



Getting to the root of the problem: the international and domestic politics of junk food industry regulation in Latin America

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Abstract

In response to non-communicable diseases (NCDs) in Latin America, governments have introduced impressive prevention programmes. However, the purpose of this article is to better explain why several governments have yet to address arguably the ‘root of the problem’: i.e. implementing effective regulatory policies restricting the food industries’ ability to market and sell their products. Introducing a political science analytical framework merging international relations and domestic politics theory, this article claims that most governments have failed to achieve this process because of their reluctance to transfer their beliefs in human rights to health from the area of NCD prevention to regulation, thus achieving what the author refers to as ‘normative transferability’. The research design for this study entailed a documentary analysis of 44 qualitative primary and secondary documentary data sources (combined), i.e. articles, books, policy reports and the usage of these data sources for a comparative case study analysis of Chile, Brazil and Mexico. These qualitative data sources were also used to illustrate the potential efficacy of the author’s proposed analytical framework, developed from the political science and public policy literature. Quantitative epidemiological data from the World Health Organization global health observatory were used to provide a contextual backdrop of the obesity and diabetes situation in these countries. Comparing these three countries, Chile was the only one capable of achieving ‘normative transferability’ due to a strong linkage between activists, supportive institutions and policy advocates within government viewing regulatory policy as a human right to protection from aggressive industry marketing and sales tactics. To better understand differences between nations in achieving normative transferability processes and effective NCD regulatory policy outcomes, political scientists and public health scholars should work together to develop alternative analytical frameworks in the commercial determinants of health.

Keywords: Politics of NCD regulatory policy, food industry, obesity, Latin America

Introduction

Recently several Latin American countries have seen considerable growth of obesity and type-2 diabetes cases (FAO *et al.*, 2019; Gallardo-Rincón, 2021). Due to increased international trade, access to cheaper—often imported—foods, changes in dietary patterns, insufficient physical activity, and increased stress (Popkin and Reardon, 2018; Herrera, 2015; Uauy and Monteiro, 2004), diseases associated with overweight and obesity, such as type-2 diabetes and heart disease, has become one of the biggest contributing factors to illness and death in Latin America [Pan American Health Organization (PAHO), 2017a; Avilés-Santa *et al.*, 2020]. While governments in Latin America have joined the international community in acknowledging the need to address these ailments, as seen through the introduction of non-communicable disease (NCD) prevention programmes (e.g. soda taxes and increased consumer education and information via food labels) (Gómez and Méndez, 2021; Hospedales *et al.*, 2012), why have they varied in their willingness to overcome what the author in this article considers to be ‘the root of the problem’ behind

these ongoing NCD challenges? This root of the problem is the neglect of most governments in Latin America to create effective regulations on the marketing and sale of junk food products (i.e. ultra-processed foods and sodas). This regulatory policy approach challenges the power and interests of junk food industries, kindling resistance from these industries and challenging the policy-making process (Swinburn, 2008).

In this article, it is argued that Latin America governments have varied in their political commitment to overcoming ‘the root of the problem’ due to differences in their willingness to transfer normative commitments, grounded in human rights principles, from the area of NCD prevention to the area of junk food industry regulation. While governments have been successful in creating NCD prevention policies grounded in principles of access to good food, nutrition and health as a human right, with rare exceptions for the most part they have not applied this normative principle to the issue of industry regulation, with an emphasis on the ‘consumer’s right’ to protection from aggressive industry marketing and sales tactics. This shift in government normative commitment

Key messages

- The application of political science theory to the commercial determinants of health can provide alternative insights into the challenges of implementing effective non-communicable disease (NCD) regulatory policies restricting ultra-processed food industry marketing and sales in Latin America.
- In Mexico, Brazil and Chile, despite the introduction of impressive NCD prevention programs, with the exception of Chile, these governments have neglected to effectively regulate ultra-processed food industries.
- To achieve this, transferring human-rights-based narratives from obesity prevention to industry regulation is necessary before progress can be made in controlling obesity.
- International health agencies have not applied a human-rights-based approach to food industry regulation, despite successfully doing so for other public health issues, e.g. human immunodeficiency virus/acquired immune deficiency syndrome.

from prevention to regulation is described as a process of ‘normative transferability’.

To provide helpful insights into how this outcome emerges, the author introduces a political science analytical framework that combines an analysis of international organizations, civil society and institutions in NCD policy agenda-setting processes. The application of this analytical framework to the cases of Brazil, Mexico and Chile reveals that these nations have varied in their willingness to achieve ‘normative transferability’ and to successfully address the root of the problem. This framework builds upon efforts to apply political science frameworks explaining NCD policy reforms (Heller *et al.*, 2019; Reich, 2019; Clarke *et al.*, 2016). Nevertheless, the author’s approach addresses two gaps in this literature. The first is the need to provide a political science framework specific to addressing the commercial determinants of health (Maani *et al.*, 2020), such as government policy responses towards the food industry, an area in need of further research (Reich, 2019; Mialon, 2020). Second, the author’s approach goes beyond the literature on the politics of NCD policy-making by comparing the politics of NCD prevention and industry regulatory policies, and the processes by which policy norms transfer from prevention to regulation.

Materials and methods

The objectives of this study were 3-fold: first, to explain what the ‘root of the problem’ is in select Latin American countries; second, to introduce a political science analytical framework that can be helpful in illustrating how select Latin American governments varied in their response to this problem; and third, to apply this framework to these case studies in order to illustrate the framework’s potential in explaining the international and domestic actors, interests and institutions leading to ‘normative transferability’. However, the intentions were not to develop and test a framework in order to establish a generalizable theory predicting government policy responses.

With regard to methodology, the author conducted a qualitative comparative case study design. The cases of Brazil, Mexico and Chile were chosen because, with the exception of Argentina and Uruguay, in Latin America, they have the highest incidence of obesity and diabetes in the region [World Health Organization (WHO), 2020]. These countries were also selected because of the author’s extensive knowledge of these countries, having lived and conducted research in two of them, Brazil and Mexico. These three countries were also selected in order to provide a more in-depth analysis and explanation of these countries, rather than striving for greater breadth and less depth through a broader comparative analysis including other countries, such as Argentina and Uruguay. The author also selected Brazil, Mexico and Chile because of their well-known, documented regulatory policy success (Chile) and failure (Mexico and Brazil), with, to the author’s knowledge, fewer documented studies of Argentina and Uruguay.

Brazil, Mexico and Chile also share similar political economy and political institutions, with slight differences between them. These governments have free markets and international trade agreements and permit foreign direct investment in food production (Bolling *et al.*, 1998). They are also presidential democracies, with decentralized governance structures and with congressional legislatures containing multiple political parties and presidents varying in policy influence. Brazil and Mexico’s presidents are challenged with congresses that are influential in the policy-making process (Cox and Morgenstern, 2001), while Chile’s legislatures have played a more limited role in policy-making due to a stronger president with veto and decree authority in agenda setting (Montecinos, 2003). Presidents also appoint ministers of health in these countries, although this by no means guarantees ministers’ policy influence.

With respect to the type of data used, this article conducted an analysis of documents from 44 combined primary and secondary data sources included for this study. Primary data entailed qualitative documents (e.g. journal articles, media and policy articles) by authors published in Brazil, Mexico and Chile, with data collected by those authors within their country; primary sources also entailed reports and quantitative data obtained from international organizations. For example, the PAHO’s (PAHO, 2011) ‘Recommendations from a Pan American Health Organization Expert Consultation on the Marketing of Food and Non Alcoholic Beverages to Children in the Americas’ was thoroughly analysed and was found not to provide policy recommendations to governments from an individual and/or a children’s rights-based perspective, instead suggesting, e.g. which government entities should take the lead on creating marketing regulatory policies, engaging with stakeholders to share information to the public while defining marketing strategies. Nevertheless, it is important to note that since the introduction of the 2004 Global Strategy on Diet, Nutrition, and Exercise, the WHO and related United Nations agencies have been committed to establishing the normative agenda on tackling NCDs. The WHO has been vocal on the issue of not only NCD prevention, such as preventing childhood obesity, but also recommending regulations that limit industry advertising to children (PAHO, 2011).

Secondary sources entailed these same kinds of qualitative documents but where other authors relied on and interpreted the primary data, e.g. field-work interviews and surveys, from

other authors conducting primary research; examples of this kind of secondary sources may also include systematic qualitative literature reviews and review essays. Thus, for secondary data, authors did not collect the original primary data and instead analysed and interpreted the results of those scholars that did. The author of this study obtained primary and secondary qualitative data sources from comprehensive online search engines, such as Google and official non-governmental organization (NGO) websites, while quantitative data on the epidemiological status of these countries were obtained from the WHO’s global health observatory database. When searching for qualitative data, the author used several key word search terms in ‘parentheses’ on the international and domestic political, social and institutional factors relevant to the author’s proposed analytical framework. Journal articles selected had to be peer-reviewed from primary (preferred) and secondary literature and had to come from reputable sources. Qualitative data were used to provide an in-depth analysis and explanation of the Brazilian, Mexican and Chilean case studies, while quantitative data from the WHO were used to provide contextual background epidemiological information.

Once these qualitative documentary data sources were obtained, specific criteria were used to extract relevant data for analysis. First, the data used from these documents had to provide evidence about a particular aspect of the author’s proposed analytical framework and the policy outcome of concern. Second, documentary data had to discuss specific international organizations and their NCD policy recommendations for governments; these data also had to discuss the specific civil societal organizations that focused on NCD policies and their agenda-setting strategies. Documentary data on supportive government institutions had to focus on relevant institutions formulating NCD policy, e.g. legislatures and/or bureaucratic agencies. Data extracted from documents about government policy-makers had to provide evidence about the presence of particular advocates within these institutions. All qualitative documents and data were stored within the cloud-based, password-protected database ‘Mendeley’, which facilitated the author’s ability to take notes and save the information.

The author’s study applied the usage of comparative qualitative case study methodology when conducting a cross-national comparative analysis of the qualitative documentary data. The author employed the method of ‘contrasts of contexts’, which uses empirical qualitative data to compare nations in order to illustrate their contextual and causal uniqueness, in turn providing more depth to the interpretation of how causal factors and outcomes emerged

differently between countries (Skocpol and Somers, 1980; Collier, 1993). The author then applied the comparative method of ‘parallel-demonstration of theory’, which uses case studies to illustrate the efficacy of a particular theoretical approach (ibid). Through these comparative methodological approaches, the author’s proposed analytical framework was applied to the cases of Mexico, Brazil and Chile. The proposed framework was used to guide the sequential analysis of the independent and dependent variables for each country across the framework’s main themes.

Interviews with stakeholders within and outside of the government were not required. Consequently, there was no need to obtain ethical consent. The data collection and analysis commenced in the spring of 2019 and concluded in the fall of 2020.

Normative transferability and the politics of non-communicable disease

This section introduces the author’s proposed analytical framework, ‘Normative Transferability and Industry Regulation’ (NTIR). As seen in Figure 1, this framework is composed of three stages. Stage 1 builds on the literature emphasizing the role that international organizations play in providing policy guidance to governments based on normative policy claims (Barnett and Finnemore, 1999; Finnemore, 1993), such as access to healthcare as a human right (Meier and Gostin, 2018). As others have argued, international organizations achieve this either by providing technical consultations to governments seeking advice in times of uncertainty, as emphasized by the epistemic communities literature (Haas, 1992) and/or by organizing and participating in conference activities. Based on this understanding, the first stage of this analytical framework questions to what extent international health organizations are providing NCD regulatory policy guidance based on normative beliefs, such as children and consumer’s rights to effective regulatory policy.

Stage 2 of the NTIR framework examines the role of civil society. This stage focuses on the extent to which NGOs and/or social movements pressure the government into introducing NCD regulatory policies based on these human rights principles. This approach builds upon the political science literature highlighting the importance of civil societal actors strategically using a human rights-based discourse when lobbying the government for health policy reform (Kindornay et al., 2012). Stage 2 therefore explores the extent to which civil societal actors are using a human rights-based discourse

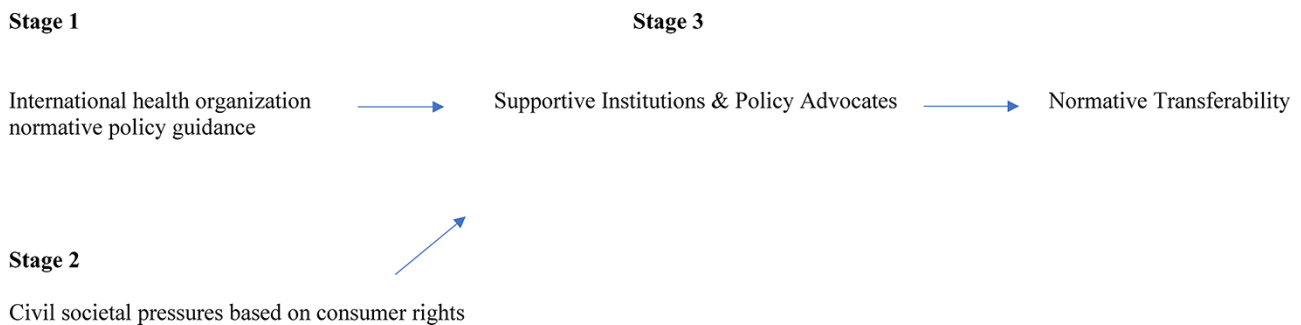


Figure 1. Normative Transferability in Industry Regulation.

when pressuring health officials for effective NCD regulatory policies.

Next, Stage 3 of the NTIR framework examines to what extent international organizations and civil societal actors have access to ‘supportive institutions’. Supportive institutions are defined as national bureaucratic committees that allow international organizations and civil societal actors to advocate for regulatory policies. This arena builds upon the political science literature emphasizing the importance of interest group access to reliable government representative institutions, where non-governmental actors can work with government actors to convey their policy ideas and where they have a choice to decide which representative venues are more important and advantageous for them (Brown *et al.*, 2012; Immergut, 1992).

During Stage 3, NTIR also focuses on the important role of a ‘policy advocate’, which must also be present within these ‘supportive institutions’. This stage questions to what extent these advocates are willing to work with international organizations and civil societal actors to uphold their unified views within government, marshalling information and consensus from these external actors to build political support for NCD regulations. These advocates reside either within congressional institutions or the bureaucracy. The author’s concept of the ‘policy advocate’ derives from the agenda-setting literature emphasizing the importance of the policy entrepreneur. Originally conceptualized by Kingdon (1984), this entrepreneur is either an elected government official or individuals/institutions outside of the government taking advantage of crisis situations (windows of opportunity) to define problems and propose ideas and policy solutions, while sacrificing time and energy to work with others in building a consensus for reform. To that end, policy entrepreneurs engage in a variety of strategies, such as expanding networks based on their team building and networking skills (Mintrom, 2019), working with advocacy networks to present and obtain information while garnering their support (Mintrom and Luetjens, 2017). These activities bolster an entrepreneur’s advocacy efforts and ability to persuade legislators by obtaining their trust and belief that a policy idea is attractive (Petridou and Mintrom, 2020; Mintrom, 2019). The author’s conception of the ‘policy advocate’ also builds on those claiming that entrepreneurs in developing countries having access to international supporters of the entrepreneur’s ideas can provide additional enabling resources for the entrepreneur (Bakir and Gunduz, 2019).

NTIR’s Stages 2 and 3 emphasizes on ‘supportive institutions’ and ‘policy advocate’ are also grounded in the literature emphasizing the importance of institutions in the agenda-setting processes. Specifically, NTIR builds upon the political science literature emphasizing the distinction between the emergence of systemic issues in society and their placement on formal agendas and those government institutions reaching out to and mobilizing society’s interests in support of new legislation within government (Cobb *et al.*, 1976), an approach that has been overlooked due to recent scholars’ focus on agenda-setting processes within institutions (Capella, 2020). Building on Capella’s (2020) concerns, the author’s emphasis on ‘supportive institutions’ and ‘policy advocates’ nevertheless rejuvenates the importance of focusing on the relationship between society and influential agenda-setting actors within the government. Furthermore, the NTIR framework

builds on Tsebelis and Rasch’s (2011) emphasis on the importance of constitutional institutional designs amplifying the power of agenda setters (e.g. ‘policy advocates’) within government (e.g. veto actors and gatekeepers) (see also Cox, 2008), while emphasizing the importance of the ideological views of agenda-setting actors within institutions. Indeed, the author’s framework builds on Tsebelis and Rasch (2011) by emphasizing the importance of the ideological views of ‘policy advocates’, shared with society, and the ‘advocate’s’ authority within government.

The process of conducting research for the NTIR framework entailed searching for qualitative documentary data addressing the main elements of the framework’s assertions. With respect to how the political science and human rights aspects of the framework was researched, the author looked for qualitative documentary data sources discussing the political aspects of the framework, such as the role of international organizations in providing policy assistance to governments through a normative rights-based perspective; next, the search and usage of qualitative documentary data discussing civil society’s role in influencing NCD policy and using normative discourse when pressuring government for policy reform; and finally, finding the same kind of qualitative data sources discussing the role of ‘supportive institutions’ and ‘policy advocates’ within the government.

All of this research was brought together beginning with the politics of the international community and civil society’s efforts to achieve normative transferability, i.e. Stages 1 and 2, respectively, which may occur simultaneously, followed by the Stage 3 literature examining if these international and civil societal actors had access to the ‘supportive institutions’ and ‘policy advocates’ needed to achieve normative transferability. This framework therefore assumes that Stage 3 processes occur after Stages 1 and 2. With respect to causal significance, neither of the first two stages is more important than the other.

Results

The application of the author’s NTIR framework illustrates that while international health organizations did not play an important role in providing regulatory policy recommendations based on a rights-based discourse in Brazil, Mexico and Chile, these countries nevertheless shared similarities in civil society’s emergence and usage of such a discourse when lobbying national agenda-setting institutions. However, NTIR revealed that these nations differed with respect to the presence of ‘supportive institutions’ and ‘policy advocates’, both of which were only present in Chile, and thus why ‘normative transferability’ was only achieved in Chile. These results are presented below by discussing each country case study independently, with the empirical discussion within them organized by each sequential stage of the NTIR framework, concluding with a discussion about the presence or absence of ‘normative transferability’. The unsuccessful cases of Brazil and Mexico are introduced first, followed by the successful case of Chile.

Brazil

The focus of the Brazil case study is to illustrate the potential efficacy of the NTIR framework and, through its application,

to explain why Brazil never experienced normative transferability. The author begins with an analysis of the role of international organizations and the absence of their normative policy advice and influence in the area of food industry regulation (Stage 1), followed by civil society's role in pressuring government for regulatory policy through a rights-based discourse (Stage 2), the presence of 'supportive institutions' and yet, the absence of the 'policy advocate' (Stage 3), ultimately contributing to the absence of normative transferability.

Stage 1: role of international organizations

In Brazil, PAHO played an important role in working with Brazil's health ministers to view NCDs, such as obesity, from a normative, human rights-based perspective. In November 2012, e.g. during an international conference on childhood obesity at the National Institute of Public Health in Cuernavaca, Mexico, PAHO met with health officials from Brazil 'to establish a normative commitment to responding to obesity... [that is, that] health authorities stand for the rights to health, healthy food, information and use of public policy mechanisms and the law to achieve these rights' (Jacoby *et al.*, 2013). PAHO also emphasized devising school interventions to address obesity, couched in these normative views in obesity prevention (*ibid.*), and encouraged Brazil and other Latin American health officials to increase regulations on industry's ability to market their products to children. At one point, PAHO acknowledged Brazil's Ministry of Health (MoH) and *Anvisa* (*Agência Nacional de Vigilância Sanitária*—National Health Surveillance Agency) for having extensive experience in the area of health surveillance and regulation, which contributed to the decision in October 2010 by PAHO to sign a framework cooperation agreement with *Anvisa* and the MoH (PAHO News, 2010). Indeed, for several years, PAHO has been working with *Anvisa* to build its regulatory capacity in healthcare (PAHO News, 2010). PAHO also acknowledged Brazil's (and Chile and Peru's) experiences in regulating children's food products (PAHO, 2014), while being a regional leader in introducing policies to stem the growth of obesity and NCDs (World Health Organization, 2017).

The upshoot, however, is that PAHO has focused on a human rights-based perspective for NCD policy but only for prevention and not industry regulation. That is, to the author's knowledge, PAHO's recommendation on regulating industry sales and marketing has never been emphasized with respect to an individual's right (especially children) to truthful information and protection from targeted and manipulative industry advertisements.

Stage 2: the role of civil society

As Brazil's nutrition transition emerged and the NCDs associated with changes in dietary habits arose, NGOs began to increase awareness about the importance of preventing NCDs and confronting the challenges of doing so (ACT *Promoção da Saúde*, 2019). Organizations such as *Instituto Alana* and 'IDEC' (Instituto Brasileiro de Defesa do Consumidor) also began to pressure *Anvisa*, the government's regulatory agency, to introduce regulations targeting the food industry, such as marketing towards children (Dias *et al.*, 2012). By 2016, several NGOs and activists formed the *Aliança pela Alimentação Adequada e Saudável*, which focused on campaigns

and activities emphasizing good nutrition as a human right (*Aliança pela Alimentação Adequada e Saudável*, 2021).

By 2005, these activists also became more involved in the policy-formulation process. Beginning in that year *Anvisa* organized a 'working group' of state and non-state actors to formulate a draft proposal, CP n.71/2006, for public consultation on NCD regulatory policies (Hartung and Karageorgiadis, 2017). One of the regulations addressed by this group was the protection of children's health, mainly through proposed regulations on the advertising of unhealthy food products, including in schools and the usage of cartoons to attract children (*ibid.*). Eventually, although *Anvisa* resolution RDC 24/201059 was published in 2010, it was substantially altered, such as removing any mentioning of advertising to children, due in part to industry and supportive judicial opposition (*ibid.*). NGOs, such as *Alana*, have also attended public congressional hearings to pressure legislators to adopt regulations on advertisements towards children, such as Senate Bill 5.921, which has been postponed since 2001 (Freitas, 2014).

Importantly, and in accordance with Stage 2 of the author's NTIR framework, these groups in civil society also began to use a rights-based discourse when pressuring health officials to go beyond obesity and diabetes prevention and to effectively regulate the marketing and sale of industry products. In 2013, e.g. the NGOs *Instituto Alana* and 'ANDI' *Comunicação e Direitos*, organized a book launching event within the Senate's Human Rights Commission underscoring the connection between children's rights and the need for food advertising regulations (*Criança e Consum*, 2013). And in 2014, when *Conanda* (*Conselho Nacional dos Direitos da Criança e do Adolescente*—National Council for Children and Adolescent's Rights)—established its Resolution N. 163/2014 (although not an enforceable federal law) prohibiting junk food advertising towards children, several NGOs supported this resolution based on children's right to protection from manipulative advertising (Reis, 2014).

Stage 3: the role of supportive institutions and policy advocates

At the same time, and in accordance with NTIR's emphasis on the important role of 'supportive institutions', during this period NGOs also made strategic use of federal institutions that provided a venue for them to lobby and voice their concerns, such as the *Consea* (*Conselho Nacional de Segurança Alimentar*—National Council for Nutrition Security). Originally created in 1992 under the President Itamar Franco administration (1992–94), although briefly closing under the Fernando Cardoso administration (1994–2002), *Consea* was a national committee within the Ministry of Health composed of 1/3 government officials and 2/3 civil societal actors, and scientists (Burlandy, 2009). *Consea* was focused on combating poverty and creating effective nutrition and related NCD policies (Burlandy, 2009).

While *Consea* thrived under the Lula administration, several challenges subsequently arose. Under Lula, *Consea* was housed within the office of the president (Burlandy, 2009), which magnified its policy influence. During this period *Consea* mirrored civil society's view that nutrition and advertising regulations need to be grounded in consumer's rights principles, i.e. '... the right for proper nutrition and consumers' right for information' (Kassahara and Sarti, 2018, p. 590),

recommending legislators to prioritize 'law projects related to regulation of processed foods and beverages advertisement in 2013' based on these principles (Kassahara and Sarti, 2018, p. 590). However, *Consea* was eventually dismantled under the conservative Jair Bolsonaro administration (2018–present), with most of its policy responsibilities delegated to the Ministry of Citizenship (Mazui, 2019). Furthermore, during its existence, no efforts were made within *Consea* to aggressively address industry regulations, such as prohibiting the marketing and sale of its products. While activists and health officials occupying seats on the *Consea* used a rights-based discourse when introducing policies focused on obesity prevention, to the author's knowledge, this was not the case with respect to introducing NCD regulatory policies.

The absence of an effective 'policy advocate' within the government has further complicated matters. When *Consea* was present, health officials sitting on the national committee endorsed the ideas and interests of nutrition scientists and activists. Still, within government, there has never been a 'policy advocate' that worked with the international community and NGOs to emphasize the importance of establishing regulatory policies through children's and/or consumer-rights' based perspective. While President Lula could certainly be viewed as a policy advocate within *Consea*, his focus was on combating poverty and malnutrition, not regulating food industries (Gómez, 2020). Subsequent President Dilma Roussef was also focused on malnutrition, poverty and obesity prevention. Thus, in accordance with Stage 3 of the NTIR analytical framework, the critical elements of 'supportive institutions' and 'policy advocates' were absent in Brazil.

The absence of normative transferability

In this context, there has been a high level of inter-governmental conflict and lack of policy consensus within government over the importance of introducing federal regulatory laws in the area of junk food sales and advertising. 'Normative transformability' has been impossible to achieve. While NCD prevention programmes on nutrition, obesity and type-2 diabetes have been influenced and designed from a human rights-based perspective, this perspective and approach has yet to transfer to industry regulation. Indeed, in the area of prevention, in as early as 1999, the MoH created the National Food and Nutrition policy to not only curb obesity, but also to promote healthy eating habits and monitor nutrition, introduced as a human right to good food and nutrition (Silva *et al.*, 2013). Gómez (2015) also found that this rights-based approach was facilitated by civil society's access to federal participatory institutions and MoH officials working with them to create programmes based on these guiding principles.

But these principles were never transferred to industry regulation. Those regulations (or rather, resolutions) that exist are not legally binding and do not entail stringent penalties and fines for non-compliance, such as the aforementioned *Conanda* Resolution No. 163/2014 on marketing towards children; consequently, these resolutions have been repeatedly ignored by food industries (Gómez, 2020). Public health activists are essentially working on their own to convince the government that children and their families have the right to not only sound nutrition, but also to be protected from aggressive marketing towards children and sales in strategic locations, e.g. near schools (Gómez, 2020). Until a full

consensus has emerged among congressional members, public health officials and the president, industries will continue to manipulate regulatory policy in their favour.

Mexico

The focus of this Mexico case study is to illustrate the potential efficacy of the NTIR framework in explaining why Mexico, like Brazil, never experienced normative transferability in the regulation of industry marketing and sales. Applying the NTIR framework, the author begins with an analysis of the absence of international organization's policy assistance to governments based on normative commitments to industry regulation (Stage 1), the proactive role of civil society in advocating for regulatory policy from a rights-based perspective (Stage 2), followed by the absence of 'supportive institutions' and 'policy advocates' (Stage 3) and, ultimately, the absence of normative transferability.

Stage 1: the role of international organizations

In Mexico, international health organizations played an important role in working with the Secretary of Health (SoH) to underscore the importance of creating NCD prevention and regulatory policies. Beginning with the WHO's 2004 Global Program on Diet and Nutrition, prevention programmes, such as a soda tax, were initially prescribed to Mexico, India and other countries confronting a burgeoning growth in childhood obesity cases (Gómez, 2018). Hospedales *et al.* (2012) also found that in 2011 PAHO worked with Mexico and other Latin American countries in a workshop in Mexico that focused on the economic implications of NCDs and policy priorities. In addition, and as Barquera *et al.* (2013) maintain, PAHO also worked with Mexico's SoH on a task force aimed at regulating the marketing of junk food to children. And yet, this task force appears to have focused on recommending best practices without PAHO's usage of a children's human rights-based perspective when advocating for regulatory policy in Mexico.

In fact, in the case of Mexico, and applying NTIR's Stage 1 analysis emphasizing the importance of international organizations in providing NCD policy recommendations to governments from a rights-based perspective, little evidence suggests that international organizations have done so with respect to prevention 'and' regulatory policy. The international assistance that Mexico has received seems to be prioritizing technical best practices and NCD policy recommendations. The result of this situation is that there have been no international policy advocates pressuring the government to regulate industries on their aggressive marketing and sales restrictions.

Stage 2: the role of civil society

In Mexico, Stage 2 of the author's NTIR framework examines the role that civil society played in pressuring the government for NCD regulatory policy reform through a consumer rights-base discourse. However, civil society's response to NCDs in Mexico was considerably delayed when compared with Brazil. This situation reflects the long history of an elite-based health policy-making process (Gonzalez-Rossetti, 2001), where little political space and opportunity was provided for nutrition activists and NGOs to question and influence policy. As the NCD challenges of obesity and diabetes arose, however, more activists and NGOs emerged to recommend policy changes. Within the past decade, several NGOs, such as *El Poder del Consumidor*, *ContraPesso* and an alliance

of approximately 30 NGOs, namely *La Alianza por la Salud Alimentaria*, have increased awareness about these NCDs and have been educating the public about the importance of sound nutrition through several campaign initiatives, while advocating for more effective prevention and regulatory policies (Calvillo and Székely, 2018; Dulce Veneno, 2020). These NGOs were critical in helping convince President Enrique Peña Nieto to introduce a soda tax in 2014. Moreover, they have been vocal about introducing more effective food labels and enforcing existing regulations on the marketing and sale of sodas and other ultra-processed foods.

In accordance with Stage 2 of the NTIR framework, in Mexico, an important aspect of civil society's success has been its adoption of a rights-based discourse when advocating for NCD prevention and regulatory policies. While these NGOs and activists have long claimed that individuals, especially children, have the right to access healthier food, when it came to food labelling regulations, they have also claimed that children and families have the right to transparent and truthful nutritional information (Aristegui, 2019; Larrañaga, 2020). In August 2018, e.g. NGOs such as *Dejusticia* (*Centro de Estudios de Derecho, Justicia y Sociedad*) and *El Poder del Consumidor* lobbied the Mexican Supreme Court to consider amendments to improve the quality of existing food labels, which the Court rejected (Dejusticia, 2018). *Dejusticia* based its argument on the consumer's right to information that can lead to better informed decisions (ibid).

Activists at the same time have used a rights-based perspective when highlighting the need to create effective regulations for the marketing and sale of junk food products, especially to children (Lira, 2018). Despite the creation of regulations through the 2014 National Strategy for Prevention and Control of Overweight, Obesity, and Diabetes prohibiting the marketing of products to children on TV for particular hours of the day, activists found that these regulations are rarely enforced and that children are still exposed to these advertisements (Lira, 2018). What is more, in 2018, the *Alianza por la Salud Alimentaria* published a report titled *Publicidad Dirigida a Niños: Una Infancia Enganchada a la obesidad* (Advertising Aimed at Children: A Childhood Hooked on Obesity), which stated that the government's neglect to create effective advertising regulations was in fact a direct infringement on children's human rights: i.e. the right to health and the right not to be manipulated by advertising (Cruz, 2018); legal experts from the prestigious *Universidad Nacional Autónoma de México* (National University of Mexico) submitted the same claims (Cruz, 2018). Thus, in accordance with the NTIR framework, civil society in Mexico was mobilizing and using a rights-based discourse when pressuring the government for regulatory policy reform.

Stage 3: the role of supportive institutions and policy advocates

A critical component of the NTIR framework is Stage 3, which emphasizes the important role that 'supportive institutions' and 'policy advocates' play when striving to introduce and prioritize the international community and civil society's normative pressures for NCD regulatory policy reform through a rights-based discourse. However, in Mexico, international organizations and civil societal actors have not had access to supportive institutions and policy advocates. To the

author's knowledge, with respect to NCD policy formulation, the only institution that non-governmental actors are allowed to have a formal role in, primarily the activist community, is the OMENT (*Observatorio Mexicano de Enfermedades no Transmisibles*). Composed of Department of Health (DoH) officials, activists and private sector representatives, the OMENT serves as an advisory body to the DoH on NCD policies, with a priority focus on recommending policies that prevent obesity, type-2 diabetes and other associated ailments.

However, an ongoing challenge has been the OMENT's composition. As Gómez (2019) claims, private sector representatives serving on the OMENT, and their supportive NGOs, consistently outnumber the presence of those NGOs serving the public's health interests. Arguably, even if the latter recommended regulatory policies through a human rights-based discourse, their policy ideas and recommendations would not be heard.

Absence of normative transferability

In this context, the introduction of any NCD regulatory policy has generated considerable conflict and resistance within the government. Efforts to create and/or enforce stricter regulations on industries have consistently been rejected by supportive congressional representatives, NGOs or academic institutions aligned with the private sector (Gómez, 2019; 2020). Consequently, normative transferability has not occurred. Moreover, within the DoH and the government in general, the human rights-based perspective that influenced the introduction of other NCD prevention programmes has been absent with respect to regulating industry marketing and sales—the 'root of the problem.' Analysts note that during the formation of the 2014 National Strategy to Prevent and Control Overweight, Obesity and Diabetes, this document emphasized the human right to good nutrition, a principle enshrined within the Mexican constitution (Hernández, 2018). But this kind of approach has yet to emerge in the area of regulating marketing and sales. In October 2020, congress passed legislation requiring front-of-package labels in the form of black octagon pictures for foods high in sugar, salt and fat. This policy was attributed to activist pressures and the emergence of a leftist government campaigning against corruption (White and Barquerra, 2020); however, it was not due to the presence of 'supportive institutions' and 'policy advocates' unified with society from a rights-based perspective.

Chile

The focus of the final Chilean case study is to illustrate the potential efficacy of the author's NTIR analytical framework. While in Chile the NTIR framework revealed that international organizations did not play an important role in providing normative-based NCD policy recommendations (Stage 1), civil societal actors nevertheless succeeded in pressuring government for regulatory policy reform through a rights-based discourse (stage 2), while having access to 'supportive institutions' and a 'policy advocate' defending their cause (stage 3), ultimately facilitating a process of normative transferability.

Stage 1: the role of international organizations

In recent years, international health organizations, such as PAHO, played an important role in supporting Chile's

approach to NCD policies. In 2016, PAHO supported Chile, Ecuador and Peru's efforts to create effective food labels in response to malnutrition in these countries and throughout Latin America (PAHO, 2016). PAHO was also instrumental in providing public health recommendations to the Chilean government when creating NCD policies, such as food labelling and advertising regulations (PAHO, 2017b). To the author's knowledge, however, PAHO never based its technical assistance to Chile on human rights principles, such as access to accurate consumer information on food labels and/or advertising regulations, based on the consumer's rights. An application of Stage 1 of the NTIR framework therefore helped to reveal that international organizations did not play an important role in assisting Chile's government in this regard.

Stage 2: the role of civil society

At the local level, when compared with Mexico and Brazil, civil society's response to worsening obesity and type-2 diabetes cases was considerably delayed, with few activists in the area of nutrition (Mialon *et al.*, 2020). Nevertheless, NGOs, such as the *Frente por un Chile Saludable*, were proactive in raising attention to much-needed NCD prevention programs, such as a soda tax (eventually passed in 2014), using social media to advocate for this policy while countering opposing industry claims (Fuster *et al.*, 2020). Furthermore, in 2014, when it came to NCD regulatory policies, such as front of package labelling, the *Frente por un Chile Saludable* adopted a consumer rights-based perspective; they pressured the government for a more transparent process about how the packages were designed, underscoring the need to provide more detailed information about unhealthy foods and their content on the labels (Conadecus, 2014). Thus, the NTIR framework's application to the case of Chile and civil society's role in the normatively transformability process revealed that civil society eventually emerged to enlist a consumer rights-based narrative when advocating for prevention and regulatory policies.

Stage 3: the role of supportive institutions and policy advocates

Stage 3 of the NTIR framework nevertheless examines if these civil societal actors had access to 'supportive institutions' and 'policy advocates' when seeking their policy goals. In contrast to what was seen in Brazil and Mexico, this certainly appears to be the case. The Chilean MoH and especially the federal Senate, through the Senate Health Commission, were important in this regard. Activists, university researchers and international health organizations had access to these institutions when seeking to influence policy. During the formulation of policy, e.g. leading nutrition experts, such as Dr Ricardo Uauy, had access to the Congress and the Senate Health Committee to present data and emphasize the importance of creating regulatory policies in response to obesity (Dorlach and Mertenskötter, 2020); this, in turn, helped politicians realize the urgency of the situation and prioritize regulation policy (Dorlach and Mertenskötter, 2020).

It is also important to highlight that during the early formulation of the 2012 front-of-package and marketing policies (discussed shortly), the MoH and the Senate were proactive in reaching out to international organizations and civil society to bolster those individuals advocating for the introduction

of these policies—especially after facing staunch opposition from industry (Pérez-Escamilla *et al.*, 2017; see also Chile, Senate, 2012). According to Pérez-Escamilla *et al.* (2017), the Senate 'convened two International Health and Nutrition Summits in 2008 and 2011 to bring together national and international experts, researchers and civil society leaders to widen support for the proposed legislation' (*ibid.*, p. 31). Thus, international organizations and civil society had access to 'supportive institutions' with 'policy advocates' who supported their cause.

Indeed, within the Senate, Senator Guido Girardi of the 'Party for Democracy' served as an important policy advocate on behalf of civil societal activists and the international community. During the formation of the aforementioned regulatory policies, Girardi worked hard to establish an alliance with activists and university researchers, garnering the support and influence needed to overcome resistance from private industry (Muñoz, 2018). As Head of the Senate Health Commission, Girardi's normative beliefs comported with civil society's rights-based views, which were that children had a right to be protected from aggressive food industry advertisements (Ramírez *et al.*, 2016). In fact, Girardi once referred to major multinational corporations as the 'pedophiles of the 21st century' by abusing children's naivety, generating disease and violating their rights (Ramírez *et al.*, 2016, p. 9).

Girardi also worked closely with international organizations to voice his opinion. Girardi in fact made these aforementioned comments when attending the Second International Conference on Nutrition (SIGN) (Ramírez *et al.*, 2016). During this conference, he reassured SIGN attendees that his Senate Health Commission was working closely with the Institute for Human Rights at United Nations Children's Fund to inquire into those multinationals endangering the health of children (Ramírez *et al.*, 2016). Through these statements, Girardi made it clear that his human rights-based perspective was in alignment with these international actors.

Unlike Brazil and Mexico, Chile was able to achieve 'normative transferability' and regulatory policy reform in the area of marketing and sales. National MoH programmes focused on improving nutrition and preventing NCDs, such as the 2017 *Política Nacional de Alimentación y Nutrición en Chile* (National Policy for Health and Nutrition) and the *Plan de Salud de Chile 2011–2020* (Chile Health Plan), were designed with human rights principles in mind (Chile Ministerio de Salud, 2017; Droguett, 2019). Unlike Brazil and Mexico, these principles transferred to the area of industry regulation. Through its supportive institutions and the leadership of Senator Girardi as a policy advocate, the government was able to successfully introduce new regulatory policies from a rights-based perspective.

In 2016, after several years of intensive industry opposition, the Chilean Congress passed the 'Chilean Law of Food Labelling and Advertising'. This law achieved two important regulatory milestones. First, more effective food labels were introduced, which included black octagon warning labels specifying information on sugar, fat, salt and calories on products (FAO, 2018). Second, all foods that were deemed unhealthy were banned from television, radio or any other web-based advertisements (FAO, 2018). In addition to prohibiting the usage of toys and cartoons in advertising, according to this Law, these foods are now banned from schools (FAO, 2018). These policies have helped Chile to

address what the author's referred to earlier as the 'root of the problem': i.e. the neglect of governments to introduce effective NCD regulatory policies in the area of food marketing in sales.

Recent studies suggest that the 'Chilean Law of Food Labelling and Advertising' has helped to reduce the consumption of these products. Extensive survey research conducted by [Taillie et al. \(2020, p. 1\)](#) '...found that the purchase volume of high-end beverages decreased by 22.8 mL per capita per day or 23.7% after the regulation was implemented'. According to this study, 'high-end' products are those beverages that include a high level of sugar, sodium, energy and fat (*ibid*). Other recent studies found that children's exposure to TV advertisements of high-end foods has dramatically declined 1 year after the 'Chilean Law's' passage ([Capella and Niedhardt, 2020](#)). In fact, surveys of 879 preschool children and 753 adolescents in middle-lower and lower-income neighbourhoods in Santiago, conducted by [Dillman Carpentier et al. \(2019, p. 1\)](#), found that their exposure to high-end food advertising on popular television networks 'decreased significantly by an average of 44% and 58%, ... Exposure to high-in food advertising with child-directed appeals, such as cartoon characters, decreased by 35% and 52% for preschoolers and adolescents, respectively'. [Dillman Carpentier et al. \(2019\)](#) further found that this decrease was greater for those children that watched more television (*ibid*, p. 1).

Discussion

As the global obesity and type-2 diabetes epidemics worsen, Latin American governments have done a commendable job of introducing several NCD prevention programmes, such as increasing public awareness about these ailments and increasing access to healthier foods, and even contentious soda taxes. Nevertheless, for the most part, these governments have not been as successful in addressing and overcoming what the author has referred to as the 'root of the problem' in the plight against NCDs: i.e. the government's neglect to implement effective junk food industry regulations on the marketing and sale of their products.

In general, it seems that most countries are willing to do everything 'but' enact these regulatory measures, which directly threaten the interests of powerful business conglomerates. But there are notable exceptions, as the author's comparative analysis revealed.

Indeed, with the exception of Chile, this article found that Brazil and Mexico were unable to achieve normative transferability when attempting to regulate industries' marketing and sales tactics and, thus, address the 'root of the problem'. In Brazil and Mexico, this challenge surfaced due to the absence of national supportive institutions and government policy advocates who could work with civil society on pursuing industry regulation from a rights-based perspective. In contrast, this was not the case in Chile, where civil society, supportive institutions and policy advocates within government were well aligned to establish normative transferability and implemented effective NCD regulatory policies.

But how and why was Chile able to achieve this while Brazil and Mexico were not? The author introduced an analytical framework, NTIR, grounded in political science theory, that can provide helpful insights into accounting for these differences in policy outcomes. The NTIR framework's exploration

into the role of the international community, civil society, supportive institutions and policy advocates revealed that in the case of Chile, NGOs advocating for industry regulations through a consumer rights-based perspective were able to find 'supportive institutions' and 'policy advocates' upholding society's normative beliefs; this, in turn, facilitated the creation of effective regulatory policies that imposed improved food labelling policies, while restricting the marketing and sales of junk food products. In contrast, in Brazil and Mexico, NGOs and activists did not have access to supportive institutions and policy advocates, thus hampering their ability to succeed in motivating the government to pursue these types of regulations.

Several theoretical and empirical insights emerge from this study. First, at the international level, the author's application of the NTIR framework highlights that international organizations may not play a significant role in providing NCD regulatory policy recommendations based on human rights principles. In Brazil, Mexico and Chile, international assistance was mainly based on technical policy consultations.

Others have alluded to similar global trends. While the United Nations through its Food and Agriculture Organization (FAO) has recently worked closely with governments to introduce domestic policies committed to ensuring food security and nutrition as a human right ([Ayala and Meier, 2017](#)), it seems that these international organizations have not been committed to emphasizing national legislation on aggressively regulating junk food industries through this normative perspective. The FAO's recommendations to nation states are focused on NCD prevention, e.g. ensuring healthy eating habits ([Ayala and Meier, 2017](#)), and not industry regulation—although the World Health Assembly, according to [Ayala and Meier \(2017\)](#), has reminded nations to incorporate international obligations to immediately introduce legislation on food marketing towards children ([Ayala and Meier, 2017](#)).

Interestingly, however, the United Nations' agencies have historically advocated for a human rights-based perspective when ensuring universal access to medicine for human immunodeficiency virus (HIV)/acquired immune deficiency syndrome (AIDS) ([Patterson et al., 2019](#)). But why has this not occurred in response to NCDs, such as obesity and type-2 diabetes, and especially with respect to junk food industry regulation? Furthermore, others have noted the need to adopt this international human rights-based perspective on the issue of healthy diets and sustainable food systems, underscoring how the HIV/AIDS example shows that this normative approach can lead to concrete global policy action ([Buss et al., 2019](#)). Relatedly, [Reeve and Gostin \(2019\)](#) claim that governments should take advantage of pre-existing international human rights agreements and conventions, such as the International Covenant on Economic, Cultural, and Social Rights, when seeking to justify and bolster their resistance to industry's political and policy interference. According to [Reeve and Gostin \(2019, p. 451\)](#), under this convention, the 'State Parties have an obligation to respect, protect and fulfil the right to health, which includes preventing corporate human rights violations'. That said, international organizations could do a better job of working with governments in Latin America and other countries to understand how to strategically use these international conventions in their favour. Future research will

need to further investigate why these international organizations are not equally as committed to recommending prevention 'and' regulatory policies through a human rights-based perspective, and the complex international public and private sector politics shaping this process.

These shortcomings in international technical assistance may reflect a couple of challenges in need of further research. First, the extent to which direct or indirect industry (e.g. through NGOs) representation and influence within international health organizations generates few incentives for agencies to pursue these regulations, especially when these agencies rely on major industries for financial support (Wilson and Kerlin, 2012). Second, the extent to which industries lobby and pressure international organizations into not obstructing the free market by recommending these kinds of regulations.

At the domestic level, the author's comparative analysis also revealed the need for additional research into the international and domestic politics of agenda-setting around NCD policy regulations. Facilitated through the application of the author's NTIR framework, the cases of Brazil, Mexico and Chile revealed that social movements, supportive institutions and policy advocates vary considerably in their adoption of a rights-based discourse and policy-making incentives. This article's alternative analytical approach provides additional insight into why nations are still encountering problems when attempting to introduce NCD regulatory policies that can effectively curb the consumption of junk food and NCDs.

Furthermore, this article's approach provides insight into empirical puzzles. In Brazil, e.g. a nation that has a strong track record of providing public health programmes grounded in human rights principles (e.g. nutrition and HIV/AIDS), why has the government not done the same when it comes to regulating junk food industries and protecting the rights of vulnerable populations? While the political power and influence of major food industries may provide insight into this matter, the author's NTIR framework suggests that other international and domestic political factors may be equally if not more important.

Indeed, the author's NTIR framework provides an alternative perspective that focuses less on the political activities and influence of junk food industries; this includes lobbying and largesse, among several other tactics, e.g. an approach that has dominated the recent corporate political activity literature (Jaichuen *et al.*, 2018; Savell *et al.*, 2014; Hillman and Hitt, 1999). Instead, findings from this article suggest that regulatory policy failure, as well as success, may have more to do with the broader international and domestic political, social and institutional context, rather than the strategies and influence of powerful industries and their supportive interest groups (see also Thow *et al.*, 2021). This finding corroborates recent political scientists' claims that despite the presence of interest groups and their political activities, their policy influence is questionable, such that challenging political contexts and structures often play an equally if not more important role in influencing policy (Halpin and Fraussen, 2017; Michalowitz, 2007).

The ongoing neglect of most nations to take on the power and interests of junk food industries through the heightened regulation of their products reveals the need to explore how political science theory can provide alternative analytical approaches to explaining these ongoing challenges. To the

author's knowledge, this article has taken the first step in this direction. In so doing, it has also revealed the need for further research and collaboration between political scientists and the global health policy community.

Conclusion

Understanding variation in NCD regulatory policy in Latin America can benefit from the construction and application of political science analytical frameworks in the commercial determinants of health. When achieved, alternative insights can emerge illustrating why some nations have been more successful than others at effectively regulating junk food industries. This is a new area of research that can benefit from collaborations between political scientists and global public health scholars.

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