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Timothy D. Lytton (University of Chicago Press, 2019. pp. 384), ISBN-13: 9780226611686, paperback

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OUTBREAK: FOODBORNE ILLNESS AND THE STRUGGLE FOR FOOD SAFETY

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Reviewed by Diana R. H. Winters, J.D., Ph.D., M.A.

In 2014, almost a fifth of the attendees at the annual Food Safety Summit—over 200 people—contracted food poisoning from a buffet at the conference. As Timothy D. Lytton puts it in *Outbreak: Foodborne Illness and the Struggle for Food Safety*, his masterful new study of the development of food safety in this country, “Headline writers had a field day” (p. 201). Of course they did. It seems ridiculous that food safety professionals could not detect and protect themselves from contaminated food. That’s the thing about foodborne illness though—it often can’t be seen, smelled, or tasted. In media interviews, Bill Marler, the country’s most prominent victim’s lawyer in foodborne illness cases, lists six foods he won’t ever eat because of the risks of foodborne illness.¹ He has established these red lines because even a food safety lawyer just can’t tell when food is unsafe to eat.

Our inability to detect dangers in the food we eat is one of the reasons why food protective measures, imposed privately by agreement or publicly by regulation, are imperative to maintain the safety of the food supply. In *Outbreak*, Lytton explores the history and development of food safety regulation in the United States by profiling various sectors of the food system, including milk, canned goods, meat, and fresh produce. In doing so, Lytton provides the reader with an enormous amount of

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¹ Sarah Whitten, *6 Foods This Food Poisoning Expert Doesn’t Eat*, CNBC (Jan. 26, 2016, 12:36PM), <https://www.cnbc.com/2016/01/26/6-foods-this-food-poisoning-expert-doesnt-eat.html>. These foods are (1) unpasteurized milk and packaged juice, (2) raw sprouts, (3) meat that is not well done, (4) prewashed or precut fruits and vegetables, (5) raw or undercooked eggs, (6) raw oysters and other raw shellfish.

substantive information about these sectors, food safety measures, and internal and external attempts at regulation. If you didn't understand Hazard Analysis Critical Control Points, a "structured management system for food safety," before, you will after reading *Outbreak*. And surprisingly, you'll enjoy it. Although at times Lytton's penchant for lists makes the reader feel like he or she is reading a filled-in outline, Lytton's usually light touch makes this potentially dense material readable and even funny at times.

This deep dive into the specifics of food protective measures is not Lytton's only purpose, however. Stories of foodborne illness outbreaks, reactions, and solutions demonstrate that food safety governance is a "complex adaptive system" (p. 161) and highlight how government regulation, private supply chain management, and civil litigation interact to produce advances in food safety (p. 120). The insight that all of these forces work together to make change in an area marked by uncertainty illuminates the role of each separately and attempts to address critics of any one part. Government regulation needs private governance and vice versa. Neither is better, and neither can stand on its own. For example, in his chapter on leafy greens, Lytton explains how both the California Leafy Green Products Handler Marketing Agreement (LGMA), and the Food Safety Modernization Act's Produce Safety Rule, which came after the LGMA, rely on a "hybrid public-private structure" (p. 145). The LGMA uses "government inspectors to audit compliance with private industry standards," whereas FSMA uses "private auditors to audit compliance with government standards" (p. 145). Both attempts to improve the safety of fresh produce layer types of regulation to address resource gaps.

In *Outbreak*, Lytton shows how specific episodes of foodborne illness interact with these layers of regulation comprising food safety governance to produce change. Whereas certain stakeholders had advocated for the use of Hazard Analysis Critical Control Points in meat production for years without success, the 1993 Jack in the Box *Escherichia coli* outbreak opened a "policy window" (p. 99) that allowed for the acceptance of new food safety systems. Several other high profile non-meat outbreaks of the mid 2000s such as the 2006 baby spinach outbreak, the 2008 hot peppers outbreak, and the 2009 peanut butter outbreak paved the way for the U.S. Food and Drug Administration to implement new guidance documents to reduce contamination in certain produce and for the passage of the 2010 Food Safety Modernization Act. Major events and resulting change draw a pattern we see in many contexts, and at times I wished that Lytton had drawn these analogies as he delved into food safety. He does this elegantly in his chapter on reforms, in which he

discusses the impact of civil liability on professions such as medical malpractice and accounting to explain its potential impact on food safety. He also explores the maturation of fire insurance and its relationship to product contamination insurance. Earlier chapters would have benefitted from an occasional look outward, too, as he discussed these pieces of the food safety puzzle. For example, Lytton also discussed product contamination insurance in the chapter on leafy greens, and a mention of the other areas where insurance has played a role in change would have been valuable here.

In *Outbreak*, Lytton deftly shows how the public and private sectors work together to continually improve food safety, but another major theme in the book is uncertainty: the uncertainty of detecting foodborne pathogens, tracing contaminated food to its source, and, most of all, assessing the benefits in food safety measures. This focus leads to Lytton's main reform suggestion, which is that government investment be focused not on food safety implementation or inspection but on outbreak investigation. Lytton explains that government is "uniquely equipped" (p. 202) to investigate outbreaks and that industry should focus resources on improving the private food safety auditing system. He also discusses several other commonly debated reform options, including consolidating federal food safety operations into one agency (he argues that this is not necessarily a good idea) and broadening criminal liability for food company executives (he asserts that more evidence of benefit is needed).

Outbreak is immensely valuable not only for scholars of food law and food safety but also for those interested in the broader fields of regulatory and administrative law. Food safety becomes a lens for Lytton to explore questions of layered regulation, institutional competence, measures of assessment, and the inevitable role of uncertainty in trying to balance benefit and cost in safety improvements. There's a lot to chew on here.