

*Food Law: European, Domestic and International Frameworks.* By Caoimhín MacMaoláin. [Oxford: Hart Publishing, 2015. xxxi+312pp. Paperback: £35.99]

*The Philosophy of Food.* Edited by David M. Kaplan. [Berkeley: University of California Press, 2012. 321pp. Paperback: £19.95]

Is food law a subject in the same way that, say, contract law is a subject, with a set of themes that interrelate in intriguing ways and lend themselves to theorizing? Or is it more like, say, road haulage law, unified mainly by the informational needs of a certain set of end users? Caoimhín MacMaoláin's book attempts to move food law out of the second category and into the first. His lucid and economical explanations of various legislative and regulatory frameworks are laced with lively historical narrative, emphasising the impact of successive food crises as well as the wider context of recent British and European politics. They are also peppered with interesting and subtle critical reflections, albeit of a restrained lawyer's kind. It is by no means a 'know your rights' handbook for chefs or farmers. It is a fascinating read for anyone with an interest in how we eat now, and why. And yet the attempt to give the book an intellectual *raison d'être* is not wholly successful. Still one wonders, at the end, what – apart from the fact that all are of concern to the 'food sector' (1 and *passim*) or the 'food industry' (3 and *passim*) – warrants the juxtaposition in one book of topics as diverse as the cleaning of restaurant kitchens, the use of the name 'feta' for cheese, the conditions in which chickens live, the use of the metric system for weighing vegetables, and the taxation of whisky.

The last example brings out one weakness of the book as a scholarly endeavour. Is whisky food? We are not assisted by MacMaoláin on the point because nowhere does he explain what food is. He occasionally tells us what the law has defined 'food' to be for certain purposes (e.g. 5, 6, 119, 135–6, 169), but without indicating whether he thinks that the legal definitions

capture anything about the nature of food. This matters because one need not think that food is by its nature good ('Doritos aren't food, they're junk!') to think that knowing what food is is closely bound up with knowing how to evaluate it. And of course knowing how to evaluate it matters in knowing how to regulate it. Any given approach to regulation, in return, betrays something about the way in which the regulated thing is being conceptualised. MacMaoláin's book reveals that the law's responses to food are all too often responses to food only *qua* marketable commodity. They are (more or less) generic competition, intellectual property, taxation, industrial hazard, and consumer protection responses. On the consumer protection side the law admittedly pays special attention to the fact that food is something we ingest. Hence toxicity norms loom large. And on the industrial hazard side the law admittedly concerns itself with the fact that, down on the farm, animals are being bred, kept, and killed for food purposes. So husbandry norms have their part to play. But toxicity norms and husbandry norms are still not food-specific. We also ingest medicines and tap water. Animals can also be kept as pets and as workers. So thus far 'food law' is not, it seems, specifically about food; food may be the occasion for it to exist, but the concern is not really with food *qua* food. It is with food *qua* marketable commodity that is ingested and might be (or be made with) an animal product.

So far unmentioned are (a) nutritional norms (b) culinary and (more generally) foodcraft norms, and (c) gustatory norms. It is answerability to norms of these three types that distinguishes food from other ingestants. 'Doritos aren't food, they're junk!' is a hyperbolic way of calling attention to this three-way answerability. Toned down it means: 'Doritos are food of a very low grade: dire in nutrition, foodcraft and gustation alike.'

Nutrition norms play a proud role in MacMaoláin's book that they do not play, to his consternation, in the law. He distinguishes between 'dangerous' and 'harmful' foods, the former having short-term or one-off negative effects on health,

the latter long-term effects from repeated consumption (4). He laments that the law, whether domestic or European, does not treat harmfulness (notably of ‘foods of poor nutritional quality’, 4, or of ‘nutritionally deficient food’, 117) on a par with dangerousness. Indeed he accuses the law of ‘facilitat[ing]’ the rise of harmful food with its hitherto lax approach to nutritional labelling (118). The very idea that nutritional labelling might be part of the solution does shed some light, however, on the law’s failure to treat harmfulness on a par with dangerousness. The law’s underlying thought is that the supplier of dangerous food is almost always better placed than the consumer to avoid the threat to the consumer’s health; almost always the consumer is being hoodwinked and dangerous food will not sell without the hoodwinkery. Not so with junk food. The consumer can in principle be equipped with full nutritional data and then may still opt to buy. When she does, the thinking goes, she is exclusively responsible for her own poor nutritional choices. These choices, even when totally predictable and indeed deliberately induced by the food industry, are taken to break the chain of causation between the food industry and the harm. So food producers and distributors are not the ones whose actions are ‘injurious to health’. Consumers do that to themselves.

This is the warped ethics of the marketplace. Nowhere else do we allow that A’s predictable bad decisions deliberately encouraged by B break the causal chain between B and the harm that results. And what this generous regulatory allowance for the food industry shows is that, when it comes to a conflict between the two, the idea of food as a marketable commodity has acquired a clear priority in public policy over the idea of food as food. That is why, as MacMaoláin ruefully remarks, there are ‘no minimum standards for nutrition’ (118) in food law.

Unfortunately MacMaoláin fails to extend his campaign for nutritional standards to foodcraft standards and gustatory standards. It is not that he lacks the occasion to do so. His chapter on protected food names is rife with missed opportunities for

critical comment on the EU's understanding of 'food quality' as something akin to the snob appeal of a high-end smartphone, protected on the model of an intellectual property right. What food-lover can keep a straight face at the suggestion, for example, that protecting high food quality is a matter of regulating the use of 'quality terms which add value [and] which can be communicated on the internal market' (227)? Even if you think (as Antonio Carluccio opined in *The Daily Telegraph*, 23 May 2003) that there is a positive correlation between featherbedding the 'big, big business' of Parma ham and maintaining a product that 'melt[s] in the mouth' with a 'lovely flavour', we need to think critically about why. Are Gucci loafers rendered better *qua* shoes, or merely more sought-after *qua* status symbols, by the law of passing off? I am not suggesting here, I hasten to add, that requirements of good taste and high craft should be imposed on the food industry (or the footwear industry, for that matter) by law. Unlike the enforcement of nutritional norms, enforcement of gustatory and foodcraft norms as such would violate the harm principle. However, as reflection on protected food names reveals, standards of taste and craft can be relevant to regulation even when there is no proposal to enforce them. They can be relevant to the grant of special rights and privileges.

Those in search of reflection on the nature of food and its distinctive norms might reasonably hope to find such matters treated more fully in a collection of essays entitled *The Philosophy of Food*. David Kaplan's collection of that name does go some way towards obliging. Like MacMaoláin's book, however, it contains too little on the very nature of food. In his introduction Kaplan notes that 'it is not even clear what [food] is' as if that would help us to understand why 'relatively few philosophers analyze food' (2). But this is, on the contrary, the very thing that should encourage philosophers to analyse food. Like law and art, food has a multidimensional nature in which various values are implicated – although not always realized – and that makes it ideal for detailed philosophical study. Kaplan promptly calls

attention to this multidimensionality by offering a sample list of different ‘conceptions’ of food (4), or perhaps they would be better described as different perspectives on food. It is a shame that he did not persuade any of his contributors to write a paper on the topic. The closest we get is Roger Scruton’s amusing meditation on the distinction between *essen* and *fressen*, food and fodder, which like so much Scruton quickly descends into a generalized rant against the supposedly barbarian times in which we live (mobile phones, baseball caps, you name it).

This essay could have been so much better. Scruton is onto something that other contributors to the volume miss. Today’s food industry has many troubling aspects. There are issues about the wholesale abuse of animals, the exploitation of growers, the despoiling of the natural environment, and the manipulation of consumers. Several contributors to *The Philosophy of Food* dwell on these issues. But analogous if not identical evils afflict the computer industry, the oil industry, the clothing industry, and so on. That’s capitalism for you. Scruton notices that before we get to the ethics of food industrialisation and food commodification we should ask: is there an ethics of food *as such*? A proper way of relating to food, of respecting it, of engaging with it, of integrating it into life? I sympathise with his initial suggestion that, if there is such an ethics, sharing comes into it in a special way. Food is not a solitary pleasure. But I find it hard to assess Scruton’s version of this idea properly when I have to view it through his fog of loosely connected nostalgic grumbles.

In other chapters, notably those by Lisa Heldke and Michiel Korthals, the theme of respect for food takes a different turn. Both Heldke and Korthals are interested, in different ways, in what might be called ‘food authenticity’. Korthals bewails the way in which certain ‘food styles’ have come to dominate others, in what he regards as a kind of ‘geopolitics with food’ (114). He makes an effort not to romanticize marginalized food cultures or their champions, but his effort does not always pay off. ‘Slow food’, for example, ‘emphasizes local production and local

tradition' in opposition to the contemporary neglect of 'quality, enjoyment, health, the environment, and the landscape' (115). We might wonder: is *foie gras* in or out? How about *súr hvalrengi* (pickled whale blubber, to you and me)? Lots of local production and local tradition there, but maybe not so good on the health and environment fronts. And which matters to 'quality'?

Heldke offers a sympathetic critique of this familiar tendency to combine different and sometimes competing desiderata of good food into 'packs' (47) or 'clusters' (43), such that vegetarianism goes with organic farming goes with reduced carbon emissions goes with artisan production goes with more robust flavours goes with healthier eating goes with traditional diets etc. 'Arguments that begin from one,' she rightly points out, 'can slip, without notice, to another' (43). And yet even she responds to the daft clustering of all food evaluations into a 'cosmopolitan/local dichotomy' (36) by trying to insert another prepackaged option between them, a third way in food politics, in which justice goes with sustainability goes with cultural heritage goes with connection to the soil etc. (46).

The culinary and gustatory aspects of food do have some systematic cross-connections; but the connections of these to the nutritional aspects are slight, and as for the connection of any of this with the wider ethics and economics of food – well, sadly, great food, like great art, can be a product of great evil. Carolyn Korsmeyer's essay attempts to cast doubt on this claim. 'If one holds that the means of producing a food are wrong,' she says 'then the food's taste will register that wrong' (97). She is confronted with the counterexample of 'guilty pleasures', such as an ethical vegetarian's occasional secret bacon sandwich. She does a valiant job of presenting consumption of such things as a kind of gustatory self-deception. Yet she gives no reason to think that the bacon sandwich isn't totally delicious, and she even allows for its total deliciousness when she asks: 'can we ... look forward to a world where we can have all those delicious flavours free from the moral taint ... ?' (100). Here, and at many other

points in the collection, I was startled at the earnest longing to live a life free from value-conflict. It made me see that ‘food country’ (as Korthals calls it, 103) is these days more a land of protestant than of catholic sensibilities, *tant pis*.

But the Kaplan volume is not all roundhead moralizing. Alongside the inevitable essays defending vegetarianism and extolling sustainability in agriculture and aquaculture we find an excellent critique of the ‘nutritionism paradigm’ by Gyorgy Scrinis, in which foodcraft and gustatory norms are admittedly a little too easily blended into a rival ‘food quality paradigm’ (287). MacMaoláin could, I think, have benefited from Scrinis’s patient exposé of ‘the ideology of nutritionism’ with its depressing ‘reductionism with respect to food, nutrients, and the body’ (270). We also find, in Emily Brady’s contribution, a bravura defence of taste and smell as ‘objects of aesthetic judgment’ (69), not to be denigrated as poor relations to high art or natural beauty. She resists the temptation to go further, to develop arguments ‘concerning the artistic status of food’ (69). Just as well, I think. Although there is clearly room for art in the kitchen, good cooking is mainly a craft. So Brady’s contribution, as well as another in the collection by Kevin Sweeney, can be read as standing up indirectly for the aesthetic contribution of craftsmanship, and not just for the aesthetic recognition of the gustatory. Standing up for these two things in combination I take to be the best way of standing up for the importance of food as food. Doing so is a valuable corrective to the food-as-fuel and food-as-marketable-commodity views that, to judge by these two fascinating books, tend to predominate even among the sternest critics of today’s food industry and food culture.