

clearly demonstrate that these laws significantly reduce hospital admissions for coronary heart disease (see J. Pell, S. Haw, S. Cobber, and colleagues' 2008 article *New England Journal of Medicine* article), for which tobacco smoke is a serious trigger.

Arguing that Bloomberg's health policies diminish personal autonomy and freedom doesn't quite fit. Ultimately, the criticism rests on the assumption that the state ought to be agnostic about the factors leading to the death and disablement of New Yorkers (except in the case of contagious disease) and that Americans should be left alone—as if on some metaphorical prairie frontier—to be self-reliant and *self-responsible*. With government sidelined, private enterprise and civil society can set about creating the good life. All of which provides a brilliant operating environment for big tobacco, big alcohol, and bad food, who knowingly shape the preferences and consumption habits of entire populations, while benefiting from the assumption that all it takes to beat ballooning rates of diabetes and obesity is a bit of personal discipline.

The real source of discontent with Bloomberg's health policies, then, lies not with the loss of freedom at the hands of the state but in interference with a cultural perception of oneself as *wholly self-sufficient*.

If the sin of the Bloomberg administration was to be invested in the health of New Yorkers, rather than remaining aloof from this century's preventable epidemics of obesity, diabetes, and tobacco-related diseases, then there is little that Bloomberg could have done to appease his critics. In democracies, citizens have the opportunity to vote for how much health they want. Ultimately, as Gostin points out in "Legal Foundations of Public Health Law and Its Role in Meeting Future Challenges," in *Public Health*, the legitimacy of a government's public health policies is won through the political process. While New Yorkers had the opportunity to vote in a mayor who was less interventionist, Bloomberg won three mayoral terms.

The argument that government should butt out and stop meddling with the lifestyles of citizens sounds most reasonable to those in rude health. Ultimately, however, a population's health problems become personalized in the suffering of each individual they affect. Only then does the *public interest* that policies seek to protect become truly visible, yet it is the perspectives of these

I am yet to come across people celebrating the unhealthy food environment that nurtured their diabetes.

(now sick) individuals that remain almost entirely absent from the libertarian narrative. Hitchens's criticisms of Bloomberg's administration, made in 2004, would make perfect sense—if no one ever died in New York City from diseases caused by tobacco use, unhealthy food, obesity, or lack of exercise.

When illness strikes, the world looks suddenly different, even to those who previously felt bulletproof. I am yet to come across a cheer squad of people celebrating the unhealthy food environment that nurtured their diabetes and contributed to the removal of their toes or a band of chronic obstructive pulmonary disease patients bemoaning the over-reach of tobacco control as they suck oxygen through a tube. One of the challenges of prevention, although the point needs to be made delicately, is that while the death and disability of many Americans is preventable, not enough are sick at any one time to make a political difference—to give a face to the otherwise disembodied "public" whose length and quality of life may ultimately depend on the political success of policies like those introduced by Bloomberg's administration.

In September 2010, three months after being diagnosed with cancer of the esophagus, Hitchens wrote in *Vanity Fair*, "In whatever kind of a 'race' life may be, I have very abruptly become a finalist." In August 2010, he told Anderson Cooper on CNN, "I've come by

this particular tumor honestly. If you smoke, which I did for many years very heavily with occasional interruption, and if you use alcohol, you make yourself a candidate for it in your sixties. . . . I might as well say to anyone who might be watching—if you can hold it down on the smokes and the cocktails you may be well advised to do so." Less than eighteen months later, he was dead.

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DOI: 10.1002/hast.242

▶ Defending Public Health Regulations: The Message Is the Medium

Professor Gostin provides a cogent summary of Bloomberg's remarkable public health agenda while simultaneously offering a powerful defense of the mayor's use of his legal authority to protect public health. Perhaps most important, Gostin provides a conceptual roadmap for responding to the ongoing paternalism-based critiques of robust public health regulations. As Gostin explains, the paternalism critique expresses a widespread belief that individuals should "assume responsibility for self-regarding decisions." This critique overlooks, Gostin reminds us, that "personal choice is always conditioned by social circumstances in various ways." Public health teaches us that social conditions "drive complex behaviors." Laws that alter those social conditions to "make healthy living the easier choice" do not trample on autonomous choices; they facilitate the development of healthier preferences.

But while the conceptual strategy that Gostin develops is useful to the defense of public health, we believe it is not sufficient to secure the type of public health gains that Bloomberg and all public health advocates seek. As much as we support Gostin's analysis, we fear

it obscures an important reality about the recurring charge of paternalism: public health is steadily losing the rhetorical battle for public support.

This reality necessitates a reappraisal of the approach, exemplified by Bloomberg, of addressing public health problems through the assertive use of preexisting legal authority. That approach often invites, as in the case of New York's soda ban, successful legal challenges. An over-reliance on legal authority may also tempt officials to intervene without first offering a compelling justification to generate public support for their actions. Without popular support, public health laws can be viewed as disrespectful of the public's opinion. Indeed, we suspect that the New York soda ban engendered widespread opposition in part because of a hectoring tone tantamount to "We know what's good for you, so do it!" In that sense, the paternalism charge might well be aimed less at the ban's limitation of liberty than the implied assertion of superior judgment.

To counteract claims of paternalism, whether based on public health laws' limitations on liberty or perceived assertions that public health officials believe in their superior judgment, public health should develop a new messaging approach that engages the public in the deliberative democratic process of determining the best way to address U.S. population health challenges. Earning public support may require strategies such as organizing, developing a stronger public health voice, and acting responsively to public concerns.

This is not to say that the rapid resort to law and executive authority is never justified (i.e., in cases of bioterrorism or pandemic flu). Laws that are paternalistic are not inappropriate simply because they are paternalistic (consider the Food, Drug and Cosmetic Act's requirement that drugs be proven safe and effective). However, more often, the use of law should be viewed as a response to the public's concerns rather than as a means of bypassing them. Put another way, public health laws should be seen as tools the public can use to promote its health rather

than as authorities that officials can use for the good of a nonacquiescent public. Legal authority should not be the dominant message used to frame and implement innovative public health policies.

Developing a sound public health intervention strategy, as Mayor Bloomberg has done, is only the first step in building public support and, ultimately, changing behavior. To succeed, a public health intervention strategy must be effectively implemented. That requires developing an understanding of the public's perceptions, needs, and concerns. Implementation often fails partly because public apprehension has not been identified or given much credence.

Gostin's analysis obscures an important reality: public health is losing the rhetorical battle for public support.

Take the controversy over bike lanes, which Gostin appropriately defends as improving the built environment. Objections were not necessarily about loss of choice. Opponents legitimately worried that the lanes would exacerbate traffic or lead to more accidents, particularly involving pedestrians. In short, many New Yorkers were not convinced that the benefits outweighed the costs or that their concerns would be taken into account. Given this, public health advocates, including the mayor, should not have asked only, "Will the bike lanes improve public health?" or "Does the mayor have the power to mandate the lanes?" They should also have asked, "How can we communicate the lanes' benefits to the public and allay their legitimate concerns?"

In short, if critics are too quick to cry paternalism, public health practitioners may be too quick to impose regulations without paying sufficient attention to how laws interfere with people's lives. Imposing a "this is good for you" attitude is no way to

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Bloomberg's Health Legacy: What Inflames Consumer Passions in the Food Wars?

BY LAWRENCE O. GOSTIN

[W]hy does such hostility persist over public policies to discourage the consumption of decidedly unhealthy foods, alcoholic beverages, and tobacco? Even the most ardent libertarians accept liberty-limiting laws to safeguard the public from infectious diseases. But, they ardently resist regulation of primarily "self-regarding" behavior.

Bloomberg, Nannying, and the Symbolic Value of Food Choice

BY ANNE BARNHILL

The charge that Bloomberg is a meddling nanny reflects not just distrust with government influence on our lives; it also expresses indignation at Bloomberg's putative attitude towards us: like little children being minded by a nanny, we can't be trusted to make decisions for ourselves.

Canada Confronts Its Own "Tuskegee" Studies

BY MIRIAM SHUCHMAN

Last summer's revelations that malnourished Aboriginals in Canada served as unwitting and unprotected subjects in nutritional experiments in the 1940s and 1950s brought a sharp reaction . . . [T]he story is off the front pages, but it continues to unfold.

U.K.'s Landmark Case on Withholding Treatment Affirms the Importance of Patients' Values

BY CELIA KITZINGER AND JENNY KITZINGER

It's a long, sad, complicated story about disagreement between a family and a hospital about whether or not particular medical treatments were appropriate. The patient, David James, died of a cardiac arrest after the Court of Appeal declared that it was legal to withhold cardiopulmonary resuscitation.

implement a program, no matter how justified it appears to public health advocates. We must do a much better job of framing our message, as well as listening and responding to legitimate public concerns. Especially in the current antigovernment political environment, public health interventions must be framed so that the public can see that these are good ideas that will benefit individuals and communities. To present them otherwise is to risk a backlash and the further erosion of public health interventions.

To be sure, we should not passively accept illegitimate complaints about paternalism. Nor should practitioners forego acting every time someone objects to some inconvenience. But our messaging strategy must focus on convincing the public we seek to serve of why our interventions are necessary and beneficial. Tone is clearly critical, but we should also rethink how we engage the public and use our legal tools. In the past, public health has been strongest at the conceptual level and much weaker at implementation. As the disastrous experience with Obamacare's health exchanges demonstrates, implementation is as important as policy design.

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DOI: 10.1002/hast.243

► Innovative Policies under Bloomberg's 'New' Public Health

Professor Gostin describes how the Bloomberg administration's public health measures represent a "new public health" of innovative initiatives. I want to suggest a definition for "innovative" in this context: innovative initiatives acknowledge that providing individuals with information is not sufficient to ensure healthy choices and that instead these initiatives must

target behavioral elements of decision-making. The evolution of the Bloomberg administration's initiatives reflects a change in the way the administration views individual responsibility for health decisions: a move from trusting individuals to make good decisions for themselves to a more proactive—and, some may say, paternalistic—view that individuals need active help making good health decisions. Early policy initiatives focused on regulations limiting third-party harm (through restaurant and bar smoke-free laws) or providing consumers with information (through menu labeling requirements) in the hope that individuals would make better decisions. They targeted products with well-documented health risks (tobacco and trans fats). Bloomberg's more

Bloomberg's innovative health initiatives implicitly acknowledge the difficulty of making healthy choices.

recent public health initiatives expanded beyond the justifications of third-party harm and included the restriction of products with empirically more tenuous ties to negative health effects (sugary drinks). Newer regulations thus seek to improve public health by actively providing individuals with an environment that fosters healthy choices and discourages unhealthy ones.

In making choices about lifestyle and risk, individuals face two significant challenges. First, many health choices are complex. Making the healthy choice requires familiarity with information that has resulted from empirical studies on health outcomes. Second, many healthy choices are difficult to execute because of competing interests, specifically when choices involve trading off short-term pleasures for long-term health benefits.

These challenges are evident in Bloomberg's initiative requiring calorie information on restaurant menus and in the initiative's shortcomings. Individuals reading this information may not

know how many calories they should consume in a single meal or that they should consider not only total calories but also sodium content and other nutritional factors. In addressing only the first challenge of making a healthy choice, this initiative may not be as effective as policy-makers had expected.

Even if individuals overcome the first challenge, they still face the second. Unhealthy food can taste good, be quick and easy to prepare, and may also be cheaper. These forces conspire to complicate the execution of healthy choices, particularly for lower-income individuals who do not have the time or money to purchase or prepare healthier options. The benefits of unhealthy food are immediate, but the costs in terms of bad health may be years away.

The evolution of Bloomberg's public health initiatives seems to recognize the difficulty of executing healthy choices. Implicit in the administration's decision to implement the sugary drink serving size restriction appears to be an acknowledgement that providing nutritional information alone is insufficient. Instead, Bloomberg's innovative policies embrace the notion that successful health initiatives must be tailored to the particulars of human decision-making. The regulation about the serving size of sugary drinks, for example, is a multifaceted policy initiative that addresses behavioral patterns behind food and drink consumption. The regulation acts in some ways like a tax by making the consumption of sugary drinks more expensive. Individuals who want to purchase a thirty-two-ounce drink would be, in effect, forced to buy two sixteen-ounce drinks instead. The serving size restriction acts as an information disclosure to the extent that it suggests the appropriate serving size for sugary drinks. The consumer is forced to make separate purchase decisions for additional servings. The regulation allows the human body time to become satisfied between decision points and provides the consumer time to reflect before purchasing another drink. This type of intervention takes into consideration behavioral elements of decision-making to make the regulation as effective as possible while