

Sussex Research

Commentary on "Food, the law and public health"

Timothy Lobstein

Publication date

01-10-2006

Licence

This work is made available under the **Copyright not evaluated** licence and should only be used in accordance with that licence. For more information on the specific terms, consult the repository record for this item.

Citation for this work (American Psychological Association 7th edition)

Lobstein, T. (2006). *Commentary on "Food, the law and public health"* (Version 1). University of Sussex.
<https://hdl.handle.net/10779/uos.23310533.v1>

Published in

Public Health

Link to external publisher version

<https://doi.org/10.1016/j.puhe.2006.07.012>

Copyright and reuse:

This work was downloaded from Sussex Research Open (SRO). This document is made available in line with publisher policy and may differ from the published version. Please cite the published version where possible. Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners unless otherwise stated. For more information on this work, SRO or to report an issue, you can contact the repository administrators at sro@sussex.ac.uk. Discover more of the University's research at <https://sussex.figshare.com/>

Commentary on "Food, the law and public health".
Public Health. 2006 Oct;120 Sup 1:40-1. Epub 2006 Sep 15.

Commentary on food, the law and public health

Tim Lobstein

International Obesity TaskForce, London, and
SPRU – Science and Technology Policy Research, University of Sussex.

The word 'law' can be taken in two ways: it can refer to the use of legislation as a means of shaping social interactions (and, in the present case, as a means of shaping the food supply and the running of the market) or it can refer to the use of the law — i.e. the courts, criminal or civil cases, etc. in the defence of, in the present case, consumers' rights to good health. Both the creation of laws and their implementation need to be considered when examining their potential impact on people's health.

In opening the debate, Professor Lang refers to a triangular relationship between the individual, the industry (food producers, shippers, marketers) and the state. In the simplest model, the state hands down legislation to control the relations between supplier and consumer, and can do this in a manner that benefits one or the other, but only with difficulty both. The tension between wealth generation and health protection often leads to conflicts of interest between consumer and producer, and hence a degree of tension within the triangular model.

There are, however, some complexities that need mentioning. The first is that legislation and regulation is formed through a complex process, usually involving those likely to be affected by the resulting laws and regulations. Producers have the upper hand in this process: put crudely, a primary aim of industry is to capture the regulatory process through lobbying, party funding and through their membership of the very regulatory bodies that should be holding them to account.

The current political climate favours the producers in the triangular relationship, with an emphasis on deregulation, 'a light regulatory touch', reduced 'red tape', market freedom and 'consumer choice'—this latter most often being a misnomer for producer choice (i.e. a producer's freedom to put poor quality, or unhealthy, goods on the market). 'Consumer choice' also has the implication that it is the consumer's own fault if he or she makes the wrong choice—e.g. consumes fatty, sugary foods in excess, and becomes ill as a result. The effect of deregulation and the passing of responsibility onto consumers is that the second meaning of the word 'law' has greater significance—consumers can and should consider using the law, in so far as it can be used, to defend their right to health and the means to achieve healthy lifestyles.

Litigation is not used widely in the UK, especially when compared with the USA where private enforcement is a common alternative to public policy-making. The use of civil law has a distinct advantage in the level of proof required—'on the balance of probability' rather than 'beyond reasonable doubt'. For consumers in Britain to defend their rights to health using civil law they need to have American-style access to class actions and group liability facilities—i.e. to be able to prosecute the industry as a group of consumers, and to hold a group of companies liable collectively rather than having to prove each one's liability separately.