

The Fox Guarding the Henhouse: Coregulation and
Consumer Protection in Food Safety, 1946 – 2002

by

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Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor
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ABSTRACT

Most citizens, business leaders, and government regulators can agree that inspections of food and consumer goods constitute a valuable and even “essential” task of governments. Nevertheless, these groups frequently disagree on what “inspection” means, who should carry it out, and how they should accomplish that goal. When American policymakers first attempted to shift food inspection responsibilities from federal agents to company employees during the 1970s, federal inspectors and consumers denounced these reforms as “the fox guarding the hen house.” Yet, as late as 2002, U.S. district courts admitted that the term “inspection” in key American food safety laws has never been clearly defined.

This dissertation critically analyzes these claims by retracing the origins and expansion of federal oversight of the poultry industry in the United States over the last half of the twentieth century, beginning with the origins of the 1958 Poultry Products Inspection Act and concluding with the establishment of the New Poultry Inspection System in 2014. In the process, this project maps changes in food safety regulation onto broader trends in regulatory governance over the course of the twentieth century, including shifts from state to federal jurisdiction, from public to private oversight, and from domestic to global networks of production and distribution. Rather than relying on simple explanations of capture or regulatory overreach, this project concludes that changes in food safety regulation should be understood in terms of a “continuum” of

coregulation, determined by a balance of difficult tradeoffs. Rather than a statement of fact, the title of the dissertation reflects an honest interrogation of the possibilities and consequences afforded by cooperation between public and private entities.

Drawing on archival records, original field interviews, newspapers, periodicals, and government documents, this research also reveals how an emerging system of international trade affected post-1945 developments in U.S. law and policy, and how American business leaders worked alongside regulators to reshape global standards at the turn of the twenty-first century. Throughout, the debate over safe food doubles as a contest over the division of public and private interests, whose expertise mattered in decision making, and what citizens can and should expect of their governments in a democratic society.

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ABBREVIATIONS

AFGE	American Federation of Government Employees
AMCBW	Amalgamated Meat Cutters and Butcher Workmen
AMS	Agricultural Marketing Service
APHIS	Animal Plant Health Inspection Service
ARS	Agricultural Research Service
BRC	British Retail Consortium
CCC	Commodity Credit Corporation
CCP	Critical Control Points
CDC	Centers for Disease Control and Prevention
CFA	Consumer Federation of America
Codex	Codex Alimentarius Commission
CU	Consumers Union
DI	Discretionary inspection
EPA	Environmental Protection Agency
FAO	Food and Agriculture Organization
FDA	Food and Drug Administration
FMIA	Federal Meat Inspection Act
FSIS	Food Safety and Inspection Service (1990-Present)
FSQS	Food Safety and Quality Service (1980-1990)
GATT	General Agreement on Tariffs and Trade
GMP	Good Manufacturing Practices

HACCP	Hazard Analysis and Critical Control Points
HEW	Department of Health, Education and Welfare
HIMP	HACCP-Based Inspection Models Project
HOHO	“Hands-on, Hands-off” Inspection
ICC	Interstate Commerce Commission
ICMSF	International Commission on Microbiological Specifications for Foods
IPI	Improved Processing Inspection
IPPC	International Plant Protection Convention
MPI	Meat and Poultry Inspection
MTI	Modified Traditional Inspection
NAFTA	North American Free Trade Agreement
NAS	National Academy of Sciences
NASA	National Aeronautics and Space Administration
NBMA	National Broiler Marketing Association
NPIP	National Poultry Improvement Plan
NPIS	New Poultry Inspection System
NSIS	New Swine Inspection System
OIE	World Organization for Animal Health
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OPA	Office of Price Administration
PBIS	Performance Based Inspection System

PCI	Payment Card Information
PPIA	Poultry Products Inspection Act
PR/HACCP	Pathogen Reduction/HACCP (or “Megareg”)
SIS	Streamlined Inspection System
SPS	Sanitary/Phytosanitary
STOP	Safe Tables Our Priority
TBT	Technical Barriers to Trade
TQC	Total Quality Control
TTIP	Transatlantic Trade and Investment Partnership
USDA	U.S. Department of Agriculture
WFA	War Food Administration
WHO	World Health Organization
WTO	World Trade Organization

ADAH: Alabama Department of Archives and History, Montgomery, Alabama.

Consumers Research Papers: Consumers' Research, Inc. Records. MC 3. Special Collections and University Archives, Rutgers University Libraries.

CLNJ: Consumers League of New Jersey Records. MC 1090. Special Collections and University Archives, Rutgers University Libraries.

George Beran Papers: George Beran Papers, 1930-2008, RS 14/6/51, Special Collections and University Archives, Iowa State University, Ames, Iowa.

Carter Library: Jimmy Carter Presidential Library, Atlanta, Georgia.

Eisenhower Library: Dwight D. Eisenhower Presidential Library, Abilene, Kansas.

LBJ Library: Lyndon B. Johnson Presidential Library, Austin, Texas.

NACP: U.S. National Archives and Records Administration, College Park, Maryland.

NAL: U.S. National Agricultural Library, Beltsville, Maryland.

Nixon Library: Richard Nixon Presidential Library, Yorba Linda, California.

Russell Library: Richard B. Russell Library for Political Research and Studies, Athens, Georgia.

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PREFACE

One of my earliest memories takes place inside a chickenhouse. In its red warmth, I am surrounded by the baby chicks, grasping at their soft down. (I am a biosecurity violation.) Even then, I think I knew that those chickens were not my pets; they were not to be kept warm in that house forever. I was not to take them into my home, nor should I craft a hutch for them in the backyard. They were for eating, just like the cows that grazed on the rolling fields were for eating. Each week, when my mother drove us to the public library, we passed the facility where workers slaughtered them, which is still located right in the middle of town. On our way home we might even re-purchase the same chickens from the meat counter at the local Ingles. People who lived in other counties and cities in Georgia could boast of jobs in manufacturing, textile mills, or lucrative defense contracts. We had Wilson & Co.

My father grew chickens because his father grew chickens. My grandfather grew chickens because his own father made too little money growing cotton. Within a generation – the one that connected my grandfather’s experience of Depression and world war with my father’s uneasy transition into a college-educated member of the middle class – American chicken went from an uncommon, seasonal product raised for a niche market into a highly industrialized, uniform, and technologically advanced commodity grown, processed, and exchanged on a global scale. None of the technological innovations, labor practices, or marketing practices that enabled the expansion of

industrial chicken would have been possible without equally unprecedented biological transformations. The chickens my grandfather raised in 1944, the ones I met in the chickenhouse that day in the early nineties, and the ‘banty hens’ who patrolled my great-grandmother’s barn well into the 2000s, were all completely different organisms. The structure of the industry evolved almost as rapidly as the bird. Trends towards increased concentration in the industry meant that fewer and fewer “dressers,” or processors, to which the growers might sell their flocks, remained in business by the 1970s. These self-styled “independent” growers eventually found themselves relying on the same few processors, and later perhaps one or two multinational companies, in order to make their living. But in large part, their success or failure had little to do with their individual ability to raise chickens, and everything to do with these larger-scale, global transformations. While my ancestors did not fully understand their connections to a rapidly growing industry, they understood its ramifications very clearly: bigger houses, faster-growing birds, fewer buyers, lower returns. My father stopped growing chickens in 1995, when Tyson asked him to make some new, expensive upgrades to the houses, to comply with some “new rules and regulations.”

I recount my family’s own history with “the chicken business” not because it is unique, or even because it gives me some special insight on food safety. Instead, I offer it as an explanation for some of the assumptions that influenced the trajectory of this research – that is, I did not begin this project with the same visions of a fictional agrarian past that still influence a great deal of the discourse about food politics, nor did I embark

with an investigative impulse to uncover truths about the activities of twentieth-century corporations. If I really wanted to read Tyson contracts, I need only go up to the attic.

Make no mistake: industrialized agriculture has created a host of new health and environmental risks that global climate change will only exacerbate, especially here in North Carolina. Yet these narratives that often begin and end at the farmer's market too often sideline the stories of people like my grandfather, who have nothing but four-letter words to describe their life on the family farm. Poultry was his ticket *out* of farming for a living; as an "independent" grower, he attributed his perceived success in broilers to his own perseverance, savviness, and hard work – a sharp contrast from his factory work in a Coca-Cola bottling plant, or the labor of his forefathers who reported their cotton crop to the county agent. Whether his understanding of that experience matches prevailing historical interpretations is entirely beside the point. That collective experience shaped the region's politics and worldview in important ways; for better or for worse, it shaped mine, too.

In this world, "bureaucracy" also counted as a four-letter word. Here, it became possible – even expected – to attend a dinner honoring big-government New Deal agricultural programs like the Soil Conservation Service, but spend half the night lambasting the latest incursions of the Environmental Protection Agency through the Waters of the United States rule. In graduate school, I came to see how this perception of the regulatory state – as distant yet invasive, vaguely incompetent, associated with large cities and experts who thought they knew what was best – was unquestionably a product

of my own environment, shaped by its own set of racial and class prejudices. But I also learned that no one in my new academic life really understood this worldview, at least not on its own terms.

There are quite a few books on the topic of industrialized meat production. Yet even the best of them tend to offer little more than retellings of Upton Sinclair's *the Jungle*, in which the authors conclude by expressing their frustration at the failures or shortcomings of the regulatory state, followed by a set of ambitious proposals for reform. This study follows a slightly different path, in part because I *began* this project with a lingering skepticism about the capacity of government agents to solve problems. Hence, I do not tabulate the myriad ways that the government has failed its citizens, nor do I seek to indict any one individual or agency; instead, I focus on why and under what circumstances government agents often fall short of their fellow citizens' increasingly lofty expectations.

Through conversations and interviews, I also recognized that it was necessary to distinguish between those who doubted in the efficacy of regulation because they doubted institutions in general, and those whose skepticism emerged from a depth of knowledge that forms the basis of a serious critique about modern governance. (This is not to say that people are incapable of simultaneously holding both statist and anti-statist views. Quite the contrary.) I refer here to the middle managers and shift supervisors who encounter the regulatory state less as a guarantor of rights or a provider of public goods, but as *more work they have to do*. Whether one works as a poultry inspector or a PCI

compliance officer, eventually it is someone's responsibility to complete the thankless task of implementing a set of esoteric rules laid down by the bureaucrats in Washington – and invariably discover all the gaps, overlaps, and contradictions. Yet these enforcers do not reside in the “isolated communities” of the late nineteenth century, even if it might look that way to the casual observer. From their position in the factories and processing plants that dot the back roads just off the interstate highways, these individuals have become deeply embedded in the international and global landscape of regulatory capitalism. They know that terrain far better than many policy scholars. We should see them, in other words, as regulatory experts.

We have dozens of origin stories for industrialized agriculture and globalization, and we have even more accounts of the consequences. But so much of the rhetoric about food, diet, and agriculture obscures a set of far more complicated truths about the circumstances under which that industrialized, corporate world of contemporary agriculture came to be – and, by extension, the regulatory state that oversees it. If one works from the premise that industrialized agriculture is a vast conspiracy, one can also lose sight of the full range of potential alternatives. More importantly, one might discount numerous potential experts who could be allies in imagining a better system. I have come to understand how the food system involved a series of decisions and compromises made between the powerful and the largely powerless, among individuals and groups who believed they were acting in their own interests – and in other cases, when they had little choice in the matter. The resulting institutional arrangements, then, compose an uneasy

balance of tradeoffs, which produce their own set of unintended consequences. This dissertation reconstructs the process by which those institutional arrangements came about, in order to illuminate how that balance might yet be shifted in the future.

INTRODUCTION

Even when the U.S. federal government “shuts down,” some federal employees remain at their posts. Government shutdowns occur when the U.S. Congress fails to approve a budget for the subsequent fiscal year. However, under the auspices of the 1876 Anti-Deficiency Act, “essential” federal workers continue reporting to work during a shutdown; these employees then receive back pay once the shutdown ends.¹ While shutdowns have become more frequent since the 1990s, these lapses in appropriations rarely lasted longer than a full pay period. Consequently, this clause drew little attention for many years. But between December 2018 and January 2019, the U.S. government remained shut down for 35 days. Media coverage revealed the human toll exacted by asking civil servants to work without pay indefinitely.² The length of the shutdown also occasioned some reevaluation of the notion of what counted as “essential” work of the government: some government functions that could be left neglected for a day or two

¹ The most current iteration of the Anti-Deficiency Act was codified in 1982: Anti-Deficiency Act, September 12, 1982 (96 Stat. 923), 31 U.S.C. § 1341.

² Yuki Noguchi, “Federal Workers Struggle To Stretch Their Money As Shutdown Lingers,” <https://www.npr.org/2019/01/14/685124785/federal-workers-struggle-to-stretch-their-money-as-shutdown-lingers>, January 14, 2019; CNN maintained an ongoing list of over 100 “direct effects” of the shutdown, which included harrowing stories of workers unable to make rent or afford lifesaving medications, to more mundane effects, like the lost revenue from fewer Uber rides within the District of Columbia: Z. Byron Wolf, Veronica Stracqualursi and Devan Cole, “102 (and counting) very real direct effects of the partial government shutdown,” CNN, January 24, 2019, <https://www.cnn.com/2019/01/10/politics/shutdown-effects-list/index.html> (Accessed January 24, 2019). For a sense of the zeitgeist, see Cardi B (@iamcardib) “I know a lot of ya do r watch the news so I’m letting ya know shit getting real...” Instagram, January 16, 2019, <https://www.instagram.com/p/BstmkvDFGAm/>

posed serious threats to life, liberty, and property after only a few weeks.³ At the same time, the executive branch stretched the definition of “essential” nearly to its breaking point – at one point, attempting to include Internal Revenue Service (IRS) employees to avoid delays in processing 2018 tax returns.⁴

The 2018-2019 government shutdown illustrated that, regardless of one’s political persuasion or opinions about the federal bureaucracy, there are a few basic tasks that most Americans would define as “essential” functions of government – and food inspection counts among them. Even in the “America First” budget for fiscal year 2018, which proposed billions in cuts across a swath of non-military government programs, the Trump Administration proposed a “fully funded” Food Safety and Inspection Service (FSIS) at the U.S. Department of Agriculture (USDA).⁵ Government-mandated inspections served various functions over the decades: to prevent fraud and establish confidence in the marketplace, to ensure orderly marketing through quality assessment and grading, and to protect consumers from potentially hazardous or unsafe products. From milk to meat, fertilizer to fruits, inspections of food and other agricultural

³ Tovia Smith, “‘Justice Delayed Is Justice Denied’ As Government Shutdown Affects Federal Courts,” <https://www.npr.org/2019/01/23/687949428/justice-delayed-is-justice-denied-as-government-shutdown-affects-federal-courts>, January 23, 2019.

⁴ National Treasury Employees Union, “NTEU Challenges Constitutionality of Forcing Employees to Work Without Pay,” NTEU Press Release, January 9, 2019, <https://www.nteu.org/media-center/news-releases/2019/01/09/secondshutdownrelease>

⁵ Executive Office of the President and the Office of Management and Budget, “America First: A Budget Blueprint to Make America Great Again,” Washington: U.S. Government Publishing Office, 2017. <https://www.govinfo.gov/content/pkg/BUDGET-2018-BLUEPRINT/pdf/BUDGET-2018-BLUEPRINT.pdf> (Last accessed January 3, 2020)

commodities became a widely accepted – and important – function of governments well before the twentieth century.⁶ In each case, inspection resolved crucial problems of asymmetric information between producers and end consumers. Evidence from across the world suggests that almost every society places a high value on safety and integrity in its food supply as a matter of the public interest.⁷

For centuries, the primary mode of determining whether a consumer good meets a predetermined set of standards has been through some kind of inspection. Before the late nineteenth century, that close look meant an organoleptic examination – in lay terms, scrutiny relying on one or more of the five senses i.e. sight, touch, smell, or even taste.⁸ In recent years, many commentators have come to refer to this approach as a “poke and

⁶ William Cronon, *Nature's Metropolis: Chicago and the Great West*, (New York: Norton, 1992); Robert Zerbe, “The Origin and Effect of Grain Trade Regulations in the Late Nineteenth Century,” *Agricultural History* 56 (1982); Matthew Booker, “Before The Jungle : The Atlantic Origins of US Food Safety Regulation,” *Global Environment* 11, no. 1 (January 1, 2018): 12–35, <https://doi.org/10.3197/ge.2018.110102>.

⁷ Regulation (EC) No 852/2004 of the European Parliament and of the Council, on the hygiene of foodstuffs, 29 April 2004. Official Journal of the European Union, 30 April 2004; Xiaolong Wu, Dali L. Yang, and Lijun Chen, “The Politics of Quality-of-Life Issues: Food Safety and Political Trust in China,” *Journal of Contemporary China* 26, no. 106 (July 2017): 601–15, <https://doi.org/10.1080/10670564.2017.1274827>.

⁸ One standout example of “taste” as a legitimate mode of inspection was the U.S. tea import inspection program, created by the Tea Importation Act of 1897. The Act established a board of tea experts (referred to as “Tea Tasters” in hearings and letters). During his term, President Richard Nixon sought to eliminate the tea inspection program and fire the board of tea experts (which at that time included several tasters who worked as consultants for a fee of \$50, and one full-time employee, a Mr. Robert H. Dick), but the wording of the statute prevented him from doing so without new legislation. Memorandum from James D. Grant, Deputy Commissioner of the FDA to Dr. Edward Harper, The White House, Re: The Tea Act, March 30, 1970, WHCF, General FG 23-7 Food and Drug Administration, Box 9, Richard Nixon Presidential Library, Yorba Linda, California; Letter to President Richard Nixon from the Committee to Keep Dick Tasting, March 18, 1970, WHCF, General FG 23-7 Food and Drug Administration, Box 9, Nixon Library. The Tea Importation Act of 1897 was repealed in 1996: Publ. L. 104–128, 110 Stat. 1198, Apr. 9, 1996.

sniff” method. Another way of inspecting involves analyzing a sample of the product and rating the safety or quality of the whole based on the sample. Inspection regimes based on sampling and chemical analyses has been used since the late nineteenth century as a means to inspect products as diverse as salted fish, fresh milk, and fertilizer.⁹ In general, sampling is important for any inspection procedures that would otherwise destroy or denature the product. “Scientific sampling” is a more specific variant of the sampling approach, and typically refers not to the use of chemical analyses (which may be employed in sampling approaches generally) but to the use of statistical methodologies in which randomly selected units of the product undergo inspection.¹⁰ While proponents of continuous inspection at USDA argue that “each and every carcass” should be given a thorough inspection, some scholars argue that even carcass-by-carcass organoleptic inspections involves a degree of sampling, particularly at faster line speeds. “Continuous” visual inspection at 120-140 birds a minute necessarily involves judgment calls by an

⁹ On early food and drug regulation, see Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton University Press, 2001), 255-275; on milk, see Richard A. Meckel, *Save the Babies: American Public Health Reform and the Prevention of Infant Mortality, 1850-1929* (University of Michigan Press, 1990); Samuel Hopkins Adams, “The Solving of the Milk Problem,” *McClure’s Magazine*, 1908; Kendra Smith-Howard, *Pure and Modern Milk: An Environmental History since 1900* (Oxford University Press, 2013); on fertilizer, see Alan Marcus, “Setting the Standard: Fertilizers, State Chemists, and Early National Commercial Regulation,” *Agricultural History* 61 (1987), 47-73.

¹⁰ Alan Stuart, *Basic Ideas of Scientific Sampling*, (London: Charles Griffin & Company, 1964); David J. Hand, *Statistics – A Very Short Introduction*, (New York: Oxford University Press, 2008), 51-54.

experienced inspector, who in effect “samples” from what they have seen in the past, compared to other carcasses on the line.¹¹

Within the Department of Agriculture, the agency tasked with inspection of meat and poultry products, an “inspection” meant an organoleptic examination for more than a century. By contrast, agents of the Food and Drug Administration (FDA) oversee almost all other food inspection in the U.S. – everything from fresh fruit juices to most seafood. Yet (with the notable exception of farmed catfish), no other commodities undergo the same degree of scrutiny – of continuous, visual inspection of each and every carcass.¹²

Especially in the last few decades, government officials, interest groups, and the general public have been engaged in a fierce debate over whether this system works – for American producers, consumers, and particularly for workers.¹³ Regulators, legal

¹¹ Timothy Pachirat describes this process with respect to cattle in Pachirat, *Every Twelve Seconds: Industrialized Slaughter and the Politics of Sight* (Yale University Press, 2011).

¹² On the USDA catfish inspection program, see Karen Aki Senaga, “Tasteless, Cheap, and Southern? The Rise and Decline of the Farm-Raised Catfish Industry” (Ph.D. Dissertation, Mississippi State University, 2016), 322-326.

¹³ Good recent overviews of the trajectory of twentieth-century American food safety regulation include: Timothy D. Lytton, *Outbreak: Foodborne Illness and the Struggle for Food Safety* (Chicago: The University of Chicago Press, 2019); Adam Sheingate, “Still a Jungle,” *Democracy*, no. 25 (2012): 48; Marion Nestle, *Safe Food: Bacteria, Biotechnology, and Bioterrorism* (Berkeley: University of California Press, 2003); recent histories of industrial meat production include Maureen Ogle, *In Meat We Trust: An Unexpected History of Carnivore America* (Boston: Houghton Mifflin Harcourt, 2013) and Joshua Specht, *Red Meat Republic: A Hoof-to-Table History of How Beef Changed America* (Princeton, N.J.: Princeton University Press, 2019); for critical appraisals of the working conditions inside packing and processing plants, see Ellen K. Silbergeld, *Chickenizing Farms & Food: How Industrial Meat Production Endangers Workers, Animals, and Consumers* (Baltimore, Maryland: Johns Hopkins University Press, 2016); Steve Striffler, *Chicken: The Dangerous Transformation of America’s Favorite Food* (New Haven: Yale University Press, 2005); for recent journalistic investigations of working conditions, see especially Tom Fritzsche, “Unsafe at These Speeds: Alabama’s Poultry Industry and Its Disposable Workers,” (Southern Poverty Law Center/Alabama Appleseed, 2013); Oxfam America, “No Relief: Denial of Bathroom Breaks in the Poultry Industry,” (Oxfam America’s Campaign for Poultry Worker Justice, 2016); on the prospects of self-regulation in food safety, see Lisa L. Sharma, Stephen P. Teret, and Kelly D. Brownell, “The Food

scholars, industry representatives, and scientists often describe visual inspection as “archaic” and “outdated,” because inspectors spend more time on visual defects as compared to the detection of microbial or chemical contamination.¹⁴ These advocates suggest that meat and poultry should employ a model that more closely resembles the Food and Drug Administration’s approach, which relies on verification, auditing, and periodic sampling. By contrast, most federal inspectors and a few consumer advocates characterize continuous inspection as a “gold standard,” and posit that any shift away from continuous inspection equates to a “downgrade” of inspection services.¹⁵ When American policy-makers first considered alternatives to organoleptic inspection in the 1970s, many inspectors within Food Safety and Inspection Service (then called the Food Safety and Quality Service) resisted the idea that other forms of inspection could effectively detect unseen contaminants, such as chemical or pesticide residues.¹⁶ Critics

Industry and Self-Regulation: Standards to Promote Success and to Avoid Public Health Failures,” *American Journal of Public Health* 100, no. 2 (2010): 240–246; Edward J. Balleisen, “The Prospects for Effective Coregulation in the United States: A Historian’s View from the Early Twenty-First Century,” in *Government and Markets: Toward a New Theory of Regulation* (Cambridge University Press, 2009), 443; but cf. Susanne Wengle, “When Experimentalist Governance Meets Science-Based Regulations; the Case of Food Safety Regulations,” *Regulation & Governance* 10, no. 3 (September 1, 2016): 262–83, <https://doi.org/10.1111/rego.12067>; and U.S. General Accounting Office, “Food Safety: Weaknesses in Meat and Poultry Inspection Pilot Should Be Addressed Before Implementation,” Report to the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, December 2001.

¹⁴ Sugarman, Carole. “Fighting Foodborne Diseases; Outdated Inspections Will Be Upgraded: [FINAL Edition].” *The Washington Post*, Washington, D.C. March 23, 1993.

¹⁵ “Food Inspectors fight Butz legacy,” *The Government Standard* (AFGE), October 1977, 9; I find the phrase “gold standard” used as both praise and critique of organoleptic inspection. See “HACCP-Based Meat and Poultry Inspection Concepts Project,” August 26, 1997 (draft), 3, Folder 3: “HIMP Guides and Documents,” Box 10, George Beran Papers, 1930-2008, RS 14/6/51, Special Collections and University Archives, Iowa State University Library, Ames, Iowa.

¹⁶ Mark Rohner, “Consumer Activist Now in Washington Defends Plan to Cut Meat Inspections,” *The Burlington Free Press*, April 26, 1979.

then and now denounced the USDA model of continuous inspection by claiming that its reliance on visual inspections by humans lacks “scientific” grounding.¹⁷ Yet many proponents of visual inspection argue that the case for sampling is based on flawed scientific evidence from a failed government experiment, and that risk-based approaches are a guise for reducing, not improving, inspection.¹⁸

Despite an apparent consensus that food inspection constitutes an “essential” task of government, Americans profoundly disagree over what inspection should mean, who should carry it out, and how they should accomplish that task. Throughout the period under investigation, the key actors understood that the stakes were far higher than whether or not chicken is safe to eat. The debate over food safety doubles as a contest over the division of public and private interests, what kind of expertise mattered in decision making, and what citizens can expect of their governments in a democratic society.

¹⁷ General Accounting Office, “Inspection System's Ability to Detect Harmful Bacteria Remains Limited.” Testimony before the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, February 10, 1994, 3.

¹⁸ Wenonah Hauter, “Setting the Record Straight on the Obama Administration’s Privatized Poultry Inspection System,” Food & Water Watch, November 6, 2015, <https://www.foodandwaterwatch.org/insight/setting-record-straight-obama-administration%E2%80%99s-privatized-poultry-inspection-system>; “USDA Rushes to Deregulate Hog Slaughter Inspection, Puts Food Safety at Risk - Consumer Federation of America,” *Consumer Federation of America* (blog), accessed March 2, 2020, https://consumerfed.org/press_release/usda-rushes-to-deregulate-hog-slaughter-inspection-puts-food-safety-at-risk/.

DEFINING “FOOD SAFETY”

How one defines “safety” in food may shape one’s preference for how it should be evaluated. Someone about to sit down for dinner might care only about the food that ends up on their plate – as a consequence, they would very much like to know that that exact piece of chicken or can of soup underwent careful examination before they dig in. While consumers have diffuse preferences not easily captured by the organized consumer movement, most consumers define “safe” food as food that does not harm them or make them sick when they consume it. Thus, while hardly “risk-free” by scientific or public health standards, someone may be able to enjoy a steak tartare, unpasteurized cheese, or raw oysters, and if they do not experience ill effects, will not question the safety of their meal. Increasingly, American and European consumers are beginning to adopt an even more wide-ranging definition of safety that encompasses production practices, animal welfare, or environmental impacts.

Much like the debate over what constitutes “health,” the definition of “safety” among scholarly researchers can vary widely across disciplinary lines: A toxicologist might assess safety in terms of its position on a dose-response curve.¹⁹ Engineers seek to design systems with multiple safety barriers that can “fail-safe” – especially evident in

¹⁹ Chester Ittner Bliss, "The calculation of the dosage-mortality curve." *Annals of Applied Biology* 22, no. 1 (1935): 134-167; cf. E. J. Calabrese, "Historical blunders: how toxicology got the dose-response relationship half right," *Cellular and Molecular Biology* 51, no. 7 (2005): 643-654.

nuclear missile guidance and nuclear waste disposal.²⁰ Economists frame safety in terms of “tradeoffs,” and acknowledge that efforts to reduce one risk may increase other risks.²¹ Historians and other humanists tend to emphasize how concepts like “safety” – whether in food, drugs, transportation, or in workplaces – should be understood as historically, socially, and culturally contingent.²² Psychologists and some scholars of risk regulation frame many of these same variations in terms of “risk perceptions;” an extensive literature on “precaution” attempts to identify societal and cultural variations in risk perceptions and anchor them in typologies.²³ This dissertation contributes to a broader social-scientific literature on risk regulation and crisis-driven policymaking by incorporating the historian’s perspective, revealing how the balance of tradeoffs is affected by understandings of safety which are never monolithic and change over time.

Debates about the safety and quality of food initially emerged from broader concerns about fraud and deception in the marketplace. In European markets, reliance on

²⁰ Donald A. Mackenzie, *Inventing Accuracy: An Historical Sociology of Nuclear Missile Guidance*, (Cambridge, Mass: MIT Press, 1990); Sven Ove Hansson, “From the Casino to the Jungle: Dealing with Uncertainty in Technological Risk Management,” *Synthese* 168, no. 3 (2009): 428–29.

²¹ W. Kip Viscusi, *Fatal Tradeoffs: Public and Private Responsibilities for Risk* (New York: Oxford University Press, 1992); Jonathan Baert Wiener and John D. Graham, *Risk vs. Risk: Tradeoffs in Protecting Health and the Environment* (Harvard University Press, 2009).

²² Donald Wayne Rogers, *Making Capitalism Safe: Work Safety and Health Regulation in America, 1880-1940*, (Urbana: University of Illinois Press, 2009); Sarah A. Vogel, *Is It Safe? BPA and the Struggle to Define the Safety of Chemicals* (Berkeley: University of California Press, 2013); Lee Vinsel, *Moving Violations: Automobiles, Experts, and Regulations in the United States*, (Baltimore: Johns Hopkins University Press, 2019).

²³ David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton, N.J.: Princeton University Press, 2012); Jonathan B. Wiener et al., eds., *The Reality of Precaution: Comparing Risk Regulation in the United States and Europe* (Washington, DC: RFF Press, 2011); Sheila Jasanoff, *Designs on Nature: Science and Democracy in Europe and the United States* (Princeton, NJ: Princeton University Press, 2005).

inspection went back centuries. Colonial settlers brought those institutional practices with them to North America, which after American Independence filtered into state-level inspection regimes for many commodities, especially those that American merchants wanted to sell in international markets. In the nineteenth century, as urban consumers became separated from rural food producers, they increasingly demanded information about the origins, quality, and safety of food that traveled great distances to urban markets. This imperative structured the regulation of perishable items like milk, but was also true of many other products, such as grains and livestock.²⁴ Regulation through inspection, grading, and labeling by governments and producers alike created standards of quality that helped to mitigate the most egregious instances of fraud in the nineteenth century.²⁵ More often, inspection and quality assessment by government agents *made* markets for goods previously deemed unsafe or unreliable, such as oysters, eggs, and of course, beef and pork.²⁶ Early food laws in the United States secured safe supplies of meat for export to continental Europe. In 1906, the Pure Food and Drug Act and the Meat Inspection Act expanded the federal government's obligations to ensure the safety of domestic consumers as well as foreign buyers. Even still, statutory language preventing

²⁴ Meckel, *Save the Babies*; Cronon, *Nature's Metropolis*.

²⁵ Edward J. Balleisen, *Fraud: An American History from Barnum to Madoff*, (Princeton University Press, 2017), 110-122.

²⁶ Matthew Booker, *Down by the Bay: San Francisco's History Between the Tides* (Berkeley: University of California Press, 2013), 111–152; Anne Hardy, *Salmonella Infections, Networks of Knowledge, and Public Health in Britain, 1880-1975* (Oxford: Oxford University Press, 2015); Alan L. Olmstead and Paul Webb Rhode, *Arresting Contagion: Science, Policy, and Conflicts over Animal Disease Control* (Cambridge, Massachusetts: Harvard University Press, 2015).

the sale of “adulterated” and “misbranded” food focused as much or more on fighting fraudulent claims as it did on guarantees of cleanliness, sanitation, or quality.²⁷

While concern about the purity and quality of food is a very old idea, the concept of “food safety” has a relatively more recent origin. The phrase “food safety” gained traction in the late 1970s; it did not eclipse other phrases with similar meanings like “pure food” or “food adulteration” in the English language until the 1980s and 1990s. The sudden increase in the use of “food safety” in the 1990s and early 2000s reflects both a heightened public awareness and interest, as well as a sharp increase in scholarly writing. Moreover, this sudden rise parallels the ascent of “pure food” during the American Progressive Era, a period in which the U.S. Congress adopted early national food laws.



Figure 1. Google Books Ngram, “food safety,” “pure food,” “food contamination,” “food adulteration,” case insensitive, 1860-2008; Screenshot taken by the author, January 3, 2020.

²⁷ James Harvey Young, “Food and Drug Regulation under the USDA, 1906-1940.” *Agricultural History* 64, no. 2 (1990): 134-42; James Harvey Young, *Pure Food: Securing the Federal Food and Drugs Act of 1906*, (Princeton University Press, 1989).

Greater concern about the safety of food also reflects more widespread worries about personal safety and health in the latter half of the twentieth century. Concepts like the “precautionary principle” – deftly summarized as “caution in advance” – gained traction as viable responses to the sheer pervasiveness of social and health risks.²⁸ In the twenty-first century, scientists, experts, and technocrats profess varying degrees of expertise in “food safety,” yet the underlying question of “how safe is safe enough?” remains fraught with social and cultural meaning.²⁹

SCOPE AND INTERVENTION

This dissertation retraces the origins and expansion of federal oversight of the poultry industry in the United States over the last half of the twentieth century, from the 1958 enactment of the Poultry Products Inspection Act to the adoption of the “New Poultry Inspection System” in 2014. In so doing, this project investigates a series of institutional shifts that characterize broader trends in regulatory governance over the course of the twentieth century: from state to federal jurisdiction, from public to private oversight, and from domestic to global networks of production and distribution. Through

²⁸ *Infra.* note 23. See also John David Graham, “The Perils of the Precautionary Principle: Lessons from the American and European Experience,” *The Heritage Foundation*, 2004, http://s3.amazonaws.com/thf_media/2004/pdf/hl818.pdf); Jonathan B. Wiener, “Whose Precaution After All? A Comment on the Comparison and Evolution of Risk Regulatory Systems,” 13 *Duke Journal of Comparative & International Law* 207-262 (2003) <https://scholarship.law.duke.edu/djcil/vol13/iss3/10>

²⁹ Sarah A. Vogel, *Is It Safe? BPA and the Struggle to Define the Safety of Chemicals* (Berkeley: University of California Press, 2013).

a close examination (one might even call it an inspection) of institutional changes within the poultry industry, this project illustrates how domestic, international, and global regulatory regimes interacted with one another to produce the presently existing food system – and, by extension, the institutions that govern it. While this study focuses primarily on the United States, poultry is undoubtedly a global product, and so I give considerable attention to the relationship between developments in the United States and parallel changes in an international and global context.

While its original focus was inspired by debates on “relative precaution” between the United States and the European Union, this project contributes to an interdisciplinary dialogue in the social sciences about the nature and effectiveness of modern regulatory governance.³⁰ Like other works in the literature on “responsive regulation,” I prefer to evaluate the quality of the regulatory approaches available to policymakers than enumerating the quantity of regulation.³¹ Of course, no study of the U.S. Department of Agriculture would be complete without at least a passing mention of “regulatory capture,” or the theory that an agency serves the interests of businesses or regulated entities, at the expense of the public interest.³² While paying careful attention to notions

³⁰ *Infra.* note 28.

³¹ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Cambridge: Oxford University Press, 1992).

³² This thesis also further distinguishes between “statutory capture,” or the idea that the legislators wrote the statute in a way that serves the regulated interests, and “agency capture” (sometimes also called “epistemic capture”) in which the agency is composed of individuals whose interests, thinking, or expertise are closely aligned with the regulated industry in ways that undermine the public interest. For this distinction, see Daniel Carpenter, “Detecting and Measuring Capture,” in *Preventing Regulatory Capture*, ed. Daniel Carpenter and David A. Moss (Cambridge: Cambridge University Press, 2013), 57–68. While

of risk and precaution, and attending to the possibility of capture, I also highlight a few other analytical lenses on regulation:

- the role of bureaucrats who act autonomously in ways that drive policy innovation;
- the competition among interest groups who form advocacy coalitions that then argue for different balances among the tradeoffs in quality, cost, and safety of given products (for this study, of industrially produced chicken);
- the emergence of transnational and/or private regulatory institutions as a key strategy to overcome technical barriers to trade among sovereign nation-states or trading blocs; and
- the circumstances that facilitate a “ratchet to the top” (rather than the far more common “race to the bottom”) in food safety standards.

An additional word about each of these points: when bureaucrats or policymakers act “autonomously,” they do so outside their formal mandate, or they expand that mandate to include new powers without formal approval.³³ “Advocacy coalitions” refers to processes by which one or more interest groups work together with other groups to

arguments (and assumptions) that the USDA is the quintessential captured agency abound – the most compelling examples of USDA acting contrary to the public interest can be found in the work of Pete Daniel: Pete Daniel, *Toxic Drift: Pesticides and Health in the Post-World War II South*. (Louisiana State University Press, 2007) – I tend to sympathize with Carpenter’s approach in that I reserve judgment until I see clear evidence of capture.

³³ Daniel P Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton University Press, 2001).

effect policy change, often for different reasons.³⁴ The “race to the bottom” phenomenon refers to an instance in which market liberalization lowers standards and overall quality as firms seek the most cost-effective solution. Races to the bottom can occur in many contexts, from resource-extractive industries such as timber, to sectors dependent on low-skill low-wage jobs such as textiles, to high-value domains like finance. Yet their inverse, ratchets to the top, are more common than conventional wisdom might suggest. The trajectory of regulations for nuclear safety, chemicals, oil spills, and auto emissions all exhibit characteristics of a ratcheting “up” of regulatory standards to meet those of an exemplary jurisdiction.³⁵

Despite an extensive literature in the broader social sciences, historians have only begun to analyze the complexities of risk regulation since the 1970s. While this study builds on literature that addresses the historical origins of modern agribusiness, by paying closer attention to regulatory developments, I challenge prevailing historical arguments about the pace of deregulation during the 1970s and 1980s. This study adds key historical context to a social-scientific literature on internationalization and privatization that frequently uses the 1990s as a logical point of origin. My research findings complicate the kind of assumptions that often color other historians’ conclusions, and that serve as an

³⁴ Paul A. Sabatier and Hank C. Jenkins-Smith, *Policy Change and Learning: An Advocacy Coalition Approach* (Westview Press, 1993).

³⁵ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Cambridge: Oxford University Press, 1992); John Braithwaite and Peter Drahos, “Ratcheting up and Driving down Global Regulatory Standards,” *Development* 42, no. 4 (1999): 109–114; Tim Bartley, “Certifying Forests and Factories: States, Social Movements, and the Rise of Private Regulation in the Apparel and Forest Products Fields,” *Politics & Society* 31, no. 3 (2003): 433–464.

origin story for other social scientists. This dissertation joins other recent scholarship that argues that “historical perspective” requires more than a paragraph of summary at the beginning of an article, but a more sustained examination of change over time, contingency, and uncertainty in order to assess the drivers of policy change.³⁶

The thesis also offers a cautionary tale about the limitations of progressive politics. This project subverts and expands upon an argument first made by radical historian Gabriel Kolko in 1963: that populist “victories” against the monopolists in finance, meatpacking, and transportation during the American Progressive Era were, instead, a “triumph of conservatism.” Kolko argues that corporate influence over Presidents and legislators ensured that Progressive Era legislation ultimately served the interests of big business, rather than the public interest.³⁷ While contemporary historians of the United States know this narrative all too well, consumer advocates during the 1950s and 1960s generally understood their objectives in terms of the “victories” during the Progressive Era.

Ironically, these midcentury progressives’ understanding of their own history substantially narrowed their imagination when tackling new challenges during the 1970s and 1980s – and, I argue, still narrows many progressives’ understanding of those challenges in the twenty-first century. Kolko’s arguments deserve more careful

³⁶ Edward J. Balleisen et al., eds., *Policy Shock: Recalibrating Risk and Regulation after Oil Spills, Nuclear Accidents and Financial Crises* (New York: Cambridge University Press, 2017).

³⁷ Gabriel Kolko, *The Triumph of Conservatism: A Re-Interpretation of American History* (The Free Press, 1963).

historicization, not least *because* they dovetail with parallel arguments about regulatory capture by business that subsequently emerged from the writings of George Stigler.³⁸ As this debate unfolded, the question of oversight and authority over food inspection remained a useful case, as the peak of progressive policymaking, the epitome of regulatory capture, or the definition of government overreach.

POULTRY, MEAT, AND FOOD GOVERNANCE

The narrative that follows also engages with an expansive literature on the origins and dynamics of food safety governance, industrialized agriculture, and the global food system. Political scientists, especially those who study the European Union, describe this division of public and private oversight as “hybridization” in food safety governance.³⁹ While historians and social scientists never truly discounted the importance of the supermarket, historians have recently doubled down on arguments that the postwar supermarket shaped not just the dynamics of mass consumption in the twentieth century, but labor relations, gender ideals, and foreign policy.⁴⁰

³⁸ George J. Stigler, “The Theory of Economic Regulation,” *The Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3–21, <https://doi.org/10.2307/3003160>; useful historical overviews (one from a member of the Chicago School, another from the perspective of institutional history) can be found in Richard A. Posner, “The Concept of Regulatory Capture: A Short, Inglorious History,” Carpenter and Moss, eds. *Preventing Regulatory Capture*, 25-48, and William J. Novak, “A Revisionist History of Regulatory Capture,” Carpenter and Moss, eds. *Preventing Regulatory Capture*, 49-56.

³⁹ Tetty Havinga and Paul Verbruggen, *Hybridization of Food Governance: Trends, Types and Results* (Cheltenham, UK: Edward Elgar Publishing, 2017).

⁴⁰ Marc Levinson, *The Great A & P and the Struggle for Small Business in America* (New York: Farrar, Straus and Giroux, 2013); Tracey Deutsch, *Building a Housewife’s Paradise: Gender, Politics, and*

Within the last ten years, several recent studies on the poultry industry heightened public awareness about the detrimental effects of the contract growing system, the threat of antibiotic resistant bacteria, and the exploitation of undocumented labor inside processing plants.⁴¹ Many of these studies focus on the working conditions inside plants, through interviews with undocumented workers or close relationships with food inspection unions.⁴² Other scholars conducted ethnographic studies by working on the line themselves.⁴³ However, these recent studies also reveal a relative dearth of historical scholarship in this area; in her study on “chickenization,” Ellen Silbergeld offers a brief history of the poultry industry in part because, as she noted, industrial livestock production “has been hardly noticed by historians of agriculture.”⁴⁴

Our modern understanding of poultry as “meat” obscures very real differences from how most Americans conceptualized poultry products even a few decades ago.

American Grocery Stores in the Twentieth Century (Chapel Hill, Ill: Univ. of North Carolina Press, 2012); Bethany Moreton, *To Serve God and Wal-Mart: The Making of Christian Free Enterprise* (Harvard University Press, 2009); Nelson Lichtenstein, *The Retail Revolution : How Wal-Mart Created a Brave New World of Business* (New York: Metropolitan Books, 2009); Shane Hamilton, *Supermarket USA : Food and Power in the Cold War Farms Race* (New Haven: Yale University Press, 2018).

⁴¹ Hannah Landecker, “Antibiotic Resistance and the Biology of History,” *Body & Society* 22, no. 4 (December 2016): 19–52, <https://doi.org/10.1177/1357034X14561341>; Monica R. Gisolfi, *The Takeover: Chicken Farming and the Roots of American Agribusiness*, Environmental History and the American South (Athens: University of Georgia Press, 2017); Maryn McKenna, *Big Chicken: The Incredible Story of How Antibiotics Created Modern Agriculture and Changed the Way the World Eats* (Washington, D.C: National Geographic, 2017).

⁴² Leon Fink, *The Maya of Morganton : Work and Community in the Nuevo New South* (Chapel Hill: University of North Carolina Press, 2003); Ellen K. Silbergeld, *Chickenizing Farms & Food: How Industrial Meat Production Endangers Workers, Animals, and Consumers* (Baltimore, Maryland: Johns Hopkins University Press, 2016).

⁴³ Striffler, *Chicken*; Pachirat, *Every Twelve Seconds*.

⁴⁴ Silbergeld, *Chickenizing Farms & Food*, 3.

Thus, a study of poultry can complement other studies that focus on other commodities – including other meats. Much of the regimes for regulating poultry products developed in parallel to existing regimes for beef and pork, premised on the idea that poultry was not meat. Similarly, historical accounts of the meat industry tend to replicate the physical separation of files on “poultry” and files on “meat” in archival repositories.⁴⁵ Yet this perceived difference of otherwise comparable products offers an untapped “natural experiment” to compare the path of poultry inspection with that of meat inspection, since nationally-mandated inspection of processed chicken and turkey only occurred in 1958, more than a half-century after the 1906 Federal Meat Inspection Act. A study of poultry, then, can ask valuable historical questions about contingency and change over time, while addressing salient policy questions about regulatory learning, processes of diffusion, and policy tradeoffs. It can be difficult to imagine that something as mundane as chicken posed a challenge to the structure of American food safety regulation in much the same way that genetically modified salmon or new crop technologies, but it did. More importantly, once chicken got its “own” inspection service, the poultry industry proved to be more of a policy “maker” than a policy “taker” over the long term. Though poultry regulators initially borrowed from existing regulations for red meats, poultry was at the forefront of the moves towards coregulation in the 1990s and early 2000s.

⁴⁵ The exception that proves the rule is Roger Horowitz, *Putting Meat on the American Table: Taste, Technology, Transformation* (Baltimore: The Johns Hopkins University Press, 2006).

Finally, a study focused on poultry clarifies how “business conservatism” operated in a rural and/or agricultural context. Major players in the poultry industry are self-avowedly deregulatory or even anti-regulatory in orientation; its own origin story relies on accounts of its bootstrap mentality and perceived success in a vacuum of government regulation. Players both large and small tend to express these sentiments – that they did not need government to begin with, and do not need government now – which influences their arguments that the industry is “overregulated” today.

POLICY TRADEOFFS IN FOOD SAFETY: COST, SAFETY, QUALITY

To make sense of shifting goals, agendas, and concerns, this dissertation frames key debates in food safety regulation in terms of policy “tradeoffs.” I focus on three key categories of tradeoffs: cost, safety, and quality. Even within these deceptively simple categories, historical actors contested their meaning and implications, and that their dominant connotations evolved. In the conclusion, I address more recent efforts to broaden the definition of “safety” in food to include other elements (including animal welfare, workplace safety, and environmental impacts). However, for the purposes of explaining the trilemma, it is necessary to offer a provisional definition of these categories:

- “Safety” hews closely to the definition of “unadulterated” in the original Pure Food and Drug Act. Here, safety refers to the very basic efforts at

sanitation that ensure the absence of pathogens, contaminants, or other adulterants in quantities are likely to adversely affect the health of anyone who consumes the product.

- “Quality,” on the other hand, encompasses issues related to cosmetic appearance, taste, texture, and the like – the kinds of issues that have been historically addressed through commodity grading programs rather than end-product inspection. Certainly, an unsafe product is likely to also be of low quality, but the two are not necessarily mutually exclusive.
- “Cost” refers to the economic forces and business decisions which can affect the cost of production – and, by extension, the price of chicken.

To clarify how these tradeoffs operate, consider the following generic examples:

A: an organic chicken processor consistently outputs high *quality* birds that are also very *safe*; however, their chickens *cost* much more to produce than other companies.

B: An innovative firm raises and processes chickens in perfect laboratory conditions, making it extremely sanitary, or *safe*. However, it is also extraordinarily *costly* to produce, and lack of access to the outdoors or other “natural” living conditions could affect the *quality* of the meat.

C: An established large-scale food processor churns out large volumes of chicken for an extremely low *cost*; however, they might pay less attention to *quality* and/or *safety*.

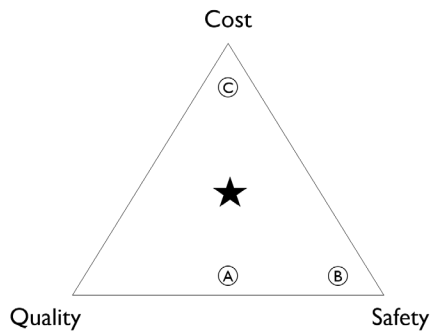


Figure 2: Trilemma of Cost, Quality, and Safety.

As shown in Figure 2, these examples from accentuate one or more elements of the trilemma. In an ideal world, one might seek to balance these tradeoffs in a way that promotes the production of moderately priced chicken, of good quality, and safe to eat (as indicated by the star marker in the center). This dissertation suggests that simply balancing the tradeoffs for a moderate, good, safe chicken requires careful attention to incentive structures and enforcement mechanisms as much, if not more than, rulemaking procedures or stringency of regulation.

ORGANIZATION AND CHAPTER OUTLINE

The overall arc of the dissertation traces a gradual shift from legislative change (chapters 1 and 2) to regulatory change (chapters 4 and 5) in food safety policy. The project begins with poultry's humble origins as the "unrationed substitute" during World War II, and follows the "gospel bird" into the early 2000s, when per capita poultry consumption by Americans surpassed beef consumption for the first time. The middle

section (chapter 3) addresses a set of economic concerns that remained fairly constant over the period under study, which reached a crisis point in the 1970s. The core of the dissertation (chapters 2, 3 and 4) focuses more closely on developments within the U.S. regulatory state, bookended by sections which “zoom out” to account for the international dimensions of American food safety regulation (chapters 1 and 5). While food safety in poultry remains the common thread throughout, chapters 2 and 4 situate the changes in poultry regulation within a broader frame of food safety and consumer politics.

The first chapter, “Helping Poultrymen Help Government: From Interstate Commerce to International Markets in Poultry, 1945-1957,” explains how American poultry production went from a regional economic concern to a matter of foreign economic policy in the decade following the end of the Second World War. The chapter builds on prior historical research that details the shift towards vertically integrated production, the contract growing system, and the attendant technological and scientific transformations that enabled mass production of poultry meat. By 1956, a consumer-labor coalition began to lobby for poultry inspection to improve consumer and worker health. Meanwhile, a group of business entrepreneurs and bureaucrats landed on poultry inspection as a strategy to address their problems of agricultural surpluses amid falling prices. Through creative use of commodity disposal programs, these businessmen lobbied for poultry inspection to access new foreign markets. This chapter traces how these two advocacy coalitions, in search of solutions to different problems and operating at cross purposes, nevertheless came to agree on the value of compulsory inspection of poultry in

the 1950's. I argue that the establishment of a poultry inspection based on end-product inspection also shaped the trajectory of future scientific and technological innovation in ways that prioritized genetic uniformity to meet inspection standards at home and abroad.

The next chapter, ““Made to Order for Government Inspection”: Ensuring Wholesome Poultry, Meat, and Fish, 1956-1968,” describes how food safety regulations fit into a larger agenda of consumer-protection legislation in the 1960s. I focus on the legislative history of the Poultry Products Inspection Act, in order to compare the debates in 1957-1958 with efforts to revise the meat inspection laws a decade later, in 1968. This chapter outlines key legal developments in food safety during a critical period of consumer activism and expansion of the regulatory state, even as it foreshadows an emerging critique of “bureaucracy” in this period. In the decade between 1957 and 1967, an evolving consumer movement increasingly turned to federal solutions to resolve perceived weaknesses in businesses’ capacity to ensure health and safety for the general public. However, these improvements in consumer protection came at a high reputational cost for the agency, as journalists soon discovered that USDA agents exaggerated and even falsified some reports of unsanitary conditions that legislators used to justify the updates to the laws. The ensuing scandal and negative publicity foreshadowed later critiques of government regulatory agencies as inefficient, wasteful, and prone to aggrandizement, which ultimately undergirded the eventual turn to co-regulation that I explore in the fourth chapter. Otherwise well-meaning reformers lacked an appreciation for scientific approaches, which narrowed their vision of what counted as “safe” and

strained relationships with the regulated industries over the long term. This chapter illuminates emerging tensions over the role of government in business operations, what authority Congress should delegate to agencies, the importance of scientific and technocratic expertise in policymaking, and the optimal shape and size of an expanding bureaucracy.

The third chapter, “Hope in Trusts: *National Broiler Marketing Association v. United States* and the Limits of Countervailing Power, 1970-1978,” turns to the “cost” angle of the trilemma, and takes into account the economic factors that directed the course of “industrial” poultry production in the twentieth century. This chapter reconstructs an ill-fated association of poultry “integrators,” whose members tried to wrest back control over supply and counter the rising influence of grocery retailers and rising power of “consumerism” during the inflationary 1970s. A group of both large and smaller players in the poultry industry formed an association that would control production and bolster the price of chicken, by utilizing an antitrust exemption reserved for agricultural cooperatives. In so doing, they drew on the logic of “self-help” and “self-control” rather than rely on government price and production controls. However, the Supreme Court struck down their cooperative as an illegal combination, primarily on the grounds that the integrators were not entitled to a legal exemption from antitrust laws afforded only to “farmers.” But the integrators expressed far greater concerns about a parallel class-action suit brought by institutional and wholesale purchasers, which promised to further narrow their opportunity to marshal organized power against the

retailers and buyers. Because of the suit, retailers began to set the agenda on price as well as quality standards in the ensuing decades. Left to compete on volume rather than quality, producers prioritized technological and scientific innovations that improved efficiency, throughput, and uniformity of birds – all of which challenged the feasibility and effectiveness of a continuous inspection service as volume increased dramatically.

The fourth chapter, “Who Guards the Henhouse? Coregulation, Command-and-Control, and Chicken Inspection, 1971-2002,” examines the historical circumstances under which regulators, beginning in the 1970s, attempted to shift U.S. policy away from physical “bird-by-bird” inspection to a regime based on the principles of scientific sampling. In this section, I compare how two different American food safety regulatory agencies responded to new threats to the safety of the food supply, such as pesticides, chemical contaminants, and, increasingly, microbial pathogens. Where the Food and Drug Administration adopted a system of process controls known as Hazard Analysis and Critical Control Points (HACCP) to augment their existing regime of periodic audits, the U.S. Department of Agriculture’s food safety inspectors maintained their program of continuous inspection; through the 1980s, “quality control” programs to address these hazards remained strictly voluntary. Scholars of regulatory governance have come to refer to HACCP and similar measures as “co-regulation” or “management-based regulation,” in which the state delegates authority to an industry, which then meets pre-established benchmarks. When the USDA adopted HACCP regulations in the 1990s, a robust debate ensued about the strengths and weaknesses of co-regulation that did not

occur with the same force when the FDA adopted similar rules. Regulators at both the FDA and USDA turned toward co-regulation in order to balance a set of conflicting imperatives: the need to manage limited resources, a desire to maintain productive efficiency, and an interest in protecting the public health. Throughout, key disagreements about the appropriate role of science and expertise in policy decision making and what constituted “safe” food stymied progress in this debate. This is perhaps nowhere more evident than the last section, which explains the trajectory of the HACCP-Based Inspection Models Project, or HIMP.

The final chapter, “HACCP is Taking Over the World! A Transnational History of Hazard Analysis and Critical Control Points (HACCP), 1976-2000,” evaluates how these developments impacted the contemporary landscape of international food governance. Here I recapitulate what political scientists refer to as a “hybridized” and globalized food safety system in which multinational food conglomerates are beholden to regulators in multiple countries as well as to a range of privately enforced food safety standards. This chapter reframes the important concept of countervailing power to describe the relationship between the modern supermarket and the integrated poultry firm, arguing that supermarket retailers extract not just price concessions, but safety and quality concessions from their suppliers. One can see this dynamic particularly clearly by focusing on the evolution of HACCP, which now comprises the foundation of basic food safety principles for domestic, international, and private regulatory regimes. Decision-makers ultimately turned to HACCP as the preferred food safety protocol not just in the

United States, but across these various public, private, and global standard-setting institutions. This chapter examines the reasons why and assesses the potential consequences.

COREGULATION AND “THE FOX GUARDING THE HENHOUSE”

By the late 1970s and early 1980s, a group of economists, bureaucrats, lawyers, and scientists determined that the existing “command-and-control” approach to food inspection failed to protect the public from chemical residues and microbiological hazards. Bolstered by scientific studies and government-contracted reports, they argued for a new approach to food safety based on the principles of the emerging field of risk analysis.⁴⁶ They proposed that the agency should turn over some responsibility for end product inspection to the regulated industry, and pay much more attention to scientific testing for pathogens and verification of preventive measures. These strategies are recognized in academic circles as “co-regulation” or “management-based regulation.”

⁴⁶ Alan I. Marcus, *Cancer from Beef: DES, Federal Food Regulation, and Consumer Confidence*. Baltimore: Johns Hopkins University Press, 1994; National Research Council (U.S.), ed. *Meat and Poultry Inspection: The Scientific Basis of the Nation’s Program*. Washington, D.C: National Academy Press, 1985; On risk analysis generally, see Paul Slovic and Baruch Fischhoff. “Targeting Risks,” *Risk Analysis* 2, no. 4 (1982): 227–34; Stephen G. Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation*, (Harvard University Press, 1993); Ulrich Beck, *Risk Society: Towards a New Modernity*, (London: Sage Publications, 1992); Soraya Boudia, “Managing scientific and political uncertainty: Environmental risk assessment in a historical perspective,” in Soraya Boudia and Nathalie Jas, eds., *Powerless Science?: Science and Politics in a Toxic World* (New York: Berghahn Books, 2014).

These proposals did not sit well with the inspectors themselves. Inspectors and consumers began to refer to attempts to modify continuous inspection of meat and poultry as “the fox guarding the henhouse.”⁴⁷ Where the existing regime of continuous inspection required little more than acquiescence to the presence of government agents, co-regulation involved more active cooperation between the regulated industry and regulators to ensure food safety. Government poultry inspectors warned that the industry could not be trusted with this level of responsibility. Other interested observers also regard the timing of co-regulation in food as especially suspect. After all, the USDA attempted to change inspection rules during a broader political wave of deregulation, which gained momentum in the late 1960s and early 1970s. By the 1980s, what might have begun as a healthy skepticism about the size and shape of the bureaucracy morphed into an attack on its very foundations.⁴⁸

In stark contrast, most contemporary scholars of regulatory governance speak favorably of co-regulatory arrangements. These scholars observe that cooperation

⁴⁷ Kathleen Hughes, *Return to the Jungle: How the Reagan Administration is Imperiling the Nation's Meat and Poultry Inspection Program*, Ralph Nader Center for Responsive Law, 1983; Adam Sheingate, “Still a Jungle,” *Democracy: A Journal of Ideas*, no. 25 (2012): 48; Timothy Pachirat, *Every Twelve Seconds: Industrialized Slaughter and the Politics of Sight*, Yale University Press, 2011, 162-207; Ellen K. Silbergeld, *Chickenizing Farms & Food: How Industrial Meat Production Endangers Workers, Animals, and Consumers*, Baltimore, Maryland: Johns Hopkins University Press, 2016. cf. Alfred V. Almanza, “Setting the Record Straight on the Proposed Chicken Inspection Policy,” *The Huffington Post*, http://www.huffingtonpost.com/alfred-v-almanza/chicken-inspection-new-policy_b_1424136.html.

⁴⁸ While the historical literature on deregulation is vast and growing, see generally Thomas K. McCraw, *Prophets of Regulation*, (Harvard University Press, 1984), 224-309; Robert B. Horwitz, “Understanding Deregulation,” *Theory and Society* 15, no. 1/2 (1986): 139-174; Daniel T. Rodgers, *Age of Fracture* (Harvard University Press, 2011).

between industry and government officials on matters of safety can produce net positive outcomes for society. They point to co-regulatory initiatives in food safety as a successful example of a regulatory “ratchet to the top” on a global scale, where other instances lead to a “race to the bottom.” However, these scholars also acknowledge that inadequate incentive structures, insufficient enforcement tools, or other institutional flaws can create novel opportunities for corruption, fraud, or capture. As a result, scholars attempt to distinguish between various types of self-regulatory arrangements as “management-based regulation,” “coregulation,” or “enforced self-regulation,” among other terms.⁴⁹

Unfortunately, neither of these characterizations offers a satisfactory explanation for the trajectory of food safety regulation over the last fifty years. This thesis argues for an understanding of key changes in food safety as a “continuum” or perhaps a “spectrum” of coregulation, in which various coregulatory arrangements fall along axes of public and private oversight, and voluntary and compulsory requirements.⁵⁰ (See Figure 3 for an

⁴⁹ Edward J. Balleisen, “The Prospects for Effective Coregulation in the United States: A Historian’s View from the Early Twenty-First Century,” in *Government and Markets: Toward a New Theory of Regulation*, 443. Cambridge University Press, 2009; Cary Coglianese and David Lazer, “Management-based Regulation: Prescribing Private Management to Achieve Public Goals.” *Law & Society Review* 37, no. 4 (January 1, 2003): 691–730; Marian Garcia Martinez, Paul Verbruggen, and Andrew Fearn. “Risk-Based Approaches to Food Safety Regulation: What Role for Co-Regulation?” *Journal of Risk Research* 16, no. 9 (2013): 1101–1121; Lisa L. Sharma, Stephen P. Teret, and Kelly D. Brownell, “The Food Industry and Self-Regulation: Standards to Promote Success and to Avoid Public Health Failures.” *American Journal of Public Health* 100, no. 2 (2010): 240–246; Susanne Wengle, “When Experimentalist Governance Meets Science-Based Regulations; the Case of Food Safety Regulations.” *Regulation & Governance* 10, no. 3 (September 1, 2016): 262–83. <https://doi.org/10.1111/rego.12067>.

⁵⁰ The figure is of my own design, but the idea of a “continuum” of co-regulation along public/private dimensions is not new: Neil Gunningham and Joseph Rees, “Industry Self-Regulation: An Institutional Perspective,” *Law & Policy* 19, no. 4 (1997): 366, <https://doi.org/10.1111/1467-9930.t01-1-00033>. To maintain focus on the “continuum” analysis and to simplify the question of typology, I generally refer to any instance in which regulators and the regulated industry cooperate as “co-regulation.”

illustration.) Admittedly, this diagram denies the possibility that a truly “free market” exists, at least outside the confines of economic theory. Evidence from the thesis shows that true regulatory vacuums rarely existed by the mid-twentieth century; even if regulatory oversight was inadequate or incomplete, some degree of non-compulsory and/or private oversight often operated in the absence of compulsory rules. The notion of “compulsory” encompasses rules that may be “de facto” requirements, e.g. rules that must be followed in order to work with a major client or vendor. (Another potential axis not captured in this diagram might be “domestic” and “international.”)

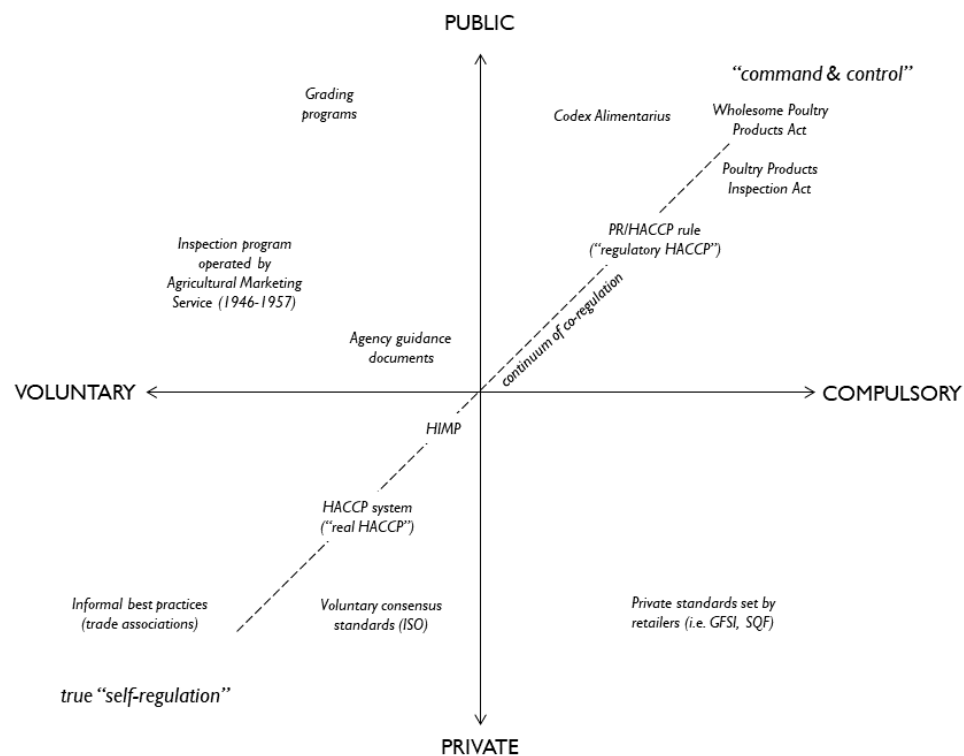


Figure 3: Continuum of Coregulation in Food Safety

Yet, instead of a smooth transition from one point on the continuum to another (or a gradual decline, depending on one's view), the following chapters will show how major changes in institutional arrangements for food safety proceeded in fits and starts, through short-lived experiments, ambitious policies, or partial reforms.

While it might be especially evocative when the industry in question involves literal chickens, the idiom “the fox guarding the henhouse” or “asking the fox to watch the hens” – offers a useful shorthand to describe any number of potentially unethical or inappropriate relationships between government regulators and their regulated entities. The fable-like image of the fox and their prey at once encapsulates more complex intellectual arguments about regulatory capture by industry, while simultaneously appealing to those who harbor a deeper and more generalized distrust of the government's place in business and civil society. The rhetoric of the “fox guarding the henhouse” is hardly specific to the meat and poultry industry, or even to food production – yet the phrase has become a persistent refrain in debates on how to regulate food production and distribution.⁵¹ The title of this dissertation is not intended as a statement of fact, but rather a serious and honest interrogation of this perspective.

⁵¹ Tom Devine, “The Fox Guarding the Hen House,” *Southern Exposure* 17, no. 2 (Spring 1989): 39–42; Felicia Nestor and Wenonah Hauter, “IS AMERICA’S MEAT FIT TO EAT?: The Jungle 2000,” Public Citizen, September 2000; Representative newspaper coverage includes: “Fox Set to Guard Chickens,” *Arizona Republic*, January 8, 1990; “Starting All over Again,” *The Banner-Press*, July 16, 1992; Edward Walsh, “USDA Shift Puts Safety In Packers’ Hands: Meat Inspectors Fight to Keep Role,” *The Washington Post*, October 20, 1998; for examples of this phrase used to compare meat and poultry with other industries, see: Will Dunham, “Critics Say Fox Guards U.S. Seahouses,” *Tyrone Daily Herald*, July 18, 1990; David B. Higginbottom, “Hospital Regulation Is Flawed,” *Tampa Bay Times*, January 6, 1997.

A few caveats are in order about what this dissertation will and will not accomplish. In these pages, I will not necessarily conclude with a clear, “bright-line” definition of what makes food safe, nor do I intend to adjudicate among the varying strategies of inspection. Instead, this project focuses on the different groups of people who have knowledge or expertise about this topic (epistemic communities), how they know what they know, and how it shaped their response to a series of debates about inspection.⁵² In many respects, these debates raised larger questions about what government is for, what it should do, and how it should accomplish those goals.

The choice among difficult policy trade-offs will always be up for debate. The capacity to distinguish when and in what contexts private actors can support, rather than subvert, the public interest is an important step in reconciling these competing ideas and moving towards better regulatory governance.

⁵² While “epistemic community” is often used to refer only to scientists, I use the term according to Peter Haas’ definition: a “network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.” Peter M. Haas, “Introduction: Epistemic Communities and International Policy Coordination,” *International Organization* 46, no. 1 (Winter 1992): 3, <https://doi.org/10.1017/S0020818300001442>; see also Mai’A K. Davis Cross, “Rethinking Epistemic Communities Twenty Years Later,” *Review of International Studies* 39, no. 1 (January 2013): 137–60, <https://doi.org/10.1017/S0260210512000034>. For an agricultural historian’s view on expertise and communities, see Amrys O. Williams, “Science in the Fields,” Okie et al., “Roundtable: Why Does Agricultural History Matter?,” *Agricultural History* 93, no. 4 (2019): 698-700, <https://doi.org/10.3098/ah.2019.093.4.682>.

CHAPTER 1 – “HELPING POULTRYMEN HELP GOVERNMENT”: FROM INTERSTATE COMMERCE TO INTERNATIONAL MARKETS IN POULTRY, 1945-1957

NO THANKS, U.S.A.

“Americans Here.” Buried in the interior pages of the U.K. trade journal *Poultry World*, this unassuming headline announced that two representatives of the poultry and egg industry from the United States had arrived on British shores. Arlo Verner Turner, the Chairman of the Grange Company in Modesto, California, and Homer Huntington, former chair of the Poultry and Egg National Board, traveled across the Atlantic in the winter of 1955 to scope out the prospects for exporting American chickens to the United Kingdom and, potentially, the rest of Europe.¹ The pair were accompanied by William D. “Dewey” Termohlen, a longtime official with the Poultry Marketing Service who had been recently assigned to the Foreign Agricultural Service.²

Even though these visitors were relatively high-profile and already well-known to the British poultry producers, the journal editors were skeptical of their prospects of

¹ “Americans Here,” *Poultry World* (UK), January 27, 1955, 113. [Note: Turner is misidentified as “Alfred Turner” in this piece]. “Marketing U.S. Dairy and Poultry Products Abroad,” *Foreign Agricultural Circular*, Vol. XIX, No. 5, May 1955, 88.

<https://archive.org/details/foreignagricultu195unit?q=%22arlo+turner%22> (last accessed March 7, 2018)

² Termohlen had been reassigned to his post as agricultural attaché to Tokyo only weeks before this trip. The previous agricultural attaché to Tokyo, the Russian-born Wolfgang Ladejinsky, was abruptly removed on accusations that he posed a “security risk.” (Ladejinsky was later cleared of all charges and held a different Foreign Agricultural Service post in Vietnam.) See “Benson Aide is Successor to Ladejinsky,” *The Washington Post and Times Herald* (1954-1959), Jan 21, 1955.

success in penetrating the British market. In particular, they did not believe that American livestock producers would be able to overcome local quarantines on animal health. In the mid-1950s, the UK enforced a strict ban on imports of chicken from countries where Newcastle disease, or “fowl pest,” was known to be endemic. Countries were certified as Newcastle-free by a private organization, the International Epizootic Organization. At the time, this policy would have excluded American chicken as well as poultry from other European countries, such as the Netherlands.³

Infamous among growers and integrators since it first appeared in 1935, Newcastle disease is a viral infection of poultry that affects 2-10 day old chicks.⁴ Newcastle threatened the viability of the chicken business much more than it threatened food safety. Losses from Newcastle averaged around 30-40% of the entire flock in a short period of time, while more virulent outbreaks could lead to nearly 100% mortality in flocks.⁵ Newcastle disease outbreaks posed a relatively minor public health concern – in

³ Based in Paris, the organization is abbreviated OIE (Organización Internacional Epizootic) and was established in 1924. Along with Codex Alimentarius and the International Plant Protection Convention, it is one of three “reference organizations” designated by the GATT/WTO to enforce the Sanitary and Phytosanitary Agreement in 1994. (Agreement on the Application of Sanitary and Phytosanitary Measures, preamble, 1994.) For a sense of the implications of that decision, see Tim Büthe, “The Globalization of Health and Safety Standards: Delegation of Regulatory Authority in the SPS Agreement of the 1994 Agreement Establishing the World Trade Organization,” *Law and Contemporary Problems* 71, no. 1 (2008): 219–55.

⁴ Newcastle disease is also called fowl pest or avian pneumoencephalitis. Chickens are more susceptible to Newcastle disease than other poultry (i.e. waterfowl). See Patti J. Miller (USDA, Agricultural Research Service), “Newcastle Disease in Poultry,” Merck Veterinary Manual (Online). <http://www.merckvetmanual.com/poultry/newcastle-disease-and-other-paramyxovirus-infections/newcastle-disease-in-poultry> (Last accessed February 6, 2018).

⁵ E.P. Johnson, “Newcastle Disease Still Threatens Poultry Industry,” *Industry News, The Southeastern Poultryman*, (March 1956), 12.

humans, the disease manifests as a mild form of conjunctivitis. Newcastle outbreaks in the U.S. dropped significantly after 1948, when a scientist at Rutgers University successfully developed an affordable vaccine.⁶

Despite the widespread use of the vaccine in many other countries, British producers did not vaccinate their chickens for Newcastle disease. (This hesitancy did not necessarily result from a lack of knowledge; from the late nineteenth century, international networks of scientists exchanged knowledge about livestock diseases and animal health.⁷) Instead, poultry producers in the UK argued that the disease was not endemic to the British Isles, and that it could be controlled by a program of domestic slaughter and quarantine.⁸ By 1955, the efforts at maintaining the slaughter and quarantine program thoroughly preoccupied the industry. In every issue from 1954-1956, amidst the classified ads for poultry houses and the latest in feed additives, *Poultry World* included the latest updates to the “Fowl Pest Regulations.” These regulations, which were updated monthly to reflect seasonal variations in production, distribution, and incidence

⁶ William R. Hinshaw, “Fred Robert Beaudette – Distinguished Avian Microbiologist and Pathologist, 1897 – 1957,” American Association of Avian Pathologists, Vol. 1, 1957 <https://www.aaap.info/assets/documents/Tribute%20-%20Beaudette%20-%20Fred%20Robert%20Vol.%201%201957.pdf> (last accessed March 3, 2018); Beaudette, Fred R., “The Immunization of Birds Against Newcastle Disease,” Proceedings of the 52nd Annual Meeting of the U.S. Livestock Sanitary Association, 254-265, 1948; “Vaccine Concocted to Control Dread Newcastle Disease.” *The Daily Journal* (Vineland, NJ) October 30, 1947.

⁷ Hardy, Anne. *Salmonella Infections, Networks of Knowledge, and Public Health in Britain, 1880-1975*. Oxford: Oxford University Press, 2015.

⁸ William D. Termohlen, “Marketing of Poultry Products in Europe Including the United Kingdom.” Foreign Agricultural Circular, March 29, 1955. <https://archive.org/stream/foreignagricultu1551unit#page/n21/mode/2up/search/%22arlo+turner%22> (last accessed 2/10/18)

of the disease, denoted precisely where and under what circumstances producers and distributors could move poultry between areas denoted as ‘clean’ (Newcastle-free) and ‘unclean.’ With rare exceptions, movement between clean and unclean areas was prohibited. A map on the cover of the January 1955 issue shows how outbreaks of fowl pest in northern counties had “the effect of splitting the country into two.”⁹ Shifts in designations for “clean” and “unclean” areas introduced uncertainties and complications in the marketing of poultry products in Britain, where consumers still thought of poultry as a ‘luxury’ food and purchased it only infrequently.

Whether or not the slaughter program was actually working to reduce the incidence of Newcastle disease, British producers had other incentives to maintain the quarantines. In the mid-1950s, British poultry production lagged well behind the American model and remained small-scale by comparison. Because consumers had not yet shifted their buying habits to include more chicken, the producers also worried that their own market was moving dangerously close to saturation by the middle fifties - to the point that they spoke of looking for their own export outlets.¹⁰ For their part, the editors of *Poultry World* made their opinion clear: “No Thanks, U.S.A. ... for the time

⁹ “Fowl Pest Clean Areas at a Glance,” *Poultry World* (UK), 20 January 1955, p. 77

¹⁰ For an account of how British producers adopted American poultry producing methods, and eventually collaborated with major UK retailers such as Sainsbury’s in order to increase demand for chicken, see Andrew Godley and Bridget Williams, “Democratizing Luxury and the Contentious ‘Invention of the Technological Chicken’ in Britain.” *Business History Review* 83, no. 2 (Summer 2009): 267–90.

being at least, we have more than enough of our own [chicken] to satisfy our immediate requirements.”¹¹

Over time, the decision to quarantine and slaughter, rather than vaccinate, for Newcastle imposed significant costs for the local producers. There was even a conspiracy theory that the importation of uncooked American poultry during the Second World War may have reintroduced the disease, and that Americans had done so intentionally. Farmers were especially unwilling to have their own burden of compliance with quarantine rules relieved, only to find themselves at a profound disadvantage to imports from countries whose farmers could produce more poultry at a lower cost.

Once the National Farmers’ Union (UK) got wind that the Americans were trying to develop a market for table poultry imports, they deployed familiar protectionist rhetoric in an effort to preserve their economic position. The British Turkey Federation and the National Farmers’ Union argued that the British government had to enforce the ban American poultry because it could potentially reintroduce Newcastle into ‘clean’ areas, rendering the whole slaughter program a pointless exercise, and ultimately weakening the position of the domestic market.¹² In 1955 and 1956, some British farmers wrote editorials denouncing the policy, but the overall tone of coverage suggests that the

¹¹ “No Thanks, U.S.A.,” *Poultry World* (UK), February 24, 1955, 1.

¹² “American Imports: Prompt Action by British Turkey Federation,” *Poultry World* (UK), April 7, 1955, 489.

producers were more apprehensive about imports in general than specifically about the reintroduction of Newcastle.¹³

American agricultural officials and leaders in the poultry industry immediately recognized the seriousness of the arguments of the British farm organizations. By blocking the imports of American poultry on grounds of health and safety, they had created a barrier to trade which would be difficult to overcome, especially under the GATT (General Agreement on Tariffs and Trade), which was almost exclusively focused on reducing tariffs. In a letter, Turner wrote that “[t]he principle roadblock to development of foreign markets for the products of domesticated birds is existing disease ‘quarantines’” against imported birds.¹⁴ As Turner saw it, removing the quarantines would require the combined expertise of government technocrats skilled at negotiation, veterinarians who could supply them with relevant scientific data, and businessmen who knew how to navigate international markets.

Although the Germans and Swiss quickly developed a taste for American chicken, competing British producers said “No Thanks, U.S.A.”¹⁵ Despite lobbying efforts by UK retailers on behalf of the American importers, the Ministry of Animal Health held fast to the quarantine against fowl pest throughout 1955. Turner and Huntington ultimately

¹³ “Table Poultry Imports,” *Poultry World* (UK), March 31, 1955, 1; “Pest Slaughter Policy Has Failed”, Our Reader’s Views, *Poultry World* (UK), June 16, 1955, 811.

¹⁴ Letter from Arlo Turner to Clarence Francis, Feb 18, 1955, Papers of Clarence Francis, Box 15 - Poultry, Dwight D. Eisenhower Presidential Library, Abilene, Kansas. (Scare quotes from the original.)

¹⁵ “Swiss Gourmets Eating Chicken.” *The Brookville American*. May 14, 1956; “Poultry Groups Join with USDA in Plan to Boost Foreign Sales.” *The Daily Journal*. May 11, 1956. “No Thanks, U.S.A.” *Poultry World* (UK), February 24, 1955, 1.

secured a minor purchase agreement for \$250,000 in canned and cooked poultry – and that only through a modification of a beef purchase order that had fallen through. Their underlying objective to open the British market to export of comparatively higher-quality (and higher-value) frozen and ready-to-cook poultry went unfulfilled.¹⁶ This frustration might have prompted Termohlen to write his own editorial in *Poultry and Eggs Weekly* upon his return. In what amount to an open letter to the trade, he wrote: “It appears that the poultry industry of the United States presently is confronted by the same dilemma facing the red-meat industry in 1907.”¹⁷ Just as beef and pork processors had pried open foreign markets fifty years earlier, so, too, did Termohlen argue that poultry producers need to secure a government stamp of approval to proceed.

Rather than an unusual anecdote of limited significance, Turner and Huntington’s European tour encapsulates a moment of profound transformation in agriculture in general, and poultry in particular. In many respects, they embodied the “farmer in a business suit” - portents of the transformations in agriculture advocated by bureaucrats in the Eisenhower Administration.¹⁸ The capacity to even take the trip across the Atlantic

¹⁶ Equivalent to ~\$2.3 million in 2018 dollars (computed by Wolfram Alpha, February 7, 2018). While this sounds like a large sum, this was a small amount relative to the total purchases and sales made for other commodities, including beef and pork, during this period.

¹⁷ “Poultry Inspection,” Hearings Before the Subcommittee on Poultry and Eggs of the Committee on Agriculture, 84th Congress, 2nd Session. House. July 17-18, 1956 (Statement of Mrs. Leonor K. Sullivan, Representative from the State of Missouri), 42, quoting Termohlen in *Poultry and Eggs Weekly*, Saturday, April 16, 1955.

¹⁸ John H. Davis and Kenneth Hinshaw, *Farmer in a Business Suit*, 1957; Shane Hamilton, “Agribusiness, the Family Farm, and the Politics of Technological Determinism in the Post–World War II United States.” *Technology and Culture* 55, no. 3 (August 8, 2014): 580. <https://doi.org/10.1353/tech.2014.0067>.

indicates a degree of cosmopolitanism that defies the notion of an insular, backwards farming interest, and exemplifies the rapid pace at which the poultry industry had grown into a potentially international enterprise.¹⁹ And though the purchase authorization for canned poultry was insignificant compared to their sales in other countries, Turner, at least, remained optimistic that it might lead to bigger and better sales in the future. “This is only a starter,” he wrote to his fellow producers, announcing the sale. “I hope you can get some benefits from it.”²⁰

In the decade following the end of the Second World War, American poultry production rapidly expanded from locally-produced birds to a national market in chicken meat. Especially in the last twenty years, there has been a great deal of scholarly and journalistic attention on this shift from live poultry markets to vertically integrated processing, the contract growing system, and the attendant technological and scientific transformations that enabled large-scale production, slaughter, and processing of chickens for human consumption.²¹ However, to the extent that historians have considered the shift

¹⁹ Cf. Victoria De Grazia, *Irresistible Empire: America's Advance through Twentieth-Century Europe* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005).

²⁰ The Editor, “American Imports - The Facts Revealed,” *Poultry World* (UK), 21 April 1955, 1.

²¹ See generally William Boyd and Michael Watts, “Agro-Industrial Just-in-Time: The Chicken Industry and Postwar American Capitalism,” in *Globalising Food: Agrarian Questions and Global Restructuring*, 1997, 192–226; on the implications for workers and farmers, see: Monica Gisolfi, “From Crop Lien to Contract Farming: The Roots of Agribusiness in the American South, 1929-1939.” *Agricultural History* 80, no. 2 (2006): 167–89; Steve Striffler, *Chicken: The Dangerous Transformation of America's Favorite Food*, (New Haven: Yale University Press, 2005). On the public health implications of these changes, see Ellen K. Silbergeld, *Chickenizing Farms & Food: How Industrial Meat Production Endangers Workers, Animals, and Consumers* (Baltimore, MD: Johns Hopkins University Press, 2016);

from voluntary inspection to compulsory federal inspection of chicken meat as part of this story, they tend to mention inspection as one small part of this broader process of industrialization and expansion.²² One author frames federal legislation mandating poultry inspection as a rare victory for organized labor and consumers who successfully mobilized around an active threat to the public health.²³

This chapter shows how poultry production went from a regional economic concern to a matter of foreign economic policy. I argue that the transformations in the domestic poultry industry were only possible due to their interactions with foreign agricultural policies and the search for international export markets. While representatives of the poultry industry often emphasized their commitment to “free enterprise” and independence from bureaucratic “red tape,” I show how the growing poultry industry benefited – albeit indirectly – from government interventions in other areas of the food supply. While consumers and labor organizers led an early push for federal inspection in 1954, a coalition of export-oriented business interests helped generate the necessary momentum to make compulsory inspection the law of the land

Maryn McKenna, *Big Chicken: The Incredible Story of How Antibiotics Created Modern Agriculture and Changed the Way the World Eats* (Washington, D.C: National Geographic, 2017). On changes in the meat and livestock industry, see Roger Horowitz, *Putting Meat on the American Table: Taste, Technology, Transformation* (Baltimore: The Johns Hopkins University Press, 2006); Donald D. Stull and Michael J. Broadway, *Slaughterhouse Blues: The Meat and Poultry Industry in North America*, 2nd ed. (Belmont, CA: Wadsworth Cengage Learning, 2013).

²² Horowitz, *Putting Meat on the American Table*, 115; Bernard F. Tobin and William B. Arthur, *Dynamics of Adjustment in the Broiler Industry*, (Harvard University Graduate School of Business Administration, 1964), 24-25.

²³ George Green and Jim McClelland, “Sick Chickens: Strikers Win Big Benefits for Consumers.,” *Southern Exposure* 13, no. 5 (September 1985): 48–55.

three years later, in 1957. Given the overall trajectory of food and drug regulation in the twentieth century, poultry was headed for federal inspection sooner rather than later.²⁴

Here I argue that it happened in 1957 primarily because of an emerging agribusiness interest which was inadvertently bolstered by the support of consumer advocates and organized labor.²⁵

I begin with a recapitulation of the transformations that produced the contemporary American poultry industry. I then place these changes in the context of shifting international and domestic agricultural policies, by returning to the story of Arlo Turner. Finally, I explain why continuous federal inspection emerged as the preferred solution to a whole range of poultry-related problems. In the conclusion, I make the case that federal poultry inspection institutionalized an emergent model of industrialized poultry production that relied on high volume at low cost, and exports as the primary strategy to absorb surplus production. In sharp contrast to the “free-enterprise” story the integrators, growers, and feed dealers like to tell, none of that would be possible without substantial government intervention.

²⁴ I discuss this in more depth in chapter 2.

²⁵ On the origins and original meaning of the word “agribusiness,” see Hamilton, “Agribusiness,” 2014.

MAKING THE CHICKEN OF TOMORROW: THE AMERICAN POULTRY INDUSTRY, 1935-1956

Poultry Production Before 1945

In 1906, Upton Sinclair published *The Jungle*, which exposed the horrific, disgusting, and inhumane conditions in the country's meatpacking plants. At that time, poultry production had minimal economic significance. Enterprising farmers' wives sold poultry for "pin money" as a byproduct of egg production. So it remained well into the 1930's, when a confluence of interventionist farm policy, shifting consumer preferences, and scientific advancements in avian health encouraged more production and consumption of chicken, and live poultry markets gave way to vertically integrated slaughter and processing plants.²⁶

In response to the environmental catastrophe of the Dust Bowl in the 1930s, the federal government instituted a system of price supports for crops, offering minimum guarantees (or the "parity" price) on basic crops like corn, cotton, and wheat, through the

²⁶ The reference to "pin money" comes from Horowitz, *Putting Meat on the American Table*, 107; for broad overviews of these changes in poultry, see Bernard F. Tobin and William B. Arthur, *Dynamics of Adjustment in the Broiler Industry*, (Harvard University Graduate School of Business Administration, 1964), 8-20; William Boyd and Michael Watts, "Agro-Industrial Just-in-Time: The Chicken Industry and Postwar American Capitalism.," in *Globalising Food: Agrarian Questions and Global Restructuring*, 1997, 192-226. This shift from poultry-keeping as a small-scale, backyard activity conducted primarily by women, to the massive agribusiness endeavors managed by "poultrymen," with black women comprising the majority of the poultry processing workforce and the parallel creation of the white, middle-class "Mrs. Consumer" as purchaser rather than keeper of poultry, deserves further analysis than this dissertation can provide. Worthwhile studies of the intersections between gender, power, and agriculture include: Psyche A. Williams-Forsen, *Building Houses out of Chicken Legs: Black Women, Food, and Power* (Chapel Hill: University of North Carolina Press, 2006); Gabriel N. Rosenberg, *The 4-H Harvest: Sexuality and the State in Rural America*, (Philadelphia: University of Pennsylvania Press, 2016).

Commodity Credit Corporation. Legislators originally hoped that this policy would keep farmers afloat whether their crops failed or flourished in a given year. While legislators created the policy partly to offset the massive losses from the Dust Bowl and Great Depression, price supports applied to only a few “basic” crops - wheat, cotton, corn, and so on - and predominantly benefited larger farms.²⁷ Over time, the price supports distorted markets; they encouraged farmers to plant more with the knowledge that they would receive a guaranteed price. Meanwhile, USDA scientists continued to research how they might improve agricultural productivity, which further enabled farmers to produce more using the same amount of land. The end result was a long-standing agricultural surplus – the ubiquitous “farm problem” run rampant.²⁸

While the USDA could respond by reducing the amount of land used for each basic crop through soil banks and acreage allotments, they could not prevent farmers from switching to new “crops” that were not regulated by price supports. (They also failed to control the pace of scientific advancements that produced greater yields.) Even as top-level officials at the USDA instituted soil conservation measures and reductions in acreage for price-supported crops, farmers adjusted by adding comparatively high-value

²⁷ Ross B. Talbot and Donald F. Hadwiger, *The Policy Process in American Agriculture*, (San Francisco, CA: Chandler Publishing Company, 1968), 207-219; Donald Paarlberg, *American Farm Policy: A Case Study of Centralized Decisionmaking*, (New York: Wiley and Sons, 1964); “General Information on Price Supports,” Folder: Benson, Ezra (5), Box 6, Dwight D. Eisenhower Administration Papers, Eisenhower Library.

²⁸ Shane Hamilton, *Trucking Country: The Road to America’s Wal-Mart Economy* (Princeton University Press, 2008), 101.

livestock to their rotation. While agents at the USDA did not explicitly endorse this behavior, they did very little to stop it.

Perhaps the best-known example of this phenomenon was the switch from cotton to poultry in upcountry Georgia. Spooked by the possibility of additional catastrophic losses to the boll weevil, which had devastated crops during the 1930s, and working with red clay soil that had been ravaged by generations of cotton farming, rural farmers in northeast Georgia gradually stopped growing cotton and started growing chicken.²⁹ In addition to the lenient credit terms offered by feed dealers like Jesse Jewell, poultry raising appealed to these farmers because it involved a shorter growing “season” than other crops or even that of cows and hogs. As early as 1956, a chicken farmer could bring his birds to market weight in 10 weeks.³⁰ Small-scale southern agriculture, which had been about long-term risk management of crops like upland cotton or tobacco, could now be about short-term gain. By the 1950’s, farmers imagined poultry as just another “crop” in their rotation - one that could be grown year-round, in controlled conditions, and harvested every 10-12 weeks.

²⁹ Gordon Sawyer, *The Agribusiness Poultry Industry: A History of Its Development*, (New York, N.Y.: The Exposition Press, 1971); Striffler, *Chicken*, 40-42; Gisolfi, “From Cotton Farmers to Poultry Growers: The Rise of Industrial Agriculture in Upcountry Georgia, 1914-1960.” Ph.D. dissertation, Columbia University, 2007.

³⁰ William Hammack, “The Georgia Farmer Speaks His Mind.” *The Atlanta Journal and the Atlanta Constitution (1950-1968), Sunday Ed.; Atlanta, Ga.* January 22, 1956. Note: Tracking the changes in time to market weight are less reliable than tracking overall feed conversion efficiency, as the definition of “market weight” has gradually increased over the years.

Scientific innovations during World War II provided some of the most important breakthroughs that created the possibility of “a chicken in every pot.” While conducting research into the antimalarial properties of sulfanilamide during World War II, scientists discovered an effective treatment for coccidiosis, a disease of poultry that affects the intestinal tract. These treatments, called “coccidiostats,” revolutionized avian health by facilitating the now-common practice of raising poultry in confinement.³¹ In 1944, after the mid-Atlantic, or “Delmarva,” region suffered repeated losses from the devastating avian virus known as Newcastle disease, Rutgers University set up a new state Agricultural Experiment Station to study the disease.³² Three years later, in October 1947, a team of avian pathologists reported that they developed a live vaccine, which became available to growers as early as April 1948.³³ These cumulative improvements in poultry health met or exceeded those gains achieved through the New Deal-era National Poultry Improvement Plan (NPIP), which all but eradicated *Salmonella pullorum*, the typhoidal strain of the *Salmonella* bacterium.³⁴ During this same period, scientists

³¹ William C. Campbell, “History of the Discovery of Sulfaquinoxaline as a Coccidiostat,” *The Journal of Parasitology* 94, no. 4 (2008): 934–45.; Navia, Manuel A., and Jurgen Drews. “A Chicken in Every Pot, Thanks to Sulfonamide Drugs.” *Science* 288, no. 5474 (2000): 2132. *Biography in Context* (accessed March 4, 2018). Cf. William Boyd, “Making Meat: Science, Technology, and American Poultry Production,” *Technology and Culture* 42, no. 4 (October 1, 2001): 638–640. <https://doi.org/10.1353/tech.2001.0150>.

³² “Delmarva” or “Del-Mar-Va” is a portmanteau of “Delaware, Maryland, Virginia,” which is used elsewhere in literature on the poultry industry, and by some historical actors.

³³ “Vaccine Concocted to Control Dread Newcastle Disease.” *The Daily Journal* (Vineland, NJ) October 30, 1947; “Vineland - Newcastle Disease Vaccine - Live Virus Now Available. (Advertisement for Vineland Poultry Laboratories).” *The Daily Journal*. (Vineland, NJ) July 14, 1948.

³⁴ National Poultry Improvement Plan: Seventy Years of Poultry Improvement. Program Aid No. 1857. United States Department of Agriculture, Animal and Plant Health Inspection Service, https://permanent.access.gpo.gov/gpo28392/npip_brochure_12-05.pdf (last accessed March 7, 2018).

discovered that antibiotics operated as a growth promoter in feed, which improved feed conversion efficiency. Once antibiotics like tetracycline were approved by the FDA as feed additives, they became standard components of chicken feed.³⁵ Through innovations in everything from vitamin-rich feed additives to new poultry house construction techniques, farmers were always looking for an edge that might improve the basic rate of conversion of feed into poultry meat, and thereby improve their own bottom line.

As other historians have shown, the 1948 “Chicken of Tomorrow” contest perhaps best exemplifies how the changes in the industry were shaped by the relationship between land-grant institutions and the USDA cooperative extension service, along with the demands of retailers and integrators, to produce a genetically superior bird. Contests like the “Chicken of Tomorrow” encouraged and celebrated modifications to avian biology that gradually converted the “chicken” into a “meat.”³⁶ But to break through into the economic mainstream, poultry needed to compete with beef and pork, which continued to be far more popular with Americans through most of the twentieth century.

The “Unrationed Substitute”: Poultry during World War II

Rationing and price controls during World War II reshuffled the dynamics of supply and demand within the industry, creating the basis of a national market in poultry

³⁵ Boyd, “Making Meat,” 644-650.

³⁶ Roger Horowitz, “Making the Chicken of Tomorrow: Reworking Poultry as Commodities and as Creatures, 1945–1990,” *Industrializing Organisms: Introducing Evolutionary History*, 215–35, 204.

and establishing an early foothold for future exports abroad. For much of the Second World War, poultry and eggs constituted the “unrationed substitutes” to beef and pork.³⁷ This advantage allowed poultry growers to materially benefit from higher consumer purchasing power during the war, and encouraged consumers to think of poultry as a food to be eaten on days other than special occasions. Unlike basic commodities like wheat, soybeans, or cotton, poultry was not the object of government price supports or controls (although it benefited from them indirectly, through the supports on grains used for feed), and most producers still raised chickens as a mix of several ‘crops’ which could include beef and corn. That changed in 1942 when the Office of Price Administration (OPA) imposed price ceilings for most agricultural commodities through the Economic Stabilization Act. Meatpackers and poultry producers bristled at the price ceilings, which kept them from taking full advantage of the sellers’ market in meat.³⁸ More importantly, it prevented them from adjusting their price in response to rising costs of feed. The imposition of wheat rationing for animal feeds by the War Food Administration during 1943-1944 intensified what these producers called the “cost-price squeeze,” and further increased their resentment at the meddling of the OPA.³⁹ Trade associations like the American Meat Institute argued that price ceilings would lead to scarcity as producers

³⁷ For the phrase “unrationed substitute” see “Commodity developments: More Meat, Shoes, and Soap Promised from Larger Cattle Slaughter,” *Barron’s National Business and Financial Weekly (1942-Current File)*, August 27, 1945.

³⁸ On the price ceiling and meat boycott in general, see Meg Jacobs, “‘How About Some Meat?’: The Office of Price Administration, Consumption Politics, and State Building from the Bottom Up, 1941-1946,” *Journal of American History* 84, no. 3 (December 1997): 910–41.

³⁹ “Management’s Washington Letter.” *Nation’s Business (Pre-1986)* 32, no. 3 (03, 1944): 17.

turned to a black market to sell their meat at a fair price.⁴⁰ For poultry producers, this would be the first time in recent memory that the government stepped in to control the industry, and they did not forget it easily.

In the spring of 1945, the Army shifted their attention to poultry: through War Food Order 119, the War Food Administration (WFA) requisitioned nearly 100% of the poultry production of the Delmarva region to be canned and packed for the Allied forces in Europe.⁴¹ The scale of this request was enormous: the army needed 70 million pounds at a time when the average production of the region was 50 million pounds. To meet that demand, the Army later expanded War Food Order 119 to include set-asides in the Southeast, which included the major poultry-producing counties in North Carolina and upcountry Georgia.⁴² From a business perspective, the timing could not have been worse. The Army had requisitioned nearly all the available chicken on the East Coast during the early spring, when consumers typically expected to find chicken at their local markets, and when the supply of poultry was most plentiful.⁴³ (Before farmers could raise poultry year-round, the term “spring chicken” was a literal indicator of its availability.) Moreover, the Delmarva region served an important market of major urban areas along the East Coast, particularly the immigrant Jewish community in New York City. These

⁴⁰ Jacobs, “How About Some Meat?”

⁴¹ War Food Order 119 - Poultry. War Food Administration, Dec. 11, 1944.

<https://archive.org/details/fooddistribution119unit> (last accessed March 7, 2018); Striffler, *Chicken*, 43-45.

⁴² War Food Order 119 – Poultry, 1944.

⁴³ “The Poultry and Egg Situation,” U.S. Department of Agriculture, January 1946.

<https://archive.org/stream/poultryeggsituat108unit>; Striffler, *Chicken*, 43-45.

communities generally could not purchase chicken from Midwestern dealers because they did not adhere to kosher methods of slaughter.⁴⁴

The distribution of Army requisitions reshaped patterns of poultry production and consumption for decades to come. While the pursuit of lucrative wartime contracts might in other circumstances have offered an advantage to the Delmarva growers, the loss of such a large portion of regional poultry production thoroughly disrupted markets that were already shaken by a shortage of other meats. This geographical imbalance in requisition volumes meant that Delmarva's loss redounded, over the long term, to Georgia's and Arkansas' gain. During the shortages in 1945, producers from the Southeast and Midwest edged in to the markets previously dominated by Delmarva producers; the region never completely recovered its comparative advantage.⁴⁵ For the East Coast consumer, the price ceiling on poultry now operated as a de facto ration. Ongoing shortages of beef and pork meant that more consumers switched to poultry at a time when it was especially hard to come by. During periods of normally elevated demand for chicken, the bird became nearly impossible to find.⁴⁶ Moreover, grain shortages and high feed prices affected poultry growers just as they affected the meatpackers, and dealers employed similar avenues to sell poultry on the black market to evade or circumvent the price ceilings. One author suggests that dealers in upcountry

⁴⁴ Horowitz, *Putting Meat on the American Table*, 108-109.

⁴⁵ Horowitz, "Making the Chicken of Tomorrow," 218.

⁴⁶ "The Poultry and Egg Situation," U.S. Department of Agriculture, January 1946. <https://archive.org/stream/poultryeggsituat108unit>, 7. (last accessed June 10, 2019)

Georgia may have used old moonshine routes to transport poultry on the black market.⁴⁷ These disruptions in regional markets laid the groundwork for a truly national market for chicken in the postwar era.

Technological Innovations: Vertical Integration, Automation, Refrigeration

Further technological innovations in production and distribution patterns completed the transformation of chicken from a local product available at certain times of the year, and only of interest to niche markets, into a product available on a national scale. While these changes also impacted other products, including other meats like beef and pork, the comparatively newer poultry industry was better positioned to make investments in new equipment and capitalize on scientific advancements in feed.⁴⁸ As a result, poultry processing achieved economies of scale through vertical integration rather than the centralized stockyard model that characterized beef production. Technological advancements in transportation allowed the industry to maintain many small processing plants in isolated, rural locations, which drew on cheap, available labor. Well before Congress first took up the matter of poultry inspection in 1956, versions of the

⁴⁷ Gisolfi, *The Takeover*, 30.

⁴⁸ For broader perspectives on the role of technological change in twentieth-century food systems, see Warren James Belasco and Roger Horowitz, eds. *Food Chains: From Farmyard to Shopping Cart*, (Philadelphia: University of Pennsylvania Press, 2009); Philip Scranton and Susan R. Schrepfer, eds. *Industrializing Organisms: Introducing Evolutionary History*, v. 5. (New York: Routledge, 2004).

'disassembly line' had come to roost in the rural corners of the Deep South and the Delmarva Peninsula.⁴⁹

One major innovation within the plant was the development of mechanized evisceration, or removal of the internal organs. Prior to mechanical evisceration, poultry carcasses were sold with entrails and feet intact, commonly referred to as "New York dressed" within the United States. But the "New York dressed" poultry took longer to freeze (because it weighed more), and the entrails posed a minor risk of diseases like Newcastle. "Quick-frozen" eviscerated poultry, which was easier to transport out of state or out of the country, began to supplant the more traditional uneviscerated birds.⁵⁰ By the time Congress enacted an inspection in 1957, uneviscerated poultry was practically relegated to a secondary market, its wholesomeness determined primarily through a religious exception.⁵¹

After the war, large meatpackers like Swift and Wilson proved eager to get into the poultry business. They intended to put the new techniques in quick-frozen foods and refrigeration towards the service of finding new markets at home and abroad.⁵² Under an

⁴⁹ Sawyer, *The Agribusiness Poultry Industry*.

⁵⁰ Minnie B Tracey, "The Present Status of Frozen Food Marketing." *Journal of Marketing (Pre-1986)* 13, no. 000004 (04, 1949): 470.

⁵¹ "Compulsory Inspection of Poultry and Poultry Products – Conference Report." *Congressional Record - Senate*, August 19, 1957, 15170.

⁵² Ellis Haller, "Meat Packers Prepare for Peace." *Barron's National Business and Financial Weekly*, May 22, 1944; Hamilton, "Frozen Foods and Mass Marketing." See also Dwight D. Eisenhower Papers, White House Central File, General File, Box 1148, Food - 1952-1955 (1) (142-G-12) for a letter from Manhattan Refrigerating Company on refrigeration for exports; Letter from Arlo Turner to Clarence Francis, October 21, 1954, Clarence Francis Papers, Box 15 – Poultry, for a conversation in which Turner

Interstate Commerce Commission (ICC) exemption for raw agricultural commodities, truckers hauled poultry over long distance in refrigerated trucks, or reefers, which further facilitated a pattern of interstate commerce in chicken.⁵³ By the mid-1950's, the more established processors in Delmarva, Arkansas, and northeast Georgia shipped poultry from rural outposts to towns and cities across the country.

The Business of Broiler Growing: Farmers Turned "Poultrymen"

While their farm receipts ballooned during the war years, the profits that poultry farmers enjoyed during the mid-1940's proved short-lived. Even though Americans ate more chicken than ever before, the industry grew so fast that supply outstripped demand. In January 1946, the War Food Administration canceled all orders for poultry at the same time they lifted meat rations. Stores of poultry reached record highs as prices dropped, while production boomed.⁵⁴

In the absence of meaningful government regulation or oversight, the cost to enter the business remained relatively low, while postwar improvements in avian health and increased feed conversion efficiency dramatically improved the productivity of individual farmers. As a result, broiler prices dropped precipitously during the 1950's, creating the

suggests that Francis collaborate with officials at ICA to develop refrigeration facilities for exports. (Both collections housed at the Eisenhower Library.)

⁵³ Shane Hamilton, "The Economies and Conveniences of Modern-Day Living: Frozen Foods and Mass Marketing, 1945-1965." *Business History Review; Boston* 77, no. 1 (Spring 2003): 39-40; on the ICC exemption, see Hamilton, *Trucking Country*, 94-95.

⁵⁴ Gisolfi, Monica R. *The Takeover*, 35.

same specter of overproduction that had driven New Deal imposition of production controls on key staple crops like wheat, corn, and cotton. The situation had gotten so dire that Congress was seriously considering similar controls for poultry by 1957.⁵⁵

However, the brief period of profits in poultry allowed individuals who had previously thought of themselves as “farmers” to define their success in terms of the entrepreneurial ethos of free-market American capitalism.⁵⁶ The “poultryman” presented himself as an entirely new category of businessman (nevertheless, at least when it came tax time, preferred to think of himself as a farmer).⁵⁷ Quite a few had chosen their newfound livelihood because it offered the prospect of liberation from the “heavy hand of big government.”⁵⁸ A cartoon published in a trade journal from 1957 provides a remarkable illustration of the poultryman’s perspective in this period (Figure 4). In it, a nineteenth-century huckster in a coat and bowler hat hocks “Economic Wonder Drugs” to a skeptical audience of broiler growers, all of whom look much more like bankers or other respectable business executives than farmers. The caption, “Yes, but what about the

⁵⁵ “Broiler Growers – Which Way?” *The Southeastern Poultryman*, August 1957, 8-9.

⁵⁶ A group of producers in favor of controls broke off from the Southeastern Poultry and Egg Association to form the U.S. Poultry and Egg Association to lobby in favor of controls. However, as the more established representative for the industry, Southeastern maintained more durable political contacts with key Southern Democrats, which rendered U.S. Poultry’s efforts unsuccessful. “New Poultry Association Endorses Industry Controls,” *Industry News*, *The Southeastern Poultryman*, April 1957, 16. For another unsuccessful strategy the industry used to respond to overproduction, see chapter 4.

⁵⁷ “IRS Ruling Protested,” (snippet) *Southeastern Poultryman*, November 1956, 15-16. In this snippet, the journal reported on how the IRS planned to prohibit poultry farmers from accessing tax deductions for soil and water conservation.

⁵⁸ “An Alternative to Controls,” Editorials, *The Southeastern Poultryman*, April 1957, 26. Helpfully, Southeastern called for “self-discipline” (further moralized and gendered as “a mark of manhood”) as the best possible response to overproduction: “Self-Discipline or Else,” Editorial, *The Southeastern Poultryman*, March 1957, 38.

side effects?" suggests that the growers are well versed in the problems with price supports and production controls in other staple commodities, especially cotton. To further emphasize the connection between government intervention and unwanted government control of business, the cartoonist labeled the huckster's wares, "Bottled in Bondage - by U.S. Gov't."

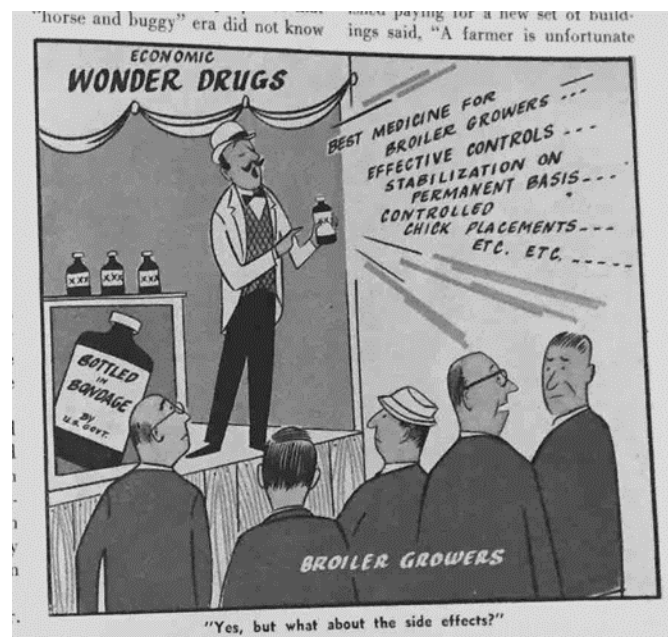


Figure 4: "Yes, but what about the side effects?" in "Broiler Growers – Which Way?" *The Southeastern Poultryman*, August 1957, 7.

So it was that the same poultrymen who attributed their runaway success to free-market capitalism believed that they were threatened with ruin without some form of market intervention. Broiler growers were unwilling to reduce the number of farmers engaged in poultry-raising, but strenuously opposed direct subsidies on ideological

grounds. Those views left support for exports as the only viable option – one which they embraced wholeheartedly.⁵⁹ The editors of the *Southeastern Poultryman* boldly proclaimed, “Let’s Sell Poultry Abroad,” as they framed the search for export markets as a way to increase profits without materially reducing production.⁶⁰ (Had they been a little more self-critical, they might have seen how this was its own kind of “economic wonder drug.”) It was through this logic that they began to view government inspection as a means to open up more foreign outlets for chicken while avoiding the more dangerous specter of controlled production. Thus, like many businessmen, the broiler growers railed against big government in many contexts, while welcoming it in others.⁶¹

MAKING POULTRY EXPORT MARKETS: POULTRY AND U.S. AGRICULTURAL TRADE POLICY, 1945-1956

From Shortages to Surpluses: P.L. 480 and Section 550

The end of World War II and the Korean War upended an era of wartime shortages in favor of ever-mounting agricultural surpluses in many commodities. By 1956, nearly two years’ worth of surplus grains had accumulated in silos owned by the Commodity

⁵⁹ David A. Lake, “Export, Die, or Subsidize: The International Political Economy of American Agriculture, 1875-1940,” *Comparative Studies in Society and History* 31, no. 1 (1989): 81–105.

⁶⁰ “Let’s Sell Poultry Abroad,” Editorials, *The Southeastern Poultryman*, March/April 1956, 30.

⁶¹ Cf. Nancy MacLean, “Southern Dominance in a Borrowed Language: The Regional Origins of American Neoliberalism,” *New Landscapes of Inequality: Neoliberalism and the Erosion of Democracy in America*, 2008, 21–38, and Kim Phillips-Fein, *Invisible Hands : The Making of the Conservative Movement from the New Deal to Reagan* (New York, N.Y.: W.W. Norton & Company, 2009).

Credit Corporation (CCC). Under the postwar regime of the General Agreement on Tariffs and Trade (GATT), the U.S. could not even give this grain away without provoking retaliation. Article VI of the GATT specifically forbade the practice of “dumping,” or selling a commodity in one country at a price below the price in the home country.⁶² Scholars who study international commerce have disagreed for decades about whether dumping constitutes truly unfree trade; nevertheless, in the late 1940s and early 1950s, dumping of basic crops like wheat had real potential to disrupt market prices and hurt producers in importing countries.⁶³ The International Wheat Agreement, signed in 1949, set strict controls on the global price of wheat and the permissible volume of exports, but did not have the power to curtail the accumulation of domestic surpluses.⁶⁴

The Eisenhower Administration, determined to reduce the role of government in the lives of hardworking farmers, came into power with the promise to fend off these agricultural crises. The Midwestern agricultural economists who comprised Eisenhower’s economic advisers sought to find ways to reduce price supports without immediately

⁶² Article VI: Anti-dumping and countervailing duties. General Agreement on Tariffs and Trade, World Trade Organization (1994). https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_04_e.htm#article6 (last accessed March 7, 2018)

⁶³ Douglas A. Irwin, *Free Trade under Fire*, 3rd edition (Princeton, N.J.: Princeton University Press, 2009), 164-195; Michael J. Trebilcock and Thomas M. Boddez, “The Case for Liberalizing North American Trade Remedy Laws,” *Minnesota Journal of Global Trade* 4, no. 1 (Winter 1995): 13-17; Terence P. Stewart and Timothy C. Brightbill, “Some Heretical Observations on the Interaction of U.S. Trade and Competition Laws: A Defense of U.S. Antidumping and Countervailing Duties,” *United States-Mexico Law Journal* 4 (1996): 35-48.

⁶⁴ E. M. Collingham, *The Taste of War: World War Two and the Battle for Food* (London: Allen Lane, 2011), 484.

bankrupting the grain belt. By the 1950's, the parity price, once intended as a floor, had become a ceiling. Farmers and policymakers alike knew that the policy of price supports had run into huge difficulties, yet no one was willing to pay the political cost to "pull the rug out from under" those farmers who grew price-supported crops. Meanwhile, Eisenhower's Secretary of Agriculture, Ezra Taft Benson, often literally preached the gospel of free markets in agriculture to the public, further encouraging farmers to continue shifting their production from staple crops into higher-value livestock.⁶⁵

Seeking the justification for his proposed policy of "trade not aid," Eisenhower established a Presidential Commission on Foreign Economic Policy in 1953.⁶⁶

Editorialists speculated that Eisenhower wanted the commission to write a report favorable to his objectives of liberalizing U.S. trade policy, but the divisions among the commission members ultimately proved intractable.⁶⁷ The commission released its report in 1954; the call-and-response among the flurry of minority and majority reports laid bare the divides that separated free-traders and protectionists in the middle nineteen-fifties.⁶⁸ Most press accounts deemed the Commission a failure.⁶⁹ With respect to agriculture, the

⁶⁵ Ezra Taft Benson (as told to Carlisle Barger), *Farmers at the Crossroads*, (New York: The Devin-Adair Company, 1956).

⁶⁶ Burton Ira Kaufman, *Trade and Aid: Eisenhower's Foreign Economic Policy, 1953-1961* (Baltimore: Johns Hopkins University Press, 1982); Papers of the U.S. President's Commission on Foreign Economic Policy (Randall Commission), Box 1, Boxes 7-13 (hearings and meetings), and Boxes 70-73 (press clippings, releases, and related public materials), Eisenhower Library.

⁶⁷ Walter Lippmann, "Today and Tomorrow ... The Theory of the Randall Commission," *The Washington Post* (1923-1954); *Washington, D.C.* January 28, 1954.

⁶⁸ U.S. President's Commission on Foreign Economic Policy, "Full Report to the Congress," 1954.

⁶⁹ U.S. Presidential Commission on Foreign Economic Policy, Folder: "Press Clippings, Releases, and Related Public Materials," Box 72, Eisenhower Library.

Commission strongly recommended that Congress abandon price supports sooner rather than later and keep US prices above the world market price.⁷⁰ While this recommendation fell in line with what Eisenhower's top agricultural economists had been arguing for years, it now remained a politically unpalatable option now consigned to a lukewarm government report.⁷¹

Although in its first years the Eisenhower administration failed to drum up a wider coalition of Congressional support for a comprehensive program to open U.S. markets to international trade, the Senate Committee on Agriculture developed several important programs that laid the foundation for agricultural exports in the postwar period. When Congress reauthorized the Mutual Security Act in 1953, they added a provision - Section 550 - that authorized the executive branch to negotiate the sale of agricultural commodities using a country's local currency. A year later, Congress enacted the Agricultural Trade Development and Assistance Act of 1954, or P.L. 480.⁷² Originally drafted by a representative from Kansas, P.L. 480 gave officials and diplomats another means to dispose of agricultural surpluses through various agreements to be negotiated with individual countries, in amounts above and beyond that allowed for under the terms of Section 550. Moreover, where the Mutual Security Act sought to provide emergency

⁷⁰ "Long Look Abroad" *Newsweek*, February 1, 1954, p. 51.

⁷¹ Ezra Taft Benson (as told to Carlisle Barger), *Farmers at the Crossroads*, (New York: The Devin-Adair Company, 1956), 27-32.

⁷² Later, the program earned the nickname "Food for Peace." While the name is usually credited to the Kennedy and Johnson administration, it was occasionally referred to as "Food for Peace" in documents from the Eisenhower presidency. In their oral histories, neither Don Paarlberg nor Clarence Francis can precisely recall when Food for Peace was first used.

food aid as part of the program of recovery operationalized by the Foreign Operations Administration, P.L. 480 offered more open-ended food aid on a longer-term basis. P.L. 480 also included provisions for bartering and direct food aid as well as purchasing agreements.⁷³

The Department of Agriculture and the State Department frequently clashed over how to administer these programs. In the early years, the competing missions of the two agencies often kept them at odds with one another on Section 550, but especially with P.L. 480. Officials at State suspected that their counterparts over at Agriculture hoped to violate trade laws and “dump” commodities through their Section 550 requests; representatives from Agriculture complained that State was too slow in processing their requests. Both P.L. 480 and Section 550 focused on surplus commodities owned by the Commodity Credit Corporation: these commodities were, by definition, also price-supported, or subsidized. Meat and poultry, which were not price supported (nor, arguably, “crops”), should therefore have been excluded from these surplus disposal programs. Nevertheless, dogged bureaucratic creativity facilitated the annual export of millions of dollars in meat and poultry by 1956, made possible by the use of government funds.⁷⁴

⁷³ In the 1960’s, the P.L. 480 program pivoted away from surplus commodity disposal and more clearly into the business of providing direct aid; the program would later be incorporated into the modern USAID. Jacqueline McGlade, “More a Plowshare than a Sword: The Legacy of US Cold War Agricultural Diplomacy,” *Agricultural History* 83, no. 1 (2009): 79–102; Barry Riley, *The Political History of American Food Aid: An Uneasy Benevolence* (Oxford, New York: Oxford University Press, 2017).

⁷⁴ “Fourth Semiannual Report on Food for Peace,” Message from the President of the United States to the 84th Congress, 2nd Session. July 11, 1956.

“Helping Poultrymen Help Government”

Although programs like P.L. 480 created the funding mechanism to launch new food exports, a coalition of businessmen and bureaucrats did much of the work of making markets abroad. Arlo Turner traveled to Europe alongside members of the Foreign Agricultural Service; he attended meetings with European officials and worked directly with local producers and farming organizations. Turner exchanged cordial correspondence with then-coordinator of Food for Peace, Clarence Francis, while also reporting back to the industry on his findings. Where Turner’s role as private citizen ended and his potential role as public representative began remains intentionally blurred by the available records. Meanwhile, undersecretary of agriculture Earl Butz openly collaborated with the industry, appearing at annual meetings and writing articles in trade publications, drawing on his expertise in the Eisenhower Administration. When Butz appeared before Congressional committees to make the case that poultry inspection should remain in the Agricultural Marketing Service, his pitch was not appreciably different from that of other lobbyists who testified on the industry’s behalf.⁷⁵ Trade

<https://babel.hathitrust.org/cgi/pt?id=coo.31924061728089;view=1up;seq=43> (last accessed March 7, 2018)

⁷⁵ In January 1956, Butz appeared before the Southeastern Poultry and Egg Association’s annual convention, giving a talk on the topic of “The National Farm Program as it Relates to the Poultry Industry.” *The Southeastern Poultryman*, January 1956, p. 67. See also: “Poultry Products Inspection Act.” Hearings Before the Committee on Agriculture and Forestry. 85th Cong. 1st Sess. Senate. February 28, 1957 (Statement of Earl Butz, Assistant Secretary of Agriculture) 99-103.

publications even noted this alignment, claiming that “considerable and joint credit” for the growth of export markets using Food for Peace resources “must be shared” between Arlo Turner and Earl Butz. Some papers went so far as to refer to the arrangement with P.L. 480 funds as “the Butz-Turner concept.”⁷⁶

Unlike many of his contemporaries who self-identified as “dirt farmers,” Arlo Turner held an L.L.B. from the University of Washington and was a second-generation businessman. In 1917, he left his legal career behind to return to his hometown of Modesto, California and take over the family’s grain-milling operation, which would later be known as the Grange Company.⁷⁷ Turner’s education and cosmopolitan outlook may have enabled him to spot an opportunity that other industry leaders did not see. He may also simply have had the right connections and access from many years spent in the industry: Turner’s letters suggest that he was personally acquainted with Clarence (who he often addressed as “Clare”) Francis, who was the director of P.L. 480 and a former executive at Post Foods.

Turner framed the problem of health quarantines as a diplomatic and regulatory issue that officials could resolve through programs like P.L. 480 or through the Foreign

⁷⁶ John Cipperly, “New Program Will Promote Poultry Exports to Europe,” FEEDSTUFFS, December 31, 1955. Originally found via a typescript copy of the piece in Folder – “Poultry,” Box 15, Clarence Francis Papers, Eisenhower Library.

⁷⁷ George E. Tinkham, “Arlo V. Turner,” History of Stanislaus County, California, with Biographical Sketches, Los Angeles, CA: Historic Record Company, 1921. pp. 1344-1345. <https://archive.org/stream/historyofstanisl00tink> (last accessed March 7, 2018) (Credit for finding this source goes to Kelley Lawton); “Oakdale Milling Company Asks Dissolution in Court.” *Modesto Evening News*. November 13, 1922.

Operations Administration. As a well-placed figure who recognized the need to build a coalition of decision-makers around new policy approaches in a given domain, he drew on government programs intended to dispose of surplus crops as well as programs that were intended to rebuild Europe through the exchange of currency. By contrast, Turner thought that the mostly protectionist members of Congress would only impede swift action. He expressed a clear preference for handling the matter through administrative and diplomatic channels: “let’s get the quarantines off and find the men to develop this business, staying away from THE HILL as long as possible, we hope permanently.”⁷⁸

Turner also acknowledged that the concerns about the health issue were not without merit. Because humans could contract the Newcastle virus through the handling of chicken viscera, or internal organs, no one could guarantee that “New York dressed” or “French dressed” poultry would be completely free of the disease.⁷⁹ This vulnerability was one of several reasons that the American poultry industry shifted from marketing “New York dressed” birds, guts intact, to fully eviscerated, ready-to-cook poultry. Now, leading representatives of the American poultry industry sensed that they needed to encourage Europeans to make the same change – a shift that required attention not only to modes of production in America, but to distribution channels across the Atlantic, and to

⁷⁸ Letter from Arlo Turner to Clarence Francis, Feb 18, 1955, Folder - “Poultry,” Box 15, Clarence Francis Papers, Eisenhower Library.

⁷⁹ Miller, “Newcastle Disease in Poultry.” Merck Veterinary Manual. Note: “French dressed” and “New York dressed” both refer to uneviscerated poultry.

appropriate marketing that would gradually alter European consumer tastes and expectations.⁸⁰

Poultry promoters also recognized that what had worked for beef and pork could also work for chicken. As they had done decades earlier, producers needed to shift away from exporting only the low-end product in favor of higher-quality meat, and if at all possible, obtain certification by government inspectors for wholesomeness. Turner also knew that, once inspection became a requirement for export, and European governments removed quarantines, it might be difficult to confine this set of standards to the foreign market only. He observed, “[s]ome folks fear that if our government starts certifying [meat for export], U.S. medical and veterinarian health authorities will request the same protections in interstate shipment.”⁸¹

The goal of promoting trade to foreign markets, then, required attention to shaping domestic laws and regulations first. Turner and other industry executives thus went about a two-pronged strategy, first gaining explicit authority to use funds intended for agricultural surplus disposal to promote markets for poultry abroad, and then marshaling a coalition of producers and bureaucrats to push for the passage of a compulsory inspection law. These businessmen knew that poultry had enormous potential to become a globally traded commodity, and one in which the U.S., with its surplus

⁸⁰ This pattern largely parallels trends in other commodities as described in De Grazia, *Irresistible Empire*.

⁸¹ Letter from Arlo Turner to Clarence Francis(?), Oct 21, 1955, p. 3, Folder - “Poultry,” Box 15, Clarence Francis Papers, Eisenhower Library.

grains, available land, and advanced science and technology, enjoyed a comparative advantage. As an owner of a milling company, Turner was keenly aware of the looming crisis posed by ever expanding grain surpluses. He believed that increased production of poultry products could address this problem without extensive government intervention into the mechanics of domestic markets. He advocated the use of government programs like P.L. 480 (“Food for Peace”) at the same time that he touted the benefits of free enterprise and open markets. After all, “[the poultry industry] cannot negotiate with foreign governments or government agencies. It's the government's job to start to open those markets and keep them open FOR THE PRODUCER.”⁸²

The following year, Turner was ready to pitch his solution to the looming farm crisis to fellow business leaders. In a bombastic letter addressed to the “PRODUCERS OF POULTRY AND ALLIED INDUSTRY IN CALIFORNIA,” Turner argued that California grain growers should “convert” their stocks into poultry products and sell them abroad using government funds. He described poultry as if it were any other secondary good, like cotton textiles or steel beams: “[it will be] manufactured in U.S. farm factories using unmanageable, expensive surpluses.”⁸³ Even though the poultry would be “manufactured” using surplus grains, poultrymen could not directly access the funds

⁸² Letter from Arlo Turner to Milan Smith, Executive Assistant to the Secretary of Agriculture, April 13, 1955, Folder - “Poultry,” Box 15, Clarence Francis Papers, Eisenhower Library. Emphasis in original.

⁸³ Letter from Arlo Turner to “Poultry Producers and Allied Industry of California,” January 13, 1956. Folder - “Poultry,” Box 15, Clarence Francis Papers, Eisenhower Library.

specifically earmarked for surplus disposal.⁸⁴ Instead, as Turner pointed out, the poultry industry should utilize funds from a different provision in P.L. 480 that broadly supported the development of new markets for US agriculture, or perhaps draw on funds from Section 550 of the Mutual Security Act.

Turner was convinced that this marketing support would readily lead Europeans to develop a taste for American chicken: “Relatively little money [compared to price supported crops] will go a long way in promoting markets for U.S. poultry products. . . . Congress, the Administration and the public should be informed of the expense government can save by helping poultrymen help government.”⁸⁵

FROM VOLUNTARY TO COMPULSORY: FEDERAL POULTRY INSPECTION, 1946-1957

Poultry “Inspection” Before 1957

The previous sections outlined how the growing poultry industry benefited from a variety of government programs intended to promote marketing, scientific research into veterinary health, support the price of feed grains, and the development of export markets. Yet, until compulsory inspection began in 1958, poultry slaughter and

⁸⁴ That is, until 1961, when poultry producers were granted a formal exemption. See: Albert Riley, “U.S. to Add Poultry to Surplus Exports: Freeman Agrees with Russell, Revises Eisenhower’s Policy.” *The Atlanta Constitution (1946-1984)*; *Atlanta, Ga.* March 1, 1961.

⁸⁵ Letter from Arlo Turner to “Poultry Producers and Allied Industry of California,” January 13, 1956. Folder - “Poultry,” Box 15, Clarence Francis Papers, Dwight D. Eisenhower Library. (emphasis in the original)

processing was subject to very little direct government *oversight* in the form of entry barriers, safety inspections, or price controls.

Throughout the twentieth century, American food regulation was famously divided between the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA); while this system attracts criticism from various quarters, scholars acknowledge that division of responsibilities can and does confer unique benefits.⁸⁶ However, this division in American food regulation placed poultry inspection in an unusual gray area. Poultry and eggs had long been a marketing concern for the USDA, which operates grading programs to ascertain relative quality. Large-scale poultry production effectively did not exist in 1906; hence, it was not one of the products subject to compulsory inspection under the Federal Meat Inspection Act.⁸⁷ In fact, until the mid-twentieth century, domestic poultry inspection remained, by and large, a task for the consumer. The farmer's wives who surveyed their backyard flocks, the women who perused live poultry markets in search of their dinner — these private inspectors knew that their task required a keen eye and a strong stomach.

⁸⁶ For an example of the critique of fragmentation, see Ron Nixon, "Obama Proposes Single Overseer for Food Safety," *The New York Times*, February 20, 2015. http://www.nytimes.com/2015/02/21/us/obama-proposes-single-overseer-for-food-safety.html?_r=0); on scholarly arguments that fragmentation confers benefits, see: Paul Verbruggen and Tetty Havinga, "Introduction to the Special Issue on the Patterns of Interplay between Public and Private Food Regulation," *European Journal of Risk Regulation : EJRR* 6, no. 4 (2015): 482–87; Spencer Henson and Julie Caswell, "Food Safety Regulation: An Overview of Contemporary Issues," *Food Policy* 24, no. 6 (December 1, 1999): 589–603, [https://doi.org/10.1016/S0306-9192\(99\)00072-X](https://doi.org/10.1016/S0306-9192(99)00072-X).

⁸⁷ Young, "Food and Drug Regulation under the USDA, 1906-1940."

Until the late 1940's, chicken remained not only a marginal product, but, as the historian Roger Horowitz persuasively argues, it was not really a "meat."⁸⁸ In the 1950s, many consumers were surprised to learn that the U.S. government did not treat all meats the same; after all, the cellophane-wrapped cutlets were commingled together in the same section of the supermarket. With its limited resources, the Food and Drug Administration quite literally had bigger fish to fry. The sort of comprehensive labor and environmental regulation that might have governed some of the related issues that affected food safety were still a few decades away.

To handle the growing volume of this new product, much of it coming in from out of state, some states set up their own inspection programs. States in the Northeast and Midwest tended to place these programs in departments of public health; in the Deep South, they were more likely to be located in departments of agriculture.⁸⁹ In 1946, the Agricultural Marketing Service invoked a provision in the Agricultural Marketing Act to set up a voluntary federal inspection program.⁹⁰ Processors paid the fees for inspection, which generally ensured that only larger processors enrolled in the program. More

⁸⁸ Horowitz, "Making the Chicken of Tomorrow."

⁸⁹ This information was gleaned primarily from the affiliations of state inspectors who submitted testimony in the inspection hearings. See especially the testimonies of Aaron Haskin, Chief Health Officer, Department of Health, New Jersey, and Joseph Hearl, Chief Meat Inspector, Department of Health, New Jersey, in "Poultry Inspection," Hearings Before the Subcommittee on Poultry and Eggs of the Committee on Agriculture, 84th Congress, 2nd Session. House. July 17-18, 1956, p. 55-57.

⁹⁰ "Poultry Products Inspection Act." Hearings Before the Committee on Agriculture and Forestry. 85th Cong. 1st Sess. Senate. February 28, 1957 (Statement of Earl Butz, Assistant Secretary of Agriculture) 100-101.

importantly, the fee-based nature of the program meant that processors could exert a great deal of power over inspectors.

Not surprisingly, this patchwork of programs neither improved the safety of poultry for consumers or workers, nor granted additional access to foreign markets. The pace of expansion in the industry, accelerated by scientific and technological innovations, and with a firm structure that was characterized by many small processors, all worked to the detriment of the development of sanitary standards in the growing and processing of chicken. State health authorities expressed disgust at the low quality of poultry that nevertheless bore the seal of federal inspection for wholesomeness. Periodic food scares briefly heightened consumer awareness, but failed to produce momentum for lasting change.

Sick Chickens and Sick Workers

Amid these still chaotic conditions, in the spring of 1954, dozens of workers at turkey processing plants across Texas fell ill, suffering from flu-like symptoms of a mysterious disease. They contracted psittacosis, or parrot fever, a rare disease that had previously been identified only in owners of exotic birds and parakeets. In the context of meat production, humans can only contract this disease through handling of infected

viscera or bodily fluids, not from consumption of the meat.⁹¹ The Texas outbreak affected plants scattered across the central part of the state; physicians reported over 300 cases before authorities managed to contain the epidemic.⁹² During the outbreak, distributors continued to ship turkeys from the affected plants across the country. After the Army rejected one shipment, the distributor in question nonetheless managed to fob it off on civilian marketers. Public health investigators found turkeys, packed in ice, but carrying the live virus, as far afield as Boston and Philadelphia.⁹³

Even some top officials at the USDA recognized that the voluntary program was not sufficient to protect public health. Concerned about the bad press USDA was receiving in light of the epidemic, B.C. Pier, the director of the federal voluntary poultry inspection program, wrote a letter to W.D. Termohlen, who was then the director of poultry marketing for the USDA. As Pier noted, “[t]here is a widespread feeling in the inspection service that efforts to carry out a sound program will not receive backing if the industry objects.”⁹⁴ In response, Termohlen fired him. The ensuing scandal eventually led to Termohlen’s reassignment to the Tokyo office at the Foreign Agricultural Service, in

⁹¹ “State Confirms Recent Corsicana Illness Siege as ‘Parrot Fever.’” *Corsicana Daily Sun*. May 19, 1954.

⁹² Plants affected were located in Corsicana, Lampasas, Brady, and Tyler. Corsicana, Lampasas, and Brady are fairly close together, but the distance from Brady (the furthest west) to Tyler (the furthest east) is nearly 300 miles.

⁹³ Drew Pearson, “Texas Parrot Fever Scandal.” *The Washington Post and Times Herald* (1954-1959); *Washington, D.C.* July 26, 1954.

⁹⁴ Pearson, “Texas Parrot Fever Scandal.”

early 1955. (It is not entirely clear exactly which agency he was representing when he left on his European tour with Turner and Huntington several weeks later.)

The outbreak raised alarm among public health authorities and labor organizers, and revealed the risks of uninspected chicken to many consumers for the first time.⁹⁵ The parrot fever outbreak revealed the lack of sanitation in poultry processing plants, as well as the clear weaknesses of voluntary poultry inspection. This incident confirmed some of the worst fears of state public health officials, who already suspected that state inspection programs were inadequate to monitor the volume of out-of-state shipments of poultry products. The lukewarm response from the federal Department of Agriculture also exposed the profound limitations and endemic problems in the Agricultural Marketing Service's voluntary inspection program. In response to the epidemic, the Amalgamated Meat Cutters and Butcher Workmen (AMCBW) mobilized to educate workers about the need for improved sanitation in poultry plants. They argued that the union would fight for better working conditions where the industry and the government, thus far, had failed.⁹⁶

Several factors limited Amalgamated's capacity to mobilize broader public support to take their fight for federal inspection all the way to the nation's capital. A combination of low consumer prices and the prospect that inspection might raise, rather than lower, the price of chicken made it unlikely that Amalgamated could marshal a

⁹⁵ Pearson, "Texas Parrot Fever Scandal."

⁹⁶ For more on the role of Amalgamated Meat Cutters in poultry inspection, see James Russell Pryor, "Work, Nature and the American Dinner Plate," Ph.D. Dissertation, Carnegie Mellon, 2013; 327-337, 365.

broader coalition of “citizen consumers” motivated by the price of food.⁹⁷ Compared to hot-button issues like school desegregation and atomic testing, the union’s push for poultry inspection received comparatively little national news coverage.⁹⁸ The formal support of organizations that included the Association of State and Territorial Health Officers, American Nurses Association, General Federation of Women’s Clubs, and National Farmer’s Union, were not enough to place poultry inspection on the legislative agenda. The union’s efforts were further stymied by Republican political appointees in the USDA who had no interest in expanding the size of the government.

Moreover, as if to confirm the British farmers’ theories about vaccination, dread diseases like Newcastle and parrot fever returned to ravage flocks in the U.S. in the spring of 1956. The outbreaks resulted from twin economic pressures facing American poultry growers. No longer threatened by the immediate prospect of massive losses from the virus, and facing all-time low prices for broilers, farmers cut corners to save money by diluting their Newcastle vaccine beyond the recommended levels - or neglecting to vaccinate at all.⁹⁹ Similarly, smaller rural processors, who often operated on slim profit margins, had little incentive to prioritize safety of workers or consumers. Farmers and

⁹⁷ On “citizen consumers,” see Lizabeth Cohen, *A Consumers’ Republic: The Politics of Mass Consumption in Postwar America* (New York, N.Y.: Knopf, 2008), 62-111.

⁹⁸ Green and McClelland, “Sick Chickens: Strikers Win Big Benefits for Consumers.”

⁹⁹ E.P. Johnson, “Newcastle Disease Still Threatens Poultry Industry,” *Industry News, The Southeastern Poultryman* (Virginia), March 1956, 12.

processors thus traded off sanitation and quality for the all-important factor, price. But when Newcastle returned, it exacted a reputational cost for the industry.

While producers fretted about losses from the resurgence of Newcastle, organized labor mobilized to renew their demands for federal inspection. Another outbreak of parrot fever, this time in Oregon, heightened their sense of urgency. Public health officials, having learned from the outbreak in Texas two years earlier, moved swiftly to quarantine affected areas and treat workers who had come down with the illness. They also embargoed interstate shipment of turkeys from Oregon.¹⁰⁰ These measures contained the outbreak and made it much less severe than the incident in Texas. Nevertheless, it received more extensive media coverage, which finally caught the attention of lawmakers.¹⁰¹

By 1956, the U.S. Public Health Service identified food poisoning as a rising public health concern; an oft-cited statistic from 1956 named poultry as the source of a quarter of all foodborne illnesses.¹⁰² The previous year, another technocratic body, the Second Hoover Commission, released its final report, in which the commission included recommendations on how to achieve government efficiency food inspection. Journalists

¹⁰⁰ “State Board of Health Confirms Turkey Disease.” *Statesman Journal*. March 15, 1956; “Handling Infected Turkeys Caused Psittacosis Outbreak.” *The News-Review*. October 16, 1956. “Embargo on Turkey, Eggs Hits Growers,” *Albany Democrat-Herald*, March 13, 1956, 1.

¹⁰¹ For a theory of the multiplier effect of repeated “shocks” to generate policy change, see Edward Balleisen et al. “Recalibrating Risk: Crises, Learning, and Regulatory Change,” in *Policy Shock*, eds. Edward Balleisen et al., (Cambridge: Cambridge University Press, 2017), 540-561.

¹⁰² Tom McNamara, “Poultry Inspection Only Voluntary,” *The Washington Post and Times Herald* (1954-1959); Sep 7, 1955, 49.

cited the report as further evidence that experts agreed on the importance of compulsory poultry inspection, with statements like “The Hoover Commission also urged that poultry be subjected to the same compulsory inspection as beef and other meats.”¹⁰³ With inspection given the apparent imprimatur of a technocratic panel of experts and the Public Health Service statistic left unchallenged, consumers increasingly favored an extension of the Federal Meat Inspection Act to cover poultry.

POULTRY AND AMERICAN AGRICULTURAL POLICY

The Meaning of “Government Inspected” Chicken

Although their underlying purposes could not have been more divergent, consumers, labor, businessmen, and farmers coalesced around a common demand for mandatory inspection of all poultry in interstate commerce in the spring of 1956. When the matter came before Congress, legislators framed the federal inspection law as a response to ongoing concerns about foodborne illness and worker health. However, the primary supporters of this idea, and the stakeholders who had the most influence over a Republican administration and a Democratic Congress, were unquestionably the poultry producers. Caught in a prolonged crisis of low prices and overproduction, business leaders in the poultry industry dominated the discussion in compulsory federal inspection.

¹⁰³ McNamara, “Poultry Inspection Only Voluntary.” Unfortunately, these statements misrepresented the Commission’s actual recommendations; I address this discrepancy – and its consequences – in chapter 2.

They relied on senior Senators in the Delmarva Peninsula and Southern Democrats, both of whom were longtime supporters of agriculture, and drew on the rhetoric of small government that drove the politics of the Republican Party. By comparison, the consumer-labor coalition that mobilized around the congressional debates that eventually generated the 1957 Poultry Products Inspection Act remained relatively inchoate and without much support from either the bureaucrats that would enact their proposed policy or a meaningful majority in Congress. The activities of that coalition represent a key moment of transition between the “pocketbook politics” of the previous decade, and the more militant ethos of “citizen consumers” or “caveat venditor” that animated the consumer-protection movement in the 1960s.¹⁰⁴

When business leaders compared the demands of compulsory inspection to the morass of price supports, price ceilings, and production controls that characterized agricultural policy in the preceding decades, inspection looked like a far *less* invasive means of governmental regulation. As such, poultrymen viewed it as an acceptable mode of governmental interference in the market. Inspection promised to resolve their foreign marketing problems and had the potential to narrow the field for competition at home, since larger processors would more easily cope with the costs associated with any inspection regime. As envisioned by the processors, compulsory poultry inspection exemplifies the notion of “raising rival’s costs” - the end of fee-based voluntary

¹⁰⁴ Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America*, (Princeton University Press, 2007); Cohen, *Consumers’ Republic*, 62-111; Balleisen, *Fraud*, 243-250.

inspection meant that smaller, upstart producers had to invest in new facilities, equipment, and hire additional labor, while established players enjoyed a reduction in costs.¹⁰⁵

Moreover, in turning to government inspection as the means to access foreign markets, the growing poultry industry employed a tried and true policy tool. While any prospective export trade in poultry after 1945 would be governed by the GATT, merchants traded agricultural commodities on international markets for several centuries. The problems generated by endemic information asymmetries repeatedly led to the creation of commodity inspection and certification regimes, to guarantee quality and protect consumers against fraud. By establishing systems of grading the quality of tobacco, grains, pickled fish, cotton, or meat, governments and commercial organizations sought to ensure that far-flung markets had confidence in the basic trustworthiness of commodity markets, so that exporting producers received a fair price for the relative quality of their goods.¹⁰⁶ Given this history of previous inspection regimes, leaders in the poultry industry logically turned to inspection as a way to solve their own foreign marketing problems.

¹⁰⁵ Steven C. Salop and David T. Scheffman, “Raising Rivals’ Costs,” *The American Economic Review* 73, no. 2 (1983): 267–71.

¹⁰⁶ Robert Zerbe, “The Origin and Effect of Grain Trade Regulations in the Late Nineteenth Century,” *Agricultural History* 56 (1982); Marcus, “Setting the Standard”; Olmstead and Rhode, *Arresting Contagion*; David M. Higgins and Aashish Velkar, “‘Spinning a Yarn’: Institutions, Law, and Standards c.1880–1914,” *Enterprise & Society* 18, no. 03 (September 2017): 591–631, <https://doi.org/10.1017/eso.2016.73>.

Meanwhile, consumers and labor organizations were focused squarely on the domestic issue of guaranteeing the safety of the poultry in their supermarkets and restaurants. They envisioned a poultry inspection program that would lead to *more* direct government intervention in business by placing a federal agent in every plant. They associated meat inspection with the Progressive Era legislation of the turn of the century that led to meaningful gains in the safety of beef and pork.¹⁰⁷ They understood that the mid-twentieth century supermarket created new information asymmetries, which led many consumers to place a higher value on labels with a “U.S. Government Inspected” stamp. Many consumer advocates and sympathetic lawmakers thus framed inspection as an inevitable outgrowth of the rapid expansion of the industry. As Senator James Murray of Montana dryly observed: “The hearings which we are opening today on compulsory inspection of poultry to protect consumers are several decades late in getting started.”¹⁰⁸ While consumers and businesses were generally operating at cross purposes (and through different Congressional committees), consumers utilized claims made in industry trade publications about the problems in export markets as a way to strengthen their own

¹⁰⁷ On the impact of federal meat inspection on animal and human health, see Olmstead and Rhode, *Arresting Contagion*. (It is worth noting that in 1957, Gabriel Kolko’s *Triumph of Conservatism*, which critiqued this positive appraisal of the Progressive Era, was still six years away from publication.)

¹⁰⁸ *Mandatory Poultry Inspection, Hearings Before the Subcommittee on Legislation Affecting Food and Drug Administration of the Committee on Labor and Public Welfare*, 84th Cong., 2nd Sess. Senate. May 9-10 (1956) (Statement of James Murray, United States Senator from Montana) 1.

argument that any poultry inspection program should mirror meat inspection as closely as possible.¹⁰⁹

Labor unions, primarily through the politically influential Amalgamated Meat Cutters and Butcher Workmen (AMCBW), argued for mandatory poultry inspection primarily as an occupational health measure. But the union had another reason to favor increased government scrutiny of the poultry supply. Poultry production was increasingly concentrated in rural areas of the Southeast, where staunchly anti-union managers and operators undermined their goal of expanding their membership to include workers in poultry processing. The prospect of continuous federal eyes in the plant offered a potential accountability mechanism that might ultimately facilitate the union's ability to establish a foothold in these currently non-unionized plants. The union organizers may have imagined that a unionized federal poultry inspector might serve as a potential whistleblower whose positioning as a government agent would insulate them from direct retaliation by the company as a result of organizing activities. They may also have hoped that direct oversight through federal inspection might lead to the kind of improvements in working conditions that organizers had, thus far, failed to secure for some of their members.¹¹⁰

¹⁰⁹ *Mandatory Poultry Inspection*, 1956 (Statement of Leonor K. Sullivan, Member of Congress from Missouri) 42.

¹¹⁰ Green and McClelland, "Sick Chickens"; Pryor, "Making the American Dinner Plate."

Converting Government Surpluses into Government Inspected Chicken

The rapid growth of the American poultry industry occurred amid a more general problem of agricultural surpluses during the Eisenhower Administration - a problem which policymakers and legislators alike considered a temporary problem, needing an immediate solution. A growing coalition of stakeholders, catalyzed by some influential industry voices, then settled on livestock exports as the solution to surpluses at home. Producers argued that inspection would open up avenues for poultry exports, offering a politically palatable way to dispose of longstanding grain surpluses by “converting” them into livestock. Lawmakers created a range of government programs to facilitate poultry exports, including the Mutual Security Act’s Section 550 and P.L. 480. These initiatives allowed officials to manage bursting surpluses while providing economic aid to foreign countries in need.

However, despite initial expectations, the promotion of export markets under P.L. 480 failed to reduce surpluses - in fact, it only entrenched them. In time, Turner’s vision - shared by many other “farmers in business suits” - of converting grain to livestock in farm factories, and exporting them as one would export finished goods, became entwined with the broader ideological project that underpinned Food for Peace. Eisenhower’s advisors at the time expressed reservations about linking the rhetoric of “feeding the world” to a program that sought to address a temporary problem.¹¹¹ But the industry

¹¹¹ Folder: WH Staff Memos-FFP, Box 12, Donald Paarlberg Records: 1954-1961, Series II. Alphabetical Subject File of the Coordinator of Food-for-Peace, Dwight D. Eisenhower Library.

repeatedly made the case that the United States could most effectively address the problems of want and hunger through increased consumption of animal protein. America should aim higher than simply feeding the world - the world needed to dine on more meat. Poultry and livestock producers continued to access funds earmarked for food aid to encourage local poultry and livestock industries around the globe, while promoting increased consumption of animal proteins as a pathway to better health. Historians narrativize the early years of Food for Peace as narrowly focused on the disposition of surpluses, with the program later evolving into a more complete and ambitious effort to replicate the “Great Society” abroad.¹¹² Yet even its creators expressed profound ambivalence about the effectiveness of the program at the time of its creation, raising questions about its capacity to draw down surpluses and reduce the subsidization of U.S. agriculture, as well as its potential impact on global hunger.

However, unlike the bureaucrats in the Eisenhower administration, Turner and other leaders of the movement for poultry inspection did not imagine the process of developing and securing export markets as a temporary stopgap to resolve a looming farm crisis. Instead, they viewed the search for export markets as a means to permanently expand their productive capacity unchecked by the usual rules of supply and demand. Regimes of certification and inspection offered an important policy lever to gain access to

¹¹² Kristin L Ahlberg, *Transplanting the Great Society Lyndon Johnson and Food for Peace*. (Columbia: University of Missouri Press, 2008); Peter A. Toma, *The Politics of Food for Peace: Executive-Legislative Interaction*, (The University of Arizona Press, 1967).

foreign markets, while raising new barriers to entry for imported goods and domestic producers. While the initial effort to open all European markets proved less successful than anticipated, it is possible that without the roadblocks of quarantines, producers might not have been as willing to go along with mandatory inspection when it came before Congress the following year. In the case of chicken, compulsory federal inspection improved the industry's access to markets both at home and abroad. Forward-looking firms benefited from moving early to secure purchase authorizations. The transatlantic business ties they developed would last for decades.

CHAPTER 2 – MADE TO ORDER FOR GOVERNMENT INSPECTION: ENSURING WHOLESOME POULTRY, MEAT, AND FISH, 1956-1968

“I have asked for this time today ... to close one of the most glaring loopholes in our pure-food laws.”¹ In 1956, Representative Leonor Sullivan sought to make her name in Congress with a simple proposal: she wanted to revise the Meat Inspection Act to include poultry. A newly elected representative from St. Louis, Missouri, Mrs. Sullivan had neither a legal background nor any practical experience in agriculture; neither was she deeply involved in the consumer movement before arriving in Washington. So she came prepared. Her testimony, which included statements drawn from industry trade journals, scientific articles, and other expert opinions, gives a clear picture of a developing consensus around inspection. Sullivan would go on to serve eleven terms, where she sponsored some of the most influential pieces of pro-consumer legislation of the twentieth century, from the food stamp program to the Truth in Lending Act. But in 1957, she was a junior representative who had been elected to her late husband’s seat without the support of her own Democratic Party, and she failed to get the amendment that she wanted.

¹ *Poultry Inspection, Hearings Before the Subcommittee on Poultry and Eggs of the Committee on Agriculture*, 84th Congress, 2nd Session. House. July 17-18 (1956) (Statement of Mrs. Leonor K. Sullivan, Representative from the State of Missouri), 3.

By 1956, the larger question of whether poultry should be “inspected” was not controversial. In the mid-1950s, consumer advocates, organized labor, and a developing “poultry industry” forged a consensus that government inspection of chicken for wholesomeness was not just necessary, but long overdue. This unlikely coalition mobilized their Congressional representatives to extend compulsory meat inspection to cover poultry, which was obtained through a new law, the Poultry Products Inspection Act (PPIA). While these disparate interest groups disagreed on almost every detail, they agreed that something must be done to safeguard the nation's supply of chicken - and that “something” specifically meant “inspection.” Like the Federal Meat Inspection Act before it, the Poultry Products Inspection Act does not explicitly define “inspection” in its list of statutory definitions. But in the context of the law, inspection came to mean “organoleptic,” or visual, inspection of “the carcass of each bird processed,” a definition upheld in court as late as 2002.²

Contemporary scholars and lawmakers often write off this focus on visible contamination in the Poultry Products Inspection Act, under the assumption that there was insufficient scientific knowledge to respond to microbiological hazards at the time. These advocates sometimes refer to organoleptic inspection as “poke and sniff” to suggest that the Poultry Products Inspection Act is an outdated and ineffective statute enacted by lawmakers with little knowledge of the relevant science and little interest in

² *AFGE v. Veneman*, No. 01-5035, 2002 U.S. App. LEXIS 5287 (2002).

improving public health.³ This chapter will show that legislators adopted “poke and sniff” inspection in poultry *in spite of* the considered opinions of experts and scientists who were well aware of the microbiological risks. These scientists’ perspectives were largely (but not completely) sidelined by consumers, regulators, and business interests, all of whom had their own ideas about the best way to ensure safe food. While scientists’ understanding of microbiological hazards advanced dramatically since the 1950s, scientists, sanitarians, and veterinarians nevertheless recognized the potential limitations of a visual-only inspection system – and they did what they could to make these views known. Historical assumptions about scientists’ relative lack of knowledge in the 1950s are fundamentally at odds with accounts that detail the major scientific leaps and bounds that enabled the industrialization of animal agriculture.⁴ Relying on such assumptions to

³ For a recent example, see: Meat and Poultry Dialogue Group, “Recommendations to Modernize the Meat and Poultry Oversight System in the United States: Developed by the Meat and Poultry Dialogue Group” (The Meridian Institute, 2019), https://s31207.pcdn.co/wp-content/uploads/2019/07/Meat-and-Poultry_Recommendations.pdf; United States Department of Agriculture, “Meeting on HACCP-Based Inspection Models Project,” Thursday, March 30, 2000, Arlington, VA, Transcript available at https://www.fsis.usda.gov/wps/wcm/connect/d3d7f608-45c7-4775-885e-00b0bca0eb74/HACCP_03_30_00.pdf?MOD=AJPERES (last accessed Oct. 28, 2018); for a few examples of the term “poke and sniff,” see: Robert Steyer, “’93 Law May Aid Safety of Food,” *St. Louis Post-Dispatch*, August 23, 1997; Allison Galosich, “Meat Inspection System Draws Criticism,” *National Provisioner*; *Northbrook* 214, no. 8 (August 2000): 10; Edward Walsh, “USDA Shift Puts Safety In Packers’ Hands: Meat Inspectors Fight to Keep Role,” *The Washington Post*, October 20, 1998; Robin Lee Allen, “Chains, NRA Defend New USDA Inspection Methods,” *Nation’s Restaurant News (New York)*, vol. 34, no. 39 (September 25, 2000): 3, 259.

⁴ A few notable accounts of scientific advancements include: Scranton and Schrepfer, eds., *Industrializing Organisms*; Kendra Smith-Howard, “Healing Animals in an Antibiotic Age: Veterinary Drugs and the Professionalism Crisis, 1945–1970,” *Technology and Culture* 58, no. 3 (September 9, 2017): 722–48, <https://doi.org/10.1353/tech.2017.0079>; for scientists’ reflections on their own history, see: R. B. Williams, “Historical Article: Fifty Years of Anticoccidial Vaccines for Poultry (1952–2002),” *Avian Diseases* 46, no. 4 (2002): 775–802.

shape future policies obscures the ways that other interests intervened in a contested policymaking process and shaped the outcome of the law.

The previous chapter described how the matter of poultry inspection landed on the legislative agenda in the first place; this chapter focuses on processes, outcomes, and consequences. As I demonstrated in Chapter 1, poultry inspection became a legislative issue in the mid-1950s, when workers concerned about occupational risks, consumers worried about safety, and industry leaders seeking access to export markets came to an agreement that inspection was the solution to their problems. Unfortunately, none of these groups agreed what “inspection” meant, who should do it, and how it should be carried out. Here, I outline why the final law took the form that it did, what other alternatives were considered, and how the decisions in 1957 shaped what was possible in future revisions of the law. I also acknowledge that poultry inspection did not gain the same kind of widespread public attention as comparable reforms in other aspects of health and safety; it barely registered at the presidential level. But this chapter reveals that its key players debated difficult questions about the extent to which policymaking should be based on scientific knowledge, the appropriate role of government in markets, and the relationship between regulation and business innovation.

This chapter diverges from the few historical accounts that consider the Poultry Products Inspection Act, which tend to frame the inspection law as a victory for a consumer-labor coalition in an era of embedded liberalism. These scholars – primarily labor historians – argue that in the face of rising risk of foodborne illness and

occupational health hazards, labor unions led the way to improve consumer protections and public health through the establishment of continuous poultry inspection by qualified federal inspectors.⁵ Other historians describe inspection as an inevitable outcome of the rapid, unchecked growth of the postwar poultry industry.⁶ Poultry inspection undoubtedly improved consumer protection in the short term. My research suggests that consumers and labor did not have as much control over the agenda as these accounts claim. Through their attempts to replicate the perceived high standard of meat inspection, consumers and labor inadvertently served export-oriented business interests. This process mirrors the “triumph of conservatism” in Progressive Era legislation at the turn of the twentieth century, and echoes language of “efficiency” from earlier in the century. Even when their proposals demanded a massive expansion of bureaucratic manpower and capacity, consumers, labor, and business interests all argued their case in terms of administrative efficiency and minimizing regulatory burden.⁷

This broad consensus around the need for “government inspection” of food products only deepened in the 1960s, as the capacity, effectiveness, and even the major

⁵ George Green and Jim McClelland, “Sick Chickens: Strikers Win Big Benefits for Consumers.,” *Southern Exposure* 13, no. 5 (September 1985): 48–55.

⁶ Roger Horowitz, *Putting Meat on the American Table: Taste, Technology, Transformation* (Baltimore: The Johns Hopkins University Press, 2006); Steve Striffler, *Chicken : The Dangerous Transformation of America’s Favorite Food* (New Haven: Yale University Press, 2005); Gordon Sawyer, *The Agribusiness Poultry Industry: A History of Its Development* (New York, N.Y.: The Exposition Press, 1971).

⁷ Gabriel Kolko, *The Triumph of Conservatism: A Re-Interpretation of American History* (The Free Press, 1963); Samuel P. Hays, *Conservation and the Gospel of Efficiency: The Progressive Conservation Movement, 1890–1920* (University of Pittsburgh Press, 1999). cf. Robert H. Wiebe, *The Search for Order: 1877 - 1920*, (New York: Hill and Wang, 1967).

players in the consumer movement changed dramatically. Lizabeth Cohen described this shift as the transition from “second wave” to “third wave” consumerism.⁸ Within a decade, “consumer protection” evolved from an agenda item promoted by an emerging interest group to an explicit policy goal articulated at the highest levels of the executive branch.⁹ A new generation of muckrakers published exposés that rivaled the political heft of Sinclair’s *The Jungle*.¹⁰ Goaded by the public interest litigation movement and bolstered by a supportive executive branch, Congress revised the meat and poultry inspection acts to require state inspection programs be “equal to” federal inspection in 1967 and 1968.¹¹ These revisions consolidated federal authority over meat safety as states gradually stopped operating separate inspection programs. The success of the meat inspection acts even led Congress to briefly consider compulsory fish inspection legislation.

But the “triumphs” of the consumer movement in the 1960s exacted a heavy reputational cost on the government agencies who benefited from expanded authority. The terms of the debate around the Wholesome Meat Acts, and the abandoned effort to establish a companion Wholesome Fish Act, reveal some of the practical limits of

⁸ Cohen, *A Consumers’ Republic*.

⁹ Esther Peterson, “Representing the Consumer Interest in the Federal Government,” *Michigan Law Review* 64, no. 7 (1966): 1323–28, <https://doi.org/10.2307/1287137>.

¹⁰ e.g. Ralph Nader, *Unsafe at Any Speed: The Designed-in Dangers of the American Automobile* (Grossman, 1965); Jessica Mitford, *The American Way of Death* (New York, N.Y.: Simon and Schuster, 1963).

¹¹ Wholesome Meat Act, Pub. L. No. 90-201, 81 Stat. 584 (1967); Wholesome Poultry Products Act, Pub. L. No. 90-492, 82 Stat. 791 (1968).

consumer - and federal - power. As the 1960s drew to a close, the meatpackers and poultry processors began to think of this new consumer movement - and the bureaucracy it created - as a threat to their livelihoods. In the coming decade, they worked with other like-minded “business conservatives” to reduce, or even roll back, what they began to perceive as unnecessary and overly burdensome regulations.¹²

THE POULTRY PRODUCTS INSPECTION ACT, 1956-1960

Defining “Inspection”

Without exception, every interest group, from the Amalgamated Meat Cutters to the American Farm Bureau Federation, testified in favor of compulsory federal poultry inspection during the 1956 legislative session.¹³ Upon receiving reports about this apparent consensus on poultry inspection, the upper echelons of the Eisenhower Administration assumed that sufficient legislative attention would be given to the issue, and took no follow-up action. In general, the matter of poultry inspection attracted little attention from the executive branch, which was fully occupied with the threat of nuclear war and the problem of reducing, not expanding, the scope of agricultural programs. For

¹² Kim Phillips-Fein, *Invisible Hands : The Making of the Conservative Movement from the New Deal to Reagan* (New York, N.Y.: W.W. Norton & Company, 2009); Benjamin C. Waterhouse, *Lobbying America: The Politics of Business from Nixon to NAFTA* (Princeton: Princeton University Press, 2013).

¹³ “Organizations Represented by Witnesses Testifying in Support of Compulsory Federal Inspection of Poultry, 1957,” “Benson, Ezra 1957-1958 (6),” Box 6, DDE Admin Series, Eisenhower Library. This statement was subsequently confirmed by a survey of the relevant Congressional hearings, which are cited extensively in this chapter.

example, in a 1956 Cabinet meeting where poultry inspection briefly received consideration, most of the meeting was devoted to a discussion of how the release of the film “On the Beach” might affect morale and civil defense efforts.¹⁴ Furthermore, the jurisdictional question of whether inspection was an appropriate function for the federal government had been settled for decades – Congress mandated compulsory inspection of horse meat as recently as 1950.¹⁵ In their review of the legislative proposal, the Bureau of the Budget found nothing objectionable in the cost of poultry inspection.¹⁶ Compared to concurrent agricultural programs of price supports and grading programs, the estimated cost to pay inspectors remained, quite literally, chicken feed.

Widespread agreement on the need for compulsory poultry inspection, however, by no means signaled consensus about what such a program should entail. The definition of what counted as “inspection” was fraught with disagreement. When defining the method and approach to inspection, two important issues were the timing and the frequency of inspection. Each involved different trade-offs in health, safety, and cost. Should inspection take place before, or after slaughter - or both? Should inspection be continuous, or based on some scheme of scientific sampling? Should inspection be overseen by veterinarians, or experts in biological sciences? Competing opinions on the

¹⁴ Cabinet Paper, “Cabinet Meeting of Dec. 11, 1959,” Box 15, Cabinet Series, Papers of Dwight D. Eisenhower as President, 1953-61, Eisenhower Library.

¹⁵ *Mandatory Poultry Inspection* (1956) (Statement of Hon. James E. Murray, Senator from the State of Montana), 1.

¹⁶ Memo from L.A. Minnich, Jr., Assistant Staff Secretary, to Hon. Percival F. Brundage, Bureau of the Budget, May 8, 1957, Legislative Leaders Meetings 1957 (3) (May-June), Box 2, Legislative Meetings Series, Papers of Dwight D. Eisenhower as President, 1953-61, Eisenhower Library.

right approach to inspection reflected different sets of values and expectations about how to ensure safe food, as well as different perceptions of risks and potential benefits. Moreover, veterinarians, sanitarians, and the emerging field of microbiology competed to be the “experts” who deserved respect in ensuring food safety.

Often, businesses and consumer representatives appeared to be talking past one another while using very similar language; this disconnect was most evident in the distinction between their use of the phrases “consumer confidence” and “consumer protection.” Trade associations frequently spoke of the need to restore “consumer confidence” in the product.”¹⁷ In his testimony, the Assistant Secretary of Agriculture, Earl Butz, emphasized the importance of “consumer acceptance.”¹⁸ This language of “confidence” and “acceptance” neatly combined wider concerns about fraud and deception with more immediate concerns about orderly marketing, without expressly acknowledging that consumer confidence did not necessarily equate to a safe product. When pressed to provide the higher priority between safety and orderly marketing, Butz curtly replied, “they are not incompatible.”¹⁹ By contrast, state public health officials and consumer advocates squarely focused their attention on “consumer protection,” and

¹⁷ *Mandatory Poultry Inspection*, 1956 (Statement of John A. Baker, Coordinator of Legislative Services, National Farmers Union), 73.

¹⁸ *Mandatory Poultry Inspection*, 1956 (Statement of Earl Butz, Assistant Secretary of Agriculture), 24.

¹⁹ *Mandatory Poultry Inspection*, 1956 (Statement of Earl Butz, Assistant Secretary of Agriculture), 29.

emphasized the prevention of disease in workers and consumers of the product as a primary goal of any inspection program.²⁰

For their part, consumers and their representatives believed that nothing less than continuous inspection would be sufficient to secure a safe supply of chicken. Many consumers expressed shock and dismay when they discovered that poultry was not inspected just like beef and pork. As a consequence, they argued that the issue deserved of immediate attention; “tomorrow does not seem too soon” for the establishment of inspection.²¹ On the question of whether to inspect before or after slaughter, consumers were clearly in favor of both. Representative Sullivan remarked, “[i]f we are going to have an inspection system, let’s not have half a system.”²²

Public health officials and veterinarians also emphasized the importance of inspection prior to slaughter, or antemortem inspection. Veterinarians pointed out that certain signs of disease easily recognizable in an antemortem inspection became undetectable after slaughter and especially after evisceration. The President of the American Veterinary Medical Association pointed out that “[antemortem inspection] is an important and integral part of complete food inspection.”²³ However, because health

²⁰ *Mandatory Poultry Inspection, Committee on Labor and Public Welfare*, 84th Cong., 2nd Session. Senate. May 9-10 (1956) (Statement of Dan Schlosser, Chairman, Meat and Poultry Committee, Association of Food and Drug Officials of the United States), 205.

²¹ *Mandatory Poultry Inspection, Committee on Labor and Public Welfare*, 84th Cong., 2nd Session. Senate. May 9-10 (1956) (Letter from Housewives United, May 13, 1956), 249.

²² *Poultry Inspection, Subcommittee on Poultry and Eggs of the Committee on Agriculture*, 84th Congress, 2nd Session. House. July 17-18 (1956) (Testimony of Leonor K. Sullivan), 46.

²³ *Mandatory Poultry Inspection*, 1956 (Statement of Harry E. Kingman, Jr., Assistant Executive Secretary, American Veterinary Medical Association), 211.

officials and consumers favored compulsory, bird-by-bird postmortem inspection, some industry groups worried that they might also push for bird-by-bird *antemortem* inspection (i.e. bird-by-bird inspection of live birds). Consumers, legislators, and scientists repeatedly argued that bird-by-bird antemortem inspection was never their intent: “I think there has been a determined effort made to make S. 1128 [a competing bill] appear as if each bird was subject to ante mortem inspection.”²⁴ Nevertheless, representatives raised the specter of continuous antemortem inspection to undermine the broader case for continuous inspection generally. Phil Landrum, representing the Ninth District of Georgia, declared that the bill proposed by the Committee on Labor and Public Welfare “would require bird-by-bird antemortem inspection,” which Landrum dismissed as “mostly ridiculous.”²⁵

The debate over how to define inspection reflected a much broader question of how Congress could legally delegate its authority to regulatory agencies. Consumer groups and health officials generally favored a more prescriptive approach to the legislation, with narrow delegation to the agency. Perhaps these groups feared what might happen in the comparatively less transparent rulemaking process. They did not necessarily trust the agency to heed any opinions other than those of the regulated

²⁴ *Poultry Products Inspection Act. Committee on Agriculture and Forestry*. 85th Cong. 1st Sess. Senate. February 28, 1957 (Statement of Senator Hubert Humphrey), 33.

²⁵ *Mandatory Poultry Inspection*, 1956 (Statement of Hon. Phil Landrum, A Representative in Congress from the State of Georgia), 199. Later in his statement, Landrum argued that the FDA failed to protect consumers against the dangers of sulfanilamide and the polio vaccine, and suggested that federal condemnations of poultry might violate the Bill of Rights.

industry when writing regulations. The poultry trade associations, not surprisingly, argued that most of the major decisions about inspection methods should be delegated to the Secretary of Agriculture, which did little to dispel concerns about capture. The trade associations' argument was consistent with their other efforts to manage poultry marketing through non-legislative (if not necessarily non-governmental) channels.²⁶

But the fast-growing poultry industry favored not just influence (which they enjoyed equally well in Congress and at the regulatory agencies), but the prospect of a regulatory regime that they could influence on an ongoing basis. And in large part, Congress agreed with them: "The committee feels that flexibility is a prerequisite to the maintenance of a continuous and exemplary program."²⁷

At least in their public statements, trade representatives spoke in favor of inspection system that was manageable for small as well as large players. In every iteration of their testimony, the American Farm Bureau Federation reminded Congress that a large part of the poultry industry was still composed of small and very small processors who did not ship product out of the state.²⁸ Nevertheless, these players remained deeply invested in preserving the high-volume production model that had taken

²⁶ For more on the industry's perception of Congress, see chapter 1; for another strategy involving a trade association, see chapter 3.

²⁷ Senate Committee Report No. 2622, S. 4243, "Poultry Inspection," July 18, 1956.

²⁸ *Poultry Inspection, Subcommittee on Poultry and Eggs of the Committee on Agriculture, 84th Congress, 2nd Session. House. July 17-18 (1956)* (Statement of Matt Triggs, American Farm Bureau Federation), 127-130; *Poultry Products Inspection Act (1957)* (Statement of Matt Triggs, American Farm Bureau Federation), 114-115; *Compulsory Inspection of Poultry and Poultry Products, Hearings before the Subcommittee on Poultry and Eggs, Committee on Agriculture, House. 85th Cong. First Session. March 6-8 and 15, 1957* (Statement of Matt Triggs, American Farm Bureau Federation), 248-250.

root in the Southeast and mid-Atlantic (or “Delmarva”). Trade associations like the Institute for American Poultry Industries noted that “with atomic energy available for peaceful uses in the near future, we may be on the threshold of completely new, revolutionary, and more efficient methods of food inspection.”²⁹ These industry representatives imagined that new technological advancements in food irradiation might one day obviate the need for physical inspection entirely.

Delegating Inspection Authority: USDA or FDA?

Despite bipartisan consensus on the need for inspection, several legislators observed that there was “some disagreement about where the poultry inspection work should be done.”³⁰ The poultry industry had flown under the government’s radar for so long in part because it did not necessarily fit into any of the preexisting food safety regimes in the United States. While most observers in the 1950s imagined that chicken was just as deserving of governmental oversight as milk, meat, or grains, it was not entirely clear what chicken *was*, at least from a regulatory perspective.³¹ As with any other novel technology or product that enters the marketplace, lawmakers needed to frame their response in the context of already existing laws and regulations. First and foremost, legislators had to decide whether to fit poultry into existing laws such as the

²⁹ *Poultry Products Inspection Act*, 1957 (Testimony of Frank G. Wollney, Field Service Director, Institute of American Poultry Industries), 46.

³⁰ *Mandatory Poultry Inspection*, 1956 (Statement of Senator James Murray, Montana), 1.

³¹ Horowitz, “Making the Chicken of Tomorrow.”

Food, Drug, and Cosmetic Act or the Federal Meat Inspection Act, or to craft an entirely new statute. The way they approached the law itself involved critical decisions about which expertise to value and to whom they should delegate oversight authority.

For many observers, the obvious choice was the U.S. Department of Agriculture. As one of the oldest regulatory agencies, the USDA possesses a relatively broad mandate; the agency is charged with both the promotion and regulation of farming and agricultural products. Not surprisingly, these two missions frequently conflict with one another, or at least give the appearance of a conflict of interest.³² But the USDA is a sprawling agency that divides labor across many sub-agencies, or “services;” two of the oldest and most important are the Agricultural Research Service (ARS) and the Agricultural Marketing Service (AMS). Historically, the Agricultural Research Service housed most inspection and health services, including the Bureau of Animal Industry which became the Animal and Plant Health Inspection Service.³³ The Agricultural Research Service operated the meat inspection program for beef and pork products, and for many participants in the debate over poultry inspection, it made sense to simply expand that service to include poultry products. But the USDA’s Agricultural Marketing Service (AMS) emphasized that their people were already hard at work in many poultry plants across the country through a voluntary inspection service established in 1946. The decision of where poultry

³² Pete Daniel, *Toxic Drift: Pesticides and Health in the Post-World War II South*. (Louisiana State University Press, 2007); Pete Daniel, *Breaking the Land: The Transformation of Cotton, Tobacco, and Rice Cultures since 1880* (Urbana: University of Illinois Press, 1986).

³³ For more on the Bureau of Animal Industry, see Olmstead and Rhode, *Arresting Contagion*.

inspection belonged within the USDA exemplified the abiding tension and overlap between its competing goals of achieving orderly marketing and ensuring safe food for the end consumer.

The USDA's Agricultural Marketing Service set up its voluntary inspection service under the auspices of the 1946 Agricultural Marketing Act, a statute designed to enable the agency to perform grading and any other services needed to ensure "orderly marketing" of agricultural products.³⁴ In this voluntary inspection model, processors covered the cost of government inspection, in exchange for the capacity to sell their products to government agencies and use the seal of inspection for wholesomeness. The voluntary inspection program was particularly important for processors who wanted to sell to the United States Armed Forces during World War II, and could not do so without government inspection.³⁵ Voluntary federal inspection also enabled processors to ship products in interstate commerce, which allowed them to circumvent state inspection programs, where requirements and regulatory purposes varied widely.

However, before inspection became compulsory, merely the veneer of government oversight was often all that was necessary to secure some competitive advantage in the most crucial location: the meat counter at the local supermarket. Many

³⁴ "Agricultural Marketing Act of 1946," Aug. 14, 1946, ch. 966, title II, 60 Stat. 1087.

³⁵ For a description of Armed Forces inspection procedures for export to Great Britain, see: *Compulsory Inspection of Poultry and Poultry Products, Subcommittee on Poultry and Eggs, Committee on Agriculture*, House. 85th Cong. First Session. March 6-8 and 15, (1957) (Enclosed letter To: All inspectors in charge, Poultry Inspection Branch. From: Daniel DeCamp, Assistant Chief, Inspection Branch, Poultry Division, Washington, D.C., dated Oct 19, 1956) 45-47.

consumers did not know that inspection and grading signified different tasks; the average consumer assumed that “Grade A” and “Government Inspected” were all but interchangeable terms.³⁶ Consumers in states that operated their own inspection programs (which could be based in either a department of public health or department of agriculture), might also have grown accustomed to a completely different mark denoting state inspection.³⁷ For example, New Jersey producers briefly marketed local turkeys using a “seal of quality” from the Department of Agriculture. Seeking more information on the label, the local Consumer’s League wrote to the state’s Department of Agriculture. Officials from the department informed the Consumer’s League that these “seals of quality” had no relationship to any state or federal inspection program: “Our turkey tags designate only source and quality or grade. They make no mention of wholesomeness inspection.”³⁸ Firms that were either unable or unwilling to pay for the cost of voluntary inspection occasionally resorted to proprietary and meaningless designations that mimicked government inspection marks, like “Cagle’s Grade A.”³⁹ Even in Georgia,

³⁶ *Poultry Inspection*, 1956, (Statement of Oscar Sussman), 66: “I think most of the members here would realize if your wife bought a piece of poultry with United States grade A on it which had not been inspected ... she would still believe that that poultry was inspected and safe for eating.”

³⁷ This remained true until the passage of the Wholesome Meat Act and Wholesome Poultry Products Inspection Act a decade later. For examples, please see a collection of intrastate-inspected sausage and meat wrappers from various states, located in Box 1, UD 4, Record Group 462 – the Food and Nutrition Service, NACP.

³⁸ News Release, New Jersey Health Officers Association, Dec. 20, 1957, Folder 42, Box 44, Consumers League of New Jersey Records. MC 1090. Rutgers University Libraries; See also: Letter from Mrs. Marion Reed to Mr. Phillip Alampi, Dec. 5, 1958, Folder 42, Box 44, CLNJ.

³⁹ It is possible that these inspection marks represent an early form of private regulation, but it seems more likely that these were meaningless designations. On the reference to “Cagle’s Grade A”, see: Clarence B. Stewart, Esq. to Richard B. Russell, Dec. 11, 1958, Folder 3, Box 35, Series C. Congressional,

already one of the nation's largest processing areas, Jesse Jewell was the "only Georgia dresser operating 100% government inspected" when the federal inspection law went into effect.⁴⁰ In an industry defined by many small processors, none but the leading firms could justify the cost of fee-based voluntary inspection, given the paltry competitive advantages it afforded. Thus, the Agricultural Marketing Service's voluntary inspection program had relatively few takers.

According to many accounts, the voluntary program operated by the Agricultural Marketing Service (AMS) was inadequate to serve the public interest of safer, cleaner poultry. Critics argued that the program did little more than serve the marketing needs of the most successful producers in the industry without requiring much in the way of improvements in processes or practices. According to the chair of the Department of Veterinary Science at the University of Wisconsin-Madison, the "voluntary program ... is inadequate and misleading, in that it purports to protect the health and interests of the public which it palpably does not do."⁴¹ These witnesses recounted past problems with the AMS program, which gave them the distinct impression that the USDA was primarily interested in marketing at the expense of public health. Even on paper, it is clear that the AMS program suffered from some of the common flaws of truly "self-regulatory"

Subseries IX. Legislative, B. Agriculture and Forestry, Richard B. Russell Papers, Richard B. Russell Library for Political Research and Studies, University of Georgia Libraries, Athens.

⁴⁰ Letter from Harold Crowe, Athens Poultry Incorporated, to Richard Russell, March 14, 1958; Folder 3, Box 35, Richard B. Russell Papers, Russell Library.

⁴¹ *Mandatory Poultry Inspection*, 1956 (Statement by C. A. Brandly, Chair, Dept of Veterinary Science, University of Wisconsin-Madison, Regarding the Need for Compulsory Inspection of Poultry Moving in Interstate Commerce), 251.

schemes. AMS inspectors had limited power or independence over plant employees or operators; in at least one case, the plant manager also served as its inspector.⁴² One provision that raised eyebrows was the possibility that a producer could pay the moving expenses of an inspector to encourage them to take on a different assignment.⁴³ Moreover, “inspection for wholesomeness may be discontinued from day to day or during the day's operation as the processor desires.”⁴⁴ The program also had a fee-based element that provided an opening for fraudulent or unscrupulous firms to buy their way to quality. This feature greatly worried officials in states that imported large quantities of poultry. A political cartoon that ran in a Missouri newspaper illustrates the threat that unscrupulous firms might “dump” unwanted poultry on states with more lax regulations (see Figure 5). In the cartoon, two workers stand next to boxes labeled “chicken” that appear to stink from a putrid odor. One asks, “We’ve sold all the healthy ones - what’ll we do with the rest?” The other replies, “Take ‘em to Springfield [Missouri] - they don’t inspect ‘em!”⁴⁵ It appeared that the implementation of the voluntary inspection program through AMS did little more than heighten emerging distinctions within the industry, in which larger producers tended to have a stronger set of relationships with regulators and other officials than smaller firms, growers, or the inspectors themselves. Little wonder,

⁴² *Mandatory Poultry Inspection*, 1956 (Statement of Dr. Aaron Haskin, Health Officer, Department of Health, Newark, NJ) 213.

⁴³ *Mandatory Poultry Inspection*, 1956 (Statement of Senator Reidy), 39-40; 51.

⁴⁴ *Infra.* note 41.

⁴⁵ “Without Poultry Inspection Laws, We May End Up a Dumping Grounds.” *Springfield Leader and Press*. February 16, 1958.

then, that the processors participating in the voluntary service wrote to Congress to say that the Marketing Service provided an “excellent” program.⁴⁶



Figure 5: “We May End Up a Dumping Grounds,” *Springfield Leader and Press* (Missouri), February 16, 1958.

Because of these perceived shortcomings of the voluntary inspection program, consumer and labor advocates initially fought to move oversight of the poultry supply into the Food and Drug Administration. Advocates for poultry inspection often contrasted the FDA’s emphasis on scientific analysis or the Agricultural Research Service’s history of its scientific approach to meat inspection to the marketing imperatives that drove decision making at the Agricultural Marketing Service. In fact, the first hearing on poultry inspection was held by the Committee on Labor and Public Welfare; the committee seriously contemplated delegating poultry inspection to the FDA under the statutory authority of the Food, Drug and Cosmetic Act. At this hearing, state-level public health veterinarians applauded the prospect of placing poultry inspection under the

⁴⁶ *Mandatory Poultry Inspection*, 1956 (Letter, Pacific Dairy and Poultry Association, May 4, 1956), 195.

control of scientists like themselves. A health officer in New Jersey admitted that “I would like to see it in the Food and Drug Administration because our connection is with the Food and Drug Administration ... Health officers are always in constant communication.”⁴⁷ They hoped that giving FDA authority over inspection would ensure that inspectors were sufficiently cognizant of the risks of zoonotic diseases and foodborne illness, which already posed serious problems for workers and consumers. Officials in state departments of public health agreed that an agency primarily concerned with public health - which included the FDA as well as the Public Health Service at that time - had the right scientific expertise to detect the pathogens that could infect poultry and endanger workers or consumers. They argued that “persons who are inspecting, grading, and certifying poultry ... should have the background of public health as it applies to the protection of the human being.”⁴⁸ These advocates also argued that FDA’s mission of protecting consumers from unsafe food, drugs, and cosmetics was far better suited to the needs of a sound poultry inspection program than the conflicting missions of marketing and regulation that defined the work of the USDA. According to the Association of State Public Health Veterinarians, the voluntary program was “degenerating into a sales-

⁴⁷ *Mandatory Poultry Inspection*, 1956, (Testimony of Aaron Haskin), 213.

⁴⁸ *Mandatory Poultry Inspection*, 1956 (Statement of E.A Rogers, Nebraska State Department of Public Health), 245.

promotion program” because it was not “under top administration of veterinarians but rather ... graders and sanitarians.”⁴⁹

Despite this political will in favor of expanding FDA’s authority to cover poultry products, political appointees from the Eisenhower Administration stymied these efforts early in the process. The secretary of HEW flatly rejected this idea, stating that it was “inexpedient” for the FDA to “undertake the added burden of establishing and maintaining a service of this kind at a time when it is tremendously concerned with the expansion of its staff and facilities [to enforce the Federal Food, Drug and Cosmetic Act].”⁵⁰ Representatives from state boards of health who arrived on Capitol Hill, ready to testify in favor of poultry inspection in the FDA, were shocked to find out that HEW officials had already gone on record saying that “[the Food and Drug Administration] is not presently in a good position to develop a poultry inspection service of the magnitude indicated by this bill.”⁵¹ Shirley Barker, of the Amalgamated Meat Cutters and Butcher Workmen, argued that “we can find no reason for the present position of the Food and Drug Administration ... It seems strange to many of us.”⁵² Some proponents of the bill even observed that since FDA was going through an institutional reorganization, it might

⁴⁹ *Mandatory Poultry Inspection*, 1956 (Statement of Oscar Sussman, Secretary-Treasurer, Association of State Public Health Veterinarians; Veterinary Medical Association of New Jersey; New Jersey Health Officers Association), 227.

⁵⁰ *Mandatory Poultry Inspection*, 1956 (M.B. Folsom, Secretary of the Department of Health, Education and Welfare) 7.

⁵¹ *Mandatory Poultry Inspection*, 1956 (Testimony of John L. Harvey, Deputy Commissioner of the Food and Drug Administration, Department of Health, Education, and Welfare) 11.

⁵² *Mandatory Poultry Inspection*, 1956 (Statement from Shirley W. Barker, Director, Poultry Department, Amalgamated Meat Cutters and Butcher Workmen), 56.

be the most appropriate time to add on new responsibilities, including poultry inspection. FDA representatives emphatically disagreed, claiming that the reorganization would only further complicate any efforts to add poultry inspection. The Oregon State Board of Health countered that “[t]his action by the Department of Health, Education, and Welfare disregards the recommendation of the Association of State and Territorial Health Officers and various medical and veterinary medical associations.”⁵³ When pressed on whether the Food and Drug Administration was responsible for protecting the public health, FDA’s deputy commissioner replied, “It is the protection of the public health, *and of the public pocketbook*, as well.”⁵⁴

The reasons why HEW rebuffed advocates’ efforts to push for poultry inspection were never made entirely clear, but archival silences may speak louder than words. While poultry was a comparatively small expense for USDA, poultry inspection would have been an enormous budget line for the chronically underfunded FDA. The agency had no prior experience with implementing a continuous inspection program, so they might have been reluctant to take on a new program that deviated from their existing “spot inspection” approach. Finally, scientific advisors and leaders at the FDA may have been aware that continuous, bird-by-bird poultry inspection would not fulfill or perhaps even

⁵³ *Mandatory Poultry Inspection, Committee on Labor and Public Welfare*, 84th Congress, 2nd Session. Senate. May 9-10, 1956, (Letter from the Oregon State Board of Health), 244.

⁵⁴ *Mandatory Poultry Inspection, Committee on Labor and Public Welfare*, 84th Congress, 2nd Session. Senate. May 9-10, 1956 (Testimony of John L. Harvey, Deputy Commissioner of the Food and Drug Administration, Department of Health, Education, and Welfare); 13. Emphasis added.

directly conflict with their mission of public health and consumer protection. At any rate, livestock and poultry interests opposed assignment in the Food and Drug Administration, and lobbied for poultry to have its “own” inspection service housed in the Department of Agriculture. The Livestock Sanitary Association – a group of sanitarians who were more closely affiliated with beef and pork interests – argued that FDA was a “policing agency” whose functions were distinct from the Department of Agriculture’s role as a “service and inspecting agency.”⁵⁵

Once consumer advocates and labor unions recognized that the Eisenhower Administration planned to block efforts to place poultry inspection under the authority of the FDA, they changed tactics and pushed for an amendment to the Meat Inspection Act. Here, Senator Sullivan once again led the charge. Sullivan rejected the idea of that poultry products should have a separate statute. If the Food, Drug, and Cosmetic Act could not be amended, Sullivan argued, then amending the Federal Meat Inspection Act was the most efficient and direct solution.⁵⁶ Expanding the meat inspection service, Sullivan and others maintained, would allow government to draw on expertise and protocols developed over the last fifty years, rather than creating an entirely new system (and corresponding bureaucratic apparatus) from scratch. Consumers were already

⁵⁵ *Mandatory Poultry Inspection, Committee on Labor and Public Welfare*, 84th Cong., 2nd Session. Senate. May 9-10, 1956 (Statement of W.L. Bendix, Livestock Sanitary Association), 239-240.

⁵⁶ *Poultry Inspection, Hearings Before the Subcommittee on Poultry and Eggs of the Committee on Agriculture*, 84th Congress, 2nd Session. House. July 17-18 (1956) (Statement of Mrs. Leonor K. Sullivan, Representative from the State of Missouri), 3-6.

confident in the beef and pork that bore the round seal of inspection for wholesomeness. Moreover, the inspectors from the Agricultural Research Service had been working comfortably alongside unionized meat cutters and butcher workmen for years. But many advocates from within the industry argued that an amendment to the Meat Inspection Act would be both insufficient and inappropriate to the needs of the poultry industry. They argued that poultry “should have the dignity” of its own inspection service.⁵⁷

The debate over where to situate poultry inspection within the federal government amounted to more than just an interagency quibble about organizational charts and division of labor. This controversy reflected a fundamental disagreement over the underlying purpose of inspection as a policy tool. Those who wanted inspection located in the FDA viewed it as necessary for consumer protection and for protection of human health; consequently, they argued that FDA was the agency with the necessary expertise to accomplish those objectives. Those who argued that inspection belonged in the USDA’s Agricultural Research Service similarly emphasized the importance of prior experience and scientific knowledge as necessary conditions for an inspection program designed to protect the public health, with a higher priority on *veterinary* expertise. By contrast, the USDA officials and industry representatives who made the case for the Agricultural Marketing Service also emphasized the value of experience gained through

⁵⁷ *Compulsory Inspection of Poultry and Poultry Products*, 1957 (Statement of Matt Triggs, American Farm Bureau Federation), 251.

the voluntary inspection program and with the research efforts concentrated in the marketing service.

Thus, the debate over which agency should oversee poultry inspection also revolved around the relative value of different types of expertise. This conflict pitted an older, nineteenth-century model of expertise fostered by the land-grant universities against an associational model from the 1920s, in which government-appointed technical experts cooperated and coexisted with experts embedded within the industry.⁵⁸ What this difference in perspective meant in practice was that two divisions within the same agency - the USDA - which had developed with different purposes and at different times, found themselves at odds with one another. The Agricultural Research Service (ARS) reflected the nineteenth-century model of government experts who had been largely trained in land-grant institutions. By the 1950s, ARS scientists formed a well-established epistemic community that bridged the fields of agricultural science and veterinary science.⁵⁹ The Agricultural Marketing Service (AMS), by contrast, had adapted to an associationalist

⁵⁸ On the importance of land-grant universities, see Kenneth Finegold and Theda Skocpol, *State and Party in America's New Deal* (Madison: University of Wisconsin Press, 1995) and Alan I. Marcus, *Agricultural Science and the Quest for Legitimacy: Farmers, Agricultural Colleges, and Experiment Stations, 1870-1890* (Ames: Iowa State University Press, 1985). On associationalism generally, see Brian Balogh, *The Associational State: American Governance in the Twentieth Century*, (Philadelphia: University of Pennsylvania Press, 2015); Ellis W. Hawley, "Three Facets of Hooverian Associationalism: Lumber, Aviation, and Movies, 1921-1930," in *Regulation in Perspective: Historical Essays*, ed. Thomas K. McCraw (Cambridge, Mass.: Harvard University Press, 1981), 95–123.

⁵⁹ For more on the cultivation of scientific expertise within the USDA, see Carpenter, *The Forging of Bureaucratic Autonomy*, 179-325; on "epistemic communities," see Peter M. Haas, "Introduction: Epistemic Communities and International Policy Coordination," *International Organization* 46, no. 1 (Winter 1992): 3, <https://doi.org/10.1017/S0020818300001442>.

style of governance to achieve their mission of orderly marketing, and developed a far closer alignment with the industries it regulated. Although the AMS had more experience with an inspection program for poultry, their inspection program focused on promotion rather than enforcement, perhaps because of that closer alignment with the interests of the regulated industry. The ARS could also claim far more overall years of experience in running inspection programs for animal protein. Respected by representatives in the public health, veterinary, and even among the industry, ARS presented a compelling choice, especially in the eyes of key interest groups. But the USDA bureaucrats representing the Marketing Service insisted that the veterinary inspectors at ARS were more experienced with the biology of cows and pigs, and knew far less about chickens. They argued that because the AMS housed both the voluntary poultry inspection program, as well as a companion voluntary grading programs for poultry and eggs, it possessed crucial comparative advantages concerning more specific expertise in avian health and poultry science.⁶⁰ This argument also implied the ARS could not easily replicate the specialized expertise concentrated in AMS. At its core, the question of expertise hinged on whether it was more important that inspectors understood the biology of chickens, or how to protect the health of humans.

⁶⁰ *Compulsory Inspection of Poultry and Poultry Products*, 1957 (Testimony of Earl Butz), 101-102. See also an extended discussion of this issue in the contents of Folder: Meat and Poultry Inspection Activities, Box 3331, Record Group 16, Entry 17 – General Correspondence, NACP.

“Bird by Bird” or “Scientific Sampling”

As it turned out, the question of where inspection should be located had enormous implications for how inspection would be carried out. Lawmakers and scientists briefly imagined a poultry inspection regime based in the Food and Drug Administration, that would follow the principles of scientific sampling and periodic “spot-checks” afforded to all other foods besides red meats. But officials in the Department of Health, Education, and Welfare rejected the added responsibility of poultry inspection on a continuous basis, perhaps because they feared that its high budgetary demands might crowd out already paltry funds for all other food products. Besides, Congresswoman Sullivan and other advocates of amendments to the Meat Inspection Act noted that FDA’s spot-check program had already proven insufficient to the task of inspecting the poultry industry: “[FDA] has been able to send an inspector ... once every three to four years.”⁶¹

In adjudicating between the approaches taken by different agencies, Congress might have accounted for the work of the second Hoover Commission, a group convened by President Eisenhower in 1954 to study government efficiency and make recommendations for reducing bureaucratic waste. If considered alongside the massive costs of other agricultural programs, the federal meat inspection program looked like a paragon of government efficiency. But, as the report of the second Hoover Commission dryly observed, meat inspection was *not* an agricultural program. Inspection for

⁶¹ *Poultry Inspection*, 1956, (Statement of Mrs. Leonor K. Sullivan), 4.

wholesomeness, at least ostensibly, sought to protect the public health. And as such, it hardly stood out as an exemplar of thrift. In their report on Federal Medical Services, the Commission noted that the meat inspection program was “the Federal Government's most expensive health regulatory activity.”⁶² At \$14 million dollars, meat inspection “costs more than 3 times as much as Food and Drug Administration activities concerning products with an annual retail value 4 times as great.”⁶³ The Commission did not mince words; they thought that the current regime of carcass-by-carcass meat inspection was both inefficient and ineffective: “We find it difficult to justify as a health measure the present costly inspection of every carcass of meat [shipped in interstate commerce].”⁶⁴ They accordingly recommended that meat inspection should abandon “poke and sniff” inspection entirely and move towards a regime of “scientific sampling.” In this context, the Commission referred to random sampling similar to the audits performed by the FDA, rather than chemical analyses. Their report concluded by noting that “part of the savings resulting from the abandonment of unit inspection [in meat] could be applied towards establishing Federal inspection of poultry on a comparable basis.”⁶⁵ Finally, the Commission also highlighted that more attention should be paid to “environmental sanitation” in meats and poultry, without clarifying what they meant by that term.

⁶² Task Force on Federal Medical Services, “Report on Federal Medical Services,” The Commission on Organization of the Executive Branch of the Government (“2nd Hoover Commission”), February 1955, 81.

⁶³ *Ibid.* Poultry inspection was projected to cost slightly less – closer to \$10 million by 1960 – but comparable to the cost listed here.

⁶⁴ 2nd Hoover Commission, 81.

⁶⁵ 2nd Hoover Commission, 82.

From the moment of publication, however, the Commission's recommendations about meat and poultry inspection fell flat. Indeed, newspaper reporters completely misinterpreted this component of the Commission's report. A widely syndicated Drew Pearson article from 1955, which reported on the Texas psittacosis scandal, incorrectly claimed that "[the Hoover Commission] urged that poultry be subjected to the same compulsory inspection as beef and other meats."⁶⁶ Unfortunately, this characterization of the Commission's findings gave precisely the wrong impression -- that the respected technocratic body had found that a compulsory poultry-inspection law along the lines of meat inspection to be compatible with general principles of administrative efficiency. This framing may have contributed to a broader public sentiment in favor of an inspection regime that promised equivalence to, rather than a potential improvement upon, the program for meats. Even the Senate Committee on Labor and Public Welfare, who "believe[d] that protection of the consuming public should be assigned to the Food and Drug Administration," conceded that placing inspection in the Agricultural Research Service was "the most practical solution ... at least for the present." They noted that their conclusion was "in line with the recommendations" on meat and poultry in the Second Hoover Commission report.⁶⁷

⁶⁶ Tom McNamara, "Poultry Inspection Only Voluntary."

⁶⁷ U.S. Senate Committee on Labor and Public Welfare, "Compulsory Inspection of Poultry," Report of the Subcommittee on Legislation Affecting the Food and Drug Administration, U.S. Senate, 84th Congress, 2nd Sess. Doc. No. 129 (Washington, D.C.: U.S. Government Printing Office, 1956), 1. See also: *Poultry Inspection*, 1956 (Statement by Hon. Harrison A. Williams, Jr. on Behalf of H.R. 11458), 53.

It is unclear why reporters at the time got this story so wrong. A survey of Drew Pearson's personal papers turned up no clear evidence to account for this discrepancy, except for a "press summary" of a different report by the second Hoover Commission.⁶⁸ The complete report of the second Hoover Commission stretches into multiple volumes and thousands of pages; within those pages, meat and poultry inspection is roughly a three-page addenda to a larger section on food within a report titled "Medical Services." Given that the report would surely not reach most lay readers and that such press summaries existed, it is highly likely that Pearson relied on the text of a similar document or other secondhand sources for his knowledge on meat inspection, rather than the actual report. However, without a copy of the material that Pearson actually read, it is impossible to know whether the error was Pearson's or the writer of the summary. Further investigation into the organization that produced the summaries offered even less clarification: a summary of the Federal Medical Services report omits any discussion of poultry and meat inspection entirely, and simply tabulates the proposed cost savings as one of many tactics to reduce costs in federal medical services (which runs entirely counter to Pearson's claim in the article).⁶⁹ There was no clear evidence that members of the Commission attempted to publicly correct the record on this point, either during the hearings or by way of direct response to Pearson. This silence suggests that the strong

⁶⁸ "Hoover Commission," Box 285, Folder 24, Drew Pearson Papers, LBJ Library.

⁶⁹ Citizens Committee for the Hoover Report, *Digests and Analyses of the Nineteen Hoover Commission Reports*. (Washington: Citizens Committee for the Hoover Report, 1955), 30. <https://catalog.hathitrust.org/Record/001156298>.

language that made it into the Commission's proposal might not have been widely shared by everyone on the Commission, or that the issue was not one about which the members of the Commission felt especially strongly.

In any case, once it became clear that the responsibility for poultry inspection would fall to the Department of Agriculture, the debate then turned on whether it was more economical to keep poultry in the Agricultural Marketing Service or to incorporate poultry inspection into the meat inspection program already operated by the Agricultural Research Service. Representatives from the Agricultural Marketing Service promised that they already had the expertise and the personnel in place, and were thus well positioned to expand services to include all producers. Yet many skeptical Congressmen doubted that maintaining two separate inspection services could ever achieve efficiencies. Even Richard B. Russell of Georgia expressed some frustration with the division of inspection across two agencies within the Department of Agriculture: "it seems to me that all of this inspection of meat, poultry and pork ought to be in the same place."⁷⁰ Other representatives (perhaps more beholden to lobbying tactics than senior Democrats like Russell) noted how regional variation in the location of hog/beef and poultry plants undercut any claims that poultry inspection in ARS would generate economies of administrative coordination. This claim, at least, had a grain of truth: unlike beef and

⁷⁰ Quoting Richard B. Russell, "Hearing of Agriculture Subcommittee of the Senate Committee on Appropriations," 4 (typescript), Folder: Meat and Poultry Inspection Activities, Box 3331, Record Group 16, Entry 17 – General Correspondence, NACP.

pork, which were concentrated near the Midwestern farm belt, most of the nation's poultry was 'grown' in the Delmarva Peninsula and the Southeast. By the early 1950s, the 'South Atlantic' region accounted for 40% of all poultry production. According to one dataset, production volumes in Georgia alone eclipsed the entire output of whole regions. (See Table 1)

Table 1: Commercial Broiler Production and Gross Income by States, 1952-1954⁷¹

	1952		1953		1954	
	No. Produced / 1000 head	Gross Income / 1000 dollars	No. Produced / 1000 head	Gross Income / 1000 dollars	No. Produced / 1000 head	Gross Income / 1000 dollars
ME	23048	23647	27888	27447	30677	24848
NH	6051	6466	7261	7448	7334	6078
VT	559	542	593	572	623	493
MA	16147	17266	17600	17424	20416	16363
RI	1136	1280	1272	1329	1348	1136
CT	21154	22777	23904	24765	25099	21324
NY	8194	9034	9259	10555	8518	9029
NJ	6644	8003	7840	9900	8232	9715
PA	18035	18089	20740	18318	22814	19159
N. Atlantic	100968	107104	116357	17758	125061	108145
OH	11102	10991	12878	11772	13264	10286
IN	33674	32112	33674	29633	36368	26767
IL	27393	24489	14207	12464	15059	10842
MI	3309	3499	3971	4118	3772	3411
WI	11166	11018	13623	12468	17029	13841
E. N. Central	86644	82109	78353	70455	85492	65147
MN	3980	3255	4139	3313	3311	2334
IA	8590	7473	9449	7682	10394	7855
MO	23544	20342	25898	20589	28488	18888
ND						
SD						
NE	6138	5322	5524	4474	5248	3542
KS	3272	2703	2945	2383	2650	1814
W. N. Central	45524	39095	47955	38441	50091	34433

⁷¹ Transcribed from a table of the same title in *The Southeastern Poultryman*, January 1956, 55. The original source of the data is unknown. Per the original, gross income “includes value of production in households of producers which is less than 1 percent of total production.”

DE	65191	56990	68451	55808	69820	48916
MD	56966	49800	62093	50624	58367	40892
VA	50642	43957	58745	47349	59332	41384
WV	19075	17940	22508	19087	25434	18638
NC	43366	34485	50738	38698	58349	37903
SC	14301	11412	13718	10255	13992	8698
GA	112621	88610	121631	93826	154471	101951
FL	9980	8383	10479	8782	11736	8202
S. Atlantic	372142	311577	408363	324429	451501	306584

KY	3677	3306	5221	4276	7884	5464
TN	8762	6992	10952	8218	11500	7304
AL	23484	18261	28416	19948	47739	32653
MS	30751	24109	35671	25715	40308	25055
AR	72627	57346	74080	54553	78525	48371
LA	8113	6701	11358	8280	12039	8307
OK	6728	5177	7132	5372	6775	4287
TX	60994	49356	65264	52237	71790	48509
S. Central	215136	171248	238094	178599	276560	179950

MT						
ID	1126	1000	1464	1397	1332	1093
WY						
CO	2129	1914	2278	1982	2210	1903
NM						
AZ	825	814	594	556	535	486
UT	1634	1520	1928	1721	1870	1580
NV						
WA	7513	7150	8339	7819	9590	7759
OR	5093	4831	4889	4041	5525	4177
CA	48079	49502	48560	46472	50017	41934
Western	66399	66731	68052	63988	71079	58932

US	886813	777864	957174	793670	1059784	753191
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Congressional representatives from poultry-producing states repeatedly made the case that while poultry inspection belonged in the Department of Agriculture, poultry was somehow “different” from red meat. As one Maryland representative put it, “I can assure you gentlemen that poultry is not only not red meat, but the factors and conditions in the field are completely different” from beef and pork. According to this self-professed “hatcheryman,” “[t]hey are handled differently on the farm, and they are handled differently in commerce.”⁷² Beyond these platitudes, representatives who spoke on behalf of the industry rarely clarified why those differences were so great that they required an entirely separate inspection service. However, the size of the carcasses and processing practices mattered: “Processing poultry is unlike the processing of red meat due to the sizes of the individual carcasses and due to the various means and methods of processing, packaging, and distributing as demanded by consumers.”⁷³ More convincingly, one Senator pointed out the dramatic variation in scale indicated by the common use of the term “carcass” in writing inspection laws; inspecting one “carcass” of poultry in 1956 involved an examination of approximately 3 pounds of meat; by contrast, a single “carcass” of beef or pork amounted to an inspection of 1,500-1,800 pounds of meat.⁷⁴ Scale mattered at the level of processing as well; as described in chapter 1, even large-

⁷² *Poultry Inspection*, 1956 (Statement of Edward T. Miller, Representative in Congress from the State of Maryland), 49.

⁷³ *Mandatory Poultry Inspection*, 1956 (Statement of the North Carolina State Department of Agriculture), 242-243.

⁷⁴ U.S. Congressional Record, Vol. 103, April 8, 1957, 5231.

scale poultry production never developed a centralized packinghouse model on the same scale as beef or pork. In the 1950s, the industry was very much defined by the existence of numerous slaughter and processing plants with small sizes but comparatively high speed for the time. Hence, these legislators argued, “there are many places where poultry is processed which could not possibly support a setup for red meat.”⁷⁵ In an era of command-and-control regulations, in which an “inspection” law might also require compliance with extensive design standards that dictated such specifics as the layout of facilities and the positioning of specific equipment, this would not have been an idle concern.

Some members of the poultry industry went so far as to argue that poultry deserved its own inspection service. They often claimed that combining the red meat and poultry inspection service would “subordinate” poultry to the larger and more influential red meat interests. In making this claim, they drew on the recent history in the Agricultural Marketing Service, which initially combined poultry with dairy interests: “[t]his industry has experienced the trial and frustrations of having its governmental relations tied administratively to the coattails of another.”⁷⁶ Poultry lobbyists stressed that poultry and red meats were competitive products, but their arguments also reflected a developing origin myth about the rapid growth of the industry.⁷⁷ Especially in their

⁷⁵ *Infra.* note 72.

⁷⁶ *Poultry Products Inspection Act*, 1957 (Statement of Harold Klahold, President, Northeastern Poultry Producers Council, Preston, MD), 37.

⁷⁷ For a summary of that origin myth, see Sawyer, *The Agribusiness Poultry Industry*.

correspondence, lobbyists and industry representatives pointed out how the poultry industry had been treated like a “step-child,” but nevertheless managed to “solve its own problems without the aid of government programs involving such things as quotas, production controls, and subsidies.”⁷⁸ (Whether inspection counted as “aid of a government program” was left largely unexamined.) But representatives from the Livestock Sanitary Association could not have disagreed more with the idea that poultry deserved a separate service. By contrast, they “hope[d] that Congress will not lightly discard this kind of experience ... by *denying* the poultry industry the services of the Meat Inspection Branch of the Department of Agriculture.”⁷⁹

“This is Definitely a Compromise Bill” : P.L. 85-172

President Dwight Eisenhower signed the Poultry Products Inspection Act into law in August 1957, to go into effect January 1, 1958, and with full inspection to all facilities who shipped in interstate commerce by January 1, 1959. The final law dictated that the Secretary of Agriculture “shall cause to be made by inspectors post mortem inspection of the carcass of each bird processed;” and “shall, where and to the extent considered by him necessary, cause to be made by inspectors ante mortem inspection of poultry” in any “official establishment.” (Antemortem inspection would be conducted in groups or

⁷⁸ The reference to “step-child”: *Poultry Products Inspection Act, 1957* (Statement by Sterling A. White, Georgetown, Del., representing the Eastern Shore Poultry Growers Exchange), 24.

⁷⁹ *Mandatory Poultry Inspection, 1956*, (Statement of W.L. Bendix, Livestock Sanitary Association), 239-240. (Emphasis added)

“lots”).⁸⁰ Congress finally assigned poultry inspection to the Department of Agriculture, but granted administrative discretion to the Secretary of Agriculture to designate the branch that would operate the inspection service.⁸¹ In doing so, lawmakers maintained a system in U.S. food inspection which treated animal proteins differently from all other foods and drugs, keeping authority over food safety divided between the U.S. Department of Agriculture and the U.S. Food and Drug Administration. Even with the support of scientists and key Senators on the Labor and Public Welfare Subcommittee, representatives from HEW repeatedly rebuffed the prospect of a sampling-based inspection regime based in the Food and Drug Administration. Moreover, the final law gave the Secretary of Agriculture “exclusive” jurisdiction over the inspection of poultry products, and poultry received an exemption from the Federal Food, Drug, and Cosmetic Act. While FDA maintained authority over the safety of additives in poultry feed, the exclusivity provision limited their capacity to intervene in matters of poultry safety without the permission or request of the Department of Agriculture.⁸²

Thus far, this chapter has outlined how the final statute represented a compromise among a set of interest groups who disagreed about almost every policy question other than the need to do something about poultry inspection. In its report to the White House,

⁸⁰ “Poultry Products Inspection Act.” Public Law 85-172, 71 Stat. 443. Sec. 6 (a) – (b).

⁸¹ P.L. 85-172. 71 Stat. 442. Sec. 4(k) (included as part of the definition of the term “inspection service”; the term “inspection” is not defined)

⁸² P.L. 85-172, 71 Stat. 448. Sec. 18(a). (NB: this provision may have been misunderstood by Congresspersons at the time, or I may be misunderstanding precisely what the exemption means. See: “[This bill] does not destroy the rights of the Food and Drug Administration.” “Inspection of Poultry and Poultry Products.” Congressional Record, House, July 15, 1957. 11719.)

the Bureau of the Budget characterized the bill as “probably the best compromise that could be worked out from the several similar bills which were introduced.”⁸³ The legislation ultimately served most of the objectives of industry players seeking to expand into foreign markets, but the PPIA also met the demands of average consumers who understood “government inspected meat” to indicate continuous inspection on par with “other” meats like beef and pork. Autonomous bureaucrats at the USDA’s Agricultural Marketing Service leveraged this ideological impasse to shape the PPIA in ways that expanded their authority; they further advanced their cause by forming a coalition with key industry players.⁸⁴ At the same time, a consumer-labor coalition shifted tactics to accept a surprisingly narrow vision of inspection, as though they were willing to accept anything that looked and smelled like the red-meat inspection service. However, in the final moments before the House voted on the bill, Leonor Sullivan remarked: “I would like to say to the House that this is definitely a compromise bill. It does not go as far as I

⁸³ Letter from Roger Jones, Assistant Director for Legislative Reference, to the President, the White House, Aug 28 1957, Folder: “Poultry,” Box 104, White House Office Records Officer, Reports to the President on Pending Legislation, Eisenhower Library.

⁸⁴ Daniel Carpenter defines “bureaucratic autonomy” as a pattern in which “bureaucrats take actions consistent with their own wishes ... to which politicians and organized interests defer.” (Carpenter, 4) Importantly, Carpenter clarifies that autonomy is not just that bureaucrats can “take any action at will” but that “*they can change the agendas and preferences of politicians and the organized public.*” (Carpenter, 15) The extent of Agricultural Marketing Service’s influence over the PPIA is reminiscent of Carpenter’s analysis of USDA in the late nineteenth century, as well as his chapters on the Postal Service, both of which emphasize the importance of networks and legitimacy. While Senators and consumer groups challenged the legitimacy of the AMS as the appropriate inspection service, the agency successfully leveraged coalitions among the diffuse interests of the industry and other agencies to expand their authority. Carpenter, *The Forging of Bureaucratic Autonomy*, 14-15.

would like in a number of respects.”⁸⁵ But just because consumers were dissatisfied does not mean that the industry got everything they wanted. In a major trade journal, an editor described the 1957 Act as the “best bill that could be obtained in the face of opposing pressure groups.”⁸⁶

The legislative outcome of the Poultry Products Inspection Act clearly illustrates both the strengths and weaknesses of the “committee era” in Congressional politics.⁸⁷ Through their seniority, the Southern Democrats who dominated the Agriculture Committee successfully wrested control of the legislation from the Labor and Public Welfare Committee, who envisioned an entirely different approach to poultry inspection within the Food and Drug Administration.⁸⁸ By extension, the large-volume poultry producers in the Southeast and Delmarva Peninsula who enjoyed strong relationships with these senior Senators were better positioned to shape the legislation to suit their interests. Finally, other Congress members were occupied with more pressing legislation – most notably, the first Voting Rights Act in 1957 (referred to obliquely as “the civil rights bill”) – which amplified the effect of intra-committee politics.⁸⁹ Members of

⁸⁵ “Inspection of Poultry and Poultry Products.” Congressional Record, House, July 15, 1957. 11718.

⁸⁶ “Inspection Law Poses Challenge,” Editorial, *Southeastern Poultryman*, Sept. 1957, 38.

⁸⁷ Julian E. Zelizer, *On Capitol Hill: The Struggle to Reform Congress and Its Consequences, 1948-2000* (Cambridge: Cambridge University Press, 2006).

⁸⁸ U.S. Senate Committee on Labor and Public Welfare, “Compulsory Inspection of Poultry,” Report of the Subcommittee on Legislation Affecting the Food and Drug Administration, U.S. Senate, 84th Congress, 2nd Sess. Doc. No. 129 (Washington, D.C.: U.S. Government Printing Office, 1956), 1-14.

⁸⁹ The legislation in question is the Civil Rights Act of 1957 (Pub. L. 85-3515). This was the first major piece of civil rights legislation since Reconstruction.

Congress not directly invested in the outcome of poultry legislation, or, like Sullivan, lacked sufficient clout to counter the will of Southern Democrats, easily turned their attention to other matters. Although poultry inspection received sporadic media coverage, it rarely made front-page news. The average member of the public likely saw little that was unusual or objectionable in replicating the inspection model for red meats and in needing a new law to do so. The public responded most strongly to evidence of workers falling ill from rare diseases that revealed the gaps in inspection for poultry, rather than comparatively academic arguments that scientists made about how the new inspection regime might be already outdated and ineffective. Without widespread public mobilization, lawmakers negotiated a compromise among a few interest groups rather than a broader set of competing interests. As the outcome of the legislation bears out, this process cast aside potentially valuable opinions and evidence.

Despite the passage of time and the corresponding advancement of science since 1906, the legislative debates over how to modernize food safety laws did little to prioritize the perspectives of most scientists or public health experts. While these experts sent in dozens of letters to make their case, far fewer witnesses offered oral testimony compared to the numerous trade associations. The 1957 legislation for poultry inspection followed the methods of continuous, carcass-by-carcass inspection employed in the 1906 Meat Inspection Act, rather than other inspection regimes based on random sampling or

chemical analysis, some of which predated the law by many decades.⁹⁰ Although scientific knowledge of food safety had advanced significantly since 1906, neither consumers, industry leaders, nor federal regulators seriously considered alternatives to continuous inspection. The major points of debate were the degree of continuous inspection that would be required – one faction even argued for continuous antemortem inspection of each and every bird. This outcome is surprising when juxtaposed against the statements of state-level public health officials and the technocrats of the Hoover Commission, both of whom presented strong arguments that de-emphasized the importance of continuous inspection in favor of inspection premised on scientific and veterinary expertise.

Regulators from the Agricultural Marketing Service repeatedly reminded legislators that they had been promulgating regulations since 1946, under the authority of the Agricultural Marketing Act, which “have been developed in accordance with the requirements of the Administrative Procedures Act which permits the public to participate in their formulation.”⁹¹ Perhaps the representatives from the Agricultural Marketing Service were much more worried about losing the accumulated regulations, than the supposed accumulation of expertise.

⁹⁰ cf. the early history of the Bureau of Chemistry, as described in Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton University Press, 2001), 255-275.

⁹¹ *Compulsory Inspection of Poultry and Poultry Products*, 1957 (Testimony of Earl Butz), 8.

At times, it sounded like the bureaucrats and members of trade associations wanted something like adaptive or even responsive regulation. Representatives from the Southeastern Poultry and Egg Association pleaded for greater discretion to the agency:

“[w]e are not writing a bill just for this year or next year ... we are writing something here for a long time, and when you spell something out ... it is very difficult to get it changed, but if you leave the details to be spelled out in the regulations, then changes can be made to make the law to meet changing conditions.”⁹²

Similarly, a representative from the American Poultry and Hatchery Federation (headquartered in South Carolina) argued that the “administrator should be given the power to establish procedures in keeping with the latest scientific knowledge.”⁹³ The final legislation left several of the major points of contention – including the location of the inspection service – to the discretion of the Secretary. One could easily read this argument for more delegation as a classic example of statutory capture, in which the statute itself is captured by special interests.⁹⁴ However, the representatives from Southeastern Poultry and Egg and American Poultry and Hatchery Federation also made

⁹² *Poultry Products Inspection Act*, 1957 (Statement of Leland Bagwell, President, Southeastern Poultry & Egg Association, and Henry C. Carbaugh, Tennessee Egg Co., also representing Southeastern Poultry & Egg Association), 86.

⁹³ *Poultry Products Inspection Act*, 1957 (Statement of O.H. Green, Executive Director, American Poultry and Hatchery Federation, Spartanburg, S.C.), 61.

⁹⁴ On statutory capture, see Carpenter, Daniel, “Detecting and Measuring Capture,” in *Preventing Regulatory Capture*, ed. Daniel Carpenter and David A. Moss (Cambridge: Cambridge University Press, 2013), 57–68; on adaptive regulation, see Lori S. Bennear and Jonathan Wiener, “Adaptive Regulation: Instrument Choice for Policy Learning over Time,” Working Paper, 12 February 2019, <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Regulation%20-%20adaptive%20reg%20-%20Bennear%20Wiener%20on%20Adaptive%20Reg%20Instrum%20Choice%202019%2002%2012%20clean.pdf> (last accessed February 27, 2020; copy in author’s possession).

a case for something like an adaptive, or at the very least responsive, regulatory regime for poultry inspection.

While they could agree that poultry inspection constituted an essential function of government, all participants highlighted their concerns about managing costs and maintaining administrative efficiency – and these concerns ultimately dictated the shape of the final law. For example, while the American Association of University Women weighed in on such technicalities as antemortem and postmortem inspection (in favor of both), they chose not to “take any stand” on where to assign the inspection service. Instead, they “favor[ed] having inspection carried out by the agency whose personnel and experience together would provide the most efficient administration.”⁹⁵

Yet, in spite of all the arguments about government efficiency, compulsory poultry inspection required a vast expansion of the bureaucracy, as one representative observed: “We are setting up a new bureau in the department, one that will ultimately ... grow into a bureaucracy of 10,000 to 15,000 people.”⁹⁶ By the time legislators recognized that the bill might fall short in addressing concerns about consumer protection or public health, it was too late to stop the momentum that had gathered around it.

Knowing that the bill would pass, House member B. Carroll Reece, of Tennessee,

⁹⁵ *Mandatory Poultry Inspection*, 1956 (Statement in Support of S. 3176, Submitted by Dr. Janet L. MacDonald, Chairman, Social Studies Committee, and Mrs. James W. Kideney, Chairman, Legislative Program Committee, American Association of University Women, Washington, D.C.), 250.

⁹⁶ “Inspection of Poultry and Poultry Products.” Congressional Record, House, July 15, 1957. 11719.

nonetheless took the time to air his grievances in the final hearing on poultry inspection, claiming that “there is no intention on the part of the sponsors of this legislation nor of the Department of Agriculture that there be bird-by-bird inspection made, because it is utterly impossible to have such inspection made under our producing system in this country.”⁹⁷ This statement suggests that some of the producers and regulators who advocated for a more flexible system of inspection may have done because they were captured or concerned only for their own self-interests. It may also suggest that these producers knew that bird-by-bird inspection would be untenable from the moment it began.

According to the Bureau of the Budget, the size of the appropriation for poultry inspection would be \$1.3 million in the 1958 fiscal year, which was a relatively modest sum compared to other agricultural programs. However, the Agriculture Department’s actual calculations of appropriations turned out to be significantly higher: \$3.5 million in 1958, \$7.4 million in the 1959 fiscal year, and \$9.7 million for subsequent fiscal years.⁹⁸ It turned out that, rather than eliminate the excess costs of meat inspection as advocated by the Hoover Commission only a few years earlier, the U.S. government merely replicated those costs for poultry.

⁹⁷ Ibid.

⁹⁸ Letter from Don Paarlberg to Percival Brundage, August 21 1957, Folder: “Poultry,” Box 104, WHO Record Officer Reports to the President on Pending Legislation, Eisenhower Library.

Implementing the Poultry Products Inspection Act, 1958 - 1960

Almost exactly as some consumer groups feared, producers immediately used the phrase “government inspected” first and foremost as a marketing tool. An examination of advertisements from before 1958 shows that firms participating in voluntary inspection used the exact same seal after enactment of the 1957 law as before, and retained comparable marketing approaches.⁹⁹ Consumers who did not follow legislative developments very closely might not have even noticed the change. Moreover, by giving administrative discretion to the Secretary of Agriculture, Congress all but ensured that poultry would be designated – at least at the outset – to the Agricultural Marketing Service. Later efforts to reorganize the department batted poultry inspection between the Agricultural Research Service and the Agricultural Marketing Service several times over the next two decades, until the formation of the Food Safety and Quality Service (FSQS) in the late 1970s. FSQS brought together the inspection components of the Animal and Plant Health Inspection Service (APHIS) and the meat inspection programs into one service; it was renamed the Food Safety and Inspection Service in the early 1980s.

⁹⁹ “Now! Government Inspected for Wholesomeness (Advertisement for Jesse Jewell’s Quality Fryers),” *The Atlanta Constitution*, September 14, 1950; “Good Eating and Easy Living Just Go Together! (Advertisement for Jesse Jewell’s Frozen Fresh Chicken),” *The Tampa Tribune*, June 15, 1956, 51; ““Mom! Dad! Kiddies! Let’s Eat Chicken (Advertisement for Jesse Jewell’s Fresh Frozen Chicken),” *Nashville Banner*, February 26, 1959.

(During the creation of the Department of Homeland Security in the early 2000s, APHIS underwent yet another reorganization.)¹⁰⁰

Even after Secretary Benson assigned poultry to the Agricultural Marketing Service, concerns about efficiency and the potential for duplication of services did not disappear. Skeptical Congressmen revived the issue in the appropriations hearings for fiscal year 1959. Addressing USDA representatives, [House member] Whitten noted: “it would be wise for you to consolidate these things . . . it would prevent duplication and, in my judgment, would be much less expensive to operate in the long run.”¹⁰¹ In response to these concerns, Secretary Benson convened a committee to review the meat and poultry inspection services.¹⁰² The 5-member committee included the president of Safeway, a former representative from the Grange, and three government officials.¹⁰³ The study group concurred with the decision of USDA to keep inspection in the Marketing division, and also confirmed that “conclusive evidence was lacking to support merger of the two inspection services on the theory that one or the other could absorb activities in the same

¹⁰⁰ U.S. Animal and Plant Health Inspection Service, “A 40-Year Retrospective of APHIS, 1972-2012,” n.d. (2012), https://www.aphis.usda.gov/about_aphis/downloads/40_Year_Retrospective.pdf. (last accessed February 11, 2020)

¹⁰¹ Testimony of Mr. Whitten, Hearings of Agriculture Subcommittee, House Committee on Appropriations, 1291-1292 pt 3, p 2, as quoted in “Views on Inspection Functions in USDA as Disclosed During Considerations of Appropriations Bill for 1959,” Folder: “Meat and Poultry Inspection Activities,” Box 3331, Record Group 16, Entry 17 - General Correspondence, NACP.

¹⁰² Letter from Ezra Benson to Miles Horst, October 17, 1958, “Meat and Poultry Inspection Activities,” Box 3331, Record Group 16, Entry 17 - General Correspondence, NACP.

¹⁰³ Meeting of October 27, 1958, Minutes, 1, RG 16, Entry 17 - General Correspondence, Box 3331, “Meat and Poultry Inspection Activities,” NACP.

or conveniently adjacent plants.”¹⁰⁴ The committee saw opportunities for consolidation at the administrative level in the future, but did not make any specific recommendations other than that poultry and meat inspection should utilize existing laboratory facilities. In short, the committee argued that “[s]ubstantial economies resulting from consolidation were not apparent.”¹⁰⁵

Finally, in spite of the Agricultural Marketing Service’s emphatic claims that they were the best prepared to take on the task of inspection, the agency failed to hire and train enough inspectors in time for the full implementation of the law in January 1959. Expanding inspection to cover the numerous small, rural plants demanded such a large work force that lay inspectors were immediately needed to supplement the work of higher-skilled veterinary inspectors.¹⁰⁶ The shortage of inspectors, coupled with varying degrees of preparedness for inspection at the plant level, meant that not all producers went under inspection at the same time. Producers had to prove that their plant met sanitation standards in order to “qualify” for inspection and gain access to a limited corps of government inspectors. Those who did not “qualify” for inspection service by Oct 1, 1958 found themselves at a distinct disadvantage, even if they operated under comparable measures of food safety as the plants who had received inspectors.¹⁰⁷ During earlier

¹⁰⁴ Report of Study Group on Meat and Poultry Inspection Services in USDA [undated], 4, “Meat and Poultry Inspection Activities,” Box 3331, RG 16, Entry 17 - General Correspondence, NACP.

¹⁰⁵ Ibid. 14.

¹⁰⁶ “Poultry Inspector Gives Pointers.” *The Greenville News* (SC). January 12, 1959, Main Edition.

¹⁰⁷ “Report from Washington,” *The Daily Notes* (Canonsburg, Pennsylvania). December 31, 1958.

appropriations hearings, even a few Southern Democrats expressed skepticism about the AMS officials' claims that keeping inspection in their department would prove more efficient. Consequently, these same Senators were more than a little irate when AMS proved unable to provide enough trained inspectors to service members of their constituency in time for the act to go into effect on January 1, 1959.¹⁰⁸



Figure 6: “Made to Order for Government Inspection,” Nichols Cross advertisement, *The Southeastern Poultryman*, September 1957, 38, and January 1958, 195.

But compulsory inspection reaped boons for suppliers and breeders who created demand for novel products by linking them to the new inspection rules. An advertisement by Nichols breeders from 1958 features the stamp “Made to Order for Government Inspection” superimposed over a full-page image of the “Nichols cross” breed of chicken.

¹⁰⁸ “Russell Hits Poultry Plan of Inspection,” *The Anniston Star*, December 24, 1958.

This ad suggested that Nichols birds were healthier and more uniform, thus, more likely to pass government inspection. (See Figure 6) Ads like these departed from earlier marketing approaches that alluded to these lines' ancient pedigree in the prehistoric "jungle fowl." Similarly, pharmaceutical companies like American Cyanamid told producers that antibiotics like Aureomycin could reduce "downgrades" and "throw-outs" caused by poor health.¹⁰⁹ (See Figure 7)

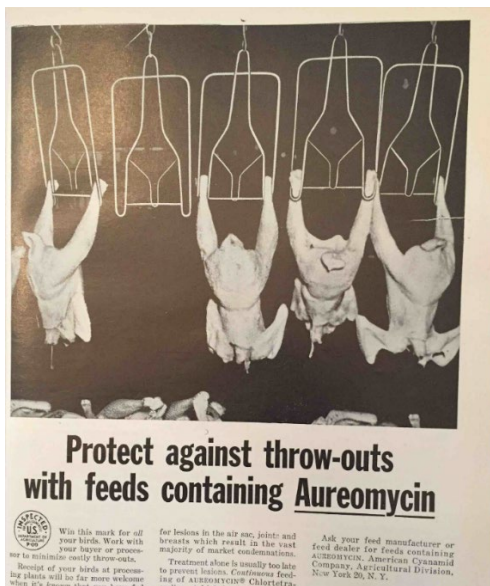


Figure 7: "Protect against throw-outs," American Cyanamid advertisement, *The Southeastern Poultryman*, January 1959, 25.

Firms that produced specialized equipment for processing plants also took an opportunity to turn the inspection requirements into a marketing opportunity. Once touted for their modern and advanced features, these companies now sold such devices as the

¹⁰⁹ "Protect Against Throw-Outs with Feeds Containing Aureomycin," American Cyanamid Advertisement, *Southeastern Poultryman*, Jan 1959, p. 25.

“Power-Flo Sof-Scalding” and “Multi-Matic Picking” machines as the “ONLY way To Meet Today’s Standards.”¹¹⁰ Companies that produced seals and tags promised custom labels with brand names placed alongside the seal of government inspection, which would “facilitate acceptance of your poultry” in the marketplace.¹¹¹ An October 1958 ad for one labeling company depicted the figure of Death alongside the title “Don’t Let Time Pass - Before checking U.S.D.A. mandatory inspection law!” The ad continued: “[the inspection law] goes into effect Jan. 1, 1959 - be sure you have the proper seal for labeling your birds.”¹¹² (See Figure 8)

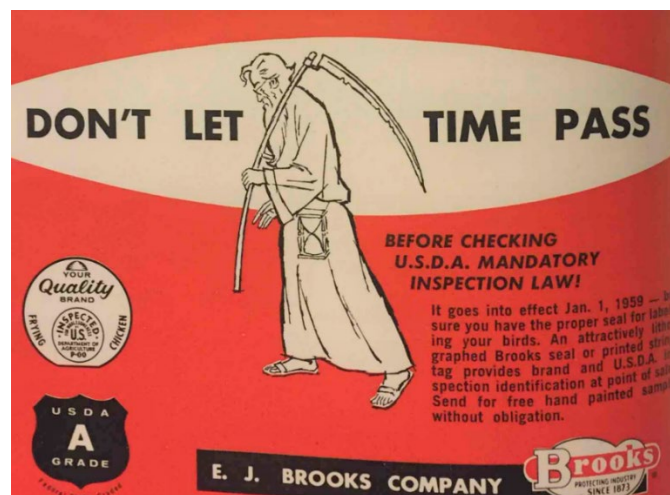


Figure 8: “Don’t Let Time Pass,” Brooks Company advertisement, *The Southeastern Poultryman*, October 1958, 42.

¹¹⁰ Gordon Johnson (Kansas City, Mo.) Advertisement, *Southeastern Poultryman* Sept. 1957, 23.

¹¹¹ “Put Your Inspection and Grading Program into High Gear with Stoffel Seal-Tags,” Advertisement, *Southeastern Poultryman*, January 1958.

¹¹² “Don’t Let Time Pass – Before Checking USDA Mandatory Inspection Law!” Brooks Company Advertisement, *Southeastern Poultryman*, October 1958, p.42.

Despite admonishments by regulators and marketers to “prepare” for inspection, the early years of implementation were marked by uneven and uncertain access to inspection services.¹¹³ Once it became compulsory, inspection conferred a more pronounced competitive advantage than the voluntary program. The uneven implementation further complicated an already competitive landscape. Producers who received exemptions from inspection to accommodate the shortage of inspectors lobbied against the use of the words “Exempted” on the packaging, on the grounds that it amounted to “a red flag being waived before the housewife.” They insisted “that the Department either change the wording or request that it be stamped on the shipping container only” to make it appear that their poultry products did not appreciably differ from government inspected ones.¹¹⁴ One processor even proposed the idea of “split-line” operation to handle the shortfall, in which the plant ran one line with government inspection, and one line without inspection.¹¹⁵

Not surprisingly, established producers who already met key requirements and had made the necessary upgrades and investments in new equipment, reaped most of the benefits from compulsory inspection. It appears that larger players who had been previously operating under the voluntary program got inspectors faster than others, which

¹¹³ “Russell Hits Poultry Plan of Inspection,” *The Anniston Star*, December 24, 1958.

¹¹⁴ Southeastern Poultry & Egg Association, To: Processing Members of Southeastern, Subject: Poultry Inspection Program, Dec. 17, 1958, Folder 3, Box 35, Series C. Congressional, IX. Legislative, B, Agriculture and Forestry, Richard B. Russell Papers, Russell Library.

¹¹⁵ Letter from Harold Crow (Athens Poultry Incorporated) to Richard B. Russell, March 14, 1958, Folder 3, Box 35, Series C. Congressional, IX. Legislative, B, Agriculture and Forestry, Richard B. Russell Papers, Russell Library.

confirmed small processors' fears that inspection privileged larger firms and "'doomed' the small processor" – giving the figure of Death used in the ad above an entirely different gloss.¹¹⁶ In the immediate aftermath of the Poultry Inspection Act's passage, many of the inspectors from the voluntary program operated by the Agricultural Marketing Service kept going to work, and the owners of the processing plants kept paying their salaries. On New Year's Day, 1958, practically the only thing that changed was that those plant managers stopped writing checks to the federal government.

Thus, upon closer examination, the Poultry Products Inspection Act includes a number of paradoxical outcomes. Congress debated the merits of bird-by-bird inspection in spite of extant scientific evidence that suggested that it would have modest impacts on public health. Regulators who testified in favor of reducing the administrative burden inadvertently helped create an entirely new bureaucracy from whole cloth. Consumers who demanded the very highest standard in food safety ended up with a regulatory regime that was already half a century old. Advocates who demanded equality with meat inspection were served up a law that contained key loopholes premised on the idea that poultry was different from other meats. In its initial version, lawmakers imagined the poultry inspection service as a new arm of the Food and Drug Administration. But the final law furthered the mission of autonomous bureaucrats at the USDA and sidelined

¹¹⁶ "Poultry Inspection 'Dooms' Small Processor." *The Morning Call* (Allentown, PA), September 24, 1957, 7.

FDA into a supporting role in approving feed additives and monitoring growth promoters. In a broader moment of consumer activism around unseen hazards, within a political climate professing an interest in government efficiency and reduced administrative burden, the very fact that bird-by-bird inspection was even considered, let alone selected as the policy response, turns out to be hardly a victory, but in fact a surprising historical puzzle.

POULTRY INSPECTION AND THE QUEST FOR “PURE FOOD,” 1958-1968

Additives, Adulterants, and Consumer Activism in the Mid-Twentieth Century

The Poultry Products Inspection Act was just one of many actions in the late 1950s and early 1960s that expanded federal oversight of an increasingly complex food supply. By the mid-twentieth century, newly affluent consumers began to set aside their concerns about prices and began to pay more attention to the safety and quality of food.¹¹⁷ But food scares based on fears of unseen contaminants or unsafe additives drew far more attention than the threat of foodborne illness. The proliferation of novel food

¹¹⁷ Cohen, *A Consumers' Republic*; Meg Jacobs, *Pocketbook Politics*; Xaq Frohlich, “Accounting for Taste: Regulating Food Labeling in the ‘Affluent Society,’ 1945–1995,” *Enterprise & Society* 13, no. 4 (December 2012): 744–61, <https://doi.org/10.1017/S1467222700011447>.

products and processing techniques complicated the distinction between adulterants and additives; even an intentionally added ingredient could turn out to be unsafe.¹¹⁸

In many respects, consumers' concerns about food safety echoed earlier worries about economic adulteration in the nineteenth century that originally prompted pure food legislation in 1906. In the mid-1950s, however, consumers also feared a host of new and unseen hazards, from atomic radiation to chemical and pesticide residues.¹¹⁹ In 1954, several tuna fishermen in Japan died from exposure to high levels of radioactive "fall-out" from aboveground nuclear testing, which revealed this danger to the public for the first time. Subsequent studies revealed that fallout from nuclear tests conducted in Nevada could travel hundreds of miles, settling on crops and grazing fields for cattle. A few years later, the infamous "baby tooth survey" conducted by a citizen-science organization St. Louis revealed for the first time that radioactive isotopes from fallout deposited in children's teeth, which terrified parents across the country.¹²⁰

¹¹⁸ Sarah A. Vogel, *Is It Safe?*; Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton University Press, 2014), 118-228; Concerns about food additives dominate most articles and features in the *Consumer Bulletin*, published by Consumer's Research, during this period. See especially: "The Food You Eat," *Consumer Bulletin*, Sept. 1957 18-22, and "The 1958 Amendment to the Food and Drug Act," *Consumer Bulletin*, November 1958, 11-13, both in Box 66, Folder 22, Consumers' Research, Inc. Records. MC 3. Special Collections and University Archives, Rutgers University Libraries.

¹¹⁹ Alan I. Marcus, *Cancer from Beef: DES, Federal Food Regulation, and Consumer Confidence* (Baltimore, Md.: Johns Hopkins University Press, 1994); Pete Daniel, *Toxic Drift: Pesticides and Health in the Post-World War II South*. (Louisiana State University Press, 2007).

¹²⁰ Ralph E. Lapp, *The Voyage of the Lucky Dragon*, (New York: Harper & Bros. Publishers, 1957.) 25-33; on fallout and nuclear testing, see Howard Ball, *Justice Downwind: America's Atomic Testing Program in the 1950's* (New York: Oxford University Press, 1986); Robert A. Divine, *Blowing on the Wind: The Nuclear Test Ban Debate, 1954-1960* (Oxford: Oxford University Press, 1978); On the baby tooth survey, see W. K. Wyant, Jr. "50,000 Baby Teeth," *The Nation*, June 13, 1959; Allen Smith,

While the constituency of the “consumer movement” broadened over this period, this “second-wave” consumer activism in the 1950s and early 1960s was, by and large, led by women who worked inside and outside the federal government. In many cases, the same women who demanded that their Congressional representative do something about poultry inspection in 1956 were also the “tooth fairies” who shipped their baby’s teeth to labs in St. Louis for analysis in 1957.

These consumers demanded government action primarily to resolve information asymmetries between producers and consumers, with the expectation that government scientists could provide unbiased information and protect them from unsafe products. But the mid-twentieth century was also a period of profound change and scientific discovery; what Americans imagined to be safe one day could turn out to be a cancer risk the next - and some of these risks did not become apparent for decades.

For example, a week before Thanksgiving in 1959, Arthur Flemming, the Secretary of Health, Education, and Welfare (HEW), delivered a public statement that cranberries were unsafe to eat.¹²¹ Flemming made this statement after learning that some farmers had incorrectly applied a weed-killer, aminotriazole, in a way that left high residue levels on the cranberries. This news devastated (and, frankly, infuriated) cranberry farmers, who depended on holiday cranberry purchases for their livelihoods.

“Democracy and the Politics of Information: The St. Louis Committee for Nuclear Information.” *Gateway Heritage Magazine* (St. Louis, MO), summer 1996, 11.

¹²¹ “Statement of Arthur Flemming,” Food Contamination (1), Box 5, Papers of Donald Paarlberg, Eisenhower Library.

Meanwhile, the announcement all but incited panic among housewives who scrambled to secure safe cranberries for Thanksgiving dinner.¹²² To further complicate matters, the FDA later acknowledged that only a small portion of the cranberry supply was affected, and hurriedly put together seals of inspection and certification for use at the retail level. But the reputational damage had already been done. Many cautious housewives did not serve cranberry sauce at their 1959 Thanksgiving meal.

One political cartoon from that fall features a turkey standing before a chopping block in a pastoral setting. (Figure 9) Above the block is a sign that reads: “Secretary Flemming’s Cranberry “Contamination” Statement.” The turkey - presumably about to get the axe for dinner - remarks “[I] wish somebody would make a crack about turkeys!”¹²³ The cartoon skewers the ways that this public statement had such wide-ranging repercussions; the scare quotes around “contamination” also imply that the government overstated the risk to an anxious populace. But the cartoon includes an irony, entirely unintended and unforeseen at the time, that resonates with the broader dilemmas of examining safety regulation from a historical perspective. Around this time, scientists and producers were beginning to learn of the hazards of diethylstilbestrol, which was

¹²² Mark Ryan Janzen, “The Cranberry Scare of 1959: The Beginning of the End of the Delaney Clause” (Ph.D. Dissertation, Texas A&M University, 2011). See also the letters in Folder: “Cranberries,” Box 1149, WHCF – General File, Eisenhower Library. This folder includes numerous angry telegrams calling for Flemming’s resignation, and letters inquiring why cranberries were targeted when other products contain cancer-causing agents (some examples given include white bread, fluoride, and tobacco) remain on the market.

¹²³ Cartoon printed in the *New York Times*, Nov. 15, 1959, originally published in the *Rochester Times-Union*, “[Government] H.E.W.: [Health Education and Welfare] - Cranberries [1960],” RNC News Clippings, Box 309, Eisenhower Library.

widely used as a growth promoter in poultry and beef. Fearing a similar outcome in poultry, dozens of processors wrote frantic telegrams urging Flemming not to repeat his approach to cranberries with turkey before Christmas.¹²⁴ This example reveals the difficulty of evaluating “risk-risk tradeoffs” as they evolve over time. Based the information we know now, we can argue that housewives were taking a far *greater* risk serving turkey than cranberries at their 1959 Thanksgiving dinner.



Figure 9: “Wish Somebody Would Make a Crack About Turkeys!” clipping in Folder: [Government] H.E.W.: [Health Education and Welfare] - Cranberries [1960], Box 309, RNC News Clippings, Eisenhower Presidential Library, Abilene, Kansas.

As these issues intersected with and built upon one another, consumers increasingly pushed for legislative and regulatory action to reduce their risk of consuming unsafe food. While existing regulatory regimes did not escape public scrutiny,

¹²⁴ Telegram to Arthur Flemming from Richard B. Russell, Dec. 7, 1959, and Telegram to Richard B Russell, from Hulan Hall, President of the Georgia Poultry Federation, Dec. 7, 1959, both in Folder 5, Box 33, Series C. Congressional, IX. Legislative, B. Agriculture and Forestry, Richard B. Russell Papers, Russell Library.

policymakers rarely reassigned a responsibility to a different agency. As a consequence, most efforts to reform existing regimes simply expanded the authority of either the Department of Agriculture or the Food and Drug Administration, rather than reimagining their roles or merging them into a unified food agency. These laws marshaled a variety of regulatory instruments to achieve different goals; some involved certifications, licensing, scientific sampling, or periodic spot-checks. Poultry was unusual in that it provided for continuous, visual inspection.

The Wholesome Meat Act: Closing the Gaps in Meat Inspection

Ironically, one of the last food laws to be revised would be the Federal Meat Inspection Act. In the fall of 1967, Nick Kotz, then a young reporter at the *Des Moines Register*, uncovered a scheme whereby intrastate meatpacking firms routinely purchased “4-D,” which stands for “dead, diseased, dying, or disabled,” meats for use in further processing and in boxed beef.¹²⁵ He would go on to win the Pulitzer “for his reporting of unsanitary conditions in many meat packing plants.”¹²⁶ In response to these scandals, a

¹²⁵ Ralph Nader, “We’re Still in the Jungle,” *The New Republic*, July 15 1967, 11-12; filed with: Summary of the NFI Survey - July 1967, Box 3, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹²⁶ “The Pulitzer Prize 1968 Winners,” *The Pulitzer Prize*, accessed July 15, 2019, <http://www.pulitzer.org/awards/1968>; Chris Deutsch, “Forging a National Diet: Beef and the Political Economy of Plenty in Postwar America,” Ph.D. Dissertation, The University of Missouri-Columbia, 2018, 281, fn 118.

young Ralph Nader and his assembled “Raiders” promised to take the cause of wholesome meat all the way to the U.S. Capitol.¹²⁷

President Lyndon Johnson and his advisors soon recognized that they could score political points by reforming the Progressive Era meat law.¹²⁸ Thus, Johnson incorporated the issue into his consumer protection agenda, and he began to talk about “closing the gaps” in meat inspection in his consumer messages.¹²⁹ Congress ordered a USDA survey of non-federally inspected plants, which uncovered damning evidence of filthy conditions and misuse of inspection seals. In response, legislators took swift action to revise the fifty-year-old law, because “unwholesome meat does not make distinction between Republican and Democrat.”¹³⁰ A week before Christmas in 1967, President Johnson signed the Wholesome Meat Act into law to much fanfare and public spectacle – Upton Sinclair himself attended the signing ceremony.¹³¹

¹²⁷ *Supra* note 125.

¹²⁸ For a more extensive account of the politics surrounding the passage of the Wholesome Meat Act, see: Chris Deutsch, “Forging a National Diet: Beef and the Political Economy of Plenty in Postwar America,” Ph.D. Dissertation, The University of Missouri-Columbia, 2018, 258-261, 271-288.

¹²⁹ Lyndon B. Johnson: “Special Message to the Congress “To Protect the American Consumer,”” February 16, 1967, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=28638>; This is also reflected in how files are stored in the Lyndon B. Johnson Presidential Library; an entire box is dedicated to the legislative fight for meat inspection, which provides a detailed narrative of the passage of the inspection act, while poultry inspection is scattered among USDA files and correspondence, and a much smaller Task Force folder (although some poultry materials are intermingled with meat inspection files, particularly correspondence). Information on fish inspection was even more difficult to track down.

¹³⁰ Statement of Senator Montoya, D-NM, *Congressional Record* 113 (1967): 33840.

¹³¹ Presidential Remarks Upon Signing the Wholesome Meat Act, 11:00am, Friday, December 15, 1967, (President’s Reading Copy), Statements of Lyndon Baines Johnson (The President), December 15, 1967 – December 30, 1967, Box 257, LBJ Library.

Insofar as the Wholesome Meat Act “closed a gap” in meat inspection, it was one of equity rather than an improvement in safety. The Wholesome Meat Act collapsed any potential difference between interstate and intrastate commerce in meat by requiring that the big packers who shipped to affluent suburban supermarkets, and local intrastate processors who served minority communities or catered to specific regional tastes, had to meet the same standards. One historian argues that this process created a “national diet undifferentiated by quality.”¹³² And advocates who had pushed for the Wholesome Meat Act praised its passage as a major step forward in consumer protection for this very reason. In this context, it appeared that legislators needed to turn their attention to the poultry inspection law; there was even talk of establishing mandatory inspection for fish and eggs along similar lines.¹³³

“Project Quick, Quiet, and Confidential”

However, it turned out that the “survey” Congress requested was not quite what the representatives bargained for. In July 1967, a group of USDA compliance officers in the Dallas area received a curious memorandum from their supervisor. Labeled “Special Project Quick, Quiet and Confidential,” the memo described a secret project by which the employees were to surreptitiously investigate slaughter and processing plants that were

¹³² Deutsch, “Forging a National Diet,” 288.

¹³³ Eric Wentworth, “LBJ Asks Strict Fish Inspection,” *The Washington Post, Times Herald*, Washington, D.C., February 7, 1968.

not federally inspected, prepare a report on their findings, purchase retail samples of the products produced by the plant, and send them off to a laboratory in St. Louis for testing. “This should be done quickly and quietly in such a manner that no one is aware of the purpose of your visit,” the writer of the memorandum implored. “Try to find contaminants on the meat if possible.”¹³⁴ The language of the memorandum suggested that the federal government was only interested in facts that made a positive case for the Wholesome Meat Act: “In your reports of plant “surveys” it is suggested that you use dramatic, graphic terms with impact ... instead of other more acceptable terms.”¹³⁵

The Wholesome Meat Act might be widely recognized today as a significant expansion of government authority to clamp down on fraud in a corrupt industry, but for the fact that the memorandum for “Project Quick, Quiet and Confidential” remained neither quiet nor confidential for very long. On May 20, 1968, the *National Observer* published a cover story entitled “Tainted Meat and Tainted Evidence: Flimflam and the Federal Men,” which reproduced the Dallas memorandum in its entirety.¹³⁶ The reporters argued that, by presenting the 1967 “survey” as unbiased fact, the USDA defrauded the

¹³⁴ “Memorandum: Project Quick, Quiet and Confidential,” reprinted in the *National Observer*, May 20, 1968, photocopy in “May 20 National Observer Article,” Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹³⁵ “Memorandum: Project Quick, Quiet and Confidential,” reprinted in the *National Observer*, May 20, 1968, photocopy in “May 20 National Observer Article,” Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹³⁶ “They Told Horror Stories,” the *National Observer*, Monday, January 29, 1968; “A Federal Ghost Doctored Reports on Meat Plants,” the *National Observer*, Monday, February 12, 1968. “Tainted Meat and Tainted Evidence,” the *National Observer*, May 20, 1968,” photocopies in “May 20 National Observer Article,” Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

journalists who reported on the story, the Senators who were influenced by the resulting accounts, but more importantly, the American people. The *Observer* questioned whether “the means adopted to obtain Federal inspection justify that end.”¹³⁷

While the Wholesome Meat Act successfully expanded federal authority over the food supply, the circumstances surrounding its passage exacted a steep reputational cost for federal food regulators. Officers of state inspection programs felt betrayed by this breach of trust, and the incident created a rift between state and federal regulators.¹³⁸ Those who suspected the USDA of a federal “power grab” were further vindicated when the D.C.-based *National Observer* unveiled the unorthodox methodology of conducting the “survey.” Finally, the scandal disappointed key consumer advocates. In his widely read *Consumer Bulletin*, F. J. Schlink of Consumer’s Research pondered “[j]ust why it should be necessary to use phony data to drum up support for “consumer protective” legislation ... There are real grievances over which consumers really do get stirred up.” But, as Schlink cynically observed, “[f]or such problems it appears that the federal government can find no politically feasible legislative remedy.”¹³⁹

The “Project Quick, Quiet, and Confidential” memo transformed a political narrative focused on how the federal government heroically stepped in to ensure the

¹³⁷ “Tainted Meat and Tainted Evidence,” the *National Observer*, 12.

¹³⁸ Memorandum from L.L. Gast, Director, Compliance and Evaluation Staff, to John M. Buhl, Director, Budget Division, Re: Preparation for 1970 Budget Hearings, Folder: July Survey, Departmental Position Papers, Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹³⁹ “Is protecting consumers a better tactic than kissing babies?” Off the Editor’s Chest, *Consumer Bulletin*, October 1968, 25; Box 295, Folder 5, Meat and Poultry Inspection, 1968, Consumers Research Papers.

safety of the American public into another insidious example of government overreach and an erosion of state authority through unethical conduct by federal officials. The allegations by the *Observer* prompted an extensive internal investigation within USDA to ascertain the exact details about whom had sent the initial directions, and how the survey was carried out by inspectors in other regions who did not receive this memorandum.¹⁴⁰ While top USDA officials, including Secretary of Agriculture Orville Freeman, generally acknowledged that the substance of the memorandum matched the directions given to inspectors, the officials did not explicitly approve of the statements made in the memo.¹⁴¹ The memo also implied that USDA officials had authorized inspectors to receive overtime compensation in order to complete the survey on time, which internal investigations corroborated. This potential misuse of taxpayer dollars prompted its own set of hearings before the Appropriations Committee, and resulted in an entirely separate investigation by the General Accounting Office.¹⁴² Federal records include whole boxes filled with carefully typed testimonies provided by inspectors, describing how they received a cryptic phone call with directions to give oral, not written, instruction to their inspectors, and to produce reports as quickly as possible: “reports could be written in

¹⁴⁰ “Records Relating to the 1967 Survey of non-federally inspected meat plants,” Boxes 5-10, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹⁴¹ “Secretary Freeman Defends Tactics on Meat-Inspection Bill,” *National Observer*, June 17, 1968, 8; see more generally “July Survey, Departmental Position Papers,” Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹⁴² Now known as the Government Accountability Office. Full investigation case files located in: Records Relating to the 1967 Survey of non-federally inspected meat plants, Boxes 5-10, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

long hand; and overtime was approved, if necessary.”¹⁴³ As it turned out, the phrase “Project Quick, Quiet and Confidential” may have been an invention of the person who wrote the memo, who explained that he wrote it because some of his inspectors were relatively new, and he “wanted to make sure nobody misunderstood what was expected.”¹⁴⁴

The scandal associated with the exposé about “Project QQ&C” confirmed the suspicions of those who perceived the expansion of federal oversight through the “equal to” law as an infringement on state’s rights and a violation of the principles of federalism. In his daily broadcast on WRAL-TV on February 7, North Carolina political commentator Jesse Helms quipped: “while the public thought it was getting clean meat, what was really happening proved merely to be dirty politics ... another example of the state being swallowed up by the federal government.”¹⁴⁵ In another editorial, Oscar Sussman of the New Jersey Public Health Association, who in other contexts had been an outspoken advocate of meat and poultry inspection, wrote: “The Wholesome Meat Act of 1967 is a fraud. It is an expensive, unproductive extension of bureaucracy and an

¹⁴³ Case File, Subj: Special Project - Survey of NFI Meat Plants in Atlanta Area - Georgia, Alabama, Florida, Tennessee, North Carolina, South Carolina and Mississippi, Loy E. Skinner, Officer in Charge, C&ES, C&MS, Atlanta, Georgia. “NFI Survey Instructions - OIC's,” Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹⁴⁴ “Tainted Meat and Tainted Evidence,” *National Observer*, May 20, 1968, 12.

¹⁴⁵ “WRAL-TV VIEWPOINT: #1781,” February 7, 1968, “July 1967 NFI Survey,” Box 4, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

unnecessary and perhaps unconstitutional invasion of states' responsibilities and rights.”¹⁴⁶

Wholesome Poultry and Wholesome Fish: The Other Gaps in Meat Inspection

Even as the *National Observer* scandal hit the headlines, President Johnson and his administration had already turned their attention to other presumed “gaps” in food safety laws. By late 1967, lawmakers began developing a companion “equal to” law for poultry, which would become the Wholesome Poultry Products Act the following year. President Johnson also raised public awareness about the lack of fish inspection through his 1968 Consumer Message; he also convened a Task Force on Wholesome Fish to study the matter. In both cases, administration bureaucrats argued that compulsory (not voluntary) inspection carried out by government agents was a matter of the public interest. However, while they successfully expanded inspection for poultry, they were unable to do the same for fish inspection.

Compared to the protracted fight just a decade earlier, the Wholesome Poultry Products Inspection Act generated much less public debate. The corresponding “survey” of poultry plants was conducted with much more communication with state officials. But the reputational damage to the USDA’s meat inspection division had, arguably, already

¹⁴⁶ Statement of Hon. Neal Smith, Congressional Record, Thursday, May 23, 1968 (clipping), “July 1967 NFI Survey,” Box 4, UD 4, Record Group 462: Records of the Food and Nutrition Service, U.S. NACP. Smith is referring to the following: Oscar Sussman, “Health Expert Reveals New Law’s Dangerous Deceit,” *Nation’s Business (Pre-1986)* 56, no. 5 (May 1968): 34.

been done. In a confidential memo to the Special Assistant to the President Joseph Califano, Secretary of Agriculture Orville Freeman, wrote: “[t]here is some bitterness and considerable feeling that the Administration acted unethically” in the promulgation of the Wholesome Meat Act.¹⁴⁷ In a sharp contrast to the public spectacle around the passage of the Wholesome Meat Act, the Wholesome Poultry Product Inspection Act elicited much less fanfare or public excitement.

Within the industry, however, there was considerable concern and confusion about why the government sought to revise the PPIA so soon after it was enacted. Editors at *Broiler Industry*, a key trade journal, expressed mock surprise that the law so easily abrogated “traditional state’s rights to set red meat standards,” as “one might have thought that would have started a “civil war.””¹⁴⁸ To complicate matters, by 1968, the poultry industry had already begun to develop competing factions of different trade associations. From their perspective, the 1968 legislative push for wholesome poultry represented a failure to organize themselves to promote legislative change that served their interests. By contrast, the consumer movement was far more united in their efforts to expand “equal to” protections for poultry this go-round. In a feature interview with *Broiler Industry* (which asked, among other things, whether the National Broiler Council

¹⁴⁷ Letter from Orville L. Freeman to Joseph Califano, January 3, 1967, CF Box 1, AG 5, WHCF, LBJ Library.

¹⁴⁸ “‘Real story’ behind new poultry inspection act, *Broiler Industry*, Dec. 1968, 18.

“sold out” its member interests to get behind the final legislation) the president of the National Broiler Council noted that the legislation moved “with fantastic speed.”¹⁴⁹

But leaders in the Johnson Administration wished for fish inspection legislation, as well. In a 1968 Consumer Message, President Lyndon Johnson noted that if consumers thought “poultry inspection is spotty today ... fish inspection is virtually non-existent.”¹⁵⁰ Where the “gap” in meat inspection primarily addressed issues of equity in safety, unwholesome fish still posed serious health risks, including botulism, hepatitis, shigellosis, and *Salmonella*.¹⁵¹ In testimony before Congress, representatives from HEW did their best to make the case for a fish inspection program supervised by their agency. In a memo, one HEW official wrote that “we demonstrated as much need in this area as in the area of meat and poultry.”¹⁵² In early 1968, an executive Task Force on Wholesome Fish considered the prospect of compulsory fish inspection. Yet even this panel of experts was unable to find a consensus on the same issues that stymied initial action on poultry inspection back in the 1950s: where in the production process to inspect, whether in-plant inspection should be done continuously or on a spot-check basis, and which agency should operate the program.

¹⁴⁹ Ibid. 18-30.

¹⁵⁰ Eric Wentworth, “LBJ Asks Strict Fish Inspection,” *The Washington Post Times Herald*, Washington, D.C., February 7, 1968, A4.

¹⁵¹ Ralph Nader, “Something Fishy,” *The New Republic*, January 1968, p.20, photocopy in EX LE/AG 5, WHCF, Box 27, LBJ Library.

¹⁵² Letter to Ralph K. Huitt from Jerome T. Murphy, Subject: Fish Legislation, attached to a Memorandum for Douglass Cater, Barefoot Sanders, and Mike Manatos from Ralph K. Huitt (HEW), May 2, 1968, EX LE/AG 5, WHCF, Box 27, LBJ Library.

Many of the arguments for and against continuous inspection of fish were almost identical to the concerns that animated the debates about poultry inspection. Those in favor of continuous inspection claimed that variation in types of inspection across commodities created consumer confusion: “[c]onsumers will expect the same level of inspection for fish as is being provided under the meat and poultry inspection programs.”¹⁵³ Opponents argued that continuous inspection was far too costly; the Task Force estimated that continuous fish inspection would cost \$20 million annually, compared to \$5 million for “spot inspections.” Representatives from the fishing industry, many of whom hailed from Alaska and the Pacific Northwest, also opposed continuous inspection because it was “too expensive,” and strongly favored good manufacturing practices and spot checks as a more workable solution. For their part, these fishing interests approved of ending a voluntary program operated by the Bureau of Fisheries and creating a new program under the oversight of HEW.

And if agencies split the responsibility for poultry inspection unevenly, they divided the task of fish inspection even more haphazardly. By 1968, the FDA spot-checked some, but not all, fish processing plants, and inspected foreign shipments of fish on a sampling basis. Much like poultry, the fishing industry benefited from an existing voluntary program operated by the Bureau of Commercial Fisheries, which was widely

¹⁵³ Task Force on Wholesome Fish, Draft Report, 1/9/68, p.7, FG 600/Task Force on Wholesome Fish, Box 369, LBJ Library.

criticized for its focus on marketing concerns.¹⁵⁴ Both of these inspection programs made little provisions for inspections of fishing vessels. Some states operated their own inspection programs, but according to the Federal Task Force on Wholesome Fish, these were “generally weak - except for Maine and California.”¹⁵⁵ Shellfish had little to no oversight at the local, state, or federal level, which seems especially surprising given that oysters were often consumed raw.

Nevertheless, key members of the fishing industry – while “supportive” of inspection in principle – remained unconvinced that an expansive fish inspection program rose to the level of the public interest. In a written statement, a representative of the Fishing Vessel Owners’ Association argued against spending taxpayer dollars on fish inspection, “where the public interest is limited,” and suggested that federal dollars be put towards “[the war in] Viet Nam, civil rights, improvements of ghettos, etc. . . . It is our view that we cannot at this time afford this expenditure.”¹⁵⁶ It is unclear from the context of the statement whether the “we” refers to the American taxpayers, or the industry, which would need to upgrade vessels or facilities to comply with the laws and regulations. Either way, the idea that fish inspection had to be traded off with unrelated

¹⁵⁴ Ralph Nader, “Something Fishy,” *The New Republic*, January 1968, p.20, photocopy in EX LE/AG 5, WHCF, Box 27, LBJ Library; see also the Task Force on Wholesome Fish, Draft Report, 1/9/68, FG 600/Task Force on Wholesome Fish, Box 369, LBJ Library.

¹⁵⁵ Task Force on Wholesome Fish, Draft Report, 1/9/68, p.1, FG 600/Task Force on Wholesome Fish, Box 369, LBJ Library.

¹⁵⁶ Harold Lokken, Fishing Vessel Owners' Association, Pier 59, Seattle, quoted in letter to Larry Levinson (Deputy Special Counsel to the President), from James G Pinkerton (Ketchikan Cold Storage Company, Alaska), March 23, 1968. Ex LE/AG 5, WHCF, Box 27, LBJ Library.

issues like civil rights or the war in Vietnam foreshadows the kind of arguments that underpinned subsequent moves for fiscal austerity.

Ultimately, the proposals for fish inspection ran into several additional roadblocks that did not affect the meat and poultry inspection legislation. After Project QQ&C grabbed headlines, public momentum to pass future inspection laws rapidly subsided; existing programs for fish were less similar to the programs for meat and poultry; and fish inspection prompted interagency disagreement over who had jurisdiction over the safety and quality of fish that did little to streamline the legislative process. In the absence of a unified consumer or food agency, Interior, Commerce, HEW, and Agriculture all made their own arguments that they should be the agency to oversee fish inspections. But fish inspection ultimately ran aground on the rocky shores of politics. In 1969, the incoming Nixon Administration rejected continuous inspection in favor of what they called “continuous surveillance,” another phrase for periodic spot-checks. At the time, representatives from the Amalgamated Meat Cutters and Butcher Workmen called this decision “a shameful retreat on consumer protection.”¹⁵⁷

¹⁵⁷ “Administration Rejects Plan For Full-Time Fish Inspection.” *The Washington Post, Times Herald (1959-1973)* Washington, D.C. July 15, 1969. A8.

“The New Power Center — CONSUMERISM”

The Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968 represent the culmination of half a century of expansion of federal oversight of the food supply. These acts authorized federal agents to inspect every facility that slaughtered or processed any meat or poultry product in the US, and required all facilities to meet the same set of standards regardless of where they shipped their product. Enacted at a moment when American consumer society had fully embraced the anonymity of the suburban supermarket, the acts lent substantive meaning to the label “USDA Inspected and Passed” for the cost- and brand-conscious “Mrs. Consumer.”¹⁵⁸ Perhaps it not surprising that, amid the “dizzying succession” of reforms during the Johnson presidency, from civil rights laws, comprehensive antipoverty programs, environmental protections, and expanded federal aid to education, historians have largely ignored this moment in which federal oversight of the food supply reached its zenith.¹⁵⁹

But the very different outcome in fish inspection offers an important counterpoint to this narrative that foreshadows the flavor of debates to come. Inspection laws reflected a shifting balance of policy tradeoffs as much as the idiosyncrasies of legislative priority-setting. For example, in 1950, Congress amended the Meat Inspection Act to provide for

¹⁵⁸ Janice Williams Rutherford, *Selling Mrs. Consumer: Christine Frederick and the Rise of Household Efficiency* (Athens, GA: University of Georgia Press, 2003); see also Balleisen, *Fraud*, 259-263; Cohen, *A Consumers' Republic*, and Meg Jacobs, *Pocketbook Politics*.

¹⁵⁹ G. Calvin Mackenzie and Robert Weisbrot, *The Liberal Hour: Washington and the Politics of Change in the 1960s* (New York: Penguin Press, 2008), 7.

inspection of horse meat, but poultry required new legislation which created a separate inspection service. Once poultry got its “own” inspection service, Congress left the door open for other commodity groups who sought similar oversight, but legislators never decided precisely where to draw that line. Lawmakers returned again and again to the vaguely defined idea that meat was somehow “different” from other foods, and poultry was yet again “different” from red meats. But fish proved to be “different” in ways that made continuous inspection less appealing than a regime of good manufacturing practices and periodic spot checks. While these dynamics were certainly amplified by the push-and-pull of interest group politics, they were hardly defined by them.

Moreover, the new “equal to” laws for meat promoted exactly the kind of consolidation of federal power over the food supply that its opponents most feared. The requirement that state-inspected meat or poultry be held “equal to” federal inspection standards also mandated that processors could not sell state-inspected poultry in interstate commerce.¹⁶⁰ One report at the time suggested that the new regulations might lead to intrastate processors facing charges of “meat bootlegging,” or transporting meat across

¹⁶⁰ This element of Federal Meat Inspection Act was amended in 2008, when that year’s Farm Bill allowed small producers employing fewer than 25 people, operating within a state with an approved inspection program, to sell in interstate commerce (which, by 2008, also included internet sales). “2008 Farm Bill,” P.L. 110–246, 122 Stat. 2124-2133, June 18, 2008. For newspaper coverage of this development, see: Bill Lambrecht, “Deal Helps Firms that Sell Meat Products,” *St. Louis Post-Dispatch*, October 24, 2007, A5; Bill Lambrecht, “Meat Inspection - States may get more power,” *Sunday Post-Dispatch*, September 30, 2007, A1.

state lines illegally, as an alternative to federal inspection.¹⁶¹ Consumer groups who initially supported the “equal to” laws voiced surprise that state programs were not allowed to be more stringent than federal rules. In her handwritten notes, a member of the Consumer’s League of New Jersey wondered: “why can’t we have stricter regulations than Federal - unfair to whom[?]”¹⁶² Thus, processors of all sizes had an incentive to undergo federal inspection, which would permit them to ship across state lines, but consumers could not push for stricter state programs as “legal laboratories” that could then encourage more stringent rules at the federal level. The long-term effect was that many states chose to discontinue their programs and turn them over to federal oversight rather than participate in federal cost-sharing. As inflation skyrocketed in the 1970s, more and more states gave up their inspection programs, which demanded, by law, that federal agents take on an ever-increasing portion of the rising cost of inspection.

The Project “QQ&C” episode offers an early glimpse of developing tensions about the locus of regulatory authority, the purpose of regulatory action, and the problems of information asymmetry amid persistent scientific uncertainty. The whiff of secrecy about the whole affair fed into a growing critique of centralized planning and contributed to a gradual erosion of trust in the federal government's ability to safeguard the public's health and welfare. These critics painted federal power in terms of an “overwhelming[ly]

¹⁶¹ Letter from the National Federation of Independent Business, Inc., dated December 6, 1968, July Survey – Department Position Papers, Box 2, UD 4, Record Group 462: Records of the Food and Nutrition Service, NACP.

¹⁶² “[Mrs. Marion C.] Reed Notes - Meat and Poultry Legis. 1958,” Box 44, Folder 26, CLNJ.

strong, maybe even well-intentioned, bureaucracy that is so convinced it knows what is best for everybody.”¹⁶³ In 1968, the Southeastern Poultry and Egg Association placed a photo of Representative Catherine May on the cover of their magazine, with a striking headline: “the new “power center” ... CONSUMERISM.”¹⁶⁴

FROM A “TRIUMPH OF CONSERVATISM” TO A “TRIUMPH OF CONSUMERISM”?

In 1963, the Marxist historian Gabriel Kolko argued that the key legislative victories associated with the Progressive Era - including meat inspection – should be understood as a “triumph” of conservative ideas directed by powerful business interests.¹⁶⁵ Kolko’s arguments have since become a cornerstone in a scholarly literature – on both the left and the right – on the concept of regulatory “capture.”¹⁶⁶ However, one should keep in mind that, in 1956 (several years before Kolko published *Triumph of Conservatism*), these ideas did not circulate among the people involved in the debate over poultry inspection. Consumer advocates generally imagined that the 1906 food and drug laws represented an unequivocally positive case of government intervention that

¹⁶³ *Supra* note 139.

¹⁶⁴ *Broiler Industry*, March 1968 (cover).

¹⁶⁵ Gabriel Kolko, *The Triumph of Conservatism: A Re-Interpretation of American History* (The Free Press, 1963).

¹⁶⁶ Gary D. Libecap, “The Rise of the Chicago Packers and the Origins of Meat Inspection and Antitrust,” *Economic Inquiry* 20 (April 1992): 242–62; George J. Stigler, “The Theory of Economic Regulation,” *The Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3–21, <https://doi.org/10.2307/3003160>.

noticeably improved public health. They likely imagined themselves as part of a corps of new Progressives, fighting against the return of the proverbial Jungle. Members of the growing poultry industry also recognized the similarities to circumstances surrounding the Meat Inspection Act and used them to bolster their case, as W.D. Termohlen did an editorial in a trade journal in 1955: “It appears the poultry industry is confronted by the same dilemma faced by the red-meat industry in 1907.”¹⁶⁷ These boosters recognized that inspection was the most straightforward path to make poultry competitive *with other meats* in a rapidly expanding global marketplace. Many consumers (and more than a few lawmakers) had a very different motivation to act. They mistakenly assumed that chicken was already covered by the 1906 Meat Inspection Act. When they discovered that most chicken was not inspected, they were horrified. These consumers (and their respective members of Congress) argued that chicken should be inspected “in exactly the same way as the red meats.”¹⁶⁸

Interestingly, most extant historical scholarship that mentions the Poultry Products Inspection Act tends to reflect these arguments made by historical actors at the time – that the Poultry Products Inspection Act represented a key victory for an emergent consumer-labor coalition. After all, workers were dying from rare zoonotic diseases as a result of handling infected poultry. Consumers, too, routinely fell ill from eating uninspected

¹⁶⁷ *Poultry Inspection*, 1956 (William D. Termohlen, quoted in testimony of Leonor K. Sullivan, Representative from St. Louis, Missouri) 42.

¹⁶⁸ *Poultry Inspection*, 1956 (Testimony of Leonor K. Sullivan,) 45.

poultry “dumped” on out-of-state markets by unscrupulous producers. Thus, consumers and labor organizers believed that a regime of strict visual inspection equivalent to the meat inspection program was urgently necessary to remedy the unsanitary conditions in which firms slaughtered and processed birds in the mid-1950’s. In the face of the rising risk of foodborne illness and occupational health hazards, these scholars argue, labor unions led the way to improve consumer protections and public health through the establishment of continuous poultry inspection by qualified federal inspectors.¹⁶⁹

Yet, while consumers and labor unions did not always have control over the agenda, these interest groups played a significant role in replicating a “triumph of conservatism” in poultry inspection. The trajectory of poultry inspection demonstrates how progressives, their vision narrowed by a specific idea of how to guarantee safety, advocated for precisely the kind of program that served, first and foremost, the marketing interests of major players in the industry. But this time, the debate took place entirely outside of a progressive framework. Consumers, labor, and business interests all argued their case in terms of bureaucratic efficiency and minimized regulatory burden.

Unfortunately, in their focus on replicating the perceived efficacy of the meat inspection program in the present, consumer advocates narrowed the future political possibilities for

¹⁶⁹ Green and McClelland, “Sick Chickens: Strikers Win Big Benefits for Consumers.”; William Boyd, “Making Meat”; on the importance of industrial unionism in meatpacking generally, see Roger Horowitz, *Negro and White, Unite and Fight! : A Social History of Industrial Unionism in Meatpacking, 1930-90*, (Urbana: University of Illinois Press, 1997).

a poultry inspection system based on principles of scientific sampling and environmental sanitation, which hindered future improvements in safety. In order to reach a workable compromise, legislators left a central point – what, exactly, it meant to “inspect” chicken – open to the agency’s evolving interpretation. The Wholesome Poultry Products Act expanded the scope of federal inspection to include intrastate commerce, without further clarifying its intent.

The Poultry Products Inspection Act and its successor, the Wholesome Poultry Products Act, represent one extreme on the “continuum” or “spectrum” of co-regulation, in the upper right corner of the quadrant of “public” and compulsory.” These laws created a set of explicit requirements, enforced by public servants, which were promulgated by a single national government. While poultry inspection laws offered undeniable improvements on the voluntary public regime they replaced, the PPIA and WPPA nevertheless reflected key assumptions about the power and capacity of government agents, and disincentivized businesses to take on an active role in ensuring the safety of their product. These laws established a balance of tradeoffs in cost, safety, and quality that proved challenging for either consumers or businesses to modify in subsequent decades to adjust to changing consumer tastes and new scientific knowledge.

Without a doubt, the successes of the consumer and labor movement during the 1960’s were sudden and sweeping - a “triumph” in its own right. But historians would be remiss to ignore the ways that these “triumphs” involved their own set of unintended consequences, and often built upon earlier “triumphs” of a very different sort. As late as

2002, when asked to consider legislative intent with regard to the term “inspection” in poultry, the federal judges of the D.C. Circuit threw up their hands. In their opinion, they wrote that the meat and poultry inspection acts “delineate what must be inspected and by whom ... but neither statute tells the reader exactly what an ‘inspection’ entails.”¹⁷⁰

¹⁷⁰ AFGE v. Veneman, No. 01-5035, 2002 U.S. App. LEXIS 5287 (2002).

CHAPTER 3: HOPE IN TRUSTS: NATIONAL BROILER MARKETING ASSOCIATION V. UNITED STATES AND THE LIMITS OF COUNTERVAILING POWER, 1970 – 1978

As the year 1970 drew to a close, interested observers called it “the worst year” for poultry. Like other enterprises that had enjoyed boom years during the late 1960’s, the dawn of the 1970’s looked unexpectedly bleak for the broiler business. (The term “broiler” refers to a chicken raised exclusively for the purpose of being slaughtered and consumed as meat. In the 1970s, growers raised broiler chicks to maturity in 8-10 weeks.) At the very moment when the poultry industry was beginning to feel the impact of revised inspection rules and other “new social regulations,” a corn blight suddenly wiped out much of the supply for the primary ingredient in chicken feed. Normally, as feed costs rise, poultry producers reduced the number of chicks placed on farms, which gradually reduced the overall supply of chicken meat and allowed producers to recoup the extra feed cost by the next growing cycle. In this case, feed costs rose too much and too fast for the industry to adjust in time, and there was simply too much chicken on the market. Prices, which fluctuated naturally in a “boom-bust” cycle, abruptly plummeted. In some markets, wholesale prices received by producers dropped from an average of 15-16 cents per pound to an all-time low of 9 cents a pound. Some desperate producers resorted to slaughtering their laying hens, which further exacerbated the problem of excess supply of chicken and drove prices down even further. Smaller processors, faced

with the looming prospect of bankruptcy, began revising contracts to reduce or delay payments to their growers until the markets improved.¹

In response to this crisis, some firms turned to an old solution -- horizontal coordination. On September 15, 1970, a group of vertically integrated poultry firms established an agricultural cooperative for the marketing of broiler chickens, the National Broiler Marketing Association (NBMA). The NBMA included just over 40 firms that, together, equaled almost half (45%) of the nation's broiler chicken production. The association included a mix of producers both large and small - from such household names as Tyson, Perdue, and Pillsbury, to lesser-known outfits like Claxton Poultry, H & H, and A.C. Smith Hatcheries. In one sense, NBMA was a truly 'national' association, in that it included firms from all over the country. In another sense, it was clearly oriented towards the southeastern United States. (see Table 4 for a list of members; see Figure 11, Figure 12, and Figure 13 for maps; all figures and tables in this chapter are located in Appendix A).

In the United States, agricultural marketing cooperatives are exempt from antitrust laws through the Capper-Volstead Act, an esoteric statute enacted in the depths of an agricultural depression in the 1920s. The core of the Act provides that "persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations" that would otherwise

¹ "1970 Called Worst Year for Poultry," *Scott County Times* (MS). December 16, 1970.

violate antitrust laws.² In many respects, Capper-Volstead represented the legislative realization of the goals of the Populist movement: it allowed small farmers a path to obtain ‘bigness,’ which promised to reduce their reliance on middlemen to market their products to consumers. Most modern agricultural cooperatives, from Welch’s to Sunkist, exist because of this Capper-Volstead exemption.

By drawing on this agricultural exemption, the broiler cooperative’s leaders planned to stabilize prices through information sharing and voluntary cuts in production. As its first action, on November 14, 1970, the new cooperative requested that its members reduce egg placements, which would curtail future supply in the short term. (This decision, it should be noted, was in line with a recommendation previously issued by the USDA.) By the end of the year, NBMA called for members to reduce their breeder flocks. A “breeder” or “laying” chicken lays the eggs that are “grown” to maturity as meat-type, or “broiler,” chickens. Breeders can also be slaughtered for meat, but it is considered to be of a slightly lower quality. Thus, the decision to slaughter breeders that promised to constrain overall supply of broiler chicks over the long term.³ By February 1971, the association was “renewing its efforts to reduce supply another 4%, as the USDA suggests.”⁴ The next month, the NBMA established production quotas for its

² An Act to authorize association of producers of agricultural products. February 18, 1922. 42 Stat. 388 (Pub. Law 67-146).

³ “Broiler co-op finds “trust” has meaning – even hope!” News & Views, *Broiler Industry*, February, 1971, 18. (All citations to *Broiler Industry* were accessed from copies at the James B. Hunt, Jr. Library at North Carolina State University, Raleigh, N.C.)

⁴ “Broiler co-op finds “trust” has meaning – even hope!” News & Views, *Broiler Industry*, February, 1971, 18.

members.⁵ By the end of its first year, the NBMA got involved in the export business, by acting as a quasi-broker in an export sale to Peru in exchange for coordinating the importation of fishmeal for use in poultry feed. They wrote to President Richard Nixon after the deal was already concluded, to “advise” him that “NBMA has just finalized several significant transactions with the Government of Peru.”⁶

By all accounts, the NBMA offered a solution to the problem of overproduction that had plagued the integrated poultry firms since the 1950s -- and all without resorting to marketing orders from the USDA or asking for Congressional intervention. As far as its members were concerned, the early successes of NBMA offered signs and portents of future possibilities of even greater coordination – and greater profits – consistent with the spirit of free enterprise and unfettered capitalism.⁷ Over the long term, agricultural cooperation along the lines of NBMA promised to end the boom-bust cycle in chicken once and for all, and could even shift the competitive landscape from one based on volume to one based on quality. The integrators even imagined that their new association might enable them to wield what they called “countervailing power” against the rising

⁵ “Let’s face facts!” *Broiler Industry*, March, 1971, 4D. [sic]

⁶ Letter from National Broiler Marketing Association to President Richard Nixon, April 10, 1972, White House Central Files, GEN TA 5 Trade Agreements [2 of 2, 1972 – 1974], Box 68, Nixon Library. See also (what appears to be) a reply: Letter from Roland Elliott to Bob Anthony, April 28, 1972, GEN TA 3 / CO 119, Alphabetical Name Files Box 127, Nixon Library.

⁷ “Broiler co-op: central sales?” *Broiler Industry*, October 1971, 19.

influence of the grocery chains.⁸ But there was just one problem: as it turned out, none of it was legal.

Two years later, the U.S. Department of Justice filed a civil antitrust action against the National Broiler Marketing Association for entering into “a combination and conspiracy to fix prices of broiler chickens at artificially high prices.” They argued that because the association’s members were processors, not growers, of chickens, they did not engage in the practice of farming – and were therefore ineligible for the Capper-Volstead exemption. As a result, the association’s weekly conference call program, in which members shared price information and offered recommended prices in regional markets, constituted a clear violation of Section 1 of the Sherman Act.⁹ Later, the association became embroiled in over 30 class-action lawsuits filed on behalf of institutional purchasers, hotels, restaurants, and other large-volume customers who claimed they had overpaid for chicken based on this price-fixing scheme. These injured parties ranged from Kentucky Fried Chicken to the State of Alabama. The National Broiler Marketing Association lost the Capper-Volstead challenge in the Supreme Court, and settled the class action litigation out of court shortly thereafter. The corporation dissolved; the central dilemma – how to structure and regulation competition in ways that balanced private interests and the public good – remained.

⁸ “Bigger role for co-ops seen from food probe,” *Broiler Industry*, December 1965, 66; John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1956).

⁹ Associated Press, “Chicken Prices Called Fixed,” *Chicago Tribune*, April 17, 1973, 4.

COOPERATION ON SAFETY, QUALITY...AND PRICE?

A central claim of this dissertation is that food safety involves a balance of tradeoffs, which can be categorized in terms of “cost,” “quality,” and “safety.”¹⁰ This dissertation also evaluates the extent to which regulators and the regulated industry balance those tradeoffs through various forms of cooperation or “co-regulation.” The previous chapters (1 and 2) outlined how lawmakers established standards for safety and quality using “command and control” regulations, which dictate specific rules that the regulated industry had to follow. In chapters 4 and 5, I explain the circumstances under which regulators began to consider alternatives to “command and control,” which involved greater cooperation with the regulated industry, and more flexible rules.

The case of the National Broiler Marketing Association offers an inflection point between these two different ways of thinking about safety, by revealing the practical limits of “self-regulation” and “cooperation” on matters of cost. Where regulators actively encouraged self-regulation and cooperation in matters of safety or quality, similar strategies proved not just unfeasible, but illegal with respect to cost.¹¹ Nevertheless, as this chapter will show, these changing ideas about safety and quality were shaped by a set of economic considerations that remained fairly constant over time.

¹⁰ Refer to the Introduction for a more detailed definition of each of these terms.

¹¹ I owe this insight to David Gilmartin.

Overproduction and price instability had been a regular occurrence in the poultry industry since the 1950's. In chapter 1, I explained that the industry got behind the idea of mandatory poultry inspection because they believed the seal of inspection for wholesomeness would grant access to export markets. But high-volume production created new problems as well as new opportunities in technological and scientific innovation. As I will suggest towards the end of this chapter, overproduction also put pressures on regulators to find new and creative solutions to meet their statutory responsibilities with declining resources. Some of the same officials and lawyers who would go on to endorse cooperation on safety had previously approved of cooperation on price in the name of “efficiency” and reducing the role of government.

While I hesitate to describe any historical case as “untapped” or “neglected,” it appears that *National Broiler Marketing Association v. United States* has been literally relegated to a footnote in legal scholarship.¹² Perhaps as a consequence of its sudden dissolution in 1978, records for the NBMA itself have been surprisingly difficult to track down; thus, it is not surprising that historians have written little, if anything, about this particular legal case.¹³ The case is rarely mentioned in legal scholarship outside of the

¹² In two recently published casebooks on antitrust law, it does not appear in the list of cases at all: Charles J. Goetz and Fred S. McChesny, *Antitrust Law: Interpretation and Implementation*, 4th ed. Foundation Press, 2009; Andrew I. Gavil, William E. Kovacic, and Jonathan B. Baker, *Antitrust Law in Perspective: Cases, Concepts, and Problems in Competition Policy*, 2nd ed. American Casebook Series, Thomson West. Cf. Phillip Areeda and Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application*, Vol. IA, Aspen Law & Business, P249. (Mentioned only in the context of the Capper-Volstead Act).

¹³ Despite efforts since 2016, I have been unable to locate anything that can approximate as records for this organization. Most of its key leaders (likely already senior in their companies at the time of

specific context of the Capper-Volstead Act. Law reviews that cite *NBMA v. US* tend to do so as part of a broader examination of agricultural cooperatives, and often in the context of evaluating the prospects for the “family farm” in agriculture.¹⁴ Some of the best secondary analyses of the case emerged while the case was in the courts or just after it was decided.¹⁵ A search for the class-action lawsuit returns a few articles that draw on its doctrinal value for implementing “most-favored-nation” clauses in settlement agreements.¹⁶ Interestingly, searches for “chicken antitrust litigation” return far more results on a new chicken antitrust action, which began in 2016 and is still working its way through the courts in 2020.¹⁷

its founding) passed away in the 1980s and 1990s. As of 2019, only the judge, William O’Kelley, has left behind personal papers in formal repositories, but those documents give no indication that there is any material related to this case contained within them. I was able to contact a few of the lawyers who were involved, but they invoked attorney-client privilege and would not speak with me on the record. In the absence of formal organizational records, I have relied on a key trade journal, *Broiler Industry*, correspondence available in Presidential Libraries and other federal government repositories, items included in the legal briefs, publicly available business and legal filings, numerous USDA reports and Congressional testimony (some, but not all, were digitized), and a box of case files from the Alabama Attorney General’s Office labeled “Chicken Antitrust Files,” which are the records that initially led me to investigate this case, and comprise the main source material on the class-action lawsuit.

¹⁴ Carson, Marlis, and Donald Frederick. “Antitrust Challenges Facing Farmers and Their Cooperatives.” *Rural Cooperatives; Washington* 80, no. 1 (February 2013): 22–27; Amber S. Brady, “Post-Smithfield and Hazeltine: An Evaluation of the Capper-Volstead Act as an Alternate Means of Marketing Power for Producers,” *Drake Journal of Agricultural Law* 10 (2005): 331–54; Shannon L. Ferrell, “New Generation Cooperatives and the Capper-Volstead Act: Playing a New Game by the Old Rules,” *Oklahoma City University Law Review* 27 (2002): 738–71.

¹⁵ Charles Gordon Brown, “United States v. National Broiler Marketing Association - Will the Chicken Lickin’ Stand?” *N.C. Law Review* 56 (1978): 29–76.

¹⁶ e.g. Kathryn E. Spier, “The Use of ‘Most-Favored-Nation’ Clauses in Settlement of Litigation.” *The RAND Journal of Economics* 34, no. 1 (2003): 79. <https://doi.org/10.2307/3087444>.

¹⁷ For more details on the 2016 chicken antitrust case, see Tom Johnston, “The chicken ‘cartel,’” *Meatingplace*, Dec. 2016, 41-49.

At first glance, the case of the National Broiler Marketing Association does not necessarily challenge existing narratives of business, legal, or agricultural history, but merely looks anachronistic or out of frame when compared to those narratives.¹⁸

Historians have already penned rich histories of the cooperative movement, eras of vigorous antitrust enforcement, vertical integration, and the rise of supermarket retailers, but for much earlier periods – the 1890s, the 1920s, even the 1940s, perhaps – not the 1970s.¹⁹ (One could say that the poultrymen were fine managers, but poor students of history.) Nevertheless, the specific historical circumstances of the 1970s, and the outcome of the case, challenge our narratives of what many historians still refer to “recent” history – even if it happened almost fifty years ago.

The case of the National Broiler Marketing Association thus offers a lesson in counterfactual history as much as a narrative of an important period in business and legal history. It may be too much of a stretch to imagine industry giants like Tyson or Cargill as beleaguered businesses who sought to “balance supply & demand for market stability.” But it should not be beyond the realm of possibility to imagine that the

¹⁸ On alternative modernities and non-chronological history, see Stefan Tanaka, *History Without Chronology* (LEVER Press, 2019); and Projit Mukharji, “Parachemistries: Colonial Chemopolitics in a Zone of Contest,” *History of Science* 54, no. 4 (December 1, 2016): 362–82.

¹⁹ Victoria Saker Woeste, *The Farmer’s Benevolent Trust: Law and Agricultural Cooperation in Industrial America, 1865-1945* (Chapel Hill: University of North Carolina Press, 2000); Alfred D. Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, Mass: Belknap Press, 1977); Naomi R. Lamoreaux, *The Great Merger Movement in American Business, 1895-1904* (New York: Cambridge University Press, 1985); Marc Levinson, *The Great A & P and the Struggle for Small Business in America* (New York: Farrar, Straus and Giroux, 2013); Laura Phillips Sawyer, *American Fair Trade: Proprietary Capitalism, Corporatism, and the New Competition, 1890-1940* (New York, NY: Cambridge University Press, 2018).

fragmented landscape of many small players that existed in the 1970s did not have to give way to the degree of consolidation, mergers that created the multinational agribusiness conglomerates that define the twenty-first century system. The processors certainly did not think so. However flawed their logic may appear – then or now – they envisioned a future in which vertically integrated firms that competed on price and volume might compete on other terms. The processors – and the law and economics scholars who served as their legal counsel – defined these terms nebulously as “service.” These terms might also have included quality.

From the vantage point of the founders of the NBMA, size – or at least heft – was part of the solution, rather than part of the problem. Here they took their inspiration from economist John Kenneth Galbraith’s concept of “countervailing power,” or “the tendency of power to be organized in response to a given position of power.”²⁰ As an economic theory, the concept suggests that when power is concentrated on one side of an economic transaction (buyers or sellers), there is a natural tendency for a corresponding concentration of power to emerge on the other side. The policy implications of Galbraith’s theory were that governments should empower small players to obtain comparable “bigness” and exert a “countervailing power” against big business rather than try to break up monopolies or trusts. When the leaders of the NBMA encountered the notion of “countervailing power,” they imagined themselves as the small players – the

²⁰ Galbraith, *American Capitalism*, 115.

farmers, the workers – rather than the middlemen or the oligopolists. They imagined that their cooperative might wield “countervailing power” against the supermarket retailers to control price and manage the problem of overproduction, in the same moment that they openly undermined their own workers’ efforts to exert countervailing power against them. Their failure paved the way for uncontrolled competition on price and quantity, in which fewer firms produced higher volumes of chicken at faster speeds. Meanwhile, the beneficiaries of the antitrust and class action lawsuits against NBMA – supermarkets, fast-food retailers – began to dictate the terms of prices. In Galbraith’s definition of countervailing power, “retailers “develop countervailing power on the consumer’s behalf.”²¹ The outcome of the NBMA case raises crucial questions about that assertion.

BIG BUSINESS AND BIG AGRICULTURE IN THE 1970S

Poultry Production in the 1970s

One could speak of a poultry “industry” as early as the 1950s; by the 1970s, the chicken business had more in common with nineteenth-century tin-plate and newsprint manufacturing than cotton or soybeans. Vertical integration, pioneered in the immediate postwar era by entrepreneurial feed dealers, defined the industry by the 1970s. Generally, industrialized poultry production involved numerous small processing plants, with high

²¹ Galbraith, *American Capitalism*, 117.

throughput, located in close proximity to local “growers” who raised the poultry in confinement. This system proved particularly successful for operators in rural areas where other employment was scarce. The location and size of these plants epitomized the notion of “economies of speed” rather than economies of scale.²² While there were large and small players by the 1970s, mergers and acquisitions generally proved disadvantageous, as new entrants easily undercut prices.²³

While growers prized their independence, their relationship to their integrator was largely fixed in this period – that is, they generally did not have an opportunity to sell their chickens on an open market. This had not always been the case: for a brief period, growers sold broilers on “grower’s exchanges,” especially in the Delmarva (mid-Atlantic) region. Nevertheless, grower’s exchanges eventually closed down as fewer and fewer growers sold on an open market. As industry historian Gordon Sawyer noted wistfully (and Whiggishly) in 1971, “the trend toward total integration continued its relentless way.”²⁴ But there are other explanations for why grower’s exchanges in chickens failed to gain traction. Many growers entered the business through existing credit relationships with feed dealers that prohibited them from selling on the open market. Independent growers typically encountered minimal advantages selling on an

²² Alfred D. Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, Mass: Belknap Press, 1977), 281-301.

²³ For these dynamics in the 1890s, see Naomi R. Lamoreaux, *The Great Merger Movement in American Business, 1895-1904* (New York: Cambridge University Press, 1985).

²⁴ Sawyer, *Agribusiness Poultry Industry*, 177.

open market, which incentivized them to develop more stable relationships with the same processor over time. Finally, regional consolidation between the 1950s and 1970s meant that these growers had fewer and fewer buyers from which to choose.

Thanks to a host of scientific and technological changes since World War II, poultry was unequivocally “grown” rather than “raised” by the 1970s. Efforts to engineer a superior bird through breeding and genetic engineering had largely succeeded by the 1950s; advancements in feed conversion efficiency allowed chicks to reach slaughter weight in around eight to ten weeks. By the 1960s, most birds derived from the Vantress breeding stock, which produced more uniform, larger birds with white-fleshed meat.²⁵ Coccidiostats and antibiotics enabled growers to raise poultry in confinement for the first time. Poultry houses gradually got larger and more sophisticated, with cement floors and rudimentary systems for heating, cooling, and automated feeders and drinkers. These technological advancements eased some of the more labor-intensive tasks for growers, but required them to make a larger investment in the industry.²⁶ Some of the growers who had entered the business in the 1940s, when almost any structure with four walls would do, left or scaled down their production rather than make the necessary investments needed to keep growing into the 1970s.

²⁵ Roger Horowitz, “Making the Chicken of Tomorrow”; Benjamin Davison, “The Chicken of Tomorrow: Bioengineering and Agriculture in Postwar America,” Presented at the Business History Conference, Portland, Oregon, 2016. (Copy in author’s possession)

²⁶ Interview with Bobby F. Bagley, former contract grower for Marell, Cumming, GA, September 5, 2019 (audio in author’s possession).

Thus, the phrase “vertically integrated poultry firm” had become not only redundant by this period, but also a bit misleading. In this chapter, I use the terms “poultry industry,” “integrator,” and “firm” interchangeably to refer to these vertically integrated firms. Sometimes I refer to “poultry processors” to emphasize the firms that were more involved in the later stages of slaughter and processing, but this term generally has a great deal of overlap with “integrator.” Occasionally, I employ a slightly older term, “poultrymen,” when I want to place more emphasis on the individuals involved, or a newer term, “chicken business,” to refer more casually to middle manager’s self-identification as “businessmen.” All of these terms are actor’s categories, and reflect how the members of this industry described themselves at various times and situations. “Vertical integration” did not necessarily indicate a fixed set of business relationships, but a gradual and haphazard process of growth and expansion. “Poultrymen” also reveals a certain slipperiness in an otherwise clear distinction between a grower and integrator, or a businessman and farmer. Some of the most well-known “integrators,” like Jesse Jewell, got their start as feed dealers.²⁷ Conversely, some integrators continued to grow poultry themselves or used “in-house” growers; some, but not all, operated their own hatcheries.

²⁷ Gordon Sawyer, *The Agribusiness Poultry Industry*. Another example that emerged from interviews is Eldo Grogan of Marell Poultry. Grogan was a feed dealer in North Georgia who owned a “dressing” plant during the late 1960s, but according to the interviewee had “lost his business” by the 1970s (According to publicly available corporate filings in the state of Georgia, Marell Poultry filed for dissolution in March 1985). The extent to which Grogan’s involvement with the NBMA directly contributed to the loss of the company is not known. Interview with Bobby F. Bagley, September 5, 2019. Audio in author’s possession.

The process of growing and raising chickens for slaughter had unequivocally become an “industry” by the early 1970s – but so had many other aspects of agricultural production and distribution. New Deal-era agricultural exemptions for long-haul truckers, along with new methods in refrigeration and vacuum packaging, revolutionized food distribution for perishable goods, including raw and frozen chickens.²⁸ The Great Atlantic and Pacific Tea Company, or A&P, transformed the business of grocery retailing by eliminating the scores of middlemen that helped to inflate the cost of food in the nineteenth century. By the 1960s, A&P itself was on the decline, as other grocery retailers emulated and improved upon the model.²⁹

Finally, other agricultural cooperatives formed under the auspices the Capper-Volstead Act, such as the California raisin industry and in the Colorado beet fields, proved be far less “benevolent” than either Capper or Volstead could have imagined.³⁰ Under the watchful eye of promoters like John H. Davis and Earl Butz, “agribusiness”

²⁸ Shane Hamilton, *Trucking Country: The Road to America’s Wal-Mart Economy* (Princeton University Press, 2008); Jonathan Rees, *Refrigeration Nation: A History of Ice, Appliances, and Enterprise in America*, (Baltimore: The Johns Hopkins University Press, 2013); Oral History Interview with Rosemary Mucklow, North American Meat Institute, Berkeley, California, May 18, 2019 (transcript in author’s possession), and Interview with Abit Massey and Mike Giles, Georgia Poultry Federation, Gainesville, Georgia, August 1, 2019. Mucklow and Massey, both semi-retired lobbyists who got their start in the late 1960s, separately emphasized the importance of vacuum packaging for the growth of the meat and poultry industries in the 1970s.

²⁹ Marc Levinson, *The Great A & P and the Struggle for Small Business in America* (New York: Farrar, Straus and Giroux, 2013); Shane Hamilton, *Supermarket USA : Food and Power in the Cold War Farms Race* (New Haven: Yale University Press, 2018).

³⁰ Woeste, *The Farmer’s Benevolent Trust*, 111-193; Bernadette Pérez, “Before the Sun Rises: Contesting Power and Cultivating Nations in the Colorado Beet Fields,” Ph.D. Dissertation, The University of Minnesota, 2017.

had become the rule rather than the exception.³¹ As a result, more and more white farmers began to don business suits, while people of color continued to do the bulk of the labor – whether on the land or on the processing line.³² For many of these individuals, mechanization and industrialization had not necessarily destroyed their livelihoods; instead, it had become an integral part of what it meant to be a farmer.

“The Farm Problem,” Price, and Overproduction

In spite of these transformative changes, the “farm problem,” or the inability for individual producers to find a profitable market for perishable agricultural products, still vexed even the most modern “farmer in a business suit.” Producers still clamored for accurate price and market data to resolve information asymmetries between buyer and seller. Where once they might have turned to their county agent for pricing data, they now employed IBM punch cards. The much-touted “Compumart,” sponsored by the Southeastern Poultry and Egg Association, promised to “predict probability of [weekly] features by locality and possibly by each chain,” using statistical analysis of historical pricing data.³³ Government price supports exacerbated the fundamental issues of supply and demand in basic crops, like cotton, corn, soybeans, and wheat, so food aid and

³¹ Shane Hamilton, “Agribusiness, the Family Farm, and the Politics of Technological Determinism in the Post–World War II United States.” *Technology and Culture* 55, no. 3 (August 8, 2014): 560–90. <https://doi.org/10.1353/tech.2014.0067>.

³² On Latinx workers in poultry processing, see especially Leon Fink, *The Maya of Morganton : Work and Community in the Nuevo New South* (Chapel Hill: University of North Carolina Press, 2003).

³³ “Compumart offers new feature forecast index,” *Broiler Industry*, January 1971, 54-56.

exports remained a crucial outlet for American surplus production well into the late twentieth century.³⁴ While the industry resisted price supports since the 1950s, poultry remained subject to the same booms and busts that affected corn prices, which in turn affected feed costs. The close relationship between price-supported crops and the price of chicken may have amplified the poultry managers' skepticism of more direct government oversight.

At the close of the 1960s, overproduction remained the single biggest problem facing the poultry processing firms. This concern, too, was not unique to chicken, but reflected a wider symptom of USDA farm policies.³⁵ "Why do we *persist* in overproduction?"³⁶ mused the editor of a trade journal in 1971. While many other managers also recognized that increasing production did not translate into greater profits, no one had a clear solution to the problem. The drive to expand into export markets during the 1950s had only entrenched, rather than reduced, a tendency towards overproduction.³⁷ Frozen product lines were still a specialty of a few brands which had made early investments in refrigerators and freezers, rather than a more widely used method to divert surplus stocks.³⁸ This partially reflected the narrow price spread

³⁴ Jacqueline McGlade, "More a Plowshare than a Sword"; Barry Riley, *The Political History of American Food Aid*.

³⁵ Sarah Milov, *The Cigarette: A Political History* (Cambridge, Massachusetts: Harvard University Press, 2019).

³⁶ William A. Haffert, "Where you'll 'fit' in the early '70s," *Broiler Industry*, March, 1971, 33.

³⁷ This is the core of my argument in Chapter 1 of the thesis. See also Tobin, *Dynamics of Adjustment*, 29-30.

³⁸ Shane Hamilton, "The Economies and Conveniences of Modern-Day Living: Frozen Foods and Mass Marketing, 1945-1965." *Business History Review; Boston* 77, no. 1 (Spring 2003): 33; "The Jesse

between fresh and frozen chicken, the higher cost to invest in the equipment to freeze poultry, and consumer preferences that favored fresh over frozen chicken (even though many consumers took home the fresh poultry to place in their freezer).³⁹ The establishment of federal inspection culled bad actors and disadvantaged small players, but it did not erect barriers to entry that were sufficiently long-lasting to prevent new entrants. Growers competed for business with integrators, but integrators also competed to sell their wares at retail at smaller and smaller margins. Low margins encouraged integrators to produce more, but the effect was that supply of chicken often exceeded demand, which kept prices low. In 1971, a hatchery operator wrote that it is “hard to understand why so many company executives have continued operating plants at full capacity just to make a greater loss instead of reducing production.”⁴⁰ Meanwhile, trends towards monopsony among grocery retailers greatly reduced processor’s bargaining power with ever-larger and ever-fewer chains.⁴¹

Despite a relatively sanguine relationship with USDA bureaucrats, poultry processors and some growers remained recalcitrant when presented with the option of government-imposed price or production controls. These producers framed control of

Jewell Story,” reprinted from *Quick Frozen Foods* [n.d. (~1960?)] (Digital copy in author’s possession, with thanks to Deb Kroll.)

³⁹ Paraphrased from Bernard F. Tobin and Henry B. Arthur, *Dynamics of Adjustment in the Broiler Industry*, (Cambridge, MA: Harvard Business School, 1964), 121-122.

⁴⁰ R.J.C. Tricou, Sr. “A plea for pooling surplus in co-op,” *Broiler Industry*, March, 1971, 26.

⁴¹ Shane Hamilton, “Supermarkets, Free Markets, and the Problem of Buyer Power in the Postwar United States,” in *What’s Good for Business: Business and American Politics since World War II*, Oxford: Oxford University Press, 2012, 177-194.

supply as a matter of individual willpower, of personal “restraint” rather than a question for government intervention: “Without production restraint,” one noted, “little will be achieved!”⁴² Some proponents of even greater coordination argued that even the NBMA’s voluntary approach was “not forceful enough” to address the underlying problem of overproduction.⁴³

Meat, Poultry, and Merger Movements

The National Broiler Marketing Association incorporated at the tail end of a “merger wave” in the 1950s and 1960s, in which the pursuit of bigness – through mergers and conglomerates – had been the order of the day.⁴⁴ Consistent with a trend across other industries, there was a notable uptick in mergers and acquisitions within the chicken business between 1959 to 1964 as compared to the previous decade, particularly among the largest firms.⁴⁵ In short, the biggest got even bigger. This trend towards chicken consolidation can be partially explained by the establishment of federal inspection, which reshuffled industry dynamics and required some capital investments that many smaller firms were less willing to undertake.⁴⁶ But, placed within this wider context, the NBMA

⁴² Tricou, “A plea for pooling surplus in co-op,” *Broiler Industry*, March, 1971, 26.

⁴³ Tricou, “A plea for pooling surplus in co-op,” 26.

⁴⁴ See generally Benjamin C. Waterhouse, *The Land of Enterprise: A Business History of the United States* (New York: Simon & Schuster, 2017), 168-173; Neil Fligstein, *The Transformation of Corporate Control*, (Cambridge: Harvard University Press, 1990).

⁴⁵ National Commission on Food Marketing. *Organization and Competition in the Poultry and Egg Industries*. Technical Supplement, No. 2. Washington, D.C. : U.S. Government Printing Office, 1966. (accessed at <http://hdl.handle.net/2027/umn.31951d01711459a>.)

⁴⁶ Sawyer, *Agribusiness Poultry Industry*, 188-190.

appears to be a response to an era of unprecedented bigness in other parts of the economy, in the precise moment where mergers were beginning to lose their appeal.

However, to truly understand the factors that drove the poultry producers to consider horizontal coordination requires an examination of a much earlier era of “merger mania.” From the 1890s to the 1920s, business enterprises that had already begun to integrate vertically began to pursue horizontal coordination as well.⁴⁷ Earlier in the nineteenth century, American businesses experimented with cartels, pools, and selling agents to stabilize prices, with varying degrees of success.⁴⁸ Where some industries achieved “economies of scale” through a few large factories, many business enterprises in the late nineteenth century discovered that they could obtain “economies of speed” by operating many smaller factories with high throughput or near-continuous operation. Once firms vertically integrated, they turned their attention to horizontal coordination, through mergers or by control of transportation and distribution.⁴⁹ Industries in which a few firms dominated, but none were able to gain monopoly power, like meatpacking, developed oligopolies.⁵⁰ But in other industries with high volume and low variation in the product, price competition tended to hurt all players, and interfirm collusion –

⁴⁷ See generally Chandler, *Visible Hand*; Lamoreaux, *The Great Merger Movement*; Tony Allan Freyer, *Regulating Big Business: Antitrust in Great Britain and America, 1880-1990* (New York: Cambridge University Press, 1992).

⁴⁸ Mark R. Wilson, “Gentlemanly price-fixing and its limits: Collusion and competition in the U.S. explosives industry during the civil war era,” *Business History Review*, 77(2), 2003, 207.

⁴⁹ Chandler, *Visible Hand*, 244-302.

⁵⁰ Mary Yeager, *Competition and regulation: The development of oligopoly in the meat packing industry*. Greenwich, Conn.: JAI Press, 1981; Specht, *Red Meat Republic*.

whether legal or otherwise – did not last.⁵¹ As a consequence, firms in these industries generally stayed small. While the poultry industry eventually developed an oligopolistic structure more like the meatpackers, the market position of many of the integrators in the 1970s had more in common with shoe leather and newsprint than with red meat.

The formation of the National Broiler Marketing Association may have also reflected competing, even contradictory, goals within its own ranks. By the 1960s, several of the “Big Four” meatpackers gained inroads into poultry processing during the 1960s, like Swift, Armour, and Wilson. These Chicago packers may have imagined the NBMA as an opportunity to create an oligopolistic structure akin to beef or pork, by first improving interfirm coordination. Meanwhile, smaller firms may have joined the NBMA with the notion that cooperation might fend off the threat of mergers and acquisitions by the Chicago packers.

Poultrymen and Business Conservatism

In 1970, the poultrymen were in good company: other businessmen across the country shared in their conviction that 1970 was the “worst year ever,” with even worse years yet to come. As they saw it, the forward march of “consumerism” in the sixties had burdened them with a host of costly and unnecessary regulations, attacked their legitimate business enterprises, and left them vulnerable to a new breed of public-interest

⁵¹ Lamoreaux, *Great Merger Movement*, 45.

litigation. In response to this “crisis of confidence,” beleaguered business leaders turned to the modes of collective action that were readily available to them. In particular, they mobilized trade associations and employed lobbyists to defend their interests in Congress.⁵²

The poultry integrators found themselves in a unique position: they had access to many of the same legal tools employed by “big business,” as well as a few available only to “farmers.” And the integrators utilized this liminal space to their advantage, by merging the ethos of managerial capitalism with the ideals of Jeffersonian agrarianism.⁵³ They marshaled their lobbying corps to defend their interests in Washington and at the state level. They also explored their options in horizontal coordination through the use of the agricultural cooperative. An exchange between regulators and a major trade association, the National Broiler Council, suggests that industry leaders had been considering their options for collective marketing as early as 1964.⁵⁴

⁵² Waterhouse, *Lobbying America*, 14-75. The reference to a “crisis of confidence” comes from Waterhouse, 15, referring to Leonard Silk and David Vogel’s ethnographic study, *Ethics and Profits: The Crisis of Confidence in American Business*, (New York: Simon and Schuster, 1976). cf. Kim Phillips-Fein, *Invisible Hands : The Making of the Conservative Movement from the New Deal to Reagan* (New York, N.Y.: W.W. Norton & Company, 2009).

⁵³ For a comparable example in tobacco, see: Sarah Milov, *The Cigarette: A Political History*, Cambridge, Mass.: Harvard University Press, 2019, 78-117.

⁵⁴ Letter from George L. Mehren, Assistant Secretary of Agriculture, to Marcus A. Hollabaugh, Hollabaugh & Jacobs, March 27, 1964, in Box 4161, Folder: “Poultry – January 1 – April 15,” Record Group 16, Entry 17 – General Correspondence, NACP. In the letter, the National Broiler Council was requesting approval/permission from the USDA to “enter into agreements with producers of breeder hens to provide for the processing and marketing of such hens.”

COOPERATION, COLLUSION, OR SELF-REGULATORY ORGANIZATION?

Based on available evidence, the members of the NBMA generally operated with the conviction that what they were doing was within the bounds of the law.⁵⁵ They described the operations and activities of the NBMA in great detail within the pages of their trade journals: “Our new marketing co-op ... has given our decision makers a *legal* means of talking with each other about supply and market demand conditions.”⁵⁶ Note that “decision makers” refers to the presidents and higher-ups within the major firms, rather than the agricultural officers at the USDA or other government officials. Other industry leaders encouraged their fellow poultrymen to “take advantage of the Capper-Volstead Act provisions ... which make it possible to act as a team to keep supply in line with demand.”⁵⁷

Moreover, in public statements and presentations, high-ranking officials in President Richard Nixon’s Department of Agriculture all but gave the green light to the National Broiler Marketing Association’s activities. In a speech to the trade, Assistant

⁵⁵ I am not ruling out the possibility that those who were involved at the higher levels of the NBMA had some inkling that they were pushing against the edges of the law. But the tone of their writings suggest very little effort to conceal or otherwise speak covertly about their actions. The NBMA’s lawyers critiqued the amicus briefs’ usage of the very sources cited in *infra* notes 56-60 in the following way: “...the treble-damage plaintiffs irresponsibly marshals “evidence” (p. 12) of petitioner’s wrongdoing consisting entirely of magazine articles.” – Richard Posner and Michael A. Doyle, Reply brief for petitioner, *NBMA v. US*, October 1977, No. 77-117, 3.)

⁵⁶ William A. Haffert, “Where you’ll ‘fit’ in the early ‘70s,” *Broiler Industry*, March 1971, 46. (emphasis added)

⁵⁷ R.J.C. Tricou, Sr. “A plea for pooling surplus in co-op,” *Broiler Industry*, March 1971, 26.

Secretary of Agriculture Richard Lyng “encourage[d] the National Broiler Marketing Association to persist in its efforts ... to encourage members to discipline supply to market demand.”⁵⁸ This last phrase, “discipline supply to market demand,” became their motto, and encircled a set of scales on the NBMA’s corporate letterhead.⁵⁹ Such statements emboldened the association to publicize its ‘success’ at taming the problem of overproduction with the logic of “self-discipline” and “self-help” through their new cooperative arrangement. Lyng continued by stating that “[i]t is better you do the job than us, at USDA.”⁶⁰ But the lines between public and private were not always so clear-cut. For example, the NBMA’s staff economist, Richard “Dick” Larkin, had previously worked as the chief poultry marketing economist for the Economic Research Service at the USDA.⁶¹

For a group supposedly committed to the doctrine of free enterprise, the poultrymen sounded very enthusiastic about the possibilities of centralized planning:

“First, [NBMA] might establish a clearinghouse on sales, perhaps through physical buy-and-selling arrangements among its members. Next, it could pro-rate

⁵⁸ “Is there a better way?” *Broiler Industry*, April 1971, 4.

⁵⁹ Letter from National Broiler Marketing Association to President Richard Nixon, April 10, 1972, White House Central Files, GEN TA 5 Trade Agreements [2 of 2, 1972 – 1974], Box 68, Nixon Library.

⁶⁰ “Do your own thing, Lyng tells co-op,” *Broiler Industry*, April 1971, 20.

⁶¹ “Is there a better way?” *Broiler Industry*, April 1971, 4.

production according to what will clear the market at USDA guideline prices. Then it should enforce these quotas through heavy penalties.”⁶²

Upon closer inspection, these ambitions begin to look less and less like a trust and more like the makings of a self-regulatory organization. The long-term vision of NBMA included the key characteristics of most self-regulatory organizations: a process for gathering information, monitoring compliance, and strategies for enforcement.⁶³ Once liberated from “dog-eat-dog competition” over prices, integrators began to imagine themselves as part of a “community of shared fate.”⁶⁴ Yet NBMA retained an arms-length relationship with the USDA, to the point of employing a former agency economist on its staff. NBMA’s leadership may have imagined themselves as the agent enacting USDA’s guidelines. NBMA thus represents an example of “regulated self-regulation” or “associationalism,” which are forms of self-regulation that involve varying degrees of oversight by the state.⁶⁵

In many respects, the National Broiler Marketing Association was only the latest in a series of experiments in self-regulation for the poultry industry. Prior to the widespread adoption of vertical integration, grower’s exchanges provided a centralized

⁶² “Let’s face facts!” *Broiler Industry*, March, 1971, 4D [sic]

⁶³ See generally Neil Gunningham and Joseph Rees, “Industry Self-Regulation: An Institutional Perspective.” *Law & Policy* 19, no. 4 (1997): 363–414. <https://doi.org/10.1111/1467-9930.t01-1-00033>.

⁶⁴ “dog-eat-dog” quote from: “Let’s face facts!” *Broiler Industry*, March, 1971, 4D [sic]; “community of shared fate” from Joseph V. Rees, *Hostages of Each Other : The Transformation of Nuclear Safety since Three Mile Island*, (Chicago : University of Chicago Press, 1994).

⁶⁵ Edward J. Balleisen, “Rights of Way, Red Flags, and Safety Valves,” in *Regulierte Selbstregulierung in Der Westlichen Welt Des Spaten 19. Und Friihen 20. Jahrhunderts*, ed. Peter Collin et al. (Frankfurt, 2014); Balogh, *Associational State*; Hawley, “Three Facets of Hooverian Associationalism.”

marketplace for independent growers to sell to processors, in much the same way that livestock auctions still function in the twenty-first century. Before federal inspection became compulsory, many larger players participated in a voluntary inspection program. The voluntary program suffered from many of the weaknesses of true self-regulation: inspected firms had a great deal of influence over their inspectors, which created opportunities for fraud and corruption. The poultry processors expressed interest in other associationalist approaches, as well. For example, some industry leaders advocated for a poultry checkoff program for research and marketing, ideally to complement and build on the work of the NBMA.⁶⁶ By contrast, commodity futures, another form of price self-regulation, was never seriously entertained as a possibility for poultry.⁶⁷

The broiler integrators even went so far as to describe their cooperative organization as a form of “countervailing power.” They arrived at this term because a government commission in the mid-1960s suggested that if farmers organized in cooperatives, they could exert “countervailing power” against the grocery retailers.⁶⁸

⁶⁶ See Haffert, “Where you’ll fit,” (1971) and “Is there a better way?” (1971) On checkoff programs, see Sarah Milov, “Promoting Agriculture: Farmers, the State, and Checkoff Marketing, 1935–2005.” *Business History Review* 90, no. 03 (2016): 505–36. <https://doi.org/10.1017/S0007680516000714>.

⁶⁷ Thanks to Evan Hepler-Smith for bringing this to my attention. A working hypothesis is that the turnaround time for chicken (8-10 weeks) is much faster than typical commodities in futures markets, like corn or soybeans, (4-6 months). Thus, as a derivative, “broiler futures” would behave quite differently than other commodity futures. Moreover, where commodity futures are often seen as a “safe,” longer-term investment (that is, they behave more like bonds), chicken futures would fluctuate more rapidly, and thereby more closely resemble stocks in terms of the degree of risk for investors. But this question certainly deserves further investigation and analysis. For another perspective on chicken futures, see *Trading Places*, dir. John Landis, Paramount Pictures, 1983.

⁶⁸ “Bigger role for co-ops seen from food probe,” *Broiler Industry*, December 1965, 66; cf. Galbraith, *American Capitalism; the Concept of Countervailing Power*; The commission in question is the National Commission on Food Marketing, which included Senator Leonor Sullivan (see ch. 2) among its

However, it is not clear whether the integrators identified with the term because they assumed they were farmers, or because the notion of a pathway to gain leverage over the retailers had such strong appeal. Their imprecision in the use of the term, given that “countervailing power” is more closely associated with retailers themselves, not the farmers or middlemen who sold to retailers, suggests that they simply misunderstood the meaning of the report.

By comparison, the processors expressed outright hostility to a parallel effort by members of Congress to grant contract growers their own form of countervailing power. The National Broiler Council called the bill a “blueprint for monopoly control of agriculture by huge bargaining associations.”⁶⁹ This statement reflected an abiding anti-union sentiment widely shared by many of the integrated poultry processors.⁷⁰ The integrators were quick to raise the specter of monopoly to describe grower’s associations and other legal decisions that limited the scope of “agricultural labor,” such as a contemporaneous NLRB case involving the drivers of chicken trucks. Where line workers and truck drivers experienced agricultural exemptions as a constraint on their

members. Their final report does not include the term countervailing power, but tentatively endorses cooperative marketing. I have been unable to locate the specific hearing to which they refer in the article above. See United States National Commission on Food Marketing. *Food from Farmer to Consumer*. Washington, D.C.: U.S. Govt. Printing Office, 1966. (<https://catalog.hathitrust.org/Record/006232975>.) See also Shane Hamilton, “Supermarkets, Free Markets, and the Problem of Buyer Power.”

⁶⁹ “Grower vs. processor? Sisk bill drawing line,” *Broiler Industry*, June 1971, 30.

⁷⁰ On labor organizing in meatpacking, see Horowitz, *Negro and White, Unite and Fight!*; Donald D. Stull and Michael J. Broadway, *Slaughterhouse Blues: The Meat and Poultry Industry in North America*, 2nd ed. (Belmont, CA: Wadworth Cengage Learning, 2013). On the origins of contract growing, see Monica Richmond Gisolfi, “From Crop Lien to Contract Farming: The Roots of Agribusiness in the American South, 1929-1939.” *Agricultural History* 80, no. 2 (2006): 167–89.

ability to form unions and organize for collective action, for the integrators, special treatment as “agriculture” afforded them additional means of collective action otherwise unavailable to “businessmen.”

The NBMA and the Antitrust Paradox

Upon hearing that his company had been charged in a price-fixing conspiracy, a manager at H&H Poultry quipped, “if someone is trying to fix a price, they would try to fix it at a profit.”⁷¹ With this comment, he concisely – if unknowingly – summarized the position of the emerging “law and economics” strain of legal thought espoused by students of George Stigler and Aaron Director at the University of Chicago.⁷² The Chicago school focused almost exclusively on price as the key element in determining whether or not an action was anticompetitive. Scholars like Robert Bork and Richard Posner emphasized the importance of “efficiency” in competition. These lawyer-economists posited that price fixing could be more accurately determined through an examination of economic factors, rather than by what Posner described as a “cops-and-robbers” search for evidence of collusion.⁷³ For example, one argument ran that information exchange should not be deemed an inappropriate collusion if it promoted,

⁷¹ Kelvin Adkins, “Shore Poultry Leaders Deny Price Fixing.” *The Daily Times*. October 22, 1974, 8.

⁷² See generally Robert Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York: Basic Books, 1978).

⁷³ Richard Posner, *Antitrust Law: An Economic Perspective* (Chicago: University of Chicago Press, 1976)

rather than undermined, economic efficiency.⁷⁴ Crucially, this line of thinking implicitly assumed that an efficient market directly benefited consumers – an idea that we will return to later in the thesis.

This school of thought would gradually transform antitrust law enforcement in the latter half of the twentieth century, as economists and economically-minded lawyers increasingly filled the ranks as antitrust experts within the legal bureaucracy. As Marc Allen Eisner reveals, this process began around the same time as the NBMA lawsuit was filed, in the mid-1970s.⁷⁵ Thus, the challenge to the NBMA offers a valuable window into a rapidly shifting legal landscape about the purpose and function of antitrust enforcement, in which “law and economics” thinkers still remained outside the government bureaucracy, but whose ideas nonetheless found a receptive audience.

The NBMA and the Changing Landscape of Competition

But who were the members of the National Broiler Marketing Association? In the class action notice, 38 firms are listed as “settling defendants.” (See Table 4) From a map of the corporate headquarters of the firms on this list, one can see that the National Broiler Marketing Association was, in many respects, a truly “national” association of vertically integrated firms. (see Figure 11, Figure 12, and Figure 13) It included at least

⁷⁴ Posner, *Antitrust Law: An Economic Perspective*, 39-77.

⁷⁵ Eisner, *Antitrust and the Triumph of Economics*.

two of the Big Four meatpackers, as well as other large firms like Tyson, Perdue, and Ralston-Purina. The list of defendants also reveals how the National Broiler Marketing Association reflected a cooperative effort among large and small firms. These smaller firms were heavily concentrated in the Southeastern U.S., in the foothills of lower Appalachia.⁷⁶ Notably, the NBMA excluded Foster Farms in California, and none of its member firms were headquartered west of Texas. (See Figure 11)

However, several years passed between the formation of the National Broiler Marketing Association and the settlement in the class action lawsuit. Wracked by inflation and cutthroat competition, dozens of integrators went bankrupt, changed names, left the business, or were bought out by larger players during the 1970s. As part of the settlement terms of the class action in 1983, dozens more firms were excluded from further suits.⁷⁷ Based on the similarity between names or a known organizational relationship, the excluded firms were likely subsidiaries or were companies that were bought out by NBMA members between 1970 and 1980.⁷⁸ It is possible that with more

⁷⁶ For arguments about how processors use geographic isolation of these plants to gain leverage over workers, see especially Leon Fink, *The Maya of Morganton*; and Bryant Simon, *The Hamlet Fire: A Tragic Story of Cheap Food, Cheap Government, and Cheap Lives* (The New Press, 2017).

⁷⁷ To: Purchasers of Broilers, Notice of Class Action Determination, Proposed Settlements and Dismissals and Hearings Thereon, In Re: Chicken Antitrust Litigation, Civil Action No. C74-2454A, United States District Court, Northern District of Georgia. (n.d., enclosed with letter dated July 18, 1975) Chicken Antitrust Litigation – Correspondence, Box 35, Chicken Anti-trust Files, ADAH.

⁷⁸ For example, Tyson bought Ocoma Foods in 1972; see Brent E. Riffel, “The Feathered Kingdom: Tyson Foods and the Transformation of American Land, Labor, and Law, 1930–2005” (Ph.D. Dissertation, University of Arkansas, 2008), 156-157; Tyson Foods, “In 1972, we acquired Ocoma Foods, virtually doubling our size! #TBT,” Facebook post, Sept. 10, 2015. <https://www.facebook.com/TysonFoods/photos/in-1972-we-acquired-ocoma-foods-virtually-doubling-our-size-tbt/868487646540088/> (last accessed Oct. 24, 2019; screenshot available upon request)

complete data about which firms were involved and precise locations of every plant, the NBMA might look far more regional (e.g. if many more smaller players than listed in the class action were involved), or far more national (e.g. if every plant operated by Wilson was included in Figure 13).

However, while the NBMA constituted a coalition of big and small firms, even the largest firms did not dominate the marketplace in this period. In 1969, the year before the NBMA was incorporated, *Broiler Industry* published a list of the top 2/3rds of the industry based on 1968 slaughter data.⁷⁹ Given that NBMA was formed not long after, in 1970, and that it was largely an industry-led voluntary association, it is reasonable to use this data as a proxy for the relative size of the firms included in the NBMA. Of the 46 firms that made the “top 2/3rds” list, 19 were identifiable as members of the NBMA. Three additional firms on the “top 2/3rds” list were not listed as settling defendants, but were among those firms excluded from future actions in the class action. The combined market share of these 19 NBMA members who also appeared in the list of “top” firms was 38.77%.⁸⁰ However, of those “top” firms belonging to the NBMA, just over half (9) had more than 1% market share.⁸¹ For comparison, the remaining 24 “top” firms that were NOT members of the NBMA had a combined market share of 25%; of those, only 8

⁷⁹ “They process 2/3rds of the nations broilers”; it is clear that this list refers to the *top* 2/3rds of the industry because it includes heavy hitters such as Wilson, Swift, Armour, Tyson, Perdue, and J.D. Jewell.

⁸⁰ With the 3 bought-out firms added in, the market share goes up slightly, to 41.17.

⁸¹ None of the 3 bought-out firms had more than 1% market share in 1969.

had market share above 1%.⁸² In court filings, the NBMA claimed that it represented 45% of the industry, which means that the remaining 19 firms affiliated with NBMA that were *not* included in the top 2/3 of the industry had to have a *combined* market share of between 5 and 7 percent. This gives an average of .2% per firm with the 3 extra firms included, or ~.3% with those firms excluded from the calculation. These figures speak to the degree of competition in the industry, and the widespread sentiment that greater consolidation was on the horizon.

The existing competitive landscape meant that even the purportedly smaller players were still vertically integrated with highly sophisticated industrial processes. As Phil Campbell of the Georgia Department of Agriculture put it: “not being corporate structures with stock on Wall Street does not mean they [poultry processors] are not vertically integrated.”⁸³ According to the 1969 data, a firm with 1% of market share processed around 100 million pounds of broilers per year. Thus, the largest of these “small” firms (.3% market share) would have processed around 30 million pounds of broilers in a year, or around 80,000 per day (assuming they have 1 plant that operates continuously every day), or 3,333 per hour. This comes out to 55 birds per minute, a figure generally consistent with typical line speeds of that era.⁸⁴

⁸² The firm with the highest market share in 1968 was Ralston-Purina, with just over 5.5%.

⁸³ United States Congress House Judiciary Committee, *Family Farm Act: Hearings Before Antitrust Subcommittee (Subcommittee No. 5), 92-2, on H.R. 11654 and Similar Bills, March 22 and 23, 1972*, <https://books.google.com/books?id=YlpFAQAAMAAJ>. (last accessed Oct. 27, 2019).

⁸⁴ It may even be a bit slower than typical line speeds, which might reflect that smaller firms were unwilling to pay overtime costs to have inspectors work a second or third shift. In 1957, one Congressman was quoted saying that poultry processors have “5,000 to 8,000 birds per hour” (Statement of B. Carroll

Agricultural Exemptions and Corporate Farming

Thus, the National Broiler Marketing Association was composed, first and foremost, of corporations, large and small. Whether or not corporations have “personhood,” they are still operated and run by people. But can those people who run corporations also be farmers? Capper-Volstead rules explicitly defined a farmer as a “person” who is engaged in the practice of farming. Yet increased mechanization and managerial coordination in agriculture meant that the question of what it meant to be a farmer was up for some debate by the 1970s – if not decades earlier.⁸⁵ As social and cultural identification with “rural life” became divorced from direct participation in agricultural production, the definition of who counted as a “farmer” became even more blurred.⁸⁶ For example, in *Bayside v. NLRB*, decided the previous year, the Supreme Court determined that the drivers of chicken trucks were employees rather than agricultural laborers, and permitted them to unionize.⁸⁷ This decision reflected the belief that companies did not deserve the benefits of agricultural exemptions that had been designed for individual farmers.

Reece (R-TN), “Inspection of Poultry and Poultry Products.” Congressional Record, House, July 15, 1957. 11719) which equals 80-130 birds per minute. On overtime inspector costs, see chapter 4 of the thesis.

⁸⁵ Deborah Kay Fitzgerald, *Every Farm a Factory: The Industrial Ideal in American Agriculture* (New Haven: Yale University Press, 2003); J. L. Anderson, *Industrializing the Corn Belt: Agriculture, Technology, and Environment, 1945-1972* (Dekalb, Illinois: Northern Illinois University Press, 2009).

⁸⁶ Shane Hamilton, “The Populist Appeal of Deregulation: Independent Truckers and the Politics of Free Enterprise, 1935–1980.” *Enterprise & Society* 10, no. 1 (February 21, 2009): 137–77.

⁸⁷ *Bayside Enterprises, Inc. v. National Labor Relations Board*, 429 U.S. 298 (1977).
<https://www.oyez.org/cases/1976/75-1267>.

The NBMA was far from the only self-styled “producer cooperative” that pushed against the bounds of Capper-Volstead protection. As Victoria Saker Woeste has argued, producers chafed at the limitations of agricultural cooperatives both prior to, and after, they were formally declared legal via the Capper-Volstead exemption.⁸⁸ By the 1960s, a cooperative of orange growers encountered very similar legal challenges like the one which brought down the National Broiler Marketing Association.⁸⁹ Yet, as the lower court judges in the case noted, the body of case law on Capper-Volstead was surprisingly thin. Other than the recently decided litigation against the orange growers (*Case-Swayne v. Sunkist Growers*, 1967) the judges had little to go on besides the legislative history and their copy of the Oxford English Dictionary.

Historical evaluations of the Capper-Volstead Act are decidedly mixed. In general, historians who have written about Capper-Volstead cooperatives have highlighted both its benefits for smallholding farmers in specific moments of economic precarity as well as its contribution to a steadily accelerating process of consolidation and corporatization within US agriculture.⁹⁰ Critical interpretations of the act point out that the inclusion of plantation owners (“planters”) undermines any populist intentions of the original Capper-Volstead language. NBMA’s own lawyers took care to point this out, and

⁸⁸ Woeste, *Farmer’s Benevolent Trust*.

⁸⁹ e.g. *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 389 U.S. 384 (1967).

⁹⁰ Lawrence Goodwyn, *The Populist Moment : A Short History of the Agrarian Revolt in America* (New York : Oxford University Press, 1978); Woeste, *Farmer’s Benevolent Trust*, 233.

claimed in 1978 that “it is too late a date to argue that only the little man is covered by the Capper-Volstead Act.”⁹¹

The Justice Department “Business Review”

The legal grounds on which the NBMA members based their status as “farmers” turned out to be much flimsier than they may have originally thought. In fact, the case filings raise real questions about how the NBMA members *ever* came to the conclusion that their association was permissible under US law. The NBMA based their claim that they were eligible for Capper-Volstead exemption on a Justice Department “business review letter” issued in 1969. But, the business review letter in question was not issued to them, but to another organization, United Egg Producers. The question at issue in United Egg Producers involved a member of the NBMA, but that was where the similarity ended. The NBMA (and/or their counsel) may have inferred that their association was legal based on the precedent of this other business review letter.⁹²

However, a cursory review of the practices of the business review letter suggests that the leaders of the NBMA – and their lawyers – were badly mistaken. Admittedly,

⁹¹ Michael A. Doyle and Richard A. Posner, Reply Brief for Petitioner, *National Broiler Marketing Association v. United States of America*. Supreme Court of the United States. October Term, 1977, January 11, 1978, 4.

⁹² Ibid. note 4. I have been unable to locate the exact text of either letter. The substance of the decision in the United Egg Producers letter is documented in a digest of business reviews published in 1983: United States Department of Justice, “Digest of Business Reviews: 1968-1982,” Washington, D.C.: U.S. Dept. of Justice, Antitrust Division, 1983. <https://catalog.hathitrust.org/Record/100844236> (accessed August 27, 2019). Many thanks to Jane Bahnson at Duke Law Library for locating this document.

while the “business review letter” was not a completely novel regulatory tool, it would likely have been unfamiliar to the leaders of the NBMA. Just two years earlier, in 1968, the U.S. Department of Justice’s Antitrust Division issued regulations for a new “Business Review Procedure.”⁹³ This procedure had its roots in “railroad release” and “merger clearance” proceedings, in which the Department of Justice “state[s] its present enforcement intention with respect to a merger or acquisition,” but is not bound to that interpretation.⁹⁴ Marc Eisner offers the clearest summary of how this policy worked in practice: “while the business review provides a statement of division policy, it is fully relevant only to the party requesting the review, is never binding on the division, and will be disregarded if the firm failed to disclose all of the relevant facts.”⁹⁵

Thus, the business review procedure was primarily intended to offer clarity to businesses without tying the hands of the Justice Department. According to a Justice Department publication, their Business Review Procedure “benefits both the [Antitrust] Division and the business community by providing a mechanism for the Division to analyze and comment on the prospective competitive impact of proposed business

⁹³ 20 CFR S 50.6; 33 Fed. Reg. 2422, February 1, 1968; 38 Fed. Reg. 34804, December 19, 1973; 42 Fed. Reg. 11831, March 1, 1977; U.S. Department of Justice, “Digest of Business Reviews: 1968-1982,” iii.

⁹⁴ 20 CFR S50.6 Antitrust Division: Business Review Procedure, as reprinted in “Digest of Business Reviews,” 1983, vii.

⁹⁵ Marc Allen Eisner, *Antitrust and the Triumph of Economics: Institutions, Expertise, and Policy Change* (Chapel Hill: University of North Carolina Press, 1991), 27.

conduct.”⁹⁶ Justice Department counsel John Shenefield, who tried the case against NBMA, described the business review procedure as an “institutionalized corporate compliance program.”⁹⁷ Writing to the American Bar Association in 1979, Shenefield described how “compliance programs” like the business review procedure afforded new opportunities for the Justice Department to work collaboratively with the private bar. He suggested that these procedures provided greater clarity for businesses and promised to reduce the time and expense of costly litigation.⁹⁸ He may have had the recently decided *NBMA v. US* in mind.

⁹⁶ United States Department of Justice, *Digest of Business Reviews: 1968-1982*, Washington, D.C.: U.S. Dept. of Justice, Antitrust Division, 1983, iii. <https://catalog.hathitrust.org/Record/100844236>. (accessed August 27, 2019).

⁹⁷ John H. Shenefield, and Richard J. Favretto, “Compliance Programs as Viewed from the Antitrust Division,” *Antitrust Law Journal* 48, no. 1 (1979): 75.

⁹⁸ Shenefield and Favretto, “Compliance Programs,” 73-80.

Table 2: U.S. Justice Department Business Review Letters, 1969-1982⁹⁹

	N	%
Acquisition-Merger	83	22%
Agricultural Cooperative	12	3%
Competitive Bidding	2	1%
Credit Bureau-Practice	4	1%
Export Association	4	1%
Export-Import	6	2%
Group Purchasing	12	3%
Horizontal Agreement (Misc.)	10	3%
Information Exchange	52	14%
Interlocking Directorate	21	6%
Joint Research Project	7	2%
Joint Venture	34	9%
Labor	3	1%
Mortgage Review Plan	16	4%
Patent/Trademark/Copyright Licensing	6	2%
Pharmaceutical Plan	11	3%
Prepaid Legal Service	9	2%
Referral Service--Professional	3	1%
Price-Fee Review	11	3%
Standards program	12	3%
Trade Association	46	12%
Vertical Practice (Misc.)	5	1%
	369	100%

Between 1968 and 1982, the Department of Justice issued only 12 business review letters pertaining to agricultural cooperatives. Notably, it issued over half of these letters between 1968 and 1972, during the first few years of the existence of the business

⁹⁹ Table compiled from data in “Digest of Business Reviews, 1969-1982,” 1983, Topical Index, xi-xiii.

review procedure, and *before* the Department of Justice officially filed suit against the NBMA. These twelve letters accounted for less than 5% of all business review letters written by the Justice Department between 1968 and 1982. (See Table 2: U.S. Justice Department Business Review Letters, 1969-1982 for a list of letters by category) This suggests that the question of whether the NBMA was a legally permissible agricultural cooperative was still up for debate, given the relatively slim precedent on which to base a decision. While most of the business review letters pertained to mergers and acquisitions, “trade associations” and “information exchange” – categories which describe the kinds of behaviors in which NBMA was engaged – were the second and third most common items considered by the Department of Justice in this business review procedure. This pattern suggests that many other businesses also sought permission from the U.S. government to engage in forms of coordination similar to the NBMA, albeit outside the bounds of the specific agricultural exemption.

THE NATIONAL BROILER MARKETING ASSOCIATION ON TRIAL

NBMA in the Supreme Court: Who is a farmer? What is a chicken?

The Department of Justice filed their case in the Northern District of Georgia, where NBMA was incorporated. The first time the case came before a federal judge, he ruled in favor of the cooperative: the NBMA were, indeed, farmers, and were perfectly eligible for the Capper-Volstead exemption. When the U.S. appealed their case, Judge

William O'Kelley (who later presided over the class action litigation) reversed the previous ruling: NBMA were not farmers. The case then went on to the Supreme Court.

In their Supreme Court briefs, the Justice Department emphasized the legislative history of the Capper-Volstead Act, in order to inform their populist reading of the 1922 law. They agreed with the Court of Appeals that the statute should be construed narrowly to understand farmers as “one who owns or operates a farm.”¹⁰⁰ In comparing the facts of the case to the recently decided *Case-Swayne*, the briefs' authors observed that “[the integrators] are more like the orange packing houses ... than they are like the growers of oranges.”¹⁰¹ An amicus brief submitted by a group of state Attorneys General further emphasized how integrators were not, and never could be, farmers. The Attorneys General pointed out that the *backward* integration practiced by feed dealers and processors was “the exact converse of the *forward* integration by farmers that Congress sought to encourage.”¹⁰² They were also unconvinced by the economic arguments that improved prices for the integrators might redound to growers. They characterized any potential “trickle-down effect” as “unsupported” and “irrelevant.”¹⁰³

¹⁰⁰ Brief for the United States, 10.

¹⁰¹ Wade H. McCree, Jr., John H. Shenefield, et al., Brief for the United States, *National Broiler Marketing Association v. United States of America*. Supreme Court of the United States. October Term, 1977, January 11, 1978, 9.

¹⁰² William Baxley et al., Brief for the States of Alabama, et al. as Amici Curiae, *National Broiler Marketing Association v. United States of America*. Supreme Court of the United States. [date illegible, ~1976-1978]. 7 (Emphasis added)

¹⁰³ Brief for the State of Alabama, et al., 9-12.

As it happened, law and economics scholar Richard Posner defended the NBMA in the Supreme Court; as far as he was concerned, breaking up the NBMA was precisely the kind of wrongheaded action that was ruining US antitrust law. He emphasized that the integrators bore the same kinds of market risks that contributed to the farm problem in the 1920s: “sellers are scattered and uninformed ... [the market is] highly susceptible to overproduction ... demand is both seasonal and cyclical, and the buying side of the market is highly concentrated.”¹⁰⁴ But the Justice Department was unswayed by the NBMA’s claim that they were farmers because they bore much of the risks of the marketplace. The Antitrust Division derided this interpretation of the Capper-Volstead exemption as “inventive” and “sweeping.”¹⁰⁵

The definition of “farmer” in the original text of Capper-Volstead includes a list of examples: “farmers, planters, ranchmen, dairymen, nut or fruit growers.” In their briefs, the NBMA’s counsel argued that these examples were *illustrative* – they claimed that the inclusion of nut growers, a relatively small industry at the time, alongside the category of planters, was meant to suggest the breadth and scope of who could count as a farmer.¹⁰⁶ By contrast, Justice Department counsel John Shenefield contended that this list should be interpreted narrowly – that is, that these categories were meant to *exhaustive*. But, where the list itself introduces a degree of interpretive uncertainty, the

¹⁰⁴ Reply Brief for Petitioner, 6.

¹⁰⁵ Brief for the United States, 20.

¹⁰⁶ Brief for Petitioner, (November 25, 1977) 10.

statute is quite explicit that farmers are, first and foremost, “*persons engaged in agriculture.*”¹⁰⁷

What remains largely implicit in the briefs is a question which has profound implications on contemporary scholarship: if farmers are persons, can corporations be farmers? While this case generally predates more contemporary debates about corporate personhood, the potential implications for a finding that corporations could be “farmers” – here imagined as a more specific subcategory of “persons” – were not entirely lost on either the plaintiffs or the defendants. The NBMA’s counsel argued that “it is undisputed that a corporation engaged in agricultural production is a farmer within the meaning of the Act.”¹⁰⁸ Without any discernible sense of irony, Posner used the example of planters and sharecroppers in order to argue that integrators should be eligible for the exemption: “Plantation owners ... were definitely intended to be within the protective coverage of the Act.”¹⁰⁹ Yet this same comparison had been put to use for a very different effect just a few years earlier in an exposé that criticized the vulnerable position of growers by characterizing contract growing as “modern sharecropping.”¹¹⁰

¹⁰⁷ 7 U.S.C. Sect. 291 (“Capper-Volstead Act”); reprinted in Vol. 1, Appendix to Briefs for *National Broiler Marketing Association v. United States of America*. Supreme Court of the United States. October Term, 1977, January 11, 1978, 83.

¹⁰⁸ Brief for Petitioner (November), 15.

¹⁰⁹ Brief for Petitioner (November), 24.

¹¹⁰ Harrison Wellford, *Sowing the Wind: a Report from Ralph Nader’s Center for Study of Responsive Law on Food Safety and the Chemical Harvest*, (New York: Grossman Publishers, 1972); For a more contemporary articulation of the “modern sharecropping” argument, see John Oliver, “Last Week Tonight – Chickens,” HBO, May 7, 2015. (available at <https://www.youtube.com/watch?v=X9wHzt6gBgI>; last accessed Oct. 28, 2019)

The two sides sharply disagreed on the degree to which integrators were invested in the process of “growing” a broiler chicken. In his brief to the Court, Posner claimed that “more than 90 percent of the total cost of producing a broiler is incurred by the integrator and less than 10 percent by the grower.”¹¹¹ By contrast, the states’ amici curiae brief contended that “replacing contract growers through [full] integration would more than double a processor’s required investment.”¹¹² While it is not clear precisely where either of these figures comes from, the cost estimates given by the NBMA likely do not take into account the value of the land or the construction of the house. By contrast, the “more than double” claim by the states might be incorporating those additional fixed costs. As explained above, by the 1970s, poultry growing generally required investments in more than the four walls of a chicken house and the time and labor involved. Chicken houses had gotten much larger, and needed to be equipped with costly technology, such as feeders, lights, and ventilation, in order to improve the safety of the birds – and, by extension, the quality of the finished product.¹¹³

As it turned out, neither side had much opportunity to present the finer points of their positions in the oral arguments before the Court. The justices practically harassed John Shenefield for not making the parallels to the orange growers’ case (*Case-Swayne*) more explicit (which, presumably, would have made their decision significantly easier).

¹¹¹ Doyle and Posner, Reply Brief for Petitioner, 5.

¹¹² Brief for the State of Alabama, et al., 12, note 11.

¹¹³ William Boyd and Michael Watts, “Agro-Industrial Just-in-Time”; Interview with Bobby F. Bagley.

In the 1960s, an eviscerated broiler chicken was exempted from freight rates as a “raw agricultural commodity.” This fact – which was “not in dispute,” to use the parlance of the briefs – elicited profound confusion among the justices, who repeatedly pressed “Professor Posner” on what, exactly, a broiler chicken *was*. Justice Stevens opened oral argument by inquiring: “why isn’t [a broiler chicken] like meat that’s been dressed by the packers?” Justice Burger, sounding slightly bewildered, ventured, “is there anything more to do before they sell it ... except perhaps cut in half, if they only want half a chicken?”¹¹⁴ The justices also doubted NBMA’s claims that chicken had to be marketed immediately and no alternative distribution channel for surplus existed, other than exports. Justice Stevens tentatively wondered whether there might be a market for a “...larger chicken,” or whether the processors could freeze and store their surplus.¹¹⁵ For his part, Posner’s replies evinced equally tenuous uncertainty: “For reasons that are not explained in the record that I do not understand, there is not a market ... for frozen chicken.”

The jurists’ questions showed how far removed they were from the market realities experienced by the vertically integrated chicken producers – or the average supermarket customer. Without a working knowledge of either the vertically integrated poultry firm or the meat counter at their local Giant Foods, the justices were unable to ask even the most basic questions about the structure of production and consumption of

¹¹⁴ “National Broiler Marketing Assn. v. United States.” Oyez. Accessed September 1, 2019. <https://www.oyez.org/cases/1977/77-117>. Audio transcript, 3.

¹¹⁵ *Ibid.* 12.

chicken. Their confusion merely highlighted the elements of absurdity in the raw product exemption, without calling into question how it was that eviscerated poultry had come to belong in that category to begin with, or how the antitrust litigation might impact production or consumption.¹¹⁶

The U.S. won its case; the majority opinion stated that the members of the National Broiler Marketing Association were not farmers, and the association's collusion violated the Sherman Act. In their dissent, Justice White and Justice Stewart emphasized that the perishable nature of broilers led similar difficulties of marketing other perishable farm products, and argued that the members of the NBMA should be counted as farmers.¹¹⁷ Justice Brennan issued a concurring opinion, where he expressed concern about the possibility that this decision would lead to further integration and consolidation. However, the majority concurred with the key arguments brought by the United States and amici curiae, and construed Capper-Volstead narrowly: the members of the NBMA were not farmers. As Justice Burger sternly reminded the counsel at the close of oral arguments: "We are all from farm states, Mr. Posner."¹¹⁸

¹¹⁶ Ibid. 13; Appendix to "National Broiler Marketing Assn. v. United States," Vol. 1, "Material Facts Not in Dispute," 7. For more on the ICC exemption (without reference to chicken specifically), see Hamilton, *Trucking Country*, 94-95.

¹¹⁷ *National Broiler Marketing Assn. v. United States*, 436 U.S. 816 (1978).

¹¹⁸ "National Broiler Marketing Assn. v. United States." Oyez. Accessed September 1, 2019. <https://www.oyez.org/cases/1977/77-117>. Audio transcript, 36.

Chicken Antitrust Litigation and the Limits of Countervailing Power

Like many antitrust suits in its era, *NBMA v. US* was followed shortly thereafter by numerous private actions. Thus, a single suit filed by a few state Attorneys General on behalf of institutional purchasers around 1974 quickly “snowballed” to include over 30 states, as well as supermarkets, hotels, and fast-food chains.¹¹⁹ All of these actions were later combined into a multi-tiered class action against the chicken cartel. Since that time, such multi-class private actions have become commonplace.¹²⁰ However, correspondence between the lawyers and state attorneys general suggest that the settlement distribution in the chicken antitrust litigation was fairly complex for its time, and dragged on for years afterwards. By 1980, the presiding judge opened one order with the observation that “[w]hile it is still too early to celebrate the slaughter of the chicken cases, at long last the end is in sight.”¹²¹ Shortly after they lost in the Supreme Court in 1978, NBMA members agreed to settle the private suits out of court, for \$31 million dollars. The settlement was to be paid “partially in cash and partially in Broilers,” with the promise that the association would dissolve itself shortly thereafter.¹²²

¹¹⁹ Sentence paraphrased from Order, March 7, 1980. Judge O’Kelley did, in fact, use the word “snowball.”

¹²⁰ On consumer class actions, see Anna Johns Hrom, “Between Fraud Heaven and Tort Hell: The Business, Politics, and Law of Lawsuits,” Ph.D. Dissertation, Duke University, 2018.

¹²¹ Order, March 7, 1980, in the US District Court for the Northern District of Georgia, Atlanta Division, In Re: Chicken Antitrust Litigation, Civil No. C74-2454A; in “Misc. Notes,” Box 35, Papers of the Office of Attorney General, Anti-trust Legal Case Files: Chicken Anti-trust, 1975-1983, Alabama Department of Archives and History, Montgomery, Alabama. (Hereinafter “Chicken Anti-trust Files, ADAH.” All materials from Box 35.)

¹²² To: Purchasers of Broilers, Notice of Class Action Determination, Proposed Settlements and Dismissals and Hearings Thereon, In Re: Chicken Antitrust Litigation, Civil Action No. C74-2454A,

Because the members of the NBMA did not count as farmers, the question of whether or not they actually engaged in anticompetitive behavior was never examined very closely by the courts. In their own published statements they claimed that their efforts to ‘stabilize’ prices were successful. But did they actually fix prices, or just talk about it? Legal scholars who analyzed price trends in broiler chickens during the period of the NBMA’s existence actually discovered a *negative* correlation – that is, prices actually went down by \$1.63 between 1971 and 1973.¹²³ Without access to their organizational records or eyewitnesses, it is difficult to make assessments of their goals and relative degree of success. Finally, because the industry was vertically integrated in this period, it is not possible to know the price spread between integrator and grower receipts without access to private grower’s contracts.¹²⁴ The best available data comes from the USDA’s quarterly publication, *The Poultry and Egg Situation*, and the price indexes published by the U.S. Bureau of Labor Statistics. (See Figure 15 and Figure 16, in Appendix A Figure 16) A graph of wholesale prices and net returns suggests that while net returns remained negative during 1971-1973 (the approximate time during which National Broiler was accused of price fixing), returns gradually crept upwards and prices remained relatively stable. (See Table 6 and Figure 14, in Appendix A) By

United States District Court, Northern District of Georgia. (n.d., enclosed with letter dated July 18, 1975) Chicken Antitrust Litigation – Correspondence, Box 35, Chicken Anti-trust Files, ADAH.

¹²³ Finkelstein, Michael O., and Hans Levenbach. “Regression Estimates of Damages in Price-Fixing Cases.” *Law and Contemporary Problems* 46, no. 4 (1983): 145–69.
<https://doi.org/10.2307/1191596>.

¹²⁴ William Hahn, U.S. Economic Research Service, email message to author, August 26, 2019.

contrast, previous and subsequent years show more of a boom-bust cycle, even if returns were higher. The obviously visible price spike in the summer of 1973 took place *after* the Department of Justice filed suit against NBMA the previous April. This price spike was more closely related to exogenous factors beyond NBMA's control: in the summer of 1973, the Nixon Administration imposed a freeze on the price of beef but allowed prices for substitute meats, like chicken, to rise according to market value. As consumers shifted their purchases to chicken, demand outstripped supply, and prices shot up.¹²⁵

Available records of the settlement process suggests that, much like with other examples of complex litigation, the benefits redounded more to the attorneys involved than to any of the plaintiffs. The suit began prior to a 1977 decision which limited awards to indirect purchasers (*Illinois Brick Co. v. Illinois*).¹²⁶ The outcome of *Illinois Brick* left the state Attorney Generals scrambling, as many states did most of their purchasing through middlemen or other indirect means.¹²⁷ Eventually, the distribution among classes had to be recalculated in the middle of the process, which added an additional layer of complexity and delay.¹²⁸ By the time the settlement was finalized (and adjusted to account for *Illinois Brick*), states received less than 10% of the total amount.

¹²⁵ One of many letters: Letter from James H. Willie (Kentucky Fried Chicken Corporation) to Melvin Laird, the White House, August 1, 1973, EX CM 20-6 Meat (2 of 2) July 1973-1974, Box 8, WHCF, Nixon Library.

¹²⁶ *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)

¹²⁷ Memorandum, To: Attorneys General, Assistant Attorneys General, From: David I. Shapiro, Re: "Ampress Brick and WHAT TO DO ABOUT IT," June 13, 1977, Chicken Antitrust Litigation – Correspondence, Chicken Anti-trust Files, ADAH.

¹²⁸ In Re: Chicken Antitrust Litigation, 407 F. Supp. 1285 (District Court 1975); In Re: Chicken Antitrust Litigation, 560 Federal Supp. 943 (United States District Court, N.D. of Georgia 1979); In Re:

As an example of how states used their settlement money, the state of Alabama is instructive. Records show that the State of Alabama most likely used the money to purchase items that could improve the abysmal (and, incidentally, unconstitutional) conditions in Alabama prisons.¹²⁹ Yet the state's needs were almost heartbreakingly banal. In a proposal to the judge, one-half of the settlement was to be allocated for the purchase of a freezer unit, as well as 2 heated food service carts that would allow prisoners to receive regular hot meals *for the first time*. The rest would go to smaller expenditures at three other prisons, which included such line items as the cost of repainting dining halls, replacement of chairs and tables, repairs for broken stoves and ventilation, and the purchase of two 20-quart mixers, at \$500 apiece.¹³⁰ Historians and legal scholars typically laud private attorneys general of this period for taking on the task of filing private actions on behalf of consumers, in a brief moment of “caveat venditor.”¹³¹ But the uses of the Alabama settlement amount raise important questions

Chicken Antitrust Litigation, 560 Federal Supp., 998 (United States District Court, N.D. of Georgia 1980); In Re: Chicken Antitrust Litigation American Poultry, et al., 669 Federal Reporter, 2nd Series (Court of Appeals, 5th Circuit 1982).

¹²⁹ Charles A. Graddick, “Proposed Distribution Settlement for the State of Alabama,” 4, August 4, 1982, Chicken Anti-trust Files, ADAH. A separate set of legal actions: *N.H. Newman, et al. v. the State of Alabama*, *Jerry Lee Pugh, etc. v. the State of Alabama*, and *Worley James, et al. v. the State of Alabama*, all filed in “the early 1970s,” found the Alabama penal system to be “violative of the inmates’ constitutional rights.” According to the chicken antitrust order, the conditions in Alabama prisons were so bad, that state was releasing inmates just to reduce overcrowding.

¹³⁰ Charles A. Graddick, “Proposed Equipment List to Be Purchased with Chicken Antitrust Money – Exhibit A,” August 4, 1982, ADAH.

¹³¹ cf. Stewart Macaulay, “Lawyers and Consumer Protection Laws,” *Law and Society Review: Beverly Hills, Calif.* 14, no. 1 (Fall 1979): 115–171; on caveat venditor, see Balleisen, *Fraud*, 245-284.

about the use of law as a tool of consumer protection: precisely who is being protected from what, and to what end?

THE NATIONAL BROILER MARKETING ASSOCIATION AND THE PRICE OF CHEAP CHICKEN

In 1971, an editor for *Broiler Industry* cautiously inquired: “What are the alternatives to the key questions of supply discipline if voluntary efforts fail?”¹³² The next fifty years revealed those alternatives quite clearly: a wave of mergers and consolidations, and an endless supply of cheap chicken. Many of the smaller corporations listed as affiliated with the NBMA filed for dissolution in the late 1970s and early 1980s, shortly after the outcome of the antitrust suit but before the final settlement in the class action litigation. Despite recent efforts to promote “antibiotic-free,” “organic,” and “natural” chicken since the early 2000s, most of the industry still competes on price rather than “quality” or “service.” The real winners, both in the Supreme Court decision and in the private action, were the retailers: the grocery chains, fast-food restaurants, and other large-volume buyers who received the bulk of the settlement money – and the future bargaining power.

To the extent that competition among chicken producers is based on “service” or quality, I argue that demand for higher quality has been driven by these retailers rather

¹³² “Is there a better way?” *Broiler Industry*, April, 1971, 4.

than producers, consumers, or even government policy. The now-common practice of private-label sales for most meats (i.e. “store brands”) means that retailers generally bear more of the reputational costs of food scares than processors do. As a consequence, retailers began setting the agenda in both safety and quality, through imposing their own specifications or quality standards in addition to legal requirements.¹³³ While the threat that retailers would integrate backward was ever-present, it is only recently that some firms have considered this possibility.¹³⁴ From the vantage point of 2020, it is unequivocally the retailers, *not* processors, who exert countervailing power.

In 1978, the NBMA’s counsel argued that the NBMA members were farmers based largely on economic terms. Because they took on the bulk of the market risks of farming, they counted as farmers. The Justice Department, however, emphasized that “farmers” were a specialized category of person, defined by direct engagement or investment in the practice of farming. While the Court paid comparatively little attention to the term “person” in 1978 – especially as compared to the term “broiler chicken” – it is

¹³³ I make this argument for the specific case of meat and poultry, but I draw heavily on the work of a group of social scientists who study these dynamics in the European context, as well as American scholars who study supermarkets. Tetty Havinga, Frans van Waarden, and Donal Casey, *The Changing Landscape of Food Governance*. Edward Elgar Publishing, 2015, and Tetty Havinga, “Private Regulation of Food Safety by Supermarkets,” *Law & Policy* 28, no. 4 (2006): 515–53; Elena Fagotto, “Private Roles in Food Safety Provision: The Law and Economics of Private Food Safety,” *European Journal of Law and Economics; New York* 37, no. 1 (February 2014): 83–109; See also Shane Hamilton, *Supermarket USA : Food and Power in the Cold War Farms Race*; Creager et al., *Risk on the Table* (forthcoming).

¹³⁴ Grant Gerlock, “Costco Builds Nebraska Supply Chain for its \$5 Rotisserie Chickens,” National Public Radio, <https://www.npr.org/2018/10/22/659561091/costco-builds-nebraska-supply-chain-for-its-5-rotisserie-chickens> Oct. 22, 2018. (last accessed September 10, 2019)

worth considering whether the case would have led to the same outcome, were it to be tried today.¹³⁵

The same framework of law and economics that justified cooperation along the lines of the NBMA also allows retailers to identify with the “person” of the consumer. If price is the only metric of efficiency, then lower prices represent a crucial metric of consumer welfare. By extension, if retailers employ countervailing power to extract lower prices, then the retailer implicitly acts in the interest of consumers. But at the end of the day, both the key plaintiffs and defendants in these suits are corporations – and it remains unclear which, if any, truly represents the interests of the consumer.

An examination of *NBMA v. US* also adds an important dimension to our understanding of the origins of “business conservatism” as it operated in an agricultural context. The story the NBMA offers a crucial connective link between the “benevolent trusts” of earlier farm cooperatives and more contemporary “checkoff” programs that structure consumer choice in ways that obscure the role of the state.¹³⁶ United by their commitment to free enterprise and a persistent skepticism about the efficacy of government intervention, a group of poultry firms that included players both large and

¹³⁵ I am grateful to (or perhaps blame?) Rachel Brewster and Phil Stern for inspiring me to think about these questions: Rachel Brewster & Philip J. Stern, Introduction to the Proceedings of the Seminar on Corporations and International Law, 28 *Duke Journal of Comparative & International Law* 413-423 (2018) <https://scholarship.law.duke.edu/djCIL/vol28/iss3/2>.

¹³⁶ Woeste, *Farmer’s Benevolent Trust*; Sarah Milov, “Promoting Agriculture: Farmers, the State, and Checkoff Marketing, 1935–2005.”

small chose to take on the task of horizontal coordination themselves. Their mistake was to place their hope in trusts.

In the summer of 2016, another antitrust suit against integrated chicken producers began winding its way through the courts.¹³⁷ Crucially, this suit involved many of the former members of NBMA who survived the latest round of mergers and consolidation in the 1980s and 1990s. Once again, these companies are accused of price-fixing; once again, their response is that they were just trying to stay afloat after 2008, “arguably the biggest bust of them all.”¹³⁸ This time, the means of horizontal coordination are less overt, and the methods involved more modern technology – the processors traded in their punch cards for access to the “Agri-Stats” database.¹³⁹ The plaintiffs, meanwhile, were a far more diverse group of large-volume purchasers and retail buyers, that range from Piggly Wiggly to Walmart, ConAgra to Hooters. Without even the veneer of an agricultural exemption, the poultry processors face an uphill legal battle. But a comparison between the current chicken antitrust litigation and the 1978 case raises

¹³⁷ The most recent action at the time of this writing: *In re Broiler Chicken Antitrust Litig.*, 2019 U.S. Dist. LEXIS 114664, 2019 WL 2764260 (United States District Court for the Northern District of Illinois, Eastern Division, May 6, 2019, Filed) – indicates that the case still has a long way to go. See a list of plaintiffs and defendants in Table 4.

¹³⁸ Tom Johnston, “The chicken ‘cartel’,” *Meatingplace*, Dec. 2016, 41-49.

¹³⁹ Jacob Bunge, “Justice Department Investigates Chicken Industry.” *Wall Street Journal*, June 25, 2019, <https://www.wsj.com/articles/justice-department-investigates-chicken-industry-11561495088>. (appeared in the June 26, 2019 print version as ‘U.S. Starts Probe Into Pricing Of Chicken.’) Jacob Bunge, “Tyson Discloses Justice Department Subpoena in Chicken-Pricing Probe.” *Wall Street Journal*, August 5, 2019. <https://www.wsj.com/articles/tyson-says-it-hasnt-seen-major-benefits-from-swine-fever-in-china-11565007688>

important questions about how the structure and regulation of markets has shaped the distribution and concentration of buyer and seller power.

By the end of the 1970s, the same cost pressures that led the poultry producers to seek improved market coordination began to adversely affect state and federal budgets, as well. Regulators began to realize that the bird-by-bird federal poultry inspection service was increasingly ill-equipped to deal with the “economies of speed” employed by the integrators. Consumers, concerned about new safety hazards that could not be detected by visual inspection, demanded that regulators employ additional resources to address the problem – in spite of competing political pressures to reduce, not expand, the bureaucracy. Consequently, USDA administrators revisited the poultry inspection program to meet their legal obligations while finding ways to lower costs. As in previous eras, regulators were forced to strike a balance between cost, safety, and quality. This ultimately led to the next experiment in self-regulation and public-private cooperation – this time, shaped by deadly incidents of chemical contamination and outbreaks of foodborne illness, and driven by ideas that came from the within the government itself.

CHAPTER 4 – WHO GUARDS THE HENHOUSE? COREGULATION, COMMAND-AND-CONTROL, AND CHICKEN INSPECTION, 1971-2002

PROLOGUE: THE WAR ON PATHOGENS

In 1993, the U.S. Food Safety and Inspection Service (FSIS) declared a “War on Pathogens.” As former FSIS Administrator Russell Cross recalled, “I got that call at midnight one night, saying meet the new Secretary, Mike Espy, at Andrews Air Force Base.”¹ The pair flew to Olympia, Washington, to respond to deadly outbreak of *E. Coli*. The outbreak, which involved contaminated hamburgers sold at Jack in the Box restaurant, killed 4 children and sicken hundreds of others. What became known as the “Jack in the Box” outbreak would go on to be one of the most high-profile outbreaks of foodborne illness in recent history, which led to some of the most dramatic changes in food safety regulation since 1906.²

¹ Oral History with H. Russell Cross, (Professor and Former Head of the Department of Animal Science, Texas A&M University, Administrator of the Food Safety and Inspection Service, (1992 – 1994)), interviewed by Ashton Merck, College Station, TX, Dec. 10, 2018, 4. Transcript in author's possession.

² Eric Schlosser, *Fast Food Nation: The Dark Side of the All-American Meal*, (Boston: Mariner Books/Houghton Mifflin Harcourt, 2012); Marion Nestle, *Safe Food: Bacteria, Biotechnology, and Bioterrorism* (Berkeley: University of California Press, 2003) 73-76; Doug Hamilton, “Frontline - Modern Meat,” PBS, Airdate: April 18, 2002, <https://www.pbs.org/wgbh/pages/frontline/shows/meat/>; Emily Green, “The Bug That Ate the Burger: *E. Coli*’s Twisted Tale of Science in the Courtroom and Politics in the Lab,” *Los Angeles Times*, June 6, 2001. H1, H3); Jeff Benedict, *Poisoned: The True Story of the Deadly E. Coli Outbreak That Changed the Way Americans Eat* (New York, NY: February Books, 2013).

While in the air, Espy asked Cross how FSIS planned to prevent these kinds of tragedies in the future. The FSIS Administrator had a plan already in mind, based on a major reorganization effort begun the previous year. Well before the *E. Coli* outbreak (and, for that matter, the presidential election), FSIS had taken up a new approach to inspect meat and poultry, called “HACCP,” which stood for “Hazard Analysis and Critical Control Points.” The new system demanded that the industry take responsibility for certain visible defects and to control for potential hazards, in order to allow federal inspectors to focus on testing for pathogens like *E. Coli* instead of conducting visual inspections. The original idea for HACCP came out of the space program, Cross explained; the process of analyzing and controlling for food safety hazards ensured the absolute safety of astronauts’ food in space. Espy then asked how many meat and poultry plants were voluntarily practicing HACCP. Cross’s answer, at least in 1993, was “not enough.”³

Moving to something like HACCP required more than a change in the regulations – it required a change in mindset for industry players, consumers, and even the regulators. Every version of HACCP included significant reliance on planning and implementation of safety measures by firms. Perhaps not surprisingly, these self-regulatory elements appealed to the business-friendly sensibilities of the incoming

³ For Cross’s account of this event, see: Elsa A. Murano, H Russell Cross, and Penny K Riggs, “The Outbreak That Changed Meat and Poultry Inspection Systems Worldwide,” *Animal Frontiers* 8, no. 4 (November 9, 2018): 4–8, <https://doi.org/10.1093/af/vfy017>.

Democratic administration – not to mention the staff economists at the Office of Management and Budget. At the same time, the method of identifying and controlling for hazards was still not well understood by many at the USDA – or even within the meat and poultry industry – in the early 1990s. A few higher-level USDA bureaucrats concurred that the HACCP system offered an important step forward in food safety, but they struggled to communicate how the government planned to share the responsibility for food safety with the regulated industry. Federal inspectors did not hesitate to remind consumers what might transpire if the industry was permitted to conduct its own inspections. These critics repeatedly denounced the plan to shift inspection responsibilities onto the industry, claiming that it would be letting “the fox guard the henhouse.”⁴ For them, HACCP was not a strategy to improve food safety; it was simply another iteration of the de-regulation that allowed the *E. Coli* outbreak to happen in the first place.

This chapter argues that the HACCP regulations in the 1990s should be understood as part of a longer trajectory of policy learning in response to crises. Far from a knee-jerk response to a single deadly outbreak, the decision to adopt HACCP regulations in meat and poultry represents the outcome of a decades-long debate over the

⁴ “Fox Set to Guard Chickens,” *Arizona Republic*, January 8, 1990, A8; Gary Tews, “Meat Safety Being Put at Risk,” *Lincoln Journal Star*, Opinion, September 27, 1995, 11B, Editorial, 15; Robert Steyer, “’93 Law May Aid Safety of Food,” *St. Louis Post-Dispatch*, August 23, 1997, 15; “Starting All over Again,” *The Banner-Press* (David City, Nebraska), July 16, 1992, 7B; similar rhetoric animated the debate about HACCP adoption in Canada: Kathryn May, “The ‘Fox in Charge of the Henhouse,’” *The Ottawa Citizen*, October 13, 1997, 1.

right way to obtain safe food. In particular, this chapter describes how scientists and academics arrived at a technocratic consensus about the importance of risk-based, process controls like HACCP as a superior approach to food safety. Cross's remark that HACCP originated from another government program, and that the concept dated back to the 1960s, presents a historical puzzle. If that observation was accurate, it raises the question of why the Food Safety and Inspection Service did not take HACCP under consideration much earlier – and what accounted for its appeal as the right solution during the *E. Coli* disaster in the early 1990s.

Although FDA regulators incorporated HACCP principles in their canned-food regulations as early as 1972, USDA regulators did not adopt HACCP in poultry and meat slaughter until nearly two decades later, in 1996. As it turned out, the idea that sampling, rather than end-product inspection, could lead to safer food did not so easily translate backwards along the production chain, from manufacturing to further processing to slaughter. The FDA regulations for low-acid canned foods attracted little attention then or now; meanwhile, USDA's decision to adopt similar protocols in meat and poultry remains a topic of public debate over twenty-five years later.⁵

⁵ U.S. Food Safety and Inspection Service, Modernization of Swine Slaughter Inspection, Proposed Rule, February 1, 2018, <https://www.regulations.gov/docket?D=FSIS-2016-0017> (last accessed May 31, 2019); FSIS Office of Congressional and Public Affairs, "USDA's FSIS Condemns The Washington Post for False Reporting on a Critical Public Health Issue," *NASDAQ OMX's News Release Distribution Channel*; *New York*. April 8, 2019. <http://search.proquest.com/abicomplete/docview/2204760438/citation/3FC1D0A61B4544E0PQ/3> (Last accessed July 5, 2019); "U.S. Worker, Food-Safety Advocates Sound Alarm over New Hog Slaughter Rules." Reuters, September 18, 2019. <https://www.reuters.com/article/us-usa-pork-slaughter-idUSKBN1W22IV> (Last accessed July 5, 2019); cf. U.S. Food Safety and Inspection Service,

Through the 1970s and 1980s, the two food safety agencies proceeded on very different paths, with regulators' decision-making shaped by statutory obligations, existing policy, available expert knowledge, and their own sense of fiscal resources. As a result, the FDA shifted its attention to obtaining safe food as defined by the principles of sampling and risk analysis. The USDA, whose existing statutory obligations required the maintenance of continuous inspection, could only address new threats like pesticide and chemical residues through quasi-voluntary "quality control" programs. By the time regulators at the USDA took on this new approach to inspection, its key concepts had become associated with ideological arguments about deregulation, austerity, and efficiency. As a result, their proposals elicited a far more strident – and enduring – political opposition.

The first section of this chapter focuses on two very different food safety hazards – the Bon Vivant case and its aftermath, and a 1979 incident involving PCB contamination in poultry feed. Those incidents demonstrate how existing institutional culture, the nature of the scandal, and the available solutions shaped the agencies' responses to crises in food safety, which in these instances nudged the two food safety agencies in opposite directions. To put it simply, FDA focused more on safety as defined by microbiological criteria, while the USDA shifted their attention to quality, as defined by the absence of residues or visible adulterants. A middle segment of the chapter

Modernization of Poultry Slaughter Inspection, Proposed Rule, April 26, 2012.
<https://www.regulations.gov/document?D=FSIS-2011-0012-0903> (last accessed June 3, 2019)

explores how both agencies' decisions were influenced by concerns about cost. Amid the rampant inflation of the late 1970s, USDA bureaucrats became more interested in alternatives to continuous inspection later as a strategy to reduce program costs. Their actions followed the blueprint of a 1977 report by a management consulting firm, Booz Allen Hamilton, which advocated major changes to the meat and poultry inspection program. This section also describes how the scientific consensus around HACCP gradually expanded to include other players in government and in academia. The final section offers a reappraisal of the HACCP rule in meat and poultry, taking this longer narrative into account. This section describes the regulatory process behind the 1996 HACCP Final Rule (colloquially known as "Megareg") and the HACCP-Based Inspection Models Project. In order to understand where HACCP came from, how it got to be on FSIS's radar at this moment, and why it generated so much controversy, it is necessary to go back to another tragedy that happened twenty years earlier, one involving the Bon Vivant Soup Company.

BALANCING COST, SAFETY, AND QUALITY IN AMERICAN FOOD SAFETY REGULATION, 1971-1979

Bon Vivant and "Good Manufacturing Practices"

On the morning of June 29, 1971, Samuel Cochran, Jr., a banker from Westchester County, New York, noticed that he was having trouble reading the newspaper on the train. At age 61, he was already quite nearsighted, and he worried that

his vision might be getting worse. As Cochran continued into New York City, he realized that he was seeing double. By mid-day, he left his office to have his eyes examined. By this point, his speech was slurred, and some key motor movements were compromised. His condition baffled the attending physicians; Cochran appeared to exhibit some, but not all, of the symptoms of a stroke, but their proposed remedies did nothing to alleviate his condition. By 11 o'clock that night, he was dead. Nurses reported that he “just suddenly stopped breathing.”⁶ It was not until the next day, when his wife began to exhibit similar symptoms of slurred speech, that the doctors made the connection to *Clostridium botulinum* in time to save her life. They traced the source of the pathogen to a can of vichyssoise improperly processed by the Bon Vivant Soup Company – recovered from the Cochran’s own kitchen trash can.⁷

Nationwide publicity of the tragedy made “Bon Vivant” synonymous with the perils of the industrialized food system. Much like “embalmed beef” and “the pig in the privy” for the nineteenth-century Progressives, “Bon Vivant” briefly served as an ironic shorthand for the deadly combination of inadequate reforms and reckless business practices that characterized corners of the postwar food system. For the next five years, the Center for Science in the Public Interest presented the “Bon Vivant Vichyssoise

⁶ Boyce Rensberger, “Grim Detective Case: Search for Vichyssoise After a Westchester Man’s Death,” *New York Times*, 1971.

⁷ Ibid.; Brooks Jackson, “Regulatory Feast: Inspection Shortcomings Result in Fatal Meals,” *Indianapolis Star*, December 21, 1976; Timothy D. Lytton, *Outbreak: Foodborne Illness and the Struggle for Food Safety* (Chicago: The University of Chicago Press, 2019), 132-170.

Memorial Award” to a company who “encourages *bad* eating habits.”⁸ Bon Vivant also made a telling appearance in an end-of-the-year roundup on some of the worst “advice” of the year 1971: “Aren’t you glad you aren’t the person who said to a housewife, ‘We’re having a special on Bon Vivant vichyssoise today?’”⁹ The incident served as a call to action for consumers – and canners.

Bon Vivant represented one of many “shocks” to the American food system in the early 1970s. Horror stories of products contaminated with deadly pathogens and toxic chemical residues repeatedly raised the alarm that the consumer-led reforms of the “Great Society” proved insufficient to keep unsafe products off supermarket shelves.¹⁰ In that same summer – 1971 – poultry processors in North Carolina discovered that their poultry stocks contained toxic residues of polychlorinated biphenyls (PCBs).¹¹ In Mississippi, farmers inadvertently contaminated poultry stocks by applying the pesticide dieldrin illegally as a rat poison.¹² In 1973, FDA investigators uncovered numerous instances of

⁸ Burros, Marian, “The Annual Vichyssoise [sic] Award,” *The Washington Post* (1974-Current File); *Washington, D.C.* June 10, 1976, G14. (emphasis in original)

⁹ Art Buchwald, “Mr. President ’My Advice . . .,” *The Washington Post, Times Herald*, (Washington, D.C.), January 2, 1972.

¹⁰ John Neary, “Eat, Drink and be Wary,” (clipping, possibly from *Life*, dated 10/20/72, 69-82), Folder 29, Box 359, Consumers Research Papers.

¹¹ “77,000 Broilers Destroyed.” *The Anniston Star*. July 28, 1971; “Contaminated Poultry May Be Sold Legally If Stripped.” *Asheville Citizen-Times*. August 20, 1971; on the impact of environmental contamination by PCBs in Anniston, Alabama, see Ellen Griffith Spears, *Baptized in PCBs: Race, Pollution, and Justice in an All-American Town* (Chapel Hill, NC: UNC Press, 2016).

¹² Memorandum for the President, “Poultry pesticide contamination in Mississippi”; From Frank G. Zarb to Bryce Harlow, William Timmons, George Shultz/Ron Brooks, Kenneth R. Cole, Jr.; April 3, 1974; folder Meat [2 of 2] July 1973-1974; WHCF: EX CM 20-6; Nixon Library.

spoilage in canned mushrooms from both European and American canners.¹³ Another deadly mix-up in livestock feed came to light in Michigan a few years later, in 1974.¹⁴ Around this time, scientists discovered unexpectedly high levels of mercury in tuna and swordfish.¹⁵ Each successive scandal highlighted a new gap in oversight, or emphasized another previously unknown hazard associated with large-scale, industrialized agriculture and food production.

Each incident also reinforced how scientists' technical capacity to detect and trace microbial contamination, carcinogens, and contamination in food and consumer products kept getting better. Now that scientists could detect minute levels of chemical or pesticide residues from environmental contaminants, they detected residues almost everywhere. As former FDA investigator Robert Savage recalled, "the more you look, the more you find."¹⁶ New studies raised questions about products that scientific experts previously deemed safe. Perhaps the most famous example is the case of cyclamate, an artificial sweetener that the Food and Drug Administration took off the market in 1971 after rat studies revealed it to be a potential carcinogen.¹⁷

¹³ Oral History Interview with Robert Savage, 5-7; "Nationwide Survey of Mushrooms," *San Francisco Chronicle*, May 4, 1973 (clipping), Folder 30, Box 359, Consumers Research Papers.

¹⁴ Carrie Arnold, "Uncertain Inheritance: Epigenetics and the Poisoning of Michigan," *Undark*, Dec. 28, 2017, <https://undark.org/2017/12/18/pbb-michigan-epigenetics/> Thanks to Evan Hepler-Smith for this reference.

¹⁵ "FDA Warns the Public Not to Eat Swordfish," *The Los Angeles Times*, May 7, 1971; Memorandum; FDA recall of mercury contaminated swordfish; January 18, 1971; folder Food and Kindred Products 1971-1973 [1 of 5]; WHCF EX CM 20; Nixon Library.

¹⁶ Oral History Interview with Robert Savage, 5.

¹⁷ Wayne L. Pines, "The Cyclamate Story," *FDA Consumer*, Dec. 1974-Jan. 1975, 19-20; 25-27 folder: FDA Consumer April 1974-Feb 1975," Box 362, Consumers Research Papers.

In response, a widening coalition of consumers and legislators sought more comprehensive reform. Unlike other periods that focused on reforms that maintained the division of responsibility across two agencies, this coalition gravitated towards the idea of a consolidated agency for food safety. However, because there was scant consensus about either the definition of “safety” or the methods that would guarantee it, interest groups disagreed on which existing regulatory structure should be the model for this new food agency. Based on the experience of Bon Vivant, some consumer advocates argued that the FDA’s existing audit regime was totally inadequate to the task of ensuring the safety of an increasingly complex food supply. These advocates wondered why, if a more hands-on regime was possible for meats, it might not be possible for other goods. Some scientists and technocrats, on the other hand, saw how FDA’s approach, given better resources, could actually be *more* effective than expanding end-product inspection. If nothing else, consolidation into a single food safety agency promised to correct some of the more preposterous examples of duplication or gaps in oversight – or the different oversight given to meat and poultry soups as compared to vegetable soups – even when they were processed in the same facility.¹⁸

Around the same time, a group of scientific and technical experts in academia, government, and private industry began to consider the possibility of a consolidated

¹⁸ Mel Seligsohn, “Who Will Regulate Food?” *Food Engineering*, February 1978, 24-26, clipping in Folder 19, Box 358, Consumers Research Papers; Peter Barton Hutt, “Safety Regulation in the Real World,” *FDA Consumer*, July-August 1973, 4-10; <https://books.google.com/books?id=03vUP-hqNaUC&pg=RA5-SA1973-PA1&lpg=RA5-SA1973-PA1#v=onepage&q&f=false>.

science for food safety, which eventually generated more agreement. Over the course of the 1970s, these experts began to argue on the basis of laboratory experiments that microbiological sampling and process controls (along the lines of what at the time was a new concept of “hazard analysis” and critical control points”) could produce safer food than continuous visual inspection. But as they belatedly discovered, the existence of an expert consensus and the willingness of scientists to engage in the policy process over the issue did not by themselves prove sufficient to secure policy change. Even though the emerging consensus around new approaches to food safety resulted from interdisciplinary collaboration among groups of “experts,” some influential scientists retained opposing views. For example, veterinarians, who held key leadership positions in Meat and Poultry Inspection program for decades, expressed skepticism about new approaches.

As soon as FDA officials confirmed that the botulism that killed Mr. Cochran was the same as the pathogens isolated from the recovered can of vichyssoise, they ordered the seizure of contaminated products and their removal from the marketplace. What began as a federally-mandated seizure of all Bon Vivant vichyssoise cans that bore the code V141 (the same as the deadly can), however, soon expanded to include all products packed by the small New Jersey cannery. First, consumers became frightened of all vichyssoise from Bon Vivant, and so the company obliged by voluntarily taking all of their cans off the shelves, even those from other lots. Next, when consumers learned that Bon Vivant packed for more brands than just its own label, but in fact processed food for

many regional supermarkets (or “private labels”), they lost trust of the safety of these other brands as well.¹⁹ The FDA eventually demanded the seizure and destruction of the entire stock of the company’s product. The scale and scope of the Bon Vivant scare echoes that of the 1959 “cranberry scare,” when the FDA released a public statement that cranberries might be contaminated by the pesticide aminotriazole.²⁰ Leaders at the FDA did not stop there; they employed the agency’s police powers to its fullest extent and conducted a criminal investigation into the company. Bon Vivant went bankrupt later that year.

In the course of their investigation, FDA scientists determined that the contamination at Bon Vivant resulted from inadequate thermal processing; two years later, the FDA promulgated regulations to prevent similar occurrences. These new rules departed from the typical rules and regulations of the era, which specified a precise actions to take, mandated the use of a piece of equipment, or dictated a defined process. Such rules are known as *design standards* or “command-and-control” regulations. By contrast, a rule that requires a product to meet a certain set of criteria, such as “less than 5% fat content” is known as a *performance standard*. Still another type of rule, a *process standard*, requires firms to follow a certain process without specification of performance

¹⁹ See generally the contents of folder “Protection Programs [1971] [2 of 3];” WHCF EX AG 3 Marketing; Nixon Library.

²⁰ Timothy Lytton argues that the FDA did not have modern “recall” authority during this period, and that the national seizure of Bon Vivant products represented “the only nationwide seizure” in the entire history of the agency. See Lytton, *Outbreak*, 110, footnote 12 (436). On the cranberry scare, see Mark Ryan Janzen, “The Cranberry Scare of 1959: The Beginning of the End of the Delaney Clause,” (Texas A&M University, 2011).

criteria.²¹ The new canning regulations took the form of flexible process standards: under these new rules, companies created their own process for controlling potential hazards, and shared their approach with the government. FDA agents would then verify that the process worked; that is, they would confirm that the methods the company proposed could adequately prevent contamination and the growth of pathogens, based on available science. Under these new rules, the FDA would still continue their practice of periodic audits, but its agents now held canners accountable to a written process submitted to the agency. By 1979, the FDA referred to these rules as “Good Manufacturing Practices.”²²

FDA regulators did not invent the new approach espoused in these rules. Instead, HACCP emerged from earlier collaborations between an interdisciplinary group of engineers at NASA and microbiologists from Pillsbury. In the late 1950s, NASA contracted with Pillsbury scientists to help their engineers ensure the safety of food for astronauts in the U.S. space program. NASA engineers, frustrated with the amount of

²¹ In an online glossary, the IEEE (Institute of Electrical and Electronics Engineers) defines a performance standard in the following way: “Performance standards specify the level of expected performance for a product, not how it should be designed, and may include test methods that simulate performance under actual conditions.” IEEE defines a process standard in the following way: “Process standards relate a series of actions or operations used in making a product and provide the methodology to perform these processes in a consistent and reproducible way.” (The IEEE defines a design standard as: “Standards that specify the design or technical characteristics of a product in terms of how it is to be constructed, assembled or manufactured.”) Standards Glossary, IEEE Standards University, 23 September 2016, <https://www.standardsuniversity.org/article/standards-glossary/> (last accessed March 5, 2020). For more on the history of the IEEE, see JoAnne Yates and Craig N. Murphy, *Engineering Rules : Global Standard Setting since 1880*, (Baltimore: Johns Hopkins University Press, 2019), 214-237.

²² “Current Good Manufacturing Practice,” Docket 075N-0333, Final Rule, U.S. Food and Drug Administration, Title 21, Subchapter B, Pt. 113 – Thermally Processed Low-Acid Foods in Hermetically Sealed Containers, *Federal Register*, Vol. 44, No. 53, Friday, March 16, 1979, 16209. <https://www.govinfo.gov/content/pkg/FR-1979-03-16/pdf/FR-1979-03-16.pdf>

testing required in traditional food safety approaches, encouraged Pillsbury scientists to apply the methodology of “critical control points” or “critical failures” – an existing NASA requirement that was already standard practice in weapons and munitions safety testing – to food.²³ The resulting system, which the scientists dubbed “Hazard Analysis and Critical Control Points” (HACCP) represented a notable departure from traditional approaches to food safety, which is focused on either end-product testing or quality assessment through grading schemes. Instead, the Pillsbury scientists adopted a preventative ethos that acknowledged the many industrial processes necessary to produce modern food.²⁴

By the early 1970s, Pillsbury scientists began to share their strategy with the broader scientific community; according to one scholar, most FDA scientists first learned about HACCP in 1971, at the National Conference on Food Protection in Denver, Colorado.²⁵ These scientists likely arrived at the conference with the Bon Vivant incident (and a scathing report from the Government Accounting Office on the conditions inside FDA-regulated plants) fresh in their minds.²⁶ To these scientists, HACCP offered an

²³ “Happy 50th Birthday to HACCP: Retrospective and Prospective,” *Food Safety Magazine*, November 26, 2012, <https://www.foodsafetymagazine.com/magazine-archive1/december-2009january-2010/happy-50th-birthday-to-haccp-retrospective-and-prospective/>; Howard E. Bauman, “The Origin of the HACCP System and Subsequent Evolution,” *Food Science and Technology Today* 8, no. 2 (June 1994).

²⁴ Jennifer Ross-Nazzal, “From Farm to Fork: How Space Food Standards Impacted the Food Industry and Changed Food Safety Standards,” *Societal Impact of Spaceflight, NASA, Washington, DC*, 2007, 219–36.

²⁵ Ross-Nazzal, “From Farm to Fork,” 224.

²⁶ Brooks Jackson, “Regulatory Feast: Inspection Shortcomings Result in Fatal Meals.” *Indianapolis Star*. December 21, 1976, First edition; Ross-Nazzal, “From Farm to Fork,” 225-230; U.S. Government Accountability Office, *Dimensions of Insanitary Conditions in the Food Manufacturing*

especially compelling solution to the growing problem of inadequately processed canned foods. FDA regulators took HACCP under serious consideration when they implemented new rules for canners and food processors.

Once the underlying principles of HACCP became mandatory through the new federal regulations, knowledge of the HACCP system percolated into the food processing industry and created a new generation of experts. A review of classified newspaper ads suggests that American firms included “HACCP” in advertisements for quality assurance managers as early as 1978, and sought candidates with a “firm understanding” of HACCP by 1981.²⁷ These experts were primarily microbiologists who specialized in food science or were trained in food science and technology programs. Crucially, some of these experts also moved from industry and academia into FDA, where they soon met the agency’s demand for expertise to oversee enforcement and to keep the regulations updated.

One of these new experts was a young microbiologist named Robert Savage. In 1971, Savage completed a Master’s thesis at Amherst College, where he worked with an expert on thermal processing. After college, he took a job with the Great Atlantic and Pacific Tea Company to oversee the company’s canning operations in Elmira, New York.

Industry; Report to the Congress [on the] Food and Drug Administration, Department of Health, Education, and Welfare (Washington, DC: GAO, 1972).

²⁷ “Quality Assurance Laboratory Manager (Classified Ad),” *The Atlanta Constitution*. March 15, 1981; “Quality Control Specialist (Classified Ad),” *Chicago Tribune*, April 22, 1979, 62. (Very likely that this was an ad for a position with Kraft – “Fortune 50 organization with Loop headquarters”); “Quality Assurance Administrator – Fisher Nut Co. (Classified Ad),” *Minneapolis Star Tribune*. November 19, 1978, 169.

From his post at A&P, Savage heard about the Bon Vivant scandal around the same time that he began to learn about the earliest versions of called HACCP. Savage recalled a presentation about HACCP at a meeting of the Institute of Food Technologists in 1970 – a full year before the Denver conference mentioned by the FDA scientists.²⁸ Thus, the larger canners may have already been thinking about these issues even before the Bon Vivant incident hit the headlines. When Savage read the new FDA regulations in 1972, he noticed how much the “critical factors” proposed in the government’s rules aligned with the Pillsbury principles of “critical control points.” He assumed that he would spend the next few years writing up a plan for A&P to comply with these new rules.

Unbeknownst to him, the FDA hired his old graduate advisor for his expertise in thermal processing; the next year, the advisor called up his former student to invite him to join the FDA as an investigator. Savage left the Graybar Building and moved to Washington, where he spent the next thirty years as a food safety regulator – first within the FDA, then later at the USDA.²⁹ Savage was part of a larger group of scientists who help microbiological expertise move from a niche area of food science to a central player in the debate over how to ensure safe food in the late twentieth century.

The Bon Vivant incident changed how the FDA regulated canners and food processors, but that path was shaped both by FDA’s existing statutory obligations and the

²⁸ Oral History Interview with Robert Savage, 4. (It is possible that Savage misremembered the year and conference.)

²⁹ Oral History Interview with Robert Savage, 4-9.

solutions then “available” to its experts. A strategy of self-regulation through adherence to a set of industry “best practices” fit comfortably within the agency’s existing strategy of auditing and verification – and faced far fewer political obstacles than asking for an expansion of inspection resources. Key elements of the FDA’s response to the Bon Vivant episode suggested underscored the value of existing legal authority for handling such a threat: the agency acted swiftly to seize the product and prevent further contamination, and subsequently exercised the full capacities of their criminal investigative capabilities – shutting down Bon Vivant for good.

PCBs in Poultry and “Total Quality Control”

In June 1979, an unused electrical transformer at The Pierce Packing Plant in Montana, which produced livestock feed, slowly began to leak. The old transformer used PCBs, or polychlorinated biphenyls, which are man-made organic chemicals that are extremely persistent in the environment and are highly carcinogenic.³⁰ (While Congress had banned new production or use of PCBs in the United States several years earlier, the legislature exempted businesses with “stocks on hand.”) The PCBs in the transformer oil leaked into the plant, contaminating the livestock feed that would soon be shipped all over the country.

³⁰ Ellen Griffith Spears, *Baptized in PCBs: Race, Pollution, and Justice in an All-American Town* (Chapel Hill, NC: UNC Press, 2016).

What happened next merits careful attention: Several weeks later, on July 6, a USDA poultry inspector took a sample from a poultry plant that had received some of the contaminated feed. However, the USDA did not publicly announce that the contamination had occurred until a month later, in early August. A laboratory mix-up delayed the processing of that early July sample, and then it got shipped between USDA and FDA agents before the contamination was officially discovered and announced. Chicken farmers and processors panicked when they learned the news. New rules about how the proper destruction of products contaminated with PCBs further complicated the response to the crisis.³¹

To make matters worse, a 1979 report by the U.S. General Accounting Office (GAO) suggested that the PCB contamination at Pierce Packing might not be an isolated incident. The investigators found that 14 percent of meat and poultry were contaminated with pesticide and chemical residues. Thus, the PCB incident in Montana appeared to be just one illustration of the bitter harvest of the “toxics revolution.” Innovations in agricultural chemicals and pesticides, long heralded by scientists and companies for their role in the growth of food production in the twentieth century, now posed risks of their own.³²

³¹ Bryce Nelson, “PCB Pollution Grave Question, U.S. Says.” *Los Angeles Times*, October 7, 1979.

³² Daniel, *Toxic Drift*; Vogel, *Is It Safe?*; David D. Vail, *Chemical Lands: Pesticides, Aerial Spraying, and Health in North America’s Grasslands Since 1945* (University of Alabama Press, 2018).

Although the 1979 incident at Pierce Packing Plant prompted extensive press coverage, it was not the first time that PCBs were found in chicken carcasses. Eight years earlier, a Wilkesboro, North Carolina-based poultry processor, Holly Farms, found residues of PCBs in their product through their own testing. After months of investigation, USDA scientists determined that the PCBs came from contaminated fish meal, a crucial component of modern poultry feed.³³ The source of the contamination was a similar leak in a cooling system, this time at a fishmeal plant in Wilmington.

Back in 1971, USDA officials treated the PCB contamination more like an instance in which a farmer's crop encountered bad weather or blight than as a problem of public safety. Legislators worked to secure indemnity payments for poultry farmers to compensate for the loss of their flocks.³⁴ The provision of indemnity payments to farmers due to chemical or pesticide contamination followed established precedent: cranberry farmers received such payments after the "cranberry scare" of 1959, when a small fraction of the American cranberry supply was contaminated with toxic levels of the pesticide aminotriazole, but public statements by the Food and Drug Administration

³³ The timing suggests that concerns about the safety of domestic fish meal may have prompted the National Broiler Marketing Association to conduct their private trade deal with Peru in 1972. On Peruvian fish meal, see Kristin A. Wintersteen, *The Fishmeal Revolution: The Industrialization of the Humboldt Current Ecosystem* (California University Press, forthcoming).

³⁴ From Frank G. Zarb to Bryce Harlow, William Timmons, George Shultz/Ron Brooks, Kenneth R. Cole, Jr. "Memorandum for the President, Subject: Poultry pesticide contamination in Mississippi," WHCF: EX CM 20-6 Meat [2 of 2] July 1973-1974, April 3, 1974.

affected the entire market for cranberries.³⁵ Poultry farmers received indemnity payments when the USDA banned diethylstilbestrol in poultry.³⁶

By the mid-1970s, amid Vietnam-related and post-oil shock inflation and budget deficits, indemnity payments faced greater scrutiny and Congress sought to curtail their use.³⁷ In agriculture, individuals often received indemnity payments less to offset the impact of unpredictable natural disasters or to restore “farmer purchasing power,” but as a means of compensation for the impact of “federal regulatory activities.” If farmers could receive compensation for regulatory changes that affected their products, some canners wondered, canners should be eligible to receive similar compensation for the sudden ban on cyclamates, an additive which had been designated “generally recognized as safe” for years.

The possibility of expanding the criteria for indemnity based vaguely on the cost of “federal regulatory activities” worried lawmakers. In a memo to the White House on the cyclamate issue, an official from the Department of Health, Education, and Welfare

³⁵ Michael Tortorello, “The Great Cranberry Scare of 1959,” *The New Yorker*, November 24, 2015, <https://www.newyorker.com/tech/annals-of-technology/the-great-cranberry-scare>.; Mark Ryan Janzen, “The Cranberry Scare of 1959: The Beginning of the End of the Delaney Clause” (Texas A&M University, 2011) 91-100.

³⁶ Memorandum for the Honorable John C. Whitaker, the White House, from the Department of Health, Education and Welfare, Subject: Indemnification of Business Losses Arising from Federal Regulatory Activities, March 15, 1971, WHCF, EX AG 3, Marketing: Protection Programs, (2 of 3, 1971), Nixon Library.

³⁷ For a review of this trend as seen from the mid-1980s, see Hollenshead, N. H., Miyares, J. Raymond., Quarles, P., Research Group, I. “Background Report for the Indemnification Report to Congress.” Washington, D.C.: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 1983, <https://hdl.handle.net/2027/umn.319510029124919>

expressed concern that offering indemnity payments for cyclamate might “distort regulatory decisions.”³⁸ The official worried that offering indemnification as a result of a typical scenario in safety regulation – that is, responding to newly available science to reduce threats to public health and safety – might constrain regulators in both directions. On the one hand, regulators might be pressured not to pass certain regulations if they knew it might “disrupt the Federal budget” or “add to inflationary pressures.”³⁹ On the other hand, regulators might take advantage of expected indemnification payments and “be encouraged to pursue unreasonably high levels of public health and safety, with long term adverse consequences on the freedom of business activity,” especially if they knew in advance that costs “would be spread over the entire Federal tax base?”⁴⁰

Taken to either extreme, expanding the situations that justified indemnity payments would make the task of regulating uncertain health and safety risks even more difficult. As the distinction between “farmers” and “business” blurred, the idea that farmers deserved special treatment for the risks they bore in the marketplace also became less convincing.⁴¹

Compensating poultry farmers also did little to address the underlying issue of the extent to which toxic chemicals pervaded the natural environment. It was almost inevitable that toxic chemicals like PCBs could – and would – contaminate feed or food

³⁸ *Infra.* note 36. See also Hollenshead, et al. “Background Report for the Indemnification Report to Congress.” A-40, footnote 106.

³⁹ *Infra.* note 36.

⁴⁰ *Infra.* note 36.

⁴¹ cf. Milov, *The Cigarette*.

again. Nevertheless, once the government removed stocks of contaminated poultry from the marketplace, the USDA officials considered the matter closed.⁴² Unlike in the Bon Vivant case, the USDA did not explore fundamental redirection of regulatory strategy within the bounds of their existing authority. Nor is there evidence to suggest that the poultry trade associations pressed for Holly Farms' in-plant methods to become mandatory regulations. This reticence may have been because they, too, perceived the presence of chemical or pesticide residues as a flaw in quality control, rather than a matter of public safety.

By 1979, however, USDA regulators recognized that they needed to take a different approach to address the prevalence of these new hazards. In an unsigned letter to the Office of Management and Budget, a USDA bureaucrat observed: “[the] recent PCB contamination problem in the Western United States provides a compelling case for the need for new types of Federal authority.”⁴³ In fact, lack of authority was one of the biggest issues in containing PCB contamination: while the USDA arguably had far more authority to inspect facilities than their counterparts at the FDA, their oversight capabilities remained surprisingly limited outside the four walls of the plant. Even after the extent and scope of PCB contamination was well known to officials and companies,

⁴² “Contaminated Poultry May Be Sold Legally If Stripped,” *Asheville Citizen-Times*, August 20, 1971.

⁴³ Letter to Hon. James T. McIntyre, Jr., Director of the Office of Management and Budget, from ? (unsigned pink copy, dictated by LLMurphy) p.2-3, “US Office of Management and Budget”, Box 2, RG 462, USDA-FSIS-OA - Office of Administrator's Pink Alpha Files, FY 80, Acc No 462-82-103; HMS # 410343, NACP.

officials possessed few tools to keep contaminated animals away from processing plants: “In the absence of authority to hold suspected animals on farms or in feed lots, FSQS was forced to rely entirely on hold and test restrictions at the Federal plants.”⁴⁴ In other words, even when USDA knew that a problem existed, they lacked the capacity to take action until the product arrived at the *location* of regulatory oversight. The USDA, moreover, did not have direct oversight of poultry and livestock feed. USDA officials provided grain grading services, but FDA remained technically responsible for the safety of the feed.

Perhaps as a result of this narrow, yet concentrated authority, food safety regulators for meat and poultry frequently envisioned regulatory solutions in terms of what could be accomplished inside the plant. For example, when asked about how to reduce or eliminate *Salmonella* in 1973, Robert Angelotti told *FDA Consumer* that “the most effective point would be at a terminal step in the processing of the food, just prior to the final packaging.” Angelotti specifically endorsed the practice of spraying the carcass “with chlorine solutions.”⁴⁵ While Angelotti went on to acknowledge that improvements in animal health on the farm might also reduce *Salmonella*, these remarks reveal how much the existing regime of end-product testing shaped these experts’ definition of safety. Angelotti’s preference for a chlorine rinse shows that the dominant conceptual

⁴⁴ Ibid.

⁴⁵ “Salmonella and Food in Your Home,” *FDA Consumer*, July-August 1973, 14, Folder 14, Box 362, CLNJ.

approaches to *Salmonella* control in the 1970s emphasized reduction *post hoc*, at the processing stage, rather than preventive measures on farms or even in animal health. At the time, Angelotti served the Director of the Bureau of Foods' Office of Compliance, but he would go on to work in USDA's Consumer and Marketing Services later in the decade. The process he described in 1973 anticipated USDA's eventual regulations for chlorine rinsing of fecal matter, which it adopted in the late 1970s.⁴⁶

After Angelotti moved to Consumer and Marketing Services, he worked alongside a former consumer advocate named Carol Tucker Foreman. When she was confirmed as Assistant Secretary for Consumer and Marketing Services by President Jimmy Carter in 1977, Foreman became the first woman appointed to such a position at USDA, and one of the first without either an agricultural or economics background. Nevertheless, Foreman already had years of experience in government inside and outside the Beltway through her work as past president for the Consumer Federation of America. Indeed, Foreman was so deeply embedded in consumer lobbying efforts that Senator Jesse Helms quipped: "The question could be raised . . . that your new job will not be a branch office of your old job."⁴⁷ Even though an intimate familiarity with the needs of the consumer was critical to success in her appointed role, overtly business-friendly members of Congress like Helms maintained their reservations that Foreman might turn

⁴⁶ Scott Bronstein, "Chicken: How Safe? First of Two Parts: High-Tech Plants Churn out Poultry – but Add to Risk.," *Atlanta Journal-Constitution*, May 26, 1991.

⁴⁷ *Nomination of Carol Tucker Foreman, Hearings before the Committee on Agriculture, Nutrition, and Forestry*, U.S. Senate, 95th Cong., 1st Sess., 1977 (Statement of Jesse Helms), 24.

out to be a de facto consumer activist within USDA. Her early policy decisions in 1977 and 1978, including regulations on labeling of mechanically deboned meat and poultry, and her campaigns to eliminate carcinogenic nitrites, a common food additive in bologna and ham, only confirmed that assumption. One critic, referring to her as “the Dragon Lady,” argued that her policies on meat labeling represented nothing less than “consumerism rampant.”⁴⁸

Foreman surprised her fellow consumer allies, however, in the late 1970s, when she argued in favor of significant changes to meat inspection. She suggested that the resources now used for incomplete or haphazard coverage by patrol inspectors could be reallocated to train inspectors to perform tests for pesticide residues and other contaminants.⁴⁹ She also espoused her USDA colleagues’ views that pathogens, like *Salmonella*, were best controlled through rinses near end-point inspection. During her tenure, Foreman oversaw a new program called “Total Quality Control,” or “TQC.” This program encouraged meat and poultry processors to take responsibility for their own quality control in exchange for reduced inspection oversight of processing functions. (By the 1970s, a pattern of “patrol” inspection in further processing was already the norm). The program required inspectors to have heightened access to records, but it allowed inspectors to concentrate their attention on “problem plants.”

⁴⁸ James J. Kilpatrick, ““Dragon Lady”“ Does Us Too Much Good,” *Asbury Park Press*, January 6, 1979, A10.

⁴⁹ Rohner, “Consumer Activist Now in Washington Defends Plan to Cut Meat Inspections.”

Consumer advocacy groups rejected Total Quality Control and the normalization of the practice of “patrol” inspections. They argued that these programs represented an active threat to the health and safety of workers and consumers. Consumers placed their faith in the “USDA Inspected and Passed” labeling, with the understanding that it meant inspection of each and every carcass. For the leaders of these consumer organizations, any alternative method of inspection, regardless of its motives or method, could only represent a reduction in the current standards. The inspector’s union, American Federation of Government Employees, also opposed Foreman’s proposed changes. They claimed that the new proposal risked the lives of “every meat-eating American.”⁵⁰

DOING “MORE WITH LESS”: AUSTERITY POLITICS, DEREGULATION, AND THE MANAGEMENT CONSULTANTS, 1977-1989

Barely a month after Carol Foreman took office, a massive three-volume report on the meat and poultry inspection program landed on her desk. A few months earlier, the outgoing Secretary of Agriculture, Earl Butz, hired the management consulting firm Booz Allen Hamilton and tasked them with reducing costs and making the meat inspection program more efficient. In their report, Booz Allen recommended an array of sweeping changes to meat and poultry inspection, from the method of inspection to a shift in the

⁵⁰ “Consumer protection?” *The Government Standard* (American Federation of Government Employees), April 1979, 10.

organizational culture at the Food Safety and Quality Service (FSQS) (today the Food Safety and Inspection Service).⁵¹ The “Booz Allen Hamilton report” would consume much of Foreman’s time, and undermined her capacity to develop the kind of policy agenda that might have appealed to her fellow consumer advocates. The consultants’ proposed reforms fanned the flames in an ongoing debate about the role of economics, science, and risk in food safety policymaking.

Butz hired the consultants to help the Department of Agriculture address the rising costs of meat and poultry inspection, which suddenly ballooned in the early 1970s.⁵² During the Johnson administration, the President prioritized “closing the gaps in meat inspection” as part of his consumer program. Enacted in 1967 and 1968, respectively, The Wholesome Meat Act and the Wholesome Poultry Products Act established the requirement that all inspection be at least “equal to” federal inspection. These acts promised that consumers would be equally protected from unsafe meat whether or not it entered interstate commerce.⁵³ The law provided for cost-sharing programs with states to maintain their state inspection programs. However, especially as inflationary pressures mounted, many states recognized that they could save money by turning over their state

⁵¹ William Rice, “Beefing Up Inspections Of Meat and Poultry,” *The Washington Post*, August 25, 1977; “Major Changes Recommended in USDA’s Meat and Poultry Inspection Program.” *Philadelphia Tribune*, July 5, 1977.

⁵² On management consultants in government, see Christopher D. McKenna, *The World’s Newest Profession : Management Consulting in the Twentieth Century* (New York: Cambridge University Press, 2006); on management consultants and labor, see Louis Hyman, *Temp: How American Work, American Business, and the American Dream Became Temporary* (New York: Penguin Random House, 2018).

⁵³ Publ. L. 90-201. 81 Stat. 584. (The Wholesome Meat Act) Dec. 15, 1967.; P.L. 90-492. 82 Stat. 791. (The Wholesome Poultry Products Act) August 18, 1968. See chapter 2 of the thesis.

inspection programs to the federal government.⁵⁴ Amid a political climate of reducing government spending, budget cuts, and hiring freezes, it became difficult to justify the pace of the expansion of meat and poultry inspection programs.

The management consultants advocated that USDA gradually shift away from continuous direct inspection in favor of scientific sampling, especially in poultry products. The Booz Allen proposal shares important characteristics with other studies performed by consulting firms like McKinsey or the Boston Consulting Group, which emphasized “lean” manufacturing through layoffs, automation, or reductions in full-time workforce.⁵⁵ Many of the plants under state inspection were small and operated in isolated areas, which meant that further consolidation of inspection did not necessarily lead to economies of scale at the federal level - in fact, quite the opposite. Between 1972 and 1977, the total number of federally inspected plants rose by over 50% with only an 8% increase in the volume of product inspected.⁵⁶ This sudden expansion of authority left the newly formed Food Safety and Quality Service scrambling to adjust to the ever-increasing needs in manpower and resources, even as popular pressure mounted to tighten budgets to reduce, rather than expand, the size and scale of government. Even a

⁵⁴ “U.S. takes back another state food inspection,” *The Government Standard* (AFGE), August 11, 1972, 12.

⁵⁵ *Infra.* note 52.

⁵⁶ Recommended Changes in Meat and Poultry Inspection: Solicitation of Views. U.S. Department of Agriculture, Food Safety and Quality Service, U.S. Federal Register, Vol. 42, No. 149, August 3, 1977, p. 39331.

former consumer advocate positioned inside government could not easily overcome these pressures.

Their approach also echoed the findings of the Second Hoover Commission in 1955. That Commission characterized the meat and poultry inspection programs as the Federal government's "most expensive health regulatory activity" and recommended that meat inspection should abandon visual inspection and move towards a regime of scientific sampling, similar to the approach taken by the FDA in its regulation of milk, juices, fruits, vegetables, and canned goods.⁵⁷ Reports like these reflected popular sentiment against the encroachment of federal bureaucracy and the desire to relieve businesses of undue "regulatory burdens."

The consultants were especially critical of continuous inspection in the number of smaller intrastate-only plants, which received Federal inspection in states that gave up their state inspection programs. In their investigation, the consultants discovered that providing inspection in smaller plants was so inefficient - in fact, 1900% less efficient - that it amounted to a subsidy to small players in industry.⁵⁸ The consultants also took aim at the organizational culture of FSQS. When the firm wrote the report, most senior management roles in meat and poultry inspection were held by veterinarians; the

⁵⁷ See chapters 1 and 2 for more on the Second Hoover Commission. Quote from: Commission on the Organization of the Executive Branch of the Government (Second Hoover Commission), Report on Federal Medical Services, 1955, 81.

⁵⁸ Recommended Changes in Meat and Poultry Inspection: Solicitation of Views. U.S. Department of Agriculture, Food Safety and Quality Service, U.S. Federal Register, Vol. 42, No. 149, August 3, 1977, p. 39331.

consultants argued that USDA placed too much priority on veterinary rather than public health expertise. They advocated that the agency should focus on training and hiring more inspectors with backgrounds in microbiology and food science, while improving the prospects for career advancement and access to management positions for non-veterinarians.

This report generated controversy almost immediately for its position on the role of in-plant inspectors. The union representing most federal meat inspectors, American Federation of Government Employees (AFGE), described this study as another attempt to “downgrade” the meat inspection service. AFGE argued that the consultants emphasized “cost avoidance” rather than cost effectiveness, and that the report had an “overriding emphasis on apparent, but not real savings.”⁵⁹ They pointed out how the consultants appeared to be concerned primarily with reducing costs, without sufficient attention to the potential benefits of the current inspection program. The Community Nutrition Institute, led by a former Assistant Secretary for Food and Nutrition Services, Rodney Leonard, also came out forcefully against the consultant’s proposals.

AFGE’s strong reaction to the proposed changes in meat inspection makes sense when compared to their recent victory in federal grain inspection. Just a few years earlier, a scandal involving fraud and bribery of private grain inspectors led Congress to enact laws re-establishing government oversight of grain inspection. Along with other labor

⁵⁹ “Food Inspectors fight Butz legacy,” *The Government Standard* (AFGE), October 1977, 9.

organizations, AFGE lobbied for the end of privatized grain inspection and the reconstitution of a federal grain inspection service. To make their case, they compared the system of “contracting-out” in grain inspection to the “more responsible” system of meat inspection, where the Secretary of Agriculture has direct oversight on the training and supervision of inspectors. They also argued that inspectors should operate with a sense of the public interest, which, in their view, could never be accomplished by private agents.⁶⁰

AFGE’s opposition also reflected the union’s concern about a much broader trend towards an increased reliance on outside contracting. Arguments to this effect appear repeatedly in their newsletter, *The Government Standard*. AFGE’s leadership recognized that contracting-out posed more than a short-term threat to federal jobs, or an existential threat to their membership rolls. In addition, union leaders saw how contracting-out undermined longer-term public support for the public sector as a whole. By the mid-1970s, the union went so far as to debate whether to try unionizing the military, possibly as a way to push back against the growing prevalence of defense contracting.⁶¹

In every case, AFGE associated “contracting-out” with *reductions* in government standards, whether it referred to the quality of U.S. grain exports or the cleanliness of toilets on army bases. In their view, any proposal that resembled contracting-out in meat

⁶⁰ “DoA could have averted grain inspection scandal with Federal inspectors,” *The Government Standard* (AFGE), August 1975, 8. The grain inspectors later unionized with AFGE: “Grain Inspectors choose AFGE,” *The Government Standard* (AFGE), January 1978, p. 8.

⁶¹ “Contracting: the threat...” *The Government Standard* (AFGE), April 1974, UM-1-UM-2; “The wages of contracting-out: Cost, confusion, corruption,” *The Government Standard* (AFGE), May 1977, 3-5; “Professionals: Big targets for the contractors,” *The Government Standard* (AFGE), June 1977 (cover story), 3-5.

inspection represented a particularly dangerous development. AFGE frequently used the meat inspection program as the point of comparison to other less responsible programs that relied on outside contractors. For example, they argued that the 1974 scandal involving private grain inspectors could have been “averted” if the inspectors had been federal employees.⁶² With this context in mind, it is easy to see how AFGE viewed the move by Foreman in 1979 to shift responsibilities for meat inspection to private employees as a giant step backward, one that promised to further accelerate privatization and contracting-out at the expense of Federal employees – and the public interest.

Austerity and Policy Tradeoffs in Carter’s USDA

The findings of the Booz Allen report and its associated criticism put Foreman in a difficult position. After all, she had just completed a grueling Senate confirmation process in which she promised that she would balance the interests of both the consumer and producer. Consumer advocates and union representatives made it clear in public statements that they would view any implementation of the consultants’ recommendations as a step backward in consumer protection. But if Foreman ignored the report entirely, she would be equally vulnerable to criticisms from those skeptical Congressmen who might denounce her as captured by consumer interests. Even worse,

⁶² “DoA could have averted grain inspection scandal with Federal inspectors,” *The Government Standard* (AFGE), August 1975, 8.

she might be blamed for failing to curb inflation and expanding the bureaucracy, in a moment where “deregulation” held bipartisan appeal.

A survey of internal memos exchanged between Donald Houston (FSQS Administrator) and Foreman during this period suggest that USDA struggled to balance the demands to reduce costs and comply with hiring freezes while continuing to uphold the law. In one letter, Houston acknowledged that “even with the significant use of patrol assignments, an average of 2.1 percent of all processing plants are not being “visited” on a daily basis.”⁶³ As a result, “the term ‘continuous’ inspection must be defined loosely in order for the Agency to meet its responsibilities under the law.”⁶⁴ Not only did Houston recognize the inadequacy of the current inspection force, he knew that shortfalls in inspection posed meaningful risks to food safety: “Of perhaps more concern, however, is the real risk of hazardous products reaching the marketplace when inspectional coverage is stretched as far as it has been.”⁶⁵

Foreman did her best to encourage substantive consumer participation in the policy process without giving the appearance of a conflict of interest. Her correspondence reveals that USDA encountered a common dilemma in public participation on highly technical regulatory issues: many consumer groups lacked the specialized knowledge

⁶³ Subject: Impact of Employment Restrictions on FSQS, From: Donald L. Houston, To: Deputy Secretary Williams, Through: Carol Tucker Foreman, April 23, 1980; Agric. / Secretary / 1980; RG 462 Box 1 of 3 Acc # 462-82-103; USDA-FSIS-OA; Office of the Administrator pink alpha files FY 80 FA UD-04W1; HMS 410343; NACP.

⁶⁴ Ibid.

⁶⁵ Ibid.

needed to provide informed comments on the Booz Allen Hamilton report. For example, FSQS wrote Consumers Union (a more left-leaning group than Consumer Federation of America) and inquired whether they would be willing to write a (paid) critique of the Booz Allen Hamilton report. However, CU President Mark Silbergeld demurred, acknowledging that “a satisfactory presentation could be prepared only by a party which has the same access as did Booz, Allen to meat and poultry slaughtering and processing establishments.”⁶⁶ In this statement, Silbergeld implicitly critiqued the lack of transparency and unequal access provided to management consultants relative to consumer groups. But the issue remained a matter of bureaucratic knowledge and expertise as much as an issue of access: “an authoritative evaluation of many of the technical details of the Booz, Allen report requires a greater background of experience in the federal meat and poultry system ... than Consumers Union possesses.”⁶⁷ Notably, the agency did not offer the same courtesy to F.J. Schlink at Consumer’s Research, (a predecessor and competitor of Consumer’s Union). Robert Angelotti invited Schlink to attend a public hearing intended to “acquaint” consumer advocates with the new rules. Schlink scribbled in the margins, “Note: not to ask advice.”⁶⁸

⁶⁶ Letter to Carol Tucker Foreman from Mark Silbergeld, Nov 4, 1977, Agric. / Secretary / 1980; RG 462 Box 1 of 3 Acc # 462-82-103; USDA-FSIS-OA; Office of the Administrator pink alpha files FY 80 FA UD-04W1; HMS 410343; NACP.

⁶⁷ Ibid.

⁶⁸ Letter from Robert Angelotti, FSQS Administrator, to F.J. Schlink, Consumer's Research, Inc., August 8, 1977, Box 294, Folder 27, “Meat and Poultry Inspection 1975-1980,” Consumers Research Papers.

After a series of public hearings and a careful review of comments, Foreman caught consumer advocates and industry lobbyists alike by surprise when she took up a few of the consultants' recommendations. In promoting several new changes in 1979, Foreman challenged the conventional wisdom among consumer advocates that meat safety equaled continuous inspection. Foreman admitted that continuous inspection for further processing was already "a myth," particularly in smaller plants.⁶⁹ By the end of her tenure, the USDA promulgated regulations for Total Quality Control (TQC), as well as Modified Traditional Inspection (MTI), a Taylorist approach to slaughter inspection in which inspectors used mirrors and other devices to minimize hand movements.⁷⁰ Foreman also allowed processors to rinse fecal contamination from poultry carcasses with chlorinated water, instead of trimming the contamination away. (In the 1990s, she acknowledged that this latter change was "a mistake" from a food-safety standpoint.⁷¹)

The Food Safety and Quality Service (FSQS) faced an all-too-common policy dilemma in the 1970s: its federal meat inspection services were in greater demand than ever before, but due to political pressures for deregulation and fiscal austerity, Congress drastically curtailed resources for those services. In 1980, FSQS Administrator Donald

⁶⁹ Rohner, "Consumer Activist Now in Washington Defends Plan to Cut Meat Inspections."

⁷⁰ National Research Council, *Meat and Poultry Inspection: The Scientific Basis of the Nation's Program*, 7-8.

⁷¹ Rebecca Perl, "Industry Plans to Test Ways to Reduce Bacterial Contamination – Cleaner Chicken on the Way?" *Atlanta Journal-Constitution*, August 8, 1991.

Houston described the agency's constant need for new inspector hires, yet budget cuts, inflation, and partial hiring freezes closed off available funding sources. Nevertheless, Houston insisted that "during this time FSQS has not only maintained its level of services to the public and the industry, but in many instances, has made significant program improvement while Agency resources have been reduced ... We have done "more with less."⁷² In other contexts, historians demonstrated how the rhetoric of budget "crises" and ensuing demands for "austerity" reflect underlying social or political contexts as much as, if not more than, fiscal realities.⁷³ Yet Houston's comments suggest some of the real fiscal constraints operating in the late 1970s. The leadership at the Food Safety and Quality Service made the case for reducing the number of inspectors to resolve budget crises and achieve fiscal austerity in part because inspectors comprised the largest expense for the program.

After these decisions, the public backlash against the Booz Allen Hamilton report intensified, leading the Reagan Administration's FSQS to commission another study a few years later, in 1983, from the National Academy of Sciences (NAS).⁷⁴ By then it was

⁷² Subject: Impact of Employment Restrictions on FSQS, From: Donald L. Houston, To: Deputy Secretary Williams, Through: Carol Tucker Foreman, April 23, 1980; Agric. / Secretary / 1980; RG 462 Box 1 of 3 Acc # 462-82-103; USDA-FSIS-OA; Office of the Administrator pink alpha files FY 80 FA UD-04W1; HMS 410343; NACP.

⁷³ Kim Phillips-Fein, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics*, (New York: Metropolitan Books, 2017); Iwan W. Morgan, *Deficit Government: Taxing and Spending in Modern America*, (Chicago: Ivan R. Dee, 1995).

⁷⁴ National Research Council, *Meat and Poultry Inspection*; National Research Council (U.S.) Committee on Public Health Risk Assessment of Poultry Inspection. *Poultry Inspection : The Basis for a Risk-Assessment Approach*. Washington, D.C.: National Academy Press, 1987.

abundantly clear that the tone of the management consultants' report, which favored efficiency, cost savings, and a temporary workforce, did not resonate with the interests of consumers or workers. Groups like Public Citizen, the Community Nutrition Institute, and AFGE continued to oppose any serious consideration of the recommendations in the Booz Allen Hamilton proposal. Food safety regulators may have hoped that a study by the National Academy of Sciences would prove more palatable to all stakeholders.

However, the National Academies study also took aim at the basic premise of visual inspection, using very similar arguments. They implored the U.S. Food Safety and Inspection Service to phase out carcass-by-carcass inspection and begin a program of scientific sampling in meats, based on the principles of risk assessment and cost-benefit analysis. This 1983 National Academies study was one of several commissioned during the early 1980s that proposed new strategies for regulators to make use of the methodologies of risk analysis and risk assessment to inform decision making.⁷⁵ A follow-up study on risk assessment in the poultry inspection program, conducted in 1985-6 and released in 1987, offered even more pointed recommendations. By this point, the NAS admonished FSIS to “adopt the *well-established* precepts of risk assessment”⁷⁶ in poultry inspection as soon as possible.

⁷⁵ Soraya Boudia, “Managing scientific and political uncertainty: Environmental risk assessment in a historical perspective,” in Soraya Boudia and Nathalie Jas, eds., *Powerless Science?: Science and Politics in a Toxic World* (New York: Berghahn Books, 2014), 95-112; National Research Council (US) Committee on Risk and Decision Making., *Risk and Decision Making: Perspectives and Research* (Washington, D.C.: National Academies Press, 1982), <https://doi.org/10.17226/775>.

⁷⁶ National Research Council, *Meat and Poultry Inspection*, 3. Emphasis added.

The NAS report on meat and poultry also de-emphasized the importance of the line inspector. The report characterized the visual inspection system as outdated and ineffective at combating meaningful threats to public health, noting that “continuous inspection is not needed to ensure food safety in meat and poultry processing plants in which hazards and CCP [Critical Control Points] have been identified.”⁷⁷ The Academy acknowledged that consumer representatives opposed changes to traditional inspection. But, the committee found “no clear evidence that the traditional inspection system and modifications to it over the years are based on objectives and criteria that relate to public health.”⁷⁸ Even if consumers believed in the efficacy of the old inspection system, the committee could not find evidence or data that visual inspection improved public health.

By contrast, the National Academy researchers spoke very favorably of a new and promising approach – HACCP. The committee “encourages FSIS to move as vigorously as possible in the application of the HACCP concept to each and every step in plant operations, in all types of enterprises involved in the production, processing, and storage of meat and poultry products.”⁷⁹ They envisioned that HACCP analysis “might be done by qualified plant personnel, by hired consultants, or by qualified FSIS staff or they might be done jointly.”⁸⁰ However, the authors of the study cautioned that “critical”

⁷⁷ National Research Council, *Meat and Poultry Inspection*, 135.

⁷⁸ National Research Council, *Meat and Poultry Inspection*, 7.

⁷⁹ National Research Council, *Meat and Poultry Inspection*, 135.

⁸⁰ National Research Council, *Meat and Poultry Inspection*, 127.

control points be limited to “control points related to public health” rather than violation of regulations or marketing considerations.⁸¹

All of these reports advocated sampling as a potential cost-saving measure, but FSIS scientists also recognized that a scientifically valid sampling program would require additional resources for initial data collection. In its response to the recommendations of the National Academy of Sciences in 1986, the agency acknowledged that they faced difficulties in gathering the kind of data necessary for an effective sampling program while simultaneously maintaining the current level of inspection.⁸² Faced with budget shortfalls, hiring freezes that prevented them from filling vacancies, and the need to balance budgets and trim costs, Donald Houston and other FSIS leadership focused on hiring inspectors at the expense of these other long-term priorities.⁸³ As its critics have often pointed out, the dual agenda of marketing and regulation may have stymied progress in the 1980s. As the report explains, “the issue FSIS faces is not whether it wants to move in this direction [i.e. away from continuous inspection] in the future, it is how to move in this direction without reducing public confidence in its ability to insure

⁸¹ National Research Council, *Meat and Poultry Inspection*, 135

⁸² “FSIS Future Agenda: A Response to the NAS Recommendations,” U.S. Department of Agriculture Food Safety and Inspection Service, Policy and Planning Staff, 1986, National Agricultural Library, Beltsville, MD.

⁸³ See generally the coverage in the *FSIS Communicator*, 1987-1989, where FSIS openly acknowledges budget shortfalls and difficulty meeting its statutory obligations. Copies of the *FSIS Communicator* in USDA History Collection, Manuscript Collection 182, Series VI, Box 6/3.

the safety of the meat and poultry supply and without disrupting production and marketing.”⁸⁴

Deregulation and Discretionary Inspection

In 1981, President Carter’s comparatively consumer-oriented appointees at USDA were replaced by a group with a decidedly pro-industry orientation. The new president, Ronald Reagan, filled many of the top positions at the USDA with former lobbyists from the American Meat Institute and the National Cattleman’s Association, including John Block, Richard Lyng, and JoAnn Smith. Under their leadership, the USDA and the FSQS expanded the scope of Foreman’s changes, but with a more explicit goal to reduce the administrative burden on industry.

In spite of a growing expert consensus around scientific sampling as a useful strategy to improve food safety and/or quality, the U.S. Department of Agriculture tried a number of other alternatives to control pathogens in meat and poultry through the 1980s.⁸⁵ Along with Total Quality Control, the USDA promulgated rules for Modified Traditional Inspection (MTI), Streamlined Inspection System (SIS), and the “hands-on,

⁸⁴ “FSIS Future Agenda,” V-3.

⁸⁵ The “hands-on, hands-off,” “discretionary inspection,” “Total Quality Control,” and “streamlined inspection systems” are just a few approaches tried between 1977 and 1989. See: *USDA’s “Discretionary Inspection” Plan for Meat and Poultry Processing Plants, Hearing before the Human Resources and Intergovernmental Relations Subcommittee on the Committee on Government Operations, House, 101st Cong. 1st Sess. (1989)*. On hands-on, hands-off inspection, see: “MFC’s hands-off inspection cuts labor, increases yield,” *Broiler Industry*, January 1978, 98-99, and Kathleen Hughes, *Return to the Jungle: How the Reagan Administration Is Imperiling the Nation’s Meat and Poultry Inspection Program*, (Ralph Nader Center for Responsive Law, 1983).

hands-off” (HOHO) inspection system, among other programs. Over the course of the 1980s, moreover, the USDA developed a proposed pilot program for “discretionary inspection” (DI) in processing plants. Discretionary inspection promised exactly what it sounds like – the proposal would have reduced the frequency of inspections in processing plants down from a “patrol” status to “discretionary,” based on the plant’s compliance history.

In order to conduct a pilot for their proposed “discretionary inspection” program, the agency needed to go to Congress to amend the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). For decades, agency leaders lamented FSIS’s limited capacity to conduct inspections or enforcement outside the slaughter and processing plant, but proved unable to marshal support from key legislators to change the law to provide for basic escalation of enforcement through civil and criminal penalties. However, the conservative drift in American regulatory politics opened a political window for deregulation – which stayed open after midterm elections in 1986 returned control of both houses of Congress to the Democrats. The agency obtained an amendment to the FMIA and PPIA not long afterward. The “Processed Products Inspection Improvement Act” of 1986 granted USDA the regulatory flexibility they needed to pilot the “Discretionary Inspection” program in further processing plants.⁸⁶

⁸⁶ Moreover, the necessary changes, often cited as the “Processed Products Inspection Improvement Act” were not made through a new statute, but were tacked on to a subsection of the Futures Grain Trading Act of 1986. Publ. L. 99-641, 99th Congress, 1986. (See Section IV of the law) The law included a sunset clause.

As part of their efforts to improve inspection without increasing the ranks of inspectors, FSIS also conducted a pilot test of an early computer system that promised to streamline inspector's responsibilities by instructing them when to inspect on any given day. Known as the Performance Based Inspection System (PBIS), it was so universally disliked that the inspector's internal employee newsletter documented their frustration with the system: "inspectors complained that the system did not allow them enough flexibility."⁸⁷ Inspectors alleged that they were asked to inspect facilities in the middle of the night, when they were closed, and they might be asked to inspect the same things over and over, while omitting other components that they considered within their purview as inspectors. One inspector told a House committee that "[PBIS] turned us into slaves to the computer."⁸⁸ After repeated requests, FSIS modified the system to allow inspectors a mere 2 hours a day of "unscheduled inspection time" to use their best judgment when conducting patrol inspections.⁸⁹

Discretionary inspection exemplified the inspector's fears of the "fox guarding the henhouse" - contracting-out government inspection to private enforcers, or worse, foregoing the responsibility of inspection entirely. PBIS, on the other hand, presented an

⁸⁷ PBIS Enhancements Begin, *FSIS Communicator*, Dec-89 - Jan 90, Vol. 6, No. 13, 2. Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection; NAL.

⁸⁸ *USDA's "Discretionary Inspection" Plan for Meat and Poultry Processing Plants*, Hearing before the Human Resources and Intergovernmental Relations Subcommittee on the Committee on Government Operations, House, 101st Cong. 1st Sess. April 11, 1989, (Statement of Eduardo Delgado, Food Inspector, USDA) 27.

⁸⁹ PBIS to Allowed Unscheduled Inspection Time, *FSIS Communicator*, August-Sept 1989, Vol. 6, No. 11. Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection, NAL.

even greater evil than privatization and contracting-out. It struck inspectors as a blatant effort to discredit their accumulated years of knowledge and expertise. Similarly, the rulemaking process for discretionary inspection (in the hearing, also referred to unironically as “improved processing inspection”) discounted the role of the in-plant inspector: “Someone far removed from the field, sitting behind a desk ... in Washington, DC ... drew up the plan for IPI (Improved Processing Inspection) with little or no field experience.” At least for meat and poultry inspection, deregulation did not necessarily mean freedom from Washington bureaucracy or increased autonomy: “The inspector was totally left out of it.”⁹⁰

The FSQS emphasized the role of science in their new regulations, but the agency lacked the data to perform basic risk assessment and risk analysis through most of the 1980s. Carol Tucker Foreman herself, now representing Consumer Federation of America, pointed out that as long as the Department of Agriculture failed to conduct baseline microbiological studies, they “have not attempted to implement the NAS report. They have just adopted the terminology the committee used.”⁹¹ By this statement, she meant that the agency was using the rhetoric of “science-based” policy to justify its discretionary inspection plan, but they were not actually collecting data on foodborne pathogens, especially salmonellosis. As an example of the kind of quasi-scientific argumentation the agency used, the FSIS Future Agenda in 1986 claims that “although no

⁹⁰ USDA’s “*Discretionary Inspection*” Plan, 1989, (Oral Testimony of Delmer Jones) 42.

⁹¹ USDA’s “*Discretionary Inspection*” Plan, 1989 (Oral Testimony of Carol Tucker Foreman), 45.

microbiological data is available, the Agency believes that carcasses that appear cleaner generally have lower levels of contamination.”⁹² This peculiar statement suggests how the agency struggled to adapt their mindset away from an organoleptic approach. Perhaps speaking from her own experience, Foreman characterized the agency’s approach as a “siege mentality”⁹³ in which the FSIS (then the FSQS) relied only on a select group of experts, failed to borrow from other agencies, and failed to follow the basics of notice and comment procedures: “The agency staff developed these regulations in virtual seclusion.”⁹⁴ Foreman insisted that consumers “did not oppose the more efficient and effective use of inspection resources,” and that organizations like CFA “strongly support the introduction of inspection practices based on improved standards and objective science.”⁹⁵ The USDA eventually withdrew the rule after it lost an “arbitrary and capricious” challenge in court.⁹⁶

⁹² “FSIS Future Agenda,” IV-9.

⁹³ *USDA’s “Discretionary Inspection” Plan*, 1989 (Oral Testimony of Carol Tucker Foreman), 46.

⁹⁴ *Ibid.*

⁹⁵ *USDA’s “Discretionary Inspection” Plan*, 1989 (Oral Testimony of Carol Tucker Foreman), 51.

⁹⁶ Elizabeth Rathbun, “Agriculture Backs Down From Plan to Cut Inspections,” *Federal Times*, April 17, 1989, 6, Folder: “III - B -2 Chemicals, Preservatives, Additives, Irradiation, Food-Related Disease, 1993,” Box 1.6/7, Manuscript Collection 182, Series I, USDA History Collection, NAL; on the arbitrary and capricious challenge, see James A. Albert, “A History of Attempts by the Department of Agriculture to Reduce Federal Inspection of Poultry Processing Plants - A Return to the Jungle,” *Louisiana Law Review* 51 (1991): 1183–1231. An “arbitrary and capricious” challenge refers to the Administrative Procedures Act, Pub. L. 79-404, 60 Stat. 237, Sec. 706(2)(a). (1946) For another example of an “arbitrary and capricious” argument used to describe deregulatory actions, see John D. Graham and Patricia Gorham, “NHTSA and Passive Restraints: A Case of Arbitrary and Capricious Deregulation,” *Administrative Law Review*, 1983, 193–252.

Towards an Expert Consensus on HACCP

Despite the contentious public arguments about meat and poultry inspection, the scientific consensus favoring microbiological controls for food safety never wavered, and encompassed an increasingly broad group of experts both inside and outside government. But the tone of many of these expert reports shows a bias towards efficiency and cost savings, which invariably shaped their recommendations. These experts admonished the USDA to start collecting data on microbiological contamination so that it could move away from continuous inspection and in the direction of a “science-based program.” During most of the 1980s, USDA did not make any of these changes; the 1986 “Future Agenda” essentially argued that conducting tests would require trading off current resources for inspection, and inspection must come first.

Moreover, this expert consensus had peculiar limits. Because HACCP came out of the canning industry, rather than from the large packing firms or even the land-grant universities, it remained unfamiliar to most firms in the meat and poultry industry until the early 1990s.⁹⁷ Russell Cross accounted for this ignorance to a lack of knowledge among regulators and within the industry: “A few companies knew something about it, but almost no one in academia knew anything about HACCP.”⁹⁸ Even after USDA finalized HACCP regulations in meat and poultry canning, that knowledge did not

⁹⁷ International Meat and Poultry HACCP Alliance, “Training, Certification Verification Top Priorities for HACCP Alliance,” December 9, 1995, <http://www.haccpalliance.org/alliance/Dec9newsrelease.html>.

⁹⁸ Oral History Interview with H. Russell Cross, 5.

necessarily transfer to the meat and poultry industry writ large. Although meat and poultry firms vertically integrated along the production line to include hatcheries, slaughter, and processing, operations such as canning typically remained outside the purview of even the most integrated meat processors. As a consequence, the canners affected by the new rules were largely the same group of people who implemented the FDA canning regulations in 1972. In 1980, the “Canning Procedures” unit was moved from the “Science” division of the Food Safety and Quality Service – where it was located inside a subdivision of “Microbiology” – to the “Meat and Poultry Inspection” division. The rationale that USDA Administrator Houston gave for the move was to “consolidate canning procedures ... in a single group or unit”⁹⁹ and to “eliminate much of the currently required coordination”¹⁰⁰ between the Science and Meat and Poultry divisions.¹⁰¹ The reorganization also implicitly acknowledged that microbiological expertise was now an important aspect of meat and poultry inspection. By the time FSIS regulatory affairs staff wrote regulations for HACCP that applied to products like meat and poultry soups, their efforts represented a regulatory “catch-up” to established best practices in canning safety. As Bob Savage recalled: “it wasn't really much of a jolt, if

⁹⁹ Letter to C.R. Hanna, Director, Management Staff, Office of the Assistant Secretary for Administration, from Donald L. Houston, FSIS Administrator; Subject: Realignment of Canning Procedures Function; Feb 22 1980; Folder: Agric. / Secretary / 1980; RG 462 Box 1 of 3 Acc # 462-82-103; USDA-FSIS-OA; Office of the Administrator pink alpha files FY 80 FA UD-04W1; HMS 410343.

¹⁰⁰ Letter to C.R. Hanna, Feb 22, 1980.

¹⁰¹ Letter to C.R. Hanna, Feb 22, 1980.

you will, for the meat and poultry canning industry. It was more a jolt for inspection people in the plants that had to look at things a little differently and more closely.”¹⁰²

Instead, inspectors and managers in the meat and poultry industry frequently encountered HACCP in a very different way – as a top-down approach established by “outside experts” that held unique promise, but fundamentally challenged well-established definitions of safety and quality. For the federal meat and poultry inspectors, HACCP represented yet another half-baked strategy to take them out of the plants and put them out of a job. In a Congressional hearing about discretionary inspection, Delmer Jones, representative for the Joint Council of Food Inspection Locals, highlighted the Kafkaesque array of USDA programs by rattling off an inscrutable string of acronyms:

“Both [inspectors and the industry] has to look at the following: DI, IPI, PDR, ISG, CAS, QDR, HACCP, PBIS, CCP, R&E, PRO, SPO, AEO, RDR, MSD, DCG, and PQC; with the understanding that this has been thrown at them in such a short time.”¹⁰³

Jones lumped HACCP in with other quality-oriented programs, like Total Quality Control (TQC) and Partial Quality Control (PQC), rather than distinguishing it as something new or different. From Jones’ perspective, DI and SIS (Streamlined Inspection System) were failures, PBIS was a flawed computer program, and TQC was about quality, not safety. Why should HACCP be any different?

¹⁰² Oral History with Robert Savage, 10.

¹⁰³ USDA’s “*Discretionary Inspection*” Plan, 1989, (Oral Testimony of Delmer Jones) 13.

The failure of Discretionary Inspection and the sunseting of the Processed Products Inspection Improvement Act prompted some reflection (and, more formally, regulatory review) within FSQS. With a new president came a set of new political appointees, who were even more favorable to approaches like HACCP. Moreover, developments in international trade negotiations suggested that HACCP would soon be incorporated in global food safety standards. Unfortunately, it would take another crisis before policymakers fully implemented these proposals.

FROM “MEGAREG” TO “HIMP,” 1993-2002

E. Coli, Salmonella, and Food Safety in the 1990s

By the late 1980s, an international community of scientists and technical experts generally agreed that HACCP represented a superior approach to obtaining food safety than visual inspection. However, these experts faced significant political opposition from all corners: organized labor, consumer advocates, and even the industry itself. In an era defined by “evidence-based” and “science-based” policymaking, these experts often lacked baseline data that they needed to make the case that the benefits of any new regulation would “justify” the costs. While agency hiring practices gradually encouraged “upskilling” of lay inspectors to “food technologists,” much of the inspector corps did not

possess the expertise to implement such a significant reorientation of regulatory strategy.¹⁰⁴

In 1993, another foodborne illness outbreak recast the political environment. In early January, physicians in Washington state began to notice an unexpected increase in children admitted to the hospital with hemolytic uremic syndrome, or HUS. Hemolytic uremic syndrome is a serious blood disorder caused by the production of Shiga toxin (which is related to the *Shigella* bacteria associated with dysentery). HUS is characterized by bloody diarrhea, fever, and vomiting; in severe cases, HUS can lead to seizures, neurological damage, kidney failure or heart failure. By 1993, HUS had been positively associated with consumption of undercooked ground beef. But the disease tended to appear in the summer months, during family barbecue season. Even more concerning, once the physicians began paying closer attention to hospital admissions, they realized that the children exhibiting symptoms of this disease came from all over the state. The doctors began to suspect that the cases must be connected by “a common retail source with wide distribution.”¹⁰⁵ Soon after, the cases were traced to a ground beef supplier for Jack in the Box stores.

¹⁰⁴ “Conversion of Food Inspectors to Food Technologists on the Rise,” *FSIS Communicator*, June-July 1988, Vol. 6, No. 4, Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection, NAL.

¹⁰⁵ Benedict, *Poisoned*, 25.

The significance of the “Jack in the Box” outbreak to the subsequent revisions to food safety laws *as well as* standard industry practices cannot be understated.¹⁰⁶ The outbreak struck a nerve for several reasons: first, it involved ground beef in hamburgers, which had become a quintessentially American food by the end of the twentieth century.¹⁰⁷ Even more importantly, its primary victims were young children, which animated a media narrative of crisis and tragedy which was later amplified by the courtroom drama of a series of lawsuits.¹⁰⁸ When asked if the 1996 PR/HACCP regulation would have happened without the Jack in the Box outbreak, Bob Savage observed that “we were certainly moving in that direction before Jack in the Box ... we had completed the [HACCP] study,” but progress was “kind of dragging along. It wasn't really clear what the next steps would be.” Savage concluded that “probably eventually it would have wound up the same, but maybe not quite as quickly.”¹⁰⁹ Russell Cross agreed: “[HACCP] would have eventually happened, but it would have taken a lot longer.”¹¹⁰

¹⁰⁶ *Infra.* 2.

¹⁰⁷ Roger Horowitz, *Putting Meat on the American Table: Taste, Technology, Transformation* (Baltimore: The Johns Hopkins University Press, 2006); Maureen Ogle, *In Meat We Trust: An Unexpected History of Carnivore America* (Boston: Houghton Mifflin Harcourt, 2013); see also Abeer Saha, “Creatures, Capital, and the State: Transforming Animal Agriculture in the Mid-Twentieth Century,” (Conference Paper) Annual Meeting of the Agricultural History Society, June 8th, 2019.

¹⁰⁸ For a recent work that analyzes the role of the media in foodborne illness outbreaks, see Timothy D. Lytton, *Outbreak: Foodborne Illness and the Struggle for Food Safety* (Chicago: The University of Chicago Press, 2019); for an account that highlights the role of attorney Bill Marler, see Benedict, *Poisoned*.

¹⁰⁹ Oral History with Robert Savage, 15.

¹¹⁰ Oral History with Russell Cross, 7.

The *E. Coli* outbreak at Jack in the Box, then, explains the timing of the changes; however, it does not completely explain the form those regulations took. The plans for what became the “War on Pathogens” had been several years in the making, and efforts to “restructure and reorganize all of FSIS” were already underway.¹¹¹ The USDA began developing plans to reform their inspection system in the mid-1980s in response to the reports by the National Academy of Sciences and the Booz Allen Hamilton study. A litany of experts from academia and government implored USDA to take HACCP seriously and begin collecting microbiological data. The public failure of the Performance Based Inspection System and similar quality-oriented programs encouraged administrators to pay more attention to HACCP as a strategy for safety, not quality, in the early 1990s. In 1990, the agency’s employee newsletter, the *FSIS Communicator*, announced the creation of a “HACCP Special Team,” a group of 6 experts from across the country who would work on developing model HACCP plans and provide recommendations to the agency.¹¹²

Before Jack in the Box, American consumers worried far more about unsafe poultry than unsafe beef. In 1987, the television show *60 Minutes* aired an episode that featured hidden-camera footage of the inside of a poultry plant. In this episode, host Diane Sawyer infamously described the condition of poultry chiller tanks, in which

¹¹¹ Oral History with Russell Cross, 3.

¹¹² Strategy for Two-Year HACCP Study Announced, *FSIS Communicator*, Dec-89 - Jan 90, Vol. 6, No. 13, 1; HACCP Special Team Named, *FSIS Communicator*, May-June 1990, Vol. 6, No. 15, 1. NAL.

carcasses are “dipped” after evisceration but before further processing, as a “fecal soup.”¹¹³ After a series of *Salmonella* outbreaks in 1990, the *Atlanta Journal-Constitution* ran a multi-part story on the state of Georgia poultry facilities, which prompted a series of Congressional hearings on poultry safety the following year.¹¹⁴

Similarly, the USDA was much more focused on tracking and reducing incidence of *Salmonella*, not *E. Coli*. In the early 1990s, Russell Cross worked with FSIS staff to begin the kinds of sampling programs that Foreman demanded several years earlier: “we started some very aggressive surveying programs for different pathogens, particularly *Salmonella*[.] [But] *E. Coli O157:H7*, it really wasn't on the horizon at that time.”¹¹⁵ While scientists knew that *Salmonella* posed a credible threat to food safety, no one quite knew what to do about it.¹¹⁶ A food scientist concurred with this assessment: “*Salmonella* is just becoming this thing that people are talking about in the poultry industry [in the late 1980s].”¹¹⁷ For their part, the industry promised safer chicken through various minor

¹¹³ For the “fecal soup” reference, see *60 Minutes*, (CBS television broadcast, Sept. 6, 1987); See also *60 Minutes*, “One Out of Three,” (CBS television broadcast, March 24, 1987), which alleged that “one out of three” chickens was contaminated with *Salmonella*. Riffel, “The Feathered Kingdom,” 2008, 215.

¹¹⁴ Scott Bronstein, “Chicken: How Safe? First of Two Parts: High-Tech Plants Churn out Poultry – but Add to Risk.,” *Atlanta Journal-Constitution*, May 26, 1991; Marian Burros, “New Urgency Fuels Effort to Improve Safety of Food.,” *New York Times*, May 7, 1990; Marian Burros, “U.S. Approves Chicken Treatment to Cut Salmonella.,” *New York Times*, October 14, 1992; Rebecca Perl, “Industry Plans to Test Ways to Reduce Bacterial Contamination – Cleaner Chicken on the Way?,” *Atlanta Journal-Constitution*, August 8, 1991; Rebecca Perl, “Poultry Officials Vow to Cut Contaminants,” *Atlanta Journal-Constitution*, January 25, 1992.

¹¹⁵ Oral History with Russell Cross, 4.

¹¹⁶ Anne Hardy, *Salmonella Infections, Networks of Knowledge, and Public Health in Britain, 1880-1975* (Oxford: Oxford University Press, 2015).

¹¹⁷ Oral History Interview with Anonymous Food Scientist, conducted by Ashton Merck, August 31?, 2019. Redacted transcript in author’s possession.

reforms, like chlorinating the water in chiller tanks. In internal publications, regulators expressed serious doubts that *Salmonella* could be reduced or eliminated in poultry. According to the *FSIS Future Agenda*, in 1986: “It is questionable whether practical microbiological criteria can be set for *Salmonella* on raw poultry *without risk of eliminating poultry as food.*”¹¹⁸

The *E. Coli* outbreak disproportionately focused regulator’s attention on this new and especially hazardous pathogen, in ways that may have caused them to de-emphasize other, more serious risks, like *Salmonella* and *Campylobacter*. The most obvious example is the implementation of performance standards and bacteria-specific treatment in the law. In 1994, *E. Coli* was declared an adulterant, and the USDA set performance standards for the industry to meet as part of the HACCP rule. Over twenty years later, *Salmonella* is still not considered an adulterant.¹¹⁹ The agency has also been slower to enact performance standards for *Campylobacter*, even though scientists have known that *Campylobacter* is a major cause of foodborne illness since at least the 1990s.¹²⁰ While some of this delay merely reflects the time it takes for new ideas to percolate into policy, the uneven treatment of *E. Coli*, *Salmonella*, and *Campylobacter* also highlights the role of crises in shaping the focus of policy change.

¹¹⁸ “FSIS Future Agenda,” 1986, IV-6. (emphasis added)

¹¹⁹ *American Public Health Association v. Butz*, 511 F.2d 331, 167 U.S. App. D.C. 93 (D.C. Cir. 1974); *Craten v. Foster Poultry Farms, Inc. U.S. District Court*, 305 F. Supp 3d 1051 (D. Arizona 2018); cf. *Supreme Beef Processors, Inc. v. USDA*, 275 F.3d 432 (5th Cir. 2001).

¹²⁰ United States Department of Agriculture, “Meeting on HACCP-Based Inspection Models Project” (2000), 76-77. https://www.fsis.usda.gov/wps/wcm/connect/d3d7f608-45c7-4775-885e-00b0bca0eb74/HACCP_03_30_00.pdf?MOD=AJPERES.

Making a “Megareg”

In sharp contrast to the FDA regulation for “Good Manufacturing Practices,” the 1995 HACCP proposed rule was *not* ghostwritten by major players in the meat and poultry industry. It was not even written by a career bureaucrat from the FSIS. Instead, the Clinton Administration entrusted Michael R. Taylor, a lawyer from the Food and Drug Administration, with the task. Rosemary Mucklow, a former lobbyist for the Western State Meat Packers Association, described the proposed rule as “a very thick regulation ... it was very legalistic and very complicated.” Unlike rules written by previous FSIS Administrators, who often arrived with prior experience in USDA-inspected facilities, the proposed rule “lacked an understanding of how plants operate.” As Mucklow observed: “[the HACCP proposed rule] was written by a lawyer sitting in an office in Washington, DC, and our industry read it, and it just seemed like foreign language.”¹²¹ As part of the notice and comment process, Taylor held a series of public hearings to explain the new rules. Mucklow vividly recalls that the hearings took place in the “glass cage” in the USDA Cafeteria, with industry leaders packed in around a long conference room table: “everybody and his uncle [in the industry] was there.”¹²²

¹²¹ Oral History with Rosemary Mucklow, 21

¹²² Oral History with Rosemary Mucklow, 21.

“Everybody and his uncle” showed up because the HACCP rule represented a “significant change in regulatory philosophy and respective roles and responsibilities of industry and inspectors over a relatively short time period,” to use the words of one 2003 study.¹²³ The regulation itself earned the nickname “Megareg,” “so called for its sweeping nature – and for the size of the government document explaining it.”¹²⁴ However, the 1996 Pathogen Reduction/HACCP rule did *not* end the practice of visual inspection of meat and poultry carcasses, either antemortem or postmortem. Instead, the regulation simply layered new HACCP requirements on top of the existing statutory mandates. This provision annoyed efficiency-minded economists, but satisfied consumers and inspectors who worried that the rule delegated too much responsibility to the industry. Meanwhile, the middle managers who sat down to write up HACCP plans began to recognize that USDA’s regulations did not quite match up to the ideas presented by Pillsbury, or even other instances of HACCP as a self-regulatory mechanism. These officials began to distinguish between “real HACCP,” which mandated *elimination* of the hazard, and “regulatory HACCP,” which called for a “reduction or elimination” of the hazard.¹²⁵

¹²³ Committee on the Review of the Use of Scientific Criteria and Performance Standards for Safe Food and Institute of Medicine (U.S.), eds., *Scientific Criteria to Ensure Safe Food* (Washington, D.C.: National Academies Press, 2003), 137.

¹²⁴ Quote from “The Mega-Reg in a Microcosm,” *Supermarket Business; New York* 50, no. 8 (August 1995): 18; In 1998, the American Frozen Food Institute ran a conference titled “Mastering the Mega-Reg”: “AFFI Conference Seeks to Master the 'Mega-Reg'.” *Frozen Food Age* 45, no. 2 (09, 1996): 38; See also Oral History with Robert Savage, 14-15; Oral History with Frank Thompson, 10; Oral History with Russell Cross, 4.

¹²⁵ Oral History with Frank Thompson, 22. Emphasis added.

Consumers also expressed dissatisfaction with a crucial change in the final rule over who was responsible for pathogen testing. While the industry was responsible for *E. Coli* testing, the responsibility for *Salmonella* testing fell instead to the Department of Agriculture. Representatives from the Center for Science in the Public Interest argued that this left an opening for this testing to go undone if Agriculture did not receive needed appropriations. As CPSI representative Caroline Smith DeWaal explained: “I don't trust Congress to give the Agriculture Department the resources they need.”¹²⁶ Her concerns about appropriations were not without some basis in fact. Two years later, when explained why Congress did not appropriate more money for the FDA, an Appropriations Committee staff member was quoted saying: "Until the day the agencies can quantitatively answer how much it would cost to reduce food-borne illness ... they won't get any more money.”¹²⁷ Of course, in order to get an accurate quantitative assessment, the food safety regulators would need money to perform tests.

The HACCP-Based Inspection Models Project

In many respects, USDA did quite the opposite of deregulation with the “Megareg”: the agency required more tests for pathogens and verification of plant procedures, while still continuing to pay for inspectors to conduct visual inspections. As a

¹²⁶ “Sweeping Changes Set for System of Meat and Poultry Inspection,” *New York Times*, March 14, 1996.

¹²⁷ “President to Push for Food Safety,” *New York Times* (Online), Jul 4, 1998.

result, the move to coregulation did not immediately solve an underlying dilemma which regulators still faced: the need to contain the rising costs of federally financed meat and poultry inspection.

Once again, high-level decision makers floated the notion of a consolidated food safety agency as a plausible solution. In the 1996 National Performance Review study to “reinvent government,” Vice President Al Gore proposed that the Food Safety and Inspection Service should be eliminated and “all food safety responsibilities” be consolidated in the FDA. The report emphasized that fragmented oversight of food safety inspection, research, and expertise led to duplication of efforts, or worse, allowed real problems to “fall through the bureaucratic cracks.” In short, the report argued that the current system of multiple food safety agencies “aren’t adequately protecting Americans.”¹²⁸

The bureaucrats within USDA did not express much interest in further consolidation at that time. Instead, they focused their attention on promulgating more rulemaking based on the principles of HACCP. As former FSIS Administrator Thomas J. Billy explained to an industry audience in 2000, “we have a public health obligation to continue our modernization efforts.”¹²⁹ Agency leaders sought to test the theories that

¹²⁸ National Performance Review (U.S.) and Albert Gore, *From Red Tape to Results: Creating a Government That Works Better & Costs Less: Report of the National Performance Review* (Washington, D.C.: U.S. Government Printing Office, 1993), 101. <https://catalog.hathitrust.org/Record/009137253>.

¹²⁹ Allison Galosich, “Meat Inspection System Draws Criticism,” *National Provisioner* 214, no. 8 (August 2000): 10.

experts had been recommending for the past several decades: to determine, through scientific experimentation and data collection, whether and under what circumstances unit inspection could be replaced with a sampling approach.

Even as the agency rolled out the HACCP Final Rule in small and very small plants, they embarked on a second rulemaking process to begin an experimental project to test these inspection models in a select group of plants. The basic plan for what became known as the HACCP-Based Inspection Models Project (HIMP) included a period of baseline data collection, followed by data collection under new inspection systems, in order to evaluate their effectiveness. These new rules introduced an even more radical change: HIMP allowed the USDA to delegate most visual inspection responsibilities to in-plant “sorters” and FSIS inspectors would shift their attention to collection of microbiological data and chemical analyses of samples.

HIMP attracted controversy when FSIS initially proposed it in 1997, and it remains contentious nearly twenty years later. This section will demonstrate how the key questions in the debate about HIMP addressed some of the core dilemmas of regulatory governance, such as the delegation of constitutional authority and the appropriate amount of deference to give to agency experts.

First, the designers of the HIMP study firmly believed that the industry needed to take on more responsibility for food safety. In internal documentation, FSIS officials explained that the goal of the project was to “develop inspection models where the

responsibility for slaughter activities is primarily an industry responsibility.”¹³⁰ This language about expanding the responsibility of the regulated industry appears several times in the document (i.e. the industry should be “completely responsible for food safety,” and the industry is “assuming full responsibility for food safety under HACCP”).¹³¹ However, HIMP documentation did not provide for concomitant industry liability or the introduction of civil and criminal penalties.

Unlike similar proposals in the 1980s that were more explicit about their intent to cut costs and reduce resources, HIMP documentation emphasized that the project was about “resource allocation and redeployment, not reduction.”¹³² To understand what FSIS officials really meant by “resource allocation and redeployment,” a brief sidebar about costs and operating hours is in order. While the FMIA and PPIA provide for public funds for “core” hours of inspection (defined in the regulations as a 9 to 5 shift), “overtime” inspection outside typical operating hours must be paid for by the company.¹³³ While the question of overtime fees played into earlier discussions about modifying inspection, the more immediate concerns about inspector turnover rates, shortages, and hiring freezes dominated discussions of costs. By contrast, committee notes and minutes on the HIMP

¹³⁰ “HIMP Project Plan, August 27, 1997,” 3, “HIMP Guides and Documents,” Folder 3: “HIMP Guides and Documents,” Box 10, George Beran Papers.

¹³¹ “HIMP Project Plan, August 27, 1997,” 20, 25, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹³² HIMP Project Plan, August 27, 1997, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹³³ Allocation of Inspection Resources (undated, 1996-1997?), 2, “HIMP Guides and Documents,” Folder 3, Box 10, Beran Papers; “Animals and Animal Products – Facilities for Inspection,” 9 CFR 307.4 2019; “Poultry Products Inspection Regulations – Schedule of Operations,” 9 CFR 381.37 2019.

project focus much more on how to reduce or eliminate these fees for “overtime” inspection – which would allow companies to operate longer hours and produce more volume – than was documented in previous attempts to revise inspection laws. Overtime inspection fees reflected a not insubstantial cost: in fiscal year 1996, meat and poultry companies paid the government \$30.5 million in overtime charges for over 900,000 hours of overtime coverage.¹³⁴

Many of the commenters questioned FSIS’s claims about the “science-based” nature of this new rulemaking. In particular, some groups requested that FSIS pay more attention to cost-benefit analysis and risk assessment. For example, in her comment, Nancy Donley, President of the consumer group S.T.O.P. (Safe Tables Our Priority), described an incident at a public meeting, at which FSIS unveiled a plan to raise the GS (General Schedule) levels for inspectors (i.e. pay grade). According to Donley’s account, when STOP representatives inquired how this change would affect the size of the inspection force, FSIS replied that “they hadn’t done the numbers yet.”¹³⁵ The Commissioner of Agriculture in West Virginia doubted that company employees would be trained to the same level as FSIS inspectors, and suspected that inspection might be

¹³⁴ “Allocation of Inspection Resources” 7, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹³⁵ Public Comment from Nancy Donley, President of S.T.O.P. on Docket No. 98-009N - HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan, Sept. 28, 1998, 3, Folder 3: “HIMP Guides and Documents,” Box 10, George Beran Papers.

turned over completely to lay inspectors: “So much for the science-based system advocated by FSIS.”¹³⁶

The HIMP debacle also centered on a debate about the validity of the study’s experimental methodology. Critics of HIMP did not question the basic practice of experimentation as a means to obtain scientific data.¹³⁷ However, they consistently articulated their concerns about the setup of the experiment, the extent to which its findings were publicly accessible, and the potential that it could be used to inform rulemaking. Several public comments in the early stages of the project called the study “fundamentally flawed.”¹³⁸ However, a comment from the Wyoming Department of Agriculture expressed guarded support for the proposal: “Our food safety systems should be based on science, be open to improvement and innovation, and should never be bound simply by tradition.”¹³⁹

Inspectors and consumer groups spent most of their time during the HACCP rulemaking process ensuring that HACCP would not replace traditional inspection. When they read the proposed rule for HIMP, which proposed exactly that, the whole process

¹³⁶ Public Comment from Gus R. Douglass, Commissioner of Agriculture, State of West Virginia, on Docket No. 98-009N - HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan, Sept. 10, 1998 (rec’vd Docket Clerk Sept 21, 1998). 3. Folder 3: “HIMP Guides and Documents,” Box 10, George Beran Papers.

¹³⁷ cf. Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life*, (Princeton, N.J: Princeton University Press, 1985).

¹³⁸ Folder 3: “HIMP Guides and Documents,” Box 10, George Beran Papers.

¹³⁹ Public Comment from Ron Micheli, Wyoming Department of Agriculture on HACCP - Based Meat and Poultry Inspection Concepts, Sept 25, 1998 (Rec'vd by docket clerk Sept 30), 1. Folder 3, Box 10, George Beran Papers.

had the flavor of a bait-and-switch. As one inspector noted: “[a]s I understand [it,] HACCP was to be an enhancement of our Inspection Program not as a replacement [for visual inspection.]”¹⁴⁰ Nancy Donley expressed similar frustration about the HIMP proposal, arguing that HACCP should be “an enhancement to and not a replacement for” carcass-by-carcass inspection, and that “the government assured us this was indeed the case.”¹⁴¹ In her comment, Donley emphasized that “HACCP is a *company’s production management* tool”¹⁴² and that “HACCP is *not* a replacement for inspection.”¹⁴³

Many commenters argued that HIMP went too far, and the proposal challenged basic consumer definitions of what counted as food inspection. Nancy Donley opposed the proposal to assign organoleptic inspection tasks to plant employees in order to shift FSIS’s role to verification of plant procedures. In her written comments, Donley took care to emphasize that “Consumers do not consider this to be inspection.” The Commissioner of the West Virginia Department of Agriculture agreed, noting that consumers “expect that meat and poultry products offered for sale have been inspected by an impartial government inspector who acts in the consumer's interest.”¹⁴⁴

¹⁴⁰ Letter from Paul Carney, President Local 926, American Federation of Government Employees, AFL-CIO, to U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, August 26, 1998. (Copy of document received by Docket Clerk, Sept. 8, 1998); “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹⁴¹ Public Comment from Nancy Donley, President of S.T.O.P. on Docket No. 98-009N - HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan, Sept. 28, 1998, 3, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹⁴² Public Comment from Nancy Donley (1998), 2, George Beran Papers.

¹⁴³ Public Comment from Nancy Donley (1998), 3, George Beran Papers.

¹⁴⁴ Public Comment from Gus R. Douglass, Commissioner of Agriculture, State of West Virginia, on Docket No. 98-009N - HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter

Even if HIMP met their expectations (which it largely did not), commenters questioned the legality of the proposed rule under existing statutes. Several comments characterized the proposal to “relegate” organoleptic inspection to industry sorters as “irresponsible and illegal.”¹⁴⁵ The Commissioner of the West Virginia State Department of Agriculture pointed out the use of terminology in the proposal:

“antemortem inspection performed by a plant employee is termed ‘ante-mortem process control,’ postmortem dispositions by the plant employee are ‘organoleptic decisions,’ pathological lesions are called ‘carcass condemnable defects.’ The proposal, however, clearly states that plant employees will conduct ante-mortem and post-mortem inspection of all animals.”¹⁴⁶

The Commissioner argued that the language change looked like a baldly transparent effort to circumvent statutory requirements.

Yet, in other instances, commenters who opposed the HIMP rule in its details accepted the premise that the meaning of “inspection” might need to change in order to ensure food safety going forward. For example, Donley conceded that “the concept of plant employees performing some organoleptic tasks” had merit.¹⁴⁷ One commenter, representing veterinary inspectors, also acknowledged that postmortem inspection in

Inspection Models Study Plan, Sept. 10, 1998 (rec’vd Docket Clerk Sept 21, 1998), 2, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹⁴⁵ Public Comment from the Humane Society of the United States, on Docket No. 98-009N - HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan, Sept. 28, 1998 (rec’vd Docket Clerk Oct 2, 1998), 2, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹⁴⁶ Public Comment from Gus R. Douglass (1998) 3, George Beran Papers.

¹⁴⁷ Public Comment from Nancy Donley (1998), 9, George Beran Papers.

poultry had “lost its previous significance.”¹⁴⁸ Even consumers agreed that poultry was somehow different from other meats, and that perhaps a different inspection system might be more appropriate. Donley conceded that it was “wrong, wasteful of resources, and limiting” to maintain an “archaic” approach of “species equality.”¹⁴⁹

Inspectors sent in individual comments (which were frequently handwritten) to grouse about the lack of support from Washington officials. One wrote:

“Thomas Billy keeps saying that we need to change the way we are doing meat inspection today, I agree. We need to go back to when I started meat inspection and let us do our jobs like we used to do without Washington always telling us to back off on our duties.”¹⁵⁰

Other commenters argued that, other than the largest players, the industry was completely unprepared to take on the task of inspection: “ante-mortem and post-mortem inspection has always been the government's responsibility, and even the most technologically advanced plants have no knowledge and expertise in this area.”¹⁵¹ One commenter even argued that the existing ante-mortem and post-mortem inspection was science-based,

¹⁴⁸ Public Comment from W. Jan Charminski, DVM, PhD, National Association of State Meat and Food Inspection Directors on Docket No. 98-039N, HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan, Sept. 23, 1998 (rec'vd Sept 28, 1998), 6, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹⁴⁹ Public Comment from Nancy Donley (1998), 10, George Beran Papers.

¹⁵⁰ Public Comment from Ron Neksla (meat inspector), to USDA Docket Clerk, rec'vd Sept 28, 1998. In another part of the letter, Neksla specified that he had been an inspector for 26 years, which meant he likely started in 1972, not long after the Wholesome Meat Act and Wholesome Poultry Products Act.

¹⁵¹ Public Comment from W. Jan Charminski, 1998, 5, George Beran Papers.

because it drew on “elements of pathology, bacteriology, toxicology, meat science and public health.”¹⁵²

Back in Washington, task forces and subcommittees produced reports that lauded a “team approach” to the models project. The report acknowledged that inspectors were “experienced and knowledgeable” and “an integral part of the assessment team.”¹⁵³ And at least in the early stage, regulators may have imagined that the HIMP project would establish performance standards that would encourage the adoption and development of new technologies, or “technology-forcing” standards: “[the] industry [is] expected to incorporate new technology to effectively and efficiently meet the performance standards.”¹⁵⁴ The report included a diagram representing HIMP as one point in a “continuum” of co-regulation. At one end of this continuum lay traditional livestock inspection; modifications to traditional inspection currently allowed in poultry were in the middle; HIMP represented the other end of that continuum. (See Figure 10)

¹⁵² Public Comment from W. Jan Charminski, 1998, 4, George Beran Papers.

¹⁵³ HIMP Project Plan, 10, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

¹⁵⁴ HIMP Project Plan, 25, “HIMP Guides and Documents,” Folder 3, Box 10, George Beran Papers.

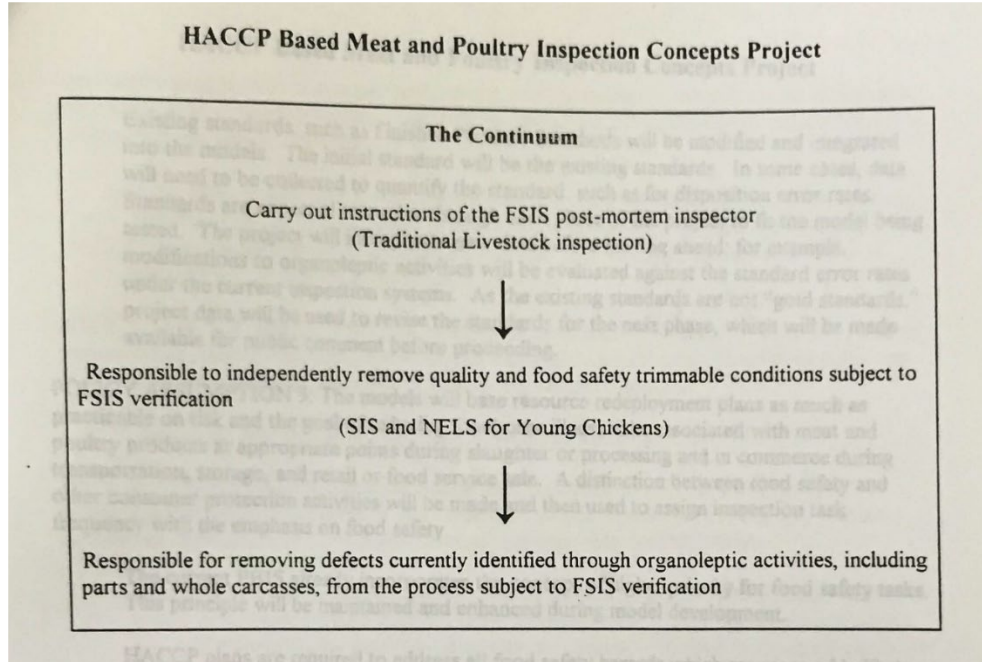


Figure 10: Continuum of co-regulation, from HACCP Based Meat and Poultry Inspection Concepts Project, August 26, 1997 DRAFT, 3, George Beran Papers.

Not everyone agreed that this “continuum” was such a good idea. In 1998, the federal inspector’s union sued to block the implementation of the HIMP pilot, asserting that the pilot program violated the requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act. The inspectors’ union based their legal arguments on the principle of “agency deference” as defined in *Chevron v. NRDC* (commonly referred to as “Chevron deference” or “Chevron authority”). Chevron deference allows courts to defer to the agency’s interpretation of a statute based on a two-part test: (1) that Congress has not spoken to the issue at hand, and (2) that the agency’s interpretation is

“reasonable.”¹⁵⁵ Chevron deference is particularly important for litigation in matters of health and safety regulation, in which the legal questions at hand may require scientific and technical knowledge that exceeds the technical expertise of most administrative law judges.¹⁵⁶ In this case, the inspectors’ union argued that the agency’s interpretation of the statute was “unreasonable,” and that the USDA exceeded their “Chevron authority” in promulgating the rule for the HACCP-Based Inspection Models Project. In short, the inspector’s union argued that the USDA exceeded the authority delegated to them by Congress through the meat inspection acts, and as a result, the project should be stopped. In the initial ruling, the judges sided with the agency, but the Appeals Court reversed their decision, and agreed with the inspector’s union. The court concurred that the pilot project asked inspectors to examine “people not carcasses,” and deemed the agency’s interpretation of the statute “unreasonable,” thereby denying the USDA *Chevron* deference in the HIMP project.¹⁵⁷

The outcome of the case forced the USDA to make modifications to the program mid-way through the pilot test, after their contractor, Research Triangle Institute, ran the baseline studies. The USDA continued to pursue the project (and the litigation), and the case returned to federal circuit courts on appeal in 2002. Upon their review of the modified models project, the court found that both the Federal Meat Inspection Act and

¹⁵⁵ *Chevron USA, Inc. v. NRDC*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

¹⁵⁶ *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009)

¹⁵⁷ *AFGE v. Glickman*, 215 F.3d 7, 342 U.S. App. D.C. 7, 2000 U.S. App. LEXIS 15369 (2000)

the Wholesome Poultry Products Inspection Act were sufficiently vague to allow these kinds of pilot projects that potentially redefined the nature of inspection: “[the Acts] delineate what must be inspected and by whom ... but neither statute tells the reader exactly what an “inspection” entails.”¹⁵⁸ The court allowed the revised pilot to go forward.

HIMP and Technological Innovation

Because the HIMP rule de-emphasizes on-line visual inspection, the regulation afforded greater flexibility in the meaning of “inspection” and “safety” as long as the product met existing performance standards and finished product standards.¹⁵⁹ Where consumers saw this prospect as a matter of great concern, businesses saw an untapped opportunity for innovation. One such avenue might be irradiation, which kills all pathogens on the product. Since at least the 1950s, the meat and poultry industry sought greater recognition of irradiation as a legitimate strategy to ensure food safety and eliminate all risk. In an article on “Atomic Poultry Research” in a 1959 trade journal, one author concluded: “Although there is much work to be done ... atomic energy will eventually find its place in the food industry.”¹⁶⁰ (In the cost-safety-quality trilemma,

¹⁵⁸ *AFGE v. Veneman*, No. 01-5035, 2002 U.S. App. LEXIS 5287 (2002)

¹⁵⁹ However, the FSIS’s enforcement capacity of these standards remains limited. See *Supreme Beef Processors, Inc. v. USDA*, 275 F.3d 432 (5th Cir. 2001).

¹⁶⁰ Lawrence J. Machlin, “Atomic Poultry Research,” *The Southeastern Poultryman*, January 1956, 142. Irradiation was also popular as a civil defense measure: Dr. Norman W. Desrosier, “Let’s Stockpile Irradiated Chicken,” *The Southeastern Poultryman*, June 1959, 7.

irradiation might be on the side of complete safety, with middling cost and middling to lower quality) While the USDA completed a rulemaking on poultry irradiation in the 1990s, irradiation is rarely used at the retail level because of persistent (if erroneous) consumer beliefs that irradiated meat is radioactive.¹⁶¹ A more legitimate concern about irradiation is that it could disincentivize the industry to address the problem of fecal contamination. As Carol Foreman put it to PBS Frontline in 1997: “I don't want a system that says you can have fecal matter all over it, and then irradiate it.”¹⁶²

The HIMP rule also created the possibilities for new inroads in automation. In the 1985 National Academy of Sciences report on meat and poultry inspection, a section on robotics begins: “The Tin Man from the Wizard of Oz and, more recently, C-3PO and R2D2 from the film Star Wars are perhaps our most well known robots.”¹⁶³ The section went on to describe the state of robotics in the early 1980s, suggesting that the technology might improve to allow robots to perform some organoleptic tasks in the distant future. In 1985, the prospect of non-human inspectors was almost as fanciful as George Lucas’

¹⁶¹ Carole Sugarman, “USDA Proposes Irradiating Poultry; Controversial Technology Seen as Weapon Against Contamination,” *The Washington Post*, May 7, 1992; Carole Sugarman, “USDA Approves Poultry Disinfection Method; Chemical Dip Found to Kill *Salmonella* Cheaply and Safely,” *The Washington Post*, Washington, D.C., October 14, 1992; “Irradiation of Poultry Approved,” *FSIS Communicator*, May-June 1990, Vol. 6, No. 15, 2, Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection, NAL; Robert L. Wolke, “Food Irradiation,” *Gastronomica* 2, no. 1 (2002): 89–91, <https://doi.org/10.1525/gfc.2002.2.1.89>; James Spiller, “Radiant Cuisine: The Commercial Fate of Food Irradiation in the United States,” *Technology and Culture* 45, no. 4 (2004): 740–63.

¹⁶² Interview with Carol Tucker Foreman, Frontline: “Making Meat,” PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/meat/interviews/foreman.html>

¹⁶³ National Research Council, *Meat and Poultry Inspection*, 145.

latest blockbuster, *Return of the Jedi*. By the early 2000s, things had changed. Improvements in optics and camera technology, as well as the recent changes in the law, opened up new opportunities for engineers to develop “automated inspection systems to emerge as a viable alternative to augment human screening tasks” – in other words, to use robots to perform the “sorting” tasks before the carcasses reach the federal (human) inspector.¹⁶⁴ A great deal of this new research emerged from the Georgia Institute of Technology, which has a long history of collaboration with the poultry industry. With their more recent work in robotics and automation, the North Avenue trade school has come a long way from the 1930s “helpline” in which they provided “on-demand expertise” to Georgia farmers over the telephone.¹⁶⁵

Much of the opposition to HIMP centers around the unsavory prospect of assigning inspection tasks to employees who are comparatively more vulnerable to being fired or retaliated against for condemning carcasses or parts. But that concern may eventually be replaced by an entirely new issue, in which human “sorters” are gradually replaced with computerized ones. Robots may one day guard the henhouse.

¹⁶⁴ Colin Usher et al., “Machine Vision Process Monitoring on a Poultry Processing Kill Line: Results from an Implementation,” ed. Yud-Ren Chen, George E. Meyer, and Shu-I Tu (Paper Presented at Optics East 2005, Boston, MA, 2005), 59960B-2, <https://doi.org/10.1117/12.632238>.

¹⁶⁵ Georgia Parmelee, “Engineers Come Home to Roost: Agricultural Technology Finds a Place at Tech,” *We Are Engineers: Georgia Tech College of Engineering Magazine*, Fall 2019, 17-23.

HACCP, HIMP, AND POLICY LEARNING

This chapter argues that the 1996 Pathogen Reduction/HACCP rule should be understood as part of a longer trajectory of policy learning in response to crises that date back to the 1970s. The Bon Vivant and Pierce Packing cases both represented “focusing events” in the sense laid out by political scientist Thomas Birkland, in that they were “sudden; relatively uncommon [occurrences]; ... reasonably defined as harmful or revealing the possibility of potentially greater future harms.”¹⁶⁶ Crucially, both cases fit into Birkland’s theory of focusing events and policy choices, in which he argues that statutory change may not always be the first choice for policymakers.¹⁶⁷ The 1993 *E. Coli* outbreak explains the timing of major changes, but earlier developments proved equally important in determining the substance of the policy response. Other incidents of foodborne illness involving other pathogens like *Salmonella* amplified and expanded the potential for the Jack in the Box outbreak to lead to substantive, meaningful change. As in other contexts, earlier crises certainly prompted expert debate, refinement of ideas, and

¹⁶⁶ Thomas A. Birkland, “Focusing Events, Mobilization, and Agenda Setting.” *Journal of Public Policy* 18, no. 01 (1998): 53–74.

¹⁶⁷ Thomas Birkland and Megan K. Warnement, “Focusing Events, Risk, and Regulation,” in *Policy Shock: Recalibrating Risk and Regulation after Oil Spills, Nuclear Accidents and Financial Crises*, eds. Edward J. Balleisen, Lori S. Benneer, Kimberly D. Krawiec and Jonathan B. Wiener (Cambridge: Cambridge University Press, 2017)

nascent policy proposals, but the “policy slope” proved too steep to generate support for change until the “focusing event.”¹⁶⁸

These findings of the chapter also raise questions about the claims that the 1996 “Megareg” constitutes an unjustifiable form of self-regulation in which the “fox guards the henhouse.” When viewed in its historical context, it is entirely understandable why these arguments gained traction: programs like Discretionary Inspection and the Performance Based Inspection System simply did not work, and the political appointees who staffed Reagan’s USDA pursued an explicit agenda to reduce regulatory burden on the meat and poultry industry. However, this chapter shows that key officials intended for the HACCP rule to be a clear departure from these earlier programs, rather than a continuation of a deregulatory agenda. Nevertheless, since the late 1970s, both the FDA and the USDA were constrained by heightened concerns about costs, which shaped their decision making.

The HIMP study, on the other hand, reflects both the possibilities and constraints on agencies’ ability to adopt flexible, adaptive, or experimental regulations within the bounds of American administrative law. If the HACCP rulemaking process was contentious and controversial, the HIMP study has been even more so. Depending on who you talk to, HIMP is either one of the longest-running efforts to collect data prior to

¹⁶⁸ *Policy Shock: Recalibrating Risk and Regulation after Oil Spills, Nuclear Accidents and Financial Crises*, eds. Edward J. Balleisen, Lori S. Benneer, Kimberly D. Krawiec and Jonathan B. Wiener (Cambridge: Cambridge University Press, 2017)

issuing a rulemaking, or one of the most flawed and compromised scientific studies ever conducted by a government agency.

A perennial problem – one not unique to food safety – is that the bureaucrats, the microbiologists, and the lawyers tended to define “safe enough” differently than consumers, workers, or inspectors. As consumer advocates, industry, and government began to develop their own experts to disseminate knowledge, they consistently challenged USDA’s claim to the use of “science” or “expert” knowledge to define and regulate food safety. The dynamics of this debate parallel many other contexts, especially environmental regulation and nuclear power, in which outside competition among groups of experts generates more disagreement and policy uncertainty rather than consensus-building through coalitional politics.¹⁶⁹

However, unlike many other cases in risk regulation, in which agency experts go to battle against ill-informed publics to improve “risk communication,” FSIS itself needed to undergo a profound cultural change to make the shift towards microbiological sampling.¹⁷⁰ The agency has historically been staffed and led by veterinarians and lay inspectors; only since the 1990s has FSIS begun to hire more meat scientists,

¹⁶⁹ Brian Balogh, *Chain Reaction: Expert Debate and Public Participation in American Commercial Nuclear Power 1945-1975* (Cambridge University Press, 1991); Stephen G. Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* (Harvard University Press, 1993).

¹⁷⁰ On risk communication, see Paul Slovic, “Perceived Risk, Trust, and Democracy,” *Risk Analysis* 13, no. 6 (1993): 675–82; Jack Bobo and Sweta Chakraborty, “Pink Slime, Raw Milk and the Tweetification of Risk,” *European Journal of Risk Regulation*, January 1, 2015, 1–5; Kim Fortun, “From Bhopal to the Informing of Environmentalism: Risk Communication in Historical Perspective,” *Osiris* 19 (2004): 283–96.

microbiologists, and food technologists. In 2000, FSIS Administrator Thomas Billy acknowledged that “there is continuing uneasiness about whether FSIS will return to the command and control approach, so I want to assure you that will not occur.”¹⁷¹ Tellingly, the transition to HACCP in 1996 was overseen by Michael Taylor, a lawyer from the Food and Drug Administration – a notable departure from the traditional “expert” that has led FSIS. By contrast, many federal inspectors started out as company employees, and drew on that experience as a primary source of their expertise on the appropriate divide between public and private authority.

Of course, debate about the role of public and private, the scope and extent of inspection, and concerns about new risks never remained confined to the United States. The next chapter describes how processes of borrowing of ideas and regulatory systems were not only happening between the USDA and FDA, but were part of a larger international conversation – one in which the HACCP system would eventually comprise not just the basis of USDA’s rules, but the backbone of a global food safety regulatory system for the twenty-first century.

¹⁷¹ *Implementation of the Hazard Analysis Critical Control Point System, Hearing before the Subcommittee on Livestock, Dairy, and Poultry of the Committee of Agriculture, House, 105th Congress, 2nd Sess., (Testimony of Thomas J. Billy, FSIS Administrator) 13.*

CHAPTER 5 – “HACCP IS TAKING OVER THE WORLD!”: A TRANSNATIONAL HISTORY OF HAZARD ANALYSIS AND CRITICAL CONTROL POINTS, 1976-2000

CHLORINE CHICKEN AND FOOD SAFETY GOVERNANCE

In the summer of 2014, negotiations on a bilateral trade agreement between the United States and the European Union ground to a halt – because of chicken. Critics denounced the proposed Transatlantic Trade and Investment Partnership (TTIP) because they claimed it would bring unwanted ‘Frankenfoods’ – like genetically modified organisms, ‘hormone beef,’ and ‘chlorine-washed chicken’ – into European markets.¹ Editorialists and pundits fretted that a trade agreement would inevitably lower European standards and permit the entry of cheaper, lower-quality American products. Protestors crafted signs and leaflets that called the proposed agreement “TAFTA” in order to draw negative comparisons to the North American Free Trade Agreement (NAFTA).² On the

¹ Caroline Winter, “Europe Dreads America’s Chlorinated Chickens - Bloomberg,” Bloomberg Businessweek, August 8, 2014, <http://www.bloomberg.com/news/articles/2014-08-08/why-chlorine-chicken-from-america-inspires-dread-in-europe>; Robin Emmott, “No U.S. ‘chlorine Chicken’ in Europe, EU’s Health Nominee Says | Reuters,” September 30, 2014, <http://www.reuters.com/article/us-eu-commission-trade-idUSKCN0HP10620140930>; Anthony Faiola, “Free Trade with U.S.? Europe Balks at Chlorine Chicken, Hormone Beef.,” *The Washington Post*, December 4, 2014, https://www.washingtonpost.com/world/europe/free-trade-with-us-europe-balks-at-chlorine-chicken-hormone-beef/2014/12/04/e9aa131c-6c3f-11e4-bafd-6598192a448d_story.html; Susanna Capelouto, “European Activists Say They Don’t Want Any U.S. ‘Chlorine Chicken,’” National Public Radio, accessed March 15, 2015, <http://www.npr.org/sections/thesalt/2014/09/30/351774240/european-activists-say-they-dont-want-any-u-s-chlorine-chicken>.

² I noticed this trend in a survey of French newspaper coverage: Michele Rivasi, “TAFTA/TTIP : Le Traité Transatlantique UE-USA Est Un Danger Pour Notre Santé. Refusons-Le,” *leplus.nouvelobs.com*, September 10, 2015, <http://leplus.nouvelobs.com/contribution/1433273-tafta-ttip-le-traite-transatlantique->

contrary, academics and trade negotiators countered that an agreement like TTIP had real potential to contribute to policy learning in ways that would benefit both parties.³ Over the last fifty years of trade under the GATT regime, these two trade blocs had resolved most major issues around tariffs and trade; in reality, the bilateral agreement promised to resolve the few lingering points of contention. For years, the “Beef – Hormones” trade dispute between the U.S. and the European Union operated as the symbol of their irreconcilable differences on matters of food and agriculture.⁴ The “hormone beef” question also reflected much broader variations in risk perceptions which have shaped

ue-usa-est-un-danger-pour-notre-sante-refusons-le.html; Thomas Porcher and Frédéric Farah, “Le TAFTA Est Contraire Aux Exigences Du GIEC. Ce Traité Transatlantique Doit Être Revu,” *Nouvel Obs*, November 13, 2014, <http://leplus.nouvelobs.com/contribution/1278166-le-tafta-est-contraire-aux-exigences-du-giec-ce-traite-transatlantique-doit-etre-revu.html>; Maxime Vaudano, “Si vous n’avez rien suivi au Tafta, le grand traité qui effraie,” *Le Monde*, October 13, 2015, http://www.lemonde.fr/les-decodeurs/article/2015/10/13/si-vous-n-avez-rien-suivi-au-tafta-le-grand-traite-qui-effraie_4788413_4355770.html; *Le Figaro*, “Tafta : La France Envisage l’arrêt Des Négociations,” *Le Figaro*, September 27, 2015, <http://www.lefigaro.fr/flash-eco/2015/09/27/97002-20150927FILWWW00228-tafta-la-france-envisage-l-arret-des-negociations.php>; “Tafta: Les Enjeux Qui Se Cachent Derrière Le Poulet Au Chlore,” *Slate.fr*, accessed April 2, 2016, <http://www.slate.fr/story/87507/tafta-cepii>.

³ Jonathan B. Wiener and Alberto Alemanno, “The Future of International Regulatory Cooperation: TTIP as a Learning Process Toward a Global Policy Laboratory,” *Law and Contemporary Problems* 78, no. 4 (n.d.): 34.

⁴ On the significance of the “hormone beef” dispute, see especially Christopher K. Ansell and David Vogel, eds., *What’s the Beef?: The Contested Governance of European Food Safety* (Cambridge, Mass.: MIT Press, 2006); on “food as culture, food as fuel” see: Marsha A. Echols, “Food Safety Regulation in the European Union and the United States: Different Cultures, Different Laws,” *Colum. J. Eur. L.* 4 (1998): 525; for another view on “food as culture,” see Michaela DeSoucey, “Gastronationalism: Food Traditions and Authenticity Politics in the European Union,” *American Sociological Review* 75, no. 3 (June 2010): 432–55; Michaela DeSoucey, *Contested Tastes: Foie Gras and the Politics of Food* (Princeton University Press, 2016)

regulatory structures (and stymied other agreements on liberalized trade) between the US and the European Communities for many decades.⁵

However, in 2014, European protestors did not direct their ire against beef. Instead, the iconic image of anti-TTIP sentiment was an oversized *Chlorhuenchen* – or “chlorine chicken” – carried by a group of German protestors wearing hazmat suits.⁶ The precise social or cultural reasons why Europeans’ concerns about “chlorine chicken” outpaced those of “hormone beef” are not entirely clear, though trade may still be the key factor. The “Beef – Hormones” trade dispute has been resolved: the European Communities agreed to pay an annual fine to offset the lost market share for American beef exporters. However, a similar case against poultry products has been in limbo since 2009.⁷

⁵ David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton, N.J.: Princeton University Press, 2012); George Gray, Michael D. Rogers, and Jonathan B. Wiener, “Beef, Hormones, and Mad Cows,” in *The Reality of Precaution: Comparing Risk Regulation in the United States and Europe*, 2012, 65-87; Christina L. Davis, *Food Fights over Free Trade: How International Institutions Promote Agricultural Trade Liberalization* (Princeton, NJ: Princeton University Press, 2003).

⁶ CBS News, “What am I Seeing? A Bio-Hazardous Giant Chicken?” (Slideshow) Oct 3, 2014, <https://www.cbsnews.com/pictures/what-am-i-seeing-10-03-14/11/>; See also: Jonathan B. Wiener, “Precaution and Food Safety in the U.S. and Europe,” Presentation at the Food Working Group, Duke University, Dec. 3, 2014, https://ssri.duke.edu/sites/ssri.duke.edu/files/Wiener_Duke_Food_Working_Group.pdf

⁷ On the outcome of the “hormone beef” dispute, see the associated documents for DS26: European Communities — Measures Concerning Meat and Meat Products (Hormones), World Trade Organization Dispute Settlement Resolution, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm (last accessed February 22, 2020); on the current status of the “chlorine chicken” dispute, see associated documents for DS389: European Communities — Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States, World Trade Organization Dispute Settlement Resolution https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds389_e.htm (last accessed February 22, 2020)

Perhaps because of that uncertainty, American poultry export trade associations continue to pursue efforts to lower technical barriers to trade, while their counterparts in the red meat industry act as though they are resigned to the lost market share. This dynamic is evident in how trade associations interacted with the U.S. Trade Representative’s office through comments and hearings on the TTIP Agreement in 2013. In their comment, the U.S. Meat Export Federation simply acknowledged that “consensus has proven impossible to reach on some high-profile issues” and advocated for greater dialogue and education as an alternative to trade agreements.⁸ Similarly, a comment from the American Meat Institute also presented a detailed description of the longstanding regulatory differences with few concrete suggestions of what USTR should do to resolve “structural disparities” between the two regulatory systems.⁹ No representatives of beef or pork interests chose to participate in two days of public hearings, but a representative from the National Chicken Council appeared before officials to say that “this agreement is perhaps the last, best opportunity to ... get back into that market.”¹⁰

⁸ Comment from the U.S. Meat Export Federation to the U.S. Trade Representative, “Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement, Docket No: USTR-2013-0019” May 10, 2013, 1-2, <https://www.regulations.gov/document?D=USTR-2013-0019-0333> (last accessed February 22, 2020).

⁹ Comment from the American Meat Institute to Mr. Douglas Bell, U.S. Trade Representative’s Office, “Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement; Docket No: USTR-2013-0019,” 3, <https://www.regulations.gov/document?D=USTR-2013-0019-0205> (last accessed February 22, 2020).

¹⁰ Statement of William Roenig[k], Senior Vice President, National Chicken Council, in a Public Hearing Before the Trade Policy Staff Committee (TPSC) on the Transatlantic Trade and Investment Partnership, Office of the U.S. Trade Representative, Executive Office of the President, USITC Hearing Room, Washington, D.C. May 30, 2013, 9:30 am., 479, l. 19-20. <https://www.regulations.gov/docket?D=USTR-2013-0019> (last accessed February 22, 2020)

Long after the prospects of any agreement on TTIP dwindled, “chlorine chicken” stayed in the headlines. In 2016, a plurality of voters in the United Kingdom elected to leave the European Union (a process which quickly earned the moniker of “Brexit”). Shortly thereafter, Britons realized that leaving the EU also meant leaving behind the single market’s notoriously stringent health and safety standards.¹¹ The worst of these fears were confirmed when group of British investigative journalists obtained a set of FSIS “noncompliance reports” – non-public reports by inspectors that can be made available through Freedom of Information Act requests – that documented thousands of regulatory violations at some of the world’s largest processing plants in graphic detail.¹² In October 2018, an article in *Business Insider* reminded readers once again of the myriad “horrors” that might await British consumers in a post-Brexit world. In public statements, British parliamentary representatives (MPs) warned against potential threats from “insect-filled chocolates, rat hair noodles, and maggoty orange juice” imported from across the pond.¹³ Even Boris Johnson, the British Prime Minister and outspoken

¹¹ Adam Vaughan, “UK Food Prices Set to Rise after Brexit Vote,” *The Guardian*, June 26, 2016, <http://www.theguardian.com/environment/2016/jun/26/uk-food-prices-set-to-rise-after-brexit-vote-farmers-union>.

¹² Andrew Wasley, “Dirty US Meat Could Flood into UK after a Brexit Trade Deal,” The Bureau of Investigative Journalism and the Guardian, February 21, 2018, <https://www.thebureauinvestigates.com/stories/2018-02-21/dirty-us-meat-could-come-over-here-after-brexit>

¹³ Adam Payne, “Insect-Filled Chocolates, Rat Hair Noodles, and Maggoty Orange Juice: The Reality of a Brexit Trade Deal with Trump,” *Business Insider*, Oct. 10, 2018, accessed February 9, 2019, <https://www.businessinsider.com/rat-hairs-and-maggots-may-warned-of-reality-of-us-brexit-trade-deal-2018-10>.

advocate of Britain’s departure from the European Union, reportedly told U.S. Vice President Mike Pence that “we’re not too keen on that chlorinated chicken.”¹⁴

In early 2019, as one of several Brexit deadlines drew near, U.S. trade representatives and emissaries turned up the heat by openly advocating for a UK-US trade deal that included concessions on agricultural standards. In February, the office of the U.S. Trade Representative published a trade negotiation white paper – which was widely reported on as a “Brexit wish list” – that emphasized the need to reduce technical barriers to trade like sanitary and phytosanitary measures.¹⁵ The following month, the U.S. ambassador to Britain described the European Union’s approach to farming and its Common Agricultural Policy as a “museum of agriculture” and described the chlorine wash as a “public safety no-brainer.”¹⁶ In a move that encapsulates the irreverence of the late 2010s, the Museum of English Rural Life (which is an actual museum of agriculture)

¹⁴ David Jackson, “Boris Johnson Tells Mike Pence the British Aren’t ‘Keen’ on Chlorinated Chicken, Wants Americans to Eat More Haggis,” USA TODAY, Sept. 5, 2019, accessed February 22, 2020, <https://www.usatoday.com/story/news/politics/2019/09/05/boris-johnson-mike-pence-no-chlorinated-chickens-more-haggis/2218695001/>.

¹⁵ Office of the U.S Trade Representative, “United States-United Kingdom Negotiations, Summary of Specific Negotiating Objectives,” February 2019 https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf (last accessed February 22, 2020; copy in author’s possession); Philip Clarke, “Battle Lines Drawn as US Seeks Access to UK Food Markets,” *Farmers Weekly; Sutton* 170, no. 25 (March 8, 2019): 14–15.

¹⁶ Robert Wood Johnson, “Don’t Let Smears about US Farms Trap Britain into the EU’s Museum of Agriculture,” *The Telegraph*, March 1, 2019, <https://www.telegraph.co.uk/news/2019/03/01/dont-let-smears-us-farms-trap-britain-eus-museum-agriculture/>; For an account of the reaction to Johnson’s comments, see Sarah Wheaton, “Trump’s UK Ambassador Hits out at US Farming ‘Smears,’” *POLITICO*, March 2, 2019, <https://www.politico.eu/article/donald-trump-trade-agriculture-uk-ambassador-hits-out-at-us-farming-smears/>; on the Common Agricultural Policy, see Ann-Christina L. Knudsen, *Farmers on Welfare: The Making of Europe’s Common Agricultural Policy* (Cornell University Press, 2009); Adam D. Sheingate, *The Rise of the Agricultural Welfare State: Institutions and Interest Group Power in the United States, France, and Japan* (Princeton University Press, 2003).

shot back: “Sir, poultry farming in Britain is a modern agribusiness with the highest standards of welfare.”¹⁷

This grim picture of a flood of chlorinated chickens washing up on British shores ignores the complex landscape of food safety standards that has developed over the last fifty years. Since 1996, international standards set by the Codex Alimentarius Commission establish a baseline for food safety standards enforced by the World Trade Organization’s (WTO) dispute resolution process. British domestic law may impose additional standards for imported goods, as long as domestic goods are held to the same standard. British grocery retailers, led by Tesco, also enforce their own private, or “business-to-business,” standards with their suppliers, known as the British Retail Consortium (BRC). But the BRC is far from the only private food standard; one study claims that as many as 400 standards organizations exist in the EU.¹⁸ By 2000, major multinational retailers formed the Global Food Safety Initiative, which was intended to be an accreditor that would harmonize among these competing standards.

To some degree, all of these regimes of private, international, and public forms of oversight require that producers follow the HACCP system (Hazard Analysis and Critical Control Points). Much of the extant literature emphasizes the importance of a series of

¹⁷ The Museum of English Rural Life, Twitter post: “On chlorinated chicken in @thetimes, from our current MERL Fellow @jamespbowen and past Fellow John Martin,” March 11, 2019, 11:52 am <https://twitter.com/themerl/status/1105134283864317953?s=12> (last accessed February 22, 2020)

¹⁸ Bernd M.J. van der Meulen, ed., *Private Food Law: Governing Food Chains through Contract Law, Self-Regulation, Private Standards, Audits and Certification Schemes*, vol. 6, European Institute for Food Law Series (The Netherlands: Wageningen Academic Publishers, 2011), <https://doi.org/10.3920/978-90-8686-730-1>.

international food scares in the early 1990s.¹⁹ From Aflatoxin in corn, *E. Coli* and bovine spongiform encephalopathy (BSE) in beef, Alar in apples, *Salmonella* in eggs and heptachlor in poultry, consumers worried over the safety of every element of the food supply. Each successive scare heightened public awareness of the problems of industrialized food and refocused global attention on food safety.²⁰

In 1992, the Codex Alimentarius Commission incorporated HACCP principles into their General Code of Food Hygiene. Regulators around the world, under pressure to respond to these food safety scares, followed suit by inserting language that reflected the logic of the HACCP concept into their domestic laws and regulations.²¹ Supermarkets and food retailers, spooked by liability lawsuits from injured consumers, formed their own private schemes in the mid-1990s which also made use of Codex standards. By 2000, leaders at the Global Food Safety Initiative, an accreditor of private standards, noted that the major certification schemes could all be “traced back” to the 1992 Codex

¹⁹ Elena Fagotto, “Private Roles in Food Safety Provision: The Law and Economics of Private Food Safety,” *European Journal of Law and Economics*; *New York* 37, no. 1 (February 2014): 83–109, <http://dx.doi.org.proxy.lib.duke.edu/10.1007/s10657-013-9414-z>; Marion Nestle, *Safe Food: Bacteria, Biotechnology, and Bioterrorism*, (Berkeley: University of California Press, 2003).

²⁰ See especially a series of clippings in the USDA History collection, Manuscript Collection 182, Series I, Box 1.6/7, in the National Agricultural Library. A few highlights include: Bruce Ingersoll, “Gone Bad: Tide of Imported Food Outruns FDA Ability to Spot Contamination,” *The Wall Street Journal*, September 27, 1989, A1; Marian Burros, “New Urgency Fuels Effort to Improve Safety of Food,” *New York Times*, May 7, 1990, A1; Janet Key, “Poison risk rises with chicken use,” *Chicago Tribune*, August 29, 1989.

²¹ U.S. Food Safety and Inspection Service, Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) Systems, Final Rule, 9 CFR Pt. 304, et al. *Federal Register*, July 25, 1996, 38806-38855; Regulation (EC) No 853/2004 of the European Parliament and of the Council, on the hygiene of foodstuffs, 29 April 2004.

standards.²² Once HACCP was adopted by Codex, it logically follows that governments and states adopted their own HACCP rules to adhere to the basic rules of international trade.

The existing origin story for HACCP fails to explain why an internal quality control program first developed by American scientists and engineers in the 1960s suddenly became an object of discussion at the meetings of the Codex Alimentarius Commission in 1992. To address this puzzle, this chapter “traces” the HACCP concept further back than the Codex standards. In doing so, I consider how HACCP compares to other international standard-setting efforts in science, technology, and engineering over the same period.²³ Secondly, even though HACCP forms the basis of private as well as international standards, I make the case for why these multiple sets of standards came to be, and why they may be necessary to ensure food safety in the twenty-first century. International standards establish a “floor” that facilitate trade at a lowest common denominator, while private standards raise the “ceiling” to meet individual companies’ (and consumer) demands. Through private standards that exceed minimum requirements set by states or international bodies, major retailers exercise a new variant of “countervailing power,” in which they extract not just price concessions, but safety and

²² Global Food Safety Initiative, “Enhancing Food Safety Through Third-Party Certification,” White Paper, March 2011, 5.

²³ JoAnne Yates and Craig N. Murphy, *Engineering Rules : Global Standard Setting since 1880*, (Baltimore: Johns Hopkins University Press, 2019); Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton, N.J: Princeton University Press, 1995).

quality concessions from their suppliers.²⁴ Before I can explain how and why HACCP diffused across these many standards, it is necessary to offer a broad overview of developments in international trade law, and where food safety standards fit in this larger legal framework.

FOOD SAFETY STANDARDS AND INTERNATIONAL TRADE

Over the last thirty years, major transformations in the institutions of global governance and the structure of international supply chains have raised the profile of seemingly “new” private and international standards. To some social scientists, these new standards and the organizations that promulgated them posed a challenge to traditional ideas of governance by sovereign nation-states. Social scientists who scrupulously examined the workings of courts, legislatures, and interest groups, rudely discovered that a whole range of non-governmental institutions had emerged as the ‘new global rulers’ for the early 21st century.²⁵

Standards assuring the quality and safety of commodities, especially food products, facilitated international commerce for many centuries. Firms seeking to gain

²⁴ On countervailing power, see John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1956) 108-135.

²⁵ John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge [England] ; New York: Cambridge University Press, 2000); Tim Büthe and Walter Mattli, *The New Global Rulers: The Privatization of Regulation in the World Economy* (Oxford ; Princeton, N.J: Princeton University Press, 2011).; Colin Scott, Fabrizio Cafaggi, and Linda Senden, “The Conceptual and Constitutional Challenge of Transnational Private Regulation,” *Journal of Law and Society* 38, no. 1 (2011): 1–19.

access to international markets worked with regulators to improve domestic standards to meet demands of foreign buyers.²⁶ From quality standards for sugar and cotton, to certification of inspection in livestock and fertilizer, standards promise to resolve endemic information asymmetries while expanding access to new markets.²⁷ In this context, standards function as a collective and potentially a public good, by forcing the adoption of new technologies, processes, or innovations that benefit societies as a whole.²⁸

But many standards – especially those based on claims about health and safety – can create barriers to trade. Laws designed to protect consumers may prevent them from accessing products they want, even if the products carry more risk than some consumers are willing to accept. From lead in toys to unpasteurized cheese, these claims about safety often reflect different risk calculations, variation in standards from one country to another, or can be little more than thinly masked protectionism.²⁹ This is not a new strategy: for centuries, businesses worked with government agents to craft domestic

²⁶ Olmstead and Rhode, *Arresting Contagion*; Booker, “Before The Jungle.”

²⁷ David Roth Singerman, “Inventing Purity in the Atlantic Sugar World, 1860–1930,” *Enterprise & Society* 16, no. 4 (December 11, 2015): 780–91, <https://doi.org/10.1353/ens.2015.0059>; Robert Zerbe, “The Origin and Effect of Grain Trade Regulations in the Late Nineteenth Century,” *Agricultural History* 56 (1982); Alan Marcus, “Setting the Standard: Fertilizers, State Chemists, and Early National Commercial Regulation,” *Agricultural History* 61 (1987), 47–73; David M. Higgins and Aashish Velkar, “‘Spinning a Yarn’: Institutions, Law, and Standards c.1880–1914,” *Enterprise & Society* 18, no. 03 (September 2017): 591–631, <https://doi.org/10.1017/eso.2016.73>.

²⁸ Charles Kindelberger, “Standards As Public, Collective and Private Goods.” *Kyklos* 36 (1983): 377–396.

²⁹ Cary Coglianese, Adam M. Finkel, and David Zaring, eds., *Import Safety: Regulatory Governance in the Global Economy* (Philadelphia: University of Pennsylvania Press, 2009).

standards that protect domestic producers from foreign competition, or to make it more costly for foreign-owned firms to enter the local market.³⁰ In some cases, standardization and certification through inspection can create beneficial barriers to trade, by preventing fraudulent, counterfeit, or adulterated goods from entering into the marketplace.³¹ Regardless of the motive or the impact, when countries hinder free trade in goods through law or regulation, this commonly referred to as a non-tariff, or “technical” barrier to trade.³²

Standard-Setting and Enforcement under the GATT, 1945-1994

The General Agreement on Tariffs and Trade was never designed to address non-tariff barriers to trade. The authors of the GATT hoped to lower exorbitantly high tariffs through an iterative negotiation process among participating nation-states in a series of “rounds.” Yet almost as soon as the organization was formed in 1946, trade negotiators struggled to address disagreements over competing health and safety standards. In this “risk society,” policymakers crafted regulations for health and safety based on social and cultural perceptions about the kinds of products or substances posed credible threats to the body politic. As a result, regulatory regimes varied widely across nations and

³⁰ Douglas A. Irwin, *Free Trade under Fire*, 3rd edition (Princeton, N.J.: Princeton University Press, 2009); Helen V. Milner, *Resisting Protectionism : Global Industries and the Politics of International Trade* (Princeton, N.J.: Princeton University Press, 1988).

³¹ See especially Edward J Balleisen, *Fraud*, 107-122.

³² Agreement on Technical Barriers to Trade, World Trade Organization, 1994.
https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm (last accessed February 23, 2019)

jurisdictions, and created even more new barriers to trade. Once nations could no longer use tariffs to respond to perceived unfair trade practices, regulators in nations both large and small deployed technical barriers to trade in increasingly creative and opaque ways. Requirements for quarantine or import inspections further delayed or often prohibited the entry of imported food products.³³

As early as 1950, members of the Joint FAO/WHO Expert Committee on Nutrition recognized that food regulations were a growing problem for this new system of international trade.³⁴ At the time, FAO officials worried that these conflicting regulations might affect the timely distribution of nutritional food, and that state regulations focused on local concerns might unnecessarily impede the expansion of global trade. In 1962, the FAO established an international standard-setting body, the Codex Alimentarius Commission, to resolve some of these problems.³⁵ At its inception, the authors of the Codex standards “intended to promote the standardization of foodstuffs ... to facilitate harmonization ... and in so doing further the development of the

³³ Ulrich Beck, *Risk Society: Towards a New Modernity* (New York: Sage, 1992); Christina L. Davis, *Food Fights over Free Trade: How International Institutions Promote Agricultural Trade Liberalization* (Princeton, NJ: Princeton University Press, 2003); Douglas Irwin, *Free Trade under Fire* (Princeton: Princeton University Press, 2015); see also Joost Pauwelyn et al., *International Trade Law*, Aspen Casebooks, 3rd Edition.

³⁴ Brigit Lee Naida Ramsingh, “The History of International Food Safety Standards and the Codex Alimentarius (1955-1995),” Ph.D. Dissertation, University of Toronto, 2011. On parallel efforts to establish food codes in Latin America, see: Diahanna Lynch Post, “Food Fights: Who Shapes International Food Safety Standards and Who Uses Them?” Ph.D. Dissertation, University of California, Berkeley, 2005.

³⁵ Ramsingh, “The History of International Food Safety Standards and the Codex Alimentarius”; Alan Randall, “Codex Alimentarius: How It All Began,” Food and Agriculture Organization, 1995. <http://www.fao.org/docrep/v7700t/v7700t09.htm> (last accessed February 15, 2019).

international food trade.”³⁶ The designers of the Codex rules thus explicitly oriented the organization’s mission in favor trade promotion, an ideal which they viewed as entirely consistent with consumer protection.

Thus, the FAO did not create the Codex Alimentarius Commission to establish standards in a vacuum, but to forge a consensus in an already crowded field of standard-making. The international community formed Codex to solve a specific problem: to coordinate and harmonize between an emerging set of competing national, regional, and industry-made standards. The guidelines to the Codex Alimentarius Commission state the organization’s purpose as one of “simplify international food standards work and avoid duplication.”³⁷ Consequently, the organization divided the labor among a series of committees, and accepted proposals submitted by individual nations, other organizations, and trade associations. In its early years, major trade associations either worked directly with Codex delegates as observers, or worked through their national food agency to influence the content of Codex standards. Deliberations and leadership in Codex greatly favored the U.S. and European countries, while their stated mission of harmonization preempted or overtook other regional efforts at harmonization during the early 1960s,

³⁶ “Guidelines for the Codex Alimentarius Commission, Part I: Purpose and Scope of the Codex Alimentarius,” in *Report of the Joint FAO/WHO Conference on Food Standards*, Geneva, Switzerland, 1-5 October 1962, ALINORM 62/8, October 1962, p. 5.

³⁷ “Guidelines for the Codex Alimentarius Commission, Part I: Purpose and Scope of the Codex Alimentarius,” in *Report of the Joint FAO/WHO Conference on Food Standards*, Geneva, Switzerland, 1-5 October 1962, ALINORM 62/8, October 1962, p. 5.

such as the Código Alimento in Latin America.³⁸ However, like other standard-setting processes that rely on “voluntary consensus,” the Codex Alimentarius Commission lacks coercive enforcement powers to demand adoption of its standards.³⁹ Much like the GATT, Codex rules and procedures assume that nation-states are primary participants; however, throughout its existence, trade associations and other business groups participated in its standard-setting efforts.⁴⁰

Meanwhile, the problem of technical barriers to trade did not subside. In 1979, during the “Tokyo Round” of negotiations, GATT signatories crafted an agreement on Technical Barriers to Trade (“1979 TBT Agreement”). Under the 1979 TBT Agreement, countries disclosed new laws or regulations that might present a barrier to trade. But the requirement to disclose, by itself, did not stop countries from continuing to promulgate and enforce rules that presented a barrier to trade.⁴¹ Both the voluntary consensus model of Codex Alimentarius, and the disclosure regime that governed the 1979 TBT Agreement, proved insufficient to reduce technical barriers to trade, especially those based on sanitary and phytosanitary (i.e. health and safety) measures.

³⁸ Diahanna L. Post, “Standards and Regulatory Capitalism: The Diffusion of Food Safety Standards in Developing Countries,” *The Annals of the American Academy of Political and Social Science* 598 (2005): 168–83.

³⁹ Craig Murphy and JoAnne Yates, *The International Organization for Standardization (ISO): Global Governance through Voluntary Consensus*, (New York: Routledge, 2009).

⁴⁰ For one example, see “Consideration of Proposals of the International Dairy Federation concerning harmonization...” *Report of the Thirteenth Session of the Joint FAO/WHO Codex Alimentarius Commission*, Rome, 3-14 December 1979, ALINORM 79/38, p. 126.

⁴¹ Wayne Jones and Peter Walkenhorst, *The Impact of Regulations on Agro-Food Trade: The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) Agreements*. (Paris, France: Organisation for Economic Co-operation and Development, 2003).

Trade negotiators returned to the problem again during the Uruguay Round of GATT negotiations, which created the modern World Trade Organization. As one of the first agreements signed in the negotiating round, the 1994 Sanitary and Phytosanitary Agreement (SPS Agreement) reflected a shared consensus among trade representatives that harmonization around a common set of sanitary standards would facilitate trade, and that the process of harmonization would necessarily involve a transfer of knowledge that could positively benefit developing countries.⁴² Crucially, the SPS Agreement did not vest responsibility for determining food standards with the still-inchoate WTO, but delegated that task to three standard-setting organizations: The Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC), and the International Epizootic Organization (OIE). This peculiar delegation of power in the SPS Agreement was, in many respects, a direct response to the failure of voluntary enforcement of Codex standards in the preceding decades.

However, when trade negotiators delegated the task of defining food safety to organizations like Codex, their decision led to several unintended consequences. Some negotiators may have imagined Codex standards as a “floor,” in which nation-states could establish (or maintain) more stringent standards to protect their citizen-consumers. Indeed, some of the language in the SPS Agreement explicitly reflects this idea. For

⁴² Tim Büthe, “The Globalization of Health and Safety Standards: Delegation of Regulatory Authority in the SPS Agreement of the 1994 Agreement Establishing the World Trade Organization,” *Law and Contemporary Problems* 71, no. 1 (2008): 219–55.

example, the preamble of the SPS Agreement states that the agreement is intended “to further the use of harmonized sanitary and phytosanitary measures between Members ... *without requiring Members to change their appropriate level of protection of human, animal or plant life or health.*”⁴³ However, the outcome of several key disputes over sanitary and phytosanitary issues (such as the “hormone beef” or “chlorine-washed chicken” disputes between the U.S. and E.C.) demonstrated that Codex standards function as a ceiling, at least as far as the WTO dispute resolution process is concerned.⁴⁴ Increasingly, scholars are beginning to examine the ways that international trade law replicates or mimics the operation of colonial and imperial regimes by favoring facilitation of trade over all other concerns, such as labor standards, human rights, and environmental impacts.⁴⁵

⁴³ Agreement on the Application of Sanitary and Phytosanitary Measures, preamble, 1994 (emphasis added).

⁴⁴ Measures Concerning Meat and Meat Products, (EC – Hormones), Complainant: US. Respondent: EC., World Trade Organization Appellate Body, January 16, 1998; European Communities — Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States. (EC – Poultry), Complainant: US. Respondent: EC., WTO Dispute 3689, World Trade Organization, February 24, 2010.

⁴⁵ Eyal Benvenisti and George W Downs, “The Empire’s New Clothes: Political Economy and the Fragmentation of International Law,” *Stanford Law Review* 60, no. 2 (November 2007): 595–631; Melissa Durkee, “The Business of Treaties,” *UCLA Law Review* 63 (2016): 264–321; for an explanation of why this imperial legacy has not been more widely acknowledged by scholars in international law, see Antony Anghie, “Imperialism and International Legal Theory,” in *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016), <https://doi.org/10.1093/law/9780198701958.003.0009>.

Private Standards Proliferate: 1990-2000

To make matters even more complicated, even as the GATT “contracting parties” negotiated the SPS Agreement, large retailers created a panoply of their own private standards and standard-setting organizations.⁴⁶ A recent study placed the number of standards organizations in food at over 400.⁴⁷ While most of these standards mean little or nothing to the great majority of supermarket consumers, a few stand out as particularly well-established within the industry: the British Retail Consortium, spearheaded by the British grocery chain Tesco, and the Safe Quality Foods Institute (SQF), which dates its origins to a program operated by the government of Western Australia. In 2003, the Food Marketing Institute, a U.S.-based grocery trade association, purchased SQF; today, its headquarters are located in Arlington, Virginia. GlobalGAP (Good Agricultural Practices) is another important private standards organization in food safety. GlobalGAP was originally created by a group of continental European retailers (as EurepGAP) to set standards for fruit and vegetables, today, it sets standards for a whole range of products, including meats and poultry.⁴⁸ While the International Organization for Standardisation (ISO) developed food standards through ISO 22000, their work proved less influential

⁴⁶ Tetty Havinga, “Private Regulation of Food Safety by Supermarkets,” *Law & Policy* 28, no. 4 (2006): 515–533.

⁴⁷ Bernd M.J. van der Meulen, ed., *Private Food Law: Governing Food Chains through Contract Law, Self-Regulation, Private Standards, Audits and Certification Schemes*, vol. 6, European Institute for Food Law Series (The Netherlands: Wageningen Academic Publishers, 2011), <https://doi.org/10.3920/978-90-8686-730-1>.

⁴⁸ The “GAP” in question stands for Good Agricultural Practices, which is a set of best practices much like its parallel in manufacturing, Good Manufacturing Practices (GMPs). For more on these various certifications, see van der Meulen, *Private Food Law*.

compared to other industry-led efforts. Retailers' efforts to privatize quality control in their own supply chains reached such a saturation point that, by 2000, they formed their own accreditation body to benchmark the varying food safety "schemes," as they increasingly called them. In 2000, the Consumer Goods Forum established the Global Food Safety Initiative as an *accreditor* of other private standards. GFSI serves an important function of review and oversight of private standards through its accreditation schemes.⁴⁹ Moreover, GFSI explicitly seeks to promote harmonization among private standards, exemplified by its slogan, "Once certified, accepted everywhere."⁵⁰

In many respects, these private standards have become 'de facto' expectations for processors. Large-volume clients, such as McDonald's or Wal-Mart, have the capacity to make demands and set standards that have a much greater impact on business decisions than domestic or even international regulations.⁵¹ These standards have the potential to raise the 'floor' above what developing countries can reasonably manage, but they are not created and negotiated in a framework in which these countries or firms have an equal

⁴⁹ GFSI may represent the kind of "regulatory comity" referred to in: Jacco Bomhoff and Anne Meuwese, "The Meta-Regulation of Transnational Private Regulation." *Journal of Law and Society* 38, no. 1 (2011): 138–62.

⁵⁰ See the GFSI website, <http://www.mygfsi.com>; this phrase is repeated throughout their numerous publications and official marketing materials. (Last accessed August 7, 2018).

⁵¹ Shane Hamilton, *Supermarket USA*. On the role of fast-food retailers (i.e. McDonald's) see Eric Schlosser, *Fast Food Nation*. On Wal-Mart, see Nelson Lichtenstein, *The Retail Revolution : How Wal-Mart Created a Brave New World of Business* (New York: Metropolitan Books, 2009); Bethany Moreton, *To Serve God and Wal-Mart: The Making of Christian Free Enterprise* (Harvard University Press, 2009). However, I am primarily indebted to the people I spoke with in field interviews for drawing my attention to this issue. Anonymous conversations with 3 food safety and regulatory compliance officials employed in poultry slaughter, secondary processing, and hatchery facilities, June 2016; Dan Glickman (former Secretary of Agriculture), in conversation, January 2020; Oral History Interview with Russell Cross.; Oral History Interview with Rosemary Mucklow; Oral History Interview with Frank Thompson.

voice. Smaller producers and producers in developing countries have found that compliance costs for these global standards create significant burdens, and they receive less support from developed countries than they anticipated.⁵²

Private, International, Voluntary: Hybridization in Food Governance

Trade scholars characterize the SPS Agreement as a delegation of state authority to these international institutions, who in turn endorsed management-based approaches like HACCP. However, this account raises questions about the reasons why businesses and private interests created their own standards. After all, business interests, either directly or through their leading trade associations, have always had a degree of influence over international standard-setting efforts.⁵³ Theoretically, if businesses were seeking standards tailored to their interests and needs, they could simply influence the international standard-setting process through lobbying, rather than going to the trouble of writing entirely new standards on their own.

As with most historical puzzles, there are many possible factors that might all contribute to an explanation. Available evidence suggests that UK-based supermarkets

⁵² Spencer Henson and John Humphrey, “Understanding the Complexities of Private Standards in Global Agri-Food Chains as They Impact Developing Countries,” *Journal of Development Studies* 46, no. 9 (October 2010): 1628–46, <https://doi.org/10.1080/00220381003706494>; Shana Starobin, “Institutions, Innovation and Grassroots Change: Alternatives to Transnational Governance in the Global South.” Ph.D. Dissertation, Duke University, 2016.

⁵³ Rachel Brewster, “The Domestic Origins of International Agreements,” *Virginia Journal of International Law* 44 (2004 2003): 501–44.

established the British Retail Consortium as a direct response to a new food safety law enacted in 1990. This new law required that retailers demonstrate “due diligence” in ensuring the safety of the products they marketed on their shelves.⁵⁴ Supermarkets like Tesco and Sainsbury’s, who already had a closer relationship with their suppliers than many US-based supermarkets, determined that private standards were a useful strategy to demonstrate “due diligence” that would limit their susceptibility to private lawsuits.⁵⁵ But hundreds of standards organizations popped up in continental Europe as well, which suggests that private certification had broader appeal than the specific legal rationale at play in the UK.

I argue that these different standards were initially created to complement, rather than compete, with one another. The standards recognized by the SPS Agreement are first and foremost designed to facilitate increased trade between nations. The standards developed by Codex establish a “floor” of minimum food safety requirements – Codex Alimentarius, after all, means nothing more specific than “food code” – and its standards similarly are meant to serve as a common denominator. By contrast, I standards created by businesses, especially retailers, reflect an expansion of the concept of countervailing power. In the original concept of countervailing power as it applied to chain stores and retailers, John Kenneth Galbraith observed that retailers used their mass purchasing

⁵⁴ Food Safety Act (UK), 1990, Section II, 21: “Defence of due diligence.”
<http://www.legislation.gov.uk/ukpga/1990/16/section/21>

⁵⁵ Ibid.

power to extract price concessions from sellers to benefit consumers. With private standards, retailers can extract not just price concessions, but also have the power to make demands about safety and quality.⁵⁶ Beginning in the 1990s, they made these demands using the common language of HACCP.

HACCP AS AN INTERNATIONAL “TECHNOLOGY OF TRUST,” 1968-2000

“HACCP is Taking Over the World!”

In 1990, the employee newsletter for U.S. meat inspectors, the *FSIS Communicator*, declared that “HACCP is taking over the world!” Quoting Dr. Catherine Adams, Special Assistant to the FSIS Administrator, the article continued: “Not really ... but we'd like the international regulatory community to seriously consider a HACCP approach” in regulating processed food in international trade.⁵⁷ Adams recounted a recent meeting of the Codex Committee on Food Hygiene, in which the delegations commissioned a working group to draft guidelines on applying HACCP to existing codes of hygienic practice.⁵⁸ According to Adams, the 1990 meeting was the “first formal consideration of HACCP within the Codex process.”⁵⁹ Adams explained that HACCP

⁵⁶ GFSI, “Enhancing Food Safety Through Third-Party Certification,” 2011, 5.

⁵⁷ Sharin Sachs, “Codex Committees Act on HACCP, Residues,” *FSIS Communicator*, Dec-89 - Jan 90, Vol. 6, No. 13, p.2,6. Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection, NAL.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

was the choice of the international scientific community, and that “HACCP will be more effective if countries have the same understanding of HACCP and how it works. Codex is the best vehicle for reaching that common understanding.” The following year, in 1991, the Codex Meat Hygiene Committee met for the first time in nearly a decade. According to Dr. Bill Dubbert, the FSIS representative on that committee, “The watchword ... is expected to be HACCP.”⁶⁰ In the same publication, the FSIS delegates also noted the international consensus to which Adams alluded: “many international colleagues feel HACCP systems are definitely best for today's inspection.”⁶¹

In fact, committees convened by the WHO, FAO, and Codex Alimentarius had been trying to incorporate the HACCP system into international food standards for quite some time. In a 1976 meeting of a WHO Expert Committee on Microbiological Aspects of Food Hygiene, the authors of a report on “Cost/Benefit Analysis of Microbiological Testing in Foods” mentioned HACCP as a promising new concept that might help decision makers identify “efficient” microbiological controls in food. At that time “no economic analysis of HACCP has yet been published.”⁶² A few years later, the International Commission on Microbiological Specifications for Foods (ICMSF) and the

⁶⁰ Sharin Sachs, “Codex Committees Lead Modernization Efforts,” *FSIS Communicator*, Dec. 1990 - Jan. 1991, Vol. 6, No. 18. Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection, NAL.

⁶¹ Ibid.

⁶² WHO Expert Committee on Microbiological Aspects of Food Hygiene, World Health Organization, and Food and Agriculture Organization of the United Nations, *Microbiological Aspects of Food Hygiene: Report of a WHO Expert Committee with the Participation of FAO [Meeting Held in Geneva from 16 to 22 March 1976]* (World Health Organization, 1976), <https://apps.who.int/iris/handle/10665/41215>. 85-86.

World Health Organization (WHO) convened to discuss the merits of HACCP as a means of improving food safety in developing countries. The authors of the 1982 report observed that HACCP already worked well in developing nations, and that its precepts could be usefully applied to improve acceptance of products exported from those countries.⁶³ The report focused on applications of HACCP in processing plants, retail establishments, and home preparation, but acknowledged that HACCP might eventually be applied to earlier production stages as well.

Scientists believed that HACCP could introduce economic efficiency and quantitative rationality into an existing food safety system marked by costly, ineffective programs. Like other “technologies of trust,” including accounting standards, actuarial calculations, and cost-benefit analysis, HACCP promised an objective, rational measure of safety based on quantification.⁶⁴ These scientists described the HACCP system of process control as more “effective and economical,” “rational,” “systematic,” and “logical” than existing inspection regimes that involved end-product testing or microbiological sampling.⁶⁵ HACCP also fit neatly into other “risk-based” approaches to regulatory governance that gained traction during this period. Beginning in the 1970s, a

⁶³ International Commission on Microbiological Specifications for Foods and World Health Organization Veterinary Public Health Unit, “Report of the WHO/ICMSF Meeting on Hazard Analysis : Critical Control Point System in Food Hygiene, Geneva, 9-10 June 1980,” 1982, <https://apps.who.int/iris/handle/10665/66415>, 11-12.

⁶⁴ Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton, N.J: Princeton University Press, 1995).

⁶⁵ ICMSF, “Report of the WHO/ICMSF Meeting on Hazard Analysis : Critical Control Point System in Food Hygiene,” 3, 11, 12.

technocratic consensus of lawyers, economists, and scientists agreed that scientific sampling and risk assessment could be applied to a whole range of policy questions, from food safety to pollution control.⁶⁶ International bodies also began to recognize these risk-based approaches as one viable strategy for controlling microbial pathogens.⁶⁷ But without a coherent structure for enforcing international standards, it appears that this consensus did not mean much to regulators or to many businesses who were satisfied with government oversight premised on “command-and-control” approaches.

For food retailers, HACCP fit into an array of other technological and organizational changes that transformed the industry during the twentieth century. These changes included improvements in refrigeration and frozen foods, transportation and logistics, and even the invention of the shopping cart, all converted the postwar supermarket into a highly efficient “machine for selling.”⁶⁸ New business strategies,

⁶⁶ Paul Slovic and Baruch Fischhoff, “Targeting Risks,” *Risk Analysis* 2, no. 4 (1982): 227–34, <https://doi.org/10.1111/j.1539-6924.1982.tb01385.x>; W. Kip Viscusi, *Risk by Choice: Regulating Health and Safety in the Workplace* (Harvard University Press, 1983); John D. Graham, Laura C. Green, and Marc J. Roberts, *In Search of Safety: Chemicals and Cancer Risk* (Harvard University Press, 1991); See more generally: Ulrich Beck, *Risk Society: Towards a New Modernity* (New York: Sage, 1992). For an analysis of the role of scientific experts with respect to HACCP, see: David Demortain, *Standardising through Concepts: Scientific Experts and the International Development of the HACCP Food Safety Standard*, CARR Discussion Papers, DP 45 (London, UK: Centre for Analysis of Risk and Regulation, London School of Economics and Political Science, 2007), <http://eprints.lse.ac.uk/36138/>. See also: Interview with John D. Graham, conducted by Edward Balleisen and Ashton Merck, March 2, 2016, Kenan Institute for Ethics, Duke University, p. 17-20. Transcript available at: <https://sites.duke.edu/regulatoryoralhistoryhub/john-d-graham/> (last accessed February 23, 2019)

⁶⁷ ICMSF, “Report of the WHO/ICMSF Meeting on Hazard Analysis : Critical Control Point System in Food Hygiene.”

⁶⁸ Warren James Belasco and Roger Horowitz, *Food Chains: From Farmyard to Shopping Cart* (Philadelphia: University of Pennsylvania Press, 2009); Shane Hamilton, “The Economies and Conveniences of Modern-Day Living: Frozen Foods and Mass Marketing, 1945-1965,” *Business History Review*; *Boston* 77, no. 1 (Spring 2003); on frozen meat and poultry specifically, see: Bob Smola and Dane Bear, “Quality Control Is Crucial for Meat/Poultry Logistics,” *Frozen Food Age* 48, no. 1 (August 1999):

including the development of “global brands” and trends towards vertical integration, also transformed the landscape of food supply chains in the twentieth century.⁶⁹ As retailers sold more goods under private “proprietary” standards (colloquially known as “private labels” or “store brands”) such as Wal-Mart’s “Great Value” or Tesco’s “Nature’s Choice,” they in turn took on more responsibility for the quality of the product.⁷⁰ Where regulations proved lax, insufficient, or simply nonexistent, supermarkets marshaled their buyer power to fill regulatory voids. For example, in 1989, a group of American retailers publicly announced that they planned to begin monitoring pesticide residues in their products. An official from the U.S. Environmental Protection Agency (EPA), sounding not a little perturbed, noted that “[it] puts the onus of pesticide regulation on grocery retailers, who are not and should not be responsible for such decisions.”⁷¹ HACCP offered an especially appealing self-regulatory strategy that could help retailers limit their liability while obtaining even more information from suppliers.

48; and Andrew Godley and Bridget Williams, “Democratizing Luxury and the Contentious ‘Invention of the Technological Chicken’ in Britain,” *Business History Review* 83, no. 2 (Summer 2009): 267–90.

⁶⁹ Shane Hamilton, *Supermarket USA*; On brands, see Teresa da Silva Lopes, *Global brands: The evolution of multinationals in alcoholic beverages*, (New York: Cambridge University Press, 2007); and Victoria De Grazia, *Irresistible Empire: America’s Advance through Twentieth-Century Europe* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005).

⁷⁰ Jill E. Hobbs, “Public and Private Standards for Food Safety and Quality: International Trade Implications,” *The Estey Centre Journal of International Law and Trade Policy*; *Saskatoon* 11, no. 1 (2010): 142-143.

⁷¹ Keith Schneider, “5 Supermarket Chains Open Efforts to Cut Pesticide Use,” *New York Times*, 9-12-89, B9, VIIB2 - Chemicals, Preservatives, Additives, Irradiation, Food-Related Diseases, Box 1.6/7, Series I, Manuscript Collection 182, USDA History Collection, NAL.

In an enthusiastic article on the “new” HACCP system, a British trade journal observed that “the HACCP philosophy can be applied in almost any situation.”⁷²

HACCP in Laws and Regulations

As described in chapter 4, HACCP was initially incorporated into America food safety regulation in 1973, when the U.S. Food and Drug Administration revised their low-acid canned food regulations to align with HACCP principles developed by the US space program.⁷³ However, USDA did not adopt HACCP regulations until 1996, and HACCP-like regulations were not extended to other FDA regulated products until the Food Safety Modernization Act of 2011 established “HARP-C,” a similar regime which has been described as “HACCP on steroids.”⁷⁴ By contrast, officials from the U.S. Centers for Disease Control represented the U.S. at meetings of the ICMSF. CDC officials like Dr. Frank L. Bryan, who published hundreds of scientific papers on the HACCP concept during his lifetime, contributed to a broader awareness of HACCP on an international stage by the mid-1970s.⁷⁵ USDA’s reticence on HACCP mattered in the

⁷² Bob Mitchell, “How to HACCP,” *British Food Journal* 94, no. 1 (1992): 16.

⁷³ Ross-Nazzal, “From Farm to Fork,” 225-230; see also Chapter 4 of this thesis.

⁷⁴ Richard F. Stier, “HARPC: Will It Be That Different?,” *Food Engineering* 86, no. 10 (October 2014): 29,32; Eric Lindstrom, “Do You Know Your HACCP from Your HARPC?,” *Food Processing*, accessed June 9, 2016, <http://www.foodprocessing.com/articles/2013/fda-haccp-harpc/>.

⁷⁵ While Bryan was not a member of the WHO committee on microbiological aspects of food hygiene in 1976, his work is cited in several places in the 1976 report: WHO Expert Committee on Microbiological Aspects of Food Hygiene, “Microbiological Aspects of Food Hygiene,” 8-9, 28, 59, 86; Based on participant lists in subsequent reports, he was invited to join the committee not long after: ICMSF, “Report of the WHO/ICMSF Meeting on Hazard Analysis : Critical Control Point System in Food

international arena for a very pragmatic reason: USDA officials led the U.S. delegation to the Codex Committee on Food Hygiene. (By contrast, FDA officials represented the U.S. on food identity standards, and the CDC participated in meetings related to microbiological standards in food). Thus, even though the broader international community knew about HACCP for some time prior to 1992, available evidence suggests that the Codex Committee on Food Hygiene did not seriously consider HACCP until USDA representatives advocated for it in 1992.⁷⁶ Shortly after it was adopted within Codex, other countries implemented it into their own laws and regulations.

HACCP proved to be a sufficiently flexible concept to adapt well to different regulatory environments and situations. While this fluidity and flexibility may have facilitated the rapid development of an international consensus, that same fluidity allows for multiple “versions” of HACCP to exist in various settings and levels of governance. When established as a law or regulation, rather than as an internal industry quality control program, HACCP can vary quite dramatically. HACCP may be implemented as a performance standard or a process standard.⁷⁷ The former requires firms to meet

Hygiene,” 16; International Commission on Microbiological Specifications for Foods and World Health Organization Veterinary Public Health Unit, “Prevention and Control of Foodborne Salmonellosis through the Application of the Hazard Analysis Critical Control Point System : Report of an International Commission on Microbiological Specifications for Foods (ICMSF Ad Hoc Committee, Copenhagen, 29-31 October 1984 and La Jolla, 25-28 October 1985,” 1986, 19, <https://apps.who.int/iris/handle/10665/61677>.

⁷⁶ “Codex Committees Lead Modernization Efforts,” *FSIS Communicator*, Dec. 1990 - Jan. 1991, Vol. 6, No. 18. Subseries I, USDA Newsletters; 6/3, Series VI, Newsletters, 1918-1996, USDA History Collection, NAL.

⁷⁷ Julie A. Caswell and Neal H. Hooker, “HACCP as an International Trade Standard,” *American Journal of Agricultural Economics* 78, no. 3 (1996): 776–77, <https://doi.org/10.2307/1243303>.

benchmarks that are specified by the regulator, and constitutes a form of “management-based regulation.”⁷⁸ The latter more closely resembles industry self-regulation, in that the firms need only implement the process of controlling for food safety hazards, without the regulator offering prescriptions on the precise hazards to be controlled.⁷⁹ In 1996, the U.S. Food Safety and Inspection Service finalized a rule which required the use of HACCP to reduce *E.coli* and *Salmonella* contamination in meat and poultry to levels set by the U.S. government.⁸⁰ By contrast, the European Union’s corresponding food hygiene standards, Regulation 852/2004 and Regulation 853/2004, require more general implementation of regulations based on the HACCP system, and leave the decision about performance standards to the Member States. The implication of the regulation, however, is that producers should implement HACCP in ways that ensure compliance with existing law, which might (and, in fact, do) include microbiological criteria: “The HACCP system should not be regarded as a method of self-regulation and should not replace official controls.”⁸¹

⁷⁸ Coglianese and Lazer, “Management-based Regulation,” 692.

⁷⁹ Neil Gunningham and Joseph Rees, “Industry Self-Regulation: An Institutional Perspective,” *Law & Policy* 19, no. 4 (1997): 363–414, <https://doi.org/10.1111/1467-9930.t01-1-00033>.

⁸⁰ Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) Systems, Final Rule, 9 CFR Pt 304, et al. Food Safety and Inspection Service, *Federal Register*, July 25, 1996, 38806-38855. It is also important to note here that the U.S. Food Safety Modernization Act employs a slightly different system called HARPC, or Hazard Analysis and Risk-Based Preventive Controls for Human Food.

⁸¹ Regulation (EC) No 852/2004 of the European Parliament and of the Council, on the hygiene of foodstuffs, 29 April 2004. Official Journal of the European Union, 30 April 2004, items 12 and 13, (quote from item 13).

In spite of this diversity in implementation and enforcement, the language used to describe HACCP remains relatively consistent. A year after its adoption in Codex, the European Commission issued the first council directive that references “the use of hazard analysis, risk assessment and other management techniques to identify, control and monitor critical points.”⁸² Several members of the European Communities followed suit, and promulgated their own state-level laws that mandated HACCP. (I did not examine whether this was also driven by a parallel impulse to gain access to export markets) Ten years later, EC Regulation 852/2004 required food business operators in the European Union to implement the HACCP system. Both of these regulations offers a useful barometer to compare how the concept of HACCP was translated into other languages. As the table below reveals, the acronym “HACCP” was generally not changed to correspond with its translation.

⁸² Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs; Official Journal L 175 , 19/07/1993 P. 0001 – 0011.

Table 3: HACCP By Any Other Name (in EC Regulation 853/2004)

Language	Acronym in 2004	Translation in Council Directive 93/43/EEC	Translation in EC Regulation 853/2004
English	HACCP	the use of hazard analysis, risk assessment and other management techniques to identify, control and monitor critical points	hazard analysis and critical control points
Spanish	HACCP	la utilización de análisis de riesgos potenciales, evaluación de riesgos y otras técnicas de gestión para determinar, controlar y vigilar los puntos críticos de control	sistema de análisis de peligros y puntos críticos de control
French	HACCP	le recours à l'analyse des risques potentiels, à l'évaluation des risques et autres méthodes de gestion permettant d'identifier, de contrôler et de surveiller les points de contrôle critiques	l'analyse des risques et la maîtrise des points critiques
Italian	HACCP	l'uso dell'analisi del rischio, della valutazione dei rischi e di altre tecniche di gestione aziendale per individuare, controllare e sorvegliare i punti critici di controllo	sistema dell'analisi dei pericoli e dei punti critici di controllo
Portuguese	APPCC	a utilização da análise de riscos potenciais, da avaliação de riscos e de outras técnicas de gestão para identificar, controlar e vigiar os pontos críticos de controlo	análise dos perigos e do controlo dos pontos críticos
German	HACCP	Gefahrenanalysen, Risikobewertungen und ähnliche Maßnahmen gelten anerkanntermassen als Verfahren zur Identifizierung, Prüfung und Überwachung kritischer Kontrollpunkte.	Gefahrenanalyse und der Überwachung kritischer Kontrollpunkte
Dutch	HACCP	het gebruik van risicoanalyse, risico-evaluatie en andere beheerstechnieken erkende methoden zijn om kritische controlepunten te identificeren, te controleren en te bewaken	HACCP-beginselen (lit. "HACCP-principles")

While this similarity may be a consequence of an overly literal translation, selected examples from local laws and regulations in these languages still use the acronym HACCP. “Hazard” may be interchanged for “risk” in some translations, but the overall

definition remains surprisingly with the original “hazard analysis” and “critical control points.”⁸³ This consistency in language could be productively used in further research that involves more systemic analysis of HACCP implementation in local regulations around the world.

HACCP and Ratchets to the Top

A strain of social-scientific literature argues that HACCP promises a ‘ratchet to the top’ in food safety, where other areas of governance remain caught in a ‘race to the bottom.’⁸⁴ But a race to the top for whom? Economists acknowledge that HACCP imposes compliance costs that privilege larger firms, located in developed countries, who can afford to make the change and hire the experts needed to conduct hazard analyses and

⁸³ For example, in French, “hazard” can also be translated as “*dangers*” (instead of “*risques*” as shown below). See: Safe Food for Canadians Regulations, last amended June 17, 2019, <https://laws-lois.justice.gc.ca/PDF/SOR-2018-108.pdf>; The definition of HACCP in Italian law also shifted from “risks” (*rischi*) to “dangers” (*pericoli*) between 1993 and 2004, although in 1997 the text uses the phrase “il sistema di analisi dei rischi e di controllo dei punti critici.” (lit. “a system of analysis of risks and control of critical points”). See: *Legislative Decree 26 May 1997, n. 155, “Implementation of Directive 93/43/EEC and 96/3/EC on food product hygiene,” GU General Series, n. 136, 6-13-1997, Ordinary Supplement n. 118, https://www.gazzettaufficiale.it/eli/id/1997/06/13/097G0189/sg* (Original: *Decreto Legislativo 26 maggio 1997, n. 155, “Attuazione delle direttive 93/43/CEE e 96/3/CE concernenti l’igiene dei prodotti alimentari,” GU Serie Generale n.136 del 13-06-1997 - Suppl. Ordinario n. 118*); The acronym APPCC seems to be standard across Portuguese-speaking countries, as it also appears in a Brazilian law from 1993: Order No. 1.428 approving the Technical Regulation on Sanitary Inspection of Food. (Original: Portaria n. 1.428 - Aprova o Regulamento Técnico para Inspeção Sanitária de Alimentos.) November 26, 1993. <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC181019//>; Retailers in the Netherlands adopted their own translation of the British Retail Consortium’s private food code in 2001, which may partially explain why HACCP is left undefined in their translation of EC 853/2004. On the origins of “Dutch HACCP,” see Tetty Havinga, “Private Regulation of Food Safety by Supermarkets,” 522-523.

⁸⁴ John Braithwaite and Peter Drahos, *Global Business Regulation* (New York: Cambridge University Press, 2000); Cary Coglianese and David Lazer, “Management-based Regulation.”

write up HACCP plans.⁸⁵ Even with technical assistance, it may still prove cost-prohibitive for small plants to comply with the rules. Since their adoption in the U.S. in 1996, HACCP regulations have inadvertently contributed to ongoing trends of consolidation in food production, even with staggered implementation and additional support to small and very small plants.⁸⁶ Meeting the demands of HACCP protocols (and process standards more generally) can be even more difficult – if not impossible – for smaller producers in developing countries.⁸⁷

Yet it may well be that the private standards, backed by accreditation schemes like GFSI, will come closer to achieving the goal of international regulatory harmonization than either the standards laid out by Codex Alimentarius or the provisions of the SPS Agreement. Unfortunately, a historical examination of the issue reveals how these private standards also recapitulate the original dilemma that Codex was meant to solve: they potentially magnify, rather than eliminate, some of the difficulties of compliance for small producers. Furthermore, a study of the origins of a purportedly objective, technocratic concept like HACCP reveals a consistent bias in favor of more powerful

⁸⁵ Laurian J Unnevehr and Helen H Jensen, “The Economic Implications of Using HACCP as a Food Safety Regulatory Standard,” *Food Policy* 24, no. 6 (December 1, 1999): 625–35, [https://doi.org/10.1016/S0306-9192\(99\)00074-3](https://doi.org/10.1016/S0306-9192(99)00074-3); Julie A. Caswell and Neal H. Hooker, “HACCP as an International Trade Standard,” *American Journal of Agricultural Economics* 78, no. 3 (1996): 775–79, <https://doi.org/10.2307/1243303>.

⁸⁶ Wengle, “When Experimentalist Governance Meets Science-Based Regulations; the Case of Food Safety Regulations.”

⁸⁷ Spencer Henson and John Humphrey, “Understanding the Complexities of Private Standards in Global Agri-Food Chains as They Impact Developing Countries,” *Journal of Development Studies* 46, no. 9 (October 2010): 1628–46, <https://doi.org/10.1080/00220381003706494>.

actors who had the capacity to influence international standards to suit their interests.⁸⁸ The example of the USDA bringing HACCP to the Codex Committee for Food Hygiene as a “new” concept is a perfect illustration of this dynamic.

In terms of what these overlapping standards mean for the spectrum or continuum of coregulation, the HACCP system may be mapped onto several places at once. In some contexts, businesses relied on the HACCP system as a self-regulatory measure that went beyond official requirements; in others, regulators invoked HACCP as a tactic to manage constraints on their available resources without renegeing on statutory obligations.⁸⁹ As individual nation-states established their own domestic HACCP requirements, businesses attempted to make sense of the chaos by creating their own auditing and standards schemes. Representatives for these new standards argue that these schemes “amplify” the legal requirements under Codex and domestic HACCP requirements. Confusingly, some of these private schemes use HACCP not just for safety, but quality as well.⁹⁰

The global story of HACCP also illuminates who has the power to make decisions about the balance of cost, safety, and quality. While the internationalization of HACCP presents clear instances of borrowing and information sharing between the public and private sector, it also reveals that multinational enterprises, rather than states or

⁸⁸ On “objectivity” in technocratic or quantitative concepts, see Porter, *Trust in Numbers*.

⁸⁹ Interview with Sally Katzen, conducted by Edward Balleisen and Jonathan Wiener, October 2012, Kenan Institute for Ethics, Duke University, p. 62-63. Transcript available at: <https://sites.duke.edu/regulatoryoralhistoryhub/sally-katzen/> (last accessed Sept. 12, 2018).

⁹⁰ GFSI, “Enhancing Food Safety Through Third-Party Certification,” 2011, 21.

international bodies, now lead the way in food safety regulation.⁹¹ For many scholars, this is cause for alarm; these voices warn that the same dynamics that contributed to HACCP's rapid ascent in the 1990s reveal clear and longstanding democratic deficits in food safety standard-setting, which have implications for consumers in both the "Global North" and the "Global South."⁹² While much is made of the importance of "consumer choice" or "voting with one's fork," most of the baseline decisions about the cost, safety, and quality of products are made well before any products reach supermarket shelves. From the consumer perspective, the promise of HACCP is that focuses on prevention of hazards rather than end-product inspection, and a HACCP plan can be adjusted to reflect changing consumer tastes or priorities. On the other hand, the co-regulatory nature of HACCP, in which the industry writes its own plan which is approved by government agents, means that consumers have no direct voice in determining what constitutes a hazard to be controlled. Consumers must implicitly rely on HACCP as a "technology of trust," with the knowledge that domestic regulations are undergirded by a set of

⁹¹ Lawrence Busch and Carmen Bain, "New! Improved? The Transformation of the Global Agrifood System," *Rural Sociology* 69, no. 3 (September 2004): 321–46; Henson and Humphrey, "Understanding the Complexities of Private Standards in Global Agri-Food Chains as They Impact Developing Countries"; for an example of states borrowing from existing international standards, see May Chu, "Horses for Courses: China's Accommodative Approach to Food Standard-Setting in Response to the Internationalization of Regulation," *Regulation & Governance* 0, no. 0, accessed November 1, 2018, <https://doi.org/10.1111/rego.12228>.

⁹² Colin Scott, "Private Regulation of the Public Sector: A Neglected Facet of Contemporary Governance," *Journal of Law and Society* 29, no. 1 (March 1, 2002): 56–76, <https://doi.org/10.1111/1467-6478.00211>; Doris Fuchs, Agni Kalfagianni, and Tetty Havinga, "Actors in Private Food Governance: The Legitimacy of Retail Standards and Multistakeholder Initiatives with Civil Society Participation," *Agriculture and Human Values; Dordrecht* 28, no. 3 (September 2011): 353–67, <http://dx.doi.org.proxy.lib.duke.edu/10.1007/s10460-009-9236-3>.

international norms and a coterie of private enforcers. As long as regulatory resources remain constrained through a withering critique of the efficacy of the administrative state, co-regulatory approaches like HACCP will continue to hold a particular appeal. In many respects, the *Communicator* was a bit late with their pronouncement. By 1992, HACCP was already well on its way to taking over the world.

CONCLUSION

“Food needs to be wholesome. Somebody needs to oversee it. There's nobody around that's willing or able to do so, other than the federal government, and therefore the Department of Agriculture got handed the task. You have to admire the political people with the guts and the gall to bring it about, back in the late 50s, I guess.”¹

- Jack Prince, former marketing executive for Jesse Jewell, August 2019.

“These large poultry-producing operations have from 5,000 to 8,000 birds going over the assembly line per hour. How are you going to get a system of bird-by-bird inspection that will be effective? The consuming public is going to be under the impression that they inspect every bird ... There is no intention on the part of the sponsors of this legislation nor of the Department of Agriculture that there be bird-by-bird inspection made, because it is utterly impossible to have such inspection made under our producing system in this country.”²

- Statement of Hon. B. Carroll Reece, R-TN, July 15, 1957.

In August 2019, Costco opened its first store in Shanghai, China. After only a few hours, the store had to close early because of the crowds. Reporters described “sheer chaos” near the meat section, where shoppers were drawn to Costco’s famously inexpensive rotisserie chickens, that sell for \$4.99 USD.³ But well before their Shanghai store was mobbed, Costco had already begun exploring its options in expanding the

¹ Oral History with Jack Prince (Former Vice President for Marketing, Jesse Jewell Company, Founder, Prince Industries), Gainesville, Georgia, Sept. 6, 2019, 23. Transcript in author's possession.

² “Inspection of Poultry and Poultry Products.” Congressional Record, House, July 15, 1957. 11719.

³ Anna Fifield and Rachel Siegel, “Shoves, brawls and shouts: Welcome to Costco’s opening day in China,” *The Washington Post*, August 29, 2019 https://www.washingtonpost.com/business/economy/shoves-brawls-and-shouts-welcome-to-costcos-opening-day-in-china/2019/08/29/fda3a208-c9a4-11e9-a1fe-ca46e8d573c0_story.html; Áine Cain and Kate Taylor, “Inside China's first Costco, where crowds forced the store to shut down shortly after its grand opening,” *Business Insider*, August 28, 2019 <https://www.businessinsider.com/costco-store-opens-china-crowds-photos-inside-2019-8#if-the-publics-reaction-so-far-is-any-indication-shanghai-is-at-the-very-least-enthusiastically-curious-about-costco-28>

supply of its rotisserie chicken. Since the mid-2010s, Costco has done exactly what the processors feared the most in the 1970s: it integrated backward into growing and processing.⁴

“We tried to bring it here,” Abit Massey, longtime lobbyist for the Georgia Poultry Federation, told me, somewhat wistfully. But, he noted, there was nowhere in Georgia that could produce and process the volume that Costco needed.⁵ To Abit, losing Costco was a missed opportunity for Georgia, a state which still produces more chicken than entire countries. Over a lunch of – what else? – chicken, I spoke with Abit and the current President, Mike Giles, about the future of the poultry industry. They expressed worries about encroachment from urban sprawl pushing out the remaining local poultry farms, increasingly strict rules about water usage from the city of Gainesville, what they described as widespread misunderstanding about the industry, as well as the ongoing problem of extremely high turnover rates inside plants. Towards the end of our conversation, I asked Abit and Mike Giles point-blank what they thought of the HIMP project, and the new rules that had gone into effect based on HIMP data. Giles returned the question back to me: “Have you ever heard of a regulation where they did that much research ahead of time?” I confessed that I could not come up with a comparable

⁴ Twilight Greenaway, “Costco’s 100 Million Chickens Will Change the Face of Nebraska,” *Civil Eats*, <https://civileats.com/2018/12/11/costcos-100-million-chickens-will-change-the-future-of-nebraska-farming/> December 11, 2018.

⁵ Paraphrased from Abit Massey and Mike Giles, in conversation, 2019.

example. As we finished our chicken caesar salads and stood to leave, I briefly contemplated which posed the greater risk: the chicken or the romaine.

CONSUMER PROTECTION IN THE 21ST CENTURY

As described in chapter 5, Costco's presence in China also reflects the degree of hybridization and globalization of food safety regulation in the early twenty-first century. From the would-be poultry exporters in the early 1950's to Costco in the 2010's, this thesis shows that access to international markets drove the direction of food safety regulation in crucial ways. The designation of a food or process as "safe" or "unsafe" in a given market has ripple effects into smaller markets – this is equally true whether one is talking about frozen poultry carcasses or genetically modified wheat. The current structure of international trade law encourages a "march to a minimum floor" through the standards promulgated by Codex, OIE, and IPPC.⁶ A crop of private standards enables a "race to the top" – but at the potential cost of replicating the very inequities and unequal access to international markets that Codex was designed to undercut.

Who or what represents the consumer interest in the 21st century? If the law and economics school is accurate, and price is truly the only viable metric of consumer

⁶ For the concept of a "march to a minimum floor," see: Daniel P. Gitterman, "A Race to the Bottom, a Race to the Top or the March to a Minimum Floor? Economic Integration and Labor Standards in Comparative Perspective," *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies*, eds. David Vogel & Robert Kagan, (Berkeley: University of California Press, 2002).

welfare, then the move by Costco to buy farms in Nebraska should provide a net benefit to consumers. Just as the Great A&P once knew far more information about the products in the early twentieth-century supermarket than any farmer, today Wal-Mart's army of logistics managers and buyers have far more information on product safety and quality than smaller processors and contract growers. Increasingly, multinational retailers mobilize the information at their disposal to define the terms of safety through their own standard-setting practices. While chapter 5 described how supermarkets created the new paradigm of private food safety standards that offer greater protection for consumers than international trade laws, chapter 3 demonstrated that retailers' capacity to wield "countervailing power" against sellers and middlemen may pose its own countervailing risks. Even the neo-Brandeisian moment of the late 2010s, in which private attorneys general file suits against large technology firms, has yet to address the underlying problem of buyer power (monopsony) in food and agriculture.

Insofar as consumers can individually advocate for change by "voting with their forks," information asymmetries about the food system persist in ways that prevent them from doing so in an effective or equitable way. Socially conscious consumers who care about the circumstances under which their food is made, produced, and distributed must conduct a great deal of independent research, or own a QR code reader in order to access "smart labels" on products.⁷ Otherwise, they must rely on external proxies, such as

⁷ Opinions on the effectiveness and usefulness of smart labels, of course, vary widely. See Heather Haddon, "Nutrition Labels You'll Need a Smartphone to Read," *Wall Street Journal*, Aug 04, 2016, Eastern

private certifications that assert various attributes related to safety and quality, or the promises of individual brands.⁸

One potential option to resolve this dilemma might be to broaden the definition of “safety” to incorporate these other dimensions, such as antibiotic use, animal welfare, worker safety, labor practices, the presence or absence of genetic modification, or the overall system of production. In some respects, such an expanded definition of safety reflects a return to much older concerns about “pure” and “natural” food, and understanding of the relationships between the ethical treatment of animals and humans.⁹ In other instances, expanding the definition of “safety” could obscure more than it might illuminate. Hence, rather than attempting to broaden longstanding regulatory definitions of “misbranding” and “adulteration,” I suggest adding a fourth dimension to the trilemma – “ethics” – which deserves far greater consideration in calculations of food safety risk along with cost, safety, and quality than it currently receives.

Especially since the 1970s, bureaucrats, legislators, and consumers recognized that many pieces of longstanding legislation did not match up to current understandings of health, safety, or consumer protection. Calls to resolve discrepancies and gaps in food

edition, D1; Tongzhe Li and Kent D. Messer, “To Scan or Not to Scan: The Question of Consumer Behavior and QR Codes on Food Packages,” *Journal of Agricultural and Resource Economics; Logan* 44, no. 2 (May 2019): 311–27.

⁸ Timothy D. Lytton, *Kosher: Private Regulation in the Age of Industrial Food* (Cambridge, Massachusetts: Harvard University Press, 2013); Shana Starobin, “Institutions, Innovation and Grassroots Change: Alternatives to Transnational Governance in the Global South.”

⁹ Susan E. Lederer, *Subjected to Science: Human Experimentation in America before the Second World War* (Baltimore: Johns Hopkins University Press, 1995).

oversight almost always involved some discussion of the prospect of consolidating food safety authority into a single agency. Since at least the 1950s, committees tasked with reorganizing or “reinventing” government pointed out the inherent flaws in the fragmentary oversight of food and agriculture.¹⁰ Yet despite dozens of food safety crises, government reports, journalistic exposes, and ambitious proposals for reform, changes implemented by federal agencies have been slow in coming, and primarily occur through regulatory adjustments, rather than more comprehensive legislative change. Reformers’ dreams of a unified food safety agency remain unrealized well into the 2010s. The contentious legislative and regulatory history outlined here also demonstrates that the process of creating unified food safety agency would not be an easy task. While almost everyone I interviewed expressed some interest in changing or even rewriting the Meat Inspection Acts, no one believed that it was possible during their lifetime. With the benefit of hindsight, it is easy to undervalue the significance of legislative changes in food safety by pointing out the ways that legislators favored special interests or relied on half measures. Yet Jack Prince has a point – it really is remarkable that poultry inspection happened at all.

¹⁰ Committee on Expenditures in the Executive Departments, “Reorganization of the Federal Government. Status of Hoover Commission Reports, with List of Public Laws Enacted, Reorganization Plans Approved or Disapproved and Bills Presently Pending to Effectuate Remaining Commission Recommendations.” Report No. 91, 82nd Congress, 2nd Session, (Washington, D.C.: U.S. Government Printing Office, 1952), <http://hdl.handle.net/2027/osu.32437011448822>; *Food from Farmer to Consumer*, Report of the U.S. National Commission on Food Marketing, (Washington, D.C.: U.S. Government Printing Office, 1966), <https://catalog.hathitrust.org/Record/006232975>; National Performance Review (U.S.) and Albert Gore, *From Red Tape to Results: Creating a Government That Works Better & Costs Less: Report of the National Performance Review*.

While the United States certainly played an important role in regulatory diffusion of food safety policies and practices, some of the most significant regulatory innovations emerged elsewhere, or in response to exogenous factors outside the United States. As chapter 5 explains, even though HACCP was developed by an American firm, without its diffusion into an international context, it might never have been incorporated into American meat and poultry regulations.

However, by paying attention only to regulatory borrowing across jurisdictions, it is possible to miss more obvious borrowing across agencies or even individual products. Despite the industry's late entry into inspection, poultry products are further along the "continuum" of co-regulation than beef or pork. A closer examination of the trajectory of American food safety regulation through the 1970s and 1990s reveals a gradual uptick in borrowing – of people, technology, and ideas – across agencies with knowledge and expertise about food safety risks. Recent calls to enhance outbreak investigations may be one strategy to further reconcile the overlapping jurisdictions of multiple food safety agencies.¹¹

¹¹ Timothy D. Lytton, *Outbreak: Foodborne Illness and the Struggle for Food Safety* (Chicago: The University of Chicago Press, 2019); Ron Nixon, "Obama Proposes Single Overseer for Food Safety," *The New York Times*. http://www.nytimes.com/2015/02/21/us/obama-proposes-single-overseer-for-food-safety.html?_r=0 February 20, 2015; Adam Sheingate, "Still a Jungle," *Democracy*, no. 25 (2012): 48.

BEYOND FOXES AND HENHOUSES

Early in the research for this project, I obtained access to a vertically integrated poultry operation.¹² As I expected, quite a bit of the process is automated – like the eviscerator and defeatherer, the enormous stainless-steel chiller, and the machine that removes the chicken feet, or “paws,” and carries them away on a separate line. “We used to throw those away,” my guide declared proudly as I looked up and saw the paws speed by overhead; but now, he informed me, they could not ship them to China fast enough. But there were still a lot of *people* working in these plants: from the gaggle of lab techs who ran chemical analyses in the feed mill, to the hatchery where veterinarians vaccinated endless rows of eggs nestled in pristine incubators, and where workers shuffled downy chicks along a conveyor belt into bright plastic crates – and into the thick ruby darkness of the kill floor, and finally the damp refrigerated chill of the cut-up area.

The whole process was highly automated, regardless of whether the action was completed by men, women, or machines. The chain on which the “hangers” draped the chicken carcasses looped all around the complex. At every station, the line workers performed a completely different, but equally repetitive, task. Yet in this enormously

¹² For skeptical readers, I acknowledge the following: First, I was not granted access to some plants to whom I reached out, so I can reasonably assume that what I saw was a “cleaner” or “better” plant, and my visit was unquestionably mediated by the fact that they knew I was coming, and that I had to rely on explanations about what was happening from my guide, rather than from the workers themselves. At the same time, I gained access to these plants primarily based on personal connections, and thus have reason to believe that they wished to present an honest portrayal of their practices. In any case, I relate the following primarily in order to make a comparison, not to provide a precise depiction of conditions inside plants. Many scholars have done just that; much of what I witnessed generally comports with their accounts.

expansive and complex operation, the USDA inspectors remained fixed in place, eyes glued to the line, checking each bird. In my visit, I was not given an opportunity to speak to those inspectors, but I understand all too well from reading their accounts over the last fifty years, that these federal agents take their job very seriously. They believe that their constant vigilance is the only thing that is keeping adulterated, sick, or unfit foods off your dinner plate. As I walked around the plant, a few droplets of cold, chlorinated water dripped lightly onto our heads as the carcasses passed by above us (slower than I expected, I might add). I was struck by all the things that the USDA did not see, or rather, not *able* to see, by spending all that time in one spot. I then imagined the auditors for Walmart, Costco, or the GFSI walking around the plant with a clipboard, and how much more they might be able to see – while yet again recognizing that their methods, too, had their own flaws and blind spots.

When I read about Costco’s new 400,000-square-foot poultry processing plant in Fremont, Nebraska, which opened in late 2019, it sounded quite different from what I witnessed. There are very few people, other than those who monitor and repair the machines. According to a description, even the waiting area before slaughter (“lairage”) was “computerized” to adjust for weights and sizes of the lot of birds. The kill floor uses temperature rather than darkness to keep the birds calm, which the article noted was safer for the workers. The birds are chilled by air rather than water, which is a common practice in Europe that remains marginal in the United States. (The birds still undergo an

EU-approved peracetic acid “dip” to treat for pathogens.) Every element that could have been automated in these plants, was automated.¹³

In 2014, the USDA published the final rule for the New Poultry Inspection System, based on the findings of data collected through the HACCP-based Inspection Models Project.¹⁴ Numerous op-eds appeared from inspectors, consumer representatives, and journalists who questioned the rule, and argued that its self-regulatory elements amounted to, yet again, “the fox guarding the henhouse.”¹⁵ Specifically, inspectors and advocates argued that the shift to “sorters” asked vulnerable, often undocumented workers to do the job the government should do, and amounted to asking the industry to inspect itself. In 2019, the USDA finalized the New Swine Inspection System rule, based on HIMP data in hog processing plants – which prompted a similar response from the same quarters.¹⁶

In both instances, groups who questioned the rule raised concerns about the validity of the data and how FSIS approached the rulemaking process. According to Consumer Federation of America, the USDA failed to obtain a peer review for its risk

¹³ Tom Johnston, “Man Vis-a-Vis Machine,” *Meatingplace*, November 2019, 70-80.

¹⁴ U.S. Department of Agriculture, Food Safety and Inspection Service, “Modernization of Poultry Slaughter Inspection,” Final Rule, *Federal Register*, Vol. 79, No. 162, 49566-49637, <https://www.govinfo.gov/content/pkg/FR-2014-08-21/pdf/2014-18526.pdf>; Ron Nixon, “New Rules Say Poultry Plants Can Conduct Own Checks,” *New York Times*, July 31, 2014, <http://www.nytimes.com/2014/08/01/us/politics/new-rules-say-poultry-plants-can-inspect-their-birds.html>.

¹⁵ “CFA Statement on USDA Changes to Poultry Slaughter Inspection - Consumer Federation of America,” *Consumer Federation of America* (blog), January 20, 2012 (Press Release), https://consumerfed.org/press_release/cfa-statement-on-usda-changes-to-poultry-slaughter-inspection/

¹⁶ “U.S. Worker, Food-Safety Advocates Sound Alarm over New Hog Slaughter Rules,” *Reuters*, September 18, 2019, <https://www.reuters.com/article/us-usa-pork-slaughter-idUSKBN1W22IV>.

assessment until after the comment period closed, and three of the five peer reviewers found the risk assessment to be flawed.¹⁷ Representatives on both sides of this debate contend that politics, not science, drives decision making, and that their perspective is the more “scientific” one.¹⁸

The problem is compounded by some basic challenges associated with data collection on foodborne illnesses more generally. Without reliable or comprehensive data on the prevalence of foodborne pathogens, it is more difficult for policymakers and the general public to evaluate the success or failure of food safety regulations.¹⁹ The etiology of foodborne illness can be complicated at the individual level: Did you get sick from the

¹⁷ Public Comment from Thomas Gremillion (Consumer Federation of America) to Carmen Rottenberg (Acting Deputy Undersecretary for Food Safety) Re: Docket No. FSIS-2018-0032, “FSIS Posts its Response to Peer Review Comments on its Hog Slaughter Risk Assessment, Including the Revised Risk Assessment Document.” September 5, 2018, <https://consumerfed.org/wp-content/uploads/2018/09/cfa-comments-on-fsis-response-to-peer-review-of-hog-slaughter-inspection-risk-assessment.pdf>; for the risk assessment and FSIS’s response, see U.S. Food Safety and Inspection Service, “Reply to Peer Review of the FSIS Risk Assessment,” December 27, 2012, <https://www.fsis.usda.gov/wps/wcm/connect/ff8b2373-697f-4c5a-bbc6-c57e404b7c09/PSRA+REPLY+TO+PEER+REVIEW+12-27-12.pdf?MOD=AJPERES>. (last accessed June 9, 2019)

¹⁸ For representative views in favor of the new rules, see Alfred V. Almanza, “Setting the Record Straight on the Proposed Chicken Inspection Policy,” *The Huffington Post*, 04/13/2012 02:39 pm, http://www.huffingtonpost.com/alfred-v-almanza/chicken-inspection-new-policy_b_1424136.html; Doug Collins, “Liberals Shun Science, Defy Obama in Poultry Production,” *The Hill*, September 27, 2017, <https://thehill.com/blogs/congress-blog/labor/352659-liberals-shun-science-defy-obama-in-poultry-production>; Russell Cross, “Food Science or Political Science?” Institute for Food Science and Engineering (Press Release), <http://www.haccpalliance.org/sub/news/FSorPSrelease.pdf>; for views opposing the new rules, see Wenonah Hauter, “Setting the Record Straight on the Obama Administration’s Privatized Poultry Inspection System,” *Food & Water Watch*, November 6, 2015, <https://www.foodandwaterwatch.org/insight/setting-record-straight-obama-administration%E2%80%99s-privatized-poultry-inspection-system>; “USDA Rushes to Deregulate Hog Slaughter Inspection, Puts Food Safety at Risk - Consumer Federation of America,” *Consumer Federation of America* (blog), accessed March 2, 2020, https://consumerfed.org/press_release/usda-rushes-to-deregulate-hog-slaughter-inspection-puts-food-safety-at-risk/.

¹⁹ Timothy Lytton and Anne Hardy offer especially useful summaries of these challenges, for the U.S. and Britain, respectively: Lytton, *Outbreak*, 14-58; Hardy, *Salmonella*, 220-230.

medium-rare steak, or the ice cream for dessert? Was it the romaine, or the tomatoes in your salad? Was the food already contaminated in the restaurant or the deli counter, or was it mishandled during preparation? To estimate the “foodborne burden” of disease, the U.S. Centers for Disease Control and Prevention must extrapolate from more serious cases or known outbreaks in which people become sick enough to end up in the hospital.²⁰ Consumer groups or food safety agencies also conduct tests of retail samples, to determine the extent to which products are contaminated at retail.²¹ But the underlying uncertainty associated with multiple, incomplete data sources creates opportunities for both proponents and detractors of a given law to make claims about the success or failure of a given policy based on the data they have available to them. Moreover, when agencies ramp up data collection efforts or improve outbreak investigations, it is possible to interpret increased numbers of violations or more documented outbreaks as signs that the system is getting worse. On the contrary, some scholars argue that recalls reflect greater knowledge of existing hazards, and show that the system is working as intended.²²

The challenges associated with collecting foodborne illness data also make it difficult to evaluate the impact of HACCP or HIMP on food safety. For various reasons,

²⁰ Elaine Scallan, et al. “Foodborne Illness Acquired in the United States—Major Pathogens,” *Emerging Infectious Diseases*, 17(1), 2011, 7-15. <https://dx.doi.org/10.3201/eid1701.p11101>.

²¹ On chicken, see especially Consumer Reports, “The High Cost of Cheap Chicken,” February 2014, <https://www.consumerreports.org/cro/magazine/2014/02/the-high-cost-of-cheap-chicken/index.htm>; Letter from Urvashi Rangan, Ph.D., Consumer Reports, to Secretary Tom Vilsack, the U.S. Department of Agriculture, December 18, 2013, https://advocacy.consumerreports.org/wp-content/uploads/2013/12/Chicken_CR_USDA_2013.pdf

²² Lytton, *Outbreak*, 14-58.

the USDA collected only sporadic and uneven data on pathogen loads before the 1996 HACCP rule. As a result, we cannot know precisely how safe or unsafe the supply of meat and poultry were in the years before the rule was promulgated. Later, the protocols for the HIMP project were modified to comply with the outcome of litigation after the baseline studies were run; some detractors argue that this reduced the quality of the data collected in the study. In any event, it has been difficult to ascertain the extent to which HACCP or HIMP have had any effect – either positive or negative – food safety in the United States. On the one hand, outside experts and scientists told the USDA that the program of visual inspection needed to be scrapped because it lacked sufficient scientific basis. On the other, consumer advocates and its own employees, claimed that the new “science-based” model would weaken, not strengthen, the inspection program. When the agency did not collect data in the early 1990s, critics assumed that government officials were covering up high disease rates that might account for foodborne illness outbreaks. But once officials started collecting data, the agency became more vulnerable to accusations that the data they collected might be flawed, incomplete, or inaccurate. Crucially, producers and retailers implemented their own changes to internal procedures and protocols during the early 1990s as well, which were codified into private standards by the end of the decade. The combination of private and public actions further complicated any meaningful analysis of the causal links among HACCP, HIMP, and food safety. As a Congressional Research Service report observed in 2003: “there may be some

connection between HACCP implementation in meat and poultry plants and the decline in foodborne illness, but it likely will never be possible to say exactly how much.”²³

The debates on food safety regulation reflect the broader challenges of regulating risks in the twentieth century, in which policymakers must negotiate with stakeholders who may have different ideas about how to balance policy tradeoffs, in situations where scientific knowledge may be uncertain or incomplete. When one approaches the history of regulatory governance from this perspective, rules like the NSIS and NPIS look less like radical departures from a system that was previously effective, and more like the most recent iteration in a contentious policymaking process. The proposed prescriptions for reform look different from this vantage point, as well. For example, slowing down processing line speeds *would* reduce risks to worker safety and health that are not currently addressed by the embarrassingly limited bureaucratic capacity of the Occupational Safety and Health Administration.²⁴ But the mechanized, modern Costco plant plainly shows that line speed adjustments alone cannot undo the sequence of decisions that created the industrialized meat and poultry industry over the past century.

²³ Jean M. Rawson, *CRS Issue Brief for Congress: Meat and Poultry Inspection Issues*, Congressional Research Service, June 6, 2003, 7.

²⁴ On the risks current line speeds pose to worker health, see Tom Fritzsche, “Unsafe at These Speeds: Alabama’s Poultry Industry and Its Disposable Workers,” (Southern Poverty Law Center/Alabama Appleseed, 2013); Oxfam America, “No Relief: Denial of Bathroom Breaks in the Poultry Industry,” Oxfam America’s Campaign for Poultry Worker Justice, 2016, https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf.

Those who argue that the existing inspection system is outdated and ineffective and demand changes for workers and consumers should pay more attention to the role that consumers played in creating *and maintaining* that system. Through their efforts to maintain visual inspection above other considerations to the safety of workers or the safety of food, consumer advocates – albeit not intentionally – helped funnel technological and scientific innovations into the other elements of slaughter and processing that were comparatively less monitored. Rather than focusing on engineering a safer or higher-quality bird, businesses created a more inspectable one. To borrow the words of one eminent historian of automobile safety, the industry responded by “designing to the test.”²⁵ In automobiles, this meant engineering vehicles to perform well in crash tests; in food, this meant breeding chickens for genetic uniformity and faster growth, and designing processing plants to maximize throughput within the confines of rules governing inspection of “each and every” bird. As several recent studies (that, coincidentally, all focus on pigs) have revealed, the structure of the state shapes the development of “techno-scientific organisms.”²⁶ That is to say, law structures markets,

²⁵ Lee Jared Vinsel, “Designing to the Test: Performance Standards and Technological Change in the U.S. Automobile after 1966,” *Technology and Culture* 56, no. 4 (November 20, 2015): 885-886, <https://doi.org/10.1353/tech.2015.0125>.

²⁶ Tiago Saraiva, *Fascist Pigs: Technoscientific Organisms and the History of Fascism*, Inside Technology (Cambridge, Massachusetts: MIT Press, 2016); J. L. Anderson, *Capitalist Pigs: Pigs, Pork, and Power in America*, (Morgantown, WV: West Virginia University Press, 2019); Thomas Fleischman, *Communist Pigs: An Animal History of East Germany’s Rise and Fall*, (Seattle: University of Washington Press, 2020).

but law can also structure *things*. Any effort to reconfigure the law will require attention both to the structure of markets and the biology of organisms.

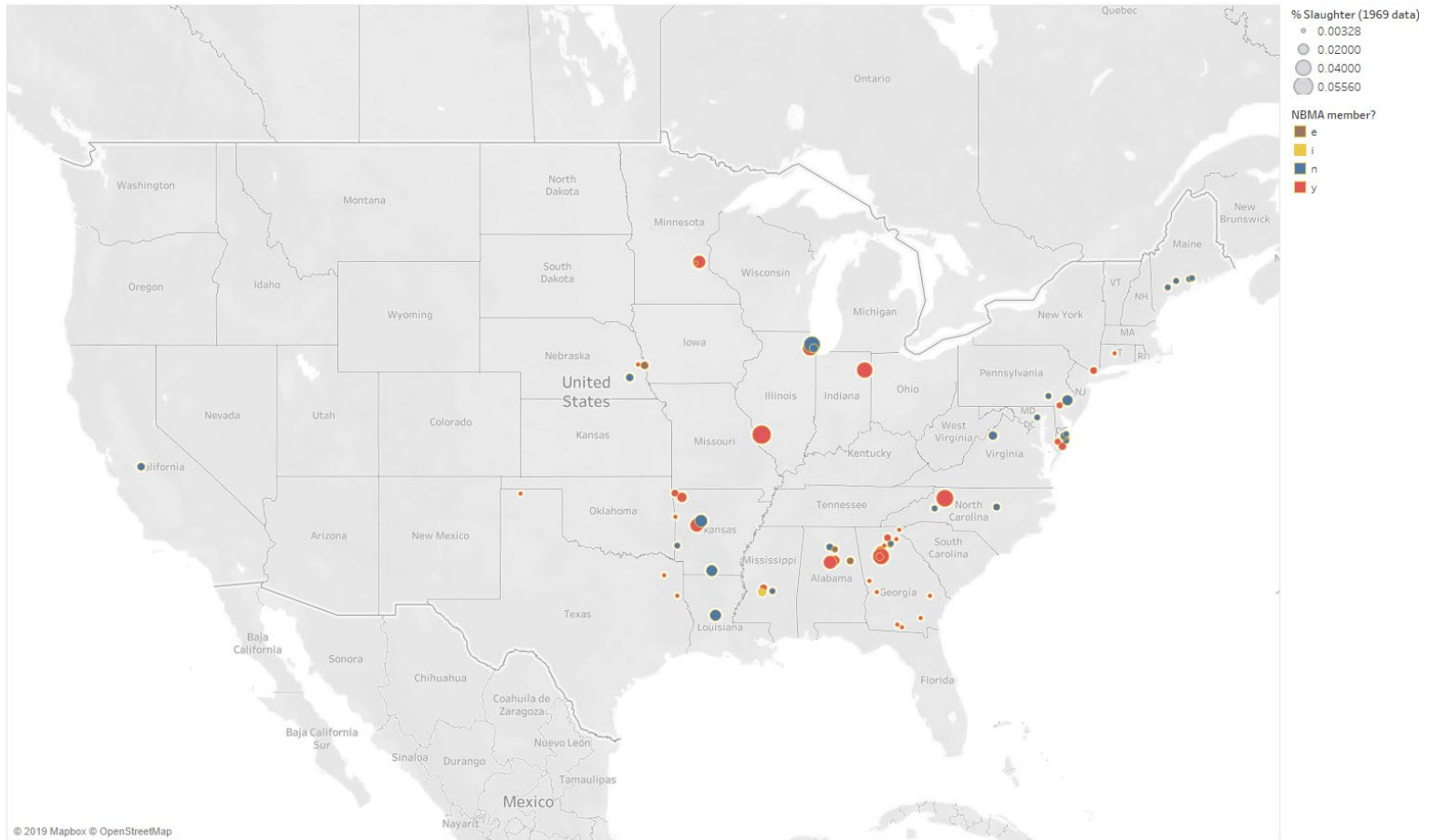
Similarly, those in favor of reducing regulatory burdens on business should recall that “command-and-control” regulation hardly constrained private innovation. Carcass-by-carcass inspection enabled untold innovations, in breeding, slaughter, processing, refrigeration, packing, shipping, and even, briefly, marketing. Some of those innovations created new risks of their own, and some challenged consumers’ understanding of safety. The last seventy years reveal that the poultry industry is nothing if not innovative; the industry would do well to turn more of its attention to innovations that address core ethical questions like worker safety, zoonotic diseases, and climate change. Paradoxically, because competition is based on volume rather than service, the industry may *need* the nudge of government regulators to create meaningful incentive structures and pyramids of enforcement to prevent overproduction. Denying the USDA any enforcement tools besides the “atomic bomb” of withdrawal of inspection serves neither the interests of consumers nor producers.²⁷ Establishing lower-level enforcement provisions like fines, civil penalties, or criminal prosecutions might paradoxically be in the economic interest of some producers, in that it could weed out bad actors and potentially bolster the reputation of the industry as a whole.

²⁷ For the phrase “atomic bomb” used this way, see Deborah Silver, “Dan Glickman,” *Restaurants & Institutions; Chicago* 110, no. 29 (November 1, 2000): 25–26.

As a policy tool, coregulation is nothing more than a statement about the arrangement of public and private interests. It is the precise balance of public and private, of enforcement and monitoring, of cost, safety, and quality – and *not* the mere fact that the regulated industry has been given some responsibility, that determine whether coregulation places the proverbial fox in charge of the henhouse. Costco’s Fremont, Nebraska plant – however modern, however automated – is still bound by decades and years of overlapping rules and regulations, on everything from net weight labeling to standard sanitary operating procedures. All of the innovations and automation in the Nebraska plant occur within an existing regulatory framework, which dictates a certain balance of policy tradeoffs. That framework may include a mix of domestic, international, and private rules, that all involve varying degrees of compulsion and public or private oversight. One side might describe that framework as burdensome, as “over-regulation,” while the other might find it inadequate, or “under-regulation.” This dissertation shows why it is possible that they can both be right.

APPENDIX A

Author's Note on Figures 11-13: Red indicates members of the NBMA, blue indicates non-members, and brown indicates the three excluded parties from the suit. Yellow indicates location of NBMA corporate headquarters. For red, brown, and blue, size of circle indicates % of total slaughter volume. Size of circles have been amplified to highlight relative differences; no firm processed more than 5% slaughter volume in 1969. See Table 4 for a list of defendants in the class action litigation. See Table 5 for "top 2/3rds" slaughter data and firm names in 1969. Locations are approximate.



Map based on Longitude (generated) and Latitude (generated). Color shows details about NBMA member?. Size shows sum of % Slaughter (1969 data). Details are shown for Approx state and Approx city.

Figure 11: National Broiler Marketing Association members and top 2/3rds of the industry, continental US view

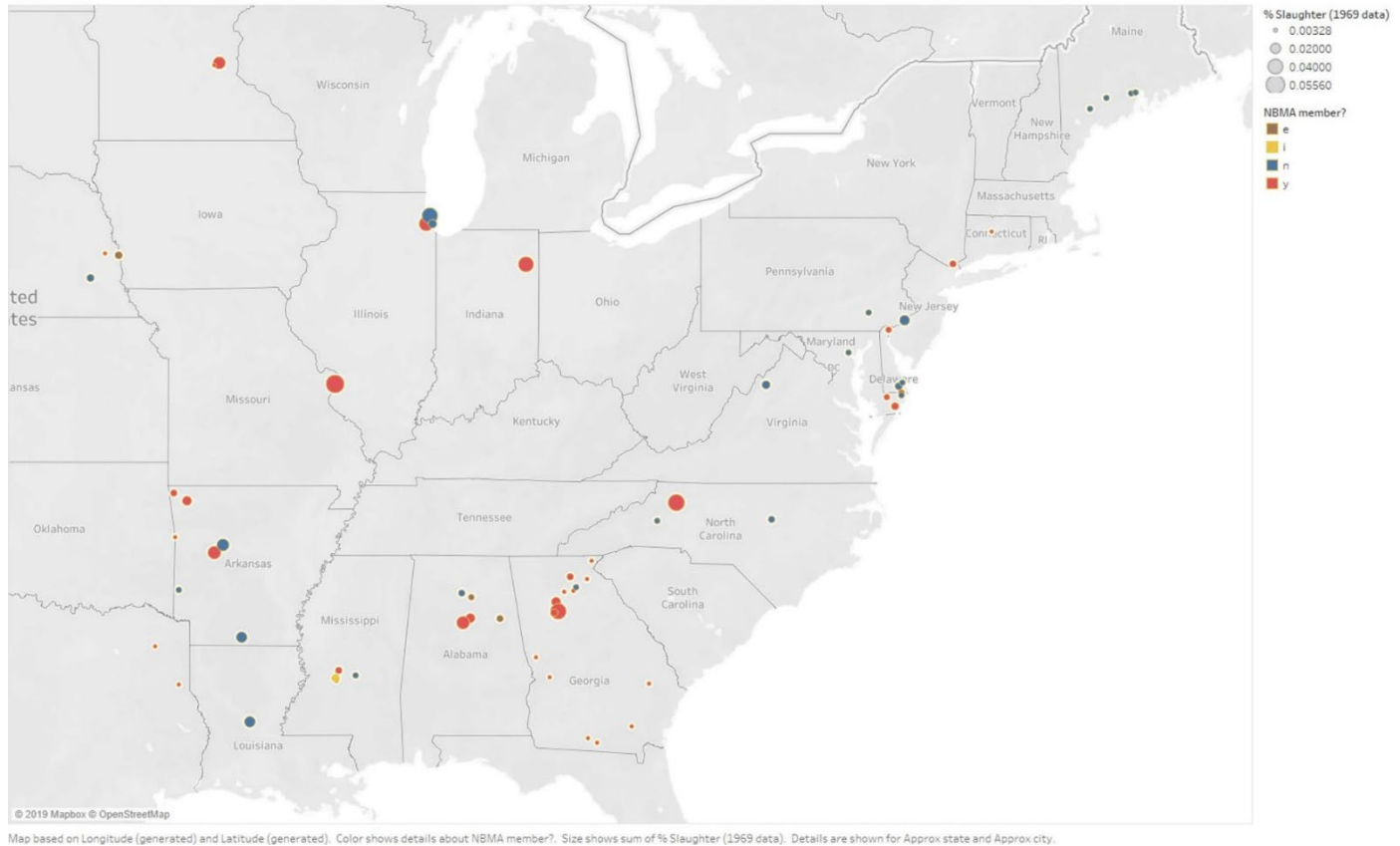


Figure 12: National Broiler Marketing Association and top 46 firms (CA excluded)

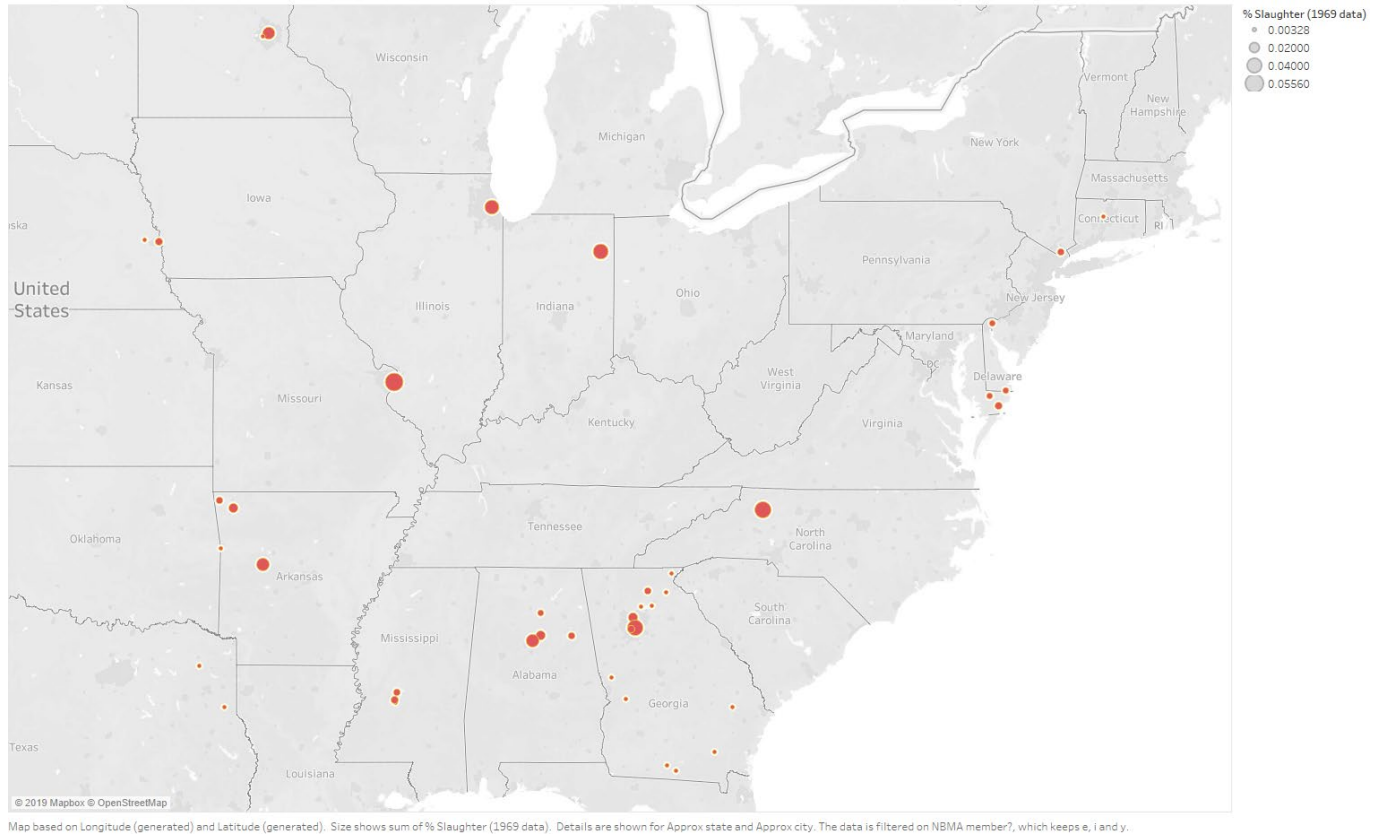
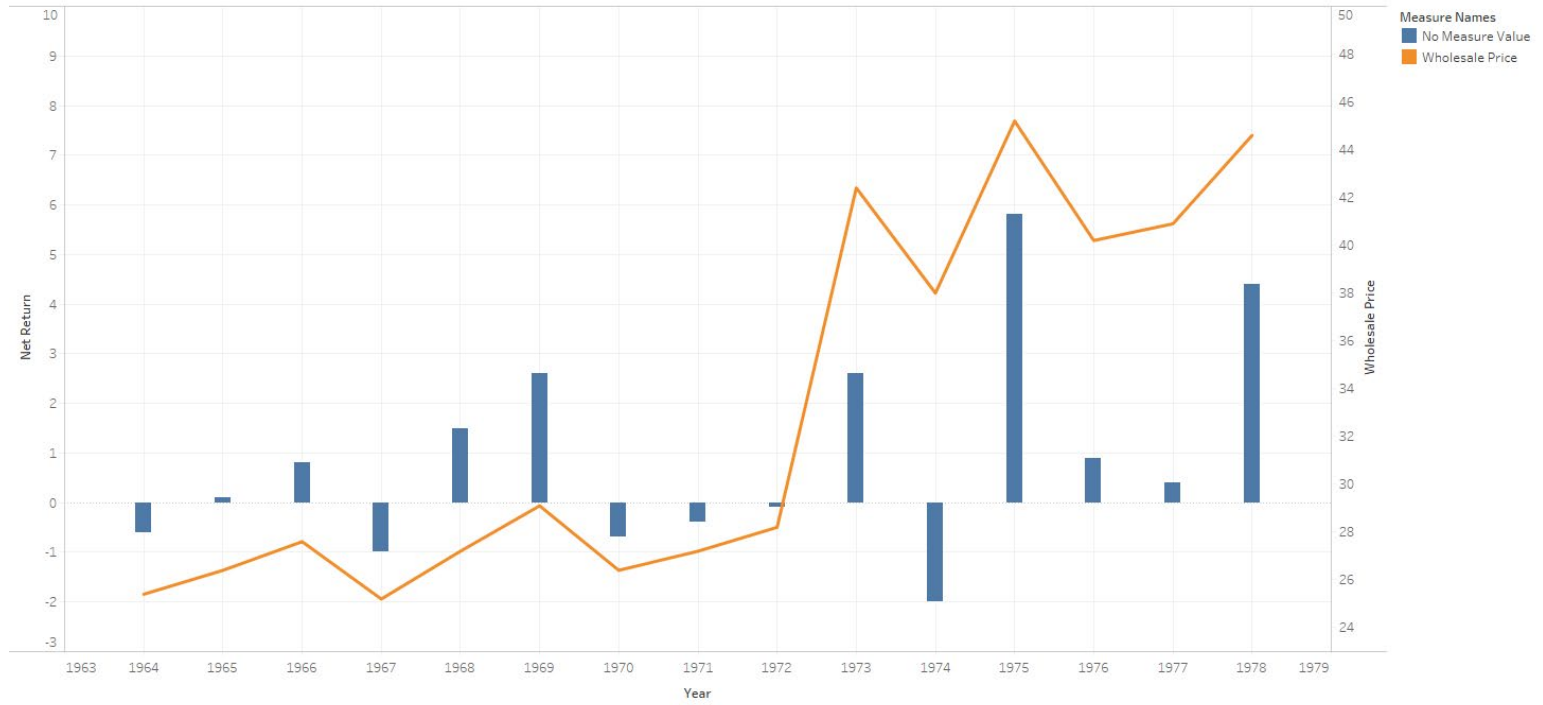


Figure 13: The National Broiler Marketing Association



The trends of Net Return and Wholesale Price for Year. Color shows details about Wholesale Price.

Figure 14: Wholesale Broiler Prices and Net Returns, 1964 – 1978

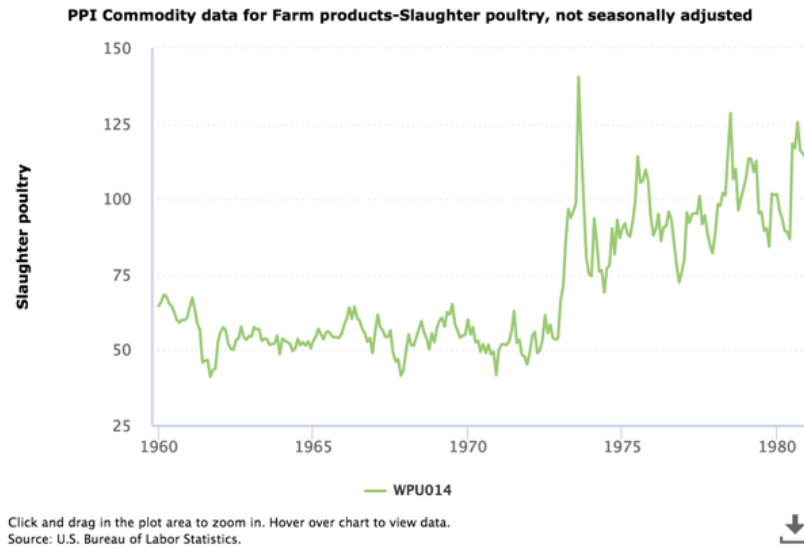


Figure 15: Producer Price Index Commodity data for Slaughter poultry, 1960 – 1980 (U.S. Bureau of Labor Statistics)

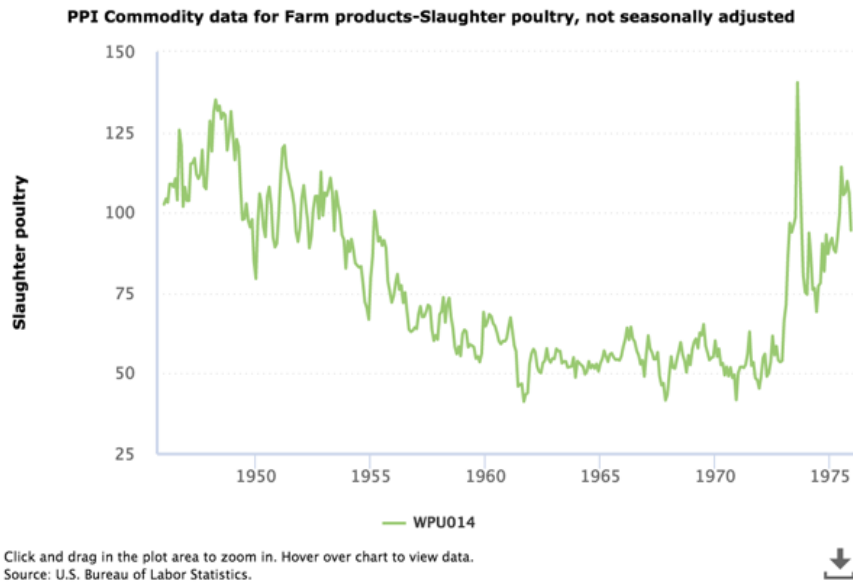


Figure 16: Producer Price Index Commodity data for Slaughter poultry, 1945 – 1975 (U.S. Bureau of Labor Statistics)

Table 4: Members of the National Broiler Marketing Association

Named Defendant (Alternate Name/Subsidiary)	HQ
National Broiler Marketing Association	Jackson, MS
A.C. Smith Milling Co.	Cumming, GA
Allied Mills, Inc. (now Wayne Farms)	Chicago, IL
B & P Poultry Co., Inc.	Hamilton, GA
Burnett Produce Company	Clayton, GA
Cagle's, Inc.	Atlanta, GA
Cargill, Inc.	Hopkins, MN
Central Soya Co., Inc.	Ft. Wayne, IN
Claxton Poultry Co, Inc.	Claxton, GA
ConAgra, Inc.	Omaha, NE
Dent Poultry Co., Inc.	Buena Vista, GA
De Witt Farms Corporation	Morven, GA
Federal Co. (Holly Farms)	Wilkesboro, NC
Fieldale Corporation	Baldwin, GA
Gold Kist, Inc. (Cotton Producers Ass'n)	Atlanta, GA
H & H Poultry Co. Inc,	Selbyville, MD
Heublein, Inc.	Farmington, CT
Hudson Foods Inc.	Springdale, AR
Kane-Miller Corp.	Tarrytown, NY
Marell Poultry Company	Dahlonega, GA
Mar-Jac Poultry, Inc.	Gainesville, GA
Marshall Durbin Companies	Birmingham, AL
Maryland Chicken Processors, Inc. (Esham)	Snow Hill, MD
MFC Services (AAL) (Mississippi Farm Bureau Federation) (Mississippi Federated Co-Ops)	Madison, MS
O.K. Processors, Inc. (O.K. Foods)	Ft. Smith, AR
Perdue Farms, Inc.	Salisbury, MD
Peterson Farms, Inc.	Decatur, AR
Pilgrim Industries, Inc. (Pilgrim's Pride)	Pittsburg, TX
The Pillsbury Company (J-M Poultry?)	Minneapolis, MN
Poultry Products Co. Inc.	Waycross, GA
Ralston Purina Company	St. Louis, MO
Southeastern Hatcheries (Southeastern Poultry?)	Atlanta, GA
Stratford of Texas Inc.	Stratford, TX (?)
Townsend's Inc.	Wilmington, DE

Tyson Foods	Springdale, AR
Valmac Industries	Valdosta, GA
Wilson & Co. (Wilson Foods)	Chicago, IL
Bayshore Foods (Kane-Miller Corp.)	Tarrytown, NY
Rite-Care Corporation	Carthage, TX
Purnell's Pride	Jackson, MS

Author's Note on Table 4:

I have been unable to assemble a membership list for the National Broiler Marketing Association that I would call reliable or complete. This table includes named defendants in the trial and class-action notice.¹ While this would ordinarily be an accurate list, some sources suggest that non-members were erroneously included. For example, H&H and Maryland Chicken Processors were not members of NBMA, but other firms they acquired (Caper Acres and Esham Farms, respectively) were members.²

Moreover, the class action notice excludes over 20 other firms from future suits related to this case; the language used suggests that those firms were most likely not members of the NBMA, but they may have been subsidiaries or affiliates of members, or firms that were bought out by NBMA members between its formation in 1970 and the

¹ First 37 members listed from an undated (before 1980) "First Amended Complaint," State of Alabama v. National Broiler Marketing Association, et al. in "Misc. Notes," Chicken Anti-trust Files, ADAH. The last 4 names ("Bayshore" to "Purnell's Pride") appear in the list of defendants in the class action notice – To: Purchasers of Broilers, Notice of Class Action Determination, Proposed Settlements and Dismissals and Hearings Thereon, In Re: Chicken Antitrust Litigation, Civil Action No. C74-2454A, United States District Court, Northern District of Georgia. (n.d., enclosed with letter dated July 18, 1975) In "Correspondence" folder, Chicken Anti-trust Files, ADAH.

² Kelvin Adkins, "Shore Poultry Leaders Deny Price Fixing," *The Daily Times* (Salisbury, MD). October 22, 1974, 8; Maryland Chicken Processors filed for bankruptcy before the class action suit began.

class action settlement in 1983.³ I have omitted these firms for brevity, with the exception of three firms that had substantial market share in 1969 and may have been members before merging with other companies (Ocoma Foods, Spring Valley Farms, Walley-Clegg).

To get a sense of the geographic distribution of these defendants, I searched for their corporate headquarters based on public business filings. I was able to locate most of these corporations using state databases for Georgia, Mississippi, and Maryland.⁴ (Many of the smallest companies were incorporated in Georgia, and the larger firms were incorporated in Georgia as “foreign” companies.). I then checked this list against a list provided in a Congressional hearing on antitrust and corporate farming in 1972. I was only able to locate some of the headquarters through a search of newspaper articles and trade publications.⁵ Given the caveats above, I cannot present this list as anything more than a preliminary list of defendants, with plausible geographic locations, who were probably members of the NBMA.

³ To: Purchasers of Broilers, Notice of Class Action Determination, In Re: Chicken Antitrust Litigation, In “Correspondence” folder, Chicken Anti-trust Files, ADAH.

⁴ Georgia Corporations Search, <https://ecorp.sos.ga.gov/BusinessSearch> (last accessed 9/1/19); Mississippi Business Search, <https://corp.sos.ms.gov/corp/portal/c/page/corpBusinessIdSearch/portal.aspx?#clear=1> (last accessed 9/1/19); Maryland Business Entity Search <https://egov.maryland.gov/BusinessExpress/EntitySearch> (last accessed 9/1/19).

⁵ E.g. O.K. Processors and Rite-Care: O.K. Processors Advertisement, *Broiler Industry*, October 1972, 18; “Rite-Care Aids Panola Economy,” *Marshall News Messenger* (Marshall, TX), 30 Jan 1972, 103.

Table 5: Top 46 firms (1969) and National Broiler Marketing Association members, by percentage (%) of total poultry slaughter

Firm name (in 1969)	NBMA?	% Slaughter	HQ City	State
Ralston Purina Company	y	5.56%	St. Louis	MO
Federal Co.	y	4.62%	Wilkesboro	NC
Swift & Co.	n	4.35%	Chicago*	IL
Cotton Producers Ass'n	y	4.22%	Atlanta*	GA
Central Soya Co., Inc.	y	3.95%	Ft Wayne	IN
Wilson & Co.	y	3.45%	Chicago*	IL
Allied Mills, Inc.	y	2.83%**	Birmingham	AL
Allied Mills, Inc.	y	2.83%**	Danville	AR
The Pillsbury Company	y	2.57%	Minneapolis	MN
Arkansas Valley Industries	n	2.46%	Dardanelle	AR
J-M Poultry Packing Co.	n	2.06%**	Alexandria	LA
J-M Poultry Packing Co.	n	2.06%**	El Dorado	AR
Campbell Soup Co.	n	1.79%	Camden	NJ
Marshall Durbin Companies	y	1.66%	Trussville	AL
Southeastern Poultry	y	1.49%	Atlanta*	GA
Tyson Foods	y	1.43%	Springdale*	AR
Rockingham Poultry Mktg Co-op	n	1.25%	Broadway	VA
Armour & Co	n	1.16%	Chicago*	IL
Foster Farms	n	1.09%	Livingston	CA
Nebraska Consolidated Mills (Red Hat)	n	1.02%	Lincoln	NE
Maryland Chicken Processors, Inc. (Esham)	y	0.98%	Snow Hill	MD
Cagle's, Inc.	y	0.94%	Atlanta*	GA
Ocoma Foods	e	0.94%	Omaha*	NE
Mountaire Farms	n	0.94%	Millsboro	DE
Marell Poultry Company	y	0.85%	Dahlonega	GA
Mississippi Federated Co-ops	y	0.81%	Madison	MS
Kane-Miller Corp.	y	0.81%	Tarrytown	NY
Walley-Clegg	e	0.81%	Oxford	AL
Golden Rod Broilers	n	0.81%	Cullman	AL
Peterson Farms, Inc.	y	0.71%	Decatur	AR
Watson Seafood and Poultry	n	0.71%	Raleigh	NC
Lipman	n	0.67%	Augusta	ME
P&L Processors (Berlin Milling)	n	0.67%	Baltimore	MD
Penobscot Poultry	n	0.67%	Belfast*	ME
Breeden	n	0.67%	Morganton	NC
Perdue Foods	y	0.65%	Salisbury	MD
Spring Valley Farms (Bagwell)	e	0.65%	Blountsville	AL

Maplewood	n	0.65%	Belfast*	ME
Paramount Poultry	n	0.65%	Harbeson	DE
BC Rogers	n	0.65%	Morton	MS
H & H Poultry Co. Inc,	y	0.62%	Selbyville	DE
Townsend's Inc.	y	0.62%	Wilmington	DE
JD Jewell	n	0.62%	Gainesville*	GA
Lane Poultry Farms	n	0.62%	Grannis	AR
Hillcrest	n	0.62%	Lewiston	ME
Victor F. Weaver	n	0.62%	New Holland	PA
Showell	n	0.62%	Showell	MD
Fieldale Corporation	y	0.33%	Baldwin	GA
Dent Poultry Co., Inc.	y	0.33%	Buena Vista	GA
Rite-Care Corporation	y	0.33%	Carthage	TX
Claxton Poultry Co, Inc.	y	0.33%	Claxton	GA
Burnett Produce Company	y	0.33%	Clayton	GA
A.C. Smith Milling Co.	y	0.33%	Cumming	GA
Heublein, Inc.	y	0.33%	Farmington	CT
O.K. Processors, Inc. (O.K. Foods)	y	0.33%	Ft. Smith	AR
Mar-Jac Poultry, Inc.	y	0.33%	Gainesville*	GA
B & P Poultry Co., Inc.	y	0.33%	Hamilton	GA
Cargill, Inc.	y	0.33%	Hopkins	MN
Purnell's Pride	y	0.33%	Jackson	MS
De Witt Farms Corporation	y	0.33%	Morven	GA
ConAgra, Inc.	y	0.33%	Omaha*	NE
Pilgrim Industries, Inc.	y	0.33%	Pittsburg	TX
Hudson Foods Inc.	y	0.33%	Springdale*	AR
Stratford of Texas Inc.	y	0.33%	Stratford	TX
Valmac Industries	y	0.33%	Valdosta	GA
Poultry Products Co. Inc.	y	0.33%	Waycross	GA

Author's note on Table 5:

This dataset was compiled and calculated from multiple sources with varying degrees of reliability in order to produce Figure 11 and Figure 12 using Tableau. The base of the data comes from a list of the top 2/3rds of the industry printed in *Broiler Industry*.⁶ This list included percentages of total slaughter volume, but did not include locations. Slaughter percentages between .62% and 5.56% were taken from this 1969 data set. Values below .62% are average estimations of probable market share based on National Broiler's claim that they processed 45% of the nation's chicken. To obtain estimations for the remaining members (N=19), I took the sum of the total percentage of slaughter of the largest firms (38.77%), and subtracted that from 45%, to obtain the value of 6.23%. I then divided this value by 19 (N of remaining firms) to obtain the value of 0.327%. The value included in the table reflects this value rounded up to 0.33%, and assumes equal market share among these 19 firms.

Mergers and consolidations make it difficult to ascertain which members were part of the association, and which ones got lumped into the lawsuit via mergers. For example, Congressional hearing data suggests that J-M Packing Co. merged with Pillsbury in the 1970s, but it was not listed in the class action as an 'excluded' firm. In particular, three firms – Ocoma Foods, Spring Valley Farms, and Walley-Clegg – were not included in the list of settling defendants, but they were part of a much longer list

⁶ "They process 2/3rds of the nation's broilers," *Broiler Industry*, August 1969, 26.

excluded from future suits. However, it mattered whether or not they were NBMA members, because they were included in the top 2/3rds list in 1969. It is not known whether these firms were excluded because they were bought out, or whether they were members of the NBMA. Thus, I also calculated the total percentage of the NBMA members with these three firms included. I obtained a value of 41.17, a “leftover” percentage of 3.83%, and an average market share for small firms of 0.20%. Given that I was not using this information for anything other than relative scale, I chose to use the slightly larger number from the previous calculation.

Firm headquarters also should be construed to represent approximations. Firm headquarters not available through corporations searches in Georgia, Maryland, or Mississippi were approximated from Google Books searches and cross-referenced with a 1972 Congressional hearing on corporate farming.⁷ However, location of headquarters, particularly for larger firms, should not be construed to mean that the company only had operations in that state. The (**) indicates companies with two or more locations based on the 1973 antitrust hearing data, but the % slaughter refers to the total for that firm. In the “HQ City” column, a (*) indicates that multiple firms were headquartered in the same city; to make the data points more easily visible on the map, duplicate cities were mapped to nearby suburbs.

⁷ United States Congress House Judiciary Committee, *Family Farm Act: Hearings Before Antitrust Subcommittee (Subcommittee No. 5), 92-2, on H.R. 11654 and Similar Bills, March 22 and 23, 1972*, <https://books.google.com/books?id=YlpFAQAAMAAJ>. (last accessed Oct. 27, 2019).

Table 6: Wholesale Broiler Prices and Net Returns⁸

Year	Wholesale Price	Net Return
1964	25.4	-0.6
1965	26.4	0.1
1966	27.6	0.8
1967	25.2	-1
1968	27.2	1.5
1969	29.1	2.6
1970	26.4	-0.7
1971	27.2	-0.4
1972	28.2	-0.1
1973	42.4	2.6
1974	38	-2
1975	45.2	5.8
1976	40.2	0.9
1977	40.9	0.4
1978	44.6	4.4

⁸ Memorandum from Lloyd Bentsen, Dale Bumpers, Robert Morgan, Donald Stewart, and Herman Talmadge to Alfred Kahn, Re: Applicability of Council on Wage and Price Stability Price Standards to the First Sale of Raw Broilers, Sept. 10, 1980, p. 18. Domestic Policy Staff – Natural Resources, Lynn Daft’s Subject Files, Box 42, Folder: Poultry, Jimmy Carter Presidential Library, Atlanta, Georgia. (The dataset cites the *Poultry and Egg Situation*, which is also available online via HathiTrust.)

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CBS News

Chicago Tribune

CNN

Corsicana Daily Sun

Farmers Weekly

FDA Consumer

Feedstuffs

Food Engineering

Food Processing

Foreign Agricultural Circular

Frozen Food Age

Georgia Tech Engineering Magazine

Indianapolis Star
Journal of Marketing
Lincoln Journal Star
Los Angeles Times
Marshall News Messenger (TX)
McClure's Magazine
Meat + Poultry
Meatingplace (print and online)
Minneapolis Star-Tribune
Modesto Evening News
National Provisioner
National Public Radio
Nation's Business
Nation's Restaurant News
New York Times
Philadelphia Tribune
Reuters
Scott County Times (MS)
Southeastern Poultryman (print)
St. Louis Post-Dispatch
Statesman Journal
Supermarket Business
Tampa Bay Times
The Banner-Press (David City, Nebraska)

The Brookville American

The Daily Journal (Vineland, NJ)

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