

The law and chronic diseases: obesity and tobacco

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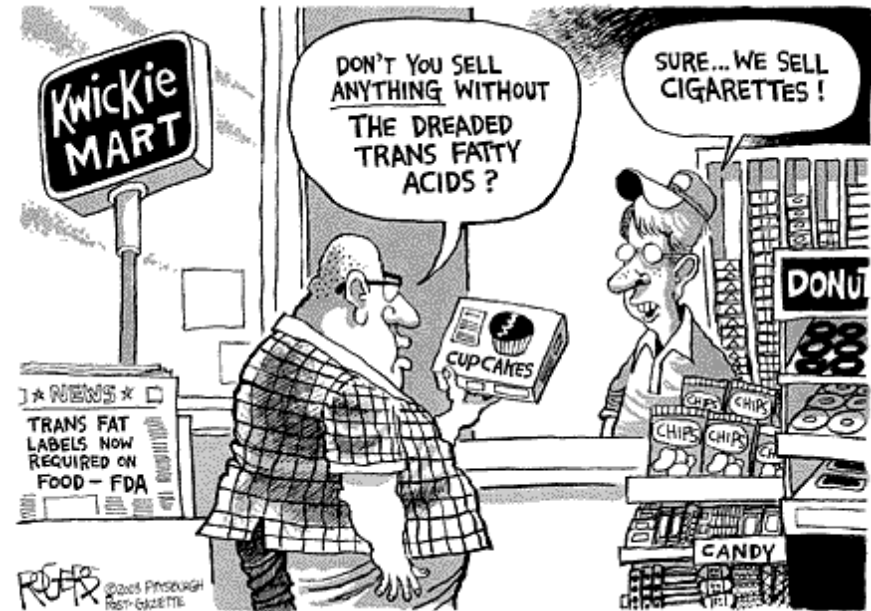
The law and chronic diseases

- Multiple and complex causes
- Socioeconomic and environmental factors
- Long-term development and effects
- Risk factors implicating human behaviour
- Challenges for the scope and role of law
 - Changing behaviour: practical and principled limits of coercion and intervention
 - Targeting causes and determinants



Obesity as “the new tobacco”?

- Public health impact and burden of disease
- Parallels in litigation
- Parallels in regulatory strategies



Public health impact and disease burden

- Morbidity and mortality statistics
- Economic burden
- “Call to action”
 - Surgeon General’s reports (1964 – tobacco; 2001 – obesity)
- Framing the problem: private vs. public



Tobacco litigation

- “Three waves” of tobacco litigation
- Product liability, cost recovery, misleading and deceptive advertising, fraud
- Controversies:
 - Personal vs. corporate vs. government responsibility
 - Judicial policy making and separation of powers
 - Litigation as a public health strategy



Litigation as a public health strategy

- **Potential functions:**
 - Public awareness
 - Information disclosure
 - Costs and damages: recovery of health care costs, incentives for industry reform, increased prices
- **Possible relationship with regulation:**
 - Complementary: stimulus or supplement
 - Substitute or solution for regulatory failure



Obesity litigation

- *Barber v. McDonald's Corp.*
- *Pelman v. McDonald's Corp.*
 - 2002 claim including: deceptive advertising, product liability (dangerous product, failure to warn)
 - Amended claim (deceptive advertising):
 - Advertisements created false impression that products were “nutritionally beneficial and part of a healthy lifestyle if consumed daily”
 - Failure to disclose that processing and additives made products less healthy than represented
 - Deceptively represented that nutritional information would be provided to customers



Other food & obesity litigation

- McDonald's – trans fats
- Kraft Foods – trans fats
- KFC – trans fats
- Big Daddy's Ice Cream & Pirate's Booty – false/misleading nutritional information
- Kellogg – marketing to children
- Cadbury-Schweppes – deceptive advertising (“natural” 7UP)



Comparing tobacco and food/obesity litigation

- **Basis for liability**
 - Product liability – issues re. dangerous or defective product, individual knowledge and choice, causation
 - Misleading and deceptive advertising
- **Role in obesity prevention**
 - Tobacco litigation debates all over again?
 - Public awareness, incentive for voluntary measures, stimulus/complement to regulation



Tobacco control regulatory strategies

- **Economic:**
 - Taxation to increase price
 - Incentives for crop substitution
- **Regulatory:**
 - Marketing restrictions (youth and general)
 - Access restrictions (youth, context)
 - Mandatory warnings
 - Smoke-free laws

Regulatory strategies for prevention of obesity

- Economic:
 - Taxes and subsidies
- Regulatory:
 - Marketing restrictions (youth)
 - Access restrictions (context, e.g. schools)
 - Labeling and disclosure requirements; regulation of nutrient content claims
 - Product regulation, e.g. ingredient bans/restrictions



Comparing regulatory strategies

- Taxes and subsidies
- Marketing restrictions
- Access restrictions
- Warnings, labels and claims
- Product regulation

Missing pieces?

- Unintended effects of laws and policies, conflicting agendas
- Socioeconomic factors
- Parallels in clinical issues and strategies



Lessons from tobacco for obesity

- Evaluating policy options
- Anticipating challenges (and their outcome)
- Borrowing evidence?
- A one-way or two-way learning process?

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