Food Labels, Autonomy, and the Right (Not) to Know

ABSTRACT. Food labelling has been overlooked in the emerging body of literature concerning the normative dimensions of food and drink policies. In this paper, I argue that arguments normally advanced in bioethics and medical ethics regarding the “right to know” and the “right not to know” can provide useful normative guidelines for critically assessing existing and proposed food labelling regimes. More specifically, I claim that food labelling ought to respect the legitimate interests and the autonomy of both consumers who seek knowledge about their food in order to make informed dietary choices and consumers who prefer to remain ignorant about the contents and effects of their food in order to avoid the emotional and psychological harm, or more simply the loss of enjoyment, which may result from receiving that information.

INTRODUCTION

The Italian government recently criticized the UK’s “traffic light” food labelling system for unfairly discriminating against some traditional Italian foods such as mozzarella, Parma ham, and Parmesan cheese (Davies 2013; Zatterin 2013). This type of labelling highlights the percentages of fat, saturated fat, salt, sugar, and calories of each food and classifies them by using red, amber, and green colors depending on the level of each nutrient. While it is true that some Italian foods do contain a high level of fat or salt (especially cured meats and cheeses), the Italian government pointed out that traffic light labelling sometimes privileges certain processed foods or fizzy drinks with artificial sweeteners over natural foods with a higher-than-average salt or fat content (e.g. Parmesan cheese). Furthermore, and most importantly, the Italian government highlighted that potentially unhealthy Italian foods should be assessed within the broader context of the Italian Mediterranean diet and that only their
excessive consumption, especially if not accompanied by the consumption of fruits and vegetables (which is central to the Mediterranean diet), should be considered unhealthy (Davies 2013; Zatterin 2013).

More recently, Consumers International and the World Obesity Federation called for the adoption of images on food packaging showing the health damages resulting from obesity. These images would be similar to those already displayed on cigarette packaging in many countries (Stephens 2014).

In this paper I do not intend to evaluate the empirical effectiveness of these and other types of food labels. ¹ My aim, instead, is to critically assess food labels from a normative perspective, by examining the values and principles that may justify their use and weigh them against those values and principles that may warrant instead a more moderate use (if not the banning) of (at least some kinds of) food labels. More specifically, I intend to show how different conceptions of autonomy may justify different and conflicting approaches to food labelling.

Political theorists have only very recently begun to be concerned with the normative issues raised by food and drink policies (e.g. see Wickins-Drazilova and Williams 2011; Merry 2012; Voigt 2012; Saunders 2013; Bonotti 2013; Voigt, Nicholls and Williams 2014) and little attention, within this novel body of literature, has been paid to the issue of food labels.² I would like to point out that the food labels I am concerned with in this paper are those that provide nutritional information rather than warnings about ingredients that may be potentially (and directly) harmful to consumers. The latter may include, for example, labels informing consumers that a food contains nuts, an ingredient to which some people are allergic and which may have potentially fatal effects on them. I believe that these kinds of labels are uncontroversial and do not raise any significant normative questions.³

Two assumptions about food nutrition labels seem to be widely shared. First, these labels provide information, which is uncontroversial and indeed valuable as it helps individuals to make responsible and autonomous food choices. Second, and in connection with the previous point, food nutrition labels do not infringe upon (and in fact they promote) individual autonomy, and therefore differ substantially from those measures (e.g. “fat” taxes, food bans, etc.), which prevent individuals from purchasing and consuming certain foods (e.g. see Merry 2012, 5).

This paper aims to critically assess this dominant position. More specifically, by drawing on some of the recent literature in bioethics and
medical ethics concerning the “right not to know” (Chadwick, Levitt, and Shickle 1997; Bortolotti 2013; Andorno 2004; Rhodes 1998), I will argue that food labelling should take into account the interests of both those individuals who seek knowledge about their food in order to make informed dietary choices, and those individuals who prefer to remain ignorant about the contents and effects of their food in order to avoid the emotional and psychological distress (or, more simply, the loss of enjoyment) that may result from receiving that information. Both interests, I will argue, are legitimate and the state ought to ensure that food labelling respects them. I will conclude by offering practical suggestions about potential food labelling regimes that may accomplish this task.

Before I proceed with my analysis, some clarifications are required. First, as this short summary suggests, this paper is mainly concerned with the political implications of food labelling, more specifically with the normative issues that arise when food labels are government-mandated or when, even if they are not mandatory (as in the case of traffic light labels in the UK), government intervention would be justified in order to protect and attempt to reconcile the diverging interests of consumers.

Second, it is important to highlight that food shopping is not always a self-regarding action. For example, we often shop for other people whose dietary choices depend on us (e.g. children). In such cases, one might argue, we have a moral duty to maximize our knowledge about the foods we are purchasing. While this is a plausible claim, though, it does not warrant imposing on all consumers (i.e. including consumers who do not have to buy food on behalf of others) food labels that aim to maximize the information provided and also employ judgmental and emotionally charged messages in order to convey it in a more effective way. I have argued elsewhere (Bonotti 2013) that even on the basis of a Millian approach to legislation regarding unhealthy food, consumers (including parents) have a moral duty to eat healthily if they have moral obligations towards others (e.g. spouses, children, employers, creditors, etc.) and their unhealthy eating would result in morally significant other-regarding harm, i.e. in the infringement of those obligations. However, also in that case I argued for the importance of devising policies that, while ensuring that those obligations are fulfilled, also protect the freedom of those who would like to engage in unhealthy non-other-regarding eating. The same issue, I believe, arises in the case of food labels. It is important, that is, to ensure that consumers who have duties towards others (e.g. children) have the opportunity to know how unhealthy the food they buy is. At the same
time, though, we also ought to respect the legitimate interests of those who would like to remain ignorant (partially or totally) about the nutritional contents and effects of their food and do not have duties towards others.

Third, the aim itself of “maximizing” information may often be counterproductive. As well as increasing production costs, with potential financial repercussions on consumers, it may also create confusion among the latter. Moreover, it might risk providing bureaucrats with undue control over the kind of information that food labels should convey. While these issues cannot be discussed within the limits of this paper, I believe that they should be highlighted and taken into account when assessing the normative dimensions of food labelling.¹

Fourth, as I will explain later in the paper, what renders certain food labels normatively problematic is not simply the emotional and psychological distress that they may cause but the fact that they undermine individuals’ ability to exercise their autonomy, intended as “self-authorship” (Bortolotti 2013), in ways that do not cause morally significant harm to others.

Finally, I have already highlighted that my aim, in this paper, is to examine how different conceptions of autonomy may justify different and conflicting approaches to food labelling. This does not imply that food labelling (or restrictions of it) could not be justified on the basis of non-autonomy-based arguments, e.g. utilitarian or communitarian approaches to public health ethics (e.g. see Dawson 2011). These approaches, and their implications for food labelling, are certainly important and worth exploring, but this analysis cannot be accommodated within the limited space of this paper. Furthermore, and most importantly, acknowledging these non-autonomy-based perspectives would not affect the argument that underlies my entire analysis. This is the idea that, given the “reasonable pluralism” (Rawls 2005) of values and principles that consumers may invoke in defending or opposing (certain kinds of) food labelling regimes in diverse societies, and in demanding different amounts and kinds of nutritional information about food, legislation about food labelling ought not to be shaped solely by any one of these sets of values. In this sense, it is true in general that “[l]abeling may be preferable to other policy tools if consumer preferences differ widely with respect to product characteristics. . . . Information is often the best solution in cases where ‘one man’s meat is another man’s poison’” (Golan et al. 2001, 145; see also Magat and Viscusi 1992). However, disagreement among consumers also concerns the amount of nutritional information that food labels should provide and the way in which it should be conveyed.
It is often argued that food labels provide information and that the latter is valuable as it helps individuals to make responsible and autonomous food choices. In her discussion of genetic knowledge, for example, Rosamond Rhodes argues that a Kantian conception of autonomy justifies knowledge but not ignorance. According to Rhodes,

[from my point of view as an individual autonomous agent . . . when I choose to remain ignorant of relevant information, I am choosing to leave whatever happens to chance. I am following a path without autonomy. Now, if autonomy is the ground for my right to determine my own course, it cannot also be the ground for not determining my own course. If autonomy justifies my right to knowledge, it cannot also justify my refusing to be informed. I may not be aware of the moral implications of ceding autonomy by insisting on genetic ignorance, but the ramifications are there, nevertheless. (1998, 18)

When applied to food labels, Rhodes’s account implies that as autonomous individuals we have a “consumer right to know” (Golan et al. 2001, 136) what is in our foods, and how healthy/unhealthy they are, but we cannot have a legitimate interest in not knowing that information. Rhodes’s conclusion presents two main problems. First, it seems to rely on an incorrect account of Kant’s conception of autonomy. While the latter requires that individuals act as self-legislating moral agents (rather than following heteronomous instincts), it does not require them to maximize the information relevant to their choices. Second, even if we set aside an analysis of Kant’s conception of autonomy (which cannot be accommodated within the limits of this paper), Rhodes’s conclusion seems implausible in its own right when applied to food labelling. Clearly, indeed, individual autonomy does not require comprehensive knowledge of food properties and nutrients, which could probably be acquired only through an in-depth study of disciplines such as chemistry and biology (e.g. see Takala 1999, 292–93). How much information, then, is necessary for the exercise of individual autonomy with regard to food choices?

In her defence of informed consent in medical ethics, Onora O’Neill (2003) provides an argument that I think can be useful for answering this question. According to O’Neill, the scope of informed consent is to protect patients from deception and coercion (2003, 5). This, however, does not require providing patients with detailed and exhaustive information. Instead, patients’ informed consent can be guaranteed “by giving them a limited account of accurate and relevant information and providing user-
friendly ways for them to extend this amount (thereby checking that they are not deceived) as well as easy ways of rescinding consent once given (thereby checking that they are not coerced)” (O’Neill 2003, 6). Similarly, the right to know with regard to food choices could be guaranteed by food labels that are sufficiently precise and comprehensible, i.e. that provide sufficiently detailed information about nutritional contents, explain what that information means within the context of an adult person’s daily diet, and allow consumers to find out more information if they wish. The latter requirement could be fulfilled, for example, by providing either a telephone number or a website address through which consumers could obtain more detailed information about the foods they purchase (e.g. see Siipi and Uusitalo 2008, 361), something most food producers already do. To ensure the impartiality of the additional information, the website (or telephone number) could be managed by an independent and impartial body (rather than the food producer).

Daily intake (DI) labels (also called reference intake (RI) or guideline daily amounts (GDA) labels) seem to be sufficient to guarantee a consumer right to know. They provide sufficiently detailed information about the amount of calories, fat, saturated fats, sugar, and salt present in a food or drink product and explain what percentage of the average daily intake those quantities provide. Yet daily intake labels differ regarding how they calculate the amounts of nutrients. Some provide nutritional information per 100 g while others indicate the amounts of nutrients per portion. The problem is that the idea of a portion size may vary significantly between producers and consumers and among consumers. Moreover, even 100 g (or any other specific amount) may be difficult to quantify by the average consumer (unless they weigh every single food they eat) (e.g. see Magnusson 2010, 6).

This implies that the information about the measurement unit adopted should be as clear as possible, in order to prevent the nutritional information from being misleading. It may be easier, in this sense, to always refer to an average “portion” rather than 100 g or any other specific weight. However, producers should also specify what the average portion amounts to (e.g. half a pizza, a quarter of a cake, etc.) and, ideally, different producers of similar products should be required to adopt the same portion standards. Clarity on this point could guarantee that daily intake labels fulfil their goal and are not misleading. However, consumers “must also consider how their individual daily intake needs compare with those of an average adult male [or female]” (Magnusson 2010, 6),
especially if they are not of “average” build (Faculty of Public Health and National Health Forum 2008). All these features render daily intake labels “complex” (Magnusson 2010, 6).

This is why traffic light labels have recently become more popular. These labels color-code nutritional information (red, amber, or green) and therefore express a judgment on the nutritional values of a food or drink product. They therefore differ from daily intake labels, which are “agnostic about the quality of the nutrition of a product” (Magnusson 2010, 6, original emphasis). Indeed,

Traffic Light Labelling is interpretive and judgmental. It helps consumers to make healthier choices by taking a position on the nutritional content of the product. It identifies the foods you should avoid or eat sparingly! It is this judgmental quality of Traffic Light Labelling, together with its relative simplicity, that makes it more helpful for making decisions in real-time, in the aisles of supermarkets and corner stores. (Magnusson 2010, 6, original emphasis)

Traffic light labels therefore respond to the need for accessible and clear information that daily intake labels may not be able to convey as easily and clearly. By being more simple and understandable, they may be better (than daily intake labels) at enabling consumers to make their food choices in an autonomous way and consistently with their busy life schedule and time constraints. Indeed “[c]onsumers are more likely to read and understand labels that are clear and concise” (Golan et al. 2001, 139).

However, traffic light labels may unduly simplify food nutritional information by decontextualizing it. This can be inimical to improving eating habits among the population (as the Italian government pointed out in the abovementioned controversy with the UK) and may risk undermining rather than enhancing consumers’ autonomy. Traffic light labelling should therefore be accompanied by a broader program of education, conducted in schools or through state-funded campaigns, educating citizens about the benefits of a balanced diet (including but not limited to a Mediterranean diet). This, of course, would not be without problems. The government agencies that would be entrusted with the task of planning and conducting these campaigns, for example, may lack sufficient information. Moreover, some government agents may endorse certain measures on the basis of personal bias, career ambition, or pressure from superiors and/or external bodies, rather than being driven by a genuine and unbiased concern for the interests and health of consumers. All these factors should be taken into account. However, rather than completely undermining the rationale
for government campaigns, these problems just highlight the importance of careful planning and overseeing in order to minimize abuses.

The kinds of campaigns advocated here are similar, for example, to those proposed by Helena Siipi and Susanne Uusitalo (2008) with regard to genetically modified food (GMF) labelling. In order to prevent consumers from thinking that products identified by GMF labels are dangerous or unhealthy, Siipi and Uusitalo argue, GMF labelling should be accompanied by a broader information campaign involving “[f]ree leaflets . . . visible posters containing relevant information in the stores . . . [or printing] on the packets of GMF products an address of a website where relevant information is available” (2008, 361; see also Jackson 2000, 323). In this way, they claim, labelling would avoid “[decreasing] consumers’ autonomy of choice instead of promoting it” (Siipi and Uusitalo 2008, 362).

One might then point out that these kinds of information campaigns would not be unproblematic. For example, many people are sceptical about GMF products and may distrust government attempts to promote them. Given this climate of disagreement with regard to GMFs, then, would it not be preferable to let public opinion be shaped by a free and unconstrained debate, in which scientific arguments can be voiced and critically assessed? The same could also be argued with regard to healthy eating. Given the level of disagreement concerning benefits and harms of different dietary habits (e.g. see Voigt, Nicholls, and Williams 2014, 19–38), it might be wiser to let the clash of arguments in an unconstrained public debate (rather than government agencies) shape public opinion. However, this almost Millian confidence in the strengths of unconstrained public debate seems to overlook the extent to which, at least in Western societies, not all social actors have the same ability to present their case and influence public opinion. Government action may sometimes be biased, of course, but it may often also be necessary in order to counter the influence of private and corporate interests that, through advertising and marketing, contribute in producing an “obesogenic environment” (Voigt, Nicholls, and Williams 2014, 111–32) that strongly affects people’s dietary habits.

Furthermore, in order to promote the idea of a balanced diet, governments could encourage supermarkets to offer discounted combined purchases including a balanced variety of foods. These might include, for example, a pack of Parma ham, a bag of salad, and a can of tomatoes; or a mozzarella ball, a bag of oranges, and a bottle of olive oil. Incidentally, as well as providing consumers with an incentive to adopt a more balanced diet, these measures might also help producers and retailers to partially
offset the potential economic losses that traffic light labelling (and other emotional and judgmental labelling) might cause (see Magnusson 2010, 7), as well as prevent the risk of controversies such as the one between Italian and UK governments. These measures, however, might have to remain voluntary in order to avoid the normative and practical issues resulting from increasing transaction and compliance costs for firms and government agents, as well as from the cost that any state subsidies would impose on the taxpayer.

As long as they are accompanied by these supplementary measures, therefore, traffic light labels seem to be able to provide (more than daily intake or other more complex labels) manageable and understandable information that can contribute to the exercise of individual autonomy by consumers. This is the case even if consumers eventually decide (knowledgeably and autonomously) to purchase unhealthy food or drink products.

FOOD LABELS, AUTONOMY, AND THE RIGHT NOT TO KNOW

The conclusion reached in the previous section overlooks an important issue that has recently been highlighted in some of the bioethics and medical ethics literature. Some authors have argued that individuals should be granted not only a “right to know” but also a “right not to know” (see Husted 1997; Andorno 2004). The right not to know is already recognized in various jurisdictions (Andorno 2004, 436) and is normally associated with genetic testing. Individuals increasingly undergo genetic tests that may reveal that they have gene mutations that may cause specific diseases, such as Huntington’s Disease, or place them at significant risk of others (e.g. cancer, Alzheimer’s disease). Individuals often undergo these tests under pressure from relatives, usually because there is a family history of a certain disease and genetic testing may provide clear information on whether the disease is going to affect a specific member of the family (see Andorno 2004). Moreover, sometimes the testing of all family members may be necessary for establishing whether a family history does exist and whether a disease is going to affect other family members. In these cases it is therefore often highlighted “that since genetic information about oneself is also information about one’s relatives there might be cases where the ignorance of one person might cause harm to others” (Takala 1999, 289). However, as Tuija Takala rightly points out, the duty to undergo certain tests in order to identify a hereditary disease within a family (assuming that the participation of all family members is required) does not imply a duty to be informed about the result (Takala 1999, 289).
The right not to know is normally defended by highlighting the fact that knowledge and information of one’s genetic traits can cause psychological harm (Andorno 2004; Bortolotti and Widdows 2011). As Roberto Andorno points out,

[in order to understand the refusal of . . . [individuals] . . . to have access to their genetic information, one has to consider that the burden of knowledge may become unbearable for them, leading to a severe psychological depression and having a negative impact on their family life and on their social relationships in general. For many people, the discovery that they have a genetic condition that places them at a high risk of suffering certain untreatable diseases could so depress them that the quality, joy, and purpose of their lives would literally evaporate. . . . Therefore, it seems reasonable to allow these people to choose not to receive that potentially harmful information and to continue their lives in peace. (2004, 435)

However, it is sometimes highlighted that the right not to know is almost unattainable because it presupposes that we already have some knowledge of what we would prefer to ignore (e.g. a genetic disease). Yet, as Andorno rightly points out, “some risks [of developing genetic diseases] may be so remote in our perception as to seem virtually inconceivable” whereas genetic testing may render those vague fears more concrete and therefore psychologically harmful (2004, 437).

It would be wrong, however, to identify the rationale for a right not to know with a welfarist argument that simply privileges individual well-being over individual autonomy. The key point, instead, is that autonomy should be conceived as a capacity that does not conflict with either well-being or knowledge (or any other goals) but is rather placed somehow before them, i.e. as a capacity that enables us to choose how to conduct our life and which goals or values to prioritize. In this sense, “the theoretical foundation of the right not to know lies on the respect for individual autonomy, even if the ultimate foundation of this right is [in the case of genetic testing] the individual’s interest in not being psychologically harmed” (Andorno 2004, 436, original emphasis). Therefore “people should be free to make their own choices with respect to information. If we understand autonomy in this wider sense, then the decision not to know should be, at least in principle, as fully respected as the decision to know” (Andorno 2004, 436).

Lisa Bortolotti (2013) offers an account of individual autonomy that reinforces the idea that the latter is consistent with a right not to know. According to Bortolotti, it is a mistake to argue that information and knowledge are inherently necessary to the exercise of individual
autonomy. “[P]ersonal information and information about the surrounding environment,” she argues, “impinge significantly on the feasibility of life plans and on the likelihood of success, but is not necessary to the capacity most human agents have to shape their own lives. Failing to obtain such information does not rule out self-governance altogether” (2013, 686).

Drawing on the work of other authors (e.g. Mameli 2007; Harris and Keywood 2001), Bortolotti claims that autonomy should not be identified with fully informed choice but with “self-authorship,” i.e. the “entitlement to make decisions on whatever grounds the agent wishes, as long as she does not cause harm to others” (2013, 685).8

Some kinds of knowledge, Bortolotti argues, are necessary to the exercise of autonomy as self-authorship, e.g. “knowledge of one’s own attitudes” (2013, 686). However, other kinds of knowledge (e.g. of one’s genetic information or life expectancy) are not, even though ignoring this kind of information may render a person’s life less successful by preventing her from making appropriate “contingency plans” (2013, 687).9 In this sense, “choosing ignorance of genetic information does not necessarily make one’s future choices less authentic or less genuinely authored—those choices can still be in tune with one’s beliefs, desires and values” (2013, 687).

In summary, what provides the normative grounds for the right not to know is the idea of autonomy as self-authorship and the duty to respect it, regardless of the specific reasons why an individual may decide to reject the available genetic information.

The defence of a right not to know is relevant to the issue of food labels. Indeed while most of us might be vaguely aware that certain foods or nutrients are harmful to our health, information provided on food labels may transform that vague understanding into concrete and precise knowledge. This knowledge can be psychologically harmful, at least for some, or it may simply decrease our enjoyment of those foods. By producing those effects, it may therefore undermine our autonomy as “self-authorship,” i.e. our ability to shape our life (in this case, our dietary choices) as we wish.

The degree of psychological harm, distress, or loss of enjoyment, and the resulting infringement upon the exercise of individual autonomy, depend on how direct and unavoidable the information provided on food labels is. Some kinds of food labels, such as the daily intake labels discussed earlier, are purely informative and non-judgmental. As we have seen earlier, due to the complexity of the information they convey, these labels may not always be the most effective for guaranteeing fully informed autonomous
choices. For the same reason, however, they are easily avoidable and therefore unlikely to cause significant distress or loss of enjoyment.

Other kinds of labels, however, may have a stronger judgmental character. These include the already discussed color-coded traffic light labels. These labels are judgmental (i.e. they tell us which food is “good” and which is “bad”), difficult to ignore (as they are normally placed on the front of packaging), and, as a consequence, can cause negative and unavoidable emotional reactions in many consumers. These might range from a sense of guilt for wanting to purchase and consume certain unhealthy foods to fear of the health conditions that eating those foods may contribute in causing. Many consumers might prefer to remain ignorant about the information provided by these labels, in order to avoid experiencing those negative emotions. Moreover, for some of them unhealthy eating may be an important aspect of their life and play a central role in social, cultural, or religious experiences and practices that are especially valuable to them (Barnhill et al. 2014). In choosing to remain ignorant about the (unhealthy) nutritional contents of their foods, however, these people would still be exercising their autonomy as “self-authorship,” i.e. they would still be shaping their own existence according to their own values.

The psychological effects of traffic light labels, it is worth noting, should not be simply attributed to the intellectual inability, by the average consumer, to process the information rationally and correctly, in a way consistent with the exercise of individual autonomy. Instead, such labels have been shown to be misleading. On the one hand, consumers may tend to associate red labels with the idea that a certain food or drink is bad or socially disapproved of. Recent research conducted by The Co-operative Food, for example, has shown that the presence of a “red” traffic light label on a food product dissuades 40% of women and 30% of men from purchasing it (The Co-operative Group 2013). On the other hand, foods displaying amber or green labels may produce a “health halo effect” (Magnusson 2010, 7). Consumers, that is, may mistakenly believe that such foods are inherently healthy and therefore can be consumed in large amounts without unhealthy consequences.

This suggests that traffic light labels (and, more generally, judgmental and emotionally charged labels), like “nudges” and “choice architecture” (Thaler and Sunstein 2008), take advantage of non-rational psychological processes and imperfections in people’s decision-making capacities in order to influence their choices (see Hausman and Welch 2010). Seeing a “red” light in the front of packaging (i.e. rather than non-colored nutritional
information that would require a closer look) may prevent consumers from deciding how much they want to know and therefore from fully exercising their individual autonomy. Judgmental and emotionally charged labels, therefore, should not be seen as simply inconvenient or welfare-diminishing. Instead, their manipulative character should be considered as a threat to the exercise of individual autonomy, to the extent that consumers’ ability to choose based on their preferred reasons is somehow undermined or reduced.

One might then point out that consumers’ autonomy would be undermined only if judgmental and emotionally charged food labels were government-mandated, rather than being voluntarily adopted by some firms. This is a plausible claim, as a voluntary system would in principle leave consumers free to choose where to shop. Yet, in the absence of government intervention (whatever this might entail) it may be difficult to ensure that consumers are provided with an effective freedom of choice. For example, before smoking bans were introduced in many Western countries, public places were not required to allow people to smoke (i.e. the system was voluntary), yet all or most of them did.11 Similarly, even though it is still voluntary in the UK, traffic light labelling already affects around 60% of all foods and this percentage may increase (e.g. for marketing reasons).12 This is why nutritional food labelling, and the form it takes, should be regulated by the government in order to guarantee consistency and predictability for both firms and consumers, and ensure that the legitimate interests of both information seekers and information avoiders are taken into account. Furthermore, consistency and predictability would also make it easier for consumers to fulfil their duty (which, we can assume, they have) to be informed about the methods adopted by governments and firms to influence their behavior.

The psychological distress resulting from judgmental and emotionally charged food labels, and the threat it poses to the exercise of individual autonomy, would be even stronger if those labels contained more explicit information, e.g. like the labels currently placed on cigarette packaging in most countries, which convey messages such as “smoking kills” or “smoking causes cancer.” It is not unthinkable to expect some governments or international organizations to invoke in the near future a more extensive use of warning labels on unhealthy food and drink products, similar to those already found on tobacco products (Merry 2012, 5). Indeed, we have seen that an even more radical proposal has already been advanced by Consumers International and the World Obesity Federation, who have
called for the adoption of food labels containing explicit pictures of cancers or other health conditions resulting from unhealthy eating, similar to those already present on cigarette packaging in some countries (Stephens 2014). These might include, for example, pictures of individuals who have just suffered a heart attack or of arteries clogged with cholesterol, i.e. health conditions unhealthy eating can contribute to. The very explicit message conveyed by these labels would cause a strong psychological distress in many consumers who would certainly prefer not to be exposed to them.\textsuperscript{13}

One obvious objection to the idea that the use of judgmental and emotional food labels should be restrained might be raised at this point. Those who endorse paternalistic views, that is, might point out that it is useful, sometimes indeed necessary, to employ judgmental and emotional labels in order to get people to do what they rationally would if they were not short-sighted. Moreover, they might argue that it is justifiable to make people experience a sense of guilt as a result of their unhealthy dietary choices. Yet this is exactly the point that defences of the right not to know aim to challenge. The right to autonomously decide how much we want to know (e.g. with regard to food or genetic testing), and to accept (or not) the potential emotional and psychological consequences resulting from that knowledge, is anti-paternalistic (Andorno 2004, 436). For this reason, nutritional food labelling should be government-mandated and should respect the legitimate interests of both information seekers and information avoiders. Mandating certain kinds of information and, therefore, a certain way of exercising one’s autonomy, would favor only the former group of consumers and would be a clear instance of paternalism towards the latter.\textsuperscript{14}

**BALANCING THE LEGITIMATE INTERESTS OF INFORMATION SEEKERS AND INFORMATION AVOIDERS**

The discussion conducted so far raises an important question: how could a food labelling regime respect the legitimate interests of both information seekers and information avoiders? Governments could adopt different kinds of strategies. A first option might be for them to simply ban existing and proposed food labels with an excessive judgmental and/or emotional content. These include traffic light labels and labels picturing health conditions related to unhealthy eating. These labels excessively undermine the autonomy (intended as “self-authorship”) of those consumers who would like to remain ignorant about the health effects of their foods. Moreover, they are not necessary in order to safeguard the
legitimate interests of information seekers. The latter require (as O’Neill’s abovementioned account of informed consent suggests) only some clear and relevant information about the nutritional contents of foods, as well as user-friendly ways of acquiring more information. Purely informational non-color-coded food labels accompanied by a telephone number and/or website address to obtain more information would be sufficient for this purpose.

The option of banning judgmental and emotionally charged labels might be especially relevant in those places, such as the UK, where such labels are currently voluntary (even though nutrition labelling in general is compulsory). However, one might point out that banning would be an unnecessary and excessive measure. It would amount to a form of censorship, restricting the freedom of expression of those producers and sellers who wish to adopt those types of labels. As long as the information they provide about nutritional contents is not deceptive, it seems that it would be wrong to prevent them from adopting certain labelling regimes.

A second and perhaps more suitable option, therefore, might be for governments to require that the informational and emotional content of food labels be dissociated. This could be achieved, for example, by providing a purely informative label in the front of packaging, containing all the neutral factual information about the nutritional contents of the food (plus a telephone number and/or website address to obtain more information), and a separate judgmental and emotional label on the back of packaging. The latter could provide, for example, either a nuanced message such as “Parma ham causes cholesterol if consumed in excess” or “Parmesan cheese causes heart attacks if it is not part of a balanced diet,” or a strongly emotional picture of a health condition associated with excessive consumption of that food.

This solution would achieve a twofold goal. On the one hand, it would prevent information avoiders from being exposed to psychologically harmful, distressful, or enjoyment-diminishing information against their will, as they can easily ignore the basic neutral information about the nutritional contents (as the latter is not color-coded or visually striking). These consumers could still work out the implications of those contents by themselves (and/or by using the telephone number and/or website address provided), if they wanted. On the other hand, it would enable information seekers, and especially those who are not concerned about experiencing emotional distress, to find out about the (potential) effects of foods on their health. Furthermore, this solution would be more effective in increasing the
knowledge of information seekers than the mere provision of a telephone number and/or website address, as consumers would be able to obtain the additional information more quickly and at no cost.

Moreover, in order to further protect the legitimate interests of information avoiders, a peel-off flap could be placed on top of the judgmental/emotionally charged label. This would allow consumers to decide whether to receive or avoid that extra information before purchasing the item, i.e. by lifting the flap. By being attached along one edge, the peel-off flap would avoid that those who seek the extra information, but then decide not to purchase the item, forget to reattach it (therefore potentially exposing information avoiders to unsolicited information). Checking this information would be similar to what we do when we want to purchase an item of clothing and want to know whether it is suitable for washing machine or dry cleaning. We can do that by checking the label placed inside the item of clothing. In the case of food, we would not be able to do that (i.e. it would be impractical and not hygienic to place the label inside the packaging), but we could at least provide a similar way of allowing only information seekers to acquire the additional information. While it is true that once a consumer has looked at the covered label she may not be able to forget its content, that is beside the point. The choice that matters concerns whether to check the covered information in the first instance. If a consumer decides to do that, her autonomy has not been undermined, even if the information contained in the label causes emotional distress or loss of enjoyment to her. The only condition for this labelling regime to be effective would be for consumers generally to be aware that this is the system currently adopted by all food producers in their jurisdiction. This is one more reason (alongside those already mentioned earlier) why food labelling concerning nutritional content, and the form it should take, should be government-mandated.

It should be noted, once again, that the practical solutions that I have just suggested are not exhaustive, and do not represent the main goal of the paper. My central aim, instead, has been to show that legislation about food labelling should take into account the legitimate interests of both information seekers and information avoiders. While empirical research may be necessary in order to establish which food labelling regime best achieves this goal, a normative account can at least guide the choices of legislators, by pointing out the values, principles, and interests that should be considered when choosing between viable alternatives.
CONCLUSION

Food labelling has been overlooked in the emerging body of literature in political theory and philosophy concerning the normative dimensions of food and drink policies. In this paper, I have argued that arguments normally advanced in bioethics and medical ethics regarding the “right to know” and the “right not to know” can provide useful normative guidelines for critically assessing existing and proposed food labelling regimes. More specifically, I have claimed that food labelling ought to respect the legitimate interests of both those consumers who seek knowledge about their foods in order to make informed dietary choices, and those consumers who prefer to remain ignorant (totally or partially) about the contents and effects of their foods in order to avoid the emotional and psychological harm, or more simply the loss of enjoyment, which may result from receiving that information.

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NOTES

1. Indeed there is disagreement with regard to the effectiveness of traffic light labels. While some authors have argued that these labels do in fact help consumers to make healthier eating choices (e.g. Magnusson 2010), others have contested that conclusion (e.g. Sacks, Rayner and Swinburn 2009). There is also disagreement regarding the effectiveness of food labelling in general as a policy instrument for informing consumers and influencing their choices (e.g. see Golan, Kuchler, and Mitchell 2001, 139).

2. There are, however, accounts of food labelling that, while not being produced by political theorists/philosophers, provide useful insights into the normative dimensions of food labelling. For a welfare economics perspective, see especially Golan, Kuchler, and Mitchell (2001).
3. As John Stuart Mill argues in his discussion of poisonous drugs, “such a precaution . . . as that of labelling the drug with some word expressive of its dangerous character, may be enforced without violation of liberty; the buyer cannot wish not to know that the thing he possesses has poisonous qualities” (Mill 2006, 109).

4. Instances of “morally significant” harm, in this sense, should be distinguished from the many situations in which our actions, including our dietary habits, may harm others for reasons that depend more on them than us. For example, being offended and psychologically “harmed” by the fact that someone else bases his or her diet entirely on junk food does not provide legitimate moral reasons for interfering with that person’s dietary habits.

5. For an account of the costs and benefits of food nutrition labelling see Golan, Kuchler, and Mitchell (2001, 148–52).

6. Of course sometimes the information provided by food producers (or by restaurants) may be intentionally misleading (see Gostin and Gostin 2009, 217). This, however, does not undermine the normative argument made here. It simply reinforces the view that food producers ought to provide clear information and that, if necessary, the state ought to impose tighter checks and controls on them.

7. However, it may still be the case that “[p]ublic health interests may in particular circumstances justify limitations on the right to ignore one’s genetic makeup as they may justify limitations to confidentiality, for instance, in the case of infectious diseases” (Andorno 2004, 437). In similar circumstances avoiding information may result in harm to others. This implies that the right not to know is limited in scope, i.e. when one’s ignorance might harm others there is no such right.

8. Similarly, Jørgen Husted (1997) defends the right not to know by appealing to a “thick” conception of individual autonomy intended “as self-determination, or self-definition” (1999, 61). This differs from a “thin” conception of autonomy for which “what is good for persons is for them to have their desires or preferences satisfied to the maximum extent possible over their lifetimes” (Husted 1997, 59) and which, according to Husted, would justify the unsought release of genetic information to them. Husted’s “thick” conception of autonomy, like Bortolotti’s idea of autonomy as “self-authorship,” clearly draws on Isaiah Berlin’s conception of “positive freedom” (1969).

9. Even the latter point, however, could be contested. According to Juha Räikkä, for example, “[g]enetic information can make rational deliberation unfeasible because of fear, it may limit the range of life plans one might have which require ignorance about when one is likely to die” (1998, 50). In this sense,
knowledge of one’s genetic information may often reduce rather than increase our chances to succeed in our life endeavours. If that is the case, this would further strengthen Bortolotti’s argument and, more generally, the justification for a right not to know.

10. For the use of emoticons in connection with energy consumption, see Thaler and Sunstein (2008, 74–75).

11. I would like to thank Tom Walker for suggesting this example.

12. Indeed Golan et al. (2001, 127) point out that “in their drive to persuade the maximum number of consumers to purchase their products, firms may provide a public service by increasing the information available to consumers.”

13. A further problem with these kinds of labels is that they are misleading as these health conditions are generally the consequence of an unhealthy diet and/or lifestyle overall, rather than of consumption of specific foods.

14. Walker (2013) makes a similar argument with regard to the amount of information that doctors should provide patients with. If a patient states that he does not want to receive certain (or any) information concerning the risks of a certain treatment, Walker claims, “it might well be that to insist that he has more information and that he uses it would be to fail to respect his capacity for autonomy” (Walker 2013, 392).

15. I would like to thank Elizabeth Cripps for suggesting the idea of “peel-off labels,” which I have modified into the idea of “peel-off flaps.”

16. The list of benefits resulting from government-mandated food labelling could be extended. According to Golan, Kuchler, and Mitchell (2001, 130), for example, “[t]he primary services that third-party entities [including governments] offer to help strengthen labeling claims are standard setting, testing, certification, and enforcement.”

REFERENCES


Food Labels, Genetic Information, and the Right Not to Know

ABSTRACT. Many people believe that individuals have a right not to know their genetic disease risk. Here it is argued that, if this is correct, individuals also have a right not to know their diet-related disease risk. Reasons to remain ignorant are analogous in the case of risk related to diet and genetic susceptibilities. It follows that any policy to promote healthy diets (e.g. through “judgmental” food labels, such as traffic light labels, or, hypothetically, scary pictures similar to those found in cigarette packets) ought to protect the individual right not to know.

INTRODUCTION: THE LINK BETWEEN GENETIC TESTING AND PUBLIC HEALTH GENOMICS

This paper explores the analogy between food label information and genetic information, in order to defend the right not to know judgmental nutritional information, such as the one conveyed by traffic light labels and other, more aggressive, recent proposals.

Traffic light labeling judges the nutritional quality of food by means of colored flags on the front pack (figure 1). It involves a simplification of the link between food quality and health outcomes. Unlike GDAs (Guidelines Daily Amount, the other main nutrition facts labeling system in use),¹ it does not present the consumer with neutral nutritional information, but conveys an interpretation of the link between nutritional qualities and disease. Indeed, Traffic Light Labelling is interpretive and judgmental. It [allegedly] helps consumers to make healthier choices by taking a position on the nutritional content of the product. It identifies the foods you should avoid or eat sparingly! (Magnusson 2010, 6).
Supporters of traffic light labeling allege that it would promote the consumption of healthier food (Faculty of Public Health and National Health Forum 2008). I contend that, just like genetic information, this kind of information can be reasonably expected to involve a cost, in terms of well-being and food choice, for consumers of food signaled as “unhealthy.” Imposing these costs on individuals (who may reasonably prefer “not to know”) is objectionable. Thus, the paper calls for avoiding such labels (while focusing on societal determinants of bad eating habits) or supporting less intrusive labels, more respectful of the legitimate interest of many individuals to avoid such information.

Clearly, empirical research is needed to establish whether the value judgment implied by traffic light labels in any way affects the emotions and well-being of consumers of unhealthy food. This is true also in the case of genetic information. In the genetic case, however, regulators have given priority to avoiding the risk of causing harm through genetic information, even for those types of genetic information where evidence of significant harmful psychological sequelae is lacking. The consensus is to avoid (whenever possible) imposing what might reasonably appear as a psychological cost on people, unless clearly consented to. Not so in the food case, where reasons in support of a right not to know have never been considered, before Bonotti’s paper (in this issue). I will argue...
that nothing but a traditional bias concerning the special value of genetic information justifies this disparity.

It might be objected that ordinary consumers are able to process the symbolic connotations of traffic light labels in purely cognitive, as opposed to emotional, ways (although I believe this can be reasonably doubted). If so, traffic light food labels are only more effective means to convey the usual messages, without any further psychological effect.

The worry expressed by the previous objection is a sound one. Let us then begin to consider other kinds of food labels, which are currently under discussion. There is no doubt that these are meant to exploit emotional reactions as a way to steer and control consumer choices. Consumers International and the World Obesity Federation are calling for the adoption of pictures on food packaging of the damage obesity can cause, similar to the images of smoking-related disease on cigarette boxes (Pippa 2014).

In what follows I shall refer to “judgmental labels” in general and I shall leave it to the reader to decide if these arguments apply to the already existing “traffic light” or only to more extreme proposals.

I will assume that people have a right not to know their own genetic information, at least when no harm to others follows from their doing so. There is, after all, a significant consensus that the right not to know matters (at least when its scope is limited in this way). The idea informs several national and international guidelines in this field. Of course, since the argument is based on an analogy, it may be turned the other way round. If genetic information is just as dangerous as food information, this could be treated as a reason to be more liberal about the use of genetic information in public health. In this essay the more common opposite stance is assumed. While few might defend the right not to know unconditionally, the case for it seems stronger when the assessment of genetic risk is relatively uncertain and the consequences of not informing are not extreme—when giving the undesired information, in other words, is not a matter of saving lives and avoiding death, at least imminent death. This is precisely the case of genetic susceptibilities to complex diseases, which are the basis of the analogy I will defend.

I will argue that, somewhat surprisingly, the right not to know food label information is as important. The argument is based on the analogy between the two types of information, the value of the freedom at stake, and the burdens of the respective kinds of knowledge. This argument strengthens the autonomy-based argument for the some rights not to know presented by Matteo Bonotti (in this volume).
The association of food and genetics may come as a surprise, but not to scholars (such as Holm 1999) who reject genetic exceptionalism. “Genetic exceptionalism” is the view that genetic information is special and must be treated differently from other types of medical information, even if the information coming from different sources allows the same or similar inferences about the health conditions of people.

I will begin by situating food labeling and the right not to know in a broad evaluative framework. In contrast to Bonotti’s paper, which is narrowly focused on different conceptions of autonomy, I will present and elaborate a different and more heterogeneous set of values. More specifically, section 1 highlights moral values supporting food labeling and the right not to know; section 2 highlights those moral values supporting the right not to know. The ethical discussion of choice-limiting policies here includes a discussion of the value and disvalue of unhealthy eating, a methodology recently advocated in this journal by Barnhill et al. (2014). In section 3, I argue for the analogy between nutritional and genetic information. In section 4, I defend it against objections. I conclude that a moral claim analogous to the right not to know genetic information places serious constraints on otherwise permissible food regulations.

1. A VALUE LANDSCAPE FOR FOOD LABELING

What values support food labeling? Arguably, the health of individuals—that for whose sake public health is pursued—is an aspect of human flourishing. A compelling, if not indefeasible, consideration in favor of judgmental food labels would be that they lead to better health. It has been argued that traffic light labeling increases consumer’s understanding of nutritional facts, if compared to ordinary, non-judgmental labels. They allegedly encourage consumers to select food with lower sugar and fat intake. Moreover, traffic light labeling could provide an incentive to producers to reduce the amounts of salt and fat in their products (Louie et al. 2008). If the technique proves effective in improving health outcomes, then a straightforward direct welfarist public health argument for it could be given. This argument would appeal to health as a component of welfare, not to improving the autonomy or freedom of consumers. It is unclear, however, whether any reliable association between sales and healthiness of the product exists (Sacks, Rayner, and Swinburn 2009).

Another welfarist argument points out the efficiency benefit (in the standard neoclassical, i.e. Pareto sense) of producing and distributing nutritional information. On the demand side, if consumers lack information
about the health impact of food, their choices only imperfectly represent the ability of the food to satisfy their needs, including their need for long-term health. This would be inefficient. Suppose now that consumers obtain the relevant information. In the long run, supply will adapt to changes in the demand for food, which better represents the utility people are expected to derive from it. In this picture, the new market equilibrium (between informed consumers and responsive producers) involves an allocation of resources that benefits all and harms no one, at least excluding transaction costs.

As Voigt, Nicholls, and Williams (2014, 78) point out, food labeling could also be seen by (some) food producers as empowering, rather than a burden. However, providing information that is accessible, non-misleading, and non-manipulative may not be the interest of current food producers and retailers. (They, on the contrary, may have a vested interest in avoiding the transaction costs.) Nutritional information is like a public good—one that does not get consumed when it gets used, from which it is hard to exclude anyone (once it exists), and which might be produced in insufficient quantities in market equilibrium. In this picture, the worry of regulators should be that markets do not produce enough information, not too much of it.

Leaving aside welfarist arguments, the legitimate interest in dietary information is also supported by autonomy-based arguments reviewed and discussed by Bonotti (in this volume), which I will not rehearse here. Notice that, in the plausible autonomy-based arguments he reconstructs, both the value of autonomy and the value of information are not absolute and universal. Rather, it is not always reasonable to place autonomy above all other considerations and it is not always rational to maximize information. Moreover, food labels promote autonomy, just like labeling of genetically modified food, only if they are accompanied by broader education campaigns (Voigt, Nicholls, and Williams 2014; Siipi and Uusitalo 2008).

2. A VALUE LANDSCAPE FOR THE RIGHT NOT TO KNOW

In the following paragraphs, I will provide a brief overview of legitimate interests protected by not knowing dietary information. The relationship between the value of autonomy and the legitimate interest to resist information is explored in Bonotti’s paper at great length. The present account relies on the distinction, often overlooked in the ethics and policy literature, between the mere instrumental value of food, and the value of
food as a constituent on commensality (Voigt, Nicholls, and Williams 2014, 52; Fischler 2011). Food is valued (by some, in culturally diverse societies) not only as a means of nutrition, but is also a constituent part of the social and cultural good instantiated by eating together (Resnik 2010; Barnhill et al. 2014). This response is also motivated by what I would call, for lack of a better word, hedonism, regarded as an important truth (but not necessarily the whole truth) about well-being. By hedonism, in this context, I mean the claim that food is valued as a source of immediate enjoyment and gratification. We derive immediate gratification from food not only in virtue of the qualia of gustatory experience but also through the experience of social or symbolic meanings, and other psychological associations. This occurs especially (but not exclusively) in commensality. Once the plurality of reasons behind food choices is understood, the idea that some people, or all people in some circumstances, could value (momentary or permanent) ignorance concerning nutritional information appears less mysterious. Food policy must deal with conflicting societal goals and values, even when the efficacy of a certain food policy as a tool of public health is unquestionable. Over a plural background of potentially irreconcilable values, even the choice of unhealthy lifestyles might retain an irrereplaceable role in individual lives (Barnhill et al. 2014).

Judgmental food labeling is problematic because it interferes with the freedom of choice of food in two senses: as potentially causing a restriction of options and as the imposition of special costs on certain options. The first phenomenon—interference with freedom understood as reduction of options—might take place if some food options disappear as a result of labeling. This might happen because producers of traditional food, now labeled as unhealthy, due to diminished demand may not be able to sustain competition in a given market, after the introduction of judgmental labels. This could happen if judgmental labels truly are effective means for affecting consumer behavior, as their proponents hope. Second, and perhaps more realistically, food labels impose a well-being cost on individuals for their unhealthy choices: this is constituted by forgone immediate enjoyment and gratification, which might have come through a remorseless and less conscientious buying (or tasting) of unhealthy food. Judgmental labels (or at least some of them) interfere with such immediate gratification, because they rely on emotional reactions to achieve their effect on consumers—more obviously in the case of labels involving scary pictures. This might also be counted as a mild form of coercion (i.e. an interference with freedom in a different sense from an absolute restriction
of options), at least if we consider fines or taxes to be forms of (often legitimate) coercion.\(^8\) Notice that there might be an irresolvable trade-off between maximizing information and autonomy of choice, on the one hand, and promoting overall well-being (and other values) on the other. Arguably autonomous and informed choices require a reflective stance; but a reflective attitude may be inimical to the enjoyment of hedonic, symbolic, and communal experiences. These, instead, may often require an automatic, ritual, non-reflective attitude towards food-related life events (Barnhill et al. 2014).\(^9\)

2.1. The Value of (Food) Choice

There are different reasons why individuals may value choosing the food they eat, including—potentially—unhealthy food. I will briefly analyze them by borrowing Thomas Scanlon’s account of the value of choice (1998, 251–53; see also Resnik 2010).

First of all, choice may have instrumental value, because in many cases (e.g. choosing apples over oranges) people are better at predicting what they will derive more enjoyment from. It is clear that reasons of this kind apply to the present case. This is true even if people may not be better than outside agents at predicting what will cause them to be healthier, without adequate nutritional information. Well-being does not consist only of years free of disability, but also of years full of gratifications of the immediate, short-term type. It also consists of social experiences, some of which involve the sharing of (often unhealthy) food (Barnhill et al. 2014). It might be argued that individuals are the best judges of the optimal balance of these three (arguably irreducible) constituents of their own well-being.\(^10\)

Second, choice may have representative value. Often, for instance in artistic creation, we want our choices to be reflected in what we do, because the point of what we do is representing or constituting ourselves, our thoughts, or sensibilities. This kind of reason to value choice can apply to food choices as well. It is not far-fetched to argue that many people become and express who they are through the food they buy, prepare, and eat. Food preparation and consumption are linked to both group (e.g. cultural) identity and to self-styled, creative self-constitution.\(^11\) Certain food choices signal membership in cultural groups; such signaling might be required to socialize within those groups and preserve one’s identity, when threatened, outside them. On the other hand, for many people, food may just have a purely instrumental value. Food labeling should take into account the legitimate interest of both kinds of people.
Third, choice may have *symbolic* value. This occurs, for instance, because not being able to take certain choices would be seen as indicative of our not being competent enough to take them. This argument also applies to food choices. Shopping for food is usually seen as involving the kind of choice that every mentally healthy adult is competent enough to make. Given the background of these social practices, judgmental food labels undermine the symbolic value of food choice. What we are discussing under the label of symbolic value is not what a person expresses about herself by choosing a certain kind of food (that is covered under the heading of “expressive” value of choice). What has symbolic value here is the ability to choose itself. Judgmental labels express low esteem for the cognitive abilities and the ability of autonomous judgment of consumers, some of which may feel treated as idiots.

Based on these arguments, it can be concluded that there are important moral reasons to value the freedom of customers in the realm of food choices. As we have seen, judgmental labeling interferes with the freedom of choosing food. It does so indirectly by restricting the range of available options, in virtue of its market effects, and directly, by attaching hedonic costs to disfavored food choices. This means that at least certain individuals, or all individuals in certain circumstances, have reasonable *(pro tanto)* grounds to avoid judgmental labels. At the societal level, as a result of this, there are *pro tanto* reasons to reject judgmental labeling as a new, dominant social norm. What is to be achieved, here, is a balanced view that, on the one hand, does not preclude “any modification of the foods people currently enjoy, simply because they enjoy them” (Barnhill et al. 2014, 206), and yet is not blind to the possible trade-offs between the different ways food is valued.

### 3. The Analogy Between Nutritional and Genetic Information as a Guide to the Balance of Opposing Reasons

As the previous section shows, different reasons can be invoked in support of food labeling or resisting food label information. The problem is, now, how to balance these different considerations. In his contribution, Bonotti advances an interesting proposal to increase the information available to consumers as well as defending their legitimate interest not to know. To achieve this purpose, Bonotti proposes two alternative solutions: the first, potentially very contentious, would be to ban any food labels that are excessively judgmental; the second would involve instead the use of double labels, a non-judgmental food label on the front and a judgmental
food label on the back of the package. The latter label could also be covered by a “peel off” flap hiding the more judgmental information. The protective flap could be removed by information seekers, but it would not be lost, since it is stitched to the pack. These technical solutions would allow consumers to decide whether to receive or avoid that extra information before purchasing the item (Bonotti, in this volume, italics in original).

I believe this policy proposal realizes a sensible balance of the values at stake. Some people may disagree, and claim that it gives too much weight to the legitimate interest not to know, while imposing an unreasonable additional burden to public health measures. In this section, I provide the argument that we ought to take the right not to know seriously, based on the analogy between food labels and genetic tests.

I will argue that the information provided by judgmental food labels about health risk is analogous to that provided by genetic information. This may appear counterintuitive at first. Notice that I do not have in mind, here, all genetic information but genetic information concerning multifactorial and polygenetic diseases.

To begin with, judgmental food label information might be compared to the information used by a recent direct-to-consumer (DCT) genetic testing company, 23andMe, to communicate information about genetic disease risk to the customers of its genetic tests, until the FDA required the company to interrupt service (Pollack 2013). The statistical likelihood of developing a disease, based on information about one’s genotype, is communicated both in a detailed and in a simplified fashion. Side by side with a three- or four-paragraph description of the weight of the genetic evidence and its limitations, the web-interface of 23andMe included graphs such as the one below (figure 2). Like traffic light labels, these graphs use red as an indicator of higher risk and green as an indicator of reduced risk, side by side with a quantitative measure of the increased risk (e.g. a twofold increase in genetic risk, relative to the population average).

Notice that traffic light food labels involve a similar simplification. For the general consumer, not trained in dietology, it is not always easy to predict the differential long-term health consequences of their personal food intake, on the basis of traffic light colors and nutritional facts. At the physiological level, this connection is mediated by several contextual factors, including the fact that the same diet has a different effect on people with different genetic predispositions. Just like the colored graphs
of a DTC genetic testing company, “traffic light” food labels attempt to simplify this picture, enabling people lacking medical knowledge to form rough expectations concerning the health consequences of the food they consume.

The analogy goes further. Genetic counseling is a better, but more expensive alternative, than the web content provided by this DTC genetic testing company. Genetic counseling gives the appropriate weight to genetic data, but also considers environmental and lifestyle parameters. Analogously, the evaluation in judgmental labels, precisely because of its simplicity, is much less helpful and much cheaper, than a diet by a dietologist doctor. The latter draws from a complex weighing of considerations and takes into account other environmental risk factors, such as lifestyle (smoking, sports, etc.). It does not rely on average quantities and recommended intakes but individual ones.

How do we balance the right not to know with the promise of increased population health? In the genetic case, many people claim that the right not to know legitimately constrains the promotion of outcomes in public health through the extended use of all available (or easily producible)
genetic information. The right not to know has been explicitly recognized by international conventions and guidelines, such as Art. 5c of the UNESCO Universal Declaration of the Human Genome and Human Rights (1997), Art. 10.2 of the European Convention on Human Rights and Biomedicine (Council of Europe 1997) and Chapter VIII, Art. 16 of a recent Additional Protocol [to the former document] Concerning Genetic Testing for Health Purposes. By contrast, let us imagine a policy about genetic data that does not take the right not to know seriously, such as the following “(You ought to) know your genetic risk!”

3.1. Background

During 2006–2010, UK Biobank conducted its recruitment phase of more than 500,000 participants who gave their consent, answered questions, had physical measurements, and gave samples (blood, urine, and saliva) at a baseline assessment visit. The Biobank provides the infrastructure and samples to study mainly gene–environment interactions in complex disease (Cambon-Thomsen 2004). Let us suppose that, in a 10-year time, several genes, or better single-nucleotide polymorphisms (SNPs), will be identified as being scientifically validated risk factors of common multifactorial disease. Assume that these SNPs, i.e. their presence in the databank population, have already been analyzed for research purposes. Researchers can identify, with a few mouse clicks, which research subjects have the SNPs associated with higher or lower probability of disease. Let us also assume that the information is actionable, i.e. knowledge of the genetic risk factor provides a rational basis for a personalized advice with respect to pharmacology, diet, and overall lifestyle.

3.2. The Policy

Individuals with SNP of known associations will receive a letter indicating the name and a brief (10 lines) description of the disease associated with the SNP. The letter will be written on a red, amber, or green colored paper, to indicate whether the risk associated with the SNP of the recipient is higher than normal, average, or lower than normal. At the same time, a public education campaign is launched, telling the high-risk patients about opportunities to receive adequate medical advice, at an affordable cost.

The reader needs to ask herself if the policy above fulfills an appropriate balancing of reasons in favor of communicating the information and of the right not to know. If the reader thinks that the legitimate interest not to
know takes priority over the possible public health improvement, then, I would argue, she ought to reach a similar conclusion in the case of traffic light labels, for these are, in all morally relevant respects, analogous to simplified information about genetic predispositions.13

4. OBJECTIONS: FOOD LABEL INFORMATION IS NOT ANALOGOUS TO GENETIC INFORMATION

In what follows, I will defend the analogy between nutritional information and genetic testing against several objections.

1. Very often genetic information will tell us about our predispositions for diseases for which there is no cure or effective prevention, such as Huntington’s disease and Alzheimer’s dementia. People may not want to live the rest of their lives under the burden of this knowledge. This can cause anxiety, depression, etc. Dietary information is not at all like this. We can decide not to eat foods linked to obesity, heart disease, etc. We can take steps to prevent adverse outcomes associated with our diet, unlike genetics.14

This objection touches different apparent disanalogies between the two realms, which have to be unpacked. One issue (1.A) is that of certainty vs. risk. It can be expressed as follows:

Knowledge of genetic information is knowledge that the disease will develop no matter what, while dietary information is merely information about increased risk. And certainty of outcome is a greater psychological burden than knowledge of risk.

While it is true that we lack a cure for both Huntington’s disease and Alzheimer’s dementia, we need to distinguish the two examples, for they relate to relevantly different kinds of diseases. Huntington’s disease is caused by an autosomal dominant mutation whose penetrance is very high, which means that the people with the mutation are almost guaranteed to get sick (if they do not die of unrelated causes before the age of disease onset). By contrast, Alzheimer’s dementia is a multifactorial trait, which is only weakly predicted by knowledge of our risk factor. So, in the Alzheimer’s case, the claim that “people may not want to live the rest of their life under the burden of this knowledge” refers to knowledge of a statistically increased risk, not knowledge of certain (or almost certain) health outcome.

From the point of view of certainty vs. risk, the parallel with unhealthy food still holds, even if people can do little to reduce their risk of
Alzheimer’s. Knowledge of a genetic risk factor for Alzheimer’s is only an indication of risk. No certainty is involved in this case.

One could insist that even knowledge of risks can cause psychological harm. When the question is examined empirically, it turns out we hardly have any evidence of anxiety increases due to knowledge of genetic susceptibility, for diseases in which the ability of genes to predict the outcome is low in absolute terms (even when risk is significantly higher than the population average) (Bloss et al. 2011). If it seems highly a priori that at least some people will be adversely impacted, it also seems a priori that at least some people will be adversely impacted by interacting with judgmental labels (see section 2).

The second point (1.B) is about the difference in the individual ability to prevent:

Dietary information is not at all like [genetic information]. We can decide to not to eat foods linked to obesity, heart disease, etc. We can take steps to prevent adverse outcomes associated with our diet, unlike genetics.

Even if a genetic susceptibility to Alzheimer’s disease is only information about risk, it is about a risk which we (let us assume) cannot act upon. This is allegedly unlike the food case in which—supposedly—we can change our overall risk estimate, by changing our habits.

In response, this objection overestimates the freedom people have to change their diets, and underestimates the importance of “obesogenic environments” (Voigt, Nicholls, and Williams 2014). It has been argued that the broader social determinants of obesity, rather than individual choices, are the main drivers of obesity and other health issues connected with food (Sacks, Rayner, and Swinburn 2009). The stronger predictors of the consumption of unhealthy food may be found in “work and time pressures, urbanization, long commutes, more women in the workforce” (Magnusson 2010, 3). The loss of spending power, rather than a conscious preference for fast foods, has been identified as the main sociological driver behind the increased consumption of cheaper, energy-dense means during the last economic downturn (Magnusson 2010, 4). This suggests that it may not be so easy for people to prevent adverse outcomes associated with their diets, when the underlying social causes of their choosing that kind of diet (work and time pressures, etc.) persist.

If so, effective policies are unlikely to be those based exclusively on expanding the information available to individuals, using “nudges” or adopting more coercive means. While it is true that we, as society, can
take steps to prevent these social ills, sweeping socio-economic change (especially in macroeconomics) is hard to achieve for individuals. Moreover, it is even questionable whether we should prevent all the underlying social factors that are behind the increased consumption of unhealthy food. Consider for instance the empirical claim that the increase of women in the workforce contributes to raising obesity risk. Public health is not the only value we pursue as part of the common good.

In the cases under discussion, for many (if not all) people, large enough change in diet, apt to significantly affect their health risk, could turn out to be as impossible as a change in their genes. If changing risk profile is not feasible, for individuals, in either case (genes or diet) it cannot ground a difference in the weight accorded to their legitimate interest not to know in the two cases. This does not entail that people are determined to get sick by the food they eat, just as the fact that a disease has a genetic basis does not necessarily entail that people are determined to get sick. Unhealthy food worsens a person’s risk profile, but other protective factors could be in place.

It might be objected that some people are able to change their diet to reduce their risk profile. But, again, for some genes, it is true that people are able to change their overall risk in response to their genetic risk profile. People with a malign variant of the BRCA gene may undergo check-ups more often or, more drastically, undergo preventive breast surgery. And yet not many people would argue that, since the genetic information is actionable, we should not respect individual desires not to know one’s BRCA status.

Notice also that the objection relies on assuming that if risk is of a kind we can reduce (e.g. unhealthy diet) as opposed to a kind we cannot reduce (e.g. genetic risk), it causes less of a psychological burden. The implicit premise could be that because the psychological burden is less in the case of food (where we can prevent the outcome), the legitimate interest not to know should not be given as much weight in our regulations. The claim about psychological burden would need to be empirically demonstrated. There are a priori reasons to doubt that the psychological burden of reducible risk is not significant, as the following example shows. Suppose that it can be predicted that a very strong earthquake will take place in the area in which I live. However, I can avert all bad outcomes associated with the destruction of my house because I had already planned to move to a different city, for independent reasons. Suppose that, according to my plan, I should stay in my house until one month before the earthquake is
predicted to occur, then I would leave it and the house would become the
possession of new buyers. I may nonetheless feel more and more anxious
about my security as the time of the predicted earthquake approaches.
The ground for my anxiety will be the impossibility to predict the exact
moment of the earthquake. That is to say, I will not be certain of my ability
to avoid the outcome. Information about the earthquake reminds me of
my fragility with respect to earthquake risk.

The earthquake example shows that it is not sufficient to reduce risk
to have one’s anxiety disappear. This is also true in the food labels case:
a picture of a blood vessel cluttered by fat would remind me of the risk
of a stroke, to which I am exposed, even if I can do something to reduce
the risk, i.e. changing my diet. It reminds me of my fragility with respect
to strokes. So, the difference between unchangeable risk and reducible
risk may not be after all so significant in terms of psychological burden.

Moreover, knowledge of reduced genetic risk might reduce anxiety, even
when it is not actionable. In the empirical study by Bloss et al. (2011),
people who undergo genetic testing for Alzheimer and discover to be in
the low risk category have, on average, their anxiety reduced. Notice that
many of these people have already reasons to fear being at higher than
normal risk for that disease, due to other cases in the family.

Summing up, it is not always true that nutrition-related disease risks
are avoidable and even if they are, it is not clear that modifiable risk
involves a significantly reduced psychological burden, compared to non-
modifiable risk.

Let us now consider two other objections.

2. Genetic information can lead to discrimination and stigma. Yes, laws
are in place to counteract this, but laws might not be respected. Someone
might want not to know genetic information to avoid this. But dietary
information is different.

Reply: First of all, it is not obviously true that dietary information
involves no risk of stigmatization. People also risk being stigmatized
for eating food presented as “unhealthy,” associated with a culture
of obesity, which is stigmatized (Voigt, Nicholls, and Williams 2014).
Second, it is not the case that all genetic information exposes to risks
of stigmatization or discrimination. Consider discrimination: individual
differences in the susceptibility to complex diseases could be almost
useless to insurance companies, when their predictivity is low. Turning
to the social danger of stigmatization, many genetic differences are not
probable causes of stigma. Statistically speaking, almost everyone will
be at greater than average likelihood for at least one disease. Most often than not, the disease for which one is at greater than average risk would be of comparable importance to the disease(s) for which other people are at greater than average risk. Those who need special protection against stigmatization are, for instance, carriers (both healthy and affected) of severe Mendelian diseases, of traits with high predictivity (such as BRCA for family-transmitted breast cancer), or traits that risk eliciting irrational reactions in others (such rare genetic variants affecting MAOA metabolism, which, in the literature, have been associated with aggressive and antisocial behavior). But the most important point is the following: it is not very clear that what justifies the right not to know in any case is the risk of stigmatization and discrimination. For the latter can also be avoided by ensuring proper confidentiality in the communication of the genetic data. As Robert Wachbroit pointed out:

we should keep in mind where the fault lies. If a patient becomes uninsurable when a genetic condition is discovered, the proper target for criticism is the insurance industry, not the discovery. If someone suffers unfair employment discrimination because of a genetic test result, the fault lies with the practices of the workplace, not with the information revealed by the test (1998, 141).

Summing up, the issue of genetic stigmatization and discrimination cannot ground a disanalogy between the legitimate interest not to know in the genetic and the nutritional case.

3. The only source of genetic information is a genetic test performed on you (or possibly a family member). Dietary information is widespread—all over television, radio, etc. Labeling practices that promote a right not to know will not prevent people from getting dietary information.

In response, judgments widespread all over television have a less direct effect on consumers of unhealthy food than judgmental food labeling would have, if they were to become the norm. This is because consumers can avoid information on TV, radio, on-line newspapers, by pushing a button on their remote control or keyboard. If we imagine judgmental labeling as the future (de facto or de jure) standard, the risk is that consumers will not be able to avoid the dietary information on the food they buy. Notice the ability for consumers to avoid judgmental dietary information on the labels of food they buy, just as they can avoid it on TV, is what the arguments in this paper support. The argument does not say that dietary information ought to disappear or become scarcer, as opposed to more controllable.
Moreover, this disanalogy relies on facts that are too contingent. It is no longer a matter of technology and cost, after the recent drop in the cost of genotyping (which was offered by 23andMe for approximately 200 dollars, before the ban by the FDA). The relative scarcity of interpreted genetic information\textsuperscript{16} is largely an effect of the social norms erected as a dam against it. In and by itself, genetic information could become as ubiquitous as other kinds of personal information on Facebook. If we are to avoid circularity in our arguments, we cannot appeal to the fact that such a social norm \textit{exists} as one of the reasons that justifies the norm.

4. “Genetic exceptionalism” is justified by the fact that people lack the ability to understand the complex link between genetic information and disease, so genetic information could be misleading and lead to fatalism.

In response to 4, nutrition labels are as potentially misleading as rough indicators of genetic risk. A healthy diet and lifestyle is a holistic concept while traffic light labels suggest that certain food or drink \textit{items} are intrinsically bad for health. Consider now the consideration that genetic information is misunderstood due to a fatalistic attitude. Obviously, people may develop a fatalistic attitude with respect to their diet, for the reasons explored in 1b. So, traffic light labels, just as misunderstood genetic tests, may raise anxiety and fatalism about one’s health.

5. CONCLUSION

Obesity and salty (and fatty) food are risk factors for a wide range of chronic diseases including diabetes, heart disease, and several types of cancer (AIHW 2006; Flegal et al. 2007; Kim and Popkin 2006). But the same is true of genetic susceptibilities.

Here I have argued for the conditional proposition that if the “right not to know” applies to genetic information for multifactorial diseases, then it also applies to the information conveyed by traffic light labels. The argument relies on an analogy between the information about health risk provided in either case.

In conclusion, the concept of legitimate claim to avoid nutritional information, defended by Bonotti (in this volume), cannot be easily discarded by those public health experts and policy makers who take the “right not to know” genetic information seriously.

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NOTES

1. Or similar labels, such as Daily Intake (DI).

2. The color “red” is a conventional indicator of danger, conveying the idea that inadequate nutrition is harmful. A signal of risk might evoke emotional reactions. A high content of fat, sugar, or salt is not represented as a neutral fact, but as a danger for health. So, traffic light labels information is information about risk (potential harm) and evokes negative emotions, at least by association.

3. If this were the case, one potential objection against traffic light labels would be that they are not particularly effective, or worse, misleading. Notice that this is not the gist of the argument against judgmental food labels in this paper. It is, however, the argument used most frequently by their detractors. Another argument not discussed in this paper is that like “nudges” more broadly, traffic light labels are forms of (paternalistic) deception, as they exploit unconscious mechanisms, leading to the shaping of choices through means other than rational persuasion. This can be characterized as a threat to autonomy (Hausman and Welch 2010).

4. Some reasons for this stance, analogous to those for not knowing nutritional information, are provided in the footnotes of the section on the value of choice. For autonomy-based arguments, see Bonotti, in this volume.

5. This emphasis on health outcomes is a common feature of arguments within public health, even justifying losses of freedom, conceived as non-interference. For instance, fluoridation of drinking water is considered a good public health measure because it has proven effective to improve dental health (CDC 1999), even if it reduces the (negative) freedom of citizens, by depriving them of the option to drink non-fluoridated water from the tap.

6. As Alan Gibbard (1990, 20) notes, in a state of full information about the details of food digestion you may loose any appetite for delicious food. It is hard to see how that could contribute to autonomy.

7. It might be objected that many consumers enjoy more what they eat if it is labeled as unhealthy (perversity effect). However, many other consumers
do not and their interests are also at stake. But suppose for the sake of the argument that all enjoy it. If so, we are discussing judgmental labels that lead to greater enjoyment, and therefore consumption, of unhealthy food, the proposal turns out to be objectionable on other grounds.

8. It could also be conceptualized as a restriction of valuable options. In virtue of judgmental labels, agents loose the option of buying and tasting unhealthy food without thinking about their health or without having feelings of guilt.

9. Notice that the having of these semi-automatic or passive attitudes in daily life can itself be part of a reflectively chosen plan of life and thus be required by (higher-order) autonomy.

10. Analogously, in the case of genetic testing, individuals may be considered better at predicting the optimal balance between the bliss of ignorance and rational life planning.

11. Analogously, in the case of genetic testing, not wanting to know how one is constituted genetically could be an act of self-expression or self-constitution.

12. Analogously, in the case of genetic testing, treating people as unable to decide how much genetic information to use may express disrespect for their agential capacities.

13. On an alternative policy, the letter is not colored but contains a picture of the disease or condition made more probable by the predisposition. If the reader thinks that the legitimate interest to avoid such letters takes priority over the possible public health improvement, then she ought to reach a similar conclusion in the case of “scary” food labels (those with the picture of a disease, which some groups are advocating).

14. The author wishes to thank an anonymous referee for raising objections 1, 2 and 3.

15. It might be objected that people get accustomed to images they see every day. In reply, this would reduce the effectiveness of the judgmental labels and here we are interested only in labels that are effective.

16. It might be objected that the reason the service was so cheap is that the information provided was so poor. That is correct, but, as argued above, the same is true of judgmental food label information.

REFERENCES


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