



FUNDAMENTAL RIGHTS AND TOBACCO CONTROL

programa
Derecho
a la **Salud**

División de Estudios Jurídicos **CIDE**

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I. WHY SHOULD WE ENGAGE IN FUNDAMENTAL RIGHTS DISCOURSE?



Tobacco Industry uses fundamental rights discourse: “the State impinges upon freedom”; “fascismo sanitario”, etc.

1. Freedom to trade
2. Freedom from discrimination (on grounds of illness)
3. Free Speech
4. “Right to Smoke”

We must engage in fundamental rights discourse:

1. Reclaim fundamental rights: health is a human right
2. Civil Law countries have traditionally **weak** procedural mechanisms for torts and consumer rights and traditionally **strong** mechanisms for fundamental rights
3. We have a regional FR tribunal: IAHRIC

II. EVOLUTION OF FUNDAMENTAL RIGHTS: IN THE PAST

CIVIL AND POLITICAL RIGHTS:



Obligation of the state to *refrain*.



Justiciable: no cost.



Examples:

- ☼ Refrain from arbitrary detention.
- ☼ Refrain from censure.
- ☼ Refrain from interfering in private life.
- ☼ Refrain from discrimination.

SOCIAL, ECONOMIC AND CULTURAL RIGHTS:



Obligation to *provide*.



Programatic (non justiciable): imply expenditures and thus are *discretionary*



Examples:

- ☼ Provide health services.
- ☼ Provide schooling.
- ☼ Provide living quarters.




IS THE DISTINCTION STILL VALID?



Type	Example	Refrain	Provide
Civil and Political	Property	Appropriation	Courts and public registries (adjudicate disputes or prevent them)
Economic, Social and Cultural	Health	<u>Subsidize or publicize tobacco</u>	Treatment (clinics)

FUNDAMENTAL RIGHTS TODAY



-  All rights involve some form of abstention.
-  All rights involve some form of provision:
 - ☼ To protect: from disinformation/exposure to harm
 - ☼ To provide: information/treatment/
 - ☼ To promote: incentives (tax)
-  Most abstentions and some provisions do not require mayor expenditures and thus can undoubtedly be requested in court.

4 TYPES OF STATE OBLIGATION

- (i) The obligation to **respect** the enjoyment of a right – not to interfere with it.
- (ii) The obligation to **protect** - that is, to keep third parties from keeping persons from enjoying a right or good.
- (iii) The obligation to **provide** - making sure a person has access to a specific good or right.
- (iv) The obligation to **promote** - that is, to establish the conditions so that people can have access to a good or right.

III. TOBACCO CONTROL POLICY AND FUNDAMENTAL RIGHTS



policy	right involved	type of obligation
ban on publicity, promotion and sponsoring	information/health	protect
prevention campaigns	information/health	provide/promote
smoke free spaces	health	protect (promote)
warnings	information/health	provide/promote
cessation clinics	health	provide
disclosure of components	consumer rights	promote
controls on exports	freedom to trade	protect

IV. FCTC AND FUNDAMENTAL RIGHTS



- A.- States have a duty to protect the fundamental right to health (among others.
- B.- States have discretion as to *how* to protect the fundamental right to health; that is, to decide which policies to implement.
- C.- States who have ratified the FCTC have ***expressly recognized*** that the policies there contained ***are the minimum needed*** to ***effectively*** protect people's health.
- D.- If states don't follow what they expressly consider to be minimum measures, they consciously fail to fulfill their obligations under the right to health.



Control de **Substancias**

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