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Trans Fat Bans and the Human Freedom: A Refutation

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David Resnik (2010) offers a balanced argument against a ban on trans fatty acids. His central premises are that the science is inconclusive; freedom of choice is limited without sufficient justification; further liberty-limiting policies will ensue (slippery slope); and the ban is neither necessary nor the least restrictive alternative. I disagree with every element of this argument.

INCONCLUSIVE SCIENCE

The evidence for the harms of trans fat, and the resulting benefits to the population’s health from a ban, are strong, as Professor Resnik ingeniously acknowledges. His claim that because the evidence is “not indubitable” a trans fat ban should not be enacted would thwart almost all public policy. When advocates oppose change, they frequently dispute the science, even in the face of a very solid scientific consensus—e.g., climate change skeptics. Science is rarely indisputable and constantly evolves. Policy can be anchored only on the best available evidence and, in this case, the science uniformly demonstrates harm, as the author fairly explains. Here, it is not even necessary to invoke the precautionary principle, which applies when science is truly uncertain about the harms caused.

FREEDOM OF CHOICE

Almost all objections to public health interventions rely on claims that they limit liberty. This is consistent with the broad bioethics condemnation of paternalism, which admittedly, and thankfully, is beginning to change. The liberty-limiting argument is flawed for two reasons. First, it matters a great deal how serious the limit on freedom is. It makes little sense, for example, to weigh a deprivation of liberty (e.g., quarantine) or invasion of bodily integrity (e.g., compelled treatment) the same as removing a harmful ingredient in food. As Resnik acknowledges, most consumers will not even realize a difference; over time, food without trans fat will become the norm; and the principal diminution in freedom rests with food producers rather than consumers.

To the extent that consumers object, the interference with their autonomy is negligible. They continue to have numerous food choices, including trans-fat-containing aged foods. One might observe, moreover, that the ubiquitous inclusion of unhealthy additives in food (e.g., trans and saturated fat, sugar, and sodium) interferes with the food choices of health-conscious consumers. (I personally find it difficult, if not impossible, to find food that is unadulterated with harmful additives).

Second, and importantly, individual choices are not purely a matter of free choice and free will. People face constraints (both internal and external) on the capacity to pursue their own interests. Sophisticated food marketing is precisely intended to persuade consumers to make unhealthy choices. The environment in which people live may limit their food choices, such as in neighborhoods dominated by fast or convenience foods.

Labeling and disclosure of nutritional content is inconsistent and perplexing. When eating in a restaurant, for example, consumers mostly have no idea of the food’s content—levels of trans and saturated fat, sugar, sodium, and calories. Furthermore, labeling of packaged foods in supermarkets is, at best, incomplete and confusing (e.g., “low-fat” food has added sugar and salt, and vice versa). The Food and Drug Administration (FDA) disclosure rule, moreover, permits companies to label a product “trans fat free” if it contains an unhealthy \(<0.5\) gram per serving, and the rule does not require disclosure of a percentage daily value (\%DV). The fact is that eating several servings of “trans fat free” foods daily could well exceed the recommended safe level of trans fat intake. Public information only goes so far.

Finally, even if individuals are well informed, they have limited willpower. The psychological, and even physical, effects of high fat, sugar, and sodium in foods are powerful.

SLIPPERY SLOPE

I rarely accept slippery slope arguments because they force a speculative analysis without any detail about the specifics of the future policy, together with the evidence supporting or opposing. If the arguments for a trans fat ban are sufficient to support the intervention, then it unnecessarily constrains policy formation to require debate about possible further interventions. Many of these future policy choices

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are, in fact, justified (Gostin et al. 2009). But it should not be necessary to win the argument now about policies that may, or may not, be proposed in the future.

THE ETHICS FRAMEWORK
Professor Resnik fairly acknowledges that the trans fat ban is effective, proportional, and publicly justified. Instead, he challenges the ban because it is not necessary and is not the least restrictive alternative. This represents a fundamental misapplication of the ethics framework. These two criteria cannot apply to all public health interventions, but only to those that pose significant limits on freedom, such as a deprivation of liberty or invasion of bodily integrity. That has long been the position of the Supreme Court in reviewing health and safety regulation (Gostin 2008). If public health officials had to demonstrate that every intervention must meet these criteria (think about surveillance, vaccines, occupational safety, and food regulation), it would thwart effective public policy.

Furthermore, bioethicists often misapply the least-restrictive-alternative test. The test does not require policymakers to adopt alternative policies that are less cost-effective. Although labeling and education, for example, are less restrictive and partially effective, they would not save as many lives as a trans fat ban and would probably be more expensive to implement.

A RARELY DISCUSSED ETHICALLY POWERFUL IDEA: THE BURDEN OF SUFFERING
In summary, the trans fat ban is one of the more easily justified interventions. The evidence of effectiveness is strong, the limits on choice are negligible, and there are no equally cost-effective alternatives.

I want to add another thought that rarely gets discussed when evaluating paternalistic policies. Bioethicists too readily focus on a narrow dimension of liberty (autonomy) rather than a broader liberty (health and well-being) (Gostin and Gostin 2009). It is false to believe that a small limit on unfettered choice matters more to individuals, families, and communities than the crushing burdens of disease, suffering, and early death. When we recognize that the disproportionate burdens of diabetes and cardiovascular disease rest on society’s poorest and most vulnerable people, a failure to act has deep moral dimensions.

The life choices of the disadvantaged are already severely constrained by their physical environments and socioeconomic status. To ignore the burdens of suffering from ill health, and fail to take known effective action, is far more morally culpable than a miniscule limit on their “choice” to eat an artificial, palpably harmful additive ingredient.

NOTE
Since this is a short commentary, I did not have space to develop the arguments favoring paternalism and obesity prevention. For these, see the following sources (Gostin 2008; Gostin and Gostin 2009; Gostin et al. 2009).

REFERENCES

Giving Liberty Its Due, But No More: Trans Fats, Liberty, and Public Health

James Wilson, University College London
Angus Dawson, Keele University

David Resnik (2010) argues that banning trans fats (TFs) from restaurants is unjustifiable at the present time, as it is too restrictive of human freedom. We agree with Resnik that liberty is an important value, one that ought to be protected and promoted. However, his argument relies upon an undefended and unjustified overvaluation of liberty. First, he overlooks some important arguments in favor of restrictions to liberty, and his consideration of the two he does review is unfair. Second, his account grossly overestimates the autonomy of our food choices. Lastly, his mechanism for