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Commentary on "Food, the law and public health"

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Commentary on food, the law and public health

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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.