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Contested Ideas of the Consumer: National Strategies of Product Market Regulation in France and Germany

GUNNAR TRUMBULL

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INTRODUCTION*

Consumer protection appeared as a new area of policy in France and Germany in the 1970s. The regulatory approaches adopted by France and by Germany did not, however, emerge from deep national traditions of consumer protection. Indeed in many areas of consumer regulation such national traditions simply did not exist. Instead, the policy models that came to dominate in each country emerged from a heated political struggle that took place between producers and consumers in the 1970s and early 1980s over the identity of the consumer. At stake in this conflict was the degree of responsibility that consumers and producers faced for product-related risk.

Debate over policy solutions took the form of a discussion of the identity and interests of the consumer that was unusually broad. Policymakers faced a choice among competing conceptions of the consumer and of the consumer's role in society. Three distinct conceptions of the consumer identity became the focus of the policy debate in each country: consumer as economic actor with the same status as producers, consumer as citizen with a distinctive set of rights, and consumer as interest group. Each of these conceptions of the consumer, understood as a policy model, provided a coherent interpretation of the consumer's condition, interests, and the kind of solutions that were appropriate for consumer protection. Consumer and producer groups therefore advocated that conception of the consumer that best met their perceived interests. Who won and who lost this struggle depended on the relative capacity of consumer and producer groups to organize in support of a policy model that best embodied their perceived interests.

In France, where consumer groups enjoyed a strong grass-roots mobilization and industry was poorly organized to pursue its collective goals, policy outcomes tended to emphasize the interests of consumers over those of producers. Indeed policymakers shifted their policy model away from the interests of industry as consumer mobilization grew. French consumer policy thus came to reflect the conception of the consumer as citizen, and worked to advance a protection approach to product market regulation. In Germany, by contrast, where producers were well organized and consumer organizations did not have a strong membership, policy outcomes instead emphasized the preferences of producers. German consumer policy thus came to reflect the

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conception of the consumer as economic actor, and worked to advance an information approach to product market regulation.

This research suggests that even in periods of radical institutional and policy innovation, familiar institutional mechanisms can help to explain what strategy comes to dominate national policy formation. In this approach, instances of substantially new policy creation are understood as a confrontational process in which competing policy models become politically contested. Each policy model makes prescriptions for a coherent strategy of regulation. Different policy models are typically mutually incompatible, that is, they are adopted entirely or not at all. Moreover, the prescriptions from each model distribute burdens differently. As a consequence, important social actors compete in the political arena to determine which policy model will come to structure national debate. The policy model that emerges as dominant from the process then takes on a path dependency that shapes ongoing regulatory efforts.

THE RISE OF CONSUMERISM IN FRANCE AND GERMANY

The emergence of consumers as a new interest group in France and Germany took on a variety of forms that are outlined in this section. The changes occurred in different public arenas. One set of changes occurred in the legal sphere. It included the attribution of collective rights to consumers, and a redistribution of legal liability from consumers onto producers. A second set of changes occurred within the political sphere. It included the integration of consumer representatives into policy-making, and the creation of a large new body of legislation focused on consumer interests. Finally, consumer groups themselves began to expand their activities, their finances, and their membership base.

Taken together these changes might be seen as constituting an instance of political incorporation (Marshall 1950). Like the earlier political incorporation of the working class or of women, the recognition of the consumer interest as a fundamental societal interest has entailed the creation of a new legal status for consumers, new access to the political sphere, and a new self-identification by consumers themselves as constituting a coherent set of social claims. Moreover, just as national approaches to incorporating the rights of labor and of women have differed across countries, so too have countries enacted product market regulations that embody very different conceptions of consumer identity and interests in the economy and society (Lipset 1983; Koven and Michel, 1990). Indeed I argue that the conception of the consumer—as political, legal, and economic entity—that emerged in France and Germany in the 1970 and early 1980s was very different. One of the theoretical challenges of this paper is to explain such national divergence in a substantially new area of policy.

Five trends were common to the emergence of consumerist policies in France and Germany. First, consumers were granted rights to act collectively in the legal sphere, although in both countries these rights fell short of the class action suit permitted in the United States. In France, the 1973 *loi Royer* and subsequent legislation permitted consumer groups to sue companies on behalf of all consumer groups, although not on behalf of individual consumers. In Germany, first the 1965 competition law and then the 1976 standard contract law granted consumer groups permission to bring legal suit against companies employing misleading advertising or unfair contract terms. Group rights were never extended to other areas of consumer grievance.

Second, a greater level of responsibility for product-related damage was attributed to producers. This marked a shift away from a strategy of socializing the cost of industry-related risk that had prevailed through the 19th Century to a strategy of internalizing product-related risk to individual companies. In Germany, court cases in 1968 and 1973 reversed the burden of proof on defendants, requiring that companies demonstrate that they had not acted negligently in the case of product-related damage. In France, the courts in 1973 imposed a no-fault, or strict, standard of liability that made companies legally responsible for product-related damage even in cases where no amount of care by the producer could have prevented the damage.

Third, governments in both countries incorporated consumer representatives into policy formation. In France, a National Council on Consumption established in 1965 created a forum for consumer representatives to meet with representatives from the government ministries. France created first a Secretariat for Consumption in 1976, then a full Ministry of Consumption in 1980. In 1976 consumers were given input into the French Plan. Germany created consumer advisory councils in the Ministry of Economics in 1972 and in the Agriculture Ministry in 1973. Germany also created an inter-ministerial advisory council on consumers, and consumer groups were granted access to the concerted action agreements at which money supply and wage levels were set.
Fourth, both countries began writing a large volume of legislation oriented towards consumers. In Germany, for example, the number of consumer-related laws grew from a total of only 25 enacted in the post-World War II period up to the end of 1970, to a total of 338 through 1978 (Laschet 1987, 60). Both the Social-Democratic Party and the Christian Democratic Union created consumer working groups to propose new consumer issues. In France the number of laws and ministerial decrees relating to consumption increased from a total of only 37 to the end of 1970, to a total of 94 through 1978 (*Les Notes Bleues* 1978, 14-20). Finally, the role and activities of consumer groups also grew rapidly at the time. Government financial support to these consumer groups increased rapidly over this period. In France, for example, funds given by the government to consumer

groups grew from 3.7 million francs in 1970 to nearly 50 million francs in 1980. Government support had grown over ten times in as many years. German government funding to consumer groups grew nearly as rapidly: from 12 million DM in 1970 48 million DM in 1980 (Bornecke 1982, 230). The government in both countries sponsored the publication of comparative consumer product tests, in the French magazine *50 Millions de consommateurs* and the German magazine *Test*. Circulation of such product magazines grew to over 600,000 in each country by 1980. Private consumer groups reached out to individual consumers, providing product information and legal advice, often leading boycotts and price surveys.

This paper does not address the question of why consumer interests emerged as a focus of political, legal, and social activity in France and Germany, nor why this occurred beginning in the early 1970s. Candidate explanations for this phenomenon would likely include a combination of factors including growing consumer affluence, a downturn in industry profitability, shifting strategies of industrial production, and a search by political parties for new constituencies. In any case this move to acknowledge consumer interests appears to represent a common trend in social and political development among advanced industrial countries. A similar transition had already occurred nearly a decade earlier in the United States, the United Kingdom, and Sweden. Indeed these earlier instances of consumer citizenship served as important models that helped to shape the policy debate in France and Germany. For the purposes of this paper the move to grant consumers a new political, legal, and economic status is taken to have similar, and admittedly plural, causes in France and Germany.

The goal of the paper, instead, is to explain a set of systematic differences that emerged in the form of distinctive strategies of product market regulation in the two countries. In Germany, the consumer was seen as an economic actor. Consumer problems were understood in terms of market failure. Appropriate solutions therefore stressed restoring proper functioning of the market, including correcting information asymmetries, enforcing an equitable distribution of contractual risk, and encouraging competition in product quality. This German strategy of consumer protection has been called the *information model*.
In France, by contrast, the consumer was seen as a political actor. Consumer problems were understood in terms of a failure of political rights. Appropriate solutions therefore stressed a better political representation of the consumer interest, including consumer mobilization, government protection of consumer rights, and an insulating of consumers from risks deriving from production. This French strategy, which emphasizes the need to insulate consumers from market risk, I will refer to as the *protection model*. It is very similar to the strategy of consumer protection that has evolved in the United States.

The policy ramifications of these different models of product market regulation are elaborated more extensively below. But the core distinction is captured by the simplification that the German consumer is treated as another producer, while the French consumer is treated as a political constituency.

THREE CONCEPTIONS OF THE CONSUMER

Because consumer protection was a new issue in both Germany and France, discussions about specific areas of regulation took place in the shadow of a broader discourse about the nature of consumer identity. How was the consumer to be understood? Was the consumer primarily an economic actor, or instead a political actor? Did consumers constitute a new interest group, or merely a collection of unrelated individuals with product grievances? Depending on how one answered such questions, different kinds of policy solutions were likely to seem more or less appropriate in addressing consumer demands. Because of their implications for policy, ideas about consumer identity and the consumer's role in modern society became the focus of a policy struggle between the interests of consumption and of production.

Three policy models in particular took center stage in the policy debates in France and Germany. See

Figure 1 below. The first, what might be called the *protection model*, views consumers as an endangered group in society in need of protection against the negative consequences of industrial production. This idea of the consumer drew on the experience of the United States, where policies of the 1950s and 1960s had placed a high burden of responsibility on producers. In this model, the consumer is seen foremost as a citizen-consumer. Consumer protection in this view is understood as a basic right of consumers. Solutions therefore focus on creating new consumer rights, on insulating consumers from market risk, and on mobilizing consumers to protect what they perceive to be their political rights. Regulatory solutions under this protection model tend to focus on the end goal of consumer safety rather than on intermediate procedural goals. This protection model also tends to encourage private law approaches to enforcing individual consumer rights. A strict standard of product liability, for example, is a hallmark of this protection model of the consumer. In legal parlance, the fundamental principle of the protection model is *caveat venditor*.

A second model, what might be called the *negotiation model*, views consumers as a societal interest group capable of representing its interests directly to other interest groups in society. This model is based on the experience of the Swedish consumer movement in the 1960s and early 1970s,

and it assumes that consumers and producers share many common goals, and that through discussions they can come to agreement on a mutually-satisfactory regulatory approach to consumer protection. In this negotiation model, consumers are viewed as an important emerging interest group in society. Consumer problems are understood to derive from a lack of discussion between consumer groups and producers. Appropriate solutions consequently emphasize the creation of forums in which fair negotiations can take place, as well as state enforcement of the outcomes of such negotiations. Regulatory approaches in this negotiation model tend to emphasize a standard of fairness and encourage mediation. A distinguishing characteristic of this approach is the Consumer Ombudsman, an administrative position, first established Sweden in 1971, that has autonomy from the government and is charged to spearhead the consumer interest in negotiations with industry. The fundamental legal principle of the negotiation model is *pacta sund servanda*, contracts are honored.

Figure 1. Three Policy Models for Product Market Regulation.

policy model	protection	negotiation	Information
Country example	United States	Sweden	Britain
Consumer identity	citizen	interest group	economic actor
Analysis of problem	expropriated rights	lack of discussion	market failure
Proposed solution	• create new rights • insulate consumers from market risk • mobilize consumers	• create forums for negotiation • make outcome of negotiations binding	• provide consumers with better information • reinforce quality production
Regulatory emphasis	• focus on ends • encourage private law enforcement	• focus on fair discussions • encourage mediation	• focus on procedure • encourage industry self-enforcement
legal principle	*caveat vendor*	*pacta sund servanda*	*caveat emptor*

A third model of consumer protection, what has been called the *information model*, views the consumer as an economic actor in society operating on a par with other economic actors, including manufacturers, suppliers, and workers. This idea of the consumer drew on consumer protection policies that had been

developed by the Labour government in Britain in the 1960s and that emphasized the need for better consumer information. In this information model, the consumer is understood to have the status of another producer. Consumer problems are interpreted in terms of market failure rather than as a breakdown in political rights. Solutions therefore focus on overcoming information asymmetries between producers and consumers, and on reinforcing the mechanisms of quality production in order to offer consumers a better set of market options. Regulatory solutions under this model focus on ensuring fair business procedures and encouraging industry self-regulation. The fundamental legal principle of the information model is *caveat emptor*.

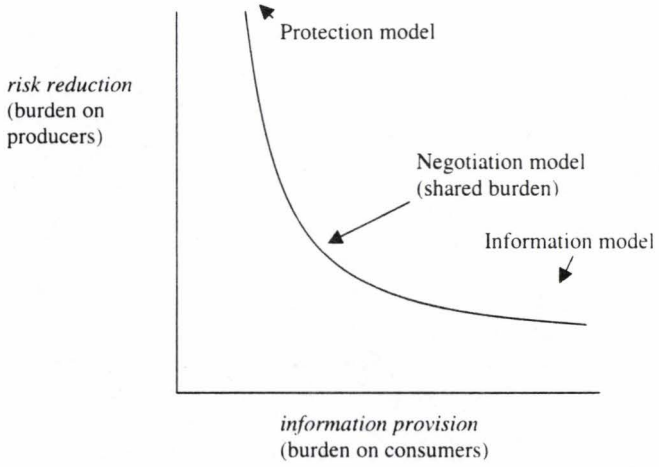
Available evidence suggests that policymakers at the time genuinely came to think of consumer regulatory issues in these terms. We know that French and German policymakers were conscious of these three different options, first, because they conducted detailed studies of the regulatory approaches adopted by other countries. Because the United States, Britain, and Sweden all preceded France and Germany in regulating consumer markets, they offered obvious models to draw from. In France, these studies took place either in the context of the Consumer Committee for the French Plan, or were initiated by consumer groups themselves (Génin and Bernard 1963). Ralph Nader was invited twice to France in the early 1970s to introduce the US model of the consumer citizen. In Germany, the Commission for Economic and Social Change undertook a five-year survey of the entire German economy that included several studies of foreign approaches to product market regulation (Kommission für wirtschaftlichen und sozialen Wandel 1977, chapter 9). Indeed German policymakers very seriously considered adopting the negotiation model, what they called the Swedish approach (Hoffman 1971, 29).

In addition to these surveys of foreign regulatory approaches, French and German policymakers met frequently in the context of European efforts to draw up common standards for product market regulations within Europe. Debates occurred both within the Council of Europe (Conseil de l'Europe 1979) and in the context of drafting directives within the European Economic Community (Bourgoignie 1987, 95).[1] Although none of the EEC directives proved effective at the time, they did generate an ongoing debate on consumer issues among European policymakers. Moreover, a new Committee on Consumer Policy in the Organization for Economic Cooperation and Development began publishing

[1] Consumer directives adopted by the Committee of Ministers in the European Economic Community included those devoted to door-to-door sales (1973), misleading advertising (1972), unfair clauses in contracts (1976), after-sales service (1978), consumer representation in standardization bodies (1979), consumer education and information (1971 and 1979), protection and defense of consumer collective interests (1978), consumer legal assistance (1981), and consumer access to justice (1981).

annual comparative studies on national approaches to consumer policy in 1972 (OECD 1972). The *Journal of Consumer Policy*, published beginning in 1977, explicitly compared national approaches to consumer policy. In sum, French and Germany policymakers appear to have been extremely well informed about the policy alternatives they faced.

Figure 2. Three Models of Consumer Protection.



These three models of consumer protection were also not conceptually arbitrary. They can be seen to map out the space of possible responses to consumer grievance. A continuum extends between a pure information approach to consumer protection, in which consumers are given the tools to make wise purchases, and a pure protection approach in which consumers are entirely insulated from product risk. The resulting space of possible policy approaches to consumer protection is depicted in Figure 2 above. The vertical axis expresses the degree to which producers are themselves made responsible for product-related risk. In practice, this dimension corresponds to mandatory safety requirements, product liability standards, product recall programs, and such. The horizontal axis expresses the degree to which information about products is provided to consumers. In practice, this dimension corresponds to standards of truth in advertising and labeling, comparative product testing, consumer education, and such.

The concave curve in Figure 2 describes the line of equivalent consumer safety. Consumers, in other words, may be equally safe when faced either with a

reduced burden of risk and little product information, or with a high burden of risk and a high level of information. In practice, of course, neither solution is entirely satisfactory. No matter how well informed a consumer may be, certain risks necessarily remain unknown. Similarly, no matter how assiduously product risks are assigned to producers, certain kinds of losses, especially those to consumer health, can never be adequately avoided or remunerated. The curve describing equivalent consumer safety therefore never fully converges with either axis.

Different strategies of consumer protection impose different burdens on consumers and producers. A strategy that emphasizes information provision places a high burden on consumers. This strategy corresponds to the information model that came to predominate in Germany. Conversely, a strategy that emphasizes risk reduction places a high burden on producers. This strategy corresponds to the protection model that came to predominate in France. But there also exists a third, compromise strategy, in which consumers and producers can jointly benefit by sharing the burden of consumer protection. This third option describes the negotiation model. By distributing the burden of product safety between consumers and producers, this negotiation approach can also lower the overall social cost of consumer protection. In sum, the policy models that defined the policy debates in France and Germany were not merely ad-hoc borrowing from foreign experience. Instead they appear to map out the full range of conceptual solutions to the general problem of consumer protection.

THE CONTESTED IDEAS APPROACH TO EXPLAINING NEW POLICY FORMATION

As described above, three different conceptions of the consumer came to constitute possible alternative models for how new consumer demands should be met. The consumer was either an economic actor similar to a producer, a new interest group in society that could negotiate its demands with other interest groups, or a citizen with special rights to protection. These different conceptions of the consumer implied specific policy models for regulating product markets. Each policy model entailed a distinctive world-view about the condition and role of consumers in society. Yet at the outset no single conception of the consumer appears to have been predominant either for policymakers or for the general public. Instead, the politics of consumption regulation took the form of a struggle between consumer and producer groups over which of these ideas of the consumer would emerge as dominant in society.

This instrumental approach to policy ideas is not new to comparative policy analysis. Other researchers have found that interests are often closely tied to

ideas in the regulation of new policy areas. Deborah Stone has argued that causal beliefs commonly embody underlying conflicts of interest in debates about new policy. Thus interest groups emphasize different kinds of causal beliefs depending on their strategic interests (Stone 1989). Geoffrey Garrett and Barry Weingast have argued that ideas can help to encourage cooperation in certain kinds of coordination games. When different strategies of cooperation are possible, policy ideas can create "constructed focal points" that permit actors to cooperate in achieving their collective goals (Garrett and Weingast 1993). Finally, Pierre Muller has suggested that new areas of policy should be seen as "ideas in action", meaning that ideas about the social identity of a group set the terms on which group interests in society are contested (Muller 1995). Each of these theories sits mid-way in the continuum between the determinacy of ideas and of interests. They evoke the multiple roles that ideas may play in new policy formation. They also share the insight that policy ideas work by compelling interest groups to choose from bundled policy solutions.

In the case of emerging consumer policy, ideas played a three-fold role in the process of new policy regulation. First, ideas about the consumer helped to draw together and bring coherence to a broad range of policies that had previously been seen as unrelated. Under the new conception of consumerism, regulatory issues as diverse as advertising, product standards, and retail contracts came to be understood in terms of a single broader debate in society surrounding the interests of the consumer. The very idea of a coherent consumer interest helped to regroup formerly disparate policies according to their impact on a "new" societal actor.

Second, each alternative conception of the consumer carried with it a coherent analysis of the problem and appropriate solutions. Each conception thus acted as a policy model, a useful shorthand for a broad set of coherent policy proposals spanning the range of consumer issues. Of course, since consumer interests were in fact multiple and diverse, no single policy model could be comprehensive. But for a new policy arena in which the government had no practical regulatory experience, each of the three conceptions had the advantage of presenting a coherent policy program that could be extrapolated to new regulatory issues as they arose.

The third and final role of ideas about the consumer identity was as a focus of policy struggles among the major social actors in France and Germany. Individual policy decisions that might otherwise have eluded public debate took place in terms of broader conflicts over the relevant conception of the consumer identity. These conceptions of the consumer thereby set the terms on which the political struggle between producers and consumers was waged in both France and Germany. In sum, competing ideas about consumer policy drew attention to

the new area of policy, provided a blueprint for coherent strategies of policy formation in this new area, and set the broad terms on which political struggles over policymaking were waged.

These three roles of ideas in the politically-contested ideas approach can usefully be distinguished from two other ways in which ideas have been seen to play a role in the formation of new policies, what might be called the strong and weak models of ideas. The strong model sees ideas as encompassing and exclusive, and emphasizes the cognitive constraints that national policy traditions can place on policy actors (Kato 1996). On this view, policy makers are constrained by limited capacities to conceive of possible policy solutions because they operate under the influence of unchallenged assumptions, persistent discursive styles, unarticulated predispositions, even linguistic conventions. Peter Hall suggests that such cognitive constraints have the character of paradigms in the sense employed by Thomas Kuhn (Kuhn 1970). "Like a *Gestalt*, this framework is embedded in the very terminology through which policymakers communicate about their work, and it is influential precisely because so much of it is taken for granted and is not amenable to scrutiny as a whole" (Hall 1993, 279). Moreover, Hall argues, this policy paradigm approach is especially powerful in cases of radical—what he calls "third order"—policy change. Strong policy ideas are so powerful that they blind policymakers to other possible alternatives.

The problem with this strong model for the role of ideas in the case of consumer policy is that major policy innovators at the time show signs of actively searching for a new conceptual framework in which product markets might be appropriately regulated. France and Germany considered a broad set of regulatory options before pursuing divergent policy programs. Government officials in both countries commissioned reports on the strategies adopted in foreign countries, funded research on the potential impact of different strategies at home, and convoked discussion groups at which domestic interests groups could present their ideas and concerns. Far from being constrained by an overarching policy paradigm, French and German policymakers appear to have been consciously seeking a useful paradigm for the consumerist agenda. It therefore seems more likely that policymakers were working from a palette of ideas. The role of ideas in the case of consumer policy is thus closer to the role that Anne Swidler attributes to culture. In times of policy innovation, ideas, like culture, act as a toolbox from which policymakers select based on other considerations (Swidler 1986). In this instance the selection emerged out of a conscious political struggle between consumer and producer interests.

An alternative conception of the role of ideas in policy formation that I will call the weak model puts ideas in the hands of policy experts. Unlike the

strong model, ideas in the weak model do not suffuse society but instead are propagated from policymakers at the top. Hugh Heclo, for example, argues that policy formation during periods of policy innovation relies on a process of "puzzling" by informed administrators attempting to formulate optimal policies. Ideas generated within this elite policy setting then diffuse outward through society. This is a weak model because it portrays policy ideas as a scarce resource controlled by high government experts and thereby discounts the possibility of a society-wide policy discourse. This style of explanation has been reprised by researchers who study policy networks as the source of distinctive national policies.

The problem with this weak model of ideas in the case of consumption policy is that elite government policymakers did not act together in France and in Germany. Instead, new consumer policies rested on a conception of the social identity of consumers that arose independently within different spheres of government. Whereas some regulations were created through legislative action, others were imposed by government ministries. Moreover a number of specific policy areas were decided almost entirely through the courts rather than by legislative or ministerial initiative. Product liability is one example of this kind of court-made regulation. Most striking is the fact that these independent court decisions about consumers tended to pursue the same national strategies of product market regulation as regulations promulgated by government policymakers. The weak model of ideas, in which government policy makers propagate expert solutions to policy problems, fails to explain how these different policy actors arrived independently at similar conceptions of the consumer interest.

INTEREST ORGANIZATION AND POLICY PREFERENCE ORDERINGS

Consumers face a collective action problem in protecting their interests. The problem stems from their large numbers. The benefits of consumer protection are diffused among all consumers, while the costs to industry are concentrated on individual sectors or even single companies. Because the benefits of consumer protection legislation to any individual consumer are necessarily small, individual consumers have few incentives to organize in order to protect their collective interests (Olson 1982, 18). Indeed, of all collective actors, consumers face perhaps the greatest barriers to organization.

Mancur Olsen describes two broad strategies that permit individual actors to overcome free-rider problems in order to pursue their collective goals. The first strategy is for representative groups to offer selective benefits to individual

members. In the case of workers, who like consumers have faced important obstacles to organization, trade unions are able to draw in members by offering them insurance policies or unemployment benefits. For consumer groups, the benefits of membership in a consumer association usually include access to useful product information and technical or legal advice. This was the approach adopted by French consumer groups. The large number of consumer publications that emerged in France in the 1970s had the goal of drawing in individual members through the information they provided. The early members of consumer groups were not connected with trade unions (Wieviorka 1977, 73). By the late 1970s, however, each of the large French trade unions had created its own affiliated consumer groups. Trade union experience with public actions and popular mobilization helped further to boost the grass-roots membership of the consumer movement. Product boycotts, political rallies, and price surveys all constituted typical consumer group activities in France.

The second strategy described by Olsen for empowering diffuse interests is to devolve group decision-making powers to one or more representative bodies. These representatives hold the legal right to speak on issues that bear on all consumers. Collective wage-bargaining by trade unions is one instance of this strategy. For consumer groups, privileged access granted by the government to policymaking forums within the government and with business meant that consumer groups did not need to seek an increase in the number of their individual members in order to advocate consumer protection policies. This approach was adopted by consumer groups in Germany. These groups were technically specialized and enjoyed privileged access to technical and policy discussions by business associations and government ministries. They thus did not work to cultivate a grass-roots consumer membership. Rather than competing with each other for consumer patronage, individual consumer groups specialized in specific activities, such as product testing (Stiftung Warentest), consumer policy training (Stiftung Verbraucherinstitut), and consumer legal protection (Verbraucherschutzverein). Because each of these organizations were formed through legislative action, it is perhaps not surprising that they focused on technical responsibilities and shied away from consumer mobilization. But even regional consumer associations, which were not bound to a single technical field, were wary that a grass-roots membership would unduly politicize consumer protection and undermine the missions of their organizations (Piepenbrock 1987). Most still do not permit individual members. This lack of popular mobilization around consumerism is puzzling in part because of the high level of political activism that Germany experienced during this period

around issues such as the environment and nuclear energy.[2] But it was also an important reason for Germany's adoption of the information model.

One German consumer group that did try to adopt the French approach of mass membership and selective benefits was the Deutsches Verbraucherbund, created by Hugo Schui in 1965. In return for a 6 DM annual fee, members received a copy of the magazine *Der Wecker* ("The Alarm Clock"), legal protection against producers and distributors, a 500 DM subsidy to pursue individual consumer law suits, and access to inexpensive airline tickets to the United States. *Der Wecker*, as the name implies, was radical in approach and launched heavy criticism at the government and parliament for their complacency in relation to consumers (Hoffman 1971, 29). Moreover, because members of the Verbraucherbund paid dues, Schui was able to offer legal support of the kind that government-sponsored consumer groups were legally prohibited from offering. The group had an impressive 50,000 members in 1970 (about 4,000 members per year took advantage of the low airfares) (*Der Spiegel* 21 September 1970, 60-61). This early success suggests that a grass-roots consumer movement of the kind that emerged in France might have been possible in Germany. But as government support to official consumer groups grew, membership in the Deutsches Verbraucherbund declined. Eventually Schui moved to New York to create Consumers International.

The different strategies by which French and German consumer groups overcame their collective action problems was to play an important role in determining what model of consumer policy would emerge in France and Germany. In France, where consumer groups pursued a strategy of grass-roots mobilization, they also became politically powerful. Because of their political influence they were able to push a heavy burden of consumer protection onto industry. In Germany, where consumer groups pursued an organizational strategy of devolved powers that freed them from the need to mobilize individual consumers, consumer groups as a consequence had little political strength. Instead they cultivated technical competencies that allowed them to participate fruitfully in detailed production and policy decisions. This strategy meant that German consumer groups did not have the political power to push a heavy burden of consumer protection onto industry, but they did have the capacity to engage industry directly on technical questions of consumer safety.

Consumer policy outcomes in both France and Germany, however, depended as much on the organization of producers as on the organization of consumers. As David Vogel has argued in the case of the United States,

[2] In comparison to France, where the consumer movement was strong and the environmental movement relatively weak, Germany's consumer movement was weak and its environmental movement was strong.

businessmen face considerable obstacles to organizing in order to pursue their collective interests in the political sphere (Vogel 1978, 72). As with consumers, the extent to which business interests were able to organize played an important role in determining which conception of the consumer would predominate in national policymaking.

In Germany, where producer groups enjoyed strong associational ties and were organized under strong sectoral trade associations, industry was able to meet consumer protection issues with a unified position. In France, where industry was less organized, and individual companies were not bound by sectoral associations, industry came to the policy table with a fragmented position and fewer capabilities for self-regulation. A more detailed exposition of the role played by the organization of production interests in France and in Germany appears in the discussion of policy preferences below. In general, however, the result of the differing organizational forms of production was that German producers enjoyed both a higher level of political power and also a greater capacity for effective self-regulation than did their French counterparts.

Policy Preference Rankings of Consumers

Consumer interests are potentially diverse. The policy-preference rankings of French and of German consumer groups have therefore tended to emphasize those consumer interests that also reflect the organizational strategies of consumer movements in the two countries. In France, where the consumer movement is founded in grass-roots mobilization and political engagement, consumer groups have favored approaches that build on mobilization. Hence French consumer groups have favored negotiations with industry and lobbying for further legal protections of consumers, both activities that draw on their strengths in mobilizing consumers. They have been less enthusiastic about the information strategy, since that approach tends to treat the consumer as an individual rather than as a political or group actor. In general, French consumer groups prefer first the negotiation approach, then the protection approach, and finally, in last place, the information approach.

This was true in product labeling, consumer contracts, advertising, and product quality standards, where French consumer groups gave their strongest endorsement to negotiated solutions. In 1975, the eleven major French consumer groups proposed a general framework law ("loi cadre") that would permit them to negotiate binding contracts with industry on a broad range of policy issues.[3] They also proposed the formation of a "high council on innovation and safety",

[3] *Un monde en mouvement: les organisations de consommation* (Paris: Ministère de l'économie -- Comité national de la consommation, September 1980).

with an equal representation of consumers, professionals, and government officials, with the goal of giving safety and design input to manufacturers, and of identifying so-called "false innovations" that were expensive for society and burdensome to consumers.[4] The consumer group OR-GE-CO, allied with the major French trade unions, strongly supported direct consumer group negotiations with industry as a productive approach to consumer protection (Dubois 1977, 2).

The second most-favored option of French consumer groups, less-favored than the negotiation model but more favored than the information, was the strategy of protection by the creation of special consumer rights. From an organizational logic, the protection approach was less satisfying for consumer groups than the negotiation model, since it did not draw on a vast organization of consumers. Nonetheless consumer groups lobbied hard for higher safety standards, better contractual terms, and greater industry responsibility, all hallmarks of this approach. While they did not object to higher quality information, especially when it resulted from negotiated agreements with industry, they were skeptical that information alone could adequately help consumers. Truth in advertising, for example, was not an important policy issue for French consumer groups. When the government proposed a set of negotiated quality labels in 1976, the Federal Consumption Union (UFC) objected on the grounds that it should not substitute for real product quality (Comité national de la consommation 1984, 3). As summarized in Figure 3 below, French consumer preference ranking for strategies of consumer protection was first negotiation, then protection, and least of all information.

Figure 3. Policy Preference Rankings of Consumer and Producer Groups.

Preference rankings	*consumer groups French*	*consumer groups German*	*Producer interests France and Germany*
First	negotiation	negotiation	information
Second	protection	information	negotiation
Third	information	protection	protection

German consumer groups have pursued an organizational strategy different from that of their French counterparts. This different strategy has generated a different policy-preference ranking. German consumer groups had few individual members and relied instead on privileged access to negotiations. They measured their success not in terms of consumer support, or their own weight as a political force, but instead in terms of their expertise and their access to government and business decision-making. This organizational strategy has caused German

[4] "Onze organisations d'usagers proposent une charte nationale", *Le Monde*, 30 April 1975.

consumer group to emphasize technical skills rather than mobilization. They have thus tended to favor both negotiation and information models, since both strategies emphasize their organizational strengths. The protection model was the least favored approach of the German consumer movement because, by making consumer issues political, it risked undermining the consumer movement's own privileged access to policymaking. Consumer groups in Germany preferred first the negotiation approach, as in France, then the information approach, and least of all the protection approach.

While both German and French consumer groups preferred a negotiation approach to consumer protection. The conception of negotiation of German consumer groups was somewhat different from that of their French counterparts. French groups saw their role in negotiation as that of aggregating broad consumer interests. German consumer groups, by contrast, perceived at the outset that they simply did not have the political power or popular legitimacy to negotiate on an equal political footing with business. In the early 1960s, for example, Germany's leading consumer association, the Association of Consumer Groups (AgV), had been pushing for the creation of a Consumption Ministry within the government. This would have given the AgV authority to speak on an equal footing with industry. But by the early 1970s the AgV had changed its position, opposing a separate consumption ministry and pushing instead for access to consumer policy committees within the economics and agriculture ministries.

Because they had little membership and no independent basis of political power, German consumer groups were dependent for their policy access on the good will of the government. The Social-Democratic Party-dominated coalition of the 1970s proved enthusiastic in integrating consumer groups into policy circles. As examples of this, in 1973, consumer groups were granted access to the multi-party Concerted Action negotiations of wage and money supply levels. In 1974 they were given access to technical committees within Germany's technical standards-setting body, Deutsche Industrie Normung (DIN). And in 1976 they were given an important role in monitoring standard consumer contracts.

In exchange for this access to government policy, German consumer groups tended to avoid confrontation with industry. This aversion led to strong consumer-group opposition to the protection strategy. When the German trademark association criticized the AgV for conducting comparative product tests, for example, the AgV simply stopped. When the president of the Federal Cartel Office (Bundeskartellamt) called for the creation of a single office for consumer and competition policy, the president of the AgV opposed the idea out of concern that the new body would undermine the status of the AgV as an equal

partner with industry (Eberhard 1973, 39). Indeed the AgV opposed any state-regulated consumer politics, and strongly opposed a state-run consumer protection bureau (*Wirtschaft und Wettbewerb* October 1973, 665-666). Most of the major consumer legislative initiatives in Germany were initiated not by consumer groups, but instead by industry or by political parties (Schatz 1983, 338). The conceptual essence of the protection strategy was consumer confrontation with industry, to which German consumer groups were entirely opposed.

The information model of consumer protection was the second-favorite option for German consumer groups. Consumer information became the foundational activity of consumer protection, especially for regional consumer associations (Verbraucherverbände). But the AgV also participated. In 1973, for example, the AgV send two buses on a tour through Germany under the slogan "together for reasonable prices" ("Gemeinsam für vernünftige Preise"). Brochures were handed out, educational movies were shown, and computerized tests of consumer's knowledge of product prices were offered (Glöckner 1973). The primary focus of French consumer groups was to collect consumer complaints and present them to industry; one of the main focuses of German consumer groups was to gather product information and present it to consumers. As summarized in Figure 3 above, German consumer preference ranking for strategies of consumer protection was first negotiation, then information, then protection.

Policy Preference Rankings of Producers

As opposed to French and German consumer groups, French and German industry had very similar ideas about consumer policy. In both countries, the primary concern of business was to avoid government interference in production decisions. Hence businesses evaluated the three policy models in terms of the level of regulatory intervention they were likely to generate. Among the three, the information model appeared the least restrictive to business. Indeed businesses in general recognized that better informed consumers could be more responsive consumers. For Germany's leading industry association, the Bund Deutscher Industrie (BDI), the greatest goal of the government was to help the consumer help herself to work through the enormous amount of information that might otherwise leave her the weaker market partner. Industry groups favored information strategies, such as product labeling and consumer education, that were objective and neutral. They especially favored school education about consumer issues and government support of product advisory centers. France's leading industry association, the National Council of French Employers (CNPF), also emphasized the usefulness of a program of consumer information: "consumer information is the condition of a true freedom of choice: a poorly or

insufficiently informed consumer has no real freedom of decision" (*CNPF Patronat* June 1976, 15).

In second-place preference, after the information model, business in both France and Germany preferred the negotiation model of consumer protection. While this put them face to face with consumers, it had the benefit of avoiding direct government intervention. Germany's standard-setting group, DIN, for example, accepted the creation of a consumer advisory board within its administration in exchange for a high degree of autonomy and freedom from government intervention. In France, the CNPF became an enthusiastic proponent of the negotiation approach when faced with the probability of direct government intervention. Indeed the CNPF created a special committee, the Commission on Industry, Trade, and Consumption (CICC) with the explicit goal of negotiating with consumers. In the case of consumer terms of sale, for instance, the CICC negotiated with consumer groups for two years before their efforts were brought to a halt by direct regulatory intervention by the government (*Information Consommation OR-GE-CO* May-June 1976, 6).

The least desirable consumer policy for producers was the protection model. This approach implied a high level of government intervention to enforce a new strong set of consumer rights. In France, industry was extremely critical of the Consumer Safety Commission (CSC) that was put in place in 1983 to regulate products in the interest of consumer safety. They criticized the fact that any of several ministries could bring cases, the fact that even trade unions could apply for product reviews, and the new Commission's strong powers to investigate producers (Garrigou 1981, 11). Both French and German industry opposed product recall actions, for example, because of concern that they could be politically motivated and disruptive to industry (Micklitz 1990, 418). For industry in both countries, the preference ranking for strategies of consumer protection was first information, then negotiation, then protection. See Figure 3 above.

POLICY CONFLICT OVER NATIONAL MODELS OF CONSUMER PROTECTION

The way in which producer and consumer interests were organized in France and Germany played three different roles in policymaking. First, as described above, the organization of consumer groups drove their ranking of policy preferences. Second, for both consumers and producers, their degree of coordination determined their ability to apply political pressure in favor of their preferred policy approach. Third, the degree of coordination of producers in particular determined their ability to implement certain strategies of consumer

protection. The way in which consumer and producer interests were organized thus set their preference rankings, their political power, and their capacities to implement their preferred policies. These three different roles interact in a complex way to generate policy outcomes.

Because of this complex interaction, policy formation in new areas of policy often has an internal dynamic. In France, for example, the process of consumer policy formation lasted for nearly ten years before a stable policy model emerged. In Germany, a different set of institutional constraints allowed policymakers to arrive at a stable policy solution after only a short period of deliberation. By paying close attention to the different roles of interest organization we can gain an understanding of the internal dynamics by which even radically new areas of policy are formed.

One way of mapping the political dynamic of new policy formation is to employ an asymmetric preference game based on the preference rankings of consumer and producer groups concerning alternative policy models. From the policy preference rankings of those groups we can adduce an ordinal payoff schedule. The lowest policy preference of each actor receives 0 points, the second policy preference receives 1 point, and the highest policy preference receives 2 points. Since French and German consumer groups had different preference rankings, emerging from their different strategies of organization, their payoffs are accordingly different. Producer preference rankings, and policy payoffs, are the same in both France and Germany. Consumer and producer policy payoffs are summarized in Figure 4.

Figure 4. Policy Payoff Schedule for Consumer and Producer Groups in France and Germany.

Preference rankings	*consumer groups French*	*consumer groups German*	*Producer interests France and Germany*
Information	0	1	2
Negotiation	2	2	1
Protection	1	0	0

In Germany, both consumers and producers had a common lowest preference, the protection model. Conflict therefore emerged only over which interest group would achieve its higher-ranked option. In this conflict the weak organization of the consumer movement placed limits on its ability to achieve its preferred policy, the negotiation approach. Moreover, the strong organizational capacities of industry in Germany permitted them industry to make the information

strategy an effective policy tool for consumer protection. German policy therefore came to favor producer over consumer policy preferences.

In France, by contrast, where the first preference of producers — the information model — corresponded to the third preference of consumers. The process of policy formation was therefore more dynamic. Early consumer protection initiatives favored industry by adopting the information model. As consumer mobilization increased the political influence of consumers, however, this information model became contested. The policy model therefore shifted to negotiation. This negotiation model, representing the first preference of consumers and the second preference of producers, was the socially optimal policy in that it offered the greatest combined payoff. Yet this strategy also failed, primarily because of the inability of French industry associations to impose negotiated solutions on individual companies. As a consequence, France shifted to its final position, the protection model. Because it was the second preference of consumers and the third preference of producers, this policy can be seen as a victory for the consumer movement. Interestingly, however, the protection model also represented the worst social outcome (that is, the worst combined score) for producers and consumers.

The Evolution of Consumer Policy in France

French consumer policy proceeded in three stages. In the first stage, from roughly 1970 to 1978, consumer policies focused on the information strategy. This was the particular emphasis of policies under the first Secretary of Consumption, Christiane Scrivener, from 1976-1978. This policy approach represented the best payoff for producers and the worst payoff for consumers. As consumers mobilized over the course of the 1970s, they became unsatisfied with this information model. The third Barre government of 1978 began the second stage of French consumer policy, in which consumers and producers espoused the negotiation model of consumer protection. Consumer and professional groups met to work out standards for all aspects of consume protection policy. By 1983, however, both sides had become disenchanted with the negotiation approach. The core problem was that French businesses were unable to negotiate agreements in a collective way. So long as all companies were not bound by agreements, individual companies were hesitant to participate for fear of suffering a competitive disadvantage. Hence in 1983 French policy moved to the third stage, in which policy reflected the protection strategy. New government policies attempted to push full responsibility for product-related risk onto producers. They also began to encourage private legal enforcement of these new consumer protections.

Figure 5 below describes the payoff levels of these different stages for consumers and producers.

Figure 5. Consumer Policy Payoff Matrix for Producers and Consumers in France.

		consumers
	Mobilized	not mobilized
organized	Negotiation model (1, 2)	information model (2, 0)
producers	*stage 2 (1978-83)*	*stage 1 (1970-78)*
not organized	Protection model (0, 1)	
	stage 3 (1983-)	

France's early initiatives in consumer protection, in the first policy stage, focused on providing consumers with accurate information. This policy approach was pushed most strongly by France's first Secretary of Consumption, Christiane Scrivener, appointed to the position in 1976 under the second government of Raymond Barre. Scrivener, who had just returned from the Harvard Business School with a mid-career MBA degree, was focused on the economic role that consumers should play in the economy (Miraval 1977). "Their information", she wrote, "determines the very orientation of our economy" (Scrivener 1972, 2). Her program for consumer protection included four "axes of action" that embodied the information model: (1) incorporate durability into the design of products, (2) give consumers more information regarding durability, which manufacturers collect, (3) require improved documentation and construction that allows consumers to keep their product longer, and (4) create regulations to help the second-hand market function properly (Scrivener 1978).

Some of Scrivener's specific policy initiatives for improving consumer information relied on market mechanisms. She pushed to legalize comparative advertising in France, for example, on the grounds that this could provide consumers with valuable information. She also called for French companies to create their own consumer relations offices that could communicate individually with consumers (Scrivener 1977). But Scrivener also felt that in many cases the

strategy of consumer protection through accurate information required direct state intervention. She pushed policies that targeted both information and education. Information policies included a new standard for quality certificates, with the Ministry of industry imposing a minimum standard of quality for all products (Prevost 1979). In 1977, Scrivener introduced consumer education into the elementary school curriculum (Garrigou 1981, 93). A law with similar effect , the *reforme Haby*, called for consumer education in technical schools. The curriculum of this education had a strong commercial content, including such topics as the way to distinguish a real Camembert (Bert 1977).

Yet this information strategy that Scrivener had come to represent was being challenged by a very different conception of the consumer as an interest group. Writing in 1977, Michel Wieworka noted that French consumerism at the time seemed to have two modes: "On the one hand, [product] scandals that by their high social visibility give a sudden importance to general consumer themes and to groups dedicated to consumers; on the other hand, a sustained effort, much less popular, tending towards informing middle-class consumers" (Wieviorka 1977, 245).[5] This emerging conception of the consumer as having a collective interest was latent in society. As early as 1973, the *loi Royer* had proposed granting consumer groups the right to file class action suits, although this law was later diluted through court interpretation (*La Croix* 29 June 1974). Indeed business had proved quite open to negotiating directly with consumer groups on issues that related to consumer information (*Humanisme et Entreprise* April 1977, 13-19). Already in 1970 the CNPF had collaborated with the state-run consumer group INC to negotiate standard product labels. In 1976 the Consumption Committee of the French Seventh Plan proposed the creation of an ongoing dialogue between consumers and producers, including representation of consumer groups in the associations that manage product information (France's standard setting body AFNOR, the labeling body AFEI, etc). The Consumption Committee also suggested that this negotiation approach might be employed to eliminate abusive contract clauses and to simplify consumer litigation (Dubois 1976, 1-2).

This negotiation approach to consumer protection became the orthodoxy of the Third Barre Government, which was inaugurated in 1978, and was especially championed by the new Economics Minister, René Monory. Monory's tenure marked the beginning of the second stage of French consumer protection. He was an economist by training, and believed that the best approach to consumer protection was not through greater government regulation but

[5] "...d'une part, des scandales qui par leur forte visibilite sociale donnent une importance soudaine aux themes generaux du consumerism et aux organisations qui s'y consacrent; d'autre part, un effort soutenu, nettement moins populaire, axé sur un effort d'information sur la consommation de couches petites-bourgeoises".

instead was through empowering consumers to represent their interests directly to business. To symbolize this view, he eliminated the position of Secretary of Consumption. Instead, he publicly referred to himself as the "Minister of Consumption", and advocated that government financial support to consumer groups be quadrupled in his first two years in office (*Démocratie Moderne* 22 November 1979). "We need to make producers and distributors realize", Monory wrote, "that the consumer should become a partner in all things, and who participates at all levels: from product manufacturing to price setting" (Marchand 1979).[6] He felt, in particular, that inflation might be held down if the two million current members of consumer groups in France were to join in a single organization (*Le Nouveau Journal*, 28 September 1979).

The negotiation approach, which had been proposed by consumer groups in 1975 (Dubois 1977, 2), was also increasingly accepted by business as a useful alternative to direct government intervention. Ambroise Roux, the head of the CNPF, felt that consumer groups "should be encouraged and developed" (Roux 1976, 29). From November 1979 to 1981 the CNPF met monthly with consumer groups to discuss consumer issues as diverse as advertising, automobile sales, after-sale service, and others (Lavergne 1981, 22). Between 1980 and 1983, the newly created Conseil National de la Publicité (CNP) negotiated with consumer associations to set standards for advertising. The Conseil contained representatives of 11 consumer organizations and 11 representatives of the media (*CNPF Patronat* July 1983, 71). Similar efforts to have consumer and professional interests negotiate agreements were being undertaken at the regional and local level throughout France.

By the beginning of 1980, however, French consumer associations had become frustrated that industry was not actually abiding by negotiated standards. In a letter of January 1980, the 11 major national consumer associations renounced participation in all collective agreements with the state and with business until an enforcement mechanism was established (Ferrier 1996, 80). Their answer came with the 1981 Socialist victory of Francois Mitterrand. Mitterrand proposed in his campaign platform, the *110 Propositions for France*, that "consumer associations must be supported" (Poirée 1984, 36).[7] Emphasizing the importance of the consumer, Mitterrand created a Minister-level position dedicated to the consumer interest, with the explicit goal of promoting negotiations between consumer groups and professional interests

[6] "Il faut faire comprendre aux producteurs et distributeurs, explique M. Monory, que le consommateur doit devenir un partenaire à part entière, qui participe à tous les niveaux: la fabrication des produits comme la formation des prix".

[7] "Il faut renforcer les associations de consommateurs. C'est une des priorités de mon action car je crois que l'on ne peut rien faire avec des consommateurs atomisés dans la nature et qu'on ne peut rien faire si tout est concentré au niveau de l'Etat".

(*Consommateurs Actualités* 4 September 1981, 5-6). In September of 1981, the newly appointed Minister of Consumption, Catherine Lalumière, said in an interview: "I believe that we can do nothing with individual consumers in the state of nature, nor if all effort is concentrated at the state level" (Doyère 1981a).[8]

The solution that the government proposed was that consumer groups be treated emerging labor unions had been in the past. By this analogy, industry should be given the responsibility of making binding agreements with consumer groups. Consumer advocates agreed that the interests of consumers deserved a legal status similar to that of labor interests (*Que Savoir* June-July 1982, 53). To this end, Lalumière appointed the consumer activist Jean Calais-Auloy head of a committee to rewrite the consumer law so as to incorporate existing regulation into a negotiated framework (Doyere 1981b). This corporatist solution was applauded by consumers but strongly opposed by industry. The Paris Chamber of Trade and Industry (CCIP) criticized the Calais-Auloy committee for its lack of industry representatives (CCIP 1982, 16). French business was simply not sufficiently organized to negotiate on an equal footing with consumer groups, and foreseeing correctly that the diversity of their interests could put them at a disadvantage to consumers (CCIP 1983, 10). The CNPF strongly opposed treating consumer relations in the same way as labor relations (Rochard 19820). They argued that professional associations could not sign binding agreements with consumers because consumer groups were not truly representative, and because consumer groups did not have the technical training properly to consider the issues that would be involved (Aubertin and Robin 1981). The Ministry of Justice sided with industry, arguing that the analogy between consumers and labor unions was not legally valid (Ministère de la Justice, 1980). Finally, the financial crisis of 1983 put an end to Lalumière's corporatist aspirations.

This policy collapse signaled the move to the third Stage of French consumer policy, in which consumers would be protected through state regulations and interventions designed to shift the burden of product-related risk fully onto producers. This policy was embodied in the 1983 law for consumer protection that created the Consumer Safety Commission (Comission pour la Sécurité des Consommateurs, or CSC), modeled on the US Food and Drug Administration (Vaysse 1992). Government Ministries were granted extraordinary rights to survey the consumer market and to call for products to be withdrawn. In 1985 France endorsed a state-sponsored consumer defense by joining the functions of consumer protection, competition, and repression of

[8] "Je crois qu'on ne peut rien faire avec des consommateurs atomisés dans la nature et qu'on ne peut rein faire si tout est concentré au niveau de l'Etat".

fraud in the new General Direction of Competition, Consumption and the Elimination of Fraud (Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, or DGCCRF) (Fily and Guillermin 1992). It is this protection model that remains the dominant strategy of consumer protection in France today.

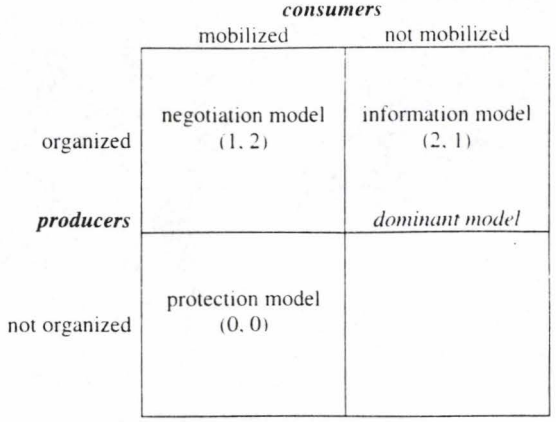
Stasis in Consumer Policy in Germany

Because German consumer groups ranked their preferences for the alternative consumer protection models differently, the payoff matrix for the German policy game looks different from that in France. See Figure 6 below. Two general observations can be made. First, because the protection model was the lowest preference both of consumer groups and of producer groups, it never came into play as a viable policy alternative in Germany.[9] This means that most policy debates in Germany took the form of conflict between the negotiation strategy and the protection strategy. Second, while the information model favors producer preferences and the negotiation model favors consumer preferences, the combined payoff of the two models are the same. Given the weak mobilization and political force of the German consumer movement, and the strong organization and political weight of German industrial associations, Germany's adoption of the information strategy followed nearly as a matter of course. Critical to this outcome was both the weakness of Germany's consumer movement, and the strength of Germany's industrial associations.

German consumer protection policy began with and has maintained an emphasis on the information model of consumer protection. Consumer input into policy making, in this approach, has taken the form of technical advice rather than strong interest representation. In 1973, for example, the German Ministry of Justice convened a discussion group to decide a course of action for regulating consumer contracts. Nearly 150 of the most prominent production and labor associations attended. Consumer groups were invited, and half a dozen attended. However the strong attendance by industry and labor representatives simply overwhelmed the consumer advocates, so that consumer interests did not figure strongly in the final proposed legislation. The resulting law on standard contract terms (Gesetz zür Allgemeingeschäftsbedingungen, or AGB-Gesetz) thus closely reflected industry interests (Schatz 1984, 68). Without greater mobilization, Germany's consumer groups were unable apply political pressure for policies they favored.

[9] Indeed, when the protection strategy was proposed in European Economic Community discussions, for example in the negotiations for a product liability directive, German consumers and producers concurred in their opposition.

Figure 6. Consumer Policy Payoff Matrix for Producers and Consumers in Germany.



The negotiation approach was considered but never employed in Germany. While German industry accepted a monitoring role for consumer groups in regulations treating consumer information, policymakers stopped short of giving consumer groups an equal negotiation position in relation to producers. In advertising, for example, consumer groups were given a policing role in ensuring that Germany's high standard of advertising was met (Schricker 1975, 189-190). But legislation blocked consumer groups from seeking remuneration for consumers who had been deceived by illegal advertising (Stein 1979). As the Free Democratic Party (FDP) explicitly warned, any class-action suit focused on consumer claims would be unacceptably profitable for consumer groups, risking to put them in a stronger bargaining position in relation to industry (*Frankfurter Rundschau* 28 January 1982). A similar dynamic emerged in product labeling in Germany. In 1974, Germany's labeling organization (Deutsches Institut für Gütesicherung und Kennzeichnung) proposed that minimum acceptable safety standards for products be negotiated outside of the industry standard-setting organization, DIN, by a committee composed of equal members from consumer and producer groups. While industry favored labeling, they objected to the influence that this arrangement would give consumers in setting product standards (*Bundesanzeiger* 23 March 1974). Under pressure from industry, the Economics Ministry refused to support the project, and a new Produktinformation (PI) system was created by the Association of German Industry (BDI) that effectively removed government and consumer influence from labeling decisions (Bopp-Schmehl et al. 1984, 86). In sum, industry accepted collaboration with consumer groups in the interest of pursuing an information strategy of product market regulation, but stopped short of acceding to equitable negotiations with consumers.

German product market regulation favored the interests of industry not only because of the political weight of producer groups but also because they were committed to a strategy of producing high-quality goods that made the information model an attractive approach to product safety. As David Soskice and Wolfgang Streeck have argued, the structure of relations between producers and their suppliers, workers, and capital in Germany have pushed German producers towards a production strategy that emphasizes high-quality products and incremental innovation (Soskice 1996; Streeck 1992). Not only has this strategic bias towards quality given German industry a genuine interest in an information solution to consumer protection, it has also made the information model a highly attractive solution for German regulators. After all, the information solution to product risk depends not only on providing consumers with accurate product information, but also on the availability of high quality goods capable of lowering consumer risk.

Consistent with the information approach, Germany has given industry a high degree of autonomy in setting safety standards. Germany's Equipment Safety Law (Gerätsicherheitsgesetz, or GSG), for example, does not itself specify minimum safety standards, but instead makes standards established by industry, in the context of DIN, mandatory for all producers (Bopp-Schmehl 1984, 101). The Economics Ministry did force DIN in 1974 to accept consumer representatives on technical standards committees relating to consumer products. But these representatives act in a technical rather than in a representative fashion. They are outnumbered on these committees by representatives from industry, and have no formal veto power over decisions on standards (Joerges et al. 1989, 186). Similarly, the negligence standard that Germany applies to cases of product liability provides for producer exculpation if the company can show that accepted manufacturing practices were followed (Tebbens 1979, 74-75). The goal of German risk regulation, in other words, is to enforce industry-set standards of product design and manufacturing on all producers, in the understanding that industry itself holds the greatest knowledge and capability to ensure that high quality goods came to market. Product standards in this approach could not be subjected to negotiations between producer and consumer groups, as the negotiation model advocated.

To summarize, in Germany, where producers were well organized and consumer groups had few members, producers were able to secure their preferred option, the information model. The information model was the second-ranked preference of consumer groups. In France, where producers were loosely organized and consumer groups enjoyed a strong mobilization, consumption policies shifted over the course of the 1970s and early 1980s away from the policy preference of producers and towards the policy preference of consumers. By the mid-1980s, France had adopted the protection model. This approach was

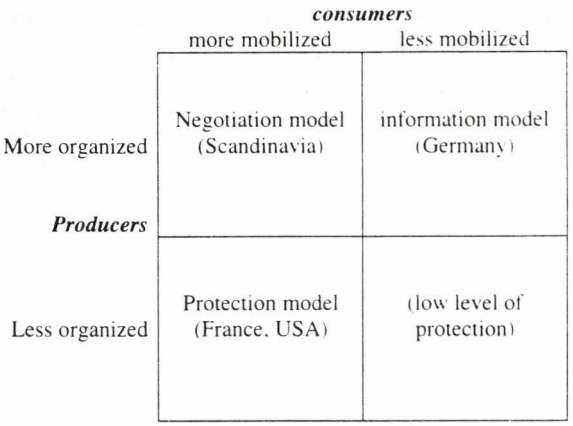
the least favored option for industry, and only the second option of most consumer groups. In this specific sense, the product market regulations that emerged in Germany can be called *producer-oriented*, as they favored the policy preferences of producers over consumers. By contrast, French product market regulations can be called *consumer-oriented*, since they favored the policy preferences of consumers over those of producers.

LESSONS FROM FRENCH AND GERMAN PRODUCT MARKET REGULATION

This paper has both a substantive and a methodological conclusion. The substantive conclusion concerns the institutional prerequisites for different strategies of consumer protection. In general, in countries like France in which consumers mobilized at the grass-roots level and producers were disorganized, as they were in France, consumer policies tend to reflect consumer interests rather than producer interests. Consumer groups with strong membership could cultivate political interest in their cause by portraying the interests of consumers as universal interests. Boycotts and rallies organized by consumer groups demonstrated the political weight of these groups. Industry, for its part, was not sufficiently organized to offer a viable alternative to the influence of consumer groups in the form of self-regulation. This resulted in a political conception of the consumer identity and a focus on a strategy of consumer protection that placed a high burden on industry. This French approach drew heavily on the regulatory strategies adopted in the United States, where a similar logic of consumer and industry organization predominated.

Conversely, in countries such as Germany in which consumers did not mobilize and producers were organized, consumer policies tended to embody producer interests more than consumer interests. Industry associations were able to coordinate their efforts in order to push for the idea of consumers as purely economic actors. Consumers for their part were politically weak, and therefore unable to push for the idea of distinctive consumer rights. Moreover, consumer groups were themselves wary of a more confrontational approach to consumer protection, for fear that they would lose their monopoly on representing the consumer interest in government and business discussions. This combination of consumer group accommodation and industry initiative resulted in an economic conception of the consumer identity and a focus on a strategy of consumer information.

Figure 7. Interest Organization and Consumption Regimes.



Alternative combinations of consumer and of producer organization strategies help to shed light on the consumer policies adopted in other countries. Where consumers have been mobilized and business is also organized, for example, as is the case in Sweden and other Scandinavian countries, consumer policies have tended to rely on a strategy of negotiation between consumers and producers in order to set consumer policies. Why did consumers groups in these countries pursue a strategy of mass mobilization? The consumer groups there were able to build on strong cooperative movements whose members were already mobilized around consumer issues.[10] Over 13 percent of all stores in Sweden were cooperatively owned in 1960, compared to less than 3 percent of stores in both France and Germany (Jefferys and Knee 1962, 65). Because both consumers and producers were politically strong, the government encouraged them to negotiate standards of consumer protection that were binding on both parties.

In general, when consumers are mobilized and industry is disorganized, as in France, we should expect a protection approach to consumer policy to emerge. This model also appears to represent the approaches adopted in the United States and in Canada. When consumers are not mobilized and industry is organized, as in Germany, we should expect an information approach to consumer policy to emerge. This model appears to represent the approaches adopted in Spain and in Austria. Finally, when consumers are mobilized and businesses are organized, the situation emerges in which a negotiation strategy prevails. This model appears to describe the consumer policy setting in Sweden

[10] In 1967 consumer cooperatives accounted for 18 percent of commerce de détail in Sweden (Chevalier 1982, 4).

and indeed in all of Scandinavia. Finally, in the case where consumers are not mobilized and business is disorganized, consumer policy is likely to be haphazard and weak. This model appears to prevail in Britain today.
As a second conclusion, this study also suggests a methodological approach to explaining policy divergence in cases of radical innovation. This approach focuses on politically contested ideas. In substantially new areas of public policy, alternative ideas about how the new policy should be addressed set the terms of political contestation. Such alternative ideas have the status of policy models, in that they imply comprehensive but exclusive conceptual frameworks for regulation. Which policy model came to dominate policy-making in each country depends on the interests and institutional form of the important economic actors in each society.

In such new policy areas, group interests are linked to their organizational forms in at least three ways:

1. The way in which group interests are organized can affect their policy preferences. We observe this in the different preference ranking of French and German consumer groups. In general this will be true of newly-emerging interests that do not have a previous tradition or understanding of their economic, social, or political situation.

2. A greater capacity to organize group membership confers a greater political weight. We observe, for example, the growing political weight of French consumer groups as they increase their grass-roots membership.

3. The institutional capacity of interest groups places constraints on the kinds of policies they can successfully pursue. German industry, for example, was well coordinated to pursue an information strategy to consumer protection, whereas French industry lacked sufficient coordination among individual companies.

Thus economic interest groups confronting radically new areas of policy resolve their conflicting preferences among policy models through a political contest, the outcome of which is strongly influenced by the way in which t+heir group interests are organized.

This strategy of explanation does have two significant limitations. First, it does not conceptualize the institutional context of policy making, but instead treats the policy process as a black box. This approach therefore ignores policy theories that focus attention on the structure of the state such as bureaucratic phenomena, agenda-setting, or veto points (Crozier 1964; Immergut 1992). But

this blindness to the functioning of the state also has advantages. In the case of product market regulation, for example, my research finds that the parliament, the ministry of economics, and the court system all contributed substantially to the shape of product market regulations in both France and Germany. Any theory based on close institutional analysis of the state would have to explain how such different institutions consistently pushed for a similar regulatory strategy. The contested-ideas approach assumes that government policies reflect the preferences of societal interests in proportion to the political power and organizational capacity of their advocates. This simple model also helps to explain how countries with such different government structures, such as France and the United States, have adopted very similar strategies of product market regulation.

The second limitation of the contested-ideas approach is that it does not address the origins of consumer and producer organizational strategies. French and German industrial organizations have roots in their nineteenth-century experience of industrialization. As such, they precede the debate on consumer protection by nearly a century. But the different organizational strategies of French and German consumer groups had a far more recent origin, emerging only in the late 1960s and early 1970s. In this context, the contested-ideas approach artificially separates the question of consumer group organization from the broader question of product market regulation.

Despite these limitations, the contested-ideas model of policy formation offers two advantages for comparative policy analysis. First, it suggests that institutional analysis need not limit its explanatory scope to instances of policy continuity, but that it can also offer powerful insights into periods of radical policy change. If policy evolution is understood as a process of punctuated equilibrium, this research suggests that the field of comparative politics can apply the tools of institutional analysis to explain not just the equilibrium but also the punctuation. Second, it suggests that the core role of ideas in new policy formation is to elaborate coherent, competing regulatory strategies, not to blind policymakers to possible alternatives. Ideas in this approach work to clarify rather than to obscure. For contemporary social actors, ideas clarify the tradeoffs they faced from alternative regulatory models. Rather than driving specific regulatory outcomes, policy ideas become themselves the focus of familiar kinds of political contestation.

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