

Discussion Paper –

Values, Governments, and Food Regulation

Stephen Coleman, Lecturer in Ethics,
School of Humanities and Social Sciences
University of NSW @ ADFA

1. Introduction

In recent years issues of food safety have been the subject of a good deal of discussion in both the academic literature and the media. This increased interest is the result of a wide range of factors. High profile events like the large scale outbreak of foot and mouth disease in the UK, and worldwide concerns about Bovine Spongiform Encephalitis (BSE), commonly known as “mad cow disease”, have certainly caused people to question the safety of meat products in ways that they had not done before. Some researchers and health advocates have voiced concerns about the possible health effects of additives used in food. Animal rights activists have had considerable success in raising public awareness of factory farming practices, with a resulting increase in demand for “ethically produced” food products. The increasing profile of research into genetically modified (GM) crops, partially fuelled by complaints of contamination of “natural” crops by GM varieties, has also contributed to the increased public attention being given to food safety issues.

These increased levels of attention on food safety have resulted in demands for government action. Some have called for tighter government regulation of food production in general to ensure that consumers are protected from diseases such as BSE. Others have called for a reduction, or even a banning, of food additives, and a return to more natural products. Some have demanded a ban on GM products, or compulsory labelling of GM foods. Still others have argued that more regulation is unnecessary, and that the law of the market, of supply and demand, will ensure that everyone’s needs and desires in the way of food will be met.

It is obviously impossible for governments to act on all of these demands, since some of them are mutually incompatible. In addition, questions have been raised about whether it is appropriate for governments to implement regulatory regimes based on values, such as the importance of “natural products”, which may not be shared by everyone within the community.

This paper will draw together the different threads of research related to these issues, primarily in ethics and public policy but also in political science, and summarise the key points to be considered when attempting to develop an appropriate policy for government intervention in the production and sale of food. Key issues to be explored include the role of government in liberal democracies such as Australia and New Zealand, issues of individual rights to liberty and autonomy, and most importantly the role that values can appropriately play in the development of governmental policy with regard to regulation of the production and sale of food.

2. Government in a Liberal Democracy

Both Australia and New Zealand are liberal democracies. This means that they are governed by parliaments composed of popularly elected representatives, whose authority is subject to the rule of law. Governments in liberal democracies are generally expected to uphold certain foundational principles such as respect for rights and freedoms of individuals, and tolerance of diversity within the community. Perhaps the simplest description of the ideals of liberal democracy is that it is the rule of the majority (democracy) with respect for the rights and freedoms of the minority (liberalism).

While both Australia and New Zealand have strong historical ties to Britain, their citizens come from a wide variety of cultural and linguistic backgrounds and subscribe to a wide range of social and political views. Given this fact, the principle of tolerance for diversity in the community is extremely important.

2.1. Different Approaches to the Role of Government

There are a range of views about the appropriate role of government in society, even within the liberal democratic tradition. However, the most important views tend to fall into two main groups; what might be termed “individualist” views, focussed primarily on upholding equality and the rights of individuals, and what could be termed “communitarian” views, which focus on society as a whole.

2.1.1. Individualist Views

While there are many ways in which individualist views might find expression, the common idea of all of these views is that the individual person is the most basic element of society and that therefore the role of government is to promote the rights and welfare of individuals. These sorts of views trace their intellectual history back to the writings of thinkers like John Locke, Thomas Jefferson and John Stuart Mill. The classic expression of these “liberal¹” views can be found in documents like the United States Declaration of Independence, Constitution and Bill of Rights. These documents elaborate principles of respect for individual rights and the rule of law, limits on the power of government, and separation of powers.

Individualist theories of the role of government usually suggest that governments should allow as much individual freedom as possible and that restrictions on individual freedom will generally only be necessary if they are required to protect the freedom of others. Thus such theories are strong supporters of freedom of speech, expression and religion, and of tolerance of the views of others. It should be noted however, that while these views strongly support the ideal of the equality of all people, the notion of equality has been interpreted in many different ways. Thus individualist views have been used to support a wide range of government policies, from unrestrained capitalism – seeking to

¹ Liberal political ideology should not be confused with political parties such as the Australian Liberal Party. Many different political parties espouse liberal values, but given the nature of politics in a democracy most parties espousing liberal values will find it necessary to compromise those values in order to implement particular policies. Political parties also tend to be influenced by other ideologies over time, so even “Liberal” parties are not exclusively liberal in ideology in practice.

promote equality through the mechanisms of the market – through to socialist democracy – seeking to provide equality of opportunity for all individuals through provision of universal social services such as education and health care.

2.1.2. Communitarian Views

The common idea of all communitarian views is that society is formed, not out of individuals, but out of social groups; families, businesses, religious groups, trade unions and the like. Thus communitarian views believe that the role of government is to promote the welfare of society as a whole, rather than attempting to promote the welfare of individuals within society. Communitarian views are willing to trade off individual rights in order to benefit society, and to promote the welfare of the majority at the expense of minority groups. While such ideals might seem to imply a form of communism, this is not the case, and communitarian ideals can be used to support a wide range of political beliefs, from fascism and conservatism through the political spectrum to communism.

2.2. Human Rights and Government Intervention

The authority of government is often thought to be limited by human rights, in that governments may not take any action that violates the basic human rights of those under its power. The most widespread understanding of these basic human rights can be found in the Universal Declaration of Human Rights, and in supporting treaties that form part of the International Bill of Rights, such as the International Covenant on Civil and Political Rights.

In some countries, such as the USA, some or all of these human rights have been codified into a Bill of Rights that forms part of the constitution, but this is not the case in Australia or New Zealand. A few rights, such as the right to freedom of religion and the right to trial by jury are found in the Australian constitution, albeit in a limited form, but even such basic rights as freedom of speech are not included. Of all the Australian jurisdictions, only the Australian Capital Territory currently has a Bill of Rights, although the Victorian Bill of Rights is due to come into effect in 2007. New Zealand has no formal constitution, but does have a statutory Bill of Rights², passed into law in 1990, that enacts the rights enumerated in the International Covenant on Civil and Political Rights.

Despite their lack of formal legal status, human rights are an important consideration in limiting the actions of government. Governments that intervene in the lives of their citizens in ways that contravene or undermine human rights are likely to undermine their own legitimacy. The most fundamental rights that governments feel constrained to respect are the rights to liberty and autonomy. The right to liberty is essentially the right to be free from the arbitrary interference of others, sometimes described as a right to the greatest freedom possible that is compatible with equal freedom for all. The right to autonomy is the right to be able to make and freely implement your own life plans and your own decisions, and to be free to make informed choices and determine your own

² The fact that the New Zealand Bill of Rights is statutory, rather than an entrenched part of a constitution, makes no difference in the day to day legal affairs of the country. However, this does mean that the Bill of Rights could be repealed without a referendum, but rather by a simple act of parliament, in the same way as any other legislation.

course of action. Most philosophers and political thinkers would suggest that autonomy is the most basic right of all, and that all other rights, including the right to liberty, can be derived from the right to autonomy.

Living as a member of society, under the authority of government, even a freely elected democratic government, means that individual freedom of action will be limited in various ways. Governments are required to place some limits on individual rights to liberty and autonomy in order to allow everyone in society to live together in peace. However, democratic governments that infringe upon or undermine these rights in an arbitrary or excessive manner cannot hope to last long, and so respect for human rights in general, and for rights to liberty and autonomy in particular, is central to the understanding of the role of government in all liberal democracies.

2.3. Paternalism

A key question that needs to be addressed in discussing the role of government in a liberal democracy like Australia or New Zealand, is whether extent a government might be justified in acting paternalistically. While there is some dispute about what paternalism actually means, in general terms it refers to acting in a way that overrides the autonomy of a person, but does so in order to achieve some perceived benefit for the person whose autonomy is being overridden.

Perhaps the most famous criticism of paternalism comes from John Stuart Mill. In his famous work *On Liberty* (1859) he argued that “The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. Over himself, over his own body and mind, the individual is sovereign.” Thus on his view, governments are never justified in acting paternalistically, and this is a view endorsed by many modern libertarians.

However, there are various criticisms that can be made of such a position. A person can only be considered to be acting autonomously if they are fully rational. Thus if they are prevented by another person from doing something that is irrational, then that action while appearing paternalistic, may not actually be a violation of the person’s autonomy, and thus may not be an act of paternalism. Suppose, for example, that a person is suffering from a treatable mental illness, such as depression, which prevents them from being fully rational. While in the grip of this illness, they attempt to commit suicide, but I arrive just in time to prevent their death. While my actions might seem paternalistic, since they are not fully autonomous at the time of the suicide attempt it could be argued that my preventing their suicide was not an act of paternalism, since they were not acting autonomously when they engaged in the suicide attempt.

One problem with this sort of argument is that it is based entirely on the question of whether a particular action is rational or not. Perceptions of the rationality of particular actions can be very subjective, and so allowing interference with the choices of others based on such subjective standards may lead to massive intrusions in people’s lives. If, for example, the government was to receive medical advice that stated that it was always irrational for people to smoke tobacco, then, based on the rationality argument, the government would be justified in forcibly preventing anyone from smoking.

There are other are other arguments that can be presented against Mill's extreme libertarian view however. Mill's views appear to be based on the idea that people are fully rational, perfectly logical agents, who always consider the consequences of their actions. In fact it is quite clear that most people do not fit into the Millian mould. People often act without thinking, don't consider the consequences of their actions, and are often unaware of all the risks that they face. In addition people are well-known to misperceive risk factors, and often act in ways that risk significant long-term harm in favour of minor short-term gain. Given these facts, it does seem reasonable to think that there will be circumstances where it is appropriate to act paternalistically.

Seatbelt laws are a good example of this sort of situation. Studies suggest that few people wear seatbelts when they are not compulsory, despite considerable evidence of their benefits. There may be many reasons for why people do not wear seatbelts, but the most likely appears to be a tendency for people to discount the risk of having an accident (perhaps partially because of an overestimation of their own driving prowess), and to dramatically over-value the comfort of not wearing a seatbelt. Essentially there are two ways that governments could address this sort of problem, either by a massive public education campaign aimed at improving people's ability to assess the risks and benefits in the area of seatbelt wearing, or by acting paternalistically and making the wearing of seatbelts compulsory. The massive imbalance between risk and benefit in this area provides quite a strong argument for paternalistic seatbelt legislation³.

Nonetheless, this balance is a difficult one for governments to manage. An argument can certainly be advanced in favour of paternalistic laws that have obvious benefits for those on whom the law is enforced; examples of laws of this type might include those requiring the wearing of motorcycle and bicycle helmets. However paternalistic laws that do not have such clear benefits for the subjects of the laws are far more difficult to justify. Examples of such questionable laws would include laws prohibiting certain sexual acts, such as sodomy or homosexual activity. Laws such as this seem to be attempting to enforce a specific moral standard (often a moral standard not shared by a significant section of the community) rather than actually aiming to achieve specific benefits for those against whom the laws might be used

2.4. The Role of Elected Officials and the Role of Public Servants

A final issue that needs to be noted with regard to the role of the government is the distinct differences in role between elected legislators who determine what policies will be implemented, and the public servants who actually implement those policies. Australia and New Zealand operate under variations of the Westminster system, where there is seen to be a clear division between the role of elected members of parliament and the role of public servants, with elected representatives having a clear political role

³ It can also be argued that seatbelt laws are not paternalistic at all since they are aimed, not at providing benefit for those being required to wear seatbelts, but rather to provide a benefit for the rest of society by preventing injuries, the treatment of which is usually at the public expense. On such a view laws that make seat belt wearing compulsory are in fact simply intended to save taxpayers money. If taxpayers are harmed by having to bear the cost of treatment that could have been prevented at much less expense, then these sorts of laws actually fall within Mill's parameters for a legitimate exercise of authority.

and public servants a responsibility to remain impartial and apolitical.⁴ In the Westminster tradition public servants are professional administrators, appointed purely on merit, without regard to their political leanings. In many other countries this same clear division between politics and administration is not apparent; in the United States for example, most senior Federal Civil Service positions are political appointments.

Members of parliament are elected to serve as representatives of the people and are charged with the responsibility of making laws and scrutinising the activities of the government. Those elected representatives who serve as Cabinet Ministers have the additional responsibility of determining government policy within their particular field. All members of parliament are directly accountable to the public through the electoral process.

Members of the public service serve as administrators. The role of the public service is to serve the government of the day, by providing impartial, unbiased and apolitical advice, and by implementing the public policy determined by the government, especially its Ministers. The aim of having this impartial and apolitical service is to ensure that administrative and public policy experience and expertise is available to successive governments and to ensure continuity of service delivery to members of the public even in times of rapid fluctuations in the fortunes of the various political parties. Members of the public service are accountable for their actions through the service itself, but are not directly accountable to the public in the same sense as elected representatives.

The differences between these roles of elected representative and public servant are quite significant in several respects. While members of the public service are duty bound to provide impartial and unbiased advice, elected representatives are not duty bound to follow it. While members of the public service may provide advice with regard to policy, they do not determine policy; that is the role of elected representatives, especially ministers. Members of the public service are duty bound to implement government policy, within the confines of the law, even if they do not agree with that policy, or even if they find that policy morally reprehensible.

To illustrate these differences more fully, consider the following extreme example. Suppose a minister, known for their hatred of members of other ethnic groups, decided upon a set of policies that were blatantly racist in nature. Provided that it was legal to do so, the duty of members of the public service would be to implement those policies, whether they agreed with the policies or not. However, a member of the public service who held the same racist views could not legitimately recommend such policies to the minister in the first place, for such a recommendation would violate the requirement that members of the public service provide unbiased advice. The effective result of these differing roles is that the elected representative is completely free to act upon their own personal beliefs and moral values within their government role, while the public servant cannot act on them at all within their government role. The sorts of conflicts that can result for members of the public service are a recognised problem.

⁴ At times the impartiality of members of the public service has been questioned, such as during the time of the Thatcher government in the UK, but the fact that this has been seen as a matter for concern demonstrates that the Westminster ideal of impartiality in the public service is still seen to apply.

Public servants are responsible for providing honest, impartial, and comprehensive advice to Ministers, and for alerting Ministers to the possible consequences of following particular policies, whether or not such advice accords with Ministers' views. However, final decisions on policy are the prerogative of Ministers, and public servants may not withhold relevant information from Ministers, nor seek to obstruct or delay a decision, nor attempt to undermine or improperly influence Government policy (for example, by the unauthorised release of official information). Occasionally dilemmas can arise where public servants have strong personal beliefs on issues that conflict with their official duties. In such circumstances, public servants must, regardless of their personal views, implement Government policies to the best of their abilities.

(New Zealand Public Service Code of Conduct, p. 10.)

3. Governments, Liberal Democracies and Regulation

Many people rely on government assistance to help them to manage the problems of life. In some cases this assistance may be financial, but in many cases it is not. One of the most basic roles of government is to write legislation, and one of the primary aims of legislation is to make people's lives better; to make people safer, healthier and more prosperous. Life, it has often been said, is risky and uncertain; risks to people's health, risk in any form of investment, and so on. This section examines the question of what sorts of public policy, if any, might appropriately be implemented by governments to aid people in dealing with this risk and uncertainty, by either reducing the level of risk or attempting to manage that risk in some way.

3.1. Major Factors Influencing Public Policy Responses

According to Caplan⁵, there are three main factors that are relevant to decisions about what kind of public policy is appropriate to deal with a specific area of potential (or actual) risk and uncertainty for members of the public. These are;

- The relative competency of the agents involved in making decisions about the risk or uncertainty to which they will be subjected;
- The ease with which this risk or uncertainty may be avoided; and
- The costs of attempting to restrict or regulate choice in the specific area of risk or uncertainty.

3.1.1. Competency of Agents

One important factor to be considered when making public policy decisions about areas of risk or uncertainty is the competence of the agents involved in making decisions about that risk. If the agents (or some of the agents) having to make decisions about the risk are considered to be incompetent, to not be fully competent, or to have their decision-making powers impaired in some way, then it seems reasonable for the government (or in the case of private companies, for the company itself) to intervene in some way to ensure that those with diminished or impaired decision-making powers are protected. If all the agents involved in making decisions about the risk or uncertainty are considered to be fully competent, it restrictions upon the liberty and autonomy of those agents seem much less reasonable. There are many types of agents who may be thought to lack the competence to make informed decisions regarding the acceptance of risk, including (but not limited to) persons suffering from developmental disabilities, children, the insane, and those who are being unduly coerced.

There are many examples of restrictions that have been put in place in an attempt to protect less than fully competent agents, and such restrictions can be found in both public policy and in private enterprise. A clear example of this sort of restriction from the area of public policy is the fact that in all states in Australia it is an offence to sell or supply tobacco products to minors (those under the age of eighteen). The basic reason for such a restriction is that those under the age of eighteen are not considered to be fully competent to make decisions about the consumption of a product such as tobacco which is (a) known to be highly addictive and (b) known to cause significant health

⁵ Arthur Caplan, "The Ethics of Uncertainty; The Regulation of Food Safety in the United States" *Agriculture and Human Values* 3(1986)180-190, p. 183.

problems. An example of this sort of restriction in private enterprise would be age restrictions on adrenaline sports such as parachuting or bungee-jumping. Such activities entail risk, and since minors are not considered to be fully competent to assess these risks, they would not usually be permitted to participate in such sports unless consent was given by an appropriate person who **was** considered competent to assess the risks (such as the child's parent or guardian).⁶

3.1.2. How Avoidable is the Risk?

In cases where agents can easily avoid the potential risk involved in particular activities then there is generally thought to be a diminished necessity for government involvement in the form of restriction or regulation, particularly in cases where information about the risks involved is easily available, or where those risks are well known. Thus there is, for example, little (if any) actual regulation of swimming on public beaches,⁷ though information about the risk involved in swimming in particular locations or at particular times (such as information about the presence of a dangerous outgoing current for example) may be provided by local authorities or other organisations in order to ensure that those choosing to accept the risks of swimming in the ocean at that place and time may be informed of the risks that they are accepting. Regulations of the risk of swimming are not usually thought to be either required or desirable, since the risks of swimming at public beaches are easily avoided, by simply refraining from entering the water.

In cases where it is difficult, or even impossible, for people to avoid the risk involved in particular activities, in cases where people may face risk without even being aware of it, and in cases where participation in certain activities may impose risk upon others without their consent, government involvement in the form of restriction or regulation is thought to be much more appropriate. Thus activities such as the release into the atmosphere of toxic chemicals or other pollutants during manufacturing or other industrial processes are considered to be appropriate activities for government regulation, since other people may well face health risks from such activities without being able to avoid acceptance of that risk (and often times without consenting to the acceptance of those risks either).

It should be noted that the costs, both financial and social, involved in avoiding a particular risk are also important, and not the mere fact that it is logically possible for the risk to be avoided. Consider, once again, the release of toxic chemicals into the

⁶ It could certainly be argued that age restrictions on adrenaline sports are intended to protect the operator of the sport rather than to protect the less than fully competent participant, and it is undoubtedly the case that many of the restrictions placed on adrenaline sports are put in place simply to protect the operator from legal liability. However, the mere fact that the operator could be considered legally liable in the absence of such restrictions demonstrates the legal principle that full competence is required for an agent to be considered to be capable of making an informed decision to take on a certain level of risk. Suppose that a fully competent adult and an unrelated child were injured (through no fault or negligence on the part of the sport operator) in an unexpected accident while participating in a adrenaline sport. All other things being equal (i.e. the adult and child being of a similar, and appropriate, height, weight, level of health and fitness etc), the mere fact that the operator of the sport would not be considered liable for the injuries sustained by the adult, but may be considered liable for the injuries sustained by the child, demonstrates that there is a legal difference between the adult and the child, which can in these circumstances only be explained by resort to the principle of competence to accept risk.

⁷ Other regulations may apply to swimming on public beaches, such as regulations regarding what sorts of attire are required while swimming, but these are not regulations regarding the risks of swimming itself.

atmosphere. Suppose a corporation announced that its factory was going to release certain toxic chemicals into the atmosphere, chemicals well-known to be toxic, but which had also been scientifically proven to degrade into harmless compounds within hours of their release into the atmosphere. Even if the corporation was to make certain that everyone affected by this chemical release was informed about the release and about ways to avoid exposure to the chemical (such as by remaining in an airtight area for a specified number of hours after the release), the costs of avoiding this risk, in both social and financial terms, would be so high that government restriction of such activity (that is, legal prevention of the release of these toxic chemicals) would still be appropriate.

3.1.3. Costs of Attempting to Restrict Choice

Another factor that is relevant to public policy decisions about whether or not the government ought to be involved in restriction or regulation of risky activity is the cost of such restriction or regulation. If the cost of attempting to restrict the choice of individuals with regard to particular risks is high, in either financial or social terms, then this would certainly be a factor to be considered in discussions of whether the government ought to take a role in regard to that risk. Even if other factors might suggest that the government ought to be involved, if the perceived cost is too high, then this would obviously be a reason why government intervention to restrict choice in this area would be inappropriate.

Prohibition in the USA (1920-33)⁸ is a good illustration of an attempt by a democratic government to restrict choice with regard to certain risks. The original intention of prohibiting alcohol was to reduce the risky behaviours and social problems, like drunkenness and violence, caused by excessive alcohol consumption. However, the eventual costs of prohibition in both financial (through the costs of enforcement) and social terms (through the increase in crime, criminalisation of social behaviour etc) led to the abandonment of prohibition, at least at the Federal level.

3.2. The Basic Case for Government Intervention

The most basic case for government intervention in any area of risk, is simply to ensure that people actually have a choice. For choice to really count as worthwhile, there are two conditions that must be met; (1) the agent must actually be free to choose between realistic options, and (2) the agent must be able to make an informed choice.

Most of the time people are free to make choices amongst different options, but this is not always the case. Sometimes agents are not actually free to choose, and in other cases there may only be a single realistic option. For example, if I am in my car, stopped by the side of the road, and a person jumps in the car, points a gun at me, and tells me to drive, I am free, in one sense, to refuse to do so, and in this limited sense I might have a choice. But most people would agree that the sort of “choice” available in this situation – to drive or to be shot – is not a real choice. In following the directions of the armed bandit and driving, I am not acting freely, but am rather being coerced, and the choice

⁸ Prohibition commenced on 16th January, 1920, when the Eighteenth Amendment of the United States Constitution came into effect, prohibiting the manufacture, sale or transport of intoxicating liquors (for beverage purposes) throughout the United States and its territories. It ended on 5th December 1933, when the Eighteenth Amendment was repealed by the Twenty-First Amendment.

that I make in such a situation is not really mine, but is the choice of the armed bandit. It is because coercion destroys genuine free choice that coercion is recognised in law as a factor that nullifies responsibility. Thus provided I acted reasonably in following the directions of the armed bandit, for example by attempting, as much as possible, to avoid causing injury or damage, I would not be considered legally liable for any injury or damage I in fact did cause, simply by virtue of the fact that I was being coerced. In other circumstances a person may not be coerced by another agent, but may still not be thought to have a genuine choice. For example, a person facing a choice between stealing food and starving to death would not generally be thought to have a genuine choice, and neither would a drug addict deciding if they will continue to take the drug to which they are addicted.

Far more common than situations like these however, are situations where agents lack the information necessary to make an informed choice. In order for a choice to be informed, the person making the choice needs to be in possession of all information relevant to making the choice, and to have an appreciation of the facts and implications of the choice. Consider the following example. A young man has been at a party, in a suburb some distance from his house. When the time comes for him to leave, he realises that the people he came to the party with have all left, and he has no way to get home. Another person at the party offers to drive him. Having ascertained from other party goers that the offering driver has not been drinking alcohol at the party, the young man accepts the offer. What the young man does not know, however, is that while the driver has not been drinking, he has consumed a significant quantity of drugs at the party, and is not in full command of his faculties. In a situation such as this, while it is clear that the young man has freely chosen to ride in the car under the control of the drug-taking driver, it is also clear that the choice is not an informed choice, for there is information relevant to the choice that the young man does not know, i.e. that the driver has been taking drugs.

3.2.1. Enabling Informed Choice

In order for those involved in making decisions about whether or not to accept a particular risk to be able to make informed decisions, it is essential for them to have access to the necessary information, information which may not always be easily available. In most business transactions for example, the seller is likely to be in possession of considerably more information than the buyer, the origin of the old saying “caveat emptor” – buyer beware. If there is to be any sort of level playing field in transactions such as this, the buyer will need to be able to access the information necessary for them to be able to make an informed choice. In order to offer some level of protection for the buyer, and to allow the possibility of informed choice, the seller is likely to have to be forced, in some way, to part with the necessary information. The easiest way to ensure that this transfer of information occur is for the government to become involved, and to regulate transactions in such a way as to ensure that the relevant information is available to the buyer. Thus in any society that considers informed choice, rather than mere choice, to be an important value, it is likely that government intervention will be required.

There are many ways this sort of government intervention may be achieved, but all have the same purpose of ensuring that the person who is accepting the risk (e.g. purchasing the product) is able to make an informed decision. One example of this type of

government intervention is in real estate; in most jurisdictions buyers of real estate are legally entitled to have access to a property for the purposes of building and pest inspections, since such inspections are necessary in order for the buyer to be able to make an informed decision. The guarantee of access makes such inspections possible, however, the purchaser is usually not required to have the inspections carried out; if they are willing to access the higher level of risk implied by not having the property inspected by an expert, then that is up to them. Another example of government intervention designed to ensure informed choice is statutory warranties. Many products sold in countries like Australia and New Zealand are required to have warranties that provide a level of guarantee to the purchaser that the goods they have purchased will meet a reasonable standard; again this ensures that the purchaser has some relevant information (in this case regarding quality) to allow them to make an informed choice, but unlike the requirement for access for real estate inspections the requirement for a warranty places a demand on the seller that always exists, even if the purchaser does not feel that they require it.

While these sorts of government interventions, designed to allow informed choice, are common, they are not generally seen to be a great imposition on free choice, and are a relatively low level form of government intervention. However, an argument can certainly be made for much more stringent government intervention in the regulation of certain types of risk.

3.3. A Stronger Case for Government Intervention

A stronger case for government intervention in regulating certain forms of risk can be made by considering two of the factors previously mentioned as influences on public policy responses; the competency of the agents involved, and the ease of avoiding the risk. It is the second of these factors that will be considered first.

3.3.1. Basic Needs

There are basic needs that all humans share, and some risk is inherent in obtaining, most, if not all of these needs. For example, all humans require air to breathe and water to drink, yet this air and water may contain substances that are harmful to health. For all basic needs, like air, water and shelter, to name but a few, where there is risk involved in obtaining these basic needs, that is risk that simply cannot be avoided. As has been argued earlier, where there is risk that cannot be avoided, there is a strong case for government involvement to reduce this risk as much as possible.

Thus, to take but one example, that of drinking water, the case for government involvement in the regulation of the supply of pure water for drinking is much stronger than the case for government involvement to merely ensure that agents are able to make an informed choice. It is of little use for people to have the information that the only available water contains high levels of contaminants, for there is little choice⁹ about whether or not those people accept this risk, since water is a requirement for human life. Thus it is appropriate for government involvement in the supply of drinking water to involve much more than simply ensuring that information is available about the quality

⁹ It is theoretically possible that people, knowing that the water contained contaminants, might purify their own water, but such a process is certainly not cheap and easy for the average person.

of water; it is more reasonable to think that the government ought to be involved in setting standards for the purity of drinking water, and in ensuring that these standards are complied with in the supply of drinking water within the government's jurisdiction. The same argument would apply for government involvement in the regulation and supply of all basic human needs; since any risk involved in these areas can only be avoided with considerable difficulty and expense, it is appropriate for governments to intervene in these areas to ensure that the levels of risk involved are as low as is practical.

3.3.2. Protection of the Vulnerable

There are many people in the world who are not fully competent to assess risk, including children and those suffering from mental deficiencies or mental illnesses. These people are especially vulnerable to harm through both deliberate exploitation and through accident. The government is usually seen to have a special role in the protection of the vulnerable, to protect from harm those who are unable to protect themselves. This is especially true in areas of basic human need that involve risk, like the previously mentioned requirements for clear air and water, shelter from the elements and so on. Given this special role to protect vulnerable people from harm, a strong case can be made for government involvement to minimise risks faced by these vulnerable people, most especially in areas where that risk cannot be easily avoided, such as in areas of basic human need, but also in other areas of risk where these vulnerable people may be open to exploitation.

3.4. Forms of Government Involvement

There are four main ways in which governments might appropriately be involved in regulation of risk within markets and within the community; through risk assessment, through ensuring that information is available to allow informed decision-making, through placing restrictions on products, services and practices, and through banning particular products, services and practices.

3.4.1. Assessment of Risk

Many forms of risk are beyond the capacity of most people to assess. For example, few people would have the resources or the expertise to assess if a new pharmaceutical product being offered for sale on the market is safe to use, or if it actually has the effect that its manufacturer claims. Governments, however, have both the resources and access to the required expertise to ensure that risk assessments of products of this type (and many other types) are actually carried out. This has the effect of ensuring that the information required for an informed decision actually exists.

3.4.2. Ensuring Availability of Information

Ensuring that the information required for an informed decision actually exists is of course only the first step in the process. The information is of no use unless it is available to those who are actually making decisions about whether they will accept this risk, which means, in the case of a new pharmaceutical, actually using the product. Thus a second major way in which governments might appropriately be involved in regulation of risk is to ensure that this information is actually available to those making

decisions about whether or not they will accept the risk. There are various ways that governments might achieve this, such as by releasing their own risk assessments to the public, or by requiring that information about particular products and services is available to people before they make the decision to buy the product or use the service.

A good example of this form of government involvement is the tobacco industry which is subject to both these forms of government intervention. Government departments advertise information about the health effects of smoking in various media, which is a form of release of government risk assessment. In addition, tobacco companies are required to place health warnings on tobacco products, and are required to ensure that certain information regarding the composition of the tobacco products is immediately available to the consumer, such as indicating on the packing of the product the amount of tar contained in the product.

3.4.3. Restrictions

If the risk involved in certain products or services is high enough, then it may be appropriate for governments to place restrictions on their availability, to ensure that they are only able to be used by appropriate people, or perhaps only after people intending to use these products and services have received special information about them. The regulation of pharmaceuticals is a good example of this sort of government intervention.

In Australia, pharmaceuticals are categorised into various different classes. Those assessed as being least risky are freely available and can be purchased over the counter through a wide range of outlets. Some pharmaceuticals that have been assessed to be somewhat more risky are still available over the counter, but only at pharmacies, where specialised advice is available. More risky pharmaceuticals are only available on prescription from a medical practitioner, and others require authorisation from a central authority in addition to the prescription. Thus depending upon their assessed level of risk, different pharmaceuticals are subject to different levels of regulation.

3.4.4. Banning

Some products and services are seen to be so risky that they are simply not available because governments have taken steps to ban them. Fireworks are a good example of this sort of product, considered to be so risky that most governments in Australia have prohibited their use by members of the public.

4. Facts and Values

There are many reasons why people call for government regulation or control over particular aspects of society or over particular products or services. Sometimes people call for government controls based on perceptions of the damage being caused to individuals or to society. Sometimes people are worried about wide-ranging effects of the use of particular products or processes, and sometimes people are worried about the message that may be sent or implied by the availability of certain products or practices.

A problem that often occurs in debates about whether governments ought to be involved in the regulation of particular aspects of life is that advocates of different positions end up talking past each other because they fail to recognise that their positions on particular issues have quite different bases. To take a particular example, consider the provision of facilities for the safe injection of heroin. Some people oppose these facilities because they are worried about the message that government involvement in such facilities might send to young people in society with regard to the use of illegal drugs. Such a person will not be convinced of the value of such facilities by evidence showing the benefits for members of the heroin-injecting community, yet it is exactly this sort of evidence that is usually given in support of such facilities.

In order to discuss such issues intelligently, it is necessary to attempt a classification of the types of positions that people hold with regard to particular products services and practices. Without some understanding of the different types of reasons that people have for suggesting government intervention, it is impossible to understand what would be considered to be reasonable evidence in support of a particular type of position, or against that position, since different types of positions regard different things as important. While there are many ways in which such positions could be classified, a good way to understand the differences between them is to divide them into those that see themselves as essentially fact based positions and those that are essentially value based positions.

4.1. Fact Based Positions

Fact based positions (sometimes referred to as evidence based positions) usually revolve around the processes of scientific assessment and evaluation of relevant evidence. Fact based positions focus on issues like the balance of risk versus benefit, adherence to scientific methodology and careful experimentation. For example, in assessing whether a particular pharmaceutical product ought to be allowed upon the market, advocates of fact based positions would tend to examine the effectiveness of the product (particularly in relation to existing treatments for the same problem), how safe the product is (particularly what the possible side-effects of the product are) how cost-effective the product is (again with particular emphasis of the relative cost of the product in comparison to existing treatments) and possible interactions with other pharmaceutical products. Fact based positions are certainly not value neutral, but the values that they tend to consider are measurable ones like cost and risk. As such, fact based positions tend to be favoured by scientists, engineers, and others accustomed to empirical research and clear objective standards.

For those who advocate fact based positions, arguments about whether particular products, processes or services ought to be subject to government control or regulation

will focus on fairly straight forward, and generally, easy to measure, issues. So if, for example, there was a dispute between two scientists about whether pharmaceutical product “A” ought to be allowed on the market, they would tend to discuss things like whether the benefits of product “A” were significant in light of its risks and whether the studies carried out on product “A” were conducted in accordance with the best scientific principles (with regard to factors like controllability and sample size for example).

4.2. Value Based Positions

Value based positions usually revolve around certain fixed moral standards. People who advocate value based positions focus on these external moral standards, and assess effects on individuals and on society in those terms. For those relying on value based positions, questions of risk versus benefit, cost effectiveness and so on are always secondary to the external values, and will only be relevant in situations where the external values have not been contravened. Thus for people who advocate values based positions, things like scientific assessment and evaluation of evidence may be important, but such things are always secondary to the external values.

There are many different types of value based positions, since there are many values that different people hold to be of special significance. Many who advocate value based positions do so because of religious convictions, but there are certainly many non-religious people who also subscribe to values based positions, such as animal rights or environmentalism. One difficulty with such positions is that they are inherently subjective; others may not share the same values, and even those who do share the same values may not agree about how those values ought to apply in particular situations.

Since there are many different positions based on different values, there will always be disagreement between positions whenever these values come into conflict. There will also be fundamental differences between advocates of value based positions and those who do not share the same values, such as advocates of fact based positions. A possible example of this conflict was in the recent Australian parliamentary debate over the abortion drug RU486¹⁰.

In 1996, Australian federal legislation created a special category of drugs, known as “restricted goods”; medicines intended to induce an abortion. Restricted goods could not be evaluated, registered, listed or imported into Australia without the written approval of the Federal Minister for Health. In 2005, debate began anew about whether such restrictions were appropriate, with those opposed to the restrictions suggesting that RU486 should be assessed by the Therapeutic Goods Administration (TGA) in the same way as any other medication. In commenting on the debate, the Health Minister Tony Abbott, argued that advice received from the Chief Medical Officer Professor John Horvath suggested that the safety risks of RU486 were significant, and thus it was appropriate to continue the current regulatory arrangements in relation to RU486¹¹.

¹⁰ The drug involved is actually known as mifepristone, and has only ever been informally designated RU486. However the name RU486 has entered into common usage in several countries, including Australia and New Zealand, even being included in Australian Legislation through the “Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005”.

¹¹ Hon. Tony Abbott MP, cited in M Metherell, “Ban on Abortion Pill to Stay” *Sydney Morning Herald*, 16 November, 2005.

The legislation that was presented to parliament, and was eventually passed by both houses after a conscience vote, was not legislation that specifically allowed RU486 to be marketed in Australia. Rather the legislation simply ensured that RU486 would have to pass through the same fact based process of assessment as any other medication. One of the explicit functions of the TGA is the management of risk associated with medicines, in that it is specifically charged with identifying, assessing and evaluating the risks posed by therapeutic goods, putting in place measures to deal with these risks, and with monitoring and reviewing risks over time. Given that the TGA is regarded by the government as being appropriately qualified to deal with the risks associated with all other medications in Australia, then it would seem that the TGA ought to also be qualified to deal with the risks posed by drugs such as RU486.

Given this fact, it would seem that those who suggested that RU486 ought to be treated differently from other medications could only be assessing the drug in terms of a value based position. A fact based position would be inconsistent if it treated a drug such as RU486 any differently from other drugs. A value based position, on the other hand, would also assess the drug on the basis of its intended use, to bring about an abortion, rather than simply on any risk involved in its use. If those values were opposed to abortion, then it would be quite consistent for a value based position to treat a drug intended to bring about an abortion differently from drugs intended for other purposes.

5. Government Involvement in Food Regulation

Given all of this background, questions regarding government involvement in food can now be addressed. The main questions that need to be answered in this area are;

- Should governments be involved in the regulation of food, and if so, what form should this involvement take?
- If governments should be involved in the regulation of food, then what role should subjective values play in these sorts of public policy decisions?
- If governments should be involved in the regulation of food, then what role should objective facts play in these sorts of public policy decisions?

5.1. The Case for Government Intervention in Food Regulation

Previous discussions should make it clear that a strong case can be made for government involvement in the regulation of food. There are two ways that such a case can be made; through the need for information to allow informed choice, and through the need for members of society, particularly vulnerable individuals, to be protected from risk that cannot be easily avoided.

5.1.1. Informed Choice and the Need for Information

As has already been discussed, people making decisions about whether or not to accept a particular form of risk require information if their choice is to be an informed one. Risk in the area of food is certainly no different, and for some consumers, such as those with severe food allergies, the risks of eating food may be extremely high. If people are going to be able to make informed choices about the food that they eat, they will require access to information. Some information, such as the price of the food, will obviously be available. However other information, even information that is absolutely vital to some consumers, may not be easily available in an unregulated food market.

In modern times, few people have direct contact with food producers. This means that information that may have been easily available in the past, such as information about where particular crops have been grown, is not longer accessible to the majority of the population. A huge number of processed and pre-prepared foods are also available, the ingredients of which are not immediately apparent. In addition, many foods now contain additives, such as flavour enhancers, colours, and preservatives. Such changes to the food market mean that as the need for information has increased, the availability of that information in an unregulated food market has decreased.

All of these factors combine to produce a strong case for government intervention in the food market, at least in any society that values informed choice. The form of intervention that would be warranted under an argument of this type would be an intervention to ensure the availability of information. Since in a diverse society different things are going to be valued by different people, the range of information that might be required could be quite large. For example, those who are allergic to particular types of food, such as peanuts, would require information about the ingredients in packaged and pre-prepared food. Those who have a medical condition that requires them to monitor the energy content of the foods they eat would require access to this information. Those who are concerned about the nutritional value of foods would need information about the vitamins and minerals contained in the foods they were eating. Those who are

vegetarian need to be able to ensure that the foods they are eating do not contain any animal products. Those concerned about their national economy may need information about the source of fresh foods, such as fruit and vegetables. Those concerned about the environment may wish to know whether the foods they are eating had been organically grown, and so on.

It should be noted that this sort of argument for government intervention does not actually ensure the safety of food, it merely ensures that information about food is available. So government intervention to ensure the availability of information might, for example, require that consumers be informed whether fresh food had been refrigerated or not, but it could not actually require the food to be refrigerated. In order to make a case for government intervention to actually ensure the safety of food, a different sort of argument would be required. However, such an argument is certainly available.

5.1.2. Basic Needs and Protection of the Vulnerable

Food, like air and water, is a basic human need. No human being can exist without food. Thus the food market is a market that all humans must participate in, and the risks inherent in the food market are risks that are essentially unavoidable. However, there are many people who are especially vulnerable to the risks in the food market. Some groups of people who are especially vulnerable are obvious, and include children, people suffering from mental illnesses and so on. However, other groups who are especially vulnerable to risks in food are not so obvious. For example, people with limited economic resources are less able to exercise free choice in the foods they buy, and are thus more vulnerable to risks in this area. Also, given the fact that so much information about food is supplied in written form, those who are illiterate, or who are not fluent in the dominant language of the country in which they live may also be more vulnerable to risks in the foods that they purchase and consume.

Given that the government is usually seen to have a special role in the protection of the vulnerable, a strong case can be made for government involvement to minimise risks faced by these vulnerable people. This is, as was previously argued, especially the case in areas where that risk cannot be easily avoided, in areas of basic human need such as food.

In fact, people are more vulnerable to risks in food than they are in most other areas of life. Foods may contain bacteria or diseases that are literally life-threatening, and these sorts of risks may only be detectable by expert scrutiny with specialised equipment. The average person on the street cannot easily tell if the food they are intending to purchase is free of such contaminants, and thus it is reasonable to argue that it is appropriate for governments to regulate various aspects of the food industry in order to provide a level of protection for all consumers.

Vulnerable people may also be open to risk in food in other forms. Apart from risks to life and health, they may also be open to the risk of exploitation, such as through false advertising claims. It is concerns of this kind that suggest that governments may also have a role in regulating food advertising, especially when that advertising is directed at vulnerable groups within society, such as children.

5.2. Role of Facts and Science

Risks in food are not always easy to assess, and some of the risks in food are beyond the assessment capacity of the average person (or even the way above average person). Few people, for example, are qualified to determine the possible health effects of a new food additive, or to assess whether it is safe to keep particular foods at room temperature, or to determine the nutritional or energy values of a new food product. Governments, however, have both the resources and access to the required expertise to ensure that risk assessments of food products, additives and storage methods are carried out.

In carrying out its role as a regulator of the food industry, the government needs to ascertain facts about different food products, since it is impossible to create any sort of public food policy without them. It is impossible to create worthwhile regulations about the storage of food, for example, if one does not have any idea about what is required in order to prevent particular types of food from spoiling. Similarly, it is not possible to create regulations about the permissible concentrations of additives in foods without knowing the possible or likely health effects of ingesting different quantities of these additives. Good risk assessment is not possible without a detailed understanding of what the risks involved actually are, and these risks can, in most cases, only be determined by detailed scientific study.

Knowledge of the facts is thus essential to the government's role in the regulation of food. While public policy can be created without an understanding and appreciation of the facts, **good** public policy cannot be.

5.3. Role of Values

Good public policy requires an understanding and appreciation of facts, but **all** public policy is intrinsically value based. All of the arguments in favour of government involvement, regulation or restriction of particular products, processes or services reflect the values of the society in which we live. Informed choice is valued much more highly than mere choice, protection of vulnerable people in society is valued at the expense of those who might seek to exploit them, the health of members of the community is valued at the expense of mere pursuit of profit by agents in the marketplace. In fact, even arguing that government regulation is unnecessary and that the invisible hand of the market is regulation enough, is to reveal the value that one places on the free market and in the profit motive.

6. Values in Food Regulation

Values play an extremely significant part in the government's role in food regulation, giving direction to the scientific processes and providing a basis for all public policy in the area. However, in liberal democracies like Australia and New Zealand, the values being expressed through the regulatory processes of government need to be ones that are compatible with the basic ideals of a liberal democracy. Thus those values must be ones compatible with respect for liberty and individual autonomy, and respect for diversity within the community.

There are certain aspects of the process of food regulation where values are more evident or where the influence of values is more likely to be felt. Thus it is these areas that will be focussed upon in this final discussion. In order to make the discussion clearer, two types of food product that have been the subject of considerable debate in recent times will be used as examples; genetically modified (GM) foods, and functional foods.

GM foods are produced from animal or plant sources whose genes have been modified in some way through recombinant DNA technology. The most common genetic modifications in vegetable crops are modifications to increase resistance to pesticides or insects, and modifications to increase nutritional value. An example of a GM crop is Golden Rice, a variety of rice genetically modified to massively increase its vitamin A content. Rice is naturally low in vitamin A, and in many regions where rice is a staple part of the diet, vitamin A deficiencies are common. Genetic researchers produced Golden Rice as a solution to this problem, intending that this strain of rice be distributed to such areas to replace traditional varieties, thus increasing the vitamin A intake of the local population.

Functional foods are foods intended to be consumed as part of a normal diet that are designed to provide physiological benefits above and beyond their simple nutritional value. An example of such a product (currently available in Australian supermarkets) is margarine which has been designed to reduce the absorption of cholesterol. Functional foods are usually designed to decrease risk factors for specific diseases and thus can be seen to blur the line between food and medicine, hence they are sometimes also known as nutraceuticals.

6.1. Assessment of Naturalistic Arguments

Opposition to new developments in food products and food production is often expressed by those outside the food regulation system, frequently on the grounds that these new developments are "unnatural" or amount to "playing God". Such arguments have been made against both GM food products and functional foods, as well as against food colourings, preservatives, artificial flavours and so on. Those presenting such arguments are clearly expressing the values that they hold, but what is often not recognised is that those within the food regulation system who are required to assess the worth of such arguments are also involved in value judgements. Thus if a decision is made to ignore such arguments, both the argument that certain food products should be banned because they are unnatural, and the decision to ignore this argument, are expressing values.

Consider the specific argument that foods produced from GM crops should be banned because such crops are unnatural and creating them is playing God. There are two ways in which such an argument can be interpreted. Such an argument can be examined as a purely secular judgment about the possible harms of such a product, in which case the argument can be judged on a careful analysis of those possible harms. Such an argument can also be seen to be a religious argument, about what God intends to occur on Earth, an argument which requires assessment in quite a different manner.

6.1.1. Unscientific Arguments

In its secular form, the argument that GM foods should be banned because they are unnatural is usually immediately dismissed as being unscientific. Those involved in risk assessments of things like GM products engage in lengthy experimentation to attempt to determine the possible harms of such a product, and are unimpressed by arguments that claim to know what the results will be before the experiments are carried out. In this respect it is certainly true that these arguments are unscientific.

However, the naturalistic arguments that are being made in opposition to things like GM foods are actually expressing something more than the claim that the harmfulness of such products can be assessed without experimentation. These sorts of arguments also seem to be expressing a lack of faith in the scientific processes as well, a doubt that those carrying out the experiments and interpreting the results will make a correct assessment of the possible harms of the products involved. In this respect the arguments are perhaps more anti-science than unscientific.

6.1.2. Religious Arguments

The religious aspect of the unnaturalness argument, that GM products should be banned because people should not be playing God, is usually dismissed as irrelevant to the processes of food regulation simply because of its religious basis. Freedom of religion usually seen to be an important value and one aspect of this freedom is the fact that governments must not invoke religion or religious arguments in order to justify general policies. Thus religious arguments that GM foods should be banned will not suffice as a reason for such a ban in the context of a liberal democracy.

6.1.3. Place of Diversity in Democracy

Despite the fact that naturalistic arguments against GM foods are unscientific or/and religious, to simply dismiss them as having no relevance to determining food regulation policy is problematic. The reason for this is that those putting forward such arguments are expressing deeply held values, and within the context of a liberal democracy such values are entitled to respect. If diversity and freedom of religion are important within a liberal democracy, then governments must take some steps to ensure that those who have deeply held values are able to express them, and those who have religious beliefs are able to follow them. This is especially important if a significant percentage of the population is in agreement with these values or religious views.

Some religions hold the view that certain foods, such as pork or shellfish, must not be eaten. There are many other people, such as vegetarians, who also have strong views about what sorts of food products they are willing to consume. Unless these people have

access to information about the ingredients contained in the food they eat, they are not able to live in accordance with those beliefs, and thus require specific information about food products in order to make informed choices about their food. In the same way, those who have objections to GM food, and choose to avoid it, require access to this information if they are going to be able to make informed choices about the food they eat, and if they are going to be able to live in accordance with their deeply held values. Thus while the naturalistic arguments are not a reason to ban GM food products, they still have value, for in demonstrating the deeply held beliefs of significant portions of the community they do present a case for the compulsory labelling of GM products.

6.2. Risk Assessment and Risk Management

Another place in the food regulation process where values come to be expressed is in the areas of risk assessment and risk management. These processes depend upon good science, but are also based upon value judgments. The decisions made during the risk management process especially are intrinsically ethical, since they carry with them notions of responsibility and accountability.

6.2.1. What Elements of Risk Will be Assessed?

The assessment of risk is often discussed as if it is a purely scientific process, but values are embedded in the process in several ways. To simply say that something contains an element of risk is to say that there is a potential for a bad effect to occur. But to suggest that something is a bad effect is to already make a value judgment, a judgment that not everyone may agree with.

It is clearly impossible to test for every possible element of risk that may be posed by a new food product. Decisions about what will be tested for, how strenuously they will be tested, and over what time frame are all value laden judgments. There have been many cases in the past where foods, food additives or food contaminants were found to cause health problems after long term exposure. That these possibilities were not discovered is, at least in some cases, because a decision was made that testing had already carried on for long enough. While risk assessment may appear to be a purely scientific process, and while those who are engaged in it may even believe it is a purely scientific process, value judgements are in fact an intimate part of risk assessment.

6.2.2. How Risky is too Risky?

Risk management, even more than risk assessment, is a value laden process. Managing risk involves making an assessment of whether or not a certain level of risk is acceptable and then, if the risk is deemed to be unacceptable, putting in place a suitable strategy to reduce the risk to a level that is seen to be acceptable. In terms of food regulation, what an acceptable level of risk actually means in practice is an acceptable number of cases of food borne illness, an acceptable number of cases of food caused health problems, and so on. In setting an acceptable level of risk, one is deciding how many people can be allowed to be harmed by a food product, which is a judgment entirely about values.

6.3. Risk, Benefit and Novel Products

An interesting aspect of risk assessment is that it is a process that only assesses one side of an equation. In most situations, people are not simply interested in risk, they are also interested in the possible benefits of undertaking risky activity. If there are no benefits, then a person engaged in any sort of rational decision-making process will not accept the risk. If the possible benefits are higher, then people are generally more willing to accept a higher level of risk.

Consider the situation with pharmaceutical products. When tests are undertaken to determine if a new pharmaceutical product will be allowed on the market, the process is not one of risk assessment, but rather of risk/benefit analysis. Most, if not all, pharmaceuticals have side-effects, which may be more or less serious depending upon the person involved. The more potential for benefit there is from a particular pharmaceutical, then the greater the risk that will be considered acceptable.

There is however, a significant difference between foods and pharmaceuticals. For some medical conditions there may be only one known treatment. If a person has the condition, especially if the condition is life threatening, then they will receive the one known treatment, even if the risks are high. Food is rather different in this respect. While everyone needs food, no one needs any particular food. There is not, for example, only one food that supplies vitamin C, so if there are risks for a person in eating a particular food that is a source of vitamin C, then that person can simply eat something else as a source of that particular vitamin. Thus unlike pharmaceuticals, the acceptable level of risk for foods will always be low, since if the expected benefit can be achieved in another way with much lower risk (for example by obtaining necessary vitamin intake by eating a food that one is not allergic too rather than a food that one is allergic too) then any rational person will choose the method with the lower risk.

However, with some novel food products, like GM foods and functional foods, the risk/benefit balance may be somewhat different. If, for example, a person knows that they are at significant risk of developing a particular medical condition, and if eating a certain functional food will reduce that risk, then this person may well decide that it is worth eating that functional food even if they expect they will suffer a mild allergic reaction after eating the food. There is some risk in eating the food, but the greater benefit that can be achieved by eating that food, and in this case by eating that **particular** food, may be thought to outweigh the risk. This sort of risk/benefit analysis is of course a value judgement, and is another way in which values may come to be incorporated into food regulation.

7.0 Conclusions

New Zealand and Australia are both liberal democracies, operating within the Westminster tradition, but home to highly ethnically diverse populations. In both countries respect for individual rights and tolerance of diversity are considered to be important values. While governments in liberal democracies are expected to uphold individual rights, they are also expected to make people's lives better - safer, healthier and more prosperous – by implementing public policies that help people to deal with risk and uncertainty in various aspects of their lives.

Governments are seen to have a special role to protect the vulnerable, especially from risks involved in areas of basic human need, and to ensure that all consumers have access to the information required in order for them to be able to make informed choices regarding the risks and uncertainty that they face. With this in mind, it seems clear that it is appropriate for governments to be involved in regulation of risk in several ways; assessing risks that may be beyond the abilities of the average member of the public to assess, ensuring that information is available regarding these risks, and by restricting or even banning certain especially risk-laden products or services. While it is often claimed that governments should only be concerned with facts and never with values in making decisions about these sorts of policies, in fact this is impossible since values are an intrinsic part of the policy making process.

It is quite clear that a strong case can be made for government involvement in the regulation of food. There are two ways that such a case can be made; through the need for information to allow informed choice, and through the need for members of society, particularly vulnerable individuals, to be protected from risk that cannot be easily avoided while obtaining their basic human need for food. In carrying out its role as a regulator of the food industry, the government needs to ascertain facts about different food products, since it is impossible to create any sort of good public food policy without them. However the policy that is advocated and implemented in food regulation also clearly reflects the values of the society in which we live. For example, values are expressed in the processes of risk assessment and risk management, processes which discuss what level of risk is acceptable. Other deeply held community values may also come to be expressed with regard to food and food regulation, and these values are most likely to become prevalent in areas of dispute and controversy, such as in discussions of the merits of products like GM foods or functional foods.

While value-based arguments in these areas may often be dismissed as unscientific, this is not in itself reason to ignore such arguments, for these arguments are expressing values that may be held by significant numbers of people within the community. In a liberal democracy, where diversity and tolerance are believed to be important, such strongly held values need to be respected, and those who hold such views must be allowed to express them appropriately. So while religious arguments, for example, are not sufficient basis for banning products such as GM food, these arguments can be used to make a strong case for other forms of regulation, such as compulsory labelling of GM products.