

THE ETHICS OF ADVERTISING TAXATION*

Jerry Kirkpatrick
California State Polytechnic University, Pomona

Abstract

This paper argues that the taxation of advertising is unethical because such an action amounts to the initiation of physical force by the government to control the flow of information within society, which is censorship. The initiation of physical force is unethical because force destroys reason, our distinctive tool of human survival. This argument is based on Ayn Rand's ethics of rational egoism, itself in part a rehabilitation of John Locke's natural rights theory.

Introduction

Many states, as well as the federal government, are seeking—either through legislation or initiatives—to tax advertising. These proposals, some of which have become law, range from a sales tax on the creative services of in-state advertising agencies, to a tax on the media expenditures of state and national advertisers who advertise within the state's boundaries, to the elimination or restriction of advertising expenditures as a tax deduction. For decades, tobacco and alcohol advertising have been targeted by both state and federal governments for especially heavy taxation and even prohibition.

The thesis of this paper is that legislation to tax advertising of any kind is unethical, because such legislation constitutes censorship. To demonstrate why the taxation of advertising is unethical, the meaning of the right of free speech must first be clarified, followed by a discussion of the meaning of censorship and of the nature of advertising's relationship to censorship. This argument is based on Ayn Rand's theory of rational egoism, which in part is a rehabilitation of the natural rights theory of such Enlightenment writers as John Locke (1952).

The Meaning Of Free Speech

Freedom of speech presupposes property rights (Rand 1964a, p. 97).

The right of free speech is the freedom of individuals to express themselves in any form or in any medium they choose—with or on their own property, or with or on the property of others who have voluntarily agreed to let the individuals use the others' property as a platform on which to speak. The only obligation of each individual is to refrain from defrauding or defaming others, or in any other way from infringing the freedoms of others—by initiating physical force against them.

* From Joel R. Evans, Barry Berman, and Benny Barak, eds., *Proceedings of the 1995 Research Conference on Ethics and Social Responsibility in Marketing* (Hempstead, NY: Hofstra University School of Business, 1995), 117-122.

Falsely yelling “fire,” for example, in a crowded theater is *not* an expression of free speech that is restricted by the “public interest”; it is criminal assault. Penalizing noisy home crowds, on the other hand, through a rule agreed upon by the owners of the National Football League, *is* an expression of the NFL owner’s right of free speech—because no initiation of physical force is involved in the rules of professional football, and because players and fans both voluntarily accept the conditions of the NFL owners when they walk onto the owners’ property.

The Meaning Of Censorship

Censorship is always an action *by the government* to restrict what an individual or corporation is allowed to say (Rand 1964a, pp. 98-99; Mises 1969, p. 24). Censorship is never a private action. And a corporation is a voluntary association of individuals (Hessen 1979).

It is not censorship, for example, when a privately owned publishing company refuses to print an article of the present writer, or when a newspaper refuses to carry an advertisement its owners find offensive. The refusal of publishers to run certain articles, or advertisements, is merely the expression of the publishers’ rights of free speech—the publishers’ right to use their property as vehicles for the ideas they value. The difference between governmental and private action is the difference between coercion and voluntary cooperation—the difference between a gun and the free market.

This last is the distinction between political and economic power. Political power is always the power of governmental coercion, initiated or retaliatory—because the government holds the legal monopoly on the use of physical force; political power is always the power of a gun. Economic power, on the other hand, is consumer dollar power, the power of an entrepreneur to become wealthy by repeatedly satisfying the needs and wants of consumers, offering them better and cheaper products than the competition; economic power has nothing at all to do with coercion, but everything to do with *voluntarily* offering *values* to consumers (Rand 1966b, pp. 46-47).

This distinction helps clarify confusion caused by the improper metaphorical extension of certain concepts. Applying “censorship” to private actions is one example of this error. Another is the incorrect description of Harlem and Watts in the United States as “ghettos,” because a crucial, fundamental difference exists between these slums and the Florence and Warsaw ghettos of Europe. The Jewish people in these ghettos were *physically incarcerated by law*, whereas the residents of Harlem and Watts are not. Similarly, it is incorrect to say that an employer who refuses to hire a particular interviewee “forces” the interviewee to look elsewhere; no guns or other physical coercion is used in the hiring process.

Censorship is the government’s use of its legal and regulatory authority to coercively control the flow of information within society.

Advertising and Censorship

An occasionally-cited historical experiment vividly demonstrates how the taxation of advertising amounts to censorship.

In 1712, a tax was imposed on newspapers and newspaper advertising in Great Britain; it was imposed initially to control seditious libel but was continued for 141 years to raise revenue for the license bureau. At the time that it was imposed, Britain’s annual newspaper circulation was

2.5 million—the American colonies at the time had only one newspaper (three in 1719, 25 in 1765). In 1853, when the law was abolished, Britain had a population of 27 million people, but only 500 newspapers with an annual circulation of 91 million; the United States, in contrast, which enjoyed a free market in newspaper publishing throughout the period, had a population of only 23 million, but 2300 newspapers with an annual circulation of 423 million (Presbrey 1968, pp. 74-76, 119, 131, 150).

The taxation of advertising, as this example illustrates, is also tantamount to content regulation. The Stamp Act of 1765 was the only time, until recently, that a tax was imposed in the United States on media and media advertising. For a review of the negative effects of advertising taxation today, in countries around the world, see Boddewyn (1983).

Advertising—the Supreme Court’s recent rulings notwithstanding—does not differ in essence from any other kind of media communication protected by the First Amendment of the U. S. Constitution. All newspaper and magazine articles, as well as all radio and television programs, are commercial speech produced for the explicit purpose of inducing a “commercial transaction”; all media communication, in other words, contains “purely commercial messages.” The wording of headlines, the copy structure of news articles, and the choice of reporters—all are designed by editors and publishers to stimulate the sales of newspapers and magazines.

The notion that commercial speech must be controlled, because it is somehow different from other forms of speech protected by the First Amendment, stems from the pre-Enlightenment doctrine that the government (or King) is guardian of the “public interest.” According to this doctrine, any product, action, speech, or idea that may be intrinsically harmful to the public interest must be regulated or banned. Today, advertising (as opposed to newspaper articles and editorials) is said to be an intrinsically harmful speech that can be regulated, taxed, or prohibited; such governmental action, it is said, serves a “public” or “compelling state interest.” The “compelling interest” in past years was the protection of the so-called public’s right to be informed, that is, the protection of an allegedly helpless public against possibly deceptive, profit-making messages. Today, when attempts are made to tax advertising, the “interest” is simply the empty state and federal treasuries (Boddewyn 1983).

The “public interest,” however, is a euphemism for whatever the state declares to be in its interest, which varies according to which pressure group controls the political party that controls the legislature, or which subcommittee chooses to examine which particular issue. Whatever the interests of the state may be, they are indeed compelling—because, while ordinary citizens become criminals when they use physical force for any reason other than self-defense in life-threatening or emergency situations, the unique nature of government, again, is that it holds the legal monopoly on the use of physical force.

If the concept of the “public interest” has any validity, it must apply to all one hundred percent of the individuals living in society, not just to fifty-one percent of them; the only way this concept can have meaning, then, is if governments protect every individual’s rights, including those of advertisers. Rights are freedoms to take action in a social context. As such, they are ethical restraints placed primarily on the arbitrary power of governments. When properly understood and recognized, rights protect the smallest minority on earth—the individual—from harm by irrational majorities. In ancient Athens, Socrates’ inalienable rights were not recognized by the majority when he was condemned to death for being “intrinsically harmful” to the “public interest.” The advertiser today is becoming a modern-day Socrates.

The Public's Alleged "Right To Be Informed"

Similarly, this "public" has no "right to be informed"; there are no public or group rights, only individual rights. The public or society is not some super-organism, or supernatural entity, separate from or better than its individual members, as this doctrine holds; the public has no rights that individuals do not have. This doctrine in fact rests on the morality of altruism and the collectivist notion of the "divine right of Kings"—because the King supposedly knows what is best for his subjects, who must dutifully sacrifice themselves for the greater good of the Kingdom; today, it is a hypostatized public that claims the alleged right to sacrifice advertisers

Rights are not privileges to be granted and withdrawn at the whim of any courtier, special interest group, or majority that happens to be in power in Washington or the state capital. Rights are the inalienable—untransferable—conditions of human existence and basic requirements of peaceful association; they are violated, as Ayn Rand was the first to make explicit, only through the *initiation* of physical force (Rand 1964c, p. 108). (This premise is present throughout John Locke's *Second Treatise of Government*, but Locke did not make it explicit. Cf. Frederic Bastiat's (1950) concept of "legal plunder.")

The New Prohibitionism

The specific assaults that occur today on tobacco and alcohol advertising raise the specter of a new prohibitionist mentality. In effect, these critics charge that consumers have no free will and, consequently, are helpless pawns of the advertisers. In addition, they charge that certain products, such as tobacco and alcohol, are intrinsically evil; consequently, their advertising must be regulated, taxed, or banned.

Both of these charges, the present writer argues, are false. Human beings are not totally determined to act the way they do either by heredity or environment. An element of freedom of the will must exist because the doctrine of determinism is a self-contradiction: to be consistent, the advocates of determinism would have to admit that they themselves are determined to believe in determinism. Such an admission, however, invalidates all knowledge, including the knowledge that determinism is true (Mandelbaum 1962; Locke 1966; Kirkpatrick 1986). No one—advertiser, politician, parent, or teacher—can get inside our minds to make us want to smoke (or not to smoke) cigarettes. (A gun, of course, can make us do things we otherwise would not choose to do, but advertising is not a gun.) Those who smoke do so by choice.

Further, material objects and actions do not possess intrinsic value; no product, taken out of the context of its use and of the person using the product, is inherently dangerous or harmful. Sky-diving, for example, it would seem to most of us, is a dangerous activity, but to some it is highly valued—to the point of getting married during free-fall! On the other hand, can we not say that chocolate mousse is inherently dangerous and harmful for obese people? Objective value, as Ayn Rand identified, is a relationship between the material object and the person doing the valuing; it results from the free choice of the individual to evaluate the object in relation to that individual's goals (Rand 1966a, pp. 21-27).

Tobacco and alcohol, in other words, are not intrinsically evil or harmful. For example, the regenerative powers of the human body—a smoker's lungs can recover to normal after 15 non-smoking years—and the paracelsus principle of toxicology—the dose makes the poison—put the lie to this doctrine. The neoclassical and Austrian economists denied the possibility of intrinsic

value when they formulated the law of marginal utility (cf. Menger 1981); Rand, however, also denies that value—whether economic or ethical—is subjective. For Rand, value is neither intrinsic nor subjective, but objective (Rand 1966a, pp. 21-27; Kirkpatrick 1994).

The Ethical Issue

Censorship is unethical because the initiation of physical force, whether committed by a criminal or the government, is unethical. Initiated force—as opposed to a self-defensive, retaliatory use of force—is unethical because it makes rational, human judgment impossible. Force invalidates the very faculty that enables human beings to survive, the faculty that distinguishes human beings from the lower animals; force destroys reason. “The precondition of a civilized society,” states Rand, “is the barring of physical force from social relationships—thus establishing the principle that if men wish to deal with one another, they may do so only by means of *reason*: by discussion, persuasion and voluntary, uncoerced agreement” (Rand 1964c, p. 108).

The ethical principle underlying the argument against the taxation of advertising is this: acts that initiate physical force must be banned, whereas acts that result from the mutual consent of adults should be legal. The contrary principle argues that acts and products that are intrinsically harmful to the public interest must be regulated or banned. However, as has been shown, there is no non-arbitrary way to determine what constitutes “intrinsic harm” or the “public interest.”

When advertising is subordinated to the edicts of the tax authorities and government regulators—whether federal or state—it is ethics, individual rights, and the unique achievement of the United States Constitution that are threatened. If the ethical purpose of government is to protect individual rights, by using physical force only in retaliation and only against those who initiate its use, then it is our right of self-defense, as John Locke argued, that we delegate to the government. The government’s power to use force, however, was originally restricted by the Constitution and Bill of Rights. These two documents were the Founding Fathers’ means of subordinating politicians to moral law.

It is this achievement that is being challenged and destroyed by every increase in government power. It is this achievement that is being threatened through the recent, exceedingly illiberal, proposals to tax and ban advertising.

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