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2014

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92 *Milbank Q.* 173-176 (2014)

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*Op-Ed*

## Limiting What We Can Eat: A Bridge Too Far?

LAWRENCE O. GOSTIN

INNOVATIVE MAYORS ACROSS AMERICA ARE SEEKING TO SHAPE personal decisions about diet and physical activity, taking a page from tobacco control. But attempts to limit personal choices of what to eat have drawn the ire of vocal critics and sometimes the rebuke of judges, with former New York City mayor Michael Bloomberg's limit on soda portions becoming a key flash point. The public broadly accepts state power to control infectious diseases, but often draws a line at limiting dietary choices. I want to dispel some of the well-worn arguments in the obesity wars.

### **“But there is no evidence the policy will work”**

Critics challenge dietary limits because they lack scientific evidence of their effectiveness. This strikes me as disingenuous because the *real* concern is that the policies actually will work, driving consumers away from lucrative products like soda, chips, cookies, and fried goods. Logic and research undergird even divisive policies such as portion limits: Sugary drinks deliver empty calories and are associated with rising obesity rates, and portion sizes have grown exponentially. But whether the evidence is definitive is almost beside the point. We do not ask for proof of effectiveness in other sectors. Legislators do not have to prove that economic or social policies work because the electorate understands that proving causality in a complex world is fraught with difficulty. Moreover, it is not even possible to prove that a ban on portion size works unless it is implemented.

The “inconclusive science” critique is faulty also because it targets a single intervention. The successful reduction in smoking rates, for example, cannot be attributed to a single intervention. Rather, a suite of policies, operating over time, changed the culture of tobacco, examples being smoke-free laws, taxes, and packet warnings. If a broad set of food

policies were applied systematically over a period of time, we might see the same shifts in dietary patterns. Imagine if the government banned trans fats, taxed junk foods, mandated clear nutritional labels, subsidized fruits and vegetables, and required healthy school meals. America's food culture would be transformed, and similar policies could promote physical activities by supplying bike lanes, pedestrian walkways, parks, and the like.

### **“But the policy is inconsistent”**

Related to scientific uncertainty is the demand for policy consistency. Bloomberg's limit on soda portions, for example, applied to McDonald's supersized drinks but not to 7-Eleven's Big Gulps or Starbucks's flavored lattes. The inconsistency critique, however, fails to understand the nature of lawmaking, forged by ugly political compromise entailing public preferences, lobbying, and the trading of favors. Politics is the art of the possible, not the ideal. The “inconsistency” claim also misunderstands the need for incremental improvement over time. Public health agencies tackle problems one at a time, hoping to build a critical mass over the long term. Insistence that policymakers solve every problem now or not at all is a recipe for doing nothing.

### **“But this is a slippery slope that will take away other freedoms”**

Critics worry that even a relatively benign policy could lead to ever-more invasive interventions; for example, “If the mayor can keep us from drinking large sodas, he can also take away our favorite foods.” A host of vested corporate interests make common cause around slippery slopes, examples being the sugar, alcohol, and tobacco industries, along with restaurants and advertisers. They all stand to lose if health is placed at the center of public policy.

Slippery-slope arguments should be viewed with suspicion, as they force a speculative analysis without any specifics about the policy feared to lie downslope. But it should not be necessary to win a debate today about policies that may be proposed in the future. Furthermore, slippery-slope arguments lack normative force because all sides can level them. An antipaternalistic policy, for instance, could set the government on a slippery slope toward neglecting acute health problems. Policymaking is about striking a reasonable balance based on available evidence.

### **“But the constitution demands free speech and choice”**

Corporations wanting to sell unhealthy foods conflate the public's interests with their own economic interests. Businesses claim that consumers have a right to eat (or smoke) what they want. While posturing as champions of consumer rights, companies really are invoking their *own* liberties. It is not surprising, therefore, that civil society's opposition to the limits on soda portions was bankrolled by the beverage industry.

When fighting against mandatory labeling or advertising bans, businesses clothe themselves in the First Amendment. This tactic has had great success for tobacco companies, with courts rejecting graphic warnings and keeping cigarettes hidden from the public's view. The First Amendment also promises big dividends for food companies as they challenge nutritional labeling and bans on ads targeted to children. The food industry, for example, could challenge the Food and Drug Administration's recent proposed rule to label “added” sugar, claiming that it is a form of compelled speech.

### **“But it is unfair to burden the poor and minorities”**

Because obesity-related diseases fall disproportionately on African Americans, Latinos, and the poor, critics complain that the policies are unjust. It certainly is true that the “burden” imposed by a limit on soda portions would fall disproportionately on the vulnerable. (This also is true for tobacco taxes, which are highly regressive.) This is an odd conception of justice, however, because it focuses on modest invasions of autonomy but fails miserably in considering the corresponding health benefits.

Government's *failure* to act to reduce suffering and early death mostly in poor neighborhoods is the far greater injustice. Suppose a ban on trans fats or soda portions leads to healthier diets. If the policies work, a negligible limit on unfettered choice seems a minuscule price to pay for easing the devastating suffering from cancer, diabetes, and heart disease. Health should be the primary freedom, as it underwrites so many of life's options.

### **“But the mayor is being undemocratic”**

The courts took former mayor Bloomberg to task for being dictatorial, even though New York City's board of health—not the elected city council—issued the limit on soda portions. The courts effectively substituted their judgment for that of the board of health. It remains an open

case whether an elected legislature should act, as opposed to appointed health officials. But the mayor was elected, and sometimes strong leadership demands action in the face of a mounting health crisis. The question is whether a chief executive has a duty to cut through political logjams to achieve collective goods.

### **“But this is the Nanny State at work”**

According to American conceptions of liberty, the label “Nanny State” is pejorative. Before rushing to the judgment that paternalism is outside acceptable political boundaries, though, consider the means used and the goals sought. Most obesity policies are not very intrusive, often nothing more than a return to the norms of the recent past—such as smaller food portions. Other policies create a “new normal,” such as reducing the amounts of trans fats, sodium, and sugar and limiting advertising to children. Once implemented, many interventions are embraced; few of us are nostalgic for the days of smoke-filled restaurants and workplaces.

For those who ardently believe in personal responsibility, consider a simplifying hypothetical. When a corporation sells an unhealthy product to a consumer, the playing field is not level. The *company* is aggressively marketing the food. The *state* is subsidizing the ingredients (eg, corn syrup) and making the food more accessible through zoning laws. The *courts* are granting free speech rights to private companies, often for misleading claims targeted to youth. And *consumers* do not have comprehensible information or affordable access to healthier alternatives. All in all, those burdened with meeting monthly bills and juggling jobs and families find it easier to choose something that is less expensive, more convenient, and deceptively marketed. The default choice in today’s America is the unhealthy choice, but we can change that without undermining anyone’s fundamental freedoms.

The bottom line is that elected officials should be held accountable for the health of their inhabitants. Those, like Bloomberg, who disrupt the status quo have thus far shouldered the burden of accountability, facing fierce criticism and industry-backed judicial challenges while the vast majority of public officials have stood by and done nothing amid skyrocketing obesity rates. It is time for the political class to be held accountable for *failing* to act in the face of manifest suffering.

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