CHAPTER I
Food Shock

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It is now a decade and a half since the UK’s Conservative Minister of Agriculture, John Gummer, ceremoniously fed his four-year old daughter Cordelia a hamburger to demonstrate the safety of British Beef. Since then 137 British citizens have died from a variant of Creutzfeldt-Jakob Disease (vCJD), presumably from eating beef infected with bovine spongiform encephalopathy (BSE)—popularly known as “mad cow disease.”¹ The event has become emblematic of a public relations fiasco. More importantly, it signifies the kinds of dilemmas in the relations between science and regulation, market promotion and consumer protection, public authority and public opinion that riddle contemporary governance. For many British citizens, Gummer willingly—even criminally—ignored the risks associated with beef consumption in order to preserve consumer confidence in an important British market.

A few years later, an equally provocative symbolic action occurred across the Channel. In the town of Millau in southwest France, an emerging farm and anti-globalization movement, led by a sheep farmer named Jose Bové, used tractors to destroy a MacDonalds then under construction. The action of Confédération paysanne was prompted by the imposition of American import duties on French foods like roquefort cheese, mustard, truffles, and foie gras in retaliation for a European Union ban on

¹ The links between BSE, beef consumption, and vCJD have still not been definitively established, but laboratory studies strongly support the transmission mechanism of consumption of BSE-infected beef (Andrews, et al. 2003). The number of deaths from vCJD are based on December 1, 2003 figures reported by the National CJD Surveillance Unit website (http://www.cjd.ed.ac.uk).
American hormone-treated beef. Again, the action symbolized the tensions in the public regulation of food. Banned by the European Union (EU) as a potential health risk, the U.S. and Canada claimed that the EU ban on hormone-treated was merely disguised trade protectionism. Although the World Trade Organization (WTO) disagreed the ban was protectionist, it ruled the ban was not scientifically supported and allowed the U.S. and Canada to impose trade sanctions on Europe.²

Most recently, President George W. Bush lambasted Europeans for contributing to hunger in Africa because of their ban on genetically-modified food (GMOs). His criticism was in part an implicit reference to the earlier refusal of Zambian and Zimbabwean governments to accept U.S. food aid that contained genetically-modified corn. Bush argued that Europe’s five-year moratorium on the import of GM foods had undermined Africa’s investment in bio-tech agriculture:

…[O]ur partners in Europe are impeding this effort. They have blocked all new bio-crops because of unfounded, unscientific fears. This has caused many African nations to avoid investing in biotechnologies, for fear their products will be shut out of European markets. European governments should join -- not hinder -- the great cause of ending hunger in Africa.³

A week before Bush made this speech, his Administration had launched another WTO grievance against the EU for its moratorium on GMOs.

This book is about the politics surrounding the regulation of food safety in Europe. In many respects, the issues raised by this topic are very common to many types of environmental, health, and safety regulation and to many international disputes over trade. Moreover, despite the more heated attention to food safety issues in Europe in

² The ruling was appealed and the appellate body ruled that the EU’s ban was designed to protect the health of EU consumers and not simply a form of disguised protectionism.
³ Transcript of Commencement Address at United States Coast Guard Academy, Office of the Press Secretary, May 21, 2003.
comparison with North America, the former’s scientific and regulatory concerns are roughly similar to those faced by non-European governments. American, Canadian, and European governments are all concerned about the balancing the interests of producers with the welfare of consumers. So why a book about food safety regulation? And why a book specifically about European food safety regulation?

The regulation of food safety represents a particularly important dimension of public policy for four reasons. First, few areas of public policy so directly, personally and continually affect the well-being of every citizen. For citizens in their roles as consumers, food safety is a highly salient and frequently emotional issue, one that affects their personal health and safety. Few areas of policy failure, or threats of policy failure, are as politically salient as those associated with food safety. Second, the regulation of food safety has important economic dimensions. Policy failure associated with food safety has often exacerbated the failure of markets to provide the higher levels of food safety: the lack of political transparency and the inhibition of the working of economic incentives have been and are key determinants of the economic implications of those failures in Europe. Further, the highly integrated nature of today’s food supply chain means that economic repercussions have become more severe than in the past, as repercussions are felt rapidly both in domestic markets as well as across borders. Third, the regulation of food safety has an important international dimension. Historically, divergent food standards have played a critical role as trade barriers. Not surprisingly, efforts to reduce

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4For the seven most commonly ingested pathogens alone, annual illness estimates for the US range from 3.3 to 12.3 million with 1900 to 3900 annual deaths (Buzby and Roberts 1996). Medical costs and lost productivity due to the most critical four pathogens in meat and poultry alone amount to 4-4.6 billion dollars annually (Crutchfield 2000). For Germany the annual costs were estimated to amount to at least 510 million Euro in 1999 (Werber and Ammon 2000)
the ability of national governments to use food safety standards to protect domestic populations have been a major focus of trade liberalization, both within the EU and globally (Vogel 1995). Finally, few areas of government regulation of business have such an important cultural dimension. Both national and ethnic cultures are associated with distinctive attitudes toward food. In fact, trans-Atlantic differences in food regulations have frequently been ascribed to distinctive European and American food cultures.

In short, food safety is an important – and often highly emotional - dimension of consumer protection, with important implications for domestic economies, trade liberalization, and cultural attitudes and norms. Food safety is a vital concern everywhere, but nowhere has it been brought into such sharp relief as in contemporary Europe. A series of food-related scares and disputes, most notably mad cow disease, dioxin contamination, beef hormones, and GMOs, have made European consumers unusually sensitive to food safety policies. This heightened issue saliency coincides with two major projects of institutional change—European integration and international trade liberalization—that have both produced new tensions among countries and accentuated the public’s sense of a loss of control over food as a trusted commodity and cultural patrimony (Vogel 1995; Phillips and Wolfe 2001). The highly contested character of food safety regulation in Europe may represent a bellwether for conflicts that are likely to become more prominent everywhere in the next few decades as technological change and globalization reshape the way our food is produced, marketed, and distributed.

In addition to its bellwether status, the subject of European food safety regulation provides an unusually rich lens into a set of broader, interrelated contemporary political developments. These issues include: (1) the growing importance of multi-level
regulation, (2) the uncertain future of European integration, (3) discontent over trade globalization, (4) core disputes about risk assessment and regulatory science, (5) the evolution of frameworks for regulating novel biological technologies, (6) the shifting balance between public and private regulation, (7) the increasingly contested nature of agricultural protectionism, and finally, (8) the “transatlantic divide”. We discuss each of these briefly below.

1. Multi-Level Regulation. As the vignettes that introduced this chapter suggest, food safety regulation in Europe provides a particularly illuminating example of an emerging system of multi-level regulation. UK Minister of Agriculture John Gummer represents the national level of regulation. The European Union ban on hormone-treated beef and rules governing GMOs represents the European level. And the WTO-sanctioned US and Canadian retaliation on French roquefort and the two countries’ complaint to the WTO against the EU’s restrictions on GMOs represent the international dimension of regulation. While issues associated with regulatory federalism are old ones, multi-level regulation has become an especially salient issue for two reasons. First, the creation of regulatory authority at the European level clashes with pre-existing national systems of regulation. This is particularly true for food, because food safety is one of the oldest regulatory systems at the national level. Second, the extension and development of a global trade regime and the increasing density of international governance in environmental protection, human rights, and trade liberalization have created international regulatory regimes of varying importance. Multi-level systems have an appropriate role to play as regulatory processes must operate at different scales.
However, they can also led to political tensions as different regulatory levels adopt different decision-making criteria. Among the critical issues this book addresses are the conflicts and adaptations that have resulted from the interaction of regulations at the national, European, and international levels.

2. *The Politics of European Integration.* European integration has created deep and unresolved tensions between intergovernmental and federal visions of Europe. The Single European Act (1986) moved the project of market integration significantly forward. But market integration required either the harmonization of preexisting regulatory regimes or the creation of new European regulations that overrode pre-existing national policies. Food and food safety have been at the forefront of the debates over regulatory harmonization—and not least because of the importance of food as a national cultural symbol. The beef hormone, BSE, and GMO disputes have revealed tensions in the democratic character of European regulation and the organization of risk assessment and management at the European level (Majone 2000; Vos, 2000).

3. *Trade Globalization and its Discontents.* The creation of the WTO represented a new phase in the institutionalization of trade liberalization. Most importantly, it established a formal process for adjudicating trade disputes that gave substantial authority to an international trade institution. Prior to the creation of the WTO, the Codex Alimentarius Commission (a joint World Health Organization and Food and Agricultural Organization standard setting body) set voluntary food safety standards to promote agricultural trade
and protect consumers.\footnote{The Commission is composed of member state representatives that vote on standards recommended by scientific advisory committees.} But with the creation of the WTO, the Codex standards have acquired legal authority. They are now employed by WTO dispute settlement panels to help assess whether national food safety standards constitute non-tariff barriers. This in turn has given food safety regulation a critical international dimension. (Skogstad 2001; Josling, Roberts and Orden 2004). Not surprisingly, the anti-globalization movement has responded by attacking globalization in general and the WTO regime in particular for undermining democratic rule and comprising stringent environmental, health, and safety standards. As Bové’s actions against McDonalds (and later against GMOs) indicate, the anti-globalization movement has made food and food safety a key issue in their protest. Yet even beyond the highly visible protests of anti-globalization protesters, trade liberalization has heightened the concerns of consumers about the quality and safety of their food (Krissoff, Bohman, and Caswell 2002).

4. The Politicization of Science and Risk Assessment. As President Bush’s statement about Europe’s “unscientific” fears about genetically-engineered foods suggests, the precise use and value of science and risk assessment have become deeply politicized. Of course, such disputes are well known to those who work with or study regulatory politics. Again, however, disputes over food safety suggest the outlines of a new stage or scale of politicization. Because of the three points mentioned above—multi-level regulation, European integration, and trade globalization—the stakes over the precise role and institutionalization of science and risk assessment have increased (Phillips and Wolfe 2001). The formation of European and international regulatory regimes has increased
the overall importance of science and risk assessment, as they play a critical role in determining and assessing regulatory policies and standards. (Phillips and Wolfe 2001). One on hand science-based decision-making and risk assessment have become a universal discourse shared across regulatory levels. Yet on the other hand, disputes increasing revolve around distinctive approaches to assessing risks, as well as the weight that decision-makers should attach to public attitudes and preferences. An example is the controversy surrounding the role of the precautionary principle in the disputes between the the EU and its trading partners over the former’s regulatory policies toward beef hormone and the GMOs. (Noiville 2000; Löfstedt, Fischoff, and Fischoff 2002). Furthermore, the reform of existing food safety institutions following the mad cow scare has tended to accentuate rather than settle disputes over the institutional relationship between risk assessment (scientific evaluation and advice) and risk management (standard-setting and enforcement).

5. The Regulation of Novel Biological Technologies. The human genome project, animal cloning, stem cell research, and pharmaceutical and food bio-engineering, among many other emerging biological technologies, seem to alternately promise startling new technological breakthroughs of great value or frightening visions of “frankenfood,” eugenics, and environmental contamination. Issues related to liability, intellectual property rights, and appropriate models of risk assessment and regulation are not yet well established. Here again, the European dispute over GM foods may establish a precedent for how societies will debate and regulate novel technologies that present complex ethical and scientific questions (Schurman and Kelso 2003; Bernauer 2003).
6. **Public vs. Private Regulation.** Across a range of regulatory fields, new questions are being asked about the potential for private “self”-regulation to serve as a substitute or alternative for costly command-and-control public regulation. In some cases, private actors have banded together to create private certifying bodies. In other cases, they have established voluntary standards (ISO 9000). In still other cases, new combinations of public and private regulation have developed. Indeed, the food industry has been a leader in experimenting with a new system of private self-regulation called Hazard Analysis and Critical Control Points (HAACCP) (Henson and Caswell 1999). As several of the following chapters describe, food-related scares and disputes in Europe have brought critical attention to the appropriate mix of public and private regulation.

7. **Contestation Over Agricultural Protectionism.** State subsidization of agriculture in Europe and the U.S. have been seen as a major roadblock to freer trade and a major barrier to the economic success of developing nations. The recent collapse of the Cancun trade talks represents the potential for this issue to disrupt world trade. To the extent that the role of subsidies declines, the role of food safety standards as non-tariff barriers is likely to increase. Thus food safety standards as likely to become increasingly contested as “disguised” (producer) protectionism. As more foods from developing nations are imported by developed nations—and as food chains in general become more global--concern about control and inspection of imported foods is likely to increase. Pressures from consumers to tighten domestic food safety standards could also become more prominent. These new cleavages are likely to generate new alignments between
consumers and domestic producers (as suggested by the idea of Baptist and Bootlegger coalitions; see Vogel 1995; Young 2003), as well as among producers in different countries.

8. The Transatlantic Divide. Are Europeans from Venus and North Americans from Mars when it comes to food too? On the one hand, Europeans appear to be more concerned and more sensitive to risks associated with food than do Americans and these differences appear to be at the heart of trade conflicts over beef hormones and GMOs (Vogel 2003, Skogstad, forthcoming; Bernauer 2003). On the other hand, institutional differences between Europe and North America may accentuate, and possibly exaggerate, these differences in risk perception. And transatlantic dialogue and adjustment can also produce patterns of convergence on food safety issues (Young 2003). Whatever the precise source and status of transatlantic differences, trade disputes over food represent a critical element of the often contentious transatlantic relationship.

The issues surrounding European food safety speak directly to these important institutional and regulatory trends. But we are also interested in European food safety regulation because it provides insight into a syndrome of policy-making and political dispute that we call contested governance.

Contested Governance

All governance is to a lesser or greater extent contested in the sense that policy actors pursue different interests and take different positions on policy outcomes. This kind of
conflict is wholly compatible with fairly well agreed upon and legitimate institutional frameworks through which policy is decided and implemented. By *contested governance*, we mean to imply a more pervasive and fundamental form of conflict, in which contestation spills beyond policy outcomes per se to who should make decisions and where and how they should be made. Contested governance is associated with a pervasive sense of distrust that challenges the legitimacy of existing institutional arrangements.

The chapters in this volume address a wide range of dimensions of food safety regulation in Europe. Each of them focuses on one or more of the following four questions. And each question in turn illustrates a critical dimension of contested governance.

First, *on what basis* is food safety be regulated? This question has to do with the broad criteria public officials will employ to determine food safety standards. For example, what role should scientific risk assessment play in shaping regulatory policy? What is the role of public pinion? How are the interests of safety, economic efficiency, and innovation balanced? On what basis is regulation legitimated?

Second, *who* should regulate European food safety? This question addresses the balance between private and public regulation. What are the respective roles for public authorities and for firm or industry self-regulation?
Third, *where* is food safety be regulated? This question refers to the level of government or governance responsible for setting food safety standards. Specifically, what kinds of regulation should take place at the national level, at the regional (i.e. European) level, and at the international level?

Fourth, *how* is food safety regulated? This question specifically addresses the establishment of authoritative bodies and procedures at each of these levels of governance. Having broadly established the broad criteria that will be used to make regulatory decisions, what institutional frameworks will be used to make, implement, and enforce decisions?

The concept of contested governance can be usefully compared similar concepts and discourses. In the late 1960s and early 1970s, scholars described a pervasive crisis of state and society. In an influential and controversial book, Crozier, Huntington, and Wazanuki (1975) viewed the rising social demands of radical social movements as eroding state authority and producing “ungovernability.” They argued that the source of these demands was rising expectations created by improved standards of living and higher levels of education. Coming from a very different political perspective than Crozier, Huntington, and Wazanuki, James O’Connor (1973) described the “fiscal crisis of the state” and Jürgen Habermas (1975) described a pervasive “legitimacy crisis.” Broadly speaking, O’Connor and Habermas described a broad societal crisis whose roots were located in society-wide structural transformations related to capitalism, political development, and modernization. For both authors, the reproduction of advanced capitalism placed the state in the increasingly untenable role of managing accumulation
crises while helping to ameliorate some of capitalism’s negative social impacts. When the state fails to effectively manage competing demands, the tension is displaced onto the public sphere, producing a withdrawal of legitimacy. Although the claims made by these works were meant to identify general trends, their analyses appear in hindsight to be closely linked to the social protests of the late 1960s and early 1970s. Beck’s (1992) more recent analysis of the “risk society” escapes this narrow conjunctural association. Building on the same Critical Theory tradition in which Habermas works, he argues that we are entering a new phase of modernity dominated by concerns about and struggles over risk.

These perspectives usefully call attention to broad structural changes in the economy and society that might promote contestation and delegitimation within policy sectors. Crozier, Huntington, and Wazanuki’s analysis might encourage us, for example, to understand increasing consumer protest around food as quality and safety in the context of heightened due to rising standards. O’Connor and Habermas, in turn, might encourage us to analyze the increasing tension between the state’s role, on the one hand, of promoting the growth of agricultural markets and, on the other hand, in reducing the social costs of this growth. Beck’s analysis of risk society seems particularly relevant, because it points to the centrality of struggles over risk that have characterized contestation over food safety, especially in relation to the introduction of new technologies like bio-technology. However, the focus of these perspectives on societal-wide structural transformations also a limited ability to explain sectoral variations in contestation. Our concept of contested governance focuses more directly on identifying the factors that accentuate political conflict within particular policy sectors.
Although more sectoral than societal in scope, we also suggest that contested governance occurs where a “snowballing” of closely related crises has occurred—either where a specific crisis initiates or encourages further sectoral disputes or where the implications of one or more crises “spillover” into related issue areas. For instance, while disputes over beef and milk (rbst) hormones, BSE, dioxins, and GMOs were distinct issues within the food sector, their contestation was cumulative (see Table 1). Perhaps most dramatically, the hormone and BSE disputes spilled over to shape the public response to the growing and marketing of GMOs. In this sense, we argue that European food safety regulation has witnessed a “food shock” somewhat analogous to the “oil shock” of the 1970s.
Table 1: Selected Recent Events in European Food Safety

<table>
<thead>
<tr>
<th>Year</th>
<th>Event Description</th>
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<tr>
<td>1970s</td>
<td>Scare over Diethylstilboestrol (DES) in French veal</td>
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<td>1980</td>
<td>4 of 10 EU members impose ban on beef hormones; European Commission prohibits use of several hormones.</td>
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<tr>
<td>1985</td>
<td>EU bans the use of growth promoting hormones in beef production</td>
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<td>1990</td>
<td>EU Council of Ministers imposes an initially temporary ban on the use of rBST in milk production; the EU legislates procedures for approval of GM crops and food.</td>
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<td>1996</td>
<td>the UK government announces connection between vCJD and BSE; EU imposes ban on British beef; US-grown GMO corn and soybeans first arrive in Europe; the US and Canada file dispute settlement requests with the WTO in regard to European ban on hormone-treated beef</td>
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<tr>
<td>1997</td>
<td>EU Parliament passes a conditional censure of EU commission handling of BSE dispute.</td>
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<td>1998</td>
<td>De facto European moratorium against the planting or use of GMOs is initiated.</td>
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<tr>
<td>1999</td>
<td>Dioxin and Coca-Cola scares in Belgium. Listeria outbreak in France. New Food Safety Agency (AFFSA) created in France. The Council of Ministers definitively bans use of rBST; EU lifts ban on British beef, but France continues ban.</td>
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<td>2001</td>
<td>Major reorganization of German food safety authority; UK foot and mouth epidemic affecting cows and sheep</td>
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<tr>
<td>2002</td>
<td>EU adopts General Food Law, which establishes the European Food Safety Authority (EFSA); a new food safety agency (FSA) created in the UK; France lifts ban on British beef.</td>
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<td>2003</td>
<td>The U.S., Canada, and Argentina request WTO dispute settlement panel over the failure of EU to lift the GMO moratorium; a dispute between Finland and Italy over where to locate EFSA is finally resolved in favor of Parma Italy.</td>
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At the level of policy sector, several important theoretical discussions offer valuable insights, but fall short of describing the phenomenon of contested governance. Corporatist, policy network, and collaborative governance models, for instance, describe policy-making dynamics under more consensual conditions or under conditions in which the rules of the game are relatively well defined and accepted. Advocacy coalition models describe patterns of conflict and cooperation among policy actors, but are primarily intended to describe medium-term stability in policy arenas. Epistemic community models are sensitive to variations in level of conflict, but are most influential where professional communities are in broad agreement about key principles. Pluralist-inspired models like the bureaucratic politics, garbage can, implementation, and venue-shopping models describe policy conflict as pervasive, but mostly characterize these political styles as politics-as-usual.

Four other types of argument come closer to describing the more exceptional nature of contested governance. Kagan describes the costly and conflictual character of policy making in the U.S.—in contrast to Europe—as a result, in part, of an “adversarial legalism” rooted in a formal, political-party influenced policy style (Kagan 1995, Kagan and Axelrad 2000). Schön and Rein distinguish “policy disagreements” from “policy controversies,” arguing that the later tend to be “intractable, enduring and seldom finally resolved” (Schön and Rein 1994, 4). They argue that “intractable policy controversies” require special attention because they cannot be resolved by allowing politics-as-usual to take its course. Similarly, Hargrove and Glidewell (1990) describe “impossible jobs” in public management as those jobs where the political and organizational context for management make it nearly impossible to achieve desired objectives. The important
factors that they argue produce “impossible jobs” include clients with low legitimacy, intense conflict among constituencies, low respect for professional authority, and controversial agency missions. Finally, La Porte (1994) describes how “institutional surprises” arising out of the complexity of large technical systems can erode political legitimacy.

These models help to describe the institutional and political conditions that produce variations in the degree of contestation in policy arenas. Other models also contribute to highlighting the temporal dynamics of contestation. Agenda-setting models are useful here because they portray policy dynamics as more cyclical and conjunctural. Kingdon (1995), for example, describes windows of opportunity, opened by triggering events, that may produce dramatic shifts in policy debates and coalitions. The social movement literature has also been very sensitive to temporal variations in contestation, focusing on waves and cycles of social movement protest (Tarrow 1994). However, to date is has primarily focused on explaining collective action rather than explaining policy dynamics per se.

To summarize, we employ the term contested governance to describe pervasive conflict in policy arenas that goes beyond politics-as-usual to challenge who should make decisions and where, how and on what basis they should be made and implemented. Contested governance entails a significant challenge to the legitimacy of existing institutional arrangements. This contestation, however, is sectoral (or multi-sectoral) rather than societal in scope and varies over time as issues come and go from the public agenda. This conceptualization helps us, we argue, to think about variation across policy sector, across country or region, and across time.
In this book, we characterize European food safety regulation as an example of contested governance. Although food safety is typically a “low politics” issue, a series of events—notably the disputes over beef hormones, BSE, dioxins, and GMOs—have brought food issues into the limelight of public attention. Mad cow disease, in particular, created a strong challenge to the institutional status quo, producing a collapse of trust in public authority that Jasanoff (1997) has called a “civic dislocation.” Although starting in Britain, the dispute soon spread to Europe and elsewhere. It then spilled over into a parallel debate about genetically-engineered foods, providing the springboard for the mobilization of a significant social movement that vigorously protested the testing of GM crops and the import of GM foods. Public opinion polls have demonstrated that the European public exhibits considerable cynicism toward government authority and places greater trust in consumer and environmental NGOs (Gaskell, Allum, and Stares 2003, 32).

Contested governance will tend to occur, we argue, in policy sectors in which there are strong institutional and political asymmetries in the character of policy-making and public management. First, contested governance tends to occur in policy sectors in which mass-level attention to issues is periodic, but intense—a response, for example, to brutal police behavior vividly captured on film, the horrible death of a child due to parental neglect, the siting of a landfill near a residential development, dramatic cases of espionage or corruption, a health epidemic, a fire in a crowded nightclub. Such dramatic events are often directly and emotionally experienced by the public, creating high issue salience. However, issue salience is likely to erode quickly unless the event either portends or symbolizes impacts on broader publics, is seen as a pattern, or persists over
time. Uncertainty about diagnosis, effects, or solutions is likely to increase the diffuse sense of the problem and heighten the issue salience. Media and social movement interest are probably important for maintaining and amplifying issue salience.

Policy or institutional failure is not a prerequisite of contested governance (though it may be), because triggering events may be uncontrollable or unknowable. However, contested governance is likely to emerge when policies or institutions can be perceived to have facilitated or failed to adequately respond to important public concerns. Contested governance is particularly likely to emerge we argue, when this periodic but intense public scrutiny confronts an extensively institutionalized policy sector in which day-to-day routine decisions are delegated to experts or administrators with little on-going attention or interest from the public. Public health is a good example. A large and elaborate system of routine public health administration continuously takes place, largely without the knowledge or interest of the public. The public typically becomes attentive only when a serious public health threat arises, particularly if the threat raises questions about the adequacy of the public health system. This asymmetry between periodic, but intense public scrutiny and extensive routine administrative or expert decision-making is particularly likely to generate intense controversy to the extent that six other conditions also hold.

(1) contestation is accentuated where there are sharp contrasts between demands for procedural and substantive rationality. Procedural rationality entails compliance with pre-established rules, protocols, or norms typically designed to guarantee equity, rights, accountability, or thoroughness. By contrast, substantive rationality is measured
according to whether outcomes themselves are regarded as true, correct, or valuable. A public health agency may follow all pre-established protocols for identifying and responding to an epidemic, yet it may fail to successfully prevent the epidemic. Since procedures are often designed to produce true, correct, or valuable outcomes, these two standards of rationality may be complementary. However, they may also stand in significant tension to one another in some policy sectors. In child welfare policy, for example, this contrast is particularly sharp and often cuts both ways. The public, for example, can protest the failure of a child welfare agency to remove a child from a home in which they are at risk or can protest an agency’s overly aggressive intervention. In either case, the agency is constrained by an extensive legal framework for removing a child.

(2) contestation is accentuated where public decision-makers must balance multiple goals and where the costs and benefits of governance are asymmetrically distributed, such that some persons or constituency groups bear the costs while different persons or constituency groups benefit. Under these conditions, real or perceived political bias or conflict of interest is likely to contribute to delegitimation. To be sure, public decision-making must often balance multiple goals or impose asymmetric costs and benefits, as exemplified by many environmental and natural resource conflicts. But we suggest that public skepticism is likely to be particularly sharp when the perception of the balancing of multiple goals or the imposition (or non-imposition) of costs is primed by a highly salient issue.
(3) Contestation is accentuated where public authority and legitimacy depend strongly on public trust. Again, the more asymmetric this trust—the more blind faith required—the more likely governance will be subject to sudden and pervasive skepticism. In other words, trust is particularly a problem where public authorities and the public recognize its importance only after it is gone.

(4) Contestation is accentuated where the public has limited exit options. The ability to avoid state regulation or to find alternative private provision of goods will reduce the urgency of contestation.

(5) Contestation is accentuated where the public (or publics) have deeply held, but divided values. The contestation over gay marriage in the U.S. or the wearing of Islamic head scarves in France are current examples.

(6) Contestation is accentuated during periods of institutional change and instability. Part of our argument, of course, is that distrust in institutions is a product of contestation. However, it is also true that contestation may become more intense when the institutional context in which it occurs is undergoing a transition or transformation or when authority is up for grabs (e.g., institutional change and instability as an intervening variable). For example, a dispute over a case of police brutality may become more vitriolic if the local police agency was already engaged in a tense process of negotiating a new relationship with local communities.
These factors interact with the complexity and diffuseness of problems and institutions. Where problems are complex and do not permit easy solution, they are certainly likely to erupt periodically into public debate. Homelessness is a good example. Complex problems like homelessness often lack the public will required to create systematic, well-funded solutions. Yet the problem does not go away and periodically resurfaces to receive intense public scrutiny. Institutional complexity may also contribute to the contested nature of governance. Where public responsibilities are shared across multiple levels of government (multi-level or federal government) or powers are shared between different institutions (separation of powers), a structural potential is created for disputes over the relative authority and power of different institutions. Most importantly, contested governance will occur where specific disputes (specific to a policy sector) become entangled with more general disputes about the division of powers and responsibilities between different branches or levels of government. While the governance of space policy has been disputed after the loss of the Columbia space shuttle, there was no discussion about whether the Federal executive branch was the appropriate place to administer space policy. However, European and international food safety conflicts have been entangled in a much more general dispute about the regulatory authority of the EU and the WTO.

**European Food Safety Regulation as Contested Governance**

We now provide a brief description of the factors contributing to the contested character of European Food Safety Regulation. First, and most obvious, Europe has recently been
subject to a series of food scandals. Even prior to the BSE affair, Europe was vigorously
debating the safety of hormone-treated beef and milk. But the mad cow affair shattered
public trust in government regulation. The BSE affair was then closely followed by an
acrimonious debate over GMOs and a dioxin scandal in Belgium. It is also probably
true that the scientific uncertainty surrounding of the beef hormone, BSE, and GMO
issues have contributed to contestation.

The issue salience of BSE, as a result of the directly experienced fear and
uncertainty of consumers, is certainly an essential part of the story of the contested
governance of European food safety. But attention to BSE may also have discouraged a
fuller appreciation of the way other contextual factors have shaped the timing and extent
of the crisis. We argue that the way food issues are entangled in larger institutional and
political debates have contributed to the intensity and duration of contestation.
Specifically, we argue that the advancing economic and political integration of the
European Union and the creation of WTO trade regime were important contextual
variables that interacted with these food scares to produce contested governance in
Europe.

As Hooghe and Marks (2001) argue, European integration has generated intense
debate about whether the European Union is the embodiment of a neo-liberal or a
regulated capitalism project. Quite early in the process of European integration, it was
recognized that food represented a stumbling block to deeper market integration.
Consequently, a significant body of European regulation has been built up around food.
BSE brought this issue to a head when the continental European states banned British
beef. However, the tension extends beyond the harmonization of safety standards to
sensitive issues related to the way certain foods were emblematic of national cultures. The dispute around the pasteurization of French cheese is a good illustration of the way safety issues and cultural sovereignty issues have become intertwined. We argue that the continual chaffing over the harmonization of food standards created by the European integration process and the framing of these conflicts as disputes over cultural sovereignty prepared European public opinion for its reaction to the beef hormones, BSE, and GMO disputes.

Beyond the issue of European integration per se, contention surrounding the Common Agricultural Policy (CAP) has subtly shaped the contestation over food safety regulation. The BSE crisis was in part produced by the way cows were fed in Europe, a feeding regime that some have argued was indirectly encouraged by CAP (Fisher 2000). More generally, the nearly continuous controversy over the last decade around CAP reform probably also contributes to the saliency of food issues for European publics.

A third factor associated with European integration is the way that it has simultaneously and subtly affected institutional trust and the opportunity structure for the mobilization of political issues. The development of an extensive regulatory apparatus at the European level has produced widespread criticism of a democratic deficit. The lack of transparency of regulatory decision-making processes at the European level has led to a sense of diffuse accountability. At the same time, European level regulation appears to provide new opportunities for the mobilization of consumer and environmental issues and groups that may have a weaker voice at the national level. In part, these new opportunities are related to the problem of a European democratic deficit.
ensure its own legitimacy, the European Commission has encouraged the representation of European-wide consumer and environmental interests.⁶

Similar points can be made about the WTO. As the anti-globalization movement attest, the line of battle has been drawn between market liberalization and national environmental and safety regulation. Again, food has become a central symbol of consumer, producer, and cultural sovereignty and agricultural protectionism has become a central focus of trade conflict.

To summarize, the contested governance of European food safety has been produced by a series of food scares, partially linked, that have become entangled in larger controversies about multi-level regulation and trade liberalization.

**An Overview of the Book**

The eleven essays in this volume are divided into four sections. A first group of essays addresses the political and institutional context of European food safety regulation. The four essays in this section place the issue of national food regulation in an historical context, examine the political mobilization of opposition to GMOs at the national and European levels, describe public attitudes toward trust in food safety in different European countries, and explore the relationship between private and public systems of food safety and quality regulation. The second section examines European food safety regulation at the national level. Essays explore changes in food safety regulation in three critical Member States of the EU, namely France, Great Britain and Germany. A third group of essays examines food safety regulation at the European level. These essays

⁶ See the discussion on input- and output-legitimacy by Skogstad (2003).
focus on the distinctiveness of the European regulatory style, the historical development of European food regulation, and the creation of the European Food Safety Authority. The fourth group of essays focuses on the international dimension of European food safety regulation. The two essays in this section present alternative perspectives on the relationship between the regulatory rules and standards of the EU and the World Trade Organization. These essays are followed by a conclusion that draws together the volume’s collected findings and returns to the general theme of contested governance.

The next section of this introduction summarizes each of these contributions.

The first four essays examine the political and institutional context of European food safety. Frans van Waarden’s “essay “Taste, Traditions, Transaction, Trust and Tragedies, “ places the issue of food regulation in historical perspective, noting that compared to other aspects of public policy, food regulation has frequently been highly contested. For both cultural and economic reasons, different countries have placed values on different dimensions of food and these have frequently clashed. Moreover, in an increasingly globalized economy, where consumers are consuming both natural and processed food from many different countries, the lack of public trust has become exacerbated. It has become increasingly difficult for to assure consumers that their increasingly diverse and stringent demands with respect to food preparation and composition are being meet.

Some of this slack is being addressed by private firms and certification agencies, but ultimately these control mechanisms too must be backed by public authority. However, each regulatory failure spawns new demands for additional private and public
controls, which invariable turn out to be inadequate, thus creating pressures for still more
controls.

“European Food Safety: Multilevel Governance, Re-Nationalization or
Centralization,” by Thomas Bernauer and Ladina Caduff also examines the role of
institutions in fostering public trust. Their analysis focuses on two dimensions: the
relationship between private and public authorities and the relations between public and
private systems of regulation. These are related: the growing stringency of food safety
regulation at the European level, dominated by multi-level governance, has been
accompanied by an increase in market concentration in food processing and distribution.
Many of these firms have established their own food safety programs, often associated
with HACCP, (Hazard Analysis and Critical Control Point Systems). While their
adoption varies widely across different countries, they have become a critical strategy for
many large firms seeking to enhance consumer confidence in their products. If small
producers are to survive in this increasingly competitive environment, it is critical that
Europe establish a highly effective, credible, and centralized system of food regulation.
Like van Waarden, they consider the problem of achieving and maintaining public trust
in food to be highly challenging.

“Contestestation over Food Safety: The Significance of Consumer Trust,” by
Unni Kjaernes, Christian Poppe, Arne Dulsrud, and Eivind Jacobsen also addresses the
relationship between public and private authorities. Their central theme is the issue,
problem or challenge of trust: how can consumers be assured that the food they are
consuming has been produced, processed and distributed in ways that meet their
expectations regarding both its quality and safety? The evidence they cite illustrates the
complexity of this problem. Notwithstanding European economic integration, consumer trust is primarily generated with a national context. Consumers in European countries exhibit markedly different degrees of trust in the food they consume. At the same time, the relationship between private and public authorities varies substantially within Europe. Both these phenomena suggest the magnitude of the challenges that confront the EU’s efforts to promote a European “trust regime.”

“Protesting Food: NGOs and Political Mobilization in Europe,” by Christopher Ansell, Rahsaan Maxwell and Daniela Sicurelli explores another critical dimension of the contemporary politics of food safety regulation in Europe. Their essay details the critical role that NGOs have played in mobilizing opposition to genetically modified foods in Europe at both the European and national levels. The anti-GMO movement is both broad and diverse, involving environmental groups, consumer groups, farmers and development organizations. Collectively this movement has creating a multi-faceted advocacy coalition incorporating activists and supporters with a broad spectrum of interests and priorities.

A particularly important role has been played by Greenpeace. In both France and Italy, Greenpeace was critical role in both increasing public awareness of and in mobilizing public opposition to GM foods, though the framing of this issue has varied in different countries. What has been critical is the ability of anti-GM activists to create political linkages across the member states, thus enabling them to effectively target EU institutions, while at the same time retaining an important national focus. The anti-GMO movement has built a multi-level organization, one capable of effective mobilization at both the national and European levels. Their efforts have significantly impacted both
national and EU regulation of this new agricultural technology and have significantly contributed to the highly contested nature of much of European food safety regulation within Europe. Both these phenomena suggest the magnitude of the challenges that confront the EU’s efforts to promote a European “trust regime.”

The second group of essays explores reform of food safety systems in France, the UK, and Germany. In “Reforming Food Safety Regulation in France,” Julien Besançon, Olivier Borraz, and Christophe Clergeau argue that the newly create French food safety agency, AFSSA (Agence française de sécurité sanitaire des aliments), has experienced considerable difficulty in establishing an independent role within the France state. Established by legislation in 1998 as a response to a series of public health policy failures in France and with the purpose of enhancing the legitimacy of public regulation, it remains a relatively weak agency. In many respects its role in shaping food safety policy in France is both limited and undefined: the critical definition of rules and norms remains the province of authorities outside the agency. AFFSA also finds itself constrained by two important trends, which both proceed and postdate it, namely the increasing role of private interests in the management of food safety and the commitment of the French government to protect French agricultural interests.

Nonetheless AFSSA has managed to play an influential role in affecting specific food safety policy decisions, most notably both the maintenance and the termination of the French embargo on British beef and public policies toward BSE. In both cases the agency adopted a highly precautionary approach. Whether it will prove capable of maintaining consumer confidence in the face of future food safety crises remains, at this juncture, problematic.
Henry Rothstein’s essay, “From Precautionary Bans to DIY ‘Poison Tasting: Constraints to the Reform of UK Food Safety Regulation,” explores the challenges faced by the Britain’s Food Standards Agency. Established in 2000 as a response to a dramatic decline in consumer confidence with the government’s ability to effectively regulate food safety caused in large measure by the BSE scandal, the Agency was heralded as inaugurating a new era of transparency in consumer protection. It was based on three principles, namely putting consumers first, openness and independence.

Rothstein critically explores the agency’s performance by describing and evaluating its responses to two food safety issues, namely BSE in sheep and food allergies. These cases reveal that the agency has a number of important limitations. They include a lack of coherence in regulatory decision-making, its inability to give priority to the interests of consumers, the continued role played by business and economics pressures in shaping regulatory policy, the inability of policy-makers to coherently and consistently make risk management decisions in cases of scientific uncertainty, the difficulty of implementing stakeholder participation and a lack of independence. Thus, notwithstanding the political context that led to its creation, FSA continues to reflect Britain’s “soft” regulatory style.

“Governance Reform of German Food Safety Regulation: Cosmetic or Real,” by Bodo Steiner describes the institutional changes made by the German government in response to the emergence of the first cases of BSE in Germany in 2000. The most striking change was the renaming of the Federal Ministry of Agriculture and Forestry as the Federal Ministry of Consumer Protection, Food and Agriculture that took place in January 2001. This change was accompanied by a strengthening of the audit capacity of the German government as well as the establishment of a large-scale private sector
quality assurance scheme. The latter shifted regulation away from publicly mandated food safety regulations toward industry-led initiatives. On balance, a number of changes in regulation, administration, and liability standards appear to have improved the effectiveness and the allocative efficiency of German food safety regulation.

The next three essays explore the emergence and characteristics of food safety regulation at the European level. “Regulating Food Safety Risks in the EU and North America: Distinctive Policy Styles,” by Grace Skogstad places the EU’s approach to regulating food safety risks in a comparative context. A nation’s approach for determining and legitimating food safety regulation – or its food safety regulatory policy style -- relies on a combination of three elements, namely science, democratic processes of representative and participatory government, and market mechanisms and incentives. These vary widely among US, Canada and the EU: the first relies on state regulation of private industry, the second on state officials and the third on political officials.

Case-studies of three current critical areas of food safety regulation, namely hormone-fed beef, rBST milk and genetically modified foods, demonstrate how differently each political system has approached the regulation of the health and other risks associated with these agricultural technologies. Underlying these differences are the centrality of democratic norms and the weaker authority of science in EU food safety regulation as compared to the US and Canada. And these differences are reinforced by both different cultural attitudes toward food produced by new technologies and a series of regulatory failures in Europe that have undermined public confidence in “appeals to objective knowledge” associated with regulatory science.
Alberto Alemanno’s essay, “The Evolution of European Food Regulation,” traces the historical evolution of food regulation by the EU. This regulation has gone through four phases. During the first phase, which began in 1962 and lasted through 1985, the European Community attempted to harmonize food law. This program met with limited success. Accordingly, from 1985 through 1997, the Commission adopted a “New Approach,” which relied on instead on mutual recognition of national standards and “framework” directives. Both of these approaches focused primarily on promoting intra-European trade in foodstuffs and paid relatively attention of safety issues. Beginning in the mid 1990s, faced with increasing public concern over food safety, the EU adopted a new set of comprehensive policies whose aim was to strengthen European food safety standards. These included the adoption of a Green Paper establishing “General Principles of Food Law in the EU in 1997 and the establishment of a DG for Consumer Protection and Health which was made responsible for coordinating scientific risk assessments. Finally in 2003, the Commission established the European Food Authority, making it responsible for providing scientific advice for all aspects of food safety regulation. Like Skogstad, Alemanno places his analysis in a comparative context, pointing to a number of important differences between the EFA and the American Food and Drug Administration. These differences reflect both the unwillingness of European national governments to cede too much authority to a centralized regulatory authority as well as the more politicized context of risk assessment in Europe.

Laurie Buonanno’s essay, “Politics Versus Science: Apportioning Competency in the European Food Safety Authority and the European Commission,” focuses primarily on factors underling the recent creation of a European Food Safety Authority. This new
regulatory body emerged from a complex set of developments, the most important of
which was the inadequacy of the EU’s comitology system to adequately address the
recurrent food safety crises to which European consumers have been subject. However
this agency faces an important challenge in reconciling disparate food assessments
among the Member States. Unless it can effectively do so, either the single market will be
undermined or consumers will not be protected from unsafe food. For it to be effective,
the EU must establish a set of policy networks capable of promoting cooperation among
national officials, interests and experts, which may well prove elusive.

The final group of essays explores the relationship between food safety regulation
at the European and international level. “Protection or Protectionism? EU Food Safety
Rules and the WTO,” by Alasdair Young and Peter Holmes focuses on the challenges
posed by the EU’s obligations under the World Trade Organization to its policy
autonomy in the area of food safety. The dynamics of market integration within the EU,
along with the EU’s highly legalistic character and its high threshold for policy change,
has made it particularly difficult for the EU to comply with adverse WTO judgments. A
substantial number of EU food safety rules have been the cause of trade friction, and two
have led to formal trade disputes. This reflects the fact that a number of EU rules are
more risk averse than those of its trading partners.

However, detailed analysis of recent WTO jurisprudence suggests that many EU
regulations are likely to pass legal scrutiny as the WTO’s Appellate Body has repeatedly
affirmed the right of the EU to choose whatever safety objectives it wishes. While
conflicts may emerge with respect to those regulations which are imposed in order to
reassure the European public but which have no scientific basis, the EU’s new procedures
for making food safety regulations will mean that its future rules are less likely to be subject to international legal challenges. Indeed, one important purpose of the new European food safety agency is precisely to make EU food safety standards consistent with the provisions of the SPS (Sanitary and Phytosanitary Measures) agreement. However, in the case of already existing rules which enjoy widespread popular support, of which the hormone ban and possibly regulations governing GMOs represent important examples, the EU has found or is likely to find it difficult to adjust its policies to bring them into compliance with adverse rulings. In sum, the WTO is affecting how European regulations are being made and justified, but to date it has had less impact on the substance of regulations themselves.

Christine Noiville’s essay “EU Food Safety and the WTO,” explores a similar set of issues, but points to a different conclusion. Carefully analyzing the provisions of the WTO agreement governing the permissible use of food safety and processing standards as non-tariff barriers, she points to a number of ambiguities that might well pose legal challenges to highly risk averse EU food standards. One of the most important of these has to do with the precautionary principles, a number of whose dimensions are more restrictive under WTO than under EU rules.

A concluding chapter by Chris Ansell, “The Asymmetries of Governance,” draws together the findings of the volume and draws out some more generic findings about contested governance. The chapter argues that the contested quality of European food safety regulation must be understood not only in terms of a rash of food scares, but also in terms of how these scares interacted with broader trends in food production and trade and the larger institutional context of European integration. The chapter also draws
together findings from the individual chapters about institutional adaptation to contested governance and explores how the dynamics of multi-level regulation contribute to the tensions surrounding food safety governance. The chapter argues that the self-sustaining dynamic of contested governance is, in part, produced by asymmetries between consumer risk perceptions and government and producer strategies of coping with these perceptions.

References


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