What products should kids have the right to buy?

By Theodore Bach

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Should children have the legal right to purchase products that are excessively high in added sugar, such as soda and candy? The quick and obvious answer is "yes." After all, sugary products are a source of calories, and calories are required for survival.

But perhaps this answer is too quick. To see why, first consider an important but overlooked difference between the legal status of children and the legal status of adults.

It is not unreasonable to claim that most adults should have the legal right to do whatever they want — grow cannabis, own semiautomatic rifles, undergo a sex-change operation — as long as they are not harming others directly.

In 1859, John Stuart Mill argued for such a view in his book "On Liberty," and while there are various devils in the details (what exactly counts as a direct harm?), the view continues to resonate with, and influence the voting behavior of, many Americans.

But often lost amid this view’s energizing claims about individual freedom is that it does not extend to children (those not "of ripe years," as Mill put it). For example, if an unsupervised 5-year-old were to walk into a tattoo parlor and request a bold and permanent face tattoo, we do not think that the tattoo artist should have the legal right to grant such a request. Similarly, we do not think that a 5-year-old should have the legal right to purchase a pack of cigarettes.
There are important differences between ordering a face tattoo or pack of cigarettes, on the one hand, and ordering a sugary can of Coca-Cola or package of Twinkies, on the other. Consuming Coca-Cola and Twinkies — at least in moderation — is not harmful to one’s prospects and well-being in the same way as a horrible face tattoo or serious nicotine addiction. Moreover, both Coca-Cola and Twinkies, but neither face tattoos nor cigarettes, offer life-essential caloric energy.

These purported differences, as well as their moral and legal relevance, are overstated. To see why, suppose that a tobacco company invented a cigarette that is exactly like traditional cigarettes but with one difference: Smoking one of these cigarettes will cause caloric energy to be released into one’s body (we can stipulate that this is a side effect of the company’s new and cost-effective recipe for nicotine delivery). Marketing this brand as “Energy Cigs,” the company sends lobbyists to Capitol Hill in the hope of gaining legal access to consumers under the age of 18. The lobbyists argue to legislators that “children deserve a legal right to purchase Energy Cigs because, you see, kids have a legal and moral right to sources of life-essential calories, and Energy Cigs are one such source.”

Surely this plea is outrageous. As one wise legislator informs the lobbyists: "Because other sources of calories — ones not harnessed to a destructive and addictive substance — are available to children, we should not provide children with the legal right to purchase Energy Cigs.”

The lobbyist, disappointed but not deterred, return to Capitol Hill the next day and report that their company has now developed an electronic version of Energy Cigs: "Legislators — did you know that there is sparse empirical evidence that electronic cigarettes are physically harmful? Did you also know that Energy E-Cigs offer the same life-essential caloric value as traditional Energy Cigs?"

The thought experiment helps illustrate which differences are most relevant to the question of whether children should have a legal right to purchase products excessively high in added sugar. Like in the case of Energy Cigs, we should ask whether the life-essential substance is harnessed to a destructive and addictive substance. If it is, we should next ask whether that life-essential substance is available to children in less addictive and less destructive forms.

With respect to products that are excessively high in added sugar — particularly soda — a strong case can be made that the answer to both questions is "yes." Mounting data indicate a causal relationship between the overconsumption of products high in added sugar and soaring rates of obesity and diabetes. In addition, many scientists now argue on empirical grounds that added sugar is addictive. And, of course, caloric energy remains available to children through a variety of less harmful substances such as fruit, milk and potatoes.

It may or may not be morally and legally advisable to ban unsupervised children from purchasing products excessively high in added sugar. But we should ask ourselves if our attitude that children deserve such a legal right is consistent with our attitude that children do not deserve a similar right with respect to traditional and electronic Energy Cigs.

We should also consider who benefits most and who suffers most — children or for-profit corporations — from such inconsistent attitudes.

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