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Public Health, Regulation and the Nanny State Fallacy

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Abstract

Regulations designed to prevent third parties from harming individuals have achieved widespread acceptance, yet proposals to limit the harm individuals might cause to themselves have generated considerable debate. While some argue that moral and economic imperatives require state intervention, others claim individuals' choices should not be constrained, no matter how harmful these might prove to be. Opponents of regulation regularly describe state interventions to promote public health as "nanny state", and accuse the government of trying to assume a decision-making role they argue belongs with individuals. These arguments are explored using proposals to limit food marketing. Our analysis suggests rejection of government intervention by describing this as "nanny statist" is illogical and avoids much needed rational debate over the options that might best promote public health objectives.

Introduction

Governments have intervened to promote public health objectives for many centuries; Jochelson (2006) noted regulations have promoted factory safety and water quality, mandated seatbelt wearing, and specified blood alcohol levels (see also Lang and Rayner, 2003). These interventions have protected individuals from the actions of others and, while now generally accepted, often provoked intense discussion when first proposed (Baggott, 2005). However, where interventions have sought to promote public health objectives by protecting individuals from the harmful consequences of their own actions, debate has proved even more intense.

Jochelson (2006) described the different philosophies that governments bring to public health decisions. She suggested an interventionist approach seeks to reduce the social inequities that contribute to health disparities, thereby promoting public health. Thus she argues that: *"Legislation brings about change that individuals on their own cannot, and sets new standards for the public good"* (p. 1149). Her argument reflects the view that, since individuals' choices are constrained by their environment, changes to this are required before people may exercise full and free choices. She proposes that these changes are most efficiently brought about via government regulation. As McKee and Raine (2005) noted, this approach follows the Marxist view, which suggests that although people make their own history, this is shaped less by their free will than it is by their circumstances.

However, libertarians oppose these views; they promote individual freedom and reject attempts to constrain this as demeaning. For example, Connelly (1999) argued that state intervention reduces the role played by individuals, to the extent that they become *"largely just a pawn in a societal game"* where their *"resilience, ingenuity, and scope for action"* (p. 59) is undervalued. Views such as these follow John Stuart Mill's argument that individuals have a right to perform actions that may result in harm, even though others, including the state, have to take responsibility for the consequences and so may wish to intervene to reduce or stop the behaviour.

These competing philosophies are evident in many public health debates and have recently re-emerged as business groups, health researchers and politicians explore how to reduce the increasing proportion of children and adults classified as overweight or obese. Groups representing varied positions on the political spectrum have not disputed medical evidence that obesity represents a serious public health problem (Yach *et al,* 2004); however, there is no consensus over how the consequences of obesity might be averted.

This discussion raises important questions about the role the state should play in creating environments that support healthy behaviour. The following section analyses interventions open to government and reviews the efficacy of these, before evaluating claims made in this debate.

The Intervention Spectrum

Limitations of Education

Rothschild (1999) argued that interventions to promote behaviour change fell into three categories: "carrots, sticks and promises". He described education campaigns, which aim to fill knowledge gaps in the belief that enhanced knowledge will translate into behaviour change, as "promises". He noted that education is a weak measure, particularly when employed in environments that actively promote, support and reinforce risk behaviours.

The limitations of purely educative approaches are evident in several public health fields where awareness of a desired behaviour is much greater than adoption of that behaviour. For example, recent estimates of awareness of "5+" messages are twice the proportion of individuals who claim to act on this message (and this estimate is likely to be inflated by social desirability error). Findings such as these led Jochelson (2006) to state that education could *"have only some impact on knowledge and attitudes, and little impact on behaviour"* (p.1153). Similarly, Swinburn (2006) epitomised the failure of communication campaigns when he argued that "*obesity is not a knowledge deficit problem.*" Furthermore, as Joffe and Mindell (2004) pointed out, education campaigns reinforce the wealthy and better educated, who are already likely to practise the promoted behaviour. Education alone, they warned, may have the unintended effect of exacerbating existing health inequalities (Durante, 2007).

Perhaps more fundamentally, attempts to educate consumers to make healthier choices implicitly accept that argument that individuals are responsible for their own actions, irrespective of the context in which they perform these. Rayner (2007) argues this approach is illogical, since the major determinants of health *"are increasingly located at the national and global levels*" (p.453). Providing information may thus improve knowledge, but will have little or no effect on behaviour if the environmental constraints that shape this remain unchanged (Nestle, 2006). Thus adoption of the least intrusive tool requires an explicit recognition that this is also likely to be the least effective option, a point we return to later.

The Social Marketing Alternative

In response to this evidence, social marketing, which provides incentives and rewards that promote behaviour change, has increased in popularity. Referred to by Rothschild as "carrots', social marketing differs from education because it recognises the importance of exchange (McDermott *et al,* 2005). Social marketers offer a benefit that will follow adoption

of the promoted behaviour; this recognises that, for consumers to forgo the outcomes they achieve from a risk behaviour, they must receive an equivalent (or superior) benefit. McDermott *et al (*2005) criticised many social marketing programmes for failing to provide a clear benefit or exchange and suggested many are no more than social advertising campaigns. This criticism highlights the challenge social marketers face in competing effectively with commercial enterprises, whose ability to provide wide-ranging, highly sought-after and eminently reinforcing benefits is difficult to counter (Salinsky, 2006).

Like education initiatives, social marketing campaigns (whether exchange-oriented or social advertising) are typically launched into a hostile environment where they are a tiny voice that struggles to be heard above the cacophonous commercial babble. Given this context, their opportunity to change the environment is limited, while their ability to exert a positive influence on behaviour is even smaller. Recognition of these limits, particularly when used to change well-established behaviours, led Lang and Raynor (2007) to warn that social marketing is not *"a panacea for inaction elsewhere in the policy world"* (p.169).

The Logic of Regulation

In these situations, where the environment strongly pre-disposes risk behaviour, Rothschild recommends use of a "stick", or regulatory intervention, since this is the most powerful and rapid means of changing the factors that exert the strongest influence on behaviour (see also Weiss and Smith, 2004). As many public health researchers have noted, regulations have modified environments (smokefree laws), imposed limits on behaviour (permissible blood alcohol levels for driving), restricted access to products (cold medications able to be "cooked" into pseudoephidrine), and required the adoption of new behaviours (mandatory use of cycle helmets) (Baron, 2006). Each of these examples illustrates a change that reduced third party risk to individuals; however, initiatives to reduce risks that individuals may pose to themselves have led some politicians and those whose commercial interests are threatened, to describe regulatory proposals as "nanny statist".

As Pannetta *et* al (2003) noted, merely describing an argument cannot be regarded as equivalent to advancing a counter-argument, since no alternative proposition is put forward. According to their logic, labelling arguments as "nanny statist" is form of ad hominem attack that aims not to expose the limitations of a position, but to discredit the individual advancing that argument. Jochelson (2006) recognised and warned against this strategy, which she argued is the antithesis of reasoned debate: "*Dismissing government intervention as nanny-statist limits debate about the possible benefits of state intervention*" (p. 1151).

From a more formal logical perspective, "nanny state" allegations go beyond *ad hominem* as some claims create straw people that deflect attention away from public health problems and affected individuals. "Nanny state" claims also often rely on slippery slope reasoning where proposed regulatory interventions are seen as the beginning of a series of increasingly intrusive measures, as Roy (2003) illustrates. Furthermore, those labelling ideas as "nanny statist" may posit a false dichotomy where governments ***either*** adopt a laissez faire position ***or*** intervene; this approach fails to recognise that intervention may be the means through which individual freedom of choice could be achieved. Johnson (2003) explicitly recognised this paradox when she argued that obesity should be recognised as a public health problem, rather than a question of individual freedoms or responsibilities (p.70).

Jochelson's concerns that these tactics would limit debate were realised during the 2007 NZ Parliamentary Inquiry into Obesity and Types 2 Diabetes, where derision by definition was a recurring theme. The same tactic has re-emerged in submissions on the Public Health Bill which, if passed in its current form, would contain provisions that enabled the Director General of Health to regulate in situations where she or he believed voluntary standards or codes of practice provided insufficient public health protection. In the remainder of this paper, we analyse assertions made by politicians, the media and business lobby groups, and critically evaluate the evidence base and logical status of these.

The Nanny State Allegations

Right wing politicians criticised proposals to limit food marketing to children when these were first mooted as a potential response to the growing problem of youth obesity. Wilson (2003), for example, claimed that "*Banning fast food advertising would be another attack on freedom of speech and more state nannying and should be rejected*" and suggested that the right to advertise was a *"fundamental right"*. Roy (2003) intimated that restrictions on food advertising would be the first step to a state where *"Labour* [government party] *makes all our lifestyle decision – such as what we wear and how we cut our hair"*. Editorial writers expanded on this theme, describing regulation as an *"old-style belief"* that *"social problems can be solved by Nanny State throwing another regulation at them" (The Press,* 2003) and highlighting the *"spectre of the food police delving into the supermarket trolleys of ordinary New Zealanders"*. Similarly, columnists for business magazines sympathised with marketers "*battling a Nanny State mentality"* (Agee, 2007, p.6).

After politicians and the media adopted the term "nanny state", business advocacy groups used it to disparage initiatives they believed ran counter to their interests. Irwin, executive director of an advertisers' lobby group, reportedly "*frames the debate* [over food advertising restrictions] *as one of individual freedom versus nanny state"* and told a public health conference that *"draconian intervention which* [sic] *diminishes the rights and responsibilities of the individual to make choices…is undesirable" (The New Zealand Herald*, 2005). Irwin dismissed individuals as well as *"the debate"* using the same tactic and criticised a senior academic who challenged his position as someone seeking a *'nanny state in New Zealand"* (Wilson, 2006; *Manawatu Standard*, 2006).

As new legislation that would facilitate regulation to promote public health has moved through the parliamentary process, those favouring self-regulation and free market philosophies have also used "nanny state" allegations to undermine the Bill. For example, during Parliamentary question time, Ryall (2008) asked the Minister of Health *"Why is it* [the Labour Government] *proposing wide regulation powers that would enable the nanny State to ban all food and alcohol sponsorship of sports teams, to tell all restaurants what food they can serve and to ban fish and chips after 8pm at night?"*. In a media release, he stated that the Bill was *"nanny state gone too far"* and claimed *"this is Helen Clark* [Prime Minister} *getting into your pantry"* (Oliver, 2008). Media representatives have expressed concerns to MPs that they would be prevented from "*reporting on food, alcohol, and other societal issues"* (Ryall, 2008b) and have used their own columns to describe regulatory provisions in the bill as *"high-handed nanny state activity" (Waikato Times*, 2008). Industry groups have also argued that the bill has *"serious implications for commerce, freedom of speech* [and] *removal of consumer choice"* (Houlahan, 2008).

Public health advocates have responded to "nanny state" allegations; Keating and Sturgiss (2008) challenged business groups' argument that education is more effective than regulation and drew attention to the conflict of interest that exists when these groups advocate mechanisms that protect their needs above public health, community and national needs. Keating and Sturgiss also called on the government to demonstrate courage in the face of name calling (Hill, 2007; Tahana, 2008) and re-defined the free-market case to expose the food industry's extensive efforts to influence consumers' behaviour. Thus, Sturgiss (2008) argued *"This isn't about a Nanny state, this is about stopping the junk food industry being in charge of the nursery"*. These arguments have won support from some media commentators, with one recently claiming that "nanny state" descriptions "*avoid the issue"* and suggesting that "*The fewer phrases like 'nanny state'… that pepper those conversations, the better"* (*Herald on Sunday,* 2008; *Nelson Daily Mail,* 2007).

Evidential Ironies

Opponents of regulation promoting public health have demanded evidence that regulation would reduce obesity levels, even though strong evidence documenting the effect of food marketing on children's behaviour exists (Stead *et al*, 2007). Causal evidence is difficult to present, since control-group experiments are ethically difficult and logistically impossible to conduct. The standards opponents of regulation call for differ from those they apply to education proposals and self-regulatory responses to obesity, which appear to take no account of the extensive public health research that has been conducted. For example, Land and Rayner (2003) warned against: *"reliance on the private sector (consumerism) to perform in the public interest, when history shows the opposite"* (p. 74; see also Knai *et al* 2005). Jochelson concluded that *"Education programmes are ineffective on their own"* (p. 1153), though she suggested these could be helpful if used in conjunction with strong regulatory measures.

Similar questions have been raised about the effectiveness of self-regulation. In her review of self-regulatory models, Hawkes (2005) concluded that self-regulation could prevent deceptive advertising, but differentiated this from what she described as the *"very, very different aim of preventing the effects of advertising on children's diets*" (p.380). She found that the low number of complaints about food advertising did not imply widespread satisfaction with self-regulation, but instead reflected the fact that the complaints system is *"framed around the acute effects of deceptive and offensive advertisements, not the chronic effects of… promotions for less than health foods"* (p. 380). Hawkes also questioned whether self-regulation has the power to promote healthier choices when these are incompatible with the food industry's commercial objectives and concluded that *"statutory powers"* are required to create an environment conducive to healthier behaviour (see also Kelly, 2005; Nestle, 2006).

Conclusions

Reliance on the term "nanny state" to discredit regulatory proposals needs to be exposed as lacking both logic and credibility. Similarly, discrepancies in the standards of evidence required of regulatory and education proposals highlight the need for greater consistency in the evaluation of policy options. Models of regulatory intervention merit more widespread discussion, since these seem likely to promote individual autonomy within enabling environments. Jochelson (2006) favoured the notion of "stewardship", which she argued had

been advanced by the WHO as *"the very essence of good government´* (p.1154). This idea is similar to Cottram's (2005) *"intelligent government",* and Joffe and Mindell's (2004) *"canny government"*, where the state is *"clever, prudent, capable and shrewd"* (p.967. Wider debate of these models might help ensure decisions made to counter obesity are based on evidence not invective, and logic rather than derision.

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