Is Safe Food Good Food? Looking beyond safety to regulate good food systems

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Abstract/Résumé

Abstract: This dissertation explores the regulation of risk with respect to the rules governing the slaughter and processing of animals for meat. Challenging the perception that food safety can be isolated from other aspects of food system governance, this dissertation considers the contextual factors that interact with scientific evaluations of risk to shape how food is produced and regulated. Focusing specifically on differences between meat inspection requirements in the neighbouring provinces of Quebec, and Ontario and the state of Vermont, it brings the legislative and regulatory texts that operate in each of these jurisdictions into dialogue with the government actors who apply them and the producers and processors who must abide by them. It considers what is lost when socio-cultural and moral perspectives about ethical meat production are marginalized in the policy-making process. Significantly, it also discusses the ways in which other non-scientific policy priorities and practices intersect with food safety governance on the farm or at the slaughterhouse and meat processing plant.

This is an interdisciplinary project and the dissertation employs mixed methods combining traditional legal analysis with empirical research. Data was obtained through document analysis and semi-structured interviews with individuals working across the meat supply chain as well as regulators in each jurisdiction. By examining meat inspection requirements in context, this dissertation employs both a theoretical framework and methodological approach that are grounded in the Aristotelian virtue of phronesis (good judgment). This means that the substantive arguments advanced in this dissertation are guided by a philosophy that the proper question we should be asking is what is right in a particular context, and that answering this question involves a normative, reflexive and a constitutive process (both in terms of the research subject and the experience of the researcher) rather than claims of inevitability, certainty or absolutism. The purpose of this inquiry is twofold. First, this dissertation seeks to problematize the perception that food safety governance is more objective, or at least less subjective, than other areas of food law and policy. In so doing, it challenges the view that even evidence-based food safety regulations that promote the overall health and wellbeing of our society are beyond ethical scrutiny. Second, in addition to describing food safety regulations as they are, it advances an argument about what they ought to be and how this can be achieved.

Résumé : Cette thèse examine la réglementation du risque en droit agroalimentaire, particulièrement en ce qui concerne la sécurité sanitaire et l'abattage des animaux pour la viande. Partant du principe que la salubrité ne s'évalue pas dans l'abstrait, cette thèse examine les facteurs influençant les déterminations du risque dans la production de la viande. En effet, étant donné que l'élimination totale des risques dans nos systèmes alimentaires est impossible, les politiques et règlements de salubrité visent à maintenir un niveau de risque acceptable. Or, la détermination de ce qui est acceptable résulte souvent de délibérations sur comment prioriser les spécificités locales, qu'elles soient d'ordre social, culturel, moral ou économique. Ce projet s'intéresse aux régimes juridiques dans trois régions du Canada et des États-Unis : l'Ontario, le Québec et le Vermont. Par le biais d'entretiens avec des éleveurs, des employés établissements d'abattage et de transformation, des restaurateurs, des bouchers, et des décideurs publics, cette

étude de terrain examine comment la détermination du risque acceptable pour assurer la sécurité des consommateurs implique des jugements de valeurs relatifs à la manière dont les animaux destinés à la consommation humaine devraient être élevés et abattus. Ce faisant, le projet établit un dialogue entre les textes législatifs et règlementaires, les fonctionnaires qui les appliquent et les acteurs de l'industrie qui doivent les respecter. Par ailleurs, ce projet étudie l'influence des priorités d'ordre publiques non-scientifiques sur la réglementation de la salubrité alimentaire sur la ferme, à l'abattoir et dans les établissements de transformation.

Le projet est interdisciplinaire et emploie une méthodologie mixte, combinant une analyse de texte juridique traditionnelle avec des recherches empiriques. En étudiant les exigences d'abattage et de transformation de la viande dans leur contexte géographique, le projet adopte une approche théorique et méthodologique ancrée dans l'éthique de la vertu aristotélicienne et, plus particulièrement, la phronétique (sagesse pratique). Ainsi, les arguments de fond avancés dans cette thèse sont guidés par une philosophie selon laquelle la question adéquate à se poser est de savoir ce qui est juste dans un contexte particulier. Répondre à cette question implique un processus normatif, réflexif et constitutif (autant au niveau du sujet de recherche qu'au niveau du vécu du chercheur) plutôt que des allégations d'inévitabilité, de certitude et d'absolutisme. L'objectif de la présente investigation est double. Premièrement, cette thèse cherche à problématiser la perception selon laquelle la gouvernance de la sécurité sanitaire des aliments est plus objective, ou moins subjective, que les autres domaines du droit et des politiques agroalimentaires. Ce faisant, elle conteste l'opinion selon laquelle les règlements fondés sur des données probantes qui favorisent la santé et le bien-être général de notre société échappent à tout examen éthique. Deuxièmement, au-delà de décrire les règlements sur la salubrité des aliments tels qu'ils sont, le projet avance un argument sur la forme que ces règlements devraient prendre et sur la façon d'y parvenir.

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I presented ideas that are now part of this dissertation at the Schulich School of Law Faculty Seminar Series (2019), the 1st, 2nd, and 3rd Canadian Food Law and Policy Conferences (2016, 2017, 2018), UQAM's *Série des Ateliers de l'Honnête Volupté* (2017), the Vermont Law School Faculty Speaker Series (2017), the Regroupement Droit, Changements et Gouvernance (2016) (special thanks to Francis Lord), and the Center for International Governance Innovation (2015). I also circulated drafts of earlier versions of this dissertation during Hoi Kong's now-famous monthly graduate student workshops. Thank you to the many people who read, and reread, my drafts and offered comments and support throughout the process.

The process of writing a dissertation is often described as a lonely one but I was fortunate to be surrounded by an incredible community of graduate students at McGill over the past five years. I have been privileged to enjoy the friendship and unwavering support of several stars. Marika Giles Samson, Tanya Monforte, Laura Dehaibi, Jeffrey Kennedy, and Amy Preston Samson: thank you for all the Thomson House lunches, tea, kombucha, long-distance pomodoros, post-it notes, and coffee. Outside of academia, I am thankful to my friends and mentors in the West African dance community of Montreal for providing the best yin to research's yang. And of course my parents, who encouraged me through the highs and the lows of writing a dissertation, and helped

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1.1 The impossible farm

On a cold and blustery winter day in December 2017, an audio recorder in one hand and a map in another, I set out for the small Quebec town of Sainte-Lucie-des-Laurentides, approximately 100 kilometers north of Montreal. I was on my way to visit Dominic Lamontagne, the author of *La ferme impossible* ("The Impossible Farm").¹ The book provides a detailed history of food and agricultural policy in Quebec and the litany of rules and regulations that make it difficult impossible, Lamontagne argues - to run a small-scale farm for profit in the province. Lamontagne and his wife used to run a bistro in Montreal. In 2012, they left their urban life to start a family farm in the country. They planned to raise livestock, grow produce, and to process and prepare food products on site to sell them locally. In practice, however, their idealistic plans came into conflict with multiple regulatory requirements and rules set by marketing boards that either outright prohibited what they wanted to do, or at the very least presented significant barriers for a fledgling operation.

In his book, Lamontagne challenges the suggestion that consumers can "vote with their fork"² for the kinds of food systems they want. The idea that we can somehow vote three times a day presumes that we have access to a variety of foods and can choose between them. However, Lamontagne asks how a consumer can for vote for products that never make their way to the supermarket in the first place.³ When he and his wife set out to start their farm, their goal was to operate at a scale that could support a small family living in a rural community and with limited finances. They estimated that in order to feed themselves and sell surplus at the farmgate or

¹ Dominic Lamontagne, *La ferme impossible* (Montreal: Éditions Écosociété, 2015).

² Michael Pollan, "Voting With Your Fork", *The New York Times* (7 May 2006), online: <pollan.blogs.nytimes.com/2006/05/07/voting-with-your-fork>.

³ See Lamontagne, *supra* note 1 at 18.

farmers' markets they would need 2 cows, 200 hens and 500 chickens. But they quickly learned that they could not sell milk without a quota (the price of which was \$25,000), that the cost of entry into the market was 10 shares (10 cows), and that there was no dairy quota available at the time.⁴ Same problem for chickens, where below-quota production is limited to 99 birds per year per civic address (meaning that if multiple individuals live at the same address, they must share this number of birds between them – the right to raise them is not assigned to the individual but the property on which they reside).⁵ Quota restrictions also apply to eggs. Unable to afford the purchase of quotas (not that any were available for purchase at the time) and uninterested in operating on the kind of scale that is required by quota holders, Lamontagne and his wife decided to limit their commercial production to 99 birds, which they would raise and slaughter on their farm. This too proved impossible because of provincial and federal regulations that prohibit the sale of uninspected meat.⁶ Convinced that on-farm slaughter of his chickens could be just as safe as driving them several hours away to the closest licensed abattoir, Lamontagne telephoned the province's Ministry of Agriculture, Fisheries and Food (MAPAQ) to inquire about his options. In his book, Lamontagne describes the antagonistic and dismissive exchange he had with the MAPAQ employee who informed him that slaughter on farm is only permitted for personal consumption, is highly discouraged by MAPAQ, and is prohibited if the person slaughtering the animal does not reside on the farm (i.e., a person cannot buy a live animal from a farmer and

⁴ See *Ibid* at 62.

⁵ See *Ibid* at 63.

⁶ See Safe Food for Canadians Act, SC 2012, c 24 [Safe Food for Canadians Act]; Safe Food for Canadians Regulations, SOR/2018-108 [Safe Food for Canadians Regulations]; Food Products Act, CQLR c P-29 [Food Products Act]; Regulation respecting food, CQLR c P-29, r 1 [Regulation respecting food].

slaughter it themselves on the latter's property⁷).⁸ The MAPAQ representative was particularly forceful in his view that on-farm slaughter was unhygienic and posed a serious food safety risk. For his part, Lamontagne writes that taking a small flock of birds to a licensed abattoir is cost-prohibitive (by his estimates, the average cost would be \$10 per bird), and that the size and slaughter-line speeds of licensed facilities actually increase food safety risks.

Reading Lamontagne's book, I was particularly interested in his insistence that small-scale artisanal producers should be permitted to slaughter animals on their farm for direct sale to consumers. The subject of animal slaughter is rarely discussed in legal scholarship, except with respect to animal welfare and accommodations for ritual slaughter (e.g., meat that is kosher or halal).⁹ However, against the backdrop of renewed interest over the past decade in local food systems and emerging scholarship in the interdisciplinary field of food studies, the question of who can slaughter animals for meat production and under what conditions is significant.¹⁰

⁷ With respect to whether or not an individual may slaughter an animal they have purchased from a farmer on the farmer's property rather than bringing the animal home for slaughter, there appears to be some confusion as to what the regulations actually permit. As I will discuss in more detail in Chapter 4, I was unable to obtain a clear answer to this question myself when attempting to speak to a representative from MAPAQ. In Lamontagne's case, this is what he was told when speaking to someone from MAPAQ on the phone. It is my view that MAPAQ is deliberately vague on this point in order to suggest in the strongest possible terms that slaughter must be performed at licensed abattoirs irrespective of whether this is explicitly what is required under the regulations.

⁸ See Lamontagne, *supra* note 1 at 94–96.

⁹ See e.g. Bruce Friedrich, "Ritual Slaughter in the 'Ritual Bubble': Restoring the Wall of Separation Between the Church and State" (2015) 17 VJEL 33.

¹⁰ See e.g. Sustainable Food Trust, "A Good Life and a Good Death: Re-localising farm animal slaughter" (2018), online (pdf): *Sustainable Food Trust* <sustainablefoodtrust.org/articles/a-good-life-and-a-good-death-re-localising-farm-animal-slaughter>; Qurat ulAin & Terry L Whiting, "Is a 'Good Death' at the Time of Animal Slaughter an Essentially Contested Concept?" (2017) 7:12 Animals (Basel), online: <www.ncbi.nlm.nih.gov/pmc/articles/PMC5742793>; Frédéric Leroy & Istvan Praet, "Animal Killing and Postdomestic Meat Production" (2017) 30:1 J Agricultural & Environmental Ethics 67; Timothy Pachirat, *Every Twelve Seconds: Industrialized Slaughter and the Politics of Sight* (New Haven: Yale University Press, 2013); The Law Library of Congress, Global Legal Research Center, "Legal Restrictions on Religious Slaughter in Europe" (2018), online (pdf): *The Law Library of Congress* < www.loc.gov/law/help/religious-</p>

Among those reflecting on local meat systems is the owner of the Montreal butcher shop Lawrence. In 2015, on Lawrence's blog, Sefi Amir described her commitment to sourcing meat products from local producers and her relationship with farmers and abattoir operators in Quebec, Eastern Ontario, and Vermont who shared her vision about a particular kind of ethical meat.¹¹ As a consumer myself looking for a trusted source from which to purchase meat that came from a farm in close geographic proximity to me, from animals raised with kindness, and from farmers whose methods respected the ecosystems in which they operated, I too shared Amir's views. But this kind of business and the work of her suppliers could often be precarious. In her post, Amir explained how some of her suppliers were reacting to the coming into force of Quebec's Act to Regularize and Provide for the Development of Local Slaughterhouses and to Amend the Food Products Act that summer. The Act was introduced in 2009 and phased out all unlicensed abattoirs in the province. Between 2009 and 2015, a grace period was provided so that previously unlicensed facilities could apply for a temporary license to continue operating while either upgrading to the new category of custom slaughterhouse, or seeking a provincial or federal license. In July 2015, this grace period would come to an end. Amir wrote about one of her suppliers who was able to invest in his facility and upgrade from a provincial to a federal license. However, she also noted how some producers and processors felt squeezed out of the market because they were unable to secure the necessary capital and their local abattoirs were at risk of closing down.

slaughter/europe>; Hillary C Barter, *Slaughterhouse Rules: Declining Abattoirs and the Politics of Food Safety Regulation in Ontario* (Master of Arts, Department of Geography, University of Toronto, 2014) [unpublished]; Sylvain Charlebois & Amit Summan, "Abattoirs, Meat Processing and Managerial Challenges: A Survey for Lagging Rural Regions and Food Entrepreneurs in Ontario, Canada" (2014) 10:1 Intl J Rural Management 1; Carrie Abels, "Gathering the Herd: Vermont Meat Processing Case Study" (2017), online (pdf): *Vermont Farm to Plate Meat Processing Task Force* <www.vtfarmtoplate.com/resources/gathering-the-herd-vermont-meat-processing-case-study>.

¹¹ See Sefi Amir, "What's at Steak: Conventional Beef Production, and Some Alternatives", (18 March 2015), online: *Boucherie Lawrence* http://boucherielawrence.com/blog/>.

The scenario Amir painted on her blog resonated with stories I had heard anecdotally from producers I spoke to at local farmers' markets. The farmer who supplied my weekly Community Supported Agriculture (CSA) basket explained that demand for his chicken was so high that he had a waiting list and had to limit the number of orders an individual could make to ensure that everyone could access his meat once per season. The demand was there but what I heard over and over again was that the regulatory barriers in terms of food safety and slaughter requirements were preventing farmers from supplying this demand. Digging a little deeper, it appeared this was a problem outside of Quebec as well. In the early 2000s, reforms to British Columbia's meat inspection system, which also eliminated the category of unlicensed abattoir, were met with strong opposition for their devastating impact on food security and Indigenous food sovereignty in rural and remote communities.¹² In Ontario, a Masters student in Geography at the University of Guelph published a thesis in 2014 on the impact of slaughter regulations on local abattoirs and meat processing facilities that described similar barriers.¹³ Then I came across Lamontagne's book about his "Impossible Farm".

While slaughter and meat processing regulations seemed to be inviting critical engagement among researchers in the social sciences and humanities, to date there has been very little discussion about them in legal scholarship. Although food safety is a central pillar of food law and policy, it is rarely considered from an academic perspective. Portrayed as technocratic formulas that can be determined objectively rather than ethical dilemmas that require subjective deliberation, food safety regulations are rarely questioned by jurists provided they are based on scientific principles and expertise.¹⁴ Identifying a gap in the literature, I decided to begin a research project about meat safety regulations and their impact on local meat systems.

¹² See Christiana Miewald, Sally Hodgson & Aleck Ostry, "Tracing the unintended consequences of food safety regulations for community food security and sustainability: small-scale meat processing in British Columbia" (2015) 20:2 Local Environment 237.

¹³ See Barter, *supra* note 10.

¹⁴ A notable exception is Matteo Ferrari: see Matteo Ferrari, *Risk Perception, Culture, and Legal Change: A Comparative Study on Food Safety in the Wake of the Mad Cow Crisis* (Farnham, Surrey: Ashgate, 2009). In the context of food safety and trade law, see Marsha A Echols, *Food*

This is how, two years later, I found myself knocking on Lamontagne's door.¹⁵ He was out milking his cows when I arrived. When he came into the house a few minutes later, he was carrying a metal pail sloshing with fresh milk and wearing a big smile. For the next couple of hours, we sat at his dining room table and talked about food safety, farming, bureaucratic technocracy, regulatory enforcement, and his frustration with the litany of rules that stand between him and his vision for artisanal food production in Quebec. It is hard not to think of Lamontagne as the Quebecois equivalent of the outspoken Virginia-based farmer, Joel Salatin (made famous in Michael Pollan's bestseller *The Omnivore's Dilemma*¹⁶), and whose book *Everything I Want to do is Illegal*¹⁷ describes food laws in the American context that discourage community-based food commerce. Salatin wrote the forward in Lamontagne's book.

Lamontagne is a force to be reckoned with. He has strong opinions and a clear objective: he wants to be able to raise animals outside of the quota system, slaughter them on his farm, process meat products and sell them at the farmgate or farmers' markets. I expected the interview (one of the first I conducted) would be informative. Lamontagne's research is thorough and he has a wealth of knowledge both in terms of the realities of farming and the rules that apply on the farm. Our discussion, however, turned out to be a pivotal moment for my own reflections and writing for another reason. This dissertation is entitled: *"Is Safe Food Good Food? Looking beyond safety to regulate good food systems"*. Originally, this was meant to describe a research project that would

Safety and the WTO: The Interplay of Culture, Science and Technology (The Hague: Kluwer Law International, 2001); Mariela Maidana-Eletti, Global Food Governance: Implications of Food Safety and Quality Standards in International Trade Law (Bern: Peter Lang, 2016).

¹⁵ Throughout this dissertation, I avoid identifying interview participants by name. However, where participants have shared their views publicly and in print, as is the case with Dominic Lamontagne, I may refer to them directly by name. The primary reason for this is to ensure that appropriate credit is given to their own publications and to avoid taking credit for ideas and arguments that are not my own.

¹⁶ Michael Pollan, *The Omnivore's Dilemma: A Natural History of Four Meals* (New York: Penguin, 2006).

¹⁷ Joel Salatin, *Everything I Want To Do Is Illegal* (Swoope: Polyface, 2007).

explore how food safety regulations define safety in the context of meat production. More specifically, it would consider the ways that socio-cultural and moral perspectives about how livestock should be raised and slaughtered are considered in the design of meat inspection systems in different jurisdictions.¹⁸

Until that moment in Sainte-Lucie-des-Laurentides in 2017, I wanted to write a dissertation that ranked the meat inspection systems of different jurisdictions along a spectrum of apparent restrictiveness and provide a critical analysis of how varying degrees of restrictiveness impacted the viability of small-scale operations. The problem I set out to study was restrictive regulatory frameworks. My objective was to illustrate how overly narrow inspection requirements are experienced by small-scale industry actors, and legitimized by government actors.

Reflecting on my conversation with Lamontagne on the drive home to Montreal, I began to appreciate how the food safety regulations, and meat inspection requirements in particular, that I was interested in cannot be understood in a vacuum. While my original objective was to demonstrate why food safety regulations must not ignore socio-cultural and moral perspectives about what constitutes good food, it became obvious that these perspectives *were* playing an active role in regulatory design and enforcement, as were many other political and economic factors as well. Market forces, political priorities, industry practices, cultural norms, and ethical values all contribute to how food safety regulations are experienced. The hypothesis I had articulated on paper about a spectrum of relative restrictiveness was too simplistic to capture the complexity of the problem. I began to realize that any attempt to rank food safety systems

¹⁸ During the early stages of the project, my thinking about food safety regulations was informed by the distinction drawn by Marsha Echols between two paradigms: food as culture and food as commerce. Writing in the context of international trade law, Echols argues that historically the idea of food as culture prevailed. However, developments in international trade during the latter part of the 20th century rejected the traditional paradigms of food as culture, and replaced it with the paradigm of food as commerce. In this way, Echols points to a dichotomy between cultural values and scientific knowledge in food safety regulations. See Echols, *supra* note 14.

would fail to account for the nuanced ways in which each system can accommodate different scales of production.

From that point forward, the title of this dissertation took on a new meaning. Is safe food good food? Recognizing that food safety as an objective of regulatory design is complex and context-specific, this dissertation looks beyond food safety as a concept that can be isolated and reflects instead on the contextual factors that interact with scientific evaluations of risk and shape how food is produced and regulated. Focusing specifically on meat inspection requirements in the provinces of Quebec, and Ontario and the state of Vermont, it brings the legislative and regulatory texts that operate in each of these jurisdictions into dialogue with the government actors who apply them and the producers and processors who must abide by them. It considers what is lost when socio-cultural and moral perspectives about ethical meat production are marginalized in the policy-making process. Significantly, it also discusses the ways in which other non-scientific policy priorities and practices intersect with food safety governance on the farm or at the slaughterhouse and meat processing plant. This project seeks to challenge the perception that even regulations that promote the overall health and wellbeing of our society are beyond ethical scrutiny.

By examining meat inspection requirements in context, this dissertation employs both a theoretical framework and methodological approach that are grounded in the Aristotelian virtue of *phronesis* (good judgment). The concept of phronesis is discussed in detail in Chapter 2. For present purposes, this simply means that the substantive arguments advanced in this dissertation are guided by a philosophy that the proper question we should be asking in food safety governance is: what is right in a particular context? A virtuous (phronetic) answer to this involves a normative, reflexive and a constitutive process (both in terms of the research subject and the experience of the researcher) rather than claims of inevitability, certainty or absolutism.

1.2 The rise of modern food safety regulations: the era of purity

Whereas few dispute the need for high-level coordinated oversight of the safety of meat and meat products destined for interprovincial and international trade, there is ample disagreement over the appropriate level of oversight of meat and meat products produced and sold locally. For these local markets, given their size, both in terms of numbers and geographic space, there is concern that certain food safety requirements excessively restrict local production, and more seriously, have jeopardized their very existence.¹⁹ Moreover, to the extent that consumers want assurances that the food they are eating is safe, some may look to the state to enforce stricter food safety regulations while others may prefer to purchase food directly from local producers if this can provide greater assurances as to the origins and quality of their food. What happens when food safety regulations meant to help consumers in fact thwart their efforts to access the food that they want? And finally, what is to be made of the fact that despite references to scientific principles and evidence-based policy-making, neighbouring provinces regulate the same products differently? Presumably, if food safety regulations are grounded in science they would be the same across the country. If they are not, what are the social, cultural, geographic, political and economic factors that are shaping regulatory design behind the scenes and how can they be made more explicit? These are some of the questions this project raises. However, before they can be explored in any meaningful way, it is first necessary to situate the regulation of animal slaughter and meat processing within the broader practice of 21st century food safety governance and its origins.

This section focuses on two watershed moments in the rise of modern food safety governance. First, the discovery of new scientific methods to detect fraud and adulteration in food products and the subsequent enactment of food safety legislation during the mid-19th century. Second, the distinctly North American²⁰ response to unsanitary practices in the meat industry at the turn

¹⁹ See Miewald, Hodgson & Ostry, *supra* note 7; Barter, *supra* note 10.

²⁰ For the purposes of this project, North American refers to Canada and the United States. It does not include Mexico.

of the 20th century. The section that follows traces the most recent shift in food safety governance, the 21st century shift towards food safety scientism and food safety regulation as a form of governance.

Modern food safety regulations can be traced back to the 19th century and the industrial revolution. In 1820, Friedrich Accum, a German chemist, published his *Treatise on Adulteration of Foods and Culinary Poisons*.²¹ His rigorous scientific method and chemistry expertise introduced new methods of detection of food fraud and adulteration. Accum used chemical analyses to test the composition of foods and his tests revealed the presence of lead and copper salts in many of them. With this publication, Accum drew public awareness to the prevalence of fraud, counterfeiting, and adulteration of popular food imports, alcohol, milk, and sweets in England. The impact of Accum's work was twofold. First, it exposed the extent to which food merchants were engaged in fraudulent activities and how hard it was for consumers to distinguish between adulterated and unadulterated products on the market. Second, it gave governments tools to intervene and regulate the market.²²

In Canada, the first legislative reference to food safety is found in the *Inland Revenue Act* of 1875, which was modelled on England's 1872 *Adulteration of Food and Drugs Act*.²³ The *Inland Revenue Act* (subsequently amended and renamed the *Adulteration Act* in 1884), drew on the federal government's criminal power to protect the public from adulteration of drinks, food and drugs. It was enacted in response to widespread fears about crime and insanity in Canada's growing

²¹ See David J Armstrong, "Food Chemistry and U.S. Food Regulations" (2009) 57 J Agriculture & Food Chemistry 8180 at 8181; Bee Wilson, *Swindled: From Poison Sweets to Counterfeit Coffee* – *The Dark History of Food Cheats* (London: John Murray, 2008).

²² See Armstrong, *ibid* note 1.

²³ Prior to Confederation in 1867, the governments of both Lower Canada and Upper Canada, and later the new Province of Canada had laws that set out requirements for the inspection, grading and marking of different named commodities (e.g., flour and meal; beef and pork; fish and fish oil; and hops). Halsbury's Laws of Canada (Donald Buckingham), (online), *Food* (Markham, Ont: Lexis Nexis Canada, 2014) at HFD-1 "Governing law and its evolution"[Buckingham].

cities, which were thought to be linked to intemperance, especially the consumption of adulterated spirits.²⁴ In addition to specific concerns about intemperance, it also addressed growing anxiety about the safety of the food supply in cities. Rapid industrialization and urbanization were moving food production from the homestead into commercial manufacturing and distribution facilities. This separation increased risks of contamination across the supply chain, while creating new opportunities for dishonest merchants to adulterate and tamper with products deliberately to increase profits. Indeed, most prosecutions under the Act were for the adulteration of milk and butter.²⁵

In 1890, the federal government amended the *Adulteration Act* again, this time to delegate legislative authority to orders-in-council to develop standards for drinks, food and drugs. With this amendment, Canada became a world leader in the development of a coherent legislative framework for food safety laws, surpassing that which existed in the United States or England.²⁶ However, lack of funding and lack of training of civil servants meant that, in practice, Canada was slow to deliver on the promise of positive food standards. Before long, the United States overtook Canada when it passed the *Pure Food and Drugs Act* and the *Federal Meat Inspection Act* in 1907. The swift passage of these two federal food safety regulations is largely attributed to the publication of Upton Sinclair's novel *The Jungle* in 1906. Sinclair, a young socialist who had set out to write a novel about the plight of labourers in Chicago's stockyards, inadvertently triggered nationwide interest in food safety as a result of his often graphic accounts of prevailing unsanitary practices in the nation's meat industry. A disappointed Sinclair was later quoted as saying: "I aimed for the public's heart, and by accident hit it in the stomach."²⁷

²⁴ See Aleck Samuel Ostry, *Nutrition Policy in Canada, 1870-1939* (Vancouver: UBC Press, 2011) at 13.

 ²⁵ Ostry notes that in 18976, 60 percent of milk sampled under the act was adulterated. And in 1877, 50 percent of the butter sampled was adulterated (*ibid* at 14).
²⁶ See *ibid* at 15.

²⁷ Eric Schlosser, "Forward" in Upton Sinclair, *The Jungle* (New York: Penguin Group, 2006) at xi.

Shortly thereafter, Canada adopted the *Meat and Canned Food Act*, which was modelled closely on the US *Federal Meat Inspection Act*, and established a regulatory framework for animal slaughter, as well as inspection and labelling requirements for packaged meat products. The federal government also invested more resources to hire properly trained food chemists and inspectors to create a fully functioning national system of food inspection, and by 1910, positive standards had been enacted for milk and milk products, meat and meat products, grain and grain products, maple products and beverages.²⁸ These commodity-specific acts and regulations marked the second watershed moment in the rise of modern food safety governance. Responding to the specific problem of unsanitary and negligent behaviour in North American stockyards, slaughterhouses and meat processing facilities, these regulations embraced greater government oversight of the industry to minimize preventable contamination proactively as opposed to merely policing negligent or criminal behaviour.

Writing about the history of food regulations in Canada, Donald Buckingham explains that these early laws "served the triple purposes of ensuring food purity, enhancing market honesty, and providing export market quality assurance."²⁹ Another interpretive approach is to see them as a revival and expansion of ancient food purity laws, where purity itself refers not only to compositional standards, but actually includes socio-cultural and moral values as well as economic objectives that are not accounted for by science alone.³⁰ For instance, the enactment of compositional standards for milk during the early 1900s coincided with a period of moral fervour among Protestant social reformers in English Canada who were concerned with 'social purity' and teaching the urban poor about proper hygiene and diet.³¹ The idea of purity of milk

²⁸ See Ostry, *supra* note 2 at 17.

²⁹ Buckingham, *supra* note 23 at para HFD-19.

³⁰ See Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London: Routledge & Kegan Paul, 1966); James Hamblin, "Purity Through Food: How Religious Ideas Sell Diets", *The Atlantic* (1 May 2015), online: <www.theatlantic.com/health/archive/2015/05/the-puritanical-approach-to-food/392030>; Catherine Carstairs, "The Granola High" in Franca Iacovetta, Valerie J Korinek & Marlene Epp, eds, *Edible Histories, Cultural Politics: Towards a Canadian Food History*, (Toronto: University of Toronto Press, 2012) 305 at 305–325.

³¹ Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland & Stewart, 2008); see also Carstairs, *supra* note 30 at 305-325.

products was thus heavily invested with meaning around this time, and understandings of purity in food laws were conditioned by the meaning given to it by social reformers, and vice versa. The development of new laws and regulations at the turn of the 20th century thus reflected improved scientific knowledge to detect and prevent disease, dirt, and dishonesty, but also social and economic perspectives about how food should be produced and consumed.

1.3 Contemporary food safety governance: the era of science

While the previous section illustrates the unique way in which food safety regulations operate at the intersection of science and morality, the third and most recent development in food safety governance reflects the retreat of morality as an explicit regulatory objective and a new emphasis on evidence-based risk management.

Regulations at the turn of the 20th century were a reaction to specific issues created by urbanization and the industrialization of agri-food systems. A century later, high profile food scares heightened concerns about the safety of the North American food supply. These outbreaks coincided with a period of consciousness-raising among the general public about the social and environmental problems associated with Big Agriculture³², leading some consumers to seek

³² Big Agriculture is a term that refers as much to the increasing size of industrial agricultural operations as to the concentration of corporate ownership within the agricultural industry. While it is difficult to draw clear lines between what could be considered small-scale, medium-scale and large-scale agricultural production, one important feature of Big Agriculture is the political role of the agricultural corporations that it is composed of. According to Jennifer Clapp and Dorish Fuchs, this power is instrumental (Big Agriculture lobbyists pursue political strategies in their best interest), structural (the power of Big Agriculture influences governance outcomes), and discursive (Big Agriculture has the power to frame issues and problems in public discourse, and can "socialize politicians and the public into accepting 'truths' about desirable practices" (see Jennifer Clapp & Doris Fuchs, "Agrifood Corporations, Global Governance, and Sustainability: A Framework for Analysis" in Jennifer Clapp & Doris Fuchs, eds, *Corporate Power in Global Agrifood Governance* (Cambridge, Mass: MIT Press, 2009) at 7–8).

alternative supply chains for their meat and others to demand stricter regulatory oversight of all methods of meat production.

In 1986, the first case of BSE (bovine spongiform encephalopathy, commonly known as mad cow disease) was diagnosed in the United Kingdom. Originally, the BSE outbreak was largely seen as an agricultural and economic crisis for the farmers who lost their livestock to this fatal disease.³³ In 1996, perceptions changed when scientists linked the consumption of BSE-contaminated beef products to a variant of Creutzfeldt-Jakob Disease (vCJD) in humans. This discovery eclipsed economic and market concerns, and turned BSE into a public health crisis that triggered nothing less than a paradigm shift in food safety management.³⁴ Although it was a nearly a decade later before the first case of BSE in a Canadian cow was diagnosed, fears about the disease travelled across the Atlantic more quickly. At the height of the BSE crisis, culls were imposed and transborder trade suspended. At the same time, alarm bells about food safety more broadly were also being raised in response to a growing number of foodborne disease outbreaks and widespread food recalls. For example, an E. coli outbreak from undercooked hamburgers from the fast-food restaurant Jack-in-the-Box in the United States in 1993, infected 732 people with the Escherichia coli O157:H7 bacterium. The outbreak was widely publicized and particularly heartbreaking because many of the victims were children, four of whom died.³⁵

Also in 1993, the Organization for Economic Co-operation and Development (OECD) prepared a working definition of food safety with a starting premise that there should be a "reasonable certainty that no harm will result from intended uses under the anticipated conditions of

 ³³ Marcus Carson, "Mad Cows, Polluted Poultry, and the Transformation of EU Food Policy" in Tom R Burns, Dolores Calvo & Marcus Carson, eds, *Paradigms in Public Policy: Theory and Practice of Paradigm Shifts in the EU* (Frankfurt: Peter Lang, 2009) 171 at 185.
³⁴ *Ibid* at 188.

 ³⁵ M Satin, "History of Food Safety and Related Sciences: History of Foodborne Disease – Part IV – Modern Times (CE 1900–Present Day)" in Yasmine Motarjemi, ed, *Encyclopedia of Food Safety*, (Elsevier, 2013) 15 at 19.

consumption".³⁶ This definition was subsequently adopted by the Codex Alimentarius Commission in 1997 as the assurance that food for human consumption "will not cause harm to the consumer when it is prepared and/or eaten according to its intended use."³⁷ In the years that followed, new principles and procedures of food safety management were introduced in both Canada and the United States to ensure this reasonable freedom from harm, and to meet the challenges of increasingly complex and industrialized food supply chains.

Since the late 1990s, food safety reforms have emphasized harmonization and standardization of practices across jurisdictions, reliance on evidence-based risk assessments to inform policy, and the importance of strengthening channels of communication between government, industry and consumers. In Canada, this began in 1997 with the creation of the Canada Food Inspection Agency, bringing together the previously separate food safety and inspection programs of Health Canada, Agriculture and Agri-Food Canada, and Oceans and Fisheries under one federal department (although it would take another 20 years to consolidate the mosaic of commodity-specific legislative and regulatory instruments they brought with them into the new *Safe Food for Canadians Act*). Also in 1997, the United States government launched the National Food Safety Initiative, in a similar effort to coordinate the activities of several federal agencies, including the Food and Drug Administration (FDA), the Center for Disease Control and Prevention (CDC), the Environmental Protection Agency (EPA), and the Department of Agriculture (USDA).

At the international and transnational level, harmonization and standardization were becoming more important as global food markets grew. One of the most significant developments in global food governance in recent decades was the 1995 negotiation of the WTO Agreement on Sanitary and Phyto-Sanitary Measures (SPS Agreement) and the Technical Barriers to Trade Agreement (TBT Agreement) which require domestic food safety regulations to be based on scientific principles, risk assessments supported by scientific evidence, and where possible, coordination

 ³⁶ OECD, Safety Evaluation of Foods Produced by Modern Biotechnology – Concepts and Principles (Paris: OECD, 1993) at 10, online: <www.oecd.org/env/ehs/biotrack/41036698.pdf>.
³⁷ Codex Alimentarius Commission, Recommended International Code Of Practice General Principles Of Food Hygiene, CAC/RCP 1-1969, Rev 3 (Rome: FAO/WHO, 1997).

with internationally recognized standards, such as those set out in the *Codex Alimentarius*. Since food standards can be either trade-enhancing (e.g., market levelling) or trade-distorting (e.g., protectionist), food safety regulations are scrutinized for their scientific justification and economic efficiency, and limited to those necessary to protect human, animal or plant life.³⁸ States must also refrain from designating local agricultural products or methods of production as special, or deserving of preferential treatment or subsidies, contrary to longstanding traditions of agricultural exceptionalism, especially in Europe.³⁹

Michelle Everson and Ellen Vos describe the privileged place of science in the WTO framework and the global food safety regulatory landscape more broadly as a function of the "politicisation [sic] of the scientific executive function" in risk management.⁴⁰ This politicization of science, or "scientisation" as they call it, is based on the rationalization of the risk assessment and risk management functions of the executive. It can lead, they argue, "to obscure and insensitive decision making at the level of the simple application of science to complex social relations, and one which might, furthermore, deny its own normative underpinnings or commitment to positive values such as human health."⁴¹ It is precisely because a philosophy of scientisation serves to mask the inevitable normative contestation at the heart of food safety risk management that it has been foundational to cooperative and coordination efforts in both the Canadian and

³⁸ See Maidana-Eletti, *supra* note 14 at 3.

³⁹ See generally Grace Skogstad, "Ideas, Paradigms and Institutions: Agricultural Exceptionalism in the European Union and the United States" (1998) 11:4 Governance at 463 {Skogstad, "Agricultural Exceptionalism"]; Carsten Daugbjerg & Alan Swinbank, *Ideas, Institutions, and Trade: The WTO and the Curious Role of EU Farm Policy in Trade Liberalization* (Oxford: Oxford University Press, 2009).

⁴⁰ Michelle Everson & Ellen Vos, "The scientisation of politics and the politicization of politics" in Michelle Everson & Ellen Vos, eds, *Uncertain Risks Regulated*, Law, Science and Society (New York: Routledge, 2009) 1 at 6. In addition to the term scientisation, scholars also refer to the concept of scientism: see e.g. Maki Hatanaka, "Assessing rule-based governance mechanisms in an era of scientism" (2010) 25:3 J Rural Soc Sciences 141.

⁴¹ Everson & Vos, *supra* note 40 at 6.

international arena.⁴² Grace Skogstad argues that the combined effect of heightened consumer awareness of food safety issues and state commitments to trade liberalization and the removal of non-tariff barriers to trade have "strengthened the authority of science as a basis for food safety regulation."⁴³ However, in spite of the sustained focus on strengthening food safety governance with principles of sound science, contamination and foodborne disease outbreaks persist.

During the early 2000s, a number of regulatory reforms were introduced across Canada following a series of highly publicized outbreaks including the Walkerton E. Coli scandal in 2000, the BSE crisis of 2003-2005 and the Aylmer meat plant incident also in 2003. In 2004, British Columbia enacted new *Meat Inspection Regulations*⁴⁴ under the province's *Food Safety Act*⁴⁵, phasing out unlicensed abattoirs and imposing strict food safety management requirements on provincially registered abattoirs. In Ontario, abattoir regulations, which were already among the strongest in Canada, were further strengthened with the adoption of the *Food Safety and Quality Act*⁴⁶ and the *Meat Regulation*⁴⁷ in 2005. In Quebec, similar reforms were introduced in 2009 with the *Act to Regularize and Provide for the Development of Local Slaughterhouses and to Amend the Food Products Act*⁴⁸, mentioned in the introduction to this chapter.

Sadly, the 2008 Listeria outbreak in a Maple Leaf plant in Toronto, which spanned five provinces and resulted in 57 human illnesses and 23 deaths, revealed ongoing gaps in federal food safety

⁴² Grace Skogstad, "Multilevel Regulatory Governance of Food Safety: A Work in Progress" in Bruce Doern & Robert Johnson, eds, *Rules Rules Rules Rules: Multi-Level Regulatory Governance* (Toronto: University of Toronto Press, 2006) 157 at 159 [Skogstad, "Multilevel Regulatory Governance"].

⁴³ *Ibid* at 174.

⁴⁴ Meat Inspection Regulation, BC Reg 349/2004 [BC Meat Inspection Regulation].

⁴⁵ Food Safety Act, SBC 2002, c 28 [BC Food Safety Act].

 ⁴⁶ Food Safety and Quality Act, 2001, SO 2001, c 20 [ON Food Safety and Quality Act, 2001].
⁴⁷ MEAT, O Reg 31/05 [ON Meat Regulations].

⁴⁸ Act to regularize and provide for the development of local slaughterhouses, CQLR c R-191 [QC Act to regularize and provide for the development of local slaughterhouses].

management, including problems with the CFIA's inspection systems, and coordination issues between responsible agencies, departments, and industry. In 2012, the federal government renewed its commitment to food safety management with the introduction of the *Safe Food for Canadians Act* (SFCA).⁴⁹ That same year, an E.Coli outbreak resulted in the recall and disposal of 12 million pounds of meat products, the largest recall of beef products in Canadian history.⁵⁰

The *Safe Food for Canadians Act* and its corresponding Regulations⁵¹ are the most recent articulation of the tendency towards regulations based on evidence of risk and prevention-focused requirements. The Regulations were finalized in 2018 and the Act came into force in January 2019. In the background documents leading up to their publication, the CFIA emphasized that one of the objectives of the new Regulations is to consolidate what was previously regulated under 14 separate regulations "into a single and more outcome-based food regulation under the *Safe Food for Canadians Act.*"⁵² Strengthening preventive food safety oversight programs is consistent with international approaches to science-based standards for food safety, such as the *Codex Alimentarius*' promotion of Hazard Analysis and Critical Control Point (HACCP) principles to identify and control hazards, and the associated regulations under the American *Food Safety Modernization Act* introduced in 2012.⁵³

⁴⁹ Safe Food for Canadians Act, supra note 6.

⁵⁰ Government of Canada, "Safe Food for Canadians Regulations: Regulatory Impact Analysis Statement" (2017) C Gaz I, 260 [Government of Canada, "Regulatory Impact Analysis"]; see also André Corriveau, Ronald John Lewis & W Ronald Usborne, *Independent Review of XL Foods Inc. Beef Recall 2012* (Ottawa: Canadian Food Inspection Agency, 2013).

⁵¹ *Supra* note 6.

⁵² Government of Canada, "Regulatory Impact Analysis", *supra* note 50 at 1.

⁵³ See for example, Robert Buchanan, *Moving from Hazard-based to Risk-based Microbial Food Safety Systems to Promote Public Health and Foster Fair Trade Practices* (San Diego: Institute on Science for Global Policy, 2011); In the Australian context, see James Smith, Kirstin Ross & Harriet Whiley, "Australian Food Safety Policy Changes from a 'Command and Control' to an 'Outcomes-Based' Approach: Reflection on the Effectiveness of Its Implementation" (2016) 13:12 Intl J Environ Res Public Health.

Between the increasing role that scientific expertise plays in the design of food safety regulations and the severity of the risk we now understand is linked to contaminated meat products, 21st century food safety governance in now firmly rooted in a philosophy of scientism. The scientisation of food safety creates a relatively objective and rigorous framework for assessing risks, while also testing the validity of other discourses (political, social, or ethical), and it can also be deployed to unveil otherwise hidden motivations such as trade protectionism or health surveillance policies.⁵⁴ At the same time, this scientisation has been accompanied by a corresponding retreat of morality and ethics from policy discussions and regulatory design of prevention-control requirements. This is not to say that the moral and ethical questions about what constitutes an acceptable level of risk or how risk should be regulated are no longer relevant. They continue to inform, and are an essential element in food safety governance. However, their contributions tend to be concealed. The decision-making process is increasingly bifurcated. Within this new system of regulatory governance, critiques of scientific-based requirements on non-scientific grounds are dismissed. The scientific rationality of food safety governance may either be insensitive to ethical values and social realities, or perceive them as extraneous to the decision-making process and thus suggest that their significance is better suited elsewhere.55

1.4 Food safety, technocratic governance and the myth of objectivity

Contemporary food safety regulations' careful grounding in the scientific discourse of risk assessments and mechanical objectivity (i.e., following the rules)⁵⁶ obscures the deeply political and moral dimensions of food law and policy, including whose voices are heard at the policy table and how we decide what constitutes good food. The privileged place of food safety and quality

⁵⁴ See Everson & Vos, *supra* note 40 at 12.

⁵⁵ See *ibid* at 14.

⁵⁶ See Theodore M Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton, NJ: Princeton University Press, 1995), cited in Hatanaka, *supra* note 40 at 144.

standards in food governance forcefully and repeatedly perpetuates a particular set of values about agri-food systems more generally through frequent reference to scientific knowledge and expertise. However, despite the widespread authority of science as the foundation of food safety regulations, scientific knowledge, especially in the field of human health is often contested.⁵⁷

Health is a cultural concept and a moral discourse.⁵⁸ There is a socio-cultural process through which dietary health and nutrition facts attain what Charlotte Biltekoff describes as "their authority and their seeming naturalness."⁵⁹ Indeed, the anthropologist Sydney Mintz notes that "[p]eople eat just about anything that won't kill them, and even a lot of things that will."⁶⁰ Good health is a (subjective) factor that informs dietary choices, but it is not the only one. What constitutes healthy food, or food that is safe to eat varies over time and across space. Foods that are known to be unsafe may still be eaten and even celebrated because of their cultural significance or simply because they taste good. Moreover, determinations of food safety are not necessarily more objective than other determinations of quality and desirability. Even if food safety could be defined in the abstract, no regulatory body would design a zero-risk food system. First, to do so would be impossible - this would mean eliminating most of the foods we consume regularly from our supply chain. Second, to do so would be cost prohibitive - testing would be required at every step along the supply chain and the inspection costs would be extraordinary. Food safety and its regulation in our modern food system are thus more appropriately understood as providing the assurance that consumers will be protected from *unacceptable* levels of risk. Determinations of what constitutes acceptable levels of risk are not neutral

⁵⁷ See George G Katchatourians, "How Well Understood is the 'Science' of Food Safety?" in P Phillips and R Wolfe, eds, *Governing Food: Science, Safety and Trade* (Montreal: McGill-Queen's University Press, 2001) at 21.

 ⁵⁸ See generally Charlotte Biltekoff, *Eating Right in America: The Cultural Politics of Food and Health* (Durham, NC: Duke University Press, 2013) at 5.
⁵⁹ Ibid.

⁶⁰ Sidney W Mintz, *Tasting Food, Tasting Freedom: Excursions into Eating, Culture, and the Past* (Boston: Beacon, 1996) at 5.

exercises, they are complex policy decisions involving trade-offs informed by socio-cultural preferences, economic priorities, geography, and politics.⁶¹

Complex policy decisions are ill-suited to the kind of food safety scientism described in the previous section. While I am attentive to the risks of generalizing or exaggerating the impact of the scientisation of food law, the authority given to science in contemporary food safety standards is significant. Whereas scholars working within the tradition of science and technology studies may be attentive to the ways that technology and scientific expertise interact with other forms of knowledge, the narratives emanating from the agencies designing and implementing food safety regulations are less interdisciplinary. In an environment where the legitimacy of regulations is premised on their objectivity and whether they are science-based or not, food safety governance becomes highly technocratic in nature.⁶² Alasdair MacIntyre describes technocratic governance as the expression of a claim to justified authority based on expertise of "a domain of morally neutral fact", the objectivity of which supports the application of "law-like generalizations [...] to particular cases derived from the study of this domain."⁶³ In other words, it reflects a mode of governance in which bureaucrats take on the role of "scientific managers of social change" and invoke their competency on the basis of their possession of a specific kind of knowledge.⁶⁴ The technocratic expert deploys scientific and social scientific knowledge to justify their actions, while carefully distinguishing them from anything that could be considered subjective preferences. This appeals to our desire for certainty in the face of complex policy problems. It also aligns with the objectives of bureaucratic organizations that place a premium on efficiency and effectiveness. MacIntyre describes this managerial mindset, or bureaucratic rationality, "as the rationality of matching means to ends economically and efficiently."65

⁶¹ See Ferrari, *supra* note 14; Skogstad, "Multilevel Regulatory Governance", *supra* note 42 at 170.

⁶² See e.g. Hatanaka, *supra* note 40.

⁶³ Alasdair C MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind: University of Notre Dame Press, 2007) at 86.

⁶⁴ See *ibid*.

⁶⁵ *Ibid* at 25.

Today, science continues to push the boundaries of what food safety management systems can do. We can now use DNA testing to investigate food fraud, and chemical intervention techniques, such as chlorine treatments and irradiation, to ensure microbiological food safety.⁶⁶ As new technologies create the possibility for novel products such as *in vitro* meat or insect-based proteins, there continue to be questions about whether these products should be permitted and subsequently regulated or whether they should be prohibited *ab initio*. However, while bureaucratic rationalities and technocratic governance aspire to be value neutral, the process of risk analysis (in the case of food safety, but also generally) necessarily has a normative dimension. From the scientific risk assessments themselves, to the political and economic decisions that inform risk management and risk communication, risk regulation is a normative exercise.⁶⁷ The anthropologist Mary Douglas recognized this years ago, noting the curious way in which cultural processes and institutional procedures support some perceptions of danger but not others.⁶⁸ What is perceived as a risk is connected with "legitimating moral principles" and thus we cannot talk about acceptable levels of risk without analyzing the cultural system in which these decisions are being made.⁶⁹

The protracted debates about the safety of genetically modified organisms (GMOs) and the appropriate use of antibiotics and hormone treatments for livestock are instructive in this regard. While the European Union has repeatedly cited food safety concerns to justify import restrictions on these products, exporting countries argue that there is no scientific evidence to support this

⁶⁶ For a survey of current and future intervention trends in food safety management, see J H Chen et al, "Intervention Technologies for Ensuring Microbiological Safety of Meat: Current and Future Trends" (2012) 11:2 Comprehensive Revs Food Science & Food Safety 119.

⁶⁷ See generally Richard V Ericson & Aaron Doyle, eds, *Risk and Morality* (Toronto: University of Toronto Press, 2003); see also Ferrari, *supra* note 14.

⁶⁸ See Mary Douglas & Aaron Wildavsky, *Risk and Culture* (Berkeley: University of California Press, 1983).

⁶⁹ Ibid at 67, 82.

claim.⁷⁰ On the surface, the World Trade Organization (WTO) trade disputes about these restrictions are about the appropriate use of the precautionary principle in cases of scientific uncertainty under international trade law and the extent to which food safety claims are in fact veiled attempts at economic protectionism. However, sticking to the surface fails to capture other concerns driving these debates, such as conflicts between opposing social, cultural, and moral values around what constitutes good food and how food systems should be managed. This is not to say that conflicting scientific principles and trade protectionism are not part of the problem. Rather, by narrowing the scope of what is considered a legitimate objective of food safety governance, the standard discourse around these disputes ignores the inherent normativity of risk.

Similarly, in the context of current Brexit negotiations, the issue of chlorine washes for poultry is the subject of heated debate between American producers who want access to the British market and British producers and consumers who disapprove of this method of sterilization.⁷¹ Chlorinated chicken is chicken that has been rinsed in a strong chlorine solution to kill microorganisms that may contaminate the surface of the carcass during slaughter and evisceration, including harmful bacteria such as *Salmonella* and *Campylobacter*. Chlorine washes are permitted in the United States but not in the EU. For this reason, American chicken has been

⁷⁰ See e.g. European Communities – Measures Concerning Meat and Meat Products (Hormones), WTO Docs DS26, DS48; European Communities – Measures Affecting the Approval and Marketing of Biotech Products, WTO Docs DS291, 292, 293.

⁷¹ George Eustice, "The UK can't accept backward US food standards – or chlorinated chicken", *The Guardian* (6 March 2019), online:

<www.theguardian.com/commentisfree/2019/mar/06/us-chlorinated-chicken-trade-dealagriculture>; Jay Rayner, "Chicken safety fear as chlorine washing fails bacteria tests", *The Observer* (26 May 2018), online: < www.theguardian.com/world/2018/may/26/chicken-healthfear-chlorine-washing-fails-bacteria-tests-brexit-salmonella-listeria>; Alice Thomson, "It's cruelty not chlorine that should worry us", *The Times* (6 March 2019), online: <www.thetimes.co.uk/article/it-s-cruelty-not-chlorine-that-should-worry-us-8b7rgk6r2>; Erik Millstone, Tim Lang & Terry Marsden, "Will the British public accept chlorine-washed turkey for Christmas dinner, after Brexit?" (2017), online (pdf): *Food Research Collaboration* <foodresearch.org.uk/publications/food-brexit-chlorine-washed-turkey-for-christmas>.

banned in the EU for the past twenty years. Now, with Brexit, questions are being raised about whether this previously restricted meat will be introduced into the British food supply. As in the case of GMOs and beef hormones, the issue of chlorine washes is less about the safety of the process itself, and more about correlative concerns. Simon Dawson notes that the EU ban on chlorinated chicken is more precautionary than evidence-based and is used as a deterrent to unsafe industry practices.⁷² In the absence of strong regulatory welfare protections for poultry in the United States, birds are overcrowded in facilities with limited light and ventilation and thus susceptible to risks of disease. Poor hygiene standards at abattoirs and processing facilities also contribute to increased risks of contamination. However, chlorine washes address these risks ex post facto. In the EU, minimum standards for chickens kept for meat production help ensure that risks of contamination are reduced at the outset.⁷³ Regulatory hygiene requirements that are poultry-specific for slaughter and processing are also intended to prevent risks of contamination rather than relying on chemical decontamination after slaughter and evisceration. The current debate about whether the UK should open its doors to American poultry is therefore not strictly about safety, but the way in which a particular process could enable less humane methods of production.

These are just two examples of the importance of acknowledging the normativity of food safety governance. The rest of this dissertation focuses on examples from Ontario, Quebec and Vermont in order to reflect in greater depth on how food safety regulatory design hinders or supports the development of more sustainable and ethical food systems.

⁷² Simon Dawson, "Chlorine-washed chicken Q&A: food safety expert explains why US poultry is banned in the EU" *The Conversation* (2 August 2017), online: *The Conversation* < theconversation.com/chlorine-washed-chicken-qanda-food-safety-expert-explains-why-us-poultry-is-banned-in-the-eu-81921>.

⁷³ EC, Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production, [2007] OJ, L 189/19.

1.5 Project outline

Eating, writes the American anthropologist Sydney Mintz, "is never a 'purely biological' activity", so attention to the foods we eat, and the way we choose, prepare, serve and consume them provides "[...] a remarkable arena in which to watch how the human species invests a basic activity with social meaning."⁷⁴ This, I believe, is no less true with respect to the way that food is regulated. This project explores the regulation of risk in the context of food safety governance. More specifically, it focuses on the ways that socio-cultural and moral perspectives about how animals should be raised and slaughtered intersect with determinations of acceptable risk in food safety regulatory design in three neighbouring jurisdictions: Ontario, Quebec, and Vermont. The purpose of this inquiry is twofold. First, it seeks to problematize the aura of scientific neutrality underlying contemporary food safety regulations, or at the very least that food safety governance somehow less subjective than other areas of food law and policy. Second, in addition to describing food safety regulations as they are, it advances an argument about what they ought to be and how this can be achieved. Through of comparison of animal slaughter and meat processing regulations in different jurisdictions, the project highlights the complexity and contingency of food safety governance. In attempting to clarify the policy ends of existing regulations, I aim to challenge the discourse of certainty and inevitability underlying much of contemporary food safety governance and to propose instead a more contextually-driven approach to the regulation of good food systems.

In Chapter 2, I set out the theoretical framework underlying the project. I begin by introducing the concepts of phronesis (the Aristotelian virtue of good judgment) and deep compromise (Henry Richardson's expression to illustrate a kind of public reasoning about policy ends). Together, these concepts provide the foundation for what I describe as a theory of phronetic food law. The process of developing a distinct theory for this project was the result of a series of unsatisfactory attempts to situate it within existing frameworks and coming to the realization

⁷⁴ Mintz, *supra* note 60 at 7.

that there is something about food and its regulation that warrants its own theoretical approach. This is not to suggest that the study of food safety governance could not be achieved by engaging with existing scholarship within deliberative democracy, systems theory, second-order diversity, or critical legal studies to name just a few. However, in light of the movement in recent years towards the establishment of Food Law & Policy as a distinct discipline in law, I was committed to contributing to the otherwise non-existent theoretical foundations of the field in addition to engaging with its substantive subject matter.

In Chapter 3, the methodological approach of the project is presented. Drawing a parallel with Chapter 2's theoretical framework of phronetic food law, this chapter introduces the methodologies of the normative case study and phronetic social science, which are also grounded in the ethical project of good judgment. This section explains how these methodologies inform this project's research objectives, with particular emphasis placed on the significance of case studies to analyze societal goals and values in the policy-making process. As a methodological approach, both the normative case study and phronetic social science more broadly are well suited to the task of working through value conflicts. The chapter then presents my personal interest in this project. In positioning myself in relation to my research, this section engages with a series of ethical considerations underlying this project and clarifies the steps I undertook to uphold its integrity. The chapter concludes with a brief description of the reasons for my choice of case studies (Ontario, Quebec, and Vermont), and an explanation of the methods employed for data collection.

In Chapter 4, the regulatory framework for each case study is presented. Although the project is focused on three jurisdictions, in fact five regulatory regimes are discussed because each jurisdiction is also subject to federal requirements for any meat products destined for interprovincial/state trade and for export.

Following this overview of each regulatory regime, Chapter 5 provides a preliminary discussion of the results from my interviews. In this chapter, emphasis is placed on insights that arose in the

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course of speaking to policy advisors, producers, processors, retailers and civil society organizers that challenged my original hypothesis and which complicate some of the narratives about the scientisation of food safety governance that are presented earlier on in the project. First is the range of opinions about how outcomes should be used to inform policy and regulatory design. Second is the impact of economic structures on the ways that food safety requirements are experienced. And third is the intersection between food safety, animal welfare and religious accommodation in the creation of regulatory exemptions for slaughter practices.

Chapter 6 provides an analysis of the case studies presented in Chapter 4 and interview results presented in Chapter 5, considering them from the perspective of a theory and methodology that are grounded in phronetic judgment. In order to advance this analysis, the chapter begins with a short review of the theory of phronetic food law presented in Chapter 2. Following this review, the rest of the chapter engages critically with the ways that food safety risk analysis paradigms influence, and are influenced by, trends towards outcome-based regulations, market forces in food system governance, and accommodations for ritual slaughter. The purpose of this analysis is twofold. First, it seeks to illustrate the contingency of food safety objectives on a variety of social, moral, economic and political factors that are themselves context-specific and subject to change. Second, it evaluates the relative strengths or weaknesses of different systems to regulate the better choice. In so doing, an argument is made that food safety regulations should not be mistaken as a final policy end in themselves.

1.6 Conclusion

There is a worrying simplification in legal scholarship and in policy discussions about what constitutes food safety. In particular, the focus on the scientific dimensions of food safety governance suggests a degree of technocratic neutrality to regulatory requirements that is unfounded. Speaking about the role of the humanities in responding to current environmental

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crises, Margaret Atwood emphasized that humans are symbolic thinkers.⁷⁵ We rely heavily on science to solve our problems, but science, she explained, is a tool that is wielded by humans. The way in which we use it, and the problems we use it to solve, reflect the narratives we share. Food safety governance can, and indeed does trigger important social, moral, political and economic considerations. This project highlights how these factors are reflective of particular contexts, time, and place, and seeks to make visible the intersection of morality and science in contemporary food safety governance and any perspective about what constitutes good food.

⁷⁵ Margaret Atwood, "Environmental Crisis & the Humanities" (Beatty Memorial Lecture delivered at McGill University, October 16, 2016) [unpublished].
2.1 Introduction

The previous chapter provided a brief history of modern food safety governance, with an emphasis on North American food systems. In particular, it highlighted how contemporary food safety regulations draw more explicitly on scientific knowledge and technical expertise than 19th and early 20th century regulations which focused on food adulteration, tampering and fraud. However, the chapter also challenged the narrative that modern food safety governance operates independently from the subjective or interest-based preferences of consumers, producers, or politicians. To suggest otherwise is both inaccurate (it ignores the range of non-scientific factors and values that inform policy development and enforcement) and inadequate (it is ill-equipped to respond to the complexity of our food systems).

This chapter lays out the theoretical framework of this dissertation. Within legal scholarship, the normative dimension of food safety regulation is underexplored.¹ In order to properly analyze the animal slaughter and meat processing requirements that are the subject of this dissertation, I develop a theory of "phronetic food law" to engage with the full range of values that shape the collection of laws and regulations that govern how animals are raised and slaughtered for meat.

¹ A notable exception in this regard is Matteo Ferrari, *Risk Perception, Culture, and Legal Change: A Comparative Study on Food Safety in the Wake of the Mad Cow Crisis* (Farnham, Surrey: Ashgate, 2009). However, while Ferrari is particularly attentive to cultural perceptions of risk and behavioural psychology, less emphasis is placed on broader ethical and moral questions about what food systems should look like. Other important contributions in this area include Daniel Sperling, "Food Law, Ethics, and Food Safety Regulation: Roles, Justifications, and Expected Limits" (2009) 23:3 J Agric Environ Ethics 267; Michelle Everson & Ellen Vos, eds, *Uncertain Risks Regulated*, Law, Science and Society (New York: Routledge, 2009) in the European context; and Marsha A Echols, *Food Safety and the WTO: The Interplay of Culture, Science and Technology* (The Hague: Kluwer Law International, 2001) in the context of international trade.

The chapter begins by situating this novel framework within existing scholarship, scholarship that provided the foundations for this work. The following section compares the tensions inherent in contemporary food safety governance with the Sophoclean tragedy *Antigone*. At the heart of both is a conflict of values. In order to avoid tragedy in the contemporary regulatory context, I argue that regulatory design and enforcement should draw on the concept of phronesis, an ancient Aristotelian virtue. The following section explains how phronesis, a contextual, constitutive and reflexive approach to deliberation, is uniquely suited to food system governance. In the final three sections of the chapter, I develop the theory of phronetic food law, which refers both to the object of law and policy-making as well as a particular process of deliberation. First, I propose a phronetic food law as substantive). Then, I link the theory of phronetic food law to scholarship on epistemological pluralism and constitutiveness. Finally, I describe how phronetic food law can be achieved through deep compromise (i.e., phronetic food law as procedural).

2.2 Review of the literature

Inquiries into the normative dimension of food safety are common in the fields of anthropology, sociology, geography and the interdisciplinary field of food studies.² In her seminal work *Purity and Danger*, the anthropologist Mary Douglas describes rituals of purity and impurity, as well as culturally constructed concepts of pollution and taboos in different societies, including with respect to food and diet.³ Impurity, she explains, implies two conditions: "a set of ordered

² See e.g. Charlene Elliott, *How Canadians Communicate VI: Food Promotion, Consumption, and Controversy* (Edmonton: Athabasca University Press, 2016); Alison Blay-Palmer, *Food Fears: From Industrial to Sustainable Food Systems* (Burlington: Ashgate, 2008); Brenda L Beagan & Gwen E Chapman, *Acquired Tastes: Why Families Eat the Way They Do* (Vancouver: UBC Press, 2015); Jessica Mudry, *Measured Meals: Nutrition in America* (Albany: State University of New York Press, 2009).

³ See Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London: Routledge & Kegan Paul, 1966).

relations and a contravention of that order."⁴ Dirt, or our perception of it, can only exist *in relation* to a system. We know what it is in relation to what it is not. Accordingly, purity entails imposing order on that which is perceived as disorderly. It too can only be understood within a particular system.

More recently, scholarship in philosophy and religious studies has inquired into the ethics of the kinds of foods we should be eating and how they are produced.⁵ Within Science and Technology Studies (STS), scholarship has focused predominantly on food safety concerns and perceptions of risk related to agricultural biotechnology.⁶ Despite differences between regulatory approaches to uncertain or novel risks as in the case of biotechnology, and known risks as in the case of animal slaughter and processing activities, the contributions of STS scholarship are helpful for their insights into the relationship between science and social values in law and policy. In particular, they establishe that regulatory science⁷ combines scientific reasoning with social and political judgment.

⁴ See *ibid* at 35. For a complementary perspective on the binary structures historical communities developed to create order in their world, see Claude Lévi-Strauss, *The Raw and the Cooked (Mythologiques)*, translated by John Weightman & Doreen Weightman (London: J Cape, 1969).

⁵ See e.g. Conrad Brunk & Harold Coward, eds, *Acceptable Genes?: Religious Traditions and Genetically Modified Foods* (New York: SUNY Press, 2009); JM Dieterle, *Just Food: Philosophy, Justice and Food* (New York: Rowman & Littlefield, 2015); see also James Hamblin, "Purity Through Food: How Religious Ideas Sell Diets", *The Atlantic* (1 May 2015), online: <www.theatlantic.com/health/archive/2015/05/the-puritanical-approach-to-food/392030/>; J Johnston, M Szabo & A Rodney, "Good food, good people: Understanding the cultural repertoire of ethical eating" (2011) 11:3 J Consumer Culture 293.

⁶ See e.g. David E Winickoff & Douglas M Bushey, "Science and Power in Global Food Regulation: The Rise of the Codex Alimentarius" (2010) 35:3 Science, Technology & Human Values 356; Sheila Jasanoff, *Science and Public Reason*, Science in Society Series (New York: Routledge, 2012) at 23; Aarti Gupta, "When Global is Local: Negotiating Safe Use of Biotechnology" in Sheila Jasanoff & Marybeth Long Martello, eds, *Earthly Politics: Local and Global in Environmental Governance* 128.

⁷ Regulatory science refers to the process of applying scientific knowledge to the policy and regulatory making process for the benefit of public health and safety. The U.S. Food and Drug Administration describes regulatory science as the science of developing new tools, standards and approaches to assess the safety, efficacy, quality and performance of regulated products.

The relationship between science and social values in the context of food safety regulations has also been explored elsewhere, for example in geography⁸ and nutrition.⁹ Political economists and rural sociologists have challenged the neutrality of science-based food safety policies and standards, highlighting the ways that they are influenced by political, economic and cultural realities.¹⁰ Qualitative and empirical studies illustrate the political motivations behind recent food safety reforms, which are often linked to responding to consumer demand and calming fears fueled by highly mediatized food scares.¹¹ Others have documented non-scientific values and food preferences of consumers and producers that may either be understood as conflicting with

science-based decision-making process that is employed to fulfill the responsibilities of a public health agency. See Department of Health and Human Services, "Advancing Regulatory Science for Public Health" (2010), online (pdf): US Food and Drug Administration <fda.gov/downloads/ScienceResearch/SpecialTopics/RegulatoryScience/UCM228444>. ⁸ See e.g. Christiana Miewald, Sally Hodgson & Aleck Ostry, "Tracing the unintended consequences of food safety regulations for community food security and sustainability: smallscale meat processing in British Columbia" (2015) 20:2 Local Environment 237; Hillary C Barter, Slaughterhouse Rules: Declining Abattoirs and the Politics of Food Safety Regulation in Ontario (Master of Arts, Department of Geography, University of Toronto, 2014) [unpublished]. ⁹ See e.g. Wanda Leigh Martin, Food Gone Foul? Food Safety and Security Tensions Faculty of Land and Food Systems, University of British Columbia, 2014) [unpublished]. ¹⁰ See e.g. Ken Hatt & Kierstin Hatt, "Neoliberalizing Food Safety and the 2008 Canadian Listeriosis Outbreak" (2012) 29:1 Agriculture & Human Values 17; Jennifer Clapp & Doris A Fuchs, eds, Corporate Power in Global Agrifood Governance (Cambridge, Mass: MIT Press, 2009); Maki Hatanaka, "Assessing rule-based governance mechanisms in an era of scientism" (2010) 25:3 J Rural Soc Sciences 141; Diana Stuart & Michelle R Woroosz, "The Myth of Efficiency: Technology and Ethics in Industrial Food Production" (2011) 26:1 J Agriculture & Environmental Ethics 231; Diana Stuart & Michelle R Worosz, "Risk, Anti-Reflexivity, and Ethical Neutralization in Industrial Food Processing" (2012) 29:3 Agriculture & Human Values 287. ¹¹ See e.g. Charlene Elliott & Josh Greenberg, "Communication, Crisis and Contaminated Meat: A Tale of Two Food Scares" in Charlene Elliott, ed, How Canadians Communicate VI: Food Promotion, Consumption and Controversy (Edmonton: Athabasca University Press, 2016) 253; Colin Sage, "Bending Science to Match Their Convictions': Hygienist Conceptions of Food Safety as a Challenge to Alternative Food Enterprises in Ireland" in Damien Maye, Lewis Holloway & Moya Kneafsey, eds, Alternative Food Geographies: Representation and Practice (Oxford: Elsevier, 2007).

food safety regulations or as offering parallel or complementary perspectives about what food system governance should look like.¹²

Within legal scholarship, engagement with food safety has been more limited. One area where it has received attention is in relation to the rules of international trade. The trade wars between Europe and North America over the regulation of GMOs and growth hormones in meat during the 1990s and early 2000s captured the attention of experts in public and private international law and revealed how entrenched values about our food systems and social perceptions of risk varied widely across continents.¹³ More recently, the subjectivity of food safety regulations has been the focus of scholarship about state control over individual food choices, and regional variation over the perceived safety of, and right to consume, unpasteurized milk.¹⁴ The raw milk debate has created an opening for more sustained reflections about the connections between regulatory science and social and political values in a North American (i.e., non-European) context. For the most part, the literature has focused on two main lines of reasoning: a personal

¹² See e.g. Paul B Thompson, "The Emergence of Food Ethics" (2016) 1:1 Food Ethics 61; Lawrence Busch, "Individual choice and social values: Choice in the agrifood sector" (2014) 16:1 J Consum Cult 124; Christopher Mayes, "An Agrarian Imaginary in Urban Life: Cultivating Virtues and Vices Through a Conflicted History" (2014) 27:2 J Agric Environ Ethics 265; Jose Luis Vivero-Pol, "Food as Commons or Commodity? Exploring the Links between Normative Valuations and Agency in Food Transition" (2017), online: <www.preprints.org/manuscript/201701.0073/v1>; Lisa Chase & Vern Grubinger, *Food, Farms, and Community: Exploring Food Systems* (Durham: University of New Hampshire Press, 2014).

¹³ See e.g. Echols, *supra* note 1; Michael J Trebilcock & Julie A Soloway, *International Trade Policy and Domestic Food Safety Regulation: The Case for Substantial Deference by the WTO Dispute Settlement Body under the SPS Agreement*, (Rochester, NY: Social Science Research Network, 2002); Ferrari, *supra* note 1; Mariela Maidana-Eletti, *Global Food Governance: Implications of Food Safety and Quality Standards in International Trade Law*, Studies in Global Economic Law (Bern: Peter Lang, 2016).

¹⁴ See e.g. Christopher M Anderson, "Striking A Balance: Regulation Of Raw Milk And A New Approach For Indiana" (2014) 11 Ind Health Rev 399; Emily Semands, "Food Choice: Should the Government Be at the Head of the Table?" (2014) 67 Okla Rev 149; Ryan Almy, "State v. Brown: A test for local food ordinances" (2012) 65 Me Rev 789; Catherine Carstairs, Sheilagh Quaile & Paige Schell, "Making the 'Perfect Food' Safe: The Milk Pasteurization debate" in Charlene Elliott, ed, *How Canadians Communicate VI: Food Promotion, Consumption and Controversy* (Edmonton: Athabasca University Press, 2016).

autonomy argument that individuals have (or should have) a right to food choice, and a division of powers argument about the rights of regional authorities to regulate local food systems. Elsewhere, I have suggested that a third line of reasoning that addresses the normativity of food safety regulations can better address fundamental disagreements about mandatory pasteurization.¹⁵

While interest in the legal dimensions of food safety is developing, it is generally treated as a problem to be studied through the lens of a particular sub-discipline, whether that be trade law, constitutional law, tort law, administrative law, religious law, or animal rights, to name a few.¹⁶ Treated this way, food safety serves as a lens through which to illustrate principles or issues in specific legal disciplines, but not as something warranting its own field of inquiry. However, over the past decade, a small but growing community of jurists (professional and academic) have been making the case that regulations and policies that govern the food and beverages we grow, raise, produce, harvest, process, transport, distribute, import, export, advertise, label, buy, sell, share, donate, cook, eat, drink, waste and dispose of are sufficiently interconnected that there should be a space in legal scholarship and practice where the legal dimensions of food can be studied on their own terms.¹⁷ Not only do these jurists believe that the interdisciplinarity of food and agriculture issues warrants its own field of inquiry where these connections can be explored, but also that our relationship with food is sufficiently unique that it requires its own disciplinary

¹⁵ See Sarah Berger Richardson, "Legal Pluralism and the Regulation of Raw Milk Sales in Canada: Creating Space for Multiple Normative Orders at the Food Policy Table" in Mariagrazia Alabrese et al, eds, *Agricultural Law: Current Issues From a Global Perspective*, LITES - Legal Issues in Transdisciplinary Environmental Studies (Cham: Springer, 2017) 211 at 211. ¹⁶ For a helpful review of the historically fragmented treatment of food and agricultural issues in legal scholarship, see Baylen J Linnekin & Emily M Broad Leib, "Food Law & Policy: The Fertile Field's Origins & First Decade" (2014) 2014:3 Wis L Rev 557.

¹⁷ See Peter Barton Hutt, "Food Law & Policy: An Essay" (2005) 1 J Food Pol 1; Linnekin & Leib, *supra* note 16.

lens.¹⁸ While the field of Food Law & Policy is gaining recognition¹⁹, in practice, efforts to establish a common theoretical approach within which research can be framed and debated remain limited. The subject matter is vast but the theoretical underpinnings are sparse. This dissertation thus develops a theoretical framework for conceptualizing food system governance generally, and food safety in particular, within the field Food Law & Policy.

2.3 Deliberating through conflict: lessons from ancient Greece

Food safety governance requires deliberations about what constitute acceptable levels of risk for different foods and transformation processes across the supply chain. This involves negotiating conflicts between the needs of producers and the demands of consumers, between pressure to increase the food supply and to improve its quality, between supporting local economies and respecting global standards, and between human and non-human (animal and environmental) well-being. While the shift over the past few decades towards food safety scientism has

¹⁸ The unique quality of food and its relationship to individual and collective identity is not yet fully developed within food law & literature. One area in which it is forcefully argued is within the right to food and food sovereignty context. For a legal perspective, see Nadia Lambek & Priscilla Claeys, "Institutionalizing a Fully Realized Right to Food: Progress, Limitations, and Lessons Learned from Emerging Alternative Policy Models The Right to Food: Power, Policy, and Politics in the 21st Century" (2015) 40 Vt Law Rev 743; Nadia Lambek & Priscilla Claeys, "Introduction: In Search of Better Options: Food Sovereignty, the Right to Food and Legal Tools for Transforming Food Systems" in Nadia Lambek et al, eds, *Rethinking Food Systems* (Dordrecht: Springer, 2014) 1. Outside of legal scholarship, for a more general discussion on food sovereignty in the Canadian context, see Annette Aurélie Desmarais & Hannah Wittman, "Farmers, foodies and First Nations: getting to food sovereignty in Canada" (2014) 41:6 J Peasant Stud 1153.

¹⁹ In 2016, the American Academy of Food Law & Policy was founded to recognize, promote and improve legal education in the field of Food Law & Policy and encourage academic scholarship within the developing in field: see Academy of Food Law & Policy, "About Us" (2015), online: *American Academy of Food Law & Policy* <www.academyflp.org/about-us>. In 2019, the Canadian Association of Food Law and Policy was founded to provide a forum for legal academics, practitioners and students to develop the field in the Canadian context: see Canadian Association for Food Law and Policy, "About", online: *Canadian Association for Food Law and Policy* <www.foodlaw.ca/caflp/about>.

downplayed the ethical complexity of what makes food acceptable to eat, modern food safety governance continues to engage socio-cultural and moral values, and politico-economic preferences. What values contribute to food safety risk analyses? What values are excluded in the process? How are determinations of risk made and should they be reasoned differently? These are the underlying questions of this dissertation. Together they can be distilled to one overarching question: Of what conflicts is food safety governance (meat inspection requirements in particular) the scene?²⁰

If food safety governance is about working through conflict, it is my view that we can best understand this contemporary challenge by shifting our gaze back more than two thousand years to the Sophoclean tragedy, Antigone. One of the hallmarks of the Greek tragedy is conflict between rival, and equally justifiable, values and virtues. In Antigone, the conflict is between young Antigone who will stop at nothing to bury her fallen brother in accordance with customary burial rites, and the ruler of Thebes, Creon, who has issued an edict to the effect that no soldier who fought and died against him may receive such a burial. Antigone is committed to giving her dead brother the burial to which she believes he is entitled. She defies Creon's edict, claiming to be answerable only to a higher authority. Creon believes he has a duty to preserve the *polis* and maintain order in a city that is just emerging from a brutal civil law. To grant an exception for Antigone would undermine the rule of law and so he refuses. But Antigone is not just any citizen, she is engaged to Creon's son, Haemon. And when Creon sends Antigone to her death, Haemon kills himself. Creon's wife then learns of her son's suicide and kills herself as well. The tragedy of Antigone is the confrontation of competing notions of the good – family honour, loyalty and the rule of law – and the struggle of the characters to reconcile them. Albert Camus sums up the tragedy in one sentence: "Antigone is right, but Creon is not wrong."²¹ Blinded by their certainty

²⁰ This question is an adaptation of the philosopher John Anderson's more general statement "[...] it is through conflict and sometimes only through conflict that we learn what our ends and purposes are," cited in Alasdair C MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind: University of Notre Dame Press, 2007) at 163.

²¹ Author's translation from the French: "Antigone a raison, mais Créon n'a pas tort " in Albert Camus, "Conférence d'Athènes sur l'avenir de la tragédie" in *Essais* (Paris: Gallimard, 1981) at 1705.

of the justness of their respective positions, each fails to recognize the validity of the other's position. Meanwhile, the Greek Chorus laments the absence of reason among the protagonists. In their single-minded insistence on the justness of their position, each ignores how remaining steadfast to their position is self-destructive as well as destructive of the other. Antigone is a sister, but she is also a member of the state. She will die to defend the law of the gods but ignores her equal duty not to break the civil law. Creon is a political ruler, but he is also a father and a husband. He insists on his edict until the very end, even though it results in the death of his wife and son. Ignoring the complexity of their own nature, each fails to recognize that which they should also be honouring. Incapable of good judgment or deliberation, both fall. Antigone dies, and Creon must live with the loss of his family and political defeat.

In his analysis of Hegel's writing on tragedy (Hegel spent nearly 30 years reflecting on and writing about *Antigone*), Mark Roche notes that the best tragedies involve the collision of equally justified conflicting positions.²² Citing Hegel, he explains that it is the justification of each position that lies at the heart of the tragedy:

The original essence of tragedy consists then in the fact that within such a conflict each of the opposed sides, if taken by itself, has justification, while on the other hand each can establish the true and positive content of its own aim and character only by negating and damaging the equally justified power of the other. Consequently, in its moral life, and because of it, each is just as much involved in guilt.²³

This is also echoed in Macintyre's reflections on the Greek tragedy when he explains that Sophocles makes clear that prioritizing one value in a particular instance over another does not exempt the characters from the authority of those they choose to go against and forces his audience to grapple with the tensions between multiple moral truths.²⁴

²² See Mark W Roche, "Introduction to Hegel's Theory of Tragedy" (2006) 1:2 PhaenEx 11 at 15, citing George Wilhelm Friedrich Hegel, *Hegel's Aesthetics: Lectures on Find Art*, translated by Thomas Malcolm Knox (Oxford: Clarendon, 1975) at 15.

²³ See *ibid*, at 12.

²⁴ MacIntyre, *supra* note 20 at 143.

Furthermore, according to Roche, tragedies involve the collision of values that frequently arise during paradigm shifts, including historical conflicts, crises, and transitions.²⁵ When these shifts occur, old ways of thinking or traditional values may be superseded by new ones. Drawing on Hegel's categories of thesis-antithesis-synthesis, Roche describes how an original worldview that exists in a particular time and place may, over time, be replaced by a new one.²⁶ The original worldview, the "thesis", represents a positive concept or truth that works but it is imperfect. The second worldview, the "antithesis", is a reaction to the thesis and it operates either by negating it or standing in opposition to its predecessor. Ultimately, however, the antithesis is also imperfect. With time, both the remnants of thesis and antithesis are unified into a third concept, "synthesis". Synthesis unites all that was good in thesis and antithesis, while eliminating their falsehoods and imperfections.

In *Antigone*, the conflict between Antigone and Creon can be understood as a conflict between a thesis and an antithesis, between ancient custom (divine law) and post-civil war rule of law. If synthesis were achieved in *Antigone*, what would look like? Given the renewed interest in *Antigone* in popular culture today, it is not at all clear that as a society we have decided how resolution between these loyalties and virtues should be achieved. In 2017, Kamila Shamsie, a Pakistani-born novelist living in the UK, published *Home Fire*, a contemporary retelling of *Antigone* in which a young British Muslim women desperately seeks to bury the body of her brother, a "homegrown" terrorist who has gone off to fight ISIS and whose body may not be repatriated to the UK.²⁷ In 2019, Montreal filmmaker, Sophie Desraspe, dazzled critics with her film, *Antigone*, about a young refugee with two brothers, one who is shot and killed by police,

²⁵ See Roche, *supra* note 22 at 12.

²⁶ See *ibid;* see also Julie E Maybee, "Hegel's Dialectics" in Edward N Zalta, ed, *Stanford Encyclopedia of Philosophy*, winter 2016 ed (Stanford: Metaphysics Research Lab, Stanford University, 2016).

²⁷ Peter Ho Davies, "An 'Antigone' for a Time of Terror" (29 September 2017), online: *The New York Times* <www.nytimes.com/2017/09/29/books/review/home-fire-kamila-shamsie.html>.

and another who is arrested and threatened with deportation.²⁸ She attempts, with tragic consequences, to break her surviving brother out of prison. The enduring interest in the tragedy of *Antigone* suggests we have not yet identified a satisfying resolution to this particular conflict. What lessons then can we draw from the idea of tragedy that could improve food safety governance?

One of the overarching questions at the heart of this dissertation is: of what conflicts is food safety governance the scene? To think of food safety governance as a tragedy is to highlight the centrality of conflict between equally justifiable claims in the regulatory decision-making process. Can food be safe while also being affordable? While also ensuring ecological sustainability? While respecting animal welfare? While providing producers and labourers with a decent income? In some cases, reconciling these different objectives will be achievable. In others, the tensions run deeper and will be more difficult, even impossible, to resolve. However, whereas in *Antigone*, the characters blindly insisted on the justness of their claims without regard for the other, this does not have to be the case in food safety governance. Even when confronted with conflicting values about how food should be produced, it is possible to identify better and worse ways of regulating food safety. The rest of this chapter considers what kind of decision-making is required to work through such conflicts and how such deliberation can be achieved.

2.4 The relevance of ancient virtues in modern food safety governance

Historically, rules, regulations and customs around food (what could be eaten and how it must be produced) were inextricably tied to community standards of purity that could simultaneously address the moral, scientific and economic dimensions of food production and consumption. In

²⁸ Marilla Steuter-Martine, "Montreal film Antigone borrows from Greek tragedy, death of Fredy Villanueva" (16 November 2019) online: *CBC News* <www.cbc.ca/news/canada/montreal/montreal-film-antigone-1.5359446>.

this sense, these purity standards embodied all three of Aristotle's intellectual virtues: *phronesis* ("prudence", i.e., practical wisdom, good judgment), *epistemé* ("to know", i.e., analytical or scientific knowledge), and *techné* ("craftsmanship" or "art", i.e., know-how or technical knowledge).²⁹ Epistemé, and to a lesser extent techné, focus on the development of abstract and generalizable principles and seek to produce knowledge from decontextualized experiments. Phronesis, on the other hand, strives to produce socially relevant knowledge that can be used to respond to social problems in a given context. It involves deliberation about values that is oriented towards action (praxis). Aristotle believed that phronesis was the most important of the intellectual virtues because only phronesis has the capacity for nuance and contingency, which are themselves needed to manage human affairs, including the analytical and instrumental rationality of epistemé and techné.³⁰

During the late 19th century and early 20th century, scientific and technological knowledge guided the development and implementation of compositional standards or methods for testing products. But the deeper societal question about what kinds of food to eat and under what circumstances were clearly rooted in normative context. In her work on rituals of purity, Douglas explained how all conceptualizations of dirt are expressions of symbolic systems.³¹ This, she argued, is as true for traditional rules informed by spiritual superstition and religious belief as it is for contemporary hygiene practices that are based on science. Purity can be a positive state or quality (something that is), such as when we say that a person is morally pure or an object is physically pure. It can also be a negative state or quality (something that is not), such as the quality of being unadulterated, free from impurities, or sinless.³² In relation to food, purity draws

²⁹ Aristotle, *Nicomachean Ethics*, Book VI, ed by Robert C Bartlett, translated by Susan D Collins (Chicago: University of Chicago Press, 2012).

³⁰ See Bent Flyvberg et al, eds, *Real Social Science: Applied Phronesis* (Cambridge: Cambridge University Press, 2012).

³¹ See Douglas, *supra* note 3 at 36.

³² The Oxford English Dictionary defines purity along the following lines: 1) a state or quality of moral or spiritual purity; 2) a state or quality of physical purity; and 3) a state or quality of being free from extraneous or foreign elements. See *Oxford English Dictionary*, (Oxford: Oxford University Press, 2000), sub verbo "purity".

on moral and religious conceptions of virtue that intersect with more technical and scientific concerns about physical contamination. And it is always contingent to some degree on the "socially local" context.³³

In Canada, our first food laws were very explicitly about regulating purity, both in terms of the quality of the food itself as well as the moral purity of those producing and consuming it.³⁴ As described in the previous chapter, they drew on the federal government's criminal power to protect the public from adulterated products which were thought to be contributing to intemperance, and by extension, urban crime and mental illness.³⁵ Moral and molecular impurity were two sides of the same coin, where the vices of producing, distributing, and consuming adulterated products all necessitated state and police intervention. Around the same time, Protestant social reformers in English Canada focused their sights on dairy products as a vehicle to teach the urban poor about proper hygiene and diet, which in turn led to the introduction of compositional standards for milk.³⁶ Early food safety laws in Canada thus drew on socio-cultural, political, economic, and moral perspectives about good food and good behaviour to legislate compositional standards and criminalize adulteration, tampering, and fraud.

In the decades that followed, unprecedented innovations in production methods introduced new risks along the supply chain, while new techniques for refrigeration and storage, as well as improved capacity to detect contaminants and pathogens ushered in a new era of food safety regulations. Growing global agricultural export markets also created a need for standardized

³³ MacIntyre notes that "there is no way to possess the virtues except as part of a tradition in which we inherit them and our understanding of them from a series of predecessors in which series heroic societies hold first place." See MacIntyre, *supra* note 20 at 127.

³⁴ See Aleck Samuel Ostry, *Nutrition Policy in Canada, 1870-1939* (Vancouver: UBC Press, 2011); Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland & Stewart, 2008). For a review of some of the specific laws that were enacted at this time see the discussion in section 1.2 of Chapter 1.

³⁵ See Ostry, *supra* note 34.

³⁶ See Valverde, *supra* note 34.

quality assurances.³⁷ Since the early 2000's, provincial and federal authorities have developed a series of food safety regulations to strengthen public confidence in our food supply. Many of these regulations are responses to specific food scares (eg., the BSE crisis during the late 1990s) but their proliferation also reflects a more general trend towards the scientization of food law and policy. This new wave of food safety governance refers less to concepts of purity and adulteration, and instead on risk management and public health surveillance.³⁸

Food scientism promotes a perspective that food safety regulations deal with factual judgments, while socio-cultural practices and moral judgements about good food are relegated to the realm of mere expressions of preference. In this context, any conflicts between scientific and moral perspectives about food production lack the tragic quality described in the previous section because the conflict is not in fact between positions that are equally justified. The realm of the subjective may be recognized, but it is subservient to the higher virtue of scientific expertise. Risk assessments replace subjective preferences about food quality, such as product origins, methods of production, taste, or even nutritional value.

The privileged place of food safety sciences in the contemporary food law and policy forcefully and repeatedly perpetuates a particular set of values about the kind of food we should be producing and the place we should afford it in our society. At the same time, it serves to discount other perspectives through frequent reference to the authority of "sound science" and

³⁷ See e.g. Clapp & Fuchs, *supra* note 10; Jennifer Clapp, "Financialization, distance and global food politics" (2014) 41:5 J Peasant Studies 797; Winickoff & Bushey, *supra* note 6; Jennifer Sumner, "Standards as a commons: Private agri-food standards as governance for the 99 percent" (2015) 2:1 Can Food Studies R Can Études Sur L'Alimentation 119.
³⁸ See e.g. Christopher R Mayes & Donald B Thomspon, "What Should We Eat? Biopolitics, Ethics, and Nutritional Scientism" (2015) 12 J Bioethical Inquiry 587; See also Marc Schuilenburg, David Garland & George Hall, *The Securitization of Society* (New York: NYU Press, 2015); Kathrin Braun, "Biopolitics and Temporality in Arendt and Foucault" (2007) 16:1 Time & Society 5; Edmund Harris, "Neoliberal subjectivities or a politics of the possible? Reading for

"scientifically based evidence".³⁹ To be sure, over the past century, scientific innovations and sanitary improvements in agri-food production and processing have saved countless lives. But scientific knowledge is contested, especially in the field of human health, and determinations of "acceptable" levels of risk necessarily involve trade-offs.⁴⁰

Such a technocratic approach to food safety reflects what MacIntyre calls a "naïve" belief that disagreements over facts can be resolved determinatively, while moral disagreements are understood in terms of pluralism and relativism without any suggestion that some forms or resolution may be preferable to others.⁴¹ Food safety governance becomes an "ideologically-neutral technology" that can be deployed by the state without needing to engage with messy ethical or moral inquiries.⁴²

Nevertheless, despite trends towards food safety scientism, the reality is that local preferences and socially relevant knowledge continue to drive the regulation of risk. In a comparative study on food safety regulations in Europe, the United States and Japan, Ferrari explains how each region's distinct food cultures shaped their perceptions of risk after the mad cow crisis, and how this in turn informed institutional and legislative reforms to food safety governance in the years that followed.⁴³ Similarly, in their work on Canadian perceptions of risk in relation to beef after

³⁹ Colin Sage, "'Bending Science to Match Their Convictions': Hygienist Conceptions of Food Safety as a Challenge to Alternative Food Enterprises in Ireland" in Damien Maye, Lewis Holloway & Moya Kneafsey, eds, *Alternative Food Geographies: Representation and Practice* (Oxford: Elsevier, 2007) at 206.

⁴⁰ George G Katchatourians, "How Well Understood is the 'Science' of Food Safety?" in P Phillips and R Wolfe, eds, *Governing Food: Science, Safety and Trade*, (Montreal: McGill-Queen's University Press, 2001) at 21.

⁴¹ See MacIntyre, *supra* note 20 at 31.

⁴² See Roderick A MacDonald & Hoi Kong, "Patchwork Law Reform: Your Idea Is Good in Practice, But it Won't Work in Theory" (2006) 44:1 Osgoode Hall Law J 11 at 19: The authors describe an instrumentalist view of law reform in which legal rules are understood as explicit commands that correct recalcitrant behaviour. This instrumental account of law, they write, "is imagined to be an ideologically-neutral technology superintended by legal professionals."
⁴³ See Ferrari, *supra* note 1.

the mad cow crisis, Lewis and Tyshenko note how responses were attenuated rather than amplified as a result of interactions with other major events at the same time, including SARS and West Nile Virus outbreaks and the US-Iraq war.⁴⁴ In fact, Lewis and Tyshenko report that Canadian of consumption of beef increased immediately following the discovery of BSE in Canadian cattle as consumers rallied to support ranchers during a time of crisis.

The gap between food safety scientism as a politically-neutral endeavor and the exercise of food safety governance in practice suggests that the normativity of risk cannot be separated from its scientific and technical dimensions. Recognizing this, there is much to gain from using phronesis to guide regulatory decision-making. Phronesis is a practice that is dynamic and flexible. Jill Frank explains that phronesis requires discerning "the particulars of a situation in order to do the right thing in the right way at the right time."⁴⁵ In this sense, phronesis is relational. It seeks balance or harmony through a commonality of interest that is at the same time as good for individuals as it is for the community.⁴⁶ Looking back to the conflict between Antigone and Creon, we can see that their righteous commitment to their opposing beliefs made it impossible to strive towards this kind of commonality. A stubbornness repeatedly lamented by the chorus. Applied to food law and policy, the idea of phronesis invites the acknowledgment that food systems are very literally rooted in place and time. As such, determinations of the better choice with respect to policies and regulations will vary according to where and when they are made. By extension, a phronetic approach to food safety governance is one that recognizes that determinations of acceptable risk are contingent on socially relevant knowledge and impossible to articulate in the abstract.

 ⁴⁴ Roxanne E Lewis & Michael G Tyshenko, "The Impact of Social Amplification and Attenuation of Risk and the Public Reaction to Mad Cow Disease in Canada" (2009) 29:5 Risk Analysis 714.
 ⁴⁵ Jill Frank, A Democracy of Distinction: Aristotle and the Work of Politics (Chicago: University of Chicago Press, 2005) at 101.

⁴⁶ See *ibid* at 106.

2.5 Conceptualizing good food to reflect science and ethics in food safety governance

In the introduction of the first issue of *Food Law and Policy* (the first scholarly journal devoted to the field), the American food and drug law expert Peter Barton Hutt explained that "food law and policy encompasses social, cultural, and personal beliefs and biases that cannot be ignored."⁴⁷ Acknowledging the socio-cultural beliefs that inform food law and policy is an important first step. Beliefs and values, however, are not static concepts that exist in the abstract and that can be transplanted directly onto food safety systems. They interact with regulatory science to articulate objectives that make sense in a particular context.

In order to bring unity to the potentially conflicting perspectives of food safety scientism and the range of socio-cultural practices and moral judgments of food safety and risk in a given time and place, I argue that the concept of good food offers a helpful and more truthful alternative. Good food is a unifying concept that, like purity, is capable of holding positive (value-added) and negative (freedom from hazards) qualities simultaneously. Good (i.e., phronetic) food enables a more holistic reflection into the character of our food systems, the ends towards which they strive, and how these should be achieved. Good food also bridges the gap between addressing the interests and values of consumers as well those of producers. By contrast, the concept of food safety is rooted in the dual objective of *protecting* consumers and *policing* producers. By focusing on what the food is not (i.e., not contaminated, not adulterated, not dangerous, etc.), the concept does not focus on the positive attributes of the product (i.e., it was produced with care, with concern for the environment, with a focus on taste, etc.). To think, then, of food in terms of its goodness, is to create space for reflections about food quality that are otherwise limited in deliberations about food safety. This will be discussed in more detail in Chapter 5, where I present some interview participants' perspectives on the difference between good food and safe food. Here, the concept of good food is introduced in order to highlight the value of

⁴⁷ See Hutt, *supra* note 17 at 2.

thinking simultaneously about what kind of food we *want* and what kind of food we *don't want* on our plates. This means that in addition to treating producers as a group that must be regulated by the state in order to ensure the well-being of the population, we should also be thinking about the ways that some producers are trying to improve food systems and produce food that either exceeds minimum food safety requirements or attempts to ameliorate other quality concerns such as ecological sustainability, animal welfare, or workers' well-being.

Increasingly, consumers want to know where their food comes from, and the processes involved to get their food from farm to fork.⁴⁸ Producers and consumers look to value-added labels to identify and attribute positive qualities to particular items. Organic vegetables, free-range eggs, pasture-fed beef, fair trade coffee: each conveys commendations of quality and value and even a narrative about where our food comes from, the kinds of people who produce it and the kinds of people who consume it.⁴⁹ Unlike food safety's focus on freedom *from* hazards, these trends in production and labelling reflect the things we want in our food. However, for the producer who is attempting to raise organic, or pasture-fed, or free-range meat, the reality is that food

⁴⁸ The journalist Michael Pollan, The Omnivore's Dilemma: A Natural History of Four meals (New York: Penguin, 2006). It was followed in 2007 by the bestselling 100-Mile Diet: see Alisa Dawn Smith & JB MacKinnon, The 100-Mile Diet: A Year of Eating Locally (Toronto: Random House Canada, 2007). Within academic scholarship, see e.g. Michael Winter, "Embeddedness, the new food economy and defensive localism" (2003) 19:1 J Rural Studies 23; Edmund M Harris, "Eat Local? Constructions of Place in Alternative Food Politics" (2010) 4:4 Geography Compass 355; Moya Kneafsey, "The region in food—important or irrelevant?" (2010) 3:2 Cambridge J Regions, Economy & Society 177; R Feagan, "The place of food: mapping out the 'local' in local food systems" (2007) 31:1 Progress in Human Geography 23; P Allen, "Realizing justice in local food systems" (2010) 3:2 Cambridge J Regions, Economy & Society 295; Phil Mount, "Growing Local Food: Scale and Local Food Systems Governance" (2012) 29:1 Agriculture & Human Values 107. ⁴⁹ See e.g. Jennifer Sumner, "Standards as a commons: Private agri-food standards as governance for the 99 percent" (2015) 2:1 Can Food Studies R Can Études Sur L'Alimentation 119; Mara Miele, "The Taste of Happiness: Free-Range Chicken" (2011) 43:9 Environment & Planning A: Economy and Space 2076; J Dara Bloom, "Standards for Development: Food Safety and Sustainability in Wal-Mart's Honduran Produce Supply Chains" (2015) 80:2 Rural Sociology 198; but see also Daniel Jaffee & Philip H Howard, "Corporate cooptation of organic and fair trade standards" (2009) 27:4 Agriculture & Human Values 387;.

safety regulations shape their practices on the farm and their ability to get their products to market.

Value-added labels that describe the methods of production and geographic origins of products do provide opportunities for farmers and consumers to strive towards practices of virtuous production and consumption. However, the concept of good food that I am trying to articulate for the purposes of theorizing phronetic food law is more complex than that which can be captured by a label. Whereas certification processes may align with social, cultural and ethical perspectives about good food, the idea of establishing guidelines and requiring mandatory compliance with a predetermined list of practices is inconsistent with the more iterative character of phronesis. In this sense, the idea of good food presented here draws on agrarianism's philosophy of striving towards harmony within the food system. Agrarianism, like phronesis, dates back to ancient times.⁵⁰ It is a philosophical approach to farming that embraces Aristotelian naturalism and is centered around the belief that, when done well, agriculture is constitutive of balanced ecologies that foster individual virtues, community justice, and environmental beauty.⁵¹

From its origins in Greek philosophy, agrarianism evolved during the 20th century to embody a very specific approach to agri-food production that is concerned with the character of food - *how* it is produced and by *whom*. According to this philosophy, the practice of farming shapes "the moral character of the individuals who engage in them" and the character of a society's farming

⁵⁰ Even before Sophocles was challenging audiences to grapple with incommensurable values in his tragedies, the Greek poet Hesiod was expounding the religious purpose of farming. See Thompson, *supra* note 12 at 37.

⁵¹ Aristotle developed his theory of the three intellectual virtues alongside his philosophy of naturalism, in which morality is a quest to live rightly by preserving and promoting the integrity of an ordered ecology of relationships between individuals, institutions and the natural environment. Together, naturalism and phronesis suggest that good food, or virtuous food systems, requires maintaining the balance of this ecology and avoiding patterns of excess that jeopardize it. See Thompson, *supra* note 12 at 58.

culture is believed to be equally reflected in that society's governing institutions.⁵² The practice and governance of farming are thus inextricably linked by a shared culture. Paul Thompson, a philosopher and agricultural ethicist notes a strong convergence between moral philosophies that focus on the emergence and stability of virtues, community, and moral character with a mind-set in which agriculture has special moral significance.⁵³ However, the current North American agri-food landscape is rooted instead in the philosophy of industrial agriculture which views food and farming like any other sector of the industrial economy and disregards their special moral significance.⁵⁴ Treating farming this way allows for decontextualized approaches to food safety risk management and communication which runs contrary to the theory of phronesis.

Thomson juxtaposes the successes of industrial agriculture (we now produce more food than ever at record low prices) with its systemic perpetuation of unwanted and harmful practices. It embodies, he writes "a form of cultural and political one-dimensionality that crushes human creativity and promotes an unsatisfying portrayal of human potential, social purpose, and the meaning of the natural world."⁵⁵ However, the philosophy and practice of agrarianism come with their own challenges. Proponents of agrarianism often neglect how agrarian thought has historically contributed to practices of violence, exclusion and dispossession among marginalized communities, producing "both virtuous *and* vicious individuals and communities."⁵⁶ For example, the agrarian tradition extols the virtues of the family farm, but may also promote a narrow conception of family structures and outdated gendered roles.⁵⁷ Moreover, the agrarian attachment to land and a particular kind of belonging has also contributed to the active, and in some cases violent, exclusion of minorities.⁵⁸ Therefore, while the philosophy of agrarianism

⁵² See *ibid* at 5.

⁵³ See *ibid* at 38.

⁵⁴ Thompson describes the philosophy of industrial agriculture as a combination of libertarian views on property with a utilitarian moral orientation towards food production that justifies industrialization on the basis of its capacity to generate benefits for the majority (*ibid* at 50). ⁵⁵ *Ibid* at 59.

⁵⁶ Mayes, *supra* note 12 at 276.

⁵⁷ See *ibid* at 278.

⁵⁸ See *ibid* at 279.

provides support for the idea that there is something special about the place of food and its production, in this dissertation I am developing a theory of phronetic food law that is distinct from agrarian thought in order to address these ethical shortcomings.

Incorporating phronesis into food safety governance is challenging, not least because what constitutes good food resists clear definitions. Articulating a single vision of good food that will satisfy all producers, consumers and government actors for the purpose of regulating food safety is inconsistent with the contextual character of phronesis. However, as a concept that by the very nature of its elusiveness requires constant attention and engagement to be meaningful, good food can bring us closer to a better synthesis between science and ethics in food safety governance.

What constitutes good food is subjective and susceptible to change. But this is not necessarily a bad thing (in fact, this revisability is actually a strength, which will be discussed below). It does, however, require courage and moral conviction. According to Boaventura de Sousa Santos, in the wake of all the advances of modern science over the past century, we have lost our "epistemological confidence" and our ability to give meaning to common sense knowledge that "science insists on considering irrelevant, illusory, and false."⁵⁹ Modern science, he writes, has enlarged our prospects of survival but our functional knowledge of the world provides little guidance for how to live – "[t]his requires another kind of knowledge, holistic, intimate knowledge, that does not separate us from, but rather connects us personally with, whatever we study."⁶⁰

⁵⁹ Boaventura de Sousa Santos, "A Discourse on the Sciences" in Boaventura de Sousa Santos, ed, *Cognitive Justice in a Global World: Prudent Knowledges for a Decent Life* (Lanham, MD: Lexington Books, 2007) at 15.

⁶⁰ Ibid at 39.

2.6 Theorizing phronetic food law: a food-centric approach to epistemological pluralism and constitutiveness

The previous section considered how phronesis can be used to reflect on the kinds of foodstuffs and food systems we desire. This section now turns to how phronesis can inform the decisionmaking process in food safety governance. The theory of phronetic food law that is developed below seeks to capture the subtle differences between positive and negative approaches to regulation (i.e., regulations that are constitutive of good food systems versus regulations that merely protect consumers from harmful substances). It is about how to survive, but also how to thrive. In this way, it is a theoretically richer framework for managing risk than food safety scientism.

The objective of phronetic food law is to make explicit the contextual nature of the decisionmaking process around food policies, laws and regulations. Phronetic food law is a normative and explanatory theory of law, and an applied version of virtue ethics that engages with the unique characteristics of good food as an object of regulatory oversight. By acknowledging the conflicts that lie at the heart of food safety governance instead of obscuring them, phronetic food law serves both to clarify the character of existing regulatory processes as well as to design better ones moving forward. More broadly, it offers a lens through which to see food law and policy as a reflexive and constitutive undertaking. In this way, it is distinct from the growing body of scholarship on food governance that focuses on hybridity and the categories of actors and institutions that are currently engaged in the regulation of food and farming, as well as the variety of instruments that may be used in the process.⁶¹ It is important to know *who* is making *what*

⁶¹ See e.g. Kévine Kindji & Michael Faure, "Overcoming food safety challenges through regulatory cooperation: Evidence from the UEMOA" in Paul Verbruggen & Tetty Havinga, eds, *Hybridization of Food Governance: Trends, Types, and Results* (Cheltenham: Edward Elgar, 2017) at 272.

policy decisions and *where*, but equally important is the *meaning* of these decisions, how they are made and what they imply for those who grow, process, distribute, sell and consume food.

Modern food safety governance draws on the Risk Analysis Paradigm (RAP) to develop food safety standards for improved detection of and protection from food-related risks.⁶² RAP, an internationally recognized approach to food safety governance, consists of three pillars: risk assessment, risk management, and risk communication (see Figure 1). Risk assessment refers to scientific quantitative and qualitative estimates associated with the presence of a hazard(s) in a product. Risk management refers to the identification and implementation of policies to control identified risks. Finally, risk communication refers to communication to the public about risk assessments and risk management measures. Interpretations of scientific risk assessments, and the way they are managed and communicated reflect a balance with other government priorities and constraints, such as ensuring food security, conserving land, water and air quality, and developing the agri-food sector. At times, these policy priorities are mutually reinforcing and complementary. For example, increasing organic food production can improve the availability of healthy food options, while promoting environmental stewardship of farmlands and improving farmers' income through access to niche markets. At other times, they work at cross purposes. For example, industrial agri-food production may be desirable for its capacity to produce food cheaply, but this may be incompatible with conservation goals.

⁶² See FAO/WHO, Application of Risk Analysis to Food Standards Issues: Report of the Joint FAO/WHO Expert Consultation, WHO/FNU/FOS/95.3 (1995)



Figure 1 : The risk analysis paradigm

Source: FAO http://www.fao.org/food/food-safety-quality/capacity-development/risk-analysis/en/

Within RAP, food safety science plays an important role. This does not mean that food safety governance is isolated from other social, cultural, political, economic, and moral forces. Rather, it is an example of what Mariana Valverde would call epistemological pluralism.⁶³ Epistemological pluralism means that "law creatively appropriates extralegal knowledges" and thus constitutes knowledge in the process of using it.⁶⁴ Food safety policies and regulations appropriate scientific and economic rationalities while also adjusting to citizens' consumption habits and preferences, because law is capable of appropriating a range of knowledges to its internal functioning, not only scientific knowledge. Scientific and non-scientific facts coexist in legal arenas, and law openly admits that this incorporation and interpretation of non-legal knowledge serves the practical purpose of generating decisions within the confines of a particular legal arena.⁶⁵ Valverde cautions against generalized claims about technocratic expertise and the domination of science in law and policy. She also questions the idea that law, even under the most technocratic circumstances, would ever purport to be entirely objective or neutral. "[L]aw as an institution", she writes, "makes no bones about the fact that legal decisions [...] have to be taken without full knowledge."⁶⁶

⁶³ Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003) at 12–22.

⁶⁴ See *ibid* at 7.

⁶⁵ See *ibid* at 15.

⁶⁶ See *ibid* at 4.

Indeed, in some instances, the cultural and normative dimensions of food choices are openly acknowledged and protected. For example, the protection of fundamental freedoms under the Canadian *Charter of Rights and Freedoms* includes the protection of freedom of conscience and religion (section 2(a)) and freedom of thought, belief, opinion and expression (section 2(b)).⁶⁷ Litigation over the past few decades has clarified that religious dietary guidelines like kosher or halal or vegetarianism are protected under the *Charter*.⁶⁸ And recently, the Federal Court noted that restricting an individual's capacity to express their political views through their purchasing choices is an infringement of their *Charter*-protected right to freedom of expression.⁶⁹ Moreover, while formal recognition of Indigenous food sovereignty does not yet exist in Canada, section 35 of the *Charter* recognizes and affirms existing Aboriginal rights and treaty rights of Indigenous peoples of Canada. These include land rights and harvesting rights such as fishing, hunting, trapping, and gathering plants. The Canadian case law on Indigenous harvesting rights draws makes clear the cultural dimensions of food practices among Indigenous peoples.⁷⁰

In the case of intellectual property regimes, the most interesting example for present purposes is that of geographic indications of origin. Section 2 of the federal *Trademarks Act* defines a geographical indication (GI) as:

an indication that identifies a wine or spirit, or an agricultural product or food of a category set out in the schedule, as originating in the territory of a WTO Member, or a region or locality of that territory, if a quality, reputation or other characteristic of the

Kilmurray et al, eds (Toronto: Thomson Reuters Canada, 2019) 151.

⁶⁷Section 2, *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

⁶⁸ See e.g. *Maurice v Canada (Attorney General)*, 2002 FCT 69; *Patterson v BC Ministry of Public Safety and Solicitor General*, 2019 BCHRT 11; *R v Chan*, 2005 ABQB 615. See also Adrienne Ng, Richard Haigh and Howard Kislowicz, "Calculations of Conscience: The Costs and Benefits of Religious and Conscientious Freedom" (2011) 48:3 Alta L Rev 679 at 708.

 ⁶⁹ Kattenburg v Canada (Attorney General), 2019 FC 1003 at paras. 114-124.
 ⁷⁰ See e.g. *R v Sparrow*, [1990] 1 SCR 1075; *R v Gladstone*, 2 SCR 723; *Ahousaht Indian Band v Canada (Attorney General)*, 2013 BCCA 300. See also Deborah Curran, "Foodlands Protection in Canada: Indigenous and Colonial Foodscapes in Law" in *Food Law in Canada*, Heather McLeod-

wine or spirit or the agricultural product or food is essentially attributable to its geographical origin.⁷¹

In Quebec, legislative protection for GIs date back to the early 2000s with the introduction of *An Act respecting reserved designations and added-value claims* to protect authenticity claims of certain products, and of the terms used to identify and promote them, through product certification based on geographic origins or on special characteristics associated with methods of production method.⁷² Examples of products that have received accreditation in Quebec include sweet corn, cheese, lamb, ice wine and ice cider. While it is beyond the scope of this chapter to present these regimes in detail, they are highlighted here to illustrate how legal instruments recognize and attribute value to specific food products on the basis of quality considerations that are socio-cultural and economic rather than exclusively on microbial safety.⁷³

Despite the recognition of the normativity of food choices in constitutional law and intellectual property regimes, the appropriation of these non-scientific preferences in food safety governance nevertheless remains either contested or obscured. In many ways, the scientization of food safety, with its shift away from principles of purity to evidence-based risk assessments, suggests that phronetic food law is impossible in the 21st century. But the government agencies and ministries who are called upon to design policies and draft regulations must negotiate between expert scientific knowledge about contamination risks, with international obligations to meet specific standards, domestic policies that continue to emphasize industrial agriculture and an export economy, as well as consumer perceptions of risk in relation to different foods. There are trends in food safety governance towards technocracy, but decisions about food safety

⁷¹ *Trademarks Act*, RSC, 1985, c T-13.

⁷² SQ 2006, c4.

⁷³ For more on GIs, see e.g. Justin Hughes, "Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications" (2006) 58 Hastings LJ 299; Marsha Cadogan, "Making Agricultural and Food-based Geographical Indications Work in Canada" (2018) online (pdf): *Center for International Governance Innovation* <cigionline.org/publications/makingagricultural-and-food-based-geographical-indications-work-canada>.

regularly engage normative, political, and economic priorities. The problem is that the reasoning behind them is not always explicit.

While Valverde cautions against overstating the impact of scientific and technocratic expertise on legal knowledge and practice, the converse is also true. Even if food safety governance is not entirely technocratic, the ways in which governments speak of food safety suggests a certain narrowing of the kinds of extra-legal knowledge that is valued. As a result, decision-makers fail to deliberate about the full range of values that are necessary to produce and regulate good food well. This matters on a philosophical level, but also on a practical one because law is a socially constitutive activity.⁷⁴ More than three decades ago, James Boyd White challenged the view that law merely acts *on* the world and *on* individuals via objectified policy choices. Instead, Boyd White suggested that law is a way to talk about and experience the world, as well as a creative process that constitutes culture and community. It is a process for resolving disputes "[...]in which the parties gradually, and often with great difficulty, come to share a common language for the description of their common part, present, and future, including an agreement as to what will be passed over in silence."⁷⁵

Drawing on these ideas, phronetic food law invites a new kind of inquiry into food safety and food system governance. It focuses on how social values around what constitutes good food and acceptable levels of risk are considered and subsequently appropriated and mixed with regulatory science. In this way, it highlights how new techniques of governance constitute particular kinds of food systems, which themselves go on to shape the design and implementation of future food law and policy. Food law and policy is more than a collection of rules and regulations. If, as Boyd White argues, the central question of law is what kind of community should we be, and with what values, motives and aims,⁷⁶ the central question

⁷⁴ James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life" (1985) 52 U Chicago L Rev 684.

⁷⁵ See *ibid* at 697.

⁷⁶ See *ibid* at 698

underlying a theory of phronetic food law is what kind of food system we should have, and with what values, motives and aims?

2.7 Applying phronetic food law through public reasoning about policy ends

In order to answer the question about what kind of food system we should have, we must return to the question introduced earlier this chapter: of what conflicts is food law and policy the scene? More specifically, what conflicts does food safety governance engage? Regulators cannot eliminate risk entirely from the food system. Therefore, the decision-making process underlying food safety risk management necessarily involves confrontation between rival, and possibly incompatible, claims for the greater good.⁷⁷ It is at the intersection of scientific knowledge and social and political judgment that the laws, policies, and regulations governing food safety are developed and implemented. For MacIntyre, the determination of the better choice in the tragic confrontation of rival goods depends on a shared narrative rooted in place, community and tradition. Another perspective on the better choice can be found in Henry Richardson's work on public reasoning and deep compromise.⁷⁸ This kind of deliberation gets to the *how* of phronetic food law; the deliberative process necessary to articulate what constitutes good food and the means to achieve it.

In his book *Democratic Autonomy*, Richardson explains that democratic decision-making must not only be reasoned, but also requires a kind of practical reasoning that is oriented towards identifying what *ought* to be done. It involves contextual reflection - sifting through reasons and arguments that have been presented "[...] to ascertain the truth of certain propositions or to

⁷⁷ See MacIntyre, *supra* note 20 at 224.

⁷⁸ Henry S Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002).

derive new true propositions from ones that are initially believed to be true."⁷⁹ This requires more than choosing one reason or argument over another. It demands conceptual coherence, an exercise that pushes decision-makers to reach out in non-hierarchical ways to understand the different things that people seek for the sake of different policy positions, and to identify and build connections of mutual support between them so that our policy ends can be expanded and revised.⁸⁰ This builds on the concepts of epistemological pluralism, creative hybridity, and constitutiveness discussed earlier.

According to Richardson, there are three kinds of practical reasoning: agency instrumentalism; cost-benefit analysis; and public reasoning about ends.⁸¹ Agency instrumentalism is a kind of ends-means reasoning which starts from a given end and works backwards to determine the means to achieve it. Cost-benefit analysis weighs pros and cons to elucidate revealed preferences that then determine what course of action is optimal. Public reasoning about ends is different in that it involves an inquiry into ends themselves. It reflects on which established ends matter and whether new ends should replace old ones. For their part, agency instrumentalism and costbenefit analysis share technocratic tendencies in their simplification of the normative dimension of public decision-making. Agency instrumentalism assumes that it is possible to separate neatly the legislatures that determine policy ends, and the administrative agencies that select the means to achieve them. In practice, however, the lines are blurred. Legislatures often articulate ends vaguely, leaving agencies to engage in normative decision-making. Moreover, agencies deliberate within society, appropriating different forms of knowledge to re-specify policy ends and settling on constitutive means to achieve them. Similarly, cost-benefit analyses are also limited because they do nothing to commensurate competing values. While seeking revealed preferences for a particular project, they lack the tools or ambition to generate new solutions, resolve conflicts, or discriminate among ends.

⁷⁹ See *ibid* at 76.

⁸⁰ See *ibid* at 111.

⁸¹ See *ibid* at 99.

In response to these deliberation deficits, Richardson argues that we should instead be pursuing public reasoning about policy ends. This means to ask not only what *shall* we do in a given situation, but what *should* we do? There are many ways to achieve a particular outcome, but there is only one answer to the latter question. Richardson's emphasis here is that the right kind of public decision-making understands that policy ends themselves are not fixed. In the quest for truth, they are subject to change. However, reformulating ends does not necessarily entail abandoning old ones, nor is it a technique of conflict avoidance (something which is characteristic of cost-benefit analyses). Rather, the process of establishing new policy ends comes from serious engagement with conflict, community values, and social commitments.⁸²

The ability to conceive of something new, to modify one's initial support for a particular policy or its implementing means, involves compromise. Richardson distinguishes between two kinds of compromise: *deep* compromise and *bare* compromise.⁸³ Bare compromise is the one we are most familiar with. For example, a family subscribes to a community supported agriculture (CSA) basket which must be picked up at a designated drop-off point every Wednesday at six o'clock. This timing is difficult for the family because the father volunteers at the YMCA across town on Wednesday evenings and the mother has band rehearsals with musicians who can only meet at that time. A bare compromise in this situation might involve the parents taking turns missing their weekly activity in order to pick up the basket. Another compromise might involve one parent abandoning their activity entirely to enable the other maintain their own. The objective is to pick up the basket. The only question is who will have to give up their activity. At best, a bare compromise is the result of a balancing of different parties' revealed preferences and willingness to accept sub-optimal outcomes to achieve pre-determined ends. At worst, it is a process whereby powerful parties exert force on weaker parties to bear disproportionate costs in the name of a broader social good.

⁸² See *ibid* at 109.

⁸³ *Ibid* at 146.

In contrast, deep compromise involves a form of deliberation that does more than rank alternative outcomes. Deep compromise, Richardson explains, involves the development of a new policy position or new implementing means that builds on an underlying compromise and is supported by a change in one's ends.⁸⁴ In the context of policy-making, this means that decisionmakers must try to understand what individuals seek, why they do, and whether they would be willing to redraw new ends in order to resolve collective problems and achieve better outcomes.⁸⁵ What is significant about this kind of reasoning is that involves a combination of bargaining and argument: a "raucous blend", according to Richardson, between the two.⁸⁶ It is bargaining facilitated by argument "in the way that cappuccino lies between coffee and milk."87 A cappuccino is not wholly distinct from coffee or milk, but it is more than diluted coffee or coffee-flavoured milk. To arrive at a cappuccino from coffee and milk requires a departure from thinking only in terms of ingredients. It is also reflective of the community norms and values in which it is created. For example, the same negotiated disagreement between coffee and milk can result in something different in Spain (cortado) or France (café au lait) than it will in Italy (cappuccino). Moreover, even in Italy, the bargaining that occurs between coffee and milk yields different results depending on the time of day, with the machiatto replacing the cappuccino in the afternoon.

Returning to the problem of the CSA basket pick-up, what would an arrangement that is based on deep compromise look like? While both parents are committed to their after-work activities, it may be that the father has been volunteering at the YMCA because he wants to model socially responsible behaviour for his children and because he enjoys the feeling of community he gets from this activity. Faced with the conflict about who should pick up the basket, the father may decide to stop volunteering at the YMCA entirely and instead volunteer his services at the CSA drop-off point. He can bring his children with him and teach them about volunteering and get to know his neighbours who share his interest in the local food movement. This would not merely

⁸⁴ Ibid at 147.

⁸⁵ See *ibid* at 145.

⁸⁶ *Ibid* at 145.

⁸⁷ Ibid at 145.

enable his spouse to continue her band rehearsals. It would create a new opportunity for the family to include their children in after-work activities, to eliminate the need for a baby-sitter on Wednesday evenings, and to enable the father to express his social engagement in a different but positive environment.

In this example, deep compromise may seem utopian and ill-suited to the realities and tensions of contemporary politics. In fact, Richardson himself notes that the process of reasonably revising previously agreed upon ends is only possible where there is mutual respect, concern, or shared identity that is strong enough for groups of people to try to work together.⁸⁸ Deep compromise is relational and requires goodwill. In the absence of any concern or respect for the other or for the collective, there is little reason to modify one's initial commitments. This means that proper deliberative reasoning is strengthened by shared values, and requires creativity and courage to depart from that which is accepted in order to conceive entirely new ends. In the context of the abovementioned family relationship, love for the other spouse will be an important factor contributing to the willingness of one individual to compromise for the other. The value of the CSA basket itself can take on an important normative significance, providing not only food for the family but an opportunity to practice and model virtuous consumption.

At the level of policy-making, the issues that require bargaining facilitated by argument are more complex and less personal. Nevertheless, it is still possible to extrapolate the principles of deep compromise and apply them to food system governance. Decision-makers are called upon to regulate food systems that are safe, but also that are healthy, productive, profitable, innovative, etc. It was noted earlier that food system governance involves a series of complex trade-offs. But there is a risk with framing food system governance solely in terms of trade-offs, because this invites the kind of decisions based on bare compromise that are inconsistent with phronesis. Trade-offs resonate with the language of costs and benefits, and the moral relativism of technocratic rationality. When environmental protection, labour conditions, animal welfare, food taste and quality are compromised in the process of ensuring food safety, the cost of bare

⁸⁸ *Ibid* at 148.

compromise in food law and policy becomes clear. Even if there is no right or wrong way of reconciling conflicts of virtue, there are better and worse ways. To think about the kind of food system we want in terms of deep compromise opens new possibilities for articulating what constitutes good food, and the regulatory means to achieve it.

Finally, the outcomes of deep compromise must be understood as embedded in historical context and cultural discourses. This point is crucial because a phronetic theory of food law and policy must not be mistaken for a purely emotional or nostalgic approach to food system governance. Confronted with the excesses and injustices of the dominant model of industrial agriculture in North America, it can be tempting to advocate for the return to pre-industrial agrarian values and small-scale farming. However, no system, whether industrial or agrarian or other, provides unquestionably virtuous goods at all times. Moreover, if deep compromise and the better choice are socially embedded, their outcomes cannot be transplanted across time and place. Phronetic food law requires more than choosing among a series of cookie-cutter policy options. It requires engagement with the full set of values that affect our food system in order to make the best decision in that particular instance. This is what this dissertation sets out to explore in the particular case of animal slaughter and meat processing regulations.

2.8 Conclusion

This chapter has developed the beginnings of a new theoretical framework to address a gap in current scholarship in the field of food law and policy. Food system governance, and food safety governance in particular, are informed by expert knowledge in the natural sciences. At the same time, our relationship with food is deeply normative. Phronetic food law is a normative and explanatory theory of law that engages simultaneously with the objective and subjective dimensions of food policy. Throughout this chapter, the following question was repeated "of what conflicts is food safety governance the scene?" In order to highlight the element of conflict that is central to this dissertation, food safety governance was likened to the ancient Greek

tragedy which involves conflicts between equally justified positions. The chapter then went on to consider how conflicts outside of the tragic form can be resolved in real life. Here, lessons were drawn from Aristotle's intellectual virtues, especially the virtue of good judgment (phronesis). Whereas the Greek tragedy by its very nature involves conflicts that cannot be resolved, phronesis offers a more constructive perspective, pointing instead to the kind of decision-making needed to work through conflicts and identify the better choice in a particular context. Ironically though, despite its emphasis on situated and context-specific reasoning, the concept itself provides limited guidance for practical application. For this reason, the theory of phronetic food law was fleshed out at the end of the chapter with reference to Richardson's theory of deep compromise and public reasoning about policy ends.

Chapter 3: Methodology

3.1 Introduction

This project explores the ways that socio-cultural and moral perspectives about how animals should be raised and slaughtered are considered in determinations of acceptable risk in food safety regulatory design. The purpose of this inquiry is twofold. First, it seeks to problematize the perception that food safety governance is more objective, or at least less subjective, than the other means by which food systems are governed. Second, in addition to describing food safety regulations as they are, it advances an argument about what they ought to be and how this can be achieved. Through a comparison of animal slaughter and meat processing regulations in different jurisdictions, this dissertation highlights the complexity and contingency of food safety governance. In so doing, I aim to challenge the discourse of certainty and inevitability underlying much of contemporary food safety governance and to propose instead a more phronetic approach to the regulation of good food systems.

The previous chapter explained that ethical and scientific/technocratic perspectives about what constitutes good food are mutually constitutive, but that in practice regulators lack a conceptual framework to engage openly and meaningfully with these connections. Instead, regulatory governance tends to encourage the dismantling of issues and concepts according to their descriptive and evaluative elements. Chapter 2 explained why this dismantling is problematic and how, in the context of food safety, it has undermined the ability of producers and consumers to raise, slaughter, sell, purchase and consume foods in ways that are consistent with their ethical preferences. Proper decision-making about food requires engagement with both evidence-based risk assessments and ethical deliberations about what is safe/good to eat. The chapter went on to introduce the concept of "phronetic food law" as way to work through these kinds of processes.

Chapter 3: Methodology

Because phronesis is contingent on context and cannot be defined in the abstract, it follows that the theoretical framework introduced in Chapter 2 requires application to clarify and illustrate its potential for addressing food policy challenges in real life. The chapters that follow present three case studies of meat inspection systems in the provinces of Ontario, and Quebec, and the state of Vermont to compare how attempts to reconcile food ethics and food safety sciences have been managed in different jurisdictions. Regulatory variations are studied to develop a better understanding of the implicit values that inform the regulation of risk in 21st century meat production. Drawing on what each of the case studies tell us about the 'better choice' in food safety governance, suggestions are then made to improve deliberation in situations of conflict and to bring normative commitments to support good food systems into greater harmony with regulatory risk management. In other words, the chapters that follow go beyond *describing* food safety governance. They articulate a *position* about what it should be.

The normative dimension of this project aligns squarely with the methodological approaches of the normative case study and phronetic social science more broadly.¹ These methodologies use cases and narratives to study value conflicts in the context of policy development, to clarify what is gained and lost by adopting a particular policy, and, where necessary, to rethink and revise specific policy ends. I draw on these methodological approaches because my aim in this dissertation is to create an intellectual space in legal scholarship for meaningful inquiries into the objectives of food safety governance. In so doing, I seek to bring into dialogue a range of perspectives about what constitutes good food and what role the state should play in regulating its production, as well as to theorize how complex policy deliberations can be made without

¹ See e.g., David Thacher, "The Normative Case Study" (2006) 111:6 American J Sociology 1631; Bent Flyvbjerg, "Phronetic Planning Research: Theoretical and Methodological Reflections" (2004) 5:3 Planning Theory & Practice 283; Bent Flyvbjerg, *Making Social Science Matter: Why Social Inquiry Fails and How it Can Succeed Again*, 1st ed, translated by Steven Sampson (Cambridge: Cambridge University Press, 2001); Meira Levinson, "Normative Case Studies as Both Source and Method for Action-Guiding Theory" (Keynote address delivered at the Annual Conference of the Philosophy of Education Society of Great Britain, New College, Oxford, 1 April 2016), online (pdf): *Philosophy of Education Society of Great Britain* <www.philosophy-ofeducation.org/dotAsset/86f14d43-0275-42bd-a095-58383b214007.pdf>.
falling back on cost-benefit analysis or instrumental reasoning. This aligns with my personal commitment to reflexivity and good judgment in law and policy. It should not, however, be mistaken as advocating on behalf of a specific group or for a particular policy outcome. Rather, the normativity of the project is grounded in rethinking and revising the ways we currently conceptualize food safety governance, and articulating more carefully what ends it should serve so that relevant stakeholders and decision-makers can themselves reflect on the right means to achieve them.

This chapter introduces the methodological approach of the project. In the first section, I situate the project within the literature on the normative case study and phronetic social sciences. This section explains how these methodologies inform this project's research objectives, with particular emphasis on how case studies can be used to analyze societal goals and values. They can also be used to work through conflicts that arise between values, thus establishing a conceptual link between the theory of phronetic food law developed in Chapter 2 and its practical application. The chapter then turns to the subject of my personal interest in this project. In positioning myself in relation to my research, this section engages with a series of ethical considerations underlying this project and clarifies the steps I undertook to uphold its integrity. The chapter concludes with a brief description of the reasons for my choice of case studies (Ontario, Quebec, and Vermont), and an explanation of the methods employed for data collection.

3.2 The normative case study: applying phronetic social science

The normative case study is a method of inquiry that seeks to deepen understandings of public values (as opposed to individual, privately-held values) and to improve our judgments about these values by reflecting on examples from actual cases.² While other case study methods, like the interpretative case study (a study to understand subjects' worldview) and the causal case

² See Thacher, *supra* note 1.

study (a study to identify causal relationships) are explanatory in nature, the normative case study combines empirical observation with normative assessments. In exploring the particularities of different cases, it aims to provoke reflection about the ideals to which we profess to be committed, and to question them in order to critically assess whether they should remain, be abandoned or modified.³

The normative case study is an application of phronetic social science, a methodological approach developed in the early 2000s by Bent Flyvberg.⁴ According to Flyvberg, the social sciences are ideally situated to work with case studies to communicate context-dependent knowledge. This is in contrast to the natural sciences, which he explains are better suited to developing theoretical and abstract understandings of life.⁵ Recognizing that scientific and social scientific research have different strengths and serve different goals (the natural sciences emphasize decontextualized experimentation to demonstrate abstract principles, while the social science produce contextualized knowledge about specific values and interests), phronetic social science embraces the subjectivity that comes with studying and recommending change in particular contexts rather than aspiring towards the impartiality that is meant to guide the natural sciences. The normative case study is also premised on the dismantling of is/ought distinctions. Rather than viewing the role of the researcher as that of impartial observer who describes what is, while leaving the task of advocating for what ought to be to someone else, this approach to research blurs the lines between theory and action.⁶

Within this broader methodological approach, the normative case study uses examples and narratives to enhance socially relevant forms of knowledge.⁷ In other words, the normative case

³ See Thacher, *supra* note 1 at 1637.

⁴ See Flyvbjerg, *supra* note 1.

⁵ In Chapter 2, this distinction between contextual knowledge and theoretical knowledge was captured by the breakdown of Aristotle's three intellectual virtues: *phronesis, epistemé,* and *techné*.

⁶ See Levinson, *supra* note 1.

⁷ See Flyvbjerg, *supra* note 1.

study seeks not only to produce knowledge for knowledge's sake, but to produce a knowledge that can be deployed within a particular social context to advance social change. Meira Levinson describes the normative case study as a method for testing and developing action-guiding theory, and fostering the kind of judgment that is required to fill the space between theory and action.⁸ This methodological emphasis on judgment is crucial to the proper application of Chapter 2's theory of phronetic law, which is itself premised on contextual decision-making and a rejection of abstract thinking. Phronetic food law describes an ideal kind of judgment, and thus remains a theory that, by definition, "abstracts from and/or generalizes about fact-specific problems."⁹ The normative case study provides the structure to remove this theory from abstraction.

Although originally conceived as a methodological approach for the social sciences, the normative case study is well suited to legal research, particularly where regulatory studies overlap with policy and governance studies. Alongside the food safety sciences that assess risks of contamination and develop techniques for risk containment, and the social sciences that study the social, cultural, economic and political factors shaping perceptions of risk, there are the laws, policies, and regulations that are the outcomes of negotiations between them. If evidence-based risk assessments and risk management are in fact localized decisions informed by ethical choices and not merely the impartial application of abstract knowledge, a phronetic methodology offers an alternate roadmap for reflecting on the public values at play in food safety governance. The normative case study provides a framework to structure an inquiry into the ways that risk is perceived and managed through regulatory instruments.

Moreover, despite its origins in the social sciences, the practice of reflecting on case studies is a well-established methodology in the common law tradition, where individual cases and facts are studied in depth to develop new insights and understandings that "carry a more universal and

⁸ See Levinson, *supra* note 1 at 5.

⁹ Ibid.

general import."¹⁰ Much like the hard cases presented to law students that force them to grapple with the moral and technical complexities of adjudication, Thacher describes the value of the case study as follows: "[...] case studies deepen our understanding of important values by confronting established ideals with dissonant cases."¹¹ Although the roots of phronesis are Aristotelian, the process of reasoning through dissonance is also reminiscent of the Socratic method, another staple of legal pedagogy used to illustrate the uncomfortable tensions that arise when deeply held convictions come into conflict, and to demonstrate how they may be held up to reflective examination.¹²

In the previous chapter, I drew a comparison between food law and policy on the one hand, and the ancient Greek tragedy on the other, because both are sites of conflict between equally justifiable values. Whereas the Greek tragedy relies on divine intervention to bring conflict to an end, contemporary regulators must look elsewhere to reach a decision about how to manage risks across the food supply chain. I presented phronetic food law as an alternative model for such decision-making and risk management. In particular, I drew on Richardson's theory of deep compromise, which is rooted in deliberative democratic principles, to illustrate how good food safety governance is one that is willing to revisit and revise existing policy ends if a better one can be identified. This was also MacIntyre's claim, that even in the absence of any kind of moral consensus, there are still better and worse ways of resolving conflict between values.¹³

The idea that we can make better judgments about conflicting values in food safety governance is the subject of this dissertation and the foundation of its theoretical framework. Adopting a methodological approach that is also grounded in phronesis means that my task as a researcher

¹⁰ Steve Griggs & David Howarth, "Phronesis and critical policy analysis: Heathrow's 'third runway' and the politics of sustainable aviation in the UK" in Bent Flyvbjerg et al, eds, *Real Social Science: Applied Phronesis* (Cambridge: Cambridge University Press, 2012) 168 at 170. ¹¹ Thacher, *supra* note 1 at 1658.

¹² See *ibid* at 1654.

¹³ See Alasdair C MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind: University of Notre Dame Press, 2007).

requires an openness to revisiting previously established research objectives and taking seriously the conflicts at the heart of my thesis. Phronetic research analyses the exercise of good judgment, but it is also itself an exercise in phronesis, whereby the researcher engages in a practice of intellectual virtue to judge and engage with their findings.¹⁴ For example, when data reveal a conflict between an initial judgment about a case and a contrary implication from existing normative ideals, a phronetic methodological approach invites the researcher to confront these tension points rather than avoid them.¹⁵ It is precisely because the kind of knowledge that is sought through phronesis cannot be articulated in the abstract that phronetic research can be strengthened by conflict.

Since phronetic food law involves a kind of knowledge that cannot be articulated in the abstract, a phronetic research methodology will lean towards in-depth case studies and empirical data collection. It approaches the analysis of the case studies iteratively, using the details of the case to advance the normative theory of phronetic food law, and then using the theory to situate the details of the case more clearly, moving back and forth between theory and case study to guide next steps. In so doing, it adopts a flexible posture towards research outcomes and resists establishing fixed objectives early on. The process of reflection in context may result in the rethinking of previous commitments and the articulation of new ones. So, while it is a normative undertaking, it may not follow a linear path of argumentation and cannot simply work backwards from a preliminary stated objective. Instead, it is an applied methodology that will necessarily confront preconceived (or abstract or theoretical) notions and contribute to their revision as the project advances.

This was certainly true in my own reflection process. At the beginning of Chapter 1, I recounted how my research question and thesis evolved over the course of conducting interviews. Whereas I began the project with a clear sense of the relative (in)justness of each of the meat inspection

¹⁴ See Svend Brinkmann, Book Review of *Making Political Science Matter: Debating Knowledge, Research, and Method* by SF Schram & B Caterino, eds, (2007) 42 Tidsskrift Kvalitativ Metodeudvikling 63.

¹⁵ See Thacher, *supra* note 1 at 1659.

systems I had selected for the project in relation to one another, I came to understand that each system had to be studied in context before it could be evaluated. I had identified the three jurisdictions as falling along a spectrum of apparent restrictiveness, when in fact such a neat line could not capture the ways that multiple socio-cultural, economic and political factors interacted with the legislative requirements of the meat inspection system. More precisely, it was the realization that my original framing of the problem came into conflict with the narratives I was hearing during my interviews that enabled me to revise my own position and reformulate my analysis in a way that I believe will better inform future policy discussions.

3.3 Positioning the researcher and other ethical considerations

In addition to the conceptual alignment between a methodological approach and theoretical framework that are both grounded in phronesis, I also employ a phronetic methodology because it is supportive of engaged scholarship. According to Brinkmann, phronetic social science provides the researcher with a voice to facilitate dialogue with - and between – those whose perspectives they study.¹⁶ This facilitation is a responsibility that the researcher undertakes. It is a kind of research that seeks to produce knowledge with a purpose, knowledge that is geared towards challenging power "not in theory but in ways that inform real efforts to produce change."¹⁷ Similarly, the literature on the normative case study describes the researcher's engagement with their study as a committed, first-person posture – one that tries to convince readers to "[...] change the way they think about their values."¹⁸ Within this literature, the committed posture stands in contrast with the detached, third-person posture, which is described as explanatory without requiring the questioning of either the researcher's or reader's values. It may be an oversimplification to suggest that all research can be neatly assigned to one of these two categories. Moreover, there may be occasions when a detached posture is

¹⁶ Brinkmann, *supra* note 14 at 63.

 ¹⁷ Sanford Schram, "Phronetic Social Science: An Idea Whose time has come" in Bent Flyvbjerg et al, eds, *Real Social Science: Applied Phronesis* (Cambridge: Cambridge University Press, 2012).
 ¹⁸ Thacher, *supra* note 1.

preferable to a committed posture or an approach lying somewhere between the two. However, I draw on this literature here because I want my research to be praxis-oriented. I want to contribute to scholarship that challenges the researcher, research participants and readers alike to exercise good judgment and to abandon previously held beliefs that fall below the standard of the better choice. Moreover, my intention with this project is to contribute to, as well as describe, policy debates about how animal slaughter and meat processing should be regulated.

This desire to participate in and influence food safety governance aligns with the views of scholars who see engaged research as a tool that can, and indeed should, be used strategically to make political interventions.¹⁹ Connecting research and politics runs against a perceived ideal of the objective and impartial academic expert. However, in practice, qualitative research is not an objective science - from the outset, the impetus to undertake a qualitative study and the research questions that follow are informed by the researcher's preferences, priorities, and assumptions.²⁰ According to this view, all researchers have an interest in their subject, regardless of whether they consciously or actively seek to promote it. Researchers bring their own worldviews and beliefs to their work. This does not mean that all qualitative research is partisan or self-interested. Nevertheless, the idea of acknowledging one's personal interest in one's research project is important for researchers who bring an explicitly praxis-oriented approach to their work. On the one hand, it creates a legitimating space for researchers who are inclined to more actively position themselves in relation to their research, while on the other, it reminds these researchers of the significance of maintaining a level of self-awareness throughout the process, and actively reflecting on how their culture, politics, gender, history, education, and

¹⁹ See e.g. Val Gillies & Pam Alldred, "The Ethics of Intention: Research as a Political Tool" in Tina Miller et al, eds, *Ethics in Qualitative Research*, 2nd ed (Thousand Oaks, Cal: SAGE, 2012) 43; Berry Mayall, Suzanne Hood & Sandy Oliver, eds, *Critical Issues In Social Research: Power and Prejudice* (Philadelphia: Open University Press, 1999). For a different perspective on researcher reflexivity in the specific case of doctoral research, see Patricia Ballamingie & Sherrill Johnson, "The Vulnerable Researcher: Some Unanticipated Challenges of Doctoral Fieldwork" (2011) 16:3 Qualitative Report 711.

²⁰ See John W Creswell & Cheryl N Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches*, 4th ed (Thousand Oaks, Cal: SAGE, 2018).

experiences shape the trajectory of their work.²¹ In the context of my own research, this is an invitation that I welcome wholeheartedly.

My interest in food law and policy, and meat safety regulations in particular, is more than academic. During my childhood, I was raised in a household that was mostly vegetarian. At the age of ten, I eliminated meat entirely from my diet because of my discomfort with eating animals under any circumstance. Soon after, I became vegan. When this became difficult to sustain, I reintroduced a restricted quantity of dairy products (organic only) and eggs (purchased directly from two local farmers I knew) into my diet. I adhered to a number of sourcing standards while also allowing for exceptions when eating out (the most common example being a situation where a well-meaning host would prepare a meal to accommodate my vegetarianism that contained cheese or eggs – a gesture I thought would be ungracious to refuse).

Over time, my personal interest in food ethics influenced my academic choices, which included studying international development with a focus on global food security. In some ways, this reflected a natural progression from a narrow interest in animal rights to a broader interest in sustainable food systems. However, it was also a deliberate strategy to distance myself from the subject of animal welfare in my academic research. The reasons for this were twofold. First, as I learned more about the complexity of local and global food systems, I began to recognize how the treatment of animals raised for food is one piece in a much larger puzzle that also includes pieces like the industrialization of agriculture, the financialization of global food markets, the carbon footprint of our growing demand for animal-based protein, peasants' land rights and Indigenous food sovereignty. The second reason for avoiding the specific question of how we raise and slaughter animals was more calculated. I worried that pursuing this line of inquiry would not be taken seriously, and that I would be seen as emotional and weak rather than intellectually sharp. I also worried that by focusing on animals, my priorities would appear misplaced. Even with my research interest in food security, I was confronted with questions about why I was focusing on diet when violent conflicts, mass migration, and restrictions on civil liberties were

²¹ See *ibid*.

ongoing. With the 2008 global food crisis, it became easier to justify my choice to study food security. But I saw no way to pursue research on farm animals without this looking like I was elevating animal rights above human rights.

When I began studying law, I attempted to carve a space for myself to research and write about food systems. I focused especially on international human rights law and the right to food, and did graduate work on this topic in Israel. It was there that the seeds for this project were planted. I vividly remember discussing possible topics for my doctoral project with a mentor at Tel Aviv University where I was completing my LL.M. I told him that I wanted to move away from the macro-level human rights work that I had being doing and to focus instead on local food systems in industrialized countries (note that I did not specifically refer to farmed animals or meat, merely local food). His response was a mix of surprise and disappointment that I should want to pursue such a "first world problem", commenting that a suburbanite's access to fresh kale at their local farmers' market did not warrant the same scholarly attention as the accountability of international leaders to ensure the realization of the right to food – certainly not the same urgency. Looking around me, the only people I knew who were working on food related issues in law were human rights experts (even if they themselves were vegetarian or vegan in their personal life). There appeared to be a clear hierarchy between what was worthy of study and what was not.

This changed, however, during a meeting with another professor at the same university who had written a couple of articles on the topic of animal welfare. When I asked him what he thought would be a food law project worth pursuing, he asked me candidly what it was that I really cared about. To my embarrassment, my eyes began to water, a lump grew in my throat, and the words spilled out - I confessed that I wanted to write about the treatment of farmed animals but that I was also worried about career prospects as a young female scholar living and working in the Middle East. I was mortified by my emotional display and we never spoke again. But that brief exchange instilled in me the confidence to declare that I wanted to pursue a research project that focused specifically on ethics in the meat industry. Emboldened with this new sense of purpose,

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I returned to Canada where I was fluent in the legal and linguistic traditions of the country, and felt a greater sense of authority and entitlement to engage with, and challenge the food system I grew up with.

My return to Canada also coincided with another shift. In Israel, my diet consisted almost entirely of local food. A combination of climatic and geopolitical factors meant that fresh, local food was always available. Back in Montreal, this was more challenging. I renewed a relationship with a local Community Supported Agriculture (CSA) farmer and pushed myself to think critically about what it means to support local, sustainable, resilient, and ethical modes of food production in Quebec, in Canada, in an industrialized country. I began questioning if a vegetarian diet that draws on protein from imported Bolivian quinoa, tofu from industrial soy monocrops, or almonds from drought-stricken California is more ethical than ordering a share of a cow raised humanely within a short distance of my home and that could feed me for a year. I decided it was not, and started to eat meat again for the first time in twenty years. I identified a few farmers and a local butcher who shared my principles and purchased meat through them. I saw in this emerging business of "ethical meat" a parallel with the academic question I was interested in pursuing. When my butcher wrote a piece on her blog about how the coming into force of Quebec's *Act to regularize and provide for the support of local slaughterhouses*²² would affect her suppliers²³, my dissertation was born.

This brief background on who I am, and how I came to write this dissertation, is meant to clarify my political and ethical aims and intentions. I have highlighted how my personal commitment to a particular model of food production and consumption is inextricably linked to the research questions I am asking. It is my hope that this project and the ideas that flow from it will inform discussions and debates about food system and food safety governance in the 21st century. This is why a phronetic social science methodology appeals to me. In the previous section, I explained

 ²² Act to regularize and provide for the development of local slaughterhouses, CQLR c R-19.1.
 ²³ See Sefi Amir, "What's at Steak: Conventional Beef Production, and Some Alternatives", (18 March 2015), online: *Boucherie Lawrence* <boucherielawrence.com/blog>.

that Brinkman describes phronetic research as a method to facilitate dialogue between the agents with whom the researcher engages. The ethical underpinning of this methodological approach is clear. It aims to create space for reflection and conversation outside of academia. This is what I want my work to do.

However, while acknowledging my stake in this project, it is not my objective to advocate for specific legislative reform or on behalf of a subgroup of producers and consumers with whom I might personally be in agreement. Rather, I seek to problematize the supposed neutrality of food safety regulations so that their subjectivity can be acknowledged and mobilized for the greater good. Debates about the future of food and agriculture can be extremely polarizing. In the particular case of meat, debates tend to focus more on whether we should be eating animal-based protein at all rather than the ideal circumstances for its production. It is my hope to move away from such divisive politics, toward a nuanced understanding of how meat production can be ethically (virtuously) accomplished.

What constitutes good meat cannot be defined in the abstract. I do not pretend to offer a simple answer at the conclusion of this dissertation, nor have I undertaken my research project with a clear outcome in mind. I have come to it intent on identifying the multiple interests that come into play in the design and enforcement of meat inspection requirements, and more specifically on holding them up against each other so that they may be better understood in context. The methodological approach and theoretical framework I adopt in this project are meant to assist me in my efforts to undertake a balanced, compassionate inquiry to foster honest and meaningful dialogue.

Phronesis requires a committed research posture, but good judgment also means being open to revise previously held objectives and to articulate new ones. Over the course of this project, my own understanding of food safety regulations, what they do, and what they do not, has evolved and my ideas about where legislative reform is most urgently needed have changed. It is my hope that this project can similarly invite better judgment and deep compromise on the part of

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decision-makers at the governmental level as well as industry actors who have different visions for what an idea food production system can and should look like. More than anything, it is this conflict of values that I am seeking to address. My normative commitment to contribute through scholarship to the improvement of the meat industry is above all to work through some of these conflicts and to identify spaces where resolution may be possible.

3.4 Case study selection

This project considers how three neighbouring jurisdictions regulate animal slaughter and meat processing and the differences between them. The three jurisdictions are Ontario and Quebec in Canada, and Vermont in the United States. As previously mentioned, an impetus for undertaking this project was the coming into force of Quebec's *Act to regularize local slaughterhouses*²⁴ in 2015. In order to contextualize the legislative change that was occurring in Quebec, I wanted to compare Quebec's meat inspection system with systems in neighbouring jurisdictions. At that time, the subject of slaughter regulations in Canada had been the focus of research attention in Ontario²⁵ and British Columbia²⁶.

The case of meat regulations in British Columbia is fascinating in the way that it engages issues of food security and Indigenous food sovereignty in rural and remote communities. Today, British Columbia's meat inspection system operates under a graduated licensing system with four

²⁴ Supra note 22.

²⁵ See Hillary C Barter, Slaughterhouse Rules: Declining Abattoirs and the Politics of Food Safety Regulation in Ontario (Master of Arts, Department of Geography, University of Toronto, 2014) [unpublished]; Sylvain Charlebois & Amit Summan, "Abattoirs, Meat Processing and Managerial Challenges: A Survey for Lagging Rural Regions and Food Entrepreneurs in Ontario, Canada" (2014) 10:1 Intl J Rural Managment 1.

²⁶ See Christiana Miewald, Sally Hodgson & Aleck Ostry, "Tracing the Unintended Consequences of Food Safety Regulations for Community Food Security and Sustainability: Small-Scale Meat Processing in British Columbia" (2015) 20:2 Local Environment 237; Christiana Miewald, Aleck Ostry & Sally Hodgson, "Food Safety at the Small Scale: The Case of Meat Inspection Regulations in British Columbia's Rural and Remote Communities" (2013) 32 J Rural Studies 93.

different classes of provincially-licensed abattoirs.²⁷ On the other hand, Ontario only recognizes one class of provincially-licensed abattoir.²⁸ In both Ontario and British Columbia, concerns have been raised that meat inspection requirements are insufficiently tailored to accommodate the differences between large- and small-scale operations. However, given British Columbia's graduated licensing system, Ontario's single-model system is, at least on the surface, more restrictive. For this reason, I selected Ontario for the second case study. Moreover, given Ontario's geographic proximity to Quebec and similarities in population size (Ontario and Quebec have the highest population in Canada, and Toronto and Montreal are the two largest cities in the country), I determined that the comparison would be more meaningful. Choosing to compare Quebec's system with Ontario's came with the practical advantage that I could more easily conduct interviews and visit meat processing and slaughter facilities in person. Substantively, I was interested in the similarities between Quebec and Ontario's inspection systems but for Quebec's recognition of a third class of abattoir. Under the Act to regularize slaughterhouses the province outlawed the previously tolerated unlicensed abattoirs, replacing them with the newly established class of "abattoir de proximité" (custom slaughterhouse).²⁹ The abattoir de proximité requires a license to operate but it is not under permanent inspection. This means that although inspectors may perform site visits, they are not necessarily present on kill days. Because they are not under permanent inspection, producers cannot sell meat from animals slaughtered at an abattoir de proximité.³⁰ Both Ontario and Quebec prohibit the sale of uninspected meat. Practically, this means that regardless of the recognition of the abattoir de proximité, the requirements in both provinces are the same for producers who want to sell meat from their animals. I was interested therefore in why Quebec was developing this new class of abattoir and

r/ontariomeatinspect.htm#meat products>.

²⁷ See British Columbia Ministry of Agriculture, "Meat Inspection & Licensing", online: *Province of British Columbia* <www2.gov.bc.ca/gov/content/industry/agriculture-seafood/food-safety/meat-inspection-licensing>.

²⁸ See Ontario Ministry of Agriculture, Food and Rural Affairs, "Ontario's Meat Inspection System", online: Ontario Ministry of Agriculture, Food and Rural Affairs <www.omafra.gov.on.ca/english/food/inspection/meatinsp/m-i-p-</p>

²⁹ *Supra* note 22.

³⁰ The regulatory framework of each jurisdiction is discussed in detail in Chapter 4.

why Ontario was not. If food safety sciences and expertise in both provinces were comparable, there were clearly non-scientific reasons for this variation in licensing.

The decision to include Vermont as the third case study for this project was because in 2014 the State passed an on-farm slaughter law that allows farmers to sell a small number of live animals to customers for slaughter on-site.³¹ Moreover, federal exemptions for poultry inspection in the United States are sweeping by comparison to anything permitted in Canada.³² As a result, a producer who raises poultry in the Eastern Townships of Quebec or along the South Shore of the Ottawa River in Ontario is subject to a meat inspection system that is very different from the one of their neighbour a few kilometers away in Vermont. I chose Vermont, despite the added complexity of having to map not only one but two federal regulatory systems (Canada and the United States) on to my case studies, because Vermont's approach to animal slaughter appears to adopt a more deliberate effort to align regulations with cultural and political perspectives about the place of food and agriculture in society. In contrast to Quebec and Ontario, Vermont seemed to be responding differently to social pressure to support community-based, local, farm-raised and farms-slaughtered meat. This was something I wanted to explore.

Initially, I viewed my selection of case studies as providing neat examples of a strict (Ontario), moderate (Quebec), and flexible (Vermont) meat inspection system. My intention was to illustrate how the variations between each jurisdiction's approach to licensing requirements was informed by socio-cultural and moral perspectives about how animals should be raised and slaughtered and thus challenge the narrative that food safety governance is an objective exercise. I believed that factors such as Vermont's rural character and Quebec's gastronomic culture could explain the allowances in those jurisdictions that are prohibited in Ontario. But, as I have stated in the introductory chapter and in the earlier part of this one, this spectrum of relative restrictiveness based on cultural differences was overly simplistic.

³¹ Vt Stat Ann tit 6 § 3311a.

³² The *Poultry Products Inspection Act* allows for the distribution and sale of poultry and poultry products without inspection for poultry growers who, in a calendar year, slaughter no more than 1,000 birds raised on their own farm. 21 USC §464(c)(4).

In fact, the differences between each jurisdiction turned out to be far more complex and this realization informed my own judgment throughout my research. Talking about each jurisdiction's food safety system with interview participants challenged me to approach the subject of animal slaughter regulations differently. While some small-scale farmers complained about regulatory restrictions that prevented them from selling farm-slaughtered meat directly to customers at the farmgate, others told me that they would never sell uninspected meat even it was legal. Others encouraged me to look elsewhere than meat inspection regulations because in their view the real problem with getting their products to market was industry consolidation and Canada's system of supply management and commodity marketing boards. What I originally perceived to be a conflict between science and ethics in relation to safety turned out to be a more delicate negotiation between a multiplicity of factors: science, economics, religion, trade, ethics and more. As a result, the chapters that follow dismantle the ranking system that informed the initial case study selection and instead develop a more nuanced, and hopefully more constructive, account of the normativity of risk I observed across these three jurisdictions.

3.5 Methods and sources of data collection

This project is interdisciplinary and employs mixed methods combining traditional legal analysis with empirical research. Data was obtained through document analysis and semi-structured interviews. Document analysis involved a study of the regulations for meat production in Ontario, Quebec, and Vermont. Scholarly publications were consulted in several disciplines outside of law, including anthropology, sociology, political science, economics, management, and philosophy. References were also drawn from media sources, especially in cases involving breaking news of foodborne disease outbreaks and other public interest stories. Semi-structured interviews were conducted with individuals working across the meat supply chain as well as regulators in each jurisdiction. Since many of the socio-cultural and moral perspectives about what constitutes good food are not explicitly articulated in food safety regulations, interviews played a key role to help me elucidate narratives that influence food safety risk management implicitly and indirectly.

3.5.1 Recruitment of participants

Over a period of seven months between December 2017 and June 2018, I interviewed 18 individuals (see Appendix A). Interview participants were a mix of government and industry actors. I interviewed public servants from the food safety departments of the Canada Food Inspection Agency (CFIA), Ontario Ministry of Agriculture, Food, and Rural Affairs (OMAFRA) and Vermont Agency of Agriculture and Food Markets (AAFM). Despite attempts over a period of seven months to arrange for an interview with the Quebec Ministry of Agriculture, Fisheries and Food (MAPAQ), my request was not granted.³³ A request for an interview with the Quebec Association of Poultry Producers was also declined. In contrast, my request to the Ontario Independent Meat Processors was granted. I also interviewed operators of abattoirs, producers and representatives from farmer organizations in each jurisdiction.

By its nature, this project is meant to be inclusive of many different perspectives. Consequently, no exclusion criteria were used in the selection of interview participants. Participants were recruited purposively, drawing on contacts from my personal involvement in food policy work and connections developed at food studies conferences. In Quebec, I was connected through my butcher to the owner of a federally licensed abattoir, and a farmer I knew helped me by circulating a call for participants on a local producer listserv. Where personal and professional contacts were insufficient, I used government directories to identify potential participants. However, in practice, cold calling yielded limited results and I relied heavily on the snowball sampling method to recruit additional participants.

³³ For a discussion of how my own experience with MAPAQ aligned with those of several interview participants, see Chapter 5.

3.5.2 Methods and procedures for obtaining data

Interviews were conducted either in person, by telephone or via an electronic platform such as Skype. Prior to each interview, participants were provided with a short description of who I am and what my research project is about (see Appendix B). In this exchange, I explained that I am interested in the ways that social, cultural, and moral perspectives about how animals should be raised and slaughtered are considered in the design of food safety regulations. Participants were also provided with a consent form (see Appendix C) and invited either to return a signed electronic copy before the interview or to return a hard copy in person at the start of the interview. Participants were given the opportunity to ask questions about the nature of the project and a few participants did raise some concerns about confidentiality with me. For example, one producer wanted to speak over the phone in order to clarify whether statements they might make could eventually be traced back to them. In particular, the producer was concerned that if they spoke candidly about meat production in their region they might reveal controversial or even illegal practices involving the abattoirs, meat processing plants or butcher shops they sold to and which could be traced back to them. In response to this concern (something I had also flagged as a potential risk of participating in the project in the participant consent form), I explained that I would not reveal the exact location of the participant in the final project (only the jurisdiction, not the region within the province or state). This seemed to provide sufficient reassurance, and a very candid interview followed. However, as an extra precaution, I decided not to attribute any direct quotations to industry actors (producers, processors, retailers) in the project unless they very specifically indicated their willingness to be so named. In the case of government representatives, anonymity is more difficult. While I refrain from using their names in the chapters that follow, by the nature of their position, colleagues within government could probably identify with whom I spoke. However, all government representatives I interviewed agreed to be identified by name and so there was not the same concern for confidentiality among these interview participants as there was among producers.

Another concern that was flagged by one participant was about my research objectives. This producer, after having read my letter of intent and participant consent form, requested a phone

call before agreeing to participate. The producer wanted to know if my research had an activist animal rights agenda. Having been the target of animal rights activism in the past, they were concerned about exposing themselves and their farm to further antagonism. When we spoke on the phone, I shared my reasons for undertaking this project – the same reasons that are discussed earlier in this chapter. I acknowledged my personal and academic commitment to advancing animal rights, noting however that I believe this can be compatible with some practices of meat production but not others. Most importantly, I explained that my objective in undertaking this project is to bring different perspectives about how animals should be raised and slaughtered safely and humanely into conversation, and that I am more interested in fostering inclusive dialogue than advancing one perspective about the ethics of eating meat. I offered to conduct an interview off-the-record (without taking notes or recording) in order to minimize any potential identification of the producer, but they decided to participate fully. In all cases where participants raised questions or expressed concerns about confidentiality, they were reminded that their participation was voluntary, and that if they chose to participate they could withdraw at any time.

Once participants had consented to the terms of the project, the interviews were conducted in two parts (for a list of interview questions, see Appendix D). The first part of the interview focused on participants' knowledge of and experience under existing food safety regulations and meat inspection requirements. I asked specific questions about the regulatory framework in the participants' jurisdiction, their understanding of the objective(s) of these regulations, what incidents might have led to their development, and their impact on the meat industry which they oversee or in which they work. I ended this part of the interview with a question about what food safety means to them, asking them to define the concept in their own words. The second part of the interview was more abstract, and invited participants to think about what "good" food is. The questions that followed were designed to explore the extent to which their understanding of food as something that is contextual, social, and cultural aligned with the conversations we had about food safety in the first part of the interview.

Interviews lasted between 45-60 minutes. In all cases, participants consented to the audio recording of the interview. When participants requested to see interview questions in advance,

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I provided them with a partial list of questions. The questions I provided were for the first part of the interview. I did not share questions about what constitutes good food nor did I make any mention of good food in my email communications. This was done to bring a degree of spontaneity and candour to the conversation, and to draw participants out of any prepared speeches they may have. The purpose of each interview was to gather information about participants' understanding of the concept of food safety, particularly in the case of meat production, and what, if any, relation food safety has to my theoretical conception of phronetic (good) food. Interviews were structured to draw on participants' context-specific expertise and to engage with tension points that emerge when convictions about the value of good food and safe food conflict. The results were deeply rewarding, and in most cases felt mutually instructive as participants and I both reflected on, struggled with, and readjusted our perspectives over the course of a 60-minute conversation.

3.5.3 Limitations

As I have mentioned previously, this dissertation brings the legislative and regulatory texts overseeing animal slaughter and meat processing in Ontario, Quebec and Vermont into dialogue with the government actors who apply them and the producers and processors who must abide by them. One of the original contributions of the project is to draw on empirical research in order to develop a better understanding of the issues at play in food safety governance and to gain access to perspectives that are not usually considered firsthand in legal scholarship. However, with 18 interviews, the conclusions I draw will not be generalizable for an entire industry. One important limitation in this dissertation is the absence of interview data from any government representative in Quebec. Although there are interesting reflections to be made on the opacity of the Quebec government compared to the other jurisdictions studied here, the analysis of the Quebec context is necessarily limited by the fact I could not verify information with them. Another limitation is the method used to recruit participants. Drawing on personal connections and the snowball method, it is possible that divergent perspectives were missed. Similarly, most (although not all) producers and processors I spoke to were operating on a small scale. However, while important to acknowledge these limitations, they do not detract from the overall

contributions of the empirical part of this project. First, firsthand accounts of what food safety regulations are meant to accomplish and how they are experienced by industry actors are missing from existing legal scholarship. While the narratives presented in the next chapters may not be generalizable with any statistical significance, they nevertheless offer a preliminary window into the perspectives of individuals who think about these regulations on a daily basis. Future research may attempt to gather a range of views from regulators and producers on a more systematic basis, but there is still value in exploring this qualitative data. Second, one of the stated objectives of this project is to consider the question: of what conflicts is food safety governance the scene? While the limitations of this dissertation may prevent an exhaustive evaluation of all of the possible conflicts that exist, even a narrow sampling of regulators and industry actors will highlight a selection of these conflicts. The issues that are the focus of the analysis in Chapters 5 and 6 are thus the result of topics raised by interview participants or the connections I identified between different responses. They are not the only issues that warrant further inquiry. They are the ones that arose from this exercise.

3.6 Conclusion

This dissertation advances a theory of phronetic food law, while also modeling good judgment through its methodological approach. The normative case study is one that is committed to identifying what *ought* to be instead of merely describing or even critiquing that which is. Determining which are the better and worse outcomes for the design and enforcement of meat inspection systems requires good judgment. Applying a phronetic and normative case study approach to the study of food safety regulations means going beyond describing food safety governance and engaging meaningfully with what it should be.

The following chapters present the results of my interviews and my reflections on them using a phronetic lens both in terms of methodology and theoretical approach. While in this chapter I have situated myself clearly in relation to the project, in the chapters that follow this first-person narrative will give way to a more descriptive one that is more common within academic

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scholarship. However, as the literature on phronetic social science and the normative case study make clear, despite a change in narration, my personal engagement with this project remains. My commitment to contribute to constructive dialogue to rethink the objectives of current food safety systems and to improve their governance is what motivates the choice of issues addressed in Chapters 4 and 5, and what structures my analysis in Chapter 6.

Before turning to these chapters, I offer one final comment on the decision to pursue empirical research in the first place. Given the availability of legislation, regulations, and in some instances, case law, for primary document analysis, a research project with similar goals could be designed without interviews. What is the value of interviewing the individuals who design, enforce or experience these rules? After reflecting on and addressing all the ethical dilemmas and risks involved in qualitative research, is it worth the hassle? Ensuring representative samples is challenging, and conducting interviews is time and resource intensive (securing interviews, travel time, interview transcription, etc.). But despite its challenges, risks, dilemmas, and complexities, empirical research also provides something that observation or the analysis of text cannot. We interview people for the simple reason that they can talk. According to Irving Seidman, the purpose of using interviews for research is not to answer questions, nor to test hypotheses rather it reflects the researcher's desire to understand the subject they are studying.³⁴ Earlier in this chapter, I explained that using a phronetic methodology implies being an engaged researcher. However, regardless of my commitments, my rationale for adopting an empirical approach is best explained by the simple fact that I have undertaken this project with the objective of learning about food safety governance as much as communicating my understanding of it to others. While I am confident in my ability to analyze food safety rules and regulations for this purpose, I recognize that I can achieve much more with the guidance and expertise of those outside of academia who work in this area every day.

³⁴ Irving Seidman, Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences, 3rd ed (New York: Teachers College Press, 2006) at 3.

4.1 Introduction

This chapter explains the regulatory requirements for meat inspection in the three jurisdictions selected for this project: Ontario, Quebec, and Vermont. In addition to rules under the provincial and state meat inspection systems in each of these jurisdictions, federal requirements are also discussed as these apply to meat that is destined for export (either across provincial/state lines or internationally). It is beyond the scope of this dissertation to provide a detailed analysis of every aspect of each jurisdiction's regulatory system. The purpose of this chapter is therefore to provide an overview of meat inspection requirements for animal slaughter and meat processing, and to highlight the circumstances where exemptions to these rules may be granted. By emphasizing the similarities and differences between each meat inspection system, this chapter offers additional insight into what makes these jurisdictions an empirically rich environment in which to apply the normative case study methodology. In light of the range of approaches to meat inspection that are presented, the case studies establish there are more ways than one to regulate food safety. These variations and the kind of situated governance they represent thus provide the foundations for the analysis that follows in the concluding chapters.

4.2 Meat Inspection in Ontario and Quebec

4.2.1. Constitutional framework

As I have described elsewhere¹, regulatory authority for food safety in Canada is split vertically across federal, provisional, territorial and municipal jurisdictions, and horizontally between

¹ Sarah Berger Richardson, "Food safety in Canada: Regulatory approaches to public health" in *Food Law in Canada*, Heather McLeod-Kilmurray et al, eds (Toronto: Thomson Reuters Canada,

departments and agencies. Parliament's power to regulate agri-food products for the purposes of ensuring food safety is rooted in the federal power over criminal law under s. 91(27) of the *Constitution Act, 1867*.² Parliament also has authority to regulate agri-food products destined for interprovincial and international trade under its s. 91(2) power over trade and commerce.

The provinces can regulate food and agriculture in relation to property and civil rights (s. 92(13)), municipal institutions (s. 92(8)), and all matters of a merely local or private nature (s. 92(16)). This includes enacting laws and regulations for the inspection of agricultural production and food processing (including establishments that sell food and agricultural products) as well as the promotion of food safety, public health, and the economic interests of the province.³ Provincial food safety measures must conform to minimum federal standards and regulations. They may also be more stringent than federal ones provided they do not impact interprovincial or international trade.⁴

Additionally, section 95 of the *Constitution Act, 1867* establishes a shared power for Parliament and the provinces to "make Laws in relation to Agriculture."⁵ While the Constitution recognizes "Agriculture" as the subject of joint legislative power, determining what is considered a law in relation to agriculture can be the subject of debate. Donald Buckingham notes that determining

^{2019) 201;} Sarah Berger Richardson & Nadia Lambek, "Federalism and Fragmentation: Addressing the Possibilities of a Food Policy for Canada" (2018) 5:3 Can Food Studies 28. ² 30 & 31 Vict, c 3.

³ See Halsbury's Laws of Canada (online), *Food* at HFD-6 "Provincial powers over property and civil rights" [Buckingham].

⁴ Although beyond the scope of this project, it is worth noting that municipal institutions are also actively engaged in food safety governance, including inspecting and regulating local establishments that manufacture, prepare or process agricultural and food products, and premises that serve food (See *ibid* at HFD-7 "Regulation of municipal institutions"). Moreover, with the adoption of outcome-based safety requirements (as opposed to prescriptive requirements) governments are increasingly delegating responsibility to industry actors to decide how best to comply with safety standards. This will be discussed in more detail in Chapter 5.

⁵ *Constitution Act, 1867, supra* note 2.

the constitutional validity of agricultural legislation has been the subject of a number of judicial rulings and he identifies two streams of interpretation that emerge from the case law.⁶ One method of interpretation attributes a broad and far-ranging meaning to "Agriculture" and "Laws in relation to Agriculture" and thus permits legislation relating to industry activities and agricultural products across the supply chain. The other method of interpretation is narrower and restricts the reach of legislation to activities on the farm (i.e., before the products have left the farm gate). Determinations as to which laws are valid exercises of the s. 95 agriculture power depend on whether a court uses a method of interpretation that restricts legislative power to "activities inside the farm gate" or to activities relating to the "industry of agriculture".⁷ According to Buckingham, the former "inside the gate" method of interpretation has dominated jurisprudence since the 1920s.⁸ In other words, only laws that regulate farming activities are the proper subject-matter for the shared agricultural power under section 95. Given that the food safety requirements that are the focus of this dissertation relate to activities that take place after animals have left the farm and once they arrive at an abattoir or processing plant, the legislative authority for the regulatory systems described below stems predominantly from ss. 91 and 92 of the Constitution Act, 1867.

4.2.2. Federal meat inspection system

With regard to meat and meat products, federal regulations operate under two main legislative frameworks. First, all meat and meat products sold in Canada must comply with the *Food and Drugs Act* and its Regulations.⁹ The *Food and Drugs Act*, which is overseen by Health Canada, prohibits the sale of unsafe food products and establishes minimum health and safety provisions for all foods sold in Canada. It prohibits the sale of unfit or poisonous food (s. 4(1)), prohibits the

⁶ Halsbury's Laws of Canada (Donald Buckingham), (online), *Agriculture* (Markham, Ont: Lexis Nexis Canada, 2018) at HAG-10 "Two streams of interpretation".

⁷ Ibid.

⁸ *Ibid* at HAG-11 "'Inside-the-gate' interpretation".

⁹ Food and Drugs Act, RSC 1985, c F-27; Food and Drug Regulations, CRC, c 870.

manufacture, preparation, preservation, packaging or storage of food for sale under unsanitary conditions (s. 7), and makes it unlawful to label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is unlikely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety (s. 5(1)).¹⁰ The *Food and Drugs Act* grants Parliament the power to make regulations for "carrying the purposes and provisions of this Act into effect" (s. 30(1)).

Second, meat and meat products destined for interprovincial and international trade must also comply with the *Safe Food for Canadians Act* and its Regulations, which apply to slaughter and processing activities.¹¹ Previously, and up until December 2018, meat production was overseen by the *Meat Inspection Act* and its Regulations.¹² However, in response to recommendations that Parliament "modernize and simplify federal legislation and regulations that significantly affect food safety"¹³, the federal government consolidated the different authorities administered and enforced by the Canadian Food Inspection Agency (CFIA) (the *Meat Inspection Act*, the *Fish Inspection Act*, the *Canada Agricultural Products Act*, the *Meat Inspection Act*, the food provisions of the *Consumer Packaging and Labelling Act*, and the 14 sets of associated regulations) with a single statute and accompanying set of regulations. Under the *Safe Food for Canadians Act* and Regulations, meat that is traded across provincial borders or exported must come from federally

¹⁰ See Buckingham, *supra* note 3 at para HFD-9 "Food and Drugs Act requirements": Buckingham notes that "the words 'value', 'quantity', and 'merit' found in s. 5(1) relate more to food quality and loss of economic value than food safety."

¹¹ Safe Food for Canadians Act, SC 2012, c 24 [Safe Food for Canadians Act]; Safe Food for Canadians Regulations, SOR/2018-108 [Safe Food for Canadians Regulations].

¹² Meat Inspection Act, RSC 1985, c 25 (1st Supp); Meat Inspection Regulations, 1990 SOR/90-288. While at the time of conducting the research for this project, the now-repealed Meat Inspection Act and its Regulations were in force, in fact the rules regarding inspection requirements did not change. Moreover, since the Safe Food for Canadians Act was adopted in 2012, interview participants were well aware of the new legislative framework despite the fact that the Regulations were not yet published and the Act was not yet in force.

¹³ Sheila Weatherill, "Report of the Independent Investigator into the 2008 Listeriosis Outbreak" (2009), online (pdf): *Government of Canada* <epe.lac-bac.gc.ca/100/206/301/aafcaac/listeriosis_review/2012-06-28/www.listeriosis-listeriose.investigation-enquete.gc.ca>.

registered slaughter and processing facilities. These facilities are inspected by the CFIA to ensure compliance with federal regulations. Inspection services are provided during the work shift, meaning that slaughter and processing activities cannot take place outside the work shift when inspectors are not present. According to the CFIA, 95% of all animals slaughtered in Canada are slaughtered in federal facilities, and the majority of meat processing in the country also takes place in federal facilities.¹⁴

In addition to these two legislative frameworks, the sections of the *Health of Animals Act* and its Regulations that apply to food animals destined for slaughter are also relevant for meat safety.¹⁵ As with the *Safe Food for Canadians Act*, the *Health of Animals Act* and its Regulations fall under the authority of the CFIA. The Health of Animals Regulations apply to the transportation of all animals in Canada, including animals entering or leaving the country, by train, car, aircraft or other vessel, and provides that these animals are subject to inspection at all times by a CFIA inspector.¹⁶ The Regulations also restrict the transportation of sick, pregnant and unfit animals, and provide guidelines for loading and unloading animals.¹⁷ Humane handling guidelines for animals during transportation engage animal welfare concerns, but they are also connected to food safety as the improper handling of animals or the processing of sick or unfit animals can create food safety risks for consumers. Finally, the *Animal Health Regulations* include traceability and identification requirements for producers, including tagging animals and record keeping, and for federally and provincially registered abattoirs and meat plants to maintain identification information of carcasses until they are approved for human consumption or condemned.

¹⁴ Canadian Food Inspection Agency Government of Canada, "Canada's Meat Inspection System", (23 July 2013), online: *Canadian Food Inspection Agency*

<www.inspection.gc.ca/food/information-for-consumers/fact-sheets-and-infographics/specificproducts-and-risks/meat-and-poultry-products/meat-inspectionsystem/eng/1374559586662/1374559587537>.

¹⁶ Health of Animals Regulations, supra note 11, ss 136–159.
 ¹⁷ Ibid.

¹⁵ Health of Animals Act, SC 1990, c 21; Health of Animals Regulations, CRC, c 296 [Health of Animals Regulations].

4.2.2.1. Ritual slaughter

While meat safety is regulated under several federal statutes and regulations, this project focuses specifically on the inspection requirements set out in the old *Meat Inspection Act* and the new *Safe Food for Canadians Act*. Moreover, in addition to the strict requirements that are set out in both statutes' respective Regulations, particular attention will be paid to situations in which exemptions are granted. For instance, regulatory provisions permit ritual slaughter under Judaic and Islamic law and provide an exemption from the standard requirement that animals be unconscious before they are bled.¹⁸ As per religious guidelines, animals are permitted to be conscious when they are cut, provided they are properly restrained and killed with a single cut that results in rapid exsanguination. The significance of these exemptions and others will be explored in more detail in the following chapters.

4.2.2.2. Preventive control plans

Animal slaughter and meat processing are among the most regulated sectors of our food system. As a result, many of the reforms introduced by the new *Safe Food for Canadians Act* legislative framework were already familiar to meat producers who faced registration, licensing, and traceability requirements under the old *Meat Inspection Act*. Moreover, the emphasis in the Safe Food for Canadians Regulations on preventative control plans can be seen as an extension of rules under the Meat Inspection Regulations, which included the requirement that all federally inspected meat establishments have Hazard Analysis and Critical Control Point (HACCP) systems in place (s. 29).¹⁹ HACCP is a systematic and preventive approach to food safety to assess hazards and to establish control systems that focuses on finding, correcting, and preventing physical, chemical, and biological hazards throughout the production process. With HACCP, industry actors

¹⁸ See *Safe Food for Canadians Regulations, supra* note 7, s 144.

¹⁹ Canadian Food Inspection Agency Government of Canada, "Hazard Analysis Critical Control Point (HACCP)", (30 August 2012), online: *Canadian Food Inspection Agency* <www.inspection.gc.ca/about-the-cfia/newsroom/food-safetysystem/haccp/eng/1346306502207/1346306685922>.

are responsible for developing, implementing, and maintaining their own preventive control systems, which are then verified for compliance by the CFIA.

However, with the coming into force of the *Safe Food for Canadians Act*, the specific requirement that abattoirs and meat processors implement a HACCP system is replaced with the requirement that operators prevent, eliminate or reduce the level of biological, chemical and physical hazards that present a risk contamination by using control measures set out in the CFIA's *Preventive Control Requirements for Biological Hazards in Meat Products*, which is published on the Agency's website.²⁰ Whereas the HACCP requirement under the Meat Inspection Regulations lies somewhere between prescriptive and outcome-based requirements (it is prescriptive in the sense that every industry actor must prepare the same kind of HACCP system and outcome-based in the sense that the actual system is meant to focus on preventing contamination), the new Regulations take outcome-based requirements one step further by allowing for a broader framework for preventive control plans that allow industry to determine what kind of safety process they want to adopt to mitigate and control risks. In a regulatory impact analysis statement prepared by the CFIA prior to the final publication of the Safe Food for Canadians Regulations, the Agency claims that preventive control requirements allow for greater flexibility and innovation than with prescriptive requirements.²¹

During the course of site visits conducted for this project, every slaughter facility made a point of showing me their large HACCP binders. And nearly all government officials and processors I interviewed spoke about the significance of preventive controls and policy shifts towards outcome-based requirements. Although this was a recurring theme in my interviews, it also proved to be an area of confusion and disagreement among interview participants. These varying interpretations and perspectives will be explored in more detail below and in Chapter 5.

²⁰ Safe Food for Canadians Regulations, supra note 7, s 47(2).

²¹ Government of Canada, "Safe Food for Canadians Regulations: Regulatory Impact Analysis Statement" (2017) C Gaz I, 260.

4.2.3. Ontario Meat Inspection System

Shifting from federal requirements to provincial ones, Ontario requires that all meat or meat products sold or distributed in the province come from an inspected source: 1) a federally registered facility (see above); or 2) a provincially licensed meat plant; or 3) an approved foreign source.²² The sale or distribution of uninspected meat is illegal. Provincially licensed meat plants are regulated under the *Food Safety and Quality Act, 2001*²³ and the Meat Regulation²⁴, which provides standards for the safe, humane slaughter of food animals and the processing of meat products in an environment that manages and minimizes the health and food safety risks to the consumer. Licensed meat plants are divided into two categories: abattoirs (slaughterhouse) and freestanding meat plants (FSMPs or further processing facilities). Abattoirs conduct animal slaughter activities and may also conduct further processing activities. FSMPs only conduct processing activities (e.g. aging, boning, cutting, slicing, smoking, curing, fermenting, etc.).

Abattoirs and FSMPs are licensed by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Any abattoir that is not federally registered must be licensed under the *Food Safety and Quality Act*. Whether a FSMP must also be licensed under the *Food Safety and Quality Act* depends on the kind of activities conducted at the plant, the meat products produced and the distribution of products. Moreover, in 2014, amendments were made to exempt certain food establishments from OMAFRA oversight.²⁵ In particular, exemptions are granted for businesses

r/ontariomeatinspect.htm#meat_products> [OMAFRA, "Ontario's Meat Inspection System"]. ²³ SO 2001, c 20 [*Food Safety and Quality Act*].

²² Ontario Ministry of Agriculture, Food and Rural Affairs, "Ontario's Meat Inspection System", online: *Ontario Ministry of Agriculture, Food and Rural Affairs*

<www.omafra.gov.on.ca/english/food/inspection/meatinsp/m-i-p-

²⁴ O Reg 31/05 [Meat Regulation].

²⁵ Following complaints that the Meat Regulation was over-inclusive of some business operations, amendments were made to exempt certain businesses that would not normally be considered meat plants but nevertheless required provincial licenses under the 2005 Regulations. The 2014 amendments served to clarify that the main objective of the Meat Regulation is "to ensure slaughter plants and processing plants that conduct higher risk processing or significant product distribution are the focus of inspections." Ontario Ministry of

considered lower risk, such as where the majority of the business activity is a food service, premises with only limited types and quantities of meat products, and premises producing meat products to be sold to other businesses (persons other than consumers) if the amount sold is either no greater than 25 percent of their meat product sales or no greater than 20,000 kg of meat annually.²⁶ These businesses are instead overseen by municipal Public Health Inspection regulations.

OMAFRA requires provincially licensed establishments to adhere to certain criteria, including specifications about plant and equipment design and construction, handling and processing of meat products, and training and certification. OMAFRA meat inspectors must be on-site whenever slaughter activities occur to verify pre-operational conditions for slaughter, to inspect each animal before slaughter (ante-mortem inspection) and to inspect each carcass after slaughter (post-mortem inspection). Inspectors also monitor employee hygiene practices and operational standards and hazards, review compliance with written programs and preventive controls, collect samples for microbial testing, perform audits, and oversee corrective actions they have ordered.²⁷ In FSMPs, the frequency of inspections is determined based on risk, and can take place anywhere from weekly up to every six weeks. In addition to regular inspection, OMAFRA conducts yearly meat plant compliance verification audits (sometimes more frequently). Compliance verification audits are performed by OMAFRA regional veterinarians or a third-party service audit provider. Failure of a plant to pass an audit results in their removal from the OMAFRA list of licensed plants.

One area of divergence between Ontario's meat inspection system and federal requirements that will be considered in more detail below is the absence of specified preventive control

Agriculture, Food and Rural Affairs, "Summary of Revised Meat Regulation", online: Ontario Ministry of Agriculture, Food and Rural Affairs

<www.omafra.gov.on.ca/english/food/inspection/meatinsp/summarychanges.htm>
²⁶ Meat Regulation, supra note 20 at s. 2.1; OMAFRA, "Ontario's Meat Inspection System", supra note 18.

²⁷ Ibid.

requirements such as HACCP at provincial facilities.²⁸ OMAFRA nevertheless encourages meat plant operators to adopt voluntary food safety and traceability programs, of which HACCP is one.²⁹ Moreover, proposed amendments to the Meat Regulations reflect an attempt by the Ministry to move the Regulations towards more outcome-based requirements.³⁰ For example, one suggested change is to remove the requirement for a water sampling tap and backflow prevention device (requirements to ensure that water used for slaughter, meat processing and cleaning meets drinking water quality standards). Because operators are already required under the Meat Regulation to have a system in place to ensure the supply of potable water, the proposed amendment seeks to enable greater flexibility for operators to achieve specified safety outcomes.

Another distinguishing feature between Ontario and federal requirements is the absence of live animal traceability requirements at the provincial level. This of course only applies to meat that is sold within the province, and meat destined for interprovincial or international trade is subject to the federal requirements under the Health of Animals Regulations discussed above. While federal regulations oversee the transportation of all live animals destined for slaughter, the Meat Regulations apply to the transportation of carcasses and meat products from a provincially licensed meat plant back to the farm, to a FSMP, or to a retail outlet. Transportation rules include the requirement that meat plant operators ensure that items are protected against physical damage, deterioration and contamination, as well as to ensure that appropriate temperature levels are maintained.³¹

²⁸ See for example, the following excerpt from an interview with an OMAFRA representative: "We do not require HACCP. And nor is there any appetite to go in that direction. [...] It would be a very large burden on our operators to have HACCP put in place. [...] For them to manage that would just put them right out of business." Interview ON06.

²⁹ Interviews ON02 & ON06.

³⁰ OMAFRA, "Meat Regulation Amendment Proposal" (19 November 2018), online (pdf): Ontario's Regulatory Registry

<www.ontariocanada.com/registry/showAttachment.do?postingId=27767&attachmentId=3913 1>.

³¹ See *Meat Regulation, supra* note 20, Part XIII-Transportation Standards.

4.2.3.1. Regulatory Exemptions

Exemptions from inspection apply only to meat products for personal consumption. On-farm slaughter without a license or inspection is permitted for producers' personal consumption and that of their immediate family. The meat is not for distribution and cannot be sold to the public. A meat plant may also process the carcass of hunted game without inspection if the meat is for personal consumption and labelled as such (i.e., "Consumer Owned, Not for Sale"). There are no exemptions for producers engaged in direct sales to consumers. Ontario's meat inspection system requires all livestock and poultry producers who sell their products at the farm gate or farmers' markets to have their animals slaughtered (and if desired, processed) from a federally or provincially inspected source. Producers must also follow mandatory labelling requirements.³²

4.2.3.2. Ritual slaughter

In an attempt to balance religious accommodation with humane handling requirements, provincial regulations provide exemptions for ritual slaughter, including that animals do not need to be stunned and rendered unconscious before slaughter as long as the animal is adequately restrained by a person who is trained to carry out a humane slaughter by means of single cut that causes immediate loss of consciousness and rapid exsanguination.³³ Moreover, in response to changing demographics and growing consumer demand, exemptions from chilling requirements are permitted to accommodate ritual slaughter for religious celebrations, particularly the Muslim holiday of Eid-al-Adha and Eird-al-Fitr. Upon request from meat plan operators, inspectors may grant written permission to deliver carcasses directly to the customer without being chilled to accommodate religious needs for hot carcasses.³⁴ During an interview with an OMAFRA

³² See OMAFRA, "Ontario's Meat Inspection System", *supra* note 18.

³³ See *Meat Regulation, supra* note 20, s 75(2)(d), 75(8). See also OMAFRA, "Meat Plant Guidelines", online: *Ministry of Agriculture, Food and Rural Affairs* <www.ontario.ca/document/meat-plant-guidelines>.

³⁴ Proposed amendments to the Regulations would additionally allow temperature-exempt carcasses from ritual slaughter to be distributed to a third party or consumers at other locations

representative, it was explained that accommodations for ritual slaughter have received careful attention by the Food Inspection Branch:

[...] we have done a bit of work on educating consumers, operators, imams, and the community, about religious slaughter and the requirement under the Regulations for religious slaughter. And we actually received, the Meat Program has actually received a provincial award [...] for the work that they have done with their Eid awareness campaign. And a lot of that is to make those people aware of those food safety requirements and why we have food safety requirements in place, and how to balance that with their religious requirements. And we have also put in place the ability for hot carcasses to leave a slaughter plant during Eid for religious slaughter [...] So, we have done quite a bit of work in being sensitive to those religious communities.³⁵

While discussions about ritual slaughter during interviews in Ontario focused predominantly on halal requirements, it should be noted that the exemptions in the Meat Regulations refer more broadly to any kind of ritual slaughter that takes place "in accordance with religious practice".³⁶ In comparison, the federal Safe Food for Canadians Regulations is worded more narrowly and refers only to ritual slaughter under Judaic and Islamic law.³⁷

⁽e.g., at celebrations). The purpose of this amendment is to help deter illegal slaughter activities. Currently, temperature-exempt carcasses must be provided only directly to the consumer of the carcass, which requires the consumer to visit the plant, causing overcrowding and operational problems during busy religious holidays. See OMAFRA, "Meat Regulation Amendment Proposa/", *supra* note 26.

³⁵ Interview ON06.

³⁶ Meat Regulation, supra note 20, s 75(8).

³⁷ Safe Food for Canadians Regulations, supra note 7, s 144.

4.2.4. Quebec Meat Inspection System

All meat or meat products sold or distributed in Quebec must come from an inspected source. As in Ontario, the sale or distribution of uninspected meat is illegal. Provincially licensed meat plants (Class A abattoirs) are regulated under the Food Products Act³⁸ and the Regulation Respecting Food.³⁹ Class A abattoirs operate under the permanent inspection of the Ministry of Agriculture, Fisheries and Food (Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (MAPAQ)).⁴⁰ Permanent inspection means that MAPAQ inspectors are on site at all times when slaughter and processing activities take place, and the inspectors are responsible for antemortem and post-mortem inspection, verifying compliance with hygiene requirements, and overseeing the use of the 'Approuvé Québec' (Quebec Approved) stamp to products, which attests that the meat comes from an abattoir under permanent inspection, is acceptable for human consumption, and is traceable. There are five categories of Class A abattoir permits, and the categories are divided according to animal species.⁴¹ Licenses for meat plants are distinct from abattoir licenses, and may be granted alongside an abattoir permit or separately. There are six categories of meat plants for preparing, conditioning or processing, for wholesale purposes, meat or meat products intended for human consumption: a "general delicatessen" permit; a "meat cutting and mincing" permit; a "pizza preparation" permit; a "canned meat" permit; a "hare meat preparation" permit; and a "canned hare meat" permit.⁴²

Again, as in Ontario, the requirements for provincially licensed abattoirs align predominantly with those found under the federal meat inspection system, but do not require HACCP systems or other named preventive control systems for carcasses or meat that stay within the province. In

³⁸ Food Products Act, CQLR c P-29.

³⁹ Regulation Respecting Food, CQLR c P-29, r 1 [Regulation Respecting Food].

⁴⁰ See MAPAQ, "Permis d'abattoir et permis d'abattoir de proximité", online: *Portail Québec* <www4.gouv.qc.ca/fr/Portail/citoyens/programme-

service/Pages/Info.aspx?sqctype=sujet&sqcid=1324> [MAPAQ, "Permis d'abbatoir"].

⁴¹ *Regulation Respecting Food, supra* note 35, s 1.3.2.

⁴² *Ibid*, s 1.3.3.

the absence of any interviews with representatives at MAPAQ, it was difficult to assess how the Ministry understands the general trend in food safety regulations towards outcome-based requirements. However, in reply to my queries, a food safety and risk assessment advisor at MAPAQ did respond with a statement that the Regulation Respecting Food adopts a "mixed approach" to preventive control, employing both prescriptive and outcome-based requirements.⁴³

One distinguishing feature of Quebec's meat inspection system compared to Ontario is its rules around custom slaughter and the establishment of a new class of abattoir called 'abattoir de proximité' (local abattoir) that came into effect in 2015. In 2009, Quebec introduced the Act to regularize and provide for the development of local slaughterhouses in an attempt to strengthen food safety in the meat industry.⁴⁴ Between 2009 and 2015, the provinces' unlicensed abattoirs were phased out and the operators of these establishments were given the opportunity to upgrade their facilities during this grace period in order to meet the requirements of a provincial abattoir (Class A), a federal abattoir, or an abattoir de proximité. A license to operate an abattoir de proximité entitles the operator to slaughter food animals and process meat and meat products for retail sale on-site, and to provide slaughter and processing services for consumers who bring their live animals to the facility and take them back for their personal consumption. Only direct retail sales on-site are permitted and the facility cannot sell carcasses or meat products for wholesale. Products from local abattoirs do not have the 'Quebec Approved' stamp, which limits where they can be sold. These restrictions are because the abattoir de proximité is not under permanent inspection by federal or provincial inspectors, meaning that slaughter can occur without an inspector be on site.⁴⁵ Provincial inspectors may nevertheless present themselves at any time and without warning to monitor the facility's activities.

⁴³ Email correspondence on file with author, July 27, 2018.

⁴⁴ Act to regularize and provide for the development of local slaughterhouses, CQLR c R-19.1.

⁴⁵ MAPAQ, "Permis d'abbatoir", *supra* note 36.

Because of the restriction that local abattoirs may only sell products on-site, producers who want to sell their carcasses or meat products rather than live food animals must take their animals to a provincial or federal abattoir. As a result, the requirements under Quebec's meat inspection system are quite similar to those in Ontario for producers who want to sell or distribute meat products.

4.2.4.1. Regulatory Exemptions

The Regulation Respecting Food provides that the slaughter of an animal must be conducted in an abattoir if the meat is destined "for sale for human consumption or to serve as food for a person other than the person who is slaughtering".⁴⁶ On-farm slaughter is only permitted for personal consumption. This meat cannot be sold or distributed under any circumstances. Moreover, while exempt from inspection requirements, the on-farm slaughter must comply with all relevant federal, provincial and municipal regulations, including the *Regulation respecting the identification and traceability of certain animals* under the *Animal Health Protection Act*, as well as animal welfare and waste management requirements.⁴⁷

4.2.4.2. Ritual slaughter

Exemptions from inspection are not granted for ritual slaughter purposes. Moreover, with the introduction of Quebec's *Animal Welfare and Safety Act*⁴⁸ in 2015, there has been an attempt by the provincial government in recent years to ensure that ritual slaughter complies with all laws and regulations around slaughter activities. The *Animal Welfare and Safety Act* provides that the circumstances and methods used to slaughter an animal must not be cruel, minimize pain and

Publication.aspx?docid=DDJ7DZ3RAA3J-202-12217>.

⁴⁶ *Regulation Respecting Food, supra* note 35, s 6.2.1.

⁴⁷ See MAPAQ, "Aïd al-Adha - Recommandations pour les consommateurs", (June 2018), online (pdf): *MAPAQ* <www.mapaq.gouv.qc.ca/fr/Pages/Details-

⁴⁸ Animal Welfare and Safety Act, CQLR c B-31 [Animal Welfare and Safety Act].
anxiety, result in rapid loss of sensibility followed by a quick death, and ensure that the animal does not regain sensibility before its death.⁴⁹ Following a series of mediatized incidents of producers illegally selling goats to Muslim consumers who slaughtered the animals on-site for Ramadan, MAPAQ recently issued a series reminders consumers and producers about the applicable rules for ritual slaughter.⁵⁰ Among other things, they emphasize that it is illegal for an individual who does not hold an abattoir license to provide their clients with facilities or equipment to slaughter an animal on-site, even if it is for the client's personal consumption. Producers were warned that failure to comply with these rules could result in prosecution for operating an abattoir illegally.

4.3. Meat Inspection in Vermont

4.3.1. Constitutional framework

As in Canada, American food safety regulations are subject to the constraints of federalism. The federal government has power under the U.S. Constitution's "Commerce Clause" to regulate interstate and international commerce.⁵¹ State governments enjoy residual powers, which allow them to "legislate and regulate any arena that has not been preempted by federal law" as long as the state laws neither conflict with federal laws nor interfere with interstate commerce.⁵² Additionally, state governments have the exclusive power to regulate and protect the health, safety, welfare and well-being of the people within their jurisdiction, including the power to make

⁴⁹ *Ibid*, s 12.

⁵⁰ See e.g. MAPAQ, "Fête de l'Aïd al-Adha - Rappel de réserver son abattoir dès maintenant", (24 July 2018), online: *Services Québec* <www.fil-</p>

information.gouv.qc.ca/Pages/Article.aspx?aiguillage=ajd&type=1&idArticle=2607242176>. ⁵¹ US Const art I, § 8, cl 3.

⁵² Neal D Fortin, *Food Regulation: Law, Science, Policy, and Practice*, 2nd ed (Hoboken, NJ: Wiley, 2017) at 8.

food inspection and health laws.⁵³ While the U.S. Constitution prevents Congress from regulating food for the purpose of achieving health and safety objectives, Article VI of the Constitution (the "Supremacy Clause") does allow the federal government to regulate an activity that incidentally falls under states governments' police powers if the intention is to regulate interstate commerce. Broadly speaking, these divisions of power as they relate to meat inspection are similar to the ones discussed above in the Canadian context. However, there are also important differences which are highlighted below.

4.3.2. Federal meat inspection system

The federal government regulates meat and poultry under the auspices of the U.S. Department of Agriculture (USDA). The USDA's Food Safety and Inspection Service (FSIS) oversees the inspection of domestic and imported meat, poultry and related products.⁵⁴ FSIS is responsible for ante-mortem and post-mortem inspection of food animals, inspecting slaughter and processing facilities, collecting and analyzing samples for contaminants and infectious and toxic agents, establishing and ensuring packaging and sanitation processes, ensuring standards compliance for imported products, overseeing voluntary recalls, and educating industry and consumers on safe food-handling practices.⁵⁵

The two primary federal statutes addressing food safety for animal slaughter and meat processing are the *Federal Meat Inspection Act, 1906*⁵⁶ and the *Poultry Products Inspection Act, 1957*⁵⁷ (as amended by the *Wholesome Meat act, 1967* and the *Wholesome Poultry Products Act,*

 ⁵³ See *ibid* at 22. See also Patricia A Curtis, "Federal, State, and Local Laws" in Patricia A Curtis, ed, *Guide to US Food Laws and Regulations* (Hoboken, NJ: Wiley-Blackwell, 2013) 55 at 58–59.
 ⁵⁴ The Food and Drug Administration oversees all domestic and imported food sold interstate excluding meat and poultry but including wild game ("exotic" meat).

⁵⁵ See Fortin, *supra* note 48; Curtis, *supra* note 49 at 55; see also USDA, "About FSIS", online: USDA Food Safety and Inspection Service

<www.fsis.usda.gov/wps/portal/informational/aboutfsis>.

⁵⁶ 21 USC § 601–695 [US Meat Inspection Act].

⁵⁷ 21 USC § 451–472 [US Poultry Inspection Act].

1968) and their Regulations.⁵⁸ The *Federal Meat Inspection Act* (FMIA) applies to cattle, sheep, swine, goats and horses slaughtered and processed for human consumption. The *Poultry Products Inspection Act* (PPIA) applies to domesticated birds, which includes chickens, turkeys, ducks, geese, guinea fowl, ratites (a variety of flightless long-legged bird) and squabs (domestic pigeon). The objectives of both statutes are similar - to prevent adulterated or misbranded products from being sold as food, and to ensure that slaughter and processing activities comply with sanitary requirements.⁵⁹

A unique feature of the American meat inspection system compared to Canada is the requirement that all state, foreign and federal meat and poultry establishments have at least "equal-to" standards of inspection.⁶⁰ With the introduction of the *Wholesome Meat Act, 1967* and the *Wholesome Poultry Product Act, 1968* (also known as the "Equal-to" Acts), the federal standards set out in the FMIA and PPIA were established as the baseline minimum requirements for meat and poultry production. As a result, State Meat and Poultry Inspection (MPI) Programs must enforce requirements at least equal to the federal ones. These programs are assessed by and receive up to 50% of their funding from FSIS. Equivalent standards are discussed further in the section below on Vermont's meat inspection system. If a State chooses not to establish a MPI Program, or fails to maintain the equivalent standard, FSIS will assume responsibility for inspection.

FSIS is thus responsible for the enforcement of the FMIA and PPIA in processing plants that ship products intrastate in the absence of a State MPI Program as well as interstate and abroad. An exception to this rule is the FSIS voluntary cooperative program introduced following a 2011 amendment to the Federal Meat and Poultry Products Inspection Regulations, which permits interstate shipments of meat and poultry products from State-inspected establishments if the

⁵⁸ Inspection of meat, meat-food products, and inedible fats, 19 CFR § 4.72; Poultry Products Inspection Regulations, 9 CFR Part 381.

⁵⁹ See Fortin*, supra* note 48.

⁶⁰ Ibid.

establishment has less than 25 employees, inspection is conducted by State inspectors who have received training in the enforcement the FMIA and PPIA, and the establishment complies with all federal standards under these statutes.⁶¹ Outside of this voluntary program, products from State-licensed facilities must remain and be sold within the State.

In 1996, FSIS introduced a rule requiring meat and poultry establishments: (1) to develop and implement written sanitation standard operating procedures (SSOP); (2) to ensure regular microbial testing to verify the adequacy of the establishments' process controls for the prevention and removal of fecal contamination and associated bacteria; (3) to establish pathogen reduction performance standards for Salmonella; and (4) to develop and implement a HACCP system of preventive controls.⁶² To receive FSIS inspection, a meat or poultry establishment must apply for and receive an official Grant of Inspection, which can be obtained if the establishment has written SSOPs, conducts a hazard analysis, develops a HACCP plan, and agrees to abide by all FSIS regulations.⁶³ The requirement of a hazard analysis and HACCP plan is also detailed in the US Code of Federal Regulations as the requirement that every official establishment must conduct a hazard analysis to assess food safety hazards, and must subsequently "develop and implement a written HACCP plan covering each product produced by that establishment whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur [...]."⁶⁴ According to the USDA, the purpose of these requirements is to control pathogenic microorganisms, reduce the incidence of foodborne illnesses, and contribute to the modernization of the meat and poultry inspection.⁶⁵

⁶³ See United States Department of Agriculture & Food Safety and Inspection Service,
 "Slaughter Inspection 101", online: USDA Food Safety and Inspection Service
 <www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/slaughter-inspection-101/slaughter-inspection-101>.
 ⁶⁴ Hazard Analysis and HACCP Plan, 9 CFR § 417.2.
 ⁶⁵ Ibid.

⁶¹ See Curtis, *supra* note 49 at 61.

⁶² Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems, 61 Fed Reg 38806 (1996) (9 CFR § 304ff).

Additional federal legislation relevant to animal slaughter and meat inspection is the *Humane Methods of Livestock Slaughter Act*, which is overseen and enforced by FSIS.⁶⁶ The *Humane Methods of Livestock Slaughter Act* is intended to ensure that animals are handled humanely when being killed for food.⁶⁷ It covers all federally inspected establishments that slaughter livestock and requires that "all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut".⁶⁸ Livestock refers to animals including cattle, calves, horses, mules, sheep and swine. However, chickens, turkeys, and other poultry are excluded from the Act.⁶⁹ Moreover, exemptions are permitted in the case of ritual slaughter, which is discussed in the section below.

4.3.2.1. Regulatory Exemptions

Under the *Meat Inspection Act*, mandatory inspection requirements do not apply to an individual who slaughters their own animals for their personal use or that of their household, non-paying guests and employees.⁷⁰ Nor does it apply to the custom slaughter of cattle, sheep, swine or goats delivered by the animal's owner for their personal use or that of their household, non-paying guests and employees.⁷¹ In the case of poultry, a third category of exemption exists. The *Poultry Products Inspection Act* provides a personal use exemption,⁷² a custom slaughter and

⁶⁶ 7 USC § 1901ff.

⁶⁷ *Ibid* § 1901.

⁶⁸ Ibid § 1902(a).

⁶⁹ For a discussion on the exclusion of poultry from legislative definitions of livestock, see e.g., Bruce Friedrich, "Still in the Jungle: Poultry Slaughter and the USDA" (2015) 23 NYU Envtl LJ 245; LaTravia Smith, "The 'Fowl' Practice of Humane Labeling: Proposed Amendments to Federal Standards Governing Chicken Welfare and Poultry Labeling Practices" (2017) 18:1 Sustainable Development Law & Policy 17. See also US Congressional Research Service, USDA Meat Inspection and the Humane Methods of Slaughter Act (RS22819) (Washington, DC: Library of Congress, 2008).

⁷⁰ Supra note 52, § 623(a).

⁷¹ Ibid.

⁷² Supra note 53, § 464(c)(1)(A).

processing exemption,⁷³ as well as an exemption for poultry growers who, in a calendar year, slaughter no more than 1,000 birds raised on their own farm for distribution or sale.⁷⁴

4.3.2.2. Ritual slaughter

The Humane Methods of Livestock Slaughter Act provides that:

"Notwithstanding any other provision of this chapter, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this chapter."⁷⁵

Ritual slaughter is defined as slaughter:

"[...] in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."⁷⁶

Consequently, ritual slaughter is also exempt from the requirements of the Food Safety and Quality Service Humane Slaughter Regulations.⁷⁷ Moreover, a FSIS directive provides that, while inspectors must ensure that pre-slaughter regulatory requirements are adhered to, they may not, in the case of ritual slaughter, interfere with the preparation of animal for slaughter, whether by

⁷³ *Ibid*, § 464(c)(1)(B).

⁷⁴ *Ibid*, § 464(c)(4).

⁷⁵ 7 USC § 1906 (2012).

⁷⁶ *Ibid* § 1902(b).

⁷⁷ For a more detailed discussion of ritual slaughter exemptions in the United States, see Bruce Friedrich, "Ritual Slaughter in the 'Ritual Bubble': Restoring the Wall of Separation Between the Church and State" (2015) 17:2 VJEL 223 at 226.

adjusting the positioning of the animal, or intervening in the ritual slaughter cut or any subsequent cuts by or under the supervision of the religious authority in order to facilitate bleeding.⁷⁸

In the case of poultry, ritual slaughter exemptions exist under the *Poultry Products Inspection Act* for establishments slaughtering or processing poultry or poultry products in accordance with religious dietary laws (there are no exemptions under the *Humane Methods of Livestock Slaughter Act* because poultry are excluded from this Act entirely).⁷⁹ For example, exemptions have been granted for the processing of poultry in accordance with Buddhist religious beliefs that require the head and feet remain on eviscerated poultry, and for processing and handling of non-eviscerated poultry with head and feet intact in accordance with Kosher requirements.⁸⁰

4.3.3. Vermont Meat Inspection System

As discussed previously, the introduction of the *Wholesome Meat Act* in 1967 created the possibility for State Meat and Poultry Inspection (MPI) Programs on the condition that they enforce requirements at least equal to those under the federal inspection system. As a result, while states enjoy certain powers to develop their own state-based food laws and policies, their primary role is to act as the implementer of federal legislation.⁸¹ State meat and poultry inspection programs operate under cooperative agreements with the USDA FSIS.

⁷⁸ US, Department of Agriculture, Food Safety and Inspection Service, *FSIS Directive 6900.2, Revision 2, Humane Handling And Slaughter Of Livestock* (Washington, DC: FSIS, 2011), online (pdf): USDA Food Safetty and Inspection Service

<www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/humane-handling >.
⁷⁹ US, Department of Agriculture, Food Safety and Inspection Service, *FSIS Directive 6030.1, Revision 1, Religious Exemption For The Slaughter And Processing Of Poultry* (Washington, DC: FSIS, 2005), online (pdf):

<www.fsis.usda.gov/wps/portal/fsis/topics/regulations/directives/6000-series>.
⁸⁰ Ibid.

⁸¹ See Carly Dunster, "Introduction to Food Law and Policy in the United States and Canada" in Gabriela Steier & Kiran K Patel, eds, *International Food Law Policy* (Cham: Springer International, 2016) 695 at 700.

In Vermont, a cooperative agreement exists between the USDA and the State's Agency of Agriculture, Food and Markets. The Vermont Meat Inspection Program provides inspection services for meat and poultry slaughter, as well as processing facilities for products that are destined for intrastate commerce.⁸² Vermont's Meat Inspection Program is based on four statutes: the *Federal Meat Inspection Act* (as amended by the *Wholesome Meat Act, 1967*), the *Federal Poultry Products Inspection Act*, Title 6 of the Vermont Statutes Annotated Chapters 201 (Humane Slaughter of Livestock) and Chapter 204 (Preparation of Livestock and Poultry Products).

In order to sell meat or meat products in Vermont, the products must come from a state- or federally-inspected facility. State inspection services are provided for producers that meet minimum food safety standards and establishments must operate with HACCP and SSOP in place. Inspectors are present at state-inspected establishments whenever they are producing products for sale. In the case of animal slaughter, inspectors are present to perform all inspection tasks related to humane handling of animals and to provide ante- and post-mortem inspection. For processing activities, State Food Safety Specialists (FSS), who receive the same training as Federal Consumer Safety Inspectors (CSI), oversee multiple plants over the course of the same day.⁸³ The Meat Inspection Program also oversees custom slaughter and processing establishments and provides voluntary inspection services (for a fee) for exotic species and game birds.

⁸² Vermont Agency of Agriculture, Food & Markets, "Vermont Meat & Poultry Inspection", online: *Vermont Agency of Agriculture, Food & Markets*

<agriculture.vermont.gov/food_safety_consumer_protection/meat_poultry_inspections>. ⁸³ Randy Quenneville, "Meat news – Slaughter facilities", online: *Vermont House Committee on Agriculture and Forestry* <legislature.vermont.gov/committee/document/2018/8/Date/1-12-2017#documents-section>.

4.3.3.1. Regulatory exemptions

In Vermont, several exemptions from inspection exist for meat products on the condition that they may not be sold or used for trade or barter. These are the personal use exemption, the custom exemption, and the 'on-farm' personal-use exemption.⁸⁴ The personal use exemption enables an individual to slaughter and process their own animal for personal consumption (including members of their household, non-paying guests and employees). The animal must be wholly owned by the individual and may not be shared with anyone else. The custom exemption enables an individual to provide slaughter and processing services for an individual or individuals who share a food animal on the condition that the carcass or meat product is clearly labeled as not for sale. The establishment performing the slaughter and processing does not have regular inspection on-site, but it must be licensed with the Vermont Agency of Agriculture and activities must comply with the federal HMSA and Vermont's Humane Handling Regulations.

The 'on-farm' personal use exemption is the newest category of exemption. It enables an individual to purchase a live animal and to slaughter the animal on-site. The purchase cannot be shared. As with the personal use exemption, the meat cannot be sold or bartered, and is for the exclusive use of the individual and members of their household, non-paying guests and employees. The farmer who sells the animal must be registered with the Vermont State Secretary, must keep records of each transaction and slaughter under the exemption, may not assist with the slaughter, and in any given year may only sell up to 5 cattle, or 15 swine, or 40 sheep/goats, or a total of 6000 lbs. (based on live weight).

Describing the impetus for the exemption, one interview participant explained that as the local food movement gained momentum in Vermont, producers and consumers were looking for ways

⁸⁴ See Vermont Agency of Agriculture, Food & Markets, "Livestock Exemptions from Inspection", online: Vermont Agency of Agriculture, Food & Markets <agriculture.vermont.gov/food_safety_consumer_protection/meat_poultry_inspections/livesto ck_exemptions>.

to commercialize on-farm slaughtered meat and to bypass the need custom slaughter facilities.⁸⁵ And in some cases, this meant engaging in illicit practices which upset law-abiding producers as well as the Agency of Agriculture.⁸⁶ However, from the perspective of the Vermont MPI Program, while expanding opportunities for on-farm slaughtering activities could provide an alternative to black market meat sales, it raised concerns about whether a new exemption would jeopardize Vermont's "at least equal to" status.⁸⁷ Ultimately, the decision to create a new 'on-farm' exemption emerged as a result of negotiations between civil society advocates and the State Legislature as well as consistency with practices in other States rather than the priorities of the Vermont's MPI:

It's not really something that was supported by the Agency of Agriculture, and we advised the legislature what we understood the rules to be, but that the rules that they came up with would not be inconsistent with some of the federal allowances, and that was important because we didn't want to jeopardize our 'at least equal to' status. [...] So again this rule [On-farm personal exemption] kind of gives them an opportunity to do a small amount of animals. And it is somewhat allowed in some states. I think what you'll find if you were able to check with all the states that have state programs is that they're a little bit more restrictive than USDA. [...] It makes it difficult for the state programs when there are things, there are exemptions that don't make a lot of sense, but the USDA has just determined that they don't have the manpower or the ability to try to regulate all that stuff, so they just say okay we'll leave it to the states to do.⁸⁸

With regard to poultry, Vermont's MPI adopts similar inspection requirements to federal standards. In addition to personal use exemptions, poultry producers can slaughter and process up to 1,000 birds annually on their own farm premises without inspection provided they raised

⁸⁵ Interview VT01.

⁸⁶ Interviews VT01, VT02, VT04.

⁸⁷ Interview VT02.

⁸⁸ Ibid.

the birds themselves, the products are sold as whole birds only, and they are sold from the farm directly to the consumer, at a farmer's market directly to the consumer, or to a licensed food restaurant.⁸⁹ All poultry sold under this exemption must adhere to specific labeling requirements including the prominent display of the following text ""Exempt per 6 V.S.A. § 3312(b): NOT INSPECTED." A 5,000 bird inspection exemption exists for producers who meet the same criteria as the 1,000 bird exemption provided their slaughter facility is not shared with anyone else, the poultry are healthy when slaughtered, slaughter and handling follow sanitary standards, practices, and procedures and the producer does not purchase poultry slaughtered under an exemption for resale to others. In order to sell poultry under this 5,000 bird exemption, a producer must submit a copy of their propose label to the Agency for approval.⁹⁰ Finally, a 20,000 bird inspection exemption is permitted. The poultry are slaughtered and otherwise processed and handled according to the federal sanitary performance standards of section 416 of the Code of Federal Regulations.⁹¹

4.4. Conclusion

This chapter provided an overview of the regulatory frameworks for animal slaughter and meat processing at the federal level in Canada and the US, and at the provincial/state level in Ontario, Quebec and Vermont. For the most part, each system requires inspection for the sale and distribution of meat. In Vermont, however, there are exceptions to this rule, where on-farm slaughter is permitted under limited circumstances and where poultry flocks below specified thresholds may be exempt from inspection requirements. From this overview of each jurisdiction's meat inspection system, it would appear that some are more strict than others. Canada's federal requirements provide no exemptions from inspection while the American

⁸⁹ Vt Stat Ann tit 6 § 3312; see also Vermont Meat Inspection Service, *Guidance for Slaughtering and Selling Exempt Poultry* (Vermont Agency of Agriculture, Food and Markets, 2018).

⁹⁰ Vermont Meat Inspection Service, "Guidance for Slaughtering and Selling Exempt Poultry" (2018), online (pdf): *Vermont Agency of Agriculture, Food and Markets*

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⁹¹ 9 CFR § 416.1–416.17.

system does. Moreover, accommodations for ritual slaughter in the United States restrict what inspectors can and cannot do on-site. With respect to licensing, Ontario only recognizes one class of provincially licensed abattoir, while Quebec and Vermont both recognize custom abattoirs, and Vermont permits on-farm slaughter. However, over the course of interviewing participants in these different jurisdictions, it became apparent that focusing on meat inspection requirements alone failed to capture the complexity of the ways in which food safety regulations played out on the ground. The following chapter presents the results of my interviews which complicate the straightforward presentation of rules and regulations described in this chapter.

5.1 Introduction

This chapter provides a preliminary discussion of the results from my interviews. Some of the information that participants shared during their interviews is covered earlier in this dissertation. For example, I asked every participant about the regulatory framework for meat safety in their jurisdiction. We also spoke about historical factors that contributed to the enactment of new food safety legislation and amendments to older rules. These topics are covered in depth in the first four chapters of this dissertation. Here, I focus instead on some of the issues that arose in the course of speaking to policy advisors, producers, processors, retailers and civil society organizers - individuals who interact with food safety regulations on a daily basis. The ways in which these issues arose challenged my original hypothesis and invited me to bring a more contextualized interpretation to the subject I set out to study.

It should come as no surprise that in the process of conducting interviews for this project, I was confronted with perspectives that did not always correspond to my expectations. This, of course, occurs frequently in empirical research. Indeed, these surprises are one of the reasons empirical research should be pursued; it challenges assumptions and sheds light onto other aspects of an issue that may otherwise have gone unnoticed. In this chapter, I describe three examples that illustrated to me how food safety requirements *in theory* intersect with other factors *in practice*.

The first section considers the range of opinions about how to describe a food safety system that is outcome-based and what kind of approach to outcomes should be used in food safety policy and regulatory design. The second section situates food safety requirements within the broader economic structures in which producers and processors operate. These, as it turns out, significantly impact the ways in which small-scale and large-scale operations experience the same inspection requirements. Finally, the third section explores the intersection between food safety, animal welfare and religious accommodation in the creation of regulatory exemptions for slaughter practices. In this chapter, these examples are introduced to convey the empirically rich qualitative data that emerged from my interviews and that complements the results of my document analysis, which are the focus of previous chapters. This sets the stage for the next and last substantive chapter of the dissertation, in which I employ phronesis as a methodology and theoretical framework to work through the value conflicts that emerge from the data and reflect on the better choice.

5.2 Outcome-based safety requirements

An outcome-based approach is one of many approaches to food safety regulation. Often, the outcome-based approach is contrasted with prescriptive regulation, and occasionally with systems-based regulation, which lies somewhere between the two.¹ The Canadian Food Inspection Agency (CFIA) describes these approaches as follows: 1) *prescriptive regulation* is technology- or standards-based and requires specific processes or procedures that are defined in regulations and with which regulated parties must comply; 2) *systems-based regulation* is management-based and requires regulated parties to develop their own risk management plans, which are then verified by the Agency to ensure proper and effective implementation; and 3) *outcome-based regulation* is performance-based where the required outcome or level of performance is specified in the regulation and performance measures are used to validate and verify regulated parties' compliance.²

¹ See e.g. Canadian Food Inspection Agency Government of Canada, "Foundations of an Outcome-based Approach", (30 May 2013), online: website <www.inspection.gc.ca/about-thecfia/strategic-priorities/action-plan/food-regulatory-forum/2013/presentations/outcomebased-approach/eng/1369926111466/1369926737211>; James Smith, Kirstin Ross & Harriet Whiley, "Australian Food Safety Policy Changes from a 'Command and Control' to an 'Outcomes-Based' Approach: Reflection on the Effectiveness of Its Implementation" (2016) 13:12 Intl J Environmental Research & Public Health 1218; Susan M Barlow et al, "The role of hazard- and risk-based approaches in ensuring food safety" (2015) 46:2, Part A Trends in Food Science & Technology 176.

² Canadian Food Inspection Agency, "Foundations of an Outcome-based Approach", (30 November 2013), online: website < http://www.inspection.gc.ca/about-the-cfia/strategic-

Whereas the literature that is most critical of food safety regulations tends to distinguish between overly prescriptive measures imposed by regulators and more flexible outcome-based requirements that are adaptable to producers' needs,³ as it turns out, the lines between the two are significantly more nuanced.

A majority of interviewees spoke positively about the value of outcome-based requirements in principle.⁴ However, there was considerable disagreement as to whether any particular meat inspection system was in fact outcome-based or prescriptive or a combination of the two. Those in favour of a rule or requirement would tend to characterize it as outcome-based, while those critical of the same rule would frame it as prescriptive and ill-suited to their needs. The lines that were drawn by many participants between outcome-based and prescriptive requirements were thus more generally between what they perceived to be more or less desirable rules. Moreover, the majority view that outcome-based requirements are better than prescriptive ones was nuanced by the fact that some interviewees promoted the use of prescriptive instruments to strengthen outcome-based requirements. For instance, several government representatives who spoke of their commitment to regulating outcomes, also emphasized the contribution of prescriptive recommendations for smaller producers and operators who might need more guidance than larger producers who have their own internal food safety and regulatory compliance units.⁵

priorities/action-plan/food-regulatory-forum/2013/presentations/outcome-based-approach/eng/1369926111466/1369926737211>.

³ See for example, Christiana Miewald, Sally Hodgson & Aleck Ostry, "Tracing the unintended consequences of food safety regulations for community food security and sustainability: small-scale meat processing in British Columbia" (2015) 20:2 Local Environment 237; Hillary C Barter, *Slaughterhouse Rules: Declining Abattoirs and the Politics of Food Safety Regulation in Ontario* (Master of Arts, Department of Geography, University of Toronto, 2014) [unpublished]; Sylvain Charlebois & Amit Summan, "Abattoirs, Meat Processing and Managerial Challenges: A Survey for Lagging Rural Regions and Food Entrepreneurs in Ontario, Canada" (2014) 10:1 Intl J Rural Managment 1.

⁴ See e.g. Interview BC01; CA01; ON02; ON04; ON06; QC01; QC06; VT02.

⁵ See e.g. Interview ON02; ON06; VT02.

During an interview with a representative from the CFIA, I was told that the new Safe Food for Canadians Regulations (the details of which were not yet public at the time of the interview) were moving towards outcome-based requirements to accommodate emerging industry actors:

Part of the reason we want to be outcome-based is that industry needs an opportunity to be innovative. As long as they're meeting the objective that we are setting for them, we don't necessarily need to prescribe how they get to that objective. [...] So, for instance, we will no longer tell them that we need you to have things painted in your building so often, we will no longer tell them things have to be 10cm away from a wall, we'll no longer be talking about that. But we're going to be talking about such things such as, you know, your building has to be built with materials that can be easily cleaned in order to be able to prevent any pathogens. So these are the kinds of things we're going towards, to leave it at the outcome-based.⁶

At the same time, she explained that the Agency is focusing on simplifying and explaining rules and requirements to ensure greater compliance, including, for example, developing model systems for producers and operators to follow:

So what we've done at CFIA is that in preparation for the Safe Food for Canadians Regulations, we've been developing some model systems so that if people were to follow those model systems, they would still be fulfilling the requirements of the law. And we're seeing, from what we've heard in our consultation, it is a tool that will be used by the smaller businesses. The bigger firms actually have their own internal regulatory teams that can do the interpretation and that can help them, and so really the outcome-based one, the outcome-based shift is to help everybody, but that transition is going to require

⁶ Interview CA01.

us to support the smaller businesses more than the bigger businesses because it is not intuitive for the smaller business to be able to go to outcome-based.⁷

Similar policies and practices came up during interviews in Ontario. One representative from OMAFRA explained the Ministry's shift from prescriptive to outcome-based requirements as follows:

I think in the past, the way that many food safety regulations were written was to be very prescriptive. To say if you're going to have a food processing facility, you need to be in a room with a certain ceiling height, or with a certain amount of lighting, or... [...] I think there's a demand from business more and more, post-2000, to have regulatory requirements that allow for different ways of achieving compliance. Rather than being told you have to do it this way, you have to have a room that's this size, and you have to have a separate room for this, and you have to have this amount of lighting. You know, looking more towards an outcome, different ways of achieving the same thing. So I think that has influenced regulatory policy development as well.⁸

Another OMAFRA representative described the province's meat inspection system this way:

We feel our regulation is very outcome-based. And so how one person might meet the regulation in one plant, is not how the person next door meets the regulation in their plant. And so we are strong believers of that, and that is what differentiates us from the federal approach, even though they claim that they are outcome-based, we have even more flexibility, I feel, in our way of being outcome-based.⁹

⁷ Ibid.

⁸ Interview ON02.

⁹ Interview ON06.

Similar to the CFIA's "model systems", the food safety advisor explained that OMAFRA provides producers with prescriptive recommendations to help them ensure proper safety measures:

I think that we pull apart the different important aspects of HACCP and write them in plain language for what our plants seem to follow. So instead of just saying "identify your critical control points and control those", we are saying "you can do slow cooling if your products meet this particular characteristic and this is the process to follow". So we are way more prescriptive to the benefit of the operator, I believe, because for them to figure out what their critical limits are and need to be, they just don't have the expertise of how to do that. [...] So I would hazard to say that we are more prescriptive for the benefit of the operator and so putting the new intervention into place, like putting the new microbial control for E. Coli on those carcasses.¹⁰

When asked to clarify how these prescriptive measures aligned with OMAFRA's commitment to regulating based on outcomes, the food safety advisor reflected that perhaps the system was more accurately a combination of the two:

[...] yes I have been saying that we are outcome-based and now I am saying that we are prescriptive. When I say prescriptive I want to almost say "in a helpful manner". Like because, I find with HACCP and with those federal regulations that are so broad, so outcome-based and don't give you any guidance as to how you can meet the expectations. We instead try to provide guidance as in "Okay this might be one way to meet the regulation. There might be many ways to meet the regulation. We will look at them with you, but if you need help, we can also provide a list", right? Like that kind of thing. So the prescriptive is only, I would say, for the benefit of the operator. More than it is to pigeonhole the operator.¹¹

¹⁰ Ibid.

¹¹ Ibid.

In the case of Vermont, there was less explicit reference to the language of outcome-based and prescriptive requirements. However, the issue did come up in reference to HACCP requirements and the role of inspectors. The Program Chief of the Vermont Inspection Service explained that small producers may need and request state help to develop appropriate preventive control mechanisms:

[...] I think that the state inspection offers the consumers a little bit better safety factor in that because of that small-scale. I think the Vermont thing with the small-scale, I think that's a big part of our role as a state program, as I said earlier, to be enabled to... you know a farmer can call me up and say, you know I'll spend time with a farmer when he says 'hey I want to start a meat business, I've got some cows, what do I do?' And I can spend time with him to let him know okay where do you want to sell them, what do you want to do, what's the market you're trying to capture? Okay these are the requirements for the facility you're going to need. That sort of thing.

Meanwhile, further complicating these representations from government actors about their respective inspection systems, an interview with the Ontario Independent Meat Processors Association raised questions about how easily any system can be labeled either prescriptive or outcome-based:

So when you're looking at, when we look at the regulations [Meat Regulations] as they were, they were very prescriptive: 'thou shall have.' And now, even CFIA is moving to more outcome-based. So making sure you meet this expectation, how are you going to get there? Where right now, even today, OMAFRA, or the provincial regulations, is still kind of like, 'this is how you're going to get there.' [...] So I think CFIA has moved towards that outcome-based, using science and research to demonstrate the effectiveness of outcomebased, where we still have to move toward that in the provincial regulations. [...] [Ontario and OMAFRA] have to still get to where CFIA is, and it's going to take them some time to change their culture and their mindset, internally, to get there. And maybe even to the meat plants themselves, not just OMAFRA, but maybe the meat plants themselves, where maybe they were used to being independent, then the regulators came in and said 'thou shall.' And they were like 'well how do I get there? How do I 'thou shall'? So they were looking for a lot of that information to come from OMAFRA, they needed them to kind of lead them to the water. And once they've reached that understanding of what the requirements are, then we can move towards that outcome-based, where they can recognize that they need to own the decision-making on the outcomes, and how to get there.¹²

At this point, it is important to acknowledge that there is a difference between a meat inspection regulatory regime that enforces prescriptive requirements, and accompanying policy recommendations as well as institutional support that are prescriptive. Caution should be exercised not to conflate the two. However, in practice, producers and operators interact with federal and provincial meat inspection systems at the level of regulatory requirements as well as policy guidelines. In their day-to-day experience, the lines between the two may blur. And while it is not incorrect to claim that an outcomes-based system can include prescriptive elements, the range of perspectives among participants about what kinds of systems are truly outcome-based highlight some of the subjectivity at play in food safety governance and that will be discussed in more detail in Chapter 6. Overall, there was general agreement among interviewees that outcome-based requirements are desirable... except in cases where they are not. Rather than interpreting these statements as a form tautological reasoning, I took them to mean that appropriate regulatory approaches must be assessed on a case by case basis. In this way, the support for outcome-based requirements as grounded in phronetic judgment. Going beyond abstract rules that must apply equally in all circumstances, participants recognized that outcomebased requirements could be defined in any multitude of ways according to the specific context in which it is being discussed.

¹² Interview ON04.

5.2.1 Inspection requirements and producers' expectations

Varying perspectives about the desirability and reasonableness of inspection requirements is a related issue that will be discussed further in Chapter 6 in relation to this project's theory of phronetic food law. Although every poultry and livestock producer I interviewed spoke of the strong moral obligation and economic incentives to ensure meat safety, there was disagreement as to whether or not inspection should be required in all circumstances. While a few adopted (self-proclaimed) radical positions with respect to the rights of individuals to purchase meat from animals that were slaughtered and processed without inspection, the majority recognized and even welcomed inspection requirements. This does not mean that they were all satisfied with current meat inspection systems.

Perspectives among producers and operators also tended to align with the kinds of relationships they had with state officials. Where producers and operators felt that requirements were sufficiently flexible and accommodating towards their needs, inspection was seen as an important service provided by the state to help them ensure the safety of the food they are producing. For instance, one producer in Vermont voluntarily opted to build a state-inspected poultry slaughter facility on his farm despite his eligibility to benefit from the under-1000 bird exemption. He explained that the decision to have his poultry inspected for direct sale was both a marketing strategy (his farm is the only one in the state to sell certified organic poultry that is also government inspected) and the result of an evolving understanding of the science of food safety:

You know, when I am in there, doing the evisceration [...] the inspector is right there looking at every little thing. And it's such an element, such a peace of mind, because they know how to look for stuff that I wouldn't even notice. When I pull out the entrails, the way we do it with the birds hanging from the shackles, we open up the birds and get the guts out and everything is hanging there, still attached to the birds. So there is no question about which organ or which liver is coming from which bird, because everything is there, still attached. And they look at everything and if they see anything that's a little questionable, well they say "you know this bird is ok, but you can't sell the liver." So the liver goes into the bucket with the intestine and all the other stuff. And I just think that's great, and I love it. And they have also showed me easier way to cut and process: they have taught us so much. Where would we get that education anywhere else?¹³

In contrast, in Quebec, where inspection exemptions are not permitted for any meat or meat product that is sold, a majority of producers lamented that they cannot slaughter animals on-site while complaining about the inadequacy of inspection services that are required. Interestingly, these producers also spoke at length about strained relations and conflicting objectives with MAPAQ. It appeared that resistance to inspection among these individuals was, at least in part, a reflection of their distrust and cynicism towards Ministry.

5.3 Quotas and marketing boards

Accounts of abattoirs and processing facilities closing down when new food safety regulations are introduced are widespread.¹⁴ In Ontario, one interview participant noted the following in relation to the introduction of the Meat Regulation in 2005:

I mean it's a well-meaning piece of legislation but essentially terrible for small-scale production and in my opinion food safety. It really – some of the things in the legislation that are facility based requirements. I think probably one of the biggest ones, you know,

¹³ Interview VT04.

¹⁴ See Miewald, Hodgson & Ostry, *supra* note 3; Barter, *supra* note 3; Charlebois & Summan, *supra* note 3; Sustainable Food Trust, "A Good Life and a Good Death: Re-localising farm animal slaughter" (2018), online (pdf): *Sustainable Food Trust* <sustainablefoodtrust.org/wp-content/uploads/2013/04/Re-localising-farm-animal-slaughter>; Simon Goodley, "UK launches nationwide review of meat processing plants", *The Guardian* (1 February 2018), online: <www.theguardian.com/business/2018/feb/01/uk-launches-nationwide-review-of-meat-processing-plants>.

that vehicles have to be able to make a 90-degree perpendicular refrigerated seal to the loading dock or whatever – like it's an easily accomplished requirement in the suburbs or in a large facility and not easily accomplished by a small family butcher shop on Roncesvalles, or the Greek guys are that are out on the Danforth, you know, [...] that's the web that really holds a lot of the agricultural community together because they're buying from small farmers. They're buying through small abattoirs – they're keeping a lot of – they're taking a lot of money from the city and sprinkling it kind of all around these rural communities and once they can't buy the whole animal because they can't sell bacon because they can't sell cured meats because they can't sell brine things because it doesn't meet that regulation, their choice is just to buy packaged boxed goods from a central supplier.¹⁵

Another participant, a former cattle farmer, spoke of his interactions with operators of abattoirs and processing facilities around this time:

I remember some anecdotal cases where, you know, it's always one-size-fits-all and they would say something like we need to have a ledge for a skid steer, but we don't have a skid steer, we don't use a skid steer, but we still have to have the ledge to accommodate that. [...] There was no nuance to the legislation is how they communicated it to me.¹⁶

Inspection and food safety infrastructure requirements can be burdensome for certain smallscale producers who experience them as additional, and sometimes unnecessary, hurdles to get their products to market. Indeed, many critiques of food safety requirements addressed in previous chapters presume a fundamental incompatibility between small-scale production and

¹⁵ Interview ON01.

¹⁶ Interview ON03.

adherence to regulatory requirements.¹⁷ While some argue that this tension should be resolved by softening requirements or creating exemptions on the basis of scale, others claim that the difficulties faced by small producers are outweighed by the benefits of a robust food safety system that applies the same standards to all actors.¹⁸

There is certainly disagreement about whether current safety regulations are over- or underinclusive in general, and particularly with regards to scale of production. As the previous section illustrates, even among small-scale producers, opinions vary about the importance and necessity of blanket requirements on an entire industry. What is often missing from these conversations, however, is engagement with the broader economic and market forces that exacerbate the effect of regulatory requirements and create *de facto* constraints on small-scale producers. For instance, many producers interviewed for this project explained that they had no objection to inspection requirements in principle and would like nothing more than to comply with them by bringing their animals to a licensed abattoir or processing facility. However, in practice, compliance was made difficult because of the challenges they faced trying to find a licensed facility in close geographic proximity that also had the capacity and willingness to process their small herds and flocks.¹⁹

¹⁷ For example, the introduction of this dissertation (Chapter 1) recounts the "impossibility" of small-scale farming according to a Quebecois farmer. See Dominic Lamontagne, *La ferme impossible* (Montreal: Éditions Écosociété, 2015).

¹⁸ For instance, one interview participant explained the challenges of developing tiered regulation on the basis of scale: "There's still those people who feel that there should be different levels of regulation based on size. And what does size mean? We don't know. Is it square-footage? Is it number of employees? Is it volume of product? The food safety risks remain the same. So the risk is the same if you're making fermented dry-cured sausages, and you have three employees, versus 500 employees. The risk is still the same for e-coli and salmonella in those products. It becomes about distribution volumes, perhaps, but for us, it's the risk is the same." (Interview ON04).

¹⁹ This was particularly true for participants in Quebec (Interview QC02; QC04; QC05). See also Barter, *supra* note 3; Charlebois & Summan, *supra* note 3; Maureen Carter-Whitney, "Ontario's Greenbelt in an International Context: Comparing Ontario's Greenbelt to its Counterparts in Europe and North America" (Toronto: Canadian Institute for Environmental Law and Policy,

Mandatory inspection requirements have had the effect of streamlining agricultural operations (both production and slaughter/processing activities) towards more intensive systems and consolidating the number of industry actors. Confronted with high capital investment costs to comply with regulatory requirements, research has documented how many facilities have shut down, while those that stay open must expand the size of their operation to recoup the costs of their facility upgrades.²⁰ With fewer provincial abattoirs in operation, producers must travel further distances to find a licensed facility, and this comes with increased expenses and more stress for livestock during their transportation. Interestingly, in Vermont, a state task force on the meat processing industry found that the problem is not a lack of local abattoirs but rather a disconnect in supply and demand where producers are turned away by facilities that are operating at capacity during peak periods but then experience cash flow issues later in the year, affecting employee retention and therefore their ability to book customers in spring and summer.²¹

While these findings are distinct from what my own interviews revealed as well as recent scholarship in the context of Ontario²² and Quebec,²³ all point to asymmetry of supply and demand. In addition to the issue of geography, an interrelated problem is the incapacity of abattoirs to take on small-scale producers as clients. For example, despite living 20 minutes away

²⁰⁰⁸⁾ at 23, online (pdf): *Canadian Institute for Environmental Law and Policy* <cielap.org/pdf/GreenbeltInternationalContext>.

²⁰ Hillary C Barter, *supra* note 3; Charlebois & Summan, *supra* note 3. For a discussion on the UK context, see also Sustainable Food Trust, *supra* note 14.

²¹ Carrie Abels, "Gathering the Herd: Vermont Meat Processing Case Study" (2017) at 2, online (pdf): *Vermont Farm to Plate Meat Processing Task Force*

<www.vtfarmtoplate.com/resources/gathering-the-herd-vermont-meat-processing-case-study>.

²² See Barter, *supra* note 3; Charlebois & Summan, *supra* note 3.

²³ See Patrick Mundler & Sophie Laughrea, "Circuits alimentaires de proximité: Quels bénéfices pour le développement des territoires? Étude de cas dans trois territoires québécois" (Québec: Université Laval, 2015), online (pdf): *Cirano* <cirano.qc.ca/fr/sommaires/2015RP-21>.

from a licensed abattoir, one producer explained that she had to drive upwards of 90 minutes to get her animals to an abattoir that would take them:

J'ai un abattoir provincial à 20 minutes de chez nous. Il y a un abattoir provincial, il nous prend pas parce qu'il n'y a pas le temps, on a un trop petit volume. Il y a un abattoir fédéral pour la volaille qui nous prend pas parce qu'on n'a pas un assez gros volume. Donc je suis obligée de faire une heure de route pour aller à l'abattoir provincial pour la volaille, 1h30 de route pour les canards, 1h de route pour tout ce qui est veau, porc et agneaux.²⁴

Not only do producers have a hard time finding an abattoir that has the time to process small herds, but they also struggle to find meat plants that can provide the tailored facilities and processing services they require for their niche, direct market sales. The issue is not only quantity, but quality. A goat cheese producer in Quebec, who had all but given up the meat dimension of her business due to challenges with finding suitable slaughter and processing facilities, complained that she had little bargaining power over who would accept her animals and under what conditions:

Ça revient beaucoup à une question de coût et de masse critique pour pouvoir, exemple, ouvrir des journées d'abattage pour nos animaux. Par exemple, si j'envoie 3 chèvres, elles se mélangent à travers plein d'autres animaux et ça devient peut-être plus un fardeau pour la structure d'abattage de faire affaire avec des gens comme moi. La même chose si j'envoie mes cochons, ils sont vraiment mélangés à travers les cochons de tout le monde. Je pense que je récupère mes propres cochons, mais je n'en suis jamais certaine. Donc cette année en les envoyant, mes cochons, bin le gars ne nous a pas mis les pattes, ni les têtes. Tsé, il s'en fout de nous autres en tant que petits producteurs. Pis il a le beau jeu parce qu'ils ont un quasi-monopole. Si je ne vais pas chez eux, je vais où ? Donc c'est générateur de beaucoup de frustration.

²⁴ Interview QC02.

[...] je sentais qu'à Coaticook, c'est beaucoup plus un empêchement pour eux, ça faisait une personne de plus, ça faisait des petites demandes, ça faisait « Ok tel paquet, il faudrait qu'il soit emballé comme ça parce que [madame] a demandé d'avoir 6 portions au lieu de 4. T'es habitué à 4, mais moi j'en veux 6 dans le paquet parce que ma cliente demande ça. » Ça je l'ai remarqué. Est-ce que c'est quelque chose de personnel à l'entrepreneur ou ça a rapport avec la taille de l'entreprise, je l'ignore. Je sais aussi que si j'amène des jeunes chevreaux à l'abattage, les probabilités qu'ils ressortent de là brisés sont très grandes. Tsé, ils vont se faufiler entre les clôtures. C'est fait pour minimum des veaux. Mais un chevreau, s'il pèse 50 lbs et un veau 300 lbs, l'équipement nécessaire pour le garder dans un enclos, tsé c'est pas les mêmes besoins. Donc ça m'est arrivé d'avoir des gigots où c'était cassé, mais moi je sais très bien que l'animal marchait quand il est parti de chez moi. Faque il a été brisé, son os, fort probablement quand il était vivant. Donc pour la sécurité du type d'animal que je fais, je pense que la petite structure est plus adaptée.²⁵

Securing the services of a good abattoir and processing facility are thus essential from a producers' perspective to make compliance with inspection requirements possible. Another issue that came up during interviews relates to connection between supply management in Canada and inspection requirements for poultry. This was particular the case in Quebec, where producers may only raise up to 99 chickens outside of the quota system. The numbers are higher in Ontario, where producers can raise up to 299 chickens below quota, and up to 2,999 below quota under the Artisanal Chicken program.²⁶ One interview participant, a Quebec producer who also wrote a book on agricultural policy in Quebec, was emphatic about his frustration with these numbers which have nothing to do with food safety, but undermine the economic viability of a farm working below quota if it cannot slaughter its birds on site.²⁷

²⁵ Interview QC04.

 ²⁶ For a review of quota restrictions across Canada see Silvia Dominguez, et al, "Productions sans quota et commercialisation en circuits courts: Statut et enjeux" (Québec: Université Laval, 2017) at 25-26, online (pdf): *Cirano* <cirano.qc.ca/fr/sommaires/2017RP-05>.
 ²⁷ Lamontagne, *supra* note 17.

Meanwhile, a producer in Ontario who raises poultry under the province's Artisanal Chicken Program (ACP) can raise and sell between 600 and 3,000 birds provided they meet the detailed application requirements established by Chicken Farmers of Ontario (CFO), Ontario's marketing board.²⁸ The ACP enables small-scale farmers to meet niche market demand for chicken raised using traditional methods, including pasture-raised, non-GMO feed, and antibiotic-free birds.²⁹ Under the ACP, farmers obtain a license and can then supply local restaurants, farmers markets, select retailers, specialty butchers, and establish on-farm retail and CSA (Community Supported Agriculture) sales directly to consumers.³⁰ The ACP offers no exemption from inspection requirements for slaughter and processing. However, it is the ability of farmers to raise up to 2,999 birds below-quota that makes the ACP work. I spoke to a certified producer under the ACP who explained it as follows:

[...] if you're raising 300—which they call their family program [...] You're a small flock, you're either doing farm gate sales, you might be doing some at the farmer's markets. You know, it's your own personal use. But you can't make a living off of 300 chickens. With 3000, I don't think you can make a living doing it, but it can be part of your farm operation.

[...] The business model [in the quota system] would say that you need to raise as many chickens as possible if you're a quota holder, because you've paid this money for quota,

²⁸The CFO manages the supply and price regime of chicken produced and processed in Ontario under the province's *Farm Products Marketing Act* (RSO 1990, c F9); and the *2001 Federal-Provincial Agreement for Chicken* (16 July 2001, online (pdf): *Chicken Farmers of Ontario* <www.chickenfarmers.ca/wp-content/uploads/2014/01/FederalAgreement.pdf>.
²⁹See Chicken Farmers of Ontario, "Responsible Growth, Shared Success: 2017 Annual Performance Report" (2017) at 39, online (pdf): *Chicken Farmers of Ontario*
<www.ontariochicken.ca/getattachment/65cf2143-c892-4f28-8ffc-7fd84d6583d2/2017-Annual-Performance-Report.aspx>.

³⁰ New farmers participating in the program are eligible to receive educational training, on-farm assistance, and other resources and support services to help facilitate a successful transition into the poultry industry through the New Entrant Chicken Farmer Program (Chicken Farmers of Ontario, "New Entrant Chicken Farmer Program", online: *Chicken Farmers of Ontario* <www.ontariochicken.ca/Programs/New-Entrant-Chicken-Farmer-Program.aspx>).

and it's sitting there, and if you don't recoup that cost, your margins are slim as they are. So I think that's the factor that goes into most folks that have quota. The nature of it means you have to raise as many chickens as possible. [...] So, it really comes down to the business model or the economics of your breed selection, of you feed selection, of your production selection. And, yeah, I don't know how you could make a go of, like, a heritage breed as a quota holder, without probably doing it on a break-even cost, would be my hunch. Whereas for me, raising 3000 as part of an operation, as one of the things that my farm does, like I do have that flexibility, where I can still make a few dollars per bird. It's not a lot per bird, I'm not making a killing off of this, and that's probably not even factoring some of my personal labour time. But it's part of my operation and it fits with the ethics and values of my farm, which is a small, mixed, diverse operation.³¹

Together, these examples highlight the collateral effects of economic factors on existing barriers to market created by meat inspection requirements. While theoretically distinct, the capital investments required to comply with abattoir or meat plant facility requirements or the obligations of quota holders to operate at capacity both dictate which kinds of facilities and producers are likely to survive in a given jurisdiction. It also means that anyone that does not fit into the dominant category of production or processing activities will struggle to find their place within the supply chain. This, in turn, can motivate requests for exemptions or alternatives such as the use of mobile abattoirs or on-farm slaughter for direct sale. It is thus not that food safety regulations are incompatible with small-scale production *per se*, but rather that their alignment with broader economic and market trends create a *de facto* restriction on particular kinds of meat production.

5.4 Ritual slaughter

Without prompting, the topic of ritual slaughter came up frequently during interviews, especially in conversation with OMAFRA. What was interesting about the special accommodations that

³¹ Interview ON05.

have been made for this particular method of slaughter is how this compares to the way that non-religious requests for special slaughter exemptions are systematically denied. For example, despite Ontario's strict requirement that all animals in the province must be slaughtered and processed at either provincial or federally licensed plants, exemptions from animal stunning and carcass chilling requirements are formally integrated into OMAFRA's regulatory system. Meanwhile, in Quebec, ritual slaughter is permitted at licensed facilities and on the farm. The latter is discouraged, but not prohibited. In Vermont, the application of federal laws creates expansive exemptions for the purpose of enabling ritual slaughter and individuals can also use the on-farm exemption and custom slaughterhouses to meet their needs.

These exemptions raise questions about the interplay between food safety, religious accommodation, and animal welfare. When discussing the relationship between them, connections are usually drawn between food safety and animal welfare on the one hand, and between animal welfare and religious accommodation on the other. The questions linking animal welfare to food safety regulations are about whether the latter are supportive or restrictive for producers who are committed to raising and slaughtering animals humanely (debates around onfarm slaughter to avoid subjecting animals to the stress of transportation are an example of this). Parallel to these questions are the questions about whether animal welfare is compromised in the process of recognizing religious slaughter practices. Rarely are all three issues considered to be interlinked. As will be discussed in more detail in Chapter 6, ritual slaughter exemptions are in fact connected to both food safety governance and animal welfare considerations. And these exemptions provide a window into the kind of engagement with conflict that is at the core of phronesis.

For example, while several food safety advisors spoke about their accommodation of the growing demand of the Muslim community to access halal meat and animal carcasses for religious celebrations, no one would say that authorized ritual slaughter posed any food safety risk. However, when asked if these accommodations could pave the way for other exemptions the answer was always a resounding no. For example, after speaking at length about

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accommodations made in Ontario for halal custom slaughter, I asked a food safety advisor if OMAFRA would consider accommodating other requests for custom slaughter such as those available in Vermont. The answer was clear: "No. No discussion at all, no discussion at all. This is out of the question."³² When asked to explain why, despite the demand, this is not something that could be open to discussion if religious exemptions are permitted, the advisor responded that the risk was too great - "We believe that the slaughter is a risky enough industry and that it needs regulations. And being regulated by the provincial government is where the regulation should be [...]"³³

In Ontario, the connection between food safety and religious exemptions was therefore not seen as problematic. However, consider the following statement from a policy advisor in OMAFRA about halal custom slaughter exemptions:

There's a couple of things in the Meat Regulation that allow for slaughter, for taking a carcass without it being chilled, which serves a specific purpose in the ethnic market. So there's a couple little things that it allows for, because we go for the outcome.³⁴

Ritual slaughter exemptions are made possible when the regulatory framework focuses on outcomes instead of prescriptive measures that all industry actors must follow. This emphasis on outcomes allows for a degree of flexibility in regulatory enforcement. The question then is why are other methods or approaches to animal slaughter impermissible if they too can achieve the same outcomes?

In Quebec, the link between food safety and religious exemptions is also underexplored. For the most part, concern over on-farm ritual slaughter has centered on compliance with the province's new animal welfare legislation introduced in 2015.³⁵ The religious requirement that animals not

³² Interview ON06.

³³ Ibid.

³⁴ Interview ON02.

³⁵ Animal Welfare and Safety Act, CQLR c B-31 [Animal Welfare and Safety Act].

be stunned prior to slaughter and the possibility that inexperienced individuals engage in slaughter activities rather than trained professionals are worrisome from an animal welfare perspective. However, the question of the microbial safety of the meat is rarely addressed. As mentioned above, MAPAQ launched an awareness campaign during the summer of 2018 reminding producers and Muslim consumers of the rules regulating halal slaughter for Ramadan.³⁶ These communications encourage consumers to make proper arrangements to secure the services of a licensed abattoir and warn producers that anyone who does not hold an abattoir license and allows individuals to slaughter animals on their property may be prosecuted for illegally operating an abattoir.³⁷ Although uninspected slaughter is permitted for personal consumption, producers and consumers are strongly discouraged from seeking alternatives to licensed abattoirs.

In the US, exemptions for ritual slaughter may trigger questions about safety more directly in that the regulations prevent inspectors from intervening in the process. In practice, however, this again may appear to be more of an animal welfare problem than a safety concern, considering the range of post-mortem requirements in place. Viewed as a whole, accommodations for ritual slaughter may be justified on the basis they do not constitute unreasonable risks for food safety (although whether or not they pose unreasonable risks to animal welfare is less clear³⁸). Nevertheless, the willingness of regulatory authorities to consider the needs of a specific community suggests to those who advocate for alternative meat systems on the basis of animal welfare concerns or principles of personal freedom and autonomy that other methods of

³⁶ MAPAQ, "Fête de l'Aïd al-Adha - Rappel de réserver son abattoir dès maintenant", (24 July 2018), online: Services Québec <www.fil-</p>

information.gouv.qc.ca/Pages/Article.aspx?aiguillage=ajd&type=1&idArticle=2607242176>; MAPAQ, "Aïd al-Adha - Recommandations pour les consommateurs", (June 2018), online (pdf): *MAPAQ* <www.mapaq.gouv.qc.ca/fr/Pages/Details-Publication.aspx?docid=DDJ7DZ3RAA3J-202-12217>.

³⁷ My attempts to clarify the extent of this restriction and its compatibility with the personal consumption exemption were unsuccessful (email correspondence with MAPAQ on file with author).

³⁸ Bruce Friedrich, "Ritual Slaughter in the 'Ritual Bubble': Restoring the Wall of Separation Between the Church and State" (2015) 17 VJEL 33.

production are possible. There is more than one way to slaughter animals and process meat safely for human consumption. If the state is capable of recognizing two methods of slaughter that achieve safe outcomes, what are the factors that prevent policymakers from considering a third or fourth option?

5.5 Conclusion

This chapter highlighted how meat inspection requirements are understood and experienced in relation to 1) regulatory shifts away from prescriptive requirements and towards outcomes, 2) economic and market forces including supply management and international trade, and 3) animal welfare standards and religious accommodation. While not always explicitly about food safety *per se* (at least not according to a strictly technocratic approach to food safety governance), they interact with meat inspection requirements in such a way that one cannot be understood in isolation from the other.

Studying food safety governance through the lens of phronesis means that the analysis must be grounded in the particular context in which meat inspection requirements apply. It cannot be theorized in the abstract. And the exercise of analyzing them must also be a reflexive process. The examples provided in this chapter emerged from such of process. Topics and perspectives that were not originally prioritized in my own research design took on new significance when it became clear that they were clarifying important sites of tension that required deeper attention. The following chapter continues this analysis by framing the case studies presented here more clearly within this dissertation's phronetic theoretical and methodological approach.

Chapter 6: A Phronetic Interpretation of Meat Safety Regulations

6.1 Introduction

This chapter concludes the analysis of the case studies and interview narratives that were presented in the previous chapters. Methodologically, this chapter critically engages with the value conflicts that emerge from the cases to clarify what is gained and lost in different meat inspection systems, and, where necessary, to rethink the policy ends of these systems. In order to advance this analysis, the chapter begins with a short review of the theory of phronetic food law first discussed in Chapter 2. The rest of the chapter then situates the case studies and narratives of this project within this theoretical framework.

The purpose of this analysis is twofold. First, it seeks to illustrate the contingency of food safety objectives on a variety of social, moral, economic and political factors that are themselves context-specific and subject to change. Second, it evaluates the relative strengths or weaknesses of different systems to regulate good food. In so doing, an argument is made that food safety regulations should contribute to the strengthening of sustainable and ethical food systems, and that microbial food safety should not be sought as a *final* policy end in itself.

6.2 Theorizing phronetic food law (a review)

In Chapter 2, phonetic food law was presented as a theoretical approach supporting decisionmaking that engages with the full set of values that affect our food system, with the objective of making the best choice in that particular instance. Rather than purporting to speak in universal, abstract terms about food safety, and food quality more generally, a phronetic approach to regulatory design and enforcement is one that is explicit about its normative underpinnings, openly acknowledges multiple sources of knowledge about food, and strives towards deep

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compromise. This section provides a brief review of these concepts, with particular emphasis on the idea of deep compromise and the normativity of risk.

According to Richardson, democratic decision-making requires practical reasoning about what ought to be done.¹ Among the three types of practical reasoning identified by Richardson (agency instrumentalism, cost-benefit analysis, and public reasoning about ends), only public reasoning about ends is capable of engaging meaningfully with this democratic requirement. Whereas agency instrumentalism and cost-benefit analyses work backwards from a given end to answer the question "what shall we do", public reasoning about ends asks instead "what should we do". Like MacIntyre's theory of virtue ethics centered around the better choice, public reasoning about policy ends channels the idea that regulatory decision-making is a subjective enterprise.

Reasoning about ends means acknowledging that ends themselves can change. If ends are not fixed, the task of determining what ought to be done is more complicated than merely determining how to arrive at what is already known and accepted. First, ends must be agreed upon, and only then can implementing means be considered. This invites engagement with community values and the conflicts that arise between equally justified conflicting positions. One way to work through these conflicts is to seek deep compromise. In Chapter 2, Richardson is quoted as describing this kind of political deliberation "as bargaining facilitated by argument and hence as lying between argument and bargaining in the way that cappuccino lies between coffee and milk."²

What is the cappuccino of food safety governance? So far, I have provided a partial answer to this question by arguing that rather than considering the ethical dimensions of food production and the scientific dimensions of microbial safety distinctly, we should instead be striving to regulate "good food" systems. However, this falls short of a complete answer to the question

¹ Henry S Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002) at 76.

² *Ibid* at 145.

because a phronetic approach to food law precludes any abstract definition or one-size-fits-all solution. It provides a framework for deliberation about what is best in a particular context, but it resists appeals for generalizable statements. The governance of food safety and the value conflicts at its core must therefore be studied on a case by case basis. This is what the rest of this chapter sets out to do.

Before turning to these cases, I offer two additional reflections on the contributions of a theory of phronetic food law to this project. First, beyond the aspirational and sometimes elusive principles of virtue ethics, the theory of deep compromise provides practical guidance for how to deliberate meaningfully about the kinds of food we want to produce and the kinds of food we want to eat. Rather than seeing safety as conceptually distinct from other values and policies related to food, it should instead be understood as a network of factors that are inextricably linked. Public reasoning about ends enables the revision of previously accepted ends that no longer align with our values so that new ends can be developed at the intersection of old ones. This does not necessarily mean that previously accepted ends should be abandoned entirely. It does however mean that an objective that was once considered in isolation from others should actually be assessed in terms of a broader policy objective. If the purpose of food safety governance is not merely to reduce exposure to microbial pathogens as an end in itself, but also understood as a component of the implementing means to achieve good food systems, meat inspection requirements must be evaluated both in terms of how well they contribute to food safety and to good food. This does not mean that food safety becomes less important than other components of a good food system. It is equally justified, and this is precisely why the regulation of risk needs to be problematized, needs to be questioned, and needs to be challenged. Food safety is as important as the environmental management of agricultural production and the welfare of farm animals. In order to ensure that food safety governance contributes to good food systems it requires ethical scrutiny.

A related point is that engagement with the ethical dimensions of food safety requires recognition of the normativity of risk. Developments in food safety sciences have made it possible

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to assess risks more accurately. But decisions about how risk should be allocated involve cultural, political, and moral choices. If risk were entirely neutral, it's regulation would not require good judgment. However, like safety, risk does not exist in the abstract. It is contextual. The mere act of calling something a risk, of identifying something as a threat or a danger, involves a judgment about what is good and bad, or right and wrong. Risk communication is itself a system of morality.³ Statistical knowledge of risk provides a statement about what ought to be. Probability statistics describe what is normal and what constitutes a risk. However, Richard Ericson and Aaron Doyle point out that the word "normal" functions simultaneously to describe what is and what ought to be, for what is normal is presumed to be right and what is risky is presumed to be wrong.⁴ Despite our scientific advances, the technical dimensions of risk do not relieve decision-makers from the moral and normative judgments they must make.⁵ A phronetic approach to food safety recognizes not only that judgments about the acceptability of risks are situated within particular communities of knowledge, but also that they are opportunities for virtuous decision-making about what food systems ought to be.

6.3 Regulating outcomes: the problem with an "all roads lead to Rome" approach

In Chapter 5, I provided three examples of value conflicts in the context of food safety requirements for animal slaughter and meat processing. First, there were differences of opinion with respect to what outcome-based requirements are, and how they should be enforced. Second, there were tensions between inspection requirements and market forces that make compliance difficult for small-scale producers. Finally, there were negotiations between food safety, animal welfare, and religious accommodation to create certain regulatory exemptions for

³ Richard V Ericson & Aaron Doyle, eds, *Risk and Morality* (Toronto: University of Toronto Press, 2003) at 2.

⁴ *Ibid* at 6.

⁵ Alan Hunt, "Risk and Moralization in Everyday Life" in Ericson & Doyle, supra note 3, 165 at 171.

ritual slaughter. Now, in this chapter, each of these value conflicts will be analyzed according to the core underpinnings of phronetic food law: 1) decision-making grounded in virtue ethics as opposed to technocratic governance, 2) epistemological pluralism, and 3) deep compromise. In this section, outcome-based requirements are discussed. Market forces and ritual slaughter are addressed in the sections that follow.

Each of the meat inspection systems studied in this project adopts a combination of prescriptive, systems-based, and outcome-based approaches. However, during interviews, most food safety policy experts described their respective regulatory frameworks as prioritizing outcome-based regulation and/or shifting towards even greater emphasis on outcome-based regulation in the immediate future. At the same time, a recurring concern among producers and suppliers was their frustration with existing prescriptive requirements and their desire to see more outcomebased regulation in the future. This was not true for everyone, and some individuals expressed their appreciation for prescriptive regulations and the guidance they provide to minimize exposure to hazards and ensure the safety of their meat products. At first glance, two conflicts emerge from these different perspectives. First, there is disagreement over the desirability of adopting outcome-based requirements, rather than prescriptive ones; disagreement, it turns out, which does not fall neatly across the small- versus large-scale divide, or between state and industry actors. Second, there is the disagreement over whether or not existing regulatory frameworks are in fact living up to their claim of supporting one approach or another. When a regulator describes their meat inspection system as outcome-based and a producer in that jurisdiction perceives it as overly prescriptive, what explains this difference of opinion? Given the range of perspectives about what makes a system truly outcome-based and whether a focus on outcomes is how food safety should be regulated in the first place, how can we determine whether any regulatory system is reflective (or not) of the better choice?

In order to consider these disagreements through the lens of phronetic judgment, a helpful framing device is the idiom 'All roads lead to Rome'.⁶ In ancient Rome, the road system resembled the spokes of a wheel with the city at the center and roads radiating out from it. Today, the idiom is used to express the idea that different paths, or methods, can lead to the same outcome. At first glance, this fits squarely with the philosophy of outcome-based food safety regulations. Provided that a particular outcome is achieved, it does not matter what path was taken to reach it. But does the path taken really not matter? While a regulatory approach to food safety that is based on outcomes may appear to support a variety of production methods and accommodate differences in scale, in practice it is demonstrative of the same kind of technocratic governance that has been critiqued in previous chapters. The promotion of outcome-based requirements reinforces the perception that food safety governance is an ethically neutral and objective exercise. Risks are assessed scientifically, targets are set, and industry actors may follow the path of their choosing provided they meet these targets. All roads lead to Rome. But what happens if some roads are maintained by the state while others are left in disrepair? What if every road has a toll and there are not alternate routes for travellers who cannot pay? Theoretically, multiple paths are available. Practically, this may not be the case. Additionally, the particular way in which outcomes are framed raises a separate challenge. Unlike the virtues of epistemé and tecné which are knowable in the abstract, phronesis demands situated knowledge. The desirability of a particular outcome may change given different contexts. All roads lead to Rome. But depending on our preferred destination within the city, some paths may be preferable to others. What if people want different things from their food? These are nuances, but they serve as a reminder that decisions about what constitutes safe food and how food safety should be regulated are illsuited to abstract reasoning and require instead good judgment.

⁶ Christine Ammer, *The American Heritage Dictionary of Idioms* (Boston: Houghton Mifflin, 1997) at 12.

6.3.1 Food safety as destination

The theory of phronetic food law advanced in this dissertation is relevant to reflections on the kinds of food systems we want (good judgment is needed to articulate a vision of good food systems), and the ways in which food systems are governed (good judgment is needed to design and enforce good laws and regulations). In other words, a phronetic approach to food law focuses both on substance and process. On the subject of substance, what can good judgment tell us about what makes food safe, what makes food good, and the differences between them?

The vast majority of us want our food to be safe. What this means, however, can vary. In response to the question "What does safe food mean to you?", most participants referred to microbial safety or the absence of exposure to harmful pathogens and foodborne illnesses.

"What does food safety mean? [...] it means people don't get hurt from foodborne illnesses. I think food safety probably doesn't encompass things like people not getting hurt from the economic collapse of their community, which is also harmful. I think it's people not getting sick from foodborne illness."⁷

"Okay, I would say pathogen-free. Ultimately, it's food you can eat and it doesn't compromise your health. [...] I think I would separate, you know, there is food health or relative status of healthy food, and then there's food safety. And maybe food safety, at a bare minimum is ensuring that it's not going to result in acute sickness after you eat it. Or of course, maybe there's no heavy metals or something so it's also not going to directly lead to a cumulative buildup. Healthy food is maybe more all the ingredients are fine by themselves, but then it's the right balance of your fats, or the right types of fat. And maybe any one of these fats in the right amount is not harmful to you, but healthier food will

⁷ Interview ON01

have the right balance. Whereas food safety is more, like, 'No amount of arsenic is good for you' or 'No amount of listeria is good for you.'"⁸

"Safe food is food that is produced in a manner that doesn't have any contamination and therefore isn't going to be harmful to the general public."⁹

"I think we stick around the World Health Organization's definition, and sort of the FAO, when we're talking about food that's safe for human consumption. It will not make people sick, it will not harm humans in any way when they're consuming it. So that's pretty much how we look at food safety. It is the manufacture of food that is safe for humans."¹⁰

This last reference to the WHO and FAO's definition of safe food requires clarification since, as discussed in previous chapters, the WHO and FAO's definition of food safety acknowledges that absolute protection from food hazards is impossible and recognizes the relative and conditional dimension of safety: safe food is food that does not present an *unreasonable* risk of contamination.¹¹ And indeed, this nuanced understanding of reasonable or acceptable levels of risk in relation to food safety was captured by several of the interviewees:

⁸ Interview ON03

⁹ Interview ON06

¹⁰ Interview ON04

¹¹ In 1993, the Organization for Economic Co-operation and Development (OECD) prepared a working definition of food safety with a starting premise that there should be a "reasonable certainty that no harm will result from intended uses under the anticipated conditions of consumption". OECD, *Safety Evaluation of Foods Produced by Modern Biotechnology: Concepts and Principles* (Paris: OECD, 1993) at 10, online (pdf): OECD

<www.oecd.org/env/ehs/biotrack/41036698.pdf>. This definition was subsequently adopted by FAO and WHO in 1997. See Codex Alimentarius Commission, *Recommended International Code Of Practice General Principles Of Food Hygiene*, CAC/RCP 1-1969, Rev 3 (Rome: FAO/WHO, 1997)

"I'd look at it more from a reasonableness standard. You want to acquire food for your use, and the use of your family, that's going to minimize risk of foodborne illness to you, to the extent that that's reasonably possible."¹²

"We try to get to a level where we're confident for most of the population that's a healthy thing, that's providing healthy, well not healthy, healthy in the fact that it's safe, you won't get sick from the food. But definitely we never think of it as zero-contamination. We're doing our best to get that down to an appropriate level."¹³

"I think we all start with the concept of risk. Different populations have different risk tolerances. And you will see that when you do your consultation, the reaction of the people to your proposals, that tells you how the population feels about a particular approach. So some people are more risk-tolerant than others. So, we tolerate more GM products than Europe tolerates GM products. Scientifically-speaking, we all are looking at the same data. The fundamental difference is they have less tolerance than we do because of certain cultural perspectives. And that is how you integrate the views of the population."¹⁴

As I have already explained, there was widespread support among participants for an outcomebased approach to food safety regulation. This is mirrored in the literature on food safety governance and is consistent with trends towards evidence-based risk management.¹⁵ Outcome-

¹² Interview ON02A

¹³ Interview ON02B

¹⁴ Interview CA01

¹⁵ James Smith, Kirstin Ross & Harriet Whiley, "Australian Food Safety Policy Changes from a 'Command and Control' to an 'Outcomes-Based' Approach: Reflection on the Effectiveness of Its Implementation" (2016) 13:12 Intl J Environmental Research & Public Health 1218; Canadian Food Inspection Agency Government of Canada, "Foundations of an Outcome-based Approach" (30 May 2013), online: *Canadian Food Inspection Agency* <www.inspection.gc.ca/about-thecfia/strategic-priorities/action-plan/food-regulatory-forum/2013/presentations/outcomebased-approach/eng/1369926111466/1369926737211>; J M Sargeant et al, "Constraints to Microbial Food Safety Policy: Opinions from Stakeholder Groups along the Farm to Fork Continuum" (2007) 54:5 Zoonoses & Public Health 177; Peter W B Phillips & Robert Wolfe,

based regulations focus more on regulating risk than on eliminating hazards. This is not to say that they do not aim to minimize contamination and exposure to hazards. However, with evidence-based risk management, the focus of regulations shifts from prescriptive requirements to managing hazards based on acceptable levels of risk. Although most interview participants agreed that emphasizing measurable outcomes instead of prescriptive provisions is desirable, in practice there was confusion about what is meant by outcome-based regulations and disagreement about how specific outcomes should be measured.

For example, a few participants articulated a broader definition of food safety that included principles of animal welfare, ecological sustainability, and human dignity that were seen as mutually constitutive rather than independent.¹⁶ If food safety is about mitigating risks to safeguard food, they explained, outcome-based regulations should support methods of production where is food handled by the fewest number of skilled hands possible, produced and processed locally, and comes from animals that were not in distress at the moment of slaughter. For them, food safety was not something to be balanced against other values. These other values were themselves integral to the realization of safe food systems. One participant who was interested in the links between food safety, environmental sustainability, and social justice noted how unreasonable it is to expect minimum-wage employees in large agri-food corporations to take the same interest in food safety standards as would an individual who owns their own food business, is invested in its long-term success and takes pride in the quality of their product:

[&]quot;Governing Food in the 21st Century: The Globalization of Risk Analysis" in Peter WB Phillips & Robert Wolfe, eds, *Governing Food: Science, Safety and Trade* (Montreal: McGill-Queen's University Press, 2001); Yasmine Motarjemi, "Modern Approach to Food Safety Management: An Overview" in Yasmine Motarjemi, Gerald Moy & ECD Todd, eds, *Encyclopedia of Food Safety*, 1st ed (San Diego: Elsevier, 2014) vol 1 at 1; Robert Buchanan, *Moving from Hazard-based to Risk-based Microbial Food Safety Systems to Promote Public Health and Foster Fair Trade Practices* (San Diego: Institute on Science for Global Policy, 2011); Lina M Svedin, Adam Luedtke & Thad E Hall, *Risk Regulation in the United States and European Union: Controlling Chaos* (New York: Palgrave Macmillan, 2010); Susan M Barlow et al, "The role of hazard- and risk-based approaches in ensuring food safety" (2015) 46:2, Part A Trends in Food Science & Technology 176.

¹⁶ Interviews BC01, ON01, ON03, ON05, QC01, QC02, QC03, QC04, QC05, QC06.

"It's not that good conditions for a worker is a separate issue, it's actually crucial to food safety. [...] If the person cleaning that piece of equipment in Aylmer that was affected by listeria was paid \$55,000 a year and had health care and maternity leave and paternity leave, they probably would be with that company for a really long time, care about its long term success, and might have done a better job cleaning that slicer."¹⁷

Similarly, several participants raised the issue of safety in relation to the scale of operations, noting how the mitigation of risk is inextricably linked to the size of a slaughter or processing facility and the volume of animals or meat it processes:

"It is about a small-scale plant, it is about not a large-volume of animals being processed each day. It's an inspector that has time to actually look at the organs and the carcass of every animal rather than they're flying by on an overhead supply line. It's about care of the animals at the end of their lives so that they are indeed killed humanely and gently. It's about a skilled workforce that knows how to properly process them, they know how to handle the animals, they know how to do the necessary steps to move them from a living being into a carcass in a cooler. And it is about a physical infrastructure that is appropriate for the task at hand, that's clean, well-maintained."¹⁸

"As far as safety, I think that the state inspected product—of course I'm a little biased but I think that every piece of meat gets a lot better inspection than it does for the large plants. Just because of the scale, because of the speed of the lines, the inspectors have a lot more time to look at every chicken, every beef, every pig that comes through for postmortem inspection. They have time to make decisions and really look at what's going on, as compared to a slaughter line that's doing 2500 head a day. So in my opinion I think,

 ¹⁷ Interview ON01. See also Timothy Pachirat, *Every Twelve Seconds: Industrialized Slaughter* and the Politics of Sight (New Haven: Yale University Press, 2013).
 ¹⁸ Interview BC01.

again, my personal opinion, I think that the state inspection offers the consumers a little bit better safety factor because of that small-scale."¹⁹

Defining food safety was unexpectedly challenging for many participants, even those for whom the design and enforcement of food safety standards was their profession. There was a tendency towards circular definitions (i.e., safe food is food that is safe, food that is not unsafe, etc.). When challenged to articulate a definition without reference to the word 'safe', participants realized that they had not necessarily given much thought to what seemed like an obvious and important regulatory objective. In order to define safety without reference to the word "safe", many referred instead to food that is healthy. However, some would then correct themselves, noting that food can be safe but unhealthy, or healthy but unsafe.

When the time came to answer the question "What is good food?", participants more comfortably drew connections between health and safety as well as other personal and collective values without feeling compelled to stay within disciplinary lines. With the idea of good food, comes an invitation to consider the policy ends of food safety governance more explicitly. Whereas the language of evidence-based risk management and outcome-based requirements masks the normative underpinnings of how we regulate food safety, good food acknowledges the necessity of good judgment to set appropriate targets and to consider how these targets should be situated within local contexts.

6.3.2 The many roads to food safety

In addition to reflecting more carefully on what it is we are hoping to achieve with food safety regulations, the analogy of all roads leading to Rome highlights the equally important question of how best to get where we want to go. Outcome-based requirements suggest that policy-makers permit – even welcome - producers and processors to adopt a variety of methods provided they reach established targets. However, in practice, the experience that producers and

¹⁹ Interview VT02.

processors have with these regulations does not exist in a vacuum. The options that are realistically available to them are constrained by the ways in which they interact with their respective meat inspection systems.

Before considering the regulation of meat, a comparison with milk regulations is instructive. A century ago, legislation requiring pasteurization was introduced across Canada to improve milk safety. This was and continues to be widely perceived as a public health triumph.²⁰ In recent years, however, scholars have problematized common justifications for compulsory pasteurization, noting that it is only one of many ways to improve milk safety.²¹ Other options include certification requirements, regular inspection of dairy farms, and routine testing of milk products for pathogens. Critics of compulsory pasteurization have also argued that the emphasis on sanitizing milk *ex post facto* runs counter to principles of food safety because unsanitary operations have no incentive to improve their practices when on-farm contamination can be remedied off-site during the pasteurization process.²² Another objection relates to the indirect pressure compulsory pasteurization creates on producers to scale up their operations in order for the process to be cost-effective. A careful study of the politics of pasteurization reveals the variety of routes that can be taken to improve food safety. This is similarly true for meat.

Among the producers, processors and retailers most critical of their jurisdiction's meat inspection requirements, arguments were made that meat could be produced outside of existing regulatory

²⁰ Catherine Carstairs, Sheilagh Quaile & Paige Schell, "Making the 'Perfect Food' Safe: The Milk Pasteurization debate" in Charlene Elliott, ed, *How Canadians Communicate VI: Food Promotion, Consumption, and Controversy* (Edmonton: Athabasca University Press, 2016) at 164.

 ²¹ See e.g. *ibid*; E Melanie Dupuis, *Nature's Perfect Food: How Milk Became America's Drink* (New York: NYU Press, 2002); Jane E Jenkins, "Politics, Pasteurization, and the Naturalizing Myth of Pure Milk in 1920s Saint John, New Brunswick" (2008) 37:2 Acadiensis 86.
 ²² See e.g., Carstairs, Quaile & Schell, *supra* note 20; Jenkins, *supra* note 21; see also Sarah

Berger Richardson, "Legal Pluralism and the Regulation of Raw Milk Sales in Canada: Creating Space for Multiple Normative Orders at the Food Policy Table" in Mariagrazie Alabrese et al, eds, *Agricultural Law: Current Issues from a Global Perspective*, (Cham: Springer, 2017) 211.

frameworks that was just as safe, if not safer, than meat from inspected provincial, state, or federal facilities. However, they felt that there were no meaningful opportunities to demonstrate their capacity to reach required outcomes using alternative techniques. For example, in Quebec, one producer spoke about his frustration with provincial regulations that prevented him from raising, slaughtering and selling chickens on his farm.²³ He works outside of the province's quota system, which means he can only raise and slaughter 99 birds annually. With these numbers, he would prefer to slaughter them on-site rather than transport them to a provincial or federal abattoir. Financially, this makes the most sense. He also believes on-farm slaughter produces better meat, both in terms of taste as well as microbial safety. Under the current system, he can slaughter his birds on his farm to feed his family (personal use exemption), but he cannot sell any surplus, despite significant customer demand.

In an attempt to demonstrate that his on-farm slaughter techniques achieve comparable outcomes to those in inspected abattoirs, he contacted MAPAQ to request authorization to run a pilot slaughter project on his farm. Among other things, this would have entailed building a custom slaughter assembly line above a sheet of Plexiglas with a webcam installed below. The webcam would live-stream the slaughter of the birds to a remote server allowing MAPAQ to see what was going on and to provide virtual inspection in real time. The proposed pilot also involved hooking up a foot switch to the camera so that screen shots of each bird, each organ inspected, and every step of the process could be uploaded and stored for record keeping and traceability purposes. Despite initial interest in this proposal, the pilot was not picked up. I was told that two significant barriers were financial (MAPAQ would not contribute to the capital investment for the project) and political (interest in the project abated following a change in government in 2014).

There are of course legitimate reasons for a government agency to refuse an individual producer's requests to operate outside of specified standards. And limited finances may be one such reason. If the producer in Quebec had the resources to build his prototype without financial support, perhaps his efforts would have been successful. I shared this story with a food safety

²³ Interview QC01.

advisor at OMAFRA who suggested the Ontario agency is more open to recognizing alternative production methods than their Quebec counterparts.²⁴ For example, a few years ago a group of artisanal sausage producers in Ontario requested OMAFRA's permission to use a method for controlling E. Coli that was different from those permitted under newly introduced provincial regulations because it did not include the use of heat.²⁵ They applied for and received funding through the federal-provincial cost-sharing program *Growing Forward 2*, and, in collaboration with the Ontario Independent Meat Processors, worked with a team of scientists at the University of Guelph's Canadian Research Institute for Food Safety to test their preferred method. OMAFRA and Health Canada evaluated the results of the study, and upon concluding that the technique achieved outcomes that were consistent with regulatory requirements, approved the alternate method.

In the absence of funding and institutional support, however, individual producers lack the capacity to demonstrate how alternative and artisanal practices may achieve specified regulatory outcomes. Moreover, as in the case of milk pasteurization, large-scale producers have an incentive to ensure that all industry actors are held to the same standards to maintain their competitive advantage. This is often referred to as 'levelling the playing field' and has been an argument used by lobbyists either to encourage policymakers to formalize the practices of a particular sector of the industry into compulsory requirements for all producers, regardless of scale, or to demand that regulatory requirements for one sector of the industry be applied to other sectors that were previously exempt.²⁶ In fact, levelling the playing field really means that the many roads to food safety that are theoretically consistent with outcome-based standards are forced to merge onto a single path.

²⁴ Interview ON06.

²⁵ See also Agricultural Adaptation Council, "Boosting food safety in artisanal sausage while maintaining taste, quality" (30 June 2015), online: *AgInnovation Ontario* <www.aginnovationontario.ca/en/boosting-food-safety-in-artisanal-sausage-while-maintainingtaste-quality>.

²⁶ See Abra Brynne, "Setting the mold: how the historical development of the meat sector in North America continues to determine and constrain contemporary possibilities for sustainable meat" in Sarah Martin & Ryan Katz-Rosene, eds, *Green Meat* (unpublished, forthcoming).

Even with shared commitments to evidence-based risk assessment and outcome-based regulations, what is possible in one system may differ in another depending on local factors, including financial resources, political will, and cultural perceptions of risk. While the shift away from prescriptive regulation towards outcome-based regulation suggests that regulators are open to a range of production methods, it is impossible to disentangle food safety governance from the normative environment in which it operates. From the reasons behind the shift towards outcomes in the first place, to the resources available (or not) to inspectors and producers to explore alternate methods to achieve regulatory targets, and to the influence of population-specific risk tolerances, even the most rigorous scientific risk assessments cannot remove food safety governance from the place where food is produced, processed, and consumed. Food safety is governed in practice, not in the abstract.

6.4 Embracing epistemological pluralism and resisting the single story

Having just explained how, despite suggestions to the contrary, food safety governance tends to narrow the scope of the kinds of foods and the kinds of processes that are considered safe, it is fair to ask if there is anything inherently wrong with regulating food safety this way. Minimizing the risk of microbial contamination in meat products is a virtuous policy objective. Why should we be concerned if food safety regulation becomes a form of "occupational specialism" where experts are tasked with measuring and managing specific risks?²⁷ Specialization and expertise have made it possible to understand and address risks associated with animal slaughter and meat processing that were unimaginable a century ago. This may be worth celebrating. However, it does not change the fact that decisions about how risk should be allocated involve cultural, political, and moral choices. The narrowing of the narrative of what food safety governance does, matters because it is incorrect; it does not reflect the reality of how food safety is governed.

²⁷ David Garland, "The Rise of Risk" in Ericson & Doyle, *supra* note 3, eds, 48 at 59.

In 2009, the Nigerian author Chimamanda Ngozie Adichie delivered a public lecture about what she called the "dangers of a single story".²⁸ As a child growing up in Nigeria, all of the books she read were from England and told stories about children who looked different from her, played in different environments, and ate different foods. On the few occasions she saw an African featured in popular culture, it was always a portrayal of poverty. Ngozie Adichie is critical of the reduction of the diversity of the African continent to a single stereotype about misery and laments that she was raised to read only one kind of story about a white European child. She describes the narrow focus of her childhood reading list as intellectually limiting and emotionally exclusionary.

In the context of meat production, what happens when the complexity of food systems is reduced to a single story about science and risk? A first problem with the hegemony of scientific discourse in food safety governance is a denial of the contribution of other values and preferences to the design and enforcement of regulatory standards. Related to this is the erroneous suggestion that food safety governance can operate in isolation from other aspects of food law and policy. Despite a long history of regulating food in silos, there are inevitable overlaps between spheres of governance, whether intentional or not.²⁹ In Chapter 2, I noted that rules and regulations governing food safety appropriate a range of extralegal knowledges into their internal functioning. This is what Valverde refers to as epistemological pluralism and it informs a phronetic approach to food safety governance.³⁰ However, I also noted that while food law and policy is theoretically susceptible to appropriating a variety of knowledges, in practice the ways in which governments approach issues of food safety is limited.

²⁸ "Chimamanda Ngozi Adichie: What Are The Dangers Of A Single Story?", online (video): *TED*<www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story>.

²⁹ See Sarah Berger Richardson & Nadia Lambek, "Federalism and Fragmentation: Addressing the Possibilities of a Food Policy for Canada" (2018) 5:3 Can Food Studies 28.

³⁰ See Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003) at 7.

A second problem with the hegemony of scientific discourse in food safety governance is that it ignores the constitutive function of law.³¹ Food safety regulations do more than impose specific restrictions on producers and processors. They interact with other food laws and policies such that the impact of slaughter and processing requirements can only be understood in relation to the other ways that producers and processors are either limited or supported by the rest of the food governance system. Even if food safety regulations are not overly restrictive *per se*, they *become* restrictive in light of other policies. This section illustrates this trend towards "a single story" with two examples. The first considers how food safety requirements interact with local politico-economic forces to shape methods of production. The second focuses on the pressures of international markets and rules of international trade.

6.4.1 Food safety and the political economy

Food safety governance is inextricably linked to agricultural economics and trade, both in terms of regulatory design and how producers experience food law and policy. In Chapter 5, this was illustrated with reference to the impact of marketing boards, supply management and quota systems on the viability of small-scale and artisanal operations. In principle, the challenges these frameworks may present for individual producers and abattoir operators are unrelated to compliance with safety regulations and inspection requirements. They are certainly distinct in the sense that there are clear divisions in government between ministries, agencies and departments over food safety on the one hand and economic development on the other hand. However, on the farm and across the supply chain, the ways in which producers, processors and consumers experience food safety regulations are directly informed by these economic structures.

For example, during my interviews I was told repeatedly that compliance with food safety regulations is more onerous for poultry producers who are interested in supplying artisanal

³¹ See James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life" (1985) 52 U Chicago L Rev 684.

products (organic, heritage breeds, free-run birds, etc.) to niche markets than it is for producers operating within the quota system. As described in Chapter 4, producers in Quebec are restricted to 99 chickens outside of the quota system. Above this number, a producer must purchase quota and the minimum level of entry is 775 birds. In Ontario, the numbers are higher, with a general below-quota limit of 299 birds, and 2,999 under the Artisanal Chicken Program. In order to participate in and benefit from supply management for poultry in Ontario the minimum is 14,000 birds under the regular system and 1,000 under the Local Niche Market Program.³²

Participation in the quota system is neither realistic nor desirable for artisanal producers whose methods are ill-suited to these numbers. First, they are cost-prohibitive to new farmers trying to enter emerging markets with only a small flock of birds. Second, the kinds of operations that are economically viable under the quota system will inevitably tend towards conventional industrialized agriculture because few producers have the space and resources to allow thousands of heritage birds to graze safely on pasture or to tend to their unique needs. Whereas below-quota production cannot sustain a commercial operation, participation in the quota system catapults producers into an entirely different framework that may not be appropriate for the market they are trying to reach. Ontario's Artisanal Chicken Program and Local Niche Market Program are promising examples of alternative structures to create an operating space for producers to make a living from a small flock while attempting to reach a market different than those of conventional breeders.

Flock size necessarily shapes the ways in which inspection requirements are experienced by producers. In Vermont, where there is no quota system, the State Meat Inspection Program has a tiered system for inspection which exempts operations with fewer than 5,000 birds from inspection requirements. Not everyone thinks that inspection should be optional, and one of the producers I interviewed built a state poultry slaughter plant on his farm in order to slaughter and

³² For a review of quota restrictions across Canada see Silvia Dominguez et al, "Productions sans quota et commercialisation en circuits courts: Statut et enjeux" (Québec: Université Laval, 2017) at 25-26, online (pdf): *Cirano* < cirano.qc.ca/fr/sommaires/2017RP-05>.

process his flock despite operating well below the 5,000 bird inspection exemption. He explained that inspection was crucial to ensure the safety of his products because the risks are so high and contamination so difficult to prevent, regardless of whether one is slaughtering one or one hundred birds:

"[...] there are meat recalls with poultry and red meat every day in this country for contamination. Either for salmonella or for campylobacter. And for some cases, these are enormous quantities. This is for, you know, large operations that get inspected. And so if it's like this for those places, then what is it like when you are out there in the pasture where animals have been trampling and defecating? I just can't see it. I mean again, if people want to do it for their own consumption, that's fine. But to have it as a commercial enterprise, I think it's a huge mistake. And ten years ago, I wouldn't have talked this way, I would have told you the opposite. But I have learned better.³³

On the other hand, another Vermont producer approached inspection differently.³⁴ He was involved in Rural Vermont's advocacy efforts to get the Vermont Legislature to approve the state's newly introduced inspection exemptions for on-farm slaughter. In his view, the exemptions, while a step in the right direction, still do not go far enough to enable a supportive regulatory environment for the kind of community-scale local agriculture that he and his organization want to promote. But then yet another participant, this one the owner of a federally-inspected abattoir (and previously employed by the Vermont Agency of Agriculture) cautioned against the progressive widening of inspection exemptions:

So most of the people who want to buy from their local person hear from that local person: "I'd like to be able to sell to you but I can't because I have all these regulations that are getting in the way. I can't get it slaughtered because [they] charge too much for the slaughter and the processing." Whatever. Some of the producers are actually poisoning

³³ Interview VT04.

³⁴ Interview VT01.

the consumers. The customer just wants a good product and would just want to get to know the person who can provide that. [...] But unfortunately, the people that I regulated would come in to the legislature and ask for these special considerations because they didn't want the regulatory part of it. I understand that, but why would we have the regulatory part in the first place? Why did we first start our Meat Inspection Program in Vermont in 1967, or why did we start our Poultry Program two years later? People get sick; this industry is dangerous.³⁵

Within all of the jurisdictions studied, there was disagreement among interviewees about whether inspection exemptions should or should not be allowed. The majority of participants supported inspection in principle. However, in practice, those with smaller operations struggled to find a licensed abattoir that would take them on as customers. Not only are many abattoirs unwilling to process small numbers of animals in light of the significant paperwork in entails, but also producers may not be able to access abattoirs that possess the appropriate expertise or facilities to accommodate custom requests such as specialty cuts or processing of heritage breeds that are different in size from conventional ones. The interplay of food safety regulations with supply management and the economics of the industry is crucial to the viability of certain kinds of small-scale or artisanal production. As a result, when some artisanal producers express frustration over inspection requirements or other food safety standards, they might not be disagreeing with the objectives set by regulators, but rather with the disproportionate challenges when faced with compliance.

It is an oversimplification to claim that small-scale or artisanal production is incompatible with mandatory inspection requirements or should be exempt from preventive control requirements. While a number of participants believed that existing regulations should be relaxed to allow more farm gate sales, there were others who self-identified as risk averse and as willing to comply with regulatory controls. In fact, it was *because* of their size that the latter were so concerned about

³⁵ Interview VT03.

mitigating risk. Unlike their larger-scale competitors, they believed their businesses could not recover from the reputational damage caused by selling a contaminated product.

In addition to concerns around scale, another factor that influenced participants' reactions to food safety standards and inspection requirements was the degree to which they felt that their government agencies were democratic and accountable. This was something that split across jurisdictional lines during the interviews, with participants in Ontario and Vermont feeling more heard by their representatives, and participants in Quebec articulating feelings of alienation at best and open hostility at worst.

Nearly every person I spoke to in Quebec was critical of MAPAQ, regardless of how they responded to questions about food safety more generally. MAPAQ was seen as antagonistic towards small producers. Access to information and advice was described as limited. This mirrored my own attempts to communicate with MAPAQ and my inability to secure an interview for the purpose of this project. Even a request for written clarification about the rules governing on-farm slaughter for personal consumption was denied. It therefore did not come as a surprise when a Montreal butcher shared her experience with MAPAQ upon learning that meat they had sold had tested positive for E.Coli. "MAPAQ called me and I think I missed the call so I called them back" the butcher explained, "and they were so unhelpful and dismissive of the whole thing, I was like- I just couldn't wrap my mind around why such a rigid system had such a flaw in it because there's always an inspector on site."³⁶ The butcher asked MAPAQ what they should do, but recounted that no one could answer her questions; there was no protocol to follow, no forms to complete, and no formal recall. The inconsistency of this laxity was difficult to reconcile with the strictness of the rules their suppliers faced and led the butcher to question the integrity of the rest of the provincial food safety system.

MAPAQ's opacity can be contrasted with the Vermont Meat Inspection System, where every participant interviewed knew the head of the state inspection system (whom I also interviewed)

³⁶ Interview QC03.

and had interacted with him personally. Vermont is much smaller than either Quebec or Ontario, both in terms of geography and population. In Vermont, every slaughter and processing plant is considered small by federal standards, and even the Lieutenant Governor raises organic pigs and chickens. This proximity and familiarity between producers, processors and the state is nicely captured by this statement from a poultry producer: "And I can tell you, as a Vermont farmer, I don't want to deal with the USDA. I want to deal with the local people. There are only 3-4 inspectors, I know them all by their first name and they really have been incredibly helpful to us."³⁷ Indeed, even among those who disagreed with some of the state's existing food safety regulations, every participant mentioned at one point during their interview that the head of the state Meat Inspection Program was either a 'good guy', meant well, or had his heart in the right place. While participants in Ontario were less familiar with individual policy advisors or inspectors than those in Vermont, they also pointed to things like the introduction of the Artisanal Chicken Program or the amendments that were brought to the Meat Regulations in 2008 as evidence of good will and responsiveness in government, even if there were still many policies that they believed needed revision.

Despite this range of perspectives, in every jurisdiction I studied, even the producers and abattoir operators who were most adamant about the importance of inspected meat agreed that it was a challenge for small and independent producers and meat plants to flourish under existing regulations. The way food safety regulations are experienced is informed by a variety of factors, and to speak of food safety as a single narrative about managing hazards based on determinations of acceptable levels of risk fails to account for this complexity.

6.4.2 Food safety, science, and trade

In addition to the interplay between food safety and the political economy in which producers and abattoirs operate, there is the influence of trade policy on food safety standards. Food safety regulations serve both to mitigate the risks created by trade and as well as a tool to promote its

³⁷ Interview VT04.

development. On the one hand, they can restrict the movement of goods in order to protect public health and to prevent the deliberate or negligent adulteration or contamination of food that enters the supply chain. On the other hand, by providing quality assurances to food importers, food safety regulations also strengthen trade and export opportunities. Deliberations about acceptable levels of risk thus inform, and are informed by, policy objectives related to public health and safety, and economic growth.

At the domestic level, this operates against the backdrop of federalism and the division of federal and provincial powers over food and agriculture. Canadian courts have a history of clarifying divisions of power as they relate to food, and more specifically, distinguishing between legislative powers to regulate food safety and trade and commerce.³⁸ In particular, a 1980 ruling by the Supreme Court of Canada profoundly altered the scope of federal jurisdiction over food when it held that Parliament's authority to regulate food and agricultural products under its criminal law powers must be clearly distinct from its authority to regulate marketing practices under trade and commerce.³⁹ In Labatt Breweries of Canada Ltd v Attorney General of Canada, the plaintiff, Labatt Breweries, had been marketing a new brand of beer under the label "Labatt's Special Lite". While federal requirements under the Food and Drug Regulations provided that light beer should contain no more than 2.5% alcohol, Labatt's Special Lite contained 4% alcohol. It was found that the use of the word "lite" was synonymous with "light" and consequently that Labatt's new 4% beer violated s. 6 of the Food and Drugs Act. However, the case then went on to consider whether provisions in the Food and Drug Act establishing compositional and food labelling standards for beer were *ultra vires* the powers of Parliament. The majority held that detailed regulation of the production and sale of beer was not a proper exercise of Parliament's criminal powers because there was no health justification for these standards. Compositional and labelling regulations were also declared ultra vires Parliament's authority over trade and commerce, and peace, order

³⁸ See e.g. *Reference re Validity of Section 5 (a) Dairy Industry Act*, [1949] SCR 1, [1949] 1 DLR
433; *Labatt Breweries of Canada Ltd. v. Attorney General of Canada*, [1980] 1 SCR 914, 110 DLR
(3d) 594 [*Labatt Breweries*]; *Standard Sausage Co v Lee*, [1933] 4 DLR 501, 47 BCR 411 (BCCA); *Berryland Canning Co v R*, [1974] 1 FC 91, 44 DLR (3d) 568 (FCTD).
³⁹ Labatt Breweries, supra note 38.

and good government. Following the Supreme Court's ruling, Parliament amended the *Food and Drugs Act* to separate clearly the provisions relating to food safety standards and standards for any other purpose.

The lines between health, trade and commerce, property and civil rights, or matters of a purely local nature, however, are not always clear when it comes to food policy (something Chief Justice Laskin noted in his dissenting judgment⁴⁰). *Labatt Brewing Co. v Canada* is generally discussed in in the context of constitutional law and federal-provincial divisions of power. It is also significant for its contribution to the technocratization of food safety governance. In Chapter 1, I noted that Buckingham describes early Canadian laws governing the inspection of foodstuffs as serving the triple purposes of ensuring food purity, enhancing market honesty, and providing export market quality assurance.⁴¹ Decisions like *Labatt Brewing Co. v Canada*, and the federal government's response to them pulled these complementary purposes apart and contributed to a narrowing of complex food policy questions into regulatory silos. While scientific developments might have made it possible to conceive of food safety standards as distinct from other standards related to food – a distinction that did not exist in previous food purity rules - laws and regulations were amended to ensure coherence and compliance with principles of federalism.

The idea that food safety standards belong in a sphere of regulation distinct from other social and economic policies is also promoted by the rules of international trade. Trends in international trade over the past half century have contributed to the reduction of food safety governance to a single narrative about science, and this despite the fact that scientific knowledge in the field of human health is often contested.⁴² One of the most significant developments in this respect was the 1995 negotiation of the WTO *Agreement on Sanitary and Phyto-Sanitary Measures* (SPS Agreement) and the *Technical Barriers to Trade Agreement* (TBT Agreement) which require food

⁴⁰ *Ibid* at 918–922.

⁴¹ Halsbury's Laws of Canada (Donald Buckingham), (online), *Food* (Markham, Ont: Lexis Nexis Canada, 2014) at HFD-19 "Shared constitutional jurisdiction".

⁴² George G Katchatourians, Peter WB Phillips & Robert Wolfe, "How Well Understood is the 'Science' of Food Safety?" in Phillips & Wolfe, *supra* note 15, 13 at 21.

safety regulations to be based on scientific principles, risk assessments supported by scientific evidence, and, where possible coordination with internationally recognized standards, such as those set out in the *Codex Alimentarius*. These agreements pushed states to open their agricultural markets while restricting their authority to adopt local health and safety regulations related to food.⁴³ However, since food standards can be either trade-enhancing or trade-distorting, domestic food safety regulations are scrutinized for their scientific justification and economic efficiency, and are limited to those deemed necessary to protect human, animal or plant life. States must also refrain from designating local agricultural products or methods of production as special, or deserving of preferential treatment or subsidies, contrary to longstanding traditions of agricultural exceptionalism.⁴⁴

International trade laws and principles of federalism attempt to distinguish between policies targeting economic growth and public health. However, the two are inextricably linked. This is particularly evident when attempts are made to harmonize and standardize local food safety practices with national or transnational standards. One interview participant who is located in British Columbia, and worked with abattoirs and meat processors during that province's regulatory reform in 2004, noted that national food safety initiatives during the early 2000s tended to view a diversity of inspection models and regulatory systems across the country as inefficient and inadequate rather than tailored and responsive to local contexts. In her view, this concern with ensuring minimum levels of safety across the country was informed by economic considerations as well:

[...] it seems that the rationale is that the division between provincially-inspected meat and federally-inspected meat is not secure enough, and therefore if provincially-inspected

⁴³ Mariela Maidana-Eletti, *Global Food Governance: Implications of Food Safety and Quality Standards in International Trade Law,* Studies in Global Economic Law (Bern: Peter Lang, 2016) at 3.

⁴⁴ Grace Skogstad, "Ideas, Paradigms and Institutions: Agricultural Exceptionalism in the European Union and the United States" (1998) 11:4 Governance 463; Carsten Daugbjerg & Alan Swinbank, *Ideas, Institutions, and Trade: The WTO and the Curious Role of EU Farm Policy in Trade Liberalization* (Oxford: Oxford University Press, 2009).

meat doesn't meet the standards of federal inspection that we might undermine our export market access. I don't think, seriously, that is much of a risk, but that ultimately was part of the rationale. So it's tied in with both Mad Cow and with inspection quality and standards, the whole thing about 'we must keep our export markets open.' And of course that's driven by the very large producers and the very large processors, not by place-based food systems.⁴⁵

Many of the participants in this project were of the opinion that provincial (and state) facilities produce meat that is not only as safe, but safer than meat from federal facilities (see discussion above). If the risk is the same, or even higher, why does the majority of meat produced in Canada come from facilities where operators face more onerous paperwork requirements? ⁴⁶ One answer is that federal facilities create export markets for interprovincial and international trade that provincial ones do not. Meat processing is the largest sector of Canada's food processing industry and represents 10 percent of the country's agri-food exports.⁴⁷ The regulatory requirements that are designed for federal facilities may be necessary to keep export markets open, but this does not mean that they are necessary to ensure food safety.

For example, an abattoir operator in Quebec who runs a small-scale federally licensed facility which caters to local and European markets explained that he must navigate between federal regulations in Canada and the requirements of importing countries. As a federally licensed abattoir, he was required to have a HACCP system in place (this was before the *Safe Food for Canadians Act* came into force). In order to reduce bacterial pathogens on cold beef carcasses,

⁴⁵ Interview BC01.

⁴⁶ 95 percent of all animals slaughtered in Canada are slaughtered in federal facilities, and the majority of meat processing in the country also takes place in federal facilities. Canadian Food Inspection Agency Government of Canada, "Canada's Meat Inspection System", (23 July 2013), online: *Canadian Food Inspection Agency* <www.inspection.gc.ca/food/information-for-consumers/fact-sheets-and-infographics/specific-products-and-risks/meat-and-poultry-products/meat-inspection-system/eng/1374559586662/1374559587537>.

microbial carcass interventions are required, including the application of biological or chemical agents during and/or after dressing. Although a range of microbial control interventions are permitted in Canada, including steam pasteurization, sodium hypochlorite, and lactic acid, this operator could only use lactic acid because the other methods are forbidden in the EU.⁴⁸

While this example illustrates that regional differences persist, more broadly the scientisation of food safety and global food governance has been foundational to cooperation and coordination efforts in both the Canadian and international arena.⁴⁹ The harmonization of food safety regulations across jurisdictions supposedly levels the playing field and ensures minimum safety and quality standards in a global food market. But what happens when food safety stops being a policy end in itself and becomes the means to achieve something else? While states must refrain from adopting protectionist health and food safety standards, many are coerced to adopt others that have little to do with science and everything to do with securing access to export markets. For example, an interview with a representative from the CFIA revealed the extent to which requirements under the federal meat inspection system are informed by trade-related requirements that constrain the agency's capacity to shift towards the adoption of an entirely risk-based assessment model:

"[...] we have systems for meat that require inspectors to be there all the time. And that requirement was never really driven by food safety; it's driven by a trade imperative with the U.S., so to remove that trade imperative, you no longer have a requirement to have an inspector there for every shift of work. And then you can truly look at it from a risk

⁴⁸ Now, in the context of Brexit negotiations, chlorine washes are the subject of heated debate between American poultry producers who want access to the British market that was previously restricted due to EU regulations. See Jay Rayner, "Chicken safety fear as chlorine washing fails bacteria tests", *The Observer* (26 May 2018), online: *The Guardian* <www.theguardian.com/world/2018/may/26/chicken-health-fear-chlorine-washing-failsbacteria-tests-brexit-salmonella-listeria>.

⁴⁹ Grace Skogstad, "Multilevel Regulatory Governance of Food Safety: A Work in Progress" in Bruce Doern & Robert Johnson, eds, *Rules, Rules, Rules, Rules: Multi-Level Regulatory Governance* (Toronto: University of Toronto Press, 2006) 157 at 159.

perspective, and if you have let's say five inspectors that have to do seafood and meat, they would have to, based on risk, spend more time in seafood than they would on meat. But right now we can't do that because the regulatory framework, which has enshrined in law those trade requirements, is still in existence. And if you remove that, then you're only looking at the pure food safety risk, and in that concept, meat is not the riskiest product, and therefore its oversight will have to be commensurate with its actual food safety risk. But that's not what we have today, because of the trade imperative which has been enshrined in law.⁵⁰

Designing a meat inspection system and determining what constitutes a reasonable risk are not mere technocratic exercises, even when they are presented as such. Food safety requirements are driven as much by economic factors as scientific risk assessments. They are shaped by, and interact with, jurisdiction-specific social values and political institutions. Food safety governance does not tell a single story. It is the legal articulation of extralegal knowledge in particular social, political, cultural, and economic environments. This section has focused on some of the ways that non-scientific knowledge – specifically economic and political - intersects with the science of food safety in the context of food safety governance. Here, the concept of epistemological pluralism was narrowly construed. The following section considers what happens when other values are also taken seriously and are explicitly engaged in the deliberation process.

6.5 Deep compromise in food safety governance: lessons from slaughter exemptions

The topic of ritual slaughter was not one that I had originally intended to discuss in this dissertation. While I recognized overlaps between my interest in the impact of food safety regulations on farmed animal welfare and concerns raised elsewhere about the inherent cruelty

⁵⁰ Interview CA01

of religious slaughter practices, they remained two distinct issues.⁵¹ However, as I reflected on the perspectives of multiple interview participants about religious accommodations for slaughter, I came to see how ritual slaughter exemptions provide a window into the kind of deliberation through conflict that is central to phronesis. Religious exemptions may not be the best way to regulate animal slaughter, but they are the result of explicit engagement with conflicting values about what constitutes good food. As will be shown below, these exemptions move past strictly technocratic decision-making and provide insights into what phronetic deliberation and deep compromise look like in the field of food safety governance.

6.5.1 Slaughter exemptions: towards phronetic food safety governance

In Chapter 4, a range of regulatory exemptions for ritual slaughter were discussed. In Canada, the new Safe Food for Canadians Regulations permit ritual slaughter provided the animal is properly restrained and killed with a single cut that results in rapid exsanguination.⁵² In Quebec, ritual slaughter is permitted in accordance with these federal standards. In Ontario, similar exemptions accommodate ritual slaughter for religious purposes.⁵³ Additionally, inspectors may grant written permission to plant operators to deliver carcasses directly to the customer without being chilled to accommodate religious needs for hot carcasses.⁵⁴ In the United States, exemptions for ritual slaughter are more expansive, extending not only to methods of slaughter but also to the authority of inspectors. USDA inspectors are prohibited from interfering with the preparation of

⁵¹ For a discussion on animal welfare concerns related to ritual slaughter, see e.g. Bruce Friedrich, "Ritual Slaughter in the 'Ritual Bubble': Restoring the Wall of Separation Between the Church and State" (2015) 17:2 VJEL 223; The Law Library of Congress, Global Legal Research Center, "Legal Restrictions on Religious Slaughter in Europe" (2018), online (pdf): *The Law Library of Congress* <www.loc.gov/law/help/religious-slaughter/europe>.

⁵² Safe Food for Canadians Regulations, SOR/2018-108, s 144. This allowance was also found in the previous Meat Inspection Regulations.

⁵³ Ibid, s 75 (2)(a)(b)(c)(3)(8).

⁵⁴ Ontario Ministry of Agriculture, Food and Rural Affairs, "Meat Plant Guidelines", online: *Ministry of Agriculture, Food and Rural Affairs* <www.ontario.ca/document/meat-plant-guidelines>.

the animal for ritual slaughter or the ritual slaughter cut by or under the supervision of the religious authority.⁵⁵ Moreover, ritual slaughter is exempt from compliance with the requirements of the *Food Safety and Quality Service Humane Slaughter Regulations*⁵⁶ and the *Humane Methods of Livestock Slaughter Act*.⁵⁷

From an animal welfare perspective, there are compelling ethical reasons *not* to permit ritual slaughter, particularly with respect to stunning requirements.⁵⁸ For example, in 2019, Belgium announced that it would prohibit kosher and halal slaughter because the ritual practices do not permit stunning before slaughter.⁵⁹ This drew both praise from animal rights activists and protest from religious groups and those who argue the restrictions are politically motivated and fueled by extreme-right politics. Belgium is one of several European countries that have prohibited ritual slaughter in recent years, including Sweden, Norway, Iceland, Denmark, and Slovenia.⁶⁰

While debates over ritual slaughter in Europe reduce regulatory exemptions to a zero-sum game between animal rights and religious accommodation, the narratives that emerged during interviews for this project suggest that ritual slaughter is in fact the subject of more complex

⁵⁵ US, Department of Agriculture, Food Safety and Inspection Service, *FSIS Directive 6900.2, Revision 2, Humane Handling And Slaughter Of Livestock* (Washington, DC: FSIS, 2011), online (pdf): *USDA Food Safety and Inspection Service*

<www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/humane-handling>. ⁵⁶ See Friedrich, *supra* note 51 at 226.

⁵⁷ 7 U.S.C. § 1906 (2012).

⁵⁸ See for example Friedrich, *supra* note 51.

⁵⁹ Milan Schreuer, "Belgium Bans Religious Slaughtering Practices, Drawing Praise and Protest", *The New York Times* (7 January 2019), online: *The New York Times*

<www.nytimes.com/2019/01/05/world/europe/belgium-ban-jewish-muslim-animal-slaughter.html>.

⁶⁰ In Europe, the Council of Europe's Convention for the Protection of Animals for Slaughter and the European Union's Council Regulation 1099/20092 establish stunning requirements for animal slaughter but also provide that Member States may allow derogations to allow for ritual slaughter. See *European Convention for the Protection of Animals for Slaughter*, 10 May 1979, ETS No 102, art 12; Council of the European Union, *Regulation on the Protection of Animals at the Time of Killing*, 24 September 2009, EC 1099/2009, art 4. See also The Law Library of Congress, Global Legal Research Center, *supra* note 51 at 2.

policy negotiations. Indeed, a careful study of ritual slaughter exemptions can provide greater clarity with respect to how food safety should be regulated.

The government and industry representatives I interviewed were adamant that ritual slaughter exemptions in no way compromise food safety. Every interview participant emphasized that the accommodations available for ritual slaughter were only granted because they do not pose unacceptable risks to food safety outcomes. From a simple cost-benefit standpoint, it may be that ritual and non-ritual slaughter are both permitted because they achieve the same outcome. Balancing between animal welfare and religious needs, both can produce safe meat. However, the former tips the balance in favour of religious groups and the latter tips the balance in favour of minimizing unnecessary pain and suffering of animals. Both combinations result in a product that is safe and this is why ritual slaughter is permitted. This is significant because it demonstrates that there is more than one way to slaughter animals safely. And if this the case, why do Quebec and Ontario draw the line at religious accommodation and refuse to entertain other non-religious alternative approaches to animal slaughter?

Accommodations for non-religious values around food are unlikely in our current political climate, but they are not impossible to conceive. Under section 2.(a) of the Canadian *Charter of Rights and Freedoms*, every person has the right to freedom of religion *and* freedom of conscience.⁶¹ The latter is notoriously difficult to define but the wording of the Charter affirms that "conscientious beliefs which are not religiously motivated are equally protected by freedom of conscience in s. 2(a)".⁶² Over the past decade, the relationship between dietary choices and freedom of conscience have received attention in the context of the rights of prisoners to vegetarian meals.⁶³ While most of these cases focus on the provision of institutional meals to

⁶¹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

⁶² *R v Morgentaler*, [1988] 1 SCR 30 at 178, 44 DLR (4th) 485.

⁶³ See e.g. *Maurice v Canada* (Attorney General), 2002 FCT 69; *Patterson v BC Ministry of Public Safety and Solicitor General*, 2019 BCHRT 11; *R v Chan*, 2005 ABQB 615. See also Adrienne Ng,

satisfy religious beliefs, the specific defence of freedom of conscience was raised in Ontario in a case involving the sale of raw milk and raw milk products in Ontario.⁶⁴ In that case, the trial court concluded that an "entitlement to consume milk, raw or otherwise, is not a *Charter* protected right."⁶⁵ This was subsequently confirmed on appeal.⁶⁶ However, this issue is far from resolved as more individuals adopt vegetarian and vegan diets for moral reasons.

If and when deeply held beliefs about vegetarianism and veganism begin to take hold within freedom of conscience jurisprudence, a related question will be whether moral convictions about other kinds of ethical diets are also deserving of protection. What is the difference between recognizing the right of an individual not to eat meat for moral reasons, and recognizing the right of an individual not to eat meat for moral reasons, and recognizing the right of an individual to eat locally sourced, pasture-raised meat from a cow-share program if the reasons underlying this choice are based on moral convictions about environmental sustainability, animal welfare, and social justice? Perhaps a concern about floodgates is one of the reasons the constitutional protection of freedom of conscience in relation to food is underdeveloped. This does not, however, mean that such reflection is impossible.

Even without turning to a rights-based framework to constitutionalize the right to the foods of one's choice, there are other ways to reconcile food safety objectives with other social priorities and realities. In addition to the interplay between food safety, religious accommodation and animal welfare, geographic and demographic factors can also be important. For example, Vermont's on-farm personal use exemption could be described as an attempt to carve out a space for alternative methods of slaughter on the basis of social and cultural preferences.

Richard Haigh and Howard Kislowicz, "Calculations of Conscience: The Costs and Benefits of Religious and Conscientious Freedom" (2011) 48:3 Alta L Rev 679 at 708.

 ⁶⁴ R v Schmidt, 2011 ONCJ 482, [2011] OJ No 4272 [Schmidt ONCJ]; R v Schmidt, 2014 ONCA 188, 119 OR (3d) 145 [Schmidt ONCA].

⁶⁵ *Schmidt* ONCJ, *supra* note 64 at para 96.

⁶⁶ Schmidt ONCA, supra note 64 at para 35. On appeal, the freedom of conscience defense was dropped and the farmer instead relied exclusively on a s.7 security of the person defense. However, in both cases, the trial and appellate decisions held that there is no Charter right to consume raw milk.

When the Vermont Legislature passed Bill H.515 in 2013 and established the category of "onfarm" personal use exemption, it formalized and legitimized a long-standing tradition in Vermont of individual farmers selling live animals directly to customers. Reference to this tradition is made in the legislative debates around the Bill.⁶⁷ Among those who pushed for the exemption were members of Rural Vermont, a farmers advocacy organization, and while they see the new regulations as a step in the right direction, they believe that exemptions should be extended even further.⁶⁸ On the other hand, the Vermont Meat Inspection Program cautioned the Legislature against adopting widespread exemptions from inspection due to concerns about microbial safety outside the controlled environment of licensed facilities. ⁶⁹ However, recognizing that farmers were ignoring the existing regulatory framework and selling animals illegally, it nevertheless conceded that there was value in creating a formalized process for on-farm slaughter to avoid these clandestine practices.⁷⁰

Vermont's on-farm exemption provisions reflect an attempt by the State Legislature - in conversation with both the administrative agency responsible for food safety and the producers and consumers in the State - to balance its responsibilities under federal food safety law with local demand to preserve traditional farming practices. The reference to the state's agricultural history to justify loosening on-farm animal slaughter requirements reflects an attempt to reconcile USDA Food Safety Inspection Service (FSIS) standards with strategic policies to support local agricultural entrepreneurs. The exemption is not perfect. Critics who are committed to traditional outdoor on-farm slaughter methods claim that the existing framework is overly

⁶⁷ For a discussion of the deliberations and debates around the introduction of the new on-farm exemption, see Kate Robinson, "New slaughtering rules are a way forward from Vermont's 'black market' in meat" (27 May 2013) online: *VT Digger* <

https://vtdigger.org/2013/05/27/new-slaughtering-rules-are-a-way-forward-from-vermonts-black-market-in-meat/>.

⁶⁸ Interview VT01.

⁶⁹ Interview VT02.

⁷⁰ Ibid.

burdensome on farmers.⁷¹ There is too much paperwork and the restriction on the number of animals a farmer can raise and sell under the program is too tight. At the other end of the spectrum, critics concerned with food safety and contamination insist that, even with the best of intentions, on-farm slaughter cannot be as hygienic as slaughter at an abattoir, and actually entails significantly more risk.⁷²

In Canada, several provinces and territories carve out exemptions like those in Vermont on the basis of size, scale, and geographic location of the farm and/or slaughtering facility. For example, in the Yukon, the Regulations under the *Agricultural Products Act* include an inspection exemption for a person "making an occasional private sale" of a live animal (excluding a game animal) to a customer for slaughter on their farm or the meat from a game animal if processed in compliance with existing regulations.⁷³ Meanwhile, in British Columbia, the province runs a graduated slaughter facility licensing regime under the *Food Safety Act* and the Meat Inspection Regulation, which permits commercial on-farm slaughter in designated remote areas while meeting license and inspection requirements for humane meat slaughter, meat processing, and meat storage.⁷⁴ From the perspective of phronetic food law and deep compromise, the most interesting thing about this range of approaches to meat inspection requirements is the way it offers a secular alternative to the ritual slaughter exemptions discussed above.

6.5.2 Deliberating through tragedy: Regulating the better choice

The diversity of exemptions contemplated across jurisdictions highlights the contingency of food safety governance. It is not a neutral exercise. Ritual slaughter exemptions compromise animal welfare commitments to maintain constitutional protections for religious expression. Vermont's

⁷¹ Interview VT01.

⁷² Interview VT03 & Interview VT04

⁷³ Agricultural Products Act, YOIC 1988/104, s 4(2)(b); see also Agricultural Products Act, RSY 2002, c 3, s 19(2)–19(3).

⁷⁴ Meat Inspection Regulation, BC Reg 349/2004, s 5.01; see also Food Safety Act, SBC 2002, c 28, s 4.

on-farm personal exemption tolerates risks of contamination for a restricted number of animals to accommodate social preferences for local food. Balancing competing values and carving out niche exemptions are a step in the right direction. A fully phronetic approach to food safety governance will strive to regulate the better choice for the food system as a whole. This necessarily involves acknowledging the "tragic" nature of virtuous food systems.

Sophocles believed that an objective moral order exists, but that humans lack the ability to negotiate between rival moral truths in order to bring them into harmony and identify this singular order.⁷⁵ The tragedy of *Antigone* is that both Antigone and Creon were right, but they were also self-righteous and refused to engage with each other. This is the reason why appeals are made to divine intervention in the Sophoclean tragedy. There is a gap between an objective cosmic order in which the virtues are united and the messiness of our human engagement with rival moral truths in real life. When food safety governance dismisses, downplays, or trivializes this messiness, it fails to take up the challenge of regulating food systems as they should be. Without acknowledging conflicts between rival moral truths in our food systems, sanitary and phytosanitary measures to protect public health are adopted because they contribute to *an* outcome but not *the* outcome we should be pursuing. Acknowledging the conflicts of food safety governance is the first step towards regulating the latter.

To a certain degree, ritual slaughter exemptions in Canada do reflect an attempt to bring competing normative claims into dialogue. With an eye towards ensuring comparable assurances of food safety, the balance between animal welfare and religious rights is considered as a whole. Pre-slaughter stunning requirements are relaxed but provisions are made that the animal must be properly restrained in order to minimize gratuitous suffering. This does not mean everyone will be pleased with the outcome. However, compared to ritual slaughter exemptions in the United States, where inspectors' authority to intervene is restricted and humane slaughter provisions do not apply to some animals, the approach in Canada comes closer to what seems

⁷⁵ See Alasdair C MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind: University of Notre Dame Press, 2007) at 143.

like the better choice. Similarly, on-farm slaughter exemptions in Vermont may permit higherrisk activities than permitted at state-licensed facilities, but restrictions on the numbers of animals that may be slaughtered this way minimize risk differently while also supporting an important agricultural identity in the state.

If exemptions can result from honest deliberation through conflict, we should expect the same from the broader system of food safety governance as well. If competing moral claims can be explicitly engaged to determine what exemptions should apply, so too must they be engaged in the design of baseline regulations and requirements. Over the course of this project, I met very few producers who disagreed openly with the scientific assessments that inform existing food safety regulations. The majority were dedicated to producing and selling the safest and highest quality meat on the market. However, they faced institutional and economic barriers that precluded them from experimenting with alternative models of production, while their largescale competitors are free to fail within existing food safety frameworks. Rules that facilitate one system of production but restrict another are not neutral. Requiring a slaughterhouse to have a HACCP plan can be a successful tool to minimize contamination on the kill floor. It may not, however, be the only tool or the best approach. Limiting the number of cattle a slaughterhouse can process in a day can also mitigate against contamination, while at the same time presenting fewer administrative hurdles for smaller operations, and ensuring safer working conditions for employees, and calmer environments for animals on their way to slaughter. These are deeply moral questions and they deserve to be recognized as such.

A phronetic approach to food law attempts to bring this normativity to light so it can be understood and confronted. If conversations about food safety preclude any contemplation of the rewards that may come from risky behaviour, there could be no space for the kinds of initiatives that led the government of Ontario to approve new methods of E.Coli detection for artisanal sausages. Different methods are valued because they lead to *different* outcomes. Ritual slaughter versus secular slaughter is about more than achieving the same outcome via different routes. It is about producing meat products that align with a particular perspective about

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acceptability. What is acceptable meat to someone who keeps kosher differs for someone who is secular. Exemptions from the chilling requirement in Ontario or authorization of commercial on-farm slaughter are permitted because the resulting meat does not pose an unacceptable risk, but also because it enables the production of socially and culturally desirable meat. Microbial safety is one of many elements that *together* constitute the desired outcome.

Ultimately, debates about whether artisanal or small-scale producers should be exempt from food safety requirements miss the more important point. The issue is not whether regulatory requirements are justifiable or not. Rather, it is about the degree to which the requirements engage meaningfully with the normativity of risk and facilitate not only optimal levels of risk but optimal kinds of risk. Just as regulations cannot ensure zero-risk, they can neither ensure perfect harmony. But phronesis commits to working through the benefits as well as the dangers associated with a particular kind of risk in order at least to strive towards the better choice.

6.6 Conclusion

While food safety regulations are generally understood as operating to protect from harm, a phronetic approach illustrates the extent to which they are also constitutive instruments that shape the kinds of food systems that are possible. The claim that a food safety system is risk-based and therefore impartial or objective ignores the reality that statistical knowledge of risk is itself a normative statement about what ought to be.⁷⁶ Technocracy may have coopted the language of risk, but expert assessments of what is normal are also evaluative judgments about what is right. Animal slaughter and meat processing is a risky activity. How should we regulate this risk? At the heart of our relationship with risk is our sense of morality. Whether we identify a risk as a threat or an opportunity will depend on values we hold about what is good and bad. According to Garland, "[i]f our orientation towards life's dangers were suddenly to shift from

⁷⁶ See Ericson & Doyle, *supra* note 3 at 6.

active concern to fatalistic acceptance, our world would be no less hazardous, but the risk society would disappear."⁷⁷ Orientation towards risk then is a choice. It is also a reflection of what we consider to be normal and by extension what we consider to be right. Our regulatory institutions increasingly see their role as promoting safety rather than to chance danger.⁷⁸ Perhaps it is time to confront the risks of animal slaughter and meat processing more honestly and see what possibilities this may bring.

⁷⁷ David Garland, *supra* note 27 at 52.

⁷⁸ See Alan Hunt, *supra* note 5 at 177.
Chapter 7: Conclusion

In October 2018, JBS, the world's largest meatpacking and processing company, recalled 6.9 million pounds of raw beef across the United States because of a risk of Salmonella contamination in meat that had been processed at its Tolleson, Arizona facility.¹ The quantity of meat recalled in this single incident was more than double the combined quantity of all beef recalled in the United States in the previous three years (2015-2017).² In subsequent months, the quantity grew to 12.1 million pounds.³ In Canada, the largest recall of beef dates back to 2012, when an E.Coli outbreak led to the recall and disposal of 12 million pounds of meat products.⁴ Currently, the Public Health Agency of Canada (PHAC) is responding to a widespread Salmonella crisis linked to raw chicken.⁵ Recalls and investigations have been ongoing since July 2017, and in September 2018, PHAC issued a Public Health Notice about the outbreaks.⁶ The most recent recall was in March 2019 for a brand of frozen chicken products that were distributed nationally in Canada.⁷

⁶ Ibid.

¹ Sam Bloch, "World's largest meatpacker recalls 6.9 million pounds of beef linked to antibioticresistant Salmonella" (Oct 4 2018) *The New Food Economy*, online: *New Food Economy* <newfoodeconomy.org/jbs-beef-recall-salmonella-newport-usda-fsis>.

² Ibid.

³ FSIS USDA, News Release, 085-2018 EXP, "JBS Tolleson, Inc. Recalls Raw Beef Products due to Possible Salmonella Newport Contamination" (4 December 2018), online: *FSIS* <www.fsis.usda.gov/wps/portal/fsis/topics/recalls-and-public-health-alerts/recall-casearchive/archive/2018/recall-085-2018-EXP-release>.

⁴ Government of Canada, "Safe Food for Canadians Regulations: Regulatory Impact Analysis Statement" (2017) C Gaz I, 260; see also André Corriveau, Ronald John Lewis & W Ronald Usborne, *Independent Review of XL Foods Inc. Beef Recall 2012* (Ottawa: Canadian Food Inspection Agency, 2013).

⁵ Public Health Agency of Canada, "Public Health Notice — Outbreaks of Salmonella infections linked to raw chicken, including frozen raw breaded chicken products" (13 September 2018), online: *PHAC* https://www.canada.ca/en/public-health/services/public-health-notices/2018/outbreaks-salmonella-infections-linked-raw-chicken-including-frozen-raw-breaded-chicken-products.html.

⁷ Canadian Food Inspection Agency, "Food Recall Warning - Janes brand Pub Style Chicken Nuggets recalled due to Salmonella" (21 March 2019) online: *CFIA* <inspection.gc.ca/about-the-

Alongside highly publicized national recalls such as these, smaller-scale recalls are regular occurrences on both sides of the border. The frequency of recalls may be a sign of well-functioning food safety inspection systems. At the same time, it is a reminder that even highly sophisticated food safety systems cannot eliminate risk entirely. Meat from inspected facilities (whether federal, provincial, or state) can become contaminated at some point along the supply chain. Sometimes, this is the result of negligence and could otherwise have been prevented. Other times, contamination occurs in spite of best practices. Food safety regulations are designed to minimize risks to reasonable levels, but they do not and cannot reduce risk to zero. In light of the life-threatening consequences of meat contamination, food safety regulations rightly seek to strengthen industry oversight and protect consumers. However, as this dissertation has attempted to demonstrate, good judgment is required to regulate outcomes well. Proper deliberation in food safety governance should take inspiration from the Aristotelian virtue of phronesis and should aspire towards deep compromise when negotiating between conflicting values.

Applying a theory of phronetic food law to food safety governance, and, more specifically, the regulation of animal slaughter and meat processing, invites new opportunities for reflection on the normativity of risk. Not all foodborne diseases or outbreaks are created equal. There are important differences between detecting E. coli in the meat from a single cow that a producer sold directly to ten individuals at a farmers' market, and detecting E. Coli in ground beef from a processing plant where large quantities of meat from many different cows are mixed together and distributed across the country. While there may be a similar risk of harm to the consumer who has either kinds of beef in their kitchen, other factors are relevant to the determinations of what constitutes an acceptable level of risk. For example, risk communication may be more effective in the context of shorter supply chains. Also significant are the different environmental,

cfia/newsroom/food-recall-warnings/complete-listing/2019-03-21/eng/1553209880516/1553209882053>

economic, and social impacts of industrial and artisanal methods of production. These are not extrinsic to a phronetic risk analysis. They are fundamental in order to decide properly what is – and, more importantly, what should be – acceptable.

This dissertation contributes to legal scholarship by taking seriously these different perspectives and values about how animals should be raised and slaughtered for meat. Challenging the perception that food safety requirements can be isolated from other aspects of food system governance, I have described the contextual factors that interact with evidence-based risk assessments in determining how meat makes its way from farm to plate. The dissertation began with a review of the history of modern food safety regulations. It traced the evolution of food safety requirements from rules prohibiting adulteration and emphasizing purity, to a highly sophisticated risk-based system of governance that focuses on preventing and/or minimizing exposure to hazards. While this shift may reflect a progressive scientisation of food safety governance, and a trend towards technocratic rule-making, I have emphasized throughout this dissertation that non-scientific factors nevertheless continue to influence the design of and experience of complying with regulatory requirements.

In order to engage critically with these regulations, this dissertation developed a new theoretical framework to guide my own inquiry as well as future scholarship in food law and policy. In Chapter 2, I set out this framework, which I call phronetic food law. In Chapter 3, I explained the methodological approach of the dissertation, which is grounded in the methodologies of phronetic social science generally, and the normative case study specifically. Both the theoretical framework and methodological approach enabled me to bring a normative lens to what is otherwise seen as an ethically neutral subject. Phronesis requires, but also legitimizes, contextual and contingent reasoning. In order to reflect meaningfully on regulations that purport to speak in universal terms about what is safe and unsafe, it was crucial to create space for conflicts to manifest themselves and to explore their significance without having a clear objective from the outset. As I mentioned in the introduction, this resulted in revisions to the initial way I had envisioned the dissertation unfolding. Revisions that I believe enriched the project as a whole.

In Chapter 4, the regulatory frameworks for the dissertation's three case studies were presented. Three jurisdictions were selected for this study: Ontario, Quebec, and Vermont. Because of the division of powers in both the United States and Canada, this meant that five regulatory frameworks were in fact considered. The federal frameworks in Canada and the United States, which regulate meat destined for interprovincial/state and international trade, and the provincial/state frameworks which regulate meat that stays within the province/state. Chapter 5 presented some of the ideas and narratives that arose during my interviews and challenged my own initial assumptions about the differences between each jurisdiction. Problematizing some of my earlier conceptions about the barriers that food safety regulations create for small-scale farmers revealed the extent of the complexity of food safety governance. In Chapter 6, this complexity was reconsidered in light of the theory of phronetic food law. The chapter highlighted how, regardless of their stated objectives, food safety regulations cannot be understood in isolation from the context in which they operate. This local context is shaped by social, moral, economic, and political factors. Whether or not their contributions are explicit, they are always present. A phronetic approach to food safety means acknowledging their presence and the conflicts that arise between them, and drawing on proper deliberation to resolve them as best as possible.

Food safety can be a matter of life or death. Food safety regulations are instrumental to promoting public health. However, as should now be abundantly clear, decisions about what constitutes acceptable levels of risk and how risks should be managed across the supply chain do not always align with the standard of deliberation that is at the heart of phronetic judgment and deep compromise. The problem is not that legal and regulatory institutions are incapable of engaging with subjective beliefs, as regulatory exemptions make clear. The problem is that among the spectrum of ideas about how animals should be raised, slaughtered and processed, some are unjustifiably prioritized over others. With the exception of accommodations for constitutionally protected minorities, regulatory approaches to meat safety often fail to engage meaningfully with the ethical dilemmas in food system governance.

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Scientific innovations and sanitary improvements in agri-food production and processing have saved countless lives. At the same time, and without minimizing the importance of food safety regulations to protect the quality of our food supply, the design of sustainable food and agricultural systems requires critical engagement with more than one policy concern. Ensuring that food is free from pathogens does not address issues of accessibility of food in low-income communities, the carbon footprint of industrial agriculture, the welfare of farmed animals, the nutritional quality or taste of food, or the working conditions of migrant agricultural workers. These are just a few among a wide variety of priorities of alternative food movements. These movements would either like to see their priorities better incorporated in existing food safety regulations, or alternatively not to be restricted by them.

It is therefore encouraging to see all levels of government beginning to recognize the importance of a holistic approach to the regulation of food.⁸ The past few years have seen the creation of several municipal, regional, and national food strategies articulating various commitments to using a systems-based lens to oversee food law and policy.⁹ The most significant is the development of A Food Policy for Canada. Upon his election in 2015, Prime Minister Trudeau

⁸ See for example, Nadia Lambek, "Social Justice and the Food System" in Heather McLeod-Kilmurray, Angela Lee & Nathalie Chalifour, eds, *Food Law and Policy in Canada*, (Toronto: Carswell 2019 forthcoming) 325; Food Secure Canada, "Five Big Ideas for a Better Food System" (25 May 2017), online: *Food Secure Canada* <foodsecurecanada.org/five-big-ideas>; Emily Broad Leib et al, "Blueprint for a National Food Strategy: Evaluating the potential for a national food strategy in the United States" (February 2017), online (pdf): *Food Strategy Blueprint* <foodstrategyblueprint.org/>.

⁹ See e.g. Government of Canada , "A Food Policy for Canada" (2 June 2017), online: *Government of Canada* <www.canada.ca/en/campaign/food-policy.html> [Government of Canada, "A Food Policy for Canada"]; Government of Quebec (Ministry of Agriculture, Fisheries and Food), "Politique bioalimentaire 2018-2025: nourrir notre monde" (2018), online (pdf): <www.mapaq.gouv.qc.ca/fr/Ministere/politique/Pages/Politique-bioalimentaire.aspx>; Système Alimentaire Montréalais, "Montréal devient la première métropole francophone à se doter d'un conseil des politiques alimentaires" (8 December 2017), online:

<www.newswire.ca/fr/news-releases/montreal-devient-la-premiere-metropole-francophone-a-se-doter-dun-conseil-des-politiques-alimentaires-662876643.html>.

requested in his Mandate Letter to the Minister of Agriculture and Agri-Food, the development of "a food policy that promotes healthy living and safe food by putting healthier, high-quality food, produced by Canadian ranchers and farmers, on the tables of families across the country."¹⁰ The Food Policy for Canada brings together sixteen federal ministries, agencies and departments that rarely work collectively on food system governance, reversing past trends of governing in silos, with limited communication between different government agencies and levels of government.¹¹ Following a series of public consultations, including regional engagement sessions, a National Food Policy Summit, town halls hosted by Members of Parliament, and other community-led engagement events held across the country, the initial details of the Food Policy for Canada were released in June 2019.¹² Early on during the consultation period, four key areas of intervention were identified: 1) increasing access to affordable food; 2) improving health and food safety; 3) conserving soil, water and air; and 4) growing more high-quality food.¹³ Framed this way, there were obvious and inevitable conflicts between each category. Particularly worrisome was the emphasis on growing more food to stimulate agricultural export markets rather than strengthening Canadian food sovereignty. Growing more food does not necessarily align with conservation efforts. And increasing access to affordable food does not necessarily align with efforts to improve food quality. These are not conflicting objectives per se, but when

¹⁰ Letter from Rt Hon Justin Trudeau to Lawrence MacAulay, Minister of Agriculture and Agri-Food (12 November 2015), online: *Justin Trudeau, Prime Minister of Canada* <pm.gc.ca/eng/minister-agriculture-and-agri-food-mandate-letter>.

¹¹ These ministries, departments and agencies include: Agriculture and Agri-Food Canada (Chair), Canadian Food Inspection Agency, Canadian Institutes of Health Research, Canadian Northern Economic Development Agency, Employment and Social Development Canada, Environment and Climate Change Canada, Finance Canada, Fisheries and Oceans Canada, Global Affairs Canada, Health Canada, Indigenous and Northern Affairs Canada, Innovation, Science and Economic Development, Public Health Agency of Canada, Privy Council Office, Statistics Canada and Transport Canada. Notably the Justice Department and Heritage Canada are not involved.

¹² Government of Canada, "Everyone at the Table!" Government of Canada announces the firstever Food Policy for Canada" (June 17, 2019), online: *Agriculture and Agri-Food Canada* <canada.ca/en/agriculture-agri-food/news/2019/06/everyone-at-the-table-government-ofcanada-announces-the-first-ever-food-policy-for-canada>.

¹³ Government of Canada, "A Food Policy for Canada", *supra* note 9.

presented as distinct components of a national food policy, it seemed unlikely that the initiative would embrace the kind of phronetic judgment our food system so urgently requires.

Thankfully, the consultations over the past several years seem to have developed the vision for the food policy. Whereas the initial mandate letter spoke of "a food policy that promotes healthy living and safe food by putting healthier, high-quality food, produced by Canadian ranchers and farmers, on the tables of families across the country", the vision that was announced in June 2019 describes the following: "All people in Canada are able to access a sufficient amount of safe, nutritious and culturally diverse food. Canada's food system is resilient and innovative, sustains our environment, and supports our economy."¹⁴ It is promising to see how this vision gives increased prominence to environmental sustainability, while also placing food safety on equal footing with food security objectives relating to nutritious and culturally diverse food.

Although the Food Policy for Canada is not yet fully developed and the composition of the Canadian Food Policy Council has yet to be finalized, several intervention areas for the new policy were identified before the 2019 election. Many specifically target food insecurity, such as a National School Food Program, and community-led initiatives such as skills-training and community freezers in Northern and Indigenous communities. A related focus is on reducing food waste across the country. From an industry perspective, cracking down on food fraud and mislabelling as well as the development of a value-added label for made-in-Canada products are both priorities. At the time of its announcement, it was noted that the Food Policy for Canada will help Canada meet its commitments under the United Nations' Sustainable Development Goals, including to end hunger, promote good health, cut food waste, and encourage a sustainable food system.¹⁵

¹⁴ Government of Canada, "Everybody at the Table!", *supra* note 12.

¹⁵ *Ibid*.

These are significant commitments. And while we may remain hopeful, it remains to be seen whether or not this opportunity will be seized. A national food policy provides an opportunity to shift the language and practice of food system governance in two key ways.¹⁶ First, by drawing attention to the interdisciplinary and multi-sectoral nature of food law and policy, it should facilitate greater collaboration and consultation between ministries, departments and agencies that have previously regulated in separate silos the way we grow, raise, produce, process, distribute, advertise, buy, sell, cook and eat food. Second, by creating a space in which it is possible to discuss the underlying norms, values or principles our food system, it should foster greater respect for the conflicting perspectives about what constitutes good food. This means taking seriously the value conflicts at the heart of food system governance, an essential component of a phronetic approach to food law.

Taking the lessons of this dissertation's analysis of meat safety regulations seriously means confronting the value conflicts at the heart of a national food policy, and, importantly, recognizing perspectives that are usually marginalized or discredited in food law and policy. It requires meaningful consideration of the diversity of values that inform individual and collective conceptions of what constitutes good food, and a commitment to genuine deliberation in deciding what our food system should look like. A phronetic approach to public decision-making about food system governance requires reasoning that attempts to determine the truth about what ought to be done.¹⁷ Generating an answer to this question does not require commensurability of values between the social, economic, scientific, environmental, or ethical issues at stake. What it does require, however, is coherence with other commitments that we agree also matter and to which we remain committed upon reflection.¹⁸ This may not please all

¹⁶ For a more detailed discussion of Canada's national food policy, see Sarah Berger Richardson & Nadia Lambek, "Federalism and Fragmentation: Addressing the Possibilities of a Food Policy for Canada" (2018) 5:3 Can Food Stud 28.

¹⁷ Henry S Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002) at 76.

¹⁸ *Ibid* at 160.

stakeholders, but a phronetic approach to food law and policy will ensure that the right decision will be made at the right time, and in the right place.

I opened my dissertation with a story about my visit to Dominic Lamontagne's farm in Sainte-Lucie-des-Laurentides. Lamontagne, who is a regular contributor in the Quebec media, recently published an editorial to critique the idea that there can ever be a single solution to the question of what food we should be eating.¹⁹ Among other things, Lamontagne is reacting to the surge of support in recent months for switching to a plant-based diet. In January 2019, the EAT-Lancet Commission on Food, Planet, Health launched its "planetary health diet", a universal reference diet to help ensure that the UN Sustainable Development Goals (SDGs) and Paris Agreement are achieved.²⁰ The diet is based primarily on plant-based foods, excluding foods deemed unhealthy, such as meat and other animal based foods. This adds to the alarm bells that have recently been sounding within the scientific community about the impact on the environment of heavy reliance animal-based protein.²¹ However, and as Lamontagne points out in his editorial, "absolute truths are rare and solutions that work for some do not always work for others."²² And in fact, the World Health Organization (WHO), pulled its support from a sponsoring initiative of the Eat-Lancet planetary health diet after the scientific basis for the diet was questioned and concerns raised that a universal adoption of the diet could result in the loss of millions of jobs linked to animal husbandry, stimulate the production of "unhealthy" foods, and threaten traditional diets that are rooted in cultural heritage.²³

¹⁹ Dominic Lamontagne, "Alimentation sans protéines animals: un délire collective dangereux" LaPresse + (9 May 2019) online: LaPresse <www.lapresse.ca/debats/opinions/201905/08/01-5225283-alimentation-sans-proteines-animales-un-delire-collectif-dangereux.php>.

²⁰ EAT-*Lancet* Commission, "The EAT-Lancet Commission on Food, Planet, Health", online (pdf): *EAT* <eatforum.org/eat-lancet-commission>

²¹ See e.g. Donald Rose, "Environmental nudges to reduce meat demand" (2018) 2:9 The Lancet Planetary Health e374; Joseph Poore & Thomas Nemecek, "Reducing food's environmental impacts through producers and consumers" (2018) 360:6392 Science 987.

²² See Lamontagne, *supra* note 16 [translated by author] (original text: "les vérités absolues sont rares et les solutions qui vont pour les uns ne vont pas toujours pour les autres").

²³ Ingrid Torjesen, "WHO pulls support from initiative promoting global move to plant based foods" (2019) 365:1700 BMJ.

Whether or not the Eat-*Lancet* planetary health diet is the only way to produce food within planetary boundaries, one thing that is clear is that our relationship with the animals we eat for food is at a crossroad. Large-scale systems of industrialized animal husbandry and meat production are threatening human health and environmental sustainability. It may not be the responsibility of food safety governance to solve all of the problems related to this method of production. Still, to the extent that food safety regulations and requirements channel the majority of producers and processors towards production at this scale, while unnecessarily impeding small-scale producers' capacity to develop alternate supply chains, they must be revisited. While not by itself a panacea for promoting methods of production within planetary boundaries, it is clearly an important and necessary requirement.

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Appendix A – Breakdown of interview participants

Jurisdiction	Interviewee (coded reference)	Sector represented
Quebec	QC01	Producer
	QC02	Processor & retailer
	QC03	Producer
	QC04	Producer
	QC05	Producer
	QC06	Processor
Ontario	ON01	Retailer & processor
	ON02	Ontario Ministry of Agriculture and
		Rural Affairs
	ON03	Producer (former)
	ON04	Processor
	ON05	Producer
	ON06	Ontario Ministry of Agriculture and
		Rural Affairs
Vermont	VT01	Civil society & producer
	VT02	Vermont Meat Inspection Agency
	VT03	Producer & processor
	VT04	Processor
Canada	CA01	Canada Food Inspection Agency
British Columbia	BC01	Civil society

Appendix B – Letter of Research Intent

Dear [insert name of participant here],

I am a doctoral candidate at McGill University's Faculty of Law, where my work is supervised by Professors Hoi Kong, Sébastien Jodoin and Jaye Ellis. My research is on food law and policy, and my doctoral dissertation studies food safety regulations for meat production. I am writing to invite you to participate in an interview to discuss meat regulations in [Ontario, Quebec, Vermont].

Your interview (if you agree to participate) will contribute to my doctoral dissertation, which explores how regulators, producers and consumers understand the concept of safety, and how safety is defined in regulations overseeing meat production. More specifically, I am interested in the ways that social, cultural, and moral perspectives about how meat is produced are considered in the design of food safety regulations. My project is comparative and studies differences between meat regulations in Ontario, Quebec, and Vermont.

If you agree to participate, I will contact you to set up a time to speak in person or through an electronic format if meeting in person is not possible. The interview should take between 45 and 60 minutes. With your permission, the interview will be audio recorded and saved on a digital file.

Every effort will be made to keep your responses confidential. As you will see from the attached consent form, you may indicate the level of attribution you desire. You will also have the right to change your preferences and/or withdraw from the research entirely at any point up until the publication of my research. As a researcher at McGill University, my commitments to protect your confidentiality are supported by the university's Advisory Council on Human Research Ethics and the Department of Legal Services.

The only people with access to your interview recording will be myself and a McGill law student I will hire for transcription purposes. The student will be required to sign a confidentiality agreement. In addition, I will be the only researcher with access to my notes arising from our interview. All notes will be saved electronically, and will be password protected. Any paper documents or notes will be kept in locked storage.

If you are interested, I will be happy to provide you with a copy of any paper that arises from this research. If you elect to be quoted, I will give you an opportunity to review a draft version of the passages in the dissertation or any other scholarly publications in which such quotations or attributions appear.

This research project has been reviewed and received ethics clearance by McGill University's Research Ethics Board. If you have any ethical concerns or complaints about your participation in this study, and want to speak with someone not on the research team, please contact the McGill Ethics Manager at (514) 398-6831 or lynda.mcneil@mcgill.ca.

Thank you for considering my request to participate in my research. If you would like more information about the project in order to make a decision about participating, please do not hesitate to contact me.

Sincerely,

Sarah Berger Richardson Doctoral candidate, Faculty of Law, McGill University 3644 Peel St, NCDH 613, Montreal, QC, H3A 1W9, Canada Email: <u>sarah.bergerrichardson@mail.mcgill.ca</u>

Appendix C - Participant Consent Form

Researcher: Sarah Berger Richardson, doctoral student, McGill University, Faculty of Law, (514) 622-8189, sarah.bergerrichardson@mail.mcgill.ca

Supervisor: Professor Sébastien Jodoin, McGill University, Faculty of Law, (514) 398-6163, sébastien.jodoin-pilon@mcgill.ca

Title of Project: Is Safe Food Good Food? Looking beyond safety to regulate good food systems

Research Ethics Board file number: 166-0917

Sponsor(s): Social Sciences and Humanities Research Council & McGill University Faculty of Law

Purpose of the Study: You are invited to participate in a research study on the regulation of meat production in Ontario, Quebec, and Vermont. The purpose of my project is to study how regulators, producers and consumers understand the concept of food safety, and how food safety is defined in regulations overseeing meat production. I am interested in the ways that social, cultural, and moral perspectives about what constitutes good food are considered in the design of food safety regulations.

Study Procedures: Participation in this project involves responding to questions asked by the researcher in a 45-60 minute interview. You can choose the location of the interview. If meeting in person is not possible, the interview can take place through an electronic format. With your permission, the interview will be audio recorded and saved on a digital file. All recordings, notes taken during interviews, and transcripts will be stored securely.

Voluntary Participation: Your participation in this project is voluntary. You may refuse to participate in the project, or decline to answer any question during the interview. You are also free to withdraw from the project at any time, for any reason. If you withdraw from the project, all information gathered until that point will be destroyed and will not be used in any analysis or reporting, unless you indicate otherwise. Withdrawal prior to the publication of my work prevents me from using your information in the project. Withdrawal after the publication of my work prevents me from using your information in any future research output.

Potential Risks: In the course of answering interview questions, there is a risk that (1) you will reveal that you have engaged in practices that do not conform with food safety regulations, or (2) you will reveal details about others in the industry who do not conform to food safety regulations. To protect against the first risk, you have the option of participating without attribution in the research project. At the beginning of the interview, you will be reminded of your right to withdraw from the project, to decline to any question during the interview, and to request non-attribution to any or all of your responses. To protect against the first and second risk, the interview will be paused if any non-conforming practices are revealed. You will be given an opportunity to withdraw your comments, or to withdraw from the project.

Potential Benefits: The purpose of this project is to contribute to a gap in existing legal literature about food safety. Participating in an interview might not benefit you directly, but it is hoped that the information collected will contribute to a better understanding of the different perspectives of actors involved in meat production across the supply chain. By participating in the project, you will have an opportunity to express your opinions about what food safety systems should look like, and how safety should be regulated in the meat industry. In addition to creating a space for your voice to be heard, the project will present your perspective in dialogue with those of other actors with whom you might not otherwise have access. Although indirect, a benefit of this project is the fostering of dialogue between food safety regulators, meat producers and consumer.

Confidentiality: You can choose the level of attribution you desire for your responses to interview questions. You have the right to change your preferences and/or withdraw from the project at any point.

Attribution of responses: Please choose one of the following

You AGREE to be identified by name in the research. *If you are quoted or views are attributed to you personally, you will retain the right to review passages in the publications in which such quotations or attributions appear.

You DO NOT AGREE to be identified by name in the research, but you AGREE to be quoted or cited as long as you are not personally identifiable by name, position or context.

You DO NOT AGREE to be identified by name, or quoted or cited in the research.

Audio-recording of interview: Please choose one of the following

You AGREE to have your interview audio-recorded *If you are quoted or views are attributed to you, you will retain the right to review passages in the publications in which such quotations or attributions appear.

You DO NOT agree to have your interview audio-recorded

<u>Researcher commitment to confidentiality</u>: As a researcher at McGill University, my commitments to protect your confidentiality are supported by the university's Advisory Council on Human Research Ethics and the Department of Legal Services. Every effort will be made to keep your responses confidential. Information collected during the interview includes audio-recording when authorized and the researcher's notes. The only people with access to the audio-recording will be the researcher and a McGill law student hired for transcription purposes. The student will be required to sign a confidentiality agreement. Only researcher will have access to interview notes. All electronic files will be securely stored on the McGill server and password protected. Any paper documents or notes will be kept in locked storage. Interview recordings, transcripts and notes will be assigned codes. One document will be created by the researcher that matches your identifiable data to your code, and this document will be stored in a password protected file on the McGill server. This file will only be accessible to the researcher.

<u>Dissemination of results</u>: The results of the research will be disseminated in the researcher's doctoral dissertation. It is also expected that parts of the research will be disseminated in academic journals and conferences.

If you have questions about the project, want to modify your attribution agreement, or withdraw from the project, please contact the researcher, Sarah Berger Richardson at (514) 622-8189 or sarah.bergerrichardson@mail.mcgill.ca

If you have any ethical concerns or complaints about your participation in this study, and want to speak with someone not on the research team, please contact the McGill Ethics Manager at (514) 398-6831 or lynda.mcneil@mcgill.ca When contacting the McGill Ethics Manager, please let them know you are referring to REB file number: 166-0917

Please sign below if you have read the above information and consent to participate in this study. Agreeing to participate in this study does not waive any of your rights or release the researchers from their responsibilities. A copy of this consent form will be given to you and the researcher will keep a copy.

Participant's Name: (please print)	
Participant's Signature:	
Date:	
Appendix D - Interview questions

- 1. How did you become involved in [insert name of department, industry, affiliation or employment]? When did your involvement begin?
- 2. What is [insert name of department, industry, affiliation or employment]'s mission? What are its goals?
- 3. How has meat production in [insert jurisdiction] changed since the introduction of [insert legislation]?
- 4. What were some of the safety challenges the meat industry faced before the introduction of [insert legislation]?
- 5. How has the new legislation addressed these safety challenges?
- 6. Has the new legislation created any new problems for producers, consumers, or inspection agents that you are aware of?
- 7. In your professional opinion, what does food safety mean? How does your definition compare to the way food safety is defined in meat regulations? Can food safety mean different things in different contexts?
- 8. What do you think good food is? [note: this question is purposefully intended to be vague in order to broaden the discussion, and shift towards other food values without naming them first.]
- 9. What is the relationship between safe food and good food?
- 10. Do any of the elements of good food that you identified come through in existing meat safety regulations?
- 11. What elements of good food that you identified are not accounted for in existing meat safety regulations? Why is that?
- 12. Is it possible for regulate good food? What would that look like?
- 13. What is unique about [insert jurisdiction] that makes its food safety regulations different from other places?
- 14. Are there any jurisdictions that you look to as models for food safety regulations?
- 15. What does an ideal food system look like? How would safety be regulated in that context? How does this compare to the current food system and its regulation?