Politics versus Science in the Making of a New Regulatory Regime for Food in Europe

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Abstract

The European Union's new food regulatory regime can be understood as a political, rather than science-based solution to the problem of recurrent food crises that have threatened the foundations of the single market. The failure of first, mutual trust and subsequently, its remedy, comitology, led to calls for an agency solution. The question of whether to invest an agency with the three powers of risk assessment, communication, and management can be understood as a struggle to define the role of the scientist in the management of regulatory policy. Scientists base their recommendations on probabilities; politicians are accountable to a public that expects government to guarantee zero risk. The outcome, a European Food Authority (EFA), preserves the management function and the Rapid Alert System within the Commission. EFA's success will rest on the harmonization of food law in Member States and the creation of a network between the EFA and Member State food agencies. Satisfaction of these goals, in turn, depends upon transparency, open communication, and willingness to cooperate. An unintended consequence of the new regulatory regime for food may be to strengthen corporate food producers and accelerate food homogeneity within Europe. These processes carry their own set of problems regarding interest group behavior, unconventional political behavior, and voter mobilization. We close the paper with recommendations for future research.

Kurzfassung

Das neue Lebensmittel-Regulierungs-System der Europäischen Union kann eher als politische, denn als wissenschaftlich fundierte Lösung des Problems der immer wiederkehrenden Lebensmittelkrisen, die die Fundamente des Binnenmarktes bedroh(t)en, verstanden werden. Der Zusammenbruch der früheren Vertrauensbasis und anschließend, sein Behelf, die Komitologie, führte zu Forderungen nach einer Agentur-Lösung. Die Frage, ob man eine Agentur mit den drei Vollmachten der Risikoprüfung, der Kommunikation und des Mangements ausstatten sollte, kann als Ringen um die Definition der Rolle des Wissenschafters in der Führung der Regulierungspolitik verstanden werden. Wissenschafter stützen ihre Empfehlungen auf Wahrscheinlichkeiten; Politiker sind einer Öffentlichkeit verantwortlich, die von der Regierung verlangt, ein Nullrisiko zu garantieren. Das Ergebnis, die Europäische Lebensmittelbehörde (EFA), wahrt die Verwaltungsfunktion und das Schnellwarnsystem (für Lebensmittel) innerhalb der Kommission. Der Erfolg der EFA wird auf der Harmoniserung des Lebensmittelrechts in den Mitgliedstaaten und der Schaffung eines Netzwerkes zwischen der EFA und den mitgliedstaatlichen Lebensmittelbehörden beruhen. Die Erfüllung dieser Ziele, wiederum, ist von Transparenz, offener Kommunikation und Kooperationswillen abhängig. Eine unbeabsichtigte Konsequenz dieses neuen Regulierungssystems für Lebensmittel könnte darin liegen, korporative Lebensmittelproduzenten und die Lebensmittelhomogenität innerhalb Europas zu stärken. Diese Prozesse bringen eigene Probleme in Bezug auf das Verhalten von Interessengruppen, unkonventionelles politisches Verhalten und Wählermobilisierung mit sich. Wir schließen das Papier mit Empfehlungen für

zukünftige Forschung.

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1 Introduction

People throughout history have taken ill or died from contaminated food. The modern welfare state promises its citizens a safety net: the policy equivalents of Maslow's lower order physiological and safety needs.(1) The food safety crisis in the EU is a subset of this larger question of the low tolerance for risk in modern, democratic societies. In that democracies rest upon the twin characteristics of accountability and transparency, even minimal risks (as defined by low probabilities in scientific risk assessment or measurement) must be reported (transparency) and such transparency inevitably runs the risk of either inaccurate reporting in the media and/or the public's confusion as to the meaning of probabilities. And when the public believes that governments fail to safeguard health, it holds politicians and bureaucrats accountable. At the same time, attempts to educate the public as to the comparative risk of harm have met with numerous difficulties.(2) The debate about risks is also one between hard science(3) and politics . And as we all know, individuals and cultures exhibit different risk tolerances. Some of us smoke; some of us read the food labels and try to attain maximum heart rates three times a week. Government ability to reduce risk is constrained accordingly.

While intriguing topics, the psychology of risk taking and the sociology of risk stray outside the task of this research. In this paper we seek to examine the implications for European food safety policy with regard to disparate notions of risk held by policy makers and scientists. These actors ask

different questions: policymakers ask, “How much will it cost? What constituencies will be impacted? Will the regulation (or lack of) be harmful to producers?(4) Scientists ask, “How can we prevent an undesirable outcome?” Scientists recognize the impossibility of zero risk; whereas policymakers face personal risks when they attempt to convey to consumers the scientific truth; i.e., even the best conceived and implemented regulatory policy cannot ensure zero risk.(5) This is thought to be a difficult notion for the polity to accept in advanced industrialized democracies that provide subsidized college education, workmen’s compensation, old age pensions, unemployment insurance, and universal health care (the latter of which the U.S. is a well-known exception).

Scientists, on the other hand, inform the public and politicians that science is not exact, but rather the best answer at a particular point in time. The recent tragic outbreak of Foot and Mouth Disease (FMD) is illustrative of this point. The polity clamor for vaccination of cattle, but scientists tell us that that vaccination will not necessarily protect against the spread of FMD. It is only by having unvaccinated herds that scientists can easily detect the presence of the organism. Given the low risk of FMD, scientists select not to vaccinate. Harrison and Hoberg (1994, 6) summarize this quandry nicely when they write “although scientific uncertainty underlies virtually all regulatory science debates, political conflict often exacerbates and sustains disagreement about scientific questions.”

In this context we can understand David Byrne, Commissioner for Health and Consumer Protection, commenting, "Science is for scientists and policy-makers are for the law” (CNN 2000). The Commission was back in that familiar, but uncomfortable space occupied by regulatory authorities in all democratic systems: the mediator between politics (Parliament, Council, interests(6)) and science. Yet a special circumstance intervened to weaken the Commission: the debate regarding the optimal administrative structure for the regulation of food quality and safety was coincident with the seating of the Prodi Commission, a new college which faced a Parliament flush with the heady victory of engineering the resignation of the Santer Commission (March 1999). Prodi, sensitive to the role the BSE crisis(7) had played in the undermining of the credibility of Santer’s tenure as president, made the establishment of a European food authority his first priority (Randall 2001). On the most basic level, the electorate holds policymakers responsible for policy failure, dissuading all but the most restless and courageous to innovate. Scientists, on the other hand, must innovate (or at a minimum, *discover*), if they expect to succeed in their profession. Our examination of Europe’s evolving regulatory regime for food is informed by this enduring conflict between science and politics.(8)

2

2 Competing Regulatory Models

Christian Joerges (1999, 7) identifies three patterns of European social regulation: mutual recognition regulatory competition; committees; and agencies. The theoretical argument for a single market based on mutual recognition of national provisions and a system of information sharing and trust relies upon adjudication of cases in the Courts—national, ECJ, and Court of First Instance—to create a body of common law upon which the internal market can be built. The outcome of this has been the ECJ’s promulgation of the principle of *proportionality*(9) , in the *Cassis de Dijon*(10) and the reliance on scientific expertise in the rendering of judgments with regard to Article 36 of the EC.(11) Weiler (1999, 345) argues that:

> One consequence of the Court’s *Sciencefest* has been in privileging those actors who are more easily able to access technical expertise. In the formal game this privileges the Commission and larger Member States. In the broader network, the Court has privileged the rich who are able to press their case by submitting expensive scientific evidence.

Joerges (1997, 297) too sees the peril of relying on the courts as the principal decision-makers in

regulatory matters, writing that:

> Where scientists cannot agree, they nonetheless continue to interpret their controversies as a scientific exercise and entrust the scientific community with the competence to assess these claims. The integration of scientific expertise into legal systems may therefore seem as a paradox. By resorting to scientific expertise, legal systems subject themselves to 'external' validity criteria. By the same token, through a reliance on scientific assessments, they overcome their built-in parochialism: the legal system becomes entitled to a recognition of its position beyond its own borders.

The second alternative *deliberative supernationalism*, a term coined by Joerges and Neyer (1997) is, in effect, a lawyer's compromise between mutual trust on one end of the continuum, and the bureaucrat's preference of an independent agency. This discussion can be seen as a microcosm of the larger issue: a choice between a common market and political union. Joerges (1999, 312) presents deliberative supernationalism as "a conceptual alternative of the well-known dichotomies between functionalism or supranationalism, on the one hand, and intergovernmentalism, on the other, which have dominated integration research in political and legal science until recent times." Deliberative supranationalim obviates the "need to construct non-majoritarian institutions, which are envisaged by Majone as the core 'fourth branch of government'" (Joerges 1999, 315). At any rate, one need not speculate on the orientation behind deliberative supernationalism, as Joerges (1997, 321-322) tells us plainly that:

> Assuming 'we the peoples' of Europe do not want to build up a Federal State which would be entrusted with the task of social regulation; assuming further that Europeans are nevertheless interested in benefiting from an opening up of their formerly national economies; assuming, last but not least, that the Europeanization of markets requires institutional structures which ensures both the effectiveness and the legitimacy of risk assessments, then we are bound to strive for institutional solutions which transcend the boundaries of our constitutional States without replacing these States with a Europeanized equivalent.

3

Hence, the current comitology system, which Joerges and Neyer (1997) propose to strengthen [Bremen group] can be traced to a realization by the mid-1980s that the mutual recognition supported by adjudication in the ECJ (and later the Court of First Instance) would not accomplish the goals of the single market. The Community did have a workable European regulatory model in its complex agricultural comitology, which successfully combined the national and supranational. Within time, however, the comitology system inspired its own set of critics. Weiler (quoted in St. Clair Bradley 1999, 76) describes comitology as "a phenomenon which requires its very own science which no single person has mastered." Hardly a recipe for accountability and transparency. Chambers (1999, 100) refers to comitology as "the Council in the Commission," part of the "constitutional fudge which glues the Union together by filling the fundamental gulf between federalism and intergovernmental co-operation. Like fudge," he tells us, "it doesn't make a very stable glue when the temperature rises!" And even if recommendations proffered by the Bremen group were to successfully answer these criticisms, a labyrinth, redundant standing committee structure cannot effectively deal with either rapid change or the imperative of making timely recommendations.(12) The history of drug evaluation is evidence enough of this point.(13) But just as the BSE crisis was to end forever the seemingly idealistic notion of a self-regulating internal market, the comitology system failed to ensure not only the safety of beef, but as Chambers (1999, 97) so movingly reminds us, it took a food crisis for the consumer to learn what the comitology system of regulation had not revealed:

> The BSE crisis had thrown a powerful spotlight onto intensive agricultural practices and the mechanisms of the Common Agricultural policy which encourage them to produce cheap food for mass markets. For many consumers, the revelation which turned them away from beef (or meat in general) was not necessarily the calculation that they stood a significant chance of developing nvCJD, but the realization that agro-industry was producing beef by feeding ground-up dead cattle to live ones (*turning herbivores into carnivores and carnivores into cannibals*…) (authors' emphasis)

While one has come to expect accusations of cheating on Commission directives among EU member states, the trust factor assumes greater importance in the food safety regime. Can the fifteen trust each other, their partners in the EEA, and the candidate countries to ensure food quality and safety? If British, Belgian and German government officials have lapsed in protecting the food supply or at least informing the European public, whom can European consumers trust and how can they obtain reliable information about the safety of the food supply? This concern has driven the Commission to measure public opinion about food safety (INFA 1998a&b, 1999). The 1997 Eurobarometer (INFA 1998a) revealed that 50% of consumers considered consumer associations the most reliable source of information regarding food, while 25% reported confidence in national authorities and 20% in European institutions.(14) Even if the food supply were safe, consumer perception ran otherwise: European consumers put policymakers on notice that the current system combining comitology and mutual recognition had failed to ensure food safety in the single market.

The third alternative the independent agency or authority, according to Joerges (1999, 7) requires the "renunciation of power by politically accountable actors" feasible only "if a type of technocratic self-restraint could be imposed on the agencies." Joerges questions the ability of the Commission to restrain the autonomy without the complex comitology agencies are designed to replace. Perhaps because of the lack of experience with regulatory agencies in Europe or the delicate balancing between supranationalism and intergovernmentalism in the European Union, the European agencies (European Environmental Agency [EEA], European Medicines Evaluation Agency [EMEA] and the Agency for Health and Safety at Work, have been denied regulatory competency. There, in short, is no precedent for the creation of an independent authority with regulatory bite.

Let us now turn to the food crises that undermined the EU's intergovernmental system of comitology and created both an internal (Commission and Parliament) and external (European public and interests) dynamic for the agency solution.

4

3 The Food Safety Crisis

John Bowis, Rapporteur, European Parliament, Committee on the Environment, Public Health and Consumer Policy, on the Commission *White Paper on Food Safety*, summarized the breadth of the food safety crisis (2000f: 10):

> …Poor practice and scandals have exercised the media, the public and their elected representatives in recent years. The list is long, ongoing and potentially endless given that absolute safety is not an attainable goal. Olive oil, contaminated wine, Perrier water, *E. coli*, *Listeria*, salmonella, polluted drinking water, BSE, dioxin sludge and slurry entering the human food chain, pesticides, animal feed, GMOs—all in their time and in their way have caused concern, fear, panic and public inquiry.

Foodborne illnesses and food contamination are not new phenomena, yet two interrelated factors over the past twenty years have altered the pattern of infection: a shrinking globe and manufacturing

and distribution practices. Within 24 hours food produced in one area of the world can be distributed to any part of the globe and outbreaks of infection may occur far from the source of contamination. We suppose one *could* assert that the spread of foodborne diseases in Europe is a function of the single market's success; but as with most public policies, an unintended (and often, negative) consequence asserts itself, and engenders appeals for a reexamination of its costs and benefits. If the Commission is to preserve the single market for food and animal feed, it must ensure the safety of food originating in the EU, the EEA and, increasingly, in the candidate countries. The alternative, the regular closing of borders and the erection of NTBs, would roll back years of painstaking, incremental movement toward the minimalist goal of Rome, i.e., the free trade association.

3.1 Foodborne Illnesses

Our history with foodborne illnesses encompasses a diverse group of etiological agents including numerous varieties of bacteria, viruses, prions, and parasites (Table 1). While some have been with us for decades, emerging diseases, such as *Escherichia coli* 0157:H7 and new Variant Creutzfeldt-Jakob Disease (NvCJD), have brought a new public awareness of the vulnerability of the food supply.

E. Coli. Escherichia coli O157:H7. *Escherichia coli* O157:H7, which produces a severe and debilitating intestinal infection, has established itself as a significant food- borne pathogen throughout the advanced industrialized societies. *E. coli* was recognized in the early 1980s, but mortality has increased in recent years, especially in young children and the elderly. Table 2 illustrates the increasing incidences of *E. coli* in EU member states. Beef may become contaminated during slaughter and the grinding of beef may transfer pathogens from the surface of the meat to the interior. If cooking is incomplete, the bacteria may survive and be consumed. Public health agencies have faced a unique challenge in tracking the source of E-Coli because the way in which beef is processed and distributed contributes to its spread. (Ground beef often includes meat from many different cattle; hence, a small number of infected animals may contaminate a large supply of beef.) One of the largest outbreaks of *E. coli* O157:H7 in the United Kingdom occurred in 1996 in Lanarkshire, Scotland. Contaminated meat originating from a butcher's shop was distributed to over 85 outlets in central Scotland. New cases continued to appear for an entire month, reaching more than 40 a day at its peak. In all, 496 people were affected with 18 fatalities. (Walford and Noah, 1999)

Table 1

Table 2

NvCJD. Bovine spongiform encephalopathy (BSE), a previously undescribed encephalopathy in cows, appeared first in the United Kingdom in 1985. While concern over the risk to human health was voiced immediately, not until 1994 was this concern actualized with the discovery of a new variant of Creutzfeldt-Jakob disease (NvCJD), which produced a subacute, degenerative disease of the brain, similar to that produced in cattle by BSE. This apparent link prompted increased surveillance of food safety, transforming this epizootic infection into an international human health crisis.

Tables 3 and 4 report the number of reported cases of BSE/NvCJD in the United Kingdom and other countries. While the source of BSE is uncertain, the leading hypothesis in the scientific community traces its source to feeding cattle rendered protein, such as meat and bone meal, produced from the carcasses of scrapie infected sheep in the early 1980s. Scientists developed this hypothesis through

statistical cross-referencing; specifically, in the United Kingdom the ratio of sheep to cattle and the rate of scrapie are both high. In 1996 an expert advisory committee hypothesized that the BSE epizootic was spreading to humans. This was based on the recognition of ten persons with the onset of a new variant of CJD. (See Table 4.) Review of these patients' medical histories, genetic analysis and consideration for other possible causes did not provide adequate explanation for these cases. In the meantime, the cause of CJD is still debated in the scientific community.(15)

Table 3

The measures used to control the BSE epizootic in the United Kingdom include bans on using ruminant protein for ruminant feed and brain and spinal cord and other specified bovine offal in feed for nonruminant animals and poultry (introduced in September 1999). The Commission was to follow the UK lead and prohibit these practices throughout the European Union.

Table 4

3.2 Contaminated Food

Calls for an independent, supranational body to regulate food safety in the EU probably began with the Belgian dioxin scare, which seriously undermined consumer confidence in food safety.(16) On May 27, 1999 the Belgian government alerted the European Commission to high levels of dioxin in chicken and eggs and soon after, pork. The Commission was furious upon learning that high levels of dioxin were discovered in laboratory tests in April: the Belgian government had waited a full month before informing the Commission.

Dioxin is an odorless organic compound with a high affinity for fatty substances, where it can accumulate. Humans are exposed to dioxin both through natural events (volcanoes and forest fires) and man made processes such as incineration, paper bleaching and exhaust emissions. Humans can be exposed to dioxin by working in industry where dioxin is a byproduct, industrial accidents, through food and human breast milk and water. Dioxin can cause testicular and prostate cancer, a low sperm count, and has been linked to endometriosis and breast cancer in women. Airborne particles of dioxin settle on animal feed, is consumed by animals, where it concentrates in the fatty tissue, and is then consumed by humans. As a result, individuals whose diets include beef, dairy products, chicken, fish and eggs have higher levels of dioxin.

The Commission acted swiftly on Belgium's report: its veterinary committee ordered the destruction of products containing Belgian eggs or chickens. The crisis, however, was to become much deeper when Belgian dairy products were found to contain unacceptably high dioxin levels. The dioxin contamination was traced to a single provider of animal feed fattener. In the single market, one provider's fraudulence or negligence can spread quickly beyond national borders. Indeed, it was soon discovered the tainted feed had been sold in France and the Netherlands. In all, it was estimated that 80,000 kilos (176,000 pounds) of dioxin-laced animal feed was spread to some 1,400 farms.

3.3 Genetically-Modified Organisms and Hormones (17)

Application of the precautionary principle (Commission 2000g) to both hormones and GMOs has been the source of protracted trade disputes between the U.S. and Canada, on one side, and the EU on the other. The EU banned growth hormones in 1988 (took effect January 1, 1989). In 1998 the WTO issued a ruling that the EU was not in compliance with the Sanitary and Phytosanitary (SPS) agreement in that the ban on hormones in meat was not based on a risk assessment (European Commission 2001f.)(18) The Scientific Committee of Veterinary Measures Relating to Public Health assessed the risk of the six banned hormones, finding that: "a risk to consumers, i.e., endocrine, developmental, immunological, neurobiological, immunotoxic, genotoxic and carcinogenic effects, has been identified with differing levels for each of the substances, but that the current state of

knowledge does not allow a quantitative assessment of the risks" (European Commission 2001f: 3). Qualitative risks were noted as well, especially in pre-pubescent children. The inconclusive nature of the findings would suggest that the EU must drop its ban, but one reads clearly from this report that the EU has no such desire.(19)

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The EU has had a three-year-old moratorium on the licensing of GMOs; but with the February 2001 approval by Parliament to endorse GMO licensing legislation (Mann 2001), GMO licensing will resume. In July 2001 the Commission approved new rules for GMOs to improve labeling and traceability.(20) Franz Fischler (2001g) has signaled a new, more tolerant era for GMOs in Europe.

The question of GMOs", Fischler went on, "is way too important, not only for the farmers and the industry or the scientific world, but also in job terms. We have to protect consumers from possible risks, we have to talk openly about the pros and cons of biotech. We should take a pro-active stance. We must explain to the people out there what they risk if we turn our back on this technology. We must make clear what benefits biotech can bring to them, from hunger-relief by making crops resistant against drought to its responsible application in the field of medicine. And here we, admittedly, must do better.

One would expect, however, long periods of public consultations and environmental risk assessments, given the opposition of a group of member states (Mann 2001). So while the British wish less stringent requirements, the Italians do not. For industry, the key question has become the role an independent authority might play in streamlining the application process, an increasingly important concern as more companies in the European agro-industry wish to challenge American dominance in the life sciences.

4 Science Confronts Politics: Probabilities vs. Zero Risk

Majone (1989, 4) writes that "When science, technology, and public policy intersect, different attitudes, perspectives, and rules of argument come into sharp conflict." Joerges (2001, 3) asks us, "to what degree should, could, or does 'expertise' replace legal, political and ethical criteria?" Patterson (2000, 318) identifies three domains in biotechnology policy: the scientific, environmental, and the market. Arguing "there is little overlap among these various domains," she traces this gap to the debate between scientists (demonstrated risks) and consumers, politicians, and environmentalists, who advocate the promulgation of regulations based on potential risks.

There are three issues upon which science and politics disagree: the assessment of risk; the management of risk (the precautionary principle); and the interconnectedness of risk assessment, risk communication, and risk management. It is sometimes thought that risk assessment, unlike the management of risks, is an uncontroversial exercise in science. Yet risk assessment is based on differential notions of, in the end, psychological assumptions and this in turn, is connected to the level of public involvement in risk assessment. There are risk-averse, risk-tolerant, and risk-neutral assumptions. Scientists, for instance, might employ a mathematical model (quantitative estimates) or safety factor (qualitative). Harrison and Hoberg (1994, 27) explain that "mathematical models derive quantitative estimates of the likelihood of risk experienced by different members of the population corresponding to the extent of their exposure." Safety factor is a qualitative risk assessment in which "those whose exposure is less than the assumed threshold are considered to face no risk of cancer." They found that in the risk assessment of TCDD (the most toxic dioxin) professionals in the U.S. were more likely to employ mathematical modeling, while scientists in Canada supported the safety factor approach. Jasanoff (1990, 61) recounts the observation of an executive of Dow Chemical that "if one wishes to eat fish caught in the Great Lakes, one had better do it in Canada. The fish is safe

across the border, even though the dioxin residues have led U.S. regulators to label it unfit for human consumption." Harrison and Holberg (1994, 117) conclude that the different approaches to risk assessment in the two countries can be explained by a more pluralistic U.S. and a more "paternalistic" (less public input) Canada. Hence, even in two countries classified in the same family of nations (Castles 1993), we find differential notions of risk assessment.

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The precautionary principle has emerged as the most contentious issue in the area of risk management. Morris (2000, 1) finds it in the German principle of *Vorsorgeprinzip* (foresight planning), which dates to the 1970s. Vogel (2001) finds a "precautionary" approach in U.S. law in the 1960s through the mid 1980s, while Applegate (2000, 413) points out that the term "only recently entered the vocabulary of domestic environmental policy debates in the United States" and that the "precautionary approach appears in a highly diluted or compromised form." He concludes that U.S. law reflects a "precautionary preference" rather than the precautionary principle.There have been numerous attempts to define the precautionary principle by its proponents, the most frequently cited emerged from the *Wingspread environmental conference* (21):

> While we realize that human activities may involve hazards, people must proceed more carefully than has been the case in recent history. Corporations, government entities, organizations, communities, scientists, and other individuals must adopt a precautionary approach to human endeavors.When an activity raises threats to human health or the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically. In this context the proponent of the activity, rather than the public, should bear the burden of proof. The process of applying the Precautionary Principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the range of alternatives, including no action.

The precautionary principle was introduced into EC law with Article 174 (environment) of the EC Treaty. The Commission extended this principle to food safety, first to defend its ban on the importation of meat containing hormones and since then, in banning GMOs.(22) The Commission sets forth, in its communication on the precautionary principle (Commission 2000e, 10), its justification for extending the precautionary principle beyond environmental policy. "Like other general notions contained in the legislation, such as subsidiarity or proportionality, it is for the decision-makers and ultimately the courts to flesh out the principle." The Commission also points to acceptance of the principle by EU institutions. The ECJ and Court of First Instance (in the Commission's interpretation) had adjudicated based on the precautionary principle and the European Parliament and Council both had approved the use of the precautionary principle in human health. Hence, the Commission (2000e, 10) concludes:

> Although the precautionary principle is not explicitly mentioned in the Treaty except in the environmental field, its scope is far wider and covers those specific circumstances where scientific evidence is insufficient, inconclusive or uncertain and there are indications through preliminary objective scientific evaluation that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the chosen level of protection.

Proponents of the precautionary principle seek its inclusion into international law; hence, the WTO ruling against the EU concerning the use of hormones in beef is regarded as set-back to this goal. James Cameron (1999, 261) reviews the environmentalist response, in which one group (Public Citizen) refers to the ruling as "the evisceration of the precautionary principle" and a demonstration

that “the SPS Agreement exalts the role of science far beyond the point it is appropriate, attempting to eliminate all ‘non-science’ factors from standard setting.”

Wildavsky (2000, 40)(23) informs us innovators do not have political champions. “To wipe out tangible benefits people already enjoy—familiar products, traditional jobs, with their identifiable and self-aware constituencies—is politically more difficult to do then to stop something new that is not yet surrounded with a self-productive belt of interest.” The consumer ultimately loses because statutes “almost never explicitly address the lost opportunity costs of screening out of a product.” Politicians, however, pander to a “clamoring constituency” who want immediate assurance as to their safety. This is because politicians can advocate “specific measures on behalf of tangible people.” Scientists are disadvantaged in this calculus because they can only promise an improved level of safety in the future and can speak in terms of the benefit to society, rather than appealing to specific groups. “You’ll be better off in the ‘by-and-by’,” Wildavsky observers, “has never been noted as a politically potent appeal.”

Durodié (2000, 163) in his review of European risk regulation writes “implicit with the Commisson’s approach has been the assumption that the precautionary principle is a zero-cost, or something for nothing option” and “pointing to the fact that science can never provide definitive answers is hardly a major new discovery, let alone one that desires to be dressed up with the title of the precautionary principle.” He suggests that the European public’s embracing of zero-risk may be a reflection of their lack of confidence in decision-makers rather than science! He concludes that the EU’s embracing of the precautionary principle has unanticipated consequences for European society (164):

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> The panic and hysteria created around these issues reflects a far wider loss of nerve within society rather than any inherent problem with the products themselves. The real cost will be that of a generation of young people brought up to live in fear from the dangers posed by harmless products, and questioning the ability of science to cast light on such issues. A broader climate of fear is being created which in turn will lead many to an even more misguided assessment of risk and greater inflexibility towards innovation and change.

Yet another diagreement between science and politics lies in the differing perceptions of the extent of interconnectedness in risk assessment, communication, and management. Figure 1 illustrates the scientist’s perspective. Politicians, on the other hand, insist that risk management (regulation) is policymaking, and policymaking is politics. And exploiting issues that are of visceral concern to the polity is the specialty of all democratically-elected bodies; this is no more evident than in the realm of food safety in which the European Parliament has successfully lobbied for the precautionary principle’s application in consumer protection and the Council has found itself promising a degree of safety to their national polities which modern science is quite simply unable to guarantee. Parliament, for instance, found fault with both the Council and Commission for mismanagement of the BSE crisis.(24) Naturally, consumers wish for a guarantee of absolute safety and are not constrained in their demands by the knowledge of probability theory guiding modern science. The EU, as a halfway house between an IO and federalist state, would be more sensitive to the need to manage risks; this is especially true of the intergovernmentalist actors in the system who must answer directly to their national polities.

Figure 1

5 Testing Different Perceptions of Risk

Having examined different notions of risk held by the principal actors in the policy network(25) we can attempt to understand the positions adopted by politicians, bureaucrats, and scientists. One argument can be summarized accordingly: differential notions of risk exist in European society; these perceptions, in turn, should be reflected in the preferences for reform of the European regulatory regime for food. This should be most particularly recognizable among politicians, who are more likely to adopt solutions that enable politicians to retain control over the management function. We make note, however, that politicians distinguish between the general feelings of the polity as, say, measured in the Eurobarometer, and the specific preferences of consumer groups. It is a long established notion that consumer groups are among the least powerful in society (Schattschneider 1960) whether because of their inability to distribute instrumental rewards and eliminate the free rider effect (Olson 1965) or the predominant place business must necessarily hold in capitalist economies (Lindblom 1977). Hence, one must distinguish between the generalized fear of the public (as exacerbated by the media) and the recommendations of organized consumer groups. While pluralist theory may offer some insights into the evolving food safety regulatory regime, rational institutionalism predicts that the collective action of individuals in political institutions not only preserves, but expands institutional power. Here, then one would expect that complex policies (that is, have the effect of diminishing the likelihood of specific voter preferences) coupled with the convergence of institutional preferences, produce outcomes that will reflect an arrangement that preserves, if not augments, institutional power.

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It is a common sense notion that agreement across EU institutions strengthens their position vis à vis interests. But under what circumstances might preferences of the Commission, Council and Parliament merge? One parliamentarian offers us a clue: “In a single market,” he reminds us, “risk does not stop at national borders” (European Parliament 2000f: 10). Food safety combines low politics (single market) with the high (the state’s duty to protect life). It is this dual nature of food safety the drives institutional preferences: the Commission and Parliament (low) have as much at stake as Council/Member States (high politics) to preserve their control over this policy regime. Patterson’s (2000, 332) work corroborates this intuitive approach. She found evidence of a low to high shift in debates surrounding genetically-modified organisms (GMOs), i.e., a subset of food safety policy. The legal basis for the original proposal for a Council Directive was found in Article 100a (95) of the SEA. Later, however, it changed to Article 130 (175), which “shifted the primary rationale for the directive from the need to create an internal market to the need to protect the environment and human health.” It seems reasonable to extrapolate Patterson’s finding to the wider food safety regime.

Yet co-decision has forever changed the nature of institutional bargaining. In such a highly politicized issue as consumer safety one would expect that EU politicians (MEPS, Ministers) to clash with the rational, scientific-based orientation of government administrators (Commissioners). The recent tendency under co-decision for Parliament to become less the “*supportive ally* of the Commission against the Council” (Nugent 2001, 189) and more inclined to work with the Council to limit the Commission’s authority increases the likelihood that Parliament and Council would approve a structure which strengthens administrative discretion, such as would be the case with an independent regulatory authority. What commissioner is likely to forget Jacques Santer addressing the European Parliament in response to the EP Committee of Inquiry’s report (European Parliament 1997) or the report’s nineteen-point finding of wrongdoing by the Commission? Naturally, the Commission would seek a solution that removes it from the direct line of blame for each new food crisis, whereas the Council and Parliament would wish food safety policy to remain in an institution over which they are accustomed (if only lately) to assert power.

5.1 Science

The Commission asked three leading European scientists and EU scientific advisors (Randall 2001) to evaluate “whether an independent agency type structure could lead to further improvements in scientific advice at the EC level” (James Kemper, and Pascal 1999: Appendix I). James, Kemper, and Pascal traced the loss of consumer confidence to a European regulatory structure preceding the single market. Its remedy would be found in a European Food and Public Health Authority, an agency(26) with the combined scope of the U.S. Centers for Disease Control (CDC) and the Food and Drug Administration (FDA). This authority would break new ground, representing the first time the control function for a social policy would be removed from Commission and Member State. According to the authors, the Commission’s current organization (as the structure that pre-dated the BSE crisis) artificially compartmentalizes risk factors to human health . Figure 2 illustrates the science-based notion of interconnectedness among animals, the environment, and humans.

Figure 2

Furthermore, they trace the failure of the EU to contravene food crises to an artificial separation of risk assessment, communication, and management in the comitology system of committee assessment and Member State implementation. The authors conclude that “systems need to be in place to show the links with policy-making, risk management, control and audit processes which are capable of rapid and effective action” (James et al. 1999; 14). Two notions—the systems approach to food safety and the close interaction required in assessing, communicating, and controlling risk—inform their proposal: a European Food and Public Health Authority. Figure 3, the authors’ recommended scheme, stands as a radical departure from the extant complex comitology.

Figure 3

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How do they defend the inclusion of the environment and public health in their proposed organizational structure? At least some aspects of environmental pollution they can attribute to animals. (See Figure 2, above.) Beyond this, DGXI, created in 1981, included the environment, consumer protection and nuclear safety (Young 1997, 211). It was not until 1989 that the Consumer Policy Service was separated from DGXI. (DGXXIV, Consumer Policy, is relatively new, having been established in March 1995.) The 1999 reorganization created a DG Consumer Protection and Public Health (DG SANCO). Not only had the Commission recognized the interconnectedness of public health, consumer safety, and the environment in its past and current organizational structure, the authors point to Amsterdam. “The Amsterdam treaty emphasized the need to include health issues in policy making at a European level.” They inform us that “the health of children and adults is markedly different within societies and across Europe (diet, smoking)” and “enlargement will amplify these differences because of the markedly greater burden of ill health in Central and Eastern Europe.” Add to the mix “ the public’s confidence in both governmental and scientific analyses and actions has declined because of a perceived bias toward political and industrial rather than consumer interests,” and we have a determined defense of a European Food and Public Health Authority. Furthermore, they expect their proposed structure would reduce the frustration of industry, “exasperated by the complex and protracted system for clearing their products.” An EFPHA would provide the accountability the current system lacked, where “national ministers, the Commission and European Parliament all seem to be involved, but where responsibility for specific issues or crisis management is hard to discern.”

5.2 Bureaucrats and Politicians

Three months after the publication of the James, Kemper, and Pascal report, the Commission (2000d) published its *White Paper on Food Safety,* calling for the establishment of an independent

agency, the European Food Authority, with the following areas of competence:

- Risk assessment
- Risk communication (including a Rapid Alert System)
- Developing a coherent and transparent set of food safety rules

The White Paper specifically rejects the transfer of risk management (15) from the Commission (the Food and Veterinary Office), citing the following reasons:

1. Transfer of regulatory powers to an independent Authority could lead to an unwarranted dilution of democratic accountability
2. The Commission must retain both regulation and control if it is to discharge the responsibilities placed upon it under the Treaties.
3. An Authority with regulatory power could not be created under the current institutional arrangements of the EU, and would require modification of the existing provisions of the EC Treaty.

This marked a significant shift from Santer's speech before Parliament in the midst of the BSE inquiry. At the time he said, "I also think that an independent agency, to meet the specific needs of the Community but based on the positive aspects of the United States Food and Drugs Administration, should be considered. Compliance with the principle of subsidiarity, to which we are all attached, must not be used as a pretext for obstructing the emergence of a credible European health protection system, as a necessary follow-on from the single market" (European Commission 1997).

The Commission's food safety proposal rested in part, on its interpretation of which structure best satisfies democratic accountability: each of the three Commission arguments elaborated in the *White Paper*—democratic accountability and transparency; Commission control and management as the most effective protection for the consumer; and prohibition of the regulatory function under existing treaty provisions—has its counterpoise, which taken together, strike us as a microcosm of the principal controversies regarding risk tolerance in modern society.

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David Byrne (2000c), in an address to the EP's majority party group, the European People Party and European Democrats (EPP/ED), said:

Looking across the Atlantic, I saw the American public placed great confidence in the work of the US Food and Drug Administration. An institution that was science-based. But also an institution that was involved in management and legislation. I concluded that such a model, while attractive in itself and clearly working for the US, would not be appropriate for the European scene. I wanted to ensure that risk assessment and risk management would be separated. Such an approach would be in line with the provisions of the Treaty, which entrusted management, and legislation, to the Commission, Parliament and Council.

Table 5 summarizes the opinions of the Parliament and Council to the *White Paper*. The Council supported the creation of an independent EFA, but not one that would supercede the authority of national agencies. Parliament, while supporting an EFA, expressed deep concern about democratic accountability. This was the case in each of the EP committee reports. The Council emphasized the importance of retaining the control function with the Commission and national authorities.

Table 5

The EP Committee on Legal Affairs and the Internal Market (2000b) in its draft opinion on the *White Paper* made the case against a strong independent EFA:

> If the authority is to act autonomously, then official authority must be transferred to it. However, limits have been placed on the transfer of official authority by the Court of Justice case law. The transfer must relate to precisely defined implementing powers, the exercise of which is fully supervised by the transferring bodies, without the authority to which the powers are transferred being given any margin of discretion. A transfer of power does, however, entail a shift of competencies, which are thus removed from the sphere of influence of the bodies legitimised by the Treaties…Legal provisions on food safety exist at both national and European level. It is, however, extremely doubtful whether a Food Authority could carry out local checks or impose sanctions, even in order to enforce the rules, or whether this would be desirable.

After considering the opinions of interests and EU institutions, the Commission published it food law proposal (Commission 2000a). The amended proposal, after completion of first reading by Parliament and Council, was presented on August 7, 2001 (Commission 2001d). This proposal retains the management of the rapid alert system in the Commission, despite the Commission's original proposal (Commission 2001a: 60):

> Where a member of the network has any information relating to the existence of a serious direct or indirect risk to human health deriving from food or feed, this information shall be immediately notified to the Authority under the rapid alert system. The Authority shall establish whether, on the basis of notification, the product in question presents a serious risk to human health, necessitating rapid action.

This is important because the rapid alert system is generally thought of as risk communication; however, both the Parliament (2001a) and Council refer to it as risk management in defending their decision to retain this function in the Commission. What this does, of course, is retain a very public function in the intergovernmental comitology system on which the Member States can assert control and the Parliament, since the BSE crisis, has oversight powers. Parliament would have no such power over an independent authority.

There are some minor differences, such as the composition of the management board, which are yet to be worked out in the second reading. But the blueprint for a new food safety regime is now complete. The EFA will have six main tasks (European Commission 2001i):

1. provide independent scientific advice on food safety issues and other related matters such as , animal health/welfare, plant health, GMOs and nutrition at the request of the Commission, the European Parliament (EP) and the Member States as a basis for risk management decisions;
2. advice on technical food issues to underpin policy development and legislation related to the food chain;
3. collection and analysis of data on dietary, exposure and other information relevant to any potential risks necessary to monitor safety along the food chain in the EU;
4. identification and early warning of emerging risks;
5. support to the Commission in case of crisis;
6. communication to the general public on all matters within its mandate.

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The EFA will be funded from the Community budget and, when fully operational, would dispose of substantial in-house scientific expertise. The Authority will employ up to 250 people after three

years, with a budget of € 40 million. This will be reviewed after 3 years. This can be compared with the U.S. FDA , which employs over 9,000 people and has 2,100 scientists working for it in a large number of specialist laboratories. It has full legal responsibility for its decisions and is thought to undertake 90% of its scientific work in-house (Randall 2001).

In conclusion, “the core task of the Authority will be to provide independent scientific advice and support and to set up a network for close co-operation with similar bodies in Member States. It will assess risks related to the food chain and give the general public information about food risks” (European Commission 2001i). Hence, the Commission has adopted the policy network approach to the management of food safety in the European Union.

6 Discussion of Results

The three assumptions laid out by the Commission in the *White Paper*, which have guided the proposal for the European Food Authority, have been critical in shaping the future of EU’s regulatory regime for food. We will examine each of these in turn.

Let us begin with that assumption that “transfer of regulatory powers to an independent Authority could lead to an unwarranted dilution of democratic accountability.” Majone (1996a & b) tells us these goals of democratic accountability and transparency can be obtained through careful structuring of regulatory agencies.(27) This is the logic he employs in his call for European independent regulatory authorities (1996b, 1997, 1999, 2000). Furthermore, Majone (1996, 285) points to the European Commission as a non-majoritarian institution. Are independent regulatory authorities less accountable than the Commission? U.S. regulatory policy teaches us that the “American experience shows that a highly complex and specialized activity like regulation can be monitored and kept politically accountable only by a combination of control instruments: legislative and executive oversight, strict procedural requirements, public participation, and most importantly, substantive judicial review” (1994, 93-94).

The second assumption, that “the Commission must retain both regulation and control if it is to discharge the responsibilities placed upon it under the Treaties” is

Majone (1997, 263) points out the common pattern whereby the Commission has “always resisted the delegation of some of it powers to independent institutions.” To his example of Commission opposition to Italian and German proposals for a European Cartel Office, we can now add regulatory authority for the EFA. Yet as the Commission sees that the EFA will be operational within the next several months, there seems to be a nervousness about its responsibilities under the treaty. David Byrne expresses this plainly in his speech of September 2001 to the Congress of European Agriculture (Commission 2001h). The date is significant as it falls between the first and second reading of the food safety law. It is hardly optimistic, despite the fact that it has now become clear that an EFA will be in place by the spring of 2002:

> I do have serious concerns, however, that this legislative framework is not enough. Its Achilles heel is not difficult to find: implementation. Member states have the best of intentions in supporting such legislation. The resolve and resources to see it properly implemented does not unfortunately always match up to these intentions. The reports of the Food and Veterinary Office published on the Internet, frequently reveal important weaknesses in the implementation of Community legislation on veterinary, phytosanitary, and food safety and animal health if they are not decisively attacked. The Commission continues to maintain pressure on Member States and third countries to do better. But it is not always having the desired impact. There are a number of contributory factors in this lack of progress. One of the biggest is that the Commission simply does not have the necessary ‘clout’ or sanctions to ensure better respect of the legislation in question.

Byrne's concern echoes that Jacques Santer's speech cited earlier (Commission 1997):

The third assumption, that "an Authority with regulatory power could not be created under the current institutional arrangements of the EU, and would require modification of the existing provisions of the EC Treaty" also generates suspicion on a number of counts. Weiler (1999, 343 & 344) in his review of the comitology system writes that:

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> …the notorious Meroni doctrine is premised on the belief in the ability and the necessity of assigning and maintaining certain functions and powers to the sharply defined subjects. The Council may have discretionary power, a committee may not…The damage created by the constitutional insistence on instrumental boundaries is no less troubling. Since the boundary is untenable, one resorts to fiction, not to say deceit. The only question is whether the Court knowingly or unknowingly turns a blind eye to the fictions of both the Council and Commission when they apply their *Meroni* circumventions.

Majone and Everson (1999, 12) write that, "neither Article 4 nor the *Meroni* doctrine are writ in stone, and it should no longer be simply assumed that they act as a legal bar to the evolution of European agencies…Meroni is likewise a product of the jurisprudence of its time and may updated in light of the advances in legal science and judicial thinking."(28)

Indeed, in the *White Paper*, item #40, we read:

> As indicated earlier, the existing Treaty provisions impose constraints on the activities that can be attributed to the Authority, but this should not be taken to mean that a possible future extension of its competencies should be discounted. Such an extension should only be considered in the light of the experience with the functioning of the Authority and the confidence gained in its operation, including the possible need to change the Treaty.

Our next task is to understand the ramifications of the network concept for food safety policy. The Medina Report (European Parliament 1997) attempts an "Explanation of the General Complicity in the face of BSE: Why so many years of passivity?" We reproduce this section of the report below:

- The European Commission, the Council of Ministers, the European Parliament and the major European media were all involved. They kept quiet while one of the most terrifying epizootics or perhaps even zoonoses was being incubated in order to allow the incubation of another 'prion', an ideological one - the federal European Union of the single market and the Maastricht Treaty (A).
- The same causes produce the same effects, the Committee of Inquiry kept the same silence to protect the same ideological prion. In this case that of the single currency (B).

> A. The culpable silence of the institutional trialogue to protect the single market and the Maastricht Treaty
>
> If from 1990 to 1994 nothing effective was achieved either by the European Commission, or the Council of Ministers or the European Parliament it was because, by chance, preparations were underway for the opening up of the single market on 1 January 1993 and the ratification of the Maastricht Treaty during 1992. Indeed, if on 20 September 1992 the French electorate had known the truth about BSE who can really believe that the few thousand votes which

> brought about the Yes victory would have been forthcoming? And if the Committee of Inquiry, strangely, refused to hear President J Jacques Delors, it was undoubtedly because he was the symbol of the federal idea which it wanted to protect.
>
> B. Culpable inaction in order to protect the single currency
>
> The report of the Committee of Inquiry is full of stylistic caution, in order to conceal its political complicity. The Committee of Inquiry has sought to find ways out in order to avoid the European Commission being censured, which would risk delaying the movement towards the single currency. The ideological ends of the federal structure have justified political passivity,. even if there is a health and economic disaster and even at the cost of the loss of credibility of the European Parliament with regard to the general public.
>
> Better that humans should perish than that an ideological principle should be harmed: the single world-euro market! For the European Commission, the Council of Ministers and the European Parliament and in its turn for the Committee of Inquiry this was the incorrect line of conduct which was pursued.

That fact that the authors of the report suggest that EU decision makers have learned their lessons is hardly comforting. Hence, we should rest assured that after EU's mishandling of the BSE crisis that the internal market will no longer be so protected, there will be no other referendum of the import of Maastricht, and that there will be no other dynamic as important as the single currency? The assumption here, of course, is that the structure is not so important as the recognition of the obligation to the European public. But without institutional structures designed to insulate science-based decisions from policymakers who are committed to increased integration (for instance, the potential for food crises is magnified with an enlarged EU), how is one to ensure that future EU policymakers have learned from the mistakes of their predecessors? It is in this light we examine the role of socialization and cooperation that is at the basis of the network model, upon which the new regulatory regime for food will be organized. This is not necessarily a debilitating flaw in the EU, according to Majone (1997, 262), who finds opportunity in the network approach to regulation. Drawing on his earlier work (1989) which studied the role of persuasion as a tool in the policy analyst's arsenal, he wonders if the European agencies "with knowledge and persuasion as the principal means of influence at their disposal, the agencies could develop indirect, information-based modes of regulation that are actually more in tune with current economic, technological and political conditions than the coercive instruments that have been denied to them" (264).

Majone's (1997) logic rests on the twin assumptions of the EU as a plural, rather than majoritarian system, and European regulation as essentially economic (market failure) rather than redistributive. He is on strong theoretical and empirical ground on both counts. While Majone presents a dynamic vision of the EU as an evolving regulatory state, he stops short of recommending for Europe the very purpose of regulatory agencies; i.e., federalization of the control function Why would this be the case? He informs us that (1997, 282):

> In the post-Maastricht era institutional reform must begin at home. Failure to create the domestic conditions for greater trust and a closer partnership between national and Community institutions can only lead either to more centralization or to the progressive weakening of the economic and political foundations of the Union.

This view is rather disturbing with regard to food safety. An example might illuminate this concern. While Roman Catholicism can claim a community of adherents through shared norms (a queasiness

over the death penalty) and practices (a universal liturgy) – i.e., a spiritual policy network--governing through norms and familiar traditions is neither practical nor desirable in the governing of modern societies. Fast trains, jet planes, faxes, e-mails or 3G mobile phones do not completely overcome human nature: there will always exist individuals or groups who, when they believe the benefits of cheating on agreements outweigh the costs, will cheat. One need not think that it is business that opposes such regulation. The regulatory literature has long illustrated that the impetus for regulation comes from established businesses that, when taking the high ground (whether for moral reasons or long-run marketing rewards) lose market share in facing upstart and unscrupulous entrepreneurs. In conclusion, European institutional builders tread a dangerous course in pinning their hopes on the emergence of a shared community when the public health is at stake.

7 Implications for European Governance

The struggle between science and politics masks a deeper and more profound struggle within the European Union. Comitology and its theory of deliberative supernationalism is at best a transition between the two known ways in which governments organize themselves: they are either federalist or unitary, confederation having proven unworkable throughout history.(29) While one can speak of regional government (as opposed to unitary) in Italy, France, and even in U.K., one can hardly suggest that the mere existence of the Committee of the Regions is somehow evidence that the EU someday will be organized according to the political geographer's conception of regional government. It seems an exercise in normative optimism that modern Europeans will develop an entirely new governance structure that eluded their ancestors. Just as proponents of multilevel governance hoped to inject into the debate an alternative to supranationalism and intergovernmentalism, multilevel governance is based on a continually shifting compromise between national and supranational actors. This compromise, however, is not based on a federal constitution but rather a set of treaties.

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Treaties are the instruments of intergovernmentalism, not intragovermentalism; i.e., federal or regional government. Confederation/multilevel governance cannot provide transparency and accountability (or whatever name one wishes to attach to a system that is part-constitutional [treaties which only professors and judges understand] and part-Member State). The European Food Safety Authority is a microcosm of this uneasy compromise between federalists and confederationists (those scholars advocating deliberative supranationalism) and hence carries with it the advantages of compromise (keeping the issue under the lid) and its disadvantages (unworkable over the long-run).

Those who espouse faith in the network model hypothesize its applicability beyond the EU. Majone (1997, 274) suggests:

> The model of the European agency could be especially relevant at (the) international level. An integrating world economy requires a parallel development of rules to correct international market failures. The absence of a world government means that international regulations will have to rely heavily on information, as well as on the close co-operation of national and supranational regulations.

Let us pursue this chain of events linking national, supranational, and international solutions based on shared norms, without the *prima facie* threat to state sovereignty entailed by regulation. Majone (1996, 78) reminds us "reductionism is a necessary condition of scientific progress." It seems to us that the vast corpus of EU scholarship might permit us to step away, for the moment at least, from the logic of reductionism (which, indeed, has informed the specialized inquiry of this paper) and offer some comments concerning the linkage of international relations, comparative politics and

policy analysis in understanding EU decision making and institution building (Rissen-Kappen 1996). Policy networks (or any of those bundle of theories predicated on epistemic communities) predict an altogether different outcome from that of either treaty revision (see above, Commission and *The White Paper*) or a jettisoning of a strict interpretation of *Meroni*. The proposed food law, instead, reads as an application of policy network theory.

This is not to say that this interpretation/prediction undercuts neo-functionalism: instead, it recognizes that the food safety regime is less likely to develop EU regulatory competency (literally, an army of EU inspectors deployed across Europe), given the strong opposition to this extension of competency by Parliament, Council and, while seemingly to a lesser extent, the Commission. Here the knowledge-interest relationship/network of scientists, consumers, farmers, food producers and distributors along those lines predicted by Deutsch—social exchange, communication and transactions (Stone Sweet and Sandholtz 1998, 5)—create a policy network under the auspices of the EFA, which in turn reinforces and expands the single market (in both Member and Applicant States).

In Rosamond's (2000, 124) review of policy network theory, he tells us that in the policy community (the most stable network) "actors are bound together in a series of relations of dependency…and networks remain largely impenetrable to outside actors." If we turn to the text of the proposed food safety law, it does appear that the Commission means to create this sort of arrangement, reserving for itself the role of arbiter. Article 35 provides for "Networking of organizations operating in the fields within the Authority's mission," with specific instructions to the EFA in creating this policy network." Article 26 creates an "Advisory forum" to be "composed of representatives from competent bodies in the Member States." Article 24 creates the management board, which includes four representatives of consumers and industry designated by the Commission.

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To cast this in the language of EU theory, we have a meso-level theory (the policy network/community of consumer protection in food safety) providing the momentum for macro-level (neo-functionalism) activity. Coupled with this is the common interest in turf protection (the rational institutionalist argument) shared by member governments and EU institutions. To strip the prediction from the language of theory: the activities of members of this policy network create a supranational entity (the EFA), supported within a structure created by the Commission and approved through co-decision of Parliament and Council. Through extrapolation, one might argue that these conditions hold under similar circumstances: where issue/policy networks thrive, so might a regulatory regime based on shared norms rather than the coercive power of the state. Deutsch and Haas were not wrong, they suffered the common fate of the genius ahead of his time: they anticipated a shrinking globe, we are living it. Majone (1997, 274) explicitly recognizes the usefulness of this approach: "…As the shortcomings of command-and-control regulation are revealed by a growing body of empirical evidence, the virtues of regulation by information are being recognized by policy-makers everywhere." (Whether his statement is grounded in empirical evidence is subject to debate.) As meso-theories, they contribute to an understanding of regulatory regimes. To be effective in translating knowledge into policy, issue networks cannot be anarchical. In this regard, the Commission has served a central role: its proposal for an EU food law reads like a blueprint for a policy network.

We need not stop here. If the logic of policy networks holds for the EU, one might test its applicability to other regions, that is, continue on past that very sticking point which plagued E. Haas: how does one wrench integration theory out of Europe and make it applicable to other regionalization efforts? This new European policy network (as opposed to divergent national approaches) might serve as a useful model for shaping the food regime within the North American Free Trade Association. The Commission (coordinating and umpiring the divergent wishes of

societal actors and scientific experts) and other key actors in this policy network have created an exportable model for other regional groups, one which specifically rejects a supranational regulatory framework in favor of a supranational body which can bring together a network of national institutions and interests through shared norms and values and a sophisticated exchange of information. Hence, a policy born of the logic and demands of European integration becomes applicable to other regional integration efforts and completely divisible from a panEuropean goal of political union. But this is to put one's faith on international regimes rather than the rule of law. The authors of this paper do not.

Paradoxically, food crises in Europe and the United States may have created a market in which the safest food may become the food that is the least nutritious.(30) McDonald's already purchases its lettuce and potatoes from farmers who grow exclusively for the company and according to its specifications (Hegmann 2001). The latest scheme afoot, the creation of a producer's pool, aims to gain access to the cow at the point of production. How this would work: McDonald's owns the meat while Nestlé and Danone, the milk. In this way the Goliaths ensure food safety by controlling all points in the production chain. This eliminates the responsibility of government regulators to ensure the quality of their suppliers' meat and dairy products: they become the suppliers. Immediately one sees the problem this poses for the independent farmer, the small slaughterhouse, the family-owned café: how can they ensure the safety of their food? They are dependent on the ability of a governmental food safety regime to instill consumer confidence in foodstuffs. Name brands—whether in food retailing or fast food restaurants—currently profiting from risk averse consumers, garner ever greater market share through the cost/price advantage of the economies of scale in controlling the inputs to their product, whether yogurt, a candy bar or a cheeseburger. Just as fast food restaurants increasingly occupy the most desirable real estate in urban areas and highway exchanges throughout the globe, relegating the smaller food purveyors to the less heavily trafficked areas, they may come to occupy the "safety space" on the marketing continuum as well. This is the logical result of governments ceding their regulatory responsibility to industry.

Rational institutionalism teaches us that local and regional governments resist the pressure to move policy to higher levels of government. Sub-national governments have acquiesced in the face of the enormous power brought to bear on them from business interests. The larger the corporation, the greater the pressure to reduce uncertainty: one stop regulatory shopping provides this insurance. The Commission, Parliament, and the Council, in constructing a regulatory authority that deviated from a broad cross-section of interests, ceded control to large producers, who exasperated, will spend their own resources to ensure food safety. This is the real pity for sovereignty, because governments (whether European or national) did not recognize that this was a zero sum game: neither national nor supranational governments will emerge with *de facto* control over food quality and safety, this when their principal function is the protection of lives and promotion of well-being of their citizens. Hence, by proscribing the role of science, policymakers thought to retain control in the Member State/EU institutions. But in the absence of an integrated scientific approach paid for by taxpayers, neither the Member States nor EU institutions can ensure safe food. In the absence of such security, corporations will take this function upon themselves.

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The cultural implications of the European path to food quality and safety both evoke and echo Gramscian criticisms of hegemonic culture. This time, however, the hegemonic culture is not specifically American, but a global post-industrial, corporate-sponsored culture, which whether purposeful or unintentional, promotes homogenization. The implications of the European approach to food safety and quality may extend well beyond Europe: it is this very homogenization (already a fact of life in the United States) contributing to the growing anti-WTO movement.(31) And while it is yet an amorphous and baffling hodgepodge of protestors, clearly the movement has rejected the

free trade regime on which the advanced industrialized democracies built their postwar prosperity. The world's largest economic area and trading bloc, in its search for a compromise (confederal) system, may unwittingly contribute to the undermining of a global trading regime built almost exclusively on Keynesian and Kantian notions of democratic capitalism.

8 Future Research

While not central to this analysis, our discussion and finding with regard to differential notions of risk have implications for the EU's position in the world trade regime, notably in its relations with its trading partners in the context of the World Trade Organization (WTO). Recent work on this topic reaches contradictory conclusions. Vogel (2001) finds that risk regulation has become stricter in Europe since the mid 1980s, citing the preeminence of the precautionary principle.(32) Skogstad (2001), on the other hand, believes that the WTO's rejection of the precautionary principle is an exogenous factor: that is, the WTO is creating pressure upon the EU to abandon the precautionary principle. These papers, published within a month of one another, draw upon the food safety regulatory regime as evidence for their predictions.

The case of food quality and safety generates hypotheses from which we might examine European institutional design.(33) First, we might look for previous cases of EU institutions overriding the wishes of European interests, including those that would presumably be integral members of a policy network. This framework might be employed, for instance, in reviewing the debates that informed the creation of the European Environmental Agency. Second, one might conduct fieldwork to ascertain if there has emerged an institutional ethos in the policy network and particularly the Commission in terms of its own self-conceived role as an omnipresent arbiter. Third, the tendency among EU scholars to remove both agency theory and practice from its origins (the U.S.) may be misguided by overlooking its basic feature: the independent regulatory agencies in plural America are intimately connected to citizen acceptance of federalism. Perhaps this line of inquiry would pry open the normative questions about federalism. Here, for instance, one might ask if it makes sense for EU scholars to blend federation with confederation, a practice which conflicts with well-established notions about the two held among political geographers.

A policy network notion of regulatory competency may not only compromise European food quality (specifically, diet) and safety but may cause unintended and deleterious side effects in the market. Specifically, the unwillingness to delegate the control function to an independent food authority may accelerate the shrinkage of endangered small- and medium-sized farmers and businesses in their on-going struggles to compete with giant food processors, distributors, and restaurant chains. Consequently, the food choices available to Europeans may become increasingly narrowed by the actions of corporate decision-makers, whether American (McDonald's) or European (Nestle) shareholders predominate. This could be tested empirically.

18

This study has alluded to the evolving role of Parliament in the regulatory regime. While Parliament seemed to favor the creation of an independent food authority during the BSE crisis. Once it had asserted its power over the Commission, Parliament seemed less enthusiastic about the agency alternative to comitology. Certainly this shift exposes Parliament to accusations of political opportunism at the expense of good governing. Here interesting comparisons can be made among the European Parliament, European national parliaments, and the U.S. Congress. It may be that the EP, with its entrepreneurial MEPs and committee system may be more similar to U.S. congressmen and women than, for example, to the British House of Commons characterized by strong party discipline. Certainly Graham Wilson's (1985) work suggests that the American politics of health and safety is characterized by conflict between Congress, the Courts, and the executive branch, thereby reducing

the effectiveness of the Occupational Safety and Health Administration.

Another possible avenue for research is the way in which disease may assert a centralizing tendency in government. The bubonic plague, for instance, has been seen as a causal factor in the nation-state (McNeil 1977). It would be interesting to study these parallels and discover if perhaps food crises could increase the pressure for federalism. This would draw on E. E. Schattschneider's (1960) work in which he argued that crises are required to intervene with the normal state of things.

Yet another interesting avenue would be in the tracing of the precautionary principle. By this we mean that it appears that only international organizations have enshrined the precautionary principle into law (Applegate 2000, 414). Hence, the EU's adoption of the precautionary principle in the TEU addresses the *sui generis* argument: at least in this case it seems that the EU behaved more as an international organization than a federalist or even multilevel governing/confederal construction. In that the precautionary principle is so costly and contentious, it is doubtful that sovereign states would substitute law-making based on scientific evidence in regulatory agencies (given the tax-base that enables the state to regulate) for a zero-risk alternative. The point here is that it is the nature of international organizations to write declarations precisely because there is no enforcement mechanism. When there is (WTO), the precautionary principle is specifically rejected: hence, the scientific basis of the SPS. While we come close to arguing that the precautionary principle was an expedient to deal with consumer concern over two areas—hormones and GMOS—neither of which had a strong business and agriculture constituency within the EU (the U.K. is the exception here), another possible exogenous explanation would be that of culture: could the EU's embrace of the precautionary principle reflect a more risk averse culture than found in the United States? Certainly this point of view could draw upon a large literature postulating just such a difference. But such an investigation should be carefully constructed to measure the role of industry and specifically the recent success of European biotechnology firms entering this field.

Finally, if a confederal food safety regime hastens oligopolistic competition and diminishes local food culture in Europe, then we should be able to document postmaterial reactions to the corporatization of advanced industrial society (Inglehart 1997). Studies might attempt to correlate the growth of organic farming, the Slow Food Movement, and Natural Law parties with Europe's new regulatory policy for food.

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Endnotes

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(1) See Ronald Inglehart (1997). *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies.* Princeton: Princeton University Press. On the welfare state and the public's demands for safety in advanced industrialized (rich) democracies, see Aaron Wildavsky (1988). *Searching for Safety*. New Brunswick: Transaction Press.

(2) See, for instance, John Adams (2000, 232-234) who deconstructs the British Department of Trade and Industry's "Richter scale for risk." Some of these difficulties include the collection of accurate statistics and averaging (very different risks associated with different groups and conditions under which the activity took place).

(3) Economists and natural scientists speak in terms of probabilities; sociologists and political scientists emphasize culture and citizen rights.

(4) Governments well know their vulnerability on food safety and are periodically reminded of their original duty to protect life when, for instance, Belgian and German ministers lose their jobs over the handling of their dioxin and BSE crises, respectively, new national regulatory regimes (most famously in the U.K. as a result of BSE), a reshuffling of portfolios (Germany's renamed ministry: Ministry for Food, Agriculture and Forestry) and the Green Party's (Simonian and Mann 2001; Simonian 2001) ability to capitalize on consumers' concerns: Renate Künast's appointment as minister to this new department).

(5)Given demands for increased transparency (in the wake of the BSE debacle and misinformation) the U.K. has taken the lead in attempts to create a system for informing the public about risks and increasing communication among scientists, the public, and policymakers. The initial result is in this interesting report: Parliamentary Office of Science and Technology. 2001. *Open Channels: Public Dialogue in Science and Technology*. Report No. 153. April.
http://www.parliament.uk/post/pr153.pdf

(6) Agriculture, consumers, industry. See an earlier version of this paper: Lanze, Zablotney, and Keefer. 2001.

(7) See the Medina report (European Parliament 1997). Medina Ortega, rapporteur for Parliament's findings regarding the Commission, Council, and U.K.'s handling of BSE.

(8) Chronology of the European Food Authority:
1997. Commission's Green Paper on the General Principles of Food Safety.
December 1999. James, Kemper, and Pascal Report submitted to the Commission.
12 January 2000. Commission's White Paper proposed a European Food Authority.
2 February 2000. Commission's report on the precautionary principle
11 November 2000. Commission's proposal for a food law
*28 March 2001.*Opinion of the Economic and Social Committee
12 June 2001. Opinion of the European Parliament at First Reading
14 June 2001. Opinion of the Committee of the Regions
28 June 2001. Political agreement in Council
as of October 8 2001 (awaiting) second reading of the EP
20 December 2001 (deadline for EP second reading)
(projected) by end of 2001. Second Council reading.
2002. European Food Safety Authority (expected name) will be operational (Nice target)
Source: EP Legislative Observatory
http://wwwdb.europarl.eu.int/oeil/oeil_ViewDNL.ProcViewByNum?lang=2&procnum=COD000286

As of the writing of this paper (October 8, 2001) a decision had not been made on the seat for the European Food Authority. The Gottenburg Summit (June 15-16, 2001) confirmed that the decision will be taken at Gent and by the Council, not the Commission. Other sources suggest the decision will be delayed until Laeken (December 2001). Romano Prodi opts for Luxembourg; David either Brussels or Luxembourg, but "according to the Edinburgh (1992) decision, member countries that do not have any EU agencies, will be preferred when new agencies are located." Among the present member countries, only Finland and Sweden belong to that category. Parma, Barcelona, and Lille are still in the running as well. Sources: http://www.efahelsinki.fi/ ; http://www.efahelsinki.fi/bulletin/040901ft.html ; http://www.efa-lille.com/ ; http://www.bcncandidatura.org/eng/fs_1.htm ; http://www.parmafoodauthority.org/ing/int-01.asp.

(9) Proportionality—"tailoring measures to the chosen level of protection" (Commission 2000e: 4).

(10) Rewe-Zenrale AG v. Bundesmonopolverwaltung fur Banntwien (Cassis de Dijon) (C120/78) [1979] ECR 649; [979] 3 CMLR 494 (ECJ). This case of a French liqueur in which the German

government believed consumers were misled into buying the product, believing it to be of higher alcoholic content. The principle of proportionality arose in that the ECJ ruled that while the German concern was legitimate, the means (blocking the product's importation) was too severe a remedy ("zero tolerance"—see Weiler 1999, 346): the Court's remedy was labeling to display alcohol content.

(11) Article 36 stipulates that Member States may enact trade barriers if they can be justified on the grounds of protecting health and consumer safety. This is the technical exception to Article 30, the latter establishes the ground rules for the internal market.

(12) Here the authors refer to fitting structure to task. See, for instance, Fred Beshears "Mintzberg's Classification of Organizational Forms" at http://ist-socrates.berkeley.edu/~fmb/articles/mintzberg/ Also, http://www.HenryMintzberg.com .

(13) See Charles Lyon. 2001. *Institutions and Politics in the European Union: The Design of the European Medicinal Evaluation Agency.* Presented at the Biennial Meeting of the European Community Studies Association, Madison, Wisconsin.

(14) Consumer groups are another whole matter. Young (1997, 225) finds that the "European consumer movement is fragmented…(they) do not always co-operate and sometimes even dramatically oppose each other."

(15) See Cookson (2001) for recent evidence linking CJD to diet.

(16) For a chronology of the dioxin crisis, see the articles cited from *The Economist*.

(17) Antibiotics are a mixed bag, as they are routinely used by the agriculture industry in the EU (*The Economist* 1999c). But this also points to a topic to which we will return later in this paper: the importance of an organized constituency for the advancement of new processes.

(18) This is an important case because it reaffirms science-based assessment, hence, rejecting the precautionary principle.

(19) Tracing European resistance to hormone use is a difficult proposition, but there is evidence that it began in Italy and may be, in fact, connected to the slow food movement. The Italian government had banned the synthetic hormone diethylstil bestrol (DES) in the 1960s. In the late 1970s, reports in the Italian media of babies with developed breasts and enlarged genitals after eating French veal containing traces of DES, led the Italian government to restrict imported veal from Member States. (Morris 2000, 2). EC directive 81/602 1985 which bans hormones used for growth promotion (using the logic of the precautionary principle) is coincident with the founding of the slow food movement, which itself was precipitated by the opening of a McDonald's in Rome's Piazza di Spagna. See, for instance, "Slow Food" by Alexander Stille at http://www.ksu.edu/geography/people/Kromm/courseweb/slow_food.htm . See also: http://www.slowfood.com

(20) See *Regulation of the European Parliament and of the Council concerning traceability and labelling of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending* Directive 2001/18/EC (COM 2001-182 final), July 2001

(21) This is the oft-quoted definition that was developed at an environmental conference that took place in January of 1998 at the Wingspread conference center in Racine, Wisconsin. Reproduced in Raffensperger and Tickner (1999: 353-354).

(22) We saw earlier how the precautionary principle has shaped EU policy concerning hormones and GMOs, despite formal complaints filed by the U.S. and Canada in the WTO. (Commission 2000g; Skogstad 2001; Vogel 2001).

(23) This is a reprint of a classic article written by Wildavsky, which predates the acceptance of the precautionary principle in EU law. Morris (2000) includes it as the lead chapter in his text as the theoretical grounding in the text's energetic attack of the precautionary principle.

(24) "Although the powers of the Standing Veterinary Committee were delegated by the Council, it is the Commission that exerts control over it. However, the committee's work is based on the opinions of the Scientific Veterinary Committee, and it is clear that the UK was able to control this latter committee through the convening of the meetings, the agendas and attendance, and the drafting of minutes" (European Parliament 1997).

(25) We use the term "network" loosely. One should not infer that it implies acceptance of policy network theory that is commonly applied to the EU (cf. Peterson 1995) as we will argue that this approach is not particularly helpful in contributing to our understanding of the new regulatory regime for food in Europe. Indeed, rational institutionalism may be the best guide to understanding the food safety law that was to emerge from the first reading. (See footnote #8 for a chronology.)

(26) The authors (1999, 40) recommend "Authority…because it is distinctive and immediately specifies a different entity from the Agency concept which is so familiar to Commission officials and Member State policy-makers. It has also, in English, the ring of excellence and the ability to respond which may be helpful given the recent crises."

(27)See particularly Majone's analysis of the feasibility of adopting a European version of the American Administrative Procedure Act.

(28) Indeed, Majone (2000, 300) continues to offer this up as a possibility, suggesting that "Perhaps the time has come when the Commission should ask the ECJ for an opinion on the issue of delegation of powers to bodies not mentioned in the Treaties?"

(29) *The Federalist Papers* still offer the most persuasive case.

(30) See Erick Schlosser's, *The Fast Food Culture*.

(31) One might look to Ronald Inglehart's work for the socio-psychological explanations, paying due note to the phenomenon of spillover to all IO and G-8 gatherings.

(32) The much publicised conflict between the U.S. and EU concerning growth hormones and GMOs are classic disagreements that center on differential notions of risk.

(33) This notion owes much to Arend Lijphart's (1971) classic work in comparative methodology.

Table I

Representative food borne bacteria, viruses, and parasites

Etiological Agent	Source	Suspect Foods
BACTERIAL:		
Bacillus cereus	Soil, dust	meat, milk, vegetables, fish, soups
Campylobacter jejuni	cattle, chicken, birds, flies, stream or pond water	chicken, turkey, raw milk, beef, pork, lamb, shellfish, water
Escherichia coli O157:H7	cattle, deer	undercooked hamburger, raw milk, unpasterized apple cider
Salmonella species	water, soil, animal feces, raw meats, raw poultry, raw seafood	raw meats, poultry, eggs, milk, dairy products, fish, shrimp, sauces and salad dressings, cake mixes, cocoa, chocolate
VIRAL:		
Hepatitis A	infected workers, feces	cold cuts, sandwiches, fruits, fruit juices, milk, milk products, vegetables, salads, shellfish, iced drinks, water
PARASITIC:		
Toxoplasma gondii	sheep, pigs, bear, cat feces	raw or undercooked pork, mutton, rarely beef, bear

Source: Doores 1999.

Table II

Trends in Escherichia coli O157:H7

	1992	**1993**	**1994**	**1995**	**1996**	**Per Million Inhabitants (1996)**
Austria	9				11	1.4
Belgium					52	
Germany	41	32		195	314	3.9
Ireland				15	14	8.8
Italy	7	14			9	0.2
Scotland	10		190		506	99.2
Sweden	0	2	3	114	118	13.6
United Kingdom	627	540	685	1138	1180	20.3
TOTAL	**694**	**588**	**878**	**1462**	**2204**	

Table III

Reported Cases of Bovine spongiform encephalopathy in the United Kingdom and other countries (as of December 2000)

Country	Native cases	Imported cases	Total cases
United Kingdom	180,376		180,376
Republic of Ireland	487	12	499
Portugal	446	6	452
Switzerland	363	-	363
France	150	1	151
Belgium	18	-	18
Netherlands	6	-	6
Liechtenstein	2	-	2
Denmark	1	1	2
Luxembourg	1	-	1
Germany	1	6	7
Oman	-	2	2
Italy	-	2	2
Spain	0	2	2
Canada	-	1	1
Falklands	-	1	1
Azores	0	1	1

Table IV

Chronology of variant Creutzfeld-Jakob disease (nvCJD) in the United Kingdom and other European countries, as of December 2000

Year of Onset	United Kingdom	France	Ireland
1994	8	1	
1995	10		
1996	11		
1997	14		
1998	17		
1999	20(+4)	1(+1)	1
2000	1(+2)		

Table V

Attitudes toward a European Food Authority

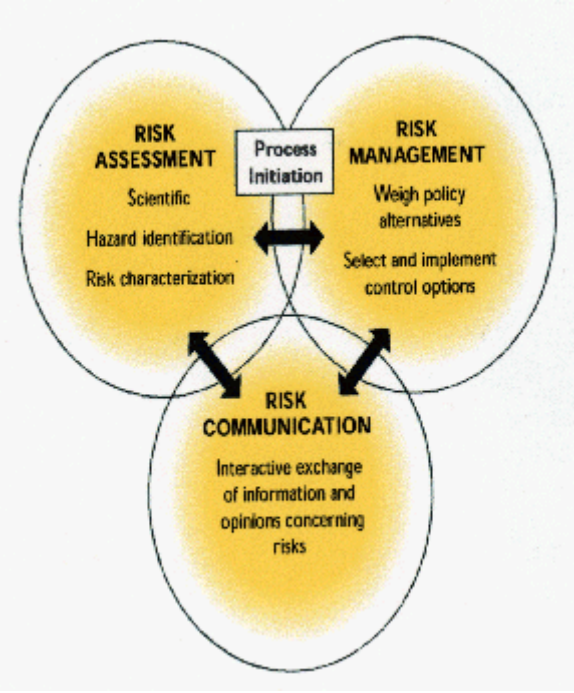
	Risk Manage-ment	Risk Assess-ment & Communication	Urgency in Creating an EFA	Subsidiarity	Democratic Accountability & Transparency
PARLIAMENT	Low	Medium (1)	High	Medium	High
COUNCIL	Low	Medium	High	High	Transparency

(high=favorable toward competency, low=unfavorable toward competency)

(1) Parliament (2000e) "believes that the Rapid Alert System which allows the rapid identification and notification of urgent food safety problems, should continue to be the responsibility of the Commission, working closely with the Member States and the EFSA, but that in due course it may be appropriate for the Rapid Alert System to be operated within the EFSA." (Bowis Report). In its common position, adopted June 2001, Parliament removed the Rapid Reaction Force from the EFA and returned it to the Commission. See European Commission (2001a). Council concurred.

Figure 1

Interconnectedness of Risk Assessment, Communication, and Management



Source: McNab, Alves, Lammerding, Stahevitch, and Morely. (1996) Risk Assessment Models of Ontario Ministry of Agriculture, Food, and Rural Affairs. OMAFRA, Guelph, Canada

Figure 2

Linkages between Human Health Outcomes, Animals, and the Environment

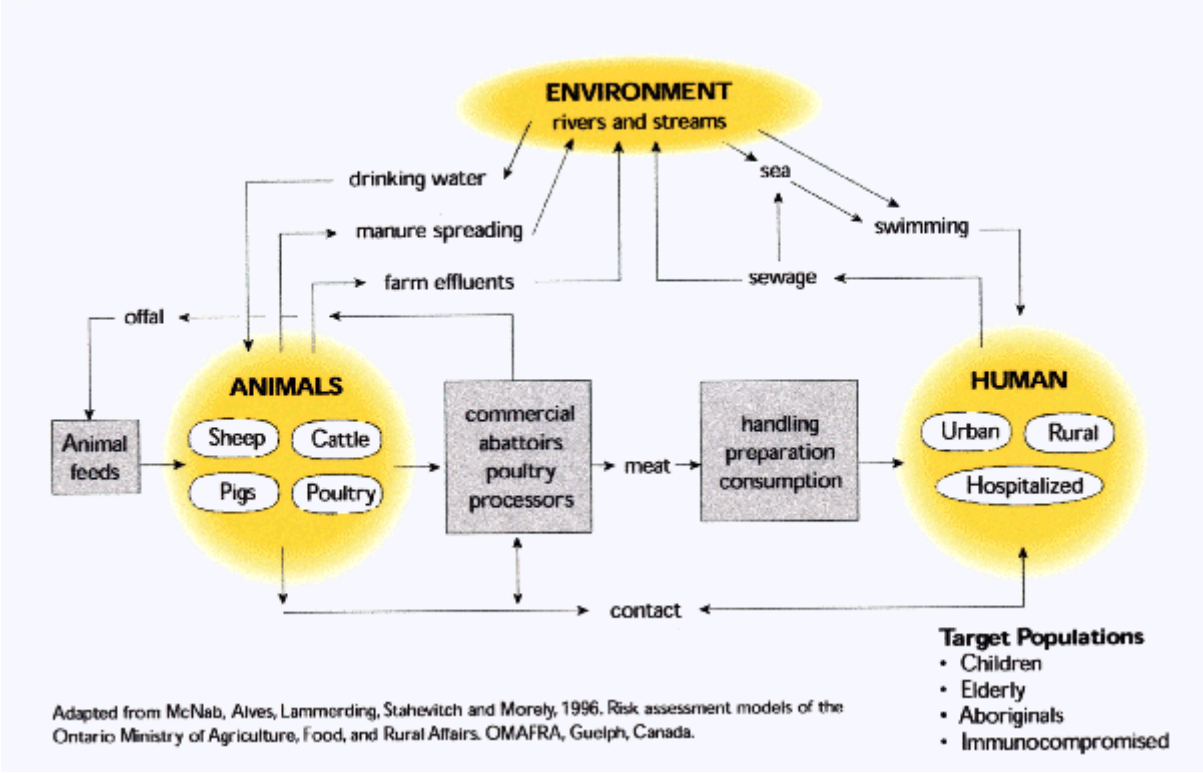
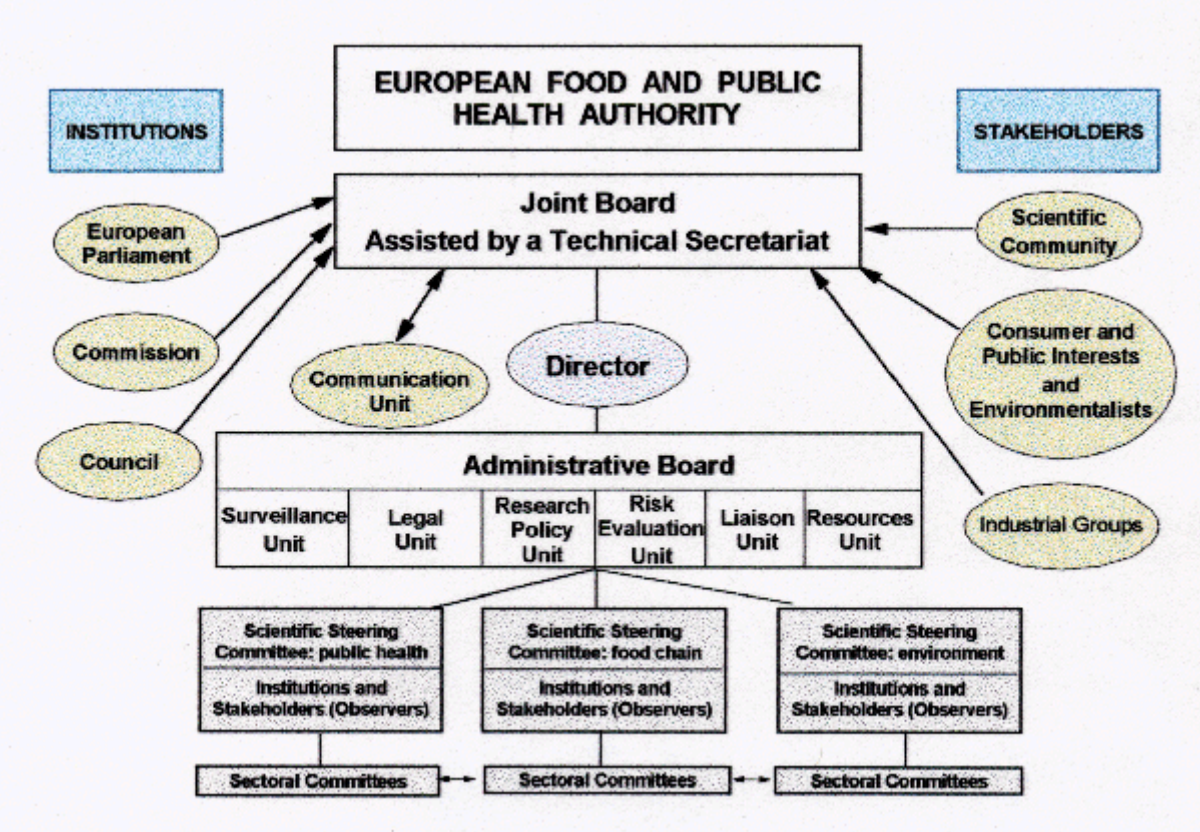


Figure 3

The Proposed Structure of a European Food and Public Health Authority



Source: James, Kemper, Pascal (1999)