POLITICS VERSUS SCIENCE: APPORTIONING COMPETENCY IN THE EUROPEAN FOOD SAFETY AUTHORITY AND THE EUROPEAN COMMISSION

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INTRODUCTION AND BACKGROUND

The European Food Safety Authority (EFSA) has been temporarily located in Brussels since the Laeken Summit (December 2001) and will remain there until compromise can be reached on a permanent site. The row between member states over EFSA's location is emblematic of the political compromises characterizing the debates and outcomes in the long road to a new regulatory regime for food safety in Europe.[1]

Typically we can attribute conflict in determining proportionality and subsidiarity to the tug and pull between intergovernmentalism and supranationalism. Food safety policy offers all this and more. It is an experiment in the building and functioning of policy networks one that, because it is to link European scientists working in Member

[1] The Gottenburg Summit (June 15-16, 2001) confirmed that the decision on the location of a European food agency would be taken by the Council rather than the Commission. Finland, at first, thought to have secured the "European Food Authority" (as it was then termed in the Commission's legislation), citing the Edinburgh (1992) decision, which stipulates that Member Countries not having an EU agency will be preferred when new agencies are located. (Only Sweden and Finland qualified under that understanding.) But not only did some Member States challenge Finland's claim to the EFSA—most indefatigably Prime Minister Silvio Berlusconi in his campaign on behalf of the city of Parma—but top EU officials expressed opposition to a Helsinki headquarters as well. Romano Prodi opts for Luxembourg; Byrne either Brussels or Luxembourg. Further complicating the issue is that in 1992 the EU was very much a different entity, both in terms of its competencies (pre-Maastricht) and membership. But perhaps the latter is the crucial point: the CEECs had recently re-entered the family of democratic, market societies and few observers predicted that the EU would grow from 12 states in 1992 to 25 in 2004. Although Finland and Italy are the self-proclaimed lead sites, other Member States (France, Spain, and Ireland) are competing for the Authority as well. (See http://www.efahelsinki.fi/ ; http://www.efa-lille.com/ ; http://www.bcncandidatura.org/eng/fs_1.htm ; http://www.parmafoodauthority.org/ing/int-01.asp.) No nearer to an agreement, Finland and Italy hoped to secure the EFSA by offering to split the Authority's competencies between Helsinki and Parma; the European Council at Thessaloniki (June 2002) dismissed their proposal as impractical.

State regulatory authorities, the Commission's regulatory committee, and EFSA, offers a new approach to governing that merits close examination. At the same time, it provides a window into the policy preferences of scientists, on one hand, and politicians, on the other.

A story of institutional building as intriguing as illuminating, it begins as early as 1996 with the European Parliament's setting up of a temporary committee of inquiry into the BSE scandal (Buonanno and Nugent, 2002: 10) and by 2002 concludes with the EP and the Council assigning responsibility for risk assessment to a newly-created European independent authority, while preserving competency for (emergency) risk communication and management in a regulatory committee. Thus entwining the EFSA in the complex comitology system that, while managed by the European Commission, is intergovernmental in membership, rule-making, and oversight. [2]

The path to EFSA was taken, at least in the first faltering steps, inductively, with no less than three reorganizations of the regulatory regime. Yet to be written is the assessment of this new regulatory structure. While in these early days our work must be impressionistic, we can be guided in our understanding of the course of events; first, in the debates that took place from 1999-2002 over the design of the new regulatory regime, and second, middle-range theories (policy networks, multi-level governance, and a distinct strand of neo-institutionalism that focuses on actor interactions between and within the Member States and the EU) that are increasingly brought to bear on our understanding of EU policy-making, especially in the EC Pillar.

[2] For a discussion of regulatory committees, see Nugent (2003: 136-139). He writes that "regulatory committees must give their *approval* for Commission decisions by QMV." Regulatory committees are comprised of representatives of the Member States, chaired by a Commission representative.

Of the three factors conditioning debate and compromise in the European food safety regime—divergent socialization and rewards of scientists and policymakers, institutional opportunism, and Member State prerogatives—this study focuses on the first two. Accordingly, we might ask, how have the different orientations of scientists and policymakers shaped the debate and their respective recommendations? Second, to what extent might institutional (EFSA's establishment) and split competences (among the Commission, EFSA, and Member State food safety authorities) either enhance or diminish the effectiveness and legitimacy of food safety regulation? Third, how can we evaluate food safety policy within the broader framework of regulatory governance in the European Union? Specifically, does the creation of food safety policy networks within a scheme of multi-level governance serve as an effective alternative to the central regulatory authority of the modern state? Fourth, what is the expected impact, if any, of EU's regulatory regime in the on-going construction of an international regulatory regime for food safety? To these thematic questions we add a fifth: with the accession in 2004 of 10 new Member States will the EFSA and DG Health and Consumer Protection be up to the task of ensuring EU standards throughout the EU-25?

SCIENCE CONFRONTS POLITICS: PROBABILITIES AND ZERO RISK

How have different orientations of scientists and policymakers shaped the debate over food safety policy in Europe? While at times the scientist *is*, by virtue of high-level government appointment to regulatory agencies and committees, a policymaker, in the main politicians legislate and enforce policy. In any case, the reward structure shifts

when scientist assumes the role of politician. A successful politician is an effective and popular governor, while the scientist's mettle is measured almost exclusively by research output, or discovery. So while the people and their government evaluate the politician, the academy shapes the scientist's reward structure. Politicians, seeking to satisfy the public and the government they serve, ask: "How much will the regulation cost the taxpayers? What constituencies will be impacted? How will they be impacted? Will government be held responsible for food crises?" Scientists, trained to think in terms of chance (probability theory) and generalizability (the goal of science) ask, "How can we reduce the *probability* of incidences of undesirable outcomes?" trained as they are that the probability of a Type I error can be reduced, never eliminated.

This tension between politicians and scientists is hardly a new concept: it grew to a virtual religion in the 19th Century Saint-Simonian (and primarily, European) movement of "New Christianity," which called for government by a theocracy of scientists, engineers, and philosophers. More recently, EU scholars have considered the impact of this different orientation of scientists and politicians in policymaking. Accordingly, Majone (1989, 4) writes, "When science, technology, and public policy intersect, different attitudes, perspectives, and rules of argument come into sharp conflict." Joerges (2001, 3) asks us to consider, "To what degree should, could, or does 'expertise' replace legal, political and ethical criteria?" Identifying three domains—scientific, environment, market—in EU biotechnology policy, Patterson (2000, 318) finds "there is little overlap," between scientists arguing for demonstrated risks, on one side, and consumers, politicians, and environmentalists on the other, advocating the promulgation of regulations based on potential risks. The 2003 outbreak of Foot and

Mouth Disease (FMD) is illustrative of this point. The polity clamored for vaccination of cattle, but scientists warned that vaccination does not guarantee 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.

There are three issues upon which science and politics regularly disagree: 1) risk assessment, 2) risk management, and 3) the interconnectedness of risk assessment, risk communication, and risk management. Risk assessment is sometimes mistakenly thought to be an uncontroversial exercise of science. Nevertheless, any decision based on differential risk thresholds will affect those for whom the standards are designed to protect. Assumptions may be risk-averse, risk-tolerant, and risk-neutral. 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, for example, 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 a Dow Chemical executive 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 among two countries classified in the same family of nations (Castles 1993), risk assessment can produce different policies.

The comparatively recent emergence of the precautionary principle is, in theory, an approach to risk assessment, but its adoption results in higher safety protocols for risk management. How did the precautionary principle come to occupy such a prominent place in the European food safety regime? Morris (2000, 1) traces it to the German *Vorsorgeprinzip* (foresight planning), which dates to the 1970s. Vogel (2001) identifies a "precautionary" approach in U.S. law in the 1960s through the mid 1980s. Similarly, Applegate (2000, 413) notes that the actual term "only recently entered the vocabulary of domestic environmental policy debates in the United States" and that U.S. law reflects a "precautionary preference" rather than the stricter management implied by the precautionary principle.

Among the many attempts to define the precautionary principle, the most frequently cited emerged from the *Wingspread environmental conference* [3]:

> 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.

[3] This definition was written at an environmental conference, January 1998, at the Wingspread conference center in Racine, Wisconsin. Reproduced in Raffensperger and Tickner (1999: 353-354).

Article 174 (environment) of the EC Treaty introduced the precautionary principle into European Community law. The Commission extended it to food safety, first to defend its ban on the importation of meat containing hormones and later in banning GMOs.[4] Furthermore, the Commission lays out, in its communication on the precautionary principle (Commission 2000d, 10), its justification for extending it to other policy areas, writing that "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." According to the Commission, the ECJ and Court of First Instance had adjudicated cases at least partly drawing on the precautionary principle, while both the European Parliament and Council had approved the use of the precautionary principle in human health. Hence, the Commission (2000d, 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 have been frustrated in their efforts to elevate it to the status of international law. When the WTO ruled against the EU's ban on beef from hormone-fed cattle, one group (Public Citizen) refered to it 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" James Cameron (1999, 261).

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[4] The precautionary principle has informed EU policy on hormones and GMOs, despite formal complaints filed by the U.S. and Canada in the WTO. (Commission 2000e, Vogel 2001).

But the precautionary principle, as all risk averse interpretations of innovation, brings a different set of costs. Wildavsky (2000, 40)[5], for example, argues that 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." Because statutes "almost never explicitly address the lost opportunity costs of screening out of a product," the consumer shoulders the costs. Politicians, however, pander to a "clamoring constituency" demanding that government ensure its safety and, as a result, advocate "specific measures on behalf of tangible people." Conversely, scientists offer generalized societal benefits and future improvements based on scientific discoveries. "You'll be better off in the 'by-and-by'," Wildavsky observes, "has never been noted as a politically potent appeal."

Durodié (2000, 163) in his review of European risk regulation writes "implicit with the Commission'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 speculates that the European public's embrace of zero-risk may reflect their lack of confidence in decision-makers rather than science! He argues that the EU's application of the precautionary principle has unanticipated consequences for European society (164):

> 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

[5] This is a reprint of Wildavsky's classic article. Morris (2000) includes it as his lead chapter. It serves as the theoretical ballast in the text's energetic attack of the precautionary principle.

> 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.

Science and politics differ not only in their approach to risk assessment and management, but also in the extent to which risk assessment, communication, and management intersect. Figure 1 illustrates the scientist's perspective of interconnectivity.

<Insert Figure 1>

This view can be contrasted with that of the politician, exemplified by David Byrne, Commissioner for Health and Consumer Protection, who commented, "Science is for scientists and policy-makers are for the law" (CNN 2000).

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."

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.

FROM DGXI TO EFSA

To what extent might institutional and policy reforms either enhance or diminish the effectiveness and legitimacy of food safety regulation? Does the answer to this question depend upon one's perspective as either a scientist or a politician?

From Harmonization to Comitology

The Commission, as guardian of the EC Treaty, regulates food safety in cooperation with the regulatory agencies of the Member States. BSE and other food scares propelled a little known policy area to the limelight, undermining the credibility of Jacques Santer's tenure as president of the Commission, empowering the European Parliament, and strengthening the resolve of the newly installed Romano Prodi to make the establishment of a European food authority his first priority (Randall 2001).

Table One, adapted from Dehousse (1997, 249), presents the four ways in which, historically, policy has been implemented in the EU: harmonization; comitology and approximation through European and international standardization agencies; comitology coupled with independent agencies; and regulatory agencies/Commission advisory committees.

<Insert Table 1>

Harmonization of food safety became increasingly important upon achievement of the customs union, especially with the persistence of and emergence of new non-tariff barriers between Member States. A single market based on information sharing and trust relies upon adjudication of cases in the Courts—national, ECJ, and Court of First Instance—in order to create a body of common law upon which the internal market can be built. Importantly, the ECJ promulgated the principle of *proportionality* (in the *Cassis de Dijon*) and the reliance on scientific expertise in the rendering of judgments with regard to Article 36 of the EC.[6] While *Cassis de Dijon* signaled the beginning of the end

[6] Article 30 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 Articles 28 & 29 (TEC Consolidated Version), the latter establish the ground rules for free trade. (See Footnote #20 for text of Article 30.)

of reliance of harmonization as the implementing process for the attainment of the Single Economic Market (SEM), with the Commission's White Paper (1985), the Milan Council Summit of that year, and the 1987 Council decision clarifying comitology (Nugent 2003, 136) we see the regulatory committee (comitology) [139] increasingly recognized as having a more important role to play in policy implementation.[7]

Two basic views of comitology have emerged in the literature, each a direct result of the question posed. If the overriding concern is "democracy" and "transparency," comitology is often vilified as undemocratic, unrepresentative, non-transparent, and unaccountable. Wessels (1997, 38) writes: "The extent of legitimacy is after all an empirical issue: how far do those represented accept the decisions prepared, taken, and implemented in the EU policy cycle?" 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." 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," she tells us, "it doesn't make a very stable glue when the temperature rises. If instead, one seeks to balance supranationalism and federalism, comitology is a practical way to accommodate this balance. Falling between mutual trust (harmonization) and independent agencies, the comitology system or *deliberative supranationalism* (Joerges and Neyer 1997) is, "a conceptual alternative of the well-known dichotomies between

[7] Nugent (2003, 137-138): advisory committees can only advise the Commission; management committees can block Commission decisions by QMV; regulatory committees must give their approval for Commission decisions by QMV. It is important to note that comitology did exist prior to the SEA, especially in the form of a complex agricultural comitology, which successfully combined the national and supranational.

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" (Joerges 1999a, 312). Deliberative supranationalism reduces the "need to construct non-majoritarian institutions, which are envisaged by Majone as the core 'fourth branch of government'" (Joerges 1999a, 315). Comitology opens and monitors the SEM "without replacing these States with a Europeanized equivalent" (Joerges and Neyer 1997, 321-322). The Commission is resource poor, in this view, because it ought not to have the power to purchase conformity. Instead, the Commission carries out its mandate by creating networks to advance community integration by promoting cooperation and dialogue among interests in Member States.[8]

From Comitology to Information Agency

But to many observers, an opaque comitology system had not been able to prevent the spread of foodborne disease beyond Member State borders. John Bowis, Rapporteur, European Parliament, Committee on the Environment, Public Health and Consumer Policy, commenting on the Commission *White Paper on Food Safety*, summarized the breadth of the food safety crisis (European Parliament, 2000b: 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.

[8] See, for example, Justin Greenwood. 1998. *Collective Action in the European Union*. Routledge.

The Commission was taken to task by the European Parliament, when it decided in 18 July 1996 to set up a temporary committee of inquiry of the Commission's handling of the BSE crisis, exercising its right of scrutiny with hearings through the fall and winter of 1996-1997. The Committee published a scathing indictment of the Commission (the Medina Report, European Parliament, 1997) on 07 February 1997, going so far as to threaten censure:

> The appropriate sanctions available to Parliament under the Treaty with a view to calling the Commission politically to account area motion of no confidence, pursuant to Article 144 of the Treaty, or the initiation of proceedings for failure to act/a breach of the Treaty, pursuant to Article 175 (32).

The Medina Report blamed the comitology system for the BSE crisis, stating that:

> The complexity of the commitology (sic) system and the lack of transparency of the procedures inherent therein make it even more difficult to apportion responsibilities be it with respect to the institutions or to the committees, and enables one institution to shift political and administrative responsibilities on to another…By virtue of the opaqueness, complexity and anti-democratic nature of its workings, the existing system of commitology (sic) seems to be totally exempt from any supervision, thereby enabling national and/or industrial interests to infilitrate the Community decision-making process.. 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.

The comitology system of regulation had not only failed to ensure the safety of beef, its lack of transparency and accountability had produced among the European public an analogous horror of an American public (and importantly, Theodore Roosevelt) who read Upton Sinclar's *The Jungle*, his fictionalized account of the Chicago meatpacking industry. Here is an example of Kingdon's (1994) classic window of

opportunity, fueled by consumer fear and disgust, which Chambers (1999, 97) captures in her review of the European Parliament's reaction to the BSE crisis:

> 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)

It came to light in the course of the hearings that the Agriculture Council had actually rejected a Commission proposal (June 1990) to prohibit the exports of meat from the U.K. and two other Councils had been made aware of the potential danger of BSE to humans: the Council of Health Ministers discussed it on several occasions and the Council of Research Ministers had, without committing funds to the endeavor, had recommended further research.

The Medina report (European Parliament, 1997: 14) also found that overlapping competencies in the DGs contributed to ineffectual monitoring.

> Public health protection competencies are compartmentalized between a number of different Commission departments (as regards possible food risks).The BSE affair has been handled variously by: DG VI (Agriculture), DG III (ex-Internal Market, now Industry), the Consumer Protection Service (currently DGXXIV), and the Directorate for Health and Safety (DG V). This compartmentalization has hampered the coordination and efficiency of the services concerned, has facilitated the shifting of responsibility for maladministration between the various services of the Commission, and points up the lack of an integrated approach, a phenomenon exacerbated by DG VI's arrogating primary management of the BSE issue to itself.

The Commission responded by dissolving the principal advisory Scientific Committees and transferring staff from a variety of DGs to an expanded DG XXIV (Health and Consumer Protection), responsible for representing and safeguarding

consumer interests. Futhermore, the Commission complied with the EP's call for "a joint (EP/Commission) body, with a fixed term of office to monitor and review on a continuing basis the implementation of the measures set out in this report" and greater transparency (European Parliament 1997: 34).

What of the root causes identified in the Medina report (23): the complex comitology, the overlapping competencies, and the influence of British government officials on the Commission? (With regard to the latter: "the Commission admitted that it had received political pressure from the UK Government not to include BSE checks in the general slaughterhouse inspections…") While the 1999 Commission reorganization might fix some of the problems identified in the Medina Report—multiple access points and overlapping competencies—it did not address Member State power in the comitology, system of regulation. Yet Parliament, in the course of BSE hearings, had attributed culpability to *both* the Council and Commission for mismanagement of the BSE crisis.[9] What regulatory structure could the Commission recommend without undermining Member State (Council) control?

[9] "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).

Comitology and Information Agency or an Independent Regulatory Authority?

Majone (1997, 262) in offering an optimistic assessment of the combination of comitology and information agency, underlines the role of persuasion as a tool in the policy analyst's arsenal. Accordingly, he offers the prospect of European agencies "with knowledge and persuasion as the principal means of influence at their disposal… 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).

Indeed, the Commission expressed interest in the informational agency when it turned to three leading European scientists and EU scientific advisors, charging them with the task of evaluating "whether an independent agency type structure could lead to further improvements in scientific advice at the EC level" (James, Kemper, and Pascal 1999).[10] The scientists gave the Commission more than it bargained for in a classic case illustrating the distinct (and contradictory) orientations of scientists and politicians.

James, Kemper, and Pascal traced the loss of consumer confidence to a European regulatory structure that was out of step with the single market. Concurring with the Medina report, they argued that 1) the regulatory structure had advantaged industrial interests at the expense of consumers' safety and 2) the complex comitology endangered the public health of Europeans. They concluded that the 1999 Commission

[10] No stranger to the European system of food regulation, Dr. Pascal has held positions in EU food policy since 1986: Member of the DG III (then DG XXIV in reorganization) Scientific Committee for Food (1986-1997); its president from 1992-1997; Member of the Multidiscipinary Scientific Committee on BSE 1996-1997. Member of the Scientific Steering Committee (DG Consumer Health and Food Safety) since July 1997 and President from November 1997 to present (2003). Source: http://europa.eu.int/comm/food/fs/sc/ssc/cv/cv-pascal.pdf

reorganization (described above), would not provide the necessary protection. Regulation should take the form, not of an informational agency, but a European Food and Public Health Authority, an agency[11] 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, as it would be the first time the control function for a social policy would be removed from the Commission and Member States. According to the authors, the current regulatory configuration artificially compartmentalized risk factors to human health. Their solution took into account two factors: the science-based notion of interconnectedness among animals, the environment, and humans (depicted in Figure 2) and the interconnectedness in risk assessment, communication, and management (depicted in Figure 1).

<Insert Figure 2>

Furthermore, they traced the failure of the EU to contravene food crises to an artificial separation of risk assessment, communication, and management among the regulatory and implementing parties, concluding 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). Hence, two new notions—the systems approach to food safety and the close interaction required in assessing, communicating, and controlling risk—informed their proposal for a European

[11] 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."

Food and Public Health Authority. Figure 3, the authors' recommended scheme, went far beyond the existing regulatory structure.

<Insert Figure 3>

James, Kemper, and Pascal defended inclusion of environment and public health in their proposed organizational structure, pointing out that some aspects of environmental pollution is attributable to animals. (See Figure 2.) In fact, there was a precedent within the EU for a similar combination of competencies: 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, was relatively new, having been established in March 1995.) But 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 find support for the linking of these policies in (at the time) the most recent EU treaty (Amsterdam), which "emphasized the need to include health issues in policy making at a European level." The architects of the proposed authority warned 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 spirited defense of a European Food and Public Health Authority. Furthermore, they expected their proposed structure would reduce the frustration of industry, "exasperated by the complex and protracted system for clearing

their products." A European Food and Public Health Authority 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."

In sum, they proposed the regulatory option (Table 1, Column 4). Indeed, early in the debate and at the height of the BSE crisis and companion EP hearings, calls for a regulatory authority along the lines of that envisaged in Figure 3 generated support among many corporations and trade associations and most consumer interests (Lanze, L.Buonanno, Zablotney, and Keefer 2001) and the EP (Buonanno and Nugent 2002). Parliament had seemingly wished for an independent regulatory agency (European Parliament, 1997: 14): "A coordinated policy would have been possible were there a body similar to the Food and Drug Administration in the US or the health administrations in some Member States, or even had a European Health Agency been created."

Three months after the publication of the James, Kemper, and Pascal report, the Commission (2000c) 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 adamantly rejected 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.[12]

This marked a significant shift from Santer's speech before Parliament in the midst of the BSE inquiry when 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 Parliament 1997).

The Commission's food safety proposal rested 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;

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[12] 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" is subject to interpretation. Weiler (1999, 343 & 344) in his review of the comitology system writes that:

> …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.

Everson et al. (1997, 12) argue 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."[12]

and prohibition of the regulatory function under existing treaty provisions. David Byrne (European Commission 2000b), 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.

No EU institution was to accept the view of the Wiseman's Report. The EP Committee on Legal Affairs and the Internal Market (2000a) 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 2001b). This proposal retained the management of the rapid alert system in the Commission: (Commission 2001b: 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 (2001) and Council classified it as risk management in defending their decision to retain this function in the Commission, effectively preserving each institution's power: for the Council, it retained regulatory authority in the comitology committees and for the Parliament, the oversight power it had exercised during the BSE crisis. Neither the Council nor Parliament desired such far reaching control to be shifted to an independent, regulatory authority.

The final outcome, adopted on 28 January 2002[13] the European Food and Safety Authority (Commission 2002a)[14] was less supranational than the Commission's *White Paper* proposal. At Parliament's initiative, "Safety" was inserted into the original European Food Authority, thereby underlining the singleness of its competency.[15] The EFSA (2003) explains its competency as: "The Authority will primarily be a scientific risk assessment body; the responsibility for risk management or decision making remaining with the EU's political institutions: the European Commission, the Council of EU Ministers and the EU Parliament." The Authority is responsible for (EFSA 2003):

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[13] Came into force 21 February 2002.

[14] "Pursuant to the general principles of food law, the Authority should take the role of an independent scientific point of reference on risk assessment and in so doing should assist in ensuring the smooth functioning of the internal market. It may be called upon to give opinions on contentious scientific issues, thereby enabling the Community institutions and Members States to take informed risk management decisions necessary to ensure food and feed safety whilst helping avoid the fragmentation of the internal market through the adoption of unjustified or unnecessary obstacles to the free movement of food and feed." (European Commission 2002a: 3)

[15] See Buonanno and Nugent (2002) for an account of Parliament's evolution of support for a U.S. FDA-style regulatory authority to information agency.

- the scientific evaluation of risks
- the collection and analysis of scientific data
- safety evaluations of dossiers put forward by industry for Community level approval of substances or processes
- identification of emerging risks
- scientific support to the Commission particularly in the case of a food safety crisis
- direct communication to the public and other interested parties of information concerning matters within its remit.

The EFA is funded from the Community budget and, when fully operational, would dispose of substantial in-house scientific expertise. The Authority is expected to employ up to 250 people after three years, with a budget of €40 million. This will be reviewed after three 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 2001c).

THE ROLE OF POLICY NETWORKS

The Commission, as in other policy areas, has adopted the policy network approach to the management of food safety in the European Union. EFSA (2003) describes its mission to "share its findings and listen to the views of others through a *vast network* (emphasis added) that will be developed over time, as well as interacting with experts and decision-makers on many levels." Figure 4 depicts the current European

food regime. The EFSA's *Advisory Forum* is a body of representatives of Member States' food safety authorities, while scientists staff its *Scientific Committee and Panels*. The latter is advisory rather than regulatory. The regulatory function is carried out by the Commission's Standing Committee on the Food Chain and Animal Health.

<Insert Figure 4>

The expectation of EFSA as part of a "vast network" of experts and decision-makers, brings us to our third question: how can we evaluate food safety policy within the broader framework of regulatory governance in the European Union?

The European Commission has long cultivated policy networks to coordinate the single market, an alternative to the independent regulatory authorities found in many federal systems. The European Food and Safety Authority (EFSA) is at the center of a network of Member State regulatory bodies to exchange and disseminate scientific assessment of food safety. The EFSA, at the same time, belongs to the Commission's network organized to manage risk and communicate risk measures.[16]

The European food safety regime offers an opportunity to examine the 1) the Commission's coordination and management of a critical policy area[17] and 2) an independent body's development, implementation, and coordination of a network for food safety assessment. The EFSA is expected to resolve a longstanding problem, namely, to reconcile disparate risk assessments among Member States, which can either

[16] "The Commission remains fully responsible for communicating risk management measures. The appropriate information should therefore be exchanged between the Authority and the Commission." (Commission 2002a: 5). With regard to the rapid alert system: "A system for rapid alert already exists in the framework of Council Directive 92/59/EEC of 29 June 1982…The revised system should be managed by the Commission and include as members of the network the Member States, the Commission and the Authority." (Commission 2002a: 5).

[17] Critical because it is straddles low (economics) and high (security of citizens) politics.

undermine the internal market[18] or fail to protect consumers from unsafe food.[19] If consumers do not trust food from other Member States, national regulators will face pressure to invoke Article 30 (TEC).[20]

While the Commission had expected a fully operational EFSA in January 2003, the EP's budgetary committee withheld 2003 allocations as a lever to force a Council decision. Starved for cash, EFSA's management board and its executive director, Geoffrey Podger), were delayed in staffing its scientific committees.

Most scholars agree that the Commission's promotion of policy networks is at least partially a result of the understaffing of European administration[21] (Dehousee 1997; Majone 1996b; Nugent 2001). To some observers, however, a comparatively small administrative organization is not seen as a fundamental weakness in the process of European integration. Competing notions of the ability of the Commission to glue (or string) together European governments, citizens, and interests shape interpretations and the extent to which multilevel governance and policy networks (two sides of the same coin) replace the need for traditional state institutions (Caporaso 1996; Joerges and Neyer 1997; Joerges 1999b; Hooghe and Marks 2001; Rosamund 2000; Peterson 1995; Peterson and Bomberg 1999) or undermine integration in a quasi-federalist state (Majone

[18] David Byrne (2002) recognizes this in his speech at the EFSA's first board meeting: "I have the very strong expectation that the development of the Authority's reputation for independence and excellence in scientific matters appertaining to food will put an end to competition in such matters among national authorities in the Member States."

[19] For instance, the failure of national authorities to recognize the dangers posed by feed practices, BSE, and its hypothesized cross-over (nCJD) in the U.K.; the dioxin scandal in Belgium

[20] Article 30 (TEC, Consolidated Version): "The provisions of Articles 28 and 29 shall not preclude prohibitions and restrictions imports, exports, or goods in transit justified on grounds of public morality, public policy, or public security; the protection of health and life of humans, animals, or plants; the protection of national treasures possessing artistic, historic, or archaeological value; or the protection of industrial or commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

[21] Permanent EU staff in 2002, 29,997; 21,750 in the Commission (Nugent 2003, 118).

1994; 1996a & b; 1999; 2000). Undoubtedly adopters of the latter view perceive a crisis in governing, the former, an Hegelian progression of ideas.

Those who see and/or advocate policy networks cum multi-level governance cum the centrality of comitology, adopt the mantel of postnationalism by predicting (sometimes observing) the increasing irrelevance of the nation-state. To them, institutionalists build with the worn blocks of executive intra- and interstate regulatory agencies made accountable through legislative oversight. We see that postnationalists,[22] influenced by a combination of enlightenment political philosophy (Kant) and homegrown experience (corporatism, conosociationalism), favor network governance.

In her literature review Börzel (1998) finds this orientation almost exclusively among German and Dutch scholars. The Anglo-Saxon literature, on the other hand, while debating the usefulness of policy network literature to produce causal hypotheses[23] regarding the nature of interactions among governmental institutional and non-governmental actors, limits its scope to that of interest intermediation. Rather than permanent constellations, policy networks (especially the loosely-structured issue networks first described by Hugh Heclo [1978]) emerge to coordinate fledgling policies. Over time, as governmental actors gain experience and knowledge in that policy sphere, the needs of interests (stability) and institutional actors (power), converge in a positive sum game. The institutional linkages and actor interactions evolve into a policy community or even the iron triangle [Cater 1964] (in the case of the once current notion of American circumvention of the separation of powers).

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[22] See Archer (2002) for classifications, especially "Globalist." For the linear development of this orientation, see Mitrany (1943), Haas (1964); Keohane and Nye (1977).

[23] See Dowding (1995) for criticisms of policy network as "theory" and Marsh and Rhodes (1992) for an example of advocacy of something beyond "approach."

Wessels (1997, 36) attributes the proliferation of networks to the Commission's failure to institute EU-wide corporatism, "The problem is thus not that the Brussels arena is a 'closed shop,' but that the new political space in which national and European institutions and groups compete is composed of complex and differentiated networks."

In an advisory (information) agency outside the *comitology web*, Dehoussee (1997, 247) sees the spate of agency creation "as part of an ongoing process of the deepening of European Community regulatory inventions." Although the functions of the 15 agencies differ, some are informational, others executive, one regulatory (Kreher 1997, 238), they share the mandate of establishing and maintaining policy networks among National Authorities, interests, and experts.

Dehousse (1997, 259) reminds us that networks are the inevitable and paradoxical result of the EU's need to "expand the scope of its influence in the administrative sphere…(while) greater centralization is politically inconceivable."[24] But he adds:

> One may, of course, wonder how durable such a solution will be. The network approach certainly responds to important concerns, both political and functional, as the relevant expertise is generally at the national level. Like an institution, regulatory networks are likely to be subjected to contradictory pressures. Yet because they are *loosely structured*, (emphasis added) they may find it more difficult to give a coherent answer.

Cosmopolitanism—the influential Habermas brand of postnationalism—predicts a diminishing role for states, pointing to the power international organizations now wield in setting standards for economic relations, in the respect and protection of human rights, democracy, and the rule of law. Europeans are *weltbürger* [world citizens] (Gottdiener,

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[24] See Majone's (1996a & b, 1999, 2000) earlier work in which he is favorable toward EU regulatory agencies, comparing the EU's current concerns with those that led to the American administrative response of executive agencies with legislative oversight as the solution to market failure (rather than the European path of nationalization).

1995: 233) living under *weltbürgerrecht* [world/cosmopolitan law] (Habermas, 1999: xxvi). There is a sense that Europeans, founders of the modern nation-state, are in the process of inventing a new kind of government, one based on shared norms rather than the power of the state. (Or neo-medievalism, as it is sometimes described in the literature!)

Critics of cosmopolitanism, however, point to its base in rational enlightenment. Policy networks depend upon shared rules and norms; the incentive for compliance boils down to the notion that it is the way people who "reason" would want to live. (Habermas' now famous unshakable faith in "reason.") This point of view has been ridiculed as naive by conservatives (whether the majority of the polity can be reasoned with and will, in turn, reason with others, is a philosophical conundrum generating as much debate today as it did in the 18th Century) and ethnocentric (whose values?) by postmodernists.

What is the prospect, then, for a food safety regime governed by policy networks?

THE EFSA: GOVERNING THROUGH THE INVISIBLE COLLEGES OF POLICY NETWORKS

Although only time will be reveal whether Europe is inventing a model for postnational governing, our narrower task is to understand the efficacy of policy networks in the European food safety regime. Fortunately a great deal of work has been conducted by sociologists who have focused on the interaction of scientists or science as a social system.

Price (1963), Storer (1966), Kuhn (1970), and Crane (1972), social constructivists (Lievrouw et al. 1987), view science as a social organization guided by a set of shared

norms and values which, in turn, affect the way in which science is organized and communicated among its practitioners. Science's principal norm, advancement of knowledge through discovery, sets up an "internal police system" governed by "fear of censure by their fellows" (Storer 1966, 85). The scientist's orientation of "organized skepticism" ensures communication among scientists:

> …he should be interested in others' responses to his work, for without them, in principle anyway, he cannot come to an accurate evaluation of his own work. The norm acts as an injunction against the scientist's making his final evaluation of his work, simulataneously protecting science against the crackpot (whose distinguishing characteristic is that he is insensitive to others' criticisms of his work—because he already 'knows' how valuable it is) and supporting the exchange-system by insisting that the scientist look to his colleagues for final evaluation of his contributions (Storer 1996, 87)

Price (1963) argues that the logical consequence of this organization of modern science ("Big Science") is an exponential growth in publications. In another work (1970, 22) he writes that "…if you want to make the field firm and tight and hard and crystalline you have to play with your peers and keep on the ball by citing their recent work." Staying current with the exponential output of Big Science, however, places an impossible burden on the scientist (Price 1963). One can increasingly specialize or develop social circles with invisible colleges[25] (Crane 1972, 138) "that help to unify areas and to provide coherence and direction to their fields." Central scientists act as leaders: they build morale, interpret new findings, recruit new members, and motivate members to increase output.[26]

Empirical work, such as that of Crawford (1970, 92, cited in Weimann 82), found that scientists communicate research information via central persons; specifically that

[25] Invisible colleges are cliques of scientists. See Rogers (1995).
[26] Storer (1966, 123) points out that a possible alternative to the social circle, "chains of authority" would grow too long , leading to rapid degeneration of the quality of information.

centrally-located scientists in one research center disseminate this information to centrally-located scientists at other research centers. The attempt to identify the characteristics of key scientists soon intersected with research on opinion leaders. Working on a different front, scholars (for political scientists, famously Lazarsfeld) have attempted to profile and identify opinion leaders. Katz and Lazarsfeld (1955, 1) in their early studies of opinion leadership wrote that it is "casually exercised, sometimes unwitting and unbeknown…" Nevertheless, in the past 50 years scholars have made gains in understanding opinion leadership.

There are two different types of leaders: innovator-leader and mediator-leader. Each has a different role to play in diffusing innovations in the organization (the former) and binding members together in a community (the latter). Leaders occupy linkage points between the different key areas of the network. Granovetter (1973) opened up a new line of inquiry when he suggested that weak ties played a critical bridging role in social networks. Members of cliques are not good sources of outside information because of the close nature of its participants: everyone knows what everyone else knows. Members, through weak ties to other cliques, bring in new information to their cliques. Key scientists communicate across cliques. In Weimann's (1994: 203-204) review of the social constructivist approach to scientific communities, he concludes that: "The accumulating findings from numerous studies in various scientific areas indicated clearly the presence of a social circles and invisible colleges."

We need only ask the same questions of the food policy regime that social network theorists routinely pose: "Does the Small-World Phenomenon arise at some point in the transition from order to disorder, and if so, what is responsible for it?" and

"What is the most general set of characteristics that guarantee that a system will exhibit the small-world phenomenon, and can those characteristics be specified in a manner independent of the model used to create the network?" (Watts 1999, 24).

In theory, then, invisible colleges should exist among European microbiologists, pathologists, and other scientists working in the area of food safety. And if so, this suggests that, at a minimum, EFSA should serve as an important clearinghouse for risk assessment. But what can be said of risk communication and management? The simple answer is, we do not know. We can only hypothesize that as Europeanization continues and possibly accelerates, national parliaments and regulatory authorities will implement the necessary regulations based on EFSA assessments.

CONCLUSIONS AND FUTURE DEVELOPMENTS

We posed five questions at the beginning of this inquiry. To the first—how the different orientation of scientists and politicians shaped debate and the recommendations—we answer that scientists had minimal control over the outcome. Scientists have, however, received a greater measure of independence in scientific assessment by virtue of an independent authority. We also found that it was at their suggestion that the EFSA would be called an "authority" rather than "agency." The very existence of a independent authority will lend more prestige to their scientific assessments than that emanating from an advisory committee housed in the Commission. But politicians viewed the issue from the perspective of power relations; specifically, who would have the authority to close markets to suspect food? Politicians answered it by leaving regulatory authority in the Commission.

To our second question—to what extent might institutional and split competencies either enhance or diminish the effectiveness and legitimacy of food safety regulation—we cannot offer a definitive answer. We can, however, suggest possible outcomes, one positive and exciting, the other troubling.

Scientists, more than any other identifiable professionals, engage in the necessary socialization and communication behavior needed to build and maintain policy networks. In our review of the literature focusing on the sociology of science, we learned that science is guided by a set of shared values ant that scientists form communities—invisible colleges—in which they maintain constant communication of ideas (hunches and discoveries) through complex and redundant communication fora and networks — listservs, computer groupware, professional conferences and workshops, journals, and exchanges to research institutes. Key scientists occupy central roles, training "apprentice disciples"[27] who fill academic and government posts throughout Europe. The EFSA takes positive advantage of these networks. To this we might add Majone's (1997, 274) observation that, "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." The Commission has assumed the role of translating knowledge into policy by making itself the main client of an informational agency staffed by scientists and public health authorities (EFSA 2003).

Yet the arguments against regulation through policy networks and for an independent regulatory agency seem equally persuasive, no less so because it is scientists (James et al. 1999) as experienced regulators who advocated this institutional structure. Disease has been identified as a causal factor in the centralization of government

[27] Price called them "sorcerers' apprentices."

authority. McNeill (1977), to use an example drawn from European history, saw the bubonic plague as much a contributing factor as any to the breakdown of medieval localism. Only governments (city-states) with the appropriate control and resources could manage the public health measures needed to contain the plague.

Paradoxically, food crises in Europe may have created a market in which the safest food may become the food that is the least nutritious.[28] McDonald's already purchases its lettuce and potatoes from farmers who grow exclusively for the company, 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. 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 the EU food safety regime to instill consumer confidence in EU 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 a container of 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.

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[28] See Erick Schlosser's, *The Fast Food Culture*.

To these arguments we might add the Commission's uncertainty over the long-run efficacy of divided competencies as expressed in the *White Paper* (2000d, item #40):

> 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 third question requires that we extrapolate beyond the food safety regime in asking us to evaluate food safety policy within the broader framework of regulatory governance in the European Union. Here the answer lies in the efficacy of policy networks. The European Commission reliance on networks is a neo-functionalism experiment in creating a Europe of people rather than a Europe of states. Whether this postnational vision of governance will provide the security and prosperity of the nation-state remains to be seen. This leads us directly into the fourth question: the expected impact of EU's regulatory regime in the on-going construction of an international regulatory regime for safety. This is postnationalism writ large, the functionalism advocated in the interwar period and come to pass in the age of the WWW and jet travel. Yet it depends wholly on the success of a norms-based approach that conservatives dismiss as naïve and postmodernists as naïve as it is ethnocentric.

Our final question asks whether the policy network approach can ensure food safety in an EU-25. Cosmopolitans have expressed reservations about the financial capacity of the CEECs to root out corruption and improve administrative capacities. Indeed, the European Commission (2002b) continues to warn the CEECs over unacceptably high levels of corruption. Despite the EU's attempt to diffuse Western

European norms through its "twinning" program of matching EU civil servants with their counterparts in the candidate countries, the European Commission cannot monitor the implementation of every local law and regulation. Can the EU food policy network extend effectively into countries with much lower per capita incomes (Nugent 2004) than the EU-15? Will Member State governments be able to ensure its nervous citizens in the EU-15 that food standards are the same in the CEEC?[29]

While we cannot predict the outcome of this historic intersection of policy networks, enlargement, and the promulgation of international norms, these questions can guide us as we continue to follow and examine developments in the EU food safety regime.

[29] One might note the irony of this concern. All of the food crises have been confined to Western Europe.

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Figure 1: Interconnectedness of risk assessment, communication, and management.
Source: McNab, Alves, Lammerding, Stahevitch, and

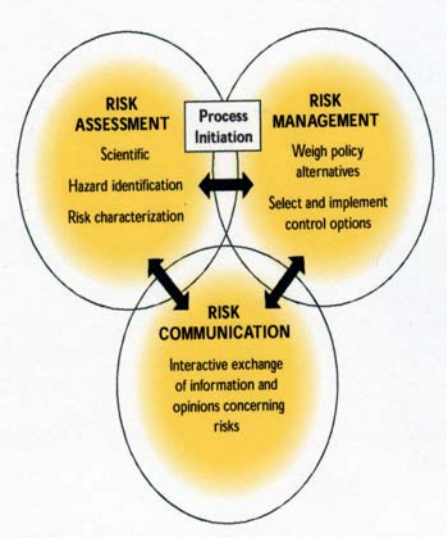


Figure 2: Linkages between Human Health Outcomes, Animals, and the Environment
Source: McNab, Alves, Lammerding, Stahevitch, and Morely

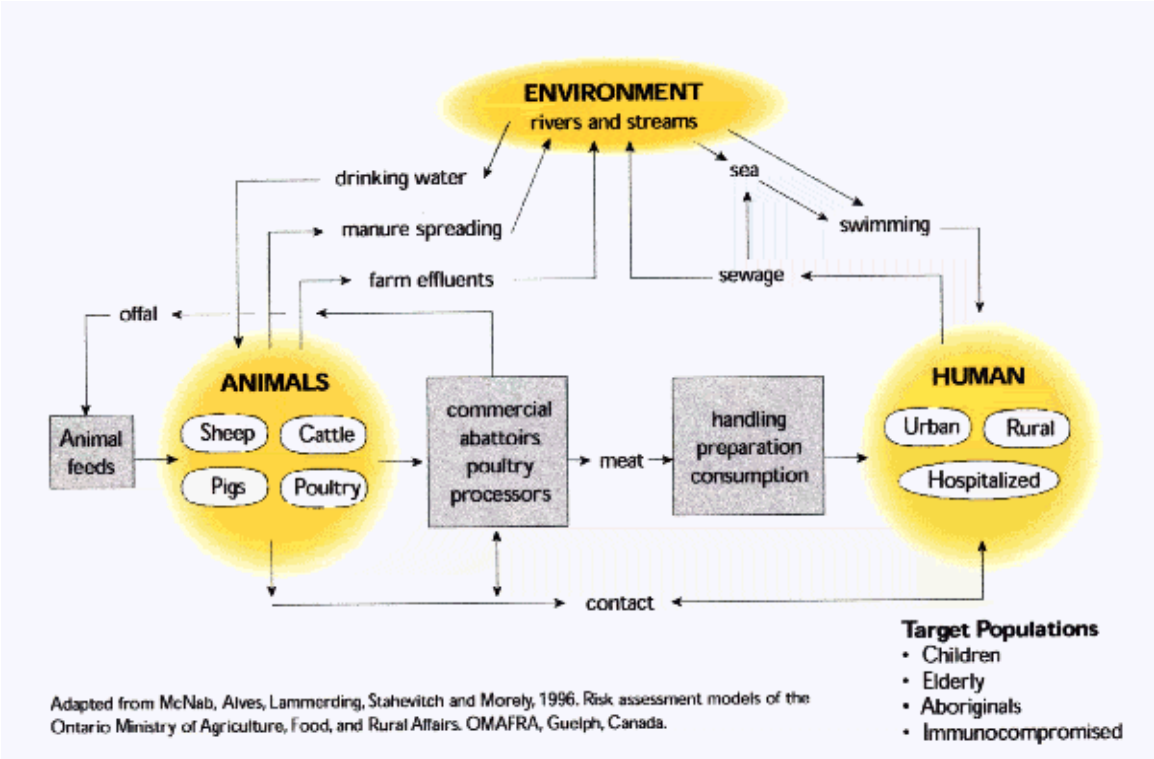


Figure 3: Scientists' Proposed Structure, European Food and Public Health Authority
Source: James, Kemper, Pascal (1999)

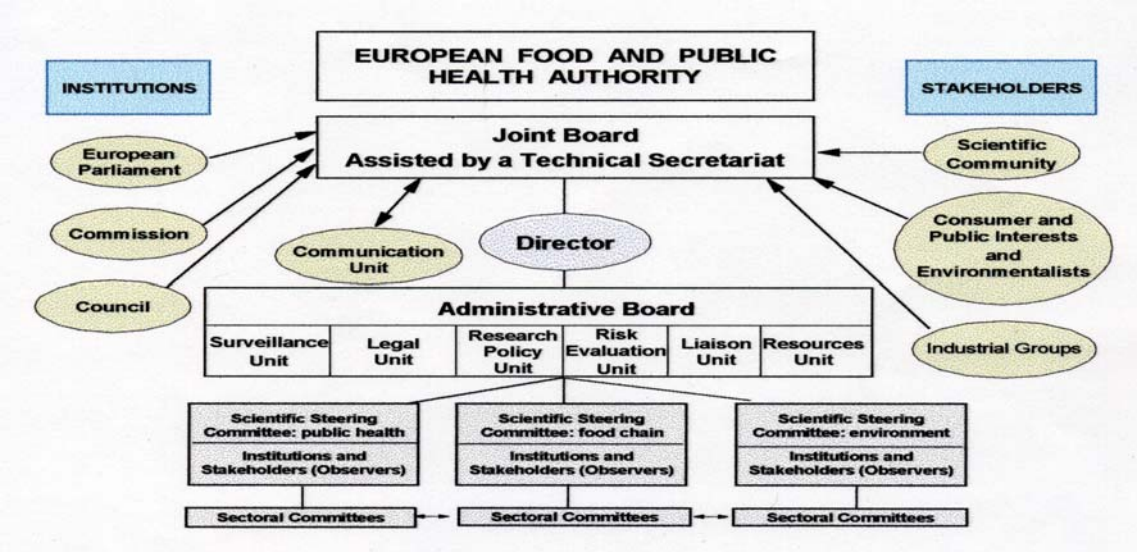
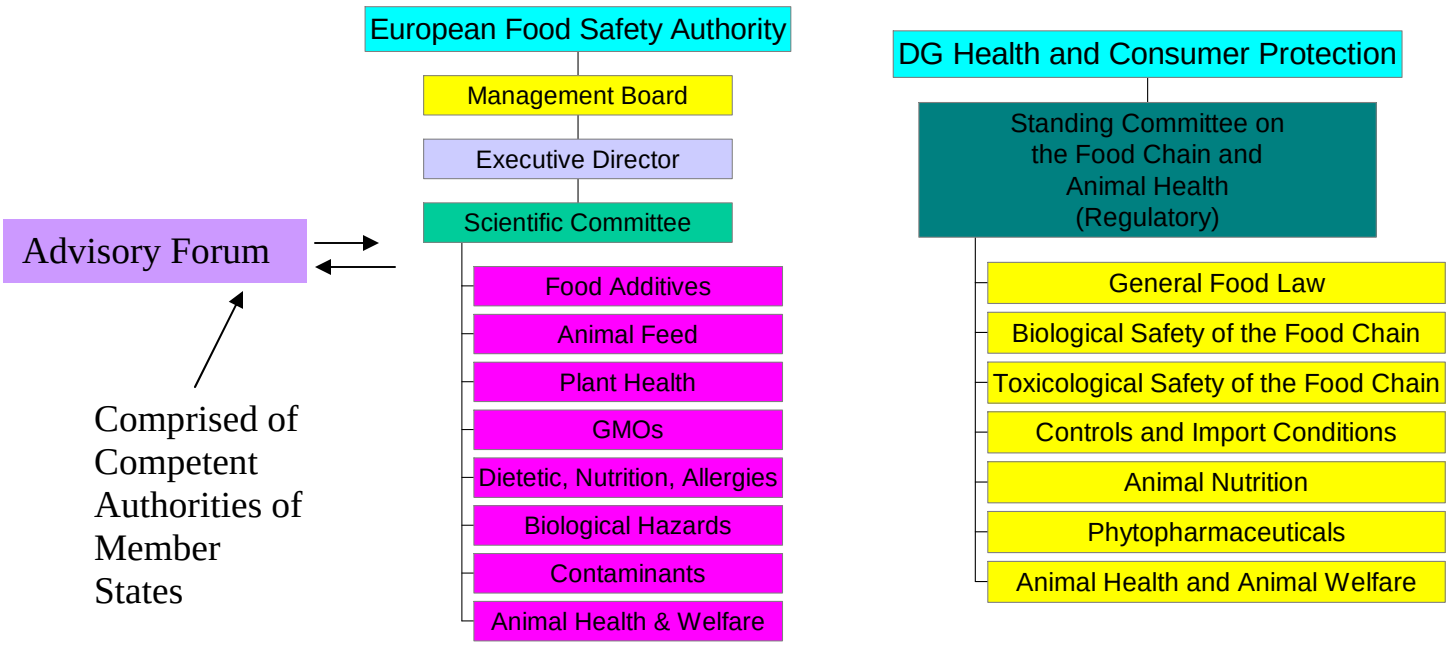


Figure 4:

European Food Safety Policy Network



Risk Assessment

Risk Communication & Management

Table 1: EU Policy Implementation

IMPLEMENTING APPROACHES	Harmonization	Comitology (Advisory, Regulatory, Management)[4]	Comitology/ Agency (14) (Regulatory, Management) and Independent Agencies (Advisory) [4]	Regulatory Agencies (1) ---------- Commission Advisory Committee
Time Period (Prevalent)	1957-1992 (EEC)	1987-Current (SEA/EC); Since EEC for Agricuture	1990-Current	1995 ------ 1992 SEM, Competition
Decision-making Processes	Consensus	Consensus, Majority, QMV	QMV in Comitology Committees	Subject to review by two comitology committees[2]
Examples	Single Market (health and safety)	JHA	European Food and Safety Agency	European Agency for the Evaluation of Medicinal Products (EMEA) ---------- Competition Policy
Key Actors	Comitology existed, but not clarified until 1987 Council decision[3]; Courts; National Administrations	Council within Commission	Council within Commission; Outside Experts Working at Independent Agencies; National States Represented on Advisory and Management Boards of Independent Agencies	Experts; Commission has the power to overrule all regulatory action of EMEA
Network Manager(s)	None	Commission	Commission & Agency	Commission & Agency
Transparency	Low	Low	Medium	High
Inner Dynamic	Trust, Invisible Hand	Network of Professionals & Interest Groups	Network of Professionals & Interest Groups with Central Clearing House	Rule of Law and Enforcement Capacity
Accountability[1]	This varies by point of view			

Notes to Table One:

[1]For instance, since the Santer Commission, the European Parliament has shifted its position from viewing independent agencies as more accountable than the Commission to one in which it views the Commission as the more accountable body (Buonanno and Nugent 2002). [2]Dehousse (1997, 256). [3] Nugent (2003, 136). [4]Approximation replaced harmonization and the EU turned increasingly to European and international standardization agencies. There are 15 EU agencies (http://europa.eu.int/agencies/index_en.htm).

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