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Why is there No Mad Cow Disease in the United States? Comparing the Politics of Food Safety in Europe and the U.S.

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*Why is there no mad cow disease in the United States?
Comparing the politics of food safety in Europe and the U.S.*

by

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Abstract

This paper compares approaches towards food safety regulation in Europe and the United States. It focuses on mad cow disease and examines how the British Government and the European Union handled the first big crisis in the nineties, juxtaposed to the American response. This worst public health disaster in Europe has led to new agencies and policies. However, these institutional changes do not abolish fragmentation, but extend the existing landscape of regulatory bodies. The paper emphasizes that fragmentation – as the American cases show despite its shortcomings – prevents science from being captured by the state, allows interest groups broader access and ensures a distinct pattern of checks and balances.

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Foodsafetyasanenduringfunctionofthestate

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Modern states provide a wide range of benefits for sick, unemployed and elder people.

Contrary to that the safety of technical products, food and drugs are a general concern, regardless of social groups citizens belong to. In the United States approximately 5,000,000 foodborne illnesses occur annually, killing several thousands of people and burdening the economy with between 4.5 and 7.5 billion dollars of cost (Post 1995).

Safeguarding public health is one of the oldest tasks the modern welfare state has to fulfill. Given conventional wisdom one would expect various states to protect their citizens in a similar way since risks are similar. After all, the cultural and historical differences that shape different social policies among Western democracies do not hold true when it comes to general risks that blur the boundaries of class, gender, or age. But the regulation of risk depends on cultural attitudes, economic structure and the institutional heritage of countries, as well. The way in which science and politics are linked is one of the most important factors that help explain the lasting difference of approaches among countries.

Institutional peculiarities such as the shape of agencies do matter if one looks at the way food safety is ensured in Western democracies. This paper draws on the emergence of mad cow disease in Europe to highlight those differences. It focuses on the first stage of the crisis, since it was followed by institutional reforms both in the UK and the European Union.

¹ I owe special thanks to Beverly Crawford, Isaac Martin, David Vogel, Nicolas Ziegler as well as other participants in UC Berkeley's Institute of European Studies' lecture series for critical comments and insightful hints. I also thank the German Fritz Thyssen-Foundation for a grant that enabled me to stay and work at the University of California to do the necessary research on this subject.

Before the outbreak of this dramatic crisis authorities in most Western democracies proudly stressed the success of modern risk regulation in the field of food safety. Dan Glickman, former U.S. Secretary of Agriculture, was optimistic enough to offer a superlative: “Today, America has the safest food in the world” (Thompson and Hammel 1997).

Compared to this, statements of British officials seemed measured, but their claims rest on shaky grounds as well. Former British Minister of Agriculture, Douglas Hogg, stated that, “people can be certain that the Government is receiving the best possible professional and technical advice... I think it is that which enables us to say with complete confidence that British beef is safe” (Alderman 1995).

A look at the background of these statements reveals more similarities. U.S. Secretary of Agriculture, Glickman, took his position while the largest meat recall in American history was on its way. British Minister of Agriculture, Douglas Hogg, made his statement amid growing fears about mad cow disease during the first BSE crisis in Europe. Both statements were primarily meant to calm voters and the public. Moreover, neither provided evidence, which is not very surprising, since evidence to support a strong argument like this has not been available and probably never will be. But the willingness of politicians to resort to such exaggerated terms shows that elected governments are definitely blamed for food safety failures by voters, the public and businesses.

The scope of governmental regulation in this field is often underrated, because policies rarely make it into the headlines except when a fundamental food crisis has evolved. On the other hand governmental capacities are often overrated because the food

chain is packed with producers, companies, farmers, consumers and other groups in a way that the government cannot control food safety on its own.

I am going to point out the way the British Government, the EU and the U.S. Government have dealt with food safety issues. My focus is mainly an institutional one. I will proceed by comparing approaches to prevent mad cow disease from bursting out or spreading over the country.

Democratic accountability and the fragmentation of government

To date, BSE has not been officially found in the U.S. However, some measures have already been taken to prevent it from breaking out. Scrutinizing these policies and their underlying approach help highlight the governmental process and its impacts. As for the UK it is not possible to understand the dynamics in Europe without taking the European Union into account.

In the case of British beef during the nineties there are two variables that I would like to call attention to. What distinguishes the British situation from the American case? In my mind it is mainly two dimensions. First, U.S. federal governments do not have a higher level of policy-making at their disposal to which they could shift responsibilities, let alone scapegoat. The case of mad cow disease shielded British authorities from a turmoil, because trade rivalries between Germany, France and Britain were obvious and could be pointed out publicly. And these battles were partly waged at the European level, so that the EU came into play as an eventual scapegoat.

Secondly, the structure and process of governing in the UK are unique. I am going to put strong emphasis on that factor, because it challenges the conventional wisdom about

the alleged advantages of centralized, parliamentary government compared to presidential government in a separated system like the United States.

I will point out that structure of government indeed makes a difference. The U.S. system of food safety has frequently been criticized, because of its typical dispersion of responsibility over different agencies which allegedly does not serve the public interest and wastes money.²

Remarkably enough, the highly centralized and powerful British system of government has been exposed to harsh criticism as well. I will argue that aside from political culture, business structure, and strategies of scapegoating, this specific type of government was responsible for striking failures during the BSE crisis. And this is why the now ruling Labor party decided to dismantle parts of the government bureaucracy, which was also supposed to provide symbolic politics. The new Food Standards Agency (FSA) adds a new type of agency to the British system and transforms the traditional approach of concealed government to some extent.

When it comes to risk regulation, a competitive environment of agencies like the U.S. model can be better equipped to come to terms with contemporary food safety challenges. Moreover it is less likely to be captured by organized interests, because different agencies lead to more checks and balances within the government.

The scope of this paper is limited to a distinctive policy, namely the policy of food safety. Students of comparative politics have pointed out that general assertions on political systems very often tend to fall short, because differences between policies are underestimated for the sake of general comparisons (Vogel 1986).

² See most recently National Academy of Sciences (1998): Ensuring safe food from production to consumption. 143 Cong. Rec. H7518 -H7519.

My argument also touches forthcoming developments in the European Union. The EU recently launched a new food safety agency to consolidate its competencies in this field, following recommendations by the European Commission and food experts.³ Despite previous deliberations it will not resemble the U.S. Food and Drug Administration. Prior to that the British Government had already undertaken major changes of administration like France and Germany.

At first glance, it looks like consolidating tasks within a single agency. But due to the mixture of intergovernmental bargaining and integrated European institutions this agency rather enlarges than minimizes existing fragmentation. Above all, the specific separation of risk assessment and risk management will even be fortified. And the Commission will not abandon its important functions in the field of food safety. Despite predictable critique on this half-hearted solution, fragmentation seems to be the better way to ensure food safety.

Public health and food safety competencies are still spread over various bodies and institutions at the EU level, alike in most member states. The European parliament rebuked that this compartmentalization obviously had hampered reasonable policy choices and accountable decisions.⁴ Given this criticism, how come many experts regard the US system of food safety as fairly successful, although it suffers from the same or even a larger scale of dispersed responsibility among agencies?

One cannot understand why the responsibility for food safety is divided up like it is without paying attention to the presidential system and its checks and balances.

³Commission of the European Communities (2000): White paper on food safety. COM(1999)719.

⁴ See Report of the European Parliament on alleged contraventions or maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and national courts, A4 -0020/97.

Congressional lawmakers quite often urged to split responsibilities for political reasons, to stick with their turf, to serve interests of constituencies, to prevent colleagues from seizing too much power (Krehbiel 1998). And that is exactly what has happened in the European Union for decades, member states playing the role of senators. It is one of the reasons why the European Union resembles the United States in terms of distinct institutional features.

One may find the effects deplorable when it comes to immediate action that can easily be handcuffed by fragmented systems. But long-term policies benefit from a fragmented system that provides checks and balances. Since regulatory policy cannot be pursued without politics, fragmentation serves as a tool for broader involvement of interest groups, alerting the public and counterbalancing agencies' self-interests.

Last but not least I would like to call attention to the role of state-controlled science. It is a commonplace to mourn the dangers of commercially driven science and its dependence. Of course there remain a lot of unsolved problems. But cases like the mad cow disaster remind us of the often underrated dangers of science in the name of public interest, which is funded, and all the more important, directly or indirectly conducted by the state. A leading British veterinary recently complained that science was shielded from the public during the crisis. Only 12 of 111 research projects had been conducted after an open contest. Consequently he urged to contract out further research (Carrington 2001).

Lijphart has frequently made the point that parliamentary democracies perform better than presidential systems when it comes to safeguarding minority rights, voter inclusiveness or democratic accountability (Lijphart 1999). On this general level he may be right. But this statistical survey may overlook the details of government structure. It try

to shed light on a distinct feature of risk policy, a subject that more and more emerges as a crucial issue. If one scrutinizes food safety policy, parliamentary government does not necessarily perform better than presidential government. The model of parliamentary government, the British democracy, has revealed severe problems, its government lacking accountability and openness. As Majone has pointed out, the idea of Ministerial responsibility in a parliamentary system mostly turns out to be a shallow promise when it comes to risk regulation (Majone 1996; Majone 1999). In parliamentary systems the government bureaucracy often lacks rules that ensure accountability because of the vital role of Ministers that is not equaled by U.S. secretaries. Almost consequently, there has not been an Administrative Procedure Act or a Freedom of Information Act in Europe.

How the mad cow crisis evolved

Mad cow disease has been the worst public health disaster since the founding of the European Union. During 2000 beef sales in Europe dropped by 27%; by 2003 the total cost of that crisis will have skyrocketed up to \$20 billion. To date more than 100 humans, who were likely to be infected by meat, have died from Creutzfeldt-Jakob-Disease, most of them in Britain.⁵ Quite a few farmers have committed suicide because the crisis dramatically diminished their livestock. As with every political crisis there were some striking stages that led to the perception of mad cow disease as a policy disaster. It is worth reconsidering the development briefly to understand these underpinnings.

The first confirmed case of a cow infected by the disease came up in 1986, when the British Government disclosed that a case in Sussex had turned out to be a form of

⁵For permanent updates see <http://www.mad-cow.org>.

Enzephalopathie. Until 1996 two Conservative governments – first under Margaret Thatcher, then under John Major – had been downplaying the possible threat of a transmission. There are two main risks interrelated with mad cow disease. On the one hand it can diminish the size of a livestock dramatically, thereby threatening farmers' economic bases. On the other hand there has been credible evidence that eating infected beef can cause the Creutzfeldt-Jakob-Disease (CJD), which almost inevitably results in the death of the infected person.

Ironically, the spread of the disease was nourished by a feeding procedure that the UK had imported from the U.S. decades ago, the so-called „Carver-Greenfield” system. But in the U.S., animal feed contains a much larger amount of soy, in comparison to Europe. This has probably prevented cows from suffering the disease; at least it seems to be one of the crucial factors. However, U.S. farmers have been feeding products containing animal waste for decades as well. Both the U.S. and most European countries still use animal feed that contains animal waste.

At first glance, the British Government acted swiftly and thoroughly. In 1988, it banned feed that contained animal waste. Indeed U.S. food safety authorities have not enacted as strict a regulation as the UK and the European Union did. The current regulation of animal feed is limited to ruminant animals and it excludes some related products like blood products from regulatory measures. ⁶Besides it was not until August 1997 that this regulation was signed into law.

But there have been plenty of flaws and shortcomings in the UK, other member states and the European Union. After the feed ban had been enacted the British

⁶See Code of Federal Regulation, 21CFR589.2000.

Government set out to prevent the European Union from taking over. And British businesses could bypass the ban thanks to the flaws of the Common European Market. Shortly after the ban of meat-based meal had been enacted in the UK, British exports of meat meal to other European countries nearly doubled. The government was aware of that, the numbers were even disclosed by the ministry of agriculture later on.⁷

From the British point of view the mad cow crisis had to be dealt with as a political issue, not a technical issue. If it had been declared a technical issue the EU could have seized power by pointing at its responsibility for the Common Internal Market. By regarding it as a political matter the whole crisis fell under the rule of “benign neglect” which meant that the UK government was in charge, not the EU. But at the same time, the government pursued another strategy, using the EU for their goals.

The inquiry on behalf of the European Parliament clearly points out that British scientists outnumbered all other nationalities of the crucial Standing Veterinary Committee. Decisive subgroups were even headed by British experts.⁸ These scientists had been picked by the British Government, most of them stemmed from the ministry of agriculture. Much attention has been paid to European administrative bodies captured by interest groups. But one reason why a “sound science” approach at the European level is hard to achieve is connected to the influence that member states exert over committees, especially scientific committees, in the European Union. Advisory committees in Brussels tend to reflect approaches of national governments and they open the backdoor for lobbyism by member states. Committees belong much more to the intergovernmental realm than to the integrated realm of the European Union. Scientists who do not work at

⁷See Report of the European Parliament, A4 -0020/97.

⁸See Report of the European Parliament, A4 -0020/97.

national agencies have barely access to this system. This is why the European Parliament has suggested that the reimbursement procedures for expenses be revised. The idea of a new Food Safety Authority in Europe is aimed at changing this situation.

Whereas the British scientists managed to calm fellow scientists in these committees, the UK faced challenges at the council of agriculture, the arena of negotiations between member states. France, Belgium and Germany banned British beef immediately in March 1996. A government committee in the UK had admitted for the first time that there might be a risk of transmission. A few days later the European commission enacted a worldwide ban on British beef and beef products. What followed was one of the notorious battles over votes of member states. Retrospectively, the former head of the commission, Mr. Santer, described British reactions and mailings as a kind of blackmail. The UK was simply threatening to block important issues like enlargement of the EU if the ban on gelatin, tallow and other things was upheld. And Britain succeeded to some extent: The commission partly lifted the ban.⁹

Up to now no minister has been forced to resign in Britain. In Germany, two federal ministers had to step down, a minister of the state of Bavaria followed. Even though the British yellow press blamed much on the government in the beginning they quickly turned to the European Union and covered the whole topic as a trade war between France, Germany and Britain (Baggott 1998). Once again strategies occurred which students of European politics have described as “scapegoating” versus “credit claiming”. These mechanisms often help to solve domestic problems or to cover them up. Of course the

⁹See Report of the European Parliament, A4 -0020/97.

U.S. federal government lacks these tools, because there is no level above its own bureaucracy.

Meanwhile the institutional landscape in Europe has changed significantly, though. In Brussels, a new directorate -general of consumer affairs was launched in 1999, shifting responsibilities for mad cow disease from the Agricultural Directorate to this new body.

The new European Food Authority will take shape soon (Buonanno, Zabloutney, and Keefer 2001). In Britain, France and Germany the Ministries of Agriculture were remodeled, new quasi -independent agencies were set up. Currently the European Union has enacted even stricter regulations than the U.S. to oust certain feed from the market. Nonetheless, a recent OECD survey stressed once more that the U.S. food safety system is tighter and more accountable than that of most European countries.¹⁰ Is Europe bridging the gap or is it on a different track?

Flexible response: the American approach towards mad cow disease

Monitoring the evolving crisis in Europe revealed the historical peculiarities of the American approach. Whereas the U.S. Department of Agriculture (USDA) is in charge of ensuring the quality of poultry and meat, the Food and Drug Administration (FDA) is responsible for animal feed because of its additives (Merrill/Francer 2000). When it turned out that the spread of mad cow disease was fostered by feed containing animal waste the FDA joined in.

First of all it is not clear whether U.S. agencies can really claim credit for keeping mad cow disease away from the country. To date mad cow disease has not occurred in

¹⁰ See United States Mission to the European Union, OECD Report on the U.S. Food Safety System, <http://www.useu.be/ISSUES/oecdus0322.html>.

the United States. This is partly due to a much larger amount of soy in animal feed compared to Europe. It probably prevents cows from getting infected with the disease because it stabilizes their immune system. But with regard to feeding, one must be aware that American farmers have also been using feed that contains animal waste for decades (Rampton and Stauber 1997). And it was not until 1997 that the U.S. Food and Drug Administration banned feeding of ruminant feedstuffs back to ruminant animals. In fact this ban is not as strict as the current European regulation, and there has been criticism on that.

The handling of the crisis in Europe has also shown that the more you test the more cases will show up. This holds especially true for the range of tests. Since France and Germany have been testing more rigorously, a lot more cases have been confirmed in these countries. Up to now, U.S. agencies have not tested apparently healthy animals, however. These shortcomings notwithstanding, experts still state that the disease would not spread largely even if some cases occurred (Stecklow 2001).

On the other hand, agencies and their stakeholders raised awareness at an early stage. The earliest ban back in 1989 concerned the import of live ruminants and most ruminant products from all countries where BSE had been diagnosed. This action was directed towards foreign countries, it did not touch businesses within the U.S. After this action had been taken, U.S. agencies waited another 8 years until they enacted new regulations to safeguard internal markets.

In 1990 a working group that had gathered in 1988 was turned into a permanent task force with the USDA. The leading unit within USDA has been the Animal and Plant Health Inspection Service (APHIS). Its staff is much bigger than the FDA's personnel,

and it is allowed to inspect facilities outside the U.S., contrary to the FDA. But there have been quite a few cases of sloppy inspection and improper law enforcement, the most recent of which was revealed in New York City and New Jersey (Drew and Hazelkorn 2001a). On the other hand, these cases proved once again that the U.S. system of regulatory agencies is embedded into a distinctive environment of accountability. It is based on a couple of elements that are lacking in Europe.

Agencies are permanently threatened by lawsuits. That is also because class actions are permitted in the U.S., unlike in Europe, where this kind of “adversarial legalism” may occur in the foreseeable future (Kagan 1997). Secondly, the style of separated government ties agencies to Congress and its committees (Jones 1994). Of course, one cannot expect congressmen to oversee their agencies permanently. But against the backdrop of principal-agent-theory there are more efficient ways to hold these agencies accountable (McCubbins and Schwartz 1984). Not only do interest groups contribute to a “fire alarm” mechanism that allows politicians to wait for their alerts. Additionally, “whistle-blowers” who notify supervisors about problems play a vital role within agencies. As for whistle-blowers the U.S. system still does not provide sufficient legal protection from being sued or ousted from the job (Lassiter 1997). But Congress has been trying to enact a law that safeguards whistle-blowers and their crucial roles in agencies. Without their alerts the latest story on misconduct would not have led to a massive inquiry into the work of meat inspectors on behalf of the Agriculture committee in Washington D.C. (Drew and Hazelkorn 2001b).

And it takes journalists who closely examine single agencies and their policies. They benefit from the public style of rule making that requires agencies to publish their goals

and regulations, backed by the Freedom of Information Act. Currently the UK and Germany are about to enact a law that resembles this feature of American administration.

But to date journalists in Europe have not specialized in watching agencies the way American journalists have. This is because they are much more orientated towards Ministers than agencies, and they lack equal access to documents.

Being aware of public scrutiny, the APHIS first decided to pursue a “conservative” policy, which meant to protect consumers profoundly. But at the same time officials were aware that other markets than those for ruminant animals would not be capable of absorbing the animal feed. After the FDA had joined consultations in 1992 it took another five years to hammer out a ban on most ruminant feed that was supposed to be fed back to ruminants.

But in the meantime, awareness has decreased among consumers. Apparently American consumers were not as wary of eventual risks of mad cow disease as European consumers (Rampton and Stauber 1997). Yet the priorities on spending reveal the growing importance of BSE for U.S. agencies.¹¹

Despite this sluggish process consumer groups could take advantage of dispersed responsibilities among agencies in the executive branch. A bunch of consumer groups urged especially the FDA to take measures (Rampton and Stauber 1997). This was due not only to the FDA's turf in terms of animal feed, but also to its greater willingness to make decisions that eventually would hurt farmers and the feed industry. But it was not until the devastating disclosure of eventual transmission in Britain that the FDA was strong enough to have its signed into law.

¹¹ This shows a look into the current FDA budget and its expenditure priorities. See FDA Backgrounder, http://www.fda.gov/opacom/backgrounders/budget_2002.html.

Recent developments have revealed more weak points. The FDA lacks knowledge of how many feed mills operate in the country, and it lacks resources to enforce the regulation thoroughly. To ensure that companies comply with the 1997 ban is a task the FDA is hardly capable of fulfilling. Moreover inspections have shown that approximately a fifth of the examined businesses had not taken appropriate measures (Stecklow 2001).

During the last years U.S. food safety agencies have also relied on voluntary measures taken by the industry instead of command-and-control policies. So the range of compliance can only be judged approximately (Lassiter 1997). The principle of Hazard Analysis and Critical Control Point (HACCP) has partly replaced the traditional approach but still requires adjustment of attitudes among inspectors.

Aside from these problems, mad cow disease in Europe has provided the U.S. with enormous economic advantages. One of several side effects touches delicate food issues between the United States and Europe. Due to the rigorous ban on animal feed there has been a shortage of feed in Europe. In 2001 the EU estimated a short fall of 2.5 tons. Europe has to import a big amount of feed from the United States that traditionally comes with soybeans, quite often genetically modified soybeans.¹² Even France, whose political groups strongly oppose GMOs, will not have a choice, but will have to import genetically modified beans, too.

Institutional convergence in Europe and the United States?

The most obvious change has taken place in the UK. One of Europe's most notorious Ministries of Agriculture (MAFF) was dismantled and reshaped in 2000. During the mad

¹²USDA has kept track with this European plight and discloses figures regularly. See FAO Online, Special Report 2000, <http://www.fas.usda.gov/oilseeds/circular/2000/00-12/decspec.htm>.

cow crisis the missing separation between promoting and regulating the industry was obvious. Sometimes such tasks are divided up within the executive branch to avoid wrong incentives. But the structure of government often depends more on surrounding networks than on rational plans. For decades the British ministry had fulfilled both tasks at once until it was dismantled. During the mad cow crisis it paradoxically led to policies that jeopardized farmers' and businesses' interests as well, because the ministry did not pay enough attention to markets and consumers (Lang 1998). Its murky press conferences and sloppy crisis management plunged markets into a deep crisis.

As for organized interests, the UK government was much more exposed to the influence of meat producers than to that of farmers.¹³ Actually, the farmers would have been interested in a clear and coordinated BSE approach, because they heavily depend on what the meat producers offer them. To some extent British farmers could have even been allies of consumer interests and public health supporters, but the government did not forge links, and it did not make use of these potential countervailing powers.

This might change through policies the new Food Standards Agency (FSA) is going to pursue. Among other objectives this agency is supposed to bolster confidence in a science-based approach. Part of this task is to reconcile the government with researchers one of whom was even named "evil" by officials at the heights of the crisis (Hughes 1998). The concept of opening the process of policy making to pluralistic science also came up during hearings that covered the widely cited BSE inquiry in Britain.¹⁴

¹³See Report of the European Parliament, A4 -0020/97.

¹⁴See The Phillips Report and the Food Standards Agency. Agriculture and Health Committees, Session 1999-2000, Nov 29, The Stationery Office, London.

It is obvious, however, that the agency will also face enormous challenges when it comes to public relations, which the staff seems to be aware of. A pundit who does not stem from Whitehall serves as director of communications. The shaping of the agency hints at the environment of interest groups that British ministries and departments have been embedded in. British farmers and meat producers first tried to avert an independent and powerful new agency (Grant 2000). At the European level, however, business associations have frequently called on officials to set up a strong European agency to regain confidence of consumers and markets. In the UK interest groups were afraid of jeopardizing their long-term relation to the ministry. But when the Labor party took over in 1997, backed by a still upset public, even members of business interest groups could not resist the idea of an agency.

The FSA is a non-Ministerial department and its tasks underscore that the former Ministry of Agriculture has been weakened when it comes to food safety. The agency is linked to parliament through the Ministers of Health in the UK, and it operates at arm's length.¹⁵ It shares some features with the FDA, whereas its accountability structures comply with the parliamentary tradition.

But as principal-agent-theory has shown, the principle of Ministerial responsibility does not automatically ensure democratic accountability. Parliamentary democracies often lack statutory law that helps clarify the range of rule making and they do not have sufficient monitoring capacity (Strom 2000). That is one reason why critics of the British constitution have long been striving to remodel the political system in the UK (Norton 1991). However, the current form of the FSA has already changed the British constitution

¹⁵ See Food Standards Agency, Business Plan 2001-2002, http://www.foodstandards.gov.uk/pdf_files/busplanuk.pdf.

because of its open style of policy-making, the visible inclusion of interest groups and constituencies.

As for the European Union, a strengthened precautionary principle has resulted from the mad cow crisis. This hints that trust in science as a tool for regulatory policymaking has rather decreased than increased in the European Union (Vogel 2001). This does not necessarily mean that sound science is opposed as an important tool of policymaking by important constituencies. Businesses for instance have strived to get an independent agency for food safety. The new food safety authority appeases these constituencies just because it claims to be based on sound science.

Besides, the American experience has made clear that even science-oriented agencies do not eliminate passionate politics (Vogel 1986). And there are lots of examples that prove the dominance of politics and passion over sound science in the US when it comes to distinct decisions of regulatory policy making (Breyer 1993). Ironically, the current threat by bioterrorism might lead to a consolidation of policies and a beefed up precautionary principle in the U.S. again, which might revise Vogel's argument to some extent (Sanders 2001; Staff 2001).

The European Union has been trying to consolidate responsibilities for food safety within a new agency to nourish a European scientific approach. However, the responsibilities for decision-making remain in the hands of European governments and the Commission. Institutionally the line between Europe and the United States has been farther blurred by recent developments. With regard to policies this does not hold true, however. (Vogel 2001).

Institutional changes notwithstanding, striking differences remain. First of all, European government agencies are not under public scrutiny the way American agencies are. A culture of public interest groups, serving as watchdogs, is still lacking, as well as opportunities to challenge agencies in courts (Jasanoff 1986). Since Green parties partly join governments in Europe – among others in Germany and France – they cannot fill this gap. They are no real equivalent. But both Germany and the UK are about to enact law that resembles the U.S. Freedom of Information Act and help scrutinize agencies. In the European Union a common public sphere has not emerged yet, although the mad cow crisis created something like a European awareness.

Secondly, a sound science approach is hard to achieve at the European level. Advisory committees in Brussels tend to reflect approaches of national governments and they open the backdoor for lobbyism by member states. Committees belong much more to the intergovernmental realm than to the integrated realm of the European Union. The idea of a new agency in Europe is aimed at changing this situation. One could argue that exercising caution towards sound science prevents people from mixing it up with political decisions and democratic accountability. And it has been widely shown that European citizens trust science less than Americans do. But it is not clear whether they distrust science in general or whether they disapprove the way governments handle science. As for the mad cow crisis, sound science would have meant to take competing scientific opinions into account. Sound science is not about a definite solution; it is about outlining alternative assessments on the base of science. So the new European food authority might hamper attempts by member states to hijack advisory committees because it provides an additional arena.

Thirdly, risk assessment and risk management will remain separated, because the European Commission and other institutions insist that powers be divided. This holds true for most of the member states, too (Majone 1996). So the EFA will not resemble the FDA with its combined powers of rule making, law enforcement and juridical competencies. This may weaken a comprehensive approach towards food safety, but it also upholds the separation of political powers in Europe.

Fourthly, the centralized style of British Government did not serve the interests of consumers, not even the interests of farmers and businesses. Government almost completely controlled science at the highest level. In a more fragmented system this would not have been possible. Conventional wisdom backs the assumption that unified governments do better when they deal with general risks. This assumption has to be called into question. As for the input into the political process, the involvement of interest groups and constituencies as well as a public deliberation process works better if there is a competitive and publicly scrutinized structure of government. Risks of interest group capture and concealed politics will be counterbalanced if one can rely on a fragmented system as the U.S. provides. Regardless of its own shortcomings such a system may be preferred over unified systems of government when it comes to distinct policies like food safety.

Political functions of a fragmented government structure

Theoretically, the more agencies or administrative bodies one provides, the more easily access for underrepresented groups is ensured. If you stick with one single agency, the most powerful interest groups will prevail. Of course there is a counterargument stating

that a strong agency with a strong professional approach could keep big interests from forming the notorious “iron triangles” of regulated businesses, congressmen and agency personnel (Thurber 1991) . However, competitive environments make sense given the pluralistic world of science and the different ways of access to government agencies. Aside from this functionalistic argument, one also has to take the dynamics of the political process into consideration. Once a congressional committee has gained power and influence over a distinct agency, it will be very reluctant to give it up. This also holds true for interest groups and their relations to agencies and legislatures (Wilson 1989) . Even if you regard it as a matter of pork-barrel-politics, it can help maintain checks and balances.

Historically, the fragmentation of U.S. regulatory agencies and policies got a boost in the 70s. These days marked the heights of regulatory policies, helped launch new agencies like the EPA and saw the rise of public interest law firms (Eisner 2000) . Since then responsibilities have overlapped, congressional committees have tried to defend their turf and historical circumstances have led to quite a few odd policies.

It is no wonder that public health experts have complained about the current flaws in the food safety system. But these problems can be traced to troubling statutory law, not to the sheer existence of competing agencies. It is unsettling that USDA inspectors regularly visit plants while FDA inspectors only show up after some evidence has been gathered (Smith DeWaal 1999) . Additionally, while USDA agents are allowed to inspect plants outside the U.S., their colleagues from the FDA are not (Merrill and Francer 2000) . So there still is a need for reform and consolidation. But it much more refers to statutory law than to agency structure.

Some experts have made the case for tightened accountability by creating one single agency. This seems to be a hasty argument. As one can observe in the UK unified responsibilities do not necessarily increase democratic accountability. Accountability depends much more on different institutional elements such as statutory law, public scrutiny or well -defined borders with other agencies. Others have even cautioned against as in the food safety agency, because it could weaken an overall pro -consumer approach.¹⁶

Whereas the raised visibility of a “food safety czar” offers some advantages for addressing the government it is not necessarily the most accountable design from an institutionalist point of view.

And it would not bolster any approach towards sound science. The sound science approach of U.S. agencies, especially the FDA, is embedded in an adversarial environment. Of course passionate congressmen have been eager to challenge the sound science approach as the Delaney Clause and other rigid regulations show (Merrill 1997). If it were up to science alone, no group would have the right to sue agencies. The history of American regulatory politics shows that even consumer groups were capable of forcing agencies to revise their strategies, because they successfully challenged their approach towards science (Vogel 1990).

As for the EU, there will not be a consolidation of food safety tasks despite a push towards institutional change. Powers and competencies remain dispersed among institutions (Buonanno, Zablony, and Keefer 2001). According to the arguments unfolded above this is nothing that critical observers should be worried about. The fragmentation of institutions often helps interest groups gain access to deliberations. As

¹⁶This position was taken by President Clinton’s Food Safety Council, cited in Merrill and Franzer 2000, p. 125.

for Europe one can clearly observe that the access for interest groups and nonprofit organizations has improved by the fragmentation in the European Union that is different from the political systems most of its member states possess.

Generally, this argument refers to the input of the political process, the inclusion of groups and constituencies as well as the enabling of public reasoning (Easton 1965). With regard to efficiency of the administration, theoretical and empirical work hints that presidential systems lag behind because they favor checks and balances over unified agency action (Moe and Caldwell 1994). Yet even though food safety at first glance seems to be about nothing but efficient administrative control the mad cow crisis reveals that most problems occurred with regard to the input, not the output of the political system. Besides an effective handling of food safety is going to be handcuffed if the political process is exclusively controlled by the executive branch.

Catching up by lagging behind?

Summing up, the findings back Vogel's argument that Europe has been facing a shift from administrative to political approaches (Vogel 2001). This is due to a growing European public sphere, greater salience of issues thanks to mad cow disease and the influence of public interest groups. More and more the European Commission has pursued a policy to fund and sponsor these groups in order to improve its own position of power towards business interests (Greenwood, Strangward, and Stancich 1999).

In a stricter sense decisions in Brussels have long been very political and not very administrative, since they always end up in negotiations and bargaining procedures. But when it comes to risk regulation the secretive realm of committees has kept it away from

public scrutiny. It has been political, but not really “politicized” in terms of visibility and public controversy. This may change when the announced institutional reforms take action. Because then the public, interest groups and other constituencies can trace the basis for decisions and can challenge it.

Institutionally, this is in accordance with arguments stating that European regulatory policy more and more resembles the American approach during the 70s, whereas the U.S. have left this path (Vogel 2001). Recent reforms reshape accountability patterns while maintaining or even deepening a distinct kind of fragmentation. This resembles certain patterns of the American constitution, too. But it will not lead to a mix of statutory law and rulemaking agencies because this would obscure political responsibilities in Europe contrary to the U.S.

European Treaties remain vague in substance, and member states are not eager to change that despite the longing for a European constitution. Nevertheless, no single independent agency is mentioned in European treaties although quite a few of them have been launched. The political system of the European Union provides flexibility. If public health emerges as an issue that merges to the Common Internal Market new institutions might gain unprecedented strength and independence in the European Union. This time, one member state provided the model for further European action, namely the UK. Its new Food Standards Agency is seen as a step in the right direction in Europe.

The institutional consequences drawn from mad cow disease in Brussels underscore that the European Union partly resembles the United States more than its own member states. But on the other hand this does not necessarily mean that policies converge, neither in member states nor at the European level. And neither do policies simply

determine politics nor do certain politics provide a similar output. Many intervening variables have to be taken into account, among others culture and attitudes, elite behavior, public sphere and the media, and economic structure. This is another familiar lesson that can be drawn from the comparison of food safety politics.

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