are, in fact, justified (Gostin et al. 2009). But it should not be necessary to win the argument now about policies that may, or may not, be proposed in the future.

THE ETHICS FRAMEWORK

Professor Resnik fairly acknowledges that the trans fat ban is effective, proportional, and publicly justified. Instead, he challenges the ban because it is not necessary and is not the least restrictive alternative. This represents a fundamental misapplication of the ethics framework. These two criteria cannot apply to all public health interventions, but only to those that pose significant limits on freedom, such as a deprivation of liberty or invasion of bodily integrity. That has long been the position of the Supreme Court in reviewing health and safety regulation (Gostin 2008). If public health officials had to demonstrate that every intervention must meet these criteria (think about surveillance, vaccines, occupational safety, and food regulation), it would thwart effective public policy.

Furthermore, bioethicists often misapply the least-restrictive-alternative test. The test does not require policymakers to adopt alternative policies that are less cost-effective. Although labeling and education, for example, are less restrictive and partially effective, they would not save as many lives as a trans fat ban and would probably be more expensive to implement.

A RARELY DISCUSSED ETHICALLY POWERFUL IDEA: THE BURDEN OF SUFFERING

In summary, the trans fat ban is one of the more easily justified interventions. The evidence of effectiveness is strong, the limits on choice are negligible, and there are no equally cost-effective alternatives.

I want to add another thought that rarely gets discussed when evaluating paternalistic policies. Bioethicists too readily focus on a narrow dimension of liberty (autonomy) rather than a broader liberty (health and well-being) (Gostin and Gostin 2009). It is false to believe that a small limit on unfettered choice matters more to individuals, families, and communities than the crushing burdens of disease, suffering, and early death. When we recognize that the disproportionate burdens of diabetes and cardiovascular disease rest on society’s poorest and most vulnerable people, a failure to act has deep moral dimensions.

The life choices of the disadvantaged are already severely constrained by their physical environments and socioeconomic status. To ignore the burdens of suffering from ill health, and fail to take known effective action, is far more morally culpable than a miniscule limit on their “choice” to eat an artificial, palpably harmful additive ingredient.

NOTE

Since this is a short commentary, I did not have space to develop the arguments favoring paternalism and obesity prevention. For these, see the following sources (Gostin 2008; Gostin and Gostin 2009; Gostin et al. 2009).

REFERENCES


balancing liberty against other concerns involves an illicit double counting of the weight of individual liberty.

**RESNIK ON BANNING TRANS FATS**

Resnik considers only two arguments in favor of banning TFs, both of which he describes as consequentialist in form: TF bans promote public health, and a ban would bring about economic cost savings. He claims that these are the "main" arguments in favor of a ban, but provides no reasons for this claim.

Resnik responds to the first argument by pointing out that we have made mistakes in food policy in the past. It is true that regulation—in the case of food as elsewhere—frequently fails to achieve a desired goal. However, this is a general problem with regulation, and we have no reason to think that decisions about the regulation of TFs are any more uncertain than anything else. It is important to note that there are also costs to not regulating: If a foodstuff is in fact dangerous, delaying regulating it on the grounds of uncertainty about the exact effects of a ban will mean people will, with certainty, be harmed unnecessarily. Given the empirical facts as presented by Resnik himself, there is a strong argument for action in this case.

Resnik’s response to his second “main” argument, the economic justification for intervention, is to suggest that the projected cost savings are dubious. We agree that the calculations here are complex and contentious. However, the projected cost savings are dubious. We agree that the economic justification for intervention, is to suggest that a strong argument for action in this case.

More generally, Resnik seems to presuppose that consequentialist grounds will provide the main support for public health regulation. This has two problems. First, it is not true. The most common arguments in favor of a ban are actually based around harm prevention and reduction (reasons that have bite at both the individual and population level). While these reasons may be considered by a consequentialist, you don’t need to be a consequentialist to see their importance. Second, there are also recognizably rights-based justifications for public health regulations. In such views, the state has an obligation to take reasonable steps to protect its citizens from various types of risk to their health, and citizens are wronged as individuals if the state fails to do this. Such a moral view is implicit in the claim—signed up to by the vast majority of countries—that there is a human right to the highest attainable standard of health (CESCR 2000). This type of view would have been important for Resnik to consider, as it implies that it is not just incursions into liberty that we must be able to justify to each individual whose liberty is infringed, but also failures to remove threats to health from the environment.

**CHOICES TO EAT UNHEALTHY FOOD**

Many people do have preferences for unhealthy food. But at the same time, many people have preferences for an environment in which the food that is easily available for them to buy is healthy. Hence, the first thing to notice here is that whichever way we choose to regulate (or refuse to regulate) TFs will involve overriding the autonomous preferences of some citizens. Making policy decisions in circumstances of such disagreement is difficult, but there is no good reason to presume that inaction per se is to be preferred (Grill 2009).

How should we interpret choices to eat unhealthy food? Presumably, unhealthy foods are rarely considered worthy of choice simply for the reason that they are unhealthy: they are generally chosen in spite of the fact that they are unhealthy. Some choices for unhealthy foods are autonomous—choices that are in line with what the person would choose if the person were deciding lucidly, given that person’s deepest values. Other choices for unhealthy food are not autonomous—for example, where someone is unaware of the risks of TFs, or discounts the risks of future coronary heart disease in a way that he or she would on closer reflection think irrational. Where possible, it is certainly worth trying to address this epistemic deficit by providing relevant information and labeling.

However, it is naive to believe that this alone will address the problem, as our choices about food rarely attain an adequate level of autonomy. Empirical studies draw attention to the power of social and cultural influences upon our choices as well as the role of nonrational situational influences (Mulvaney-Day and Womack 2009). It follows that where we regulate to help ensure that the food people eat is healthy, we will rarely be overriding preferences that are adequately autonomous. So even where the intention of food regulation is paternalistic, this may well be justifiable (Nys 2008). Moreover, the people who are most likely to come to harm through the liberty to eat TFs are those who are already badly off. Hence, pace Resnik, giving citizens the liberty to choose things that we have reason to think bad for them will tend to exacerbate inequality (Arneson 2005).

**WEIGHING LIBERTY AGAINST HEALTH**

Resnik argues that we should weigh liberty against public health according to the principles for public health regulation that Childress and colleagues (2002) lay out, namely, effectiveness, proportionality, necessity, least infringement, and public justification. Resnik allows that banning TFs from restaurants would be effective, proportional, and could be publicly justified. However, he argues that such a ban is nonetheless currently illegitimate because it would not meet either the criterion of necessity or the criterion of the least restrictive alternative. TF bans fail to comply with these criteria, he argues, because there are other less restrictive measures, viz. mandatory labeling and public education, that could be effective in reducing TF intake, and therefore we cannot say that it is necessary to ban TFs from restaurants.

However, Resnik’s argument is weak. The necessity criterion simply asks us to consider whether there are other
ways of regulating a particular public health risk that have a better balance of moral benefits over moral costs. Costs to liberty are only one of the relevant factors. The very probable large costs to human life through waiting to see whether education and labeling policies are effective ways of reducing trans fat intake is also a relevant factor. Resnik provides no reason to think that the moral costs associated with these very probable deaths are smaller than those associated with the infringement of liberty.

Moreover, invoking the “principle of the least restrictive alternative” in public health regulation seems to be either almost entirely superfluous, or to involve an illicit form of double counting. If it means that we should adopt the least restrictive alternative out of the ones that have already been singled out as offering the best balance of moral benefits over moral costs, then presumably it can only operate as a tie breaker, and so will be unable to do the work Resnik requires. But if it is supposed to play a substantive role (as Resnik seems to imagine it will), then it seems to be clearly illicit, given that liberty has already been weighed in the balance against the other goods at the stage of working out which policies are proportional and necessary. Liberty is an important value, but it is not so important that it ought to be counted multiple times.

CONCLUSION
We have argued that Resnik overvalues liberty in three distinct ways. First, he fails to consider some powerful arguments for thinking that the state ought to intervene to create a safe environment for its citizens. Second, he overestimates the degree to which food choices are autonomous. Third, he puts his thumb on the scales when he comes to weigh liberty against protection of the health of the public. Giving liberty its due—but no more than its due—would allow us to adopt a more sensible policy, in which we ought to weigh the liberty to eat TFs less heavily than the protection of thousands from early death through a simple intervention that no member of the public will even notice.

REFERENCES

Public Health Interventions Need to Meet the Same Standards of Medical Ethics as Individual Health Interventions

Michael Keane, Casey Hospital

David Resnik (2010) gives a sophisticated coverage of an important topic. Like the target article, this open peer commentary (OPC) focuses on trans fats, but also generalizes to the ethics of restricting (through regulation or taxation) access to various products under the guise of public health: phenomena that could euphemistically be called “government lifestyle mandates.”

Resnik designs highly reasonable criteria for deciding when freedoms should be usurped for public health. In order to solve this tension between public health and

Address correspondence to Michael Keane, Casey Hospital, 52 Kangan Drive, Berwick, Victoria, 3806, Australia. E-mail: mikekeane00@hotmail.com