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Guest Editorial

Who's afraid of the nanny state? Introduction to a symposium

The 'nanny state' has become a powerful symbol in debates about the merits of public health policies. In rhetorical terms, associating a policy proposal with the nanny state is to spoil and disparage it, at least in western, liberal democracies where individuals have become highly sensitised to the risks of state intrusion into the private domain. Debates about the nanny state are not new. However, they have a particular salience when it comes to policies for reducing behavioural or lifestyle-related risks factors including tobacco use, harmful use of alcohol, poor diet and obesity. As Professor Gerard Hastings OBE argues in this symposium, corporate entities have comprehensively insinuated themselves into the daily lives and intimate spaces of individuals, significantly altering lifestyles and consumption habits, and in the process causing an enormous burden of preventable death and disease. Yet the idea that the state should seek to ensure the highest attainable standard of health for the population, in accordance with its international obligations[1] remains curiously suspect: a dangerous challenge to the prevailing ethic of capitalist consumption.

The success of populist accusations of 'nanny statism' may partly reflect the failure of public health advocates to frame their message appropriately in the single-sentence digital era. Mountains of evidence establish the existence of social inequalities in health – the shorter and harder lives lived by those with lower levels of income and education. Yet the challenge of creating a fairer society gets twisted in the assertion that '[n]anny state liberals love to tell others how to live because they are intellectually superior'.[2]

This symposium builds on a conference entitled *Who's afraid of the nanny state: freedom, regulation and the nation's health*, hosted jointly by the Charles Perkins Centre and Sydney Law School at the University of Sydney on 28–29 April 2014.[3] The aim of the conference was to consider a number of questions, including:

- in what circumstances is it appropriate for governments to take actions to protect public health?
- What things, specifically, should governments do or not do?
- What makes governments take action?

In this short report, we review key themes from the conference presenters.

Are consumers free?

Nanny state claims assume that individuals are free agents at risk of losing their freedom to an intrusive and overbearing state. In the leading paper in this symposium,[4] Professor Gerard Hastings OBE exposes the nonsense of this idea, arguing that consumers have not only lost their freedom, but have surrendered it willingly, collaborating in the process of promoting and creating value for products that cause them serious harm. This is a global phenomenon that would not be possible without the value of symbolism, cleverly channelled through marketing and promotion. Sugary Coke gets to every corner of the globe, writes Hastings, and partners with McDonalds, purchasing the right to associate itself with the youthful, vibrant and healthy values of the Olympic Movement, 'though sugar and fat are hardly at the core of a successful athlete's diet'.

Professor Hastings has a challenging message for those working in public health. The goals of public health should neither be to micromanage individuals, nor merely to nudge them in a healthier direction. 'The problems we face defeat the capacity and compromise the ethics of such limited ambitions'. Ultimately, Hastings argues that individuals need to reclaim their sovereignty, withdrawing their cooperation from those who are responsible for the industrial epidemics of tobacco, alcohol and food that dominate global disease statistics. Ironically, Hastings points out, the bread and circuses given by the Romans were free. By contrast, modern consumers pay for their servitude by purchasing the symbols and values of global marketers, while imagining themselves as free. Hastings offers a blunt assessment: 'In a system where the shareholder is absolute ruler, consumer sovereignty is treason'.

Freedom to consume

Roger Magnusson reinforces some of Hastings' concerns with his analysis of the content and context of 'nanny state name-

calling'.[5] He argues that the real pre-occupation of nanny state theorists is not loss of freedom as such, but the role of the state. Ultimately, nanny state critics pedal a neoliberal philosophy that wants the state to be agnostic about the health of the population, allowing market forces to dominate. Their interest in freedom is derivative: ultimately what seems to matter is the loss of an environment that permits corporations to influence consumer behaviour for commercial gain. This agenda is consistent with economically-motivated opposition to public health measures during the nineteenth-century, when the state began to assert the right to regulate the water supply, sewerage, slaughterhouses, and the removal of rubbish and filth from the streets. Magnusson develops his argument through case-studies of opposition to Michelle Obama's campaign for marketing healthier food to children, Christopher Hitchens' attack on New York City Mayor Bloomberg's public health policies, and attacks by neo-liberal think-tanks on Australia's tobacco plain packaging legislation.

Hiding from nanny in the USA

Rogan Kersh examines how the fear of being tagged with the nanny-state label has impacted policymaking in the United States.[6] He argues that this has forced governments and public health advocates to pursue public health gains by promoting personal responsibility, through 'submerged policymaking', and through an approach he labels the 'psychological state'.

Submerged policymaking seeks to achieve public health outcomes in ways that are less visible to the community at large and hence less vulnerable to nanny state name-calling. These include relatively abstruse tax measures intended to indirectly influence health, as well as legal action taken by individuals, groups, local governments and their agencies, rather than by central government. By the 'psychological state' Kersh refers to attempts to manipulate behaviour through 'nudging' or 'choice architecture' which do not involve prohibitions or penalties and so are harder to brand as paternalistic. Kersh provides a relatively pessimistic evaluation of the effectiveness of all three approaches, as strategies for improving public health in the USA. He suggests that effective action on obesity and related disorders will require firm action by central government. This requires government to stand up to nanny-state name-calling and Kersh suggests we stop trying to avoid these accusations and reclaim the rhetoric of 'nanny' by emphasising its positive associations. Come back Mary Poppins, all is forgiven!

The other papers in this issue all help to lay the groundwork for such a direct confrontation with nanny state critics. They do so by contesting the core claim that those critics make: that firm action by government to promote health necessarily reduces the liberty and autonomy of citizens.

Re-thinking freedom

Philip Pettit describes the vision of free citizenship at the heart of his influential philosophy of 'civic republicanism'.[7] Through most of western history, he argues, freedom has had two essential elements. First, no person should be 'dominated' by another, such as a slave-master or an oppressive husband. Second, no community should be 'dominated' by an external agent such as a monarch or a colonial power: the laws that bind us should be the laws that we have made for ourselves as a community. Pettit urges us to return to this older vision of freedom in place of the 'negative' conception of liberty as mere non-interference which, he argues, is a relatively recent innovation.

Kersh and other contributors to this issue document how powerfully the idea of negative liberty has shaped public policy in the USA. Ironically, Pettit suggests that some early advocates of that conception of liberty used it to argue that there was no reason for the American colonies to make their own laws, so long as Britain gave them negative liberty. The colonists, however, insisted that no matter how benign a colonial government may be, those who lived under its rule were not free citizens. It is this perspective that Pettit urges we bring to the question of whether the actions of a democratic government to improve the health of citizens reduce or enhance liberty.

Professor Pettit's paper reinforces the concerns expressed by Hastings about the threat to freedom from corporate power. The ability of large corporations to influence individual behaviour through scientifically designed marketing is an instance of the domination of one individual by a (corporate) other. The ability of corporations – which as Hastings notes are now often larger in financial terms than many national governments – to dominate the policy and legislative process represents the dominance of communities in a form akin to colonialism.

Michael Moore, Heather Yeatman and Rachel Davey endorse Pettit's republican vision of freedom and analyse in this light the policy debates in Australia around tobacco plain-packaging, the regulation of alcohol, gambling and solariums – all of which have featured nanny state rhetoric.[8] Consistent with Magnusson's analysis of nanny state rhetoric, these authors argue that the real choice, in policy terms, is between well-intentioned state interference or interference on an even larger scale by commercial actors who ignore the welfare of those they manipulate, even in the face of substantial evidence of harm. Moore, Yeatman and Davey criticise the hypocrisy of conservative politicians who, while professing deep fealty to freedom and autonomous decision-making, enthusiastically restrict the liberty of individuals on moral issues such as gay marriage or prostitution. Fundamental moral choices, the choices that reflect our deepest values and sense of identity, are made the legitimate business of the state, whilst even the most trivial interference with consumer choice is ruled out. Individual freedom, it seems, is only sacrosanct when it serves the interests of corporations.

Re-thinking autonomy

A more psychological perspective on these issues can be found in the remaining three papers in the special issue. The first two of these draw heavily on influential work by the philosopher Catriona Mackenzie which argues that human relationships provide the essential background to personal autonomy. Mackenzie was a speaker at the symposium, and we are pleased that her ideas are well-represented in this special issue.

Stacey Carter, Vikky Entwistle and Miles Little explore three conceptions of individual autonomy, each of which implies a different view of whether public health policies are paternalistic.[9] They criticise the libertarian, negative conception of autonomy on the ground that it makes unrealistic assumptions about human psychology and fails to distinguish between significant and trivial freedoms (e.g. between freedom to express a different sexuality and freedom to choose a different brand of cigarette). They argue that the explicit, informed, individual consent that features so prominently in clinical bioethics is neither appropriate nor practical for most public health issues. Their preferred approach, Mackenzie's 'relational autonomy', suggests that autonomous choice first requires that people have real control over their own lives, something that requires a degree of equality of opportunity, not merely non-interference. Second, people must be able to form a coherent identity and make decisions that reflect this, so that, for example, an abusive upbringing may compromise autonomy in an adult even though no-one is exerting pressure on them at the time. Finally, individuals must have enough self-worth to assert themselves against domination by others. This conception of autonomy is by no-means uncritical of conventional public health policies, as the authors show via a series of case-studies. However, it does make clear how public health policies – and government action more generally – can sometimes promote rather than reduce personal autonomy.

That theme is taken up by Paul Griffiths and Caroline West, who examine the 'intervention ladder' popularised by the Nuffield Bioethics Council.[10] They criticise the fact that the ladder has 'take no action' at the bottom and that each additional rung has a greater cost to liberty. This implies that nothing can do more to enhance individual liberty than inaction, which they argue is inconsistent with even a purely libertarian, negative conception of autonomy, as well as with relational conceptions of autonomy and with the positive conception of liberty that figures in Pettit's civic republicanism. To resolve this inconsistency they propose a 'balanced' intervention ladder, which has 'take no action' in the centre, located between public health actions that increase autonomy and those that reduce it.

Challenging myths

Janet Hoek adds an empirical element to these conceptual discussions of autonomy.[11] She describes research that challenges a claim that is central to libertarian ideas on tobacco: that adult smokers, armed with factual information about the dangers of tobacco addiction, can make a rational and autonomous decision to bear the risks of smoking. Drawing on interviews with New Zealand smokers, many of whom progressed to regular smoking after the age of 18, Professor Hoek describes the range 'self-exempting' cognitive strategies that smokers use to avoid taking risk information into account when dealing with their addiction. She concludes that: 'most participants had only a superficial knowledge of smoking's risks, knew few specific risks, understood even fewer implications, and rarely showed any personal acceptance of the risks they did appreciate'. When combined with the fact that the overwhelming majority of current smokers began to smoke as adolescents, this research provides a compelling ethical case for continuing the work of tobacco control.

Belinda Reeve and Roger Magnusson challenge a different kind of myth in their paper on opportunities for strengthening the performance of food reformulation – and specifically salt reduction – programs in the UK and USA.[12] Reducing average salt intake in the population could substantially reduce death and disability from cardiovascular disease. Is it possible to regulate the collective behaviour of the food industry and to reduce levels of salt consumption without micro-managing individual food choices or imposing direct state control over the formulation of foods sold in a free market? Drawing on the field of regulatory studies, the authors seek to demonstrate that a 'middle way' exists between intrusive statutory regulation on the one hand, and under-performing, voluntary salt reduction initiatives on the other. Applying the theory of responsive regulation, the authors propose a step-wise approach that introduces regulatory 'scaffolds' to progressively increase levels of government oversight and control in response to industry inaction and under-performance. Their approach makes full use of industry's willingness to voluntarily take action to meet reformulation targets, but recognises that governments remain accountable for addressing major diet-related health risks, and must be willing to escalate regulatory controls in response to industry inaction. These authors argue that governments have access to a wide range of options for incrementally strengthening under-performing food reformulation schemes, while minimising interference with commercial freedoms.

Philip Pettit argues that nanny state rhetoric reflects a libertarian or neo-liberal perspective that frames the proper role of the state as being a nightwatchman.[7] However, under the nightwatchman ideal, freedom is understood in terms of non-interference by the state, and in these circumstances, any action by government becomes fair game for nanny state critics. In democracies such as the UK, USA or Australia, individuals can vote for as much or as little health as they like. However, given the preponderance of non-communicable diseases, and the contribution that patterns of lifestyle-related risk factors are having on the global burden of disease,[13] the road to longer and healthier lives is less assured than some would assume. This for the simple reason that vast industries, including tobacco, alcohol, and processed food, supported by the retail and advertising industries, have a vested economic interest in selling products and perpetuating choices that lead to shorter and less healthy lives. As the papers in this special issue argue, re-claiming the proper role of the state, and challenging spurious assertions about state interference is more than just an intellectual exercise. Our lives might just depend on it.

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