

SYMPOSIUM INTRODUCTION

FOOD LAW: CHALLENGES AND FUTURE DIRECTIONS

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Of all the frauds practised by mercenary dealers, there is none more reprehensible, and at the same time more prevalent, than the sophistication of the various articles of food. This unprincipled and nefarious practice, increasing in degree as it has been found difficult of detection, is now applied to almost every commodity which can be classed among either the necessities or the luxuries of life, and is carried on to a most alarming extent ...

Friedrich (Frederick) Accum, *Treatise on Adulterations of Food and Culinary Poisons* (1820) 13-14.

Food law, viewed in historical context, through the lens of recent human rights instruments, and in the glare of modern globalisation, is necessarily international. However, as yet international approaches toward trade restrictions and tariffs, provision of aid, processes to regulate the growing, sale, contamination, labelling and distribution of food, as well as crop production are substantially at variance. So too are legal responses, including criminal liability, coronial inquests and the civil liability of regulators. However, there is much to be said for better discourse about such matters at an international level through an International Association of Food Law and Policy in order to explore the potential to reduce inconsistencies, based upon scientific approaches to health and safety and the creation of coherent approaches to what are essentially transnational dilemmas.

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I FOOD LAW IN PERSPECTIVE

Food law is a complex area of legal discourse that has little choice but to engage with political sensitivities that have existed at both a local level and across states' boundaries for at least as long as governments have attempted to regulate production, distribution and quality of food. Even in the Roman era controversies surrounded the provision of subsidised grain to citizens.¹ During the early centuries of the Republic a number of people were executed for distributing free grain to the poor for fear that they were endeavouring to seize government and overthrow the Republic. However, from 123 BC fixed amounts of grain were distributed monthly at low cost to all Roman citizens as a result of the *Lex Sempronia Frumentaria*. This was a very significant food supply and public order initiative; the one issue went with the other.

Nonetheless, food crises in the Republic were recurrent, with the result that availability of grain was an ongoing and tense political issue that periodically flared. In 57 BC a rabble-rousing politician, Publius Clodius, made the 'grain dole' (the *frumentatio*) freely available for all and lowered the minimum age for eligibility to 10, resulting in all citizens over that age, including freedmen, being entitled to collect five *modii* (32.5 kilograms) of grain without charge per month.² By 46 BC 320 000 people were recorded as receiving the *frumentatio*. Reduction in such rights to food supply, or its quality, came at politicians' peril.

The Roman state for a considerable period took responsibility for purchasing, administering and distributing grain.³ Strict laws controlled both the quantity and quality of the grain, which was imported from provinces such as Sicily, Egypt and Africa. This entailed ensuring that grain was correctly weighed⁴ and that it was free from contamination or adulteration.

The issue of adulteration of staples in the diet was a continuing theme of food regulation long after the demise of Roman influence. In 1266, for instance, the *Assisa panis et cevissiae*⁵ (Assize of Bread and Ale) was passed in England in an attempt to regulate the quality, measurement and pricing of bread and ale by bakers and brewers.⁶ Amongst other things, it enabled prosecution of

¹ See P Erdkamp, *The Grain Market in the Roman Empire: A Social, Political and Economic Study* (2005); P Garnsey, *Famine and Food Supply in the Graeco-Roman World: Responses to Risk and Crisis* (1988).

² See G S Aldrete, *Daily Life in the Roman City: Rome, Pompeii and Ostia* (2004).

³ See G Rickman, *The Corn Supply of Ancient Rome* (1980).

⁴ See M Toussaint-Samat, *A History of Food*, 2nd ed (2008).

⁵ 51 Hen III (1266).

⁶ To whiten bread, for example, bakers sometimes added alum and chalk to the flour, while mashed potatoes, plaster of Paris (calcium sulphate), pipe clay and even sawdust could be

bakers who sold bread under-weight or otherwise over-priced it, and remained in existence until 1815 when a spirited debate about the merits of such regulation resulted in its being abolished.⁷ However, its effectiveness was questionable. Friedrich Accum,⁸ for instance, in his 1820 *Treatise on Adulterations of Food and Culinary Poisons*⁹ reviewed many food staples, including cinnamon, pepper, tea, coffee, wine, ale, milk, meat, vegetables and bread, and found most to be intentionally adulterated, often with dangerous substances. His work was furthered by the physician A H Hassall¹⁰ and the famous coroner, surgeon and editor of the *Lancet*, Thomas Wakley. In due course this led to the formation of the Analytical Sanitary Commission and the passage of the *Food Adulteration Act 1860* (Eng).¹¹

The articles that follow this piece constitute a landmark collection in the *Deakin Law Review*. They are the product of a symposium hosted at Deakin University's Geelong Campus in January 2009. Each article addresses aspects of food law with a relevance that is contemporary and that is likely to give cause to reflect upon the discipline as it evolves into the future. Most move beyond the local focus that characterised earlier generations of food law

added to increase the weight of their loaves. Rye flour or dried powdered beans were used to replace wheat flour and the sour taste of stale flour could be disguised with ammonium carbonate. Brewers, too, often added mixtures of bitter substances, some containing poisons such as strychnine, to 'improve' the taste of the beer and save on the cost of hops. By the beginning of the 19th century the use of such substances in manufactured foods and drinks was so common that problematic numbers of town-dwellers had begun to develop a taste for adulterated foods and drinks. White bread and bitter beer came into increasing demand: Royal Society of Chemistry, 'The Fight Against Food Adulteration' (March 2005): <<http://www.rsc.org/Education/EiC/issues/2005Mar/Thefightagainstfoodadulteration.asp>> at 24 November 2009.

⁷ Assize of Bread Repeal Bill, HC Deb 27 June 1815 vol 31 cc 1009-11 <<http://hansard.millbanksystems.com/commons/1815/jun/27/assize-of-bread-repeal-bill>> at 23 November 2009.

⁸ Friedrich Christian Accum (1769-1838) went by the anglicized name of Frederick Accum while working in England.

⁹ F Accum, *A Treatise on Adulterations of Food, and Culinary Poisons Exhibiting the Fraudulent Sophistications of Bread, Beer, Wine, Spiritous Liquors, Tea, Coffee, Cream, Confectionery, Vinegar, Mustard, Pepper, Cheese, Olive Oil, Pickles, and Other Articles Employed in Domestic Economy* (1820) <<http://www.gutenberg.org/files/19031/19031-h/19031-h.htm>> at 23 November 2009.

¹⁰ See A H Hassall, *Food and its adulterations; comprising the reports of the analytical sanitary commission of 'The Lancet' for the years 1851 to 1854* (1855).

¹¹ See too H W Wiley, *The History of a Crime Against the Food Law* (1929); W Robins, *A Plot Against the People: A History of the Audacious Attempt by Certain Kentucky 'Straight Whisky' Interests to Pervert the Pure Food Law in Order to Create a Monopoly for their Fusel Oil Whiskies and to Outlaw All Refined Whiskies* (1911).

scholarship¹² and grapple with the human rights and international issues that lie at the heart of modern food law. Many call for enhanced transnational collaboration and co-operation.

This Introduction identifies some of the challenges and issues which are likely to preoccupy regulators of the food industry in the future and the international dilemmas that face those seeking to give meaning to 'the right to food'. It calls for support for the establishment of an International Association of Food Law and Policy to explore means for a scientifically and legally based harmonisation of global food laws.

II NUTRITIONAL ISSUES

From the time of the *Assisa Panis et Cevissiae* food regulation has been concerned with derogation from the pecuniary value of food as a commodity as well as with the risk of introduction of potentially harmful contaminants to foodstuffs. Lawrence¹³ in this collection emphasises the existence of a variety of health conditions that are reaching epidemic proportions in western countries and are food- and nutrition-related. There is an escalating public awareness of the potential for ill-informed consumption of food to lead to seriously deleterious impacts upon the health of cross-sections of the community. An example in this regard is the impoverished state of the health of Indigenous Australians, in part because of their consumption of forms of food without balanced nutrition.¹⁴ The 'obesity epidemic' in western countries, about which there is now a welter of reports, and public health and even legal writing,¹⁵ is a further example of controversy about food consumption in the contemporary era.

¹² See eg the important early work in Australia: M W Gerkens and R J Gerkens, *Food Law in Australia* (1985).

¹³ M Lawrence, 'Reflections on Public Health Policy in the Food Regulatory System: Challenges and Opportunities for Nutrition and Food Law Experts to Collaborate' (2009) 14(2) *Deakin Law Review* 397.

¹⁴ See eg R McDermott, S Campbell, M Li and B McCulloch, 'The Health and Nutrition of Young Indigenous Women in North Queensland – Intergenerational Implications of Poor Food Quality, Obesity, Diabetes, Tobacco Smoking and Alcohol Use' (2009) 12(11) *Public Health Nutrition* 2143; J K Brimblecombe and K O'Dea, 'The role of energy cost in food choices for an Aboriginal population in northern Australia' (2008) 190(1) *Medical Journal of Australia* 547.

¹⁵ See eg R Ingleby, L Prosser and E Waters, 'UNCROC and the Prevention of Childhood Obesity: The Right Not to Have Food Advertisements on Television' (2008) 16 *Journal of Law and Medicine* 49; M Bagaric and S Erbacher, 'Fat and the Law: Who Should Take the Blame?' (2005) 12 *Journal of Law and Medicine* 323.

Policy responses have sometimes proposed measures such as partial banning of the use of substances (such as sugar), limiting advertising, mandatory disclosure of foodstuff content, publication of warnings and taxing to discourage usage.¹⁶ More commonly, though, what is advocated is enhancement of labelling as an effective communication tool to consumers. However, in this regard an important study by Signal et al¹⁷ raised the question of the effectiveness in the real world of labelling. It found that Māori, Pacific and low-income New Zealanders rarely use nutrition labels to assist them with their food purchases for a number of reasons, including lack of time to read labels, lack of understanding, shopping habits and relative absence of simple nutrition labels on the low-cost foods they purchase. This led the authors to conclude that current New Zealand nutrition labels are not meeting the needs of those who need them most. The authors mooted other responses such as targeted social marketing and education campaigns, increasing the number of low-cost foods with voluntary nutrition labels, a reduction in the price of 'healthy' food, and consideration of an alternative mandatory nutrition labelling system that uses simple imagery such as traffic lights.

III HEALTH AND RELATED CLAIMS IN FOOD ADVERTISING

There is currently a prohibition on health and related claims in the *Australia New Zealand Food Standards Code* (the Food Code), with the exception of claims relating to the benefit of maternal consumption of folate (see below). However, Food Standards Australia New Zealand has recorded that of the 1262 labels collected in 2003 in Australia and New Zealand, 43 per cent carried nutrition claims or health claims. A greater proportion of the labels collected featured nutrition claims (42 per cent), rather than health claims (11 per cent). In his article in this collection Lawrence¹⁸ examines the role of Food Standards Australia New Zealand (FSANZ) Proposal 293 – Nutrition, Health and Related Claims, whose aim is to cover a wide variety of forms of information.¹⁹ He urges the need for a clear conceptualisation of what is meant by the aspiration to protect public health and safety so that regulators

¹⁶ See eg J Azize, 'Sugar, Ethics and Legislation' (2010) 17 *Journal of Law and Medicine* (in press).

¹⁷ L Signal et al, 'Perceptions of New Zealand Nutrition Labels by Māori, Pacific and Low-income Shoppers' (2008) 11(7) *Public Health Nutrition* 706.

¹⁸ Lawrence, above n 13.

¹⁹ Food Standards Australia and New Zealand, Proposal 293 <http://www.foodstandards.gov.au/_srcfiles/P293%20Health%20Claims%20Cons%20Paper%20FINAL.pdf#search=%22proposal%20293%22> at 24 November 2009.

can integrate evidence from nutritional science into construction of policy in relation to food regulation.

IV APPROACHES TO GENETIC MODIFICATION OF CROPS

A controversial issue in respect of which there is an important divergence of approach is in relation to regulation of genetic modification (GM) of crops. Another relates to the role of nanotechnology in cognate contexts.²⁰ As Grossman²¹ in this collection points out, the incidence of genetically modified crops is escalating at an unprecedented rate. This is particularly so in the United States which is responsible for approximately half of the world's hectares of such crops. By contrast, relatively few such crops are grown in the European Union and there is a significant consumer resistance within the Union to such crops. In the United States government policy has been relatively encouraging toward genetic modification of crops. In this regard, in principle European Union policy is not substantially different but, with the prevalence of antagonistic public opinion, a number of states and numerous regions have banned the cultivation of genetically modified crops.

The regulatory approach in the United States is principally focused upon the product rather than the process of genetic modification.²² The opposite is the case in the European Union.²³ In the United States there are relatively few labelling requirements in relation to genetically modified products but in the European Union there are labelling obligations as soon as GM content exceeds 0.9 per cent. The precautionary principle that postulates that when scientific uncertainty exists, lack of certainty should not delay adoption of preventive measures, forms a cornerstone of European Union environmental law but is not so significant in United States policy.

²⁰ See generally D J Armstrong, 'Nanotechnology and the US Food Regulations' (2009) 57 (18) *Journal of Agricultural and Food Chemistry* 8180.

²¹ M R Grossman, 'Protecting Health, Environment and Agriculture: Authorisation of Genetically Modified Crops and Food in the United States the European Union' (2009) 14(2) *Deakin Law Review* 257.

²² See generally N D Fortin, *Food Regulation: Law Science, Policy and Practice* (2009); P A Curtis (ed), *Guide to Food Laws and Regulations* (2005).

²³ See generally B Atwood and AA Painter, *Butterworths Food Law* (2000); K Goodburn, *EU Good Law: A Practical Guide* (2001); D Lauterburg, *Food Law: Policy and Ethics* (2001); B M J van der Meulen and M van der Velde, *Food Safety Law in the European Union: An Introduction* (2004); D Holland and H Pope, *EU Food Law and Policy* (2004); R O'Rourke, *European Food Law* (2005); J Vapnek and M Spreij, *Perspectives and Guidelines on Food Legislation with a New Model Food Law* (2005); B van der Meulen, M van der Velde, M Szajkowska and R Verbruggen, *European Food Law Handbook* (2008).

Clearly the incompatible approaches of the European Union and the United States are unsatisfactory in relation to a fundamental issue that should command a global approach. They also create dilemmas for countries such as Australia and New Zealand that are outside both blocs. It is likely that the latter countries will experience more comfort with the attitudes of the European Union that are scrutinising processes with greater rigour and providing information in a way more apt to allow consumers to make their own decisions about purchase of products.

V TRADE REGULATION

Generations of the *leges frumentariae* sought to guarantee to those at the heart of the Roman Empire as well as to its military, which tended to be more diversified in ethnic background and stationing, a continuing flow of sufficient food – at least in the form of grain. Today, we are increasingly aware of the extent of starvation and poverty in many parts of the world. This is going to be exacerbated by the effects of global warming. Already there are warning signs, with the significant increases in average food prices documented by Kaufmann and Ehlert²⁴ in this collection. They argue that ‘food security’ is a key element in strategies for the reduction of poverty. Such security involves working to enhance the availability of food, access to food, stability of supply and access, and safe and healthy food utilisation. They argue for reduction in tariffs, and for export restrictions and food subsidies in developed countries to be eliminated.²⁵ They observe that the predictable increase in the demand for biofuels, and the resultant rise in agricultural commodity prices, are likely to present an opportunity for agricultural growth and rural development in developing countries with potentially positive implications for economic growth, poverty reduction and food security. However, such opportunities also come with risks, meaning that biofuel policies must be developed so as to protect poor and vulnerable populations. This highlights the need to give to developing countries, a number of which are among the larger consumers of food, the opportunity to become fully-fledged participants in the benefits of international trade and agricultural development.

²⁴ C Kaufmann and C Ehlert, ‘International and Domestic Trade Regulations to Secure the Food Supply’ (2009) 14(2) *Deakin Law Review* 233.

²⁵ See too T Epps, *International Trade and Health Protection: A Critical Assessment of the WTO* (2008).

VI CRIMINAL LAW ISSUES

It is important that individual consumers have proper recourse against manufacturers, distributors and purveyors of food that is dangerous. Such recourse has many components and its share of controversy.²⁶ Generally criminal actions brought by the state are not feasible because the gross negligence required by most legal systems for prosecutions for manslaughter cannot be established.

However, governments frequently experience powerful pressure to be seen to be responsive to protect public health and safety. Notably, in the aftermath of the melamine milk scandal in China, which resulted, officially, in the death of six babies (with some 294 000 becoming ill), the legal response was swift and stern: imposition of two death sentences. The sentences can fairly be described as an indication of the embarrassment felt by the Communist Party's senior leadership over the scandal, in which a poisonous chemical was added to milk supplies for months, if not years, without being detected.

The head of China's biggest milk powder company, Sanlu, was spared the death penalty but was sentenced to life in prison and fined more than \$A5 million. Sanlu failed to recall products even after it knew they were contaminated with melamine, a chemical which causes kidney stones in young children. It was a state-owned company and allegedly Party officials ordered it to keep quiet about its discovery in advance of the Olympic Games.²⁷ Babies began falling sick with kidney problems as early 2007, and by July 2008 many doctors were blaming powdered milk, particularly the low-cost variety sold by Sanlu. The company's tests confirmed melamine poisoning by August 2008, but the problem was not made public until the New Zealand government informed the Beijing authorities in mid-September. Fonterra, a New Zealand firm, owned a stake in Sanlu. It was discovered that large quantities of melamine had been sold to dairy farmers and middlemen to add to milk because it artificially enhanced protein readings.

One of the men sentenced to death, Zhang Yujun, was a manufacturer who sold more than 600 tons of melamine, which is banned from foodstuffs. His associate, Zhang Yanzhang, was given a life sentence. The second death penalty was given to Geng Jinping, a middleman who added the product at milk collection stations. However, in spite of the sentences meted out by

²⁶ See, eg, Food Standards Agency, Great Britain, *Report on the Formal Enforcement Activities of the Food Law Enforcement Agency* (2003).

²⁷ R Spencer, 'Two Sentenced to Death over China Melamine Milk Scandal' (22 January 2009) *The Telegraph* <<http://www.telegraph.co.uk/news/worldnews/asia/china/4315627/Two-sentenced-to-death-over-China-melamine-milk-scandal.html>> at 23 November 2009.

China's courts, little has been authoritatively established about the role of government officials in the failure of effective regulation and about the risk of similar problems recurring in comparable scenarios. Underlining the international repercussions of local transgressions in the food context, Food Australia New Zealand (like many other regulators) has responded by withdrawing certain Chinese milk products from the market.²⁸

VII CIVIL LAW ISSUES

A more effective legal response to such disasters is the holding of an open and independent inquiry into the circumstances in which deaths by food contamination occurred. In Australia, New Zealand and the United Kingdom this important role has long been played by coroners.²⁹ Significantly, the trend of modern coronial reform is to give to coroners greater investigative powers, to enhance their status in the legal process and to require of entities that are the subject of recommendations by coroners that they make public response.³⁰ This does not render coroners 'roving Royal Commissions'³¹ or 'free-ranging' investigators into deaths³² but it does integrate them into a preventative, public health system which seeks to identify avoidable causes of death and to formulate measures to reduce the likelihood of their repetition.

However, individual rights are also involved which require the payment of suitable financial compensation to victims when wrongs can be established.

To address the difficulties that consumers/plaintiffs can have in terms of proof, Directive 85/374 of the European Union has made producers strictly liable for defective products that they have placed on the market, even in the absence of fault. This is an initiative to reduce litigation and enhance victims' rights that could well be considered outside the European Union.

A practical problem experienced by plaintiffs in food litigation is that often the principal defendants – manufacturers, distributors and retailers – have shallow pockets and there is not enough money for plaintiffs to be properly compensated, especially if there are multiple victims. This has led to

²⁸ Food Standards Australia New Zealand, 'Melamine in Foods from China' <<http://www.foodstandards.gov.au/newsroom/factsheets/factsheets2008/melamineinfoodsfromchina/>> at 23 November 2009.

²⁹ See I Freckelton and D Ranson, *Death Investigation and the Coroner's Inquest* (2006).

³⁰ See further I Freckelton, 'Coronial Law Reform: The Anglo-Australian Gap Widens' (2010) 17 *Journal of Law and Medicine* (in press).

³¹ *Re the State Coroner; Ex Parte the Minister for Health* [2009] WASCA 165.

³² *Harmsworth v State Coroner* [1989] VR 989, 996.

examination of the extent to which regulators can be made liable if they have failed in fulfilment of their statutory duties.

Lederman³³ in this volume reflects upon potential legal recourse if mandatory fortification of food with folates were to cause harm to consumers. For Australia and New Zealand, this boils down to the potential liability of the regulator, Food Standards Australia New Zealand whose obligation under section 18(1) of the *Food Standards Australia New Zealand Act 1991* (Cth) is variously defined as: to protect public health and safety, to enable food consumers to make informed choices and to prevent misleading and deceptive conduct. Lederman notes the immunity given to the Commonwealth by section 151 of the Act, the impact of tort reforms which limit the availability of damages for negligence and under the *Trade Practices Act 1994* (Cth), as well as the limited success in Australia of class actions. He argues in favour of discretionary compensation schemes as a means of providing some redress but concedes that when there are large numbers of harmed people such schemes have limitations. He contends that this highlights the need for decision-making about matters such as the fortification of food to be made in strict conformity with legal and scientific standards and for the creation of rights of recourse, at least in some situations, against negligent regulators.

Miller and Finlay³⁴ document the legal issues arising from the deaths of 22 people in Canada and the infection of some 35 others with listeriosis from eating processed meat from a Canadian food supplier. They too question the role of the regulator – in Canada's case the Canadian Food Inspection Agency. They draw attention to the fact that, in general, actions against regulators in Canada, as in Australia, have not succeeded.³⁵ They acknowledge that there are valid and important reasons for limiting the ambit of government liability, but contend that it is reasonably foreseeable that, if there are negligent inspections by a regulator, physical and economic harm will ensue. They query whether in all circumstances regulators should be immune from civil action if they fail to fulfil their own statutory charter, thereby enabling foreseeable harm.

³³ J Lederman, 'Protecting Legal Rights When Things Go Wrong: Legal Recourse if Mandatory Fortification of as Food Were to Harm Human Health' (2009) 14(2) *Deakin Law Review* 367.

³⁴ S M Miller and S N Finlay, 'Crown Immunity in a Food Crisis: A Consideration of the 2008 Listeriosis Outbreak in Canada' (2009) 14(2) *Deakin Law Review* 341.

³⁵ See in particular the repercussions of *Holland v Saskatchewan* (2008) 294 DLR (4d) 193.

VIII TRANSCENDING PAROCHIALISM

Access to adequate food in sufficient quantities is archetypally a human rights issue. Article 25 of the *Universal Declaration of Human Rights* prescribes that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food’. More specifically, article 11 of the *International Covenant on Economic, Social and Cultural Rights* provides that:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

General Comment Number 12 of the Committee on Economic, Social and Cultural Rights (1999)³⁶ defines the right to food as:

the right of every man, woman and child alone and in community with others to have physical and economic access at all times to adequate food or means for its procurement in ways consistent with human dignity.

The Comment has contended that this entails state obligations to ‘respect, protect and fulfil’ the right to food, such a right being indivisibly linked to the inherent dignity of the human person and indispensable for the fulfilment of other human rights. With the work of the Special Rapporteur on the Right to

³⁶ <<http://www1.umn.edu/humanrts/gencomm/escgencom12.htm>> at 24 November 2009.

Food, Jean Ziegler (2000-2008), the concept of food rights has become specific and relevant for first and third world countries alike.³⁷

Launched on the 60th anniversary of the Declaration on Human Rights, the *Cordoba Declaration on the Right to Food* goes further. It proclaims that:

States should, as a matter of priority, revise policies and practices to guarantee that the food insecure and vulnerable groups in their society can feed themselves directly from productive land or other natural resources, or have the means for the procurement of adequate food. They should also avoid policies and practices that prevent other States from being able to do so.

The international community should be ready to provide assistance, when necessary, in order to enable States to meet these priority obligations. Agriculture, food security and the right to food should be given priority in national, regional and international development plans and poverty reduction strategies. Consistency should be sought in different policy areas (infrastructure, social protection, trade, research, climate change and environmental management).³⁸

It is apparent that the direction of international law and of international initiatives in relation to both climate change and poverty is towards achieving multinational consensus on measures to combat poverty and towards reducing barriers to international efforts to relieve starvation and threats to contamination of food.³⁹ This will require integrated, whole-of-government approaches at the local level, vertical implementation of policy initiatives, and adoption of measures to ensure that food regulatory bodies not only formulate policies and carry out inspections in the public interest but are suitably accountable. Risk analysis cannot be divorced from accountability. It also requires collaboration by states within the global community, reduction in the kinds of differences that characterise the United States/European Union divide on food law, and movement toward consistency of regulatory approach and response.

³⁷ See J Ziegler, 'Right to Food' <<http://www.righttofood.org/new/html/WhatRighttofood.html>> at 23 November 2009.

³⁸ <<http://sustainablefoodmonitor.org/2008/12/12/the-cordoba-declaration-on-the-right-to-food/>> at 23 November 2009.

³⁹ See too Food First, 'UN Special Rapporteur on the Right to Food Recommends Principles and Measures to Discipline "land grabbing"' (15 June 2009) <<http://www.foodfirst.org/en/node/2467>> at 24 November 2009.

In this collection Bernd van der Meulen⁴⁰ argues for the creation of an International Association of Food Law and Policy to facilitate the development of better international understanding and common bases for research across countries and cultures. Such a body could significantly augment the work of the Special Rapporteur on the Right to Food. Van der Meulen contends that the 2000 Commission of the European Communities' *White Paper on Food Safety*,⁴¹ which expressed a vision for the overhaul of European food law by regulation for the most part, rather than directives, could form a basis for a global approach. One of the distinctive features of the European approach has been its comprehensive nature. For instance, the General Food Law of 2002 expresses in article 5 the following objective:

Food law shall pursue one or more of the general objectives of a high level of protection of human life and health and the protection of consumers' interests, including fair practices in food trade, taking account of, where appropriate, the protection of animal health and welfare, plant health and the environment.

There is an artificiality and an anachronistic flavour about a regulatory focus that is principally upon food products rather than also upon how they came into being. In addition, labelling and traceability have become mainstays of public health law in most parts of the world.⁴² There is no reason why food products should be excepted. In fact there is every reason to the contrary if contaminated foodstuffs are to be effectively withdrawn from supply in countries to which they have been exported away from their country of manufacture, given the nature of international trade. The melamine milk scandal in China and the listeriosis tragedy in Canada have latterly highlighted the need for regulators to maintain a wide vision in relation to their activities.⁴³

It is likely that public pressure and anxiety will increasingly press all countries toward a uniform and rigorous approach toward food law. There is a pressing need for nutritionists, health rights activists and lawyers to work together in

⁴⁰ B M J van der Meulen, 'The System of Food Law in the European Union' (2009) 14(2) *Deakin Law Review* 305.

⁴¹ <http://ec.europa.eu/dgs/health_consumer/library/pub/pub06_en.pdf> at 23 November 2009.

⁴² See L O Gostin, *Public Health Law: Power, Duty, Restraint*, 2nd edn (2008); C Reynolds and G Howse, *Public Health Law and Regulation*, 2nd edn (2004).

⁴³ See United States Food and Drug Administration, 'Melamine Contamination in China' (5 January 2009) <<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm179005.htm>> 23 November 2009; United States Food and Drug Administration, 'Routine Tests Uncover Listeria Contamination in Strubs Norwegian Style Steelhead Salmon Agency Warns Consumers to Avoid Eating Product' (7 April 2009) <<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm149556.htm>> at 24 November 2009.

relation to the content and direction of food law as it evolves in the new era of climate change and international ad reform. Just as the grain regulations of the Roman Empire of necessity extended in consistent form beyond Rome itself to all parts of the Empire, so must food law become genuinely global in its conceptualisation and practice. Publication in the *Deakin Law Review* of analyses of internationally varying approaches toward food law, together with their various rationales, is a constructive step in the direction of globalisation of the discipline of food law, appreciation of the content of the 'right to food', and the promotion of better interdisciplinary and transnational understanding of the need for effective regulation. It is a particularly important initiative for Australia and New Zealand. An even more significant further step would be the creation of an energetic International Association of Food Law and Policy.