

## Conceptualising policy options for obesity prevention – response to “Counteracting obesity: developing a policy framework to guide action”

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Smart policy requires clear thinking. This is especially true for complex problems like population weight gain: the causes of which continue to be debated, range across a variety of sectors, and involve complex inter-relationships between global, national, local, setting-specific, behavioural, physiological and genetic factors. A well-developed framework for obesity prevention efforts not only identifies, categorises and explains the strategy that underlies specific policy initiatives: it can also function as a model for evaluating the comprehensiveness of government obesity prevention programs.

Gostin has played a foundational role in calling attention to the contribution that law can make to public health policy,<sup>1</sup> including obesity prevention.<sup>2</sup> Cismaru claims that Gostin’s framework serves as a basis for classifying policy interventions for obesity prevention, regardless of whether they are legislative or regulatory in character.<sup>3</sup> Her method consists partly of surveying obesity prevention policy documents from a range of countries to validate the merits of Gostin’s model for policy efforts generally. I will comment on both the method and the claim.

I agree with Cismaru that a survey of policy documents from countries that have taken a lead in obesity prevention policies can be useful for benchmarking purposes. At the same time, policy documents are usually politically sensitive: they propose options that proponents believe are likely to be *politically feasible*. It is not clear that these documents will include the full range of measures that may be necessary if governments are to successfully reverse the trend towards population weight gain.<sup>4</sup> It is no coincidence that Cismaru’s survey of

policy documents reveals few or no examples of policies that would tax fatty foods, require food manufacturers to improve the nutritional quality of their products, or hold advertisers to account for deceptive and misleading claims about food. Precisely because such policies challenge the prevailing ideology of commercial freedom and individual choice, they tend to be left out of policy platforms for responding to population weight gain. One exception may be laws constraining the marketing of unhealthy foods to children, which do appear to be slowly gaining traction.<sup>5</sup> This is not a judgment of Gostin’s model, but a reminder that no country has yet succeeded in reversing its average weight. Identifying the elements of a successful obesity prevention package may involve far more than scanning what governments are currently prepared to do.

There is a lot that we can learn from reviewing Bills and legislative proposals on obesity prevention, especially in the United States which – for all its commitment to free markets and individualism – leads the world in regulatory approaches to obesity prevention at state and local levels. However, using internet keyword searches as the search method is not a satisfactory way of investigating legal sources. This is not to deny that Cismaru’s method highlights several important initiatives that governments should consider. For example, Cismaru points to policy initiatives that address health insurance coverage for obesity-related conditions. This category could helpfully be expanded to recognize initiatives that involve the funding of preventive clinical services within health care systems, or which seek to re-design primary health care systems so that health providers have financial incentives to perform basic chronic disease prevention services.<sup>6</sup>

One important category of policy/law not mentioned by Cismaru relates to efforts by governments to *re-structure themselves*: improving their governance capabilities through the creation of new processes or agencies with inter-sectoral vision and reach. Obesity prevention – like global warming – is a complex challenge that cuts across conventional departmental boundaries and requires governments to evolve new processes for policy development and governance.

Cismaru points to the built environment as an important policy category for facilitating physical activity and access to healthy food. Recognising this, however, says little about the policy pathways for actually pursuing this goal. This requires identification of a concrete set of interventions whose combined impact could improve the quality of the local environment, together with a nuanced assessment of *where*, or *in whom* the political power, resources and legal mandates exist – especially within devolved or federal systems – for taking up the challenge and seeking to implement these policies. The precise legal mechanisms for achieving changes in the local environment may vary widely between legal systems, but little work has yet been done in this area.

Cismaru makes oblique mention of school food programs favouring locally grown foods, and laws supporting farmers' markets. This hints at an important and still-emerging category of initiatives where there are potential synergies between obesity prevention and environmental goals. For example, there may be novel, yet important opportunities for alignment between policies designed to reduce saturated fat intake by moderating demand for animal products, and policies designed to reduce the substantial impact of livestock production on global greenhouse gas emissions.<sup>7</sup>

Ultimately, I believe it is a misuse of Gostin's framework to treat it as a model for classifying both regulatory and non-regulatory policies for obesity prevention. Doing so may result in an inappropriately narrow view of the range of initiatives that are in fact required. While law may be an effective tool for implementing policy initiatives in some cases, it is not clear

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that law is capable of achieving – less still that Gostin's model intends to capture – the full range of interventions required for a comprehensive obesity prevention strategy. Because it is a *legal model*, Gostin's model focuses primarily on what governments can do, leaving aside the contribution that the private and voluntary sectors could make to healthier nutrition. For example, the food and beverage industry could have a significant impact on health outcomes by re-designing products and seeking to challenge and re-shape consumer preferences.<sup>8</sup> Employers also have an important role in introducing health and wellbeing policies within the workplace, as WHO and the World Economic Forum have highlighted.<sup>9</sup>

Secondly, since it aims to identify areas where law can help to implement policy, Gostin's model does not attempt to identify all the dimensions of the policy environment within which obesity and chronic disease prevention efforts take place. Recent policy documents from the World Health Organization, for example, point to the role of capacity-building, strengthening the primary health care system, policies addressing the behavioural, socioeconomic and environmental determinants of disease in a variety of sectors and settings, surveillance and monitoring of the burden of disease, the promotion of research capacity, and attention to health inequalities.<sup>10–12</sup> While law may have a role in implementing some of these policy goals, the point is that the policy framework extends well beyond Gostin's categories.

If our goal is to develop a model that truly teaches us about what law can contribute to the prevention of obesity, I am unsure that a static list of categories will do it. In its place, I would propose a method that consists in the "friction" generated between a model of the determinants of obesity (which identifies intervention points for policy generally), and a model of the kinds of strategies law can adopt in regulating people, organizations and activities.<sup>13</sup> As an identifiable body of law, the "law of obesity prevention" is barely five years old. Gostin's model begins the process of charting its scope, but it may yet develop in ways that surprise us all.

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