

Obesity, law and personal responsibility

Ruth M Armstrong

A recent conference raised issues about the environment in which lifestyle choices are made

Even before it had started, the recent 1-day conference “Obesity: should there be a law against it?” provoked controversy. The very title of the conference, convened by the University of Sydney’s Centre for Health Governance, Law and Ethics and the Australian and New Zealand Institute of Health Law and Ethics, elicited outraged responses. The recipient of much of the outrage, Conference Convener, Roger Magnusson (Associate Professor, Faculty of Law, University of Sydney), explained to the conference attendees that law’s perceived role in society is all about coercion. While law is a potent tool for public health and disease prevention, it needs to be able to “justify its involvement and defend itself from ideological attacks”. The conference’s quirky title went to the very core of the issue. Surely, adults have a right to choose to be overweight if it fits with their desired lifestyle. Shouldn’t the law stay away from our refrigerators and couches? An insightful early question from the floor was, “How can the law help frame the debate which is now framed as freedom of choice versus paternalism?” A distinguished international group of speakers presented a range of approaches to this dilemma.

The Australian context: Boyd Swinburn (Chair in Population Health, School of Exercise and Nutrition Sciences, Deakin University) considered obesity in terms of the conventional epidemiological triad, where host factors (human biology and behaviour) interact with vectors (excessive energy intake and inadequate expenditure) and the environment (physical, economic, policy and sociocultural). By far the major environmental drivers, said Swinburn, are economic ones, and these are weighted on the side of obesity. Products such as energy-dense foods and cars are heavily promoted, while others such as bicycles, the exercise industry, and fruit and vegetables are not. “If you look at obesity from a libertarian perspective, it is difficult to argue for an approach that involves laws, regulations and enforceable policies; people have a right to be unhealthy if they choose to be. A protectionist approach can be used for children, whom it can be argued have a right to be healthy. However, even in adults you can justify policies such as detailed food labelling on the grounds that they will support healthy choices — making healthy choices easy choices.”

While he acknowledged vast differences between the tobacco industry and the food industry, Chris Reynolds (Senior Lecturer in Law, Flinders University) pointed out the similarities in the way the two industries have marketed their products. Restrictions on marketing have had a major role in tobacco control, but so far in Australia, public policy for obesity has centred on exercise, education, and consideration of the built environment. Recent calls for controls on a range of other fronts, including food marketing, have been controversial and not supported by the federal government. While supportive of the idea of personal responsibility, Reynolds did not see this as excluding a community or collective response to public health issues. Personal choice will be influenced by the environment in which people are making that choice. “People are more likely to exercise personal responsibility if they’re not expected to swim against a current of advertising and promotion.”

Elizabeth Handsley (Associate Professor, School of Law, Flinders University) is currently involved in a multinational study of the regulation of food advertising to children in Australia, the United States, Canada, the United Kingdom, Sweden and Norway. These countries vary in their regulatory structures, rules (from minimal restrictions to a complete ban), and sanctions imposed for breaches. Interesting issues raised include: who should be the regulator (industry is more efficient but government is more independent)?; to what extent should surveillance rely on public complaint versus active monitoring?; what are the relative roles of parents and society?; how should the “rules” be defined?; and, what sanctions should be imposed?

The US and the UK: According to James Hodge (Associate Professor, Bloomberg School of Public Health, Johns Hopkins University, Baltimore, USA), Americans are split between viewing obesity as a public health issue or as a personal issue, and are more likely to support interventions aimed at children. He gave a colourful account of a raft of US strategies, covering various areas of the law. These occur at every level of government, with state and even local government jurisdictions not waiting for the federal government to act. They include incentives to encourage healthier behaviour, disincentives to discourage unhealthy behaviour, litigation by injured (obese) people seeking recourse (this has generally not been successful and many states have introduced “personal responsibility” laws that prohibit it), and restriction of access to unhealthy foods (local governments achieve this via zoning laws).

Robyn Martin (Professor, Public Health Law, University of Hertfordshire, UK, and Visiting Professor, Public Health Law, Chinese University of Hong Kong) pointed out that, although obesity affects many different nations, the context differs. In the UK, the context includes the political system, a culture of long working hours, class- and age-related food traditions, and even the climate! Over the past 5 years, obesity has been variously categorised in government documents as a medical problem, an economic problem, a societal problem, a public health problem and, most recently, by Prime Minister Tony Blair, as a personal problem. In a 2006 speech, he said: “Our public health problems are not, strictly speaking, public health questions at all. They are questions of individual lifestyle ... the result of millions of individual decisions.” Even within this narrow framework, argued Martin, there is much that the government can do in the way of legal support and structures to make it easier for people to live healthily.

A spurious dichotomy: Despite all the controversy, personal responsibility and the wider community response are not on opposite sides of the fence, says Chris Reynolds. “These two ideas are inextricably linked. One is necessarily supported and sustained by the other. The community must create the environment that maximises the potential for people to make healthy choices.” And Magnusson’s answer to that question from the floor about how the law can help reframe this debate? “We can turn it around and say that, if we really want to deliver on autonomy or individualism, we need to introduce legislation that allows people full freedom of choice.”

The conference “Obesity: should there be a law against it?” was held in Sydney on 28 September 2006. This is a selective, abridged account.

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