

It is evident that there are many contrasting views as to the extent to which the state should involve itself in regulating the individual choices of its citizens with regard to issues surrounding public health, or whether such questions should be left entirely to the mechanisms of the free market with little or no state intervention (Basham, 2010; Calman, 2009; Cottam, 2005; Daube *et al.*, 2008; Gearhardt *et al.*, 2011; Silver and Bassett, 2008; Sullum and DiLorenzo, 2000; Wright, 2010). Many proponents of liberal individualism—or rather contemporary neo-liberalism—advocate the importance of the freedom of the individual to pursue his or her own choices without interference from the state; a political philosophy that asserts the *laissez-faire* market as intrinsic for individual liberty and the closely linked notion of self-reliance (Baggott, 2000). These neo-liberalists often make use of the pejorative ‘nanny state’ term to describe the state when it introduces coercive-like interventions or regulations, which they argue impede the fundamental rights of individual free choice and unnecessarily hinder the self-regulating free market system (Basham, 2010; Daube *et al.*, 2008; Sullum and DiLorenzo, 2000).

Calman, in contrast, asserts the notion that “the state has a duty to look after the health of everyone, and [that] sometimes that means guiding or restricting people’s choices” (2009). This paper will support Calman’s claim through an extensive critical analysis not only of the political philosophies which frame the debate around state regulation, but also through exploring the levels of intervention to which Calman (2009) alludes, and the evidence-base which supports them, with a specific focus on policy related to food and nutrition-related illness. However, the paper will also highlight and gauge the possibly narrow scope of Calman’s assertion which, it could be argued, does not fully encompass the complexity of contemporary politics which now involve supra-national bodies whose policies may supersede those of the state in implementing and enforcing policy, specifically around food (Baggott, 2000; Calman, 2009; Lang, 2006).

In order to better structure this analysis, the following section of this paper will briefly describe the role of food in relation to public health, and thereby the underlying reasons for tackling the question of state regulation with regard to food, which is a particularly contentious topic in this arena (Basham, 2010; Calman, 2009; Daube *et al.*, 2008; Lang, 2006). A conceptual framework will then be provided examining the political philosophies which shape the debate around food regulation with a particular focus on the ‘harm principle’ introduced by the philosopher John Stuart Mill in 1859 within his essay *On Liberty* “in which he argued that the only justification for the state to constrain the actions of an individual were when an individual’s actions risked harming others” (McKee and Raine, 2005: 369). The levels of intervention to which Calman (2009) alludes will then be unpacked and assessed on the basis of the available evidence which support them, before the paper will finally

attempt to address the scope of Calman's argument, which, it can be disputed, falls short of fully grasping the complexity of the contemporary political landscape, in which the state does not always possess complete sovereignty, which may be overridden by the policies of a supra-national body, especially in the expansive and trade-intensive food market (Baggott, 2000; Lang, 2006).

While food is fundamentally tied to health, and is indeed a prerequisite for it, the capitalised modernisation of the market in which it is produced, commoditised, advertised and consumed has so drastically changed, that the very nature of the contribution of food and diet to ill-health has become a dynamic and constantly growing challenge to public health (Gearhardt *et al.*, 2011; Lang, 2006; Lawrence, 2009; Roosen and Marette, 2011; Silver and Bassett, 2008). While traditionally the principle health concerns associated with food have been those related to food safety and contamination, Silver and Bassett assert that "the most rapidly growing food-related threat to health today is not microbes, but overconsumption of calories, sugar, salt, and unhealthy fat" (2008: 957), which appear to form substantial components in the highly processed, value-added foods typical of a saturated market which requires constant innovation and the reduction of marginal costs in order to remain competitive (Gearhardt *et al.*, 2011; Lang, 2006; Lawrence, 2009; Roosen and Marette, 2011; Silver and Bassett, 2008).

Mark Lawrence, Associate Professor of Public Health Nutrition for the World Health Organisation (WHO) Collaborating Centre for Obesity Prevention at Deakin University, relates that for developed countries, diet-related diseases, which include obesity, coronary heart disease (CHD), stroke, diabetes and cancer, account for almost sixty percent of preventable deaths (2009). Also in industrialised contexts, consumers are estimated to be faced with around 200 food-related decisions per day, which would appear to have negative consequences with regard to attention and awareness when making nutrition-related choices (Roosen and Marette, 2011). The challenge of ill-health related to diet presents unique challenges for public health in that while unsafe or contaminated food may be quick to show results, the effects of poor nutrition may take decades to materialise and cannot be tied to any specific product (Lang, 2006).

One of the most easily measurable and far-reaching consequences of food and diet is overweight and obesity which is a very contemporary world health concern due to its nature as a predictor for increased burden from several diseases including cardiovascular disease (CVD), diabetes and cancer (Wang *et al.*, 2011). Estimations indicate that 1.46 billion adults were overweight in 2008, and that 502 million of these were obese (*ibid.*). WHO estimate that nearly 43 million children below the age of five were overweight in 2010 and that "once considered a high-income country problem, overweight and obesity are now on the rise in low- and middle-income countries" (2011). Wang *et al*

(2011) explore in their study the ever-increasing economic burden of overweight and obesity on health care costs which are set to soar in many settings over the coming years. This ultimately raises the question of who will bear that burden as will be explored later in this paper.

The above illustration of food in relation to public health is by no means comprehensive, but it does provide a sound foundation from which to approach Calman's assertion for state intervention through an analysis of the political philosophies surrounding issues of individual choice and obligation. Tim Lang (2006) introduces three conceptualisations of the permutations of the relationships between the three key stakeholder groups he identifies in the sphere of public health and food; the state, corporate interests (and the supply chain), and civil society. This paper argues that Lang's third 'triangular dynamic' model of food law and governance exhibits the most encompassing and holistic conceptualisation of the relationships at play in food regulation, but simultaneously it must be qualified that the power of each actor within this model is dynamic and dependent on the issue in the incumbent discourse (2009). This relationship framing is supported by the dynamic associations at play in issues such as the labelling of food, where the state, corporate food bodies, and civil society organisations have all competed for the recognition of their interests in advocating for or against regulatory controls (Calman, 2009; Holdsworth *et al.*, 2010; Lang, 2006; Roberto *et al.*, 2010).

In an attempt to better understand the underlying philosophical and political dimensions which shape the arguments for state regulation, *Figure 1* attempts to synthesise the political approaches described by Baggott (2000)—and which are used by competing key stakeholders to best frame their interpretations of public health—into Lang's 'triangular dynamic' model (2006). The figure also incorporates Calman's interpretation of the 'stewardship model' originally described by the Nuffield Council on Bioethics (2007; Calman, 2009).

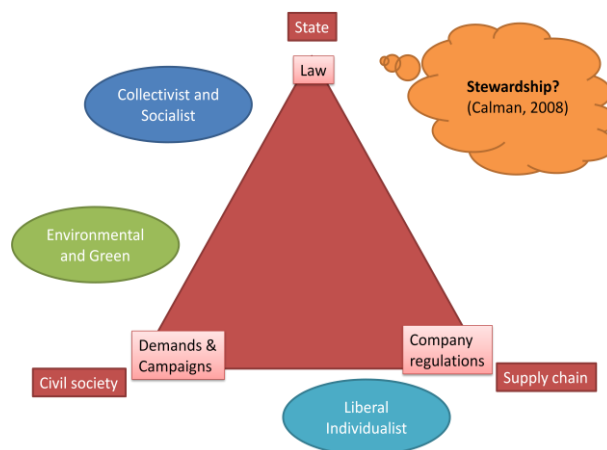


Figure 1: 'Political approaches' model adapted from a synthesis of Lang (2006), Baggott (2000) and Calman (2008)

Collectivist and socialist approaches emphasise the role of the state as the principal means of social improvement and are “cynical about the ability of isolated individuals to produce their own solutions to complex social problems” (Baggott, 2000: 3). Furthermore, from this perspective, health equity is intrinsic to social justice and there is therefore a rationale for state intervention in “ameliorating the health-damaging consequences of individualism and tackling the socio-economic causes of ill health generated by capitalism” (ibid.). However, herein lies a caveat which Baggott (2000) identifies under the guidance of Labonte (1998 cited in Baggott, 2000); collectivist and socialist approaches cannot ignore the warning offered by libertarian theory in opposition of the undermining of individual autonomy by the state. It should be explicitly noted then that this qualification would and should be central to any critical assessment of Calman’s claim regarding the “state’s duty” (2009: e9) which Baggott would argue should always be “complemented by ‘deliberate democratic practice’ in order to avoid interventions that marginalise and exclude socially disadvantaged groups” (2000: 4). Therefore, while collectivist and socialist perspectives place the greatest emphasis on the role of the state to protect public interests through regulation, the approach must also take civil society into consideration which speaks to the placement of this philosophy within *Figure 1*.

Similar to the collectivist and socialist approach is the environmental and green ideology, which is also wary of individual libertarian arguments, but simultaneously suspicious of state power, which is believed may be just as oppressive to individuals as corporate interests, and as damaging to the environment (Baggott, 2000). This perspective therefore finds its place closest to civil society stakeholders in the *Figure 1* ‘political approaches’ model and closer to the socialist/collectivist perspective to which it is arguably better related than the liberal individualist perspective which it intrinsically rejects (ibid.).

The final of the three perspectives explored in Baggott (2000) is the liberal individualist approach which is placed closest to the corporate supply chain stakeholders in the *Figure 1* model and furthest from the state, which this philosophy completely rejects in favour of complete autonomy for the free market model. Neo-liberalists argue that “individuals are in greater need of protection from the state than from the vagaries of the market” (Baggott, 2000: 4) and that with specific reference to public health “that it is unfair for the majority of individuals to sacrifice their personal freedom for an illusory common good” (ibid.). Proponents of neo-liberalism advocate individual responsibility in health and “believe that individuals should make their own informed choices rather than be told what to do by the ‘nanny state’” (ibid.). It is this perspective that would appear to provide the greatest criticism of Calman’s assertion for state interventions in public health which Calman has attempted to reframe as ‘stewardship’ (also indicated in the ‘political approaches’ model of *Figure*

1), and, indeed, this paper recognises that there exist many compelling neo-liberal arguments against the ‘nanny state’; even when reframed under the less pejorative ‘stewardship’ title (Basham, 2010; Calman, 2009; Sullum and DiLorenzo, 2000). However, one aspect that stands out as common in all of the political perspectives outlined above is the central principle that state intervention is always warranted when harm to others becomes a concern (Baggott, 2000). This principle known as Mill’s ‘harm principle’ has already been outlined above and suggests “that state intervention is primarily warranted where an individual’s actions affect others, i.e. coercion is legitimate where it acts to avoid (sic) harm to third parties” (Calman, 2009: e7).

However, Mill also argued that “[those] who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury” (cited in Calman, 2009: e7), and so he recognised the legitimacy of state interventions in protecting children and other vulnerable people from things that may, for example, be damaging to their own health. Mill also recognised the importance of education in the provision of information to people so that they may make informed decisions about how they lead their lives (Calman, 2009). As this central principle is recognised, even from a neo-liberal perspective where autonomy may be interrupted where harm to others or vulnerable groups is called into question, the ‘harm principle’ forms the basis of this paper’s arguments in support of Calman’s claim (ibid.).

The first argument for Calman’s statement is that the economic burden related to food and nutrition-related obesity, overweight and morbidity can be asserted to be harmful to others, especially tax payers, who must foot the bill for what may be classified as essentially preventable costs (Wang *et al.*, 2011). These costs to society may not only be economic, but psychosocial too, and it may be argued that because these externalities cause harm to third parties, the state has a mandate to intervene and regulate the factors creating this result (Calman, 2009; Lang, 2006; Lawrence, 2009; Roosen and Marette, 2011).

Secondly, Gearhardt *et al.* (2011), in their study identify the addictive properties of modern ‘hyperpalatable’ foods which are engineered with increased levels of fat, sugar, salt, flavours and food additives to elicit similar behavioural and biochemical responses in both humans and rats to those exhibited by addicts of traditional drugs of abuse. Addiction denotes a loss of both control and free choice and we can argue, therefore, that again the state should be compelled to act in the interests of a vulnerable demographic who cannot make rational healthy decisions (ibid.).

Closely linked to this lack of rational choice, especially with regard to children and other vulnerable groups, the third argument highlights Rachel Cottam’s assertion that “[‘individual choices’] are never

natural nor *a priori*, but have always been manipulated or at least carefully directed” (2005: 1593). Her claim is similar to those made by others:

The law is unimportant in a world where advertising and its myriad variations such as texting, product placement, [and] sponsorship shape consumer wants (Lang, 2006: 32).

Any [health] campaign will take place in an environment in which individuals are already bombarded with a vast array of highly sophisticated and enormously expensive marketing activities designed to encourage activities that are likely to damage health (McKee and Raine, 2005: 371).

Jutta Roosen and Stéphan Marette (2011) describe this in terms of behaviour economics which looks at decision-making through integrating knowledge from psychology and neuroeconomics. Where neo-liberalism and market theory rely on the ‘rational decision-making’ of the agents therein, Roosen and Marette’s (2011) findings on agent behaviour highlight that they often do not act rationally, and that this resultant market failure can be used as another argument in support of state intervention.

The Nuffield Council on Bioethics (2007) propose an ‘intervention ladder’ to describe the levels of intervention a state may take in areas of public health. An adapted version of this ladder is reproduced in *Figure 2* and aims to divide the interventions into three levels of (1) information provision/inaction at the bottom, (2) moderately coercive actions in the middle, and (3) explicitly coercive actions at the top (Bioethics, 2007; Calman, 2009).

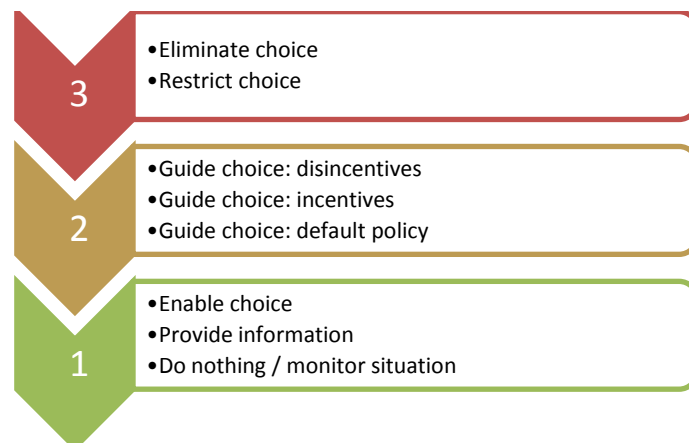


Figure 2: ‘Intervention ladder’ adapted from Nuffield Council on Bioethics (2007)

On the basis of Mill’s ‘harm principle’ the above arguments and examples may warrant an intervention which ‘guides’ or ‘restricts’ people’s choices and this could be argued for on the basis of preventing harm to others and to the inability of children and certain vulnerable groups to make rational healthy choices for themselves (Calman, 2009). However, as interventions increase in

restriction, or up the ladder in *Figure 2*, we would do well to be reminded that any of these interventions should be “complemented by ‘deliberate democratic practice’” (Baggott, 2000: 4).

Mill’s principle also argues that, at a minimum, the state should provide interventions from the first level of the ladder (*Figure 2*) and inform the public with relevant guidelines, labelling and information to enable healthy choices (Calman, 2009). There is compelling evidence available that would warrant the implementation of interventions from the level of ‘information provision’ up through ‘disincentives to guide choice’, such as menu labelling with calorie information and recommended daily intakes, or ‘junk-food’ tax (Roberto *et al.*, 2010; Sacks *et al.*, 2011).

As a final note in this assessment of Calman’s claim for state intervention in public health related to food, this paper would argue that Calman’s view of the state as the de facto regulator for public health may be too narrow, and not fully appreciate the complexities that are brought about through the regulatory activities of supra-national bodies such as the World Health Organisation, European Union and free trade areas (Calman, 2009; Lang, 2006). It could be argued that Calman’s assertion is not expansive enough in its failure to incorporate what Baggott (2000) terms ‘institutional politics’ which focuses on viewing health policy as a “product of the interaction within and between different political institutions” (6) which includes supranational institutions.

This paper has shown through a considered and critical analysis of the political perspectives related to public health that by basing the examination of Calman’s claim on the commonly held ‘harm principle’, introduced by John Stuart Mill, we can convincingly support state intervention in public health issues related to food (as long as they are supported through due democratic diligence). By basing the argument on Mill’s principle we have also recognised that the level of intervention used should, in most cases, only exceed the middle level (*Figure 2*) when the regulation is specifically designed to protect children or other vulnerable groups. Finally, the paper has qualified to what extent Calman’s claim does not explicitly address the complexities of the state and its relationship with supra-national bodies and that his view may narrowly ignore the implications for state intervention that this presents with relation to food policy.

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