUDLAR & MAMUDU, *supra* note 82, at 15.

89. See *id.*

90. See *id.*

emerge, and new problem-solving mechanisms are put in place.⁹¹ Nevertheless, the five-way classification has demonstrated its analytical merit and practical value.⁹²

The meaningfulness and applicability of the scheme may be further enhanced by breaking up each of the identified clusters into finer categories. The objective is to achieve a better fit between program structures and realities, greater semantic precision, and an increased likelihood of productive operationalization of key variables, which is needed both prior to implementation (for assessing the potential attractiveness of the options considered) and following it (for monitoring performance).⁹³ Regulation (through legislation or voluntary agreements), thus, comprises tobacco advertising and promotion; the sale of tobacco, including domestic and export restrictions; smoking in public places (second-hand smoke); ingredients, such as the levels of tar in cigarettes; and customs enforcement on smuggling and counterfeit cigarettes.⁹⁴

Finance consists of taxation and other levies; spending on directed health services, including smoking cessation services and nicotine replacement therapy; economic incentives, including agricultural incentives and tax expenditures on arts, and sports sponsorship by tobacco companies; and litigation against such firms.⁹⁵ Capacity building may be regarded holistically, without being subjected to further differentiation because it largely revolves around the provision of funding for community development programs and organizations to eliminate tobacco use.⁹⁶ This does not imply that the flow of money follows a standard procedure or that the process does not entail considerable variation. Nor does it, of course, detract from the significance of this activity.

Indeed, capacity building is often pursued in conjunction with education, the next set, with the two potentially reinforcing each other's impact because of efficiency gains and synergies realized.⁹⁷ The latter encompasses health warning labels on cigarette and tobacco packs and health education campaigns.⁹⁸ Learning and information tools also closely overlap with capacity building, as well as education.⁹⁹ This last

91. *See id.*

92. *See id.* at 14-15.

93. *See id.*

94. *See id.* at 14.

95. *See id.*

96. *See id.* at 126-27.

97. *See id.*

98. *See id.* at 14.

99. *See id.* at 126-27.

category includes legislative hearings, executive reports, and funding of scientific research.¹⁰⁰ Again, it should be emphasized that a certain degree of homogeneity should not be viewed as indicative of fruitless endeavors or marginal status.¹⁰¹ As suggested earlier, the picture observed tends to reflect country-specific beliefs and priorities.

A prominent manifestation of context dependence is the American recourse to litigation, unprecedented in its scope and frequency by international standards.¹⁰² This is a firmly entrenched trend, which dates back to the late 1960s, a point at which the curtain descended on the country's last "decade of innocence," a period of political quiescence coupled with negligible bottom-up activism, ushering a revolution in product liability law, evidenced by the adoption of "strict liability" for defective products.¹⁰³ Impelled by "newly emerging concerns about toxic exposures and a broader-based rise in the public's claims consciousness, tort awards and tort doctrine were swept up in a [wave] of legal turbulence that has yet to abate."¹⁰⁴

A heavy reliance on a particular policy cluster or mode of intervention within it need not result in the "crowding out," let alone exclusion, of alternative strategies, current or contemplated. Resources are not infinite, and trade-offs cannot be avoided; however, the fourteen pathways outlined above are complementary, rather than mutually exclusive. Indeed, in both theory and practice, it is possible to address smoking in a comprehensive fashion, whether balanced or unbalanced.¹⁰⁵ The problem is also increasingly approached from a global angle, although it remains to be seen if this is a realistic prospect and to what extent.¹⁰⁶ Clearly, the prevalence of country-specific proclivities and

100. *See id.* at 14.

101. *See id.* at 126-27.

102. *See id.* at 15.

103. *See* Robert L. Rabin, *Institutional and Historical Perspectives on Tobacco Tort Liability*, in *SMOKING POLICY: LAW, POLITICS, AND CULTURE* 110 (Robert L. Rabin & Stephen D. Sugarman eds., 1993) [hereinafter *SMOKING POLICY*].

104. *Id.*

105. *See generally* CAIRNEY, STUCLAR & MAMUDU, *supra* note 82; TOBACCO CONTROL POLICY (Kenneth E. Warner ed., 2006); RAJEEV K. GOEL & MICHAEL A. NELSON, *GLOBAL EFFORTS TO COMBAT SMOKING: AN ECONOMIC EVALUATION OF SMOKING CONTROL POLICIES* (2008); David Sweanor & Rachel C. Grunberger, *The Basis of a Comprehensive Regulatory Policy for Reduced Harm Tobacco Products*, 11 *J. HEALTH CARE L. & POL'Y* 83 (2008).

106. *See generally* CAIRNEY, STUCLAR & MAMUDU, *supra* note 82; GOEL & NELSON, *supra* note 105; TOBACCO CONTROL POLICIES: STRATEGIES, SUCCESSSES, AND SETBACKS (Joy de Beyer & Linda Waverley Brigden eds., 2003).

priorities renders international consensus-building, coordination, and effective implementation a serious challenge.¹⁰⁷

B. Evaluative Perspective

Assessing the impact of macro-level initiatives, confined to national territory or casting a wider net, to prevent tobacco use and attenuate its consequences has also been a multidisciplinary, as distinct from an interdisciplinary, undertaking. Notable contributions have been made by scholars and practitioners in fields of scientific inquiry highlighted earlier—namely, economics, law, political science, and sociology.¹⁰⁸ Again, economists have tended to differentiate themselves from other researchers, theoretical and applied, in the socio-legal space by displaying a strong penchant for quantitative methods. The preferences exhibited elsewhere have typically been towards the qualitative end of the spectrum.

The term “spectrum” is employed here intentionally to indicate that there are no clear demarcation lines and that, for all intents and purposes, quantitative and qualitative techniques may be seen as lying on a continuum. It is simply impossible to conceptualize and dissect smoking by relying exclusively on mathematical and statistical models. By the same token, narrative-based accounts, bereft of any empirical support, normally fall short of inspiring confidence. That said, relatively speaking, some methodological strategies are inherently more quantitative than others, and, thus, embracing a binary classification in this context is not without merit,¹⁰⁹ even though some authors deem it desirable to introduce a third category, a mixture incorporating elements from both sides.¹¹⁰ The bipartite distinction is, thus, adhered to below.

Quantitative-style investigations have traditionally focused on evaluating the analytical underpinnings and the effectiveness of financial regulatory measures targeting tobacco use.¹¹¹ The emergence of law and economics and law and public policy as vibrant interdisciplinary

107. See generally CAIRNEY, STUDLAR & MAMUDU, *supra* note 82; GOEL & NELSON, *supra* note 105.

108. See generally Timothy B. Baker et al., *Transdisciplinary Tobacco Use Research Centre: Research Achievements and Future Implications*, 11 NICOTINE & TOBACCO RES. 1231 (2009).

109. See generally Jean S. K. Lee, *Quantitative Versus Qualitative Research Methods—Two Approaches to Organization Studies*, 9 ASIA PAC. J. MGMT. 87, 88 (1992).

110. See generally JOHN W. CRESWELL & VICKY L. PLANO CLARK, *DESIGNING AND CONDUCTING MIXED METHODS RESEARCH* (2011).

111. See generally Jonathan Gruber, *The Economics of Tobacco Regulation*, 2 HEALTH AFF. 146, 147 (2002).

domains of socio-legal inquiry has shifted attention to tort actions and settlements,¹¹² as well as command-and-control systems (e.g., restriction of smoking in public places and restrictions on youths' access) that lend themselves readily to quantification grounded in utilitarian logic.¹¹³ This trend notwithstanding, finance continues to dominate the agenda of mathematically and statistically inspired scholars and practitioners who endeavor to come to grips with the impact of alternative ways of tobacco use and its consequences.¹¹⁴

The starting point in such explorations is the "rational addiction" model, widely relied upon in economic studies of smoking and related forms of behavioral dependency.¹¹⁵ Within this framework, individuals are assumed to display awareness of the addictive nature of the choices they make, yet persist with their habits because the gains, or utility, derived from the activity exceed the costs, or disutility, incurred from future addiction.¹¹⁶ The appeal of this model, due to its neoclassical roots, which place it firmly within the economic theoretical mainstream, accounts for the fact that rational dependency has been, and remains, at the epicenter of efforts to quantitatively conceptualize and estimate the consumption of goods, such as tobacco products.¹¹⁷

The normative corollary of the model is that the optimal regulatory strategy for the government regarding smoking is solely the function of the societal burden attributable to smoking.¹¹⁸ Given that tobacco use, like other consumption decisions, entails the conscious exercise of rational choice, the imposition of hefty costs by smokers on themselves is irrelevant in this context.¹¹⁹ The only justification for regulatory intervention, primarily via recourse to financial incentives and disincentives, is, thus, in the form of the societal costs engendered by tobacco use.¹²⁰ This proposition has spawned substantial literature on potentially robust methods that measure the heavy burden imposed on society by smokers.¹²¹

112. *See id.* at 149-52.

113. *See id.* at 149.

114. *See id.* at 152-58.

115. *See generally* Gary S. Becker & Kevin M. Murphy, *A Theory of Rational Addiction*, 96 J. POL. ECON. 675, 675-76 (1988).

116. *See generally id.* at 694.

117. *See* Gruber, *supra* note 111, at 152.

118. *See generally* Becker & Murphy, *supra* note 115, at 695.

119. *See generally id.*

120. *See generally id.*

121. *See generally* Willard G. Manning et al., *The Taxes of Sin: Do Smokers and Drinkers Pay Their Way*, 261 J. AM. MED. ASS'N 1604 (1989); W. Kip Viscusi, *Cigarette Taxation and the Social Consequences of Smoking*, 9 TAX POL'Y & ECON. 51, 53 (1995); William N. Evans,

Initial findings painted a surprisingly palatable picture, reflecting the assumption that the increased health and related costs foisted by smokers on others are offset by the high rate of premature deaths among them, leading to lower expenditures on insurance and public programs for the elderly.¹²² Subsequent research has cast a less reassuring light on the situation, however.¹²³ Specifically, it has brought into focus the resources channelled into dealing with cardiac arrest and lung cancer ascribed to second-hand smoke,¹²⁴ as well as the funds directed at mitigating the adverse impact (educational, in addition to medical) of the significant incidence of low-birthweight babies.¹²⁵ Diminished workplace productivity (if not culminating in lower wages), rather than merely due to sick leave, has also been accorded proper attention¹²⁶ (but not the nuisance experienced by nonsmokers).

More importantly, the premises underlying the rational addiction model have been subjected to critical scrutiny. An argument that has featured prominently in attempts to refine this analytical vehicle is the notion that tobacco users are “time inconsistent.”¹²⁷ Unlike in traditional-style formulations, this implies that individuals are more impatient when assessing trade-offs between today and tomorrow than trade-offs in the future.¹²⁸ In the most rudimentary (naïve) version of the augmented model, they fail to recognize this phenomenon. For instance, they genuinely believe that even though quitting smoking is impossible today, it can be realized at some juncture in the future (along the lines of the often encountered conviction that “I will begin my diet tomorrow”).¹²⁹

In the more elaborate (sophisticated) forms of the enhanced construct, individuals are aware that they will never shake-off their tobacco addictions and would like to jettison the pernicious habit, but they are unable to pursue this course of action (“I wish I could quit yet I

Jeanne S. Ringel & Diana Stech, *Tobacco Taxes and Public Policy to Discourage Smoking*, 13 TAX POL’Y & ECON. 1 (1999); Frank J. Chaloupka & Kenneth E. Warner, *The Economics of Smoking*, in 1B HANDBOOK OF HEALTH ECONOMICS 1539 (Anthony J. Culyer & Joseph P. Newhouse eds., 2000).

122. See generally Manning et al., *supra* note 121; Viscusi, *supra* note 121.

123. See generally Chaloupka & Warner, *supra* note 121.

124. See *id.*

125. See generally Evans, Ringel & Stech, *supra* note 121.

126. See generally Phillip B. Levine, Tara A. Gustafson & Ann D. Velenchik, *More Bad News for Smokers? The Effects of Cigarette Smoking on Labor Market Outcomes*, 50 INDUS. & LAB. REL. REV. 493 (1997).

127. See generally Jonathan Gruber & Botond Koszegi, *Is Addiction Rational? Theory and Evidence*, 116 Q.J. ECON. 1261 (2001).

128. See generally *id.*

129. See generally *id.*

simply cannot find the necessary strength”).¹³⁰ The reason is that they opt time and again to avoid the discomforts, mental and physical, of nicotine withdrawal.¹³¹ Put another way, since smokers are impatient today but patient tomorrow, it is more attractive to shed their addiction tomorrow. Unfortunately, when tomorrow arrives, they revert to their impatient posture and, thus, never quit.¹³² This manifests itself, *inter alia*, in the persistent demand for self-control mechanisms—such as betting with others, informing others of the decision, and signalling that tobacco use is a fundamentally embarrassing activity—which lessen the appeal of smoking.¹³³

The introduction of time inconsistency into the equation has considerable policy ramifications. It bolsters the case for regulatory initiative above and beyond the interpersonal dimension. The key point is that government intervention serves as the self-control tool that time inconsistent consumers of tobacco products seek recourse to in order to suppress their harmful propensities and rectifies any misperceptions among “naïve” ones about the intractable dependency associated with smoking and the deleterious health effects that ensue.¹³⁴ Financial disincentives, such as cigarette taxes, thus, correct the “internalities” (the consequences for one’s own well-being), as well as the externalities of tobacco use.¹³⁵

Additional adjustments to the rational addiction model have been suggested, giving rise to broadly similar inferences.¹³⁶ Another notable extension has been the incorporation of distributional considerations into the efficiency-oriented framework.¹³⁷ This is an aspect of the picture that cannot be disregarded because smoking has become socioeconomically concentrated in recent years, which is a marked departure from the pattern observed previously, when tobacco use rates exhibited little

130. *See generally id.*

131. *See generally id.*

132. *See generally id.*

133. *See generally* James O. Prochaska et al., *Self-Change Processes, Self-Efficacy, and Self-Concept in Relapse and Maintenance of Cessation of Smoking*, 51 *PSYCHOL. REP.* 983 (1982).

134. *See generally* Gruber & Koszegi, *supra* note 127.

135. *See generally id.*

136. *See, e.g.,* Fritz L. Laux, *Addiction as a Market Failure: Using Rational Addiction Results to Justify Tobacco Regulation*, 19 *J. HEALTH ECON.* 421 (2000); TOBACCO CONTROL POLICY, *supra* note 105; ROBERT WALLACE, AMY GELLER & V. AYANO OGAWA, *ASSESSING THE USE OF AGENT-BASED MODELS FOR TOBACCO REGULATION* (2015); HELEN LEVY, EDWARD C. NORTON & JEFFREY A. SMITH, *TOBACCO REGULATION AND COST-BENEFIT ANALYSIS: HOW SHOULD WE VALUE FOREGONE CONSUMER SURPLUS?* (2016).

137. *See generally* Gruber & Koszegi, *supra* note 127.

divergence across income classes.¹³⁸ Given this trend, the merits of cigarette taxes, their potential deterrent effects notwithstanding, need presumably to be reexamined in order to determine whether they do not impose an excessive financial burden on the most vulnerable segments of society.

Indeed, the rational addiction model, in its original form, points in this direction. However, the reconfiguration in terms of time inconsistency allays some of the concerns relating to regressive taxation.¹³⁹ First, since the poor smoke more, they benefit proportionally more from the salutary impact of higher cigarette taxes.¹⁴⁰ Second, the poor are far more sensitive to cigarette prices than those further up on the socioeconomic ladder.¹⁴¹ It follows that the favorable consequences of higher cigarette taxes are enjoyed to a greater extent by the poor than the rich, or, to express it differently, that cigarette taxation is helpful to the former but moderately disadvantageous to the latter.¹⁴²

Quantitatively underpinned evaluations have not been confined to the efficiency and distributional effects of financial strategies designed to curtail tobacco use.¹⁴³ Issues, such as the (high) price-sensitivity of youth smokers, the (low) impact of clean air laws and access restrictions in this consumer category, and the (by no means straightforward) relationship between youth and adult smoking, have also been econometrically explored.¹⁴⁴ Much of the empirical work has been conducted in the United States, but this is not necessarily an exclusively American enterprise.¹⁴⁵ An interesting development is the systematic dissection, relying on standard economic conceptual and technical vehicles, of policies towards tobacco use in China, even if spearheaded by Chinese scholars based in the United States.¹⁴⁶

Qualitative policy assessment is, by definition, a less precise and more loosely structured undertaking than its quantitative counterpart.

138. See *The Global Tobacco Crisis*, *supra* note 27.

139. See generally Gruber & Koszegi, *supra* note 127.

140. See generally *id.*

141. See generally *id.*

142. See generally *id.*

143. See generally Jonathan Gruber, *Government Policy Toward Smoking: A View from Economics*, 3 YALE J. HEALTH POL'Y, L. & ETHICS 1 (2003).

144. See, e.g., Jonathan Gruber, *Youth Smoking in the 1990s: Why Did It Rise and What Are the Long Run Implications*, 91 AM. ECON. REV. 85 (2001); Jonathan Gruber & Jonathan Zinman, *Youth Smoking in the U.S.: Evidence and Implications*, in RISKY BEHAVIOR AMONG YOUTHS: AN ECONOMIC ANALYSIS 69 (Jonathan Gruber ed., 2001); PETER D. JACOBSON ET AL., COMBATING TEEN SMOKING: RESEARCH AND POLICY STRATEGIES (2001).

145. See, e.g., Ekpu & Brown, *supra* note 29.

146. See generally TOBACCO CONTROL POLICY ANALYSIS IN CHINA: ECONOMICS AND HEALTH (Teh-wei Hu ed. 2008).

Unlike the latter, which is firmly rooted in positivism, it primarily draws its inspiration from social constructionism and interpretivism.¹⁴⁷ In addition, whereas quantitative research follows the deductive route (i.e., is geared toward theory testing), the qualitative variant embraces inductive reasoning (i.e., is oriented towards theory building).¹⁴⁸ The corollary is that those engaged in this form of knowledge generation do not purport to be objective observers detached from the phenomena they are investigating.¹⁴⁹ Rather, they actively construct pictures of reality by devising situation-specific instruments for data collection and organization.¹⁵⁰ These instruments are not static, but subject to ongoing renewal and revision.¹⁵¹ The concepts freely invoked provide the foundation for the interpretation of the data.¹⁵²

Qualitative tools for extracting clues about socio-legal phenomena encompass simple and time-honored, yet dependable and versatile when appropriately and transparently employed, methods such as observing, interviewing, and reading documents.¹⁵³ The vehicles for attaching meaning to these clues are less familiar and more specialized, without, however, being overly technical and tightly structured.¹⁵⁴ They include frame or value-critical analysis, story-telling analysis, narrative analysis, dramaturgical analysis, and category analysis.¹⁵⁵ Neither the data collection instruments nor those utilized for data interpretation constitute a homogeneous cluster:

Different approaches to interpretative theory have varying takes on the object of interpretations (intentions, reasons, traditions, stories, discourses, systems of signs), follow different methods and operate on different preconceptions, but their shared assumption is that policy formation and implementation, or broader activities and interactions of government agencies, public officials, and their publics in civil society, cannot be properly understood unless we grasp the relevant meanings.¹⁵⁶

147. See Alan R. Sadovnik, *Qualitative Research and Public Policy*, in HANDBOOK OF PUBLIC POLICY ANALYSIS: THEORY, POLITICS, AND METHODS 417, 420 (Frank Fischer, Gerald J. Miller & Mara S. Sidney eds., 2007) [hereinafter HANDBOOK OF PUBLIC POLICY].

148. See *id.* at 420.

149. See *id.*

150. See *id.*

151. See *id.*

152. See *id.*

153. See Dvora Yanov, *Qualitative-Interpretative Methods in Policy Research*, in HANDBOOK OF PUBLIC POLICY, *supra* note 147, at 405, 407-09.

154. See DVORA YANOV, CONDUCTING INTERPRETIVE POLICY ANALYSIS 5-7 (2000).

155. See Yanov, *supra* note 153, at 411-13; see also YANOV, *supra* note 154, at 4, 41-62.

156. Hendrik Wagenaar, *Interpretation in Policy Analysis: Causal Versus Intentional Explanation*, in HANDBOOK OF PUBLIC POLICY, *supra* note 147.

Scholars and practitioners embracing the qualitative vision also distinguish their craft by highlighting its context-sensitivity¹⁵⁷ and proposing an array of data management strategies for maximizing this objective.¹⁵⁸

Qualitative policy evaluations focused on smoking have relied predominantly on observation, reinforced by insights derived from interviews and documentary sources (containing, *inter alia*, descriptive statistics).¹⁵⁹ Interpretation of the empirical patterns observed has been principally undertaken through narrative analysis.¹⁶⁰ Attention to context has featured consistently, albeit indirectly, without being identified as such and treated formally.¹⁶¹ It could, thus, be argued that the investigations pursued in this realm have been somewhat narrowly configured, from a strict methodological viewpoint. They have, nevertheless, yielded a range of valuable perspectives, complementing those generated via the more rigorous, but also not necessarily broad-in-scope quantitatively underpinned techniques.

Considerable light has, thus, been shed on insufficiently informed consumer choice, paving the way for better structured policy interventions such as

publicly funded (possibly tobacco-tax funded community—and physician-based education [initiatives], additional disclosures about product risk printed on tobacco product packages and promotional materials, further controls on the style and content of cigarette advertisements and promotions, and public health-oriented and information-based mass media campaigns about smoking, including such related matters as information about cessations [schemes] and alternative products.¹⁶²

Another notable contribution has been in the form of a constructivist take on tobacco users as “addicted victims,”¹⁶³ “immoral actors,”¹⁶⁴

157. See generally Susan E. Clarke, *Context-Sensitive Policy Methods*, in HANDBOOK OF PUBLIC POLICY, *supra* note 147, at 443.

158. See *id.* at 446-54.

159. See generally SMOKING POLICY, *supra* note 103; CAIRNEY, STUDLAR & MAMUDU, *supra* note 82; PETER D. JACKSON ET AL., COMBATING TEEN SMOKING: RESEARCH AND POLICY STRATEGIES (2001); ROBERT L. RABIN & STEPHEN D. SUGARMAN, REGULATING TOBACCO (2001) [hereinafter REGULATING TOBACCO]; SIMON CHAPMAN, PUBLIC HEALTH ADVOCACY: MAKING SMOKING HISTORY (2007); Paul Verkuil, *A Leadership Case Study of Tobacco and Its Regulation*, PUB. TALK, <http://www.upenn.edu/pnc/ptverkuil.html> (last visited Feb. 3, 2018).

160. See generally SMOKING POLICY, *supra* note 103; JACKSON ET AL., *supra* note 159; REGULATING TOBACCO, *supra* note 159; CHAPMAN, *supra* note 159; Verkuil, *supra* note 159.

161. See SMOKING POLICY, *supra* note 103; JACKSON ET AL., *supra* note 159; REGULATING TOBACCO, *supra* note 159; CHAPMAN, *supra* note 159; Verkuil, *supra* note 159.

162. SMOKING POLICY, *supra* note 103, at 7.

163. See *id.* at 9-12.

164. See *id.* at 12-13.

and “villains”¹⁶⁵—a cognitive constellation with significant policy implications.¹⁶⁶ The role of leadership in determining regulatory outcomes is also being explored.¹⁶⁷

A particularly crucial qualitative input has originated in the sphere of ethics and has shifted the policy discourse well beyond the economically and even sociologically defined space into the philosophy of morals.¹⁶⁸ The issue of smoking and its consequences has been framed in ethical terms both at the individual (the right to die and define one’s quality of life versus the obligation to oneself and others)¹⁶⁹ and the collective/regulatory level.¹⁷⁰ The latter conceptualization has revolved around the inherent tension between paternalistic interference (morally unjustified if one subscribes to John Stuart Mill’s core principle) and the proposition that tobacco users may not be knowingly taking the risks they “choose” to take.¹⁷¹ A further question that has arisen in this context is whether and to what extent smoking violates the Millian tenet of not harming others.¹⁷² After all, if tobacco use can inflict damage on “people other than the smoker, then a *prima facie* case exists that . . . in such circumstances [it] should be subjected to ethically legitimate controls.”¹⁷³ Still, for the morally minded philosopher, this leaves unanswered the issue of “the levels of exposure at which ‘harming others’ might be reasonably said to commence”¹⁷⁴ and, more fundamentally, “what is harm.”¹⁷⁵ Depending on the direction in which the ethical argument might veer, this could conceivably lead to a cognitively and morally inspired “denormalization” of smoking.¹⁷⁶

C. *Explanatory Dimension*

Policy content is a variable, rather than a constant, in that its configuration differs across countries and evolves over time. Policy learning through systematic quantitative and qualitative assessment partly accounts for these variations, but there are additional, often more

165. *See id.* at 13-15.

166. *See id.* at 15-21.

167. *See* Verkuil, *supra* note 159.

168. *See generally* CHAPMAN, *supra* note 159.

169. *See id.* at 6-11.

170. *See id.* at 11-17.

171. *See id.* at 11.

172. *See id.*

173. *Id.*

174. *Id.* at 12.

175. *Id.*

176. *See id.* at 153-71.

potent, forces at work. Comparative economics¹⁷⁷ and comparative law¹⁷⁸ are capable of accounting for some of the differences witnessed, yet merely in a selective fashion.¹⁷⁹ For more multifaceted insights one needs to reach into the interdisciplinary field of comparative policy studies,¹⁸⁰ which draws quite heavily on comparative politics¹⁸¹ and comparative sociology.¹⁸² It is primarily qualitative in its orientation, rich with observations gleaned from a large number of cases painstakingly examining diverse policy processes, although not exclusively so.¹⁸³

A sweeping attempt has been made, within a framework built on this foundation, to explain variations in policy content in the United States and Canada.¹⁸⁴ Three key questions have been addressed by the authors involved in a detailed and thorough manner;¹⁸⁵ namely, (1) “[W]hy did governments take particular actions?”;¹⁸⁶ (2) “Why have some levels of government been more restrictive in tobacco control in each country?”;¹⁸⁷ and (3) “After [several] years of activity in tobacco control in both countries, what are the similarities and differences in policies, timing, and levels of government involved?”¹⁸⁸ These questions, allowing for minor departures from the underlying pattern, are at the heart of efforts to pinpoint the causes of divergences in policy content across borders (between-group variance) and over time (within-group variance).¹⁸⁹

177. See generally J. BARKLEY ROSSER & MARINA V. ROSSER, *COMPARATIVE ECONOMICS IN A TRANSFORMING WORLD ECONOMY* (2d ed. 2004).

178. See generally MATHIAS REIMANN & REINHARD ZIMMERMANN, *OXFORD HANDBOOK OF COMPARATIVE LAW* (2006).

179. See generally J. Barkley Rosser & Marina V. Rosser, *A Critique of the New Comparative Economics*, 21 *REV. AUSTRIAN ECON.* 81 (2008); Roda Mushkat, *Killing the Proverbial Two Birds with One Stone: New Ways to Expand the Comparative Law Methodological Repertoire and Enhance the Effectiveness of Inter-Jurisdictional Environmental Governance Regimes*, 6 *TRADE L. & DEV.* 229 (2014).

180. See generally ANNELIESE DODDS, *COMPARATIVE PUBLIC POLICY* (2013).

181. See generally CARLES BOIX & SUSAN C. STOKES, *OXFORD HANDBOOK OF COMPARATIVE POLITICS* (2009).

182. See generally *NEW FRONTIERS IN COMPARATIVE SOCIOLOGY* (Masamichi S. Sasaki ed., 2002).

183. See, e.g., BENOIT RIHOX & HEIKE GRIMM, *INNOVATIVE COMPARATIVE METHODS FOR POLICY ANALYSIS: BEYOND THE QUANTITATIVE-QUALITATIVE DIVIDE* (2006).

184. See generally DONLEY T. STUDLER, *TOBACCO CONTROL: COMPARATIVE POLITICS IN THE UNITED STATES AND CANADA* (2002); *REGULATING TOBACCO*, *supra* note 159; *SMOKING POLICY*, *supra* note 103; CAIRNEY, *STUDLAR & MAMUDU*, *supra* note 82.

185. See generally *STUDLER*, *supra* note 184.

186. *Id.* at 21.

187. *Id.*

188. *Id.*

189. See *id.*

The choice of the United States and Canada for purposes of comparison is not ideal as the socioeconomic similarities outweigh the differences. The two neighbors are each other's pivotal trading and investment partners.¹⁹⁰ There are also substantial bidirectional exchanges via channels, such as the media, travel, and the like.¹⁹¹ The physical proximity and shared use of dominant language facilitate the two-way flows and amplify their impact, resulting in a rapid transmission of events from source to recipient, albeit in an asymmetrical fashion because of U.S. size advantage (the border between the two countries has been portrayed as the "longest one-way mirror in the world").¹⁹² Consequently, it is easy for policy communities, both governmental and nongovernmental, to engage in joint learning.¹⁹³ The institutional environments are structured and operate in a parallel manner as well, although without fully overlapping.¹⁹⁴

Such similarities notwithstanding, there is considerable scope for theoretical illumination, at least in the liberal democratic context. The exploration of the North American tobacco control space has, thus, revealed the relevance of explanatory schemes focused on the role played by agenda setting (pluralist versus elitist, evolutionary and marked by "punctuated equilibrium," driven from inside versus shaped from outside);¹⁹⁵ interests groups/social movements;¹⁹⁶ partisanship/ideology/elections;¹⁹⁷ political institutions;¹⁹⁸ overall political culture;¹⁹⁹ political culture dynamics;²⁰⁰ policy types (distributive, regulatory, redistributive, and variants thereof);²⁰¹ and lesson drawing (entailing learning from other jurisdictions, also referred to as "diffusion," "policy borrowing," "policy transfer," "emulation," and "policy copying").²⁰²

The applicability of these theoretical blueprints has been further examined in European (including United Kingdom) and other industrialized country settings, albeit more selectively.²⁰³ The proposition

190. *See id.* at 40.

191. *See id.*

192. *Id.* at 40.

193. *See id.*

194. *See id.* at 47-54.

195. *See id.* at 65-69.

196. *See id.* at 69-71.

197. *See id.* at 72-73.

198. *See id.* at 73-74.

199. *See id.* at 74-76.

200. *See id.* at 76-79.

201. *See id.* at 79-81.

202. *See id.* at 81-87.

203. *See generally* CAIRNEY, STUCLAR & MAMUDU, *supra* note 82.

that agendas (“How is the problem framed and how important is tobacco control as a policy issue?”),²⁰⁴ interest groups/social movements (conceptualized as networks: “Has there been a shift in power among pressure participants?”),²⁰⁵ partisanship/ideology/elections (with an emphasis on ideas: “What is the role of medical or scientific knowledge and to what extent is policy driven by the transfer of ideas?”)²⁰⁶ and political institutions (“Who has the responsibility for tobacco policy?”) exert influence over policy content has been found to be broadly valid.²⁰⁷ Socioeconomic factors (“What is the role of social and economic factors and have they contributed to shifts in power and agendas-status?”) have also emerged as a relevant causal element.²⁰⁸

An explanatory structure that has received particularly close attention is that centered on interest groups/social movements.²⁰⁹ Dissatisfaction has been expressed with the pluralist and corporatist views of networks operating in the smoking policy arena.²¹⁰ The former assumes that numerous groups compete intensely in order to tilt policy in their favor, with the government proceeding in a mostly passive fashion to allocate resources in accordance with the balance of power among them.²¹¹ The latter posits that an integration of business and labor, two private sector pillars, with the State leads to the formation of a stable bourgeois-dominant regime which determines policy outcomes through orderly bargaining.²¹² The analytical and empirical limitations of these contrasting models have prompted socio-legal researchers to invoke the concept of policy networks, or systems whose interdependent components consist of intimately linked government and key societal actors.²¹³

The balance of power within policy networks evolves in a dynamic fashion, although normally neither constantly nor sharply.²¹⁴ The trajectory it charts hinges on the competencies of the actors involved, or the effectiveness of the strategies they pursue, rather than merely the

204. *Id.* at 23.

205. *Id.*

206. *Id.* at 24.

207. *Id.* at 23.

208. *Id.*

209. *See generally* MELVYN D. READ, *THE POLITICS OF TOBACCO: POLICY NETWORKS AND THE CIGARETTE INDUSTRY* (1996).

210. *See id.* at 19-22.

211. *See id.* at 19-20.

212. *See id.* at 20-22.

213. *See id.* at 22-38.

214. *See id.*

resources at their disposal.²¹⁵ Evidence has been marshalled to demonstrate that, in a challenging environment, the tobacco industry has been able to maneuver successfully to maintain its privileged position with government members of the network, shifting materially the policy agenda in the process: “Initially health was the main concern but as this, ultimately, proved to be the wrong path to follow the question became less and less about the smoking-health controversy and more about the value and worth which tobacco offers society, to smokers and non-smokers alike.”²¹⁶

It remains to be seen whether and to what extent such theoretical perspectives may enhance the understanding of processes shaping policy content, in general and in relation to smoking in particular, beyond liberal-democratic territory. In authoritarian China, for instance, the explanatory paradigms relied on, for this purpose, have borne little correspondence to those outlined above.²¹⁷ The Chinese example may well be something of an outlier for cultural reasons, in addition to its persistently rigid institutional underpinnings.²¹⁸ However, a degree of cultural distinctiveness is not peculiar to China and it is often coupled with unique institutional attributes.²¹⁹ The corollary is that explorations undertaken in the liberal democratic context have produced an array of illuminating insights, but that they may have to be further enriched, fine-tuned and even radically reconfigured in an effort to increase the fit between them and the specific environment targeted by policy analysts.

III. THE HONG KONG *SUI GENERIS* ECONOMIC MODEL

Hong Kong enjoys considerable international prominence but it is a city of merely about seven million people. More significantly, it has never exercised full control over its destiny—initially as a British colony provided with robust law and order, but a modest measure of self-rule,²²⁰ and latterly as a semiautonomous Special Administrative Region

215. *See id.*

216. *See id.* at 38.

217. *See generally* JIANRONG HUANG, THE APPLICABILITY OF POLICY-MAKING THEORIES IN POST-MAO CHINA 2-3 (1999).

218. *See generally* JAN-ERIK LANE & SVANTE ERSSON, CULTURE AND POLITICS: A COMPARATIVE APPROACH 1-5 (2d ed. 2005).

219. *See generally* FLEMMING CHRISTIANSEN & SHIRIN M. RAI, CHINESE POLITICS AND SOCIETY: AN INTRODUCTION (1996); KENNETH LIEBERTHAL, GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM (2d ed. 2004); TONY SAICH, GOVERNANCE AND POLITICS OF CHINA (4th ed. 2015).

220. *See generally* NORMAN J. MINERS, THE GOVERNMENT AND POLITICS OF HONG KONG (5th ed. 1998); MA NGOK, POLITICAL DEVELOPMENT IN HONG KONG: STATE, POLITICAL SOCIETY, AND CIVIL SOCIETY (2007).

(HKSAR)²²¹ of a gradually, yet unevenly reforming and quintessentially authoritarian (no longer even in the “soft” sense of the term)²²² Chinese communist regime. Given this backdrop, capitalist Hong Kong’s achievements are remarkable, perhaps even without parallel. The city has progressed by leaps and bounds in the face of persistent turbulence across the border, severe international turmoil, widespread global and regional economic malaise, and profound structural shifts in the capitalist landscape (complex transitions from merchant to zaibatsu-style industrial capitalism, the managerial capitalist variant or Fordism/mass manufacturing, and the Toyotism/flexible production).²²³ In the process, it has transformed itself from a busy, but unspectacular entrepot, into a leading international manufacturing center,²²⁴ as well as, following the opening up of China in the late 1970s, a vibrant global metropolis supplying intermediary/producer services to its neighbors and the rest of the world.²²⁵

These accomplishments are captured in conventional performance metrics, such as per capita income/standard of living,²²⁶ and less conventional ones, such as the United Nations Human development index.²²⁷ Hong Kong is also one of the two jurisdictions, the other one being Singapore, most predisposed towards enabling foreign trade²²⁸ and—rather astonishingly, given its size—it has recently overtaken the United States as the prime platform for inward and outward foreign

221. See generally MINERS, *supra* note 220; MA, *supra* note 220; RODA MUSHKAT, ONE COUNTRY, TWO INTERNATIONAL LEGAL PERSONALITIES: THE CASE OF HONG KONG (1997); YASH GHAI, HONG KONG’S NEW CONSTITUTIONAL ORDER: THE RESUMPTION OF CHINESE SOVEREIGNTY UNDER AND THE BASIC LAW (2d ed. 1998); LO SHIU HING, GOVERNING HONG KONG: LEGITIMACY, COMMUNICATION, AND POLITICAL DECAY (2001); YONGNIAN ZHENG & CHING PING YEW, HONG KONG UNDER CHINESE RULE: ECONOMIC INTEGRATION AND POLITICAL GRIDLOCK (2013).

222. See generally DAVID SHAMBAUGH, CHINA’S FUTURE (2016).

223. See generally Ronald Dore, William Lazonick & Mary O’Sullivan, *Varieties of Capitalism in the Twentieth Century*, 15 OXFORD REV. ECON. POL’Y 102 (1999).

224. See generally Zhigang Tao & Y.C. Richard Wong, *Hong Kong: From Entrepot to Manufacturing and then Producer Services*, in URBAN TRANSFORMATION IN CHINA 235 (Aimin Chen, Gordon G. Liu & Kevin H. Zhang eds., 2004).

225. See generally *id.*; MEYER, *supra* note 64, at 1-4; CHIU & LUI, *supra* note 64.

226. See *World Bank Country and Lending Groups*, WORLD BANK, <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (last visited Feb. 3, 2018).

227. See UNITED NATIONS DEV. PROGRAM, HUMAN DEVELOPMENT REPORT 2015 (2015), http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

228. See Thierry Geiger, *Top 10 Economies Best Set Up for Trade*, WORLD ECON. F. (Apr. 1, 2014), <https://www.weforum.org/agenda/2014/04/10-countries-best-for-enabling-trade/>.

direct investment (FDI).²²⁹ Moreover, Hong Kong continues to be consistently ranked as the world's freest economy;²³⁰ it excels in terms of the ease of doing business,²³¹ as well as international competitiveness,²³² and, despite ultimately being part of the opaque Chinese political regime, Hong Kong possesses a highly transparent institutional infrastructure.²³³

It is tempting to ascribe Hong Kong's exceptional adaptability, inventiveness, resistance to shocks, rise, and vitality to Confucian cultural heritage, locational advantages, physical characteristics, proximity to China, and special relationship with the reawakening mainland demographic giant. The influence of such factors cannot be overlooked, but they enjoy a rather circumscribed explanatory power, individually and collectively.²³⁴ When the picture is considered in its proper historical context, one cannot fail to notice that Hong Kong experienced its dramatic economic take-off and extraordinarily successful adjustment to fundamental changes in its external environment during the three-decade long detachment from China. It would have undeniably been a more formidable challenge in the current set of circumstances, yet this does not call into question the basic notion, which is that the principal source of creativity, flexibility, resilience, and vigor has been institutional capital.²³⁵

Hong Kong's institutional capital, an "acquired advantage" or "advanced factor,"²³⁶ is the unmistakable product of British colonial rule that paved the way for a governance regime capable of gainfully

229. See John Nylander, *Hong Kong Overtakes the U.S. in FDI*, FORBES (June 25, 2015), <http://www.forbes.com/sites/jnylander/2015/06/25/hong-kong-overtakes-the-u-s-in-fdi/#22962a2a37f5>.

230. See *2016 Index of Economic Freedom*, *supra* note 67.

231. See *Doing Business*, WORLD BANK, <http://www.doingbusiness.org/rankings> (last visited Feb. 3, 2018).

232. See *Competitiveness Rankings*, WORLD ECON. F., <http://reports.weforum.org/global-competitiveness-report-2015-2016/competitiveness-rankings/> (last visited Feb. 3, 2018).

233. See *Corruption Perceptions Index 2015*, TRANSPARENCY INT'L, http://www.transparency.org/cpi2015?gclid=CjwKEAjwsuK_BRDD9ISR1bawwUwSJCbOiiX6VBDeteg_iBlzfWieztM_fuT88oD54l6fX8gNzPHBoCnEDw_wcB (last updated Feb. 1, 2016).

234. See MUSHKAT, *supra* note 68, at 1-17.

235. See *generally* DARON ACEMOGLU & JAMES ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2012); LAURA BRUNELL, *INSTITUTIONAL CAPITAL: BUILDING POST-COMMUNIST GOVERNMENT PERFORMANCE* (2005); ROBERT D. PUTNAM, ROBERT LEONARDI & RAFFAELLA Y. NANETTI, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 7-8 (1993); ROBERT D. PUTNAM, *DEMOCRACIES IN FLUX: THE EVOLUTION OF SOCIAL CAPITAL IN CONTEMPORARY SOCIETY* (2002); LALITA SOM, *THE CAPITALS OF NATIONS: THE ROLE OF HUMAN, SOCIAL, AND INSTITUTIONAL CAPITAL IN HUMAN EVOLUTION* (2015); HIROFUMI UZAWA, *ECONOMIC ANALYSIS OF SOCIAL COMMON CAPITAL* (2005).

236. See *generally* ANDREA MANESCHI, *COMPETITIVE ADVANTAGE IN INTERNATIONAL TRADE: A HISTORICAL PERSPECTIVE* (1998); MICHAEL E. PORTER, *THE COMPETITIVE ADVANTAGE OF NATIONS: WITH A NEW INTRODUCTION* (1998).

leveraging capabilities derived from physical geography and cultural/social history. Its principal components comprise the following:

- a heavy dependence on market forces to fuel growth and maintain stability (akin to Adam Smith’s “invisible hand”),
- robust protection accorded to private property rights,
- firm commitment to free foreign trade and investment,
- numerous ferociously competitive small and medium-size enterprises (SMEs),
- small government predisposed towards exercising restraint,
- rule-based, rather than discretionary (fiscal, monetary, and regulatory) policy regime,
- robust legal system rooted in common law (as distinct from civil)²³⁷ (“rule of law” rather than autocratic “rule of man” or Chinese-style “rule by law”),²³⁸
- bilingualism with English—the world’s *lingua franca*—enjoying the status of one of the two official languages (the other being Chinese, with no suggestion as to whether it is the Cantonese dialect spoken in Southern China or Mandarin), and
- an unwaveringly business-friendly government stance (what is good for business is good for Hong Kong).²³⁹

Over time, this fundamentally noninterventionist, yet one reinforced by order-promoting institutional mechanisms, public policy posture has morphed into a somewhat more expansionist variant portrayed as “positive non-interventionism.”²⁴⁰ In this substantively new form, it is characterized by a greater willingness by government than has historically been the case to embark on initiatives designed to complement (e.g., stepping up investment in physical and social infrastructure)²⁴¹ and underpin (e.g., the recent introduction of a far-

237. See Horace Yeung & Flora Huang, “One Country-Two Systems” as Bedrock of Hong Kong’s Continued Success: Fiction or Reality?, 38 B.C. INT’L & COMP. L. REV. 191 (2015).

238. See generally Miron Mushkat & Roda Mushkat, *Economic Growth, Democracy, the Rule of Law, and China’s Future*, 29 FORDHAM INT’L L.J. 229 (2005).

239. See LEO F. GOODSTADT, *UNEASY PARTNERS: THE CONFLICT BETWEEN PUBLIC INTEREST AND PRIVATE PROFIT IN HONG KONG* (rev. ed. 2009); LI, *supra* note 68, at 1-76; KU-WAI LI, *THE HONG ECONOMY: RECOVERY AND RESTRUCTURING* 1-31 (2006); MUSHKAT, *supra* note 221, at 1-17; ALVIN RABUSHKA, *HONG KONG: A STUDY IN ECONOMIC FREEDOM* (1979); David Mole, *Introduction to MANAGING THE NEW HONG KONG ECONOMY* 1 (David Mole ed., 1996).

240. See LI, *supra* note 239; LI, *supra* note 68, at 485-562; Mole, *supra* note 239, at 2-3; MUSHKAT, *supra* note 221.

241. See LI, *supra* note 239, at 1-31; LI, *supra* note 68, at 485-562; MOLE, *supra* note 239, at 2-3; MUSHKAT, *supra* note 221.

reaching competition law)²⁴² the operation of market forces²⁴³ (e.g., the recent introduction of a far-reaching competition law).²⁴⁴ Nevertheless, the departure from early colonial era norms and practices has not been decisive in nature, with the basic traits of the governance regime, notwithstanding the intense exogenous pressures endured at times, remaining largely intact.²⁴⁵

A crucial corollary of this elastic, but sturdy institutional constellation, is the system's ability to minimize the negative repercussions of cyclical fluctuations in aggregate demand. The reason lies in the "non-stickiness" of the prices of factors of production (notably labor and land/property) and goods and services. To elaborate, unlike in many other economic settings, when aggregate demand flounders, typically due to external influences, domestic prices undergo a sharp downward adjustment, competitiveness is quickly restored, and export momentum accelerates.²⁴⁶ This cyclical rebalancing, the product of what is depicted as an "automatic corrective mechanism," also bolsters the real money supply (i.e., the nominal money supply minus inflation), increasing the sense of wealth among agents in the household sector and thus boosting consumption.²⁴⁷ The pattern reverses during periods characterized by economic overheating.²⁴⁸

Another pivotal effect of the flexible, but robust, governance regime designed and refined by colonial-era institutional architects has been the vast space and powerful incentives provided for entrepreneurial initiative. This is a vital element that has been virtually absent from Adam Smith-like classical economic treatises and ruminations on the "Hong Kong miracle."²⁴⁹ By contrast, entrepreneurship looms large in the work of members of the "Austrian school," particularly Joseph Schumpeter, who laid a strong emphasis on the role of creative destruction in socioeconomic processes,²⁵⁰ and it periodically appears in libertarian

242. See Miron Mushkat & Roda Mushkat, *Political Economy of Regulating Competition in a Challenged Global Metropolis: The Hong Kong Blueprint*, 40 N.C. J. INT'L L. & COM. REG. 293 (2014).

243. See LI, *supra* note 239, at 1-31; LI, *supra* note 68, at 485-562; MOLE, *supra* note 239, at 3; MUSHKAT, *supra* note 221.

244. See generally Mushkat & Mushkat, *supra* note 242, at 293.

245. See Mole, *supra* note 239, at 2-3; Mushkat & Mushkat, *supra* note 242.

246. See MUSHKAT, *supra* note 221, at 1-17; Edward K.Y. Chen, *The Economic Setting*, in *THE BUSINESS ENVIRONMENT IN HONG KONG* 1-50 (David Lethbridge ed., 1980).

247. See MUSHKAT, *supra* note 221.

248. See *id.*

249. See *id.*

250. See Joseph S.K. Wu, *Entrepreneurship*, in *THE ECONOMIC SYSTEM OF HONG KONG* 155-59 (H.C.Y. Ho & L.C. Chau eds. 1988).

surveys of Hong Kong's economic development. In the latter, the indispensable input of entrepreneurs, continuously, rather than merely that of the post-1949 arrivals from previously vibrant Shanghai, to material progress is properly recognized. Strong emphasis is laid on their valuable contribution in spheres, such as the introduction of new goods, incorporation of new methods of production, opening of new markets, identification of new sources of raw materials, and promotion of new forms of industrial organization.²⁵¹

Perhaps more importantly, this unique system has facilitated effortless and fruitful structural transformation throughout Hong Kong's history. The transition from pre-1949 Chinese Communist Revolution steadily moving, yet not high-flying entrepot, to post-1950s Korean War international manufacturing center and, subsequently, global metropolis has been remarkably orderly and swift.²⁵² The adaptive capacity demonstrated is arguably indicative of a formidable property that goes beyond resilience. The point is that, in the aftermath of each massive and unanticipated exogenous shock, Hong Kong has not merely proved its resilience by promptly regaining its equilibrium, but it has, rather miraculously, reinvented itself, lifting the economy to a higher structural plateau.²⁵³ This quality, which is seldomly observed elsewhere, may be equated with "antifragility."²⁵⁴

Looking forward, the picture is less reassuring. The emerging problem is twofold, emanating from both external and internal sources. First, it manifests itself in the gradual institutional convergence, partly driven by the "diversity-resistant" Chinese Communist Party (CCP) and partly spontaneously inspired, between Hong Kong and Mainland China.²⁵⁵ The process has been vividly portrayed as one of "mainlandization," triggering symptoms of political decay in the territory:

HKSAR is characterized by a more personal style of governance; a chaotic implementation of public policies; an increasingly politicized judiciary whose decisions have been . . . challenged by Beijing and its supporters in Hong Kong; endangered civil liberties including academic freedom; an amalgamation of political labelling and mobilization; a failure of political institutions to absorb public pressure and demands; and a governmental insensitivity to public opinion.²⁵⁶

251. *See id.* at 159-62.

252. *See* MUSHKAT, *supra* note 221, at 1-17.

253. *See id.*

254. *See generally* NASSIM N. TALEB, *ANTIFRAGILE: THINGS THAT GAIN FROM DISORDER* (2012).

255. *See generally* HING, *supra* note 221.

256. *Id.* at 13.

Second, the failure of the Chinese authorities and the local government to earnestly address political reform has resulted in severe institutional imbalances.²⁵⁷ A global metropolis blessed with a highly sophisticated economic system is, thus, saddled with grossly inadequate and deeply flawed political infrastructure.²⁵⁸ The once dependable and uncertainty reducing executive-led governance regime has given way to a chaotic and fragile one.²⁵⁹ The official presiding over it enjoys virtually no legitimacy, being perceived as an agent of the powers that be in Beijing, the executive and legislative branches are constantly at loggerheads and the latter is seriously fractured.²⁶⁰ State capacity, or policy effectiveness, has inevitably eroded.²⁶¹ As matters stand, the historically grounded economic model has been marginally affected, but, in the absence of more constructive institutional reengineering, future prospects are somewhat ambiguous.²⁶²

IV. EXPLAINING PATTERNS OF TOBACCO CONTROL IN HONG KONG

As outlined in the previous Part, the territory's strategy of noninterventionism, often lauded for its steadfast adherence to classical economic principles, has evolved into a more activist stance, depicted as positive noninterventionism. In practice, the former had occasionally

257. See generally Miron Mushkat & Roda Mushkat, *The Political Economy of Constitutional Incrementalism in Hong Kong*, 9 NW. INTERDISC. L. REV. 1 (2016).

258. See generally *id.*

259. *Id.*

260. *Id.*

261. *Id.*; see generally BRIAN C.H. FONG, HONG KONG'S GOVERNANCE UNDER CHINESE SOVEREIGNTY: THE FAILURE OF THE STATE-BUSINESS ALLIANCE AFTER 1997 (2015); YU GU, HONG KONG'S LEGISLATURE UNDER CHINA'S SOVEREIGNTY: 1998-2013, at ix (Brill Nijhoff ed., 2015); NGOK, *supra* note 220; Chi-kit Chan, *Structural Weaknesses of the Executive-Led Model: Governance and Party Politics in Hong Kong*, in THE SECOND CHIEF EXECUTIVE OF HONG KONG SAR: EVALUATING THE TSANG YEARS 2005-2012, at 85 (Joseph Y.S. Cheng ed., 2013); Anthony B.L. Cheung, *Executive-Led Governance or Executive Power "Hollowed-Out"—The Political Quagmire of Hong Kong*, 15 ASIAN J. POL. SCI. 17, (2007); Brian C.H. Fong, *Executive-Legislative Disconnection in Post-Colonial Hong Kong: The Dysfunction of the HKSAR's Executive-Dominant System, 1997-2012*, 12 CHINA PERSP. 5 (2014); Brian C.H. Fong, *State-Society Conflicts Under Hong Kong's Hybrid Regime: Governing Coalition-Building and Civil Society Challenges*, 53 ASIAN SURV. 854 (2013); Sonny S.H. Lo & Dennis K.K. Leung, *The Dynamics of Executive-Legislative Discord in Hong Kong: Conflict, Confirmation, and Adaptation*, 15 PUB. ADMIN. & POL'Y 6 (2012); Tai-lok Lui & Stephen W.K. Chiu, *Governance Crisis and Changing State-Business Relations: A Political Economy Perspective*, in REPOSITIONING THE HONG KONG GOVERNMENT: SOCIAL FOUNDATIONS AND POLITICAL CHALLENGES 91 (Stephen W.K. Chiu & Siu-Lun Wong eds., 2012); Ma Ngok, *Value Changes and Legitimacy Crisis in Post-Industrial Hong Kong*, 51 ASIAN SURV. 683 (2011).

262. See Alan Wong, *Imagining Hong Kong's Future, Under China's Tightening Grasp*, N.Y. TIMES (Jan. 29, 2016), <http://www.nytimes.com/2016/01/30/world/asia/hong-kong-ten-years.html>.

ventured beyond its supposedly strictly defined boundaries without shifting the lines outwards. The latter has gone somewhat further by stretching the early colonial-era boundaries, albeit moderately and transparently. Combating “public bads,” such as smoking, and the negative externalities they produce has become an acceptable and common policy response. The specific paths followed are sketched below, the research conducted locally with a view to providing a firmer foundation for the initiatives actually and potentially taken is subsequently reviewed, and an attempt is then made to furnish an explanation for the trajectories observed.

A. *Evolution of Policy Content*

Smoking in Hong Kong has been trending downward but remains widespread. Its current prevalence is estimated at about 10.5% of the population, which is equivalent to approximately 641,300 daily users.²⁶³ The figures for males and females diverge markedly, with the respective percentages being around 18.6% and 3.2%.²⁶⁴ Youth smoking, both tobacco use and recourse to e-cigarettes, persists at non-negligible levels.²⁶⁵ E-cigarettes appear to hold a particularly strong appeal for members of this demographic cluster.²⁶⁶ About 9% of secondary school students are regularly drawn to the product versus approximately 2.7% of the traditional variant.²⁶⁷ The corresponding figures for primary school students are around 2.6% and 0.2%.²⁶⁸

The U.S. Surgeon General’s 1964 report is generally credited with establishing a clear link between tobacco use and ill-health and raising awareness of the dangers of smoking.²⁶⁹ The WHO emphatically embraced those findings and message in 1970, sowing the seeds of a growing adverse sentiment towards tobacco use and the rise of a sizeable movement propelled by it.²⁷⁰ This ignited concern over smoking and its

263. See *News Update*, H.K. COUNCIL ON SMOKING & HEALTH, <http://smokefree.hk/en/content/web.do?page=news20160204> (last visited Feb. 3, 2018).

264. See *id.*

265. See *id.*

266. See *id.*

267. See *id.*

268. See *id.*

269. See *Tobacco*, SURGEON GENERAL, <https://www.surgeongeneral.gov/priorities/index.html> (last visited Dec. 31, 2017).

270. See *Health Consequences of Smoking*, WORLD HEALTH ORG., http://www.who.int/tobacco/framework/wha_eb/wha23_32/en/ (last visited Feb. 3, 2018); see also A. LEE FRITSCHLER, *SMOKING AND POLITICS: POLICY MAKING AND THE FEDERAL BUREAUCRACY* (1989); A. LEE FRITSCHLER & CATHERINE E. RUDDER, *SMOKING AND POLITICS: BUREAUCRACY CENTRED POLICYMAKING* (6th ed. 2007).

impacts in Hong Kong, leading, in the following year, to the establishment of a working group, consisting of informed individuals not associated with special interests and representatives of relevant government departments, to study the problem and increase public knowledge of its scope and repercussions.²⁷¹ The narrow remit, coupled with lingering bureaucratic inertia, met with some criticism, and prompted the government to form in 1974 an Ad Hoc Committee on Smoking charged with the task of injecting a more explicitly practical element into the equation.²⁷²

The Committee's report, produced with a two-year lag, provided the basis for the articulation, in 1975, of a tentative policy framework geared largely towards fulfilling educational goals and discouraging tobacco use among youth, while respecting individual freedom of choice.²⁷³ It took the government another seven years to implement its first legislative measure in the shape of the Smoking (Public Health) Ordinance (chapter 371), enacted in 1982.²⁷⁴ The principal objectives expressed were (1) "to establish and encourage the establishment of no-smoking areas to prohibit smoking in certain enclosed places and public transport";²⁷⁵ (2) "to carry out more positive promotion of public health education";²⁷⁶ (3) "to require every cigarette packet and specified cigarette advertisements to carry in prescribed form of a government health warning and in certain media a general statement of tar content";²⁷⁷ and (4) "to control cigarette advertising."²⁷⁸

The next significant step in the policy development process was, following a WHO recommendation to create an institutional vehicle for inter-agency and inter-sectoral coordination, the set-up of the Hong Kong Council on Smoking and Health (COSH) in 1987.²⁷⁹ The mission of the

271. Grace Oi-Man Lee, *Government, Pressure Groups and the Tobacco Industry: A Study of the Politics of the Public Health Policy 38* (2006) (unpublished Master's thesis, University of Hong Kong), <http://hub.hku.hk/handle/10722/29134> (follow "FullText.pdf" hyperlink; then enter name and email address; then click submit; email with the full pdf of the article will be sent to the email address you provided).

272. *See id.* at 40.

273. *See id.* at 40-41.

274. *See* Winne Lei-Chun Wa, *A Study of Tobacco Control Policy in Hong Kong* (2005) (unpublished Master of Public Administration thesis, University of Hong Kong), <http://hub.hku.hk/handle/10722/131676> (follow "FullText.pdf" hyperlink; then enter name and email address; then click submit; email with the full pdf of the article will be sent to the email address you provided).

275. *Id.* at 47.

276. *Id.*

277. *Id.*

278. *Id.*

279. *See id.*

new body was (1) “to inform and educate the public on smoking and health matters”;²⁸⁰ (2) “to conduct and commission research on the harm caused by tobacco dependence”;²⁸¹ and (3) “to advise the Government, community health organizations, and any public body on matters relating to smoking and health.”²⁸² COSH has become a semi-independent channel for carrying the burden of gathering relevant information from external and internal sources, synthesizing and disseminating it, and making concrete recommendations to the government, without the latter necessarily adopting them unconditionally.²⁸³

Selective implementation of COSH recommendations has resulted in further, although incremental and modest, amendments to The Smoking (Public Health) Ordinance.²⁸⁴ A Tobacco Control Office was also established in 2001 within the Department of Health²⁸⁵ to further enhance and coordinate Government’s tobacco control efforts.²⁸⁶ Its specific goals are (1) “[t]o act as a principal enforcement agency under the Smoking (Public Health) Ordinance”;²⁸⁷ (2) “[t]o assist venue manager of statutory no smoking areas to ensure public compliance to the Smoking (Public Health) Ordinance”;²⁸⁸ (3) “[t]o promote smoke-free culture and enhance compliance to the Smoking (Public Health) Ordinance through publicity and health education”;²⁸⁹ (4) “[t]o coordinate the smoking cessation service of the Department of Health”;²⁹⁰ and (5) “[t]o assist the Food and Health Bureau in reviewing tobacco control legislation.”²⁹¹

While policy evolution has been gradual and the deviation from the prevailing *status quo* seldom substantial, the pace has varied considerably, with significant decision lags periodically giving way to meaningful, even if not always decisive, forward movement.²⁹² Notably, greater continuity and stronger momentum has been seen from the 1980s onward.²⁹³ Moreover, incremental adjustments to existing policies,

280. *Id.* at 47-48.

281. *Id.* at 48.

282. *Id.*

283. *See id.* at 48-50.

284. *See id.*

285. *See id.* at 50.

286. *See About Us: Introduction*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/about/about_intro.html (last visited Feb. 3, 2018).

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *See Lee, supra* note 271, at 35-90.

293. *See id.*

particularly when coupled with manifestations of certain aversion to change and measured scepticism, may convey the impression that politico-bureaucratic responses to social problems are marked by stagnation if looked at individually. A somewhat different picture may emerge when the cumulative effect of actions resorted to over a distinct phase in the “life” of a regulatory regime is taken into consideration.

Thus, in its current incarnation, the Smoking (Public Health) Ordinance is a fairly wide-ranging instrument.²⁹⁴ It extends the coverage of nonsmoking areas to indoor parts of all restaurant premises, indoor workplaces, public indoor places (including public transport facilities), and some outdoor public places (including bus interchanges).²⁹⁵ No person is allowed to smoke or carry a lighted cigarette, cigar, or pipe in areas so designated.²⁹⁶ Detailed provisions are furnished regarding the sale of tobacco products.²⁹⁷ These comprise health warnings on cigarette packets and retail containers; health warnings on retail containers of any cigar, pipe tobacco, or cigarette tobacco (other than retail containers containing one cigar); price markers and price boards of tobacco products; and prohibitions on selling or giving of tobacco products.²⁹⁸ A similarly restrictive approach is witnessed with respect to tobacco advertisement.²⁹⁹ To broaden the scope of the component of the legislation concerned with nonsmoking areas, the deferral of the ban on six key establishments (qualified bars, qualified night clubs, qualified clubs, massage parlors, bathhouses, and mahjong-tin kau premises) has been terminated.³⁰⁰ The content of the Ordinance and related programs is actively promoted via broad-based outreach talks,³⁰¹ smoking cessation outreach talks,³⁰² and health educational materials.³⁰³

294. See *Smoking (Public Health) Ordinance*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_so.html (last visited Feb. 3, 2018).

295. See *Statutory No Smoking Areas*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_sa.html (last visited Feb. 3, 2018).

296. See *id.*

297. See *Statutory No Smoking Areas*, TOBACCO CONTROL OFF., *Regulation on Sale of Tobacco Products*, https://www.tco.gov.hk/english/legislation/legislation_tp.html (last visited Feb. 3, 2018).

298. See *id.*

299. See *Meaning and Regulation on Tobacco Advertisement*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_ta.html (last visited Dec. 31, 2017).

300. See *Expiry of Deferment of Smoking Ban on Listed Establishments*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_dsb.html (last visited Feb. 3, 2018).

301. See *Seminar on Ordinance*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_talk.html (last visited Feb. 3, 2018).

302. See *Smoking Cessation Health Talk*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/quitting/quitting_talk.html (last visited Feb. 3, 2018).

The Smoking (Public Health) Ordinance remains the centerpiece of the strategy to curtail tobacco use and minimize its adverse consequences. However, additional regulatory mechanisms, some well-established and some relatively new, are relied upon for this purpose. Pivotal elements of the policy set include the Fixed Penalty (Smoking Offences) Ordinance and its subsidiary legislation, which stipulates that “anyone who smokes or carries a lighted cigarette, cigar, or pipe in statutory no smoking areas or on public transport carriers, will be issued with a fixed [HK]\$1,500 fixed penalty notice by enforcement officers,”³⁰⁴ an array of ordinances identifying specific no-smoking areas,³⁰⁵ Dutiable Commodities Ordinance (focused on tobacco tax),³⁰⁶ Public Health and Municipal Services Ordinance (pertaining to extracts of smokeless tobacco products),³⁰⁷ and Council on Smoking and Health Ordinance.³⁰⁸ This is a reasonably elaborate framework, mostly consistent with the patterns observed in high-income countries, although inadequate enforcement and regulatory loopholes continue selectively to be an issue attracting critical attention.³⁰⁹

B. Locally Generated Research Findings

Hong Kong has been a relative latecomer, and initially an ideologically recalcitrant one, to the battle against tobacco use. As such, the territory has not sought its own pathways to alleviating the problem. Rather, it has relied on lesson drawing (also referred to earlier as “diffusion,” “policy borrowing,” “policy transfer,” “emulation,” and “policy copying”), selectively and tentatively at first and incrementally expanding and varying the range of preventive and remedial instruments resorted to for this purpose in subsequent stages of strategy evolution. There has, thus, been ample time for relevant knowledge to accumulate

303. See *Health Promotion and Publications*, TOBACCO CONTROL OFF., <https://www.tco.gov.hk/english/downloads/downloads.html> (last visited Dec. 30, 2017).

304. See *Fixed Penalty (Smoking Offences) Ordinance and Its Subsidiary Legislation*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_fps.html (last visited Dec. 31, 2017).

305. See *Other Ordinances Related to Tobacco Control*, TOBACCO CONTROL OFF., https://www.tco.gov.hk/english/legislation/legislation_oo.html (last visited Dec. 31, 2017).

306. See *id.*

307. See *id.*

308. See *id.*

309. See Bernice Chan, *10 Laws that Are Broken in Hong Kong Every Day*, SOUTH CHINA MORNING POST, <http://www.scmp.com/lifestyle/article/1802374/10-laws-are-broken-hong-kong-every-day> (last updated May 20, 2015); see, e.g., Paul Surtees, *Legal Loophole Undermines Smoking Ban*, CHINA DAILY ASIA (Dec. 17, 2013), http://www.chinadailyasia.com/opinion/2013-12/17/content_15106412.html.

in other jurisdictions and apply it locally, without embarking on potentially complex and costly scientific explorations. Moreover, the pre-1980s ambivalent official stance towards smoking reduction had long deprived interested scholars and practitioners of the incentives and means necessary for pursuing such undertakings.

Over time, the realization has grown that patterns discerned elsewhere may not ineluctably manifest themselves in a similar manner, or at all, in Hong Kong and that their exact configuration, or perhaps even existence, needs to be empirically determined in the different local cultural and institutional setting. The policy climate in the past three decades has also undergone a fundamental transformation, with a more positive official posture crystallizing towards efforts to systematically shed light on the forces shaping tobacco use and strategies to fruitfully control them. This has led to a steady, albeit not high-volume, flow of projects addressing pertinent aspects of smoking behaviour, its physical and psychological ramifications, and its management.

Interestingly, but unsurprisingly, given that Hong Kong is still some way from qualifying as a full-fledged democracy, most of the research conducted has been of the micro-level type. Key subjects examined have included the epidemiology of tobacco use in Chinese women in the territory;³¹⁰ smoking and perceived health in Hong Kong Chinese;³¹¹ intention to quit smoking, attempts to quit and successful quitting among local Chinese tobacco users;³¹² current knowledge, beliefs, attitudes, confidence, and practices of Hong Kong doctors involved in treatment of smoking addiction;³¹³ predictors of intention to quit tobacco use in local secondary school children;³¹⁴ knowledge, attitudes, and practices regarding smoking cessation among Chinese affiliates of women's organizations in the territory;³¹⁵ a comparison of the degree of happiness displayed by ex-tobacco users versus that exhibited by those who have

310. See generally E.M. Lau et al., *The Epidemiology of Cigarette Smoking in Hong Kong Chinese Women*, 37 PREVENTIVE MED. 383 (2003).

311. See generally S.Y. Ho, *Smoking and Perceived Health in Hong Kong*, 57 SOC. SCI. & MED. 1761 (2003).

312. See generally A.S. Abdullah & H.K. Yam, *Intentional to Quit Smoking, Attempts to Quit and Successful Quitting Among Hong Kong Chinese Smokers: Population Prevalence and Predictors*, 19 AM. J. PUB. HEALTH PROMOTION 346 (2005).

313. See generally A.S. Abdullah et al., *Investigation of Hong Kong Doctors' Current Knowledge, Beliefs, Attitudes, Confidence and Practices: Implications for the Treatment of Tobacco Dependency*, 10 J. CHINESE MED. ASS'N 461 (2006).

314. See generally David C. Wong et al., *Predictors of Intention to Quit Smoking in Hong Kong Secondary School Children*, 32 J. PUB. HEALTH 1 (2010).

315. See generally D.Y. Leung et al., *Knowledge, Attitudes and Practices Regarding Smoking Cessation Among Chinese Affiliates of Women's Organizations in Hong Kong*, 19 HEALTH & SOC. CARE COMMUNITY 207 (2011).

not jettisoned the habit in the Chinese adult segment of the population;³¹⁶ behavior, attitudes, and experience of local Chinese women smokers;³¹⁷ and electronic cigarette awareness and use among adults in Hong Kong.³¹⁸

This continuous stream of small-scale, yet intensive, methodical inquiries has coincided with occasional studies of the macro-level variety. Most of these fall into the evaluative category. A comprehensive survey, covering the period up to 2009, of projects whose findings may provide the basis for concrete policy action is available online.³¹⁹ Virtually, the entire output is attributable to the caring professions, with community medicine/public health playing a prominent role. A noteworthy feature of the empirical work pursued in recent years has been the increasing, albeit still modest, contribution of social scientists representing disciplines such as economics, political science, and sociology. Significant examples of social science-style approaches consist of an attempt to assess the impact of the 2007 legislation on youth smoking and quitting behaviour,³²⁰ a dissection of the relationship between tobacco taxes and tobacco consumption in Hong Kong,³²¹ and an investigation designed to gauge public support for a total ban on tobacco sales in the territory.³²²

Explanatory accounts have been comparatively scarce, largely confined to research endeavors of graduate students, with no tangible input from established scholars and practitioners. However, the inquiries undertaken by budding social scientists in the course of writing their (mostly M.A., rather than Ph.D.) dissertations have been appropriately grounded in the theoretical literature on smoking behaviour and its management and have been carefully and sensibly implemented. They offer valuable, even if partial, insights into the development of strategies

316. See generally M.P. Wang et al., *Ex-Smokers Are Happier than Current Smokers Among Chinese Adults in Hong Kong*, 109 ADDICTION 1165 (2014).

317. See generally William H.C. Li, Sophia S.C. Chan & Tai Hing Lam, *Smoking Among Hong Kong Chinese Women: Behavior, Attitudes, and Experience*, 15 BMC PUB. HEALTH 1 (2015).

318. See generally N. Jiang et al., *Electronic Cigarette Awareness and Use Among Adults in Hong Kong*, 52 ADDICTIVE BEHAVIORS 34 (2016).

319. See generally T.H. Lam, *Translating Tobacco Related Research into Public Health Action*, TOBACCO CONTROL OFF. (Feb. 13, 2009), <https://www.tco.gov.hk/english/files/symposium/12.pdf>.

320. See generally S.S.C. Chan et al., *New Anti-Smoking Legislation on Youth Smoking and Quitting Behaviors via a Smoking Cessation Hotline*, 17(3) H.K. MED. J. 43 (3d supp. 2011).

321. See generally Suwina Cheng, *Public Policies, Tobacco Taxes, and Tobacco Consumption: Evidence from Hong Kong*, 2 INT'L J. PUB. L. & POL'Y 215 (2012).

322. See generally Man Ping Wang et al., *The Tobacco Endgame in Hong Kong: Public Support for a Total Ban on Tobacco Sales in Hong Kong*, 24 TOBACCO CONTROL 162 (2015).

aimed at curtailing tobacco use over a number of decades.³²³ These insights have the potential to selectively demonstrate the broad relevance and hence geographical scope of conceptual schemes pertaining to the evolution of tobacco control programs in jurisdictions with a longer and richer history of confronting the challenge.

Strong emphasis is laid in such guided explorations on the role of pressure groups—the tobacco industry and its affiliates—in molding public opinion towards smoking, and palpably influencing policy responses thereto in Hong Kong. This was abundantly evident in the pre-1980s period but has by no means receded into the background thereafter.³²⁴ Indeed, the Tobacco Institute, a powerful lobbying vehicle created to mobilize and consolidate the industry's formidable resources was established in 1983, a point at which pro-smoking sentiments appear to have peaked.³²⁵ Initially through multiple channels, and latterly via the Institute, the industry has launched both extensive and targeted campaigns in a sustained fashion in order to directly and indirectly maintain the management of smoking on a path consistent with its strategic goals.³²⁶

The campaigns have been underpinned by scientifically, or quasi-scientifically, derived information casting doubt on the putative linkage between tobacco use and a plethora of serious ills, while skillfully highlighting the positive side of the picture.³²⁷ The appealing taste of cigarettes has, thus, been repeatedly accentuated.³²⁸ The relationship between smoking and attractive personality traits (assertiveness, autonomy, confidence, independence, resilience, strength, and the like) has similarly been given prominence.³²⁹ This has coincided with the aggressive promotion of safer products, such as filter-tip and low-tar cigarettes.³³⁰ To its credit, the industry has proved equally capable of substantial versatility in the face of intense exogenous pressures by

323. See generally Lee, *supra* note 271; Wa, *supra* note 274; Ka-man Ngai, A Study of the Smoking Control Policy in Hong Kong (2006) (unpublished Master of Public Administration thesis, University of Hong Kong), <http://hub.hku.hk/handle/10722/52526> (follow "FullText.pdf" hyperlink; then enter name and email address; then click submit; email with the full pdf of the article will be sent to the email address you provided); Chan Wai Yin, Beyond Public Health: The Cultural Politics of Tobacco Control in Hong Kong (2009) (unpublished Ph.D. thesis, Lingnan University), http://commons.ln.edu.hk/cgi/viewcontent.cgi?article=1003&context=cs_etd.

324. See Lee, *supra* note 271, at 35-90; Wa, *supra* note 274, at 1-7, 67-95.

325. See Lee, *supra* note 271; Wa, *supra* note 274.

326. See Lee, *supra* note 271; Wa, *supra* note 274.

327. See Lee, *supra* note 271; Wa, *supra* note 274.

328. See Lee, *supra* note 271; Wa, *supra* note 274.

329. See Lee, *supra* note 271; Wa, *supra* note 274.

330. See Lee, *supra* note 271; Wa, *supra* note 274.

combining domain defense (information-driven campaigns) and domain offence (ongoing product innovation) strategies with domain creating ones (e.g., market segmentation through the proliferation of brands).³³¹

These well-coordinated and well-supported efforts have not gone unprovoked. Already, during the pre-1980s period, anti-smoking groups emerged in a bottom-up manner and attempted to counter the diverse strategies pursued by the tobacco industry in a mostly sympathetic socio-political environment.³³² These groups were almost exclusively associated with caring professions (e.g, Anti-Cancer Society, Medical Advisory Board, and the like), which were isolated, invisible, loosely organized, and resource-poor.³³³ Their impact on public opinion and policy may have been distinctly modest at any point in time, but, if looked at from a multiyear perspective, they seem to have to some degree sensitized the grassroots community and the bureaucratic elite on the dangers posed by smoking.³³⁴

Awareness of such dangers has intensified in the past three decades, resulting in a meaningful expansion of the forces bent on significantly clipping the wings of the tobacco industry and curbing the use of its products.³³⁵ The components of this (decentralized, but not lacking cohesion) coalition have not been confined to (still dominant) caring professions and have included a host of consumer groups, public interest groups (PIGs), elected officials and even elements within the politico-bureaucratic establishment (i.e., “insiders” as well as “outsiders”).³³⁶ The COSH may have been the most visible and possibly influential element of the anti-smoking coalition.³³⁷ The capabilities of this constellation of forces should not be overstated, but it may be legitimately portrayed as a moderately well-organized grouping with reasonable access to the corridors of power.³³⁸ As such, it may have been instrumental in inducing a fundamental shift in the official attitude towards tobacco use in the 1980s and beyond.³³⁹

Familiar concepts such as agenda setting and ideas are invoked to account for the shift.³⁴⁰ The government is depicted as an entity subject to

331. See Lee, *supra* note 271; Wa, *supra* note 274.

332. See Lee, *supra* note 271, at 35-48; Wa, *supra* note 274.

333. See Lee, *supra* note 271; Wa, *supra* note 274.

334. See Lee, *supra* note 271; Wa, *supra* note 274.

335. See Lee, *supra* note 271, at 49-90; Wa, *supra* note 274.

336. See Lee, *supra* note 271; Wa, *supra* note 274.

337. See Lee, *supra* note 271; Wa, *supra* note 274.

338. See Lee, *supra* note 271; Wa, *supra* note 274.

339. See Lee, *supra* note 271; Wa, *supra* note 274.

340. See Lee, *supra* note 271, at 35-90; Wa, *supra* note 274.

strong conflicting pressures and struggling to reconcile them.³⁴¹ At times, it is acting as a “referee,” but more often it is taking sides.³⁴² For a number of decades following the Second World War, it leaned heavily in the direction of the tobacco industry, emphasizing values such as individual freedom of choice, and opting to be oblivious to the harm inflicted by smokers on third parties.³⁴³ This has given rise to arguments that it allowed itself to fall “victim” to “regulatory capture” by corporate interests.³⁴⁴ The pattern has reversed, albeit not unambiguously, from the 1980s onward due to the accumulation of knowledge regarding the damage wrought by tobacco use and the emergence of the anti-smoking coalition as a countervailing force to be reckoned with.³⁴⁵

The transition from an accommodative to a restrictive government stance vis-à-vis tobacco use three decades ago qualifies as a wholesale regulatory regime change. This strategic reconfiguration has been attributed to a mixture of endogenous and exogenous factors.³⁴⁶ The politico-bureaucratic establishment has apparently autonomously progressed beyond noninterventionism by embracing positive noninterventionism.³⁴⁷ This has reflected itself in a greater willingness to address social problems earnestly and in a more balanced manner.³⁴⁸ Hong Kong’s increasing wealth and its growing middle class has also been accompanied by the crystallization of a public climate featuring lower tolerance of “public bads” generating negative externalities, such as smoking.³⁴⁹ This attitudinal transformation in turn, has paved the way for the bottom-up emergence of a wide range of adequately equipped forces vigorously opposed to tobacco products and the industry where they originate.³⁵⁰ The causes pinpointed, thus, lie in the institutional and socioeconomic domain, consistent with the mainstream accounts found in the general literature on the subject.

C. *Gaps in the Explanatory Fabric*

The systematic examination of governance structures, including the regulatory variants, has loomed largely on the academic and policy

341. See Lee, *supra* note 271; Wa, *supra* note 274.

342. See Lee, *supra* note 271; Wa, *supra* note 274.

343. See Lee, *supra* note 271; Wa, *supra* note 274.

344. See Lee, *supra* note 271; Wa, *supra* note 274.

345. See Lee, *supra* note 271; Wa, *supra* note 274.

346. See Lee, *supra* note 271, at 91-98.

347. See *id.*

348. See *id.*

349. See *id.*; Yin, *supra* note 323.

350. See Lee, *supra* note 271.

agendas for the past three decades. It has evolved into an ambitious enterprise, whose aim is to determine “[h]ow can public-sector regimes, agencies, programs, and activities be organized and managed to achieve public purposes.”³⁵¹ Its scope has expanded beyond the domestic arena and now encompasses international institutional constellations as well.³⁵² Indeed, the current preoccupation with global governance is on a scale that seems to exceed that witnessed on the domestic front, perhaps understandably so, given the fragility of the international system in the pre-1989 Berlin Wall collapse Cold War and post-1991-2010 “short peace” eras.³⁵³

The quest for better understanding and steering of governance regimes has been spearheaded by Western scholars principally concerned with the functioning of Western institutions. However, African,³⁵⁴ Asian,³⁵⁵ and Latin American³⁵⁶ experiences and challenges have by no means been overlooked. By contrast, smoking behavior and its regulation outside the Western hemisphere has received scant attention. There has been scattered attempts to come to grips with the problem, with China serving as a notable exception to the norm,³⁵⁷ but they have mostly been limited in scope, as well as few and far between. Moreover, the focus has almost invariably been on evaluation of the strategies employed, rather than explanation of the patterns observed, detracting from the potential completeness of the picture painted.

Therein lies the intellectual value of the empirical work pursued in Hong Kong. A significant portion of it falls into the evaluative category. This is an analytical realm, where the approaches relied upon by researchers, while not immune to controversy because of their supposedly ideological underpinnings, converge across geographical space. There is, thus, distinctly modest room for augmenting and even refining the toolkit available. A journey beyond Western territory often

351. Laurence J. Lynn, Carolyn Heinrich & Carolyn Hill, *Studying Governance and Public Management: Why? How?*, in GOVERNANCE AND PERFORMANCE: NEW PERSPECTIVES 1 (Carolyn Heinrich & Laurence J. Lynn eds., 2000).

352. See, e.g., INTERNATIONAL REGIMES (Stephen D. Krasner ed., 1983).

353. See Niall Ferguson, *We Need to Relearn the Arts of War and Grand Strategy*, FIN. TIMES (Sept. 25, 2015), <https://www.ft.com/content/3e1d221a-5e28-11e5-9846-de406ccb37f2>.

354. See, e.g., DAVID BOOTH & DIANA CAMMACK, GOVERNANCE FOR DEVELOPMENT IN AFRICA: SOLVING COLLECTIVE ACTION PROBLEMS (2013).

355. See, e.g., ISHTIAQ JAMIL ET AL., GOVERNANCE IN SOUTH, SOUTHEAST, AND EAST ASIA: TRENDS, ISSUES, AND CHALLENGES (2015).

356. See, e.g., SCOTT MAINWARING & TIMOTHY R. SCULLY, DEMOCRATIC GOVERNANCE IN LATIN AMERICA I (2009).

357. See generally TOBACCO CONTROL POLICY ANALYSIS IN CHINA: ECONOMICS AND HEALTH, *supra* note 146.

ends up as an exercise featuring duplication. On the other hand, the Hong Kong studies centered on the explanatory dimension hold the promise of shedding new light on the configuration, dynamics, and performance of tobacco control regimes because they have been conducted in a different, non-Western cultural and institutional setting.

It should be noted at the outset that, whether or not they provide a basis for theoretical enhancement, these studies perform a valuable function. Specifically, they demonstrate that elaborate paradigms emanating from the West possess multiple building blocks that may guide empirical exploration irrespective of place. Some fine-tuning may be called for in order to take account of special local circumstances, but a general conceptual framework may be constructed in a way that accommodates variations stemming from non-overlapping economic, historical, political, and social trajectories. The fruitful recourse in the Hong Kong context to explanatory schemes revolving around notions, such as agenda setting, force of ideas, interest group activity, and regulatory capture lends credence to this proposition.

Nevertheless, from a broader theoretical perspective, selectively embracing and partly validating existing hypotheses does not tangibly add to the prevailing body of knowledge. Hong Kong's distinctiveness is lost in the process. Instead, it becomes the object of most similar systems design (MSSD)³⁵⁸—a member of a homogeneous class, whereas it is best suited for analytical scrutiny via most different systems design (MDSD).³⁵⁹ The reason lies in Hong Kong's unique institutional attributes, which set it apart from virtually all other members of the heterogeneous class where it belongs, be they industrial or industrializing, democratic or authoritarian, or some combination thereof.³⁶⁰ Taking the former route yields insights specific to Hong Kong, while taking the latter potentially leads to conceptual enrichment.

The key sources of the territory's distinctiveness have been identified earlier, but it is appropriate to reintroduce them in a manner suitable in this context. In the economic sphere, the "big market, small government" blueprint has been of paramount importance.³⁶¹ This means that Hong Kong's *laissez-faire* economy has been characterized by "a high degree of individual . . . freedom and liberalism, and an absence of

358. See generally ADAM PRZEWORSKI & HENRY TEUNE, THE LOGIC OF COMPARATIVE SOCIAL INQUIRY (1970).

359. See generally *id.*

360. See generally Mushkat & Mushkat, *supra* note 257.

361. LI, *supra* note 239, at 17-20.

severe government intervention.”³⁶² The policy apparatus structured along these lines has also displayed a strong pro-growth bias, subordinating political values to economic ones: “Politics in Hong Kong [has] to support economic prosperity.”³⁶³ This has coincided with a vision derived from the “more or less paradigm,” which posits that “individuals can gain a share in prosperity [without narrowing] differences in gains among individuals.”³⁶⁴

In the political domain, the executive-led governance regime has, until recently, been largely insulated from centrifugal forces. The officials presiding over it may have chosen not to exercise discretion, opting for restraint instead, but they have enjoyed ample room for strategic, tactical, and operational maneuver. Because this flexibility has not been exploited and the underlying structure of the system has remained mostly intact, the regime has been marked by remarkable continuity. The system’s resilience, and to some extent rigidity, has been reinforced by its detachment from the community in which it has been embedded.³⁶⁵ While it is currently fashionable to invoke the notion of a societal network, it may have been conspicuous by its absence in this particular case, partly due to the fact that the politico-bureaucratic machinery has not really been integrated into the community.³⁶⁶

The economic and political anchors impart a conservative bias to the *modus operandi* of the governance regime. This is consistent with the well-supported view that institutional constellations—economic, legal, political, and social—determine the policy style adopted by governments.³⁶⁷ A fundamental distinction is made in this context between regime “standard operating procedures” that encourage incremental movement towards stated goals and those that favor sharp leaps forward, as well as between ones that foster consensus building and those that do not place a high premium on societal harmony.³⁶⁸ As has been evident on other policy fronts,³⁶⁹ given Hong Kong government’s

362. *Id.* at 17.

363. *Id.* at 24.

364. *Id.* at 26.

365. *See generally* SIU-KAI LIU, *SOCIETY AND POLITICS IN HONG KONG* (1982) [hereinafter *SOCIETY AND POLITICS*]; SIU-KAI LIU & HSIN-CHI KUAN, *THE ETHOS OF THE HONG KONG CHINESE*, 13 (1988) [hereinafter *ETHOS*].

366. *See generally* *SOCIETY AND POLITICS*, *supra* note 365; *ETHOS*, *supra* note 365, at 13.

367. *See generally* PAUL CAIRNEY, *UNDERSTANDING PUBLIC POLICY: THEORIES AND ISSUES* (2012).

368. *See generally* JEREMY J. RICHARDSON, *POLICY STYLES IN WESTERN EUROPE* (1982).

369. *See generally* Miron Mushkat & Roda Mushkat, *The Political Economy of Loose Regulation: Modernity Meets Tradition in Hong Kong*, 7 *INT’L J. REG. & GOVERNANCE* 101 (2007).

traditionally noninterventionist posture and, owing to its shallow ties to the community, the imperative not to disrupt the societal equilibrium, an incremental and consensual policy style, has naturally evolved.

For these reasons, the Hong Kong tobacco control system has exhibited far greater path dependence,³⁷⁰ or resistance to change, than comparable regulatory regimes.³⁷¹ For two decades, mounting evidence regarding the harmful effects of smoking, while not brushed off unceremoniously, was treated with palpable skepticism.³⁷² Even after a turning point was reached in the 1980s, the departure from the *status quo* has assumed the form of cautious stepwise adjustment.³⁷³ Throughout the entire period of policy development, extensive consultations have been held with primary and secondary stakeholders.³⁷⁴ Frequent opinion surveys have also been conducted to ensure that potential shifts in strategy enjoy adequate grassroot-level support and do not engender undue social friction.³⁷⁵ This is a pattern consistent with reactive, rather than proactive, leadership.

Institutional inertia, which may have positive, as well as negative consequences, is not peculiar to Hong Kong and its tobacco control system. For instance, a recent examination of an environmental water recovery mechanism in Australia's relatively fluid political setting has revealed self-perpetuating tendencies.³⁷⁶ That said, the path dependence displayed by the Hong Kong anti-smoking regime has been on a different scale and more pronounced. An even more extreme case is the persistence of China's authoritarian system, which is attributable to a plethora of institutional (bureaucratic structure, Confucian theory, imperial examination methods, and procedures for rewarding performance) and traditional cultural factors.³⁷⁷ However, it does not detract from the comparative uniqueness of the much younger Hong Kong tobacco control regime.

By underplaying the distinctiveness of this system, existing explanations of its functioning also do not sufficiently highlight the

370. See HOWLETT, RAMESH & PERL, *supra* note 71, at 192, 200.

371. See generally TOBACCO CONTROL POLICY, *supra* note 105.

372. See Lee, *supra* note 271, at 35-90.

373. See *id.*

374. See *id.*

375. See *id.*

376. See generally Graham R. Marshall & Jason Alexandra, *Institutional Path Dependence and Environmental Water Recovery in Australia's Murray-Darling Basin*, 3 WATER ALTERNATIVES 679 (2016).

377. See generally Xuanhui Liu, *Path Dependence and Authoritarian Regime in Traditional Chinese Culture: A Historical Institutionalism Framework of Analysis*, 3 PUB. ADMIN. & GOVERNANCE 1 (2013).

structural implications for policy learning. The historical surveys undertaken show a rather (initially) static and (latterly) splintered picture,³⁷⁸ without drawing the inevitable analytical inferences. The point is that, during the early phases of its evolution, the regime's configuration impeded efficient information processing and the acquisition of knowledge, featuring nolearning or perfunctory learning (whereby new insights are used to validate prevailing assumptions).³⁷⁹ As the system has opened up to anti-smoking groups, there has been a discernible shift to contested learning (which entails competing/partial assessments by different organizations and actors),³⁸⁰ lacking close coordination.

Another related issue not systematically highlighted in the current literature is the interplay between regulatory regime characteristics and policy change. Clearly, there was a turnaround at some juncture in the 1980s. The question is how to account for it. Was this the result of layering (a process in which new ends and means are simply added to existing ones without abandoning the previous ones),³⁸¹ drift (which occurs when policy ends change while policy means remain constant),³⁸² conversion (a process in which there is an attempt to change the mix of policy means in order to meet goals),³⁸³ or redesign/replacement (in which case there is a conscious effort to fundamentally restructure both the means and ends of policy so that they are consistent and coherent in terms of their goals and means orientations)?³⁸⁴ The pattern qualitatively outlined³⁸⁵ equates with layering, which would dovetail with the patchwork observed when a noninterventionist, self-contained, incrementalist, consensus-seeking, and stability-oriented institutional apparatus confronts social problems.

It might be tempting to suggest that the trend-reversal observed in the 1980s was a manifestation of punctuated equilibrium, a process whereby "change occurs as an irregular, non-linear, or stepped function in which relatively long periods of policy stability are interspersed with infrequent periods of substantial change."³⁸⁶ This would be a possible, but rare, turn of events in the Hong Kong context. "Big bang" is the exception, not the norm, for the territory's governance regime. While the

378. See generally Lee, *supra* note 271; Wa, *supra* note 274.

379. See HOWLETT, RAMESH & PERL, *supra* note 71, at 194.

380. See *id.*

381. *Id.* at 204.

382. *Id.*

383. *Id.*

384. *Id.*

385. See generally Lee, *supra* note 271; Wa, *supra* note 274.

386. HOWLETT, RAMESH & PERL, *supra* note 71, at 207.

authors may convey the impression that sharp acceleration materialized following two decades of inaction, their factual accounts are not entirely consistent with that interpretation.³⁸⁷ Rather, the picture painted is one of piecemeal adjustments, which at some not readily defined juncture become more tangible and whose cumulative impact or ripple effect culminates in policy reconfiguration.

Finally, the notion of “regulatory capture,” which does not sit comfortably with the image of an autonomous and socially disconnected regulatory agency, calls for a qualification. It is true that the Hong Kong tobacco control system had to face for a long period of time a monopolistic interest group structure,³⁸⁸ consisting of a strong and cohesive coalition of producers and a weak and dispersed set of consumer bodies. Yet, even then, its ability to shape outcomes, and exercise veto power, if need be, was significant.³⁸⁹ Admittedly, as indicated earlier, State capacity has undergone erosion in recent years, but so has the strength and cohesion of the producer coalition.³⁹⁰ The present interest group structure may be likened to competition,³⁹¹ featuring weak and dispersed consumer and producer lobbies.

A subtle distinction, thus, ought to be drawn between regulatory capture and regulatory cartelization. The former takes place when goal-deflection in bureaus in favor of producer interests is the result of the regulator’s development of a symbiotic relationship with its principal client group.³⁹² The latter occurs when organizational goals are bent in accordance to the values and interests of the elite steering the system—that is, insiders, rather than outsiders.³⁹³ The two patterns may, of course, coexist. The factual accounts provided indicate that this may indeed have been the case in Hong Kong.³⁹⁴ However, on balance, the evidence appears to be skewed towards regulatory cartelization,³⁹⁵ which might be construed as a reflection of the positioning and *modus operandi* of the regulatory regime and the overall institutional system in which it is embedded.

387. See generally Lee, *supra* note 271; Wa, *supra* note 274.

388. See MICHAEL J. EWEN, PUBLIC POLICY: THE COMPETITIVE FRAMEWORK 143 (2006).

389. See Lee, *supra* note 271, at 35-48; Wa, *supra* note 274, at 67-95.

390. See generally Anthony B.L. Cheung, *Public Governance Reform in Hong Kong: Rebuilding Trust and Governability*, 26 INT’L J. PUB. SECTOR MGMT. 421 (2013).

391. See EWEN, *supra* note 388, at 143.

392. See Roger G. Noll, *Government Regulatory Behavior: A Multidisciplinary Survey and Synthesis*, in REGULATORY POLICY AND THE SOCIAL SCIENCES 9, 26-27 (Roger G. Noll ed., 1985).

393. See *id.* at 27-33.

394. See generally Lee, *supra* note 271; Wa, *supra* note 274.

395. See generally Lee, *supra* note 271; Wa, *supra* note 274.

V. CONCLUSION

Benign perceptions of smoking as a pleasurable activity and a status symbol have given way in the past half a century to the realization that it is highly damaging to consumers and bystanders. An acute appreciation has also crystallized that the social costs, both quantifiable and nonquantifiable, are enormous and that vulnerable population segments are at risk. Substantial research, conducted at the micro- and macro-level, has lent solid support to these assertions and has greatly enhanced the understanding of the academic and practical complexities involved. A wide array of instruments has been created to mitigate the problem and its consequences. Statistical time-series reassuringly show that palpable success has been achieved on this front, albeit selectively so, because of lingering and emerging disparities between prosperous strata and disadvantaged ones, as well as between the Global North and Global South.

Other than in terms of geographical location, Hong Kong readily qualifies as a prosperous member of the Global South. It enjoys a high standard of living, possesses superior human capital, and key facets of its institutional architecture are genuinely superb. The territory is also at the epicenter of a vast network of cross-border flows and transactions. It is one of a handful of cities considered to be functioning as global metropolises, the corollary being that it is expected to operate in accordance with lofty international standards across the policy spectrum. This is seen in domains such as human services (e.g., education and healthcare), rather than merely those encompassing the economic, information, legal, and physical infrastructure.

Yet, despite having a dominant and lightly constrained executive branch throughout most of its history, Hong Kong's tobacco control system has evolved less efficiently and purposefully than has been the norm in the Organization for Cooperation and Development (OECD; "industrial countries" "club") space.³⁹⁶ There have been long recognition, decision, and implementation lags. This, in turn, has prompted scholars and practitioners to methodically search for ways to improve its performance and to come to grips with its drivers. Micro- and macro-level evaluative-style and explanatory-type projects have been pursued, with an emphasis on the micro and evaluative sides. The attention accorded to explanation, however modest at the macro-level, is welcome

396. Particularly interesting, in this context, is the Japanese experience. See Eric A. Feldman, *The Culture of Legal Change: A Case Study of Tobacco Control in Japan*, 27 MICH. J. INT'L LAW 743 (2006).

because evaluation alone may yield insufficient insights and may even prove unproductive.

It is, thus, noteworthy that Hong Kong researchers have not overlooked this side of the picture. Indeed, at the micro-level the empirical work undertaken has been meaningful and is still ongoing. Moreover, the macro-level endeavors, while few and far between, have been elaborate and theoretically inspiring. However, by opting for duplication and validation alone, the latter have provided a window into Hong Kong from a mainstream conceptual perspective without tangibly contributing to knowledge regarding the operations of regulatory regimes in general and anti-smoking ones in particular. This theoretical inventory cannot fruitfully expand and be refined if its content is solely determined by the experience of adaptive Anglo-Saxon democracies and structural characteristics of other governance systems are disregarded.

Moreover, Hong Kong is not just another item in the politico-economic universe. It is virtually without parallel in the OECD and equivalent institutional space. Its governance regime is atypical by virtue of its noninterventionist and pro-growth (by implication, pro-business) proclivities, tenuous sensitivity to distributional outcomes of socioeconomic processes, weak enmeshment with the community, self-image as a neutral referee, inbred caution, preference for marginal departures from the *status quo*, reluctance to proceed in the absence of a widespread agreement among stakeholders, and preoccupation with stability. In the tobacco control realm, this has led to pronounced path dependence, no learning or perfunctory learning followed by that of the contested variety, layering, change at a snail's pace and regulatory cartelization (as distinct from regulatory capture). A sound appreciation of this dynamic may facilitate broad-based knowledge accumulation and regulatory system reengineering in Hong Kong and, where appropriate, elsewhere.