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Do bans help modern public health?

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Do bans help modern public health?

A century ago, the 18th Amendment to the United States Constitution went into effect, banning the “manufacture, sale, or transportation of intoxicating liquors.” Fourteen years after its ratification, the 18th Amendment was repealed by the 21st Amendment. What did Prohibition teach us about banning hazardous products like alcohol, tobacco, or e-cigarettes?

The 18th Amendment was a failed “noble experiment,” with unforeseen harms, including a thriving black market, organized crime, and sporadic enforcement. Eventually, illicit sale of liquor became easily affordable. Pervasive flouting of Prohibition undermined the rule of law.

A prohibition on hazardous activities is a blunt tool because products often have both public health risks and benefits. Using illicit drugs is addictive and harmful, but needle exchanges can reduce harms. E-cigarettes can cause acute and longer-term hazards, but they can help cigarette smokers to quit. If government bans a product, it cannot tax it, thus forgoing vital revenues. Lawful marijuana sales in the United States, for example, have financed public services, such as education.

There are no easy answers, but strict regulation of unsafe products is a more flexible tool to decrease behavioral risks, while avoiding social harms (a black market or discriminatory enforcement). Regulations are often more politically viable than bans, which raise concerns about paternalism and the “nanny state.”

Tobacco control offers a paradigmatic case of effective rules. A suite of measures, including taxes, age limits for purchasing, marketing restrictions, graphic warnings, and public smoking curbs, has greatly reduced smoking rates. The World Health Organization’s Framework Convention on Tobacco Control codified this regulatory system globally. Similar public health benefits could be achieved by controlling other unhealthy products, including alcoholic beverages, “junk” foods, and sugar-sweetened beverages. Taxes, for example, have been shown to reduce consumption of the latter. Gradually reducing sodium in packaged foods could lower hypertension rates.

Government sometimes criminalizes activities without any evidence of harm. Bans on needle exchange programs, for example, are counterproductive. Research shows that exchanges do not encourage drug use but, rather, reduce the sharing of contaminated drug injection equipment.

The harder cases entail products that have a dual use, causing harm to some consumers, while safeguarding others. Debate swirls around banning e-cigarettes, which can cause lung damage and nicotine poisoning. The benefits and harms of vaping are not fully understood, but evidence suggests that vaping could be a gateway to tobacco use; it also could serve as a harm reduction strategy for tobacco smokers. Prohibiting vaping would cause a public backlash and extinguish any benefit from harm reduction. A suite of regulations would be more nuanced, including taxes, age restrictions for purchasing, youth marketing curbs, outlawing all flavors, and even requiring a physician’s prescription to purchase e-cigarettes.

Marijuana laws stir public controversy, but there is also incomplete evidence regarding the health benefits and harms. Government strategies are inconsistent: U.S. federal law bans all marijuana use, whereas many states allow marijuana for personal use or require a medical prescription. The majority of drug arrests in the United States are for marijuana, and mostly for simple possession. Discriminatory enforcement has led to disproportionate incarceration rates among African Americans.

Bans have another downside. Researchers can assess the effectiveness of regulations, but once government prohibits an activity, it becomes hard to evaluate. Evidence of effectiveness enables government to alter policies to safeguard the public’s health.

Prohibition taught society to be cautious about bans. It is deceptively simple to criminalize a hazardous activity. But bans can create unforeseen social and political risks. The public does not support a government that tells individuals what they can or cannot do for their health. Yet government’s greatest responsibility is to safeguard the public’s health. It can do that through a well-regulated society—that is, with evidence-based interventions to “nudge” the public to adopt healthier and safer behaviors.

— Lawrence O. Gostin

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