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# England's Fresh Approach to Food Waste: Problem Frames in the *Resources and Waste Strategy*

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**Abstract:** Coexisting and eye-watering levels of food abundance, waste, overconsumption and hunger, are symptomatic of a broken food system punctuated by vested interests in systematic overproduction. This article evaluates England's 'new' approach to food waste in light of concerns that policy-makers have framed food waste as a consumer behaviour problem, rather than a structural challenge. The *Resources and Waste Strategy's* acknowledgement of normalised overproduction is thus remarkable, but unexpected. However, frame critical analysis reveals how an apparent departure from preoccupations with economic growth, combined with promises of government action, obscure an ongoing reluctance to intervene against powerful interests and the causes (not symptoms) of food waste. Legislative proposals, rather than *reducing* surplus, shift the burden of *redistributing* food away from the state and retailers, on to charities and farmers. With England, perhaps wrongly, seen as a world-leader on food waste, this has implications for other jurisdictions, as well as forthcoming consultations.

**Keywords:**

## INTRODUCTION

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Waste has been relatively neglected by legal academics.<sup>1</sup> This may be due to its complexity,<sup>2</sup> or perceptions of banality ('eyes tend to glaze over at the mention of waste law').<sup>3</sup> But this belies waste's scholarly and practical interest and importance. Waste is a fascinating topic of enormous significance. Inescapably bound up with issues of production and consumption, waste touches on almost every aspect of our daily lives, reaching into the core of contemporary business models and our global economic system's reliance on growth. Indeed, waste is always about more than *just waste*, exemplified by tensions between waste management (what we do with stuff once it becomes waste) and resource management (how do we manage stuff so as to prevent it becoming waste in the first place).<sup>4</sup> Waste also raises fundamental questions at the heart of environmental law: matters of value and distribution; the extent of individual and business responsibility; and the role of the state in addressing global problems.

Food waste is no exception: engaging, significant and, until recently, ignored by legal academics.<sup>5</sup> Few resources are as important as food. Its production, distribution and value are embedded within complex agri-food supply chains reaching beyond territorial boundaries. In addition to a waste of resources (land, soil, water, energy), food waste is also a climate problem. Were the 3.3 billion tonnes of global annual greenhouse gas emissions from food waste released by a single country, it would be the third largest emitter after China and the United States.<sup>6</sup> The tendency to focus on waste rather than resource management has also been problematic in the context of food, central in failures to capture the particularities of managing a precious and often perishable resource within supply chains punctuated by influential vested interests in maintaining systemic levels of overproduction.<sup>7</sup> With one-third of all food grown globally not eaten,<sup>8</sup> and approximately 821 million people undernourished worldwide,<sup>9</sup> food waste is not just a generic waste problem, but a specific resource challenge, subsumed within the complexities and power dynamics of the global food supply chain.

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<sup>1</sup> Although not entirely without scholarly attention, see I Cheyne 'The Definition of Waste in EC Law' (2002) 14 *Journal of Environmental Law* 61; R Lee and E. Stokes 'Rehabilitating the Definition of Waste: Is It Fully Recovered?' (2008) 8 *Yearbook of European Environmental Law* 162; E Scotford 'The New Waste Directive - Trying to Do It All...an Early Assessment' (2009) 11 *Environmental Law Review* 75.

<sup>2</sup> S Tromans 'EC Waste Law—A Complete Mess?' (2001) 13 *Journal of Environmental Law* 133.

<sup>3</sup> M Lee *EU Environmental Law: Challenges, Change and Decision-Making* (Oxford: Hart Publishing, 1st edn, 2005) 213.

<sup>4</sup> E Scotford 'Trash or Treasure: Policy Tensions in EC Waste Regulation' (2007) 19 *Journal of Environmental Law* 367.

<sup>5</sup> C Bradshaw 'Waste Law and the Value of Food' (2018) 30 *Journal of Environmental Law* 311; T Ferrando and J Mansuy, 'The European Action against Food Loss and Waste: Co-Regulation and Collisions on the Way to the Sustainable Development Goals' (2018) 37 *Yearbook of European Law* 424; M Blakeney *Food Loss and Food Waste: Causes and Solutions* (Northampton, MA: Edward Elgar, 2019).

<sup>6</sup> HM Government *Our Waste, Our Resources: A Strategy for England* (London: Crown Copyright, 2018) p 99.

<sup>7</sup> Bradshaw, above n 5; Z Gille 'From Risk to Waste: Global Food Waste Regimes' in D Evans, H Campbell and A Murcott (eds) *Waste Matters - New Perspectives on Food and Society* (Oxford: Wiley, 2013).

<sup>8</sup> FAO *Food Wastage Footprint: Impacts on Natural Resources (Summary Report)* (FAO, 2013); J Gustavsson and others 'Global Food Losses and Food Waste: Extent, Causes and Prevention' (Food and Agriculture Organization of the United Nations, 2011).

<sup>9</sup> FAO, IFAD, UNICEF, WFP and WHO (ed) *The State of Food Security and Nutrition in the World 2018: Building Climate Resilience for Food Security and Nutrition* (FAO, 2018).

With the UK regarded as an international leader on tackling food waste,<sup>10</sup> England's fresh approach to food waste warrants particular scrutiny. *Our Waste, Our Resources: A Strategy for England* ('the Strategy'), published in December 2018, confirms food waste as an ongoing government priority but remarks that a 'new approach is needed'.<sup>11</sup> It sets an aspirational target of eliminating food waste to landfill by 2030, and commits to the UN Sustainable Development Goal of halving per capita retail and consumer food waste, also by 2030.<sup>12</sup> The Strategy in some respects embodies an unexpected policy shift, at least when compared with the prior policy position, the 2013 Waste Prevention Programme for England ('the Programme').<sup>13</sup> However, much of the relevant detail to evaluating the contours of this shift will reside in forthcoming consultative and legislative detail. This article therefore offers an early assessment by exploring how the Strategy 'frames' the problem of food waste, particularly in ways which are different compared to frames adopted under the Programme.

Problem frames matter. They allocate causal and reformatory responsibility, challenge or maintain existing power structures, and push certain values and actors forward and others into shadow. Moreover, problem frames in high-level policy have particular significance, not least because of policy's centrality in environmental law. But evaluating constructions of the complex, socio-political world is a difficult, profoundly subjective, exercise.<sup>14</sup> In view of this, and in response to calls for methodological clarity in maturing environmental legal scholarship,<sup>15</sup> this article explicates the waste policy frames by identifying assumptions, hidden premises and normative conclusions, and explores how elaborated or restricted they are. In particular, we ask to what extent these frames are capable of accommodating accounts in the literature that food waste often arises from embedded, power-laden and structural factors across the supply chain which drive overproduction and overconsumption. While the Programme was restrictive, the Strategy is more elaborated, in three ways.

First, where the Programme subsumed food waste indiscriminately within generic approaches to waste, the Strategy constructs food waste as a specific challenge. Second, while the Programme constructed waste as an economic opportunity, so that waste prevention efforts can (must?) contribute to economic growth, the Strategy identifies growth as part of the problem. Gone is the focus on the 'business case' for waste prevention which, under the Programme, restricted contemplating what the Strategy explicitly acknowledges: the existence of excess quantities of food, and its structural causes. Third, whereas the Programme hollowed out food waste prevention law and governance, and government 'stepped back' from food waste, under the Strategy, government appears to 'step back in', proposing a range of legislative measures, and seeking powers under the Agriculture Bill to

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<sup>10</sup> J Bloom *American Wasteland: How America Throws Away Nearly Half of Its Food* (Cambridge, MA: Da Capo Lifelong Books, 2011) ch 11, 'Great, Britain! A Kingdom United in Hating Waste'.

<sup>11</sup> *The Strategy*, above n 6, p 99.

<sup>12</sup> *Ibid.*, pp 10–11, 18 and 99.

<sup>13</sup> HM Government *Prevention Is Better than Cure: The Role of Waste Prevention in Moving to a More Resource Efficient Economy* (London: Crown Copyright 2013).

<sup>14</sup> OW Pedersen 'Modest Pragmatic Lessons for a Diverse and Incoherent Environmental Law' (2013) 33 *Oxford Journal of Legal Studies* 103.

<sup>15</sup> E Fisher and others 'Maturity and Methodology: Starting a Debate about Environmental Law Scholarship' (2009) 21 *Journal of Environmental Law* 213.

address food waste caused by unfair trading practices (UTPs). This contrasts with previous proclamations that legislation to tackle food waste would be like ‘using a sledgehammer to crack a nut’.<sup>16</sup> In many ways, the Strategy ‘talks the talk’ of a more elaborated frame. It remains to be seen whether what follows will ‘walk the walk’. The Strategy’s prescriptions do not always match its diagnosis of the problem: rather than stepping in to reduce overproduction, the burden of redistributing surplus food is shifted away from the state and retailers onto charities and farmers. Overproduction remains the ‘elephant in the room’, with responsibility for food waste not meaningfully distributed across the supply chain.

The article begins by outlining the significance of frames in government policy and how we might evaluate them, before briefly situating high-level waste policy within the food waste scholarship. It then explores three overarching ways in which the Strategy is less restrictive than the Programme: first, by acknowledging food waste as a specific rather than generic waste problem; second, by reframing economic growth as part of the problem; and third, by assuming a role for the state in the previously hollowed out law and regulation of food waste prevention.

## PROBLEM FRAMES MATTER

A rich (and large) literature highlights how problems do not exist inherently ‘out there’ as social facts awaiting discovery, readily packaged for policy makers to address.<sup>17</sup> Undesirable situations are instead actively converted—‘framed’—into understandable problems. The literature draws a distinction between ‘framing’ and ‘frames’. Framing is as an active and iterative process, where actors engage in the selection, interpretation, production and maintenance of meaning.<sup>18</sup> A frame is the substantive outcome of a framing process, providing a somewhat static, definitional interpretation of a particular situation allowing actors to make sense of complex realities.<sup>19</sup> A frame is a categorising or taxonomising structure, a central organising idea, narrative, or interpretive schema which allows actors to

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<sup>16</sup> House of Commons Environment, Food and Rural Affairs Committee *Oral Evidence: Food Waste* HC 429 (2017), Q 528, evidence of Dr Thérèse Coffey MP; J Parsons ‘Coffey Rules out Food Waste Regulation “Sledgehammer”’ [2017] *ENDS Report*.

<sup>17</sup> See eg DA Snow and RD Benford ‘Master Frames and Cycles of Protest’ in AD Morris and C McClurg Mueller (eds) *Frontiers in Social Movement Theory* (London: Yale University Press, 1992); M Rein and D Schön ‘Reframing Policy Discourse’ in F Fischer and J Forester (eds) *The Argumentative Turn in Policy Analysis and Planning* (Durham, NC: Duke University Press, 1993) p 146; CE Coburn ‘Framing the Problem of Reading Instruction: Using Frame Analysis to Uncover the Microprocesses of Policy Implementation’ (2006) 43 *American Educational Research Journal* 343 p 343; F Daviter ‘Policy Framing in the European Union’ (2007) 14 *Journal of European Public Policy* 654; M van Hulst and D Yanow ‘From Policy “Frames” to “Framing”: Theorizing a More Dynamic, Political Approach’ (2014) 46 *The American Review of Public Administration* 92; C Hilson ‘Framing Fracking: Which Frames Are Heard in English Planning and Environmental Policy and Practice?’ (2015) 27 *Journal of Environmental Law* 177.

<sup>18</sup> DA Stone ‘Causal Stories and the Formation of Policy Agendas’ (1989) 104 *Political Science Quarterly* 281; Snow and Benford, above n 17; Rein and Schön, ‘Reframing Policy Discourse’, above n 17.

<sup>19</sup> Rein and Schön ‘Reframing Policy Discourse,’ above n 17; RA Payne ‘Persuasion, Frames and Norm Construction’ (2001) 7 *European Journal of International Relations* 37; van Hulst and Yanow, above n 17; Coburn, above n 17; Snow and Benford, above n 17.

make sense of an 'amorphous, ill-defined problematic situation'.<sup>20</sup> The framing process is an important locus of study in itself, and there are limitations to what might be revealed through analysis of resulting frames alone. As will be seen, however, frames adopted in high-level policy documents matter: they attribute causal and reformatory responsibility, and in doing so, may exclude or marginalise important accounts of phenomena, as well as possible interventions, while protecting (or challenging) existing structural orders. This framing literature, briefly outlined below, is used later in the article to unpack the Strategy's new approach to food waste.

At the heart of frames are causal narratives: 'a package of ideas that includes, at least implicitly, an account of the causes and consequences of undesirable circumstances and a theory about how to improve them.'<sup>21</sup> Snow and Benford refer to this as 'diagnostic' and 'prognostic' attribution.<sup>22</sup> Diagnostic attribution involves identifying the causes of a problem. This informs and shapes prognostic attribution, which outlines the nature of possible 'prescriptions', or the range of viable solutions and interventions. Despite diagnostic attribution having 'the most profound effect on where one ends up', there is a tendency to decide on solutions prematurely, instead of allowing these to flow from careful problem definition;<sup>23</sup> what the literature calls 'solution-mindedness'.<sup>24</sup> Through diagnostic and prognostic attribution, frames can highlight some aspects of the problem and throw others into shadow, and legitimate some solutions and actors, while neglecting, devaluing or excluding others.<sup>25</sup> As Rein and Schön note, 'whatever is said of a thing, denies something else of it',<sup>26</sup> identifying things as 'this', but not as 'that'.<sup>27</sup> Furthermore, some frames are 'consistently shut out', particularly structural or other complex accounts of problems which identify economic or political systems as the causes of problems.<sup>28</sup> As will be seen, structural causes of overproduction and food waste, while in the Strategy's diagnostic frame, are somewhat excluded from its prognostic frame.

Frames can thus locate responsibility and burdens differently. They might protect an existing structural order, or challenge that status quo by redistributing power or reshaping authority relations.<sup>29</sup> Given frames allocate causal and reformatory responsibility, counter-frames can and do arise.<sup>30</sup> Problem framing is thus often described as a dispute, battle or

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<sup>20</sup> Rein and Schön 'Reframing Policy Discourse', above n 17, pp 146–147; Snow and Benford, above n 17, p 137; JA Weiss 'The Powers of Problem Definition: The Case of Government Paperwork' (1989) 22 *Policy Sciences* 97 p 118; van Hulst and Yanow, above n 17; RM Entman 'Framing: Toward Clarification of a Fractured Paradigm' (1993) 43 *Journal of Communication* 51 p 52; Daviter, above n 17; Payne, above n 19.

<sup>21</sup> Weiss, above n 20, 97; Stone, above n 18.

<sup>22</sup> Snow and Benford, above n 17; RD Benford and DA Snow 'Framing Processes and Social Movements: An Overview and Assessment' (2000) 26 *Annual Review of Sociology* 611.

<sup>23</sup> LV Bardwell 'Problem-Framing: A Perspective on Environmental Problem-Solving' (1991) 15 *Environmental Management* 603 p 605.

<sup>24</sup> *Ibid*, p 608.

<sup>25</sup> Coburn, above n 17, p 347; Weiss, above n 20; Stone, above n 18.

<sup>26</sup> M Rein and DA Schön 'Problem Setting in Policy Research' in CH Weiss (ed) *Using Social Research in Public Policy Making* (Lexington MA: Lexington Books, 1977) p 239.

<sup>27</sup> van Hulst and Yanow, above n 17, p 99.

<sup>28</sup> Stone, above n 18, pp 288–292.

<sup>29</sup> Stone, above n 18; Weiss, above n 20; Coburn, above n 17.

<sup>30</sup> Coburn, above n 17, p 347.

war between competing frames.<sup>31</sup> While a policy frame may be settled for many years, consensus can be challenged and undone: policy frames are ‘currents in the stream of political discourse’.<sup>32</sup> As will be seen, even the frame itself is a weapon of advocacy or rhetoric, where actors deliberately portray problems ‘in ways calculated to gain support for their side ... while making it seem as though they are simply describing facts’.<sup>33</sup> Deborah Stone provides a vivid account:

Even when there is a strong statistical and logical link between a substance and a problem - such as between alcohol and car accidents, handguns and homicides, tobacco and cancer deaths, or cocaine and overdose deaths - there is still a range of places to locate control and impose sanctions ... Finding the true or ultimate cause of harms in these policy areas is not what is at issue. Rather, the fight is about locating moral responsibility and real economic costs on a chain of possible causes.<sup>34</sup>

Frames are thus more than expressions of empirical reality, and locating moral and economic responsibility is often more about the ‘political strength of different groups’ than it is about, say, causal logic or statistical proof.<sup>35</sup> At the very least, ‘negotiating among and between frames is likely to be shaped by structures of power and authority’,<sup>36</sup> so that framing is ‘subject to strong competitive forces’.<sup>37</sup> It is thus important to keep in mind when analysing policy that dominant frames may reflect the outcome of power dynamics, as opposed to widely accepted accounts of a problem.

In constructing the ‘complex and multidimensional socio-political world’ into identifiable problems,<sup>38</sup> frames are often informed by pre-existing values and ideologies.<sup>39</sup> There is thus some overlap with sense-making, where actors use pre-existing cognitive frameworks to understand new problems.<sup>40</sup> As Payne notes, ‘an actor is more likely to accept new claims if they are shown to be similar to already accepted ideas’.<sup>41</sup> A ‘resonant’ frame with ‘mobilising potency’ is often necessary for it to ‘take hold’.<sup>42</sup> Frames must not only ‘accommodate’ political realities, but ‘create’ those realities, by motivating and coordinating action.<sup>43</sup> Frames may therefore use conceptual hooks, draw on a repertoire of cultural resources, and model prior thought, so as to render a problem ‘sensible in terms of pre-

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<sup>31</sup> Stone, above n 18, p 283; Hilson, above n 17; Snow and Benford, above n 17.

<sup>32</sup> Weiss, above n 20.

<sup>33</sup> Stone, above n 18, p 282. See also E Stokes ‘Regulatory Domain and Regulatory Dexterity: Critiquing the UK Governance of “Fracking”’ (2016) 79 *The Modern Law Review* 961.

<sup>34</sup> Stone, above n 18, p 297.

<sup>35</sup> *Ibid.*

<sup>36</sup> Coburn, above n 17, p 347.

<sup>37</sup> FR Baumgartner and C Mahoney ‘The Two Faces of Framing: Individual-Level Framing and Collective Issue Definition in the European Union’ (2008) 9 *European Union Politics* 435 p 435.

<sup>38</sup> van Hulst and Yanow, above n 17; Coburn, above n 17, pp 343–344.

<sup>39</sup> Weiss, above n 20.

<sup>40</sup> Coburn, above n 17; van Hulst and Yanow, above n 17.

<sup>41</sup> Payne, above n 19.

<sup>42</sup> Benford and Snow, above n 22.

<sup>43</sup> Weiss, above n 20; Coburn, above n 17.

existing thinking'.<sup>44</sup> Frames can thus be rhetorical and/or action-based.<sup>45</sup> Rhetorical frames feature a persuasive narrative to 'win the allegiance of large groups of people', whereas action frames may inform policy programmes and 'determine the content of laws, regulations and procedures'.<sup>46</sup> So not only are frames potentially expressions of power, but they are subject to strategic forces, mediated by pre-existing ideologies and shaped by the need for a frame to take hold with constituents. As will be seen, the Strategy at first sight appears more action-based than rhetorical, but its promised sense of 'action' may obscure an ongoing reluctance to step in against the interests of powerful actors.

What is a 'good' problem definition, or the 'best' policy frame, and how do we know? With conflicting frames, we are faced not with disagreements that can be settled by appeal to established facts, but competing (even ideologically opposed) views of the world.<sup>47</sup> Frames can create multiple social realities, even when based upon the same evidence.<sup>48</sup> This will be familiar to environmental lawyers, given environmental problems are 'complex, plagued with uncertainty, and extremely political'.<sup>49</sup> Liz Fisher views this through the lens of environmental problems as 'hot situations', where disputes are not *ad hoc*, but foundational, arising from potentially mutually incompatible understandings of the world informed by differing ideologies and values which, are themselves, not easily reconcilable.<sup>50</sup> In hot situations, where multiple frames apply, any frame is controversial, and what is 'best' is not 'an objective criterion', but shaped by a mixture of normative concerns and politics.<sup>51</sup>

For scholars, this requires discerning a terrain between extreme positivism, where competing frames are 'resolvable by reference to facts and logic', and extreme relativism, where all frames are equally 'acceptable or compelling'.<sup>52</sup> This terrain might lie in frame critical analysis and questioning.<sup>53</sup> This involves *explication* of conflicting frames, identifying taken-for-granted assumptions, hidden premises and normative conclusions.<sup>54</sup> Frame critical analysis asks whether frames imply or permit systematic analysis of alternatives, and which political values are moved forwards and backwards.<sup>55</sup> Is the frame 'restricted, rigid and

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<sup>44</sup> Coburn, above n 17; van Hulst and Yanow, above n 17; Benford and Snow, above n 22; DA Snow and others 'Frame Alignment Processes, Micromobilization, and Movement Participation' (1986) 51 *American Sociological Review* 464.

<sup>45</sup> Snow and Benford, above n 17, pp 138–139.

<sup>46</sup> van Hulst and Yanow, above n 17; DA Schön and M Rein *Frame Reflection* (New York: Basic Books, 1994) p 32.

<sup>47</sup> Rein and Schön 'Reframing Policy Discourse', above n 17. See also Hilson, above n 17.

<sup>48</sup> Rein and Schön 'Reframing Policy Discourse', above n 17, pp 147–148.

<sup>49</sup> Bardwell, above n 23, p 603. See also JS Dryzek *The Politics of the Earth: Environmental Discourses* (Oxford: Oxford University Press, 2005); M Schwarz and M Thompson *Divided We Stand: Redefining Politics, Technology and Social Choice* (Philadelphia, PA: University of Pennsylvania Press, 1990) pp 4–6; E Fisher, B Lange and E Scotford *Environmental Law: Text, Cases & Materials* (Oxford: Oxford University Press, 1st edn, 2013) pp 46–53.

<sup>50</sup> E Fisher 'Environmental Law as "Hot" Law' (2013) 25 *Journal of Environmental Law* 347; Fisher, Lange and Scotford, above n 49, pp 52–53.

<sup>51</sup> Fisher, above n 50, pp 350–352.

<sup>52</sup> Rein and Schön 'Reframing Policy Discourse', above n 17, pp 148–150.

<sup>53</sup> See also Pedersen, above n 14, where this middle ground lies in 'pragmatism'.

<sup>54</sup> Rein and Schön 'Reframing Policy Discourse', above n 17, p 150. See also Weiss, above n 20; Daviter, above n 17.

<sup>55</sup> Rein and Schön 'Reframing Policy Discourse', above n 17; Weiss, above n 20. See also J Salzman and M Doyle 'Turning the World Upside Down: How Frames of Reference Shape Environmental Law' 44



particularistic,' organised in a narrow band of ideas and providing a constricted range of definitions?<sup>56</sup> Or is the frame more 'elaborated, flexible and elastic', organised in terms of a wide range of ideas, and inclusive in its problem-solving approach?<sup>57</sup> Fisher similarly highlights scholarship's role in 'rigorous description' and 'measured identification' of frames, exploring whether mainstream accounts are too narrow, or practices are unrecognised.<sup>58</sup>

Indeed, engaging in rigorous frame explication and measured, frame-critical analysis, is precisely the work required of mature environmental law scholarship.<sup>59</sup> And as discussed later in the article, frame-criticality helps unpack England's approach to food waste.

## **POLICY FRAMES AND DISTRIBUTED RESPONSIBILITY FOR FOOD WASTE**

This section briefly explains the significance of policy frames, particularly for lawyers, before situating them within food waste scholarship. Frames are generated in multiple, not necessarily governmental, fora, and at multiple levels.<sup>60</sup> Similarly, government frames can be found in numerous departments, policy contexts and outputs, which may not always cohere into a single narrative.<sup>61</sup> Policy thus sits within a broader political and institutional context.<sup>62</sup> Nonetheless, environmental policy, while not easy to define, is a worthy site of inquiry for lawyers.<sup>63</sup> It is pervasive in environmental law, defying attempts to disentangle law from policy.<sup>64</sup> High-level policy particularly acts as an action-based frame, guiding what is expected by numerous actors. When proposing legislative intervention, policy is also key to defining the 'mischief' of legislation. Policy frames thus shape the contours of legislative debate, but also the parameters of legislative opportunity: a governmental policy frame is not only central to defining legislative success or failure, but part of the story as to whether legislation is even on the table, and why (or why not).

Waste policy is no exception. The 2013 Programme has quasi-legal status beyond more *ad hoc* developments, given Waste Prevention Programmes are produced periodically

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Environmental Law 1; M Rein and D Schön 'Frame-Critical Policy Analysis and Frame-Reflective Policy Practice' (1996) 9 *Knowledge and Policy* 85.

<sup>56</sup> Snow and Benford, above n 17.

<sup>57</sup> *Ibid.*

<sup>58</sup> Fisher, above n 50, pp 354–356.

<sup>59</sup> On this generally, see eg OW Pedersen (ed) *Perspectives on Environmental Law Scholarship: Essays on Purpose, Shape and Direction* (Cambridge: Cambridge University Press, 2018).

<sup>60</sup> See eg C Hilson 'Framing the Local and the Global in the Anti-Nuclear Movement: Law and the Politics of Place' (2009) 36 *Journal of Law and Society* 94; Benford and Snow, above n 22.

<sup>61</sup> See eg E Scotford and J Robinson 'UK Environmental Legislation and Its Administration in 2013—Achievements, Challenges and Prospects' (2013) 25 *Journal of Environmental Law* 383, on the prolific and fragmented landscape of environmental policy documents.

<sup>62</sup> In the context of contemporary waste policy, see eg HM Government *The Clean Growth Strategy: Leading the Way to a Low Carbon Future* (2017); HM Government *Industrial Strategy: Building a Britain Fit for the Future* (2017); HM Government *A Green Future: Our 25 Year Plan to Improve the Environment* (2018); Defra *Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit* (2018).

<sup>63</sup> Scotford and Robinson, above n 61, p 397.

<sup>64</sup> Fisher, Lange and Scotford, above n 49, ch 11.

pursuant to EU law.<sup>65</sup> The 2018 Strategy is not the new Waste Prevention Programme for England, and so is not quite a like-for-like comparison with the 2013 Programme. However, the Strategy is the most recent statement on waste,<sup>66</sup> and it will shape the Programme's forthcoming revision.<sup>67</sup> More broadly, waste policy is fundamental to implementing EU obligations on waste, and is thus partially constrained by law. While neither the Programme nor the Strategy legally bind successor governments,<sup>68</sup> high-level policy positions are more than frozen 'frames of the moment'.<sup>69</sup> As will be seen, they cast a shadow on future framing, providing some lock-in, even if policy changes quickly.

Frame critical analysis of waste policy is particularly pertinent given the scholarship's concern that food waste has been narrowly framed as a 'problem and possibility' of consumer behaviour.<sup>70</sup> Such accounts focus predominately on individual notions of responsibility for food thrown away by households.<sup>71</sup> A rich body of literature provides sociological and structure-sensitive counter-frames to such narratives, highlighting how, even when consumers do throw away food, it does not follow that they are singularly responsible for it.<sup>72</sup> Instead, broader structures drive individual food wasting practices: barriers to local and daily shopping; imperatives around healthy eating; food safety and hygiene; and the challenges of feeding a (sometimes fussy) family.<sup>73</sup> Framing food waste as a problem of individual behaviour thus 'underestimates the extent to which individuals' autonomous action is constrained by infrastructures and socio-technical systems'.<sup>74</sup>

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<sup>65</sup> Directive 2008/98/EC of 19 November 2008 on waste [2008] OJ L312/3 (as amended), arts 28-29. Waste Prevention Programmes require Member States to identify and evaluate measures taken which break the link between economic growth and the environmental impacts of waste generation. Such 'reflexive' or procedural obligations are commonplace in EU environmental law. Given this article's concern with food waste prevention (how we prevent food from becoming waste) in response to overproduction and overconsumption, we are less concerned with government policy on waste management (what we do with 'stuff' it becomes waste), and so our comparator for the 2018 Strategy is the Waste *Prevention* Programme, rather than the 2013 Waste *Management* Plan: Defra *Waste Management Plan for England* (London: Crown Copyright, 2013).

<sup>66</sup> HM Government *The Strategy*, above n 6, p 16.

<sup>67</sup> *Ibid*, p 77, where the implication is that 2019 will see the separate preparation of at least a new Plan, and presumably a new Programme.

<sup>68</sup> Scotford and Robinson, above n 61, pp 397-398, citing *R v Secretary of State for the Environment, ex p Hammersmith and Fulham LBC* [1991] 1 AC 521 at 597.

<sup>69</sup> van Hulst and Yanow, above n 17.

<sup>70</sup> C Alexander, N Gregson and Z Gille 'Food Waste' in A Murcott, W Belasco and P Jackson (eds) *The Handbook of Food Research* (London: Bloomsbury Academic, 2013); D Evans *Food Waste: Home Consumption, Material Culture and Everyday Life* (London: Bloomsbury Academic, 2014); M Mourad 'Recycling, Recovering and Preventing "Food Waste": Competing Solutions for Food Systems Sustainability in the United States and France' (2016) 126 *Journal of Cleaner Production* 461; D Evans, D Welch and J Swaffield 'Constructing and Mobilizing "the Consumer": Responsibility, Consumption and the Politics of Sustainability' (2017) 49 *Environment and Planning A* 1396; D Welch, J Swaffield and D Evans 'Who's Responsible for Food Waste? Consumers, Retailers and the Food Waste Discourse Coalition in the United Kingdom' (2018) 0 *Journal of Consumer Culture* 1; J Swaffield, D Evans and D Welch 'Profit, Reputation and "Doing the Right Thing": Convention Theory and the Problem of Food Waste in the UK Retail Sector' (2018) 89 *Geoforum* 43.

<sup>71</sup> See eg Institution of Mechanical Engineers 'Global Food: Waste Not, Want Not' (London: Institution of Mechanical Engineers, 2013); T Qusteded, R Ingle and A Parry 'Household Food and Drink Waste in the UK 2012 (WRAP Final Report)' (Banbury, Oxford: WRAP, 2013).

<sup>72</sup> Evans, above n 70; Alexander, Gregson and Gille, above n 70; M O'Brien *A Crisis of Waste?* (London: Routledge, Reprint edn, 2011); Gille, above n 7.

<sup>73</sup> Evans, above n 70; M Watson and A Meah 'Food, Waste and Safety: Negotiating Conflicting Social Anxieties into the Practices of Domestic Provisioning' (2012) 60 *The Sociological Review* 102.

<sup>74</sup> Welch, Swaffield and Evans, above n 70, p 6.

Consumer-centric frames also marginalise the role retailers play in driving post-retail ‘downstream’ and pre-retail ‘upstream’ food waste. Retailers shape how and where consumers shop, what they buy, and in what quantities, in ways which may be profitable for retailers but generate food waste through incentivised over purchasing, such as through large portion sizes, or 3-for-2 and ‘buy one get one free’ (BOGOF) offers.<sup>75</sup> Similarly, focusing on households tends to go hand-in-hand with paying less attention to food wasted upstream, and the ways waste is built into the system through normalised overproduction.<sup>76</sup> A preoccupation with consumer behaviour is thus not necessarily misdirected, but disproportionate in terms of consumers’ relative responsibility and because waste occurs elsewhere in the supply chain. Indeed, the literature displays how retailers drive overproduction (and waste) within their supply chains, including on farms, particularly through UTPs made possible by supermarkets’ dominant positions and market concentration.<sup>77</sup> Food waste is therefore underpinned by vested economic interests in levels of overproduction and overconsumption which go beyond the need for surplus ‘give’. Therein lies the paradoxical coexistence of abundance, waste, overconsumption and hunger: food is produced in excess of what is needed to feed the global population, but while one-third of all food produced is wasted and 2 billion people are overnourished, over 800 million people are hungry.<sup>78</sup> Research highlighting the relationship between climates of fear among producers, food abundance, poverty and waste, thus provide structural and power-sensitive counternarratives to ‘consumer blame’. Instead, food waste is symptomatic of systemic issues, including power asymmetries, the allocation of risks in the global economy, and a broken food system.<sup>79</sup>

In response, an emergent sense of ‘distributed responsibility’ has reportedly arisen, within which retailers accept some responsibility for food waste’s causes and solutions.<sup>80</sup> This consensus embodies a ‘widespread recognition’ that food waste is systemic, requiring

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<sup>75</sup> T Stuart *Waste: Uncovering the Global Food Scandal* (London: Penguin, 2009); C Bradshaw ‘The Environmental Business Case and Unenlightened Shareholder Value’ (2013) 33 *Legal Studies* 141.

<sup>76</sup> Stuart, above n 75; Bloom, above n 10; M O’Brien ‘A “Lasting Transformation” of Capitalist Surplus: From Food Stocks to Feedstocks’ (2012) 60 *The Sociological Review* 192; Gille, above n 7; Alexander, Gregson and Gille, above n 70; JI Macdiarmid, T Lang and A Haines ‘Down with Food Waste’ (2016) 352 *The BMJ* 1380; E Colbert ‘Causes of Food Waste in International Supply Chains’ (London: Feedback, Rockefeller Foundation, 2017). On food systems more generally, see eg J Ingram ‘A Food Systems Approach to Researching Food Security and Its Interactions with Global Environmental Change’ (2011) 3 *Food Security* 417; C Parker and H Johnson ‘From Food Chains to Food Webs: Regulating Capitalist Production and Consumption in the Food System’ (2019) 15 *Annual Review of Law and Social Science* (forthcoming).

<sup>77</sup> Stuart, above n 75; Colbert, above n 76; B Devin and C Richards ‘Food Waste, Power, and Corporate Social Responsibility in the Australian Food Supply Chain’ (2018) 150 *Journal of Business Ethics* 199. On supermarket power generally, see eg D Burch and G Lawrence *Supermarkets and Agri-Food Supply Chains: Transformations in the Production and Consumption of Foods* (Cheltenham: Edward Elgar 2007); C Beaton-Wells and J Paul-Taylor ‘Problematising Supermarket–Supplier Relations: Dual Perspectives of Competition and Fairness’ (2017) 26 *Griffith Law Review* 28.

<sup>78</sup> Gustavsson and others, above n 8; above FAO, n 8; E Holt-Giménez and others ‘We Already Grow Enough Food for 10 Billion People ... and Still Can’t End Hunger’ (2012) 36 *Journal of Sustainable Agriculture* 595.

<sup>79</sup> Gille, above n 7; T Lang ‘Food Waste Is the Symptom, Not the Problem’ (*The Conversation*, 25 June 2013) at <http://theconversation.com/food-waste-is-the-symptom-not-the-problem-15432> (last accessed 4 July 2019).

<sup>80</sup> Evans, Welch and Swaffield, above n 70; Swaffield, Evans and Welch, above n 70; Welch, Swaffield and Evans, above n 70.

'collaboration between actors across the food chain'.<sup>81</sup> This consensus resonates somewhat with critiques of food waste as an individualised consumer problem, but to what extent is distributed responsibility reflected in policy? Informed by the literature, frame critical analysis reveals limitations in England's fresh approach to food waste, to which we now turn.

## FOOD WASTE FRAMES IN THE STRATEGY

While 'distributed responsibility' for food waste was not reflected in the 2013 Programme, it has gained some purchase in the 2018 Strategy, with frame critical analysis revealing a shift towards a more elaborated and sophisticated frame. This is seen in three main ways: first, by acknowledging food waste as a specific rather than generic waste problem; second, by reframing economic growth as part of the problem, rather than the goal; and third, by assuming a role for law and regulation. However, whether the Strategy moves to a whole-systems, resource management frame is unclear. Furthermore, rather than reducing surplus, the Strategy shifts the burden of redistribution away from the state and retailers onto charities and farmers, in turn revealing a mismatch between its prognostic and diagnostic frame.

### Food waste as a specific (rather than generic) waste problem

Food waste receives special treatment in the new Strategy by way of its own chapter,<sup>82</sup> in contrast to the Programme, which framed food waste as a generic waste problem. Whether the Strategy moves toward a resource management frame is harder to assess. As will be explained, fragmented approaches may restrict consideration of the special resource implications of food, although the commitment to impact-based targets is significant.

Understanding food waste as a generic waste problem is a familiar framing approach, using pre-existing frameworks to understand 'new' problems. Bardwell notes the tendency to construct environmental problems (here, food waste) as 'like' others (waste), to be solved by analogy.<sup>83</sup> However, scholarship highlights how generic waste approaches can be restrictive. Framing waste as a waste management problem (what we do with stuff once it becomes waste), rather than a resource management problem (how do we produce and manage resources to prevent them from becoming waste), has led to end-of-pipe approaches which tackle the symptoms, not the causes, of waste, and shift blame to those at the end of the chain (especially consumers).<sup>84</sup> Similarly, generic waste management approaches fail to accommodate the distinct challenges arising from food, a resource which is profoundly important to humanity and central to everyday life, but also often perishable.<sup>85</sup> Important

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<sup>81</sup> Evans, Welch and Swaffield, above n 70, p 1404.

<sup>82</sup> HM Government *The Strategy*, above n 6, ch 5.

<sup>83</sup> Bardwell, above n 23.

<sup>84</sup> Scotford, above n 1; Alexander, Gregson and Gille, above n 70; Bradshaw, above n 5.

<sup>85</sup> Bradshaw, above n 5; Ferrando and Mansuy, above n 5. On the particularities of food, see eg Parker and Johnson, above n 76; H Johnson *International Agricultural Law and Policy: A Rights-Based Approach to Food Security* (Cheltenham: Edward Elgar, 2018).

accounts of the problem, and the ethicality of the material produced, are liable to be excluded when food waste is framed like any other waste problem.

The Programme outlined food as a ‘priority material’, indicating that food waste needed urgent (not special) attention.<sup>86</sup> The sheer number and breadth of priority materials leads one to question what analytical work was done by singling out so many.<sup>87</sup> After briefly listing pre-existing interventions (discussed below),<sup>88</sup> food waste was then dotted around the Programme in ways which implied the generalisability of waste prevention approaches, as opposed to the distinct challenges of food (‘many of the actions outlined are relevant across sectors and materials’).<sup>89</sup> The Programme thus made no overt or implied acknowledgement that food might be different. Furthermore, apparent business cases for waste prevention (discussed further, below) were exemplified by a number of resource efficient business models.<sup>90</sup> However, these made little sense applied to food. Keeping food for longer, repairing, borrowing and hiring food, or buying it second hand, are either nonsensical in the context of perishables, or involve logistical and temporal challenges which undermine the ease of solutions.<sup>91</sup> The indiscriminate application of generic approaches to specific waste problems displays the problems created by a restrictive frame.

By contrast, the new Strategy’s food waste chapter pays lip service to treating food waste as a specific rather than generic problem. The likely reason for this is the obligation, pursuant to the revised Waste Framework Directive, to adopt food waste prevention plans.<sup>92</sup> The result is a more holistic account, with food waste measures grouped together and subdivided by reference to the different challenges that upstream/business and downstream/consumer food waste pose. In doing so, the chapter begins to enable a whole-system approach more in-keeping with a resource management frame. This was more difficult in the Programme’s ‘priority materials’ approach, where thinking was structured around what different actors across multiple sectors could do to address various types of waste,<sup>93</sup> rather than what might be done by *relevant* actors to address a *specific* challenge.

However, a fragmented approach, without efforts to join-up thinking, restricts the Strategy’s resource-based appreciation of the problem. The leading diagram in the Strategy’s food waste chapter displays the problems of not doing so.<sup>94</sup> The figure depicts the sector-specific contributions to the UK’s 10.2 million tonnes of post-farmgate food waste in 2015:

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<sup>86</sup> HM Government *The Programme*, above n 13, pp 22–23.

<sup>87</sup> They are food, textiles, paper and board, plastics, electronic and electrical equipment, other items for reuse, built environment (including construction and demolition and facilities managements) and chemical and healthcare.

<sup>88</sup> HM Government *The Programme*, above n 13, p 22.

<sup>89</sup> *Ibid*, pp 11–12, 22, 26, 30 and 40.

<sup>90</sup> The examples given are retained ownership models (such as take-back schemes), customer loyalty schemes (such as bicycle shops offering mechanical services and upgrades), or lease-based services (such as car hire models like ZipCar), see *ibid*, p 27.

<sup>91</sup> As seen with food redistribution, where the perishability of food creates particular challenges. See C Alexander and C Smaje ‘Surplus Retail Food Redistribution: An Analysis of a Third Sector Model’ (2008) 52 *Resources, Conservation and Recycling* 1290.

<sup>92</sup> Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste, art 1(22)(c)(2a). This obligation will be retained law when the UK leaves the EU, see the European Union (Withdrawal) Act 2018 and HM Government *The Strategy*, above n 6, p 113.

<sup>93</sup> HM Government *The Programme*, above n 13, pp 25–44.

<sup>94</sup> HM Government *The Strategy*, above n 6, p 100.

households 7.1m tonnes (pictured: house), manufacturing 1.85m (factory), hospitality and food services 1m (hotel), and retail 0.2m (supermarket trolley). This has the problematic tendency to conflate where food waste occurs with its causes, obscuring the structural context of (for example) household food waste.<sup>95</sup> Quite remarkably, this visual frame omits how food is (for now) grown or reared on farms, excluding the agricultural sector and the estimated 3.6m tonnes of food wasted on farms.<sup>96</sup> This is partly a function of using the post-farmgate data, preferred due to nervousness about on-farm estimates.<sup>97</sup> But the data gap is partly due to the focus on consumer waste, together with retailers' resistance to reporting.<sup>98</sup> An image which ignores the agricultural context is thus neither a neutral, nor complete, frame. This would be more significant were powers not being sought to tackle on-farm food waste, but fragmented approaches with divergent frames across a complex and interrelated supply could impede success and restrict a resource management approach (all discussed below).

Another example is the Strategy's commitment to consult on mandating separate food waste collection from 2023 onwards.<sup>99</sup> This is found in Chapter 3 on waste management (not Chapter 5, on food waste).<sup>100</sup> This is a natural result of the Strategy's structure, which looks sequentially at product life stages (production, consumption, end of life/waste management, in Chapters 1-3, respectively) followed by special topics waste crime (Chapter 4) and then food waste. This is not problematic in itself; the framing literature suggests that problems have to be broken down. But in the face of fragmentation, efforts must be made to join-up thinking. This involves reflecting on how downstream policies affect upstream behaviour, and vice versa. Separate food waste collection aims to support diverting the inedible fractions of food, like coffee grounds and fruit stones, from landfill, in particular to anaerobic digestion (AD), an energy recovery process where bio-material is broken down to produce renewable biogas and fertiliser. However, AD subsidies, combined with minimal support for food redistribution, incentivise the removal of edible food from the supply chain; food which ought to be redistributed early enough to feed people gets sent instead to AD.<sup>101</sup> Nonetheless, the Strategy makes no mention of the relationship between food redistribution, subsidies for AD, and mandatory separate waste collection. While the food waste chapter documents new support for redistribution (discussed below), it is disappointing to see these issues siphoned off into separate chapters, and the relationship between them not explicitly recognised. More broadly, this shows how past frames, rather than being frozen frames of the moment, can cast long shadows, and the manifestations of a previously restrictive frame can be difficult to unpick: with a waste management frame, AD is a beast which we must now continue to feed. This all casts doubt on the Strategy's ambition, and highlights its restrictiveness, evidenced particularly by the headline but non-

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<sup>95</sup> Alexander, Gregson and Gille, above n 70.

<sup>96</sup> B Bajzelj, W McManus and A Parry 'Food Waste in Primary Production in the UK (Final Report)' (WRAP 2019).

<sup>97</sup> Ibid.

<sup>98</sup> See eg Stuart, above n 75; Colbert, above n 76.

<sup>99</sup> HM Government *The Strategy*, above n 6, pp 9 and 70.

<sup>100</sup> Ibid, pp 70–71.

<sup>101</sup> Bradshaw, above n 5.

binding waste management target of eliminating food waste sent to landfill by 2030, likely (but perhaps not desirably) to be achieved through AD. The Strategy does not fully embrace a more elaborated resource management frame.

The Strategy's commitment to move away from weight-based to impact-based (including carbon emissions) targets and reporting is more in keeping with a resource-based frame.<sup>102</sup> Indeed, this is central to the 'fundamental shift' away from a focus on waste, toward a focus on resources.<sup>103</sup> This proposal is buried in the final chapter on monitoring,<sup>104</sup> and is not food-specific, but it may be especially important in the context of food. Food is a relatively light material with high environmental impact, so that measuring tonnage masks impacts, particularly given the embedded carbon costs of food waste (a fifth of UK carbon emissions are associated with food and drink, especially production).<sup>105</sup> Nonetheless, a resource frame means ensuring food is eaten, and climate imperatives ought not mask broader distributional challenges in the context of food. Renewable energy subsidies for AD amount to a codified preference for profitable waste management over charitable food redistribution.<sup>106</sup> It is thus significant that social and economic indicators are also on the agenda.<sup>107</sup>

The food waste chapter is, at a general level, a noteworthy frame shift, but it is not without restrictions. Whether this moves towards a more elaborated resource approach is more difficult to assess. As discussed in the following sections, there are additional tells in the Strategy's understanding of the causes of food waste and its solutions.

### **Broadening the diagnostic frame: beyond waste as an economic opportunity**

The 2018 Strategy is broader in its account of the causes of food waste, adopting a less restrictive diagnostic frame than the 2013 Programme. We see this through three interconnected themes. First, the Programme framed waste as an economic opportunity, so that waste prevention can (must?) contribute to economic growth, whereas the Strategy positions growth as part of the problem. Second, with a move away from the focus on business cases for waste prevention, the Strategy acknowledges what the Programme actively ignores: the existence, and structural causes, of excess quantities of food. Third, this permits the Strategy's inclusion of a broader range of actors and values which the Programme's restricted approach threw into shadow.

#### *Growth: from goal to problem*

The Programme's overriding conceptualisation of waste was not so much as an economic problem, but as an economic opportunity, so that waste prevention can (must?) contribute to economic growth: 'A key priority for the Government is to boost growth in the economy

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<sup>102</sup> HM Government *The Strategy*, above n 6, pp 19 and 36.

<sup>103</sup> *Ibid*, p 138.

<sup>104</sup> HM Government *The Strategy*, above n 6, ch 8.

<sup>105</sup> *Ibid*, pp 10 and 99.

<sup>106</sup> Bradshaw, above n 5.

<sup>107</sup> HM Government *The Strategy*, above n 6, p 17.

whilst continuing to improve the environment... Moving towards a more resource efficient, circular economy offers scope for innovation, sustainable growth and saving money, as well as reducing the impact on the environment.<sup>108</sup> Where the Programme thus framed growth as the goal of waste prevention, the Strategy frames growth as part of the problem:

[O]ur growth over many decades has been over-reliant on exploiting finite natural resources whose depletion inevitably leaves future generations poorer ... Material resources are at the heart of our economy, and we consume them in large quantities. They allow us to meet our basic human needs as well as generate economic growth and social value. But our use of resources is unsustainable.<sup>109</sup>

We see more nuanced manifestations of this frame-shift in the contrast between natural capital and resource efficiency. Within the Strategy's overarching natural capital approach, waste is framed primarily as an economic, social and environmental *risk*, reflected in the *exploitation* of *depleting* stock of *finite* natural capital and its underlying economic *and social* value.<sup>110</sup> If not aiming towards the total maintenance of resources, it looks toward not taking them for granted, by contemplating moving away from models of exploitation: 'Natural capital is one of our most valuable assets. The air we breathe, the water we drink the land we live on, and the stock of material resources we use in our daily lives are at the heart of our economy, our society and our way of life. We must not take these for granted'.<sup>111</sup>

Risk and conservation under natural capital should be contrasted with the Programme's focus on economic opportunities in *using* resources efficiently:

Resource efficiency means *using* the Earth's *limited* resources in a sustainable manner while minimising negative impacts on the environment ... A resource efficient economy is one where fewer resources are *used to produce more*, making the most of those resources by ... extracting maximum value from them while in use, then recovering and regenerating product and materials at the end of each service life.<sup>112</sup>

Here, the exploitation or use (rather than conservation) of limited (not finite) resources was front and centre. Even though the Programme acknowledged the need to use fewer resources, the emphasis was still on producing *more*, displaying the importance of production and consumption to growth.

A body of critical literature provides scepticism as to whether less, no, or negative growth are contemplable within natural capital approaches.<sup>113</sup> Natural capital may simply be waste as an economic opportunity repackaged, with the frame-shift more apparent than real. However, this coincides with the Strategy's departure from the Programme's restrictive,

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<sup>108</sup> HM Government *The Programme*, above n 13, p 5.

<sup>109</sup> HM Government *The Strategy*, above n 6, p 15.

<sup>110</sup> *Ibid* (emphasis added).

<sup>111</sup> *Ibid*, p 7.

<sup>112</sup> HM Government *The Programme*, above n 13, pp 8–9 (emphasis added).

<sup>113</sup> See eg L Fisher, B Lange and E Scotford *Environmental Law: Text, Cases & Materials* (Oxford: Oxford University Press, 2nd edn, 2019) pp 744–757.



business case-approach to diagnosing the causes of waste, where waste prevention win-win opportunities are not seen or grasped.

*From business cases to structural overproduction?*

Within the growth-orientated frame, the Programme constructs barriers to waste prevention in business case terms, as a result excluding broader accounts of the causes of food waste. Waste was an economic externality, not fully priced in the market because (i) the business cases for waste prevention are either unknown or underestimated, or exist in the medium to long-term, rather than short-term, or (ii) the financial benefits of waste prevention are split across a number of actors within the supply chain.<sup>114</sup> The Programme also recast informational and behavioural challenges in business case terms, receiving a coat of win-win gloss when characterised, respectively, as occurring because the financial benefits are ‘unknown’, or ‘the long-term ... benefits are underestimated, the risks overestimated, and upfront costs ignored over long-term benefits.’<sup>115</sup>

The Programme thus framed waste diagnostically as arising from slightly (rather than fundamentally) misaligned incentives, or informational (as opposed to power) asymmetries. The Programme’s prognostic attribution (discussed further, below) was also constructed in similar terms, where the business case for waste prevention acted as the conceptual hook, or rhetorical device, through which waste prevention as an economic opportunity would be operationalised. Because ‘waste costs money’, reducing waste ‘can help save businesses money’; like ‘sustainable economic growth and environmental improvement’, they can ‘go hand in hand’ and ‘are not mutually exclusive’.<sup>116</sup> As explained above, these examples made little sense applied to food. And when the Programme did give examples of food waste prevention win-wins, they were opportunities for consumers which may not translate into financial gains for businesses.<sup>117</sup> This is because it largely goes against retailers’ business models to encourage consumers to buy less.<sup>118</sup> Indeed, the Programme walked a fine line between pointing to financial gains for consumers while never explicitly mentioning the importance of encouraging people to buy less food, presumably because the growth goal restricted contemplation of hitting retailer profits. This was potentially implicit in the Programme’s plea that consumers ‘meal plan’,<sup>119</sup> but this is subtle. Read with the broader context of economic opportunity, there was little scope for contemplating the possibility of consuming or buying less, especially when waste prevention was characterised in terms of ‘*how* products are designed and manufactured, *what* we buy, *how* we use and maintain products, and *what* we do when we have finished with them’.<sup>120</sup> Not *whether* we produce, or *whether* we buy.

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<sup>114</sup> HM Government *The Programme*, above n 13, pp 11–12.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, pp 8 and 28.

<sup>117</sup> *Ibid.*, p 42.

<sup>118</sup> Bradshaw, above n 75.

<sup>119</sup> HM Government *The Programme*, above n 13, p 42.

<sup>120</sup> Defra *Government Review of Waste Policy in England 2011* (London: Crown Copyright, 2011) para 70 (emphasis added).

Unsurprisingly, therefore, the Programme made no mention of normalised and systematic overproduction. Indeed, the business case, as the central rhetorical weapon in the frame, actively restricted this. As the scholarship shows, business case logic—the idea that behaving responsibly pays (and is even easy)—preserves and reinforces the status quo, so that questions about the fundamentals of a particular industry model remain unasked, and structural changes are difficult to contemplate.<sup>121</sup> Reflection on overproduction and prevailing power structures is actively excluded by diagnostic framing shaped by business cases. Indeed, it is telling that an intervention to tackle supply chain power imbalances, in place at the time of the Programme's writing, was not even mentioned. The Groceries Supply Code of Practice (the Code), now enforced by the Groceries Code Adjudicator (GCA, discussed below), requires retailers deal with suppliers fairly, and seeks to tackle the adverse effects on competition arising from the structure of the food supply chain.<sup>122</sup> Any role the Code might play in food waste reduction is thus tangential to its primary aims, but its exclusion from the Programme displays the restricted diagnostic frame: food waste as a side effect of power imbalances is actively excluded, with the business case frame obscuring complex structure-sensitive accounts of food waste in the literature, and failing to contemplate the existence of overproduction as problematic.

Significantly, the new Strategy explicitly acknowledges surplus in the system as a problem: 'Growing excess food that no one eats damages the Earth's ecosystems.'<sup>123</sup> Admitting, even in passing, that there is excess in the system, and that this is problematic, is an immediately broader and more sophisticated diagnostic frame. Structural causes can at least get a look in, with the Strategy recognising that food waste sometimes arises from UTPs made possible by imbalances of power.<sup>124</sup> Similarly, the Strategy frames household food waste not as an individualised consumer behaviour problem, but potentially as a retailer problem, with (as discussed below) businesses constructed as the primary target of policies addressing household food waste.<sup>125</sup> This implicitly acknowledges that consumer practice takes place within a structural context. While the Programme did highlight the role retailers may play in reducing household food waste,<sup>126</sup> structural causes were then forgotten when the Programme highlighted how consumers might better manage their food consumption practices.<sup>127</sup> The Strategy is thus comparatively more elaborated in its account of the causes of the problem: open to the existence of overproduction and overconsumption and its structural causes. Given the framing literature suggests structural accounts are often excluded, it is perhaps remarkable that they have found their way in.

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<sup>121</sup> Bradshaw, above n 75; Swaffield, Evans and Welch, above n 70.

<sup>122</sup> The Code is contained in the Groceries (Supply Chain Practices) Market Investigation Order 2009, Sch 1; see also the Groceries Code Adjudicator Act 2013.

<sup>123</sup> HM Government *The Strategy*, above n 6, p 10.

<sup>124</sup> *Ibid*, p 105.

<sup>125</sup> *Ibid*, pp 107–109.

<sup>126</sup> See HM Government *The Programme*, above n 13, eg p 19.

<sup>127</sup> *Ibid*, p 42.

*Beyond economic actors and values*

The Programme's frame also pushed certain actors and values into the background, in ways which were more restrictive than the Strategy. Businesses, and business interests, were foregrounded in the Programme, as were actors (re)constructed in economic terms. The Programme put emphasis on resource efficiency as a contributor to growth, partly because it saw businesses as dependent on resources, so that resource *inefficiency* was a threat to competitiveness: 'Our economy and businesses depend on global trade and resources ... using resources more efficiently will put us in a strong position to win the global race'.<sup>128</sup> When speaking to other constituents, the Programme recast them economically, advising civil society, for example, to 'think like a business'.<sup>129</sup> Similarly, win-wins around household food waste reduction in the Programme (above) spoke to people just as consumers (rather than also as citizens). The Programme thus pushed certain reasons for acting out of contemplation, and in turn excluded important alternative practices (or downplayed their importance, by prioritising commercial value).<sup>130</sup> The food sharing platform OLIO, for example, explicitly does not have a 'business model' (or at least not yet).<sup>131</sup> Food redistribution charities such as FareShare produce social good beyond the nutritional and financial benefits of redistributed food, where communal meals create communities and reduce loneliness.<sup>132</sup> The restrictiveness of a frame which prioritises economic values and actors is emphasised by the literature, such as critiques of 'green consumerism' (emphasising consumption rather than non-consumption) or the limitations of seeking environmental change through the market.<sup>133</sup>

The new Strategy is, in the framing language, comparatively elaborated, with both economic growth and social value (not just economic value) relevant, as seen in the quotes above, and the inclusion of future generations brings inter-generational equity into the picture.<sup>134</sup> This also informs different approaches to the reasons for, and goals of, state intervention. Under the Programme, government would intervene only to correct 'market failures', with its role limited to setting 'the conditions and guidelines that allow the market, businesses, local authorities and people to ... propel us towards a more ... sustainable economy'.<sup>135</sup> In contrast, under the Strategy, state interventions would instead need to adhere to at least one of five principles, the first of which is to allow people 'to do the right thing',<sup>136</sup> rather than *just* save (or make) money. The Strategy talks of 'citizen' (rather than *just*

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<sup>128</sup> Ibid, p 10.

<sup>129</sup> Ibid, p 56.

<sup>130</sup> See M Blake 'The Multiple Ontologies of Surplus Food' (Europe Now, 7 May 2019) at <https://www.europenowjournal.org/2019/05/06/the-multiple-ontologies-of-surplus-food> accessed (last accessed 4 July 2019).

<sup>131</sup> Quoting (with permission) M Barsties (Head of Food Waste Heroes Programme, OLIO) in response to questions at 'Future Food Symposium', Nottingham University Business School, University of Nottingham, 20 June 2019. See also OLIO 'About' at <https://olioex.com/about/> (last accessed 4 July 2019).

<sup>132</sup> See eg FareShare 'Our Impact: More than Meals' at <https://fareshare.org.uk/what-we-do/our-impact/> (last accessed 4 July 2019).

<sup>133</sup> See eg M Sagoff *Price, Principle, and the Environment* (Cambridge: Cambridge University Press, 2004).

<sup>134</sup> HM Government *The Strategy*, above n 6, p 132.

<sup>135</sup> HM Government *The Programme*, above n 13, p 16.

<sup>136</sup> HM Government *The Strategy*, above n 6, p 17.

consumer) action on food waste, thus speaking to people's values (not *just* their pockets).<sup>137</sup> This boundary-work is familiar from the literature, where frames can identify problems as 'this', but '*not* that'. The Strategy is more elaborated: 'this', but '*also* this'.

These might seem like linguistic subtleties, but these shifts may signal a move away from market-dominated approaches with a distinct ideological heritage. Indeed, problem frames are 'currents in the stream of political discourse'. Of course, while natural capital may be 'economic opportunity' in new clothes, the broader diagnostic frame explored above has led to changes in the assumed responsibility of the state for addressing food waste. However, while the Strategy has much by way of contemplated action, there remains an ongoing reluctance to intervene against powerful interests. As discussed below, where business cases in the Programme underpinned a preference for government 'stepping back', their absence in the Strategy paves the way for government 'stepping back in'. But not against supermarkets, and not against overproduction.

### **Broadening the prognostic frame: government 'steps back in'?**

Central to the waste policies are familiar but fundamental debates about the role of the state in addressing environmental and other social problems.<sup>138</sup> As discussed below, the 2013 Programme adopted a clear line of diagnostic and prognostic framing, where waste as an economic opportunity, exemplified by business cases for waste prevention, limited the need for government intervention. More cynically, this frame barely disguised a broader economic agenda seeking to shift responsibility for all sorts of problems away from the state. In this hollowed out governance space, distributed (and outsourced) responsibility for all, was more akin to a vacuum of responsibility for none. In the 2018 Strategy, government purports to 'step back in', and unlike the Programme, acknowledges retailer-driven overproduction as part of the problem. But the Strategy's broader diagnostic frame is not matched by its prescriptions, with a focus on redistributing rather reducing surplus, and responsibility shifted away from the state and retailers on to charities and farmers. So while the 'elephant' of overproduction was not even allowed 'in the room' under the Programme, under the Strategy, the elephant has been granted admittance, but (as the metaphorical idiom provides), it is still being ignored.

#### *Government 'steps back': vacuum of responsibility under the Programme*

It is widely acknowledged that responsibility for addressing food waste should be spread ('distributed') across the supply chain, with interventions at multiple levels by a range of actors. The Programme was thus largely uncontroversial in declaring that 'everyone' has 'a part to play' in waste prevention.<sup>139</sup> But the Programme then declared that 'no single actor

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<sup>137</sup> On the distinction between consumer and citizen mobilisation and the limitations of the former in building sustainable communities, see eg A Dobson *Citizenship and the Environment* (Oxford: Oxford University Press, 2003).

<sup>138</sup> See eg R Eckersley *The Green State: Rethinking Democracy and Sovereignty* (Cambridge, MA: MIT Press, 2004).

<sup>139</sup> HM Government *The Programme*, above n 13, p 12.

has overall responsibility or oversight’,<sup>140</sup> and that a more sustainable economy ‘can and should be delivered with *limited government intervention* as industry responds to the clear business case for action.’<sup>141</sup> This underpinned Defra’s later statement that it would ‘step back’ from waste,<sup>142</sup> with the Minister recently describing food waste legislation as ‘using a sledgehammer to crack a nut’.<sup>143</sup>

The Programme displayed a clear line of diagnostic and prognostic thought. Waste as an economic opportunity, exemplified by business cases for waste prevention, limited the need for government intervention. More cynically, it is unclear whether minimal government intervention flowed from the problem definition of waste as an economic opportunity, or, if small-state ‘solution-mindedness’ was the real goal which (reverse) engineered the problem’s definition. Was a limited role for the state the (ideological) tail wagging the dog? Central to shifting responsibility away from the state was the business case which, as a central rhetorical device, displays how frames are as much weapons of advocacy as they are reflections of empirical realities.<sup>144</sup> High-level policy frames inevitably form part of broader political agendas, and the framing literature is clear that pre-existing ideologies shape problem definition. In this sense, the Programme was perhaps not really about waste at all, but a broader concern to drive economic growth through a (mostly) non-interventionist state, (largely) irrespective of policy area. Either way, this shrunk government responsibility for particular aspects of waste (food waste prevention) on the basis of a restrictive diagnostic account as to the causes of food waste. In doing so, it excluded the systematic consideration of alternatives, removing from contemplation legislative measures which long featured on campaigner’s wish lists.<sup>145</sup>

The Programme’s role for government in encouraging and supporting action through collaborative approaches<sup>146</sup> resulted in the relative hollowing out of food waste prevention law and regulation. The limited exception is the Groceries Code. As above, any role the Code might play in food waste is tangential to its primary aims. However, the GCA’s ability to intervene in the monopolistic conditions which allow for UTPs has been noted as capable of supporting the reduction of on-farm food waste, notably in respect of demand forecasting.<sup>147</sup> But the Code is not mentioned in the Programme, confirming the restrictiveness of its diagnostic and prognostic frames. Otherwise, food waste prevention has largely been outsourced to WRAP (the Waste and Resources Action Programme, a charity which receives most of its income from central government and devolved

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<sup>140</sup> Ibid.

<sup>141</sup> Ibid, p 16 (emphasis added).

<sup>142</sup> House of Commons Environment, Food and Rural Affairs Committee *Waste Management in England* HC 241 (2015), paras 3-5.

<sup>143</sup> House of Commons Environment, Food and Rural Affairs Committee, above n 16.

<sup>144</sup> See also Stokes, above n 33.

<sup>145</sup> Stuart, above n 75, has long campaigned for mandatory food waste reporting.

<sup>146</sup> HM Government *The Programme*, above n 13, pp 5–6.

<sup>147</sup> House of Lords EU Committee *Counting the Cost of Food Waste: EU Food Waste Prevention* HL 154 (2014) para 99.

administrations).<sup>148</sup> WRAP administers perhaps the most high-profile food waste intervention, *Love Food Hate Waste* (a consumer information campaign),<sup>149</sup> as well as voluntary agreements, such as the Courtauld Commitments with food retailers and businesses.<sup>150</sup> These agreements include relatively unambitious non-binding targets, with Courtauld 2025 aiming to reduce per capita UK food waste by 20 per cent between 2015-2025.<sup>151</sup> However, voluntary approaches rely overwhelmingly on business cases which, as explained above, are not necessarily contrary to structures that drive overproduction. Indeed, literature highlights the limits of the 'market for virtue', providing scepticism as to the ability of voluntary, collaborative and market-orientated approaches to dismantle vested interests in ongoing levels of overproduction and waste.<sup>152</sup> The Programme's prognostic frame was therefore highly restricted by actively excluding legislative interventions.

Read with the Programme's removal of oversight for anyone (including government), this casts doubt on the meaningfulness of 'distributed responsibility'. As Swaffield *et al* show, the perceived business case for tackling food waste was central to supermarkets accepting some responsibility.<sup>153</sup> But limited retailer responsibility under business case approaches, combined with no single actor having overall oversight, is more akin to a vacuum of responsibility. In the same way that accountability to all is accountability to none, distributed responsibility for all is responsibility for none. This somewhat empty prognostic frame may (in framing language) have 'resonated' or 'taken hold' with powerful actors precisely because it helps them escape meaningful reformatory responsibility for food waste. At the same time, the rhetoric of 'stepping back' obscured how government was (and still is) subsidising AD, and thus responsive to the needs of for-profit waste management and a broader bias towards energy.<sup>154</sup> Saying government had 'stepped back' was thus disingenuous. Rather, government had stepped back from legislating on certain aspects of waste, merely supporting collaborative and voluntary approaches to addressing retailers and waste prevention, while supporting economic interests in food waste management by legislating for AD subsidies. This false dichotomy between 'stepping back' and 'stepping back in' is, as explained below, not entirely absent in the Strategy's mismatched prognostic and diagnostic frames.

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<sup>148</sup> WRAP 'WRAP UK' (9 October 2012) at <http://www.wrap.org.uk/about-us/governance> (last accessed 4 July 2019), WRAP 'Annual Financial Review (2017-2018)' at <http://review-2018.wrap.org.uk/financial-review/> (last accessed 4 July 2019).

<sup>149</sup> WRAP 'About Us | Love Food Hate Waste' at <https://www.lovefoodhatewaste.com/about-us> (last accessed 4 July 2019). See also B Turner *Taste, Waste and the New Materiality of Food* (Abingdon: Routledge, 2018) pp 160–163.

<sup>150</sup> WRAP 'Courtauld 2025' (19 February 2018) at <http://www.wrap.org.uk/food-drink/business-food-waste/courtauld-2025> (last accessed 4 July 2019).

<sup>151</sup> Compare the 20 per cent by 2025 target with the UN Sustainable Development Goal of reducing per capita food waste by 50 per cent by 2030. See also the redistribution targets discussed by Bradshaw, above n 5, at fn 51.

<sup>152</sup> See eg D Vogel *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Washington DC: Brookings Institution, 2006); N Gunningham 'Corporate Environmental Responsibility: Law and the Limits of Voluntarism' in D McBarnet, T Campbell and A Voiculescu (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge: Cambridge University Press, 2007). Cf with eg S Piras and others 'Unfair Trading Practice Regulation and Voluntary Agreements Targeting Food Waste: A Policy Assessment in Select EU Member States' (REFRESH, 2018).

<sup>153</sup> Swaffield, Evans and Welch, above n 70.

<sup>154</sup> Bradshaw, above n 5.

*Government ‘steps back in’ under the Strategy?*

Government purportedly ‘stepping back’ from waste under the Programme was heavily criticised by the House of Commons Environment, Farming and Rural Affairs (EFRA) Committee, who argued that Defra should take the ‘lead role and responsibility’ for waste policy.<sup>155</sup> It is therefore notable that, where the 2013 Programme started from a position of limited-to-no role for the state, the 2018 Strategy acknowledges the need to actively ‘provide’ incentives for waste prevention, ‘through regulatory or economic instruments if necessary and appropriate’.<sup>156</sup> Legislative proposals on the table under the Strategy, when they were previously off the table under the Programme, is an ostensibly significant frame shift. However, rather than seeking to reduce surplus, these proposals shift the burden of redistribution onto charities and farmers, and even the taxpayer and consumers. The Strategy thus displays a restrictive prognostic frame which does not match the its own more elaborated diagnosis. This is seen in three main respects. First, the centrality of redistribution to the Strategy’s overall approach, and related problems with the waste hierarchy. Second, a fragmented approach to regulating food waste and UTPs. Third, the continued outsourcing, and limited distribution, of responsibility for downstream food waste.

Redistribution and the waste hierarchy

Food redistribution is central to the Strategy’s action on upstream food waste.<sup>157</sup> It outlines measures to support charitable redistribution of surplus food, but also recasts potentially broader interventions in terms of the narrower supportive role they might play for redistribution. A £15m pilot food redistribution fund, open and administered by WRAP just prior to the Strategy’s launch, supports, for example, redistribution hubs and gleaning networks.<sup>158</sup> The Strategy also pledges to consult on surplus food donation and redistribution obligations for food businesses, similar to those adopted in France,<sup>159</sup> but recently rejected in England.<sup>160</sup> Combined, these measures seek to avoid diverting edible food to AD, although the Strategy makes no mention of the subsidies incentivising this.<sup>161</sup> In assessing whether the fund ‘levels’ the economic playing field between charitable

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<sup>155</sup> House of Commons Environment, Food and Rural Affairs Committee above n 142, para 22.

<sup>156</sup> HM Government *The Strategy*, above n 6, p 17.

<sup>157</sup> *Ibid*, p 100–104.

<sup>158</sup> *Ibid*, pp 100–102. Gleaning networks involve volunteers harvesting food that, often for economic reasons, would not otherwise be harvested.

<sup>159</sup> M Mourad and S Finn ‘Opinion | France’s Ban on Food Waste Three Years Later’ (*Food Tank*, 19 June 2019) at <https://foodtank.com/news/2019/06/opinion-frances-ban-on-food-waste-three-years-later/> (last accessed 4 July 2019).

<sup>160</sup> House of Commons Environment, Food and Rural Affairs Committee *Food Waste in England* HC 429 (2017).

<sup>161</sup> HM Government *The Strategy*, above n 6, p 101; Bradshaw, above n 5.

redistribution and AD subsidies,<sup>162</sup> one might compare the £15m redistribution fund with the reported £160m supporting AD.<sup>163</sup>

The redistribution of surplus food does not necessarily address overproduction, and may simply support the dispersal, rather than reduction, of excess in the system. Food waste prevention targets and mandatory reporting obligations, on which the Strategy also promises to consult,<sup>164</sup> may assist in ensuring that redistribution obligations do not become alternative means of dealing with unmitigated quantities of surplus. But as the Strategy states, 'our priority is to stop surplus food from becoming waste',<sup>165</sup> (rather than to minimise surplus itself). This reveals the restrictions of the Strategy's prognostic frame. The diagnosis identifies excess as part of the causes of food waste, but redistribution addresses its symptoms, not causes. Indeed, three years after certain French retailers were required to enter into donation agreements with redistribution organisations, the measures, while increasing the amounts of food donated (not all of which is eventually eaten), have failed to address the underlying problem of overproduction, and may, perversely, have lessened the incentive to do so.<sup>166</sup>

Additionally, this narrow prognostic frame of intervention shifts responsibility for food waste away from businesses and the state; confirms the burden already on charities for redirecting donated food; and makes new asks of the taxpayer. The £15 million redistribution fund, by making it easier for retailers to deal with their waste, partly amounts to a transfer of public money (via charities and redistribution) to supermarkets, which some might see as an indirect form of 'corporate welfare'.<sup>167</sup> For those seeing the causes of hunger residing in poverty, inequality and a state which is responsive to corporate rather than social needs, this may seem misplaced. Indeed, if redistribution becomes more than a temporary stop-gap to the coexistence of surplus, hunger and waste, and the Strategy's proposed legal obligations institutionalise redistribution as a solution to 'food poverty', then this may divert attention away from the role of the state in addressing the causes of both poverty and surplus.<sup>168</sup> While the language and rhetoric of the Strategy's diagnostic frame is thus much less overtly business-oriented than the Programme, there is much within its prognostic frame to appeal to retailers and, notwithstanding the promised sense of government intervention, proponents of a small(er) state. The Strategy's focus on charitable redistribution may reflect

<sup>162</sup> FareShare 'FareShare Encourages a Level Playing Field for Food Disposal' (8 September 2015) at <http://www.fareshare.org.uk/fareshare-encourages-level-playing-field-for-food-disposal/> (last accessed 4 July 2019).

<sup>163</sup> H Sheffield 'Thousands of Tonnes of Edible Food Are Being Diverted from Feeding the Hungry' *The Independent* (9 February 2016) at <http://www.independent.co.uk/news/business/news/uk-government-paying-millions-to-turn-food-waste-into-energy-while-needy-go-hungry-a6863401.html> (last accessed 4 July 2019).

<sup>164</sup> HM Government *The Strategy*, above n 6, p 103.

<sup>165</sup> *Ibid.*

<sup>166</sup> Mourad and Finn, above n 159; M Mourad 'Did France Really "ban" Food Waste? The First National Food Waste Regulation, Three Years On', Future Food Symposium, Nottingham University Business School, University of Nottingham, 20 June 2019.

<sup>167</sup> Though admittedly somewhat modest in quantum, see eg K Farnsworth 'The British Corporate Welfare State: Public Provision for Private Businesses' (University of Sheffield Political Economy Research Institute Paper No 24 2015).

<sup>168</sup> J Rayner 'Don't Talk about "Food Poverty" – It's Just Poverty' *The Guardian* (16 May 2019) at <https://www.theguardian.com/food/2019/may/16/dont-talk-about-food-poverty-jay-rayner> (last accessed 4 July 2019).



the interests of, or have greater ‘mobilising potency’ with supermarkets, than those seeking more large-scale reimaginings of the food system.<sup>169</sup>

Similar criticisms apply to the Strategy’s pledge to review business implementation of guidance on applying the waste hierarchy. The hierarchy is a legal obligation, originating in EU law, which requires those generating waste to take reasonable measures to prioritise waste prevention.<sup>170</sup> This can be complied with by distributing food surplus for human consumption or feeding it to animals, before managing food waste by sending it for AD or incineration, or to landfill. The hierarchy’s application to food is thus relatively straightforward, and so the guidance is unsurprisingly somewhat anodyne and prosaic.<sup>171</sup> A guidance implementation review is thus no substitute for actual enforcement of the hierarchy, the lack of which has been noted.<sup>172</sup> In fact, continued lack of enforcement would represent an ongoing absence of the state. Furthermore, the so-called ‘constructive ambiguity’ of the waste hierarchy was documented as key to creating the *moral and economic imperative* underpinning consensus around ‘distributed responsibility’ for food waste.<sup>173</sup> Curiously, the presentation of data underpinning this finding gives no indication that relevant actors appreciate how the hierarchy is a legal obligation, not just a non-legal imperative.<sup>174</sup> A focus on guidance, rather than enforcement, may perpetuate collective ignorance or amnesia in some quarters as to the hierarchy’s legal status.

Of course, supporting compliance is an established strategy before escalating enforcement.<sup>175</sup> To that end, mandatory food waste reporting and prevention targets, on which the Strategy also promises to consult, may further support compliance with the waste hierarchy.<sup>176</sup> In accordance with meta-regulatory approaches, reporting obligations and targets can generate information for designing solutions and ‘irritate’ businesses into action,<sup>177</sup> and transparency has long been seen as a way to leverage retailers’ poor performance on food waste.<sup>178</sup> However, as argued elsewhere, the framing effect of the

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<sup>169</sup> See eg RP Lee ‘The Politics of International Agri-Food Policy: Discourses of Trade-Oriented Food Security and Food Sovereignty’ (2013) 22 *Environmental Politics* 216; O Hospes and A Brons ‘Food System Governance: A Systematic Literature Review’ in A Kennedy and J Liljeblad (eds) *Food Systems Governance: Challenges for justice, equality and human rights* (London: Routledge, 1st edn, 2016); E Holt-Giménez *A Foodie’s Guide to Capitalism* (New York: Monthly Review Press, 2017).

<sup>170</sup> Directive on waste, above n 65, art 4; Waste (England and Wales) Regulations 2011, SI 2011/988, reg 12.

<sup>171</sup> Defra ‘Food and Drink Waste Hierarchy: Deal with Surplus and Waste (Statutory Guidance)’ (*GOV.UK*, 18 December 2018) at <https://www.gov.uk/government/publications/food-and-drink-waste-hierarchy-deal-with-surplus-and-waste/food-and-drink-waste-hierarchy-deal-with-surplus-and-waste> (last accessed 4 July 2019).

<sup>172</sup> House of Commons Environment, Food and Rural Affairs Committee, above n 160.

<sup>173</sup> Swaffield, Evans and Welch, above n 70; Welch, Swaffield and Evans, above n 70.

<sup>174</sup> This would seem to confirm arguments made elsewhere that the waste hierarchy has limited practical utility in the context of food: Bradshaw, above n 5.

<sup>175</sup> See eg I Ayres and J Braithwaite *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: Oxford University Press, 1992); N Gunningham and P Grabosky *Smart Regulation: Designing Environmental Policy* (Oxford: Oxford University Press, 1998).

<sup>176</sup> HM Government *The Strategy*, above n 6, p 103.

<sup>177</sup> See eg EW Orts ‘Reflexive Environmental Law’ (1994) 89 *Northwestern University Law Review* 1227; C Parker *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge: Cambridge University Press, 2010).

<sup>178</sup> Stuart, above n 75.

hierarchy can actually divert attention away from overproduction,<sup>179</sup> further evidenced by the Strategy so explicitly tagging implementation of the hierarchy to redistributing rather than reducing surplus: 'we expect more surplus food to be redistributed as a result'.<sup>180</sup> Enforcing the hierarchy is thus no panacea, and may simply legitimate, rather than challenge, the overproduction of surplus. We might thus query to what extent this really represents the state 'stepping back in', highlighting the potential for a mismatch between rhetorical frames and meaningful action, while simultaneously pushing the problem of surplus to the background.

#### On-farm food waste and UTP powers in the Agriculture Bill

Significantly, the Agriculture Bill 2017-19 would provide powers to address UTPs which, as the Strategy states, 'are often the cause of viable produce going to waste', particularly on farms.<sup>181</sup> The powers apply to agreements between first purchasers, such as processors and distributors, and agricultural producers, usually smaller farmers particularly vulnerable to UTPs.<sup>182</sup> The Secretary of State would be able to introduce statutory codes of conduct, and specify the content of contractual terms often associated with driving overproduction and waste. Powers to fund producer groups pursuing joint business models, such as short supply chains and alternative markets, would additionally support producers in selling surplus elsewhere.<sup>183</sup>

These fair dealing powers are sought explicitly to *inter alia* address the (conservatively estimated) 3.6m tonnes of food wasted annually on farms, and the Strategy acknowledges the structural power imbalances within which incentives to overproduce are embedded.<sup>184</sup> For example, farmers routinely overproduce as a deliberate strategy to avoid being unable to meet orders (or last minute increases), and potential delisting by a purchaser as a result.<sup>185</sup> This overproduction can be wasteful when (contractually permissible) last minute quantity reductions or cancellations leave insufficient time for producers to find alternative buyers, or if producers are prohibited from selling surplus elsewhere.<sup>186</sup> Unfairness can also arise when producers are forced to bear the financial costs of this surplus/waste. Powers to define

<sup>179</sup> Framing debates by reference to the waste hierarchy 'masks more fundamental questions as to whether we should be producing the quantities of food, in the way and places that we do', Bradshaw, above n 5, p 329.

<sup>180</sup> HM Government *The Strategy*, above n 6, p 103.

<sup>181</sup> *Ibid*, p 105; Agriculture Bill Explanatory Notes (Bill 266) (House of Commons, 2018) p 31. Shortly before this article was accepted for publication, the future of the Agriculture Bill was rendered uncertain by the calling of a General Election. It is not impossible that the Bill will be reintroduced in its current form in the next Parliamentary session. If not, the food waste provisions of the Bill nonetheless serve a useful function in exploring the relationship between policy frames and legislative intervention.

<sup>182</sup> Agriculture Bill 2017-19 (Bill 292 as amended in Public Bill Committee, 21 November 2018), clause 27; Agriculture Bill Explanatory Notes, above n 181, p 31; HM Government *The Strategy*, n 6 above, p 105. While the EU context is beyond the scope of this article, these powers may end up implementing Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the food supply chain. On the proposed (rather than the recently agreed) Directive, see eg H Schebesta and others 'Unfair Trading Practices in the Food Supply Chain: Regulating Right?' (2018) 9 *European Journal of Risk Regulation* 690.

<sup>183</sup> Agriculture Bill Explanatory Notes, above n 181, p 32.

<sup>184</sup> HM Government *The Strategy*, above n 6, p 105.

<sup>185</sup> See eg Lang and Barling, above n 77; Stuart, above n 75.

<sup>186</sup> Agriculture Bill Explanatory Notes, above n 181, pp 31–32.

the content of contracts, which more powerful market actors such as processors, distributors and retailers are presently able to impose on smaller suppliers,<sup>187</sup> thus have the potential to tackle overproduction and waste by minimising the financial and contractual risks of underproduction.

The Strategy is thus less restrictive than the Programme in its diagnostic framing, which framed food waste as arising from slightly (rather than fundamentally misaligned) incentives, or informational (as opposed to power) asymmetries. However, the Strategy casts these powers as seeking to distribute rather than reduce surplus, by making it easier for producers to find alternative outlets for produce, the present difficulties of which mean ‘perfectly good food never even reaches the shop shelf’.<sup>188</sup> If overproduction is in the prognostic frame (or the goal of intervention), it is subtle. While use of these powers may thus reduce the financial and contractual risks farmers face by not overproducing, the explicit framing of these powers is to make it easier for producers (not retailers) to bear the burden of surplus, rather than seeing that level of surplus reduced.

That being said, these measures are more interventionist than voluntary agreements and arguably have the potential to realign power relations. While contractual regulation might not be a substitute for hierarchical manifestations of the state, at least when enforcement is through private law,<sup>189</sup> the Bill includes powers to establish a public enforcement regime, likely administered by the Rural Payments Agency (RPA).<sup>190</sup> Specifying the terms of contracts, with credible enforcement by a public body, is very much the state stepping back in.<sup>191</sup>

That the powers are sought within the context of upstream agricultural policy does begin to situate food waste within farm-to-fork thinking.<sup>192</sup> However, the manner of implementation is not the whole-systems approach expected by a fully elaborated resource management frame. The new RPA regime will sit alongside the Code, which protects *direct* suppliers of the UK’s 10 major supermarkets from UTPs. Farmers tend to be indirect suppliers, so that most of them are not covered by the Code.<sup>193</sup> The new powers thus create a separate regime covering agreements between first purchasers of agricultural products (not usually supermarkets) and producers (farmers).<sup>194</sup> This fragmented approach was criticised by the House of Commons EFRA Committee, who ‘saw no reason’ for ‘two separate processes and enforcement bodies’.<sup>195</sup>

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<sup>187</sup> Ibid, pp 31.

<sup>188</sup> HM Government *The Strategy*, above n 6, pp 103–104.

<sup>189</sup> See eg A Héritier and D Lehmkuhl ‘The Shadow of Hierarchy and New Modes of Governance’ (2008) 28 *Journal of Public Policy* 1.

<sup>190</sup> Agriculture Bill Explanatory Notes, above n 181, p 32.

<sup>191</sup> Although for doubts as to whether the RPA has the resources or capability to provide credible enforcement, see House of Commons and Environment, Food and Rural Affairs Committee *Scrutiny of the Agriculture Bill* HC 1591 (2018) p 19.

<sup>192</sup> Whether agricultural policy is any more concerned with food management remains to be seen; see eg T Lang ‘The New Agriculture Bill Has No Vision for Food’ (*Food Research Collaboration*, 18 September 2018) at <https://foodresearch.org.uk/foodvoices/agriculture-bill-food/> (last accessed 4 July 2019), arguing that the Agricultural Bill is farm, land and finance focused, with no vision for food other than to make it cheaper.

<sup>193</sup> Agriculture Bill Explanatory Notes, above n 181, p 31.

<sup>194</sup> Ibid.

<sup>195</sup> House of Commons and Environment, Food and Rural Affairs Committee, above n 191, p 21.

As a result, those major retailers most heavily implicated in driving overproduction escape direct legal responsibility for food wasted on farms and by other indirect suppliers. Given the literature is clear that frames are often (as above) about the ‘political strength of different groups’, it may thus be no coincidence that some of the most powerful actors are largely untouched by legal responsibility for food waste along the supply chain. Indeed, the Strategy actively confirms support for ongoing ‘collaborative’ (voluntary) action to address retailer responsibility for food waste under Courtauld 2025.<sup>196</sup> Responsibility is thus more distributed in the Strategy’s prognostic frame than the Programme’s, with new obligations on first purchasers. But responsibility for retailers remains limited, raising questions as to whether an ‘extended producer responsibility’ regime for food waste is warranted.<sup>197</sup> At the same time, the Strategy’s otherwise more interventionist frame works mostly within the status quo: supermarket dominance is relatively unchallenged, in turn pushing into the background alternative visions of the food system, such as locally based food economies and shorter supply chains.<sup>198</sup>

Interestingly, the Agriculture Bill extends the geographical reach of these obligations in ways which are consistent with an elaborated resource management approach. Powers to regulate contract terms extend to agreements between producers outside of the UK and UK-based first purchasers.<sup>199</sup> It is curious that this garners no attention in the Strategy, particularly given the entire chapter on international leadership.<sup>200</sup> However, extending the geographical remit of regulation may just add to the challenges of fragmentation. Multiple interventions (the ongoing presence of waste law, especially the waste hierarchy, new powers under the Agriculture Bill, voluntary agreements, and the Code) come with a variety of respective regulators (the Environment Agency, the RPA, WRAP and the GCA), with different responsible government departments and sub-teams (waste and agriculture teams within Defra, and the Department for Business, Energy and Industrial Strategy). With this comes a proliferation of frames across departments, policy domains, regulators, and time, which may not cohere into a coherent narrative. Indeed, the challenge of a more elaborate frame is the management of an ever-changing and unwieldy beast.<sup>201</sup> Furthermore, a fragmented landscape, as Parker and Johnson note, creates opportunities for law and regulation ‘to be shaped by short-term political interests and not by social and ecological realities’.<sup>202</sup> How these regimes are to coexist in an increasingly crowded and fragmented regulatory space is unclear,<sup>203</sup> and they may be vulnerable to interests, such as those of retailers, preferring more restricted food waste frames. These tasks seem beyond what is

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<sup>196</sup> HM Government *The Strategy*, above n 6, p 104.

<sup>197</sup> Extended producer responsibility is a regulatory technique which imposes costs on producers (broadly defined to include retailers) for the post-consumption costs of products; see further Fisher, Lange and Scotford, above n 113, pp 550–551; Bradshaw, above n 5.

<sup>198</sup> See eg Holt-Giménez and others, above n 78; Parker and Johnson, above n 76; Mourad, above n 70.

<sup>199</sup> Agriculture Bill 2017-19, clause 27(10).

<sup>200</sup> HM Government *The Strategy*, above n 6, p 99 and Ch 6 on ‘Global Britain: International Leadership’.

<sup>201</sup> See eg Scotford and Robinson, above n 61, on the ‘unwieldy legal beast’ that is environmental law.

<sup>202</sup> Parker and Johnson, above n 76, p 11.7 (citing Review in Advance version, 10 June 2019).

<sup>203</sup> See eg the need to stitch different instruments together within regimes typified by ‘patchwork’ forms of governance, explored by C Holley and A Kennedy ‘Governing the Energy-Water-Food Nexus: Regulating Unconventional Gas Development in Queensland, Australia’ (2019) 59 *Jurimetrics* (forthcoming).

achievable by the Strategy's Food Surplus and Waste Champion, whose remit (on paper) is limited to awareness-raising.<sup>204</sup>

#### Downstream food waste

The Strategy's approach to downstream food waste, concerning consumers and households, though relatively brief, raises similar issues as to the relationship between the causes of the problem (diagnostic framing) and the scope of interventions (prognostic framing). Measures outlined which seek to make it 'easier for people to waste less food' include working with industry on labelling and packaging; monitoring implementation of best practice by retailers and brands; and supporting work to prevent citizen food waste.<sup>205</sup> Actions on household food waste by businesses are coordinated primarily by WRAP. WRAP has significant and valuable expertise, but it does not have the hierarchical or cross-policy clout which may be necessary to tackle retailer incentives to drive overconsumption and address downstream food waste. WRAP's best practice guidance on when to use best before dates,<sup>206</sup> for example, is incapable of addressing the very distribution of power within the legal frameworks on food labelling.<sup>207</sup> Yet the allocation of responsibilities within that regime allows food businesses considerable scope in addressing the tensions between profit, safety and waste, in ways which benefit them reputationally and financially but to the detriment of food waste imperatives.<sup>208</sup> Labelling guidance is therefore no panacea, and the preference for outsourcing from government may restrict the systematic consideration of alternative (potentially legislative) approaches.<sup>209</sup> Meanwhile, the focus on labelling may actively shift the burden of food waste away from retailers and back on to the consumer,<sup>210</sup> in ways which are not in keeping with a meaningful distribution of responsibility. Again, the broader diagnostic attribution provided by the Strategy, which admits the role of structures in consumer food waste, is (mis)matched with a narrower prognostic frame which is hollowed out, and shifts burdens to consumers.

## CONCLUSION

Frame critical analysis of the Strategy reveals a significant shift in England's approach to food waste. Special treatment is a noteworthy departure from restrictively framing food waste as a generic waste problem, although the importance of some interventions, such as impact-

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<sup>204</sup> HM Government *The Strategy*, above n 6, p 103.

<sup>205</sup> *Ibid.*, pp 107–109.

<sup>206</sup> WRAP, 'Food Date Labelling and Storage Advice' (WRAP, 2017).

<sup>207</sup> Bradshaw, above n 5.

<sup>208</sup> Stuart, above n 75; Bradshaw, above n 5. See also Feedback 'No Use Crying over Spilled Milk? How Wrong Date Labels Are Driving Milk Waste and Harming the Environment' (London: Feedback, 2019). Milk is also good example of the nexus between waste, supermarket power and UTPs. See eg MN Cardwell 'Farmers, Milk Prices and Rural Indignation' (2015) 5 *Oñati Socio-Legal Series* 51; Beaton-Wells and Paul-Taylor, above n 77, p 43.

<sup>209</sup> Which for the UK, at present, lies at the EU Level, so for now beyond the UK's full control, see further Bradshaw, above n 5.

<sup>210</sup> I am grateful to Christine Parker for this point.

based reporting and the global reach of UTP powers, have been downplayed. Moving away from framing growth as the goal, to framing growth as part of the problem, has also opened up space for contemplating governmental intervention.

However, the Strategy's focus on farmers and charities redistributing (rather than reducing) surplus fails to respond to its own elaborated account of the causes of food waste, which acknowledges structural overproduction and overconsumption. Shifting responsibility away from retailers and the state echoes how frames can reflect the outcome of power dynamics and reinforce a system's status quo. Furthermore, the potential disconnect between rhetorical framing and practical action is almost obscured by the Strategy's more inclusive language, its acknowledgement of surplus as problematic, and its promised sense of intervention. Promises to consult on food waste legislation are not promises to legislate. The continued reliance on guidance, collaborative/voluntary strategies and WRAP, together with the fragmented approach to UTPs, indicate a reluctance to step in where it may be needed most: against the interests of major retailers through direct legal responsibility for food waste.

In addition, if powers under the Agriculture Bill are used, and legislation on targets, reporting and mandatory donation come to fruition, the previously hollowed out governance of food waste will be populated by increasing levels and layers of legal and regulatory complexity, all informed by different frames from different political eras. This is typical of environmental law, but it raises familiar challenges which require not only government oversight and coordination, but a scholarly reengagement with waste. Otherwise, the fresh impetus to address food waste as more than a generic waste problem could result in fragmented rather than distributed forms of responsibility for managing a particularly precious resource.