FROM COMMON MARKET TO SOCIAL EUROPE?

PARADIGM SHIFT AND INSTITUTIONAL CHANGE IN EUROPEAN UNION POLICY ON FOOD, ASBESTOS AND CHEMICALS, AND GENDER EQUALITY

Marcus Carson
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MARCUS CARSON

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ABSTRACT
This dissertation takes up developments in European Union policymaking that indicate important shifts from an emphasis on prioritizing markets and economic arrangements to a greater recognition and competing prioritization of what can be broadly characterized as “social” concerns. Potentially sweeping changes are already taking place in EU policy in the areas of food policy, chemicals, and gender equality. Each is being substantially guided, even driven by concerns for public health, sustainability, and basic rights defined in terms of their social consequences. Such a socially defined agenda is increasingly important in European Union policymaking. This dissertation investigates these developments through case studies – based on interviews and original documents, as well as secondary literature – in three otherwise quite different policy sectors: the transformation of EU food policy from its focus on food as primarily a market commodity to taking into consideration and prioritizing public health and consumer safety concerns; EU chemicals policy and the banning of asbestos in Europe; the development of gender equality as an EU goal and the emergence of domestic violence as an EU policy concern. The concepts of public policy paradigm – and paradigm shifts – are employed as theoretical tools to specify, analyze and understand: (1) the priority ordering of guiding principles and institutional arrangements for defining and creating public policy, (2) public problem definitions and attributed causes, 3) the classes of social actors who are deemed authoritative, credible, and responsible for the amelioration of such problems, (4) the choice and formation of institutional strategies and definitions of appropriate means for problem solving, and more broadly (5) the ways in which competing complexes of leading ideas influence the choice and formation of institutional strategies. A paradigm shift in this perspective entails changes in one or more of the core dimensions of a paradigm. Such shifts also typically result in pressures to restructure institutional arrangements to make them consistent with a new paradigm. The cases examined here illustrate varying stages in an ongoing interplay between policy paradigms, actors, and
institutional arrangements. The dissertation concludes that paradigmatic shifts have taken place in the three policy sectors examined, and that the institutionalization of the new paradigmatic elements is in varying phases of development. These ongoing institutional reforms are based on newly prioritized goals consistent with core operating principles defined chiefly in terms of their social consequences. The emergence and development of an EU “social dimension” – indicated by the policy changes investigated in this dissertation as well as other policy changes – represent a formidable challenge to core principles and priorities of the free market paradigm which has enjoyed an overriding legitimacy.

Keywords: Policy paradigm, public policy, European Union, new institutionalism, food safety, BSE, chemicals policy, asbestos, gender equality, domestic violence
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Marcus Carson

Department of Sociology
Stockholm University
To Anna, Elise, and Niklas
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AI</td>
<td>Asbestos Institute</td>
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<tr>
<td>AmCham</td>
<td>American Chamber of Commerce</td>
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<tr>
<td>ANDEVA</td>
<td>Association Nationale De Défense Des Victimes De L'amiante (Nat’l Assoc. of Asbestos Victims)</td>
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<tr>
<td>BEUC</td>
<td>European Consumers' Organization</td>
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<tr>
<td>BSE</td>
<td>Bovine Spongiform Encephalopathy, A.K.A., Mad Cow Disease</td>
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<tr>
<td>CAP</td>
<td>Common Agricultural Policy</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CEFIC</td>
<td>European Chemical Industry Council</td>
</tr>
<tr>
<td>CJD</td>
<td>Creutzfeld-Jacobs Disease</td>
</tr>
<tr>
<td>CEEP</td>
<td>European Centre of Enterprises with Public Participation</td>
</tr>
<tr>
<td>COPA</td>
<td>Comité Des Organisations Professionnelles Agricoles</td>
</tr>
<tr>
<td>CSC</td>
<td>Catholic Confédération Des Syndicats Chrétiens</td>
</tr>
<tr>
<td>CSTEE</td>
<td>Scientific Committee on Toxicity, Ecotoxicity, and the Environment</td>
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<tr>
<td>EAGGF</td>
<td>European Agricultural Guidance and Guarantee Fund</td>
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<tr>
<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<tr>
<td>EDC</td>
<td>European Defense Community</td>
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<tr>
<td>EEB</td>
<td>European Environmental Bureau</td>
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<tr>
<td>EFSA</td>
<td>European Food Safety Authority</td>
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<tr>
<td>EFTA</td>
<td>European Free Trade Area</td>
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<tr>
<td>EINECS</td>
<td>European Inventory of Existing Commercial Chemical Substances</td>
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<tr>
<td>ELINCS</td>
<td>European List of Notified Chemical Substances</td>
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<tr>
<td>EPC</td>
<td>European Political Community</td>
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<tr>
<td>EPHA</td>
<td>European Public Health Alliance</td>
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<tr>
<td>ERT</td>
<td>European Round Table of Industrialists</td>
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<td>ETUC</td>
<td>European Trade Union Confederation</td>
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<tr>
<td>EWL</td>
<td>European Women's Lobby</td>
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<tr>
<td>FGTB</td>
<td>Fédération Générale Du Travail De Belgique</td>
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<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>GM / GMO</td>
<td>Genetically Modified / Genetically Modified Organism</td>
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<td>IBAS</td>
<td>International Ban Asbestos Secretariat</td>
</tr>
<tr>
<td>IG</td>
<td>Intergovernmental Conference</td>
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<tr>
<td>ILO</td>
<td>International Labor Organization</td>
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<tr>
<td>IPCS</td>
<td>International Program on Chemical Safety</td>
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<tr>
<td>MEP</td>
<td>Member, European Parliament</td>
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<td>NRC</td>
<td>Natural Resources Canada</td>
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<td>OSHA</td>
<td>Occupational Safety and Health Administration, US Dept. Of Labor</td>
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<td>SEA</td>
<td>Single European Act</td>
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<tr>
<td>TEU</td>
<td>Treaty on European Union</td>
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<tr>
<td>TUTB</td>
<td>Trade Union Technical Bureau</td>
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<tr>
<td>UNEP</td>
<td>United Nations</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environmental Program</td>
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<tr>
<td>UNICE</td>
<td>Union of Industrial and Employers’ Confederations of Europe</td>
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<tr>
<td>V-CJD</td>
<td>Variant Creutzfeld-Jakobs Disease</td>
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<tr>
<td>WAVE</td>
<td>Women Against Violence Europe</td>
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<tr>
<td>WEU</td>
<td>Western European Union</td>
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<td>WHO</td>
<td>World Health Organization</td>
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FORWARD

As recently as 1998, I’d have had a difficult time imagining that I would develop an interest in the European Union – much less do research on its policies and policymaking. I had a strong interest in politics, public policy, and the processes by which grassroots organizations have an impact on it, but this came mostly from working over the course of a couple of decades within grassroots organizations, unions, and policy advocacy coalitions in the US. Europe seemed both far away and not terribly relevant to what I considered to be pressing concerns.

It would have been equally far-fetched to imagine when my wife Anna and I met some 17 years ago that our path would eventually provide me a window of opportunity to do the graduate study I had sometimes thought about pursuing, but never seemed to have time for. But one of our marriage vows – which I made completely in the abstract – was that we would live in both countries. It eventually came to decide whether or not that promise was real, and when we moved to Sweden with our two small children, both of us looked for ways of using the change to do more study.

I eventually got the chance to do work in a research project on EU policymaking – in part because I had experience organizing and lobbying in a federal system – and that research became part of the basis for this dissertation. My initial impressions of the EU were not especially positive. I shared many of the concerns expressed about its effects on democratic participation and national level social protections. I still believe these concerns are legitimate, but I have been persuaded during the course of what I have learned in doing the research and writing for dissertation that the picture is far more nuanced than I, in any case, initially understood. I have become more optimistic about both the performance and the possibilities of the EU on a number of issues I believe are important, and that general tone is undoubtedly apparent in various parts of this work. That optimism should be understood, however, as being informed by my own experience of the frustrations, difficulties, and successes involved in mobilizing for reforms in a multi-level political system. I have also come to understand that just as the actions within and by the USA affect policy developments in Europe, what happens here within the EU will have an important impact in the US. There is already evidence of this in the “European” innovations being pursued by US grassroots organizations working on peace issues, health system reforms, protecting the environment, and improving economic equality. The extent to which a sense of Euro-optimism is warranted is a question that will only be answered over time. My hope is that this dissertation offers some useful new insights regarding where and how to look for those answers.
ACKNOWLEDGEMENTS

Like all such endeavors, this dissertation has been a collective enterprise. Even if I am finally responsible for the contents, I can say with conviction that the better ideas contained in these pages are there thanks largely to insights gained from mentors, colleagues, and friends. Many of the most important ones were in my previous work, especially in the southern United States. Sibal Holt, Robbie Madden, Roger Guissinger, David Williams, Dennis Weeks, Wade Rathke, Victor Bussie, Sue Sherry, Arnold Bennett, Hal Ruddick, Nina Schulman, Larry Ginsburg, Jeff Kirsch, Peter Wood, Pat McCoy, Kurt Roscow and numerous others all played an incredibly important role in that work. What I learned from them about organizing, politics, and policy making is reflected in the better parts of this dissertation.

In my academic life, my first thanks go to Barbara Hobson, who has been my advisor since I began at Stockholm University two years ago. It is with Barbara’s frequent input, constant support, and a sharp eye for missed metaphors that I have managed to bring this project to completion. I appreciate your confidence and encouragement, especially in the final process of deciding what to keep and what to save for another project. Tom Burns helped set this process in motion five years ago by returning a phone call from a curious potential student. He has been a formal or informal advisor through this entire process, as well as a collaborator. Thanks for getting me interested in the EU in the first place, and for backing me up when I felt stuck. I owe Jim Kemeny for originally suggesting the paradigm concept. In a conversation about developments in Swedish rental housing policy, Jim captured my description of the nature of the changes I believed were underway, suggesting I was describing “a sort of paradigm shift, leading to system drift”. Sven Hort taught me the meaning of the Swedish term “dispens” by seeing to it my rudimentary Swedish didn’t prevent me from taking my first sociology course in Sweden in Swedish. Thank-you Sven for the assistance you’ve given many newcomers to Sweden, including me.

Rogers Hollingsworth, Keith Pringle, and Johan Nylander provided very helpful commentary on a very early version of this manuscript. Feedback from Kerstin Jacobsson and Jens Rydgren, both discussants at my final seminar, has also helped make this a stronger piece of work, even if I haven’t been able to weave in all the good suggestions. I’ve also been fortunate to get good constructive feedback on the contents of individual chapters from David Vail, Will Coleman, Myra Marks Feree, Magnus Boström, Nora Machado, David
Langlet, Linn Persson, and Ingalill Montanari, as well as more general comments from Göran Ahre and Calle Le Grand. Mia Eriksson was especially generous with feedback on the domestic violence chapter, as was Olof Dahlbäck in his careful reading of some earlier drafts of my theory chapters. Thanks to my colleagues at the Department of Sociology for comments, conversations and camaraderie, and to the Department for the doctoral fellowship that made this work financially possible. I also want to express my appreciation to the EU officials, activists, and others who took time out of packed schedules to share with me what they were doing and why. Thanks to Steve Turner, Dave Lewis, and Tomas Korpi for ongoing discussions about all aspects of this and previous work, for the pub nights, and for helping me maintain the important links between my friendships and my professional life.

I can thank my parents, Elsie and Nick Carson, for planting the idea of doing graduate study in my head in the first place – even if they had long since stopped thinking I would ever get around to it – and for their encouragement once I did get to it. My parents-in-law, Ulrik and Signe Mattsson helped make an otherwise impossible balance of managing this work and commuting with young children possible by helping with a list of tasks too long to list here. Thanks to my wife Anna, with whom I have been fortunate to share both the values and activism of the time we lived in Louisiana, and the inspiration of academic work following our move to Sweden. She finished her academic track a couple of years before me, and has subsequently picked up a lot of slack to enable me to complete this dissertation. It goes without saying that it’ll be my turn to do the bulk of the laundry for the foreseeable future. Finally I can thank the two most important young people in my life, my daughter Elise and son Niklas. They were both amazingly patient during the final stages of this work, checking in periodically on my progress by asking “how many pages do you have left to write on your dissertation Pappa?” Elise and Niklas, I’m happy to tell you its done.

Marcus Carson
Stockholm, 2004
Have I said clearly enough that the Community we have created is not an end in itself? It is a process of change, continuing that process which in an earlier period of history produced our national forms of life. Like our provinces in the past, our nations today must learn today to live together under common rules and institutions freely arrived at. The sovereign nations of the past can no longer solve the problems of the present; they cannot ensure their own progress or control their own future.

~Jean Monet

A. INTRODUCTION

Efforts to achieve a union of European states have been fueled with dreams of greatness, wealth, larger markets, greater stability, and a better life for the continent’s inhabitants for over half a millennium (1992). But it was not until the emergence of the European Union\(^2\) (EU) over the past half century that any considerable realization of such dreams was accomplished by peaceful means rather than by attempts at military conquest. The EU and its member states have succeeded in institutionalizing over the past five decades a shared supranational framework for joint deliberation and concerted action to address common concerns. Under the rubric of “subsidiarity”, they have also

\(^1\) (Memoirs of Jean Monet, c.f. Byrne, 2001/05/25)
\(^2\) The current name of European Union (EU) is generally used for the sake of consistency, even where the technically correct term might be European Communities.
cordoned off certain categories of issues to be kept under national control, although the boundaries between what is considered to be properly national and properly “European” have proven in practice to be both diffuse and mobile.

Despite the variety of undertakings the EU numbers among its many accomplishments, the goal of European integration\(^3\) has remained difficult and contentious. At the heart of this struggle is the question of which areas of public policy should be integrated and for what purposes – and which should not. The sentiments vary considerably depending upon how efforts toward integration are applied to markets, to security arrangements, to social policy and welfare, or to other distinct areas of public policy concern in Europe. Given Europe’s history of divisions and conflicts, however, the integration that already been realized could be considered quite remarkable\(^4\).

Within institutional, political, and conceptual constraints, the supranational governance embodied in EU institutions has harmonized a wide range of European legal and regulatory structures. This achievement has not been even on all fronts, however. Movement toward reducing the divisions symbolized by national boundaries and developing and strengthening Europe-wide standards has been far greater in economic than in social policy (Hobson, 2003a; Offe, 2003; Scharpf, 2002; Beck et al., 1998; Montanari, 1995). There are good reasons for this. Kohler-Koch (1997:49) observes that the “basic philosophy of the treaties remains dominant: welfare will be provided by the economic growth accruing from the economics of a common market and not from the regulatory and distributive capacity of governments”. Accordingly, economic integration and market-oriented goals in particular have generally held center stage; they remain primary in the treaties and are clearly reflected in what are typically considered to be among the major policy accomplishments of the EU - the single market and monetary union.

As measured by performance on its stated goals, EU market integration has been a great success, but on social goals, lofty rhetoric has been less often complemented with policy authority, concrete projects, and demonstrable results. The historical record suggests this is less a function of the ambitions of European institutions than it is the reluctance of member states to relinquish certain kinds of policy authority (Rossilli, 2000b; Cram, 1997; Leibfried and

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\(^3\) Defined generally as the development of common policies at the supranational, EU level. This is similar to, but not exactly identical to “Europeanization”, which is sometimes used to refer to the shift of policymaking authority from the national to the EU level.

\(^4\) On the one hand, the desire to avoid future military conflict and manage related security concerns was among the strong concerns driving early efforts toward European integration. War between EU member states is now virtually unthinkable. There has also been strong resistance to specific aspects of European integration during different periods; national leaders such as Charles DeGaulle and Margaret Thatcher, for example, adamantly sought to limit increases in the scope of EU authority.
Pierson, 1995b; Addison and Siebert, 1991). There are numerous reasons for this reluctance, among them the fact that political elites in member states are understandably nervous about upsetting the delicate balance of constituted in national social policies (Cram, 1997), that they may simply not see European-level social policy as being in their interest (Moravcsik, 1998), and that social protections have evolved in individual member states along very different lines, reflecting their own particular configuration of organized interests, and institutional and cultural influences (Scharpf, 2002; Baldwin, 1990; Esping-Andersen, 1990). As of the mid-1990s, the overall assessment was that “by most accounts the social dimension of the EU remains rudimentary” (Pierson and Leibfried, 1995:3).

Throughout the history of the EU, social concerns have been largely subsidiary, a province of member states. They have been secondary at the EU level to market-defined goals, which have been oriented toward freeing economic actors from regulatory interventions considered to serve protectionist or non-market purposes (Stone-Sweet and Sandholtz, 1998; Scharpf, 1996; Streek, 1995). Moreover, given that EU law takes precedence over national-level policy in the areas in which it has competence, this unevenness in the institutionalization of economic versus social policymaking authority has produced a “constitutional asymmetry between policies promoting market efficiencies and policies promoting social protection and equality” (Scharpf, 2002:645). This phenomenon has had significant consequences, since many, if not most, major issues are multi-faceted. One result of the EU’s constitutional limitations is that a portion of these interconnected dimensions is largely off limits to EU intervention, with the result that where EU-level market rules and national-level social policies come into conflict, market priorities take precedence by default, as occurred when the EU took action to keep other member states from blocking the import of British beef during the early stages of “mad cow disease”. Such occurrences reinforce the perception of the EU as primarily concerned with market integration at the expense of social protections, and this type of actual and potential policy outcome has been the source of ongoing widespread reservations about the EU. They are evident, for example, in referenda in Denmark, Ireland, and Sweden, as well as public opinion polls.

5 Pierson & Leibfried’s own assessment at the time was that some areas of social policy, such as gender equality and occupational health and safety, were quite developed. Their statement represents an assessment of the views generally held at the time.

6 These would include, for example, the failed first referendum in Ireland on the Treaty of Nice, the prominence of anti-EU positions in Denmark’s most recent elections, and the refusal in Sweden to embrace monetary union. In Sweden, both the EU Parliament and European Commission ranked last on a recent survey of Swedish citizens’ trust in various public institutions. See also, Gabel (1998) and Deflem and Pampel (1996) for discussion of the kinds of factors believed to contribute to opposition or support of European integration among European populations.
AN EMERGING “SOCIAL” DIMENSION?

Following the launching of the Single European Market in 1986 and the subsequent adoption of the Social Charter 1989, academic interest in the relevance of the EU’s social dimension resurfaced (Addison and Siebert, 1991; Kenis, 1991), and intensified during the course of the 1990s (see, for example, Geyer, 2000; Beck et al., 1998; Cram, 1997; Leibfried and Pierson, 1995b; Westerlund, 1995). Sector-specific research points to important developments in several policy sectors, including employment policy (Offe, 2003; Trubek and Trubek, 2003; Jacobsson, 2001; Westerlund, 1995), public health and environment\(^7\) (Carson et al., 2001; Vogel, 2000; Chichowski, 1998; Vogel, 1997), and gender equality (Helfferich and Kolb, 2001; Pollack, 2000; Rees, 1998), as well as other diverse areas (Burns et al., 2001; Pierson and Leibfried, 1995). These observers noted the increasing importance of social concerns in a broad array of discourses and policy developments in these areas and others.

A number of especially important new developments became apparent during the late 1990s. Quite contrary to the general impressions and expectations of many observers, social priorities emerged as a driving force in key areas of EU policymaking. In several important policy sectors, rather than following a generally neo-liberal mode of deregulation across the board, EU policymaking institutions were imposing European-level regulation that served primarily social purposes on market actors – to protect public health, to preserve the environment, and to improve equality between women and men. In addition, other concerns with little obvious connection to completing a single market also emerged: improving transparency and democratic accountability, concerns about racism and xenophobia, protecting the rights of indigenous minorities, and countering violence against women, to name a few. These developments were reflected across the spectrum of EU policy, from the “low” politics of “soft law” action programs and “hard law” Directives and Regulations, to the “high” politics of Treaty revisions. They were by no means comprehensive, but neither were they random. Moreover, the broad form taken by the developments suggests something more than isolated or ad hoc shifts within diverse policy sectors. It points to an important reordering of guiding principles and priorities, and the emergence of a new public policy paradigm in EU policymaking.

These developments were particularly striking in the EU policy sectors concerned with food, chemicals, and gender equality. In food policy, the EU shifted from its earlier mode of integration through deregulation to integration

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\(^7\) Although I do not equate environmental concerns with social concerns, they are often interrelated. Consequently, the development of EU competence on environmental concerns is taken up in several areas of this dissertation, even though environment per se is not a focus of attention. It is important here primarily in its connection with worker and public health concerns, and in terms of placing constraints on market activity for non-market purposes.
through establishing a common body of regulations to protect food safety, including the creation of a European Food Safety Authority. Under chemicals policy, the EU capped a decade-long effort ban the commercial product asbestos. A subsequent series of major policy documents (White Papers) outlined concrete new proposals for regulating potentially hazardous products under EU chemicals policy following the guiding logic employed in the asbestos case. If implemented, these would fundamentally alter the nature and expand the scope of EU regulatory intervention chemicals in the interest of protecting public health and the environment. In the area of gender equality policy, the EU went beyond its previous labor market limitations to make equality between women and men a core goal of the EU, and to add the issue of domestic violence to the list of social problem areas in which it engaged.

To be sure, each of these developments came with important limitations, and none are fully institutionalized. Nonetheless, they represent significant breakthroughs. The depth and breadth of EU policymaking pertaining to social issues has expanded substantially, representing an important challenge to a long-standing emphasis on market-defined problems and priorities. In each of these areas, EU engagement was further legitimized through amendments added in the Maastricht (1993) and Amsterdam Treaties (1999). The new policy authority signaled a new phase of institution building, but it also represents a culmination of mobilization and policy developments over the course of the previous decade.

The developments of the late 1990s build on a foundation set in place in increments over the history of the EU. Sympathetic observers are quick to point out the long-standing record of EU effort and activity around a wide range of social concerns. Significantly, concerns such as worker health and safety, employment retraining, and equality between women and men, for example, have been part of the legal competence granted the EU since the initial treaties were signed setting the process in motion, although these came with important limitations. In some respects, the very strengths of the early EU social policy and competence have also been part of its weakness. The “sole purpose envisaged in the Treaty of Rome for social policy was to make a Europeanwide labor market. Community jurisdiction on social protection thus was limited to work and employment-related matters, excluding such classic social policy issues as pensions, unemployment, housing, family, the disabled and the young” (Streek, 1995:397). There were efforts to remedy this weakness, and as early as 1972, the Paris Conference of Heads of State declared its support for a “vigorous social policy, having the same importance.

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8 “Competence” is the EU term for treaty-sanctioned legal authority to make policy and/or take regulatory action
9 The Treaties of Rome, 1957 - the Euratom Treaty (Euratom), and the Treaty establishing the European Economic Community (EEC), and their precursor, the European Coal and Steel Community Treaty (ECSC) 1952.
and the achievement of economic union” (Addison and Siebert, 1991:600). However, a general economic downturn combined with other factors contributed soon after to the Council retreating somewhat from the position, cutting short the effort to develop an EU level social policy. The effort was slowed, but by no means stopped altogether, so that even the most arguably neo-liberal and free-market oriented treaty revision, the Single European Act (1986), brought with it expanded EU competence in important areas of social policy. Such competence was broadened under the Maastricht Treaty (1992), and again under the Amsterdam Treaty (1999). During the course of the 1990s, there was a flurry of work programs and other initiatives, policy proposals, and concrete legislation pertaining to social issues on a European level.

The essence of these developments would seem to be that important social issues have been brought to the fore at the EU level, posing a significant challenge to what is widely seen as the primarily neo-liberal, market orientation of the EU. The question is whether they represent anything more than the political “log rolling” necessary to achieve the level of support necessary to reach agreement. Are such developments largely accommodations to support efforts to build a de-regulated economic Europe – or do they represent significant steps toward the kind of “Social Europe” that at least some of its founders had in mind? These questions can be seen as located within a general area of inquiry regarding whether the overall dominance of the market paradigm in EU policymaking may have been altered, in what specific ways, and what kinds of factors contribute to that process?

B. AIMS OF THE DISSERTATION

This dissertation addresses itself to two sets of core questions within this broader context: 1) What kinds of factors generated the important policy changes of the late 1990s? What were the processes by which goals and priorities defined in terms of their “social” qualities – in contrast to “market” – became more legitimate and influential during the late 1990s than earlier? 2) How have their related discourses successfully competed with the heretofore more legitimate and powerful market discourses in the EU context? What are the institutional and cognitive foundations of these changes, and who are the actors involved?

This also raises related questions that can be considered standard fare for EU research: What kinds of factors contribute to certain policy areas becoming the province of EU policymaking – whether by their emergence as new types of problems on the European stage, or via upward shift from national or regional levels? What do such tendencies suggest for future EU policymaking regarding the social dimension?

I have pursued answers to these questions through case study research in the policy sectors dealing with food, asbestos and chemicals, and equality between women and men. Issues in each of these sectors are multi-
dimensional in nature, including both market and social qualities. Food policy, for example, includes agricultural, market, cultural, and public health components. The regulation of chemicals has economic, health, and environmental repercussions. Goals connected with pursuing greater equality between women and men affect labor markets, employment, political representation, and family and personal relationships. Key developments in each of these sectors during the 1990s emphasized the social qualities of the issues within it.

The first of the above questions represents an effort to better understand important new manifestations and developments in the ongoing competition between actors guided by what can be referred to as “free market” and “social market” paradigms. In what ways are these competing “paradigms” concretely reflected in the cognitive models of EU actors as revealed through discourses, policy arguments and accounts, and in the institutional structures of the EU? The second question is primarily theoretical, concerned with processes and factors that drive the process of policy change, and more broadly, of European integration. This effort draws on neo-institutional approaches to the European Union (Fligstein and Stone Sweet, 2002; Jachtenfuchs, 2002; Olsen, 2002; Burns et al., 2001; Flinkstein, 2001a; Peterson, 2001; Stone-Sweet et al., 2001; Andersen and Eliassen, 1996b; Marks et al., 1996; Leibfried and Pierson, 1995b; Andersen and Eliassen, 1993; Bulmer, 1993), and to public policy generally (Hollingsworth et al., 2002; Campbell, 1998; Hollingsworth et al., 1994; Thelen and Steinmo, 1992; Hall, 1989a; Burns and Flam, 1987).

Given that my goal here is not so much to map out the development of new EU social policies as it is to understand and explain how that development is unfolding, I pursue these broad questions through original case study research in the three policy sectors identified above. Greater detail is provided below, but the common theme that links these sectors is that in each, significant steps have been taken that have resulted in EU intervention in market activities to achieve social purposes. This is not to say that market considerations have been case aside, but rather, that policy priorities have been reordered in each sector in ways that place social goals ahead of market goals.

The results of the case studies taken up in this dissertation argue that within important policy sectors, developments in social policy go well beyond the symbolic or minor accommodations that might be deemed necessary to further market goals. In the cases under examination, the social dimensions of important public policy issues were increasingly taken into account and prioritized, the policymaking processes of the union opened up to become more participatory and democratic, although not in a conventional sense, and the Europeanization of competence on social issues tended to complement national level social policies designed to protect the public rather than dismantling them. The details of these findings are presented in the three sector-specific case studies in subsequent chapters. In addition, similar
developments in other areas of EU policy suggest that development of the EU’s social dimension may be more than a local phenomenon tied to particular policy sectors.

While the individual case studies examine important shifts in specific policy sectors, these developments also take place within the broader context of the tension between contrasting conceptions of the core purpose of the European Union – between “Common Market” versus “Social Europe”. On the one hand is the vision of a unified Europe as economic Europe. It is embodied in specific projects ranging from the “Common Market” and the “Customs Union” to the “Single Market”. On the other hand is a vision of a “Social Europe” built on democratic institutions and democratic participation, a high level of social welfare, and a distinctive “European Social Model”. While developments in any EU policy sector are conditioned by this broader context, it is equally clear that the context itself is influenced by feedback effects arising out of policy successes and failures – and by related market successes and failures. It is in this context that the case studies have something to say about the broader phenomenon of European integration.

ONGOING RESERVATIONS

The political backdrop of future European integration is influenced by a broad critique of the European Union that includes this “market” versus “social” dialectic, but also takes account of the related issues of who should participate in policymaking, under what conditions, for what purposes, and to whose advantage. Apart from the various historical-legal reasons EU social policy lags behind market integration, the fact of this asymmetry has supported a variety of criticisms, objections, and reservations. The reservations and concerns expressed about further European integration that are of primary concern here are expressed in three principle areas: 1) the substantive policy priorities of the EU, (i.e., its broadly free-market orientation), 2) in its lack of conformity with contemporary democratic norms (i.e. the “democratic deficit”), and 3) in its assuming decision-making authority believed to rightly lie elsewhere (i.e., the questions of sovereignty and subsidiarity). These issues are deeply intertwined. In practice, they tend to be folded into one another, and one may serve as a proxy for the others. Nevertheless, they are qualitatively different issues. To better understand the process of Europeanization of specific policy sectors, these elements must be “unpacked” (Hooghe and Marks, 1997).

Some objections to the EU stem from the concern that it simply cannot live up to its promises of a better life for the people of Europe (Judt, 2001) – or worse, that its emphasis on deregulation will undermine the existing level of general welfare by further contributing to the erosion of national-level social policy arrangements (Streek, 1995). European-level policy limits the repertoire of policy choices available to European states in terms of both the tools
available for managing the economy and various forms of social protection (Scharpf, 2002). Market actors such as multinational corporations are seen by many European NGOs, for example, as the principle supporters and beneficiaries of EU policy thus far, a perception that is echoed in scholarly accounts (Stone Sweet, Sandholtz, and Fligstein, 2001). Beck, et al. (1998) and others have argued that neo-liberal inspired free market ideas about how public policy should be designed have been seen as more legitimate and influential, generally overshadowing dreams of a Social Europe. Given the historical emphasis on constructing a common market and the legal competence defined in the succession of Treaties, this is hardly surprising.

Process oriented reservations are expressed in the ongoing discussion directed toward the EU’s “democratic deficit” (Rossilli, 2000b; Andersen and Eliassen, 1996b). The decision-making institutions of the EU do not fit well with normative expectations of democratic governance. Just what sort of decision making body the EU remains the subject of much speculation and theorizing for the past five decades (Schmitter, 2004; Peterson, 2001; Stone-Sweet et al., 2001; Aspinwall and Schneider, 2000; Rosamond, 2000; Moravcsik, 1998; Stone-Sweet and Sandholtz, 1998; Andersen and Eliassen, 1996b; Marks et al., 1996). Earlier in its history, the intergovernmental nature of the EU permitted it draw on the legitimacy of member state governments, any of whom could veto a proposal for new legislation (Moravcsik, 2002), and the EU enjoyed a generally passive, if shallow consensus. The broadening of its legal competence and the expansion of Qualified Majority Voting (QMV) under the Single European Act (SEA) have undermined this source of legitimation, since individual member state preferences may be overridden on issues related to completing or regulating the internal market, as well as on some key social issues. However, the European Parliament remains comparatively weak, although it has gained significant powers in the past decade. These issues of governance are related to the question of who are the legitimate participants in particular kinds of decision making, and consideration of whether and to what extent any public institutions should have the legitimate right to regulate certain forms of activity. Considerations of what should rightly be dealt with the public sphere of collective rule making and what should rightly remain off-limits to policymaking institutions applies not only to the well explored arena of “politics against markets”, but also to other types of social concerns, from social exclusion to combating domestic violence.

Concerns related to issues of subsidiarity are often expressed in terms of EU intrusion upon the sovereignty of nation-states, although in less interest-

10 Equal treatment of women in working life and worker health and safety are important examples.
11 Stephen Krasner (1995) points out that sovereignty is a concept often associated with the Westphalian model of the state, based on the exclusive exercise of political authority within
laden terms, they focus on which level (local, national, or supranational) various types of policy are best managed and/or can be made most accountable. An important normative argument here is that decisions are best when made close to the people affected, and that local democracy enhances the chances for engagement and participation. The balancing argument to this that local democracy is nested in a broader social, economic, and cultural context that is largely beyond local control, and which includes established power relationships. This aspect of the sovereignty/subsidiarity question represents a common thread between market and social that links back to the question of the substance of European law and regulation, given that the “constitutional asymmetry” of the EU tends to privilege market priorities and goals over the social.

Clearly, these issues are not unique to the European Union. The competition between variations on “free market” versus “social market” models of governing ideas and priorities has been a major preoccupation of public policy in Europe and North America for the past half century, and its study has generated a significant body of literature related to welfare state models (Sainsbury, 1999; Esping-Andersen, 1990; Tilton, 1990), various aspects of social policy (Hobson, 2000c; Leibfried and Pierson, 1995b; Gillroy and Wade, 1992; Saltman and Von Otter, 1992), and public regulation of capitalist economies (Hollingsworth et al., 1994; Hall, 1989a; Esping-Andersen, 1985).

Likewise forms of governance. Individual nation-states and supranational organizations alike currently struggle with their own particular “democratic deficits” as they seek to balance competing goals and manage increasingly complex policy questions (Burns, 1999; Held, 1997; Dryzek, 1996a). Sovereignty is an ideal-type which also turns out to be seldom realized in practice; the supposed sovereignty of nation-states has been routinely traded away voluntarily, compromised, or forcefully violated (Krasner, 2001, 1995).

Struggles as to the “level” of governance where policy making should take place can be found in Scandinavia in the form of centralization/decentralization (Villadsen, 1996; Olsson, 1990) and in federal arrangements such as the USA in the institutionalized struggle between centralized authority and individual states’ rights. They are also visible in protests such as those in Seattle and Washington at the 1999 WTO meeting over the ceding of what are considered national policy questions to international bodies. While some of this struggle revolves around normative beliefs regarding how and at what level democratic participation is best cultivated, actors also frequently seek to move their issue to the policymaking arena in which they believe they are most likely to prevail (Mazey and

defined boundaries. Krasner argues that in practice, this is an ideal type; compromises of this model have been more the rule than the exception (whether by voluntary or involuntary means).
Richardson, 2001; Fowler, 1994). This strategic practice is sufficiently common in multi-level political systems to have earned the label “venue shopping” (Baumgartner and Jones, 1991). Embedded in many of these latter struggles are questions of the extent to which many issues should be considered subject to collective decision making and public regulation at all – “private” rather than “public” matters.

If these issues are not unique in the context of the European Union, neither are they new. The complex tensions between “market” and “socially” defined priorities have been present from its very conception, although perhaps not so clearly linked with issues of governance and subsidiarity. The intellectual heritage of the European Union lies not in the movement for international free trade, but in the desire to combat nationalism, avoid future military conflict, and cultivate the social conditions that contribute to a high level of welfare among European peoples. Economic integration was seen as an important means for pursuing these goals, in part through regulating at a comparable level, market transactions that had already expanded beyond national boundaries (Robbins, 1998 [1937]). European big business was actively shunned by the early architects of European integration as being both too nationalistic and generally unsympathetic to the broader social goals they pursued (Cowles, 1997). Moreover, large enterprises were generally reluctant to embrace the Common Market idea out of concerns about how they might fare. But means would seem to have become ends in themselves; the EU’s deregulatory mode of “negative integration” of the past two decades has been frequently characterized as a largely neo-liberal inspired, market-oriented project (Pollack, 1998a; Streek, 1995). This is evidenced in the constitutional asymmetry pointed to earlier (Scharpf, 2002), in the process of “negative integration”, and in the legitimating discourses considered to have weight at the European level.

C. “COMMON MARKET” VS “SOCIAL EUROPE”

The “Common Market” versus “Social Europe” distinction has been characterized as a struggle between backers of neo-liberal ideals and those who advocate some form of regulated capitalism (Hooghe and Marks, 1997:3). Briefly summarized, market exchange is the productive engine that generates the resources that provide for social welfare in each of these conceptualizations. The two models differ most strikingly in their priorities, their causal explanations, and the actors they legitimate. The former emphasizes the maximization of social welfare as the byproduct of unfettered economic exchange and minimal regulation (Boaz and Crane, 1993), permitting and promoting greater specialization and efficiency. In this conception, regulation for non-market purposes (beyond defining property rights and rules of exchange) is an adjunct – intended only to curb the destabilizing effects of significant market failures. In contrast, the latter
emphasizes social citizenship as the highest purpose, and points to the need for intervention by democratically accountable actors (typically with the state as the vehicle) to harness markets’ economic productivity not only to serve the public good, but to keep competitive markets from self-destructing. As used in this dissertation, the term “social policy” is broadly defined to include T.H. Marshall’s definition of regulating markets to produce social benefits they would not produce on their own (c.f. Pierson and Leibfried, 1995). It also includes policy that defines the rules of social interaction in primarily non-market relationships between individuals and between different groups in society. Policies pertaining to social inclusion and exclusion, violence against women, or political representation not tied to property ownership are examples of this type of social policy.

These separate public policy paradigms – broadly speaking, market versus social – differ most in their emphasis on different problems and the public policy questions they define: in their emphasis on individual versus collective responsibility for general welfare, the production versus redistribution of wealth, and in the ways in which they seek to channel entrepreneurial energy in the promotion of self-interest versus societal interest. In practice, both approaches seek a balance between competing principles; what differs most is which principles are given priority in the development of public policy.

The indications of a shift of policy emphasis referred to above therefore represent more a re-ordering of institutional priorities and strategies than the emergence of completely new concerns, although some of the details are certainly new. The central goals guiding initial post-war efforts to establish a European Union were economic recovery and protection of social welfare by making future wars between European states difficult, if not impossible (Holland, 1994; Nicole & Salmon, 1993). Economic integration has been both a strategy and a goal in itself, but these differing motivations for pursuing market-friendly policies have contributed to a widespread perception of the EU as principally an economic union (Rosilli, 2000; Stone Sweet and Sandholtz, 1998; Kohler-Koch; 1997) – particularly since the Single European Act strengthened EU decision making authority in matters connected with completing the internal market.

Until the late 1980s, there were relatively few voices demanding that the EU take up social concerns; the focus has largely been at the member state level (Ross, 1995:360). Such concerns were either being addressed with what was considered to have been somewhat satisfactory results at the national level

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12 Sylvia Walby (1999c:1-2) notes that generally, the impact of the EU on social issues is theoretically and empirically undervalued, and that “there are policies of social regulation which have a strong social impact which tend to be neglected or underestimated in the evaluation of the impact of EU social policy”, but which are overlooked because of an overly narrow definition of social policy. This analysis seeks to overcome that limitation.

13 There are exceptions to this, of which the push for gender equality is a notable one.
or it at least seemed the most likely forum in which the desired goals could be achieved. In practical terms, the fact that many of the organized actors most concerned about social issues have been – and remain – strongest closer to home has helped reinforce this perception. But more than that, the organizational culture and political base of many NGOs is rooted in the individual member states, along with their political relationships, organizational history, financial resources, understanding of the political and policymaking systems, and knowledge of how to ground claims for new policy in the norms of their respective societies (Streeck, 1996). In this context, Brussels is indeed foreign territory for many of the Union’s citizens.

This all changed with the “re-launching” of Europe through the single market program in 1986. Lobbying activities virtually exploded during the period following the passage of the Single European Act (Greenwood and Aspinwall, 1998; van Schendelen, 1993; Andersen and Eliassen, 1991). In effect, transnational commercial actors supported and facilitated the development of a new policymaking arena, which, in their primary area of interest, often supercedes the authority of national arenas in which their likely opponents are better equipped (Stone-Sweet and Sandholtz, 1998). For their own part, the public interest NGOs whose political leverage resides in less mobile resources – their members – were slower to set up shop in Brussels

While the Commission itself has frequently stepped in to facilitate the creation of European level public interest NGOs (Cram, 1998) in the form of umbrella organizations such as the European Environmental Bureau (EEB), the European Public Health Alliance (EPHA), the European Women’s Lobby (EWL), the European Consumer Federation (BEUC), and numerous others, the NGOs remain enormously under-resourced, out-financed and out-staffed by commercial interests and the consultancies that serve them (Nylander, 2000).

Where demands for social policy have been made, they have often been in reaction to the social consequences of the deregulation undertaken to achieve the internal market (Smith, 1999). While such effects are part of the process of internationalization in many policy areas, the EU is one of the more visible actors in a larger process that generates some of these effects. In many instances, the demand has been either for a better balance between the market and the social, or for the EU to simply keep out. But while demands have been directed at the EU owing to its apparent interference with national policies once considered successful, calls for action on social issues have also been made where satisfactory results have proven difficult to achieve at the national level, such as with policy on equality between women and men (Streek, 1995).

14 While the European Environmental Bureau (EEB) was established in 1974 by the Commission (shortly after the creation of its environmental directorate), international environmental organizations did not open offices in Brussels until the late 1980s (Webster, 1998). Other European level NGOs, such as the European Public Health Alliance, the European Women’s Lobby, or the European Social Forum were established during the 1990s.
As a result, new European-level interests are emerging to call for the active intervention of EU institutions in new policy sectors and spheres of activity— or new types of intervention in established sectors. The issues that concern them often come under broad, and sometimes ambiguous headings: gender equality, fundamental rights, environmental protection, consumer protection, or public health. These common themes link the substance of the individual policy sectors and issues taken up in this dissertation, and often overlap one another. They are fleshed out and given force by the development of concrete concepts and policy strategies that break new ground or suggest new directions; mainstreaming\(^\text{15}\), sustainability\(^\text{16}\), and the Precautionary Principle\(^\text{17}\) have emerged as both guiding principles and concrete strategies. These general themes are also reflected concretely in specific policy sectors.

D. **Theoretical Assumptions and Orientation**

The theoretical grounding for this dissertation lies primarily in the “new” institutionalism. I draw principally on the sociological neo-institutionalism, which, in general, seeks to integrate the reciprocal influences of socio-cognitive phenomena and structural forces on human interaction and agency. I also draw on the historical institutionalism, which emphasizes the importance of historical context and the ways in which it influences the development of public policy over time. Socio-cognitive factors are generally grouped under concepts such as “ideas” “norms” “frames” “paradigms”, and “mental models” to “culture”. This provides the broad cognitive context for the concept of public policy paradigm, which is the concept I use to map the relationships between changing ideas and public policy. Structuring is conceptualized as guided by institutions, which can be characterized as complexes of rules and procedures that shape human interactions in a given sphere of activity (Burns and Flam, 1987). Agency is seen as embodied in a range of actors that encompasses organizations at all levels, including states, transnational and supranational organizations, NGOs, corporations, policy networks, etc. It also

\(^{15}\) “Mainstreaming” is a strategy by which certain social policy goals have been formally prioritized in the EU Treaties so that they are to be pursued “in all policies of the Community”. It has been applied in environmental, public health, and gender equality policy, although it has most often referred to in conjunction with gender equality.

\(^{16}\) Sustainability is a concept introduced in the effort to optimally balance social, environmental, and economic development goals. The precise balance that should be achieved between these different concerns is somewhat vague and remains contested.

\(^{17}\) The Precautionary Principle is an explicit statement of priorities to be used by the Commission for deciding on a course of action regarding first environmental, and now food safety matters, where the scientific evidence is inconclusive. It requires the party wishing to import or market a product to demonstrate it is safe when there is credible evidence to suggest that it might pose a hazard. This principle is outlined in some detail in a White Paper published in February of 2000 (COM(2000) 1).
includes individual actors – typically in specialized roles such as “policy entrepreneurs” or “skilled individuals” (Fligstein, 2001b; Hoskyns, 1996).

While there remain several competing and sometimes conflicting theories and approaches in EU research, a significant consensus has emerged around the importance of institutions (Schmitter, 2004; Peterson, 2001; Stone-Sweet et al., 2001; Aspinwall and Schneider, 2000). Institutional analysis is well suited to addressing a defining characteristic of EU policy: that developments in a) the substantive content of EU public policy, b) European integration (defined as the development of new competence at the European level – whether by changing levels or by developing new areas of public authority), and c) new actor configurations, are all moving targets. One of the goals of the case studies included here is to identify ways in which these might move in systematic relation to one another. The institutional complex defined by the combination of these factors represents a set of real-world compromises. These compromises are, however, not merely the result of packages of bargains made by state actors pursuing their economic self-interest. Rather, they are the result of bargains and compromises made by an array of influential actors who are guided by their own cognitive models of how the world is constructed, and from within which they pursue diverse ideal and material interests. This research is therefore guided by the view that rationality is context bound, operating within the parameters of these cognitive models (Nee, 1998). This theoretical orientation broadly challenges perspectives in which the role of rationality dominates in the policy process (Andersen, 2001). Indeed, Majone has gone so far as to argue along the lines that “policymaking can hardly be considered a rational enterprise” (Majone, 1992). Although the role of rationality in policy making may be circumscribed, rationally constructed explanations are important in the process of giving accounts for decisions made.

This dissertation emphasizes the role of ideas and ideals in the processes by which actors seek to initiate new policies and restructure policymaking institutions – or defend those already established. In general, the analytical strategy is to trace the evolution of institutional change in a process that moves from ideas through action to institutionalization. The basic elements of this change process include: a) the emergence of new problems, or the redefinition of existing phenomena as pressing problems, impelled by new claims and demands for structural change made by organized interests and policy entrepreneurs, b) the replacement of an established complex of policy ideas with a new one that is not comparable in the same terms, and c) the institutionalization of the new ideas in the form of new norms, policy competencies, revised or altered organizational structures and goals, and new types or groups of actors defined as having a legitimate role to play. Given that

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18 A brief discussion of the dominant theories of EU integration can be found in Chapter 2.
this approach focuses on the importance of socio-cognitive policy models and the discursive struggles that groups engage in to realize them in practice, I make use of the insights from portions of the literature on public policy and institutions, and to a lesser extent, social movements. Drawing primarily on Peter Hall’s (1993; 1992) work, as well as my own previous collaborative work (Burns and Carson, 2004, 2002; Carson, 2001; Carson et al., 2001), I use the concept of policy paradigm (discussed in greater depth in Chapter 2) to elaborate this complex of guiding ideas that serves as a model for managing policy issues.

**Policy Paradigms**

The basic starting point is a core assumption that “ideas matter”, particularly in the form of structured complexes of ideas. Notwithstanding the renewed academic emphasis on the power of ideas in politics and policy during the past decade, Campbell (2002) argues that still more effort needs to be devoted to understanding “how ideas, that is, theories, conceptual models, norms, world views, frames, principled beliefs, and the like, rather than self-interest, affect policy making”. The effect of conceptual models on policymaking (and vice versa) is the central empirical and theoretical concern of this dissertation. The conceptualizations of an issue or the kinds of issues that are to be handled in a policy area are therefore considered fundamentally important. Denzau and North (1993:1) argue, for example: “it is simply not possible to make sense out of the diverse performance of economies and polities both historically and contemporaneously if individuals really knew their self interest and acted accordingly. Instead, people act in part upon the basis of myths, dogmas, ideologies, and ‘half-baked’ theories”. At the same time, the feedback effects of new or existing policies may have a profound effect on the conceptual models. Conceptual models structure and constrain where and how policy pertaining to those issues is developed, what kinds of rules and actions are seen as appropriate and legitimate, and which kinds of actors are considered to be the appropriate and legitimate authorities for dealing with the issue. The ideas we are most concerned with here are interconnected and interdependent – the paradigmatic conceptual models through which actors perceive and understand the world.

The public policy paradigm is the central theoretical concept of this thesis. It is essentially a shared model of reality that guides policymakers’ problem-solving activities. The various interested groups and individuals in society may share this model, or may challenge it. The policy paradigm concept has been employed in several settings to analyze the effects of systematic conceptual changes on public policy (Burns and Carson, 2004, 2002; Carson et al., 2001b; Andersen, 1999; Coleman et al., 1996; Hall, 1993; Hall, 1992; Jenson, 1989). Peter Hall (1993; 1992), for example, outlines a concept of policy paradigm shift generated by policy anomalies and failures leading to a broader, partisan
policy debate. Coleman, et al. (1996) describe an alternative path to paradigm change that is more negotiated and corporatist in nature. Andersen (1999) and Carson et al. (2001) employ it to understand unanticipated policy developments within the European Union.

The policy paradigm concept fits within a wider theoretical framework emphasizing the role of social institutions in conditioning policymaking processes and other forms of social interaction. These efforts they have made skillful use of the paradigm concept to analyze the process of policy change. For the most part, however, they have not sought to elaborate the paradigm concept beyond Hall’s adaptation. Several factors argue that such elaboration is likely to produce additional insights regarding the process of policy change in general, as well as developments specific to the European union. An important theoretical goal of this dissertation, therefore, is to further elaborate the concept of policy paradigm, its internal logical architecture, and its relationships with institutions, actors, and their discourses.

INSTITUTIONS
A second core assumption, which also has become a cliché within academic discourse, is that “institutions matter”. Ideas do not float freely and conceptualizations are often contested. Some conceptual models of issues and policy sectors are better established than others, and they may be backed by established rules-of-the-game (both formal and informal) that guide how and by whom such questions are to be dealt with, and how rules are to be made or altered. Institutions are conceptualized here as systems of rules that govern social interaction and may be normative (shared understandings) or formalized (i.e. laws, procedures, etc.) (North, 1991; Burns and Flam, 1987). Institutionalized systems of rules condition power relationships (Burns and Flam, 1987). They also generate inertia, or a sort of path dependency, based on how similar issues have been handled in the past, especially the recent past, and based on the power relationships defined in those rules and the underlying assumptions embedded in them (Thelen and Steinmo, 1992). There may be substantial inconsistencies, incompatibilities, or incommensurability, between what is considered the most compelling way of thinking about a set of policy issues or problems, and the way in which existing institutionalized rules dictate that it should be dealt with. This can result in obstacles to effective problem solving, undermined legitimacy, and political tensions that destabilize the existing social order (Burns and Carson, 2002).

ACTORS AND ALLIANCES
This points to a third assumption: that “actors and alliances matter”. Where competing constellations of individual and organized actors emerge, choices may also be conditioned by the quality and nature of relationships with other organized or individual actors (Bourdieu, 1996). These may take different
forms, as policy networks (Coleman et al., 1996), policy advocacy coalitions (Sabatier and Jenkins-Smith, 1993), peak organizations, and the like, and may include alliances or conflicts with third parties who are considered relevant in the policy process.

E. RESEARCH DESIGN:
COMPARATIVE ANALYSIS OF CASE STUDIES

I approach the questions posed earlier through individual case studies that trace important policy developments in the trio of different sectors pointed out earlier: food, chemicals and asbestos, and gender equality. The food case examines the dramatic changes in EU food policy that were influenced by the crisis surrounding Bovine Spongiform Encephalopathy (a.k.a. mad cow disease) in British beef, and the subsequent dioxin contamination of Belgian poultry. The chemicals case examines the processes that culminated in a European ban on the commercial product asbestos, which is regulated under EU chemicals policy. The principles on which the asbestos case turned were adopted in a subsequent broad revision of the principles governing EU chemicals policy. The gender equality case examines the emergence of domestic violence against women as an EU issue. The issue of domestic violence is considered in the context of the broader evolution of EU competence to pursue gender equality goals, from its beginnings in the Treaty of Rome’s equal pay article, to its escape the bounds of workforce participation to pursue non-economic goals such as human rights.

CHOICE OF CASES

The policy sectors dealing with food, chemicals, and gender equality may seem at first glance an odd choice for comparison. Several important factors recommend these three as good comparative cases. First, within each there are fundamental tensions between market and social goals that extend beyond the policy sector itself to influence the further development of the EU. Food and chemicals are among the most important products in Europe’s common market. Many of the issues that arise under gender equality are evident in some of the tensions between employers and workers, and more broadly, questions about which kinds of issues are appropriately regulated by public bodies and which are best left in the private sphere. Second, the groups affected in the three policy sectors constitute important political constituencies that may align themselves either for or against European integration – either narrowly, within a given policy sector, or more generally, linked to integration overall. Moreover, each has contributed to cross cutting cleavages among organized actors that are generally in agreement at the national level. Third, this phenomena was evident the vote on monetary union in Sweden in the fall of 2003. Each of the major political parties had significant factions on both sides of the issue, and the
social concerns connected with each of these cases have followed a similar patterns of institutionalization in the Treaties – from first being mentioned as an issue that required attention, to being included within the general competence of EU institutions, to being “mainstreamed” – although both the ways and the degree to which each has been institutionalized varies significantly.

There are also important and potentially instructive differences. First, the nature of the social/market tensions differs. In the food and chemicals cases, important conflicts revolve around where the burden of proof of lies in managing known hazards and potential risks. This affects what types of potential social and economic costs can be externalized across time and social groups, and which must be borne by the producers who are the clearest short-term beneficiaries. The nature of actor constellations is also different. The changes in food policy were precipitated to a significant extent by the concerted, but non-coordinated action of European citizens refusing to purchase British beef. Consumer and public health NGOs played an important supporting role, but were not the driving force. In the case of banning asbestos, the gradual unraveling of the coalition opposed to its ban was a central factor, while organized groups in key member states pressed for the ban. In the gender equality case, the painstaking work of women’s organizations at the every level of governance from local to national to international eventually put the issue of combating domestic violence on the European agenda. The nature of the factors driving change also differs. Although there are incremental, evolutionary developments that contribute to change in each of the sectors over time, the food case is much more crisis driven at the European level, while developments in policy on gender equality have been incremental and steady by comparison.

Many of the important developments in European integration over the past decades have emerged from the “low politics” of sector-specific developments in the ongoing policymaking activity of the EU (Fligstein, 2001a; Peterson, 2001; Cram, 1997). While sector-specific policymaking takes place within the larger institutional context defined by the Treaties, empirical research demonstrates that there is an ongoing two-way interaction between sectoral policymaking and eventual Treaty revisions (Helfferich and Kolb, 2001; Nylander, 2000; Vogel, 1995). There is a similar two-way interplay across policy sectors\textsuperscript{20}, in which policy innovations in one sector are subsequently emulated in others. This is in part because entrepreneurial actors are able to anchor new concepts, claims, and arguments into a common complex of overarching discourses, norms, and rules. Examining these processes in the

\textsuperscript{20} This “spillover” was seen by neo-functionalists (see Schmitter, 2004; Holland, 1994; Haas, 1948) as an important driver of European integration.
work within individual policy sectors can therefore be expected to reveal useful patterns in how the nature of policymaking in the EU evolves over time.

Following this approach, revisions in the series of Treaties that form the quasi-constitutional basis of EU law are less defining moments than they are notable events in the larger process of institutionalizing specific policy ideas, goals, and priorities. In Simon Bulmer’s (1997) words, they are but “the tip of the iceberg”. Treaty-defined competencies are obviously important, but the historical record of the EU’s evolution makes it clear that both the Commission and the Council of Ministers have frequently chosen not to wait for new competencies to be established in the treaties before forging into new territory; such excursions have often helped set the stage for future Treaty revision (Cram, 1997; Vogel, 1995; Addison and Siebert, 1991). The emergence of new problems and stretching of old limits establishes the context within which the treaty-negotiating intergovernmental conferences take place. An important goal of the case studies in this research is therefore to better understand some of the ways in which day-to-day policy processes contribute to European integration on a grand scale; it sees the intergovernmental bargaining that produces the new Treaty revisions as part of a larger process of institution building.

CASE COMPARISONS

The general approach taken is descriptive and comparative, meaning I compare the patterns of policy development over time and across the three cases. The individual case studies I have included here examine the processes by which social concerns emerge to be taken up at the European level, and eventually take precedence over market priorities. The case comparisons are intended to identify commonalities, differences, and spillover effects, and in general, how the cases may be related to one another. This also requires clarifying some assumptions, since in the case of the EU, substantive content and the level of governance at which policy is taken up may vary in conjunction with one another. Conventional comparative approaches to analyzing policy and policymaking processes in the EU have had to finesse certain assumptions related to the conventional state and its authority to make policy (Peterson, 2001). Vogel (2000; 1997), for example, proceeds under an implicit assumption that the EU functions as a federal state analogous to the USA in his comparative examination of chemicals policy in Europe and the US. This assumption depends on differences in governance structures not being a significant source of the policy differences. Leibfried and Pierson (1995a) make this assumption explicit, pointing to the strongly federal characteristics of the EU/member state relationships, and the fact that it is no longer possible to understand what was once considered domestic policy in European states without also taking into account the “emergent multi-tiered system of governance” that is the EU. Working from such assumptions is
clearly legitimate, although it is not without its limits. While there is a perpetual tension between state and federal authority in US policymaking, this is vastly different from the comparative fluidness and sometimes indeterminate quality of policymaking authority in the EU. For example, getting an issue on the political agenda in the EU may require skillful framing of problems not only to make them relevant and salient, but also to define them as matters which the EU possesses the legal competence to take up. Alternatively, the rules that define whether a particular issue or policy can be addressed at the EU level sometimes change in conjunction with the substantive policy measures being contemplated. Taking both into account tells us something about the process of Europeanization of a policy sector.

I have approached the case studies in a manner similar to Burawoy’s (1991b) extended case method, which is characterized by an ongoing dialog between theoretical concepts and empirical data. Burawoy (1991b:11) points out that “to be sure, knowledge of the literature is not the contaminating influence that Glaser and Strauss attribute to it, but neither is it a sine qua non of research”. Indeed, numerous scholars (including Glaser and Strauss, 1967) have noted that our observations are quite dependent on the concepts through which we view the world (Sabatier, 1999; Sayer, 1999; Becker, 1998; Kuhn, 1970), even if those concepts are not consciously organized and formalized as theory. Central to Burawoy’s (1991b:9) argument is that “what is interesting in the field emerges from our theory”; this remains the case even where the empirical data requires theory to be revised. Burawoy’s approach seeks out anomalies that are revealed by situating the empirical phenomena in their historical and cultural context, enabling the further development and refinement of theoretical constructs.

The method for organizing the case studies is consistent with the logic recommended by Bennett and George (1997), which urges “structured” comparisons – a process of posing the same theoretically derived, categorical questions to each of the cases. Cases are chosen based on there being present important developments relevant to the categories/questions of theoretical interest or relevance. Given a focus on identifying cases with comparative value, Bennett and George point out that they should be comparable on the basis of a carefully defined “class” of events or developments” (1997: 2). In this instance, the “developments” can be briefly summarized as a reordering of core policy assumptions, priorities, and goals that constitute the conceptual model guiding policymaking in the area of interest between market and social orientation – a reordering which constitutes a conceptual, or paradigmatic shift. Such a shift includes a redefinition of the actors considered to have a

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21 It should be noted that important evidence was gathered via interviews with informants rather than participant observation (see Appendix A). However, my understanding of the interviews was supplemented by previous experience connected with policy making and interest organizations.
legitimate interest in decision making regarding issues in that policy sector – typically an expansion in the cases under examination – and either a de-facto or a formal recognition of that legitimacy via the adoption of new procedures that facilitate their participation. In addition, it entails an institutionalization of new areas of policymaking competence at the European level.

As with Burawoy’s approach, this model counsels that cases should be chosen which involve developments relevant to the theoretical framework used. The common developments in each of the cases include the conceptual shift from market to socially oriented priorities, the expansion of participation in the policy sector, and the emergence of new policymaking competence at the EU level. What differs between the cases is the set of factors that drive the policy change, the nature of actor constellations that fuel the change, and the extent of institutionalization of the new policy paradigm. Comparison of these developments should provide insight into the processes by which the kinds of concerns in question come to be prioritized as the subject of EU policymaking, those by which the social aspect of these issues comes to be prioritized over the economic, and the resulting ways in which costs, benefits, and risks are defined and regulated by public policy.

F. OVERVIEW OF THE DISSERTATION:

This dissertation consists of eight chapters. Chapters 1-4 include introductory, theoretical, and historical background relevant to the research. Chapters 5-7 consist of case studies in three separate policy sectors, while Chapter 8 is the concluding chapter consisting of analysis and concluding reflections.

Chapter 2 (The Power of Political Ideas) discusses the relevant approaches within the new institutionalism, then develops the concept of “policy paradigm”, the main analytical concept used in the case study analysis. It outlines the most influential theoretical approaches to studying the European Union and recent efforts to overcome core weaknesses in these established approaches. Chapter 3 (Public Policy Paradigms, Paradigm Shifts and the European context) in what is really the second half of a long theoretical chapter, I set out how I have sought to operationalize the theoretical framework. Chapter 4 (The Roots of EU Development: Ideas, Policy, and Institutionalization) outlines the historical roots of the EU idea(s), some of the actors who have championed them, and provides early historical background pertaining to the development of each of the policy sectors examined in the case studies. This background provides a glimpse of the historical context that influences EU policymaking in the three policy sectors, but is also interesting story in itself.

The empirical work of the dissertation is covered in Chapters 5-7. Each case study examines recent policy developments connected with issue areas
central to the social dimension. The individual cases represent EU policy issues in varying stages of development, including the transformation taking place in EU food policy (Chapter 5), the fundamental shift of policy priorities in EU policy that led to the ban on asbestos in Europe and related policy developments regarding hazardous chemicals (Chapter 6), and the emergence of gender equality as a core goal of the EU, with a focus on domestic violence and the strategy of gender mainstreaming (Chapter 7). Each of these chapters traces the development of institutional competence, identifies key organized interests, and illustrates how earlier policies have helped set the stage for current developments. The case studies illustrate the contention and struggle captured in various discourses that actors have used to frame the respective issues within their broader institutional and social contexts.

Chapter 5 on food safety takes up one of most important policy areas – and the source of one of the more severe crises – of the EU’s 50-year history. It examines the broad evolution of EU food policy and describes the policy responses to two major food safety crises: those triggered by so-called mad cow disease and by dioxin-contaminated poultry. The focus of attention is directed to both policy evolution and related events during the period from 1995 to 2001 – a period for which policy development can be characterized as shifting “from market focus to public health and consumer focus”.

Chapter 6 (Banning Asbestos, Controlling Chemicals: Paradigm Shift in EU Chemicals Policy) traces the incremental process by which the EU first established competence regarding asbestos, then regulated its handling and applications, and finally set in place a ban on its further use. The story sheds light on current struggles over future EU chemicals policy – another sphere in which market and public health goals compete head to head for first priority. The asbestos case serves as a particularly useful example of EU policymaking on chemical hazards in the workplace and environment; it has been characterized as representing a typical example of the progression of EU policymaking, and is yet markedly different in several respects. It develops in the context of both occupational health and safety issues and public health concerns, and illustrates how actors guided by these priorities present a challenge to those espousing open, minimally regulated markets as a higher guiding principle. These issues are analyzed by examining how EU policy assigns the burden and standard of proof of hazard, how it establishes responsibility in linkages between benefits and risks, and in the face of uncertainty, assessing to which actors and interests the benefits of the doubt tend to accrue.

Chapter 7 (Domestic Violence, Fundamental Rights, and Mainstreaming Gender Equality) – examines the unexpected emergence of domestic violence as an EU issue and its relationship with Gender Mainstreaming as a strategy for improving performance on a range of gender equality goals. It examines the role of efforts to define violence against women as a human rights issue,
both within and outside the EU, in the institutionalization of a gender equality agenda. Domestic violence against women – an issue frequently considered to be a private matter between intimate partners – has been established and legitimized as a public concern suitable for action at the European and supranational levels. Developments that have contributed to these changes taking place and the new possibilities that this new institutional basis establish are examined.

Chapter 8 (Paradigm Shifts and Institutional Change) takes up the comparative analysis of the case studies, identifying key similarities and differences between the cases. It briefly highlights some important parallel developments and offers reflections about the future development of Social Europe.

Discussion of the method of data collection, general research strategy, difficulties encountered and adjustments made is included in Appendix A.
CHAPTER 2

THE POWER OF POLITICAL IDEAS: POLICY PARADIGMS, INSTITUTIONS, AND ACTORS

-society as law coerces the individual from without, society as conscience coerces him from within.

- Berger & Pullberg (1965:203)

A. INTRODUCTION

Just as the European Union has evolved over the past half century, so too have the theoretical models that have informed and guided its examination and analysis. The fluidness of the EU and its policymaking as objects of study has presented unusual challenges and learning opportunities. As a result, the theoretical models employed to make sense of the EU have grown in both breadth and complexity as their subject matter has evolved, expanded, and supplied researchers with new problems, or new versions of old ones. Not coincidentally, the dominant competing theoretical approaches have often entailed concerns and basic assumptions closely related to those guiding the evolution of the EU itself. As the nature and pace of EU development has changed over time, so too has the explanatory power and consequent credibility and status enjoyed by a given theoretical model.

The primary purpose of this chapter is to outline the key theoretical concepts used in this dissertation. In particular, the concept of policy paradigm is elaborated and linked to the broader institutional framework used in

22 See Schmitter (2004:3) for an elegant and unusually clear typology of the various theories of European integration.
analyzing the case studies. Taking ideas, institutions, and alliances as fundamentally important, the central questions that emerge are how do they matter, under what conditions, and what are the relationships between them? This entails fleshing out the relationships between the particular types of ideas that constitute the internal structure of the paradigm and how it helps define interests and “logics of appropriateness”, sketching its relationship to policymaking institutions, and to actors connected with policymaking processes. I start this chapter by briefly outlining and commenting on the theoretical approaches that dominated earlier research on EU integration (and which remain important). The remainder of the chapter is devoted a discussion of the new institutionalism and to developing the policy paradigm concept in detail.

**INTERGOVERNMENTALISM & NEO-FUNCTIONALISM**

Much of the theoretical competition among efforts to account for the various aspects of European integration has taken place between intergovernmentalism and neo-functionalism, both of which emerged from political science. During periods in which EU development has stagnated, intergovernmentalism has held sway, while periods of more rapid European integration have been better explained by neo-functionalism. When the process has been stalled by the reluctance of individual member states to cede further sovereignty, intergovernmentalism has tended to enjoy status as the best analysis. This was particularly true through the late 1970s and early 1980s, when integration seemed to have ground to a standstill, prompting the descriptive label “Eurosclerosis”. When integration was re-ignited in the mid-1980s and the EU began once again to gain expanded authority in new policy sectors, neo-functionalism enjoyed a revival, and seemed to possess greater explanatory power (Schmitter, 1996b).

**INTERGOVERNMENTALISM**

The intergovernmental (or “realist”) approach (see Moravcsik, 1998; Hoffman, 1966) is an outgrowth of the study of international relations (IR). IR studies surged during the interwar years and again after the Second World War, fueled in part by the sense of need for building a web of relationships between states that could obviate the possibilities for future warfare (Rosamond, 2000). Nation-states are the overwhelmingly dominant actors in an anarchic world; treaties and other forms of international agreements structure their various relationships. It emphasizes aspects of the EU that are relatively constant and slow to change (states and treaties), and tends to see EU development in terms of an inter-state equilibrium punctuated by periodic intergovernmental conferences and subsequent treaty revisions. Intergovernmentalism works from an underlying assumption that the outcomes of EU political deliberations are a function of member states’ rational pursuit
of their interests and preferences, and that these are largely fixed. In doing so, it tends to define interests primarily in terms of maintaining the social order and political power, or sovereignty over clearly defined territory; all else is secondary.

Intergovernmentalism provides its most valuable insights under three kinds of conditions. The first is the processes that have slowed or halted European integration; it is representatives of member states who negotiate new treaties, that must sign off on overt changes in policy direction, and that wield veto power over new proposals. The second condition is one of “dis” integration, where member states break with European regulation by exercising policy authority in their own interest in violation of EU agreements. The third is where interstate bargaining results in increased integration, but based on a “lowest-common-denominator” position.

Intergovernmentalism’s starting assumptions pose several problems, however. Member state preferences are in practice neither as rational nor as fixed as the assumption typically requires. Empirical research on EU developments (including the case studies in this dissertation) also suggests that member state preferences (with respect to the EU) are unstable and shift over time (Parsons, 2002; Nylander, 2000). The most obvious example of such a shift is a change in governments that takes place based on internal political changes unrelated to European integration (see, for example, Parsons, 2002): the French under Charles De Gaulle or the British under Margaret Thatcher, for example, were far more guarded about relinquishing authority to the EU than either their predecessors or their successors. Moreover, as Schmitter (1996a:151) observed, “it undoubtedly helped that in the early 1950s an unusually homogeneous group of statesmen was governing the six original member states. Their common conservative and Catholic background and high degree of mutual trust may have made them exceptionally willing to take ‘le saut dans l’inconnu’ that such a novel measure implied”. This strongly suggests that cultural and interpersonal factors such as trust (see Fukuyama, 1995) may have critically influenced even high-level intergovernmental negotiations. This weakness of intergovernmentalism has been partially addressed by Moravcsik’s (1998) impressive efforts to illustrate how state preferences are formed leading up to the grand bargains produced through EU treaty negotiations. However, his “liberal intergovernmentalism” remains at its core a model of rational self-interested choices made by state actors. It takes as a given the broader context within which those rational choices are defined, and therefore has difficulty taking into account the role of ideas or changing context in shaping preferences.

23 This veto power varies depending upon whether unanimity or qualified majority voting (QMV) is used.
The assumption that takes nation-states as the only meaningful actors is also problematic. It obscures influential non-state actors at the European and international levels. The number of lobbying organizations that have set up shop in Brussels has exploded since the signing of the Single European Act (Anderson & Eliassen, 1996, 1993), and the study of the influence of European NGOs and other transnational organizations (including women’s organizations, the environmental movement, business associations, and labor unions, to list a few) on EU policy has become a virtual cottage industry. These developments suggest that preferences and interests are defined by complex interactions both within and external to national boundaries. This issue is particularly relevant when interests and issues are defined in specifically European terms (Carson, et al, 2001; Nylander, 2000). International organizations such as the UN, ILO, WHO, WTO, etc., also exercise influence independent of their constituent member states at both the EU level and within EU member states, and moral persuasion is by no means a factor to be discounted (Risse and Sikkink, 1999).

Stone Sweet and Sandholtz, (1998:2) further argue that from the strict intergovernmental perspective, institutions don’t exist, and “institutionalization is not an issue because the EC remains as it began, a set of bargains among independent nation-states”. These institutions are important, however. Simon Hix (1998:2), for example, notes, “the EU is more of a ‘political system’ than an international organization…with executive, legislative and judicial functions”. This ‘political system’ is not all encompassing in the Weberian sense; it does not apply to policy areas in which the EU either lacks the appropriate mandate or where it remains unclear and under contention. However, certainly in the areas within its legal competence, EU institutions are seen by many observers as important actors in their own right (Fligstein, 2001a; Wendon, 1998; Cram, 1997). As a complex of institutions, the EU is an actor that has proven itself quite proficient at stepping into the spaces generated by new problems, or by the unintended consequences of a particular set of institutional arrangements, as the case studies in subsequent chapters demonstrate. Such unintended consequences generate pressures for new arrangements and open the door to policy innovations. Intergovernmentalism accommodates such developments only poorly. Overall, in indicating that “Moravcsik has developed a theory of intergovernmental bargaining within a specific institutional context24, that of the EC, but not a satisfying general theory of integration”, Stone Sweet and Sandholtz (1998:26) would seem to have accurately summarized intergovernmentalism in terms of the contribution of one of its most articulate proponents.

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24 In fairness, Moravcsik does not claim that his liberal intergovernmentalism accounts for day-to-day policymaking processes at the EU level.
NEO-FUNCTIONALISM

Functional and neo-functionalist approaches (see Schmitter, 1996b; Haas, 1948; Mitrany, 1948) argue that Europeanization — the transfer of political authority from member states to the EU level — is a result of the needs, or "functional spillover" generated by increased transnational activity (Holland, 1994). It was also animated by the desire to head off future wars between nation-states — to the extent that it qualifies as both a theory of integration and as a normative model for achieving Europeanization. Early proponents of neo-functionalism such as Ernst Haas (1948, 2001) for example, readily acknowledged they were as interested in showing the way to some sort of federal arrangement as they were in explaining how it was occurring. In general, it emphasizes developmental processes, sometimes to the extent that specific structural developments themselves appear to demand subsequent changes and adjustments.

In contrast to intergovernmentalism, neo-functionalism emphasizes the role of supranational actors, although it tends to privilege economic actors over others (Schmitter, 1996:10-14). For example, in sectors where industries have a high level of transnational activity — cross border exchanges and transactions, multi-national ownership, etc., policy-making and regulatory authority are expected more likely to be transferred to the EU level. In fact, industrial sectors with high numbers of international transactions do tend to be more Europeanized than others, and the European chemicals industry is a good case in point (Grant, 1995). But transnational dealings are by no means limited to commercial activity. Schmitter (1996b) notes that the expansion and broad variety of policymaking has meant a substantial increase in the frequency of contact between national representatives on many levels. This would suggest that EU policymaking at this point in its development constitutes a transnational activity in and of itself!

The fact that neo-functionalism's ability to explain developments has ebbed and waned with the pace of integration argues that there are other important factors it does not account for, and that transnational activities and interdependencies alone are not always sufficient to drive further integration. Schmitter (1996a), for example, concludes that although functional interdependencies do tend to drive integration forward, it is frequently in ways not originally intended, and there may be significant time lags. He also points to a practical problem in neo-functionalist reasoning: that short-term payoffs

25 Mitrany's is more correctly labeled functionalist, while Haas and Schmitter were neo-functionalists. The key difference is that Haas and Schmitter looked to the development over time of a federal arrangement at the European level and saw this as desirable. Mitrany's view was that the creation of a federal European supra-state would only shift the kinds of international conflicts that had contributed to WW-II up a level, and that functional interrelationships were the preferred model for developing interdependence.
do not necessarily obscure the long-term surrender of authority and autonomy. Hence, representatives of national governments may consciously choose not to give in to the inexorable logic of interdependency and transnational “externalities” by taking the bait represented by short-term gains. Pierson (1998:29) points to a related weakness: that “given the strong institutional position of member-state governments in the EC, neo-functionalists seem to attribute greater autonomy to supranational actors than can plausibly be sustained”.

Neo-functionalism’s shortcomings are sufficiently problematic for it to have been largely abandoned as a full-blown theory by at least two of its most prominent early proponents (Schmitter, 2004; Haas, 2001). As has been the case with intergovernmentalism, efforts have been made to update and revise neo-functionalism to address some of these gaps. For example, while Alec Stone Sweet and Wayne Sandholtz contrast their theorizing with neo-functionalism, they readily acknowledge that they embrace many of its core arguments. Stone Sweet and Sandholtz (1998:2) embrace its focus on process, but relax some of its core assumptions and qualify their assessment of its explanatory capabilities. “We do not claim to explain policy processes, or their substantive outcomes, in terms of increasing cross-border exchange; specific policies are the product of complex political interactions. Rather, increasing exchange provokes behaviors and processes that are decisively shaped by the institutional context of the EC, and these processes tend to produce or reinforce supranational rule-making”. They differ primarily in not accepting Haas’s contention that Europeanization entails a shift in loyalties and allegiance to the supranational level (although this tendency is clearly visible within the European Institutions). In this sense, they may be considered proponents of “neo-neo-functionalism”.

Stone-Sweet, et al, (2001, 1998) see neo-functionalism as sufficiently compatible with the concept of institutions that institutionally-oriented analyses can acknowledge many of its core insights, and in doing so, lay credible claims as its logical successor. Schmitter (2004) sees their efforts as consistent enough with neo-functionalism to label it neo-neo-functionalism in his mapping out of theoretical approaches to investigating the EU. Moreover, neo-functionalism’s legacy appears important enough that others are also laying some claims to it. Christiansen, et al (2001), for example, suggest that a social constructivist approach to theorizing European integration might naturally subsume neo-functionalism. Borrowing from Stone Sweet et al’s (2001) assessment of intergovernmentalism (and to some extent their assessment of neo-functionalism), it would seem that while neo-functionalism does not provide us a with “satisfying general theory of integration”, it offers a useful theory of the functional spillover generated by the actions or organized actors within a specific historical and institutional context.
Overall, intergovernmental and neo-functional analyses can be said to give us important parts of the story, but on its own, each also overlooks important factors that influence EU integration and policymaking. Realist/intergovernmental approaches tend to overlook both non-state actors and the ideal interests that motivate them (and which define the context within which states pursue their interests). They also overlook the complex systems of rules that emerge over time to guide the interactions of states and other actors. Neo-functionalism tends to underestimate the strength of state actors to resist functional needs and the role of actors more generally in determining which functional relationships individual actors exploit and which they ignore or seek to counteract. Here, too, the role of ideal interests as a source of movement and direction is underestimated.

Numerous scholars, including several of those cited above, have sought alternative concepts and principles that can accommodate or reconcile the insights provided by two theories discussed above, while not casting out the baby with the bathwater. Any theory of European integration worth its salt has to be able to account for processes that lead to relatively rapid integration, for stagnation, and even dis-integration (Schmitter, 2004). It must also take into account the multiplicity of actors and rule-defined arrangements that constitute the EU, and the ideas that have animated them with meaning, given them direction, and overcome path dependencies. Institutional approaches help address these issues by recognizing states as one among several institutions that must be taken into account and by acknowledging a diversity of national and transnational organizational actors that affect the pace and direction of European integration. Aspinwall and Schneider (2000:2) are probably overstating their case in suggesting that “almost any Europeanist with a minimal level of self-respect flags herself as an ‘institutionalist’ at the moment”. Whether the kind of theoretical convergence suggested by Aspinwall and Schneider is taking place remains to be seen. However, approaches that assign a central role to institutions are sufficiently widespread that Philippe Schmitter (2004), a long time EU observer and an influential early proponent of neo-functionalism, identifies no fewer that six discrete variations, although he does not accord all equal value. “Governance” and “multi-level governance”\(^\text{26}\) are important concepts that have emerged across the range of institutional approaches. Somewhat newer in EU studies is the sociological institutionalism and the emphasis it places on ideas, culture, and other ‘soft’ factors in EU integration and governance (see, for example, Fligstein, 2001a; Jacobsson, 2001; Andersen, 1999; Andersen and Burns, 1996; Fligstein and Mara-Drita, 1996)

\(^{26}\) These concepts help address the problem regarding whether or not the EU should be treated as a federal state (this is taken up in the next chapter).
At the heart of the “new” institutionalism (Hollingsworth et al., 2002; Brinton and Nee, 1998; Thelen and Steinmo, 1992; Powell and DiMaggio, 1991; Burns and Flam, 1987) lies a common recognition and understanding that both “socio-cognitive” and “structural” factors provide the context, the impetus, and the tools for political struggle and other forms of social interaction, although there are diverse strategies for applying this shared core (Hall and Taylor, 1996). The core assumptions enumerated in the introductory chapter are part and parcel of the new institutionalism – particularly the sociological institutionalism that provides much of the theoretical grounding for this work.

The “new” institutionalism (as distinct from the original approach to institutions, and to some extent in reaction to it) animates institutions; it gives them meaning, movement, and direction. It takes them not as social “facts”, but recognizes them as socially constructed phenomena, and as such, dynamic, changing, contestable, and subject to feedback effects. Much of the new institutionalism in sociology emerged through the study of middle-range phenomena such as organizations, which are more conducive to change (Scott, 1987). In contrast, the functionalist orientation of the earlier sociological view of institutions was often focused on mapping out outcomes driven by the relatively fixed architecture of long enduring structures within specific spheres of societal activity (Sztompka, 1993) – like building blueprints from existing buildings.

The sociological neo-institutionalism includes a variety of approaches that emphasize cognitive and ideational factors (Burns and Carson, 2002; Hall and Taylor’s three major categories of neo-institutional approaches, the new institutional economics is less useful in this context because it continues to relegate conceptual models largely to the background. In general, it can be said that the new institutional economics breaks from mainstream rational choice theory with the concession that there are both cognitive and structural constraints that underlie preference formation and “rational” choices. If rational choices are context bound, then institutions can be seen as part of the context that creates constraints. But seen from the individual level of “rationality within constraints”, or “context-bound rationality” (Nee and Brinton, 1998; Nee, 1998; c.f. Boudon, 1987:64), one can distinguish as “context” not only structural/institutional constraints, but also cultural/cognitive constraints. Such cognitive constraints are pushed into the background largely through the assumption of rational actors seeking to maximize their material self-interest, although important concessions have been made to the problems of the limits of rationality and to incomplete and unevenly distributed information. Diverging still further from the strict rationality assumption is economic historian Douglass North. North (1981) points to the importance of belief systems, in this case in terms of ideology, in explaining individual and group preferences and action that cannot be accounted for by rational choice models. He points out that preferences and beliefs are shaped not only by institutional arrangements, but also by lived experience, and goes as far as calling for a new theory of ideology to more systematically account for the ways in which cognitive models both structure constraints and serve as enabling tools.
Campbell, 2002; Fligstein, 2001b; Hobson, 2000a; Arditi, 1994; Ahrne, 1994; DiMaggio and Powell, 1991). These often draw implicitly or explicitly on Berger and Luckmann’s (1969) classic work, which among other things emphasizes the socio-cognitive processes by which practices become institutionalized (Scott, 1987:493). “Institutionalization involves the processes by which social processes, obligations, or actualities come to take on a rule-like status in social thought or action” (Meyer and Rowan, 1977:341). This suggests an important link between socio/cognitive models and institutions, which Scott (1987:497-498) summarizes in his insight that “institutionalized belief systems constitute a distinctive class of elements that can account for the existence and/or the elaboration of organizational structure”. Attention to these “classes of elements” permits the construction and analysis of the belief systems to which he refers.

A pair of important core strategies for integrating cultural/cognitive factors within the new institutionalism are to anchor them to organizational structures or the institutionalized structures of discrete spheres of societal activity that they inspire (Ahrne, 1994; Powell and DiMaggio, 1991; Burns and Flam, 1987), or to the historical timeline (Pierson, 1998; Thelen and Steinmo, 1992; Hall, 1989a). Each of these is relevant to the case studies taken up in this research. For example, there has long been an awareness of “organizational culture” as a distinct phenomenon embedded in “organizational structure” (Perrow, 1979). The European Commission, for example, is a “multi-organization” (Cram, 1994), with the various Directorates General (DGs) guided by distinctly different organizational missions and cultures. The sociological and historical institutionalisms use in varying degrees existing institutional/organizational structure and time frames to impose order on the flow of ideas. At the institutional level where the Treaties help define EU competence in the various policy sectors, there are different logics reflected in the procedures, voting rules, capacity to act, etc. These have developed over time, so that it is possible to trace the evolution of paradigmatic ideas as new ones become institutionalized (Pierson, 1998), replacing earlier guiding logics.

**Institutions as Rule Systems**

It is primarily the conception of “institutions as rule systems” that I employ, drawing largely on the work of Burns and Flam (1987). It suggests the ways in which conceptual models and culture are embodied and embedded in institutions. An institution is a complex of relationships, roles, and norms, which constitute and regulate recurring interaction processes among participants in socially defined settings or domains (Burns and Flam, 1987). Examples include the family, the state, markets, the firm, courts, parliaments and other democratic institutions, etc. Institutional rules systems provide actors with formal obligations and responsibilities, and with certain benefits and
rights. They provide concrete, specified guidelines for particular kinds of action, and these are supported by a system of authority and powers of enforcement (North, 1991; Burns and Flam, 1987). Competition in this sphere is manifested in the exercise of power rooted in institutional arrangements – directed at either deliberately shaping or coercing action, at addressing particular problems, or at undermining or superceding competing institutional structures (Burns and Carson, 2004). This may be in the form of rewards and punishments, incentives and disincentives, or by simply creating some paths of action that provide greater resistance than others.

Rule systems are socially developed and transmitted, and carried by individuals and groups. Actors may choose to follow them, or not. They are subject to creative interpretation or mis-interpretation, misunderstanding and contention. These understandings may function on the basis of rationality and instrumentality, or more based on factors that are endowed with social value, such as “appropriateness” and “legitimacy”. Hall and Taylor (1996:18) highlight this distinction in their observation that “anyone who has waited at a traffic light when no one else was around…has to admit that there are dimensions to the relationships between institutions and action that may not be highly instrumental or well-modeled by rational choice theories”. In this context, rationality functions within the structural context of the opportunities for gains defined by rule systems, and within the broader context of cognitive models that define what it is that constitutes preferences (see Nee, 1998 on context-bound rationality; see also, Denzau and North, 1993).

Rule systems theory highlights factors that contribute to institutional change by focusing on the difficulties produced when there are competing institutionalized rule systems guided by incommensurable principles or differing logics (Burns and Flam, 1987). This approach takes culture, belief systems, and ideas as a fundamental constituent of social institutions, using institutional arrangements as the skeleton to be fleshed out with important cultural phenomena. Normative beliefs are brought into focus, as are the cognitive/conceptual tensions created by competing rule systems and by inconsistencies between belief systems and formal rules. From this perspective, the passage of time is an important factor, but most analytically important are the rule system complexes of other institutions, often nearby and sometimes in competition, as the sources of new models for restructuring existing rule systems. Rivalries between actors within competing institutions are frequently the driver of change, where one or the other actor seeks dominance in instances in which domains overlap and come in conflict.

Significant changes in policy – such as the rise and fall of Keynesian economic policies, the emergence of strong environmental policies, or the unfolding of programs aimed at improving equality between women and men – often unfold over periods of time that extend to a decade or more (Pierson, 2001; Sabatier, 1999c, 1999b; Sabatier and Jenkins-Smith, 1993). Even in
situations of urgent crisis, the seeds of that crisis often can be traced back to earlier developments, including the results of actions or inaction guided by earlier policies. In contrast to sociological approaches, the historical institutionalism (Steinmo, et al, 1992; Hall, 1989) employs the historical timeline to provide analytical structure, identifying “historical preconditions”, tracing changes in values, normative beliefs, and policy models over time as they are formalized and institutionalized. This constitutes the socio-historical and cognitive environment within which institutions are created and function; events and developments are embedded in this broader context. This approach shares some of the character of the historian’s particularistic reading of social change, while embracing the capacity of a sociological analysis to understand overall patterns of social interaction and change. This strategy informs important efforts within the welfare state literature, for example, to trace the conditions that have contributed to the evolution of welfare state arrangements (Korpi, 1994; Esping-Andersen, 1992; Molin, 1992; Steinmo, 1989; Baldwin, 1990). One strength of this approach is that it generates a great deal of rich detail. An important weakness is that its explanations sometimes tend toward functionalism or simple path dependency, explaining historical preconditions with earlier preconditions; change that represents divergence from that path is more difficult to explain (Thelen and Steinmo, 1992: 14-15). Although this tendency is common, it is not universal, however, as illustrated by Peter Hall’s (1989) efforts to tackle it directly (Hall’s work is taken up later in this chapter). Hall and his collaborators present a compelling picture of the emergence and development of Keynesian ideas in guiding economic policy in the US and Europe, and how they were institutionalized in unique ways in specific institutional environments.

The historical institutionalism demonstrates that while discrete preferences are shaped by institutional context, broader goals and what constitutes self-interest are as well (Thelen and Steinmo, 1992). It also illustrates especially well the powerful tendencies toward path dependencies and stability (Immergut, 1992). Taking important cues from sociology, Hall’s approach (1993, 1992, 1989) significantly expands this picture, giving systematic expression to the role of a coherent complex of policy ideas by tracing their adoption and institutionalization in formal policy over a period spanning two decades.

**THE IMPORTANCE OF POLICY IDEAS AND COGNITIVE MODELS**

It has been frequently noted in social science literature that what we see is based in large part on the theories or conceptual models through which we view the objects of study (Sabatier, 1999a). That our understandings and the meanings we attribute to phenomena are based on the cognitive models we use has broader application (Lakoff and Johnson, 1980), which clearly includes

Following the background assumptions outlined earlier, policy preferences and the perception of self-interest are likely to be guided by cognitive models that define what is “right and appropriate”, by perceived opportunities for material gains, and by the nature and quality of relationships with other actors. These considerations may come into conflict with one another. Moreover, clear cut policy preferences and self-interest may be difficult for actors to determine, not only as a result of the bounds of rationality and insufficient or incorrect information and the like (Denzau and North, 1993), but also because these factors may be difficult to measure, weigh against one another, and evaluate in comparable terms. Any of these elements may be largely independent of, even contrary to, what might be considered to be conventionally “rational” or “self-interested”28. Which combination of these factors dominates may vary. In addition, certain interested actors (especially organized actors, but also entrepreneurial actors) will have an impact on whether path dependency prevails, or whether new developments break from the expected path.

Efforts to map out the architecture of socio-cognitive models are plentiful in the public policy and social movements literature, some of which is addressed to the question of how particular ideas are made to become policy or formal rules, and how claims are framed and anchored to make them relevant to the intended audience. The common theme among these diverse approaches is the attempt to systematically relate policy relevant ideas to one another, to interested actors, and to change processes, whether in the form of culture (Lane and Ersson, 2002; Johnston and Klandermans, 1995), ideology (Van Dijk, 1995; Denzau and North, 1993; Cormack, 1992; Thompson, 1990; Tilton, 1990:248-280; Adams, 1989), frames or master frames (Hobson, 2003b; Fligstein, 2001a; Benford and Snow, 2000; Snow and Benford, 1992; Snow et al., 1986) belief systems (Sabatier, 1999b; Sabatier and Jenkins-Smith, 1993; Gelb, 1989), discourses (Hobson et al., 2002; Jakobsson, 2002; Dryzek, 1996a), or policy paradigms (Burns and Carson, 2004, 2002; Carson, 2001; Andersen, 1999; Coleman et al., 1996; Hall, 1993; Hall, 1992).

These concepts address themselves to the same general phenomena, even if with different emphases. As a consequence, there are important areas of overlap in the way in which these diverse concepts are used and some concepts

28 There is some variation in the way in which “interests” or “self-interest” are defined. They are frequently used in largely economic terms to mean material interest (see, for example, Moravcsik, 1998). This stands in contrast to motivations guided by “a logic of appropriateness” (March and Olsen, 1989), which are driven by more altruistic values and norms. My use of the term distinguishes between “ideal” and “material” interests, although where not specified, “interests” can be taken to mean material interests.
tend to be shaded into one another in general use. The paradigm concept shares similarities, for example, to the concept of “master frame” used in the social movements literature (Snow and Benford, 1992). There are also important overlaps with the concept of ideology as used by Oliver and Johnston (2000) and Denzau and North (1993). However, as both Surel (2000), and Oliver and Johnston (2000) note, the various conceptual categories are not interchangeable; they differ in scope, function, and/or center of focus.

My use of the paradigm concept follows Burns and Carson (2002, 2004), Carson (2001), Andersen (1999), and Hall (1993, 1992) who conceptualize the paradigm as a socio-cognitive model employed in problem solving. Andersen (1999:2) characterizes policy paradigms as a category of “cultural frame”, a concept also employed by Fligstein (2001a). Surel (2000), considers both Hall’s policy paradigm and Sabatier’s (1993) belief system in similar terms, as a specific type of “cognitive and normative frame” applied to policymaking, and within which individual issues or policy questions can be contextualized and “framed”. These usages are consistent with the definition of paradigm used in this dissertation. “Culture” is understood in Blumer’s (1969) sense of the term to mean the characteristic ways in which members of a society or social group tend to conceptualize, attribute meaning, and interact in relation to a particular sphere of social activity.

The overriding reasons for preferring the concept of policy paradigm can be summarized in terms of 1) its operation at the analytical level at which policymaking takes place (see Coleman, et al, 1996; Hall, 1992, 1993); 2) the specific conceptual elements and problem-solving notions it entails, and which are linked to or become embodied in institutional arrangements (Burns and Carson, 2004; Carson, 2001; Andersen, 1999); and 3) its emphasis on contradiction and incommensurability as generating conditions conducive to change (Hall, 1993). This includes the emergence of anomalies that an institutionalized paradigm has difficulty explaining and coping with – and that may in fact be a byproduct of the successes and failures of policies guided by that paradigm (Burns and Carson, 2002).

C. PUBLIC POLICY PARADIGM

REVISITING KUHN

It is difficult, if not impossible to take up the notion of paradigm without also acknowledging the person who introduced it, and all the more so given that I (and others who use the concept) refer to Kuhn’s work in the process of

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29 Oliver and Johnston (Oliver and Johnston, 2000) for example, highlight the ways in which the concept of master frame has often come to be used in place of ideology. They argue that while the concepts are related, they remain separate concepts and that each is ill suited to do the work of the other. Using the concept of ideology carries its own difficulties. Adams (Adams, 1989) argues “there is no division between theory and understanding: the two are conflated so that the theory is the understanding […] these theories are self-validating.
elaborating it as a concept for use in the public policy context. The policy paradigm does share important characteristics with Thomas Kuhn’s familiar usage (Hall, 1993), even if they are not at all the same thing. Like Kuhn’s paradigm, a policy paradigm is a cognitive model shared by a particular community of actors, and which facilitates problem solving. It provides a conceptual framework that helps actors interpret events and their causes, aids in their identification and definition of relevant problems, and suggests what kinds of criteria might provide useful measures of success or failure. The policy paradigm is constructed around a core set of norms, values, and assumptions. Kuhn’s concept of scientific paradigm also shares these characteristics. However, where norms and values are intrinsic to politics and policymaking, Kuhn’s characterization of science as a largely interest and values-driven enterprise is part of what generated such intense controversy about his work. Kuhn uses a fundamentally political model to describe the process of theory replacement in science; he emphasizes the persuasive aspects of scientific discourse, including the use of metaphors such as “revolution” to describe a certain type of innovative period in science (Restivo, 1983). In these respects, the paradigm concept is better suited to politics and public policy than to science. How well suited the concept is to conceptual developments in either the natural or social sciences has remained a subject of intense debate, but that is a separate matter and not a debate to be taken up here.

Quite apart from the question of values and politics in science, there are defining differences between policy paradigm and scientific paradigm in terms of the logical rigor, methods, and standards of evidence required. Nevertheless, a policy paradigm that gains currency in the modern political context is unlikely to have been constructed and promoted without the help of scientific expertise.

**DEFINING THE PUBLIC POLICY PARADIGM**

The policy paradigm is an important cognitive-normative concept that permits the analysis of distinctly different, sometimes incommensurable ways of conceptualizing the issues, problems, interests, goals, and remedies involved in policymaking. It can be characterized as containing a generally coherent complex of assumptions and principles, simplifying metaphors, and interpretive and explanatory discourses. It represents a shared conceptual framework through which adherents envision “how things should be” and “how the world works”, and with which they define the kinds of issues that should be considered social problems. This conceptual framework helps impose order on a chaotic environment in which actors engaged in making or

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30 The controversy was sufficiently intense that he eventually began substituting “disciplinary matrix” where he had earlier used “paradigm”.
influencing public policy are frequently required to make decisions with limited expertise, inadequate or contradictory information, and often on a comparatively short time frame.

Within this context, the policy paradigm conditions choices and frames potential opportunities by shaping the conceptual parameters – the boundaries of what is thinkable, possible, or acceptable, and it endows certain courses of action with meaning. It defines the kinds of actions and institutional structures considered to be good or bad, the boundaries between right and wrong, appropriate and inappropriate, and the sense of what does or does not constitute a problem. A policy paradigm enables actors to interpret events and their causes, invests certain actors with credibility and authority, suggests what the various rights and responsibilities of actors should be, and guides action (Burns and Carson, 2002; Hall, 1993). A given paradigm is therefore realized in three types of processes: cognition and meaning, expression and action, and in its institutionalization.

The public policy paradigm is a shared conceptual model used for political problem solving. However, it is more encompassing than a simple problem solving model, since it is the model used to construct the very problems it is used to address (see Bacchi, 1999; Sabatier and Jenkins-Smith, 1993). It does so, starting from core assumptions, by defining priority among competing policy principles and goals. Within that context, the paradigm delineates the suitable means for achieving goals, and identifies what kinds of expertise should be considered legitimate and relevant, and who should be considered competent authorities responsible for decision making and for implementing corrective measures. The actors who advance the model are themselves likely to be defined in it, giving it a serf-referential aspect. When institutionalized, a policy paradigm shapes the production and distribution of societal resources, forms guidelines for how benefits and related costs are distributed, structures power relationships, and defines “logics of appropriateness”.

CONCEPTUAL AND INSTITUTIONAL ELABORATION OF A PARADIGM

If a central feature of social institutions as rule systems is that they condition how social interaction is to proceed in a given sphere of social life (Burns and Flam, 1987), the policy paradigm represents the socially constructed, idealized, relatively coherent and logically consistent conceptual model upon which these rules are built (Burns and Carson, 2004). But while the formulation of institutional rules may be guided by a given policy paradigm, these rules are constructed through negotiation and compromise. Because the process of institutionalization unfolds over time, rule changes may be made in piecemeal fashion, and may even be developed and carried out under the guidance of a competing paradigm – so that the internal logical consistency present in the institutionally operationalized paradigm may be
weakened or undercut in the process of its institutionalization or over time. The paradigm therefore constitutes an idealized model complex of rules, while the institutional rule system or rule complex represents a compromised version of this ideal. However, they both define the same categories of elements and relationships. In short, the policy paradigm is to governance institutions what theory is to a research program.

The extent of a paradigm’s conceptual elaboration is likely to vary substantially, related in significant degree to the extent to which the kinds of policy measures it recommends have been adopted and implemented and to the extent that intellectual expertise is engaged in efforts to develop the paradigm as a conceptual model for action. Although intertwined, institutional arrangements and paradigmatic models influence action differently and are themselves affected differently in change processes, particularly those driven by tangible institutional problems.

Although a policy paradigm is a cognitive model that can exist only in the minds of individual actors, it is socio-cognitive, or elaborated and shared among a group of social actors. It can be discerned from what actors do, both in terms of discourses they choose and in terms of the kinds of purposes for which they mobilize (Van Dijk, 1995). It is reflected in: a) characteristic discourses and logically coherent complexes of approaches to defining and dealing with social problems; b) the realization of the paradigm through the actions of individuals and organized interests; and c) reproduction through its institutionalization as the guiding policymaking model in specific areas of public policy, in the development of performance indicators and the giving of accounts, and in programs of education and training. These processes are not necessarily sequential, but constantly interacting with and influencing one another.

COMPETITORS GUIDED BY DIFFERENT PARADIGMS

There are likely to be multiple policy paradigms addressed to a particular sphere of policy at any point in time, carried by groups of actors who may compete with one another in an effort to realize their particular ideals, values, interests, and goals. These actors possess relationships to power and relationships with one another. Moreover, a paradigm becomes “real” to the extent that the principles it contains are realized through the behavior of subscribing actors, and through the implementation of the kinds of policy measures it defines, the authorities it legitimizes, etc.

Based on these parameters, actors may choose to act (or not to act) on particular desires or wishes, and may choose to either follow or disregard particular rules or norms. Competition between actors contending for power rooted in paradigmatic ideals and ideas is played out through public discourses
that carry with them some need for internal, logical consistency. Such discourses are typically aimed at focusing or redirecting attention, seeking to define certain problems into or out of existence, at offering a particular interpretation for the experience shared by members of various social groups, and at characterizing the various authorities and forms of institutional power as legitimate or not.

If, on the one hand, actors have a great investment in protecting the concrete institutional arrangements themselves, for reasons of power, security, predictability, and so on, rules are tightened, enforcement mechanisms are deployed, even strengthened (as in Michels’ (1962) Iron Law of Oligarchy). The emphasis is on protecting ideas and principles that are already realized and institutionalized, and this may be done at considerable cost. If, on the other hand, actors have – or would like to make – a much greater investment in solving a problem(s) that the existing institutional arrangements and guiding paradigm have proven unable to manage, the actions taken are quite different. Rules are consciously broken in spite of possible or likely sanctions, supporters are rallied more around possibilities than certainties, and short-term, concrete interests may be set aside in favor of what are perceived to be long-term possibilities. There is a substantial shift in risk-taking orientations – or even what is defined as “risk”.

RELATION TO EU RESEARCH

Applying the paradigm concept to an examination of EU policy developments poses a special problem. While a policy paradigm applied at the level of the nation-state speaks to questions of policy substance – what substantive principles should be prioritized and realized, examination of EU policymaking requires bring a pair of other considerations under closer scrutiny. These are: a) questions of competence or jurisdiction – entailing the distinctions between levels, such as local, national, supranational, international, and b) questions of governance and process – by what procedures should public policy decisions determined, who should participate and ultimately, whether it is a “public”, EU issue at all. At the EU level, this means that in addition to feedback effects generated by the substance of actual policy, there is also an ongoing interplay between paradigmatic principles defining the levels over which such decision making authority should be distributed and the governance processes by which policy is created. These considerations are not absent at the national level, but in the EU context they are unusually fluid.

31 Neuman and Tabak (2003) point out that inconsistency is not a problem in itself, but may become a problem when attention is drawn to inconsistencies that are seen to have adverse consequences.
It is not just any coherent system of ideas, beliefs, and definitions that attracts a significant following. The apparent potential to offer remedies to stubborn problems gives a paradigm relevance and salience to the important political/policy questions of the moment. In highlighting the sociological qualities of his concept, Kuhn fleshes out his characterizations of the scientific paradigm with the observation that it possesses two essential qualities: its conceptualization is “sufficiently unprecedented to attract an enduring group of adherents away from competing modes of scientific activity. Simultaneously, it was sufficiently open-ended to leave all sorts of problems for the redefined group of practitioners to resolve” (Kuhn, 1970:10). This, of course, is less a further elaboration of paradigmatic characteristics than it is a statement about what gives a paradigm weight and importance: believers. Notwithstanding the fundamental differences between science and policymaking, it suggests two vital qualities that draw actors to a particular policy paradigm. First, the conceptualization of how society should work and the courses of action it recommends (in a particular sphere, i.e., markets, welfare, governance, etc.) must be sufficiently plausible and compelling to attract adherents from other, competing paradigms. This requires at least some basis in empirical reality, although the standard for causal inferences in not that of science. Part of what makes it compelling is that it appears to more satisfactorily address urgent and currently irresolvable social problems. Second, it must offer a seemingly coherent approach to the social phenomena to which it is addressed (designated as problems), rather than presenting a detailed prescription. This allows the “open-enderness” also important to the Kuhnian paradigm, permitting the application of the paradigm to both a broad range of recognized social problems and those not yet defined. In a political context, a general approach instead of detailed prescription also makes it easier for actors who share core assumptions to join together around values and goals they share, and to overlook comparatively minor differences. Generality also presents a more diffuse target to opponents. A policy paradigm presents the possibility of an array of solutions to a variety of thorny problems, rather than being seen more narrowly as what could be argued as a specific solution to a specific problem. What makes this open-endedness compelling is not certainty, but possibility and promise. In public policy, Keynesian style economic policies and market regulation were addressed to the failure of liberal market economies to self-regulate. The ascendancy of the neo-liberal, “free market” paradigm in North America and Europe in the 1980s and early 1990s gained its foothold in the stubborn economic and social problems that policies guided by the Keynesian model seemed unable to satisfactorily master (Hall, 1989a). Within the EU, this general pattern was reflected in the development of the Single Market Program and a general shift toward deregulation. The general
pattern is also apparent in historical terms specific to the EU. The dream of a federal Europe, or more generally, European integration, was conceptualized and presented as a general model for building relationships between states. It was believed that this web of relationships would preclude military exchange, in part by enhancing and regulating the economic exchange that was already expanding beyond the jurisdictional boundaries of individual nation-states.

Another important set of distinctions that can be made between scientific and public policy paradigms is in the nature of the contest between the agents who promote a particular paradigm, the means and standards by which a particular paradigm gains prominence, and the kinds of benefits that accrue to those whose paradigm prevails. These differences are particularly salient in the way in which resources are marshaled behind one or another paradigm, in claims-making activities, in efforts to establish or shore up legitimacy, and in the eventual fate of discarded paradigms. Nevertheless, struggles over scientific paradigms, ideas, and even facts have sometimes proven to be considerably less “scientific” than the front stage characterization would suggest. Collins (1999) makes this point in an examination of the debate regarding the existence of “gravity waves”, which he demonstrates was won as much on the basis of rhetorical skill as the merits of scientific evidence. Jonathon Potter (1996) emphasizes this phenomenon more generally in his discussion of “empiricist discourse”, and the various ways in which scientists position themselves in relation to their arguments in order to establish the “facticity” of their scientific claims. Such struggles and tactics are quite apparent in the case studies presented in subsequent chapters.

While believers are important to the development and institutionalization of any paradigm, the process of institutionalization does not require all actors who press for the implementation of specific paradigmatic ideas to buy the whole package. Diverse actors may joint together to press for particular policies while motivated by quite different goals or ideals (Sabatier and Jenkins-Smith, 1993). This may lead to unexpected coalitions or other configurations of actors – “strange bedfellows” – pressing for a given policy change, even while they continue to vehemently disagree in broader philosophical terms. Burns and Carson (2002), for example, note that paradigm replacement may be brought about via the replacement of elites with actors guided by ideals embodied in a new paradigm, or existing elites may adopt a new paradigm based on more instrumental motivations. They note that revolutionaries or reformers, once in power, may follow policies that are strikingly similar to those of their predecessors. In some of the former communist countries, a surprisingly stable group of elites presided over the transition to market economies. Risse and Sikkink (1999) arrive at similar conclusions in their examination of the leverage gained when human rights conventions are adopted. Some regimes, for example, have formally adopted human rights conventions in order to avoid international isolation. In seeking
to give the appearance of complying, they may also set in motion a process of cognitive and institutional change that leads to substantively better compliance, even where that was not the intent. Carson, et al (2001) note similar building of alliances in connection with EU policymaking in food and energy. One group may pursue a set of policies for instrumental reasons, while another may pursue the same policies in an effort to realize their ideal interests. These groups may or may not share the same long-term goals.

Such odd alliances are made possible in part by the fact that not all paradigmatic elements are equally important (Carson and Burns, 2002; Carson, 2001; Hall, 1993; Sabatier, 1993). Fellow travelers may follow a common path for a period even though they have very different or even contradictory “destinations” in mind – depending in part on their access to information, and their particular strategies, judgments, and misjudgments. Similarly, actors who share a particular destination in common may perceive entirely different paths in their respective efforts to get there.

Figure 2.1. Paradigm ↔ Actor ↔ Institutional Relationships:

Source: Adapted from Carson, 2001.
Figure 2.1 illustrates the relationships between the three basic building blocks discussed in the preceding pages. The distinctions are intended as analytical categories, given that institutions are socially constructed, and paradigms, in their turn, are the plans upon which those constructions are modeled. Within the actor category, several different kinds of alliances, or actor configurations are listed. There are also more detailed subcategories within the paradigm and rule systems categories, and these are taken up later in this chapter. The important point to note regarding the overall categories is that they exert different kinds of influences. Rule systems exert external pressures that influence behavior, while the influence that stems from the paradigm is cognitive and conceptual, as well as normative. In an instance where a policy paradigm is highly institutionalized, the two would be expected mirror one another to a very large extent. In instances where the level of institutionalization is much lower, such as in periods of transition, one would expect many gaps and inconsistencies, owing in part to the fact that the institutional rule system reflects the greater incoherence derived from its construction based on a changing blueprint.

E. DOING THINGS WITH WORDS: PARADIGMATIC DISCOURSES

Discourses provide evidence with which to identify socio-cognitive models (Dryzek, 1996a; Van Dijk, 1995; Lakoff and Johnson, 1980) such as paradigms, and the processes by which they change. Defined here as primarily written and verbal communications, public policy discourses frame and articulate a given view of reality (see, for example, Kemeny, 2002; Bacchi, 1999; Hardy and Phillips, 1999; Spector and Kitsuse, 1987). These can be analyzed as expressions or reflections of one or more paradigms through which actors perceive the world – a means of organizing, understanding, interpreting, and giving meaning their experience (Dryzek, 1996). Discourses may serve to either legitimize or challenge the existing order, and may be institutionalized – formalized and codified into rules, policies, and laws. These formulations, like rule systems, intersect and conflict with – or reinforce each other – to shape the environment within which policymaking takes place. These also tend to either reinforce or undermine the various underlying assumptions and values that form the foundations of a paradigm.

In general, these discourses may take either metaphoric or descriptive forms. Metaphors simplify. They serve to more easily convey complex concepts by communicating them in condensed, simplified terms, and to impart meaning by presenting one set of concepts in terms of another the meaning of which is already established (Lakoff, 1996; Lakoff and Johnson, 1980). Thus opponents of genetically modified materials in foods have dubbed such products “Frankenstein foods” and global women’s networks have succeeded to a significant extent in defining women’s rights as human rights. Descriptive narratives, on the other hand, serve to elaborate and specify the
detail of the concepts being communicated or expressed. These are more often expressed the language of the rational, systematic work of experts, particularly scientific experts, in what Potter (1996) refers to as the “empiricist discourse”. Public policy discourses are communicated using both. Each of these delineates paradigmatic elements in its own particular way: problem definitions, approaches for quantifying and evaluating, appropriate agents and authorities, interpretations of events and occurrences and attributions of cause.

**KEY COMPONENTS OF PARADIGMATIC DISCOURSE**

Discourses structure and conceptually anchor a paradigm in a number of different ways. These can be further elaborated and specified, based on the particular roles of these elements. Discourses expressing a given paradigm can be analyzed for the categories or complexes of definitions they contain (Burns and Carson, 2004; Sutton, 1998; Van Dijk, 1995): 1) defining an issue/problem and its characteristics (issue/problem complexes), 2) the location and types of sources considered to be valid authorities on the issue — therefore having legitimate information and/or facts to offer (distribution of expert authority), 3) the authorities that have formal or informal responsibility for addressing and/or resolving the issue/problem (distribution of policy responsibility and authority); and 4) the form and range of acceptable solutions (solution complexes). These complexes, in turn, can be located within one or more public policy paradigms.

Public policy paradigms may be expressed in discourses concerning “public problems”, distribution of “expert authority”, distribution of “policy authority and responsibility”, and “appropriate solutions”. When institutionalized, the discourses refer to laws and written rules and other materials that define the location and other particulars of formal rule making authority, and set(s) of institutional practices or strategies for dealing with specific types of problems. The state, markets, and civil society and their respective institutional structures include a range of institutional practices and strategies for addressing issues considered to be problems, and use a system of rules that establish formal authority for how and where to address various types of problems (Burns and Carson, 2002).

**Problem/Issue Complexes:** Discourses that define an issue or problem by defining and framing the nature, causes, or consequences of a problem fall within this category. Characterizations of who is affected and how, and the broad categorizations of an issue/problem as social, economic, political, etc., are a part of such definitions, as is the particular way in which a problem is dispersed, or subdivided into segments so as to make it more (or less) easy (apparently) to grasp and manage. Put in other words, these include: *causal narratives* — or narratives and statements that contain either implicit or explicit assumptions about the sources or causes of public issues and problems; narratives of threat — which help define the nature of a problem, describe who
is affected and the likely consequences if it is not “solved”, and classify the problem as social, economic, moral, etc.; dispersion of the problem – or the way in which the problem or issue is subdivided into more manageable pieces (Sutton, 1998).

Solution Complexes: Solution complexes include characterizations of the particular way(s) in which the resolution of an issue or problem should be constructed, including the use of appropriate or particular available institutional practices and strategies. It has been observed that problems are often deliberately defined in ways that permit an issue to land in particular parts of the EU policymaking apparatus (Nylander, 2000). This, in turn, dictates the range of both possible and likely responses (Baumgartner and Jones, 1991). Structures developed as the response to one set of circumstances are, not infrequently, adapted to new purposes.

Distribution of Expert Authority: Who (or which) are the legitimate sources and authorities for information, facts and analysis regarding the problem? This includes the determination of who has the authority to produce information about an issue that is already the subject of discussion. Equally important, it also defines who has the legitimacy to define a particular problem into – or out of existence – or to redefine an issue or problem into another existence.

Distribution of Policy Making Authority and Responsibility: Who are the legitimate authorities for addressing and/or resolving the problem? This includes both institutional authority and legitimacy for making policy and the responsibility for taking some corrective action. This is related to expertise, but equally important, is grounded in the social norms for determining who should be empowered to pass judgment, adopt new policy, or initiate necessary action on behalf of other members of society.

Figure 2.2 below illustrates the structure and relationships between the complexes that define the paradigm – the shared cognitive-normative space. It illustrates the various flows combine to produce the paradigm, and which produce conceptualization of the “problems” to be addressed by policymakers, the roles of various actors in producing information, making decisions, establishing goals, and implementing appropriate solutions. The actions taken to implement solutions and the resulting outcomes stand outside the cognitive-normative model and feed back into it. To the extent they are visible, the range of actual of outcomes will tend to either reinforce or undermine the various elements defined by the paradigm. Of course, exogenous factors may also intervene to modify the outcomes that would otherwise be produced, although these interaction effects may not be obvious or clear cut. Persistent or significant failure to produce the desired outcomes (in this case, policy or market failures) will tend to undermine one or more elements of the paradigm, creating pressures for adjustment. Where this undermines core, defining elements, it may eventually lead to paradigm shift, to power shift, or both.
Figure 2.2 Public Policy Paradigm—A Shared Cognitive-Normative Space
The details of which of these above complexes constitute the core elements of the paradigm may vary from context to context; some of the components or dimensions of the public policy paradigm are likely to be considered central, while others are not. This is an important distinction when it comes to understanding and explaining which complexes are first changed – or where there is likely to be systematic resistance to changing certain components. In general, actors representing and bearing a paradigm – those whose identity is most closely associated with its core components or dimensions, their material and ideal interests, their sense of order as “core” – are typically ready to resist significant change in these. Peripheral components can generally be negotiated and adapted much more easily. They do not concern, for instance, powerful interests related to social power (such as property rights or political power). This core-secondary aspect of the paradigm is taken up in greater detail later in this chapter.

With respect to the EU, the structure of the above-described definitions manifests itself in a number of ways. For example, during the evolution of the EU, some categorizations of issues/problems have been defined as lying within the competence of the EU (market related issues), while others fall primarily outside (more typically, non-market social issues). If the perceived cause or effect of a problem falls outside of EU competence, it tends to be invisible to its policymaking structure. New areas of competence emerge, in part, where market integration or development results in new social problems, as in the case of equal pay provisions, where there was concern that social costs might create market “distortions” and unfair competition. Where EU policy or institutional arrangements such as the single market might be (or might be seen as) the source of these new problems, the incentives to action are likely to be particularly strong.

DISCURSIVE CHALLENGES

There are numerous challenges to assessing the weight, influence, and importance of a particular set of discourses, a pair of which I take up here. The first challenge is the fact that “talk” is subject to conscious construction, manipulation, and misrepresentation, as captured in sayings such as “talk is cheap”. Simply put, there is frequently inconsistency between what is claimed and what can be empirically verified – or between what actors say claim to be working for and what is indicated by the policies they pursue or by their actual behavior. However, given the contested nature of public policy paradigms, deliberate efforts to construct and frame arguments in more salient, persuasive terms to influence others are relevant and important. This is in part because they are part of a process of establishing relevance and meaning for policy arguments to make seem them more relevant and/or persuasive than they might otherwise be the case. A simple example of this is the “Right to Work” effort in the USA, which focuses not on a basic right to employment, as the
label might imply, but on an employee’s right to choose not to join and pay membership dues to a union when he or she already has a job. The movement is employer-sponsored and generally anti-union. In the EU, pharmaceutical companies have argued that they might be forced for economic reasons to move production from EU countries whose health systems use their bargaining power to negotiate relatively low prices for their products (Nylander, 2000). Even though the connection between prices paid for pharmaceuticals in any given country and the location of production facilities could be considered dubious, the threat of plant closings may contribute to making national health authorities conscious of possible undesirable side effects connected with driving a hard bargain. In this particular instance, even the implicit threat of plant closings is framed in the softer and more politically acceptable terms of companies potentially being “forced” to relocate by circumstances not of their own choosing.

Part of the remedy for sorting out the underlying paradigm from instrumental representations is to seek to identify the more global consistencies and conceptual patterns revealed in a given policy discourse, and to trace their coherence and consistency with actors’ associated efforts to defend or modify institutional rules. Of course, coherence and consistency often appear to be in short supply, given the often-intense competition between agents who are promoting their own particular paradigm, discourses can be quite intertwined and confused. The fact that even competing paradigms may share many common elements only further contributes to such confusion (Carson, 2001).

A second problem is that even absent the sort of external static and interference described above, not all paradigms are equally coherent — and all paradigms (like all theories) contain inherent gaps, inconsistencies, and incompatibilities. These can be rooted in actor interests, in the natural limitations of human rationality in building up a conceptual model, in attempts to maintain incompatible elements within a given paradigm, and, as with the scientific paradigm, in a particular paradigm simply being inaccurate in significant ways in its underlying assumptions — a less than adequate match with reality. More basic inconsistencies result in a less compelling paradigm when attention is drawn to them. In addition, there are often multiple variations of a given paradigm. What distinguishes between different paradigms on the one hand, and variations on a theme, on the other, is the differences in underlying assumptions and the complex of core principles.

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32 See Jonathan Potter (1996:150-175) for an excellent discussion of how actors use “externalizing devices” to rhetorically position themselves in relation to the data and arguments they employ.
CORE-PERIPHERY DISTINCTIONS

As has been noted earlier, a vitally important aspect of the policy paradigm is that not all the rules and relationships defined by these complexes are equally important (Burns and Carson, 2002; Carson, 2001; Surel, 2000; Hall, 1993; Sabatier and Jenkins-Smith, 1993). A complex of fundamental assumptions, principles, values, and priorities distinguishes one public policy paradigm from another; it is the “incommensurability” (see Kuhn, 2000; 1970) of the complex of core elements that differentiates one paradigm from another (Burns & Carson, 2002; Carson, 2001). The practices, procedures, and forms of accounting or measurement they define constitute the secondary, or peripheral characteristics that distinguish variations of a given paradigm – and as Kuhn observed, may even be shared with a competing paradigm. But they are not necessarily innocuous, since secondary practices and characteristics that are incompatible with the core paradigmatic principles may generate tensions that raise questions about the paradigm’s validity as a model of reality and its legitimacy for guiding policymaking. Where a neo-liberal free market paradigm, for example, defines markets as essentially self-regulating, government intervention in some area outside the accepted core area such as establishing property rights (see Campbell and Lindberg, 1990) or rules of exchange represents a diversion from the model. When obvious market failures prompt such intervention, the intervention may be characterized as an exceptional case in an effort to facilitate the disappearance from view of both the problem and the corrective response that, theoretically speaking, should not have been necessary. However, where a particular type of market failure occurs repeatedly, it opens opportunities to challenge the soundness of the paradigm itself, while the interventions that are undertaken to address the problem tend to legitimize challengers. Where such problems are persistent and therefore difficult to continue to characterize as exceptional, the question then becomes whether the (market or policy) failure itself is considered more problematic for maintaining the paradigm, or whether the de-legitimizing effects of the repeated corrective measure are. Actors who share a common core of assumptions and beliefs may differ in their assessment of how to best minimize the long-term harm to the policy paradigm they support.

Peter Hall’s (1993) work explores these distinctions of core and secondary elements in terms of first, second, and third order change. It is here he draws his most direct parallels with Kuhn. Hall’s three orders correspond with: 1) policy adjustments or calibrations, or the specific, often technical details of policy; 2) policy instruments, or the general types of laws and programs that are employed in efforts to address problems and meet goals; and 3) policy goals, or the broad purposes that a given class of policies is intended to serve. First order change is likely to be ongoing, incremental and often routine – “normal” policymaking. Second order change represents increasingly “strategic action” in developing policy, but does not directly challenge the
fundamental goals of policy, and is therefore less likely to be conflict ridden. Third order change is quite the reverse: it is likely to entail different types of process, struggles for power, authority, and legitimacy, and marked changes in the discourses that describe what needs to be done. Hall summarizes what is at stake in third order change with what is perhaps his most profound insight:

The movement from one paradigm to another will ultimately entail a set of judgments that is more political in tone, and the outcome will depend, not only on the arguments of competing factions, but on their positional advantages within a broader institutional framework… Faced with conflicting opinions from the experts, politicians will have to decide whom to regard as authoritative, especially on matters of technical complexity, and the policy community will engage in a contest for authority over the issues at hand (Hall, 1993:279).

Hall’s formulation is developed from his empirical observations of the evolutionary changes that led first to the gradual adoption, then to the erosion and eventual replacement of Keynesian regulation in economic policy (see Hall, 1989, 1992). Teresa Rees (1998) applies a similar set of distinctions in her examination of the development of gender equality policy in the European Union. Rees refers to the levels of change as “tinkering”, “tailoring”, and “transforming”, reflecting her more descriptive than theoretical purposes. Rees (1998:26-48) examines three types of EU equal opportunities policies (anti-discrimination, positive action/positive discrimination, mainstreaming) based on the level at which they demand adjustment from the currently institutionalized arrangements. Anti-discrimination measures seek to remove specific barriers to women’s participation within a larger set of institutional arrangements whose fundamental assumptions are taken for granted (and therefore remain unchallenged). Positive action measures, recognizing that “equal treatment” may simply freeze existing inequalities in place, seek to apply temporary measures to establish a new, more desirable equilibrium, but fundamental assumptions again remain unchallenged. Mainstreaming is seen as a strategy for systematically examining, challenging, and potentially transforming, the underlying assumptions and core goals of the particular institutional arrangements in question from a gendered perspective.

Paul Sabatier & Hank Jenkins-Smith (1993) also outline a set of distinctions between levels, but from a somewhat different perspective. Rather than focus on the institutions that are targeted for reforms, they

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33 Sabatier and Jenkins-Smith develop a similar conceptual structure, but they discount institutions generally, relegating them to the status of “background conditions”. This poses two significant problems for analysis of EU policymaking: First, there is form and structure to the “background conditions” that influences both how and where the efforts of actors pressing for change are most likely to bear fruit. Second, given that this governance structure has undergone periods of comparatively rapid change in the EU context, it cannot be taken as a constant.
distinguish between fundamental and secondary elements of the belief systems that guide “advocacy coalitions”. The most important aspect of this distinction in their analysis is that diverse organizational and individual actors may support specific policy measures for fundamentally different reasons. Examples of this are apparent in the way in which the British Labor government adopted Tory recommendations that contributed to the dismantling of Keynesian economic policies and their replacement with monetarist policies. Labor Party leaders were looking for a means to protect what they had built, while Conservatives were seeking to get their foot in the door and implement policies consistent with their more free market oriented policy views (Hall, 1992). Each of the case studies examining policy change in this dissertation include this “strange bedfellows” phenomenon in which some organized interests that generally disagree with one another may support a given policy proposal for reasons which at least superficially, seem incompatible. Thus public health NGOs might support strict regulations on asbestos to further their public goals, while free market oriented asbestos producers might support the same regulations as a way of mitigating problems that could precipitate more stringent regulations (such as a ban, for example). Examples of the reverse of these sorts of seemingly improbably alliances are also readily available, such as when organizational actors who share a common core set of beliefs split over disagreements about how best to realize those beliefs. This can be illustrated with Swedish political parties’ positions during the referendum on the European Monetary Union (EMU). Social Democrats and Moderates often found themselves campaigning side by side for the proposal, even though their policy goals and reasons for supporting the EMU are substantively different overall. On the other hand, the Social Democrats (and other parties) were deeply split on the EMU issue, even while sharing a common set of core values and policy goals.

Surel (2000) notes the strong similarity between the paradigmatic orders identified by Hall (1993) and the levels of importance within the belief system model outlined by Sabatier and Jenkins-Smith (1993). The levels do not correspond exactly, although each arrives at three different levels of importance. One reason they don’t correspond precisely is Sabatier and Jenkins-Smith focus on the conceptual model, while Hall is analyzing the institutionalization of the new conceptual model as it takes place. Burns and Carson (2002) make an analytical distinction between the model itself (the policy paradigm) the process of institutionalization, and its institutionalized

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34 This distinction can be illustrated with Figure 2.1. Sabatier and Jenkins-Smith’s “belief system” corresponds with the “paradigm” in the left upper portion of the diagram. Hall focuses on the point at which specific elements of the paradigm are formally adopted and institutionalized, becoming part of the “Institutional Rule System” in the upper right portion of the diagram. Since both are interested in significant policy change, it can be assumed that the paradigm is not the one upon which the currently institutionalized rule system is based.
form. The principles, goals and practices that constitute a paradigm can be mapped in terms of their transformation from the conceptual stage to being realized, and then institutionalized. Hall hints at this distinction in his discussion of competing models, one of which is replaced incrementally with the other, but for the most part, his focus lies in the transition, in the process of institutionalization itself. Table 2.2 (below) illustrates the core/peripheral conceptualization of paradigmatic structure.

Table 2.2 Core/Peripheral Elements of Public Policy Paradigm

<table>
<thead>
<tr>
<th>Level of significance</th>
<th>Elements of policy paradigm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Core:</td>
<td>• Underlying assumptions (often hidden &amp; taken-for-granted) including conceptions of justice and fairness, rights</td>
</tr>
<tr>
<td></td>
<td>• Identities, relationships with power and authority</td>
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<tr>
<td></td>
<td>• Ideal and material interests</td>
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<tr>
<td></td>
<td>• Us/Them definitions</td>
</tr>
<tr>
<td>Peripheral (secondary):</td>
<td>• Strategies</td>
</tr>
<tr>
<td></td>
<td>• Trusted sources of expertise</td>
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<tr>
<td></td>
<td>• Giving of accounts</td>
</tr>
<tr>
<td></td>
<td>• Situational adjustments</td>
</tr>
</tbody>
</table>

The above distinctions – between defining and non-defining elements – come into play in the process of paradigmatic evolution/revolution and are important in three significant respects: 1) changes at the secondary, or more peripheral level tend to be less fraught with conflict and therefore more easily achieved, and 2) inconsistencies and incompatibilities between core and peripheral elements provide windows of opportunity for claims making activities, and 3) actors who fundamentally disagree at one level may support similar measures on the other (Sabatier and Jenkins-Smith, 1993). While the details of these particular groupings merit further exploration, it is the hierarchy of principles, or general core-periphery pattern, that is most relevant to the change processes investigated here. The process of institutionalization involves not only key events (staking out a new position or “anchoring” a new principle) but all the various forms of filling out that principle with supporting material – new laws and regulations, legal interpretations, compiling data, theorizing, mobilizing advocates and resources, and defending the reordered complex of core principles. “Tinkering and tailoring”, while not directly challenging the fundamental assumptions and principles of the institutionalized model, may nevertheless serve to destabilize the existing institutionalized arrangements by generating incongruities and inconsistencies that highlight and legitimate new problems and shortcomings.
DIFFERENTIATING BETWEEN PARADIGMS: INCOMMENSURABILITY

The basic quality that differentiates competing public policy paradigms is their fundamentally different, incommensurable ways of seeing the world, and of identifying and ordering core principles upon which policy is constructed. These include, for example, the relationship of individual to collective, how the “Us” and the “Them” of society are defined, and the consequent designation of appropriate roles and priority ordering of key institutions such as state, market, family, religion, and civil society. Because these core complexes are derived from divergent underlying assumptions about the nature of society, they are understood and evaluated in terms that are not completely translatable. If it is the complex of core assumptions and priorities that defines a given paradigm, it is the “incommensurability” of that core complex with that of a competing paradigm that permits the two to be distinguished as qualitatively different from one another – as not mere variations on a theme, but fundamentally different themes.

These underlying assumptions are often taken for granted, and as a result, left largely invisible and unexamined. Charlesworth (1999) and Fraser (1989), for example, point to the kinds of taken-for-granted assumptions primarily related to gender roles, and these have often proven deeply enough embedded that they are exceedingly difficult to expose. Other examples of such presuppositions include the conception of human beings as ‘rational self-interest maximizing individuals’ or as basically group-oriented creatures for whom rationality plays a limited role, or the belief that welfare is primarily an individual responsibility from one perspective, or a collective responsibility from another. Hall (1993:280) summarizes the consequences of this difference:

Paradigms are by definition never fully commensurable in scientific or technical terms. Because each paradigm contains its own account of how the world facing policymakers operates and each account is different, it is often impossible for the advocates of different paradigms to agree on a common body of data against which a technical judgment in favor of one paradigm over another might be made.

Where dissimilar conceptions lead to the development of different kinds of data and indicators, the corresponding problem definitions, causal inferences, and assessments of success or failure will also tend to be dissimilar (Breslau,

35 There was a significant difference between the “hard” first version of Kuhn’s conception of incommensurability and his “softer, gentler” later conceptualization he developed over time (Kuhn, 2000; Sankey, 1993). Where he appeared to initially suggest that one paradigm could not be grasped and comprehended from within another (Phillips, 1975), he modified his view over time to meaning that two paradigms could not be understood in the same terms: that one theory could not be translated into the other without the loss of essential elements.
Even where the same data is used, the interpretation of the data is likely to be quite dissimilar – especially with regard to how to deal with gaps in knowledge. These factors, in turn, tend to lead to dissimilar remedies for addressing a given set of social problems.

Inasmuch as different ways of seeing the world tend to emphasize or obscure different phenomena, differing approaches to conceptually defining and responding to social problems will also emerge over time. Differences in conceptualization focus attention on different qualities of an issue. They define different kinds of problems and legitimize different categories of actors to address them. The institutionalization of a paradigmatic shift entails differences in practice in fundamental areas, such as how decision making power is organized, how and for what purposes markets are regulated, or how the public welfare is pursued; it also leads to a shifting of priority order among these areas. This may apply to competing paradigms operating within a given sphere of public policy where actors compete to prioritize the guiding principles of a particular institution in broader public policy. Such priority ordering of a common set of principles produces different outcomes over time, as with, for example, “free market” versus “social market” conceptions of how and for what purposes public policy regulating the economy should be structured.

There may be multiple paradigms that come into conflict where the actors within the institutions they guide compete for dominance and prioritization (as can be the case with for example, market, religion, and the state). Where such assumptions apply broadly to social institutions such as markets, governance, the state, religion, etc., they may represent oversimplifications, such as “political/state intervention in the market is bad” (or conversely, good), or may entail more nuanced and complex issues of balance between competing principles. It is this sort of prioritization and balancing act we are concerned with regarding EU policymaking both generally, and within the policy sectors being examined.

36 This is especially apparent in the case studies on food safety and asbestos regulation, and has also played an important role in establishing domestic violence as a problem at the national level.

37 A good example of this is the fight over health care reform in the United States during the early 1990s. Free market oriented actors argued that high prices were a result of the market distorting effects of government intervention and health insurance that “insulated” patients from the cost of care, advocating the development of individual medical savings accounts with which people in need of medical services could shop for the balance of cost and quality. Actors oriented toward health services as a fundamental right and human need argued that high prices for health services are instead a result of the incompatibility of health needs with price competition and free market transactions. They argued generally that prices and systemic capacity should be controlled in order that competition could take place around issues of quality, and recommended a system of national health insurance, rather than individual accounts, be implemented (Himmelstein and Woolhandler et al., 1989).
F. STABILITY AND CHANGE

The relationship between a policy paradigm and its institutional embodiment has a direct effect on the various possibilities and probabilities for change; it presents actors with distinct opportunities for (and obstacles to) action. The character of this relationship appears to follow certain regular patterns. Michels’ (1962) classic account of the oligarchization of ideals-driven organizations suggests that beyond the institutionalization of guiding principles and ideals, interests develop in association with the implementation of formal organizational structures and new institutional arrangements. This occurs in part because they distribute the advantages of power and material resources in particular ways. This general pattern can be clearly identified in accounts of the role and development of ideas in the making of public policy over time, and in a variety of different areas of public policy (Åsard and Bennett, 1997; Fowler, 1994; Weir, 1992; Baldwin, 1990; Olsson, 1990; Hall, 1989a).

PHASES, SHIFTS, AND THE PROCESS OF INSTITUTIONALIZATION:

Keck & Sikkink (2001) propose a model of policy change at the international level that they characterize as “Five Stages of Effectiveness”. The stages include 1) issue attention, agenda-setting, and information generation; 2) discursive change, or establishing the status of new norms; 3) procedural changes, including new agreements and procedures; 4) changes in specific policies; and 5) influence on behavior of actors (in their specific case, large institutional actors such as states and powerful non-state actors). What Keck and Sikkink outline here is essentially a process of institutionalization that moves from a) claims making based on new ideas or complexes of ideas (or paradigms), to b) efforts to realize those ideas in the form of new rules and procedures; to c) the institutionalization of those ideas and ideals in formal rules and behavioral changes. In practice, the process of policy and behavioral change is not so linear; processes in each stage feed back to obstruct or facilitate further change. However, it can be argued that certain kinds of processes are characteristic of each stage.

Building on Keck and Sikkink and others, I argue that particular kinds of processes are characteristic of each of these three general phases, and they are vulnerable to challenge in distinctly different ways and to different degrees. Three general phases can be identified based on the processes that most strongly characterize each phase, which I characterize here as emergence, institutionalization, and reification.

Emergence – This initial phase is characterized by the emergence of a reconceptualization and reordering of principles in response to new conditions that create an opening: particularly novelty or pressing social problems not adequately explained and accounted for by the currently established paradigm. This is not a functional response, but a result of actors’ claims making
activities establishing such developments as a problem or problems requiring action. As this becomes more systematized, a new paradigm emerges. It represents a challenge to the existing conceptual order, and as such, is not readily embraced. Its initial rejection is in part the inherent difficulties in conceptualizing fundamental change, and in part a function of individual, organizational, and institutional investment in the established paradigm. The process by which it succeeds in taking hold can be likened to striking a match. Dragging the match along a rough surface requires the input of energy, and creates difficult-to-detect changes that become apparent only when the match finally bursts into flame, proceeding to burn of its own chemical inertia.

In the replacing of one paradigm with another, those who were not “invested” in the old paradigm or the institutions that promoted it were likely to be most easily persuaded. This would include, for example, those who were not already deeply invested in careers or power based on the aging paradigm, or those who were more interested in addressing unresolved problems and anomalies than in protecting the “infallibility” of a particular institution. For some actors, of course, the conceptual or institutional change is too great; they (as defenders of the “old ways”) are eventually marginalized or simply die out. Similar patterns are revealed in other work, such as Inglehart’s (1990) examination of cultural shifts in modern societies, which highlights the generational nature of such shifts. The typical learning phases in human development, as well as the defining experiences and events shared by distinct generational groupings play a facilitating role. The institutional choices are somewhat different. They range on a continuum between attempting to crush the new paradigm on the one hand, and co-opting it on the other, adopting pieces of it as their own and taking credit for it. Both of these strategies contain their own particular hazards for the actors who seek to preserve established institutions and the paradigm upon which they are built.

In public policy, novelty can be seen as the socially-defined problems that are either inadequately addressed under the existing paradigm, or those that may even arise as unintended consequences of the ways in which the institutionalization of the dominant paradigm structures social action. The new paradigm provides a plausible explanation for the particular condition (novelty) that has been observed and defined as a social problem, including causal relationships and the likely consequences of a failure to address the problem. In providing these interpretations, the newly emerging paradigm frames anew the possibilities for solution to the problem and the definitions of success, and the particular actors who are seen as legitimate authorities for producing information or taking action.

A new paradigm gains a foothold by virtue of its ability to explain and offer plausible remedies for social problems that appear unresolvable by the old, but this is clearly not sufficient to anchor the paradigm and enable its expansion and widespread adoption. This process takes place through social...
action guided by the paradigm, and through the successful realization of elements of the new paradigm in social institutions. Actions freely taken based on the values contained in a given paradigm have their own reinforcing quality. Research in social psychology, for example, indicates that when people struggle for something based on their beliefs and values, that action tends to reinforce those values and beliefs. The reverse also appears to be true, where failing to act in accordance with one’s beliefs and values tends to generate “cognitive dissonance” and may lead over time to the erosion or readjustment of those values38 (see Festinger, 1957). Of even greater significance, however, is when the realization of paradigmatic principles delivers the promised result. This not only has a reinforcing influence on paradigmatic beliefs, but also provides the credibility and momentum that help support the institutionalization of additional paradigmatic elements. The greatest dangers to the challenging paradigm in this stage are, a) that the irresolvable problem will disappear, leaving the challenger without an opening, or b) that the realization of any significant paradigmatic elements will be blocked, depriving its proponents of the “positive” feedback necessary to offer proof that the remedies offered are capable of delivering on the paradigmatic promises. Thus, the incremental, perhaps strategically sequenced institutionalization of the challenging paradigm is an essential process if the paradigm is to gain adherents and prevail.

Institutionalization – In this middle phase, the replacement of the old paradigmatic principles with the new takes place. This conceptual, paradigmatic shift takes hold as the new principles and the methods and practices built around them are systematized, expanded, and institutionalized beyond the initial experiments. The foundation of paradigmatic support begins to shift to a relative balance between the power of compelling ideas and the power of institutional structure, perhaps reflecting a shift from the idealism of the challenger to a pragmatism rooted in the need to deliver on promises made and being in position to attempt to do so. The conceptual framework is systematically applied to a widening array of problems, defining new problems to which it is particularly sensitive. Leadership is increasingly as likely to be bureaucratic as charismatic, as the levers of institutional power come into reach, adding both the opportunity and the need to mobilize institutional resources to supplement the ability to persuade and inspire. The movement within or into the institutional structure becomes more restricted as actors begin to concern themselves as much with protecting what they have achieved as reaching to realize the dreams that once inspired them.

38 This was also nicely captured by sociologist and grassroots activist Saul Alinsky, in the statement that a man is a radical in his 20s, a liberal in his 30s and a conservative in his 40s (Alinsky, 1972). For a concise overview of Leon Festinger’s Cognitive Dissonance Theory, see Aronson, (1976:131-139).
A potential vulnerability of the paradigm during this phase of relative balance and strength is that as problems are resolved and key elements of the paradigmatic promises are kept, the original sense of direction and inspiration may fade and renewing and transformative possibilities may disappear. There is a need to update guiding ideas and adjust policy goals. New adherents may be attracted less by idealistic visions that might be realized, and more by the practical benefits of alignment with the current regime, including careers, status, privileges, etc. While they are not mutually exclusive, there is a distinct shift in the balance between idealism and pragmatism in their role of attracting and holding adherents. Weaknesses also begin to emerge more concretely, as the paradigm’s limitations are established through its increasingly broad application and practice to “problems” to which it is not as readily suited 39.

**Reification** – The old paradigm is sufficiently institutionalized, developed and extended to have exposed its inherent shortcomings, weaknesses, and inconsistencies. The problems for which the paradigm provided the conceptual structure for solutions have been either resolved and therefore faded from the immediate consciousness of many, or proven themselves resistant to solutions developed on the basis of the paradigm. Additional problems arise from incompatibilities between core principles and marginal, situational adjustments in practices. Its inability to accommodate an expanding array of novelties is represented by gaps and inconsistencies between paradigmatically-informed expectations and empirical reality. The tendency increases to address problems by wielding institutional power, including sanctions and penalties, not so much in addition to, but in place of using the power of ideas through persuasion, inspiration, and building consensus. The efficacy of the old paradigm, and the practices of the actors who wield institutional power are increasingly questioned. Robert Michels’ (1962) characterized these processes in great detail in his study of the powerful tendency toward oligarchy in ideals-driven organizations.

In the case of public policy, a sufficiently large body of unresolved problems or undesirable side effects (including heavy-handed institutions) helps to raise doubts about the efficacy or advisability of solutions guided by the paradigm in question. Actors seek out or develop new paradigms to explain and respond to these inconsistencies and new social problems. Depending in part upon the power and vitality of the matured paradigm, in part upon the external conditions that helped produce unresolvable problems, and in part on the strategies and resources employed by the challengers, a new paradigm may eventually modify or replace the old paradigm through the processes discussed in the conception phase. It is whether it the change takes place in peripheral accounts and practices or in core principles that distinguishes between paradigmatic modification and paradigmatic shift.

39 Hence the saying “if your only tool is a hammer, then every problem is a nail”.

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As already pointed out, some of the phase-bound challenges faced here are expressions the powerful organizational tendencies observed by (Michels, 1962), in which the pursuit of utopian dreams is superseded first by the need to deliver on promises, then by the desire to stay in power – both to protect the faithful and to be in position once a new vision of utopia is found or constructed. Weber (1946) described this general pattern in terms of traditional leadership being challenged and replaced by charismatic leadership, which itself becomes (or is eventually replaced by) bureaucratic leadership. Given time, the bureaucratic system takes on the reified characteristics of the traditional, and the cycle continues.

Another important and related quality can be also drawn from Kuhn’s discussions, although nowhere is it explicit. Many of the elements of the challenging paradigm match the old (Burns and Carson, 2002). It is the replacement of core paradigmatic principles with the incommensurable principles of its challenger that constitutes the paradigm shift. The more peripheral elements of the paradigm, constituted by the methods and day-to-day practices built around the core, are likely to be in a constant process of change and “marginal adjustment”, just as one finds in Kuhn’s characterizations of “normal” science. But while these adjustments tend to both contribute to and follow the replacement of one set of core principles by another, it would be extremely disruptive and chaotic for top-to-bottom changes to occur in a single sweep.

A significant difference of the public policy paradigm from the scientific paradigm is the extent of recycling of the core paradigmatic elements that takes place. Core principles themselves are less likely to be new; it is rather a new combination and reordering of priorities and principles, adapted in response to problems that emerged under the dominance of paradigm it challenges. Important aspects of the old paradigm may be preserved, but retains their validity only under particular limiting circumstances defined by the new paradigm. Examples of hybrids include, for example, social markets, welfare capitalism, and so on. These hybrids can be seen, at least in part, as part of the ongoing differentiation and refinement in response to the increasing complexity of managing public policy. The world of difference between these competing hybrids lies at the paradigmatic core in the priority order they establish, while at least some of the day-to-day practices may appear quite similar.

40 This is a pervasive feature of modern-day policymaking (see Burns, 1999; Andersen and Burns, 1996).
CHAPTER 3

PUBLIC POLICY PARADIGMS, PARADIGM SHIFTS: APPLICATION IN THE EUROPEAN CONTEXT

In the past, we have perhaps been so focused on completing the Internal Market that we have given the impression that this is an end in itself. It is now clearer that the Internal Market is simply a tool to serve wider goals”.

-David Byrne,
EU Commissioner for Health and Consumer Protection
(Speech, 2001/05/25)

A. INTRODUCTION

The purpose of this chapter is to summarize the structural characteristics of the EU institutional arrangements in which policymaking takes place, then to operationalize the policy paradigm as a conceptual tool. Since the EU is a system of governance still under construction, it is unusually fluid and flexible. Nonetheless, its general framework has been in place since the 1950s.

Operationalizing the paradigm concept is approached in two steps. The first is to outline the key elements that constitute the EU paradigms that represent the dominant competing visions of the EU. This is approached through identifying how the different paradigms assign priority to market versus social goals, how they define who should participate in the processes related to policymaking and how, and how they define where, or at what level of governance the issues associated with competing goals should be decided.
The second step is to outline the process of paradigm construction with consideration for the categories of actors involved, the kinds of problem solutions that are conceivable, and the concrete goals that are developed from those. These different elements can be identified empirically in the policy discourses: the various arguments, explanations, and giving of accounts. This process entails more than the emergence of a new paradigm, however. Since an existing model already occupies the conceptual and institutional space, the process entails not only constructing a new paradigm, but also pushing out the old one – or more accurately, relegating its guiding principles to secondary or lower priority status. This process can be traced at the level of interaction between the respective discursive complexes identified in Chapter 2, and also within those complexes. Developments on both these levels can be identified in the various policy discourses already outlined.

B. EU Governance: Policymaking Bodies Participation, and Policy Instruments

Considerable effort has been devoted over the past decade to charting out just what kind of political creation the EU represents (Fligstein and Stone Sweet, 2002; Jachtenfuchs, 2002; Christiansen et al., 2001; Stone-Sweet et al., 2001; Rosamond, 2000; Sandholtz and Stone-Sweet, 1998; Andersen and Eliassen, 1996b; Marks et al., 1996; Leibfried and Pierson, 1995b). Much of this research and theorizing focuses on EU governance, which Chryssochoou (1999:3) characterizes as “an institutionalized system of rule without the formal/legal attributes of competence embedded in authoritative state structures”. This approach marks the EU as embodying a new form of rulemaking system, although there remains an influential body of research efforts that see the EU principally as the accumulated outcomes of member state negotiations, and therefore nothing fundamentally new (Moravcsik, 1998).

Clearly, the EU is not a state in the traditional European or even contemporary international sense; it represents a new form of supra-national authority. In principle, it is still based on strong national systems that are surrendering – or have surrendered – varying degrees and types of national sovereignty across a wide spectrum of policy areas. Although European Community law has priority over the conflicting law of a member state, the rate of implementation and degree of compliance vary a great deal.

The EU is not, in general, a political system in which policymaking elites are held accountable by citizens for their public policies and actions, and where they compete by offering alternative programs and vie for popular support at the European level. In this sense, it is not a typical political
The direct influence of citizens through formal representative democracy plays only a marginal role in EU governance (Andersen and Burns, 1996); individual citizens voting in free, fair, and competitive Euro-elections are able to exercise little or no influence over the composition of Euro-authorities. It is largely this break with normative expectations that has generated discussions of the “democratic deficit”. There have been, however, a variety of efforts to address this problem of democratic legitimacy, although the channels available for extracting accountability remain substantially different than in a conventional parliamentary democracy.

Even if it fails to qualify as a conventional state, the EU does make policy, the scope of which has increased substantially over time (Hix, 1999b). With no conventional EU-level “government” making policy, “governance” has emerged as a widely embraced concept for capturing the policymaking processes taking place. Jachtenfuchs and Kohler-Koch (2003:4) characterize governance as “the continuous process of setting explicit goals for society and intervening into it in order to achieve those goals”. Recognition of the quasi-federal nature of EU governance has led to the extension of this concept into “multi-level governance” (Hooghe and Marks, 2001; Scharpf, 2001, 1997a). Schmitter (2004) prefers to refer to this as “poly-centric governance” in recognition that governance extends not only across levels (local, national, supranational, etc.), but that there is also functional specialization over levels that varies with the particular policy sector. Schmitter is clearly quite correct on this point, and it is borne out in the individual case studies taken up in this dissertation. The term multi-level governance is used here both for the sake of simplicity and because the concept of levels is most relevant to this analysis. However, it should be understood to encompass the poly-centric nature of EU policy making authority.

While the European Union cannot be considered democratic in any conventional sense, neither is it merely a vehicle for dismantling member state level regulation of the market. In practice, it is characterized by a form of sector-specific governance which is highly differentiated and includes multiple forms of representation, and which has been characterized as a type of participatory or organic democracy (Burns, 1999; Andersen and Burns, 1996). A wide spectrum of special interests, organizations, and value-committed groups engage in or are drawn into governance processes. Rather than depending solely upon parliamentary representatives, organized actors in the EU seek to articulate their own positions and participate themselves. They often have both the capacity and opportunity to engage directly and forcefully in policy and administrative processes they consider relevant to their interests.

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41 Although parliamentary institutions are considered the core of Western political systems, they are currently undergoing systematic erosion (Andersen and Burns, 1996; Burns, 1999).
However, these organizations vary a great deal in power and influence, both formally and informally. They include member states, regional and transnational business associations, regional and transnational NGOs, and Brussels-based lobbying efforts, among others. As a multi-level policymaking system, the EU is highly open and dynamic, with poorly defined boundaries between its functions, jurisdictions, and authorities. These conditions provide significant opportunities for entrepreneurial actors and informal politics (Andersen and Burns, 1996). Entrepreneurial actors – both within the system and outside of it (who have resources and/or are organized and seek to influence policy or restructure the system in practice), may mobilize resources and formulate specific legitimating discourses, framing and shaping particular policies as well as new institutional arrangements. However, such entrepreneurship operates within constraints. These include general constitutional (Treaty-based) and institutional constraints, as well as the opposition of other agents. Nationally-oriented agents who seek to protect national sovereignty, for example, may seek to block the further expansion of EU powers and structures (Burns and Carson, 2003).

EU POLICYMAKING INSTITUTIONS

More or less in place since the Treaties of Rome, the core EU institutional arrangements include bureaucratic/administrative (the Commission), democratic representation (European Parliament), legislative with quasi-national representation (Council of Ministers), judicial (the European Court), and inter-governmental negotiative (the European Council) institutions. The boundaries between the functions and roles of different institutions are in practice unclear and flexible. “Public” authority is dispersed in these arrangements, which integrate public and private actors. A clear center of authority is lacking, as is a clear division of powers, and the formal procedures that regulate the various EU level policy networks are weak (Burns et al., 2001). The Commission plays the central role in initiating legislation. The Council has the final responsibility for making decisions and passing judgment on Commission proposals. Parliament has been politically weak, with limited initiative or positive influence, although its role and strength have been progressively increased over time. Overall, this set of policymaking institutions embodies many crosscurrents and tensions as a result of contradictory, institutionalized values and rule complexes, as is the case with any large complex of institutions (Burns and Flam, 1997). The concrete ways in which these crosscurrents conflict, coexist, and reinforce one another shape the institutional environment in which policymaking and policy development takes place.
THE EUROPEAN COMMISSION (COMMISSION)

Thus far in the history of the EU, the Commission has been the most consistently important entrepreneur. The EU literature often describes the Commission as a strategic actor that has been able to skillfully exploit political openings and policy opportunities as they have opened up (Cram, 2001; Fligstein, 2001a; Bellier, 1997; Cram, 1994). It has the formal role as initiator of policy proposals and the central role in building consensus and orchestrating support behind those proposals. The Commission has the task of balancing and mediating national interests as well as interest group opinions in order to come forward with proposals that will be also accepted by the Council of Ministers and the European Parliament. However, it is also an actor with goals of its own. One core raison d’être of the Commission is to promote European integration, and it uses a variety of venues and means for achieving its goals (Wendon, 1998). The Commission has often co-operated with the European Court of Justice (ECJ) to promote European integration, since the ECJ shares with the Commission a preference for deeper integration (Pollack, 1998b:249). The Commission is active in taking initiatives and shaping EU policies, and in the consultation process, engaging lobbyists and experts. Other European policymaking bodies are obviously important, but they primarily come into view as they reinforce, reshape, scale back, and/or legitimize the activities and initiatives of the Commission.

The Commission is by no means a monolithic entity. Not only do the individual Commissioners frequently have different political goals and views, the Directorates General, they oversee have markedly different missions. There is considerable variation in the goals of the respective DGs, and some are clearly more influential than others. During the development of the Single Market, for example, DG Enterprise (the former DG-III – Industry), carried probably the greatest weight. Others, such as DG Employment and Social Affairs (formerly DG-V) were seen as weaker and unsure of their mandate (although this has changed over the past several years) as in the case of DG Employment (Sutton, 1998). Even with clearly defined competence, it takes time to establish networks of experts, develop legitimizing discourses, fine-tune arguments, and gain authority and influence in relation to other DGs, and in relation to other important actors in the EU complex.

Clearly, the Commission is a powerful actor in its own right and a creative and important entrepreneur in EU policymaking and institutional reform. The Commission has further strengthened its position through linkages and coalition building with European lobbyists and interest associations. Indeed, it has been an explicit policy of the Commission to encourage direct contact with specialized affected interests and organizations, as well as those who mobilize expertise. Much of this contact takes place in diverse, specialized policy networks. In a system that lacks conventional democratic legitimacy and
accountability, this can be seen as an alternative approach to developing some form of constituency and the legitimacy it entails.

THE EUROPEAN PARLIAMENT (EP),

Although the early calls for a European Union called for a full-fledged European Parliament, the EP began much more modestly as an Assembly with only advisory powers. It formally became the European Parliament in 1962, and the first direct elections of EU Parliamentarians were held in 1979 and are now held every five years. Each successive Treaty since the Single European Act (1987) has expanded the powers of the Parliament, so that although it lacks the powers of national parliaments, there are opportunities for the EP to exert significant leverage. It has limited powers of initiative in that it can formally adopt its own proposals for legislation, although the Commission is not obligated to act on them. Similarly, its participation in the early stages of policy discussions can influence the nature and direction of eventual proposals. The EP also exercises leverage and influence under any of several formal procedures (these include consultation, cooperation, and co-decision – See Nugent, 1995:174-186). In 1999, the EP precipitated the resignation of the Santer Commission following a series of Commission missteps and scandals.

THE COUNCIL OF MINISTERS

The Council of Ministers is the principal legislative body of the EU. However, it is limited in that it can generally act only on the basis of proposals from the Commission. The Presidency of the Council rotates every six months, and Council of Ministers meetings are typically convened by the country that holds the Presidency. These meetings are often used to focus an agenda based on the issues a country has decided to prioritize during its presidency. Voting is handled by one of three procedures. Simple majority votes may be taken on non-controversial technical issues, while a qualified majority (QMV) is sufficient for matters pertaining to completion of internal market. Unanimity is required where the Treaties do not provide for lesser majorities, and in practice, the goal is to reach a consensus. In practice, the Council of Ministers is several councils, made up of the relevant ministers in a given policy area (Nylander, 2000).

THE EUROPEAN COURT OF JUSTICE (ECJ)

The ECJ is responsible for adjudicating and applying EU law, and for interpreting the general provisions of the Treaties. Based in Luxembourg, The

42 There are ways around this limitation, through “soft-law” types of informal or non-binding agreements, through the adoption of resolutions and recommendations, or through invoking Article 152 of the EEC Treaty (1958), which permits the Council to submit proposals to take certain actions in the absence of Commission initiatives Nugent, 1995: 124).
ECJ is comprised of 15 judges who serve six year staggered terms, one from each member state. Final decisions are taken by a simple majority vote, but unlike the US Supreme Court, there is no provision for dissenting opinions, and the results of votes are kept confidential (Hix, 1999). The ECJ has demonstrated a general bias toward further integration, and has proven itself a skillful and politically savvy policy entrepreneur in its own right. Over the course of EU history, the ECJ has made a crucial contribution to European integration through its success in constitutionalizing the Treaties through establishing two key principles. The first is the supremacy of EU law over the law of member states; the second is the “direct effect” of EU law, which permits private citizens to bring legal actions against member states based on EU law. These principles have gained increased importance as the scope of EU law has broadened and deepened.

**“Social Competence” and Policy Instruments**

The EU has a number of formal and informal means available for promoting its policies (Table 3.1) – or what Héritier (2001) aptly characterizes as “overt and covert institutionalization”. Formal legislation includes Directives and Regulations, which have force of law, and Recommendations, which amount to formal suggestions to member states, but with no obligations attached. In and of themselves, these are comparatively straightforward, follow established procedures, and are registered in the official journals. However, the informal, or “soft law” means are no less important, especially in areas where the legal basis in the Treaties is comparatively weak or unclear. In several instances, the use of soft measures has set the stage for the eventual development of formal, “hard law” measures, and arguably, even to Treaty reforms.

Soft law measures include not only the Action Programs developed by the Commission, but also a multitude of consensus facilitating measures and activities carried out within specific policy areas. These include development of Green Papers, White Papers, the development of common knowledge pools and measurements, benchmarking, monitoring, research funding, the cultivation of policy networks and constituencies, and other potentially consensus-building activities and procedures. While such activities are a long-standing part of the Commission’s repertoire (Burns and Carson, 2003; Cram, 1997), they have been developed and refined over time. Such means were systematized and formalized with regard to employment policy at the March

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43 There are numerous examples of this phenomenon. See, for example, Andersen (1999) or Nylander (2000) pertaining to the energy sector, and Vogel’s (1993) overview of the development of environmental policy. The case studies taken up in chapters 5-7 also provide examples,

Table 3.1 European Union Policy Instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations</td>
<td>Binding in their entirety on all member states. Regulations are directly applicable as law at member state level, and need not be transposed into national law.</td>
</tr>
<tr>
<td>&quot;Hard Law&quot; Directives</td>
<td>Binding on all member states in terms of results to be achieved, but national governments are free to choose the particular means by which those results are to be achieved. Directives must be transposed into national law.</td>
</tr>
<tr>
<td>Recommendations</td>
<td>Non-binding recommendations</td>
</tr>
<tr>
<td>Open Method of Coordination (OMC)</td>
<td>Formalized at the 2000 Lisbon summit, the OMC is a systematic process of setting employment related goals, and monitoring and reporting.</td>
</tr>
<tr>
<td>Action Program</td>
<td>A work plan for the Commission that enumerates specific measures to be taken as well as a timeline.</td>
</tr>
<tr>
<td>&quot;Soft Law&quot; White Paper</td>
<td>Policy Paper produced by the Commission in consultation with the Council and Parliament. A White Paper typically includes an enumeration of specific goals and an itemization of specific measures expected to be necessary to meet those goals. A White Paper has no legal force, but is often followed by &quot;hard law&quot; proposals.</td>
</tr>
<tr>
<td>&quot;Soft Law&quot; Green Paper</td>
<td>Policy paper produced by the Commission that outlines in a specific policy sector a set of &quot;European&quot; problems, related goals, and the types of approaches that might serve to remedy the identified problems. Broadly speaking, Green Papers are used to shape, identify and build consensus.</td>
</tr>
<tr>
<td>Other modes of consensus building</td>
<td>Identification and definition of common problems, development of bodies of shared knowledge and common measurements, benchmarking, monitoring, research funding, the cultivation of policy networks and constituencies, and other potentially consensus-building activities and procedures.</td>
</tr>
</tbody>
</table>

As pointed out earlier, the EU has historically lacked the legal authority to produce "hard law" – to legislate directly applicable rules – on most social questions. This stands in stark contrast to the clearly defined competence on market making goals that was put in place in the Treaties of Rome, and then expanded in the Single European Act (SEA). It also differs greatly from member states, whose legal competence to take action on social concerns has been well established, though not unchallenged, through long traditions of social regulation and welfare programs. Where the EU does have the authority to take legislative action on the social concerns, the typical requirement of unanimity among member states presents a significant hurdle. In some areas,
such as health services, it is explicitly barred from playing more than a coordination and facilitation role\(^{44}\), although such limitations do not apply to the market aspects of health services. Organizational capacity to pursue the development of European-level social issues is also limited. This is partially a result of the limited possibilities for financing organizational expansion of the EU bureaucracy, and partially a function of the relative newness of some EU competencies. Such capacity has required development over decades, or even generations in the member states.

C. POLICY PARADIGMS: “MARKET” VERSUS “SOCIAL”

The second task for this chapter is to flesh out ideal-types for the “Common Market” and “Social Europe” policy paradigms that guide actors’ efforts to influence EU policymaking. For this purpose, I borrow from the Hooghe and Marks (1997:3) characterization of the EU as an arena of struggle between backers of neo-liberal ideals on the one hand, and groups who support some form of regulated capitalism, on the other. These paradigms take on added dimensions in the EU context, because neither forms of participation nor the level at which policymaking takes place are fixed. This suggests the need for distinguishing the two paradigms not only in terms of the differences between their substantive goals and priorities on a roughly left/right continuum, but also in terms of the forms of participation each indicates, and in terms of the level of governance at which policy is (or should be) carried out.

The dimensions of policy substance, forms of participation, and level of governance follow not only from the kinds of general criticism leveled at the EU (see Chapter 1), but also from careful analysis. As Mark Pollack (1998a) and Simon Hix (1999a) have astutely observed about the two dimensions of substance and level – or in their terms, “left/right” cleavages\(^{45}\) and “national independence/integration” – neither is reducible to the other. Each of these dimensions represents an area of intense contention. Hix (1999a:3) further notes that the left-right dimension is itself “really a summary of two ‘value dimensions’”. The first is the above-mentioned issue of regulatory intervention in economic activity that defines the traditional left/right political continuum; the other pertains to interventions in social and political life to serve some collective good. Struggles over each of these include both the “where”, or “level”, at which policymaking takes place to the process by which it is made and the question of “who” should participate and how. It is here that issues of

\(^{44}\) This role is not insignificant, however, and has frequently marked the initial stage of European competence in a given policy area.

\(^{45}\) It is worth noting that the substantive aims of EU policy do not fit neatly along a conventional left-right continuum. In Sweden, for example, each of the major parties is split on issues of further EU integration. Those who support it do so for very different reasons.
legitimacy and democratic deficit are raised. Each of these dimensions is taken up in greater detail below.

**POLICY SUBSTANCE:**

This first dimension – the relative balance between “market” versus “social” priorities – pertains to what can be characterized as the policy substance dimension. It characterizes EU policymaking in terms of the concrete goals, themes, and types of policy produced, how it prioritizes key underlying principles, and the various complex interests such policy tends to favor.

Work by Catherine Hoskyns (1996) and by Patrick Kenis (1991) suggests a set of useful distinctions along these lines. Hoskyns (1996:47), for example, presents a three-part typology of EU policies, including what she characterizes as: a) non-economic social policy measures (which she refers to as the “society creating type”, b) measures aimed at “harmonizing” social costs for employers, and c) measures aimed at establishing the single market. Kenis (1991) suggests a similar set of substantive distinctions in his examination of whether the EU social dimension has become a core element of EU policy or remains an adjunct to the goal of economic integration. Hoskyns and Kenis each identify two general categories of policy (social, or “society creating”, and economic and “market making”). The middle category (“harmonizing” for Hoskyns and “adjunct to the market” for Kenis) represents a hybrid in which the relative balance between social and market policy is a close one. This middle ground implies a growing recognition that public policy must simultaneously take account of both social and economic goals and priorities or run the risk of generating unwanted or harmful side effects.

The use of a single hybrid category, however, leaves obscured a crucial distinction: “adjunct”, or secondary status, can apply to either social, or to market goals and priorities in public policy. Therefore, we find policies the substance of which includes both social and economic goals, but where they conflict with one another, one sphere of activity is clearly prioritized and the other is secondary (or “adjunct”). This set of relationships is sketched below in Table 3.2. Policy measures with “adjunct” status may be included to mitigate real or potential or anticipated policy failures, or they may be included because they are considered desirable in and of themselves and supportive of the core goals. Either way, where there is conflict between incommensurable goals, one must trump the other. In the EU, this tends to be systematic because of the limits on EU competence, and because of the way in which priorities are constitutionalized in the Treaties.

A few concrete examples (drawn from the case studies) should help to clarify the kinds of policies seen as fitting in the above idealized categories. Beginning on the left side of the table, an example of market policy with relatively little in the way of a social component would be the standardization
of products that eases the process of establishing the single market. Many of the early standards applied to foodstuffs, for example, were of this type. The second category, market policy with social policy as adjunct, would include measures such as Article 119 of the Treaty of Rome (1958), which was intended to help avoid potentially market distorting effects of legislation intended to reduce pay disparities between women and men (see Chapters 4 and 7). An example of the third category, where social goals are prioritized over strictly market oriented goals, can be found in the EU ban of the commercial product asbestos on the basis of public health considerations, or in the EU requirement that new chemical substances be approved as meeting certain safety standards prior to being placed on the market (see Chapter 6). In the last category, which includes policies with relatively little connection to market concerns, policies pertaining to issues such as domestic violence can be found (see Chapter 7).

Table 3.2. Market / Social Dimensions of a Public Policy Paradigm

<table>
<thead>
<tr>
<th>MARKET POLICY</th>
<th>SOCIAL POLICY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOCUS AND PRIORITY</strong></td>
<td><strong>FOCUS AND PRIORITY</strong></td>
</tr>
<tr>
<td>MARKET POLICY</td>
<td>SOCIAL POLICY</td>
</tr>
<tr>
<td>“market making”</td>
<td>“society creating”</td>
</tr>
<tr>
<td>(Type A Policy Paradigm)</td>
<td>(Type B Policy Paradigm)</td>
</tr>
<tr>
<td>MARKET POLICY</td>
<td>SOCIAL POLICY</td>
</tr>
<tr>
<td>social policy as adjunct</td>
<td>market policy as adjunct</td>
</tr>
<tr>
<td>(Type A/b Policy Paradigm)</td>
<td>(Type B/a Policy Paradigm)</td>
</tr>
</tbody>
</table>

Distinguishing between issues that fall on the respective ends of the spectrum is a relatively straightforward process. However, distinguishing between the two types of hybrids presents more of a challenge, and this is especially true given that several of the measures defined in this dissertation as primarily social in nature were characterized, promoted, and passed as measures to support the construction of the single market. Also, given that this dissertation is concerned with an apparent shift of emphasis toward socially defined concerns, it is particularly important that there be a consistent set of criteria for drawing the dividing line between the two. The answers to several key questions (below) help to clarify these distinctions. These distinctions are also clarified in part by reference to the two dimensions taken up below (forms of participation and levels of governance).

**DEFINING QUESTIONS**

**Prioritization of guiding principles and policy goals:** When there is a conflict between market-defined and socially defined goals, which most systematically takes precedence?
Regulation, monitoring, and transparency: Whose activities are being regulated or monitored, and to whose benefit? Is there self-regulation according to voluntary standards, or are there formal, imposed rules with sanctions attached. Aside from whether regulation is formal or informal, voluntary or mandatory, there is also the matter of monitoring to assess the extent to which the rules or agreements are being followed. Are the results of this monitoring process publicly available, or are they considered proprietary? As a matter of general principle, a neo-liberal, market paradigm tends to favor self-regulation and proprietary information, while the regulated capitalism or social paradigm tends to favor public regulation and public access to information.

Distribution of Benefits and Costs – How do policies within the sector tend to distribute benefits and costs, and are immediate and tangible benefits and potential future costs linked to one another? If one may assume that a product that offers few tangible benefits to the purchaser will be unsuccessful, and a product that is unprofitable will not be produced for long, the issue of benefits and costs is largely one of immediate and tangible benefits, versus long term costs that may be more difficult to determine. Planning longer term requires capacity to do so. Organizations, including the state, have an advantage. With both regulatory authority and a longer planning cycle, they are capable of planning and taking longer-term concerns into account. Individuals also operate under an assumption that products on the market are reasonably safe, particularly for the intended uses, and that the state regulates and monitors the market along such lines (see burden of proof). Some of the processes by which EU integration proceeds complicate this set of responsibilities. If products placed on the market prove later to be serious health or environmental hazards, to what extent are costs distributed across societies, and to what extent are they borne by the producer(s), and are these decisions made prospectively or retrospectively?

Burden of proof: What are the operating assumptions regarding burden of proof? For example, are new products considered safe and acceptable until proven unacceptably hazardous beyond doubt, or are they subject to some form of testing and evaluation to assure that they are safe and acceptable according to some set of standards? If gender discrimination is alleged, which party carries the burden of proving or disproving the charge? One effect of a policy paradigm that emphasizes market goals such as product innovation and increased efficiency is that products are generally assumed to be sufficiently safe until proven otherwise. Lack of information means a decision generally defaults to the producer. Those products that later prove problematic may be subject to regulation regarding their transport, handling, and use; but such regulation is still generally approached from an assumption that it is the particular use that generates the risks, while their hazards intrinsic to the
product are seldom sufficient to warrant the removal of a given product altogether.

Under the assumptions of the market paradigm, the burden of proof for establishing the existence of unacceptable hazard rests with public officials, public interest organizations, and with the general public, while the standard of proof generally required to meet this test has been scientific certainty. “Definitive proof” of health hazard generally comes from epidemiological studies. In practice, this has sometimes meant the toll in morbidity and mortality must be sufficiently large and the causal linkages made sufficiently clear to justify denying market actors the economic benefits associated with a given product (Harremoës et al., 2001). The result is a standard of proof that is more likely to lead to inaction while waiting for more conclusive data, a situation which also has direct consequences for how related benefits and eventual costs are distributed in society over time. Under such conditions, inconclusive information and scientific uncertainty accrue to the benefit of the producer, whose goods are likely to remain on the market while the arguments are being made (COM(2001)88 final).

The similar issue connected with gender equality is how the legal burden of proof is distributed in proving employment discrimination. Especially in cases of indirect discrimination in which rules are applied equally but disproportionately disadvantage women, it has often proven difficult to meet the burden of proof. Under a neo-liberal model, this is not a problem since the market determines wages and working conditions. A shift in the burden of proof enables employees bringing complaints to more easily demonstrate patterns of discrimination, and increases the incentive for employers to share relevant documents and information.

**Proposition 1:**

To the extent that governance in a policy sector (or the EU generally), is moving in the direction of elaborating and prioritizing socially defined goals (in the policy sectors under examination), one should be able to identify significant instances of social policy prioritized with market goals as adjunct (Type B/a policy – see Table 3.6) in which new regulation and its associated costs are imposed on market actors for socially defined purposes. “Positive” integration through the development of a common body of regulations would be expected to become increasingly apparent, and in some instances replace self-regulation. An increase in the number of instances of non-market social policy (Type B – see Table 3.5) should also be apparent.

Conversely, to the extent that the EU integration follows neo-liberal or market ideals, there should be little development of social policy at the EU level (with such considerations remaining at the national level), market

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46 These terms are part of the public health discourse and refer to illness and death.
problems should increasingly be given space to sort themselves out according to market mechanisms, and self-regulation would replace public intervention as the preferred mode of regulation. As national level regulations are enacted to protect public health, environment, and the like are identified as trade barriers and removed, they would instead be replaced with regulations aimed at facilitating cross-border trade. Product innovation is emphasized, and the benefits of new commercial products accrue primarily to owners. The costs of mistakes or accidents will tend to be distributed over time and across society generally, to some extent, as part of the necessary risk and trade off for the benefits of innovation and economic growth.

FORMS OF PARTICIPATION

A second important dimension of analysis emphasizes the forms of participation in governance. It focuses on governance processes and institutional arrangements which facilitate or hinder the participation of interested social groups in policymaking, and which distribute advantages across different groups. These issues are relevant to concerns about the “democratic deficit” and other questions of legitimacy, and are distinct from issues regarding the levels at which policy is made (whether local, regional, national, supranational, etc.). This dimension encompasses forms of political participation and engagement (see Held, 1997), the extent to which the EU’s neo-corporatist or pluralist forms of interest intermediation (Burns and Carson, 2003; Falkner, 1997; Schmitter, 1996b) may help facilitate the representation of various groups in society. Table 3.4 (below) highlights four different composite categories to be used in assessing forms of participation in governance. The first is conventional parliamentary democracy (see Held, 1996). The second category is what has been referred to as “organic” democracy, (Burns, 1999; Andersen and Burns, 1996), which entails the participation of organized actors or stakeholders through lobbying, and through mobilizing a wide range of discursive and organizational resources, including specialized expertise. The third category, labeled as “regulation by invitation”, is exemplified by the market actors seeking to make their environment more manageable and predictable by inviting public authorities to participate in defining property rights and rules of engagement for the marketplace (see Fligstein and Stone Sweet, 2002). This type of policymaking tends to operate as more of a closed system, limiting participation to actors with special technical expertise or with ownership (“stockholder”) interest. The fourth category entails private decisions and voluntary or self-regulation (which may be undertaken in an effort to stave off public intervention).

PROPOSITION 2: Further elaboration of the social dimension within a specific policy sector or the EU generally can be expected to entail systematic increases in the policymaking participation of NGOs, increased openness and
transparency in policymaking (with accompanying demands for transparency in lobbying activities), greater influence of formally democratic institutions in areas of contention, and less reliance on self-regulation. Conversely, an expansion along neo-liberal lines could be expected to shift more policymaking authority into the two categories on the right of Table 3.3, and efforts to draw regulatory issues back into the public domain at either the EU or the national level would be resisted.

Table 3.3 Public/private continuum for policymaking and regulation

<table>
<thead>
<tr>
<th>Self-regulation</th>
<th>Regulation “by request”</th>
<th>“Organic” democracy</th>
<th>Conventional representative democracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Private” decisions non-collective</td>
<td>Quasi-private policymaking using public arenas as neutral arena for reaching agreement between market actors on rules-of-the-game (i.e. property rights). Efforts to keep system “closed” and participation limited to economically interested parties, technical experts.</td>
<td>Public/collective policymaking with participation of “stakeholders” through mix of corporatist intermediation and/or lobbying in administrative/legislative systems. Extensive use of expertise from multiple sources.</td>
<td>Public/collective policymaking via democratic representation. Accountability via public scrutiny, free elections.</td>
</tr>
</tbody>
</table>

LEVELS OF GOVERNANCE

The third dimension of analysis engages elements of the long-standing theoretical tension and dialog in EU research between intergovernmentalism and neo-functionalism, and between Westphalian-style states and some form of European supranational or federal arrangement. “Sovereignty” and “subsidiarity” are the watchwords for this dimension. However, this is not solely a struggle between national and supranational bodies; struggles over where policy authority should be properly located extend both above and below these levels, extending from the local to the international level (as illustrated in Table 3.4). John Petersen (2001:290-291), for example, notes that “in Europe more than elsewhere the international, supranational, transnational, national, regional, and subnational are inextricably linked”. Beginning with the local level, each successive level is “nested” in a context influenced by the level above it, and which it in turn influences to varying degrees (Hollingsworth, 2002b). The lines of influence may sometimes bypass the level above or below, as when local or regional governments set up lobbying activities in Brussels. As issues within each of the policy sectors
covered in the case studies illustrate, sovereignty is in practice spread across these successive levels, whether formally by virtue of legal agreements, or by default, through the ability of some economic actors to relocate elsewhere.

Assessments of at which level policy authority should rest have varied considerably with the policy sector and over time. On the weak end of the spectrum, a passive consensus would permit EU engagement in certain issues deemed important, whether via work programs, support of research initiatives, or staging conferences or meetings with the goal of identifying common problems and potential European level remedies, etc. A greater degree of competence might include acknowledgement in the Treaties of an issue area or sector as an EU concern, but one that grants only limited competence to pass legislation. Legal competence with the ability to pass legislation on the basis of a qualified majority vote represents a greater degree of institutionalized authority, as does establishing a particular set of concerns as a core goal of the EU. An important, but less obvious and visible type of competence is the coordinating role the Commission may sometimes Commission on behalf of EU countries in international forums, such as the 1995 Beijing Conference on Women. Most important here is the overall constellation of legal competencies and organizational capacities, rather than any particular type of competence or capacity.

Table 3.4 Levels of governance (adapted from Hollingsworth, 2002).

Attempting to “stack the deck” by influencing the rules by which policy disputes are decided is a well-worn strategy, so too is choosing the particular arena in which a given contest is decided (Nylander, 2000; Baumgartner and Jones, 1991). The importance of the contentiousness around the governance
and integration dimensions is greatly magnified by the fluidness of institutional arrangements of the EU. The EU is very much a moving target.

PROPOSITION 3: As the EU’s ability and mandate to pursue specific kinds of social goals expands, one would expect to see different kinds of relevant competence emerge at the supranational, EU level, as well as the development of new organizational structures and capacities to pursue them (such as with a series of work programs, or with the establishment of a new DG or department within an existing DG). The overall configuration of these competencies and capacities should make possible a wide range of activities, including the development over time of new constituencies to support EU action in the policy sector in question.

D. THE EMERGENCE OF A NEW POLICY PARADIGM

The emergence of a new paradigm can be traced over time using the discursive categories or complexes introduced in Chapter 2. The discourses in these categories define concrete characteristics of the three dimensions elaborated above. Taken as a whole, these categories define a policy paradigm – a particular socio-cognitive order that when implemented, guides interaction and problem-solving activities (with respect to the case studies, this operates within the policy sector). A conceptual model of the problems that require attention and remedial action is constructed in the interplay between the ways in which the related issues/problems (problem/issue complex), legitimate authorities (responsibility/authority complex), and expertise (expert complex) are defined, and from which a general set of problem solving approaches (solution complex) and concrete policy goals can be developed. Changes in the general and specific policy goals developed from this process are what Hall (1993) defines as constituting third order change. But it is this overall “package” that constitutes the policy paradigm. These complexes are outlined in Table 3.5 below.

The discursive categories are intended to be generally applicable to policymaking, but the categorical descriptions in Table 3.6 are outlined with the EU policy process in mind. Also with EU policymaking and the sectors taken up in the case studies in mind, “Paradigm A” should be read as the institutionalized “market” paradigm, while “Paradigm B” should be read as representing the challenger, the “social” paradigm, in each of the cases. Paradigm A/b represents the market paradigm with social concerns managed
Table 3.6 Emergence/Institutionalization of a New Policy Paradigm

<table>
<thead>
<tr>
<th>Paradigm A: Time period 1</th>
<th>Paradigm A/b: Time period 2</th>
<th>Paradigm B/a: Time period 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Problem / issue complex</strong></td>
<td>Type A problems/issues readily recognized and responded to by designated responsible actors. Type B problems/issues are mostly &quot;invisible&quot; to the system, and not a &quot;public&quot; concern in the EU context.</td>
<td>Type B issues become visible in context of established EU goals and priorities. Partial conceptualization of Type B problems/issues, making them peripheral EU issue.</td>
</tr>
<tr>
<td><strong>Responsibility / authority Complex</strong></td>
<td>EU without authority (competence) or responsibility to take up Type B issues. Responsibility for managing B (to the extent it is recognized at all) lies elsewhere, perhaps at the national level, or may be &quot;private&quot; issue.</td>
<td>Partial responsibility for Type B issues because of relationship to EU integration goals and Type A goals, but formal authority absent or limited. Type B problems addressed by actors responsible for achieving Type A goals on ad hoc basis.</td>
</tr>
<tr>
<td><strong>Expert complex</strong></td>
<td>Available experts well-versed in Type A problems/issues. Type B expertise outside EU and generally not available.</td>
<td>Recruitment of expertise to the EU through NGOs, through other affected or interested groups, or international bodies. Some expertise may exist within EU administration itself. Some engagement in identifying and defining type B concerns via &quot;soft&quot; approaches.</td>
</tr>
<tr>
<td><strong>Conceptualization or model of issue</strong></td>
<td>Elaborated Paradigm A. Causal patterns and relationships of Type A concerns to other EU goals clearly conceptualized and formulated. Little or no structured conceptualization of Type B concerns in terms of a model, or as EU issue, with consideration of Type B concerns largely absent.</td>
<td>Partial EU conceptualization of Type B causality patterns (with key elements provided by &quot;third parties&quot;), formulated mostly in relation to disturbance Type B problems cause for type A goals. Emerging conceptualization supported with evidence provided by &quot;third party&quot; actors who frame Type B issues in terms of concerns and goals derived from Paradigm A.</td>
</tr>
<tr>
<td><strong>Solution complex</strong></td>
<td>EU solution neither necessary nor desirable because the phenomenon &quot;invisible&quot; from EU perspective, or because lack of EU competence means no EU solutions are available. &quot;Soft&quot; solutions possible. &quot;Hard&quot; solutions may be situationally possible if there is unanimity, consensus. &quot;Creative&quot; interpretation of Type B problems may permit use of &quot;hard&quot; measures.</td>
<td>Partial EU problems/issues formulated on logic of paradigm B, with clear goals and responsibilities, more systematic, comprehensive use of &quot;soft&quot; solutions.</td>
</tr>
<tr>
<td><strong>Concrete policy goals &amp; focus of attention</strong></td>
<td>Type A goals clearly conceptualized and formulated. No EU goals related to problem/issue B.</td>
<td>Concrete goals defined by A pursued with some consideration for type B concerns.</td>
</tr>
</tbody>
</table>
as an adjunct within that paradigm, while Paradigm B/a represents the social paradigm, with market goals maintained, but placed in a position of serving social goals. In each of these competing paradigms, principles can be identified that tend to validate the claims and interests of one set of actors over another, that tend to legitimize the participation of certain groups more than others, and that tend to define certain kinds of problems as properly EU issues, and others as outside of its competence. These principles are systematically related to one another, and can be identified in the two distinct paradigms.

As noted earlier, a new paradigm does not emerge into open, uncontested conceptual or institutional terrain – actors must typically struggle for that space. When new issues first emerge into view, or are successfully brought into view by actors’ claims making activities, the initial responses are likely to include denial or refusal to acknowledge the issue as a “problem”. This is especially true if the claims-makers are “third parties” or “outsiders”, external to the already institutionalized and recognized complex of responsible authorities or experts – although “insiders” may experience similar problems. The “issue” is more likely to be acknowledged as a problem to the extent that it can be seen to have undesirable consequences for the institutionalized order. Even if recognition grants some status to both claims-makers and the designation of the issue(s) as a “problem”, initial efforts to resolve or manage the problem are likely to be pursued from within the conceptual framework of the institutionalized paradigm. Such approaches and strategies would fall within the middle column (Paradigm A/b). This may fail to produce satisfactory results, either because the nature of the problem is poorly understood within the framework of the institutionalized paradigm, or because causal processes connected with the issue are difficult to correctly conceptualize.

The key elements involved in the process of challenge and change are located in Paradigm A/b, Time Period 2. Some of the key developments in this process include the emergence of anomalies, or unanticipated issues that are successfully defined as problems. In an effort to manage them, authorities make adjustments to the institutionalized model in various places. If the problems connected with “Type B” issues appear to be resolved or under control, the adjustments may bring stability, and therefore not pose a fundamental challenge to the paradigmatic model. To the extent that the problem persists and creates disturbances, authorities may feel compelled to make other peripheral adjustments (in addition to acknowledging the issue as a problem). This may include accepting the expertise of outsiders as claims-makers (or policy entrepreneurs supporting their claims) as legitimate and engaging new kinds of expertise, assigning currently responsible actors with limited authority to manage the problem, and accepting or developing new kinds of indicators and knowledge in hopes of putting the issue to rest.
This is most likely to occur where ideal and material interests of members of the dominant group come into conflict, creating opportunities for observant, entrepreneurial actors to enter the discussion and tip the balance in one direction or another. In and of themselves, none of these adjustments constitutes fundamental change; rather, they represent the first or second order change referred to by Hall (1993). Taken together, however, they may eventually produce a profound reconceptualization of the problem/issue and associated patterns of causality that calls for a fundamentally different set of remedial approaches, strategies, and policy goals. One example of this is a situation where market intervention by public authorities appears necessary in order to prevent damaging effects of market failure from undermining the legitimacy of the paradigm and the elites who advocate it. However, the intervention itself, as a contravention of the model, tends to legitimize both further intervention and the actors who called for it. One typical way to seek to manage this problem is to characterize the problem as a “special case” or “aberration” – an exception to the rule that calls for unusual or unconventional measures. Under certain circumstances, such processes may introduce greater incoherence into the paradigm, which in the face a crisis or persistent, unresolvable problems, may contribute to the replacement of the paradigm. Such replacement may come as governing elites embrace the new paradigm or – elites and paradigm may be replaced at the same time (Burns and Carson, 2002). This level of reconceptualization entails a reconfiguration of the core from which the solution complex and concrete policy goals are derived – the designation of new authorities, responsibilities, and expertise, but in a dominant, primary role rather than the secondary role through which they were first accepted into the social order.

PROPOSITION 4: The definition of new European level problems will generate opportunities for paradigm change supporting further European integration. This is especially true where problems are constructed in ways that present credible European-level solutions. Paradigm change is problem focused, with “problems” defined in terms of policy failures. These may be specified in terms of either policy failures or market failures – terms which tend to assign responsibility for the cause of the problem. In the end, they are simply different types of policy failure. Crisis can be considered a particularly acute type of policy failure that threatens the existing order (Fligstein, 2001a; Legro, 2000), opening greater possibilities for actors supporting an alternative paradigm to press for reforms. Crisis focuses attention on a specific issue – or represents widespread consensus that a specific issue is an important problem – although its source may continue to be a matter of intense dispute.

47 The case of asbestos, for example, was characterized as having little relation to chemicals or chemicals policy by industry representatives and others.
What has just been described here is a complex process of development that entails feedback loops between the complexes and at every level, suggesting that paradigm change is the result of an untold number of incremental decisions, although some of these decisions may have large consequences. The difficulty that emerges is assessing just when it is possible to determine that the established paradigm has been replaced by its challenger. Hall’s (1993) strategy to this problem is to identify a paradigmatic shift by mapping the institutional changes as they are implemented in accordance with the new model. He follows this pattern in his characterization of orders of change; the paradigm shift is apparent as the apparatus of governing institutions is redirected and brought to bear to achieve qualitatively different goals than previously. Following this logic, Hall (1993) traces the series of incremental policy adjustments that eventually culminated in a fundamental shift in British monetary policy, with the conclusion is that the policy shift in Britain from a Keynesian approach to monetarism was goal driven on the part of some actors (the Tories), and an unintended consequence of paradigmatic adjustments carried out by others (the British Labour Party). However, the conceptual shift is inferred primarily from the institutional shift, and therefore can be identified in only retrospect. This is the way in which the concept of paradigm shift has generally been employed.

The argument I make here, however, is that the paradigmatic and institutional shifts are analytically distinct, and at least sometimes empirically distinct, meaning that the shift past the respective thresholds may occur at separate points in time, and that these separate turning points can often be identified in discourses. Paradigmatic and institutional change are likely to be empirically distinct where there is lag time between cognitive change and formal policy change. This is especially so where routines are deeply embedded and interests deeply entrenched, making the adoption of policies following the new logic an incremental process. It is likely to be more difficult to make a clear empirical distinction in cases where dramatic events or crises result in an immediate and radical reversal of policy. However, even in such cases, it is likely that the some claims-makers’ discourses can be found which suggest a prior recognition and understanding of what led to the crisis, but which in retrospect were given insufficient attention.

The elements outlined in Table 3.6 combine to define the separate dimensions of policy substance, forms of participation, and level of governance specified in section C. The authority complex, for example, defines the authorities responsible for dealing with a given issue/problem, including whether they operate at the local, national, or supranational level. The issue/problem complex may likewise be defined in terms that identify the

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48 Such as with the September 11, 2001 bombing of the World Trade Center.
nature of the problem and the level at which it is relevant (i.e. whether it is defined in terms of market or social concerns, and whether the issue should be considered “national” or “European”).

Any of the dimensions of substance, forms of participation, or level of governance, can constitute the core of the paradigm, and therefore function as its center of gravity. Actors guided by a paradigm that primarily emphasizes policy substance over other considerations, for example, are more likely to seek out the level of governance and type of policymaking arena in which they believe they are most likely to prevail. A paradigm strongly defined by nationalism, on the other hand, would emphasize maintaining authority at the national level and seek to define and deal with most problems within national boundaries. Actors guided by a paradigm that stresses European integration as a core priority would tend to emphasize defining problems in European terms and seek to expand policymaking at that level. As noted earlier (by Hix, 1999a; Pollack, 1998a), the core complex is in practice likely to entail multiple priorities, with some elements comprising the core and tending to systematically take precedence over others. In addition, groups guided by different paradigms may press for a given policy for divergent reasons, such as the alliance (whether formal or informal) of neo-liberals and nationalists that Streeck (1995) identifies as allies in seeking to Europeanize authority in the economic sphere while maintaining most authority for social policy at the national level.

PROPOSITION 5: New actor alliances may form around predominantly ideal interests, predominantly material interests, or some combination of the two. Where such alliances shift the overall balance of power relationships connected to a particular sector or policy area, they may influence the nature and pace European integration.

APPLICATION IN THE EU CONTEXT

The policymaking culture and architecture of the EU lends itself to making the types of distinctions outlined in section C and D. Because the EU policymaking architecture is comparatively open, complex, often highly contested – but with the need and goal of achieving a comparatively high level of consensus – a variety of consensus building tools are used to test and shape the political environment in which policymaking takes place. Shifts in the core principles that guide rulemaking in a given policy sector are often presented in the form of the “Green Papers” and “White Papers” (see Table 3.1) that are somewhat a trademark of EU policymaking. Although these documents are not themselves the paradigm shift, they serve as useful markers of a conceptual shift that can be traced in the principles, goals, and concrete measures typically outlined in such papers. They represent a significant measure of consensus on the principles that should be guiding policy development, and are also
employed as a means of testing the political climate into which anticipated new policies will be launched. White Papers in particular typically offer a detailed blueprint of the policies the Commission anticipates enacting, and for which it anticipates support based on communication with the various stakeholders, including member state officials. However, their actual implementation is by no means assured, as continued disputes in all three cases investigated here illustrate. Nevertheless, these policy documents represent the expression of a particular conceptualization of the issues that require EU attention in a given policy sector, and they are presented quite apart from the formal adoption of new regulations following logic they recommend.
CHAPTER 4

THE ROOTS OF EU DEVELOPMENT: IDEAS, POLICYMAKING, AND EUROPEAN INTEGRATION

“The nature of the profound evil undermining European society is by now only too obvious to all: it is modern total warfare, the preparation and conduct of which employs all the social energies of any single country”

-Altiero Spinelli (1941)

A. THE HISTORICAL FOUNDATIONS OF THE EUROPEAN IDEA

The evolution of the European Union has been nudged forward step by step from idea to reality over the past half century by a spectrum of actors that includes nation-states, national and transnational organizations, and the entrepreneurial individuals that sometimes inspired or led them, or worked within them. They have been guided by blend of idealism and self-interest, the proportions of which have varied by actor and over time. Choices have also been guided and conditioned by the accumulated experience embodied in specific institutional arrangements, by the understandings about how these have either worked or failed, and by the new political opportunities that these have presented. To the extent that such institutional arrangements have been deemed to have worked well, they have been more resistant to change; where they were deemed to have failed in significant ways, new institution-building opportunities have opened up, the stage set with greater opportunities for political innovation.

49 Ventotene Manifesto, 1998[1941]:87
A virtual alphabet soup of new treaties and organizations (both European and international – see Table 4.1) emerged in the decade following the Second World War. These agreements were penned by individual European states seeking gains – gains defined in terms of fostering economic development and stability, but to a large extent in terms of securing American aid for post-war reconstruction. But there were also elements of idealism, and not only based on avoidance of new military conflict, but on seeking to construct a new world order based on democratic and humanitarian principles. Many of these treaty based arrangements faltered or simply faded into relative oblivion, others have remained strictly intergovernmental arrangements, while the organization that was to become the EU evolved through several stages, seemingly having taken on a life of its own.

Table 4.1 Major Treaty Revisions of the European Union

<table>
<thead>
<tr>
<th>Treaty Name</th>
<th>Place Signed</th>
<th>Date Signed</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty establishing the European Coal and Steel Community (ECSC)</td>
<td>Paris</td>
<td>18 April 1951</td>
<td>23 July 1952</td>
</tr>
<tr>
<td>Treaty establishing the European Atomic Energy Community (Euratom)</td>
<td>Rome</td>
<td>25 March 1957</td>
<td>1 July 1958</td>
</tr>
<tr>
<td>Treaty on European Union (TEU)</td>
<td>Maastricht</td>
<td>7 Feb. 1992</td>
<td>1 Nov. 93</td>
</tr>
<tr>
<td>Treaty of Amsterdam</td>
<td>Amsterdam</td>
<td>2 Oct. 1997</td>
<td>1 July 1999</td>
</tr>
</tbody>
</table>

The evolution of the European Union has by no means followed some inexorable developmental path, but neither can it be characterized as merely the product of self-interested interstate bargains. Important aspects of the rough outlines and directions of the EU are remarkably consistent with ideas being developed by influential intellectuals, and later by the resistance movement, long before the final shots of the Second World War were fired. Entrepreneurial leaders, including familiar names such as Jean Monnet and Altiero Spinelli, worked independently of European states (although often in cooperation with them) and infused the movement with ideals and strategies, and with their own often-considerable personal energies for furthering the process of European integration. They spoke to – and helped shape – the hopes.

50 The United Nations, founded in 1945, and the Council of Europe, founded in 1949, are examples of international organizations based primarily on the latter principles.
and expectations of European people who hoped not to be forced to endure yet another war. Other familiar names – Schuman, Adenauer, Spaak, Mollet, and numerous others, moved the political levers that brought member states on board. More recently, a diverse range of transnational NGOs, labor, and business organizations have emerged, seeking to help shape EU developments and connect them with the various expectations of the particular groups of people with whom they work.

This chapter summarizes key elements of the ideational and policy development of the EU, describing some of the historical conditions that form the backdrop against which all EU policy has emerged and evolved over the past half century. In doing so, it highlights some of the lofty ideals, practical concerns, and vested interests that have helped make the EU into far more than a free trade zone or international organization, the practical arrangements seen as suitable for achieving the long-term goals, and the institutional path-dependency that has contributed to the EU remaining something less that a federal state. It emphasizes not so much the string of Treaties from Paris to Amsterdam, but the spaces between that represent the backdrop for negotiating the series of “grand bargains” that define the competence of the Union. The Treaties are seen here as markers or signposts along a path, a sort of taking stock of the issues around which a significant level of consensus has been reached and consolidating the results. These, in turn, serve as a sort of base camp for subsequent excursions. The overall goal of chapter is to sketch out the ideational, institutional, and policy context within which the changes tracked in the individual case studies unfold.

**EARLY STEPS TOWARD EUROPEAN INTEGRATION**

In the still-settling dust of World War II, European leaders participating in the May 1948, Congress of Europe called for the establishment of a democratic structure for cooperation and integration in the form of a European Parliament. In addition to political union, their proposals also envisioned a single European defense force, an integrated economic system, and common citizenship (although without loss of nationality), organized as some form of federation of European states. There was a great sense of need to revive battered economies and rebuild political institutions, and participants hoped for new approaches that could serve to help avoid repeating the mistakes of the past (Holland, 1994). The offer from the U.S. of enormous sums of money for reconstruction via the Marshall plan in exchange for formally cooperating provided added impetus for developing and institutionalizing effective forms of cooperation (Nicoll and Salmon, 1994).

The first concrete steps, however, included neither a European Parliament nor anything resembling European federation. Cooperation arrangements instead followed a model of intergovernmental negotiations protective of national sovereignty, but which could nevertheless facilitate the coordination
of U.S. aid. The Organization for European Economic Cooperation (OEEC), formed in 1948, “did nothing to challenge the sovereignty of individual governments…the virtue of co-operation was extolled, not the principle of integration” (Holland, 1994:23). A second intergovernmental organization, the Western European Union (WEU), was launched soon after. It was established by the “Brussels Treaty” (the Treaty on Economic, Social, and Cultural Collaboration and Collective Self-Defence) to help counter the increasing possibility of renewed military aggression in Europe (De Schoutheete, 2000:118), and was in large part a response to Soviet actions in Central Europe (WEU, 2002). The treaty’s key provision was a commitment to mutual defense in the event any of the signatories became the target of armed aggression. It is notable that the treaty establishing the WEU also called for the progressive political integration of Europe. It included no specific provisions for pursuing this integration, however, and was in practice guided by the principle of state sovereignty and independence (Holland, 1994). Many of the important defense-related activities envisioned for the WEU in the Brussels Treaty were soon made redundant by the creation of the North Atlantic Treaty Organization (NATO) in 1950. Nevertheless, the WEU provided the foundation for subsequent negotiations that resulted in the more ambitious proposal to establish a European Defense Community (EDC) in which Belgium, France, Italy, Luxembourg, the Netherlands, and the Federal Republic of Germany were to participate. However, those efforts were left in shambles as the governing coalition in France shifted due to internal political factors, leading to the subsequent refusal of the French National Assembly to ratify the Treaty (Parsons, 2002).

These initial efforts to establish stable European partnerships began with strong agreement about what was to be avoided rather than with a clear consensus on what forms the new European cooperation should take. A sense of “never again” and desire to achieve a lasting peace was reinforced by an increasing perception among political leaders and other influential individuals that nationalism and competition for scarce resources had been the root causes of two European “civil wars” already during the first half of the 20th century (Spinelli and Rossi, 1998 [1944]; Holland, 1994). The all too fresh memories of recent war and the beginnings of new economic and security tensions assured that these concerns remained foremost in leaders’ minds. They helped generate a plethora of new treaties and collaborative efforts. For a variety of reasons, however, the great strides called for by the 1948 Congress of Europe were far larger than the steps to which all European national governments were prepared to commit. But although more conventional intergovernmental modes seemed to have prevailed in the initial steps taken toward European reconstruction and future security, calls for some sort of federal model for European cooperation were not without significant support.
SEEKING PEACE AND PROSPERITY: THE BEGINNINGS OF THE MODERN EUROPEAN IDEA

Winston Churchill’s 1946 Zurich speech is frequently singled out as marking the beginning of the idea of a European Union. Churchill used the occasion to call for a “kind of United States of Europe” with a reconciled France and Germany at its center, which “if well and truly built, will be such as to make the material strength of a single state less important” (1946:3). His plea included a note of urgency: “I must give you a warning. Time may be short…the cannons have ceased firing. The fighting has stopped; but the dangers have not stopped. If we are to form the United States of Europe, or whatever name it may take, we must begin now” (Churchill, 1946:3). However, while Churchill suggested a path and institutional configuration for pursuing peace, the role he envisioned for Britain in the enterprise remained ambiguous.

Churchill may have been the first head of state to call for a formally united Europe in the post war period, but he built on a perception shared by many other prominent leaders and intellectuals that the only hope of securing a lasting peace was to effectively restrain national rivalries and competition. The League of Nations had failed to accomplish this task; something else was clearly needed. The idea of some form of European federation had deep roots; it was being cultivated by influential intellectuals and by the resistance movement already during the early stages of the War; Churchill was clearly aware both of these sentiments and of some of their history (Bidmead, 1948).

Even as the Axis powers shifted their war machines into full gear, the resistance movement had already begun looking hopefully to its conclusion and the steps that would be necessary to avoid another repetition. Altiero Spinelli, who would later emerge to become an important champion of European integration and an eventual EU Parliamentarian, wrote his federalist paper, the Ventotene Manifesto, in 1941 in collaboration with fellow prisoner Ernesto Rossi. Spinelli, a resolute anti-fascist and active member of the Italian Communist Party, had been a law student at the time of his arrest for his opposition to Mussolini’s regime. Rossi, a professor of economics, had been imprisoned for his role as a leader of the social-liberal organization Giustizia e Libertà (Pinder, 1998). By the time the two met in 1939, the then-30 year-old Spinelli had already spent ten years in incarceration.

While imprisoned, Spinelli read insatiably and followed events and developments elsewhere in the world – including Stalin’s rise to power. Spinelli’s commitment to the social justice-oriented values he found in communism seems to have remained strong, but the totalitarian character of Soviet communism disturbed him; it was perhaps too near his own experience in fascist Italy. He sought explanations in discussion and in books, and “impressed by non-Marxist writers and resenting the straitjacket of communist
doctrine, he challenged the party line and was expelled in 1937” (Pinder, 1998:69).

Rossi introduced Spinelli to ideas of the British Federalists, among them Lionel Robbins and William Beveridge\(^{51}\). The “mental clarity and precision” and non-ideological character of their work were to leave a strong impression on Spinelli. Robbins’s distinctive contribution was identifying the “contradiction between an international economy and the insistence on national sovereignty, which allowed international economic forces to escape a proper framework of law” (Pinder, 1998:5). Robbins argued “the characteristic institutions of a liberal society are inconceivable without government…the mere absence of violence is not a sufficient condition for the efficient working of free enterprise…it must be restrained within suitable limits by a framework of institutions. Neither property nor contract are in any sense natural” (Robbins, 1998 [1937]:50-51).

Beveridge, summarizing the important themes of federalist thinking in “Peace and Federation?”, addressed himself to the broader political question: “How can justice in place of war be established as the arbiter among nations?” (Beveridge, 1998 [1940]:31).

Federation has been proposed above for a limited area. Limitation of area is essential; federalism is a strong remedy for a virulent disorder; it is not a healing lotion that can be sprayed over the world. World federation is for the millennium. The federation projected here is for the next peace treaty: it is a federation of nations which from fresh experience of war will be determined to make as certain as they can that war will never be repeated”…“Federation across national boundaries is a plan so new that it will be rejected by some critics as Utopian…The plan of this paper is Utopian, for it aims at making a world different from the world that we have known for nearly a generation. The plan dares and needs to be Utopian because the choice is no longer between Utopia and the pleasant, ordered world that our fathers knew. The choice is between Utopia and Hell (Beveridge, 1998 [1940]:35).

These writings clearly identified the abuse of concentrated power as a problem that urgently needed to be addressed – an analysis strongly shared by Spinelli. As Robbins pointed out, abuse of power was not the sole province of national governments; market failures, arising from unregulated or insufficiently regulated international markets, contributed to the instability and conflict that fostered the Nazi and Fascist rise to power. The arguments contained in these and other federalist papers provided Spinelli with a coherent set of ideas and remedies that were consistent with both his values and his

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\(^{51}\) Lionel Robbins, a political and economic liberal, became a professor at the London School of Economics (LSE) in 1929 at the age of 30 and remained there until 1961. William Beveridge was Director of the LSE from 1919 to 1937, and is widely regarded as a father of the modern welfare state.
experience – and that of many of his fellow prisoners. Eugenio Colorni summarized their conclusions:

Thus it was that in the minds of various people the central idea was forged that the basic contradiction which causes crises, wars, poverty, and the exploitation that afflicts society is the existence of sovereign States which exist geographically, economically, and militarily, which consider other States as competitors and potential enemies and which live in a perpetual state of bellum omnium omnes with respect to each other (Colorni, 1944).

Spinelli and Rossi set about drafting a manifesto to argue that constructing a European federation could preclude a return of totalitarian government and war. Named after the island on which had Mussolini imprisoned them, the Ventotene Manifesto was unequivocal in its description of the specific urgent problem to which federalism would be the solution: it was the combination of nationalism and capitalist imperialism that had fostered conditions favorable to the development of fascism. Nationalism and the totalitarian state were the principal threat to human liberty, and these must be combated. The manifesto was equally clear in its identification of the necessary positive goals of a “united Europe”. “As soon as this era ends the historical process of struggle against social inequalities and privileges will be restored in full…In order to respond to our needs, the European revolution must be socialist, i.e. its goal must be the emancipation of the working classes and the creation of more humane conditions for them” (Spinelli, 1941:11). At the same time, it left room for a diversity of actors and beliefs of “countless shades and nuances, stretching from very conservative liberalism to socialism and anarchy…They hope for the end of dictatorships, conceiving this as restoring the people’s insuppressible right to self-determination” (Spinelli, 1941:6-7). The Manifesto was circulated widely within the resistance movement, the original scribbled by hand on cigarette papers, and smuggled off the island in the false bottom of a tin box.

Spinelli’s substantial contribution, however, was perhaps less in his writings than it was in his subsequent efforts to bring the idea of a united Europe to fruition. Upon his release from confinement in the fall of 1943, he helped found the Movimento Federalista Europeo (MFE-European Federalist Movement), and dedicated his life to organizing, mobilizing, and lobbying for a federal Europe (ASIFS:2002) in Italy, and internationally. He would carry out his work from outside the European institutions for the next 27 years. He “made his prime objective the construction of Europe, to be achieved, not...
through the channels of foreign affairs, but by a democratic struggle based on supranational and constitutional criteria” (Albertini, 2002:1-2).

In fact, Spinelli was by no means alone; he was part of a much larger movement, and one he helped foster. If Churchill helped make the federalist idea widely accessible by popularizing it with a familiar and then-sympathetic metaphor, Spinelli, Rossi, and the British Federalists contributed an intellectual coherency of thought and proposals for action. Their ideas offered an internally consistent complex of remedies for addressing a persistent and serious problem, clearly pointing toward something more than intergovernmental “European cooperation”.

It was the strategic sense of French diplomat and businessman Jean Monnet, however, which was to prove pivotal to setting it in motion. As was the case with Spinelli and others, for Monnet, “while Europe was a political and economic concept, it was above all ‘a moral idea’” (Holland, 1994, c.f. Monet, 1978:392). Monnet was in many ways a remarkably unremarkable character; the son of an entrepreneur (his family started a brandy label in competition with the Hennessey & Martel labels), he enjoyed financial success but not great wealth. He worked closely with leading political figures in Europe and the United States, but never held political office. “He was not highly educated, nor an intellectual or political philosopher; he exhibited no special eloquence as a writer or public speaker; he had too little tolerance for detail to make a model bureaucrat. He possessed, however, extraordinarily shrewd judgment about politics and economics, combined with an uncommon gift for networking and friendship. He had, we would say today, the best Rolodex on three continents” (Schuker, 2002:16-17). That “Rolodex” had been accumulated through the years during a variety of international efforts: working to expand the family’s brandy business (prior to WW-I), helping coordinate economic cooperation and efforts to ensure the shipment military supplies during both world wars, and working for the League of Nations during the inter-war years (only to resign in frustration as it began to collapse) (Fransen, 2001). In summarizing his general orientation toward the endeavor he embraced as his life’s mission, Holland (1994:44) characterizes Monnet as “primarily an economic functionalist” and “secondly an incremental federalist”. But economic functionalism was a strategy he employed in his efforts to move forward in increments toward the goal of European Union. It was here he most differed with people such as Spinelli, who as a true federalist, believed that the window of opportunity generated by the dislocations of war would be brief, and that rapid movement toward European integration would be required. On the goals of foreclosing the possibilities for future war and a decent chance for a good life for average citizens, the two were of quite the same mind.

Monnet saw the establishment of effective institutions as the long-term key to success on European integration (Holland, 1994:10). It was Monnet
who, with a small circle of associates, drafted a proposal for combining French and German steel and coal production under a supranational High Authority - the proposal that became the Schuman Declaration (1950), and eventually became the basis for the Paris Treaty establishing the European Coal and Steel Community (ECSC) in 1952. Its purpose was to remove the raw materials needed to wage any future war from the control of individual governments (Nicoll and Salmon, 1994). The organization of the ECSC reflected this sense of the importance of institution building, and the future-oriented focus of not only Monnet, but also of other key leaders including French Foreign Minister Robert Schumann and German Chancellor Konrad Adenauer. But if Schumann and Adenauer were motivated by the same lofty ideals that drove Monnet, Spinelli and others, they were also constrained by political and practical considerations. The ECSC Treaty proved to be an expression of both.

It was not the formal cooperation of the original six member states (with France and Germany in the lead that distinguished the ECSC Treaty from others; it was the particular form it took. The institutions established under the ECSC included a High Authority as the administrative entity, an Assembly (although the Common Assembly possessed no formal power), and a Court of Justice for adjudicating disputes between states. A Council of Ministers had not been part of Monnet’s original proposal, but was incorporated into the Treaty to assuage the concerns of some members that some sort of checks on the ECSC administrative branch might be necessary. The model for this new set of institutions was not drawn up from scratch, but from Monnet’s own experience of the structural failures of the League of Nations, and his experience of the organizational structures that contributed to success in his work to facilitate and coordinate economic cooperation and the supply of essential supplies during two World Wars.

No less remarkable than the parties’ agreement to pool their coal and steel production was their willingness to vest substantial independent rulemaking authority in the High Authority of the new supranational organization. Parsons (2002) attributes this choice to a combination of the idealism of supporters of federalism (in large part, French), political and economic self-interest (both French and German), and a general political stalemate about the best way to proceed that defied conventional France political alliances and divisions. The French discussion included relatively equal political groupings guided by three different general models of how to proceed. In addition to advocates of European community who supported federalism, a second camp included traditionalists such as DeGaulle who remained strongly committed to preserving national sovereignty, and supporters of a looser confederation of states, who were most inclined toward British-style proposals of a close cooperation European free trade area that required little or no transfer of sovereignty. Since these groupings cut across the normal boundaries of political parties and alliances, the situation was unusually fluid. Once
Schumann and Adenauer had struck an agreement, Schumann maneuvered around the division of political elites and absence of a public outpouring of either support or opposition for the Treaty through the skillful use of his political power and agenda setting prerogatives to gain French Parliamentary approval of the ECSC Treaty.

Monnet, Schumann, and Adenauer had grander plans in mind – the ECSC was for them only a groundbreaking first step. These larger goals were no secret, as Monnet amply illustrated in his comments on the Schuman proposals: “We can never sufficiently emphasize that the six Community countries are the fore-runners of a broader united Europe, whose bounds are set only by those who have not yet joined. Our Community is not a coal and steel producers’ association: it is the beginning of Europe” (Monnet, 1978:216). European “integration” had finally entered its formative early stages of institutionalization, helped over a threshold that had previously represented an insurmountable barrier by a combination of historical and circumstantial factors. These factors had radically altered actor and power relationships – in part by destabilizing existing social institutions – and fostered a greater openness to new ideas and approaches. Thus, the EU as a peace project began with the economic integration in the strategic commodities of war. Jean Monnet had found the political opening he was hoping for. It was a tentative, but decisive step.

THE CIRCUITOUS PATH TO ROME

The early years of ECSC were generally judged to be a success, although it is unclear whether this success resulted from the work of the ECSC itself, or from endogenous conditions (Nugent, 1995:42). By the late 1950s, however, the ECSC had failed a crucial test – a crisis generated by overcapacity in coal production. In a general pattern to be often repeated in subsequent decades, member states rejected the Community proposal and reverted to developing their own individual strategies and policies for dealing with the overcapacity, at least partially retreating from the agreed-upon principles of the ECSC. In the longer run, the decline of importance of coal and steel has greatly reduced the importance of the concrete arrangements established in the ECSC. The institutional arrangements initiated with the ECSC, however, exerted a

\[53\] There are competing interpretations of these developments. Intergovernmentalists (see Moravesik, 1998 and others) tend to interpret the individual states’ choices as rational and self-interest serving. Neo-functionalists and federalists (see Haas, 1948; Mitrany, 1948) tend to see ideational factors and structural-functional needs as the driving forces. My characterization supports Parsons’ (2002) interpretation that all these factors were important, but that the relative balance between them opened the way for political entrepreneurs who were especially skilled and strategically positioned to tip the balance in one direction or another and overcome historical inertia.
powerful influence on the future European Economic Community and eventual European Union.

For Monnet, Schuman, and many others, the ECSC was intended to be a significant step toward a united Europe, not the end of the line. Efforts to negotiate two important components of further European integration were launched almost before the ink was dry on the ECSC treaty: the European Defense Community (EDC) and the European Political Community (EPC). The EDC negotiations were launched in parallel with the ECSC negotiations by French Prime Minister René Pleven, and based on his belief in the need to more comprehensively integrate West Germany (which was not in NATO). The EDC proposal called for creation of a European army for common defense under the authority of common political institutions (Nugent, 1995:53). These envisioned political institutions were patterned after the ECSC institutional forms, with a Joint Defense Commission, a Council of Ministers, an advisory Assembly, and a Court of Justice, and would have ultimately subsumed the ECSC institutions to form the European Political Community. The Treaty was signed in May 1952 by the same six states that had joined to form the ECSC. France, however had come under new leadership based on issues unrelated to foreign policy (Parsons, 2002) and was skittish about German rearmament even in the context of a joint project. In the absence of Schumann’s consummate political skill in a position where they gained leverage, ratification problems emerged, and the French National Assembly rejected the proposed Treaty in late 1954 by, thereby killing the effort. The envisioned common political institutions, in the form of the European Political Community, never reached the ratification stage. The EPC was abandoned with the failure of the European Defense Community, there being nothing to place under its authority.

In the wake of this sobering failure, the Six original signatory states regrouped and renegotiated. ECSC foreign ministers took up new proposals from the Benelux countries at a conference in Messina in the summer of 1955. The conference charged Belgium’s Socialist Foreign Minister Paul-Henri Spaak with the task of heading up a committee of representatives of the national governments. The committee was to prepare a report that would serve as the basis for another round of negotiations. Here too, French domestic politics unrelated to the question of “Europe” spilled over into the process. Conservative French Foreign Minister Pinay went beyond his mandate at Messina to accept the appointment of the study Committee, proposing the most pro-Community participant (Spaak) to head the committee, then sent his most pro-community deputy to represent France. He subsequently went even

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54 Great Britain was also invited to participate, but was pushing its own even looser association of states in a free trade area, and withdrew from the negotiations after failing to gain support. It eventually succeeded in forming the European Free Trade Association.
further and joined with other delegations to permit Spaak’s team to draft the entire report themselves, which contributed to making a coherent plan, but one that bore little resemblance to official French positions (Parsons, 2002:68). The proposal linked the European Economic Community (EEC) proposal with Euratom, which Monnet had been working to promote in France, and explicitly drew on the ECSC as its model for institutional structures.

The reactions to the Spaak proposals in France were unenthusiastic at best, with government bureaucrats, agriculture, and business groups taking a broadly negative view. But yet another political shift took place in 1956 with a Left-Center coalition gaining power by a narrow margin on a social policy platform. The surprise selection of the pro-community Socialist partly leader Guy Mollet by conservative Independent French President René Coty placed key governmental positions and institutional leverage in the hands of supporters of European integration. This enabled them to leverage sufficient support and ameliorate enough of the opposition to sign the treaties negotiated on the basis of the Spaak Report and quickly engineer their ratification by the French Parliament four months later, in July 1957.

The result was the Treaties of Rome: the European Atomic Energy Community (Euratom) Treaty and the Treaty on European Economic Community (EEC), which entered into effect January 1, 1958. Cooperation around establishing the Common Market provided the common denominator, which required the development of a common trade policy and the progressive removal of trade barriers between member states and their substitution with joint external tariffs. This proved a still challenging, but critically lower set of hurdles to clear than overt integration of defense capabilities or political authority. This was in part because it followed a wider trend of economic internationalization that was already underway (Griffiths, 1995), and in part because a critical mass of interests within the individual member states perceived a relatively rapid payoff in terms of access to their neighbor’s markets (Moravcsik, 1998). Even so, its success may have had as much to do with unusually skilled and idealistic political leaders and with timing as with any anticipated material gains. The Treaties of Rome established more than a free trade zone. They expanded what could only be characterized as experimental supranational institutional arrangements beyond coal and steel; they also carried within them language pointing to the loftier social purposes of integration, even if they were given little concrete expression.

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55 Monnet had resigned his position with the ECSC to establish the Committee for the United States of Europe, whose membership was composed primarily of Social Democrats and Christian Democrats, and eschewed business leaders (Cowles, 1997)
B. FROM GRAND GOALS TO CONCRETE POLICIES

The Treaties of Rome mark the official beginnings of what would eventually become the European Union. They mark a new period of institution building – of fleshing out the policies of the European Economic Community and the European Atomic Energy Community and of developing the organizational structures that would implement them. In short, the Treaties formalized the policymaking institutions and procedures, enumerated the range of goals and purposes for which the EEC was the intended vehicle, and defined legal authority and intermediate steps for achieving some of those goals. But from the broader vision of political, economic, and social change that inspired many of those who had worked to establish the EEC, only a limited number of elements were concretely realized in the new arrangements. While the overall combination of social and economic goals provided important inspiration, comparatively little concrete competence was invested in the EEC on social issues – the delegated authority and defined work plan from which to proceed was limited largely to the economic sphere. The result was that “in the EEC, the future rules on trade were set out fairly clearly, but only guiding principles were laid down for social policy and for agricultural policy” (Nugent, 1995:44).

This vagueness regarding the social dimension did not stop its development in its tracks, but it did make the process more tentative and exploratory – and politically uncertain. It should be also noted, however, that such vagueness was at least in part a function of the fact that the elaboration of social policy in European welfare states was still in its relatively early stages during the 1950s when the groundwork was being laid for the future EU (Scharpf, 2002; Baldwin, 1990). In addition, there was a sense that social policy differences between member states would be harmonized naturally as a byproduct of market integration (Ohlin Report, 1956).

EARLY EXPLORATION OF THE SOCIAL DIMENSION

By many accounts, the initial decade of EU development was remarkably successful – whether in spite of, or because of, the continuing struggles and machinations in the international political arena that characterized the 1960s (Lucarelli, 1999; Middlemas, 1995). European Commission President Walter Hallstein is credited with having built up an extremely effective organization staffed with highly qualified people, and they managed to engineer their primary goal and first major achievement, the Customs Union, in 1968, two years ahead of schedule. Exploratory forays in the area of social policy, although they progressed in specific areas, were hampered by the lack of a clear-cut legal basis in the Treaties. Perhaps more importantly, they were cut short by the recessions of the mid-1970s. The Paris Summit, for example, endorsed a significant development of EU social policy in 1972, only to backpedal four years later (Cram, 1997). This did not halt further exploration,
but made it more difficult to proceed except where treaty competence was more firmly established. The effect was to narrow the openings through which efforts to pursue social policy could proceed.

**The Evolution of Policy Sectors: Food, Chemicals, and Gender Equality**

The roots of each of the policy areas taken up in the case studies can be found in the early Treaties, although the issues and problems to which policy was addressed were conceptualized differently. Food policy, for example, focused primarily on food security – producing enough food to meet European needs and to make the Europe self-sufficient – and on assuring the economic viability of agriculture through active intervention to facilitate modernization and stabilize agricultural markets. The goals of the Common Agricultural Policy (CAP) were set out in Article 39 of the Treaty of Rome, although the specifics were left out – with the important details to be negotiated later. Chemicals policy did not exist as a separate area of policy and therefore fell naturally under the broader trade policies and Customs Union. However, occupational health and safety concerns were highlighted under the Euratom Treaty, and can be considered a precursor to the broader public health issues that emerged in the 1990s. Equality between women and men received special attention, primarily as a concession to French concerns about uneven conditions of competition, in the form of Article 119 in the Treaty of Rome requiring equal pay for women.

**Food, Farmers, and Self-Sufficiency**

Initial EU food policy focused on two pressing problems: the need for a level of European food production sufficient to feed Europe, and the need for farming to be economically viable. Progress on these issues would require increases in agricultural productivity and efficiency, and more stable markets. A related problem, but one connected more to the practical politics of securing an agreement on the treaties than agriculture per se, was the precariousness of France in the whole process. A primary French concern was that its farms, which remained family-based and dependent on old methods, would be especially vulnerable to the reduction of import protections. At the same time, increasing productivity in some areas of French agriculture made the prospect of new markets for agricultural products (particularly Germany) especially attractive. The result was that “the politics of the CAP was closely enmeshed with French economic imperatives (Lucarelli, 1999:53).

56 The development of EU Social Policy as a whole has been described in detail and quite well. See, for example, Geyer, 2000; Cram, 1997; Hoskyns, 1996; Leibfried and Pierson, 1995). The discussion included here provides more detailed background for the sectors covered in the case studies.
The goals of early EU agricultural policy were not only a concession to France, however. In fact, the general consensus among the signatories to the Treaty was that agriculture was indeed a special case where liberal markets did not work normally, that the consequences of market failures were potentially serious, and that it therefore required special treatment (Nugent, 1995: 362). The Netherlands, for example, strongly supported the underlying principles that would guide the agricultural policy, with its Minister of Agriculture arguing the position that “the application of the principle of economic liberalism, suitable for the industrial sectors of the economy, cannot be applied to farming” (Mansholt, 1952: 110, c.f. Rieger, 1995:201) This view of agriculture was enshrined in subsection (a) of Article 39 of the EEC Treaty, where it instructs that: “account shall be taken of: the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions”.

Negotiations on the details proved to be too complex to include in the EEC Treaty, so Article 39 of the EEC Treaty instead enumerated the central principles and goals that were agreed upon. These goals included a secure food supply, stable agricultural markets and commodity prices, increased agricultural efficiency and productivity, an improved standard of living for farmers, and the availability of food supplies to consumers at reasonable prices. These goals would be pursued through active intervention in agriculture coordinated through common policy. Accordingly, an agricultural policy – with considerable resources attached – was developed and deployed in pursuit of these goals.

The rules of the CAP were negotiated and pieced together largely during the course of the first five years of the EEC. It was carried out through intensive market interventions using price supports, investments in infrastructure with the goal of modernizing European agriculture by improving efficiency and stabilizing agricultural markets in order to assure farmer’s continued survival. By the beginning of 1964, meat and dairy products, poultry and eggs, rice and grains, and other agricultural products were covered by a complex web of more than 300 EU regulations (Lucarelli, 1999:53).

A strong argument can be made that at least in its origins, the CAP could be considered as a redistributive social policy. Rieger (1995:195), for example, portrays EU agricultural policies as “a succession of attempts, carried out in a volatile environment, to solve the basic problems of the agricultural sector in the developed industrial societies of Western Europe”… He goes on to point out that “the institutions of the Union – not the market economy – are the central mechanism for the allocation of resources and the principle source of conflicts and tensions” and that “it is therefore legitimate to speak of the ‘welfare dimension’ of the CAP”. The Common Agricultural Policy constituted a major system of income redistribution to farmers, many of whom
managed on modest incomes and under conditions of great uncertainty. Lower income and family farmers were not the only beneficiaries of the CAP, however, since its rules did not distribute payments based on the economic needs of farmers. Over time, those producers who were already stronger and better positioned to take advantage of the opportunities and incentives in the CAP benefited disproportionately (Rieger, 1995). The strictly food related issues of the CAP were connected with increasing productivity and efficiency, thereby securing the supply. In this respect, the CAP was very successful – perhaps too much so. In 1958, the EU was a net importer of foodstuffs, with the six original member states producing roughly 85% of their food needs. Within a decade, it was already producing surpluses (Nugent, 1995:375).

The resources to pay for the CAP’s structural investments and market stabilization measures were financed through the European Agricultural Guidance and Guarantee Fund (EAGGF), which was established within the EU budget in 1962. This fund was initially financed from the external tariffs established by the Customs Union, and so were not a direct cost borne by citizens of EU member states. The plan was that roughly one-third of expenditures would be used under the guidance section for structural investments, with the remaining two thirds being used for direct market interventions. However, the Guidance fund never amounted to more than 2.75% of the CAP budget from 1970 through the mid 1980s (Roederer-Rynning, 2003:149).

The food policy embodied in the CAP appealed to an initially large constituency. In 1958 when the EEC Treaty went into effect, an estimated 25% of total employment in member states was in the agricultural sector (Nugent, 1995: 364). That has dwindled significantly over the course of the EU’s development to roughly 4.3% (Roederer-Rynning, 2003: 133). Nevertheless, the EU still allocates roughly half of its budget to the CAP. Lobbying to keep the core features of the CAP is intense, and has been carried out by well-organized networks of farm organizations working at both national and supranational levels since the CAP’s inception. At the national level, “farm groups were more effective in monopolizing the attention of governments in need of expertise, as consumer and environmental organizations were only in the very early stages of development” (Roederer-Rynning, 2003: 137). Nugent (1995:365) notes that with the establishment of the CAP, lobbying organizations were also quickly established at the European level, with the number of Community-wide agricultural interest groups approaching 100 by the mid 1960s. The efforts of these organizations, including the Comité des Organisations Professionnelles Agricoles (COPA), an umbrella organization of all the national-level farmers organizations, helped reinforce by default an asymmetry in which the agricultural and commodity qualities of food were Europeanized, while issues of quality and safety remained largely at the national level.
EARLY POLICY ON CHEMICALS, HEALTH, AND THE ENVIRONMENT

The principle concern of EU chemicals policy as it emerged in the Common Market was to secure the general economic benefits of a healthy European chemical industry and foster a strong common market in chemical products. As chemicals policy per se gradually emerged as a subject for European policymaking, it was therefore organized principally around the market and commodity aspects of chemical products (Vogel, 1993; Brickman et al., 1985). Attention to the commodity aspects of chemicals products and the concrete EU mandate to pursue market integration were mutually reinforcing. The first EU Directive specifically regulating chemicals, adopted in 1967 (67/548/EEC), introduced classification, packaging, and labeling requirements. These first measures were primarily part of a process of standardization that was supportive of establishing an internal market in chemical products.

Some of the products were of course, already known to be dangerous, and EU officials recognized that chemical products present certain hazards that require special attention. This generated a multiplicity of concerns to drive early EU chemicals regulation that are apparent in the explanatory text of the 1967 Directive:

Whereas any rules concerning the placing on the market of dangerous substances and preparations must aim at protecting the public, and in particular workers using such substances and preparations;
Whereas the differences between the national provisions of the six Member States on the classification, packaging, and labeling of dangerous substances and preparations hinder trade in these substances and preparations within the Community and hence directly affect the establishment and functioning of the common market;
Whereas it is therefore necessary to remove such hindrances…

(67/548/EEC: emphasis added).

As the Directive’s language suggests, regulations protecting worker and public health were acknowledged as legitimate, but the differences between member states in their approaches to implementing the necessary protections also risked hindering trade and the “functioning of the common market”. The goals were not inherently incompatible; it was the differences between health and safety measures adopted at the national level that brought them into conflict with common market goals, and the asymmetry between competencies that provided the political challenge. EU competence in the area of economic integration was already being established, while competence in the area of occupational health ad safety was less clear-cut. It was therefore primarily trade and common market-related problems that justified EU-level attention and intervention on health and safety questions. The health threats posed by chemicals may have been an important concern at the EU-level in and of
themselves, but the ability to act on that was derived from the goal of establishing and developing the common market.

As elsewhere, environmental concerns entered the picture in the 1970s. The 1972 Paris Summit invited the Commission to develop the EU’s first environmental program and authorized the Commission to establish an Environmental Directorate (Syngellakis, 1999). When the First Environmental Action Programme was formally adopted by the Council of Ministers in 1973, it set out basic principles for its new environmental policy within the dominant, Treaty-sanctioned context of “harmonious development of economic activities” (Article 2, Treaty of Rome, 1958).

Important restrictions on the sale and use of some hazardous substances were set in place three years later, in 1976 (Directive 76/769/EEC). With the 1976 Directive, the EU followed, rather than led regulatory efforts. Controversy could be avoided to a great extent because the EU measures echoed health and environmental protection regulations already adopted in individual member states in response to growing environmental mobilization and related demands that public authorities take corrective action. A number of hazardous substances were also singled out in an occupational health and safety directive as requiring especially careful handling and treatment (80/1107/EEC). Asbestos was among them, marking the first mention of asbestos in EU regulation.

The adoption of European-level regulations was motivated not only by the increasing plethora of national-level environmental laws that complicated the process of regulatory harmonization for creating the common market, but also by a recognition (arising out of repeated chemical accidents) that many health and environmental hazards were in fact, transnational in nature. Equally important, though not enumerated, were Commission concerns for political legitimacy (Cichowski, 1998). Accordingly, the Commission sought in various ways to act – frequently stretching the boundaries of the authority established in the Treaties. Not surprisingly, the diverse nature of its motives posed certain problems. Vogel (1993:121) points out that “the Treaty of Rome, by not explicitly mentioning environmental protection, provided EC policymakers with no framework for balancing environmental protection with other EC goals, the most important of which was obviously the creation of the common market itself”.

In fact, it did provide such a framework, even if by default. This dynamic was not overlooked by Vogel (1993:127), who noted that the EU, “while attempting to respond to growing public pressures for stricter environmental standards, was equally determined to prevent environmental regulation from interfering with economic integration. When faced with a tension between the two, it chose the latter over the former…”. This conclusion echoes other assessments that at least well into the 1980s, much of the European-level regulation of chemicals has been primarily intended primarily to promote
European trade in chemical products and a healthy European chemicals industry (Brickman et al., 1985). The paradigm guiding European integration placed market integration at its center, and the emerging awareness and urgency of environmental and public health problems did not alter that basic fact. These concerns entered from the periphery—both conceptually, as awareness of the health and environmental hazards posed by chemicals developed, and in terms of the legal/institutional framework provided by the Treaties.

**GENDER EQUALITY AND THE BEGINNINGS OF EU SOCIAL POLICY**

The principle of gender equality was enshrined in European law at the formation of the European Economic Community, with Article 119 of the Treaty of Rome setting forth the principle of equal pay for equal work (Treaty of Rome, 1957: Article 119). However, the reasons for its inclusion lie not primarily in concerns over comparable remuneration of women by employers, but in the desire to make the accommodations necessary to secure France’s agreement to the Treaty (Warner, 1988:143). The equal pay article was conceived as an adjunct to the goal of building the common market: a measure to mitigate unwanted side-effects. France had already enacted “equal pay” regulations in the late 1940s in response to union and women’s activism, and partially in recognition of the important wartime role women had played in the Resistance (Hoskyns, 1996). French officials and employers both were concerned about the potentially “market distorting” effects of their equal pay regulations in a common market in which others did not abide by comparable standards and practices. This was considered particularly threatening to French enterprises under the circumstances, given that the envisioned common market would mean the removal of protective tariffs that could compensate for such differences in national policy.

While such concerns reflected quite real practical considerations, the major opposing policy positions on this issue in the Treaty negotiations were related to how the process of “harmonization” of social costs would take place (Cichowski, 2001:117). The French took the position that an active harmonization of the costs of employment and social policy was necessary to assure that measures mandated by national social legislation (such as equal pay) did not put industry at a competitive disadvantage. This amounted to endorsing at least some measures pertaining to social policy as an adjunct to market goals—social policy in the service of the market economy. Germany and the Netherlands, on the other hand, believed that such harmonization would be a natural outcome of the establishment of the Common Market, taking the more liberal oriented stance that economic policy should be kept separate from social policy, and that active intervention in the economy for

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57 In reality, this was a minimum wage law for women’s work (Geyer, 2000).
social purposes should be avoided. This question was referred to an expert committee of the International Labor Organization (ILO) headed by Swedish Liberal Party leader and economics professor Bertil Ohlin. The committee returned its analysis in the form of the Ohlin Report (ILO, 1956), generally supporting the more market-oriented German argument that “harmonization” would be a natural outgrowth of common market development. It did, however, acknowledge that some specific areas of policy might be considered exceptions. In either case, however, the principal concern was less one of women’s equality with men than the broader concern of how to achieve market integration with fair competition and minimal market distortion resulting from social provisions. There were clearly self-interested economic motivations among both states and transnational business actors, especially given that both Germany and France were still working to rebuild economies shaken by the war.

Authoritative accounts (see Hoskyns, 1996) suggest that the negotiations about gender equality focused not on the issue of gender equality per se, but on its effects as a social provision on labor costs. This means that the arguments focused little, if at all, on the desirability of gender equality as a policy goal, etc., but rather on how to harmonize the costs in a broader social context. Arguments that might have normally been raised in the context of a discussion about the general principle of equal treatment regarding pay (of the sort presented by Belgian arms factory in the Herstal Equal pay strike) were less important. The language of Article 119 was therefore negotiated based on its conceptualization as a provision to prevent market distortion. It was by no means without precedent; the ILO had already adopted its Convention 100 in 1951, which contained a similar statement of principle regarding equal pay. When it was eventually moved to the social policy section in the final version of the Treaty, the language already negotiated remained, leaving it stronger than it would have been had it not been crafted as a market-supporting measure. As such, it provided an unusual opening for promoting gender equality. Had the issue of equality between men and women been raised in a different context – that a core purpose of the EU should be to promote equality between women and men – it is difficult to conceive of an article ever making it into the Treaty of Rome. In the context of the Treaty negotiations, core policy assumptions were not challenged; it was secondary issues that were being negotiated.

Despite some cautious preliminary attempts by the Commission to give expression to the equal pay provisions (largely in the context of the Commission’s interest in pursuing a social policy more generally), Article 119 and its potential lay largely dormant for nearly a decade (Hervey and O’Keeffe, 1996). As of the late 1960s, no Member State government had yet taken steps based on the principles embodied in the Article, perhaps accurately reflecting
the original intentions of the intergovernmental bargain that placed Article 119 in the Treaty.

C. EUROSCLEROSIS AND THE NEO-LIBERAL TURN

By the beginning of the 1980s, the European Union faced a new crisis (Fligstein, 2001a): “Eurosclerosis” was beginning to set in. European integration had already begun to lose some of its momentum by the end of the 1960s, and was more or less stopped in its tracks by the late 1970s (Schmitter, 1996b). As the Social Europe initiatives of the early 1970s stalled, they further contributed to this stagnation (Streek, 1995:397) “A combination of increased awareness of its emerging impact upon national sovereignty and the capability of national states to pursue their own macro-economic policies” helped drag development to a near standstill (Schmitter, 1996b:9-10). But it was not only the increasing friction generated by entrenched interests that slowed the integration process; it was also running out of steam. The combination of inspiration of and fear that had fueled it was waning, in part because many of its early goals appeared to have been achieved. By the beginning of the 1980s, the “Eurosclerosis” had emerged as a frequently used metaphor to characterize the state of European economies in general and the overall loss of momentum and direction of European integration. The EU developments of the early 1980s took place in a context that included the crisis of economic stagnation and the related ascendancy of neo-liberalism in Europe and North America (Streek, 1995). European business was struggling with what it considered to be excessive regulation and taxation at the national level and looking for ways to increase its competitiveness vis-à-vis Japan and the USA.

In the midst of this fading momentum, however, the 1975 decision of the European Council to move to direct election of the European Parliament came to fruition. These first direct elections were held in June of 1979, and brought with them increased influence and legitimacy for the body – even if it still lacked the powers generally invested in Parliaments. Altiero Spinelli was among the newly elected Parliamentarians. Sensing opportunity in the emerging crisis, he and a group of nine colleagues (who called themselves the “Crocodile Club” after a restaurant in which they frequently met) began discussions on institutional reforms. The EP set up an Institutional Affairs Committee in July of 1981 with Spinelli as the coordinating rapporteur, and

58 This meeting of the Council was significant because 15 years of Gaullist government in France had been ended by the election of pro-European President Valéry Giscard d’Estaing, making possible the unanimous vote necessary to establish direct election of the parliament (Pinder, 2000).
59 This Council meeting also resulted in the Parliament gaining authority to accept or reject the budget proposed by the Commission (EP, 2004).
60 This first “European” Parliamentary election took place just three months after the March 29, 1979 death of Jean Monnet at the age of 91.
the committee set to work on the initiative of drafting a new Treaty proposal. The Spinelli report was subsequently approved by a large Parliamentary majority on February 14, 1984 (Pinder, 2000). The report’s “preliminary draft treaty” called for establishing the European Union by thoroughly democratizing the Treaty of Rome ultimately provided more impetus than direction. The proposal was referred in June of 1984 under the then French Presidency to an ad hoc committee (the Dooge Committee, after its chairperson) charged with making proposals for institutional reforms and strengthening political cooperation.

As it turned out, the EP’s Institutional Affairs Committee under Spinelli was one of a number of initiatives seeking to chart a path out of the gridlock into which the process of European integration had become mired. A core problem was the unanimity voting that had been agreed to as the solution to the “empty chair” crisis in the mid 1960s. Gaston Thorn, Commission President from 1981-1985, summed up this problem, pointing out that “Europe needs to be governed and I do not believe that it can be governed unanimously with ten or twelve governments” (c.f. Fligstein, 2001a:272). Finding consensus on institutional reforms, however, proved difficult. Even with the support of the European Parliament, efforts at institutional reform under Thorn’s leadership were stymied, and the United Kingdom in particular (under the Thatcher government) opposing changes in the voting rules. By early 1984, just as the Spinelli Report was being approved by the EP, the growing political crisis reached a new high (Fligstein, 2001a: 271-273)

Where the direct election of the European Parliament had helped spark proposals for some kinds of new institutional reforms, the 1979 European Court of Justice (ECJ) decision in the Cassis de Dijon case provided a basis for others. The decision on the case opened the door for a new and more streamlined method to achieve market integration, dubbed “mutual recognition”, through which goods produced according to the standards of one EU member state were to be considered acceptable for sale in other member states. This opened a possibility for reducing the Commission’s workload connected with harmonizing national regulations – one which the Commission picked up on and systematized in its White Paper on the completion of the internal market (Majone, 1996a). The streamlining effect of the new approach was a result of bypassing the need for unanimity among the member states for each further reduction of market barriers. It also facilitated the process of modernizing product standards from specification standards to more innovation oriented performance standards (Majone, 1996a). However, it also

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61 This crisis was precipitated when the French under Charles de Gaulle boycotted EU meetings. It was finally resolved with the “Luxemburg Compromise”, an agreement that permitted a single member state to effectively veto a proposal it considered contrary to its vital interests – even where majority voting would otherwise be permitted under the Treaty provisions (Griffiths, 1995:52-53).
carried with it certain possible undesirable consequences. One that was quickly recognized was the potential for undermining national level health and safety regulations. This was addressed in part through the proposal (which was incorporated into the Single European Act) to lower the voting threshold for Europeanizing occupational health and safety regulations to qualified majority.

Instead of the broad move toward the federal Europe Spinelli and his colleagues had sought to spark, the next steps toward European integration focused more narrowly on the “completion” of the single market. That it went anywhere at all is considered a tribute to the formidable political skills of Jacque Delors, former French Socialist Finance Minister, and Commission President from 1985-1989, and other key actors within the Commission. As was the case earlier, the Delors Commission built on the ground prepared by its predecessors. Delors’ intention was to use the theme of “completion of the single market” to achieve institutional reforms believed necessary to further the integration process, and also to expand the social policy initiatives undertaken earlier, with the target date set for 1992. However, few of the “social Europe” initiatives cleared the critical threshold of support necessary, in part due to the adamant position of the Thatcher government. Where national governments remained skeptical about altering voting rules, business associations mobilized in support of a generally neo-liberal, deregulatory mode of extending European integration, with the argument that deregulation was necessary to make European enterprise “competitive”. Actors concerned with the future of European integration pressed forward on the basis of the strengthening the tools available for future integration. The Single Market Program thus served a dual purpose, with these purposes supported by different constituencies (see Fligstein, 2001: 277). Labor (and to some extent, and public interest NGOs) was considered the loser in this effort (Silvia, 1991).

Wolfgang Streek (1995:394) offered an especially pessimistic perspective on the level of development permitted by following the intergovernmental lowest common denominator: “the positive integration element of the 1992 process – its supranationalism, as vested in the qualified majority vote – was to apply to ‘all issues relating to the internal market’, but to nothing else; indeed, it was only because it was entirely dedicated to the purpose of market making that qualified majority voting was acceptable in both European international relations and Europe’s domestic political economy”. This configuration of institutional reforms has had significant consequences for the development of social policy post-SEA, but it has by no means arrested the process of building

62 For detailed analyses of the process leading to the Single European Act from alternative perspectives, (see Fligstein, 2001a; Fligstein and Mara-Drita, 1996; Middlemas, 1995:111-155; Ross, 1995; Moravesík, 1991)

63 Although many of the items in the 1989 Charter of Fundamental Social Rights were eventually adopted (see Addison and Siebert, 1994)
social Europe via positive integration, as the case studies demonstrate. In some instances, has facilitated the process in unexpected ways.

If the adoption of the Single European Act (1987) and the 1992 target for the completion of the internal market represented a revitalization of the European idea, it was once again more concretely spelled out, granted the requisite competence, and organizationally better equipped in the economic than in the social arena. Where the mandate granted the EU in the market sphere was open ended with the road paved with qualified majority voting, the mandate on social policy remained generally tentative. Where pursuit of social goals was permitted, it generally required unanimity in the Council in order to proceed. This is the set of conditions to which much of the criticism of the EU seem to be directed. In addition, there is abundant evidence to suggest that the emphasis and attention to completing the internal market represented contributed to a widespread perception of the EU as oriented toward economic integration at the expense of social protection.

Notwithstanding the general inability to realize the hoped-for expansion of competence on social issues in the SEA, significant breakthroughs were made. In spite of the single market focus, other policies did come in the bargain, and these helped set the stage for future action. Market deregulation would be constrained, at least to some extent, by new competences. The development of occupational health and safety standards was brought under qualified majority voting with Article 118a. This provided the legal base for a series of Directives setting basic health and safety standards in several areas, then strengthening those standards from the base level (Ross, 1995). Several of the directives eventually passed under QMV rules were included as proposals under the 1989 Social Charter, which was to have been a part of the new treaty, but was downgraded in status and delayed due to hard opposition from the United Kingdom (Geyer, 2000). For environmental policy, the passage of the SEA was considered a “defining moment”. The first explicit legal competence was defined under Articles 130r-130t, and environmental concerns were “mainstreamed”, with the language of Article 130r(2) dictating that environmental protection “shall be a component of the Community’s other policies (Syngellakis, 1999:170). These were by no means the only areas where ground was gained on social policy64, but they were among the more decisive. In an overall assessment, Ross (1995:387) suggested that while the hopes of deepening and widening the integration process fell far short of the hopes of many, “the Delors period leaves a considerably enlarged social policy

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64 For example, the European Regional Development Fund (ERDF), which can be counted as redistributive social policy, even if across regions rather than class or generation, was significantly restructured and its budget increased in 1988. Its status was boosted in the Maastricht Treaty (1993) under Article 130c. For a discussion of the EU’s structural funds, see Jeffrey Anderson (1995) or Doreen Collins (1983). See also, (EUROPA, 2003).
legacy to its successors”. It was this base that the activities of the 1990s built upon.

**BEYOND THE SEA: MAASTRICHT & AMSTERDAM**

Several of the important developments of the 1990s found expression in the Maastricht or Amsterdam Treaties. The incremental expansion of formal competencies was to a significant extent a reflection of work being done and the effectiveness of claims being made by various actors supportive of the idea of a more “social Europe” (including, among others, NGOs and supporters within the Commission). These changes in formal EU authority by no means extended far enough to correct the “constitutional asymmetry” that characterizes EU competence on market versus social policy. At the same time, the Treaty changes provided an expanded and stronger base for subsequent action. For example, Article F in Title I of the Maastricht Treaty (1993) declared, “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms”. Also in the Maastricht Treaty, a new Article 129 first established EU competence in the area of public health, requiring that public health be considered in EU policymaking, thus expanding the space for the Commission to take action. Important institutional reforms were also sealed in Maastricht. The Co-decision procedure was set in place, granting the European Parliament more power vis-à-vis the Commission. The EP also gained the authority to approve (or disapprove) the appointment of the Commission. Both these changes would prove significant before the end of the 1990s.

Following a generally functionalist logic, increased trade helped highlight other previously unnoticed hindrances and created new ones. Increased trade raised issues connected with standardization of products, labeling, packaging, and safety standards, among others. The increasing movement of products, services, capital, and people across national borders also generated calls for more attention to questions of public health, product safety, occupational health and safety, and environmental protection, to name only a few. The subsequent response to these pressures and changes is in evidence in several sections of the next treaty to take effect, the Amsterdam Treaty (1999).

The Amsterdam Treaty (1999) brought with it a number of important developments, including the “mainstreaming” of two new areas of policy.

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65 These demands for EU action have arisen in part out of values and expectations based in experience at the national level, where government has long taken significant responsibility for protecting the public interest. For a variety of reasons, the EU has over time come to be more widely perceived as a suitable agent for protecting the public interest.

66 A month and a half before the ICG that negotiated the Amsterdam treaty, the Blair Labour government replaced John Major’s Conservative Government. In addition, several new member states (including Sweden) helped change the political balance.
Article 2 of the Treaty established that the “promotion of equality between men and women is a task of the European Community”, while Article 3 made equality between women and men a core goal of the EU: “the Community shall aim to eliminate inequalities and to promote equality between men and women”. Article 13 establishes the authority to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

In addition, the mandate pertaining to public health was reinforced and expanded in the Amsterdam Treaty (1999) to state that “a high level of human health shall be ensured in the definition and implementation of all Community policies and activities”, and that community action should include “improving public health, preventing human illness and diseases, and obviating sources of danger to human health” (Article 152, Paragraph 1, Amsterdam Treaty, 1999, emphasis added). The Council must act unanimously, however, to approve new regulations that are based on these principles.

In a similar vein, Article 153 establishes competence for the Community to “ensure a high level of consumer protection” by protecting the health, safety, and economic interests of consumers...”. This language is comparable to that found in Article 152, but although there is no separate authorization for issuing directives to accomplish these goals, the issuance of directives is specifically authorized if done in the context of regulations also furthering the goal of the single market (Amsterdam Treaty, 1999, Articles 14, 95 and 153, emphasis added). In contrast, directives aimed at pursuing EU public health policy via the direct harmonization of national health service policies have been explicitly off limits, even while many directives that affect health care services have been issued in the establishment of the single market. Directives are permissible in the consumer protection arena – if framed in the context of promoting movement toward the single market.

The formal competence to address several important new social concerns was at least partially institutionalized during the course of the 1990s in the Maastricht and Amsterdam Treaties (1999). These competencies remain subordinate in important ways to both the goals of the single market and the sovereignty of member states. However, they provide small but significant openings in the treaties that have been exploited by the Commission and public interest NGOs. Often, these have taken the form of framing actions to protect public health and consumer safety in terms of protecting the internal market. These have become enormously important, as each of the case studies illustrates.
CHAPTER 5

MAD COWS, POLLUTED POULTRY, AND THE TRANSFORMATION OF EU FOOD POLICY

The Temporary Committee to follow up the recommendations on BSE...expects that in the future the Commission will follow a policy in which higher priority is given to the principles of health and consumer protection than to other key principles of the internal market...

- European Parliament’s Temporary Committee concerning follow up on BSE (1997/11/14)

A. INTRODUCTION: EMERGING HEALTH DIMENSIONS

The start of the new millennium was marked by a quite remarkable process of change in the food policy of the EU – one in which the policy orientation appears to have shifted past the balance point – both conceptually and institutionally – from an emphasis on the commodity and market aspects of food, to placing first priority on food-related public health and consumer concerns. As was the case with the coming of the new millennium, this shift in EU food policy had been underway for some time; it was also accompanied – and in this case facilitated – by the concerns of a variety of interests, a series of important events and developments, and ongoing preparations and activities. The policy shift was a reflection of significant changes in the way in which food policy is understood and conceptualized. This in turn influenced which types of food-related problems are considered to be appropriate and important for EU-level policymaking. At the same time, this policy shift is being institutionalized in a variety of different ways within European Union
institutions: reordered priorities, organizational restructuring, and the writing of new rules-of-the-game at the European level.

As has already been outlined, early EU food policy issues were seen as largely agricultural in nature, with an emphasis on the security of the food supply and the economic viability of farms, and these initial problems were gradually addressed. But the initial problems were eventually replaced by new ones that were an outgrowth of earlier policies – in particular, the need for new markets and the desire in many quarters for lower commodity prices. This new focus fit quite well with the broader push for the single market, and resulted in the European policymaking apparatus being brought to bear upon the various obstacles to open trade in agricultural products and foodstuffs within Europe. Another new set of problems emerged with the development of the single market in the early 1990s. This time, they were manifested in the form of a series of food-related crises that have once again shifted attention to reshape the way in which the EU’s responsibility for food policy is understood and conceptualized. Food safety, public health, and consumer choice are the issues to which the newly emerging food policy are being addressed – and around which new institutional structures are being organized.

The European Food Safety Authority (EFSA), the regulatory agency now being set up in Parma, Italy, and the reorganized DG Health and Consumer Protection (the former DG–XXIV), had a markedly different mission than the component parts transferred in from DG Industry (DG–III) or DG Agriculture (DG–VI). This in itself represented a major departure from the EU’s sometimes single-mindedly single market mission of the late 1980s and much of the 1990s – even if knowledgeable observers have argued that at least in its early stages, the establishment of the EFSA represents more of a reconfiguration than the creation of any structure or capacity. At the same time, the raison d’être of the EFSA points both forward and backwards; in addition to its newly explicit priorities of protecting consumer interests and the public health, the policy changes embodied in the Authority can be seen as an important step toward protecting many of the achievements materialized in the creation of the European Single Market – and the marketability of European agricultural products on a world market. With the internal market largely in place, any lack of attention to the new problems generated could potentially contribute to its undoing, as the struggles around food safety have illustrated. Remarkably, the two short paragraphs in the Amsterdam Treaty (Articles 152 and 153) calling for a high level of consumer and public health protection in the development and implementation of all EU policies may prove not only to be an unexpectedly potent protection against the excesses of poorly or insufficiently regulated markets – they may also serve as powerful leverage for

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67 This observation was repeated in interviews with Commission staff and NGO representatives.
DG Health and Consumer Protection with the other DGs during internal negotiations to craft Commission proposals.

While these developments appear almost certain to contribute to the further “Europeanization” of new areas of public policy, they were by no means certain; they might easily have taken a very different path. One likely alternate path may well have been a de-facto return to the regulation and management of food safety issues by individual member states. As of November of 1999, the bans imposed on British meat exports by both the French and the Germans were still in place, with the Commission initiating infringement proceedings against France (IP/99/850). This was three years after the connection between “mad cow disease” and human health first jolted public consciousness – and it is only one among several examples of the ongoing tensions between national and supranational policymaking in the food arena. And in spite of the ongoing public concern and controversy regarding BSE (Bovine Spongiform Encephalopathy, a.k.a., “mad cow disease”), the EU continues to experience difficulty persuading many member states to implement regulations designed to tighten up on the agricultural practices that have contributed to its spread.

One interpretation of the changes currently underway might be that the Commission took the proverbial bull by the horns, taking steps to set in place the structures necessary to protect both the single market and the public health by prioritizing European citizens’ health and consumer interests. A plausible alternative explanation is that a shift in priorities – from that of fostering less regulated and less encumbered markets to ensuring food safety and public health – had already taken place in other quarters, i.e., among a substantial segment of European populations, within the European Parliament, and within some member states. It was up to the Commission to decide whether to attempt to ensure that this reordering of priorities in food policy would be decisively reflected in coordinated action at the European level – or watch it unfold on its own at the level of member states. The pattern of developments that led to the transformation of food policy suggests some combination of these factors.

EU FOOD FIGHTS

Food has long been among the more difficult and often contentious policy arenas in the EU. From the beginning of efforts to create the Single Market in the 1980s, a complex, often-difficult dynamic has characterized this arena. Evidence of this contentiousness has been apparent in actions such as farmers from nearby member states converging on Brussels with demands for policies to protect them from the changes being embraced and promoted by the EU in the pursuit of the single market. The rapid growth of interest group presence and lobbying in Brussels during the 1990s serves as a different kind of evidence – an approach to influencing EU policymaking on behalf of
particular interests (Andersen and Burns, 1996; Andersen and Eliassen, 1996a; van Schendelen, 1993; Andersen and Eliassen, 1991). This growth includes organizations oriented toward a variety of commercial interests (farm, processor, and distributor) as well as public interests (consumer, public health, and environment) related to food and food production. However, comparatively speaking, the public interest groups are meagerly-financed and vastly outnumbered (Nylander, 2000). Given the political and economic stakes connected to food and agricultural production, it is no surprise that Member States themselves have played an important, albeit often inconsistent role in shaping developments in EU food policy. Actors external to the EU such as the World Trade Organization (WTO), the World Health Organization (WHO), and external trading partners such as the USA have also exerted a powerful influence. Of course, the EU is not merely an arena in which these and other interests compete for dominance; the EU’s various institutions are important actors in their own right (Nylander, 2000; Cram, 1997).

A series of high profile, food-related crises and conflicts have played a central and continuing role in the most recent transformation of EU food policy. These include crises of public confidence resulting from the unintentional or careless introduction of dangerous substances into the food supply. The crises surrounding BSE-infected British beef or dioxin-tainted Belgian poultry are two of the most important examples of such incidents, although they are hardly the only ones. Significant conflicts generated by the deliberate introduction of certain substances into the food chain in pursuit of greater agricultural productivity have also been quite important. These include the struggles over the use of hormones or antibiotics in meat production, or the conflicts regarding the introduction of genetically modified organisms (GMOs). Also the subject of conflict but less high profile are issues such as chemical or pesticide residues or other contaminants in crops.

B. THE EVOLUTION OF EU ACTION ON FOOD POLICY:

The food crises of the late 1990s took place in the context of an ongoing evolution of EU food policy. EU policy has institutionalized different ways of conceptualizing food over time – in terms of both institutional structure and concrete policy priorities. These can be traced, for example, through the successive DGs that have been invested with the primary responsibility for EU food policy (specifically, from the DGs responsible for Agriculture, to Industry, to Public Health and Consumer Affairs), as well as through the broad policy priorities established by the member states and the Commission. These should be seen as distinct and separate from, though intimately related to the events and crises and conflicts mentioned above (and which are described in greater detail in the next section).
BACK ON THE FARM

The role of the farmer has been a complex one, since in addition to representing the starting point on the “food chain” and economically quite important to member states, farmers have been both a culturally significant and politically powerful force to be reckoned with. This importance was recognized with the negotiation of a Common Agricultural Policy (CAP) in the waning years of the 1950s, and its implementation in 1962 (EC: DG–VI, no.2). The CAP was originally developed to help achieve self-sufficiency in food production by stabilizing agricultural markets. Farmers were intended as the principal beneficiaries (EC: DG–VI, no.3) of a wide range of policies set forth in the CAP, including price supports and subsidies. As self-sufficiency was achieved and European food exports grew, these policies came under attack from a variety of sources as unfair trade practices that created undesirable market distortions. The antagonists included supranational organizations such as the WTO and large farm exporters outside of the EU such as the USA (Buckwell Report, 1997). From within the EU, pressures came in the form of the drive toward a European Single Market.

Partially in response to these pressures, the CAP was modified in the late 1980s, changing the configuration of subsidies and bringing a “social dimension” – in this case, rural development – into the picture. Another sign of institutional adjustment to the changing perceptions was the leakage of some areas of relevant policy from DG Agriculture (DG-VI) to DG Industry (DG-III); in relation to the latter, processors and distributors of agricultural goods in particular found a more compatible and sympathetic orientation. This was probably further facilitated by an erosion of consensus among farmers themselves as to the value of the CAP, based at least in part on the seemingly unanticipated ways in which it benefited or disadvantaged particular subgroups among them (Buckwell Report, 1997). Overall, the CAP can be seen as having been forced into its first modifications and revisions by two sets of influences. Externally, the movement toward the Europeanization and internationalization of agricultural markets has been unsympathetic, even hostile toward farm subsidies and price supports that made up an important element of the CAP. International organizations such as the WTO have also exerted pressure to reduce or remove both production supports and inhibitions to trade. Internally, the complexity of the system and the perception of an uneven and inequitable distribution of benefits had eroded support among farmers, while other food business interests, and some consumer organizations, such as BEUC (the European Consumers’ Organization) argued the need for increased competition to bring greater choice at reduced prices.

More recently, some have pointed to the CAP as an important contributor to both environmental and food safety problems. The series of food scares and crises beginning with the BSE crisis served to cement this concern (Buckwell,
1996). The CAP was seen in these instances as contributing to unhealthy production practices that led to the crises, essentially eclipsing any food safety and environmental concerns. The CAP recently went through a major revision as a part of Agenda 2000, a package of proposals addressing a wide range of future challenges faced by the EU. As it currently stands, it is expected that the Commission will “re-orient the broad policy outlines of the CAP towards a European social model of farming and to establish a second pillar of policy around rural development” (EPHA, #44, 1999:2). In more concrete terms, farm support mechanisms are expected to be restructured and price supports reduced, environmental considerations are to be explicitly taken into account, and public health concerns such as food safety will be prioritized (EPHA, #44, 1999:2-3). These changes represent a formalization of some policy changes already taking place that are oriented toward public health aspects of food.

FROM THE FARM TO THE SINGLE MARKET

Agricultural products – animal feeds, raw materials, and consumer products -- were from the beginning a central element of the drive toward a European Single Market. The creation of a single market in foodstuffs and other agricultural products, however, required significant deregulation and reorganization of existing national laws pertaining to food. Sweden, for example, was required to accept lower standards for the presence of a variety of food additives and pesticides (Joffe and De Broe, 1998). Of course, Sweden is by no means the only country to trade away certain of its public health standards and practices for membership in the EU. Neither should this be taken to mean that harmonization of standards invariably meant a drop to the lowest common denominator, although the most stringent standards were generally reduced, while the lowest were generally forced upward (De Winter, 1998).

Much of the EU’s economic growth in the production and consumption of food and drink products since the mid-1980s has been in the “added value” sector – processed foods (COM(97)176: 4). This growing demand for processed food products and the subsidies and price supports (for the raw materials) contained in the CAP suggest that it was the middle actors in the food chain, food processors and distributors, who have stood to gain most from deregulation and opening markets. On one end of the supply line, competition between more and different sources for raw agricultural products offers a greater number of choices in balancing price, quality, and other specific characteristics of concern to food processors. On the other end, the benefit of more markets in which products can be sold is self-explanatory. The loosening of national regulatory structures was a key element in pursuing the twin goals of cheaper supplies and increased sales, and consistent with the broader, supportive attitude toward deregulation that existed. Majone (1996) has characterized the pattern of deregulation/re-regulation at the member state/EU level as the substitution of member state regulation with regulation at
the European level. And while it is quite true that the EU market mission entailed far more than the dismantling of significant elements of nation-based regulatory structure, it is also true the basic nature of the early EU regulations in the food sector was quite different than the national-level regulations they replaced. Until relatively recently, EU food legislation was ridiculed, at least by consumer and public health groups, as being largely concerned with standardization for better market compatibility – i.e. the size and shape of tomatoes, fruit, etc. – rather than food quality or safety (De Winter, 1998). This derived in large part from efforts to further enhance cross border trade in agricultural products by addressing technical questions.

Barriers to the “free movement of foodstuffs” within the EU were approached from two directions: harmonization and mutual recognition. Harmonization has been a top-down approach in which legislation adopted at the EU level must be implemented in member states within established parameters. Mutual recognition is a horizontal approach that applies where there is no specific EU law. This is a bilateral, negotiated approach, based on member states generally accepting products from other EU countries unless there is proof of a specific problem. Under mutual recognition, the burden of proof has in practice rested with the member state wishing to exclude the products of another member state. It is the failure of this negotiated approach in specific instances that has been the source of much of EU food law (De Winter, 1998; COM(97)176).

The majority of the EU’s food regulation was built up between 1985 and 1992 (COM(97)176), and aimed toward achieving the single market in foodstuffs. It primarily addressed the problem of barriers to trade, and also dealt with specific problems and conflicts that arose in that process. Standards were, therefore, directed more at promoting trade and resolving disputes than at assuring food safety. While barriers to the free movement of foodstuffs were seen as one sort of problem, new problems with the quality or safety of food products were quite another. The achievement of the single market in food products helped produce some of these problems, and turned some problems that would have otherwise largely been contained within individual member states into “European” problems. The BSE and dioxin crises are good examples of these. With less open markets, the actual safety problems would have been more confined to the countries of origin, while action to block the products at the borders of receiving countries would have been a great deal more straightforward. In the context of a higher authority, however, both the safety issues and the political problems became truly European in character.

Many of these new problems could be seen as the direct result of the “Europeanization” of food markets and the accompanying deregulation at the

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68 As noted in Chapter 4, mutual recognition was ushered in with the ECJ’s decision in the 1979 Cassis de Dijon case, then modified and formalized in the Single European Act (1987).
national level. Pressures for increased productivity were intensified by the opening of markets, forcing significant changes in agricultural production methods. Other of these issues can be seen more as long-standing conditions which became “problems” as a result of changing standards and expectations. These derived in part from technological developments that have vastly increased the capacity for managing and assuring food safety. Still others have arisen from increasing public awareness sparked by repeated crises. What began with problems with food safety quickly evolved into a crisis of confidence in the responsible European institutions, which were already viewed with a healthy measure of distrust by significant segments of European populations. That this intensified the need for a decisive response is clear from the subsequent repeated reference in EU documents pertaining to food policy. But such decisive action did not (and perhaps could not) take place until after a reordering of priorities that took place in the wake of the crisis triggered by mad cow disease.

REORDERING PRIORITIES: A NEW BALANCING ACT

The Commission’s food policy “Green Paper”\(^69\), which set forth new food safety principles (COM(97)176), can be seen as representing the most recent turning point in the orientation of EU food policy. It represents an extraordinarily delicate balance between competing policy agendas – looking simultaneously backward and forward – while framing the fate of the goals of divergent public policy agendas in a single recommended course of action. And while it was undertaken in 1993 in DG Industry (DG-III) and developed as a consensus document in collaboration with the DG responsible for Agriculture (DG-VI), it clearly set out the conceptual framework that guided later actions. It is this framework that was subsequently institutionalized and placed within DG Health and Consumer Protection. Interestingly, it was bottled up in DG-III despite the careful balance it struck. It was only after the BSE crisis erupted, undermining public confidence in both EU institutions and the single market, that it was updated and released\(^70\).

The Green Paper leads with an overall assessment establishing the context for the detail to come: that “the majority of national food law has been harmonized at the Community level” and that “recent studies…have shown that the Community’s legislative programme in the foodstuffs sector has had a generally positive impact” (COM(97)176:1). It goes on to point to two criticisms that will form the basis of the broad principles that inform its recommendations, that: “some criticisms have been expressed of overly detailed legislation, fragmentation…and problems in the day-to-day

\(^{69}\) Referred to as the “Green Paper” in the remainder of this chapter.

\(^{70}\) This was confirmed in an interview with a Commission official who was involved in the process.
functioning of the internal market”, and that “in the light of certain recent events, in particular, BSE, others have raised doubts about the capacity of the legislation to entirely fulfill its objectives to ensure a high level of protection of public health and consumer protection” (COM(97)176: 1, emphasis mine). These statements can be interpreted as saying “we’re doing pretty well, but a few problems remain and it is important that we attend to them”. The problems pointed to are framed as a product of circumstances; in no way is the finger of blame directed toward guiding principles or individual actors. The language, however, also belies the depth of the political crisis triggered by the BSE connection to human health and food safety.

The document continues with a discussion of each key policy area connected to food (and in the process, each key area of interest group activity) (COM(97)176:4-11). Rather than pointing to problems arising from policy developed in the respective sectors, however, it validates each of these areas with respect to food policy: the importance of the food sector to European economies, the CAP, the internal market, industrial policy, and the consumer dimensions of food safety and public health. This has the effect of indicating to each relevant category of interest that their goals and concerns are considered to be legitimate and important, and will be carefully taken into account as the Commission charts its new course. It then proceeds to set forth a set of principles that makes it possible to link the fate of the goals of each distinct area of food policy to the success of the others. The ever-present tension between national and supranational competence and authority was not overlooked; these principles would be realized at the European level, with respect for and the participation of the individual member states.

Overall, it appears that the Green Paper succeeded in facilitating three key processes. First, as a consensus document, it captured the most pressing concerns and problems faced by staff and officials within the Commission, and particularly within the DGs most involved. In doing so, it seems quite likely that the process itself produced somewhat of an alignment of thinking within the Commission’s staff and officials (Nylander, 2000). That the document was bottled up for some time before a serious external crisis prompted its release suggests that political concerns were the source of the delay. However, the fact that events in the BSE crisis unfolded according to patterns already identified in earlier drafts of the paper may well have contributed after the crisis to the overall credibility of its approach. It also suggests that the kinds of problems and conflicts that led to the BSE crisis were already quite familiar to Commission staff involved in coping with the day-to-day questions regarding food safety.

At the same time the Green Paper provided a picture of the sort of consensus that could be mustered within the Commission, its release also served as the Commission’s “finger in the wind” for assessing the reactions of actors external to the Commission, including likely political reactions. But in
presenting to both Commission and external actors a document to which to respond, it also offered a coherent response to a set of growing problems that was more appealing than readily apparent alternatives. The first major test for the approach came with the dioxin crisis, in which the Commission’s actions (and the way in which they were received) stood in stark contrast to those taken early on in response to the emergence of BSE. That the concrete plans set forth in the subsequent White Paper on Food Safety follow the Green Paper quite closely can be seen as evidence of the persuasiveness, and perhaps the necessity of its approach (for a variety of philosophical and practical reasons), as judged by actors external to the Commission.

A third, and perhaps the most important policy effect of the document is that it initiated a re-prioritization of core operating principles in food policy, explicitly placing public health and food safety concerns ahead of other goals, including goals guided by a neo-liberal inspired orientation toward minimalist regulation. One clear extension of this reordering of priorities was the extension of the Precautionary Principle from environmental matters to food policy, shifting the burden of proof in food safety matters from public to private interests. Perhaps key to the eventual success of this shift is that it cast the achievement and maintenance of market goals as being dependent on the protection of public health in general, and food safety in particular. And while the social and economic aftermath of two major food safety crises suggests this to be a perfectly accurate assessment of European reality with regard to food, it seems highly unlikely that the possible political implications of this structuring of the problem were not well understood (at least by some key actors).

INSTITUTIONALIZING NEW PRIORITIES: THE EUROPEAN FOOD AUTHORITY

The first EU food legislation was passed in 1962 (regulating the use of food colorings). However, most of the subsequent food regulation (as opposed to single market legislation that has required deregulation at the member state level) has been passed since the 1992 implementation of the single market. The bulk of this legislation was in response to specific new problems arising from opening markets to food import/export, and from market deregulation in general (De Winter, 1998). The reactive nature of much of EU food legislation prior to the release of the Green Paper (COM(97)176) resulted in a patchwork system of new regulation that possessed neither the regulatory coherence nor the institutional structure necessary to prevent – or effectively respond to – breakdowns in food safety such as those that occurred prompting the BSE and dioxin crises. It is precisely these two problems to which the White Paper on Food Safety71 (COM(1999) 719), which sets forth the formal principles and

71 Hereafter referred to as the “White Paper”.

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intended organizational framework for the Commission’s new food policy, is addressed. Thus, the White Paper included an action plan (COM(99) 719:Annex, pgs. 37-52) that outlines 84 individual steps, with a time frame, for (a) building a coherent, systematic set of policies for ensuring food safety, and (b) establishing the institutional structure at the European level for implementing and managing this new system of regulation.

While the White Paper could be perhaps most simply understood as a blueprint for future Commission actions on food policy, it was clearly also a political document. Like the Green Paper, it anchors the proposed action in the context of both the economic and social aspects of food (including environmental concerns), taking a significant step toward institutionalizing food safety and public health as the principal priority:

The European Union’s food policy must be built around high food safety standards, which serve to protect, and promote, the health of the consumer. The production and consumption of food is central to any society, and has economic, social, and in many cases, environmental consequences. Although health protection must always take priority, these issues must also be taken into account in the development of food policy. In addition, the state and quality of the environment, in particular the ecosystems, may affect different stages of the food chain. Environment policy therefore plays an important role in ensuring safe food for the consumer. (COM(1999)719: 6).

Two steps already taken give extra weight to this shift in guiding principles. First, the “Precautionary Principle” outlined in the White Paper has already been applied with respect to food products being imported from outside the EU, for example, in the case of GMOs or hormone treated meat. The Precautionary Principle effectively shifts the burden of proof of the safety of food products from governments or consumers to the producers and distributors of those products. This is a fundamentally different approach than raising or lowering the standard of proof required for opposing sides to prevail. This in itself represents a dramatic reversal in principal from, on the one hand, that of avoiding regulation in order to permit market forces to correct problems without the intervention of public authorities, to, on the other hand, the establishing regulation to assure the protection of public health and consumer safety.

A second significant step is the relocation of the organizational structures dealing with food safety to the DG responsible for health and consumer protection (then DG-XXIV). This step gives concrete institutional form to Articles 151 and 152 of the Amsterdam Treaty, which, as mentioned earlier, require a high level of protection of the public health, and of consumers’ health, safety, and economic interests in all policies of the European Union (Amsterdam Treaty, 1999). The treaty article these replaced, Article 129 of the
Maastricht Treaty, required that health and consumer questions be taken into consideration in the development of the single market, a mandate that fell far short of the new treaty language. These new Articles appear to have provided unexpectedly powerful leverage – legal trump cards woven into the Amsterdam Treaty – that permit particular social concerns to be prioritized over the market mission outlined in Article 2 of the Amsterdam and Maastricht Treaties. DG Health and Consumer Protection was created quite recently, in 1995, and even in 1998 was considered to be one of the weaker of the DGs (Sutton, 1999). In view of the priorities articulated by President Prodi (SPEECH/00/41), it would seem that both DG Health and Consumer Protection and the portfolio for which it is responsible are rising stars within the EU – and increasingly important to its future.

One source of concern and skepticism several observers raised regarding this reorganization was that many of the civil servants being relocated to staff the food safety work within DG Health and Consumer Protection (DG-XXIV) came from DG-Enterprise (formerly DG-III – DG Industry) and DG-Agriculture (formerly DG-VI). These DGs are known to operate with quite different missions – on quite different core principles \(^72\) – than those articulated for DG Health and Consumer Protection. One might expect these concerns to be well-founded, based on the different organizational missions of the respective DGs. The quite different ways of identifying, defining, and addressing problems represented by these organizational principles and priorities might easily contribute to internal conflict and organizational ineffectiveness, even a subtle undermining of the institutional mechanisms envisioned in the White Paper. An interpretation more encouraging to the advocates of the changes outlined in the White Paper is that these staffers have long since made the necessary conceptual transition. According to this perspective, having already had to wrestle with the problems to which the actions outlined in the White Paper are a response, the staffers in question are intensely aware of the problems created and the need for a shift of perspectives to address them. To the extent that these changes are being facilitated by entrepreneurs within the Commission, one might say that they engineered their own move, while those who remain unconvinced would stay put. The extent to which either of these interpretations are an accurate reflection of reality is a question that can be answered only with time.

The White Paper also envisioned the creation of an independent system of scientific evidence for the Commission, housed within the EFSA. The goal, first and foremost, would be to give the EU the expertise and capacity to produce its own data on food safety risks independent of other interested

\(^72\) DG Industry (DG-III Commissioner Martin Bangeman made no secret of his understanding of his organization’s mission as protecting and promoting the interests of Europe’s business interests (Nylander, 2000)
parties and organized around principles compatible with the EU’s stated food safety policy priorities. This too, was the response to a specific problem. The Commission was inhibited from taking earlier action regarding BSE-related risks by its own lack of sufficient awareness of the possible risks. Some of the scientific opinion downplaying the possible risks of BSE appeared to have been heavily influenced by former British Agricultural Ministry officials sitting on the key committee within DG Agriculture. Among other things, this made clear the need for more credible, and more disinterested sources of scientific information. In addition to providing the Commission with better scientific information, this step will also help to avoid conflicting accounts within the EU, and makes the EFA a prime “interpreter” of relevant events and developments.

C. MAD COWS, CARCINOGENIC CHICKENS – EU RESPONSES TO FOOD SAFETY CRISES

The struggles and conflicts over food safety during the middle and late 1990s created a serious crisis for the EU. The case examples briefly sketched out in the following pages describe these key events and conflicts to which EU institutions, and the Commission in particular, were required to respond. These events have helped shape the evolution of new EU food policy, at the same time that existing EU food, commercial, and agricultural policy has helped shape its responses to these crises and conflicts. They are by no means a complete account of events, actor’s roles or other developments. Nevertheless, taken together, they illustrate an important part of the environment within which EU institutions operated and to which they sought to respond – particularly during the latter half of the 1990s and beyond – with their various policy initiatives on public health and consumer food issues. The cases begin with what appears to be widely regarded as the single most important set of developments in the shaping of EU food policy – the BSE crisis. The BSE crisis is the case most often referred to in descriptions and discussions of consumer issues generally, and food safety in particular, and is frequently described as a pivotal point in EU food policy (Collins, 1999). Accordingly, it is presented with the greatest level of detail. The next significant food scare – the contamination of Belgian poultry products with cancer-causing dioxins – is also presented at some length. Other cases that have become significant public and political controversies, including conflicts over hormone-treated meat, the use of antibiotics in animal feed, or GMOs in food, are briefly mentioned, but not presented in any detail.

MAD COWS AND TAINTED FOOD: THE BSE CRISES

When the European Commission issued its directive banning the export of most British beef products on March 27, 1996 (Decision 96/239/EC), it was seen as a dramatic move to control a rapidly developing food safety crisis.
This extraordinary step followed by only one week the announcement of British Secretary of State for Health Stephen Dorrell of a possible link between BSE and a new variant of invariably fatal Creutzfeld-Jacobs Disease (CJD). Nevertheless, these events came more than ten years after the first identification of BSE in British cattle, and came as the ninth in a string of formal measures dating back to 1989 which had been taken by the Commission in efforts to deal with the various potential hazards posed by BSE. Two months after the Commission’s ban on British beef exports was issued, the British government retaliated with a decision to obstruct the working of European institutions in order to get the ban lifted, and on June 11 of 1996, a plan for the gradual lifting of the ban based on meeting strict criteria was adopted (BSE Vademecum, 1998). The prohibition, however, was not the first action by the Commission pertaining to banning British beef products. In 1990 it had supported both its single market mission and the British Government by demanding and obtained the lifting of BSE-related bans of British beef products set in place by the German and French governments in exchange for promises to beef up its own health measures.

These decisions took place in a context of incomplete and often conflicting information regarding the nature and level of risk. The science regarding BSE was painfully incomplete, leaving policymakers to deal with the problem with limited information. Even the various sources of scientific and other information available could be seen as suspect – tied to particular interests in these struggles and therefore to be viewed with suspicion. This uncertainty and suspicion served to fuel political fights both between member states and between member states and the EU, particularly the Commission. As the source of the problems came to be better understood, it also focused public attention on methods of animal production, in this case the recycling of animal by-products for animal feed (Consumer Voice, No 1, 2000: 7), and on the export of potentially tainted beef products across one possible line of defense – national borders.

This effect is likely to have been unusually powerful in view of significant news coverage of “mad cow disease” over the course of a decade. News of the spread of the disease outside Britain and the destruction of literally tens of thousands of infected cattle would have been hard for most people to miss. The Lancet put forth a theory of possible transmission to humans as early as

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73 Some of the officials working for DG Agriculture on veterinary matters had been previously employed by national veterinary services linked to the governments involved and were implicated in some of the mishandling of the BSE affair (Bulletin EU 1/2-1997).

74 The first cases of BSE were identified in the UK (1985), Ireland (1989), Portugal (1990), and France (1991), with the epidemic in the UK peaking in 1992 with 37,280 cases officially recorded (BSE Vademecum, 1998). As of October of 1996, a total of 163,071 cattle at 33,657 farms had been reported in the UK. Some 450 cases had been recorded in other European countries, with the majority of these found in Switzerland (233) (GIS-BSE (96)7.5).
1990 (BSE Vademecum, 1998). When the possible connection of BSE to the death 19-year old Stephen Churchill and several others from a previously unknown variant of CJD was made explicit by the British health secretary, it triggered “an unprecedented crisis of confidence among European consumers with regard to beef and bovine products” (GIS-BSE (96)7.5: 3), confirming their worst fears. People across Europe were immediately aware of a vaguely-defined, potentially deadly hazard that could be as close as the nearest butcher shop or grocery store – or their own table. Beef consumption across Europe plummeted, regardless of product origin (GIS-BSE (96)7.5), spreading the economic effects of BSE far more rapidly than the health hazard itself, whether bovine or human. The inquiry initiated by the European Parliament (EP) on 17 July 1996 into the Commission’s handling of BSE related matters, as well as subsequent Commission policy decisions, suggest that the above-mentioned crisis of confidence referred not only to beef products, but also applied to the EU itself, particularly the Commission.

The Commission came under pressure – or more accurately, under attack – on a number of fronts. When the political appeals by British officials including Prime Minister John Major (Bull. EU 1/2-1997) to remove the ban failed, the UK turned to the European Court of Justice seeking an immediate suspension of the decision implementing the ban, as well as an annulment of the decision (Case C-180/97). Among other things, the UK argued that the both BSE and CJD had been known to exist long before the decision, that the Commission had acted in disregard for the Treaty principles of the free movement of goods and the establishment of the internal market, and that in any case, it had overstepped its legal authority (Case C-180/97: 8,9). In this instance, the Commission was backed by the court – and by public opinion – on every count. However, the Commission did not emerge unscathed; it had its own previous course of action to answer for.

The European Parliament’s (EP’s) Temporary Committee of Inquiry into BSE was backed up with the threat of a motion of censure – the EP’s legal trump card which would have forced a resignation of the Commission (A4-0362/97) The Parliamentary Committee submitted a scathing report on 7 February 1997 (A4-0020/97), which in its findings presented evidence of what it considered to be considerable negligence and mal-administration on the part of both the Commission and the UK Government. It found that the UK Government consistently put producer interests above public health and safety interests within its own internal handling of BSE in the early stages, and that

75 While the link between BSE and the new variant of CJD (designated V-CJD) remained speculative, statements released by the WHO in April 1996 and a study published in the 24 October 1996 issue of Nature seemed to confirm the probable connection As of October 1996, 15 cases of V-CJD had been identified, with 14 cases in the UK and one in France (GIS-BSE (96)7.5). By November 1998, 30 fatalities from V-CJD had been identified, 29 in the UK and 1 in France (COM (97) 509 final: 58).
perhaps based on this more general orientation, it also failed to consistently follow either its own agreements with the Commission and to implement the Commission Directives aimed at containing the spread of the disease. The Commission was found to have failed to sufficiently monitor and enforce UK compliance with its BSE-related Directives, up to and including the March 27th ban. Perhaps more serious was the apparent influence of the UK’s Chief Veterinary Officer, M.K. Meldrum, on the actions taken by DG-VI (Agriculture). This influence was “obviously increased by the preponderance of British experts and Ministry of Agriculture officials on the BSE Subgroup of the Scientific and Veterinary Committee” (A4-0020/97:8). One effect of such influence was to reduce interest in further research and to greatly reduce the flow of needed scientific information regarding BSE. In addition, a temporary Commission official who was entrusted with the day-to-day management of the BSE affair was a former official of the British Ministry of Agriculture. Finally, the available evidence suggested that lobbying by agricultural processors helped to reinforce the wait-and-see approach being taken. The general argument used was that there was insufficient justification for taking measures that might cause concerns among consumers.

The EP’s report included in its official findings that 1) the Commission had given priority to management of the market and the “huge economic interests at stake in the meat, feeding stuff and animal residue processing industries” (A4-0020/97:34) rather than possible human health risks; 2) the Commission followed an overall policy of downplaying the problem; 3) that Employment, Industrial Relations, and Social Affairs (DG-V) had failed to act to prevent risks to human health presented by BSE; 4) that the workings of the Scientific Veterinary Committee could be characterized at best as lacking transparency, and in less diplomatic terms, that important information may have been intentionally withheld; 5) and that the Commission’s response to the investigation could generally be characterized one of obstruction. The Committee’s recommendations for the future included in the report were preceded by a clear message about the stakes involved: “The appropriate sanctions available to the Parliament under the Treaty with a view to calling the Commission politically to account are a motion of no confidence, pursuant to Article 144 of the Treaty, or the initiation of proceedings for failure to act/a breach of the Treaty, pursuant to Article 175” (A4-0020/97:36).

It was the connection to food safety and human health that distinguished the perception of – and handling of – the BSE crisis prior to the March 26th, 1996 announcement, from the actions taken in its wake. The BSE affair can be seen as the source of several distinctly different, but related crises. Prior to 1996, it was largely understood, and certainly handled by the Commission, as an agricultural and economic crisis – and a possible threat to speedy progress toward the single market – pitting farmers and processors faced with the costs of lost or blocked sales resulting from the epidemic, against farmers,
processors, and member states who were as yet apparently free from the disease. Public health was a concern expressed by European public interest organizations such as the European Consumers’ Organization (BEUC) and the European Public Health Alliance (EPHA) and some scientists, and echoed by some within the European Parliament and later by the World Health Organization (WHO). But these concerns took a back seat, with the burden of proof that a hazard existed resting with those expressing concerns for public health and consumer safety. Following the announcement of a possible BSE/V-CJD link, the dimensions of the crisis were transformed. While the economic and market considerations remained, they were effectively eclipsed by the crisis in consumer confidence in food safety, a potential public health crisis, and the political crises generated by questions about actions taken and why so little had been done to cope with these potential problems much earlier. These crises helped to set in motion a significant array of changes based at least in part on the need to restore some measure of consumer confidence in food safety – and in the political accountability of the Commission and the EU itself.

As was previously pointed out, the BSE crisis is repeatedly referred to in Commission documents as a clear turning point in EU food and consumer policy. The changes that have been underway since then are proceeding not only under continued political pressure from the European Parliament, but also under the continued pressure and awareness generated by a series of similar crises and conflicts regarding consumer and food safety, and public health. But these other crises and conflicts are taking place in a context already broadly shaped by the events connected with the BSE affair.

CARCINOGENIC CHICKENS: THE DIOXIN CRISIS

As if to prove to European citizens and EU institutions that the food safety crisis generated by the questionable handling of BSE was no fluke, the next public crisis unfolded virtually under the collective noses of EU officials in Belgium. Late in the afternoon of Friday 27 May 1999, EU officials and the Belgian public were notified that Belgian chicken, eggs, and possibly other products had been heavily contaminated with the carcinogen dioxin. Indications of the emerging crisis became more visible as poultry products began disappearing from grocery store shelves the next day on the orders of Belgian Public Health Minister Marcel Colla (BG-b, 1999). But even as store shelves were emptied, stories of the crisis began to flood the news – including stories of possible scandal and allegations of cover-up, and that the Belgian Government had known of the problem as early as February. By Monday, media coverage had exploded (Lok and Powell, 2000).

Other governments did not wait long to respond. The European Commission adopted emergency protective measures on June 3, after consultation with the Standing Veterinary Committee, banning the export of
the potentially contaminated Belgian food products and calling for their removal and destruction across EU Member states (Decision 99/363/EC). The measures were amended to include pigs and bovine animals a day later upon the receipt of new information from the Belgian authorities. The EU announcement included critical remarks about the timeliness of their notification by Belgian authorities, including mention of the possibility of legal procedures directed against Belgium for failure to comply with EU food safety notification requirements (PR-1, 99-06-02; James, 1999). Other nations both within and outside of the EU responded with similar speed: countries across the EU followed with their own actions, while the US Food and Drug Administration issued a decision to ban all imports from the European union of products containing chicken or pork (FSIS, 99-06-03). The contamination was uncovered largely by accident, when the De Brabander farm experienced serious enough problems with its hens to prompt them to contact their insurer. The expert engaged by the insurer, also an official with the West Flanders veterinary inspectorate, traced the problem to fat in the animal feed and sent a sample off for testing. The Belgian Ministry of Agriculture was notified of the problem on March 19th. The problem, which was determined to be dioxin contamination of the feed, was first traced to the Verkest company, which had processed the animal fat used by the feed company, then to another firm, Fogra, which had sold animal fat to Verkest. Whether by accident or through negligence, the Verkest-rendered animal fat had been stored in an inadequately cleaned container that had previously contained some form of dioxin-containing industrial oils. The contaminated animal fat had been sold to eight Belgian animal foodstuffs manufacturers, along with one French and one Dutch company, in the last half of January 1999. Fogra was later found to have exported some of its product to Spain where it was used to produce cooking oil. The contaminated feed was subsequently sold to an estimated 417 poultry producing companies, mostly in Belgium (BG-a; BG-b).

The Belgian Agriculture and Health Ministries officially confirmed the presence of extremely high levels of dioxin in the animal feed and chicken fat on April 24th, 1999. But although they then officially notified the French and Dutch authorities, it was not until over a month later, on May 27, that the Commission was notified, after further tests and more investigatory work revealed the breadth of the problem (BG-b; Lok and Powell, 2000).

76 The ban on all EU-produced poultry and pig products should be seen in the context of an ongoing trade dispute at the WTO between the US and the EU regarding the EU’s refusal to permit the import of hormone-treated meat from the US. The US argued that the EU was using the ban to protect against competition from US beef producers. The EU, on the other hand, had banned the use of growth hormones and several antibiotics in animal feed based on public health concerns. It is not clear to what extent the dioxin crisis may have provided legitimacy for retaliatory action by the US related to the hormone case.
The Belgian government was harshly criticized by the Commission for its failure to inform them much sooner of the problem, but it was likely the firestorm in the news media that did the most damage. News stories referenced past threats to food safety, including the ‘mad cow’ scare. The Belgian government was accused in various reports of “serving the economic interests of farmers’ unions and the meat industry”, and of trying to protect themselves in preparation for the general elections on 13 June, instead of protecting public health. Belgian newspapers were especially harsh, calling the incident ‘total havoc’ and ‘a human and economic catastrophe’ (Lok and Powell, 2000:9). The speculation arising from the many details that remained unclear only served to intensify the frenzy. On June 2, the Ministers of Public Health and of Agriculture offered their resignations, joining as victims of the crisis more than 400 poultry farms and tens of thousands of chickens (James, 1999). Belgian voters completed the rout two weeks later, denying what had appeared to be a near-certain re-election to the center-left governing coalition.

Although the Belgian government was harshly criticized for its handling of the affair, the Commission appeared to have learned from previous experience, stepping in decisively in order to protect public health. Lok and Powell (2000) suggest that the Commission was overly aggressive and confrontational in its response in general, and with the Belgian government in particular, and that this stance further complicated the process of coping with the crisis. To the extent this was the case, several factors can be identified that may have influenced such an approach. First, there was a likely need for the Commission to demonstrate to the broader public that it had indeed recognized its previous errors, and that it had indeed adopted a “food policy which gives pride of place to consumer protection and consumer health” (Bulletin EU 1/2-1997:5). Second, given that the Belgian government exacerbated the crisis by delaying notification of the Commission, it seems clear there was an important message to be sent to other member states regarding their conduct in the event of similar developments. Third, the Commission had already covered considerable ground in its reorganization and reprioritization in the wake of the BSE crisis. A major policy document on food, the Green Paper on food safety, had been revised and issued in 1997. Two important follow-up documents, a clarification of the application of the Precautionary Principle (COM(2000) 1) and a White Paper (COM(99) 719) containing the Commission’s proposals for implementing its food safety priorities, were also well underway. So while the dioxin crisis served as a dramatic reminder of the weaknesses in Europe’s regulatory systems for food safety, it also served as a test case for the EU’s transformed institutional conceptualization of food – and for its new and improved approach to protecting consumers and the public health.
D. PARADIGM SHIFT, INSTITUTIONAL SHIFT & THE TRANSFORMATION OF EU FOOD POLICY

The overall evolution of EU food policy appears to be following the path of food itself – a stepwise progression from farm to market to consumer and public health. As is also the case with food in its movement from farm to market to table, each of these steps in the transformation of a policy sector entails processes that are themselves quite complex – and without which the transformation from one phase to the next is unlikely to take place. Unlike food itself, EU food policy must remain fixed at the intersection of agriculture, market, and public health and consumer policy – they are all elements that are inextricably linked to food. The transformation that took place is in terms of core, priority principles around which food policy is organized, and in the way in which related EU institutions reflect those priorities and principles.

There are a variety of ways to trace the story of the evolution of EU food policy. The shift of core principles and priorities from market orientation to public health/consumer orientation and their institutionalization has already been highlighted as a central theme. Another related story is the Europeanization of the public health and consumer safety issues connected with food policy. This represents both paradigmatic and institutional shifts in the food sector in the guiding principles of governance. A third related story is how policy entrepreneurs, particularly within the Commission, enlist opportunities created by external crises to re-cast particular issues according to a particular new policy paradigm. In this sense, both public interest groups and the advocates of greater European integration have made important gains.

PARADIGM SHIFT

The evidence strongly suggests that the paradigmatic shift in the food safety policy of the EU staved off a return to national level regulation. While substantial adjustments to the policy dictated by the market paradigm might have addressed many of the actual public health and safety issues, the demands created by the public confidence and related political crisis forced more revolutionary action. The Green Paper on food safety (COM(97) 176) has been singled out earlier in this paper as the official turning point in EU food policy because it represents the formal announcement of the change in hierarchy of core principals guiding EU food policy. Because there had been disagreement within the Commission about the content of the paper, its release became possible only after the crisis, and in direct response to it.

77 This can be rephrased as a progression from an emphasis on producer interests to market interests to public interest. At the beginning of the 1990s, the CAP balance was tipping from producer interests toward market interests (Daugbjerg, 2003).
An important step toward the institutionalization of the principles outlined in the Green Paper was realized in the EU constitutional framework in the form of the legal mandate provided by the treaties. Articles 152 and 153 (Amsterdam Treaty, 1999), which, radically although subtly, strengthened the place of public health and consumer interests in EU policymaking, and emerged at least in part, from responses to the handling of the BSE crisis. This was noted as part of the background to the evolution of EU food policy, but, is worth pointing to again as a reminder that it not only forms an important part of the context within which this policy evolution is taking place. It represents a deeper institutionalization of the paradigm shift with respect to public health and consumer safety issues – the formal acknowledgement by member states of the new paradigmatic order in these policy sectors. It is also intertwined with, and is yet another reflection of, the changing perceptions regarding the kinds of issues that can be considered European versus national or local.

**DG HOPPING**

The shift in perspective was also institutionalized at a more mundane level. The movement of the high priority responsibilities for EU food policy within EU institutions – from DG Agriculture to DG Industry to DG Health and Consumer Protection – was more than symbolic. This is especially true, given that DG Health and Consumer Protection was only created in 1995, and as recently as 1998 was generally seen as quite weak in comparison with the other two (Sutton, 1999). The different missions of the respective DGs offer a hint of which competing principles for food policy were likely to dominate the framing of policy and action.

DG Agriculture currently indicates as its mission that it is “responsible for the European Union’s policies on agriculture and rural development” (DG Agriculture, 2000). Information found on the DG Agriculture home page goes on to explicitly downplay the earlier focus on agricultural markets: “the focus of the CAP has shifted somewhat from the previous dominance of market measures” and directs attention elsewhere, “including the important social role of agriculture in the EU…” (DG Agriculture, 2000).

The stated mission of DG Industry was until late 1999 “to promote the competitiveness of European industry” and to “improve the functioning of markets, in particular the Internal market, in order to provide a stable, coherent and predictable environment for business” (DG Industry, 1999). The previous Commissioner, Martin Bangeman, was known for being equally unequivocal in communicating his sense of mission (Nylander, 2000). This is a comparatively direct and unapologetic statement of purpose from a DG considered to have been among the most influential of the DGs, and with a powerful pro-business constituency. Interestingly, the DG did make a gesture toward more socially-oriented goals, but did so by describing competitiveness as “the ability of industry to generate rising standards of living for the
population as a whole…” (DG Industry, 1999). When the new Commission came into place in late 1999, the name was changed to DG Enterprise and the mission language softened to say that the “mission of the Enterprise Directorate General is to address the entire business environment to enable enterprises to strengthen their competitiveness, grow and develop in a way that is compatible with the overall EU goal of sustainable development” (DG Enterprise, 2000, emphasis added). While the extent to which such language changes represent fundamental changes in mission remains to be seen, the consistency of the language with other developments in the EU suggest something more that a simple facelift. Even so, the bulk of responsibility for food policy was shifted to DG Health and Consumer Protection.

The statement of mission for DG Health and Consumer Protection is as explicitly consumer oriented as the statement of DG Industry was business oriented: “to ensure a high level of protection of consumers’ health, safety and economic interests as well as of public health at the level of the European Union” (DG Health and Consumer Protection, 2000). The statement is given greater force by the fact that it is drawn almost directly from the relevant articles of the 1999 Treaty (Amsterdam Treaty, 1999, Articles 152, 153.).

It would be naive, of course, to take such statements of purpose strictly at face value, ignoring the political and symbolic character of both the statements and the institutions whose purposes they reflect. It is possible to compare statements presented to different audiences or in different forums, and it is even more helpful to compare claims with actions. But even taking the most cynical perspective possible – that such statements are no more than political rhetoric and represent no substantive change – they do create important pressures. Political legitimacy and trust require at least a measure of consistency to be maintained between what is said and what is done. In fact, the shift in prioritization of guiding principles does appear to be increasingly reflected in public statements (i.e., in relevant DG mission statements and in numerous speeches, see SPEECH/00/41) and in new actions being taken by the Commission (i.e., Commission actions taken to block Belgian poultry exports – or to block the import of U.S. beef containing potentially dangerous growth hormones), and in the planned further institutionalization of these principles in the organizational structure of the EU (i.e., in the new Food Safety Authority).

Several inferences can be drawn from the presentation, or framing, of the guiding principles of DG Agriculture. Prior to the late 1980s, the role of DG-Agriculture was clearly defined as supporting and administering the CAP and its earlier policy focus, and later, even supporting the need for market reforms. Second, the newer, more “social” focus suggests a changing set of policy priorities for the DG, since it characterizes agricultural policy through the framework of social concerns – concerns that are only indirectly agricultural. While such statements may be influenced by a perceived need to offer a “front
stage” presentation of the DG’s goals in terms of a newly popular and
legitimized set of priorities, other evidence also points to deeper institu- 
tional adjustment. If, as the evaluation of the CAP for the Commission stated, the “legitimacy of the CAP is in danger” (Buckwell Report, 1997: 5:1), then the legitimacy and authority of the DG responsible for its substance and implementation are also in danger. The qualification of the mission of DG Enterprise points in a similar direction. And while this hardly means that DG Enterprise will be competing with DG Health and Consumer Protection to champion citizens’ and consumers’ health, safety, and rights, it does suggest that the goals and purposes of the respective DGs are inherently and inevitably different in a way that requires some clear set of principles and rules for establishing priority, or “pride of place” in the many areas where conflicts exist.

This is, of course, only the tip of the iceberg, as the changes reflected in legal documents establishing both legal competence and operating principles demonstrate. In the context of events that have unfolded over the past half decade, Articles 152 and 153 of the Amsterdam Treaty have taken on a level of priority that was probably quite unexpected when they were agreed upon.

E. THEORETICAL OBSERVATIONS

The principal phases or components of this policy transformation process can be described in terms of: a) paradigm shift – the shift in core guiding principles and conceptualizations, b) action – with discourses and activities that reflect the challenging paradigm’s re-ordering of priorities, and c) institutional change (system shift) – the institutionalization of new organizing principles in the reorganization of European policymaking and administrative structures, and allocation of resources (in relation to food issues). These phases can be seen as separate, although interconnected and contemporaneous, with one setting the stage for the other. The details of the transformation – how extensive the change is that takes place, how dramatic or disruptive that change is, and how quickly change takes place – are influenced by the particular confluence of three factors: policy paradigm, actors, and institutional structure. External events and developments – in this case, the byproducts of food policy guided by the market paradigm – provide the real-world problems and issues to which the elements are addressed.

This interplay can be traced in the empirical evidence in a) the nature of the problems identified and prioritized, and the context in which they are seen; b) in the different ways in which particular actors have been able to successfully define and frame concrete problems, and how they have been able to exercise power and authority in dealing with them; and c) the institutional changes that have taken place within the EU, including treaty language, internal guiding principles and policy priorities, and the particular institutional actors who are granted power and responsibility with respect to food policy.
Finally, this evolution can be seen as the response to events and other developments, including crises, or “anomalies”, that have developed, at least in part, as a direct result of the particular configuration, at some point in time, of conceptual orientation, interested actors, and institutional structure. Several general propositions can be drawn from the empirical evidence based on these theoretical conceptualizations. These are further expanded upon below.

**Paradigmatic Anomalies and Social Problems**

Observation 1: problematic anomalies are the catalyst – and an essential feature – of paradigm and institutional shift processes. They generate pressure on the dominant paradigm for response and adjustment. Actors guided by a competing paradigm may take advantage of such problems to promote an alternative set of explanations for, and solutions to, pressing problems, but they do not create them. Neither do demands for change find much purchase in the absence of a perceived problem. Public interest groups raised numerous concerns and cautions about food safety and public health issues in the years prior to the BSE crisis. Actors within the Commission had clearly come to understand and recognize the validity of these concerns, given that much of the Green Paper on Food Safety (COM(97) 176) was drafted before the crisis exploded. Even while the core principles of the market paradigm suggested that competitive forces would successfully weed out such problems, the Commission had taken some regulatory action to protect food safety – but generally within the restrictions of the market paradigm.

Observation 2: the effect that an anomaly has on the related policy paradigm is related to how the source of the problem is understood. To the extent that the problem is seen to be either unexplained or unaccounted for by the paradigm, there will be pressures to modify or adapt the paradigm to address the problem. This would entail adjustment in the more peripheral areas of the paradigm – first in methods and approaches as reflected in specific policy measures. The Commission’s pre-BSE responses to food safety concerns, articulated in numerous issue-specific safety directives and actions, can be seen as just such an adjustment response. While certain actors (in particular, European public interest organizations) saw the emerging problems as more deeply rooted, their number or severity had not reached a level that

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78 There distinction between anomalies and problems is an important one. As it is used here, an anomaly is a development or condition that is either inadequately accounted for by the explanations and attributions contained within a given paradigm, or even produced by the implementation of the paradigm. Problems are usefully described by Spector and Kitsuse (1987:74) as “the activities of those who assert the existence of conditions and define them as problems”. In the strictest sense, therefore, an anomaly may or may not be defined as a problem – it is the claims-making activity of social actors that produces this result. There are many phenomena that are poorly, if at all accounted for, by any given institutionalized public policy paradigm. It is the problem-causing anomaly that is of interest here.
could be referred to as a “critical mass”. The Commission demonstrated this by pressing for the removal of national bans on British beef products in response to the first signs of a problem, actions that clearly suggest that the problem was understood as a trade and agricultural problem and to be dealt with within those frameworks. Emerging problems that were more clearly related to public health and food safety were addressed with adjustments in practices and rules within the single market framework.

Observation 3: The nature of a problem and its threat to a given policy paradigm changes radically, however, to the extent that the paradigm itself is seen as a source of the problem – a side effect of, or directly caused by, that paradigm. The BSE crisis provides the textbook case. By the time of the BSE crisis, the EU’s CAP had already been under siege for some time. In addition to being seen as the cause of undesirable market distortions, it was being blamed for environmental problems and even undermining the quality of European food products. While the single market programme sought to address the various market distortions created by state-level regulation and earlier EU food policy, it was not addressed to food quality or safety except as an expected side effect of unleashing competitive forces. Public interest groups, including environmental, public health, and consumer groups, continued to sound alarms about potential problems. Meanwhile, the implementation of the single market was accompanied by concerns over the weakening or dismantling of existing regulatory structures for food safety, and more generally, the EU’s increasing intrusion on what until recently been considered a national, rather than supranational policymaking arena. When the announcement of a connection between BSE and an invariably fatal human disease sent shock waves across Europe, the stage for a crisis encompassing numerous paradigms was already set: 1) mad cow disease had already been in the news for years – long enough for its source to have been traced to animal feed and agricultural practices generated by the intensification of competition in agricultural production. There had long been speculation regarding the possibility of BSE hopping species to humans, and concerns expressed that economic interests were being prioritized over public health and safety; 2) the widespread economic downturn experienced over much of Europe during the 1990s contributed to intensified debate about the requirements placed upon member states’ policies by a supranational authority, and its role in prioritizing economic interests over broader public concerns; 3) specific actions taken by the EU in support of the British government with respect to BSE, including the apparent British role in downplaying any response by the Commission, made the EU appear as an accomplice, if not the primary cause of the crisis. This generated crises on three fronts: 1) a food safety crisis - pertaining to actual risk of contracting a fatal disease from eating beef products; 2) a crisis of public confidence – relating to a more general undermining of public confidence in the safety of
food and the institutions for its assurance; 3) a political crisis – a crisis of confidence in European institutions, the Commission in particular. Inevitably, the dominant paradigm by the Commission and the European Union were understood – the market paradigm – as well as the actors most clearly associated with it, were seen as the source of developments that had become difficult to deny as a serious problem and threat. That the British government continued to deny any real food safety problem only served to undermine what credibility that may have remained. The actions eventually taken contributed to not only holding the regulation of agricultural and foodstuffs markets at the EU level, but by effectively drawing food safety much more firmly into the European arena. A failure to do this would likely have resulted in many more member states asserting public health concerns through their erection of new national barriers to trade in agricultural and food products. This would have obviously implied a failure of the idea of a European single market.

Observation 4: A paradigm shift can be said to have taken place when one set of core paradigmatic principals is replaced by another, with institutional and practical consequences. This is likely to entail a reordering of the priority order of these core principals rather than the complete rejection of all or part of that core. The reordering, however, must dictate a course of action that would not be possible – or would be incommensurable with – the ordering it replaces. It might therefore be asserted that it is the particular structuring and prioritizing of fundamental principals that represents the core of the paradigm. Thus, establishing the single market while taking into account public health concerns dictates a radically different direction over time for policy decisions and organizational structures than assuring a high level of public health and consumer safety in all European Union policy. The adaptation of the Precautionary Principle from environmental policy to food policy and shifting the burden of proof connected with potential food safety problems provides a clear example. The rapid and public response of the Commission to dioxin contamination of Belgian poultry products not only greatly reduced the ongoing, actual danger to public health, it also sent a clear message about in whose favor such decisions might be resolved in the future. The clumsiness of the Belgian government in the episode only served to provide the Commission an unwitting “villain” against which to play hero (making a much more interesting, intrigue-filled, and newsworthy story). While the EU ban on many Belgian products undoubtedly harmed many innocent farmers whose products had not been contaminated, the demonstration of the direction in which uncertainty would be addressed undoubtedly reduced unnecessary exposure to dioxins, while doing much to rebuild public confidence in a European role in assuring food safety.

Observation 5: Changes in the peripheral or secondary elements of a policy paradigm may serve to reinforce and more deeply embed the currently dominant institutionalized paradigm – or they may serve to
weaken and undermine it, paving the way for the replacement of the paradigm by its challenger. This effect depends in part on the extent to which the changes influence factors in three categories: 1) their effect on the legitimacy or effectiveness of claims-making activities that define social problems (while changes in rules or the practices that characterize their implementation may, for example, ameliorate or eliminate a problem, the responses themselves may also serve to legitimize such problems); 2) their effect on how the material interests of powerful actors are played out; and 3) their tendency to increase or decrease the overall coherence, or internal consistency, of the paradigm.

The UK and the Commission took numerous steps to address the BSE epidemic from the time of its initial discovery. The most public of these was to slaughter tens of thousands of British cows – and at enormous cost. They also took steps to remove from the food chain the suspected sources of the infection, which derived from recycling animal by-products into animal feed. This was a quite invasive set of steps in the context of a paradigm that promotes minimal regulation or other governmental intervention. It was undoubtedly made possible by the fact that economic interests – including both agricultural and food processing industries – were also being severely hurt by the problem. Action was needed, since British farmers were not voluntarily slaughtering their potentially infected herds, and the subsequent cheating on related regulations suggested that some farmers and producers would not, even with government intervention, voluntarily place public health concerns above their own economic interest. The governmental intervention in commercial agricultural activities clearly legitimized and publicized the problem, as it would be almost inconceivable to order the destruction of so many animals in the absence of a major threat. The need for intervention by public authorities in market matters was also legitimized, since agricultural markets did not appear to be self-correcting. This undermined the market paradigm and reinforced the challenging perspective – a paradigm that called for vigorous public intervention in the market. The fact that the problem was not only a public health concern, but also threatened influential market actors across Europe, changed the stakes; the BSE issue expanded food safety questions beyond public health and into the capacity of the market to function properly. The convergence of “claims-making” activities across the interests (and realignment of interests), combined with the gradual legitimizing of decisive intervention by public authorities in market matters, and the subsequent undermining of the market paradigm with respect to food concerns, crystallized with the announcement of the possible connection between BSE and human health. A hidden villain became the public threat, while some kind of action by public authorities became the solution, transforming the perception of at least some forms of government intervention from “problem” to “solution”. Only the British government held fast to the problem-causing
paradigm, as if to prove people’s worst fears about the type of food policy it could produce.

Since the release of the Green Paper on food safety (COM(97)176), actions taken by the EU have tended to flesh out and reinforce the new paradigm. In addition to deeper formalization in the treaties (Amsterdam Treaty, 1999) these actions are reflected in the paradigmatic principles, such as those expressed in the formalization and clarification of the Precautionary Principle. They are also reflected in the more peripheral areas of practice, including the implementation of policy decisions on food safety, for example, the EU actions in response to the dioxin crisis. The most important theoretical generalization that can be drawn here is that the effects of changes in paradigmatic elements are likely to be cumulative and context dependent – rather than sequential and ordered according to their place in any hierarchy. Finally, such paradigmatic changes are increasingly reflected in institutional reorganization – representing the system shift following the paradigm shift. This reorganization is having the effect of making the institutional structure of the EU – particularly the Commission and its DGs – more coherent and compatible with the new policy paradigm. Some of the more significant details are taken up in the next section.

SYSTEM SHIFT: INSTITUTIONAL / ORGANIZATIONAL CHANGE

The system shift consists of taking the actions necessary to bring the institutionalized organizational structure into line with the paradigmatic structure that provides conceptual guidance. As the post-BSE changes in EU food policy demonstrate, this should be thought of as neither a smooth nor rapid process, nor is it ever complete, owing to the necessary incapacity of any policy paradigm to be completely coherent or address all possible problems. Typically, it can only be identified after the fact – after the process of paradigmatic and system challenge has begun to erode the newly enshrined paradigmatic priorities – just as no one knows how high the stock market will go until after it has started to fall. It is nevertheless possible to trace the institutional reorganization that takes place to bring it into line with a newly adopted public policy paradigm. Given their concreteness, it is the institutional reorganization – changing organizational structure, reassignment of responsibilities, and allocation of resources and authority – that are perhaps most straightforward to trace.

F. PUBLIC POLICY PARADIGM: DEFINING THE NATURE OF THE PROBLEM AND THE STRUCTURE OF THE INSTITUTIONS THAT ADDRESS THEM

The broad conceptualization of the problems to be solved has consistently driven the EU discussion – and policymaking – regarding food. From the
1950s until the 1980s, the dual, dominant problems were seen to be adequate food supply and maintaining a “healthy” enough agricultural system to sustain both producers (farmers) and consumers (European citizens). The political power and economic resources of the EU were directed toward achieving these goals. When the push for the single market began to materialize, the main problem of adequate food supply seemed to have been addressed, but new problems had already emerged as a result of the CAP. The new problems were largely seen in terms of market-inspired goals: they were high cost and low productivity, and to a lesser extent, a lack of consumer choice. Achievement of these goals meant dismantling at least part of the previous system, including economic supports and regulatory mechanisms, to achieve a common market in agriculture. The fact that some of the regulatory mechanisms that inhibited agricultural trade had public health benefits seemed not to be a consideration – the problem was defined differently, as the need for a stronger, united market, necessitating the removal of obstacles to trade. This would, in turn, increase choice, lower prices, and achieve greater agricultural efficiency. The fact that enormous economic interests were at stake only served to propel developments further and faster.

European food policy has now taken yet another major turn – toward considerations of public health and consumer safety as the principal priority. This turn, too, has been triggered by the emergence of new problems. When Commission President Jacques Santer observed before the European Parliament back in 1997 (Bulletin EU 1/2-1997: 4) that the food crisis that threatened his presidency was a direct result of then-dominant principles guiding EU food policy, he echoed what at some level many European citizens already understood to be true. The transformation of EU food policy that has evolved since the mid-1990s – beginning with the paradigmatic shift announced in the Green Paper on food safety, and that is now being institutionalized in the rule changes and organizational restructuring that have and are continuing to take place – followed from that understanding of responsibility and the demand for effective measures.

These contentions and conclusions regarding the transformation in EU food policy might be taken as encouraging news by critics of the market ideology that has guided important EU developments since the 1980s – and by those with concerns more narrowly directed to public health. We would all do well, however, not to rest too comfortably – the new principles are not yet deeply institutionalized, although the current changes appear to be having an effect. However, this process is ongoing, and unanticipated events and resourceful actors could easily combine to shift both attention and directions once again. One food producers’ organization, for example, highlights its concerns about food safety by redirecting attention to practices in the kitchen – covering stored food, proper cooking, not leaving food out, etc. While these are certainly legitimate concerns, they are not only of a quite different nature –
they also shift the attention and sense of responsibility for food safety from producer to consumer.

Public interest groups are clearly aware of this potential for subtle redirection. In their comments on the recent paper clarifying the use of the Precautionary Principle (COM(2000) 1), the EPHA points out that the principle is essentially political in nature, and that the scientific evidence to which the Commission communication refers is itself based on its own underlying assumptions which can be influenced by other interests (EPHA, 2000-02-02). This was precisely the problem in the early stages of the BSE epidemic, when the possibility of transmission to humans was first raised. The BEUC made similarly keen observations earlier regarding consumer policy and the provisions in the Amsterdam Treaty (BEUC/300/98). The definition of issues as either fundamentally technical, or political in nature, moves policy questions into very different decision processes, as Nylander (2000:112-146) observed in the struggle over the law on biotechnology patents in the EU.

While there is great demand for consultation with consumer and public health organizations at the moment, there are also problems. They continue to lack the practical resources that make effective participation possible on a rapidly increasing scale. This threatens to reduce their ability to focus sufficiently on important issues, while at the same time it risks creating the impression that they are not as concerned as they have claimed. Their ability to be heard has in part depended upon the severity and of, and the level of public awareness of, the problems to which they address themselves. Nor have these obstacles gone unnoticed by commercial interests, which in some cases have established what might be cynically referred to as front groups – consumer-led, industry-financed organizations to enhance their own credibility and position of issues of interest (see Nylander, 2000:112-146).

In spite of such ongoing questions, there are also parallel forces at work that reinforce the transformation in EU food policy. At the international level, the World Trade Organization (WTO) issued its decision in 1999 prioritizing public health concerns over trade interests79 – one of the few times free trade rules have been overruled by public health concerns. Within the EU, other social concerns are being reflected in a range of other policy decisions – some of which are taken up in subsequent chapters. Even within food policy, discussions are extending beyond strict questions of food safety (defined as the absence of harmful foreign substances) to the health impacts of normal components of food products such as fat and other nutritional content. These discussions are likely to reinforce more fundamental safety concerns, as well as continue to contribute to the further Europeanization of food policy as new regulations, and monitoring and enforcement mechanisms are deployed.

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79 The WTO decided in favor of France (citing public health concerns) in its refusal to import Canadian asbestos, a known cancer-causing agent (Olson, 2000-06-16).
CHAPTER 6

BANNING ASBESTOS, CONTROLLING CHEMICALS: PARADIGM SHIFTS IN EU CHEMICALS POLICY

The main objective of the new Chemical Strategy is to ensure a high level of protection of human health and the environment, while ensuring the efficient functioning of the internal market and stimulating innovation and competitiveness in the chemical industry.

(European Commission News Release, IP/01/201)

A. INTRODUCTION

With the approval of a series of White Papers (the Chemicals White Paper “Strategy for a Future Chemicals Policy” (COM(2001) 88 final); “the White Paper on the “Precautionary Principle” (COM(2000) 1); and the White Paper on Environmental Liability (COM(2000) 66 final), the EU marked a critical juncture in its approach to regulating the hazards of chemical products produced or marketed within European borders. What remains to be seen is the extent to which future EU chemicals policy will be guided by the fundamental conceptual shift signaled in these policy documents – or by an inertia derived from decades of previous practice and defended by powerful interests. In effect, Sisyphus has rolled the stone once again to the top of the mountain; what remains in question is which direction it will roll down.

Whether the process now set in motion will roll forward through the step-by-step institutionalization of newly defined policy principles, priorities, and goals through the adoption of concrete policies and regulatory measures – or back from where it came through failures to do so – remains unclear and difficult predict. What is certain is that the process will continue to be laborious and intensely contested.
The stakes are high. Chemical products are among the most economically important commodities in the European economy; the products that fall within the regulatory scope of EU chemicals policy have been an important component of building the internal market, of increasing commercial exchange between member states, and of building a stronger economy within the European Community as a whole. As of the mid-1990s, the chemicals industry ranked second in size in manufacturing in the European Union, placing behind only the food industry in overall production (COM(96) 187). As of the 2001 publication of the Chemicals White Paper, the chemicals industry directly employed some 1.7 million people within EU member states, with the 31% EU market share of global chemicals production accounting for a trade surplus of €41 billion (COM(2001) 88 final).

Yet, chemical products also present a variety of hazards and risks to human health and the environment. An awareness of the transnational nature of such environmental and health hazards led in the early 1970s to the development of the first of a series of EU environmental policies. It eventually contributed to the granting of competence in the Single European Act (1987) to officially permit the EU to regulate chemicals not only as commercial products, but also for the protection of the environment and for worker health and safety. It is a fine line, however, that separates regulation to protect health and the environment from regulation to protect nationally based commercial interests against foreign competition; the distinction sometimes depends on which side of the line one is on. Chemicals regulations in Sweden, Austria, and Finland, for example, were generally stricter than EU regulations. When these countries joined the EU, they were granted a four-year transition period to bring their regulations into line with EU regulations.

The harmonization of national regulation by which Single Market goals have been pursued has frequently meant the revision or removal of national regulations that were deemed barriers to trade and the creation of a European regulatory framework to facilitate cross-border commerce (Majone, 1996). This is no less true of chemicals than of other products. Chemicals policy has been organized principally around the market and commodity aspects of chemical products for much of the EU’s history. From the signing of the Treaty of Rome (1957) through the mid 1980s, the overriding concern has been to secure the economic benefits of a healthy European chemical industry and to foster strong internal market in chemical products (Syngellakis, 1999; Brickman et al., 1985). As recently as 1998, the Commission joined in a complaint in the European Court of Justice (ECJ) against a Swedish ban on the use of the chemical Trichloroethylene (C-473/98), a known carcinogen, arguing that since the Swedish law was more stringent than the relevant EU

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80 This overall assessment was offered in an interview of an official of DG Environment.
regulations, the prohibition was in violation of the EU principle of free movement of goods.\textsuperscript{81}  

The guiding principles presented in the “Strategy for a Future Chemicals Policy” suggest a fundamental change in the way in which EU officials wish to pursue European-level chemicals regulation. On October 29, 2003, DG Environment Commissioner Margot Wallström and DG Enterprise Commissioner Erkki Liikanen announced Commission’s the adoption of a proposal that would establish a new framework for Chemicals regulation, launching a new phase in the process set in motion by the White Papers. After an eight-week consultation process\textsuperscript{82} with interested parties, the proposed new system (called REACH – Registration, Evaluation and Authorization of Chemicals) is currently under consideration by the European Parliament and the Council of Ministers under the co-decision procedure. It has meet with stiff opposition from industry. At the heart of the framework is a proposal that all chemical substances currently on the market would be subject to registration, evaluation, and authorization – or non-authorization – and on a defined timeline. Producers would be required to provide the necessary data, and the burden of proof lies with them (COM(2003)644(03)). As the industry rightly contends, the adoption of these proposals would constitute a fundamental change in the way chemicals are regulated in Europe.

A CONCEPTUAL SHIFT, NOT YET INSTITUTIONALIZED

An important goal of this chapter is to develop an analysis of the meaning and possible effects of the principles and priorities enumerated in the White Paper on future EU Chemicals Policy and related documents, and the concrete legislative proposals based on them. This general goal raises several key questions: In what ways do the principles enumerated in the White Papers and related legislative proposals represent a paradigmatic shift? What kinds of institutional arrangements do the new priorities tend to require, justify, or support, and which actors do they legitimize? What are the processes by which this paradigmatic shift emerged? Finally, what might the answers to these questions suggest about the future of EU Chemicals Policy?

The basic argument presented is that the Commission’s release of the White Paper, “Strategy for a Future Chemicals Policy” (COM(2001) 88 final) and related policy papers signals a paradigmatic shift related to chemicals policy. These documents articulate a re-ordering of the fundamental principles and concrete goals that guide the EU approach to chemicals and asbestos – but

\textsuperscript{81} While the Commission did not initiate the challenge, it joined the case on the side of the Swedish company Toolex Alpha AB, which had brought the case. The Court sided with Sweden in its judgment, holding that although the ban placed clear restrictions on trade, it was justified as having been enacted strictly on the grounds of protecting public health and the environment.

\textsuperscript{82} The consultation was conducted by Internet, as well as by more traditional means.
one that so far lacks a corresponding change in concrete institutional arrangements. The fate of the REACH proposals will determine the next step in this process.

This paradigmatic change lies primarily in the reordering of several key principles and priorities. These include: 1) a reversal of presumption that products already on the market are sufficiently safe unless proven otherwise, 2) a reversal the burden of proof regarding the relative safety or hazard posed by commercial products, with a resulting change in the standard of evidence required to justify regulatory intervention\(^83\) (including more vigorous measures such as the removal of a particular product from the market), 3) a shift of the responsibility for providing data from public authorities to the industry producing and using the substances, and 4) a more clearly defined linkage between benefits and eventual harms in the form of legal liability for future problems and harms caused by the use of the product. The White Paper on the Precautionary Principle (COM(2000) 1 final), approved the year before, clarifies a similar rank ordering of policy principles applied more broadly to risks associated with products. In February of 2004, the European Parliament and the Council reached agreement on the details of a new environmental liability Directive.

An important consequence of these proposed changes is that new issues of safety and hazard, particularly those that are longer-term and less obvious, are being drawn more firmly and comprehensively into the public policy arena. They are at the same time being transferred from the national level, where the form and strictness of chemicals regulation have varied and may be overridden by EU market regulations, to the European level. They effect a shift from a dominant policy emphasis on the commodity aspects of chemicals to an emphasis on the public health and environmental hazards they present. This paradigmatic shift comes in the context of a greater policy emphasis on “sustainability”, a general concept that has gained increasing importance in efforts to explicitly balance economic interests and goals with environmental, health, and other social concerns.

In the process, the Commission seems to be seeking to assure consumer, public health, and Environmental NGOs and the public that it has fully embraced the new responsibility for protecting environment and public health enumerated in the Amsterdam Treaty (1999). At the same time, it seeks to reassure the commercial interests whose activities are being regulated that their concerns will also be taken into account. It is perhaps at this looking back / looking forward dichotomy that the notion of sustainability is directed – in the recognition that a high level of protection of human health has not been the fortuitous by-product of minimally regulated markets.

\(^{83}\) In this instance, the default mode is prohibition of the product until the necessary requirements have been met.
CHEMICALS & ASBESTOS

I have pursued answers to the questions and issues raised above through an examination of the course of events and struggles connected with the commercial product asbestos, which is regulated under EU Chemicals Policy. Asbestos was a common material in products including automobile brake shoes, building insulation, and wall and ceiling tiles, and sufficiently ubiquitous for Natural Resources Canada (NRC, 2001) to point out that “we inhale a small amount of asbestos in every breath”. Contrary to NRC claims about the reasons, however, its presence is a result of widespread use, and a great deal of the material remains in buildings even in those countries that banned the further use of asbestos beginning in the 1970s.

Over the past century, the widespread perception of asbestos has been transformed from that of “miracle mineral” to “deadly dust”. EU regulation of asbestos has unfolded only over the past 25 years, but has nonetheless followed a comparable progression. What began with initial recommendations for worker safety and protection from exposure was subsequently expanded to include increasingly strict regulations on exposure, uses, and varieties of asbestos, and was eventually transformed into an outright ban on the import and use of asbestos in European markets. This successively stringent regulation was pursued with what appears to have been a trio of purposes, which were sometimes complementary, sometimes conflicting. On the one hand, EU officials sought to develop and maintain a common body of regulations for chemicals and asbestos at the EU level, and to avoid increased national-level regulation – with both in support of the overarching goal of greater market integration. On the other hand, EU officials and public interest organizations sought to regulate a commercially important product to safeguard workers and protect public health – goals it was eventually concluded were incompatible with the continued presence of the product on the market. Finally, there is the interest in expanding EU authority to broaden and deepen its reach in diverse policy sectors as part of the larger project of European integration. As the course of events demonstrates, developments moved most quickly toward greater EU competence where these three purposes have been seen as compatible with and tended to reinforce one another.

EU Chemicals Policy has itself been influenced in critical ways by health hazards, regulatory problems, and political conflicts similar to those encountered in the asbestos case. I argue here that the revised principles for chemicals regulation presented in the White Paper and subsequent regulatory proposals are in significant ways a reflection of the many emblematic struggles

84 With limited exceptions, including some industrial gaskets. The ban is scheduled to go into effect January 1, 2005.
over asbestos. These struggles included disputes over the core principles guiding regulation, the interpretation of scientific evidence, the political power of economic interests, and the Commission’s various interests in furthering European integration.

The hazard and risk properties of asbestos rather closely parallel those of chemicals and are therefore dealt with both in the EU and elsewhere under chemicals policy. Asbestos also differs in important ways; it is technically not a chemical (asbestos is a naturally occurring mineral fiber) and is mined rather than synthesized. Its widespread use goes back more than a century, as does at least a portion of the data on the health hazards it presents. These hazards lie somewhere between the immediate and tangible hazards of poisons, explosives, or structural instability, and the difficult to trace and identify hazards of other substances that are bio-accumulative, carcinogenic, or otherwise result in long-term environmental damage, health problems, or death. The configuration of interests is also somewhat different. Given that asbestos is mined rather than synthesized, production is geographically bound in ways that distinguishes it from chemicals manufacturing.

The asbestos case was described by one Commission official as a “classic example” of how the EU policymaking proceeds incrementally with the regulation of health and environmental hazards through negotiation and consensus building. In this respect, it offers insights into how the regulation of other hazardous substances that present public health risks in the workplace and the environment are likely to be approached within the European Union. Another Commission official characterized the asbestos case as a poor indicator of the course of future action in the EU, or at the WTO level. Indeed, some of the most important lessons to be found in the asbestos case were made possible by the ways in which asbestos differs from other potential health hazards, such as the use of antibiotics or growth hormones in meat production, the release of genetically modified organisms into the environment and the food chain, or the chemicals in various products and production processes.

There are important differences in the inherent properties that distinguish asbestos from most chemical substances, just as there are important differences that distinguish different classes of chemical substances from one another. In contrast to many chemicals, asbestos presents relatively little environmental concern per se. The major issues are occupational health and safety and public health. However, even if asbestos differs from many chemicals in important ways, there are equally large differences between different chemicals products, the benefits they offer, and the nature of the hazards they present. Moreover, the political history of asbestos regulation is strikingly similar to that of polychlorinated biphenyls (PCBs) (Koppe and Keys, 2001) and of benzene (Infante, 2001), for example, suggesting that while some of the intrinsic properties of the substances may differ, the politics of markets and regulation have been quite similar. Following this pattern, the increasingly restrictive
regulation of asbestos developed in concert with the broader EU chemicals policy.

Another important political difference is that in contrast to the regulatory system that would be required to implement the proposed new chemicals policy, a ban on asbestos required virtually no new infrastructure. Removing a single product or class of products from the market is a very different matter than developing a workable and effective system for evaluating and registering thousands of products. The first is comparatively simple – an action that requires no new institutional infrastructure. The latter, however, requires establishing and developing over time an effective and efficient bureaucratic infrastructure for registering evaluating, and regulating thousands of diverse products.

B. Controlling Chemicals in the EU

Chemical products are for the most part regulated in the EU at the intersection of several policy sectors: market integration and economic development, occupational health and safety, environmental protection, and public health. The first of these was a fundamental component of the Treaty forming the European Community, while occupational health and safety concerns were included in the Euratom Treaty. Environmental issues connected with chemical products were largely invisible as a policy concern until the environmental movement of the late 1960s and early 1970s helped push them onto the policy agenda across Europe and North America. The first EU Environmental Action Program was approved in 1973. However, formal authority to take up environmental issues was lacking until 1987, when a recognition of the connection between environmental issues and the deregulation required to build the single market prompted the inclusion of an article requiring consideration of environmental effects in the Single European Act (SEA, 1987, Title VII, Articles 130r-130t). The advances for environmental considerations were not completely obvious. However, since such consideration of environmental concerns could be coupled with the achievement of the internal market (Article 100a), lowering the voting threshold from unanimity to qualified majority (Syngellakis, 1999) Public health, as discussed in the previous chapter, was a later addition, not emerging into view on its own terms until the 1990s, when the formal authority to make public health concerns an independently legitimate basis for action was first formally granted in the Maastricht Treaty (1992), then strengthened in Amsterdam (1999) (see Chapters 4, 5).

The SEA’s environmental section was in part a product of hard bargaining on the part of the member states with strong environmental movements

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85 Occupational Health and Safety concerns were also included under the earlier ECSC Treaty (1952).
(Germany, Denmark, and the Netherlands) and a push from the European Parliament (Vogel, 1993). However, it was no less a formal acknowledgement and sanctioning of activities already long underway – activities that were already politically and practically difficult to reverse. Neither the Commission nor the Council of Ministers had waited around for the clear competence recognized in the SEA to enact environmental regulations that among other things, sought to regulate certain known serious chemical hazards. The first EU classification, packaging, and labeling requirements were introduced in 1967 (67/548/EEC). These first measures, however, were primarily part of a process of standardization supportive of developing the internal market in chemical products. The 1972 Paris Summit invited the Commission to develop the EU’s first environmental program and authorized the Commission to establish an environmental directorate (Syngellakis, 1999). When the First Environmental Action Programme was formally adopted by the Council of Ministers the following year, it set out basic principles for its new environmental policy within the dominant, Treaty-sanctioned context of “harmonious development of economic activities” (Article 2, Treaty of Rome, 1958). The first restrictions on the sale and use of some hazardous substances were set in place three years later, in 1976 (Directive 76/769/EEC).

With the 1976 Directive, the EU followed other regulatory efforts rather than leading them; the EU measures echoed health and environmental protection regulations already being adopted at the member state level in response to growing environmental mobilization and related demands that something be done. A number of hazardous substances were also singled out in an occupational health and safety directive as requiring especially careful handling and treatment (80/1107/EEC). Asbestos was among them, marking the first mention of asbestos in EU regulation.

Since these initial steps, the regulation of chemical products has been expanded significantly in both volume and scope. Overall, some 120 Regulations and Directives pertaining to wide array of environmental concerns from automobile emissions to water quality were issued between the early 1970s and the mid 1980s (Vogel, 1993; see also, Briggs, 1986:110-111). However, regulation pertaining specifically to chemicals remained mostly a patchwork of legislation constructed on a case-by-case basis in which significant restrictions on trade in hazardous chemicals were the exception rather than the rule. The Framework Directive on Dangerous Substances was amended in 1979 to establish an EU-level system for screening new chemicals. In 1981, still in the infancy of its policy on hazardous substances, the European Commission took the comparatively radical step of establishing requirements for testing and risk assessment prior to new substances being produced or sold on European markets. However, over 100,000 substances
already in use\textsuperscript{86} were “grandfathered” in, thus limiting the reach of the new regulations. After over two decades, this remains no small matter; the number of such substances still represents more than 99\% of the total volume of all substances on the market as of February of 2001 (COM(2001)88 final). One result is that while the roughly 2,700 chemical substances introduced since 1981 have been evaluated and registered, “there is a general lack of knowledge about the properties and the uses of existing substances” (COM(2001)88 final:6). This lack of public data on the health and environmental effects applies to the vast majority of chemical substances on the market – an estimated 30,000 chemical substances currently considered commercially relevant. Of these, approximately 140 have been marked as substances of particular concern, to be subject to closer scrutiny and testing. However, from the point of view of industry, environmentalists, and member states alike, the process of evaluation of even this extremely limited number of substances has been painfully slow and ineffective. As of 2000, ten substances had been banned from the market or restricted for use subject to specific limiting conditions (76/769/EEC Annex 1).

The early flurry of regulatory activity was motivated not only by a recognition (arising in part out of several highly publicized chemical accidents) that many health and environmental hazards were in fact, transnational in nature, but also by the plethora of national-level environmental laws that complicated the process of regulatory harmonization for creating the common market. Some of the diversity of motives driving early EU chemicals regulation is apparent in the explanatory text of the first EU Directive regulating chemicals:

\begin{quote}
 Whereas any rules concerning the placing on the market of dangerous substances and preparations must aim at protecting the public, and in particular workers using such substances and preparations;

 Whereas the differences between the national provisions of the six Member States on the classification, packaging, and labeling of dangerous substances and preparations hinder trade in these substances and preparations within the Community and hence directly affect the establishment and functioning of the common market;

 Whereas it is therefore necessary to remove such hindrances... (67/548/EEC: emphasis added).
\end{quote}

\textsuperscript{86} Substances which were marketed in the EC at some time between 1 January 1971 and 18th September 1981 are listed in the European Inventory of Existing Commercial Chemical Substances (EINECS) list. New chemical substances are defined as chemical substances which do not appear in EINECS. Chemicals introduced subsequent to September of 1981 are registered in a cumulative index, European List of Notified Chemical Substances (ELINCS). Exemption categories include consumer products pertaining to pharmaceuticals, cosmetics, and foodstuffs are exempt from this list, as are pesticides, radioactive materials, wastes, and substances used in scientific research.
The above language indicates, however, that while regulations protecting health and safety could be seen as legitimate, they also risked hindering trade and the “functioning of the common market”. But because EU legal competence was rooted in economic integration, it was primarily trade and common market-related problems that required EU-level attention and intervention; the health and/or environmental threats presented by chemicals were an important consideration, but a secondary one. Nevertheless, EU officials have long recognized that chemical products present certain hazards that require special attention. Accordingly, they have sought in various ways to act – frequently stretching the boundaries of the authority established in the Treaties.

Equally important were Commission concerns for political legitimacy (Vogel, 1993). The language of the 1967 Directive is also strikingly similar to that of the Commission news release quoted at the beginning of this chapter. The decisive differences lie in how the balance between competing principles is realized in institutionalized rules, and which class of goals lies at the center of attention: what kinds of “problems” are considered most urgent, how priorities are organized, and which goals are granted first priority when there are conflicts. Not surprisingly, the diverse nature of these different goals presented potential conflicts and competition for priority. Vogel (1993: 121) points out that “the Treaty of Rome, by not explicitly mentioning environmental protection, provided EC policymakers with no framework for balancing environmental protection with other EC goals, the most important of which was obviously the creation of the common market itself”.

In fact, it did provide such a framework, even if by default. The paradigm guiding EU integration placed economic integration at its center, and the emerging awareness and urgency of environmental and public health problems did not alter that basic fact. Health and environmental concerns entered from the periphery, both conceptually, in terms of the context within which the issues were understood, and legally, in terms of the institutional framework provided by the Treaties. This dynamic is not overlooked by Vogel (1993:127), who noted that the EU, “while attempting to respond to growing public pressures for stricter environmental standards, was equally determined to prevent environmental regulation from interfering with economic integration. When faced with a tension between the two, it chose the latter over the former…”. This conclusion echoes other assessments that at least well into the 1980s, much of the European-level regulation of chemicals has been primarily market oriented – intended primarily to promote European trade in chemical products and a healthy European chemicals industry (Brickman et al., 1985). Regulation for health or environmental purposes has therefore tended to be either substance specific or hazard specific, and thus an exception to a general rule that products were assumed to be acceptable unless
scientifically proven otherwise. Such concerns were otherwise considered a matter for normal market mechanisms to resolve. Regulation has therefore responded to public demands related to concretely demonstrated health and environmental threats with specific targeted remedies rather than identifying broad risks and taking comprehensive preemptive measures. This means that policy for regulating chemical hazards with respect to health and environment has generally been reactive rather than precautionary, and exceptional rather than universal. It is this conceptual orientation and paradigmatic framework that the White Papers appear to seek to turn on its head.

C. ASBESTOS IN THE EU

When France announced on July 3, 1996, that it would prohibit “the production, import, and sale of asbestos containing products, notably asbestos cement” (c.f. AI, 1996:1) beginning January 1, 1997, the repercussions were as dramatic as the announcement itself. Inside the European Union, France had long been among the staunchest supporters of the asbestos industry’s arguments that chrysotile asbestos, considered the least dangerous of the six types of asbestos, could be used and managed safely. As the abrupt French turnaround shifted the center of gravity among EU member state, it revived a stalled EU effort to implement a near-total ban on asbestos – one which then proceeded with remarkable speed.

The timing of France’s policy near-simultaneous reversals on asbestos and GM crops was striking, and apparently linked. But the linkage was to an entirely separate issue of public health and risk – the contamination of the blood supply in France in the mid 1980s with the AIDS virus. More than 4000 people were infected, over 1000 of whom had died as of the time of the trial (ETC-1999/02/09). Four senior French health officials, including the directors of the national transfusion and public health services, were convicted in 1992 and received prison sentences of up to four years for failing to take appropriate action based on the information regarding the risk of blood contamination that was available at the time, knowingly permitting the use of potentially infected blood stocks (Henley-1999/02/06). Questions regarding the responsibility were not resolved there, however. Former Prime Minister Laurent Fabius and two of his cabinet members, Edmund Hervé, responsible for health and Georgina Dufoix, responsible for social affairs, were later formally charged with

87 The turnabout of the French government on asbestos was apparently part of a broader shift in French public policy regarding the management of risk. Less than two months after the French asbestos ban took effect on January 1, 1997, another major reversal in policy orientation was announced when Prime Minister Alain Juppé revealed on February 12 that his government would not authorize the cultivation of 3 hybrid varieties of the genetically modified (GM) maize (Marris, 2000). What had essentially been a closed, scientific/technical discussion prior to 1997 was systematically transformed into a very public discussion of the potential risks and benefits, and the related responsibility and accountability of public officials for taking appropriate action.
manslaughter, and accused of knowingly permitting the delay of systematic testing of blood for “commercial and nationalistic reasons” (Hebert-1999/02/10). The former ministers were acquitted amid a great deal of controversy over the conduct of the proceedings, but the impression it made on public officials was nevertheless quite powerful.

Not surprisingly, the French asbestos ban was received disapprovingly by asbestos producers, and in Canada, the world’s third largest exporter of chrysotile asbestos (Perron, 1999; Morel-àl’Huissier, 1995). Together, they faced the unhappy prospect of losing one of the few remaining European markets for asbestos exports (accounting for roughly 7-8% of Canada’s total asbestos exports before the EU ban was announced). Moreover, it was clear that the French policy reversal could clear the way for the European-wide ban that had been sought by the Commission several years earlier. More significantly, as a result of the actions in Europe, asbestos producers and exporters faced eroding credibility and the possible reduction in exports to the developing countries that had become their bread and butter. The complaint procedure that Canada initiated against France at the World Trade Organization (WTO) was set into motion with the intention of winning back this lost ground. Canada also hoped to send a message to other nations considering a ban that such a course would be both costly and difficult (NRC, 1999:17.5). But the WTO was destined to produce its own surprises. The trade body broke with its own pattern of decisions in previous trade disputes to set a striking precedent, issuing what has been described as one its first rulings that prioritized social concerns (in this instance, public health) over free-trade principles and economic interests (Wirth, 2002).

But why such a remarkable series of turnabouts and reversals? One natural conclusion would be that they were generated by new scientific breakthroughs in the knowledge about asbestos and its role in deadly disease. Commission documents published in preparation for taking up a proposed ban support this interpretation, referring to new scientific developments as clarifying the need for taking a more restrictive approach to asbestos regulation (DG-III – DEN). However, both the European Trade Union Confederation (ETUC) and the International Ban Asbestos Secretariat (IBAS) (two of the most active public interest groups that advocate a complete asbestos ban) take a different view, arguing that the science has been well established at least since the 1970s, if

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88 In earlier asbestos cases, one of the defenses companies used was that they followed public laws and regulations in their conduct, and were therefore not legally liable. The question that naturally arose as a consequence was if the hazards were so clearly established, but not reflected in public policy, why not? Once the French courts were involved in the contaminated blood case, the potential consequences were more visible. Public opinion was also very much on the side of the victims, cementing the government’s choices.

89 The EU represents member states at the WTO, since it represents a single market. However, it is individual EU member states that are members of the WTO.
not before (ETUC/TUTB; IBAS). From the side of the debate favoring asbestos use, a Canadian Government spokesperson echoed the opinion that new scientific knowledge was not the deciding factor: “We believe the ban in France, and the one proposed by the EU, is not based on sound science and was taken on strictly political grounds” (Benjelloun, 2000:4; AI, 1997). This sentiment was echoed in detail by the Canadian-based Asbestos Institute, an industry interest group which promotes the “safe use” of asbestos (AI, 2001). This “political” interpretation might suggest that these policy changes were the eventual fruits of decades of hard work on the part of the public health, labor, and environmental organizations that have long sought to ban asbestos outright. But while many labor, public interest, and victims organizations have clearly played an essential role in raising awareness of the hazards and by demanding reforms, there is little evidence supporting the contention that the EU decision to ban asbestos was “political” in the sense that the Asbestos Institute portrays – that grassroots organizations intimidated governments into approving more restrictive regulation (AI, 1996).

What is clear is that the fight over the regulation and eventual banning of asbestos was first and foremost a battle over issue conceptualization and fundamental priorities – commercial trade vs. public health – and over the related issues of burden of proof and the nature of the standards by which that charge could be met. As such, a great deal of the contention was over the interpretation of relevant scientific data and methodology and, and how that data framed issues of asbestos hazards for public policy. An important aspect of this contention was how the remaining scientific uncertainties – especially the aspects of hazard and risk left un-clarified by science – were understood and viewed by both policymakers and the general public. And while “political grounds” – interests – were clearly a significant basis for the decisions made by all the actors, Canada itself had been the leading lobby in high-level asbestos diplomacy. The targets for its potent combination of political hardball and skillful persuasion included national governments and supranational governance, and even international organizations concerned with science.

**LEADING ACTORS**

Among the member states, both France and the UK, struggling with the political and health consequences of the issue at home, were the key to reviving the Commission’s stalled efforts to institute a complete ban in Europe. In this regard, France’s role is considered to have been pivotal. In addition to their own specific concerns, states served as proxies for other interests. Within those member states, and to some extent, at the EU level, a network of labor, public interest, and victim’s organizations pressed for a ban, while the asbestos industry and business that used asbestos products argued for the continuation of its “safe use” policy. International organizations that deal with health and workplace health and safety standards – the World Health
Organization (WHO), the International Labor Organization (ILO), and the joint WHO/ILO sponsored International Program on Chemical Safety (IPCS) played a subtle, yet significant role through making their various pronouncements and judgments regarding the scientific evidence on asbestos.

The European Trade Union Confederation, the transnational network International Ban Asbestos Secretariat (IBAS), and other NGOs such as the ANDEVA, a French NGO working on behalf of asbestos victims played an important role. While theirs was by no means a victory achieved by overpowering the opposition, they provided a mobilized and focused European constituency to which the Commission and European Parliament felt a need to respond, and which at the same time helped to legitimate EU action. They helped make the available scientific evidence relevant and understandable in human terms, enlisted the support of the European Parliament to press the Commission into renewed action, and argued how future health costs could undermine Europe’s economic health. Victims’ organizations in France and the UK were particularly important, in part because they were already mobilized to press for bans in their respective countries. Given that mobilization, including Brussels their activities to further their efforts was a relatively small additional step. This provided a well-coordinated network of organizations sufficient motivation to mobilize with the Commission and European Parliament as their target.

The Canadian Government acted as the global coordinator for an array of sophisticated lobbying and public relations efforts aimed at protecting international asbestos markets. It has also helped fund the Asbestos Institute (NRC, AI, 2001), which organizes a variety of activities directed toward “promoting the safe use of asbestos” and contributed its own political clout and credibility to the overall effort. Canada has more at stake than keeping open international markets for the asbestos it produces. While the estimated 2,500 jobs directly connected with asbestos exports represent a relatively small population of workers to be directly affected, virtually all of its asbestos mining and production industry lies within the politically sensitive province of Quebec. Where Canada might have otherwise found it more expedient to obscure or downplay its many lobbying activities on the world stage, it had an essential interest in advertising those activities to the people of Quebec. One practical result of this dual interest is that Canada’s actions have been uncharacteristically transparent for this sort of activity: documentation of lobbying activities that might ordinarily be maintained as internal memos and progress reports has been actively promoted to the Canadian public in the form of speeches, press releases, and other revealing information. Canada’s involvement was therefore motivated by its own political interests, but it also served in a coordinating role for commercial producers and other actors with commercial interests. Since Canada was in fact a pivotal actor in the conflicts over banning in asbestos in Britain, France and the EU, as well as the WTO,
the arguments produced by Canada are taken here as representative of the most important arguments made on behalf of the “safe use” of asbestos. Canada’s arguments are used here to represent the arguments of commercial interests - particularly the asbestos producers – although many of the manufacturing and other business interests had eventually greatly reduced or even abandoned asbestos products before the EU moved forward on the ban.

The European Commission was not without its own particular concerns. A fundamental question here is how does the asbestos issue affect the larger process of European integration? Commission documents and legislation point out that regulatory differences arising from what might be characterized as renegade action by member states to regulate or ban asbestos “form a barrier to trade and have a direct impact on the establishment and operation of the common market” (Directive 85/610/EEC). Adding to this problem of regulatory consistency, three new member states entered the EU in 1995 with bans already in place (Sweden, Finland, Austria). Action to weaken restrictions on asbestos in the name of market integration would likely have been received poorly in those countries for a variety of reasons. Such deregulation would have done little to help address either the Commission’s problems with public legitimacy or its “democratic deficit”. But while greater political legitimacy and further harmonization of market regulation was an important goal, the Commission was also clearly motivated by growing public health concerns. In fact, it appears that even before 1990, Commission officials had already been persuaded that the risks posed by asbestos were unacceptable (DG-III – DEN: 3). One might also expect an enhanced sensitivity to the hazards of asbestos on the part of long-time Commission staff – the Berlaymont Building, the Commission’s headquarters and a symbol of the European Union, was hurriedly abandoned in December of 1991 when deteriorating asbestos building materials were discovered earlier that year to be contaminating the Commission’s very workspace. While no one seems to believe this embarrassment fundamentally altered the Commission’s position, it is easy to understand how such an experience might, at the very least, transform the issue from a set of comparatively abstract scientific and trade questions to something very concrete and personal.

**BACKGROUND: KNOWLEDGE AND ASBESTOS POLICY**

Asbestos is often thought of in terms of the building materials that are the most common source of that hazard in the workplace and public spaces, including asbestos cement products and asbestos insulation. The substance has also become synonymous with the incurable, often-deadly lung diseases it causes: asbestosis and lung cancers – including mesothelioma, a particularly lethal and otherwise rare form of cancer. However, asbestos was long considered a miracle material. A naturally occurring mineral fiber, its several beneficial properties – durability, tensile strength, and heat and fire resistance
have made it historically quite valuable. Ironically, these very properties also make it deadly. The human body cannot break down and remove the durable microscopic fibers from the lungs once inhaled, so they remain and accumulate, where the irritation they cause leads to its deadly results. Its fire resistance resulted in its promotion to avoid one hazard, only to create another far less visible and immediate. Attention to its beneficial attributes helped facilitate the widespread industrial use of asbestos during the early 1880s, when English and French textile industries produced fireproof fabrics woven from asbestos fibers. The products filled a market niche and asbestos use was quickly expanded to other areas of manufacturing, with its most important applications including brake linings, heat resistant seals, and asbestos cement board and pipe. Asbestos insulation applied through spray techniques enjoyed an extensive, though brief popularity (Vogel, 1999; AI, 1996).

It was not long, however, before the widespread use of asbestos began to generate noticeable – often deadly – side effects. A British factory inspector noted certain hazards from asbestos fibers as early as 1898. Eight years later in 1906, some fifty deaths among workers at a French asbestos spinning and weaving factory were linked to asbestos in a report by factory inspector Denis Auribault. In Britain during the same year Dr. Montague Murray was among the first to report asbestosis, an irreversible lung fibrosis that impedes the lungs’ capacity to take up oxygen (Brodeur, 1985). Given the relatively long latency periods of asbestos-induced illnesses (roughly 15 years for asbestosis, 20-40 years for mesothelioma), these early observations were right on schedule.

The latency period for policy responses would prove to be longer, however. In spite of this early evidence linking asbestos exposure to lung disease, it would be more than half a century before this scientific knowledge began to be reflected in public policies that protected workers and the public from asbestos exposure. The image of asbestos as a miracle fiber was already well established, as were the commercial interests that benefited from that picture. The accumulating evidence was deemed inconclusive – and in any case not sufficient to remove a successful and profitable product from the market. Public policy continued to reflect the useful qualities of the product, and the vague hazards of asbestos dust undoubtedly seemed less compelling than the obvious protection it provided against an immediate fire hazards.

The policymaking threshold was first passed with the combined weight of a growing body of scientific evidence, a mounting toll of human illness and death, and concerted action by groups concerned with the health consequences of asbestos use. The potent carcinogenic properties of asbestos were recognized by German researchers by the late 1930s, and British cancer statistics published in the late 1940s provided an epidemiological dimension to the causal linkages offering a glimpse of the possible magnitude of the
damage (Castleman, 2001). The body of research continued to expand, carried out not only by academic researchers, but also by asbestos producers and companies that manufactured or used asbestos products. The latter research, however, was later revealed to have often been organized more to serve commercial interests than to expand scientific knowledge; results were routinely kept confidential and company lawyers and managers exercised editorial rights (Castleman, 2001). Both the burden of proof and the standards required to meet it stacked the deck in favor of continued use.

As has often been the case, the first steps were taken in the area of occupational health and safety. Women and men who had labored in work environments where high concentrations of asbestos dust were present were most exposed to the hazards – the “canaries in the coal mine”. Workers with high exposure were consequently most visibly affected, developing asbestosis, then other lung problems including cancer and mesothelioma. But it soon became clear that it was not only workers who were at risk for exposure and therefore at risk. Workers came home with the dust on their clothes, extending the effects to their families, and asbestos products could not contain it indefinitely. Large public buildings such as offices, hospitals, and schools had been built and insulated with asbestos containing materials. Some of these asbestos materials, particularly insulation and ceiling tiles, have been found to be especially prone to deterioration and subsequent release of asbestos fibers into the air. Asbestos cement and brake linings, while clearly more stable, also deteriorate or break down over time or with normal use, releasing the deadly fibers into the air. What had come to be seen as health hazard for a relatively circumscribed class of workers suddenly became a hazard that could endanger anyone – office workers, hospital workers, teachers, and children.

The first regulatory breakthroughs came in the early 1970s. An initial wave of governmental regulations of asbestos in North America and Western Europe began systematically replacing voluntary measures that had proven ineffective in containing the hazards – often because they were insufficient,

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90 For what is considered to be the definitive historical research on asbestos and health, see Asbestos: Medical and Legal Aspects (Castleman, 2001) The 731 page volume includes a complete annotated bibliography for the medical and epidemiological research on asbestos and human health. It also contains a summary of many of the internal company documents that were forced into the open during the course of legal proceedings brought against the companies by unwitting asbestos victims.

91 A great deal of the evidence of such activity has been accumulated in the course of legal proceedings in the U.S. in which the “discovery” process has opened access to highly sensitive internal company documents. The answers these documents have provided to questions regarding what the company knew, when it knew, and what actions it took have resulted in billions of dollars in legal awards to asbestos victims, often posthumously. The volume of these claims by injured workers and their families have resulted in numerous bankruptcies.

92 This problem has continued to the present in spite of safety measures taken. One study of Canadian asbestos workers’ families, for example, has revealed several cases of asbestos-caused disease.
but also because they were often simply ignored. In the U.S., the Occupational Safety and Health Act (OSHA\(^93\)) was passed in 1970, including asbestos regulation as part of a larger package of measures. Denmark initiated what is believed to have been the first ban in 1972, prohibiting the spray application of asbestos insulation, and also banning the import of crocidolite asbestos. Sweden followed shortly after, banning crocidolite in 1975, and prohibiting asbestos cement products in 1976. The Netherlands adopted both these measures in 1977, and France established its measures regulating asbestos in the same year (DG-III DEN).

**EU Efforts to Regulate Asbestos Hazards**

In addition to the practical effects of reducing the circulation of asbestos in North America and Europe, the first wave of legislation had two clear effects. First, such widespread attention lent a new kind of legitimacy to the claims of asbestos-related health hazard; it established it a legitimate subject for governmental regulation and an important matter for additional research. The second effect was to pave the way a plethora of subsequent regulations that varied a great deal from nation to nation.

The EU first explicitly regulated the use of asbestos in 1983, marking the first steps toward a formal EU re-conceptualization of asbestos from that of commercial product with life-saving fire-retardant and other useful properties, to that of a significant health hazard for workers – and eventually for others as well. It came toward the end of the first international wave of legislation that sought to ameliorate the most obvious asbestos hazards by reducing exposure to asbestos in the workplace, by limiting the emissions of asbestos into the work environment, and by taking steps to restrict the marketing of certain specific types of asbestos. This initial regulatory action at the EU level consisted of two separate Directives. The first (83/477/ECC) sought to establish initial European-level standards for occupational health and safety pertaining specifically to asbestos – seeking to protect workers against asbestos exposure. In this case, the principle of singling out certain “chemical, physical, and biological agents at work” (including asbestos) for extra attention had already been established under the earlier Directive (80/1107/EEC). This directive had two important consequences. First, it helped further anchor a growing European consensus that defined asbestos use as a serious problem in the form of a demonstrated health hazard – in this instance, primarily in its more focused form as an occupational health and safety issue. It was also the area in which the scientific evidence on the issue was most advanced and clear cut. Second, it established a foothold for the EU as an actor with a legitimate role to play in addressing the problems posed by asbestos. This action also fell within the scope established in the Treaties,

\(^93\) This is also the acronym for the U.S.’s Occupational Safety and Health Administration.
given that earlier precedent had already confirmed the EU’s general competence to intervene in workplace health and safety issues.

The language of this first occupational safety and health directive clearly stated that it was not to be seen as a maximum standard that would limit “the right of Member States to apply or introduce laws, regulations or administrative provisions ensuring greater protections for workers” (80/1107/EEC, Article 7), but neither did it establish any real floor. Article 3.2 clarified the optional nature of the Directive, noting that “Member States shall determine the extent, if any, to which each of the measures provided…is to apply...” (emphasis added). The new Directive added important new substance by establishing the first legal basis for collecting comparable data on the extent to which asbestos dust might be present. Employers were required to report on asbestos use in detail, to assess the risk to workers of exposure, to measure such exposure using comparable methods, and to report such information to the responsible authority of the Member State. Specific exposure limits were established, with employers required to take steps to both stay within those limits and make additional efforts to minimize overall exposure, and set standards for medical surveillance and procedures for workers who had been exposed. Finally, employers were required to consult with workers and their unions regarding all asbestos-related information and practices. The Directive also took the significant step of prohibiting application by spraying – probably the most clearly dangerous occupational contact with the fiber. But as already indicated, these “requirements” were essentially up to the member states to accept or reject. Probably the most important longer-term effect of the legislation is that asbestos was transformed from a vague, diffused health threat that might be present to one that was much more clearly specified as to location and volume. Volume was comparable to independent standards and from one location to the next. What might have previously been identified only as the general presence of asbestos contamination could now be evaluated from established points of reference – for example, as being 2, 3, or 50 times the levels considered allowable.

STAKING OUT NEW TERRITORY, ESTABLISHING LEGITIMACY

The second 1983 directive (Directive 83/478/ECC) introduced the first Community-wide measures restricting the marketing and use of products containing asbestos. As had been the case with the earlier occupational health directive, this measure also built on the precedent set by the earlier EU directive restricting the sale and use of substances considered to present a

94 This would be characterized by Beck (1995) as meaningless – simply reinforcing the status quo. It has another effect, however, and that is to begin to challenge and erode the paradigm that conflates more technology with “progress” by giving level of threat needed form and tangibility.
particularly serious danger to health or environment (Directive 76/769/EEC). Anchoring itself in the established legitimacy of the earlier legislation, the marketing directive (83/478/EEC) extended to asbestos both the regulatory uniformity and tighter restrictions of the earlier measure, phasing in a ban (with exceptions) on the marketing and use of crocidolite asbestos, the most demonstrably hazardous variety, and requiring warning labels on all products containing asbestos. Two years later, in 1985, a follow-up directive (85/610/EEC) extended that ban to include six specified uses of all other types of asbestos. Included among these newly restricted uses were toys, materials applied by spraying, and retail products in powered form.

Part of the rationale presented in the language of the Directive for establishing such restrictions was the fact that member states had already enacted a variety of different regulations governing hazardous substances (including arsenic, benzene, mercury, lead, and other materials), and that “these differences constitute an obstacle to trade and directly affect the establishment and functioning of the common market” (85/610/EEC, emphasis added). What cannot be determined from that language is the extent to which EU-level asbestos regulation was driven by the desire to protect and enhance uniform regulation within the single market on the one hand, and the extent to which arguing in terms of the market served as both legal basis and legitimating cover for very real health and environmental concerns on the other. What is clear is that the market arguments provided the only legal basis for action, given that the first EU competence in public health did not come into force until the Maastricht Treaty (1993-Article 129)\textsuperscript{95}. Also significant was the fact that a 1987 Directive (87/217/EEC) to reduce and prevent environmental pollution by asbestos was explicit that “A Member State may, in order to protect health and the environment, introduce provisions which are more stringent than those of this Directive, in compliance with the conditions laid down by the Treaty” (87/217/EEC, Article 9). Nor can it be considered a coincidence that this “environmental” measure followed the first formal EU competence to address environmental issues. This also stands in contrast the environmental policy being developed during the same period, which Vogel (1993) has characterized as seeking to set both floor and ceiling for member state environmental regulation – an approach more consistent with the goal of regulatory harmonization. Given that several member states had already banned asbestos, it is easy to understand how some member states would have wanted to assure that the Directive served only as a floor, and not as a ceiling. Moreover, including such language could be read as a clear invitation to enact more stringent regulations, rather than serving to reduce the kinds of

\textsuperscript{95} It was granted some rudimentary, but formal authority one year later under Article 100a(3) of the Single European Act (1986), which urged the Commission to seek a high level of protection in such matters as related to the single market.
differences that constituted an “obstacle” to the proper functioning of the common market.

The lack of obvious struggle around these early EU-level restrictions suggest that opposition at that stage was minor – or more likely, that such struggles had already be resolved in other arenas, both national and international. Early European-level regulations essentially codified what had become a reasonably broad base-level consensus; the need for at least some level of formal legal controls had already been established by science, by experience, and by precedent elsewhere. Roughly similar standards for asbestos use were, for example, adopted by the General Conference of the International Labor Organization (ILO) as the Asbestos Convention in June of 1986. The rules of the Convention paralleled the EU Directives, though they were somewhat weaker: the principle of substitution was introduced, crocidolite asbestos was prohibited, and the spraying of all forms of asbestos was prohibited (ILO, 1986 – C162 Asbestos Convention). The legal force of the Asbestos Convention, however, was contingent upon its ratification by ILO members. The Convention was based in part on a report developed by a committee of scientific experts working with the International Program on Chemical Safety (IPCS)96, which emphasized that the now recognized risks of asbestos could be minimized and managed with adequate controls (Castleman & Lemen, 1998).

The new regulations represented concrete steps toward reducing the hazards of asbestos use based on public health concerns, although even then, public interest groups already considered them utterly insufficient to protect public health. Regulations at the national, international, and EU levels also served to further legitimize the health hazard claims about asbestos being made by unions, public interest NGOs, and public health officials. But commercial interests were served as well; given the number and variety of asbestos regulations materializing across Europe, the prospect of some greater degree of consistency and uniformity undoubtedly made such steps more appealing to many businesses. The extensive documentation produced by legal battles in the United States and Europe (mostly in the UK), and the general pattern of controls being imposed on both continents (sometimes including the banning of the most hazardous uses and types of asbestos) also suggests that the question of whether or not asbestos should be considered a matter for public regulation had already been conceded in favor of more defensible territory – embracing regulation as a pre-emptive strategy for avoiding just the sort of ban that the EU eventually concluded was necessary. This approach has been characterized as “safe use” by asbestos producers (and “controlled use” by sympathetic governments), although the global pattern of asbestos exports and monitoring of use supports the contention that producers are far more

96 The IPCS is jointly sponsored by the WHO, the ILO, and the UNEP.
interested in the “use” element of the slogan and less concerned about “safe” or “controlled” in practice. In any case, conversion to substitutes in Europe had not yet progressed very far, so among other barriers, the number of companies that either produced or used asbestos products still presented a formidable obstacle to going further at the time. In addition, the tougher restrictions undoubtedly improved the longer-term prospects for asbestos use by better controlling the risks and actual measurable harm connected with its use.

**SUBTLE CHANGES, LARGE CONSEQUENCES: RESTRUCTURING POLICY PRIORITIES**

The paradigmatic shift in the EU policy for dealing with asbestos was not announced with the release of any new EU policy paper. Nor was it announced in a news conference hastily put together in response to some political or environmental crisis. Instead, it emerged as a change in emphasis that was subtle in its immediate effect, but which had large long-term consequences. A second round of EU legislation further tightened the European-level restrictions on asbestos use in 1991. As previously, the new Directives were taken up in the context of new ‘market disturbances’ – as additional member states implemented increasingly restrictive asbestos regulation at the national level. Labor unions and public interest groups were making demands similar to those lodged earlier, but external conditions had also changed somewhat. EU background documents suggest that “more scientific evidence about the dangers of asbestos had emerged and safer substitutes had been developed to replace asbestos in many uses” (DG-III, Detailed Explanatory Note:2). Of these two factors, the development of substitutes is believed by public interest groups to have been most significant. It helped reduce and undermine the network of opposition to a ban, leaving asbestos producers with an eroding base of business allies within the EU. This contributed to permitting a further tightening of the limits for occupational exposure under Directive 91/382/EEC (amending the earlier Directive 83/477/EEC).

Two other steps, however, broke new ground. All types of asbestos were classified as Category I carcinogens (defined as substances known to cause cancer in humans) under Directive 67/548/EEC (amended to include asbestos

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97 The vast majority of asbestos exports and product use is now in developing countries. While part of the eventual EU and WTO arguments focused on whether the “safe use” of asbestos is practically possible in industrialized countries with a great deal of experience of regulation and monitoring – such regulations are routinely violated in the U.S. (Infante, WTO proceedings, 2001-03-12). According to advocacy groups, effective regulation and monitoring is woefully inadequate – or even non-existent – in many developing countries (ETUC/TUTB, IBAS)

98 According to one trade union official interviewed, the availability of workable substitutes has been an important element in the erosion of the numbers of commercial enterprises with an interest in continued use of asbestos.
in 1991). This had the effect of bringing asbestos under an established body of regulation pertaining to substances known to cause cancer in humans (this list includes, polychlorininated biphenyl (PCB) and vinyl chloride, and dioxins, among other substances). The second, more significant step was to introduce a complete ban on the marketing and manufacture involving all types of asbestos fibers with exceptions. Chrysotile, although still permitted, was prohibited (Directive 91/659/EEC) for an extended list of 14 specified categories of products (including, in addition to the earlier list, roofing felt, low density insulating or soundproofing materials, and most textiles). Products containing chrysotile asbestos that were not listed in the restrictions (including asbestos cement products) were not barred, so although the scope of the Chrysotile restrictions had widened a great deal, it remained, in effect, a blanket approval with selective restriction, rather than a blanket restriction with exceptions.

This was not intended to be the end of the line. “Even in 1991, the Commission realised that more needed to be done to restrict the marketing and use of chrysotile asbestos” (DG-III -DEN:3). The “Detailed Explanatory Note” produced in 1996 in preparation for subsequent efforts to close the final loopholes permitting asbestos use characterized the asbestos-related policy of the European Community in the early 1990s as one of “controlled use”. But it also noted that during the 1990s, an increasing number of Member States considered the Community’s policy to be insufficient to protect public health. The Commission announced its intention with the passage of the 1991 asbestos ban Directive to complete the reversal of its approach from regulating to banning asbestos. It would shift the balance of the remainder of its policy on asbestos, including Chrysotile, from blanket approval with exceptions (albeit, an increasing number of them) to blanket prohibition with exceptions – from banning particular types of asbestos and banning Chrysotile for specified uses, to imposing a Community-wide ban on all forms of asbestos while permitting only certain specified exceptions (DG-III. DEN).

The significance of this shift in orientation is that it effectively transferred the burden of proof from unions, public interest groups, and public health officials, to the remaining asbestos producers and manufacturers. Rather than requiring those with health concerns to demonstrate in each individual case and with scientific certainty that a particular type of asbestos or specific application was sufficiently dangerous to prohibit, the producers and manufacturers would have to prove that there were overriding reasons to permit the hazard, and that the hazard could be acceptably managed. The announcement proved premature, however. Plans to complete the transition and phase out asbestos use foundered on the lack of the necessary qualified majority. Later Commission documents make this point diplomatically:

“At the adoption of Directive 91/659/EEC, the Commission announced its intention to propose a community-wide ban with exceptions. In 1993, the Commission’s services drew up a draft proposal for such a ban. However, after
7 meetings with the Member States, it became clear that there were a wide variety of views and that the required qualified majority could not be reached without further background information”(DG-III – DEN: 3)

**Asbestos “Politics” and Going for the Ban**

When six years later, the stalemate finally broke, several factors had changed to permit the movement to ban asbestos to proceed. One element that appears not to have significantly changed is the science underlying the ban proposals, although materials produced by the Commission characterized this otherwise – as was probably necessary given the circumstances. However, the arguments and the scientific evidence they were based on remained largely the same. Even as early as 1983, the Commission had pointed out that “current scientific knowledge is not such that a level can be established below which risks to health cease to exist…” (83/487/EEC). This point had been raised early on as part of the argument for a complete ban with exceptions. This has remained the case, and Commission officials have pointed out the difficulty of even establishing a threshold given the low levels of exposure now being examined. More is known about the hazards of asbestos substitutes, though the knowledge remains incomplete. Cellulose fiber, a substitute used for insulation applications for example, is not believed to be carcinogenic, and while it remains to be determined whether glass fiber is carcinogenic, the consensus appears to be that it should be handled as such (Infante, 2000).

Notwithstanding the arguments about scientific progress made in Commission documents, it was the politics that had changed. However, it was not in the sense suggested by Canada and the Asbestos Institute – that French and European officials had caved in to grassroots political pressures (AI). As the historical development illustrates, the struggle over asbestos regulation had long been “political”. The two decisive political elements that had changed were the alignment of conventional political power and the conceptual framework from which the scientific evidence was judged.

The political constellation around the asbestos issue had changed dramatically. On one side of the equation, the network of actors with a stake in supporting the continued use of asbestos had eroded. European commercial enterprises, for example, had increasingly changed over to substitutes. This changeover was undoubtedly driven in part by a desire to use safer materials, but it also appears that businesses saw the writing on the wall and sought to make the transition on their own schedule, rather than waiting to be forced. One such example was ETERNIT, a Belgian-based company and large producer of building materials including fiber cement and board products. Their conversion to substitutes, while it did not occur until after the regulatory actions of the early 1990s, permitted the company to phase out their manufacturing of asbestos products before the ban took place and thus escape economic consequences of delaying the changeover until forced. They now are
engaged in business connected to the handling and removal of asbestos, including in the new member states. ETERNIT’s position shifted from that of being harmed by a ban to being positioned to benefit. Ironically, at least some of their current work entails the removal of products that they themselves manufactured and/or installed. The broader effect of such developments, however is that such defections substantially undermined the network of political support available within Europe for the asbestos producers to draw on.

Another clearly political factor was that several member states chose not to wait for “further background information”, acting on their concerns that existing regulation was insufficient to protect public health. At the EU level, the same public health reasoning pressed for once again taking up the closing of Europe’s borders to the import of new asbestos or asbestos-containing products. Increasing national regulation carried an added incentive: as member states took matters into their own hands, they “successively imposed further national restrictions on products not covered by harmonization, creating disunity in the Internal Market” (DG-III, DGN:3 emphasis added). This was potentially a problem that could leak over into other areas of EU trade policy, raising the question of whether the product in question was worth the precedent-setting that takes place with members taking regulation regarding market matters into their own hands. The EU faced a trade-off between intervening in market affairs to ban a particular commodity, or letting disorder increase as member states independently decided that public health principles were this instance a higher priority than market non-intervention. The fewer European allies available for the asbestos industry to enlist, the more likely that this question would be answered “no”. It was not only a matter of a lack of consistency in asbestos regulation in the Internal Market caused by renegade regulations being passed at the member state level. As noted earlier, the overall head count had also changed. Austria, Sweden, and Finland joined in 1995 with asbestos bans already in place. By the time the Commission revisited an across the board ban on asbestos products, Belgium had followed France’s lead in adopting its own ban in 1998, and three other member states (the UK, Ireland, and Luxembourg) had indicated their support. The three remaining holdouts, Spain, Portugal, and Greece, remained opposed to any regulatory change “for scientific and technical reasons and because the economic effects it would have on their asbestos-cement industries”(DG-III, DEN: 3).

COMMON KNOWLEDGE AND POLITICIZED SCIENCE

If the exercise of various forms of political power was one side of the asbestos politics coin, political persuasion was the other. The targets for persuasion included not only political leaders and broader publics, but also scientific experts. While the history of asbestos research, human tragedy, and
corporate responsibility was once the subject of intense disagreement, much of the dispute has been put to rest with the help of an ever-growing body of scientific evidence and internal company documents pried out of corporate files by class-action lawsuits. However, as the struggles over the French, British, and European bans illustrate, the question of banning asbestos had by no means become uncontested; it had simply been moved to more defensible ground.

This strategic retreat is most evident in the arguments of Natural Resources Canada (NRC), the Canadian governmental department responsible for regulating and overseeing Canadian asbestos production – and maintaining its export markets abroad. The core elements of the arguments for continued asbestos use are well illustrated in a skillfully crafted document, entitled “Chrysotile Asbestos Fact Sheet” (NRC, 2001; see Figure 6.2 at the end of this chapter). This document contains the counter arguments targeted at the two audiences particularly important in democratic policymaking – the non-experts that largely comprise the general public, and the non-experts that largely comprise the body of policymakers – who frequently lack the technical expertise to evaluate the claims being made. In doing so, it helped establish the context in which scientific information is to be judged. The “facts” in the document strategically shift the argument to more defensible ground, by seeking to a) establish the credibility and trustworthiness of asbestos producers as experts; b) distinguish “Canadian” chrysotile asbestos from the other more dangerous forms; and c) inoculate against the belief that banning chrysotile asbestos will effectively remove the environmental hazard. Based on these three points, it then argues that there is no reasonable justification for establishing trade barriers to block asbestos import.

The strategic rehabilitation of actors is carried out under the heading of “Problems of the Past”, which portrays the historic lack of adequate management of asbestos hazards first, as a function of an earlier lack of knowledge – an innocent mistake – and second, as no longer being an issue. It goes on to suggest: “Unfortunately, public health officials were slow to see the link (a statement that is particularly at odds with the historical evidence), in part because illnesses could take 45 years to develop”. This suggests that 1) there is no longer a danger, 2) mistakes that were made were innocent, and 3) it was public health officials who erred, but understandably so. This story is of course quite a contrast with the historical record briefly summarized earlier in this chapter.

In the next step, chrysotile asbestos is rhetorically distinguished from the other forms of the deadly mineral by indicating that science has finally clarified the problem: “Asbestos has been the focus of extensive scientific and medical scrutiny. Among other things, scientists have discovered that not all asbestos is alike…chrysotile asbestos, the most common form of asbestos used in the world and the only kind mined in Canada, can be used safely in products
such as building materials, brake linings, and water and sewer pipes” (emphasis added). The threat is therefore greatly reduced, if not entirely eliminated. This is accomplished without a single statement that the proponents of banning asbestos could definitively prove false. Asbestos has been the focus of much research, there are different types of asbestos, and theoretically, it can be used safely in theory – even if in practice this proves to be extremely problematic. It is the effect of the three sentences together that creates the impression of “problems of the past” and not of the present.

The third step is to point out that even banning the use of asbestos would not eliminate it from our environment. Under a sidebar with the heading “Did you know…”, the leaflet points out that asbestos is “found naturally in nearly two-thirds of the Earth’s crust” and “because of its wide prevalence, we inhale small amounts of asbestos in every breath”. While it may well be that asbestos is geologically extremely common, there are a wide range of questions about the condition and location of its presence in the Earth’s crust, which ranges between 8–40 kilometers thick. Its wide prevalence, however, is more likely to be a result of the asbestos in building and insulating materials, brakes\textsuperscript{99}, and other commercial uses of the sort at issue. The linking of the two separate statements, however, creates a very different impression.

The final section returns to the goal of establishing the credibility of the asbestos producers. It entails taking an apparently aggressive stand on safety, even labeling their model the “safe use” approach and going into some detail on the controls in place for the production and manufacturing process, and “safe use” seminars offered in developing countries in which asbestos products are used. The obvious emphasis here is on taking action to promote safety with training, etc. the more subtle context is on their interpretation of science, and on the production aspects of asbestos use given that “safe use” strategies apply only to settings in which use can be controlled.

The asbestos lobby did not limit itself to conventional political targets. Its efforts to influence the debate on asbestos by contextualizing the evidence extended to respected scientific journals and scientific organizations, including worldwide organizations whose activities and recommendations influence public policy. The British medical journal Lancet likened these activities to those carried out by the tobacco industry, which actively sought to influence the scientific discussion on the effects of tobacco and helped sympathetic scientists gain positions where their views could influence public policy (Lancet, 2000). The production of a 1986 expert report on asbestos produced

\textsuperscript{99} At least one study suggested that the widespread use of asbestos in automobile brakes has created a significant asbestos hazard in metropolitan areas with heavy stop-and-go traffic (see Castleman, 2001).
by the International Program on Chemical Safety and Asbestos (IPCS)\textsuperscript{100} follows this pattern\textsuperscript{101}. Three of the five scientists that prepared the report had documented close ties to the Canadian Government and/or the asbestos industry, and the Secretary of the Task Group responsible for the report was a Canadian government official (Castleman and Lemen, 1998). The final report mirrored the position of Canada and the Canadian asbestos industry, emphasizing that adequate control measures were sufficient to protect workers and the public.

A subsequent effort (in 1993) to prepare an update on chrysotile asbestos was marred by further political influence. Overt efforts to manage the outcome in favor of asbestos use drew sharp criticism from officials of the U.S. National Institute for Occupational Safety and Health (NIOSH) and the Collegium Ramazzini\textsuperscript{102} among others, and resulted in their refusal to participate. An IPCS workshop on chrysotile was carried out with the financial assistance of various industry organizations despite the controversy, and the proceedings were edited by two industry consultants and the Canadian official who had earlier served as Task Group Secretary. In part a result of the conflict generated, the process of developing a final report extended until 1996, and included additional scientists. The Task Group chair at the time, also an employee of the Canadian government, was forced to step down as chair when she attempted to veto the larger group’s decision warning against the use of asbestos in building materials (Castleman, 1999a). The WHO has since sought to address some of these conflict of interest issues by implementing the use of a one-page disclosure form to be completed by the scientists with which it consults. It is unclear, however, whether this step will be sufficient to reveal all relevant conflicts of interest.

**INSTITUTIONALIZING NEW PRIORITIES: CLOSING EUROPEAN BORDERS:**

When in 1997 the Commission once again took up the question of banning asbestos – this time armed with the necessary qualified majority – important political, economic, and social considerations remained. One was the continued opposition of the three member states of Greece, Spain, and Portugal, and the likely consequences in terms of additional unemployment and economic disturbance. They argued that the EU ban presented no problem to nations that had already implemented a ban, and that they had been able to adopt their bans on their own terms in order to minimize the disruptive effects. Another problem was the certainty of a WTO challenge by Canada, which if successful, could have other undesirable consequences. These factors required

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\textsuperscript{100} The Geneva-based IPCS is a joint activity of the World Health Organization (WHO), the International Labor Office (ILO), and the United Nations Environment Program (UNEP). It is housed at the WHO, which also issues its publications (IPCS, 2001).

\textsuperscript{101} Barry Castleman and Richard Lemen (1998) outline these developments in some detail.

\textsuperscript{102} The Collegium is a highly respected scientific body.
the ban to be approached with sensitivity to the hardships likely to be faced by
the three dissenting member states and people in the affected industries. They
also required the “proof” – the scientific data upon which the ban was to be
based – to be assembled with Canadian arguments in mind.

The internal political, economic, and social considerations of
implementing a complete ban were taken up in the process of meetings and
deliberations through which the final Directive was developed. Commission
officials made visits to mines and factories where owners and employees who
would be adversely affected in member states could express their
disagreement. On one visit, workers (under the watchful eye of the their
employers) requested the delegation members and the EU to let them make
their own choices and take their own risks\textsuperscript{103} – unemployment with few other
options would be the likely consequence of a ban. This is an obvious
problems, and the prospect of taking out of workers’ hands decisions about the
their occupational risks and effectively putting people out of work so
deliberately, provided a sympathetic portrait of the disadvantages of the
decision being prepared. However, such requests overlooked the obvious lack
of choice offered to people exposed “downstream” and often without their
knowledge – a group that has often included the very families the workers are
laboring to support.

In practice, these human and economic concerns were addressed by
including a five-year phase-in period to permit more time for adaptation and
conversion to substitutes in Greece, Portugal, & Spain. This phase-in period
was based in part on a study commissioned to examine the economic impact
on the countries in question. The study determined that there would be no
substantial additional benefits from a longer phase-in period (DG III-DEN).

The Commission’s handling of the scientific issues connected with the ban
was directed to both the internal and external concerns. Strong evidence was
clearly necessary to justify imposing additional economic hardships on people
in member states who were perhaps least prepared to manage them. Given
Canada’s promised WTO challenge, however, it was clear that the scientific
evidence would eventually be judged against the standards and obligations
established under international agreements, including the GATT and the WTO.

In view of the importance of the scientific data to buttress the eventual
political decisions regarding the management of risk, the Commission began
the process of marshalling the scientific facts behind the ban. It began with the
report by INSERM, (the French scientific agency that had been responsible for
evaluating the risks of asbestos) a report the Canadian-based trade group the
Asbestos Institute had already labeled as both “flawed” and “political”. The
Commission also contracted with (ERM) to do a review of all the existing
literature on the epidemiology and risks of asbestos. This represented no new

\textsuperscript{103} This account was provided by an observer present at the meeting.
research, both because of the time and expense that would have been required for the Commission to establish its own research. Neither was it necessary in the view of the Commission and others – the level of certainty about the risks of asbestos was already considered quite sufficient to justify the ban being proposed.

This report was then referred to the Commission’s own Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) for review and an opinion regarding the conclusions of the ERM report. Canada’s lobbying efforts were successful in redirecting the committee’s attention. A lengthy submission by Canadian scientists succeeded in reframing the context of the questions posed by the Commission – away from the uncertainties inherent in public policy decisions and toward the remaining areas of scientific uncertainty. The CSTEE conclusion was that “the ERM Report provides no new evidence which indicates that a change in the risk assessment for chrysotile is appropriate” (CSTEE opinion of 2/9/98). In fact, this conclusion was largely irrelevant to the course of action being contemplated by the Commission for two reasons: first, it ignored the question of whether there were less hazardous substitutes available. Second, it was so much any change in risk that was motivating the proposed ban, but rather a different approach to dealing with the level of risk that had already been established. Nevertheless, this result put the Commission in the awkward position of choosing between accepting further delays, or appearing to ignore the conclusions of its own scientific committee and thereby weakening an important basis of its arguments. Given the circumstances, accepting delay appeared to be the wiser course.

The Commission responded creatively, by making a second and much more specific request for an opinion from the Committee – this time for an analysis of the safety/hazard of substitute products relative to the hazards of asbestos. The request for the follow up opinion read: “on the basis of the available data, do any of the following substitute fibres pose an equal or greater risk to human health than chrysotile asbestos? Cellulose fibres? PVA fibres? P-aramid fibres?” (CSTEE Minutes, 1999/01/18)

The conclusion of the second CSTEE opinion reads quite differently than the first: “A major concern with fibres is their carcinogenic potential. There is sufficient evidence that all forms of asbestos, including chrysotile, are carcinogenic to man. No evidence of fibre-caused cancer occurrence in man is available for any of the three candidate substitutes…” (CSTEE, 1998/09/15).

**Defending Public Health Priorities at the WTO**

While the WTO challenge was formally directed at France’s ban (and not that enacted by the EU), the decisions would still have clear consequences for the EU ban; the bans were similar and based on the same scientific evidence and reasoning. In essence, the EU was defending its own ban by proxy.
The fundamental assumptions that guide the WTO complaint procedures are precisely those that had to be overcome in order to first regulate asbestos, then prohibit it. The starting assumption is that such actions represent a barrier to trade unless proven otherwise. The burden of proof lies with the party that wishes to prioritize some public good over free trade, while the official standard remains that of scientific certainty. This is seen as a serious problem by observers who argue that trade regulations must be balanced by attention to other competing priorities, particularly needs for improved health and environmental protection (Castleman, 2002, 1999b).

The final decision that upheld the prioritization of public health concerns came in spite of the deck being stacked against such a finding. A variety of related factors conspired to make this possible. The WTO panel itself faced contradictory choices regarding which rules to take up the case under. Not surprisingly given the criticism that has been directed at the trade body, the appellate body was also concerned about the consequences of the case for WTO. Even so, the favorable decision hinged at least in part on the unanimity of experts (a first, and probably a mistake on the part of Canada – it was in the selection of experts that the case was won (by the EU) and lost (by Canada). It is also significant that the Precautionary Principle was not a factor in the legal case – lawyers representing the EU wanted to present the French/European decision to implement an asbestos ban as entailing no scientific uncertainty (even though the Precautionary Principle was relevant to the EU legislation – the asbestos case contributed to its concrete development and articulation, and the principle was applied in approaching the remaining uncertainties). In the end, the WTO declined to uphold the Canadian complaint, although the decision itself was not an unequivocal victory for supporters of the ban.

The EU asbestos ban is now slated to become effective on January 1, 2005. This is not likely to be entirely conflict free, however, given that recent reports indicate that Greece has yet to take any measures to phase out asbestos production or use. Nor has the expected domino effect of a European ban meant that asbestos opponents could breathe easier.

D. EVOLUTION AND REVOLUTION IN ASPBESTOS REGULATION

Three prominent themes emerge among the numerous threads that can be traced in the emergence and transformation of EU policy on asbestos. The first is the reconceptualization of the product asbestos over time from that of a durable and inexpensive fire-proof building material to a health hazard for unprotected workers, to a widespread public health hazard and confirmed killer – from problem solver, to a serious problem in and of itself. The second thread is the process of institutionalization of that reconceptualization in the

104 The preparations and strategies for the WTO defense were described in an interview with a high-level member of the EU’s legal team.
form of EU regulations that first seek to mitigate the unwanted side effects of asbestos, but eventually bar its use altogether. The third is the emergence of organized interests aligning themselves for and against the use of asbestos, the ways in which each deploys different types of knowledge about asbestos to promote their respective positions, and the eventual erosion of the interests seeking to benefit economically from its continued use.

One salient element of this story is the way in which these three themes are linked through social struggle over both which qualities of asbestos emphasized and acted upon, and over the ways in which it was given expression in EU law. Powerful interests engaged to establish or undermine various claims of hazard and risk on the one hand, and to mobilize the forms of institutional power to which they had access on the other. For the purposes of analysis, we can examine this struggle from two perspectives: 1) the institutionalized policy paradigm in which the different arguments and types of knowledge are deployed or framed, particularly the core assumptions upon which it is based; and 2) the discourses that lie at the heart of this struggle: the use of different types of knowledge to define essential properties, the nature and scope of the problem, legitimate expertise and authorities, and suitable solutions.

As with the case of food policy, anomaly provided the catalyst. One obvious anomaly in this case was that the very same physical properties that made asbestos useful proved to be a serious longer-term hazard. The essential properties of asbestos remained unchanged, but as awareness of its hazards expanded, the conceptualization of the tradeoffs being made radically changed. The initial problem came in the form of observations of a pattern of illness and death of people who had come into regular contact with the fireproof and commercially successful product, leading to demands on the part of interests concerned primarily with public health for an appropriate policy response – in this case, a complete ban. The paradigmatic anomaly, however, is that the influence of market forces, rather than gradually forcing the product off the market in favor of safer substitutes, tended to encourage obscuring or misrepresenting the hazards of the material. Self-interested actors chose to withhold or downplay relevant information leading to severe economic and public health consequences.

The above anomaly emerged a significant problem in connection with EU policy regulating asbestos. The policy paradigm and associated institutionalized rule system themselves proved an obstacle to taking what were concluded by Commission officials to be the necessary measures, and the “default” position left on the market products that were already believed to be unacceptably dangerous. This problem became clear when the guiding policy assumptions and principles did not permit the Commission to proceed with the measures it believed were required to establish the necessary level of protection. In both cases, these anomalies were established as problems
through the various demands made by public health organizations, victims
groups, labor unions, and others, that something be done. The overall process
was problem focused and actor driven, but mediated by the ways in which
knowledge was used to define the problem and constrained by existing
institutional arrangements.

INSTITUTIONALIZED ASSUMPTIONS AND THE POLICY PARADIGM

The EU effort to ban asbestos brought the new goals pursued by European
officials into direct conflict with the institutionalized core assumptions, goals
and rules of the policy paradigm that has guided EU chemicals policy through
an important phase of its history. That paradigm has emphasized market
integration, economic development, and the corrective capacity of market
mechanisms – even if not exclusively. It was structured by taken-for-granted
assumptions about how uncertainty and possible hazards are to be dealt with,
which actors must shoulder the respective burdens of proof, and where the
balance of benefits and risks are distributed by the policymaking activities. But
asbestos, along with the hazards and risks it posed, had been reconceptualized.
Within the market paradigm, taking action to deal with a threat required
defining asbestos in terms relevant to that paradigm and in a way that
permitted its rules to be applied to achieve the desired outcome. Member
states’ prohibitions on it were characterized as a threat to market integration,
but in order to have the rules applied in the way necessary to achieve the goal
of health protection, asbestos was accordingly defined as an exception in the
category of market products. Otherwise, the rules would have dictated
challenging the bans individual member states had put in place. Under a social,
or public health paradigm, these prohibitions would have been characterized as
proper measures, with the absence of a ban in a minority of member states as a
threat to public health. It was this second set of conceptualizations that
provided the goals for action, while the specific actions to be taken were
framed to permit the desired results to emerge from the rule system of the
institutionalized paradigm. Drawing on the elements outlined in Chapter 3,
table 6.1 below sketches the basic elements of the policy paradigm guiding
chemicals policy. The second column outlines the basic assumptions and
principles of the institutionalized paradigm that has guided EU chemicals
policy, while the third column enumerates the corresponding assumptions and
principles highlighted in the Chemicals White Paper. Three general
observations regarding the two competing paradigms are suggested by the case
study.

Observation 1: the core policy principles follow a) from the general
goal and problem definitions (obstacles to achieving the goal) of the
paradigm, and b) from basic assumptions and values (or world view)
inherent in those definitions, which often remain hidden and taken for
granted. Accordingly, when the primary goal is to foster economic
development and successful commercial products are a prime means of pursuing that goal, associated risks and hazards tend to remain a secondary concern – unless they threaten the market itself. Furthermore, where regulatory intervention is seen as an inherently blunt and undesirable tool and hazard to be avoided wherever possible, it is considered best to seek regulation via market mechanisms first, and intervention only as a last resort. Operating from these goals and assumptions, the burden of proof falls on non-market actors who wish to restrict a commercial product, while the standards that must be realized for meeting that burden of proof are set at a high level. In practice, given that at least some measure of regulation is based on a high level of consensus among market actors, this can be categorized as market regulation for primarily market purposes.

Table 6.1 Competing paradigms in chemicals policy

<table>
<thead>
<tr>
<th>Paradigm: Guiding the Role of Public Policy</th>
<th>Original: Market-Oriented</th>
<th>Replacement: Health/Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Assumptions/Goals</td>
<td>Facilitating greater economic exchange and efficient production through ensuring competitive markets. Markets a fundamentally private domain, with regulation for non-market goals considered &quot;market distorting&quot; and undesirable.</td>
<td>Protection of health and environment from market or other failures via regulation. Markets fundamentally a social enterprise, with regulation for primarily social purposes normal and necessary.</td>
</tr>
<tr>
<td>Primary public policy goal and focus of attention</td>
<td>Economic exchange with minimal regulation, commercial products, and economic activity</td>
<td>Protection of human health and environment from recognizable product hazards and risks</td>
</tr>
<tr>
<td>Conceptualization of chemical hazards</td>
<td>Occasional hazard associated with certain uses of chemical products. Best handled by managing hazards as necessary on case-by-case basis to avoid unnecessary regulation.</td>
<td>Hazard an inherent quality of chemical products. Better to prevent environmental/health consequences of possible hazards than to respond after the fact.</td>
</tr>
<tr>
<td>Standard of proof required for intervention</td>
<td>Scientific certainty of hazard</td>
<td>Reasonable indication of hazard</td>
</tr>
<tr>
<td>Burden of proof</td>
<td>Public officials (including public health), NGOs must prove hazard associated with specific use of product.</td>
<td>Commercial producers must provide evidence of safety in connection with probable uses, with higher burden in the presence of evidence of possible hazard</td>
</tr>
<tr>
<td>Benefit/Cost Linkages</td>
<td>Short term, financial liability for harms done linked to intentional negligence</td>
<td>Long-term - Explicit linkage</td>
</tr>
<tr>
<td>Voting</td>
<td>Qualified majority voting (QMV) permitted for legislation intended to further the construction of the Single Market. Unanimity required for legislation intended to protect health and/or environment.</td>
<td>Unanimity required for legislation intended to protect health and/or environment. However, health &amp; environmental protections that correct or prevent market failures may be framed in terms of furthering Single Market goals, thus permitting QMV.</td>
</tr>
</tbody>
</table>
We can analyze the struggle over implementing the EU-level asbestos ban by posing questions about how it fits with the respective paradigmatic assumptions and requirements. How does one go about pursuing a single European market for a specific category of products by eliminating one of those products? Initial regulation of the product was largely based on an emerging consensus that included asbestos producers – even if in many respects their participation was a matter of strategic retreat. Unsurprisingly, finding a comparable consensus for eliminating asbestos products altogether proved problematic. Lacking such agreement, the question becomes one of how to rationalize and justify extreme measures such as a ban in the larger context of the formal rules governing EU policymaking – or in other words, what are the various rule-defined conditions that must be met in order to legitimately remove a product from the market? A policy paradigm that emphasizes the commercial characteristics of market products, and the self-correcting capacity of markets to resolve problems, sets a high hurdle to clear before adopting regulatory measures.

Observation 2: an asbestos ban was logically inconsistent with the institutionalized, broadly market-oriented paradigmatic framework for producing regulations in the EU, but is consistent with the revised principles announced in the Chemicals White Paper. Legislating a ban on a commercial product for public health reasons clearly proved difficult. First, it had to be framed as an exceptional case within the broader chemicals policy – and as a threat to the single market project. Among other things, this enabled the ban to be pursued via the QMV procedure rather than the unanimity required for non-market measures. Had the Commission’s effort to implement a ban in the early 1990s been successful, the matter might have been ended there. However, given that the EU and its member states are party to an international-level set of agreements about policy principles embodied in the WTO, the EU was forced to approach its ban more systematically by addressing the fundamental principles under which the policy was passed and defended at the WTO in order to have a reasonable chance to define the measures not as a barrier to trade, but as necessary steps to ensure the protection of public health.

Observation 3: If asbestos is truly believed to be an unusual case, and the vast majority of chemicals on the market are believed to be sufficiently safe, then the approach of tackling one chemical or substance at a time is justified. However, if it is not exceptional, addressing any significant number of risky chemicals via the same route will be time consuming, resource intensive, and exceedingly difficult. The solution to this problem is to adopt and institutionalize a new paradigmatic model, the rules of which simplify and streamline reaching the high priority types of goals that need to be achieved, so that the exception is the substance that is permitted on the market in spite of significant risks. Moreover, such exceptions should
be made only after determining social benefits that warrant unusually high risk. It was the latter – the recognition of the nature of these struggles is not an exception – that is reflected in the replacement of core principles pointed to in the Chemicals White paper.

**E. POLICY PARALLELS: ASBESTOS & CHEMICALS**

What is it that makes the struggle over asbestos a story that informs us more generally about EU Chemicals Policy? There are numerous important policy parallels between the asbestos case and the broader category of chemical products. The first is the way in which the object to be regulated is conceptualized – a matter of how public policy tends to emphasize and respond to their distinct characteristics either as market products or as health hazard. While the shift of perception of most chemical products is not as dramatic as the transformation of asbestos from “miracle mineral” to “deadly dust”, there has been a broad shift of emphasis on chemicals as a category from their problem solving and commercial benefits to the health and environmental hazards inherent in their use. This shift has been generally evolutionary for both chemicals and asbestos, except in specific cases where accidents or other dramatic developments have generated crises that shattered existing assumptions. Nevertheless, the institutionalized policy assumptions and regulatory measures have tended to lag behind even the often hard-fought process of re-conceptualization (Harremoës et al., 2001).

EU officials were spared much of the preliminary policy struggle, since the widespread use of asbestos had already been called into question by the time the first EU treaties were being signed. In addition, the first international wave of asbestos regulation was already on the law books before the Single European Act was signed. In most of its legislative acts regulating the manufacturing and use of asbestos products, the EU echoed the policy examples set in the U.S., in EU member states, or international bodies such as the ILO. Nevertheless, these factors became part of a distinctively EU story when the Commission broke fresh ground in 1991, announcing its intention to proceed to a complete ban on the further import and use of asbestos within European borders.\(^{105}\) The EU stepped into a position of global leadership on the issue as it eventually enacted the ban and subsequently took up the defense of the French ban (and indirectly, its own) at the WTO.

The development of EU asbestos regulation over time has also shadowed the development of the larger body of chemicals regulation. As a rule, it has been subject to the same policy assumptions and standards of proof, the same

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\(^{105}\) Asbestos has not been banned in the US, although the US Environmental Protection Agency (EPA) sought to phase out most uses of asbestos in 1989. An asbestos industry court challenge overturned that rule in 1994 on the basis that the EPA had overstepped its authority. Efforts to ban the further use of asbestos in the US continue.
competence as defined in the successive Treaties. Changes in both of these areas have been hotly contested. The contending interests measure their goals and benefits or harms in terms that are frequently incommensurable, although they have sparred with one another in the languages of the natural sciences, economics, and everyday life. The commercial interests are often well-entrenched and extremely well resourced, while the public interest NGOs are typically newer on the scene, and underfinanced. However, the latter often carry greater moral weight and enjoy greater credibility – when they are sufficiently able to make themselves heard.

The steps along the way from first legislative mention of asbestos in 1980 to the initial decision to pursue an asbestos ban in 1991 can be considered a part of a larger policy learning process in which the EU systematically redefined asbestos as a threat to both workers and the general public, established its own legitimacy and authority to act on the problem, and then shifted its own regulatory presumptions from general acceptance with exceptions to prohibition of products containing asbestos with exceptions. In the early stages prior to 1991, it was a largely negotiated process in which EU regulation represented the institutionalization of understandings that for the most part had become consensus at both the national level and within international organizations. Although much of the early action on asbestos was facilitated by the influence of changes taking place elsewhere, Commission officials and staff learned important lessons from its own experience in the process. This was particularly true in as negotiations broke down in 1991, giving way to conflict and stalemate. In grappling with the various public health, economic, and political problems posed by asbestos use, the Commission encountered important obstacles to bringing European policy in line with its own redefinition of asbestos as a serious health threat, and one that by its very nature could not be managed with “safe use”.

The most important among these was the set of fundamental assumptions inherent in the market-oriented policy paradigm that served as the starting point for decision making. These clearly included political pressures to maintain the status quo that were generated both internally (from a dwindling group of business interests and the governments of Spain, Greece, and Portugal) and externally (from asbestos producers and the Canadian government). But the political pressures generated by interests bent on preserving asbestos markets were reinforced and given their legitimacy by the paradigm then guiding policy on hazardous substances. The key elements included the basic assumptions regarding the appropriate location of the burden of proof, and that scientific unanimity constituted the standard that must be met to deliver that proof. In order to move forward with its ban, the EU was forced, in effect, to reorder the policy priorities it applied to asbestos and reverse its own operating assumptions, then defend that reversal.
PRESUMPTION OF ACCEPTABILITY

As was the case with asbestos, the vast majority of the chemical products and substances in use today were placed on the market under an assumption of acceptability: that the various benefits of a new product outweighed the risks of its use in the absence of definitive evidence to the contrary. That assumption has been supported and reinforced by the general lack of comprehensive and publicly available information regarding the hazard and risk properties of the substances. It is reinforced by the fact that many of the harmful effects are long term in nature, generated by overall bioaccumulation or by the fact that these substances escape from the products containing over time.

BURDEN OF PROOF

Because the default position has been that products are acceptable unless there is scientific proof to the contrary, the burden of proof has fallen on parties who wish to restrict the uses of a product or remove it altogether (i.e. public officials or health or environmental NGOs). In the majority of cases – which are typically characterized by incomplete or imperfect information – this burden has proven difficult to meet. The standard required for meeting the burden of proof has in practice been scientific certainty, and not the “beyond a reasonable doubt” standard (as used in US criminal proceedings). As Commission officials themselves became convinced that a general prohibition on the further marketing of asbestos was necessary to protect public health, the burden of proof in EU policymaking was effectively shifted within the EU to interests supporting continued asbestos use (although this shift in orientation remained a subject of contestation). Commission officials had also made a judgment that a sufficiently high standard of proof had already been met, and that for the public policy purposes at hand, perfect scientific unanimity was neither possible nor necessary. But even in the case of asbestos, which is in some ways more straightforward than many instances of chemicals, this process took decades, delaying earlier action to protect public health (Harremoës et al., 2001). It was ultimately a political struggle, not simply over an analysis of costs and benefits of the product, but over the distribution of those costs and benefits over time, and between producers and unsuspecting citizens.

EXPERTISE: “SOUND SCIENCE” VS. “POLITICIZED” SCIENCE

The struggle over the science pertaining to asbestos was less over the actual data, than over: a) the meaning of the data, and b) the policy assumptions and framework into which that information would be placed for deliberation and action. For both sides in the asbestos struggle, scientific knowledge and discourses were used as the basis of inherently political decision making. The EU was blocked from its intended course of action on
asbestos for several years – and then challenged at the WTO\textsuperscript{106} – by powerful interests still seeking to maintain policy assumptions and prioritizations that the EU had replaced, but that were still held elsewhere. And although the EU had managed its own transformation in assumptions and definitions of constitutes scientific “proof” for policymaking on asbestos, it was forced to defend its conclusions in what was, in effect, a higher court. Given the opposition of the US chemicals industry to proposed changes in EU chemicals policy, it can be expected that the WTO will continue to be an important factor.

In chemicals policy, “sound science” arguments are also undercut by industry demands that compensation be provided when safety testing data is shared (Cefic, 2003). Accepted scientific standards require placing results in the public domain to enable results, methods, and theoretical assumptions to be subject to review by the larger scientific community. Truly sound science cannot be proprietary. While chemical producers’ claims that they should be compensated for their investments can be considered legitimate, such intellectual property claims come as a part of a larger trade off. As earlier noted, these are ultimately political decisions that science is not equipped to manage. Producers understand this quite well; while arguing for “sound science” they also demand that non-scientific considerations be taken into account in the decision making, foremost among them, the anticipated economic effects of the ways in which new regulations might redistribute business opportunities among existing or new economic actors.

\textbf{INSTITUTIONALIZING THE CHEMICALS WHITE PAPER?}

The initial release of the Chemicals White Paper was met by a great deal of criticism and disappointment from environmental and health NGOs. Their criticism highlighted their conviction that changes envisioned in the paper in EU practices for chemicals regulation would not carry concrete reforms far enough to solve pressing environmental and health threats posed by a multitude of chemical hazards (EEB, 2001/02/14; WWF, 2001/4; FotE, 2001/5). The Greens offered a “cautious welcome”, and echoed the NGO’s concerns in emphasizing that the new policy could “only be a first step towards full protection of human health and the environment from hazardous chemicals” (Greens/EFA, 2001/02/13). They noted improvements, but indicated concern that changes in practice would be so small as to risk squandering an opportunity to take major steps forward.

\textsuperscript{106} WTO proceedings are equipped for resolving commercial, rather than scientific disputes. Scientific experts may be enlisted by opposing sides, but the panel empowered to judge a dispute is typically assembled based on their commercial credentials, and not their scientific expertise (Christoforou, 2000).
The chemical industry also indicated its disappointment, but in a quite different manner. It expressed support for the Commissions efforts “to develop a more transparent and workable chemicals policy” but doubts “that this can be achieved in the way described in the White Paper…” (CEFIC, 2001/02/13). Significantly, the chemical industry’s criticisms were directed not so much at the concrete changes proposed, but rather at the shift in policy principles and priorities that would guide future regulation of potential chemical hazards.

When the REACH proposals were announced, the critique followed similar lines – where environmental and health NGOs emphasized gaps remaining in the proposals, the chemicals industry focused its attack on the underlying principles that would, over time, lead to a radical restructuring of EU Chemicals Policy. The positions noted above indicate two separate classes of policy priorities the Commission sees as important and needing attention, both of which must be managed well. As the divergent criticisms suggest, however, important choices must be made. Where the two come into conflict, one or the other priority must come first. It is this fundamental struggle over policy priorities, and subsequently over the policy implemented to realize them, that lies at the core of the current struggle over EU chemicals policy.

This is clearly an unfinished process. As this dissertation goes to press, a major struggle is underway over how the EU’s new chemicals policy will work, and the core principles and goals by which it will be guided. By several accounts, the lobbying on these proposals is unprecedented, and much of the most vehement opposition is coming from the US, including the American Chamber of Commerce in Brussels (AmCham EU), and even the American government via its embassies in Europe107 (DN, 2004/03/01). Some European leaders are also nervous about the possible effects of formalizing this paradigm shift, bringing the fate of the proposals into question. As might be anticipated where the stakes are potentially very high, the institutionalization of a new policy paradigm will require time, and will have to be fought for step by step.

107 According to one EU official interviewed, lobbying meetings have been conducted throughout Europe through American embassies – not unlike Canada’s efforts with respect to asbestos.
CHAPTER 7

DOMESTIC VIOLENCE, FUNDAMENTAL RIGHTS, AND MAINSTREAMING GENDER EQUALITY

Essential for achieving gender equality is success in establishing a new partnership between men and women, entailing equal sharing of power and responsibility in the public and private domains. Such a partnership requires the acknowledgement of women’s fundamental rights, the full and equal participation of women in the decision making process, their equal access to the labour market and economic empowerment.

- EC, May 2000

Progress has been made in the EU on narrowing the gender gap, but remains slow.
- news release, European Commission (2004/02/20)

A. INTRODUCTION

The kickoff of the European Commission’s European Campaign against Domestic Violence in January of 1999 marked an important milestone in the effort to establish “domestic” violence as a truly European problem. It was also symbolic of the expansion of the European Union’s (EU) authority to pursue its stated goal of equality between women and men, and more broadly,
to develop the EU “social dimension”. It would be an overstatement, however, to characterize the Campaign as a decisive step in EU policy regarding domestic violence against women. The Campaign was not considered especially effective – some of the women’s groups active on the issue were not even aware it was underway (EWL, 2000) (although one could point out that the possibility of EU activity on domestic violence had not yet entered their thoughts). Nor did it mark any new EU legislative competence. The EU remains barred for the most part from directly legislating on such matters – one measure of the “Europeanization” of a public policy question. Its legal authority remains largely limited to a “coordination and facilitation” role. Neither did the Campaign generate any revolution in public policy within member states – although the progress report produced for the Finnish EU Presidency at the end of the Campaign suggested that existing efforts had been supported and some new action had been initiated (CESIS, 2000).

Nevertheless, both the European Campaign against Domestic Violence and the developments that contributed to its realization have served to strengthen the legitimacy of European institutions to engage in a sphere of social life frequently considered properly off-limits from the intervention of even national or local governments. They also lent additional force and credibility to long-standing claims made by women’s movement activists and organizations regarding the nature and pervasiveness of the such violence against women, its underlying causes, and its detrimental effects on women, children, and men – and on society as a whole.

**A European Problem?**

The basic questions of this chapter is how and why did domestic violence emerge as a matter of public policy concern at the EU level, and what is its connection to EU policies for promoting equality between women and men, including “gender mainstreaming”? Given both the historically economic emphasis of the EU and the limitations of the Treaties that have served as a de facto constitution since its inception, that domestic violence has been taken up at the EU level at all is a matter worth noting. Non-economic gender equality issues such as domestic violence are nowhere to be seen in a world viewed from the perspective of a market paradigm that emphasizes economic relationships, integration through the lowering of regulatory barriers to trade, and the construction of the single market. In such a framework, domestic violence is a non-problem – it simply fails to come into view.

Given the difficulty in getting domestic violence on the policy agenda at the national level (Kelly, 1999; Walby, 1999a), getting the issue on the EU agenda seems doubly unlikely. At the national level where social policy has been a focus of attention, such violence against women has often swept under the rug and explicitly marked as off-limits – as a “private”, family matter. The report produced for the Finnish EU Presidency in 2000 highlighted the
stubborn persistence of the sentiment that domestic violence is not a matter for public policymaking. It pointed out, for example, "in the UK, the perception even by some official bodies is that domestic violence is not a serious problem (except in extreme cases) and that it is a private, family matter where State bodies should not interfere" (emphasis added) (CESIS Study, April 2000: 27).

The upshot of these two factors, whether paradigmatic blindness or studied indifference, is that domestic violence has tended to be not seen as a problem, and therefore not a matter of public policy. The persistence of such sentiments would suggest that the arrival of domestic violence on the EU agenda is indeed a noteworthy development – even if it is a development that marks a particular type of progress, and not a resolution of the problem.

It is not completely inconceivable that the broader issue of violence against women could have been a concern in the early days of what has become the European Union, given that the overwhelming concern of the time was to establish arrangements that could help preclude future violence of the type that had already racked the continent twice in half a century (Fransen, 2001; Holland, 1994). Women were clearly among its victims – and in ways both similar to and different from men. In fact, international agreements such as the Geneva Convention, developed in the aftermath of the Second World War, established obligations for states to protect women against attacks on their “honor”. But they framed sexual violence in relation to men’s property rights and as a violation against a larger community, not the individual women subjected to such violence (Charlesworth, 1999:386-388, 394). Even so, it is hard to imagine how domestic violence per se could have been an issue. The concerns of at least several of the key intellectuals and policy entrepreneurs, from Federalists such as Lionel Robbins, William Beverige, and Altiiero Spinelli (see Pinder, 1998) to practical functionalists like Jean Monnet (see Fransen, 2001), were focused on the violence organized and carried out by states – rather than individual violence quietly sanctioned by the state (see Walby, 2002). The violence committed within the context of intimate relationships had not yet been established as a public problem.

Nor did the fledgling European institutions possess more than a rudimentary organizational capacity of any sort that could enable them to take action even in those areas in which their constitutional mandate was clearly set forth. So while the principle of gender equality showed up remarkably early on the EU agenda, domestic violence remained as invisible in Brussels as anywhere else. When domestic violence finally was put on the EU policy agenda, it was on a foundation that was straining the confines of an EU gender equality policy bound to women’s role in the workforce. It was also built on

108 The equal pay provision in the Treaty of Rome (Article 19) languished without action for well over a decade. This was in due to numerous factors, and the EU lacked any organized infrastructure developed around the principle of gender equality.
the progress made in a critical mass of EU member states and at the international level. It emerges as an EU concern in the area of overlap between gender equality, human rights, public health and a broader social dimension; this has been reinforced by a deepening understanding of domestic violence and by developments in other areas of public policy.

**UNDER, OVER, AND DOWN THE MIDDLE**

Domestic violence was made an EU issue in the confluence of two separate currents of policy development. One current entailed transforming domestic violence from a private into a public issue – first on the national, and then on the international agenda through wide-ranging grassroots advocacy work and the engagement of new expertise (Joachim, 2002). These efforts eventually intersected with the development of EU gender equality policy, which had evolved along a very different path over the decades since Article 119 was written into the Treaty of Rome (1958).

Putting domestic violence on the EU agenda required skillful organizing and mobilization along these parallel tracks and across multiple levels of governance (local and national, supranational, and international). At the national level, the issue was drawn out of the “private” domain considered properly off limits to the reach of any public institutions and establishing it as a legitimate public policy concern. In individual countries, the demand was for equal application of the law to the private, family sphere, to define and treat domestic violence as a crime like any other form of battery.

At the international level, domestic violence was established through a series of stages as a transnational problem, thereby removing it from the exclusive jurisdiction of individual states. Here, establishing domestic violence as an issue was part of the larger package of advances at the international level and the UN, connected with promoting equality by defining women’s rights as human rights (West, 1999). Domestic violence has been defined as a violation of agreed-upon human rights norms and conventions to which states have a responsibility to respond – failing to do so is to be complicit in violation of women’s human rights.

At the supranational, EU level, bringing domestic violence onto the agenda required an expansion of EU policy competence beyond workplace concerns to include non-economic issues of equality between men and women. In the European Union, domestic violence is increasingly being defined as an obstacle to the goal of equality between women and men, to achieving a “high level of public health”, and even to achieving the prosperity that is to be provided by economic integration – each of these being core goals of the EU based in the Treaties and therefore within the competence of the EU to engage. Although it got off to a slow start in the 1960s and 1970s, EU gender equality policy was by the mid-1990s straining the limits of what it could accomplish within a market/employment framework (Hervey, 1996). Women’s NGOs
such as the European Women’s Lobby (EWL) were gearing up for a major push to expand EU gender equality policy beyond the workplace, and they were doing so with support from well-placed supporters within the Commission (Helfferich and Kolb, 2001).

Overcoming the obstacles at these respective levels entailed a process of navigating a variety of conceptual and institutional hurdles. It required establishing and institutionalizing new paradigmatic ideas and norms through a mobilization of discourses that defined the phenomenon as a serious problem, and redefined the understanding of its causes and perpetrators, and what authorities should be responsible for implementing the appropriate remedies. The effects of successful efforts at the national and international levels then set the stage for a convergence at the EU level which opened the political space for domestic violence to be taken up as an EU issue. In each case, these arguments possess the same core concerns that permit women’s organizations to unite across a diversity of life experiences and geography.

The “parallel tracks” phenomenon suggests that the evolution of EU gender equality policy has been driven from “below” and “above”, as well as at the European level. At the EU level, women activists and organizations at the international, national, and supranational level have nudged EU policy along through periods of relative inactivity or painfully slow progress punctuated by occasional surges forward – a process of fits and starts that resembles the evolution of the EU itself. At the same time, it has been facilitated by contemporaneous developments within individual member states and at the international level that have also been driven in large part by women’s activism. Perhaps not surprisingly, efforts to strengthen the EU role in promoting gender equality have often been supported and facilitated by individual member states and by international organizations once they themselves have adopted new policies, and by EU institutions as they have developed the competence and capacity to promote new initiatives. These levels are linked in that the process of institutionalizing a new policy paradigm follows a similar path, although in each case it must be adapted to institution-specific norms and rules and made relevant to their broader purposes. Thus, different discourses and arguments have been emphasized in the process of anchoring domestic violence as a policy concern at the local and national, supranational (EU), and international levels (i.e., UN).

As the above descriptions suggest, progress in addressing the problems of violence against women is closely linked to broader issues of gender equality in women’s mobilization, EU discourses, and EU policymaking. Gender equality has a range of meanings in the EU, as elsewhere. In the framework of the treaties, gender equality goals have been expressed in concepts ranging from “equal treatment” to “mainstreaming”. What is clear is that the local, national, and transnational networks of women activists and their NGOs have played a central role in the process of defining these meanings (Keck and
These developments were also nurtured and driven forward by an array of EU-level actors: women’s organizations and other sympathetic NGOs, officials within the European Commission, members of the European Parliament, and civil servants and officials within several Member States. Moreover, international organizations such as the United Nations (UN), the International Labor Organization (ILO) and the World Health Organization (WHO) have exerted important influence. These actors have labored in a social environment that has more often than not made invisible the problems connected with violence against women. The policy and political environment has generally not been more encouraging; even where the general reluctance of individual states to pass legislation and take action has been overcome, there remain large gaps between formal laws, actual enforcement, and day-to-day practice – even among the EU countries considered relatively “advanced” on issues related to gender equality. In spite of frequent criticisms regarding the EU’s “democratic deficit”, these developments have emerged through effective activism specific to violence against women, and against a backdrop of more general EU-level and transnational activism seeking to improve equality between the sexes.

B. GENDER EQUALITY POLICY IN THE EUROPEAN UNION

European Union gender equality policy emerged from its comparatively mundane beginnings as a necessary accommodation in the Treaty of Rome to become a standard-setter for EU social policy (Gelb, 1999). Many women activists and scholars consider the policies of the EU to have contributed significantly overall to promoting equality between women and men (Rossilli, 2000b; Gelb, 1999; Walby, 1999a, 1999c). EU gender equality legislation has often forced member states to be better than they otherwise would have been without the leverage EU law provides (Walby, 1999a; Rees, 1998; Hoskyns, 1996).

Nevertheless, the most striking quality of the assessments of EU performance on gender equality goals is their strong ambivalence. Many observers have noted, for example, that progress on gender equality goals has also come with significant tradeoffs. EU gender equality policy has come as part of a larger package of market integration that has weakened many national-level social protections considered important to women (Rossilli, 2000; Hoskyns, 1996, Ostner & Lewis, 1995). This sentiment echoes earlier cautions by Hoskyns (1996) and by Kenis (1991) that the EU social dimension may be largely an adjunct to its market making goals. Young (2000:94) captures the more skeptical view in her argument that there is nothing in EU gender equality policy that does not benefit a neo-liberal model of capitalism at least as much as it benefits women.

To be sure, there are significant flaws in both performance and policy that leave EU gender equality policy open to earned criticism. The EU has thus far
fallen short of its promise to forcefully confront gender inequalities and other forms of discrimination, while its supranational nature imposes difficult burdens on grassroots efforts to mobilize (Elman, 2001). There is much evidence to support these arguments. And although the EU’s gender equality goals are quite broad, all of the EU Directives pertaining to gender equality are connected with women’s workforce participation (Hobson, 2003a, 2000b). The limited scope of Article 119 in the Treaty of Rome (the equal pay article) virtually guaranteed this, as has the generally limited authority granted the EU in subsequent Treaties. The EU’s authority to pursue non-market gender equality goals therefore has been, and remains, limited to soft-law approaches such as Action Programs (Joachim, 2002).

There is no straightforward policy response to these criticisms. As already noted, the EU’s lack of a more substantial social policy generally is a result of a variety of factors (Rossilli, 2000a). The subsidiarity principle’s inclusion in the Maastricht Treaty was in large part a response to frequent initiatives of the Commission, with member states seeking protection of their sovereignty on matters of social policy (Ostner, 2000). Such resistance and increasing alertness to encroachment on the part of member states may require more indirect strategies for promoting social goals generally, and gender equality specifically, at the European level.

**EARLY DEVELOPMENT OF GENDER EQUALITY IN THE EU**

The development of EU gender equality policy over time generally follows a trio of themes, which can be characterized as equal treatment, positive action, and mainstreaming. The first two are bound directly or indirectly to women’s workforce participation, which is where their legal basis in the Treaties is anchored. Equal treatment can be characterized as a demand based on the realization that rules were being applied differently based on gender, and that such differences frequently worked to women’s disadvantage. The positive action theme stems from the realization that equal application of laws and other rules does not remedy structural disadvantages that women face, and that corrective measures must be taken that are based on a principle of difference.

“Mainstreaming” and the “soft law” approach of defining European problems and facilitating member state consensus and cooperation on those problems are two important examples of indirect approaches to expanding competence and to making policy. Geyer (2000:122), for example, characterizes gender mainstreaming as “a way of making policy without the need to strengthen its legitimacy and with its reliance on the kinds of expertise that the women’s movement has proven adept at developing.

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109 It should be noted, however, that it also opens new opportunities in connection with the EU need to strengthen its legitimacy and with its reliance on the kinds of expertise that the women’s movement has proven adept at developing.

110 Theresa Rees (1998) refers to these themes as “tinkering”, “tailoring”, and “transforming”, based on the degree to which she sees them as capable of producing policy change.
making policy”, although it might be more accurate to characterize it as a way of gaining the legal authority to take up all manner of gender equality issues without the problems associated with specifying exactly which ones in always delicate Treaty negotiations. Mainstreaming represents an effort to reconcile the earlier two principles of equal treatment and positive action by subordinating them to the guiding principle that all EU policies should contribute to the goal of greater equality between women and men (Rees, 1998). Mainstreaming also represents a broadening of gender equality goals that transcends the boundaries of the work, although this expansion comes at a price. The nature of the breakthrough represented by gender mainstreaming is that EU gender equality policy has been freed from its connection to work. The important trade-off made in gaining that freedom is a loss of the focus and specificity that has facilitated policymaking to improve gender equality, and the mobilization necessary to motivate or support it (Shaw, 2000). The gender mainstreaming provisions included in the Treaty of Amsterdam (1999) are seen by some as a major breakthrough in EU competence (Rees, 1998). The institutionalization of that competence will take time, however, and has thus far been uneven (Pollack and Hafner-Burton, 2000). As is the case with EU gender equality policy overall, the views on mainstreaming are thoroughly ambivalent (Shaw, 2002; Helfferich and Kolb, 2001; Hoskyns, 2000; Pollack, 2000), reflecting the still significant gap between the promises and possibilities it offers and the actual results that have so far been delivered.

**EQUALITY THROUGH EQUAL TREATMENT**

Quite apart from its origins and at least some of the Member State’s underlying intentions, Article 119 provided a clear statement of policy principle at the constitutional level. However, it was a principle with neither clear legal definition nor the organizational capacity necessary to realize it in practice; it lacked institutional priority, administrative apparatus, and the engagement of European-level actors necessary to make it an effective instrument\(^{111}\). While this probably eased the difficult process of getting the EEC Treaty negotiated and ratified, these deficiencies presented a substantial challenge for implementation – one that was taken up by key women in the second wave of women’s mobilization in the late 1960s and early 1970s.

The broad social context set the stage for a pair of key developments. During the mid-to-late 1960s, the established order was being called into questioned on multiple fronts. Militancy was strong among unions, students were organizing, and women were engaging at new levels; all were challenging the conventional assumptions of the day. Particularly important

\(^{111}\) This was also true of the Treaty provisions more generally. There was a high degree of uncertainty regarding the strength of the various Articles, and the extent to which they superceded national law, although this changed over time as the European Court of Justice issued its early rulings (Weiler, 1991).
were the engagement of strong leaders among female labor activists in Germany and France, and the eye-opening effects of the Herstal Equal Pay strike in Belgium\textsuperscript{112} – which became in many ways the embodiment of the problem of unequal (and unfair) treatment of women workers. The Herstal strike, which involved as many as 3000 women and caused some 4,500 other workers to be laid off between February 15\textsuperscript{th} and May 9\textsuperscript{th}, 1956, challenged in particular the different rules applied to setting women’s and men’s pay levels. The principle of equal pay had been raised and discussed, but little had so far been done. In the Herstal case, the Belgian arms factory in Herstal was intransigent, but neither did the principle unions involved at the plant(s), the socialist Fédération Générale du Travail de Belgique (FGTB) and the Catholic Confédération des Syndicats Chrétiens (CSC), manage their responsibilities to their women members well. The women’s struggle and eventual victory generated shock waves that reached far beyond their particular effort.

Among those inspired by the breakthrough embodied in the strike was Elaine Vogel-Polsky, a Belgian attorney who specialized in social and labor law cases\textsuperscript{113}. Vogel-Polsky saw an opportunity to push the ECJ to give meaning to Article 119, by challenging it to apply the Article in a manner consistent with other Treaty provisions. At the core of Vogel-Polsky’s argument was that the equal pay Article should have equal legal standing and provide for the same right of direct applicability as Treaty provisions considered essential to the building of the common market. In essence, she was arguing that the Article should be considered directly applicable to the terms of employer/employee relationships. After a great deal of effort searching for the appropriate test case (including unsuccessful attempts to engage the major labor unions), she was put in touch with Gabrielle Defrenne. Defrenne, an “air hostess” (as they were referred to at the time) with 17 years of work with Sabena Airlines, had in accordance with company policy been forced to resign her job upon turning forty (as had others before her). The direct result was the loss of a job, but the indirect result was the loss of future earnings and future retirement benefits, among other things. Defrenne agreed to provide the test case, but was apparently reticent about playing any other significant private or public role in the case\textsuperscript{114}.

\textsuperscript{112} The Herstal pay strike is considered a watershed event in women’s organizing and mobilization. See Hoskyns (1996:60-61), for additional detail.

\textsuperscript{113} For the authoritative account of the development of EU gender equality policy and the role of some of the individual women policy entrepreneurs in these early developments, see Catherine Hoskyns (1996: 60-94). The description of events here summarizes Hoskyns’s research.

\textsuperscript{114} Cichowski (2001: 113-114) seeks to identify basic mechanisms of institutional evolution on the issue of sex equality, describing the Defrenne case as an instance of a process by which “self-interested private litigants and lawyers are able to activate the EU legal system”. However, it seems clear from the particulars of the case that adherence to broader policy principles, and not self-interest in the normal sense of the term, was the motivation for bringing this particular case. It also appears to have played an important role in the ECJ decision.
The Defrenne cases\textsuperscript{115} went to an activist court whose member judges were described as having “shared the formative experience of the second world war”, and as having “been united in their determination to give reality to the process of European integration…” (Hoskyns, 1996:71). Even so, they exercised caution in their judgments, while responding with the logical consistency that Vogel-Polsky’s framing of the issue demanded. In their 1976 Decision, they spoke to the fundamental question of consistency across policy spheres posed by Vogel-Polsky: if an Article (in this case, Article 95 of the Rome Treaty) pertaining to discriminatory acts within the context of the common market superceded national law and gave individuals direct access to the courts so seek redress (which meant in effect that the provision would have the direct force of law without the need to be transposed into national law), should this not also be the case for the equal pay provision embodied in Article 119? The affirmative answer to this question provided by the ECJ anchored (and further institutionalized) a single important principle of gender equality at a level comparable to that of the principles by which the common market was being established. Nevertheless, the lack of existing organizational capacity at the time, both within the European Institutions and women’s organizations (and would take many years to develop), meant that building on this victory would necessarily be a gradual and painstaking process.

CONCURRENT DEVELOPMENTS

Even while the Defrenne Cases were working their way toward an ECJ decision, the realization of the principle of gender equality through equal treatment was being pursued via another route. It was developed through the enactment of a 1975 Directive requiring the harmonization of member state laws (Directive 75/117/EEC)\textsuperscript{116}. Member states were required to provide legal remedies, including job protections for women bringing discrimination charges, and the Directive defined what was meant by equal pay for equal work, calling for the elimination of “all discrimination on grounds of sex with regard to all aspects and conditions of remuneration” (Directive 75/117/EEC: Article 1). The Directive continued the pattern of characterizing the principle of equal treatment as an economic issue, describing the goal of equal pay as “an integral part of the establishment and functioning of the common market”, although whether this language represented the necessary political framing of the issue or its underlying conceptualization is open to debate.

Rather than putting the issue to rest, the new directive highlighted other forms of unequal treatment and raised yet further questions regarding the

\textsuperscript{115} The Defrenne challenge came in the form of two separate cases under different aspects of law, and arrived at the ECJ via separate legal paths. The first of the cases ruled on was the second case filed. The original case was the standard setter. (Hoskyns, 1996:67-74).

\textsuperscript{116} This cannot have escaped the attention of the ECJ’s judges, and probably made the practical step embodied in their eventual Decision a smaller, more manageable one.
economic dimensions of gender inequality. If equal treatment in paycheck matters could be considered “integral”, then what about the economic consequences of other discrimination on the part of employers, as well as education and social protection systems? Two additional Directives targeting employment-related discrimination against women followed, the first of these in 1976 on implementing the principle of equal treatment regarding access to employment, vocational training and promotion, and working conditions (Directive 76/207/EEC), and the second in 1979 requiring the progressive implementation of equal treatment in connection with social security (Directive 79/7/EEC). The EU adopted these early legislative instruments during a period in which new territory was being staked out for equality between the sexes. In addition, state intervention in markets, whether on behalf of workers and for ensuring the public welfare, was still seen as necessary and appropriate. Keynesian economic policy was still widely accepted (Hall, 1990) and welfare state institutions were still being expanded and consolidated across Europe (Baldwin, 1990).

The 1970s was also a period of slipping momentum in the development of the European Community, which fostered additional openness to new policies and reaching out to new constituencies. All three Directives approached the principle of equality through seeking to legally limit market/employment violations of the principle of equal treatment. But as with many of the other initial forays into social legislation, these efforts were quite preliminary, circumscribing only the most obvious violations of the principle of equality. Notwithstanding the neo-liberal flavor of much of the 1980s, efforts to pursue the development of EU social policy continued. The 1980s and early 1990s can be characterized as a period of consolidation of gains made, with an expansion of women’s formal and informal role within the Commission, a further mapping out by the ECJ of the meaning of Article 119 and the major directives issued under its authority, and an expansion of activity pertaining to women’s concerns within DG-V (now referred to as DG Employment and Social Affairs) and within the framework of a succession of Action Programs (Rees, 1998; Geyer, 2000). It included an expansion of women’s formal role within the Commission, and development of the Commission’s organizational capacity (much of it in DG-Employment) to address gender equality issues. It also included a regrouping and reorganizing of the array of transnational, European women’s organizations. For example, an Advisory Committee on Equal Opportunities for Women and Men was established at the end of 1982 (82/43/EEC) to create a structure for regular consultation and evaluation of EU gender equality policies. NGO activity at the EU level was also promoted and supported. The European Women’s Lobby was founded in 1990 with funding from the Commission. Its goal was to function as an EU level NGO for fostering coordination among women’s organizations and communication with the Commission.
The European Court of Justice continued to flesh out EU gender equality through case law, although not without limits. While the ECJ demonstrated a willingness to intervene in the “private” domain of employers, it also continued to recognize certain boundaries. In the Hoffmann case (Case 184/83 it ruled that the Equal Treatment Directive was “not designed to settle questions concerned with the organization of the family, or to alter the division of responsibility between parents”. Viewing the decision in the case as a significant setback, Scheiwe (1994) argued: “a rigid separating line between the two spheres, the market and the family, has been erected in case law and used by the Court to justify a narrow interpretation of the equal treatment Directives. The ECJ argues that the equal treatment directives are not designed to alter the division of labour of couples in private households or to take into account family obligations of employees (Scheiwe, 1994:261, c.f. Beveridge and Nott, 1996:385).

**POSITIVE ACTION**

Progress also began to emerge on new fronts, in the form of new measures based on similar goals, but a different underlying principle – the principle of difference. In the process, key new Directives began reaching in new and different ways into the sphere adherents of a neo-liberal paradigm might generally consider to be the “private” area of “contractual relationship” between employer and employee. One intervention in this sense was a 1997 Framework Directive dealing with part-time work (Directive 97/81/EC). Based on the consultation between the Social Partners (the peak industry and trade union associations at the EU level - UNICE, CEEP, ETUC), this Directive targets structural discrimination against part-time workers, the majority of whom are women, in terms of benefits and working conditions. Other, earlier legislation along these lines included Directive 92/85/EEC, to protect the safety & health of pregnant workers or those breast-feeding. However, this directive was passed not as an equality measure, but as a health and safety measure in order to enable its passage by qualified majority rather than unanimous vote (Beveridge and Nott, 1996:389). In addition, a Framework Agreement on parental leave was negotiated by the Social Partners, which later became Directive 96/34/EEC. Both these Directives were aimed at helping to address problems faced by women in their efforts to combine work and family, but the policies also address another pair of pressing problems linked to EU market concerns. First, is the more general demographic shift toward an older population driven by lower birth rates; the second is the related need over time to draw women into the workforce in greater numbers. Both these economic goals are served by reducing the conflict and disadvantage women in the workforce face as a result of difficult to reconcile priorities in the realms of work and family – benefits that were seized on to strengthen arguments for supporting the Directives. These Directives impose
new rules and costs on market actors, many of whom would likely have been unwilling to take on such costs voluntarily. Moreover, such costs were not being imposed by international competitors such as the USA\textsuperscript{117}. There is clear precedent for this sort of multi-purpose social policy. Sweden and Hungary, for example, implemented women-friendly policies dealing with work/family issues including child care and parental leave, and during periods of labor shortage (Asztalos Morell, 1999; Florin and Nilsson, 1999). It is important to note, however, that these developments were not merely driven by functional needs. Rather, the labor shortages opened up opportunities for skilled actors inside and outside state bureaucracies who were interested in strengthening gender equality (Hobson, 2003b).

**C. BACKGROUND: FROM “SILENT EPIDEMIC” TO SOCIAL PROBLEM**

Violence against women takes numerous forms, reaching into many areas and institutions of social life. Domestic violence, or battering – the violence that takes place in the context of family or intimate relationships – has proven to be among the most sensitive and complex among these. Even the terms used are often an area of contention; domestic or family violence are fundamentally acts of violence committed by men. Yet, such labels have sometimes been used to suggest gender neutrality and shared responsibility, minimizing the typically one-way nature of the violence (Dobash and Dobash, 1992; Kurz, 1989). The all too common perception of the problem was captured in the language of a North Carolina Court decision from the 1980s:

> If no permanent injury has been inflicted, no malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive (Browne, 1987, c.f. Kurz, 1989:496).

Liz Kelly (1999) observes that knowledge and awareness of gendered violence were quite limited as recently as the early 1970s. This and a lack of concrete, systematic data contributed to the problem remaining a largely indistinct, seemingly invisible phenomenon until the 1990s, and it was therefore largely absent from the public agenda. Kelly (1999:125) summarizes one of the conceptual hurdles, pointing out that “for men the threat of basic security primarily concerns the public sphere, whereas for women and children the home (the private) is one of the most likely settings in which violence occurs”.

\textsuperscript{117} Although the US did pass legislation providing for up to twelve weeks of unpaid family and medical leave in 1993. It does not apply to employers with fewer than 50 employees (see US Department of Labor, 1993).
One clear consequence of the lack of clear conceptualization of the issue and corresponding absence of formal knowledge was that there existed, in effect, no clearly defined social problem to which to address public policy, in part because the pervasiveness of the problem was not widely understood. Yet, when women began establishing battered women’s shelters in the mid to late 1970s in the U.S. and the UK, they often rapidly filled up and were even forced to turn away women seeking safety (Schechter, 1982). The seemingly anecdotal evidence provided by overfull shelters and periodic coverage in the news media has been repeatedly substantiated by subsequent research, pointing to a long-standing and shockingly widespread phenomenon that nevertheless was difficult to establish as a public problem.

The “anecdotal” evidence offered by news coverage of hardship and tragedy has been a crucial factor in making a previously “invisible” problem real and tangible – in providing images and metaphors that capture the phenomena, and incrementally building a public consciousness of domestic violence as a problem to be addressed. It provided easily grasped evidence of the ways in which the institutionalized discourses failed to see or account for the problem. Nancy Fraser (1989:174) highlights the discursive/conceptual change:

Until about fifteen years ago, the term ‘wife battering’ did not exist. When spoken of publicly at all, this phenomenon was called ‘wife beating’ and was often treated comically, as in “Have you stopped beating your wife?” Linguistically, it was classed with the disciplining of children and servants as a ‘domestic’ – as opposed to a ‘political’ matter. Then, feminist activists renamed the practice with a term drawn from criminal law and created a new kind of public discourse. They claimed that battery was not a personal, domestic problem, but a systemic, political one; its etiology was not to be traced to individual women’s or men’s emotional problems but, rather, to the ways these problems refracted pervasive social relations of male dominance and female subordination.

The conceptual shift Fraser points to was realized to an important extent in both research and in policymaking. Both activists and researchers further fleshed out the problem with sharpened concepts, empirical data, and causal explanations118 that have tended to discredit both earlier institutional arrangements that made such violence invisible and the various discourses that have been used to explain or defend them. Demie Kurtz points to the overall effect in noting how “researchers, by providing statistical evidence documenting the extent of wife abuse, have played a critical role in making it a

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118 See Judith Innes (1994) for an especially clear and insightful discussion of the importance of scientific data and concepts and the social indicators based on them, in the formulation of problems and public policy.
social issue” (Kurz, 1989:489). Kurtz also explains this process in terms of the replacement of one conceptual model applied to understanding such violence, the “family violence” model, with another – a “men’s violence against women” (see Table 7.1 below). Although the models are similar in a number of respects, they are fundamentally different in their core assumptions (which are only made explicit in the feminist, “men’s violence” model). The result is that the kind of data gathered is substantively different than before, as are the kinds of policy recommendations that emanate from the research. Taken together, these have had important consequences for establishing domestic violence as a recognized social problem.

Table 7.1 Domestic Violence: conceptual models (adapted from Kurtz, 1989)

<table>
<thead>
<tr>
<th>Basic Premises &amp; Methodologies:</th>
<th>Domestic violence as “Family Violence”</th>
<th>Domestic violence as “men’s violence”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Premise: Core Perspective / Unit Of Analysis</td>
<td>Part of pattern of violence occurring among all family members</td>
<td>Means of control – a reflection of unequal power dynamics of male/female relationships</td>
</tr>
<tr>
<td>Assumptions Regarding Origins Of Violence</td>
<td>Originates in wider social norms condoning violence, also in structure of contemporary family</td>
<td>Originates in fundamentally unequal power relationships between male/female. Wider social norms condoning violence, also in structure of contemporary family</td>
</tr>
<tr>
<td>Causal Linkages</td>
<td>Dominant partner uses violence to assert or maintain dominance. Society’s acceptance of violence as conflict resolution mechanism. Partners participate equally in violent behavior. Stress a significant contributing factor. Product of socialization.</td>
<td>Violence “one of a variety of controls that men try to exercise over female partners.” Primarily a male tool. Product of unequal power relationships.</td>
</tr>
<tr>
<td>Methodology</td>
<td>Self reporting</td>
<td>Hospitalization &amp; police records, official crime statistics</td>
</tr>
<tr>
<td>Names &amp; Terms:</td>
<td>Family violence; spouse abuse; domestic abuse</td>
<td>Wife battering; wife abuse; Domestic violence; men’s violence against women</td>
</tr>
<tr>
<td>Male Perpetrator</td>
<td>Ca 50/50%</td>
<td>95% / 5% - equal amounts of violence a myth – also argues other perspective ignores reasons: acts of self-defense, initiator, question of who is most often injured.</td>
</tr>
</tbody>
</table>

Where male dominance is not a central feature of paradigm, women can be seen as one of several classes of victims and indistinguishable from those other victims. Also, failure to see male dominance obscures causal connections between battering and other types of male violence against women.
Even as Kurz quotes the North Carolina court, she remarks on the progress made in reconceptualizing the problem: “wife abuse” has been transformed from a private, largely invisible matter, to one viewed as a social problem for which appropriate remedies should be sought” (Kurz, 1989:489). The 1990s brought continued changes as women’s organizations continued to mobilize and build on earlier gains, as new data was collected, analyzed, and distributed, and as the increasing prominence of closely related social issues offered new anchor points for dealing with battering. The private-becoming-public status of domestic violence is captured in some of the slogans employed by efforts to establish the issue of domestic violence as a public problem, such as “Breaking the Silence” used in the European Campaign Against Domestic Violence, or “the silent epidemic”, used in Swedish materials targeting violence against women. Nevertheless, the issue of men’s domestic violence against women remains a sensitive area for public policy. Even in Sweden, considered by many to have made greater progress toward gender equality than most countries, characterizing battering descriptively as “men’s violence against women” rather than more generically as “family violence” or “domestic violence” draws uncomfortable reactions (Mattsson, 2001; Eduards, 1997; Elman, 1996).

This change in perspective – represented here as a paradigmatic shift – continues to diffuse and be institutionalized in small increments among industrialized and even developing nations. The gains, however, remain tentative and preliminary; they have been only partially and unevenly institutionalized. UN Special Rapporteur on Violence Against Women Radhika Coomaraswamy noted in 1999 that all but a handful of nations had formally embraced the new consensus regarding domestic violence and other forms of male violence against women, but she went on to qualify the progress made:

However, fewer countries have really gone beyond the policy making stage. They have not systematically gathered statistics so that they can ascertain the scale of the problem they are facing. Some countries have introduced training for the members of the criminal justice system but a larger number have not introduced any courses for law enforcers with regard to domestic violence. In addition states have not really assigned resources to deal with the problem, either with regard to an evaluation of the system's readiness to deal with the issues concerned or with regard to the provision of support services for the victim. Though I welcome the recognition of violence in the family as an important area of concern, without implementation strategies and proper information gathering the struggle against domestic violence will be futile (UN-Coomaraswamy, 1999).

Coomaraswamy’s observations suggest that, while it is generally no longer considered acceptable to publicly sanction or defend domestic violence, a great
deal more will have to be done to achieve a large measure of consistency between public statements and the less visible and more private attitudes and behavior of individual governments or individual men.

D. CONVERGENCE: DOMESTIC VIOLENCE, HUMAN RIGHTS, AND MULTI-LEVEL ADVOCACY

Remarkably, the documents that mark the shift to expand the EU’s broader policy paradigm to include domestic violence were formalized not in Brussels, but in Beijing\textsuperscript{119}. The Platform for Action that emerged from the Beijing Conference (1995) defined domestic violence and other violence against women as a violation of human rights requiring “immediate and direct attention”. The implicit and explicit argument of these UN documents (and others) was that these are “public” issues, and therefore legitimate questions for governing institutions to take up and address. The agreements struck in Beijing go beyond legitimating all forms of violence against women as a public issue, however. Since they define it as a violation of women’s human rights, seeking to address such violence becomes an acknowledged responsibility of the state.

The consensus building process in Beijing was facilitated by Commission officials, although not directly, and not without some difficulty. The EU is not a member of the UN, but an observer. Spain, which held the EU Presidency at the time, formally represented EU member states, while the Commission acted as a coordinator and provided support for the Spanish Presidency. Commission officials participated in a supporting role in the planning of the conference as well as the conference itself, and its most important goal was helping the member states “to agree on a common position for the European Union” (EC, 2000:3). Consultation with European women’s NGOs was largely pro forma – at least initially.

While the American delegation held open briefings and discussions with women’s NGOs\textsuperscript{120}, Spain placed a low priority on such meetings. It postponed meeting requests from European women’s NGOs, claiming to be unable to share information. When Spanish Social Affairs Minister and EU delegation leader Christina Alberdi finally did agree to meet, European women’s NGOs discovered that they had better and more up-to-date information on the ongoing negotiations than the minister who had called the meeting. At this point, the NGO representatives walked out of the meeting in frustration,

\textsuperscript{119} This “convergence” occurred at the international level, with the Commission and EU member states participating in the process. One result is that instead of an EU Green Paper outlining EU principles, goals, and a general plan of action, the “Beijing Platform for Action” became the EU working document.

\textsuperscript{120} The American delegation, led by First Lady Hillary Rodham Clinton, had its own tightrope walk to perform, working under the distant, but watchful eye of a newly Republican majority in the Congress, which was not especially sympathetic to Mrs. Clinton’s ideas.
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The failed meeting, however, appeared to have been more due to a lack of understanding on the part of the Spanish Presidency about how to collaborate with NGOs than it was a lack of willingness to support the key goals espoused by the NGOs. Out of these struggles came both a personal apology from Ms. Alberdi and a commitment to finding ways to cooperate. This strengthened the ability to collaborate on developing amendment language that could smooth over the differences between member states on some of the more delicate issues such as reproductive health, where member states were initially far apart, and keep EU member states moving together in the same direction. The EU delegation had also agreed that they would not press forward with their own particular concerns, but instead take the more minimalist approach of throwing support behind the lead taken by a number of developing countries. Gender mainstreaming was an exception to this general rule, in part because it represents a general strategy rather than a substantive agenda. It was the weight of the EU delegation that put “gender mainstreaming” on the Beijing agenda (Young, 2000; EC, 2000), with strong support from Sweden. On the problem of violence against women, the EU followed the lead of lead taken by women from developing countries. Domestic violence, and violence against women more generally, were clearly core issues that united women across an array of differences (Keck and Sikkink, 1998).

“Europe gained an incredible weight in the negotiations, because it spoke with one voice”, and it was able to significantly influence the eventual consensus.122 The final document, the Beijing Platform for Action (UN, 1995), added linkages between long-standing and widely accepted principles of human rights, currently influential discourses supporting equality between women and men, and a definition of violence against women that defines the expected policy responses based on the nature of the violence, and not on the particular sphere of social life (i.e. family) in which it takes place. The imperative to combat violence becomes the priority, superseding both state sovereignty and family privacy. These linkages are clear in the language of the Platform:

The advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a women’s issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political,

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121 This account of the process in Beijing is developed from interviews with people who participated in the meetings.
122 Interview with former NGO activist, March 2004.
social, economic, cultural and environmental security among all peoples (Beijing Platform for Action, 1995: paragraph 41).

Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. In many cases, violence against women and girls occurs in the family or within the home, where it is often tolerated (Beijing Platform for Action, 1995: paragraph 117).

In approving the Platform, representatives of individual governments embraced a feminist definition of the problem, as well as the causal linkages it elaborated. Lack of equality between the sexes is a structural obstacle to achieving a shared goal - security on all levels, while violence against women is an important source of inequality (in addition to the other problems it poses). The implicit and explicit argument of these UN documents (and others) is that these are public issues, and therefore not only legitimate questions for democratic institutions to take up and address – it is imperative they do so. Furthermore, providing remedies is defined as a matter of governmental responsibility at all levels, from local to transnational – a statement that directly contravenes the sentiment that sees such problems as a private matter:

Implementation is primarily the responsibility of Governments, but is also dependent on a wide range of institutions in the public, private, and non-governmental sectors of the community, national, subregional/regional and international levels (UN: Beijing Declaration: Art. 286).

While Beijing clearly represented a major summit for women, the evidence suggests that at least in the past, such international conferences have probably been taken less seriously by individual states and other actors (including potential opponents as states and within states). This made it possible to make commitments under conditions in which the “stakes” were seemingly lower, especially given the “soft-law” status of a “Platform” or “Declaration”, in contrast with a treaty, convention, or other form of legally binding legislation. In addition, in accepting responsibility for implementing the appropriate measures, governments retain control of the issue, and in so doing, avoid ceding authority. Nevertheless, the endorsement was by representatives of UN member states, and that endorsement entails some measure of moral obligation that can be leveraged into more substantive obligations, just as the norms that apply to human rights have been increasingly solidified and institutionalized (Gelb, 1999; Risse and Sikkink, 1999; Gelb, 1989). States therefore embraced the logic and causal relationships identified in the Platform statements, but without having to swallow all at once all that it might come to mean. This prepared the way in the EU to begin thinking about domestic violence in new terms.
The breakthroughs of the Beijing Conference were in fact the culmination of many years of painstaking work with the UN and elsewhere by the transnational network of women’s organizations. In a process that proceeded through several steps beginning with the 1976 International Tribunal on Crimes Against Women in Brussels, domestic violence was formally included in the UN’s definition of gender-based discrimination in 1992, and was fully embraced by the UN as a human rights issue at the UN’s Vienna World Conference on Human Rights in July of 1993 (UN:A/CONF.157.23).

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community…Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated (UN:A/CONF.157.23, Article 18).

Incorporating women’s rights as “inalienable, integral and indivisible part of universal human rights” was no small accomplishment. Despite the obvious commonalities between specific women’s rights and human rights more generally, human rights advocates were skittish about defining domestic violence as a violation of human rights for fear of weakening or confusing their own claims. While human rights violations were committed by the state or in the name of the state, the state’s role in domestic violence has generally been seen as more removed.

The immediate follow-up to the Vienna Conference was the 1994 Session of the UN Commission on Human Rights, which approved several resolutions dealing with gender equality and women’s human rights, building on and reinforcing the language of the Vienna Declaration. John Crook (1994:813) suggests that the resolutions, especially the one dealing with violence against women, represented a “modest reconceptualization of human rights…seemingly at odds with long-standing paradigms of human rights in the UN system”. Crook characterizes the old paradigm as one concerned with relationships between the state and individuals, with the essential obligations falling to the state. Among the notable acts of the 1994 meeting was a

\[123\] The Tribunal was organized in response (and partially in protest) to the 1975 First UN World Conference on Women in Mexico City, and emphasized personal testimony and sharing of experiences – an important type of expertise. Nearly 2000 women from more than 40 countries participated. (Joachim, 2002)

\[124\] A notable exception to this view is Walby (2002), who argues that the state, with its monopoly on the use of violence, has essentially continued to sanction domestic violence by choosing to look the other way.
“landmark resolution” creating a special Rapporteur on the global problem of violence against women (Crook, 1994:813). In Crook’s words, “the new special rapporteur’s mandate extends to forms of domestic violence and traditional practices that may have been seen previously as cultural matters outside the sphere of international human rights protection”.

In arguing for a new set of institutionalized arrangements, the Vienna Declaration and Programme of Action carefully references and anchors itself in a vast web of earlier law, declarations, documents, commitments, and action. It echoed the principles and positions of the previous half century of work – a period during much of which domestic violence was a non-issue. Nevertheless, a decidedly new spin was achieved – and presumably, a new result over time – by applying established principles to new issues or problems. The Beijing Conference itself represented both the culmination of this and other earlier work, and the launching point for new activity.

Establishing the position of Special Rapporteur had important symbolic and practical effects. It further legitimized the problem of violence against women as defined in the Vienna declaration. At the same time, it further established corrective action as a public, governmental responsibility by assigning specific duties and allocating additional resources to monitoring, reporting, and further advocacy on the issue – in the language of the Vienna Declaration, to “strengthen the United Nations machinery in this field…” (UN:A/CONF.157/23: 2). It also provided the added credibility of an official, internationally-sanctioned voice on the specific transnational problem of men’s violence against women. Each of these incremental steps can be seen as part of the much larger process of institutionalization of a new policy paradigm – one that redefines the relationship between women and men, and redefines the role of states as having legitimacy and responsibility to take the actions necessary to further that process. In the European Union context, this would first require a reconceptualization of gender equality – which had long been confined to a market context – to include all EU policies. However, this was only a precondition to accepting domestic violence as an EU issue. Taking that additional step to would require accepting the EU as competent to intervene in the context in which domestic violence occurs – the private sphere of the family. This would require a very different view of EU competence than that expressed by the European Court of Justice in its ruling in the Hoffmann case (Case 184/83), in which it confirmed “family” matters as being outside the scope of EU law.

DOMESTIC VIOLENCE AS AN EU CONCERN

It was the European Parliament’s (EP) Committee on Women’s Rights and Equal Opportunities that first pushed the issue of domestic violence into view on the EU radar screen with a 1986 resolution calling for the EU member states to organize campaigns to “awaken public awareness to the existence and
extent of violence against women” (EP, 1986: paragraph 2), and calling attention to the problem of “violence in the private sphere”. The resolution’s authors took their inspiration from the work of the 1985 UN World Conference on Women in Nairobi, Kenya, at which violence against women was named as a major obstacle to achieving equality between women and men. They also sought to establish legitimacy for the EP to speak out through reference to international declarations and agreements. The resolution referenced documents that included the UN Universal Declaration of Human Rights (1948), the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW, 1979), and Articles 100 and 235 in the Treaty of Rome (1958). Nevertheless, the message of the resolution fell largely on deaf ears within EU institutions. If the assumed “private” nature of domestic violence made it a challenge to put on national policy agendas, it was an issue that was doubly private in the EU context, given that non-economic issues of gender equality were still seen to lie in the “private” sphere and beyond the EU’s legal mandate.

In September of 1990, the European Women’s Lobby was established through with encouragement from the European Parliament and encouragement and financial support from the European Commission. Hoskyns (1996:185-191) notes that it might have been organized and supported earlier, but differences in philosophy and priority delayed the process. While the founding of the EWL did not put these issues to rest (minority and feminist women’s groups were said to be marginalized in the process), it did provide a systematic channel through which numerous demands were channeled to the Commission. The independent voice of the EWL was conditioned by its dependence upon the Commission for a large portion of its budget, but at the same time, it was also dependent upon affiliate groups throughout the EU for its legitimacy. This endowed it with both advantages and liabilities in its role as an intermediary between the Commission and the diverse array of women’s organizations across Europe – a situation of which the EWL leadership was quite aware.

As it became clear in the mid-1990s that a new Intergovernmental Conference (IGC) would be making revisions to the Maastricht Treaty, the EWL and other groups began preparing an ambitious agenda to unlock EU gender equality policy that had by then reached its limits, from the workplace. In the 1995 to 1997 time frame, both gender mainstreaming and domestic violence would be put on the EU agenda.

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125 Hoskyns (1996) highlights some of the tensions present in the formation and the developmental stages of the EWL. She identifies a general bias toward professional and well-educated women the at least partial marginalization of important constituencies within the women’s movement, particularly feminists, women of color, and migrant women.
COMBATING DOMESTIC VIOLENCE AS EU POLICY

When domestic violence did finally begin to find an official place on the EU agenda, it was on the coattails of the established goals and priorities connected with gender equality, and part of a larger package concerning violence against women more generally. The first mention of violence against women in EU official documents post-Beijing was made when it was included as a concern in the 1996 communication on “Trafficking in Women” (COM (1996) 567). The problem, causes, and consequences of violence were characterized in terms that clearly drew on the expressions of the Beijing Platform. One year later, in July of 1997, the EP, led by Rapporteur MEP Marianne Eriksson (Sweden) and others, revived its call for a Europe-wide campaign to counter violence against women. As before, the report anchored itself in the legitimacy of earlier agreements and actions adopted by European and international institutions, though updated to reflect recent progress in Vienna and Beijing, as well as a 1990 resolution on combating private violence adopted by the Council of Europe (CoE, R(90)2). Echoing the Beijing Platform in many respects, it pointed to the myth of domestic violence being a “private matter”. It also recommended appropriate measures to be taken, suggesting the need for detailed assessment of the significant hidden social and economic costs associated with the various forms of violence against women (along the lines of research carried out in the Netherlands), and noting that although “it would be neither desirable nor possible to harmonise Member State’s legislation on violence against women...Member States that lag behind should be urged to reform their legislation” (EP-A4-0250/97). On the one hand, this sort of statement recognizes concerns about subsidiarity, on the other, it recognizes that legislative changes are only a part of the solution. The culture that supports such violence must also be changed (Galtung, 1990)

At the same time, the EWL was establishing its European Policy Action Centre on Violence Against Women with the goal of providing a forum for women’s NGOs to better engage policy makers to take responsibility for violence against women. Part of this activity entailed the creation of an Observatory on Violence against Women, which consisted of an expert group of women with special expertise on the problem of violence against women, with a representative from each of the EU member states.

Also in 1997, the Daphne Initiative was launched with €3 million in funding, a pilot project which included financial support for specific projects targeting domestic violence. The budgeted amount was miniscule in proportion to other EU expenditures. This meager allotment is better understood in context, however, since it easily dwarfed the resources available to many grassroots organizations. Moreover, where such expenditures have been recurring in subsequent years, the represent a concrete investment in building the organizational capacity of the respective national or transnational women’s organizations. The Women Against Violence in Europe (WAVE)
network, initially organized coming out of the Beijing Conference and based in Vienna, Austria, received its initial funding from this initiative, as has the EWL’s Policy Action Center.

The Commission launched their European Campaign against Domestic Violence in 1999 following prompting from the European Parliament, with support and leadership from five successive EU presidencies. In the process, the commission adopted the language and reasoning used by the women’s movement and formalized in UN documents. In 2000, after a 3 year trial run, the Commission re-launched Daphne as a 4-year program, allocating €20 million to support NGO activities combating domestic violence and men’s violence against women more generally\textsuperscript{126}.

\textbf{QUALIFIED SUCCESS}

It was not solely EU participation in Beijing that opened the door to placing domestic violence to the EU agenda. Following the experience in Beijing, the EWL and other European women’s NGOs organized to make the 1996 Intergovernmental Conference (which eventually produced the Amsterdam Treaty) their focal point for seeking to expand EU competence on gender equality policy beyond the workplace. Article 6 of the Amsterdam Treaty (1999) echoed Beijing in its emphasis on the importance of “respect for human rights and fundamental freedoms and the rule of law”. Other changes the EWL and women’s NGOs were successful in getting adopted in the Amsterdam Treaty (1999) made equal opportunities for both women and men a core objective of the EU. The Directorate for Justice and Home Affairs, where the Daphne Program is based, was created earlier, following the addition of a new pillar of the Union in the Maastricht Treaty (1992) (Joachim, 2002). Swedish Commissioner of Justice and Home Affairs Anita Gradin is credited with making the Daphne Program a reality through a combination of administrative skill and legal creativity.

In spite of this general broadening of EU competence on issues of gender equality, however, the legal basis of the Daphne Program lies not in the equal opportunities article, but in the Article 152 of the Amsterdam Treaty (1999), which requires ensuring a high level of public health in all Community policies. Officials at Justice and Home Affairs argue that establishing equal opportunities between women and men as a core value of the EU does not provide sufficient legal basis for initiating new stand-alone policy – even if it requires assuring equal opportunities in all policies the EU does initiate. This is illustrative of one of the dangers of mainstreaming. It would seem that

\textsuperscript{126} The Daphne II Program was approved in early 2004, with an allocation of €50 million over 5 years. Although this figure represents an increase in funding for the Daphne Program, it will now be distributed across 25 member states rather than 15.
although member states continue to be extremely sensitive to EU intrusion in their criminal law.

**DOMESTIC VIOLENCE AND THE EU POLICY AGENDA**

**DISCOURSE, ANOMALY, AND POLICY PARADIGMS**

One of the more striking qualities of the discourses cited and adopted at the EU level condemnation of domestic violence is the way in which it makes domestic violence relevant to – and an obstacle to reaching – many of the other core purposes of the EU. It is, as established in Beijing, a fundamental violation of women’s human rights. But it is also presented as an economic problem in that it undermines economic development and workforce participation and increases health costs. It is a pervasive public health problem that weakens EU goals in that area and contributes to pushing up health costs, and it is a problem that undermines democracy and participation, etc. Examining the problem from a Swedish perspective, Maud Eduards and Gunnel Gustafsson (1997) express legitimate concern about this kind of discursive development\(^\text{127}\), pointing out that becomes not a matter of ending domestic violence for women’s sake, but rather for the sake of democracy, of the economy, of society, etc. This is significant, since as this dissertation argues more generally, the way in which an issue is conceptualized has important consequences for how it is dealt with in public policy, by whom, and for what purposes. Defining the problem in terms other than the women’s human rights framework runs the risk of weakening the problem definitions the women’s movement has worked so diligently to establish.

The above concerns are mitigated by two important factors. First, this dense web of connections to other undesirable side effects of domestic violence makes the problem relevant in multiple spheres of public policy and of social life. Domestic violence should be ended for women’s sake alone, but the argument is even more compelling when the benefits of doing so are enumerated in terms more understandable those who lack the experience, awareness, or sensitivity to appreciate the harms caused by domestic violence. The tighter and denser the web of connections, the more effective the arguments – especially with individual policymakers who see the possibilities for reaching their own goals as being impaired by a look the other way toward domestic violence. This, I would argue, is one of the qualities that makes the Beijing Platform such an artful and powerful document.

The other factor is the way in which it permits the framing of the problem of domestic violence in terms relevant to the already institutionalized policy paradigms that guide individual nation-states, international organizations such as the WHO or UN, and the European Union. In each instance, the issue must

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\(^{127}\) Although Eduards and Gustafsson’s concerns were expressed in connection to developments in Sweden, the general principle applies to EU discourses as well.
be anchored to different institutional structures – different priorities, norms, and levels and types of authority. In at least two cases (that of food safety and the EU ban on the import and use of asbestos), the framing of primarily public health issues in terms of their market qualities has permitted EU Directives to be passed with a qualified majority vote rather than the unanimous vote that would typically be required for non-market concerns. Nevertheless, such tactics and strategies must be used with great care.

The pervasiveness of domestic violence and the failure to take decisive action against it presents an anomaly that cannot be explained or dealt with within the respective paradigms\textsuperscript{128} without a fundamental revision that recognizes the institutionalized power differences between women and men. Formal recognition may represent only a very partial step toward more decisive measures, but again, it provides additional legitimacy to feminist claims, explanations, and interpretations.

At each of these levels, distinctions of public and private are formulated differently, and must be challenged differently. The first is the established gendered distinction between the “public” sphere of politics and the “private” sphere of home and family. The second, intertwined with the question of subsidiarity, is the distinction between the portion of the public sphere of politics that is considered properly EU territory, and that which is not (and independent of the level of responsibility embraced by individual member). A broadly free market orientation that assumes the vast majority of economic activity should be permitted to be self-regulating also counsels non-intervention in the social sphere. Until the Treaty of Amsterdam, reticence at the national level to intrude on the “private” sphere and the lack of open ended authority for the EU for anything other than pursuing economic integration combined to leave domestic violence in doubly private territory, and off-limits to EU policymaking. Mainstreaming has created a small opening here, although it is one that has only just begun to be explored.

**Multi-Level Lobbying**

Among the more striking impressions one gets from the policy developments in combating domestic violence is the multi-level nature of these developments, and of the activism that has fostered their progression. Perhaps less obvious is the high degree of interaction between the levels and the discourses that must be anchored into, and the ways in which a strategic target on one level may become an actor and even an ally on another. Elman (2001) is quite correct in noting the formidable obstacles connected with the greater complexity and cost of managing mobilization at multiple levels – a challenge frequently encountered by US social movement organizations that

\textsuperscript{128} In the case of the UN, the “human rights” paradigm, in the EU case, the market integration paradigm that excludes non-market social goals.
seek to mobilize at local, state, and federal levels. Women’s organizations and networks have clearly been up to the task, and have managed to work these levels and complexities with remarkable skill (Keck and Sikkink, 1998), in part by identifying themes and strategies that managed to unite women across the many difficult differences in both geography and approaches to feminism (Helfferich and Kolb, 2001).

This multi-level activism has helped generate what Gelb (1999) has paraphrased as a “race to the top”, based on the moral and normative pressures that can be generated to encourage and leverage countries to improve their policies and behavior. While this phrase is probably overoptimistic, something like “a slow hike toward the top” may well capture the progressive aspects of the process. Individual countries that have responded to women’s movements more quickly than others to recognize and begin to deal with domestic violence are profiled (or profile themselves) as examples of “good practices” on NGO websites, EU policy reports, and the like. Those that have “lagged behind” emerging European or international norms can offset their backward appearance by taking a transnational leadership role at the EU, or at UN Women’s Conferences, for example. This appears to have helped facilitate stronger statements of cause and effect, of unwanted consequences of a problem, and of appropriate and legitimate policy responses than might otherwise be expected, such as with the Beijing Platform or some of that adopted in EU policy. The adage “talk is cheap” remains as true as ever, but such official approval of feminist discourses not only boosts their legitimacy, it creates some measure of obligation to act according to the approved principles in all but the most cynical of institutions. Even the most cynical institutions of governance must maintain some level of legitimacy by not allowing too much distance between discourse and deeds (Liebert, 2002). Cynical is probably not a term that applies to the EU, but in any case, the legitimacy problems often referred to suggest that the EU must take extra care to keep promises from drifting too far away from its ability to concretely deliver.

E. MAINSTREAMING AND POLICY DEVELOPMENT WITHIN THE EU

The mainstreaming of gender equality cleared the way for the EU to engage on the issue of domestic violence, but the progress made through international work to redefine accepted norms and establish violence against women as an legitimate international issue made it a safe issue for the EU to take up. The Commission and member states went to Beijing to promote the idea of mainstreaming gender equality and returned with a larger package that included combating domestic violence.

As already suggested, gender equality was not the only policy sector “mainstreamed” in the Amsterdam Treaty – language assigning responsibility for the EU to ensure a “high level of public health” in all policies was also
included (Articles 152, 153). In both cases there was considerable pressure for
deeper EU involvement that was generated on the one hand by women’s
groups and EU officials seeking to expand gender equality beyond the
boundaries of the workplace, and in the case of public health, driven by a food
safety crisis that deeply shook the EU (see Chapter 5). Both of these followed
the mainstreaming of environmental concerns, a set of problems understood to
be transnational significantly earlier.

The Treaties that have provided the legal basis of the EU have served in
practice as a sort of constitutional framework. Especially in the area of
constructing the internal market, the Treaties have provided a legal structure
around which to build concerted action, rather than legally defined boxes
within which to house it. But this authority has been lacking in other non-
economic areas, essentially barring the EU from taking action in some areas or
requiring difficult to reach unanimity among the member states. The
“mainstreaming” of gender – and of environmental and public health concerns
– subtly changes this, although far less subtly than most imagined, by
providing an open-ended, if more modest, mandate. It represents a deeper
institutionalization of the paradigm shift with respect to public health and
consumer safety issues – the formal acknowledgement by member states of the
new paradigmatic order in these policy sectors. It is also intertwined with, and
is yet another reflection of, the changing perceptions regarding the kinds of
issues that can be considered European versus national or local.
CHAPTER 8

PARADIGM SHIFTS AND INSTITUTIONAL CHANGE: CASE COMPARISONS AND ANALYSIS

“To succeed, always chose the path of least resistance.”
-Jean Monnet (1978)

A. INTRODUCTION

The case studies presented in the previous chapters are illustrative of the ways in which certain kinds of social concerns gained significant influence in EU policymaking during the course of the 1990s and just beyond. As outlined briefly in the introductory chapter, these individual cases share a set of common characteristics. In each of the three sectors, there has been a 1) reconceptualization of the core issues and problems to which the EU needs to respond, with a corresponding reorientation of the guiding principles and policy goals guiding policymaking in that sector, 2) concrete institutional changes consistent with the new paradigm – for example, in the form of a broadening of EU competence and organizational capacity to engage in the “social dimension” of these policy sectors, and 3) expanded participation and democratization – in the form an increased presence and participation by NGOs representing broad public interests and an expanded role for conventional democratic institutions. These developments have progressed in varying degrees in each of the policy sectors – in part a function of the different institutional and historical context in which each has unfolded. Previous, long-standing concerns and goals were not simply replaced by the new ones. Rather, the policy focus in each sector was qualitatively changed, and with it the priority ordering of guiding principles and the assumptions upon which these are based. This chapter first highlights the important
structural differences and commonalities across the cases. It then examines the similarities and differences in the process by which the “social Europe” paradigm emerged and came to replace the “market” paradigm in each of the cases. Finally, I draw on the case studies to offer a few of the theoretical observations that can be drawn from the cases.

In each of the policy sectors, social concerns have been given an expanded base in the treaties through the “mainstreaming” of key policy principles and goals. These provisions do not provide a constitutional footing equal to that of completing the single market. However, mainstreaming has created new windows and structures of opportunity for pursuing social policy goals that did not exist previously, particularly within the specific policy sectors. Moreover, these openings provide opportunities for social concerns to be prioritized over market goals where the two come into conflict. In none of the cases was Treaty-based competence the starting point for EU engagement; formal competence instead represented some kind of market or milestone – part of a larger process of change. Taken individually, each case entails an unfolding of events contributing to paradigmatic shift, marking a new phase of subsequent institutional change. These are reflected in rule changes pertaining to policymaking competence and processes, and in the creation of new regulatory and organizational structures at the EU level. New types of responsibilities have been reassigned to the EU, with EU level actors designated to shoulder these responsibilities.

The central focus of EU food policy was shifted from its market-making orientation to a primary concern with food safety and public health. This effected an overall shift in food policy from negative to positive integration, with new EU responsibilities and a European Agency for food safety. Within chemicals policy, the profitable commercial product asbestos was banned in Europe on the basis of public health concerns. In this case, the underlying assumptions regarding burden of proof and product safety were reversed to support addressing a significant occupational and public health threat. The Commission subsequently proposed that a comparable reversal of those same principles should apply to chemical substances currently on the market. This could require the assessment of thousands of products already on the market, but for which there is currently insufficient publicly available data to properly assess their safety. In contrast to the other two cases, the general principles guiding EU gender equality policy were well established as an EU concern going into the 1990s. But during that decade, the policy focus of EU gender equality goals was dramatically expanded beyond women’s workforce participation where it had been largely confined since the founding of the union. In order for gender equality to be pursued outside of employment issues, the scope of EU policy generally must expand beyond its market orientation. One example of such an expansion is that the issue of domestic
violence – a problem often considered off limits to national governments – has found space on the European agenda.

To be sure, each of these breakthroughs comes with its own particular limitations and qualifications, some of which were highlighted in the introductory chapter. The most straightforward limitation is that implementation and institutionalization is a long-term process – something borne out by the case studies and the development of the EU more generally. For example, the EU and DG Health and Consumer Protection are intensively engaged in work to ensure and monitor the safety of foodstuffs in European markets. But the European Food Safety Authority has only just been put in place – nearly five years after it was recommended in the White Paper on Food Safety. Commission proposals for the new chemicals policy (REACH), for example, are still hotly contested as of the middle of 2004. It remains unclear how much of the proposal will survive the EU legislative process without being significantly weakened. The Daphne program has been renewed for another program period, but the slightly increased funding (€50 million) must now stretch over five years and a greatly enlarged number of member states. Moreover, the legal base of the Daphne program remains Article 152 (public health) rather than the Treaty articles dealing with gender equality or non-discrimination, suggesting that the treaty base remains weak. Since the competencies examined in this dissertation are for the most part comparatively recent developments, the process of institutionalization has had a relatively short time to unfold. There is no guarantee that the level of mobilization required to keep the issues at the center of attention in Brussels will be forthcoming. Nevertheless, these are not the kinds of developments that observers would have predicted in the 1980s, or even in the early 1990s.

Taken together, the cases exhibit certain similarities in their patterns of development that suggest how and under what kinds of conditions the process of European integration might proceed to embrace issues of primarily social concern. Each of the three cases entails, in part, new EU level regulation of the activities of market actors. There are similar patterns of development across the cases in terms of policy substance, the nature and forms of participation in the governance process that produced that policy, and in the ways in which different forms of competence were gained or granted at the EU level. These sectors/cases vary considerably, however, in the extent to which the new paradigm has been institutionalized, what kinds of factors contributed to the paradigmatic shift, and the pace at which events transpired. Nor is comparison of the cases and generalizing from them entirely straightforward. There are important structural differences both in specific case characteristics and the factors that contributed to their development. There are also important differences in the nature of alliances and opposition involved in each of the cases, and in the nature of the policy development in each of the sectors.
STRUCTURAL CHARACTERISTICS OF THE CASES

The first important difference is in the nature of the cases. Although the relationship to the single market focus of the EU is an important shared theme, the relationships to market concerns differ across the cases. Food safety and chemicals policy, for example, are both directly connected with the management of the risks and hazards associated with some market products, although the nature of the products differs a great deal. In contrast, gender equality policy involves the regulation of labor market relationships. Since it regulates certain conditions of employment, EU gender equality policy has been tied to the EU market mission through its linkage to women’s workforce participation. The emergence of domestic violence as an EU issue is one important example of the extension of EU gender equality principles beyond the boundaries of EU market competence and into non-employment social relationships. In this sense, the issue suggests a process is underway which is releasing a significant component of EU social policy from its earlier market context. This is true even though EU efforts to address the problem of domestic violence represent only a tentative and preliminary foray outside of gender equality policy’s longtime boundaries.

While each of the cases constitutes a sub-case within its respective policy sector, the relationship between each case and its related policy sector differs. The food safety and chemicals policy cases both illustrate policy learning processes in which the Commission and others involved encountered difficult conflicts between the core principles guiding policy in the sector and the serious and pressing problems that needed to be addressed. The changes in EU food policy were driven largely by the crises surrounding the Commission’s earlier management of BSE. The asbestos/chemicals case was characterized by protracted struggles and negotiation over how to handle an inherently hazardous substance, asbestos, in the future. Significantly, since the EU did not seek to harmonize market regulations by pressing member states to remove existing bans on asbestos, established EU policy was not seen as a cause of the problem. As a sub-case of gender equality policy, domestic violence is similarly nested in the broader context through its connection to structural issues that disadvantage women. Both the processes leading up to Beijing and the results achieved there were extremely important to the emergence of domestic violence as an EU issue, and to the promotion of mainstreaming as a general strategy.

In each of the cases, public health serves as a unifying theme, yet for different reasons. Public health concerns were at the heart of the food and asbestos cases. Commercial products are, in effect, the carriers and deliverers of hidden health hazards. Due to the different nature of the health threat connected with domestic violence, however, it was not the core concern. It could not be remedied or managed by regulating the activities of market actors, nor is the hazard typically hidden from the likely sufferer. However,
public health considerations remain important, in part because the legal basis of the Daphne program rests on the public health article in the Amsterdam Treaty (Article 153).

**EMERGING SOCIAL CONCERNS IN THE MARKET CONTEXT**

In each of the cases, the emergence of new, socially focused policy principles and goals was part of a long-term developmental process in which the integration of market activities was the starting point. In each of the three cases, the policy changes of the mid-to-late 1990s took place in the context of the long-term, ongoing development of policy in that sector. This dynamic is clearest in the area of gender equality policy as its history reaches most unambiguously back to the original Treaties of Rome (1957) – even if the first decisive steps were taken only in the 1970s. To the extent that occupational health and safety can be taken as a precursor to public health, then it too dates back to the original Treaties. Occupational health and safety gained QMV status with the Single European Act, a development that is not completely consistent with what is often characterized as the neo-liberal character of the SEA. Similarly, the environmental consciousness that now inform chemicals policy emerged in the 1970s, but only gained formally legitimate status with the passage of the Single European Act.

Although social policy developments in each of the sectors began at different points, they do appear to have gained ground during the same general time periods. Following a surge of social protest in the late 1960s, significant gains were made in gender equality policy (both in the ECJ and in new directives passed), in chemicals policy pertaining to health and safety regulations and environmental protection (in the establishing of the Environmental Directorate and the implementation of the first of a series of action programs). The EU’s first substantive efforts to develop a social policy also emerged during this period, even though a number of factors contributed to those efforts being quickly scaled back (Cram, 1997).

The EU project was infused with new momentum in the late 1980s, and the Delors Commission sought to package an expansion of EU social policy with the completion of the single market. There were some notable successes, including formal competence to deal with environmental issues and qualified majority voting for workplace health and safety measures, but for the most part, what was accomplished in social policy fell far short of what many had hoped for. At the beginning of the 1990s, much, if not most of the progress on social policy could be seen as adjunct to the goal of market integration (Kenis, 1991). Moreover, the constitutional asymmetry (Scharpf, 2002) that was enhanced with the SEA meant that market integration, which could proceed by
non-decision, was more likely to come at the expense of national level social protections that could be reestablished at the EU level only with unanimous consent. Formal competence to take up important social issues such as public health was still largely absent. The challenge coming into the intergovernmental conference that negotiated the Maastricht Treaty (1993) was not so much developing these areas as it was establishing a foothold – some clear competence to engage (Ross, 1995).

Gender equality policy was different. Coming into the 1990s, it was already firmly established in the Treaties, and in the case law. One of the powerful motivations going into the mid 1990s was the feeling that further development of EU gender equality policy would be difficult as long as it remained bound to workforce participation (Hervey, 1996). Women’s groups such as the EWL developed as a central strategy a plan to engage in the intergovernmental conference that produced the Amsterdam treaty in order to open new territory in which to pursue gender equality goals (Helfferich and Kolb, 2001). Those efforts were legitimized in advance by the work done and the commitments made by member states at the Beijing Conference with support from the Commission (EWL, 2001).

B. PARADIGM EMERGENCE ACROSS CASES

The individual cases of food, chemicals, and gender equality policy each provide an interesting study in the emergence and gradual institutionalization of a new policy paradigm. Notwithstanding the important differences in case characteristics and the overall timing of the developments, some of the parallels are striking. These developments can be traced, as outlined in Chapter 4, through examining changes in: 1) policy substance, 2) policymaking participation and the processes by which policy is made, and 3) competence and organizational capacity at the EU level. The emergence of issues that are defined as pressing problems can be identified in each sector (proposition 4), although crisis is not necessarily present. Finally, changes in configurations of actors and alliances can be identified which reconfigure power relationships (Proposition 5) and contribute to the adoption of a new paradigm. In each instance, the underlying principles and policy goals that emerged place a high priority on social concerns, setting boundaries on the kinds of market activity are considered desirable and acceptable. Participation by NGOs, the European Parliament, and civil society increased in the process, and the general direction of new policy was consistent with what these actors demanded. The “advocacy coalition” pressing for these changes included the Commission as a crucial

129 “Non-decision” refers to bypassing the normal EU legislative apparatus (which requires voting majorities) to get specific barriers to trade removed. “Mutual recognition” is the institutionalized process by which this is achieved. Appeals to the Court of Justice (or the threat of doing so) have been a common tool for accomplishing this goal.
participant in the overall configuration of actors, although its role has sometimes been reactive rather than initiating. Over the course of the 1990s, the formal competence and formal and informal capacity to engage in social issues has been systematically expanded and developed. What follows below is a discussion of some of the highlights drawn from the individual cases that illustrate these developments.

**PROPOSITION 1: POLICY SUBSTANCE**

Proposition 1 in chapter 4 suggested that paradigmatic shift and institutional change in a given policy area should be systematically identifiable in the substance of new policies produced by the EU within the policy sector. These changes included a replacement of previous guiding principles and assumptions with new ones, revised policy goals, and a shift of direction toward developing a new body of regulation serving socially-defined goals and benefiting non-market actors.

**CORE PRINCIPLES AND ASSUMPTIONS, NEW POLICY GOALS**

While the ability to pursue market integration has been enhanced through qualified majority voting, it is arguably the case that the principle of mutual recognition has facilitated this process at least as much. As has been noted, it permits market integration to proceed largely through deregulation and via “non-decision” (Streeck, 1996:67). Most other means require at least some kind of affirmative decision – even where QMV makes the threshold is more easily reachable. As noted further below, mutual recognition also tends to assume that higher standards in one country constitute a trade barrier unless proven otherwise, placing the state that seeks higher health, environmental, or social protections in the position of defending both its reasoning and the validity of its evidence. This tends to support a neo-liberal approach of integration through deregulation and seeking efficiency gains through promoting regulatory competition.

Limitations on this approach were articulated in the series of White Papers released in the wake of the food scares, starting with the White Paper on Food Safety (COM(99) 719), and continuing with the white Paper on the Precautionary Principle (COM(2000) 1 final), the White Paper on Environmental Liability (COM(2000) 6 final), and the White Paper outlining a Strategy for a Future Chemicals Policy (COM(2001) 88 final). Each of these documents articulated guiding principles that set clear boundaries on a neo-liberal model of regulatory competition while setting out concrete goals and policy proposals for realizing the new core principles. Moreover, many of the principles, assumptions, and goals articulated in these documents had already

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130 Majone (1993) notes that an absence of EU level standards in these types of areas could produce regulatory competition that would erode the existing level of protection.
been in play in some form or another for some time. What was new was their systematic articulation as guiding principles and goals of the Union. Leading the way, the principle of equal treatment of women and men in the workplace had been established as a basic principle for regulating market activity back in the 1970s with the Defrenne case, and with the early equal treatment directives. Finally, as clear statements of core principles of the EU, Articles 2 and 3 of the Amsterdam Treaty (1999) establish “the promotion of equality between men and women is a task of the European Community”, and that “in all its activities the Community shall aim to eliminate inequalities and to promote equality between men and women”. Similarly, both environment and public health were “mainstreamed”, with achieving a “high level of protection” in each a new guiding principle. Although these statements of principle were subtle and seemingly minor, a new body of rules has begun to emerge based on them that sets significant new EU level boundaries on the actions of market actors. As applied to the three policy sectors under consideration, these new “constitutional” principles significantly alter the “asymmetry” Scharpf (2002) highlights. While the core task of the EU remains market integration, in principle, it is bound to pursue types of market integration that are consistent with improving gender equality, and achieving a high level of environmental and public health protection.

REGULATION, MONITORING, AND TRANSPARENCY

Through the course of the mid 1990s, the mode of EU food regulation shifted from one of standardization to improve interstate trade to one designed to ensure food safety, and to provide for “traceability” back to the source in the event some contamination or other problem was identified. A significant body of new legislation has already been set in place concerning everything from production methods to limiting the levels of certain substances or contaminants in food and feed products131 – to be managed and enforced in cooperation with national level agencies. The Commission recently proposed a harmonized system of controls to manage food and feed safety (COM(2003 52 final), which envisions a not only common standards for food and feed, but also for the staffing and organization of national level agencies that oversee health and safety concerns. The system of traceability has required the development of comprehensive systems of record keeping that must be implemented by market actors. The EU has even ventured beyond strict food safety issues and into new territory in the process of extending food regulation.

131 It has barred the use of certain growth hormones and antibiotics in animal feed, for example, citing public health concerns. This has sparked several trade disputes with the US, which argues that there is insufficient proof to warrant action.
beyond market-making goals. A 1999 Directive (Directive 1999/74/EC)\(^{132}\) phases in minimum requirements for the “protection of laying hens”, and the Commission has adopted a proposal for a Regulation to protect the welfare of animals during transport (COM(2003)425-2)\(^{133}\).

One noteworthy aspect of regulating asbestos by prohibiting it is that unlike regulating products on the market or before they are placed on the market, this kind of action requires virtually no new infrastructure, and thus essentially no new costs for the EU. There are clearly costs for producers and manufacturers of asbestos products, even if the size of industry had already greatly diminished in Europe. In contrast, pre-authorization and retrospective authorization of chemical products require complex systems for producing and evaluating data, and for monitoring for compliance. A significant difficulty with the existing policy of pre-authorization is the demands it places on the regulatory apparatus are larger than it has been able to handle\(^{134}\). Because of the backlog that has developed, one of the proposals in the new chemicals policy is that these requirements be changed in favor of a targeted system that prioritizes potentially high-risk substances. One of the major changes outlined in the REACH proposals is that the responsibility for producing the data would be shifted to industry, and that evidence supporting claims that existing products are sufficiently safe must be produced by industry as well. Given that approval would be required in order for a product to continue to be on the market, the incentive for producing the necessary data is quite high. As the REACH proposals stand now, products for which such evidence is not forthcoming will not be allowed to remain on the market\(^{135}\). These requirements pose some new risks for industry, which will find it more difficult to benefit from the ambiguity that exists regarding the health and safety concerns connected with some of its products – one of the reasons the proposed new requirements are so hotly contested.

\(^{132}\) The Directive specifies minimum requirements for issues such as cage size, access to water and food, and that “the floors of installations must be constructed so as to support adequately each of the forward-facing claws of each foot” (Chapter I, Article 4.2, Directive 1999/74/EC).

\(^{133}\) As was the case with some of the food safety issues, increased trade within the single market has generated some important new concerns that did not exist or were minor before. Longer transport, for example, has created new animal welfare problems. The proposed regulation outlines requirements for standards ranging from access to water to limitation on travel times to not permitting the transport of some young or pregnant animals.

\(^{134}\) This problem was confirmed in interviews with an official from DG Environment and representatives of Environment NGOs and the chemicals industry.

\(^{135}\) Because of the sheer volume of chemical substances, part of the discussion has been about whether this requirement should apply to all chemical substances on the market, or whether certain products for which there are currently concerns should be prioritized. If this kind of prioritized system is adopted, one important question will be where to draw the line, and which products will be allowed to remain on the market under the earlier assumption that they are sufficiently safe.
The equal pay article (Article 119) in the Treaty of Rome was included out of concern for possible market distortions and unfair competition. This turned out not to be the problem French industry had feared it might be, as evidenced by over a decade of inaction and inattention to the Article. Beginning with the Defrenne II Decision and the Equal Pay Directives of the late 1970s, new costs were imposed on employers to serve equality goals that provided no discernable direct benefit to individual market actors. Where the principle of equal treatment was initially limited to equal pay, it was expanded through a series of directives during the 1980s and 1990s to other aspects of working life including access to education and training, health and safety of pregnant workers, equal treatment in occupational social security schemes, parental leave, etc. In this instance, monitoring for compliance is done to some extent by individuals who have the right to bring legal action.

In each of these instances, new regulatory requirements are being imposed on market actors for goals that may bring some benefit to market actors, but which are primarily organized around socially defined goals. But it is not only market actors being regulated and monitored – member state agencies are also being required to meet certain standards, such as those being proposed for food safety monitoring. A similar development of minimum standards can be expected for the relevant member state agencies if the new chemicals regulations are successful. The equal treatment directives already apply. Accountability would increasingly run not only between market actors and governing authorities, but also between governing authorities themselves via the EU regulatory apparatus.

**DISTRIBUTION OF BENEFITS AND COSTS, BURDEN OF PROOF**

In February 2004, an agreement was reached between the Parliament and the European Council on a new Environmental Liability Directive based on the proposals put forth by the Commission in the related White Paper (COM(2000) 66 final). The liability Directive is a codification of the polluter pays principle, which was originally outlined in the 1972 Stockholm Declaration that was developed at the United Nations Conference on the Human Environment (UN, 1972) the principle was included in the Environmental Section of the Maastricht Treaty (1993, Article 174(2)). Environmental and public health NGOs have expressed concern that it leaves significant holes (EEB, 2004). Notwithstanding legitimate criticisms, the Directive will set in place a common framework for allocating costs for environmental damage to polluters, and reducing the costs borne by taxpayers.

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136 One of the more serious criticisms is the lack of a mandatory insurance, which could mean a violator would enter bankruptcy before it was able to pay the cost of the damage (For a discussion of possible impact of the anticipated Directive, see UK, 2002).
In chemicals, the burden of proof was partially shifted for the first time in 1981 with the Directive (79/831/EEC)\(^{137}\) requiring the registration and approval of new products before they could be placed on the market. This was expanded systematically by the Precautionary Principle (outlined in COM(2000) 1 final), and would be realized concretely under the new chemicals proposals that require chemical companies to provide evidence of the safety of products long on the market. Asbestos and dioxins are but a few examples of products that were widely used before enough was known about their undesirable effects. It has generally proven extremely difficult to remove a successful product from the market once it has been established (Markowitz and Rosner, 2003; Harremoës et al., 2001), as the asbestos case illustrates. This would be changed substantially if the REACH proposals are adopted in their current form. It is not only in the area of product hazards that the burden of proof has been shifted.

In the area of gender equality, the assumptions regarding burden of proof have also been modified. A 1997 Directive (Directive 97/80/EC) dealing with gender discrimination shifts the burden of proof to employers once reasonable indications of discrimination have been presented. This is not only in cases of direct discrimination, but in instances of indirect discrimination, where meeting the proof requirements have proven exceedingly difficult for the plaintiff.

**PROPOSITION 2: FORMS OF PARTICIPATION IN GOVERNANCE PROCESSES**

The second of the propositions in Chapter 3 was that an expansion of the EU social dimension in the three policy sectors or more generally would be expected to entail a systematic increase in the influence of formally democratic institutions, greater transparency in policymaking and greater demands for transparency in lobbying activities, and increased participation by public interest NGOs in defining problems, formulating proposals, and monitoring the results. Conversely, a continuation of the direction of policymaking following neo-liberal lines could be expected to shift more policymaking authority into the two categories on the left of Table 3.4 (“self” regulation and “regulation by request”), and resist efforts to draw regulatory issues back into the public domain.

The most straightforward example of a development in the direction of a more democratic EU is the increased authority of the European Parliament. While it is not necessary to chart the development of Parliamentary powers in detail here, the EP’s ability to intervene in EU policymaking, with some ability to set or influence the agenda, was significantly increased through the Single European Act (1987), the Maastricht Treaty (1993), and the Amsterdam Treaty (1999). One example of the willingness and ability to use its expanded

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\(^{137}\) The Directive went into effect in September of 1981.
authority can be seen in the particularly strong message the EP sent the Santer Commission in its report on the Commission’s handling of BSE, and the subsequent vote of no confidence that sent the Santer Commission packing. In addition, many social policy initiatives have either originated in the EP or been strengthened by its input. The EP has sufficient real power to have become a site of intense lobbying. By several accounts, many social NGOs have become very adept at working the space between the EP and the Commission in order to strengthen their position to advance their concerns.

Public interest NGOs have also gained significant ground, although this is by no means an argument that they have developed anything approaching brute strength of some of the commercial interests. They remain meagerly financed and understaffed, and this substantially hampers their ability to take advantage of the increased numbers of opportunities being made available to them. At the same time, the relationships between Euro-NGOs and their members and allies in member states are being developed, refined, and systematized over time. This is a complex process even in an established multi-level system of governance, as many non-profit activists in the US federal system can attest. The unfolding nature of the EU makes working this out both more complex and more urgent.

It is important to the EU that the NGOs are able to enjoy some measure of success. This is not only because some officials within the Commission support the goals of the NGOs, but also because the NGOs help to address the problem of the EU’s “democratic deficit”. The participation of public interest NGOs provides legitimacy that would otherwise be lacking, and it helps create new channels that have the potential to strengthen the connections between national and European-level actors.

Finally, the Commission has directed significant energy and attention to the issue of the EU’s “democratic deficit”. For example, the Commission lists among its strategic objectives for 2000-2005 greater political integration based on the shared values of “liberty, peace and stability, democracy, human rights, tolerance, gender equality, solidarity and non-discrimination”, arguing that these goals can best be promoted through “shared policies and institutions” (COM(2000) 154 final:3). A skeptical view of the EU perceives such statements as largely symbolic or instrumental rhetoric – or even as wishful thinking on the part of the Commission, given member states’ demonstrated skittishness about giving up authority over domestic social policy. There is evidence, however, that these broad statements of goals might mean something more, if for no other reason the fact that the documents acknowledge potentially serious problems for future integration. The same documents articulate the recognition that “faith in our national and European institutions

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138 The European Parliament effectively cut short the term of the Santer Commission in 1999 with a vote of no confidence.
is low. Citizens feel remote from them and are calling for a greater say in how things are done at European level.” (COM(2000) 154 final:3). This also indicates a realization that the achievements of the single market and launching the Euro did not bring with them the sort of faith and legitimacy that might have been hoped for – a fact that was almost certainly driven effectively home by the premature demise of the previous Commission headed by Jacques Santer. These general goals are complimented with the more concrete goals and plans of the Commission’s short term work program (COM(2000)155 final), emphasizing the integration of gender equality into general EU policy, progress toward the establishment of a European Charter of Fundamental Rights, expanding efforts for combating social exclusion, a commitment to full employment, higher food safety standards, and an expansion of its public health strategy under the then-newly in force provisions of the Amsterdam Treaty (1999). Market and trade goals are also detailed, including the ongoing efforts to remove barriers to a single market in services, including financial services and insurance. Even here, however, one finds previously absent considerations and qualifiers creeping in. They are couched in phrases such as “activity will be coherent with other policy priorities, such as the environment and consumer protection” (COM(2000) 155 final:8). Clearly, the real test of such statements is in how they are put into practice, and how those practices are institutionalized over time. The range of concrete developments summarized above suggests measured but significant progress in this direction.

**PROPOSITION 3: LEVELS OF GOVERNANCE**

The proposition related to governance levels suggested that as the EU’s ability and mandate to pursue particular kinds of social policy increases (in particular, related to the policy sectors in question), one would expect to see new kinds of competence emerge at the EU level, as well as the development of new organizational structures and capacities to pursue them (such as with a series of work programs, or with the establishment of a new DG or department within an existing DG). The overall configuration of these competencies and capacities should make possible a wide range of activities, including the development over time of new constituencies to support EU action in the policy sector in question.

The most straightforward method by which to assess the EU’s competence to intervene the three sectors in pursuit of social goals is to follow the progressive increase of authority granted in the Treaties, particularly in the Single European Act, Maastricht, and Amsterdam. As was outlined in the case study chapters, public health, environment, and gender equality were each mainstreamed in the Amsterdam Treaty (although not in precisely the same ways). In each instance, mainstreaming was a step in a much longer-term developmental process that began with identifying certain problems, organizing EU activities to develop additional European-level knowledge and
standards, an expansion of EU activity to include soft or hard regulation, then some kind of mention in the Treaties. This is a process that one might imagine will be ongoing. Only in the case of gender equality did Treaty-based competence precede significant engagement on the part of the EU, although there is little, if any evidence to suggest that the direction gender equality policy did eventually take was either planned or anticipated by those who negotiated the Treaty of Rome (1958). In the case of public health and consumer protection, subsequent developments strongly suggest that proposals for ensuring food safety went well beyond the intentions that the modest-sounding language of Article 152 suggested. Only in the case of environment does it seem that the competence that was granted was something close to what was intended (although resistance to the REACH proposals suggests that there might be some regrets), but that can be attributed largely to the fact that the EU had a functioning environmental Directorate and a developed policy for environmental protection quite some time before the inter-state bargain was struck that ceded authority for environmental regulation to the EU. In the overall process the series of work programs, action plans, and other activities through which the Commission and other EU actors engaged in socially defined issues has played an important role in the process. It has helped to cultivate a conceptualization among key actors of some of the related social issues and problems as possessing a European dimension that warranted European-level intervention.

Another set of developments that has been important is the creation of EU level organizations and agencies. Some clear examples of these include the creation of an environmental DG in the 1970s, or the new public health and consumer protection DG in 1995. Gender equality issues are not housed in a separate DG, but a formal group of Commissioners focusing on gender equality issues that was established in 1995 is significant along similar lines. The European Food Safety Agency has just been established, while the REACH proposals include the creation of a European Chemicals Agency. The development of such organizational capacity has both cognitive and practical implications. It has cognitive and symbolic value in that particular class of concerns is given attention as worthy of special attention at the EU level, and it supports actors in thinking about such “social” issues in EU terms. The practical implications are also important. Within the Commission, an increased number of DGs with a “social” mandate provides an important counterbalance to those whose mission is primarily to further market integration. This was especially the case for DG Health and Consumer Protection, which enjoyed a significant increase in its clout within the Commission following the food crisis. This organizational development also

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139 Based on the available documents and several interviews, there seems to be little disagreement related to creating this agency.
supports the organization of resources that enable work plans to be created and pursued, actors to be mobilized, data to be developed, and so on – and in European terms.

Where a separate DG or EU agency has not been established, the efforts of others have frequently been supported. In the area of domestic violence, for example, the Daphne Program has helped finance the European Information Center Against Violence established by Women Against Violence Europe (WAVE), and the European Policy Action Center on Violence Against Women, set up by the European Women’s Lobby in 1997. These efforts produce new knowledge that is comparable across member states, and can be used to concretely illustrate the nature and extent of the problem, as well as providing leverage for change in poorly performing countries. Perhaps equally important, they help cultivate new organizational efforts and leadership, even though the available resources are extremely modest.

PROPOSITION 4: PROBLEMS/SOLUTION PROCESSES CONTRIBUTING TO PARADIGM SHIFT

At least three identifiable types of processes contribute to the paradigmatic shifts examined in the case studies. These include: 1) crisis and reaction – in which problems develop into crisis, especially where a set of problems is seen as having been generated by the unintended consequences of other EU policies; 2) conversion and consolidation – in which EU policymaking elites bring about an incremental conversion of guiding principles and assumptions over time through learning. Persuaded that new guiding principles are needed to avert future problems or crisis, policy gains achieved in other arenas are converted into EU policy by consolidating and adopting them at the EU level, making them “European”; 3) persuasion – establishing the new paradigm through lobbying and framing issues in normative terms and establishing them as relevant and important. Each of these entails both a definition of the issue as “European”, and an acceptance of the EU as a legitimate and suitable agent for taking up the issue. In practice, issues have been placed on the EU agenda through some combination of these processes, although one or the other may dominate in particular cases.

The first of these represents both an opportunity and a risk for the goal of European integration, as the food safety case illustrated. The second suggests a comparatively safer, reduced conflict route to expanding EU competence where a consensus position has been established through extra-EU international discussions and negotiation. In practice, these processes have been both bottom-up (from member states to the EU level) and top-down (from international organizations to the EU level). The third, persuasion, suggests an opportunity to expand what might be described as the moral or ethical dimension of European integration. It is pursued through elaborating new social and moral standards defining what is European. Making these
issues European is facilitated in part by the fact that some of these issues are problematic for national governments for one reason or another, as has often been the case with domestic violence. In such cases, sovereignty is less an issue, and moving some degree of competence to the EU level may be supported as a way of getting rid of the problem locally.

**FOOD SAFETY: PARADIGM SHIFT THROUGH CRISIS AND REACTION**

The issue of food safety and consumer protection provides a striking example of crisis generated by the unintended consequences of other EU policies. Policies connected with the goal of market integration contributed to serious problems on a European scale. Numerous smaller problems and the EU response to them set the stage for a crisis to emerge in which both policy activities and core institutions of the EU were seen as responsible – the emphasis on deregulating markets at the national level and the supra-national decision making authority that made these actions possible. The food safety crisis seriously threatened what is arguably the most fundamental policy paradigm of the EU – that of “European Integration”, including the development of supranational policymaking authority through which to develop common policies. Given a choice of seeing the accomplishments inspired by the market paradigm eroded by action at either the national level or the EU level, Commission actors (also under enormous threat from the European Parliament) chose to protect one important paradigm (“an integrated Europe”) by weakening another (the neo-liberal, or “market paradigm”). The core principles guiding the food policy paradigm were reordered to give priority to protecting European citizens (even if this was first in their role as “consumers”). In the process, EU gained a chance to play a fundamentally new role with respect to European citizens and consumers, and one that offers new opportunities for strengthening it legitimacy in their eyes.

**ASBESTOS: PARADIGM SHIFT THROUGH CONVERSION AND CONSOLIDATION**

The asbestos case provides a good example of consolidation of regulations agreed to elsewhere. In large part, the early phase of development in the asbestos case was a matter of consolidating policy already enacted in both member states, and in international agreements. The steps along the way from first legislative mention of asbestos in 1980 to the initial decision to pursue an asbestos ban in 1991 can be considered a part of a larger policy learning process (Hall, 1993) in which the EU systematically redefined asbestos as a threat to both workers and the general public, established its own legitimacy and authority to act on the problem, and then eventually shifted its own regulatory presumptions from acceptance to prohibition of products containing asbestos. Until the final stages, it was a largely negotiated process in which each new level of EU regulation represented the institutionalization of understandings that had become consensus at the EU level and elsewhere.
Although much of the early action on asbestos was facilitated by the influence of changes taking place elsewhere, however, the Commission learned important lessons in the process from its own struggles. This was particularly true as a negotiative approach broke down in 1991 and gave way to stalemate and conflict.

Although a European asbestos crisis never emerged to drive the course of policy development\(^\text{140}\), EU encountered in the process the logical consequences of the dominant market paradigm. In grappling with the various public health, economic, and political problems posed by asbestos use, the Commission encountered several important obstacles to bringing European policy in line with its own redefinition of asbestos as a serious health threat that could not be managed with “controlled use”. These clearly included political pressures to maintain the status quo that were generated both internally (from a dwindling group of business interests and the governments of Spain, Greece, and Portugal) and externally (from asbestos producers and particularly from the Canadian government). But the political pressures generated by interests bent on preserving asbestos markets were reinforced and given a measure of legitimacy by the policy paradigm then guiding policy on hazardous substances. The key elements included the basic assumptions regarding the appropriate location of the burden of proof, and that virtual scientific unanimity constituted the standard that must be met to deliver that proof. In order to move forward with its ban and be able to defend it, the EU was forced, in effect, to reorder the policy priorities it applied to asbestos and reverse its own operating assumptions.

As Commission officials became convinced that a general prohibition on the further marketing of asbestos was necessary to protect public health, the burden of proof in EU policymaking was effectively shifted to supporters of continued asbestos use (at least as far as the Commission and many member states were concerned). Commission officials had also made a judgment that a sufficiently high standard of proof had already been met, and that for the public policy purposes at hand, perfect scientific unanimity was neither possible nor necessary. The struggle was less over the actual data, but over a) the meaning of the data, and b) the policy assumptions and framework into which that information would be placed for deliberation and action – the policy paradigm. Nevertheless, it was blocked from its intended course of action for several years – and then challenged at the WTO – by powerful interests still seeking to maintain policy assumptions and prioritizations that the EU had replaced, but that were still held elsewhere. These lessons transfer to chemicals both in terms of the regulatory difficulties (and potential crises) generated by currently institutionalized principles, and the fact that some of

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\(^{140}\) Although, as noted earlier, a political crisis in France helped to push the process along surprisingly quickly once France and the UK had reversed their earlier positions.
the products that would likely fail to receive approval have long been on the market and therefore will be defended by powerful constituencies.

**DOMESTIC VIOLENCE: PARADIGM SHIFT THROUGH MULTI-LEVEL PERSUASION**

The EU adoption of domestic violence driven by the multi-level activism and persuasive lobbying of women’s organizations. No EU or national-level crisis emerged to spark or drive the process along\(^{141}\); instead, it was moved onto the agenda through the persuasion of persist activism at the national, international, and EU levels, using the window of opportunity provided by a confluence of policy developments. One set of developments is the anchoring of domestic violence as an important problem at the national level. Related to that is the success of the transnational women’s movement in defining women’s rights as human rights, establishing violence against women generally as a human rights problem, and domestic violence as one pervasive type of human rights violation. Since the issue has been accepted at the international and national levels as a legitimate concern of states, the path was easier after the Beijing Conference to get the Commission to follow the initiative taken by the then Justice and Home Affairs Commissioner Anita Gradin (in starting the Daphne pilot project) in 1997, and that from the European Parliament Women’s Committee for a year-long campaign to raise awareness and add emphasis to the problem.

There were also other important contributors to opening the space for domestic violence to be placed on the agenda. The most obvious of these is the more general problem of violence against women and its linkage to trafficking in women, which has gained significant attention. In this respect, domestic violence was made an EU issue as part of a larger package of issues. Less obvious is the support provided by the mainstreaming of public health. Since the public health competence (Article 153) granted in the Amsterdam Treaty (1999) provides the legal basis for the Daphne program, it is unclear whether some other basis might have been used in the absence of public health competence. Moreover, the problem of domestic violence shares certain commonalities with other health issues being defined as common problems. The EU has been engaging as part of its public health agenda in fleshing out the characteristics of common health threats that might constitute an EU dimension. Likewise, the causes of domestic violence are common across national boundaries, even if their manifestation is on an individual level. In this sense, the logic that guides some of the work being done in developing an EU public health agenda is compatible with this same work on issues of violence against women, including domestic violence.

\(^{141}\) Although localized events such as the Dutroux affair in Belgium in 1996 or other publicized cases of sexual abuse or battering have often provided shocking concrete illustrations of the systemic problem women’s groups have pointed to. The Dutroux incident in the European capital helped “kick start” actions to combat trafficking and violence (see Hubert, 2003).
Finally, the Beijing process and subsequent mainstreaming of gender equality provided the impetus and the larger package within which domestic violence could be defined as an EU issue. Success in defining this set of issues as relevant and important in another forum (in which EU member states participated actively) simplified the process of formalizing them as EU issues. Nevertheless, it will take a good deal more work and time to define it as a priority.

PROPOSITION 5: CHANGING ACTOR CONFIGURATIONS

The configurations of influential actors were somewhat different in each of the three cases, although in all cases, NGOs played an important role in providing expertise, normative arguments, and legitimacy, and NGO activity at the EU level has substantially increased over the past decade. The Commission played the central entrepreneurial role in each of the cases (although not without making some serious mistakes). The European Parliament most often played an important role in support of a greater emphasis on social issues, and on several occasions, has been the initiator of a new issue. It was perhaps the type of mobilization of actors within civil society that differed most.

In the food case, the crisis and changes were driven to a great extent by the non-organized, concerted action (or what has been termed “political consumerism”) of European citizens refusing to buy British beef – or any beef products at all for a period – or in the case of the dioxin contamination, leaving poultry on the grocery store shelves. A struggle between producers and manufacturers and distributors over the CAP also provided an opening for a new food safety regime.

In contrast, there was no mass reaction or mobilization in the asbestos case. In part, this was a result of many European states having already banned asbestos. The exceptions were victim’s organizations in France and the UK, with the European Trade Union Confederation, public health and consumer organizations also supporting a ban. The coalition of business support for the asbestos industry eroded as manufacturers shifted to other products, supported to a large extent by technological improvements that made substitutes available. Those who might resist the ban for ideological reasons quietly withdrew in hopes the problem would go away. The broader chemicals sector is quite different, however, with a collection of powerful organizations actively resisting several important elements of the proposed regulations. In this case, the Commission was the main entrepreneur from early on. It took up the arguments made by NGOs and made use of data provided by experts associated with the ban asbestos movement, and was eventually supported by changes in position by two key member states: France and the UK. As outlined earlier, the French shift in position was crisis driven (by events tangentially related to asbestos), while the UK was seeking to transfer a problem elsewhere.
in order to avoid threatened retaliation by Canada. International organizations, particularly the WTO, played an influential role in the process. The EU was forced, in part, to develop its evidence and reasoning for the ban with a possible WTO challenge in mind.

The gender equality case is the one most clearly driven by transnational grassroots activism and mobilization. Entrepreneurial actors using Article 119 and the Court of Justice succeeded in prompting the initial breakthroughs in EU policy, while at the same time the Commission and member states cooperated to produce several important new Directives in the same spirit. Building on these initial advances, women’s activism was channeled through the Court, the Commission, and member states to institutionalize the principle of gender equality in its connection with employment. By the beginning of the 1990s, the transnational network of women’s NGOs had also managed to establish a platform “above” the EU level, though international work at a series of UN Conferences connected with human rights. At the same time, this network of NGOs solidified its base “below” the EU level in the member states, through women’s shelter movements and other mobilization around issues of women’s rights and equality. These activities converged at the supranational level in the mid 1990s, where women’s groups managed to take advantage of the historical development of EU equality policy to create new openings and policy opportunities. The “women’s rights as human rights” framework gained Commission and member state support at Vienna in 1993. This support was consolidated in Beijing, and the Beijing agreements were brought back to Brussels as a rough working plan and tool for monitoring progress on gender equality goals. In this instance, an international organization, the UN, served as both a forum and a legitimating tool supporting advances in the EU gender equality agenda. There is little discernable opposition to seeking to eliminate domestic violence. There is, however, resistance at the national level to the EU “intruding” in the area of member state criminal law, for example, and some activist have noted signs of a “backlash”, or growing reluctance to embrace new initiatives for promoting gender equality.

C. TOWARD SOCIAL EUROPE? OBSERVATIONS AND IMPLICATIONS

While the case study research in this dissertation has focused on particular policy developments in three policy sectors of the many areas in which the EU makes policy, there is also evidence of a general trend of the extension and elaboration of the social dimension in the EU across diverse sectors. Across all these policy areas, there are new rules and organizational structures being set

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142 This section is based on an article written jointly with Tom R. Burns and Johan Nylander (see Burns, et al, 2001).
in place, and new European-level actors engaging to promote them. Although the pace of these developments is uneven, their general thrust is significant.

At the level of the policy sectors investigated, paradigmatic shifts have taken place that have been partially institutionalized, although to a different extent in each case. These sectoral level shifts are based on broadly similar complexes of assumptions, problem definitions, and social goals – a shared paradigm. At the level of the EU generally, the contention that a more social Europe is emerging is supported not only by developments in guiding principles and policy substance policy in food safety, chemicals, and gender equality, but also issues only superficially touched on such as occupational health and safety, environmental protection. Moreover, developments in policies pertaining to promoting social inclusion, countering various forms of discrimination, and combating racism and xenophobia, all contribute to supporting this overall development.

The trend toward a more social Europe, although both diverse and surprisingly strong, has not been linear. During the 1980s and early 1990s, a neo-liberal paradigm with associated discourses, and policy initiatives stressing markets, competition, and the economic dimension were highly influential (Hansen, 2000, Nylander, 2000, Beck et al., 1999; Streek, 1995). Nonetheless, the neo-liberal period neither blocked nor prevented continuing efforts to introduce and develop social policies in the EU. The dialectical development might be sketched as follows: The 1970s and 1980s was a period broadly characterized by the failure of Keynesian policies and a shift to a neo-liberal model stressing market solutions, even with respect to social problems, and a de-emphasis on welfare concerns. Regulation that existed was seen as overly heavy in some instances, or in others a poor fit with rapidly changing conditions. This set the stage not only for critique but also for reform initiatives. However, the new context for reform (the 1980s and early 1990s) was one of growing neo-liberalism and critique of an earlier paradigm of socio-political intervention and welfare considerations. This led to a phase of de-regulation in a number of areas (Nylander, 2000) and hesitation in dealing with and developing the social dimension not only on the EU level, but on the national level as well. During the 1980s and early 1990s, the neo-liberal “experiment” was tested and tried; deregulatory and market strategies were deployed to address issues that had been defined as pressing problems, and producing many of the anticipated results. Many failures also occurred (some of which have been outlined here in the areas of food safety, chemicals and asbestos), setting the stage for a resurgence of “social questions” in recent years, recognized in the Amsterdam Treaty (1999), the Lisbon statement (2000), and the recent Food Safety (COM(1999)719) and Chemicals policies (COM(2001)88 final), among others.

The overall process is a complex and dialectical one. There is no simple, sequential process of the EU simply taking action after legal competence is
formalized in the Treaties. Rather, there is an ongoing process in which framing policy, taking action, and establishing formal authority feed into one another with specific constraining and/or reinforcing effects.

A common mechanism for institutional innovation and change is activated when the old arrangements fail to fit or operate effectively in a changed world (Burns and Carson, 2002; DeVille and Burns, 1977). Criticism grows, generating and reinforcing pressures for institutional reform. Ultimately, new institutional arrangements are introduced and established that may or may not effectively address the relevant problems. In periods of founding or transition, the broader ideological and normative climate plays a key role, as neo-liberal concepts did in the 1980s and early 1990s. One unstated hypothesis is that these diverse initiatives are motivated by – and give expression to – deeply held core values, understandings, and ideas in Europe (Andersen, 2001b). These relate to such matters such as human rights, democracy, rationality, cultural diversity, family security, social security, and the like. Another view is that at least some minimum of attention to social issues was a prerequisite for the successful passage and continuation of single market initiatives (Kenis, 1991). These are not mutually exclusive.

The following paragraphs summarize the empirical results and several of the propositions concerning the emergence and articulation of EU’s social dimension in a number of policy areas.

1) Selected social concerns were acknowledged very early in the “European project” in connection with market integration. A number of social issues that emerged in connection with economic cooperation were defined as public matters of significant concern at the European level, and this led to a number of EU level policy decisions. The most significant of these included equal treatment of men and women in working life, the working conditions of coal miners or steelworkers, and the conditions of workers in the nuclear industry (the latter seen as members of a relatively new occupation that dealt with recognized international problems). Several early Directives concerned health and safety at work, as well as living and working conditions. Some of these policies were based on concerns that European-wide market

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143 A new ideological or normative climate alerts or attunes people (in this case EU public officials, lobbyists, mass media, and general publics) to previously unnoticed problems. Key actors shift their perspective, or actors concerned with the new issues or problems gain confidence and assert themselves, finding it easier to gain acceptance and to exercise influence for their ideas and proposals. The new climate may be the result of global developments and secular trends such as the human rights movement, the environmental movement with the Rio de Janeiro Declaration, Kyoto Protocol, Treaty on Chemicals, World Trade Organization decisions and policies, or the growing concern among peoples in developed countries about safe food.
competition might undermine working conditions and standards of living. It was considered unacceptable for a country to gain competitive advantage from lower work environment or safety standards. In general, several important EU “social policies” were defined and accepted during the founding decade of what was to become the European Union. This pattern has continued, even during the period of neo-liberal influence in the 1980s and early 1990s (see below). But the neo-liberal discourses, while influential, were never hegemonic. Moreover, they appear to have been at least to some extent harnessed to serve another goal – to reinvigorate the stagnating integration process.

2) Some social problems arising in connection with market policies and performance have been dealt with using Treaty competence connected with market integration as the legal basis. The European ban on asbestos and the new principles guiding food safety, for example, were managed through DG Enterprise. Because they could be defined as market issues, they were able to be passed with a qualified majority vote. Had they been pursued and framed as public health or public safety measures, they would have fallen short of the necessary votes and not been able to pass. Market-generated problems were considered in these and other cases as entailing unacceptable costs on social or health grounds. In cases such as food, they were even seen as a potential threat to the entire EU economic undertaking.

Such policy issues and initiatives are problem-focused and often crisis-driven. The food crises of the 1990s or the dangers to health and environment of asbestos and dangerous chemicals provide useful examples. The important pattern here is that EU economic policies and market mechanisms result (or are anticipated to result) in serious public problems, such as food safety problems, environmental exposure to chemical hazards, the reduction of worker standards of living, or reduced standards for work environment. In response, policies are initiated that prioritize these social concerns in order to address problems at the EU level. In the cases under examination, they have led to what I have defined as a shift in public policy paradigms. The most obvious and powerful example is how the food crises of the 1990s contributed to a shift in the policy paradigm guiding food policy – from what was largely a commodity and market perspective to a perspective which gives first priority to public health considerations and directs these to be upheld or realized through a new EU food safety agency. The pattern is similar in the case of

144 The legislative package for the proposed new chemicals policy is being handled jointly between DG Environment and DG Enterprise.

145 Non-market areas where policy developments have been problem-focused are, for instance, the emergence of radical nationalist movements in the 1980s; and evidence of systematic institutional discrimination of minorities and immigrants.
chemicals: chemicals policy until recently was largely concerned with market values such as competitiveness and efficiency. The Commission and other EU actors are now seeking to see that “sustainability”, environment, and public health concerns are set out as top priorities, with major policy shifts becoming possible – even if the fate of current proposals remains unclear at this point. This learning process was facilitated not only by the crisis in the food case, but also by the kind of experience gained in the EU’s effort to ban asbestos.

An important aspect of this new policy paradigm is a shift of “burden of proof” concerning possible negative consequences. Under the new proposals outlined in the White Paper on Chemicals Policy (COM(2001) 88 final), and in the new regulatory proposals (REACH) the beneficiaries of chemical products, including the producers above all, would be required to provide evidence of the safety of products already on the market. This stands in stark contrast to the earlier rule that the potential victims, public officials, and public interest groups had to provide definitive evidence of harmful effects before a product would be substantially restricted or withdrawn from the market.

3) A number of social issues neither linked to market considerations nor “addressable” in these terms have, nonetheless, become EU concerns and policy matters. For instance, issues of “human rights”, domestic violence, and racism and xenophobia are matters of significant concern and general consensus among EU elites. EU level agents have been prepared and willing to articulate and to mobilize such consensus, or the potential for consensus. Public entrepreneurs (civil servants in the Commission, politicians in the EU parliament, or organized interests) emerge to push for EU policymaking in the area. Examples here include violence against women, trafficking, or racism and xenophobia. Therefore, some issues taken up by activists looking for such opportunities – in the EU governance structure – result on an aggregate level in a more socially oriented EU. Europeanization is then often the result of agents exploiting windows of opportunity rather than a reflection of increased levels of transnational commercial activity. An inability or failure to address the problem effectively at the national level opens up opportunities at the EU level.

Such social issues may advance quite slowly in EU policymaking, and may easily get bogged down during periods in which the overall policy environment is unsupportive or attention is directed elsewhere. Although a variety of entrepreneurs (NGOs, some Commission officials, Members of Parliament, etc.) struggle to make them into EU issues, they are frequently not sufficiently powerful – at least in the political and ideological climate at the time – to move “their” policy issues onto the official agenda for action. For instance, in the area of public health, this has been the case to a great extent with respect to the regulation of alcohol consumption, or the establishment of harmonized minimum standards for the provision of health services within the
EU area (the latter is blocked by the subsidiarity principle based on treaties). It has also been the case with respect to legislation and criminal sanctions against domestic violence. While these issues have been effectively put on the EU policy map, the relevant actors are not yet in a position to institutionalize the initiatives in EU “hard law” such as directives. Nonetheless, relatively modest policy initiatives on social issues may lay the groundwork for unexpected and significant developments.

For example, the Maastricht Treaty (1993) opened important new possibilities for public health and consumer protection: The public health consequences of EU policies would be considered – with the Treaty calling for a high level of protection of public health and consumer health and safety. This was largely a potentiality, since the administration in the EU Commission responsible for health (DG Health and Consumer Protection) was recognized as a comparatively weak agent within the EU. But in the context of a food crises, the issue of food safety became a paramount concern, substantially increasing the importance of the administrative unit responsible for food safety and health. Competence and “consideration” were upgraded to high priority in the Amsterdam Treaty (1999), but here too, the change was subtle. Responsibility for public health was shifted in 2000 to the DG dealing with Health and Consumer Protection, which has become an influential actor in the European Commission. Thus, “Health and Consumer Protection” became a powerful idea because it involved an important Commission agent with institutionalized means and capabilities that were not available earlier to those interested in public health matters. This is one of the ways a policy paradigm shift is institutionalized over time.

(4) New forms of policymaking and governance have been developed and refined, especially in the context of social policy issues that cannot – either conceptually, or lacking sufficient support from powerful actors – be handled in market and competition policy areas requiring only qualified majorities. Nonetheless, important EU actors consider that certain social problems should or must be dealt with and are determined to do something about them. Consequently, new methods of “policymaking” and governance have been developed. Initiatives in “social” policy areas that require member-state unanimity led ultimately to the development of “soft laws” and non-legislative measures such as data gathering, dialogue conferences, standardization of classification and measurement, opinion formation, education, etc.

Social policy formation and the logic of governance tend to differ substantially in arenas where, on the one hand, social policies are linked to “competition” and “market” issues and where the rule of a qualified majority can be applied and, on the other hand, those which are not linked in such a way and can be settled only through consensus. One pattern that has emerged
is that policy areas defined in relation to “market” and “competition” are more likely to exhibit “hard” regulation and enforcement. Initiatives in areas requiring unanimity (and typically understood as “social”) have become closely associated with the development of “soft law” (Jacobson et al, 2001) and less formal, non-legislative measures. Although these are not legally binding, they have some legal content and are intended to influence member state policies – as in the case of recommendations, codes of conduct, and best practices (Jacobsson et al, 2001). Non-legislative methods overlap with “soft law” but they need not have any legal character (as recommendations, codes of conduct, and normative guidelines), for example: collecting and sharing standardized and comparable data among member states; making international comparisons, applying peer pressures (including “benchmarking”) to align policy.

Establishing a problem, issue, or policy area as “European” is one of the principle strategies of EU actors including, of course, the Commission (Burns and Nylander, 2001). This can be seen, for example, in ongoing attempts to establish public health policies. One constructs European public health issues that can only be resolved – or at least resolved best – through EU policy. The Commission (through DG-Sanco) tries to identify political issues and objects for action that are distinct from those found at national levels (Sutton and Nylander, 1999). This is not unproblematic. Proposals about health involving EU intervention are generally met by strong claims invoking subsidiarity. These claims can be neutralized, and conflicts with member state interests reduced, if the EU can claim that it is working with phenomena that exist only at a European level (Sutton and Nylander, 1999:8). For example, the Public Health Action Program emphasizes the “common health issues facing Europe.”

In this and related ways, some aspects of the regulatory role of the member state are bypassed or subsumed by the EU regulatory role. In the area of EU markets, this is a given. But such markets generate new problems, including various market failures or instabilities, which provides incentives and reasons to consider an integrated, common policy. Regulation concerning food or chemicals offer a good example. There are practical pressures and good arguments for centralized (and predictable) regulation, reinforcing the EU position over national agencies.

Standardization is a key aspect of the EU policymaking strategy. However, it is not only products that are being standardized. Problem definitions, information, and methods are being formulated in part, in terms of “European knowledge,” which is not available at the level of Member States (Waterton and Wynne, 1996). European knowledge is standardized knowledge about phenomena across the Union. Statistical data often provides the basis of such European knowledge, particularly when it is obtained through a coordinated European effort. A standardization of the type of information to be collected
and the methods to be used ensures comparability across the EU and suggests objectivity (Waterton and Wynne, 1996; Sutton and Nylander, 1999). This is a key ingredient in EU consensus formation. For example, in the environmental sector, the Commission established a “European data base,” arguing that it provided “comprehensive, complete and compatible information on the environment across the Community” that could “ensure consistency” (Waterton and Wynne, 1996:427). Such a database could be contrasted favorably with national information that was characterized as lacking such qualities. The standardized, global information is regarded not only as more useful and objective than that attainable from any one member state. In the area of public health, epidemiological research is an important basis for the development of European knowledge, since it provides comparable data on health that can not be accomplished strictly by working from a national level (Sutton and Nylander, 1999). This type of information can be used in arguments to justify action, since it provides both evidence of a global phenomenon that the EU can justifiably address and develop unique practical competencies to deal with it. The development of European standards provides a major opening for EU policy area development and intervention.

Others, have identified the strategy of the EU Commission to shape and manage networks, both in creating interests and mobilizing a constituency of support (see Burns and Nylander, 2001; Mazey and Richardson, 1996). One basis of the legitimacy of EU policy – given the norm of consensus – derives from the broad engagement and participation of a variety of relevant interests (Andersen and Burns, 1996). New interests and lobbyists continue to appear on the scene. Following the Maastricht Treaty (1993), for example non-governmental organizations and other interest organization have become increasingly active, in the area of public health. The Commission also has often taken initiatives by providing financial and other forms of support to NGOs (Greenwood, 1997:10). The European Public Health Alliance (EPHA), the European Women’s Lobby (EWL), the European Environmental Bureau, (EEB), the European Consumer Federation (BEUC), all receive significant portions of their funding through relevant DG’s in the Commission. In return, they are expected to provide a range of services including a role as intermediary between the Commission, other NGOs and interest groups, and the general public.

Other non-legislative forms of coordination and common policy development include conducting EU workshops and conferences to discuss and analyze policy issues and measures; sharing experiences from similar or different approaches; defining a policy issue as “European”, identifying “best practices,” etc. These and other practices contribute to establishing “a common European approach” for defining problems, establishing goals, and formulating solutions. The distinction (and competition) between this emerging social paradigm and the American (US) approach also promotes
awareness of, and commitment to, a shared European paradigm, adding a powerful force for collective problem-solving and mobilization.

The methods and strategies outlined above emphasize framing, opinion formation, European data collection, standardization of measurements and classification, monitoring, and mutual learning processes, the diffusion of “best practices”. In general, these methods facilitate consensus building from the bottom up. Social policies handled in this way differ somewhat in character from those that are handled or can be handled with conventional “hard law”, “legislative measures”, and administrative controls. But even where the use of hard law is available, these approaches substantially strengthen the process of monitoring and compliance. Of course, such methods have also been an important part of standard nation-state behavior. What is striking about the EU is the extent of and systematization of such practices – particular in areas of the social dimension where harder methods are less available or ineffective.

5) There are multiple channels and patterns of social policy formulation in the EU (in part, this is a reflection of the complexity and flexibility of EU governance. EU social policies do not always show up where one would expect; they emerge sometimes in peculiar settings or configurations of settings. Given the different possible paths and mechanisms of social policy formation, and the fact that there are both regulatory and normative elements to social policy, one should not expect to find a one-to-one correspondence between considerations of social policy and the new forms of governance (“soft laws” and non-legislative measures)(cf. Jacobsson et al, 2001). Given the possibilities of alternative paths, one can also expect to find purely tactical considerations: key actors bargain and struggle to frame and define the social problem as a market related problem, thus determining the arena – which implies particular rules, procedures and legitimate agents – where only a qualified majority vote is necessary to determine a policy. In other words, the policy setting may be selected not because it makes substantive sense, but because it make sense institutionally and procedurally and, ultimately, in terms of effectively bringing about a policy change. The policy can be advanced with a qualified majority in the “economic arenas” whereas in an ”appropriate” “social” or “public health” area, effective policy determination would be much less feasible or certain in outcome, because of the unanimity voting principle. This was the case in the emergence of the new strong policy proposals concerning chemicals (COM(2001) 88 final) and food safety (COM(1999) 719), or in the legislation banning the export of most British beef (Decision 96/239/EC) in response to the first BSE crisis, or the ban (with limited exceptions) on further production or marketing of asbestos products in Europe (Directive 99/77/EC, amending Annex I of Directive 76/769/EEC). There are potential difficulties associate with such creative definitions. Given the importance of framing in defining an issue or set of
issues, there is the danger that the problem will be redefined not only for instrumental purposes, but also in the way it is understood more generally, stripping it of some of its meaning. This is the concern expressed by Eduards and Gustafson (1997) in connection with some of the undesirable secondary effects of domestic violence. Nor does it necessarily broaden the base of political support for European Union actors seeking to broaden the understanding of the EU as more than a market making project when even market regulating social priorities are characterized in terms of protecting market integration.

6) The differences in “conditions” and paths for social policies imply a certain measure of incoherence and potential lags in policy developments. On the one hand, when only a qualified majority is required, policymaking may be advanced comparatively quickly and systematically, as is the case with market integration issues and even social issues that are closely tied to market considerations. Social policy areas where unanimity is required lag behind unless there is high consensus, as appears to be the case with human rights. Some social and health policy areas have been more contentious and problematic, as exemplified by policymaking regarding alcohol (Sutton and Nylander, 1999).

7) The EU cannot be considered in isolation from the international environment in which it is an important actor. The EU relationship with other actors in this environment is complex, as illustrated by the Canadian challenge of the asbestos ban WTO (as well as other WTO complaints involving additives in animal feed such as hormones or antibiotics, issues related to GMOs, etc.), the experience at Beijing, or the internal struggles over how to respond to the Iraq war and international terrorism. The European ban on asbestos has had an important impact on the ability of developing countries to follow suite (Brazil recently announced a ban on asbestos free of the threat of a WTO challenge), while the constructive role played by the EU in its participation in the Beijing Conference is considered to have had a crucial impact on the eventual outcomes within the EU. The European Social Model is in the process of being more clearly defined and articulated, and to the extent that it is set out as an alternative to the USA, one might anticipate competition to demonstrate that a high level of social welfare can be a productive factor in the economy, rather than the inevitable drag as defined by a neo-liberal perspective. Clearly, the EU and further integration can be made to support many different kinds of goals. Exactly which goals it furthers will depend to a great extent on which organized interests are able to mobilize, and what kinds of policy competence are available to the EU to pursue common goals.
8) The challenges and difficulties of pursuing the social dimension of European integration lie not so much in the nature of supranational governance per se, but in the “constitutional asymmetry” that in many instances grants market-oriented goals de facto priority over social goals. That asymmetry is supported by a confluence of different paradigms. As Streeck (1995) pointed out, for example, the combination of groups guided by neo-liberal and nationalist ideals serves to support and preserve this asymmetry. This increases the obstacles to developing a viable social dimension based on the shared values and ideals upon which European welfare states were constructed. In practice, the asymmetry has on numerous occasions proven a significant legal obstacle to maintaining or implementing important market-correcting measures. But the problem is also cognitive – the problem conceptualizations derived from the market paradigm itself may prevent early and/or effective responses, as in the food safety case. In that instance, the conceptualization of the EU’s of mission and purpose drove the initial EU responses to BSE at least as much as its legal authority. In such instances, local or national problems may be expanded to become new European level problems, which can be addressed only after unnecessary delays, and perhaps only after avoidable crises undermine the legitimacy of the EU and member states alike. On the other hand, severe crises may provide the conditions under which consensus is possible for taking actions that extend beyond the boundaries set by normal rules. In still other instances, the requirement for unanimity means that non-market social measures can be blocked by a single government.

In addition, the asymmetry threatens to hamper one potential source of innovation in response to market generated problems. If all European countries had been forced to wait until a qualified majority existed to ban most uses of asbestos, the toll in illness and death would undoubtedly be much higher in the long run. Early action in some member states helped sensitize others to potential problems, and also helped legitimize subsequent action in other states.

Ironically, this asymmetry may also serve as an indirect force for further integration following a somewhat functionalist logic, as the spillover effects from the food safety crises illustrated. Where unintended side effects of market policies open new windows of opportunity to which alert entrepreneurs can respond, new “European” problems can be defined which require European level remedies. It also serves as an incentive for the development of indirect and creative approaches to developing policy, including the soft methods discussed above.
D. REFLECTIONS ON THE FUTURE OF SOCIAL EUROPE

Contrary to the prognoses and judgments of many observers, the social dimension is emerging in across a range of policy areas as a key factor in EU policymaking and governance. In some sectors, the development entails a reinforcement and elaboration of earlier policy considerations, for example in the area of gender equality or occupational health and safety. Other policy developments – in the areas of public health, food safety, anti-discrimination, fundamental rights, and employment – are largely recent developments, emerging in the 1980s and 1990s. These have given an entirely new profile to EU policymaking and governance. “Soft laws” and “non-legislative measures” have been the means by which some of the most significant developments in the general area of social policy have been initiated and cultivated, in some instances, paving the way for the application of “hard law”. This is in large part due to the requirement under EU rules that unanimity continues to be the requirement for legislation addressing most social issues. However, even “hard” laws for pursuing social goals have been established in policy areas where the issue can be framed in terms of single market considerations.

This research has identified several of the concrete ways that policies emerge and develop in the EU. It has sought to take the historical development of EU competence and policy into account. The cases studied share certain common themes and in some instances even overlap, but concurrent developments suggest that these three cases are not entirely unique. It would be premature to declare a paradigm shift has taken place – that constructing the social dimension has replaced the construction of a common economic space as the preeminent goal guiding European integration. However, it is clear that important elements of the social goals pursued by diverse actors over the history of the European integration project have been incorporated in EU practice, policy, and competence, although not necessarily in the form originally envisioned. The depth and breadth of these developments serve as testimony to the power of the idea of “Social Europe” and its importance to European integration generally. It expands the opportunities for subsequent progress at the same time it increases the demands on the EU itself to develop new ways to facilitate the engagement of European citizens in pursuit of the kinds of common goals that constitute Social Europe.

What path developments will take from here is the open question. The historic enlargement that went into effect on May 1, 2004 adds an entire range of new actors, issues and uncertainties. At the very least, the vast array of issues connected with enlargement has already had – and in all probability will continue to have – the effect of drawing attention away from further developing the social dimension of the EU to managing an inherently uncertain and unstable process. In the process, it highlights once again some of the core questions that have been a source of criticism not only of the European Union, but also of nation-states and the relationships between them:
What do we mean by democracy in an increasingly complex and fast moving policymaking environment? To what extent is it defined by formal voting procedures, by actual participation in policy formulation and decision making, or by the substantive output of those procedures? Local democracy enhances some kinds of direct participation, but also takes place in a larger context over which it has little control. What kinds of authority and participation are needed at those other levels in order to influence that broader context, and who should be entrusted to play those roles? What boundaries do we set on local democracy – for example, many of the important gains of the civil rights movement in the US were won at the national level, with laws that superceded local control and “states rights”. At the same time, flexibility is needed, since many important policy initiatives have been developed from the local or state level and successful experiments emulated elsewhere. What is the proper role of the economy, and what is the optimal balance between market and social imperatives? What are the acceptable alternatives and tradeoffs when the economy falters, and what are the consequences of externalizing problems and shifting them elsewhere? It was a specific configuration of answers to these questions and related agreed-upon problems that brought the EU into existence in the first place. They were formulated in a particular context, and the idealized models of how those answers should be operationalized were hammered out over a long period through difficult negotiations. They are still being hammered out today, but in a new context partially conditioned by previous answers and problems solutions. It serves as testimony to the fact that whatever answers and solutions that are agreed upon, we can be certain to face the same general questions again in the same or modified form.

Part of what the paradigm concept argues is that the way in which these issues are conceptualized and defined in public policy is systematically related, and has important consequences. The policy paradigm concept facilitates the examination of the link between these complexes of ideas, between those that are institutionalised and those that challenge the existing order, and between the actors guided by different paradigms. In examining the small-scale changes in how problems and their solutions are conceptualised, it is possible to trace change processes systematically from their early stages, and to identify important developments that give a greater understanding for how and why major policy changes have transpired.
APPENDIX A: DATA COLLECTION

My analytical strategy has been to get at the policy effects of how various actors conceptualize the content of public policy, the various arenas in which struggle over policymaking takes place, and the roles of key actors in the process (as well as that of the institutions of governance, and of their allies and competitors). I have sought to identify these conceptual elements primarily in verbal communications, both in spoken and written materials, including interviews with informants on the EU level and the use of a variety of formal and informal documents. These written materials include: EU official documents such as Treaties, Directives, Communications, reports, minutes, and journals; organizational publications and formal comments offered by business, labor, and public interest organizations (NGOs) in response to perceived problems and specific EU proposals; news coverage published by mainstream newspapers and trade journals. I have also drawn on the secondary literature, which, as a number of perceptive researchers have pointed out, typically contains the same dominant underlying assumptions, concepts, and values embraced by actors in the policymaking process and the broader society (Bash, 1995). One difficulty in discourse analysis is distinguishing between the “talk” that has weight and that which does not. The general method employed in this analysis makes this distinction by tracing discourses that have been 1) adopted by important actors, and manifested in their own discourses and actions, and 2) reflected at the institutional level in public statements, operating principles, and/or organizational structure. Patterns of change are apparent where these discourses differ in principle and content from previous ones.

INTERVIEWS

The interview materials used for this research consist of interviews (see Table A.1 below) with 28 different informants on four separate research trips to Brussels. Follow up contacts were also made with some of these informants via phone, email, or in person. I conducted the interviews during the periods of June 13-16, 2000; February 17-20, 2001; April 17-20, 2001, and March 1-5, 2004. Interviewees consisted of a number of different actors representing a variety of different interests and roles, including European Commission (EC) officials, Member State (MS) officials, and representatives of various business and trade groups, labor organizations, and other NGOs.146

146 NGOs are for the purposes of this work defined as public interest organizations that are organized along not for profit principles. The addition of designations such as “health” or “social” is descriptive. Although business interest organizations are also technically “non-governmental” organizations, they are distinguished from the broader category of NGOs based on their distinct economic interests and relatively good access to economic resources. Labor
Table A.1

<table>
<thead>
<tr>
<th>#</th>
<th>Type of Actor</th>
<th>Date of Intvw.</th>
<th>Principle topics</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Business/Trade Group</td>
<td>2000/6/15</td>
<td>food safety/antibiotics/agriculture</td>
</tr>
<tr>
<td>2</td>
<td>Business/Trade Group</td>
<td>2001/2/13</td>
<td>General business interests</td>
</tr>
<tr>
<td>3</td>
<td>Business/Trade Group</td>
<td>2001/4/18</td>
<td>General business interests</td>
</tr>
<tr>
<td>4</td>
<td>Business/Trade Group</td>
<td>2004/03/01</td>
<td>Chemicals</td>
</tr>
<tr>
<td>5</td>
<td>Business/Trade Group</td>
<td>2004/03/04</td>
<td>Chemicals/asbestos</td>
</tr>
<tr>
<td>6</td>
<td>EC Official</td>
<td>2000/6/16</td>
<td>Food safety</td>
</tr>
<tr>
<td>7</td>
<td>EC Official</td>
<td>2001/2/13</td>
<td>Food safety, EFA, other</td>
</tr>
<tr>
<td>8</td>
<td>EC Official</td>
<td>2001/4/18</td>
<td>asbestos/chemicals</td>
</tr>
<tr>
<td>9</td>
<td>EC Official</td>
<td>2004/03/05</td>
<td>Asbestos/chemicals</td>
</tr>
<tr>
<td>10</td>
<td>EC Official</td>
<td>2001/4/20</td>
<td>asbestos/chemicals/WTO</td>
</tr>
<tr>
<td>11</td>
<td>EC Official</td>
<td>2004/03/02</td>
<td>gender equality</td>
</tr>
<tr>
<td>12</td>
<td>EC Official</td>
<td>2004/03/03</td>
<td>gender equality</td>
</tr>
<tr>
<td>13</td>
<td>Journalist</td>
<td>2000/6/13</td>
<td>overview</td>
</tr>
<tr>
<td>14</td>
<td>Journalist</td>
<td>2000/6/13</td>
<td>overview</td>
</tr>
<tr>
<td>15</td>
<td>Journalist</td>
<td>2000/6/14</td>
<td>overview</td>
</tr>
<tr>
<td>16</td>
<td>Labor Organization</td>
<td>2001/2/14</td>
<td>asbestos/chemicals/labor issues</td>
</tr>
<tr>
<td>17</td>
<td>Labor Organization</td>
<td>2001/2/15</td>
<td>Labor and gender equality issues</td>
</tr>
<tr>
<td>18</td>
<td>Member of European Parliament</td>
<td>2004/03/03</td>
<td>Gender equality issues (Marianne Eriksson)</td>
</tr>
<tr>
<td>19</td>
<td>Member of European Parliament</td>
<td>2001/2/16</td>
<td>food safety</td>
</tr>
<tr>
<td>20</td>
<td>Parliamentary Official</td>
<td>2004/03/02</td>
<td>Gender equality</td>
</tr>
<tr>
<td>21</td>
<td>Member State Official - Sweden</td>
<td>2001/4/19</td>
<td>EU policymaking in social dimension</td>
</tr>
<tr>
<td>22</td>
<td>Member State Official - Sweden</td>
<td>2001/4/19</td>
<td>EU policymaking in social dimension</td>
</tr>
<tr>
<td>23</td>
<td>Consumer NGO</td>
<td>2000/6/15</td>
<td>consumer - food, consumer issues</td>
</tr>
<tr>
<td>24</td>
<td>Health NGO</td>
<td>2000/6/14</td>
<td>Public health</td>
</tr>
<tr>
<td>25</td>
<td>Health NGO</td>
<td>2001/2/14</td>
<td>Food &amp; health</td>
</tr>
<tr>
<td>26</td>
<td>Social NGO</td>
<td>2001/2/14</td>
<td>Gender issues</td>
</tr>
<tr>
<td>27</td>
<td>Social NGO</td>
<td>2001/2/15</td>
<td>Social dimension</td>
</tr>
<tr>
<td>28</td>
<td>Social NGO</td>
<td>2004/03/03</td>
<td>Gender issues</td>
</tr>
<tr>
<td>29</td>
<td>Environmental NGO</td>
<td>2004/03/05</td>
<td>Chemicals &amp; health</td>
</tr>
</tbody>
</table>

Unions are also given a separate designation in view of their generally high degree level of institutionalization in the policymaking process, and their related special status together with business groups as “social partners”.

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The interviews were recorded on tape (the last eight were recorded on electronic media), and supplemented with handwritten notes. Formal statements and positions were frequently available in print form from the relevant individual and organizational actors, including EU institutions. My approach to interviews was semi-structured, focusing broadly on the issue area, but leaving it to the interviewee to identify the particulars that he/she saw as important. This approach was guided by a desire to reduce interviewer influence on the way in the informants presented the issues, struggles, and characterizations about the policy developments in question and to get a sense of how various actors viewed the issues, their role in them, and the role of the EU and other actors. For example, my early interviews regarding food safety and asbestos were more exploratory in nature – I did not yet know what specific questions I should be asking. As I became more familiar and knowledgeable in particular areas, I added more specific follow-up questions, and where possible, used the discussions to test my understanding of the various dimensions of a given issue, the surrounding conflicts, etc. I have also had subsequent telephone or email contact with several of the people I met in the course of the initial interviews.

I treated the interviewees as informants, with the interview materials treated as background and explanatory information and not to be attributed without first gaining their permission. Identities were as a rule kept confidential, and in all but a very few instances, I have corroborated the interview information with other sources for accuracy. In cases where I have used information gained in interviews that is not corroborated by other sources, I have noted that the source is from an interview. My approach to the individual interviews also varied somewhat. In some instances, I provided general background on the research project and on my particular areas of interest. In others, I sent some written questions in advance to facilitate the interview. In general, whether or not written questions preceded the interview, I sought answers to the following questions:

- What is your position, how long have you been here, and what are your responsibilities?
- Can you tell me about your organization, its purpose, membership, etc?
- What is the role of your organization in addressing this issue(s)?
- How would you characterize the most important aspects of the issue(s)?
- What was the process by which the policy changes in question took place?
- What factors were most important in the policy developments that occurred?
- Who were your allies or opponents in these efforts, and who else played an important role?
• Can you recommend others (people/organizations who either share or oppose your position, or have an interesting perspective) whom you think I should speak with about these issues?

• Other questions were directed to the specifics of the case study in question, or the role of the particular interviewee.

The general strategies used to identify the most important discourses and the conceptual differences they contained included (1) looking for conflicts concerning the issues and policy areas in question, particularly conflicts based on fundamentally different ways of conceptualizing a given issue, and especially those conflicts that took place as critical discourses were expressed in new institutional arrangements; (2) identifying actors whose roles or positions were considered significant in a given policy area, (3) looking for different types of actors whose perspectives and/or positions differ; (4) examining journalistic accounts of policy development or issues in the areas in question (such accounts obviously influence the way the public sees the issue, but also tend to identify key actors; they must also translate the issue from technical or bureaucratic language to make it accessible to the readership); and (5) tracing the development of discourses over time – particularly as these discourses find concrete institutional form. These strategies were aided by the analytical methods discussed in Chapter 3, in which discourses are examined for the ways in which they identify and define problems, recommend or exclude various categories of solutions, which actors/institutions are suitable for implementing those solutions, and who is to be trusted as a source of information and expertise. Further assistance is provided by the actors that produce the discourses, since they frequently identify areas of conflict, competing actors, acceptable sources of authority, competing views of a given set of circumstances or developments, etc. The process of following these “references” is not fundamentally different from the processes of tracing back references in the academic literature.

Another important question that arises is how to distinguish between “front stage” accounts and “back stage” accounts (see Goffman), or between objective and subjective characterizations of “reality”. While this concern is applicable to interviews, it is even more appropriate for the consideration of materials that may have been carefully structured and edited (Scott, 2000). Natural Resources Canada’s “fact sheet” on asbestos is a prime example of such a carefully organized characterization of an issue. A number of strategies are useful here, although the goal in this instance is not to screen out and discard subjective accounts, since they are essential to understanding both calculated and unconscious discursive struggles for dominance over the conceptual terrain represented by competing paradigms. Comparisons to identify patterns of similarity and differences are essential here. This includes
identifying discontinuities and inconsistencies that exist over time or those that
can be found between the advertised description of intention or purpose and
observable actions, and tracing the evolution of ideas to institutional form. The
process of gathering data has been guided by these considerations, and by the
necessity of being able to make such comparisons.

In addition to the interviews, I also benefited a great deal from discussions
connected with participation at an OECD/EU sponsored Workshop (Brugge,
Belgium, 26-28 June, 2000), and participation at the European Health Forum,
sponsored by the European Commission, among others (Salzburg, Austria, 27-
30 September, 2000). These provided an opportunity to examine formal
presentations, and also provided the occasion for numerous informal
conversations with EU and national officials, and with representatives of
various NGOs. I sought answers, observations, and judgments regarding the
same general and specific questions indicated earlier, and subsequent notes
from these discussions and workshop materials became part of my case study
material.

**CHOICE OF CASES**

The complexity of the EU policymaking system presents a special
challenge for generalizing from one or a few cases. Case studies of individual
policy sectors cannot be taken as examples of the EU in miniature in the
anthropological sense (Andersen, 1999). Accordingly, my goal here has been
to use the patterns of similarities and differences in the individual case studies
to make theoretically informed generalizations about the types of conditions
that contribute to certain kinds of EU policy development. These are explored
in both conceptual (paradigmatic) and institutional change. I have sought to
manage the problem of comparability of case studies pointed out by Bennett
and George (1997) by using a comparison between three differing
configurations of “similar” and “least similar” cases within the context of the
EU’s “social dimension”, and with special attention to public health related
issues. Within the social dimension, health was chosen because of its particular
nature as an issue with extremely important economic, political, and social
qualities. The experimental “constants” are social and public health
considerations, including health related risks, in the three different policy areas
taken up in the case studies. The “dependent” variables are the processes by
which the concerns in question come to be prioritized as the subject of EU
policymaking, and by which issues defined in terms of their social dimensions
come to be prioritized over the economic and market aspects.

This sets the stage for struggle over fundamental issue and problem
definitions, over authority and responsibility for addressing those problems,
and over the specific types of public policy responses generated. The three
cases represent different paths to “Europeanization” as a movement of the
particular policy sector to the supranational level, and three different processes
of moving on the continuum from a primarily market principles to primarily “social” principles. They also represent quite different stages along their respective paths, as well as different stages in the process of conceptualization as a social policy question. These differences make the common issues and processes even more relevant for theoretical development.

Among the case studies, food policy was an easy choice; it has been the subject of a great deal of EU policymaking activity, driven at least in part by numerous crises. Asbestos and chemicals policy offers a related area in which similar issues of health risk are grappled with – and similar problems encountered. While the issues are equally contentious, the change processes were not significantly driven or fueled by EU-level crises, and thus represent a different path to conceptual and institutional change, yet through similar considerations. Neither has the new chemicals policy progressed as far as the new food safety policy.

Domestic violence as a European issue represents a rather different case. It combines important elements of health & gender equality, but it is also interesting because economic arguments were posited – even though the issue represents no real direct challenge to market paradigm. Its main linkage to market issues is through the origins of EU gender equality policy in equal treatment in pay. Unlike the first two cases, its social aspects are not overshadowed by economic considerations – it simply doesn’t appear as a concern in a free market inspired framework. Because neither the arguments nor the issue presented any challenge to the EU’s market-guided priorities, I came very close to deciding against its inclusion as a case study. I finally kept it in after it was pointed out to me that its emergence represents a quite different phenomenon than do the food and chemicals cases. It emerges as an EU issue via another path, and for that reason serves as an important illustration.

**DOCUMENTARY MATERIALS AND RESEARCH CHALLENGES**

The complexity of the EU apparatus, the pace at which it is changing, and the incredible volume of EU materials available present a number of significant challenges. One of these challenges was the need to filter through an enormous volume of primary documents to identify the most important and relevant. I gained access to and searched through a good deal of this array of materials was gained via Internet, which provided quick and convenient access to an amazing volume of information. This tool spared me both the burden and the charms of doing research the “old fashioned way” using card catalogs (with real paper cards), publication indexes, organizational registers, shelves of law books, or thumbing through stacks of periodicals and newspapers in search of relevant headlines. This approach also had its limits; one notices a definite reduction in the volume of virtually all materials available as one probes further back in relatively recent history, particularly around 1995. For
the most part, my use of primary source materials from prior to 1995 was limited to documents that other researchers or actors had deemed important enough to reference. In such cases, I hunted down the materials using more traditional means, although EU Directives and Treaty Language were a notable exception, and also available on the “net”.

While the Internet and the EU’s new policy of transparency have provided access to information, they have exacerbated the problem of sifting through large volumes of material. Familiarity from previous work with NGOs and long exposure to the issues of domestic violence and public health was quite helpful in the process of selecting and analyzing data. On the other hand, food safety and asbestos/chemicals issues were almost completely new territory, and required a good deal of ground work before I even knew what I was looking for. Interviews with informants were the most important key to identifying key issues and events, and tracking down the most relevant and important documents.
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preparations (asbestos).

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environmental pollution by asbestos

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marketing and use of certain dangerous substances and preparations.

Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of
positive action for women

(asbestos) Directive 76/769/EEC on the approximation of laws, regulations and
administrative provisions of the Member States relating to restrictions on the
marketing and use of certain dangerous substances and preparations.

from the risks related to exposure to asbestos at work.

from the risks related to exposure to chemical, physical, and biological agents at
work.

Directive 67/548/EEC on the approximation of the laws, regulations and
administrative provisions relating to the classification, packaging and labeling of

treatment in connection with social security.

Council Directive 76/769/EEC on the approximation of laws, regulations and
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marketing and use of certain dangerous substances and preparations.

equal treatment regarding access to employment, vocational training and
promotion, and working conditions

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