

# The Role of Regulation in NCD Prevention

## The ‘state of the art’

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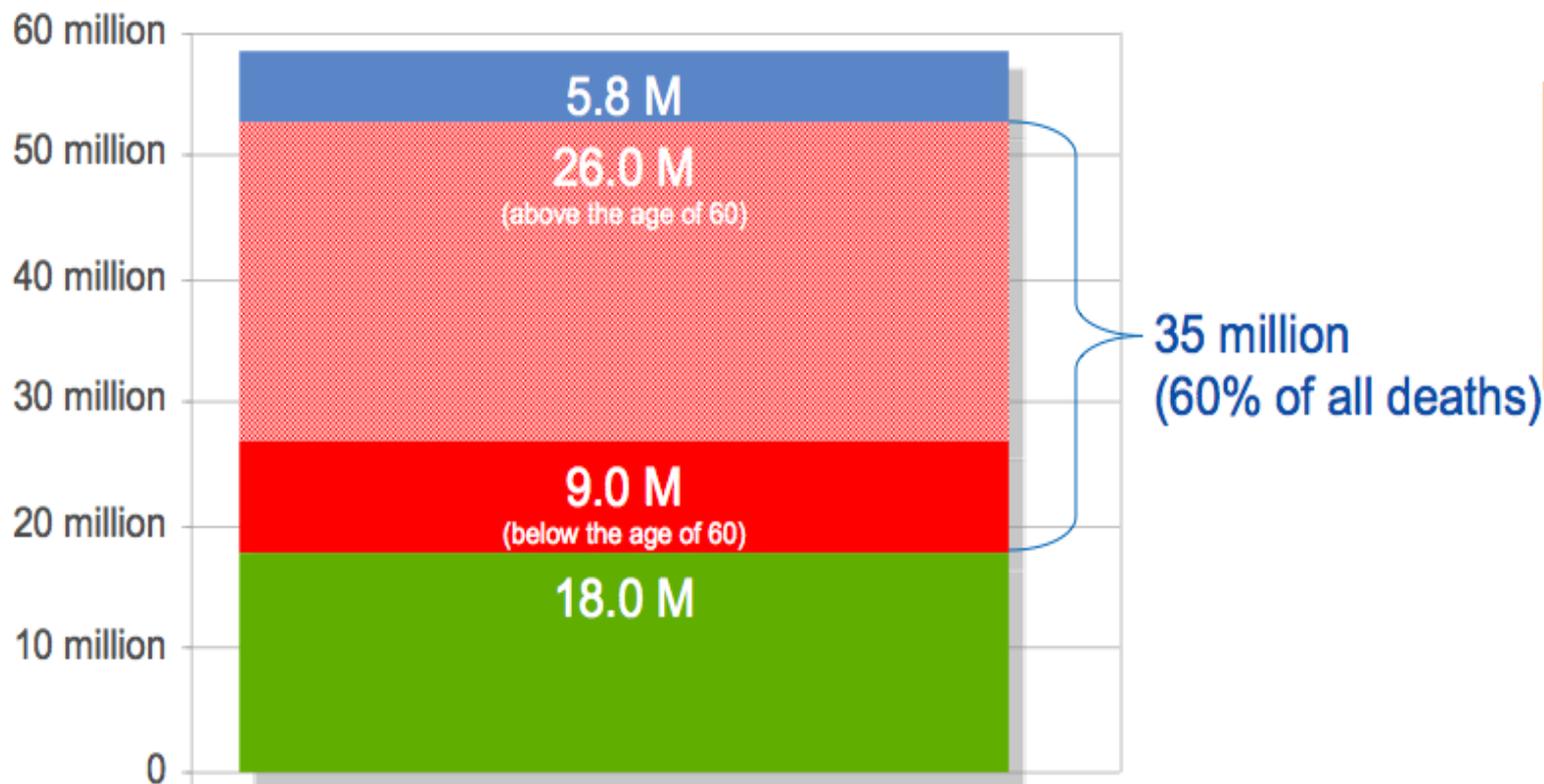
# my claim

law has a role to play in health promotion

by regulating (some of) the circumstances  
determining individual and collective behaviors

# NCDs are the single biggest cause of death: 9 million people die every year at young age

*Total number of deaths in the world*



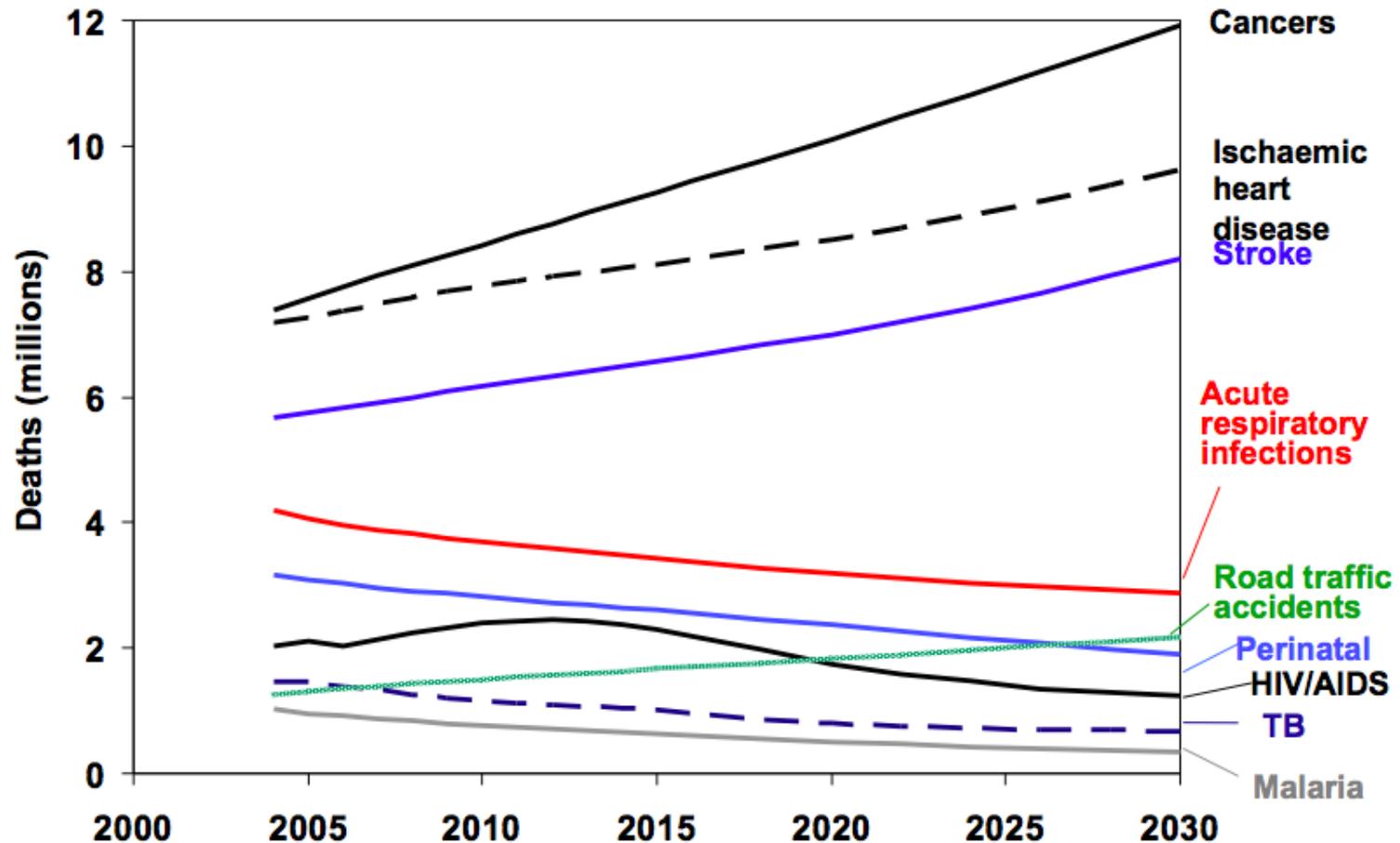
Source:

THE GLOBAL BURDEN OF DISEASE  
2004 Update

- Group III - Injuries
- Group II - Other deaths from noncommunicable diseases
- Group II - Premature deaths from noncommunicable diseases (below the age of 60), which are preventable
- Group I - Communicable diseases, maternal, perinatal and nutritional conditions

# Noncommunicable Diseases

## Projected global deaths (2030)



# What to do about it?

Since they are preventable, let's tackle their  
major

**NCD risk factors**









How to address NCD epidemic?

THE LAW

more precisely

# 'regulatory mix'

evidence-based  
effective and cost-effective  
population wide and individual  
multisectoral  
multi-stakeholder  
multilevel  
affordable

action

through 'the implementation of  
international agreements and strategies,  
and education, legislative, regulation and  
fiscal measures'

What a role the **LAW** may play in NCD prevention?

# Law in NCD

source of opportunities

source of constraints

only if **constraints** understood,  
**opportunities** will be maximised.

Law in NCD

as

source of opportunities

# Law & NCD

despite proliferation of health-rights,  
role of law in promoting public health largely  
unexplored and overall underestimated

BUT today growing interest in  
REGULATION

Can LAW make  
a difference  
?

‘law specifically, and public policy more generally, are among **the most powerful tools** to improve population health’

Institute for Medicine, For the Public’s Health: Revitalizing Law and Policy to Meet New Challenges, 2011.

‘the implementation of **international agreements** and strategies, and education, **legislative, regulation** and **fiscal measures**’

UN Political Declaration NCDs

# 3 ideas of **why law matters**

Normativity: law shapes norms

Deterrence through enforcement

Impact on underlying problem

# YES, provided

We understand the phenomena: **evidence**

We define the target

We understand what it works: **evidence**

Who are the forces against

We acknowledge limits of the law and its rapid  
transformation



**Open the Tool Box**

# ' NCD regulatory toolbox'

- disclosure requirements
- regulation of marketing
- measures affecting product availability
- fiscal measures and subsidies
- performance-based regulation
- fundamental rights

+ self-regulation + educational campaigns +  
monitoring schemes

# common objective

promoting healthier lifestyles by  
**reducing exposure** to a given risk factor

# disclosure

Rationale: information asymmetry of credence goods

Aim: informed consumer choice

Pro: 1. social normativity

2. politically viable insofar as not a **warning**  
(offset marketing efforts)

Con: effectiveness?

# Marketing regulation

(and other forms of promotion)

Rationale: control of voluntary information

Aim: limit effect of marketing in promoting consumption

Pro: limit exposure to general/vulnerable

Con: impact on competition

# Product availability

*monopoly, product reformulation, age limits*

Rationale: limit availability to reduce consumption

Pro: highly effective in controlling/limiting exposure

Con: alternative distribution channels  
change in consumer preference

# Fiscal measure

*Tobacco, alcohol and 'Fat' taxes*

Rationale: to induce drop in consumption

Pro: individuals sensitive to price

Con: regressive nature



# self-regulation

*code of conduct – platform*

Rationale: alternative to regulation

Pro: politically viable  
cheap (no enforcement)

Contra: not always suitable  
conflict of interest  
regulatory capture

# Supportive policies

- Educational campaigns
- Monitoring scheme

## Nuffield intervention ladder

Greater levels of intervention

**Eliminate choice:** regulate to eliminate choice entirely.

**Restrict choice:** regulate to restrict the options available to people.

**Guide choice through disincentives:** use financial or other disincentives to influence people to not pursue certain activities.

**Guide choice through incentives:** use financial and other incentives to guide people to pursue certain activities.

**Guide choice through changing the default:** make 'healthier' choices the default option people.

**Enable choice:** enable to change their behaviours.

**Provide information:** inform and educate people.

**Do nothing or simply monitor the current situation.**

what **divide** them

different nature

different actors

different scope

what **unite** them

all require some legal intervention

depend on strong evidence-base

need support: monitoring and education

need to be tested and mixed

But there is more...

all presuppose 'rationality' of human action

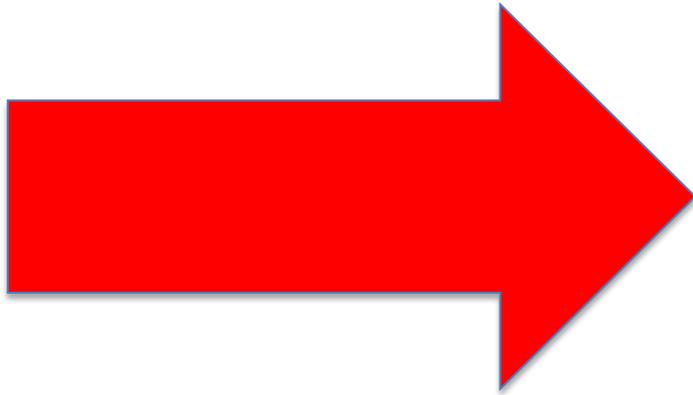
humans are not



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but





# Behavioral SCIENCE



context matters



5 cups  
270 calories



Tub  
630 calories



3-inch diameter  
140 calories



5-6-inch diameter  
350 calories



333 calories



590 calories



Original 8-ounce bottle  
97 calories



20-ounce bottle  
242 calories



default matters

# Portion Sizes Drive Consumption

People given larger portions simply eat or drink more

People given larger portion sizes of food eat approximately **20-50%** more, without reducing intake at later meals.

**20-50%  
MORE**



People eating soup from self-refilling bowls ate **73%** more.

**73%  
MORE**



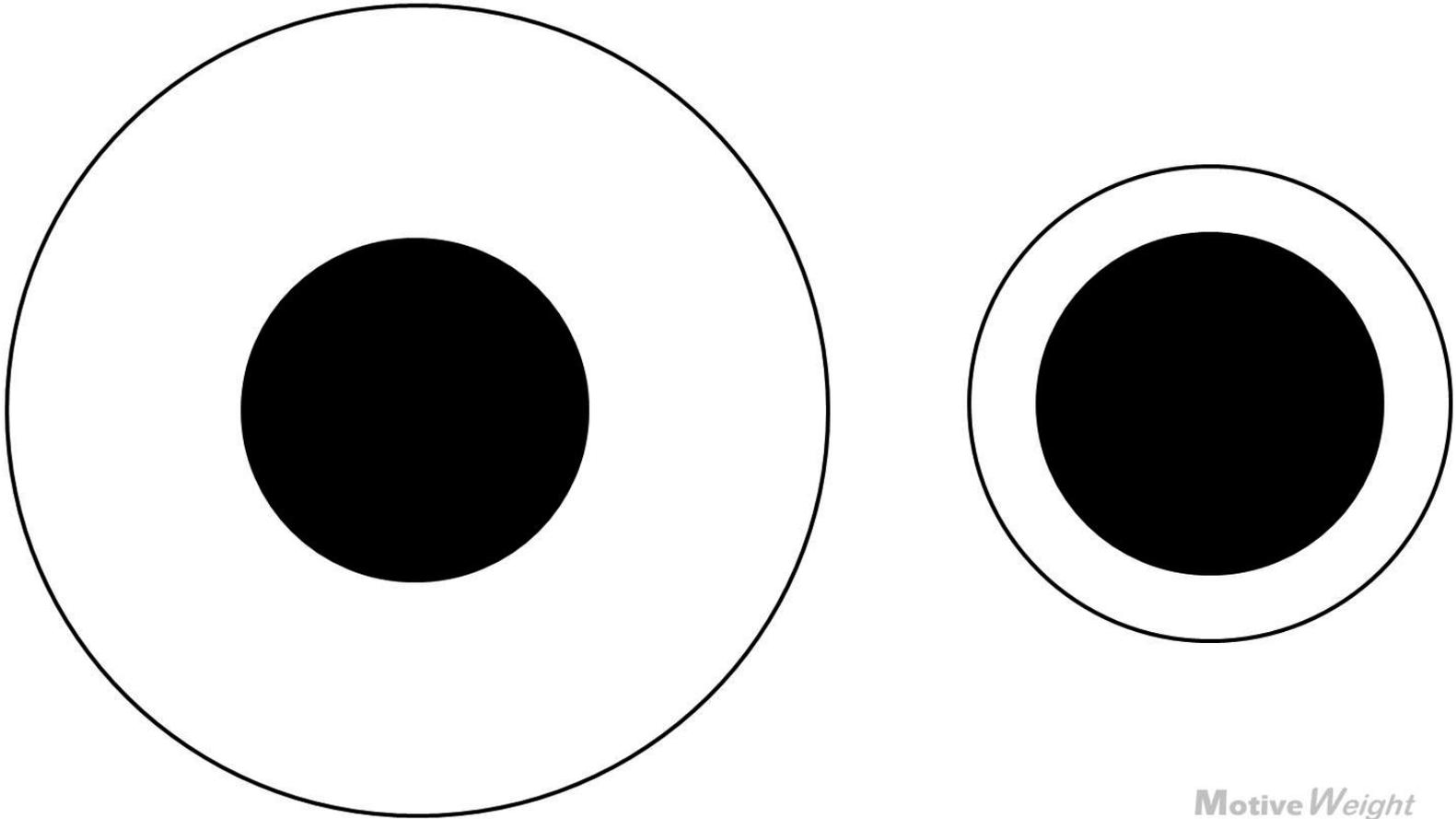
People given beverages **50%** larger consume **20%** more (women) to **33%** (men), with no decrease in food eaten.

**20%  
MORE**

**33%  
MORE**



**When you use a smaller plate the food appears bigger and this tricks your brain into thinking you're eating more food.**



social context matters



# Historically, not areas of legal intervention

But if marketers do, should governments do the same?

- counter-nudging

*warnings – front of pack – traffic labeling –*

- public nudging

*Choice-architecture: design of canteen, allocation*







# Nuffield intervention ladder



to be combined with other measures

Law in NCD

as

source of constraints

# NCD regulatory action

must be legally sound and scientifically  
substantiated as  
relevant industries ready to challenge

HENCE the need to know the **constraints**

# constraints

- Legitimacy
- Legality
  - Constitutional
  - Trade
  - Fundamental rights
- Cultural
- Design

# constraints

- Legitimacy
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- Design

# Legal constraints

- Constitutional law
- International (trade & investment) law
- Fundamental rights

# Constitutional constraints

**Multilevel action** is required, but:

- at what level of government to act?
- how to determine proportionality of action?

# International trade constraints

- virtually all NCD preventive actions encroach on trade
- subject to international trade obligations and external scrutiny
- balancing of trade vs public health

# Fundamental rights

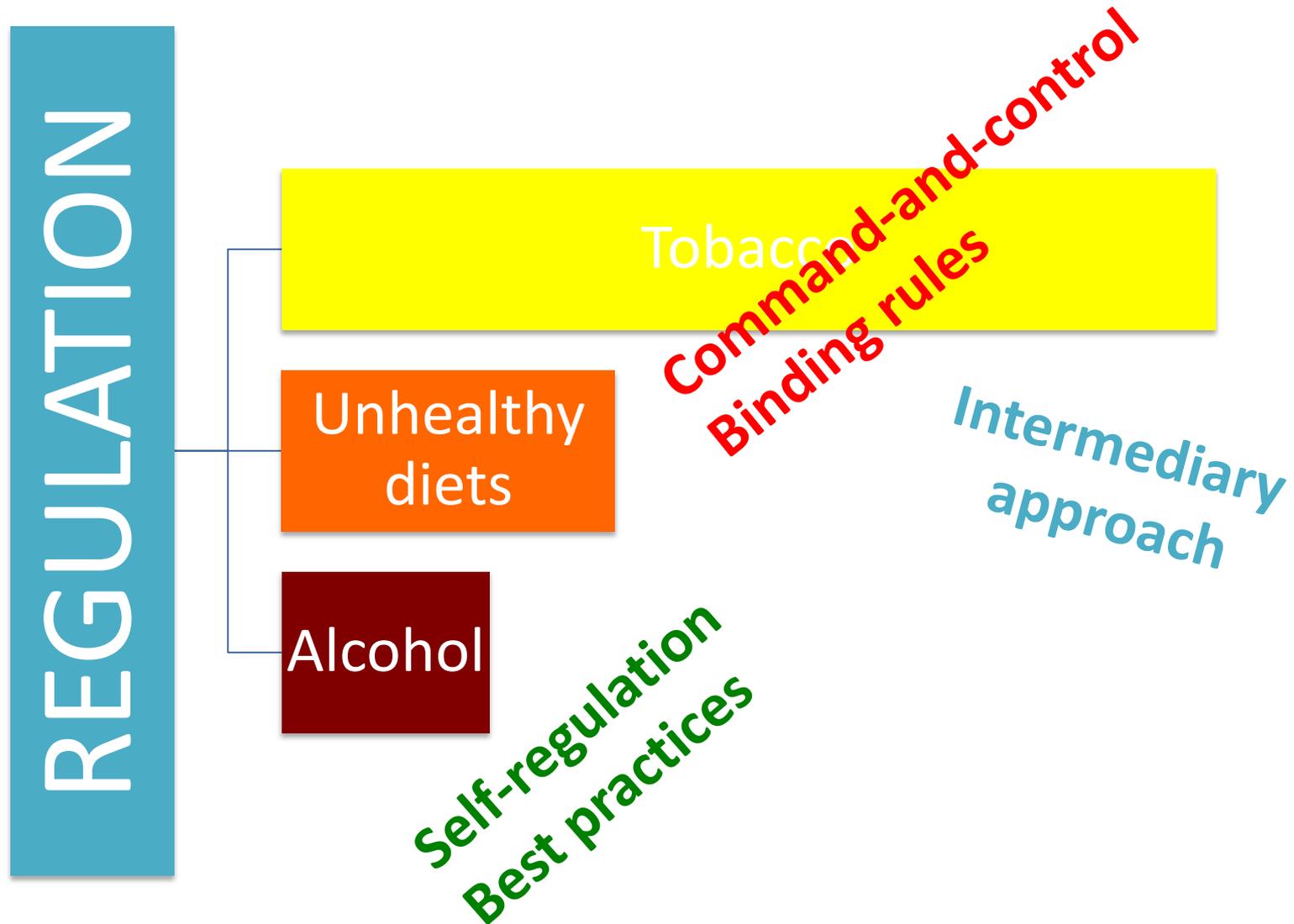
More often invoked by industry than citizens:

- the freedom of expression and information
- the freedom to choose an occupation
- the right to engage in work
- the freedom to conduct a business and
- the right to property

How to operationalize fundamental rights?

Where do we stand today?

**NCD action** varies in nature, scope and intensity depending on the risk factor under consideration:



# No panacea

BUT

value of legal intervention and its inherent potential in stimulating progressive change appears considerable

AND

existing evidence about both size of NCD and effectiveness of law **require ACTION**

not **whether** but **how** to use  
the LAW  
in NCD prevention



health should become ‘the easier, default option rather than being agonizingly difficult’.

B. Thomas and L. Gostin, “Tackling the Global NCD Crisis: Innovations in Law & Governance”, *Journal of Law, Medicine & Ethics* (2013), 16, at 25.