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MILK AND LAW IN THE ANTHROPOCENE:  
COLONIALISM'S DIETARY INTERVENTIONS

*Kelly Struthers Montford*

# Milk and Law in the Anthropocene: Colonialism's Dietary Interventions

Kelly Struthers Montford\*

## Abstract

It is widely accepted that we are living in the Anthropocene: the age in which human activity has fundamentally altered earth systems and processes. Decolonial scholars have argued that colonialism's shaping of the earth's ecologies and severing of Indigenous relations to animals have provided the conditions of possibility for the Anthropocene. With this, colonialism has irreversibly altered diets on a global scale. I argue that dairy in the settler contexts of Canada and the United States remains possible because of colonialism's severing of Indigenous relations of interrelatedness with the more-than-human world. I discuss how colonialism—which has included the institution of dairy—requires and authorizes relations that at their core seek to domesticate those imagined as wild, including humans, animals, and land. With this in mind, I then analyze recent and current dairy lawsuits as well as proposed legislation seeking to maintain legislated definitions of milk as exclusively animal-based. I argue that instances of mobilizing law to secure dairy as exclusively animal-based are attempts to re-secure settler colonial ontologies of life along a “real food” versus “fake food” dichotomy in which plant-based foods are positioned as substitutes for animal products. However, these pro-dairy lawsuits are often unsuccessful. Thus, dairy law is one arena in which settler colonialism's orderings of life and relations are being challenged and re-made. In the context of the Anthropocene, the role of legal ontologies in shaping our consumption habits and relationships with animals remain all the more urgent.

## I. Colonialism and the Anthropocene

Milk has recently received considerable public and legal attention. Scholar, Vasile Stanescu, argues that milk is now being used by the alt-right as code for white supremacy.<sup>1</sup> Milk is also the

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subject of lawsuits and proposed legislation (such as the Dairy Pride Act) that seek to maintain the definition of “milk” as being exclusively animal-based.<sup>2</sup> In Canada and the United States (“US”), dairy is the direct result of colonial projects seeking to “remake” the New World in the image of colonial homelands.<sup>3</sup> Colonists replaced Indigenous understandings and relationships about and between humans, animals, and territory with western European “universal” and “civilized” norms and in doing so, they fundamentally altered the Earth’s processes.<sup>4</sup> Colonialism has irreversibly shaped the Earth:

The arrival of the Europeans in the Caribbean in 1492, and subsequent annexing of the Americas, led to the largest human population replacement in the past 13,000 years, the first global trade networks linking Europe, China, Africa and the Americas, and the resultant mixing of previously separate biotas, known as the Columbian Exchange.<sup>5</sup>

Settlers brought with them farmed animals and plants that changed Indigenous environments and ecological systems—and imposed property-based relationships with the land and animals.<sup>6</sup>

Colonialism has not only caused the genocide of the first peoples of the Americas, but also “a genocide of all manner of kin: animals and plants alike.”<sup>7</sup> For example, while farmed animals were

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participants of the Dairy Tales symposium for their feedback on earlier drafts of this article, as well as Chloë Taylor and Tessa Wotherspoon.

<sup>1</sup> See generally Vasile Stănescu, ‘White Power Milk’: Milk, Dietary Racism, and the ‘Alt-Right’, 7 ANIMAL STUD. J. 102–28 (2018).

<sup>2</sup> Kathleen Justis, *Lactose’s Intolerance: The Role of Manufacturer’s Rights and Commercial Free Speech in Big Dairy’s Fight to Restrict Use of The Term “Milk”*, 84 BROOK. L. REV. 999, 1002–04 (2019).

<sup>3</sup> See Mathilde Cohen, *Animal Colonialism: The Case of Milk*, 111 AJIL UNBOUND 267, 271 (2017); CLAIRE JEAN KIM, DANGEROUS CROSSINGS: RACE, SPECIES, AND NATURE IN A MULTICULTURAL AGE 47 (Cambridge Univ. Press 2015); VIRGINIA DEJOHN ANDERSON, CREATURES OF EMPIRE: HOW DOMESTIC ANIMALS TRANSFORMED EARLY AMERICA 6 (Oxford Univ. Press 2006).

<sup>4</sup> Robin McKie, *How Our Colonial Past Altered the Ecobalance of An Entire Planet*, GUARDIAN (Jun. 10, 2018, 2:00 AM), <https://www.theguardian.com/science/2018/jun/10/colonialism-changed-earth-geology-claim-scientists>.

<sup>5</sup> Simon L. Lewis & Mark A. Maslin, *Defining the Anthropocene*, 519 NATURE 171, 174 (2014).

<sup>6</sup> See, e.g., ANDERSON, *supra* note 3, at 1–12; Lewis & Maslin, *supra* note 5, at 177; Cohen, *supra* note 3, at 268–71.

<sup>7</sup> Heather Davis & Zoe Todd, *On the Importance of a Date, or Decolonizing the Anthropocene*, 16 ACME 761, 771 (2017).

brought to the New World as “creatures of empire,”<sup>8</sup> colonists decimated other native animals (such as the buffalo) in order to starve Indigenous persons—who colonists believed stood in the way of “progress”—and hunted fur-bearing animals for their skins, which were sent back to Europe as raw materials to further consolidate imperial wealth.<sup>9</sup> In addition to animal pelts, colonists also took various humans, live animals, and plant species back to their homelands to own, collect, display, and/or reproduce.<sup>10</sup>

Animal agriculture provided a legal justification for land acquisition, the literal terrain required for colonial state-building. Under English law, individuals could make property claims to land, provided they met the criteria for productive use and/or transformed the land.<sup>11</sup> Having animals graze on land, cultivating the land (through planting of crops and deforestation), and erecting permanent structures, such as homes (in a context in which permanent abodes were considered civilized, and nomadic persons as savages), constituted “productive use,” allowing for private ownership.<sup>12</sup>

Some have argued that the Anthropocene is not merely an apolitical change in the earth’s systems. Instead, it is the ongoing result of a specific organization of nature under capital, namely that capital, empire, and science have been mobilized and designed to extract and harness the unpaid energy of global life, including that done by enslaved, colonized, and racialized humans, women, animals, and the environment.<sup>13</sup> This reorganization of nature then

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<sup>8</sup> See ANDERSON, *supra* note 3, at 1–12 (introducing the concept of “creatures of empire”).

<sup>9</sup> See, e.g., HAROLD A. INNIS, *THE FUR TRADE IN CANADA: AN INTRODUCTION TO CANADIAN ECONOMIC HISTORY* 9–21 (Univ. of Toronto Press 1956); NICOLE SHUKIN, *ANIMAL CAPITAL: RENDERING LIFE IN BIOPOLITICAL TIMES* 13 (Univ. of Minn. Press 2009).

<sup>10</sup> Rebecca Tuvel, “*Veil of Shame*”: *Derrida, Sarah Bartmann and Animality*, 9 J. FOR CRITICAL ANIMAL STUD. 209, 209–11 (2011) (“Sarah Bartmann, famously known as the ‘Hottentot Venus,’ was a South African Khoisan woman who was paraded around nineteenth-century England and France (sometimes in a cage) because of her striking appearance.”). See generally BLANCHARD ET AL., *HUMAN ZOOS: SCIENCE AND SPECTACLE IN THE AGE OF COLONIAL EMPIRES* (Liverpool Univ. Press 2008) (discussing the display of humans).

<sup>11</sup> See, e.g., Allan Greer, *Commons and Enclosures in the Colonization of North America*, 117(2) AM. HIST. REV. 365, 367 (2012); Robert Nichols, *Theft Is Property! The Recursive Logic of Dispossession*, 46 POL. THEORY 3, 5–6, 13 (2018).

<sup>12</sup> Kelly Struthers Montford, *Agricultural Power: Politicized Ontologies of Food, Life, and Law in Settler Colonial Spaces* (Nov. 27, 2017) (unpublished Ph.D. dissertation, University of Alberta, Canada) (on file with author).

<sup>13</sup> See Jason W. Moore, *Introduction*, in *ANTHROPOCENE OR CAPITALCENE?: NATURE, HISTORY, AND THE CRISIS OF CAPITALISM* 1, 1–13 (Jason W. Moore ed., 2016).

required a shift in our relationship to nature such that land is private property, human activity is wage labor, and scientific “progress” is focused on surveying natural resources for extractive purposes.<sup>14</sup> Davis and Todd argue that this “colonial project” has been key in severing the relationship with nature that structured pre-colonial life in the Americas.<sup>15</sup>

Unlike the Cartesianism<sup>16</sup> of the west, which frames humans as uniquely rational and both independent from and superior to nature and the (animalistic) body, many Indigenous societies understand humans not as separate from the land, but as extensions of land itself, with animals and plants being kin rather than the property of humans.<sup>17</sup> As such, while animal agriculture was instituted as a means to materially acquire land, it has additionally caused an ontological change in the relationships structuring life in the New World. Cohen has argued that “the old, colonial animal law was only global for imperialist ends”<sup>18</sup> with “[a]nimal colonialism involving not only the migration of animals, but also the legal status they were accorded in the Old World.”<sup>19</sup> This legal status both presupposes and requires a certain ontology of animality that is constantly remade in sites of animal agriculture. Namely, it requires and affects a de-animalization where animals exist as “deaded life” rather than as subjects with their own desires, kinship structures, and purpose.<sup>20</sup> Viewed as living meat, eggs, or dairy, as deaded life animals are ontologized as mere input-output machines, existing only to produce the commodities that they will produce or become upon their death.<sup>21</sup> Animal agriculture further requires a particular

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<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., Davis & Todd, *supra* note 7, at 767.

<sup>16</sup> Cartesianism continues to shape understandings of the subject (i.e., ‘the human’) and those who are categorized as non-subjects/objects (racialized humans, animals, and nature), based on Descartes’ contention that humans have exclusive purview over rationality whereas animals are more like machines who respond only to stimulus. See, e.g., JACQUES DERRIDA, *THE ANIMAL THAT THEREFORE I AM* (Marie-Louise Mallet ed., David Wills trans., Fordham Univ. Press 2008).

<sup>17</sup> See, e.g., Davis & Todd, *supra* note 7, at 771; Kim TallBear, *Beyond the Life/Not-Life Binary: A Feminist-Indigenous Reading of Cryopreservation, Interspecies Thinking, and The New Materialisms*, in *CRYOPOLITICS* 179 (Joanna Radim & Emmal Kowal eds., 2017); Struthers Montford, *supra* note 12; GLEN SEAN COULTHARD, *RED SKIN, WHITE MASKS: REJECTING THE COLONIAL POLITICS OF RECOGNITION* 61 (Univ. of Minn. Press 2014).

<sup>18</sup> Cohen, *supra* note 3, at 267.

<sup>19</sup> *Id.* at 268.

<sup>20</sup> See James Stănescu, *Beyond Biopolitics: Animal Studies, Factory Farms, and the Advent of Deading Life*, 8(2) *PHAENEX* 135–55 (2013) (framing the concept of “deaded life” in the context of factory farms).

<sup>21</sup> *Id.* at 154–55.

ontology of land where it too is not a subject, but instead, a resource to be directed to benefit human interests.

The denigration of animals and land within this westernized, metaphysical schema was integral to colonialism because it provided both the intellectual terrain and moral justification for the ontological and environmental transformation of the New World. Settler colonialism has attempted to replace what Kim TallBear, building on the work of Vine Deloria Jr., has called an “Indigenous metaphysic: an understanding of the intimate knowing relatedness of all things.”<sup>22</sup> Referring to a phenomenon in terms of metaphysics is not to point to the “existence of absolute foundations,”<sup>23</sup> but rather to the contingency of events that has led the phenomenon in question to be *taken as* the natural result of progress. Put differently, through practice and repetition, historically contingent events—such as animal agriculture being the primary method of food production—are taken to be ontological certainties. Because ontological frames structure how we understand and make sense of our worlds, challenging ontology allows us to question how claims about the immutable nature of a given phenomenon are instead politically contingent and, therefore, could be otherwise.

Claims that humans are superior because they are the only creatures who have language and have transcended their animal natures, and claims that animals and land are merely private property and resources for humans both represent ontological changes that have been written into the territory of colonialism through various practices. Dairy has then been a means by which land was acquired, diets altered, and relationships between mothers and offspring transformed. As Cohen argues, “lactating animals became integral parts of colonial and neocolonial projects as tools of agroexpansionism and human population planning.”<sup>24</sup> The increased availability of animal milk has interrupted mammalian feeding cultures, severing the bonds between dairying animals and their offspring.<sup>25</sup> Under this framework, I argue that animal agriculture—including dairy, the focus of this article—is a colonial method,<sup>26</sup> entangled in whiteness,<sup>27</sup> able-bodiedness, and human superiority.

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<sup>22</sup> TallBear, *supra* note 17, at 191.

<sup>23</sup> Johanna Oksala, *Foucault's Politicization of Ontology*, 43 CONTINENTAL PHIL. REV. 445, 449 (2010).

<sup>24</sup> Cohen, *supra* note 3, at 267.

<sup>25</sup> *Id.*

<sup>26</sup> ANDERSON, *supra* note 3, at 1–107; KIM, *supra* note 3, at 24–60; Cohen, *supra* note 3.

<sup>27</sup> E. MELANIE DUPUIS, *NATURE'S PERFECT FOOD: HOW MILK BECAME AMERICA'S DRINK* 1–124 (NYU Press 2002); Stănescu, *supra* note 1.

Animal agriculture is then both a technology and outcome of settler colonialism's territorial and terraforming drive, which included "the damming of rivers, clear-cutting of forests, and importation of plants and animals [that] remade the worlds of North America into a vision of a displaced Europe, fundamentally altering the climate and ecosystems."<sup>28</sup> Dairy remains one of the most ecologically intensive and environmentally detrimental foods available.<sup>29</sup> It has resulted in the transformation of forests into feed crops and pastures, feed crops that are largely comprised of non-indigenous plants, with water and manure run off from animal farms degrading the environment in an ongoing manner.<sup>30</sup>

Some have argued that colonialism—with its homogenization of the earth's biotas, killing of first peoples, and global trade routes—marks the beginning of the Anthropocene, evident in the stratigraphic record by Old World foods appearing in the New World's sediments and vice versa.<sup>31</sup> Foundational to colonialism has been its effect of "permanently and dramatically altering the diet of almost all of humanity."<sup>32</sup> If it is the case that the Columbian Exchange set in motion the conditions for the Anthropocene, then I suggest that animal agriculture remains a constitutive driver of this epoch.

This article argues that in both Canada and the US, dairy should be understood as part of a broader colonial framework wherein the severing of Indigenous relations to animals has provided the conditions for the possibility of the Anthropocene. Specifically, the propertied relationships to land and animals inherent to animal agriculture have been integral to territorial acquisition and terraformation.<sup>33</sup> First, I discuss how colonialism—and by extension, dairy—requires and authorizes material and ontological relations that have as its goal colonialism's drive to domesticate those imagined as wild, including humans, animals, and land. Second, I explain how dairy was introduced in settler contexts while at the same time being discussed as a universal and "perfect" food. Third, I show that recent lawsuits over the labelling of plant-based

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<sup>28</sup> Davis & Todd, *supra* note 7, at 771.

<sup>29</sup> See Luciana Baroni et al., *Evaluating the Environmental Impact of Various Dietary Patterns Combined With Different Food Production Systems*, 61 EUR. J. CLIN. NUTRITION 279, 283–85 (2007) (noting cheese and milk among foods with the highest environmental impact).

<sup>30</sup> *Id.* at 6–7.

<sup>31</sup> Lewis & Maslin, *supra* note 5, at 174–75; Davis & Todd, *supra* note 7, at 770.

<sup>32</sup> Lewis & Maslin, *supra* note 5, at 175.

<sup>33</sup> See generally ANDERSON, *supra* note 3; KIM, *supra* note 3; Nichols, *supra* note 11.



milks as “milk” are not merely about clarity in labelling. I argue that these instances of mobilizing law to secure dairy as exclusively animal-based are instead attempts to re-secure settler colonial ontologies of life. It is my position that these lawsuits should be read as attempts by private industry to maintain a specific mode of colonial production (animal agriculture and dairying) that requires and produces food ontologies in which “real” food is only ever animal-based. Thus, dairy law is one arena in which settler colonialism’s orderings of life and relations are being challenged and re-made. In the context of the Anthropocene, the role of legal ontologies for shaping our consumption habits and relationships with animals remain all the more urgent.

## II. Indigenous Ontology Meets Property Law: Domesticating Dairy

Crist argues that the Anthropocene, which I take to be inseparable from colonialism, has been an assimilationist project wherein human culture(s) dominate the natural.<sup>34</sup> Crist puts this another way by stating, “[t]akeover (or assimilation) has proceeded by biotic cleansing and impoverishment: using up and poisoning the soil; making beings killable; putting the fear of God into the animals such that they cower or flee in our presence . . . . The impact of assimilation is relentless . . . .”<sup>35</sup> Integral to this assimilationist colonial project has been the enclosure, parceling, and transformation of territory into private property.<sup>36</sup> With this, domesticating drives have targeted land, animals, and their substances, transforming them for human exploitation.<sup>37</sup> Territory has been re-imagined as a passive resource for humans to own rather than a subject in its own right.<sup>38</sup>

Animal agriculture has been one mechanism through which land has been materially and conceptually transformed into a resource requiring ownership, cultivation, and extraction for the benefit of settler individuals and states. Yet, this view of land is neither universal nor inevitable. Indigenous scholar, Glen Coulthard (“Yellowknives Dene”), notes that for his peoples, land is not an

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<sup>34</sup> Eileen C. Crist, *On the Poverty of Our Nomenclature*, in ANTHROPOCENE OR CAPITALOCENE? 14, 28 (Jason W. Moore ed., 2016).

<sup>35</sup> *Id.* at 28–29.

<sup>36</sup> Jason W. Moore, *The Rise of Cheap Nature*, in ANTHROPOCENE OR CAPITALOCENE? 78, 86–87 (Jason W. Moore ed., 2016).

<sup>37</sup> ANDERSON, *supra* note 3, at 43–45, 70–71, 156–57.

<sup>38</sup> See Davis & Todd, *supra* note 7 (discussing how colonialism has affected human perception of land).

entity to be owned, nor is its importance related to its potential as a resource.<sup>39</sup> Instead:

[L]and occupies an ontological framework for understanding *relationships*. . . . In Weledeh dialect of Dogrib . . . “land” (or dè) is translated in relational terms as that which encompasses not only the land (understood here as material), but also people and animals, rocks and trees, lakes and rivers, and so on. Seen in this light, we are as much a part of the land as any other element. Furthermore, within this system of relations human beings are not the only constituent believed to embody spirit or agency.<sup>40</sup>

As such, according to this Indigenous mode of thought, relationships with the more-than-human are premised on interrelatedness: “reciprocity, nonexploitation and respectful coexistence.”<sup>41</sup> Testimony from members of the Blackfoot First Nation to the Royal Commission on Aboriginal Peoples also framed land as a living being that one is in relation with:

The land was considered a mother, a giver of life, and the provider of all things necessary to sustain life. A deep reverence and respect for Mother Earth infused and permeated Indian spirituality, as reflected in the Blackfoot practice of referring to the land, water, plants, animals and their fellow human beings as ‘all my relations.’ Relations meant that all things given life by the Creator—rocks, birds, sun, wind and waters—possessed spirits.<sup>42</sup>

Within these belief systems, land is part of both the spiritual and physical realms. For the Blackfoot people the Creator entrusted them as stewards over their land, responsible for the wellbeing of all their relations.<sup>43</sup> Notions of stewardship and responsibility, therefore, do not inevitably translate into a worldview in which land is owned or seen as a resource to be dominated.<sup>44</sup> Mohawk legal scholar, Patricia Monture-Angus, instead framed this as a duty-based relationship in which one is responsible to someone or something

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<sup>39</sup> COULTHARD, *supra* note 17, at 61.

<sup>40</sup> *Id.* at 60–61.

<sup>41</sup> *Id.* at 12.

<sup>42</sup> ROYAL COMM'N ON ABORIGINAL PEOPLES, VOLUME I: LOOKING FORWARD, LOOKING BACK 64 (1996).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

other than oneself—in this case, to territory.<sup>45</sup> This duty-based responsibility is not premised on the control of territory;<sup>46</sup> rather, it is consistent with a metaphysical framework of interrelatedness. Within a frame of anthropocentric capitalism, however, in which humankind is regarded as the central element of existence,<sup>47</sup> nature is viewed as a raw material: “passive and uncultivated—a wilderness to be tamed—while culture is the active set of practices by which humans “dominate” nature.”<sup>48</sup>

Domestication has been used to signify domination in various registers. It seeks to make something or someone intelligible and familiar. It does not appreciate the subject on its own terrain, but rather alters the subject in question to fit the framework of the more dominant party in a given situation. As Jessica Polish notes, Kant argued that women were men’s first domesticated animals.<sup>49</sup> Kant described that women were “a kind of mule, ‘loaded down with his [the man’s] household belongings,’”<sup>50</sup> or, in the context of polygamous marriage, women were more like dogs in a man’s harem, or, to use Kant’s term: “kennel.”<sup>51</sup> According to Kant, domestication provided the conditions necessary for “civilized” intra-human relationships to occur.<sup>52</sup> For him, this civilizing occurred through the institution of monogamous marriage.<sup>53</sup> Andrea Smith argues that “Native nations are seen as sufficiently domesticated to be administered through government policy, rather than seen as a continuing political threat requiring ongoing military intervention.”<sup>54</sup> For Smith, domestication is, therefore, a process by which oppressive power relations are sustained and administered. It also refers to a state where a threat to the dominant social order is neutralized and rendered manageable. Sophia Magnone argues that domestication creates an “anthropocentric hierarchy that cordons off

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<sup>45</sup> PATRICIA MONTURE-ANGUS, *JOURNEYING FORWARD: DREAMING FIRST NATIONS’ INDEPENDENCE* 33 (Fernwood Publ’g 1999); Nichols, *supra* note 11, at 11.

<sup>46</sup> MONTURE-ANGUS, *supra* note 45; Nichols, *supra* note 11, at 13.

<sup>47</sup> Oxford, *Anthropocentric*, LEXICO, <https://www.lexico.com/en/definition/anthropocentric> (last visited Mar. 15, 2020) (defining “anthropocentric” as “[r]egarding humankind as the central or most important element of existence . . .”).

<sup>48</sup> Maneesha Deckha & Erin Pritchard, *Recasting Our Wild Neighbours: Contesting Legal Otherness in Urban Human-Animal Conflicts*, 49 UBC L. REV. 161, 163 (2016).

<sup>49</sup> Jessica Polish, *After Alice After Cats in Derrida’s L’animal que donc je suis*, 7 DERRIDA TODAY 180, 183 (2014).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*

<sup>53</sup> *See id.*

<sup>54</sup> Andrea Smith, *Not-Seeing: State Surveillance, Settler Colonialism, and Gender Violence*, in *FEMINIST SURVEILLANCE STUDIES* 21, 24 (Rachel E. Dubrofsky & Shoshana Amielle Magnet eds., 2015).

and elevates humanity from the rest of the animal world.”<sup>55</sup> Through tactics of captivity, spatial containment, renaming (both at the taxonomic level and at that of the individual), and subordination, domestication instills an ontological ordering of life in which animality is tamed, exploited, and exterminated per the needs of dominant humans.<sup>56</sup> In this sense, Magnone argues that domestication has made “certain types of animals common in human societies as companions, workers, food, and resources.”<sup>57</sup> While domestication can take multiple forms and be put to work for various political projects, what remains consistent is the attempted taming and controlling of that not under the control of the domesticator.

The substance of dairy itself has been targeted, transformed, and made possible through the domestication of dairy-producing mammals. The ubiquity of milk represents the “triumph over nature” in which humans have used science to alter milk to such a degree that it could be transported long distances without causing human fatalities.<sup>58</sup> Further, humans have domesticated female mammals—primarily cows, goats, and sheep—to select for high milk yields.<sup>59</sup> Domestication is evident not only in species level transformations—in which humans have bred animals based on selected traits that they believe to be valuable and useful, such as docility, rapid weight gain, and high milk production—but in the ongoing control of individual farmed animals, as well.<sup>60</sup> Dairy animals live a life of ubiquitous commodification and reproductive control.<sup>61</sup> Female animals are forcefully inseminated using sperm collected from captive males, and mother-child bonds are disrupted as dairy animals’ offspring are taken away early so that their mother’s milk can be consumed by humans.<sup>62</sup> Domesticating drives continue, as the next generation of males are streamed into veal and other meat industries, while the

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<sup>55</sup> Sophia Booth Magnone, *Finding Ferality in the Anthropocene: Marie Darrieussecq’s “My Mother Told Me Monsters Do Not Exist,”* FERAL FEMINISMS 33, 33 (2016).

<sup>56</sup> See *id.* at 34.

<sup>57</sup> *Id.*

<sup>58</sup> See Greta Gaard, *Toward a Feminist Postcolonial Milk Studies*, 65 AM.Q. 595, 596–97 (2013) (providing that before milk—a highly perishable liquid—began to be sterilized and pasteurized, it caused infections as well as epidemic diseases such as scarlet fever, typhoid, and tuberculosis).

<sup>59</sup> See *id.* at 596, 603; G. F. W. Haenlein, *About the Evolution of Goat and Sheep Milk Production*, 68 SMALL RUMINANT RES. 3, 3–6 (2007).

<sup>60</sup> David A. Magee et al., *Interrogation of Modern and Ancient Genomes Reveals the Complex Domestic History of Cattle*, 4(3) ANIMAL FRONTIERS 7, 19 (2014); see also Jessica Eisen, *Milked: Nature, Necessity, and American Law*, 34 BERKELEY J. GENDER L. & JUST. 71, 109 (2019) (describing the effects of certain technologies of control on domesticated cattle).

<sup>61</sup> *Id.* at 100.

<sup>62</sup> *Id.* at 106–08.

young females are reproductively exploited to support dairy.<sup>63</sup> Then, when the mother's milk productivity declines, she will be slaughtered for low-grade processed meats or companion animal food.<sup>64</sup> Dairy cows, imagined as domesticated and, thus, transformed, become indexed as passive and unending resources whose only purpose is to sustain humanity. The subjugation of dairy cows is supported by colonial ideas about nature, in which nature is represented as female—a “selfless and self-sacrificing mother”—and this idea is extrapolated onto cows, imagining them as a symbol of “maternal nature: mindless, patient, slow-moving, lactating.”<sup>65</sup>

In Canada, the will to domesticate either Indigenous or foreign animals for dairy reveals an ongoing tendency to imagine animals as natural resources. For example, in a 1919 memorandum from the Minister of the Interior, the Honourable Arthur Meighen, to the Minister of Justice, Charles Joseph Doherty, Meighen suggests that the indigenous muskox be domesticated in Northern Regions for their meat, milk, and wool.<sup>66</sup> Specific to milk, Meighen states that “[a] muskox gives two or three times as much milk as a reindeer. The milk is considered by the white men of our parties to be better than cow's milk in taste. It differs from cow's milk hardly at all except in being richer in cream.”<sup>67</sup> This passage reveals a colonial domesticating desire in which Indigenous animals were a target for cultural and ontological disruption. *Which* animals were domesticated for their milk was mobilized by a belief in the inevitable remaking of the new world according to the inter-species relations and food habits that dominated the old.<sup>68</sup> This transpired within a social context in which milk was thought to be a “perfect food” that was not only nutritionally superior<sup>69</sup> but also led to the racial superiority of white individuals.<sup>70</sup>

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<sup>63</sup> *Id.* at 107.

<sup>64</sup> NAT'L RESEARCH COUNCIL, AIR EMISSIONS FROM ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS 35 (2003).

<sup>65</sup> Gaard, *supra* note 58, at 613.

<sup>66</sup> C. GORDON HEWITT, THE CONSERVATION OF THE WILD LIFE OF CANADA 311–13 (N.Y.: C. Scribner 1921).

<sup>67</sup> *Id.* at 313.

<sup>68</sup> See Eisen, *supra* note 60, at 75.

<sup>69</sup> DuPuis, *supra* note 27, at 19.

<sup>70</sup> Iselin Gambert, *Got Mylk? The Disruptive Possibilities of Plant Milk*, 84 BROOK. L. REV. 801, 859 (2019); DuPuis, *supra* note 27, at 117–18.

### A. Milk's Perfection

Beginning in the mid-nineteenth century, early nutrition researchers were surprised at milk's content, namely that it "contain[ed], in perfect measure, all the ingredients to sustain life."<sup>71</sup>

In the 1920s, the National Dairy Council of America drew on the statement of renowned nutritionist, E.V. McCollum, to attribute the consumption of dairy products to the cultural, physical, economic, and social superiority of distinctively white populations:

The people who have achieved, who have become large, strong, vigorous people, who have reduced their infant mortality, who have the best trades in the world, who have an appreciation for art, literature and music, who are progressive in science and every activity of the human intellect are the people who have used liberal amounts of milk and its products.<sup>72</sup>

Similarly, Ulysess Hendrick stated that "[o]f all races, the Aryans seem to have been the heaviest drinkers of milk and the greatest users of butter and cheese, a fact that may in part account for the quick and high development of this division of human beings."<sup>73</sup> In Canada, Indigenous children in residential schools and on reserves were used as experimental bodies in which to set consumption norms.<sup>74</sup> With the backing of the government, those running the study deliberately allowed Indigenous children to remain malnourished while at the same time milk was positioned as integral to the health of a child.<sup>75</sup>

At the same time that milk was positioned as a "perfect" food, it was also extremely dangerous, as it caused high rates of infant mortality as well as deaths amongst adults due to its transmission of tuberculosis.<sup>76</sup> The science of milk was then put to work in service of the industry. Within a broader Victorian

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<sup>71</sup> DUPUIS, *supra* note 27, at 19.

<sup>72</sup> *Id.* at 117.

<sup>73</sup> ULYSSES PRENTISS HENDRICK, A HISTORY OF AGRICULTURE IN THE STATE OF NEW YORK 362–63 (N.Y. State Agric. Soc'y 1933).

<sup>74</sup> Ian Mosby, *Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952*, 46 SOC. HIST. 145, 147, 160 (2013).

<sup>75</sup> *Id.* at 161, 171.

<sup>76</sup> See RICHIE NIMMO, MILK, MODERNITY AND THE MAKING OF THE HUMAN: PURIFYING THE SOCIAL 60 (Tony Bennett et al. eds., 2010) (discussing the history of the public perception of milk); DUPUIS, *supra* note 27, at 20–21; see generally PETER J. ATKINS, A HISTORY OF UNCERTAINTY: BOVINE TUBERCULOSIS IN BRITAIN, 1850 TO THE PRESENT (Winchester Univ. Press 2016).

imperative to sanitize society,<sup>77</sup> in which ‘culture’ acts upon ‘nature’ to shore-up the boundaries of each, efforts unfolded to control disease in animal bodies and dairy, to set legal limits on milk’s composition (water to dairy fat ratios, etc.), as well as to pasteurize, refrigerate, and transport milk long distances.<sup>78</sup> The control of disease was central to this vision. As Nimmo writes, “science was to penetrate into the animal nature in order to colonize it for culture and sanitize the process of its externalization for human consumption.”<sup>79</sup> Through these processes, animals as the agents, producers, and consumers of milk are marginalized, and milk is “cleansed of the traces of its human-nonhuman hybridity.”<sup>80</sup> Scientific and legal efforts to intervene upon and control milk can be understood as a further iteration of the colonial project’s severing of relationships between human, animal, and natural life because it effectively removes the animal from the animal product and transforms it for human consumption.

Laws against milk adulteration tied into a broader public health drive to increase milk consumption.<sup>81</sup> The role of public health officials became about ensuring people drank enough milk, rather than about protecting them from contaminated or dangerous foods.<sup>82</sup> These efforts took extra-legal forms, with both the demand and normalization of milk created through a series of propaganda campaigns that linked nutritional discourse, child welfare, and morality.<sup>83</sup> By the mid-twentieth century, milk had assumed an essential role in children’s development, and dairy products became ubiquitous in western Europe, the US, and Canada.<sup>84</sup>

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<sup>77</sup> Nimmo provides information on the sanitizing of the social. See NIMMO, *supra* note 76, at 119. For example, he writes about this ethos that “to govern modern ‘society’ it is necessary to govern its opposite, that is, to define, sanitize, and control its boundaries with ‘nature’; hence the ascendancy of scientific expert knowledge and authority was integral to the realization of humanist modernity.” *Id.*

<sup>78</sup> See generally PETER WILLIAM ATKINS, *LIQUID MATERIALITIES: A HISTORY OF MILK, SCIENCE AND THE LAW* (2010); see also NIMMO, *supra* note 76, at 92–95.

<sup>79</sup> NIMMO, *supra* note 76, at 88.

<sup>80</sup> *Id.* at 133.

<sup>81</sup> DUPUIS, *supra* note 27, at 120; ATKINS, *supra* note 78, pt. IV; *Id.* at 60–72 (outlining the intertwined history of dairy sanitation and marketing); see also Mathilde Cohen, *Of Milk and the Constitution*, 40 HARV. J. L. & GENDER 115, at 144–49 (2017).

<sup>82</sup> Cohen, *supra* note 81.

<sup>83</sup> See generally *id.* at 115–82.

<sup>84</sup> NIMMO, *supra* note 76, at 125–30; DUPUIS, *supra* note 27, at 37; Julie Guard, *The Politics of Milk: Canadian Housewives Organize in the 1930s*, in *EDIBLE HISTORIES, CULTURAL POLITICS* 271–285 (Franca Iacovetta, Valerie J. Korinek, & Marlene Epp eds., 2012).

While dairy remains ubiquitous and western dietary norms have been exported to non-western, “new” markets using strategies of food imperialism,<sup>85</sup> its consumption in the US and Canada is declining. For example, between 1975 and 2017, milk consumption in the US dropped 40%, from 247 pounds to 149 pounds per person, per year.<sup>86</sup> In Canada, dairy consumption declined by 18% between 1995 and 2014.<sup>87</sup> At the same time, plant-based milk sales are increasing, representing a \$1.7 billion industry in the US.<sup>88</sup> In January of 2019, Canada’s revised food guide removed food groups all together, including those of meat and dairy food.<sup>89</sup> Overall, it advises Canadians to consume more plant-based foods, including proteins.<sup>90</sup> It is within this context of declining dairy and increased plant-milk consumption that pro-dairy bills and lawsuits have been introduced.

### III. Securing Mammalian Ontologies of Milk: Agrarian Identities, Animal-Based Economies

Food ontologies of real versus fake are reflected in law and are used to reproduce normative orders of food consumption, as well as the inequitable relationships between humans and animals on which they rely.<sup>91</sup> For example, in 2010, the National Milk Producers Federation (“NMPF”)—whose motto is: “Connecting Cows, Cooperatives, Capitol Hill, and Consumers”—petitioned the US Food and Drug Administration (“FDA”) to enforce existing legal standards of labeling identity.<sup>92</sup> The NMPF asked the FDA to

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<sup>85</sup> Vasile Stănescu, *The Whopper Virgins: Hamburgers, Gender, and Xenophobia in Burger King’s Hamburger Advertising*, in *MEAT CULTURE* 90, 90–108 (Brill 2016); Gaard, *supra* note 58, at 595.

<sup>86</sup> Niall McCarthy, *Milk’s Massive American Decline*, STATISTA (May 13, 2019), <https://www.statista.com/chart/2387/american-milk-consumption-has-plummeted/>.

<sup>87</sup> Eric Atkins, *Milk Sales Continue to Slide as Diets, Society Shift Away from Dairy*, *GLOBE & MAIL* (Aug. 26, 2015), <https://www.theglobeandmail.com/report-on-business/milk-sales-continue-to-slide-as-diets-society-shift-away-from-dairy/article26117550/>.

<sup>88</sup> McCarthy, *supra* note 86.

<sup>89</sup> Amina Zafar, *New Food Guide Unveiled Without Food Groups or Recommended Servings*, *CBC* (Jan. 21, 2019, 6:39 PM), <https://www.cbc.ca/news/health/canada-food-guide-unveil-1.4987261>.

<sup>90</sup> *Id.*

<sup>91</sup> Cohen, *supra* note 81.

<sup>92</sup> Letter from James Mulhern, President & CEO, National Milk Producers Federation, to Scott Gottlieb, Commissioner, U.S. Food & Drug Administration (Oct. 26, 2017), [https://www.nmpf.org/wp-content/uploads/files/NMPF%20to%20Gottlieb%20Nutrition%20and%20Label%20Info%2010%2026%202017%20FINAL%20\(r1\).pdf](https://www.nmpf.org/wp-content/uploads/files/NMPF%20to%20Gottlieb%20Nutrition%20and%20Label%20Info%2010%2026%202017%20FINAL%20(r1).pdf) [hereinafter Mulhern 2017 Letter]; Letter from Beth Panko Briczinski, Vice President, National Milk Producers Federation, to Food & Drug Administration (Aug. 29, 2017), <https://www.nmpf.org/wp-content/uploads/files/N>



intervene to prevent non-dairy products from being labeled as milk, ice cream, or cheese, because this constituted illegal misbranding.<sup>93</sup> The NMPF argued that, even if the words “soy” or “almond” precede the word “milk” on the label, the non-dairy product is “misbranded” because it “includes a standardized food name, e.g., ‘milk’, as part of a name for that product, e.g., ‘soymilk.’”<sup>94</sup> They continue to reason that the terminology on the labels of plant-based milks, cheeses, yogurts, and frozen desserts is “confusingly similar”<sup>95</sup> for consumers, who would assume that these were in fact animal-based products.<sup>96</sup>

Importantly, the NMPF mobilized law to maintain animal-based products as the norm from which others presently deviate in terms of composition and nutritional content.<sup>97</sup> The NMPF charged that non-dairy companies are:

[C]apitalizing on the dairy halo of good health by pairing a standardized dairy term—like “milk” or “yogurt”, which consumers expect to contribute specific essential nutrients to the diet—with nutritionally-inferior, non-standardized, formulated plant-based foods is defrauding the consumer by misrepresenting the true nutrient content of these imitation products . . . NMPF again requests the FDA to significantly increase enforcement efforts to prevent the misbranding of certain food items that are imitations of standardized dairy products.<sup>98</sup>

By focusing on questions of substance and nutritional content, the NMPF attempted to deploy the law to maintain a food ontology that is both substance-based and animal-based. This leaves ethical questions as to the relations that make something or someone food ignored and excluded. Following this petition in 2010, class action

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MPF%20Comments%20on%20GFI%20Petition%2008%2029%202017%20FINA L.pdf [hereinafter Briczinski Letter].

<sup>93</sup> Mulhern 2017 Letter, *supra* note 92; Briczinski Letter, *supra* note 92.

<sup>94</sup> Letter from James Mulhern, President & CEO, National Milk Producers Federation, to Department of Health and Human Services, Food & Drug Administration (Feb. 21, 2019), <https://live-nmpf.pantheonsite.io/wp-content/uploads/2019/03/National-Milk-Producers-Federation-Citizen-Petition-and-Attachments.pdf> [hereinafter Mulhern 2019 Letter].

<sup>95</sup> Mulhern 2019 Letter, *supra* note 94.

<sup>96</sup> *Id.*

<sup>97</sup> Letter from Beth Panko Briczinski, Director, National Milk Producers Federation, to Food & Drug Administration (July 28, 2010), <https://www.nmpf.org/wp-content/uploads/file/NMPF-FOP-Comment-072810.pdf>.

<sup>98</sup> *Id.*

lawsuits making similar arguments were levied against plant-based food producers.

In 2013, a proposed class action lawsuit, *Ang v. Whitewave Foods Co.*, was brought against three producers of plant-based milks on the basis that products labeled as “almond milk” and “soymilk” duped consumers into buying these products when they believed that they were buying animal-based products.<sup>99</sup> The plaintiffs’ proposed class action was unsuccessful, with US District Judge, Samuel Conti, stating that it “stretche[d] the bounds of credulity.”<sup>100</sup> Judge Conti further held that no reasonable consumer would mistake the plant-based products in question for dairy-based products because their labeling clearly stated “almond” or “soy.”<sup>101</sup>

A similar case, *Gitson v. Trader Joe’s Co.*, was filed in California in 2013.<sup>102</sup> The plaintiffs proposed a class action on the basis that the defendant’s soymilk label violated existing standards of identity because the product failed to meet the legal definition of “milk.”<sup>103</sup> In December of 2015, US District Judge, Vince Chhabria, dismissed this claim,<sup>104</sup> holding that “soymilk” does not violate the Food, Drug, and Cosmetic Act by purporting to be a food that the FDA has given a “standard identity” to—in this case, milk—because “the standardization of milk simply means that a company cannot *pass off* a product as ‘milk’ if it does not meet the regulatory definition of milk” and here, the company did not, by calling its product “soymilk” attempt to pass off this product as milk.<sup>105</sup> Rather, Chhabria notes that “[t]he reasonable consumer (indeed, even the least sophisticated consumer) does not think soy milk comes from a cow. To the contrary, people drink soy milk in lieu of cow’s milk.”<sup>106</sup> These attempted class action lawsuits provide examples of attempts to mobilize law to both protect the interests of dominant food producers and secure normalized modes of eating.

In a 2017 case heard before the United States District Court for the Central District of California, class action plaintiff, Cynthia Painter, sued almond milk producer, Blue Diamond Growers, on the

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<sup>99</sup> *Ang v. Whitewave Foods Co.*, No. 13-CV-1953, 2013 WL 6492353, at \*1 (N.D. Cal. Dec. 10, 2013).

<sup>100</sup> *Id.* at 4.

<sup>101</sup> *Id.*

<sup>102</sup> *Gitson v. Trader Joe’s Co.*, No. 13-CV-01333-WHO, 2013 WL 5513711, at \*2–3 (N.D. Cal. Oct. 4, 2013).

<sup>103</sup> *Id.* at 2.

<sup>104</sup> *Gitson v. Trader Joe’s Co.*, No. 13-CV-01333-VC, 2015 WL 9121232, at \*2 (N.D. Cal. Dec. 1, 2015).

<sup>105</sup> *Id.* at 1–2.

<sup>106</sup> *Id.* at 1.

basis that its products are mislabeled.<sup>107</sup> The plaintiff argued that rather than using the term “almond milk,” these products should be labeled as “imitation milk,” as they stand in as substitutes for dairy milk, yet they do not have the same nutritional composition.<sup>108</sup> The court did not find in favour of the plaintiff, and, instead, held that a reasonable consumer would not be misled to purchase almond rather than dairy milk by assuming that these were nutritionally equivalent.<sup>109</sup> Upon appeal, the US Court of Appeals for the Ninth Circuit upheld the lower court’s ruling and additionally noted that the legal definition of imitation products centers on the substitution of inferior ingredients in the making of the same product.<sup>110</sup> Specifically, the Court noted that because dairy milk and almond milk are distinct products, each necessarily has a different nutritional profile.<sup>111</sup> It could not, then, be a case of imitation because, as the Appellee’s Answering Brief noted, imitation requires that producers “literally remove and replace the product’s natural or traditional ingredients with cheaper, less nutritious ingredients designed to increase yield or shelf life.”<sup>112</sup> This case serves as an interesting counterpoint to others in that it expressly positions almond milk as a distinct food rather than a substitution or “replacement” dairy product.

Matters of dairy ontology have not only been limited to the courts, as politicians have sought to strengthen the legal ontology of milk as *only* animal-based. Both Congresspersons and Senators have asked the FDA to enforce existing regulations and have proposed companion acts in both the House of Representatives and the Senate that would curtail the “mislabeling” of “imitation” milks in order to protect and defend dairy farmers.<sup>113</sup> On December 16, 2016, Congressman Peter Welch—a Democrat representing Vermont—alongside twenty-four other Congresspersons, wrote to the FDA, urging them to use their legal authority to enforce labeling standards.<sup>114</sup> In his press release on the matter, Welch describes this

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<sup>107</sup> Painter v. Blue Diamond Growers, No. CV 17-02235-SVW-AJW, 2017 WL 4766510, at \*1 (C.D. Cal. May 24, 2017), *aff’d*, 757 F. App’x 517 (9th Cir. 2018).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 2–3.

<sup>110</sup> Painter v. Blue Diamond Growers, 757 F. App’x 517, 519 (9th Cir. 2018).

<sup>111</sup> *Id.*

<sup>112</sup> Appellee’s Answering Brief at 24, Painter v. Blue Diamond Growers, 2017 WL 4766510 (C.D. Cal. 2017) (No. 17-55901).

<sup>113</sup> *Welch Leads Bipartisan Effort to Stop the Illegal Branding of ‘Fake Milk’ as Real Milk*, CONGRESSMAN PETER WELCH (Dec. 16, 2016), <https://welch.house.gov/media-center/press-releases/welch-leads-bipartisan-effort-stop-illegal-branding-fake-milk-real-milk> [hereinafter *Illegal Branding*].

<sup>114</sup> Letter from Peter Welch, Congressman Vt., et al. to Robert M. Califf, Comm’r FDA (Dec. 16, 2016), <https://www.nmpf.org/wp-content/uploads/Welch-Simpson>

as an effort to catalyze the FDA “to investigate and take action against the manufacturers of products they falsely claim to be milk.”<sup>115</sup> Their reasons for writing to the FDA are based on the declining sales of dairy, the increasing sales of plant-based milks, and the commensurate decline in dairy prices.<sup>116</sup> They claim that, “[s]ince 2014, milk prices have plunged 40 percent. During that same time, there has been a surge in the mislabeling of imitation “milk” products, including beverages produced from almond, soy, and rice.”<sup>117</sup>

Welch and others argue that the makers of these plant-based products should not be permitted to market them as “milk”.<sup>118</sup> They base this argument on their claim that, because “real” milk is “produced by the mammary gland,” it contains levels of vitamins, minerals, and protein that plant-based milks are unable to “mimic.”<sup>119</sup> In their letter to the FDA, they assert that while the legal framework to address this problem already exists, the FDA fails to enforce current labeling standards.<sup>120</sup> Following this public statement regarding the FDA’s inaction, Welch and others proposed legislation that would curtail the FDA’s discretion and oblige enforcement on the matter.<sup>121</sup>

On January 31, 2017, Welch and Senator Tammy Baldwin, a Democrat for the State of Wisconsin, introduced companion bills to the House of Representatives and the Senate “to require enforcement against misbranded milk alternatives.”<sup>122</sup> The long title of the Act is the *Defending Against Imitations and Replacements of Yogurt, Milk, and Cheese to Promote Regular Intake of Dairy Everyday Act*, while the short title is the *Dairy Pride Act* (“DPA”).<sup>123</sup> The purpose of the DPA is to prevent manufacturers of plant-based milks from using the word “milk” on the label of their products—a measure they claim will encourage the consumption of animal-based

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%20Letter.pdf [hereinafter Welch Letter].

<sup>115</sup> *Illegal Branding*, *supra* note 113.

<sup>116</sup> Welch Letter, *supra* note 114, at 1.

<sup>117</sup> *Illegal Branding*, *supra* note 113.

<sup>118</sup> *Id.*; see Welch Letter, *supra* note 114.

<sup>119</sup> Welch Letter, *supra* note 114; *Lawmakers Make Push on Milk Labeling*, CONGRESSMAN PETER WELCH (Jan. 31, 2017), <https://welch.house.gov/media-center/press-releases/lawmakers-make-push-milk-labeling> [hereinafter *Push on Milk Labeling*].

<sup>120</sup> Welch Letter, *supra* note 114.

<sup>121</sup> *Push on Milk Labeling*, *supra* note 119.

<sup>122</sup> Dairy Pride Act, H.R. 778, 115<sup>th</sup> Cong. (2017); Dairy Pride Act, S. 130, 115<sup>th</sup> Cong. (2017).

<sup>123</sup> S. 130; H.R. 778.

dairy products.<sup>124</sup> To justify their demand, the lawmakers behind the Act cite to the FDA definitions of “milk,” “cream,” and “dairy.”<sup>125</sup> They also claim that the health of adolescents, adult females, and the entire American population is in jeopardy due to low milk consumption.<sup>126</sup> They further argue that “imitation dairy products” are nutritionally unequal to dairy milk.<sup>127</sup> If passed, the DPA would *require* the FDA to enforce its existing legislation regarding the definition of milk.<sup>128</sup> Under the DPA, the FDA would also be required to issue a national guide for the enforcement of mislabeled products within ninety days, as well as to report to Congress within two years as to their progress on the matter.<sup>129</sup>

The DPA was not passed in 2017, but it was reintroduced on March 14, 2019 by Senators Baldwin and Risch.<sup>130</sup> As before, the bill is meant to prevent “fake” vegetable and nut milks from trading on “dairy’s good name.”<sup>131</sup>

#### IV. Defining Dairy, Erasing Animals

It is my position that the DPA defines “milk” and “dairy” in such a way that dairy cows, goats, and sheep are de-animalized to the extent that their use to this industry is unquestioned and their relationships to other animals and their offspring are erased.

The lawmakers who authored the DPA sought to maintain existing legal definitions of “milk” and “cream” as that resulting from “the complete milking of one or more healthy cows.”<sup>132</sup> Whereas “dairy” products can be from other milk-producing animals and labeled as such provided that they “contain[] as a primary ingredient, or [are] derived from, the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more hooved mammals.”<sup>133</sup> From these definitions, the inference

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<sup>124</sup> See *Push on Milk Labeling*, *supra* note 119; *Illegal Branding*, *supra* note 113.

<sup>125</sup> S. 130 §§ 2(7), 4(a); H.R. 778 §§ 2(7), 4(a).

<sup>126</sup> S. 130 § 2(3); H.R. 778 § 2(3).

<sup>127</sup> S. 130 § 2(5); H.R. 778 § 2(5).

<sup>128</sup> S. 130 § 4(a); H.R. 778 § 4(a).

<sup>129</sup> S. 130 § 4(b)–(c); H.R. 778 § 4(b)–(c).

<sup>130</sup> Dairy Pride Act, S. 792, 116th Cong. (2019);

Dairy Pride Act, H.R. 1769, 116th Cong. (2019). See generally Beth Newhart, *Senators Reintroduce Dairy Pride Act*, DAIRY REP. (Mar. 19, 2019), <https://www.dairyreporter.com/Article/2019/03/19/Senators-reintroduce-Dairy-Pride-Act#>.

<sup>131</sup> Newhart, *supra* note 130.

<sup>132</sup> S. 792 § 2(7); H.R. 1769 § 2(7).

<sup>133</sup> S. 792 § 4(a); H.R. 1769 § 4(a).

can be made that only animal-based milks can be labeled as “milk,” and the sale of human breast milk is prohibited.

The directionality of milk consumption is also fixed, as per these regulations, farmed animals produce milk to be consumed by humans, and not vice-versa. The commodification of animal milk also ushers our attention away from situations where cross-species feedings occur outside of a consumer market—for instance, when humans breastfeed orphaned animals or, in inter-species kinships, when animals of differing species nurse others. While human’s consumption of milk ought to provide the basis to consider cross-species kinship and to destabilize the assumed fixity of the species-barrier, these possibilities are largely foreclosed by existing legal definitions and standards of food identity. These are legal norms, which I believe both rely on and reinforce the belief that humans are above all others and, as a result, are entitled to the “food” produced by farmed animals.

Additionally, I argue that the legal stipulation that “milk” and “dairy” must be derived from the “complete milking” of the animal in question is another means by which animal relations are decided and denied through law. In the British context, a court in the early twentieth century ruled that, if milk sold on the market was not from the complete milking of a cow *because* the farmer chose to save some for the calf, then this would demonstrate the prioritization of the interests of the calf over that of human infants.<sup>134</sup> Concerns about “complete milking” are also tied to historical tropes about adulteration that date back to the early twentieth century, when it was a common belief that farmers kept the “higher-quality” hind-milk for themselves (or for nursing calves) and sold the lower fat fore-milk to consumers.<sup>135</sup> The first milk (fore-milk) was believed to be thinner and of lower quality, whereas the hind-milk was believed to be superior because of its higher fat concentrations.<sup>136</sup> I suggest that the US stipulation of “complete milking” reflects similar concerns and outcomes. If a cow’s entire milk supply must be directed to the dairy industry to meet the legal threshold for the sale of “milk,” she is precluded from nourishing her calf—who will then be used for dairy or veal depending on their sex.<sup>137</sup>

I argue that the breaking and erasure of cow-calf bonds is foundational to the dairy industry. In order to market milk as a food that is first and foremost for humans, the dairy industry must

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<sup>134</sup> ATKINS, *supra* note 78, at 213.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Gaard, *supra* note 58, at 612.

continually engage in a project of denying a bovine ontology of relational animality. The industry instead asserts a deanimalized ontology of cows as milk-machines who exist solely to nourish humans and to bolster and optimize human populations.<sup>138</sup> Nutritional claims about milk come together with biopolitical concerns about healthy children and healthy future populations in such a way that portrays this food as substance whose benefits outweigh ethical concerns related to its production. In fact, Congresspersons supporting the DPA justify the Act (and, thus, the resulting legal ontology of milk and dairy) based on milk and dairy's supposed nutritional irreplaceability, and the necessity of these substances for American well-being.<sup>139</sup>

### V. The Biopolitics of Milk and Nutritional Sciences

The lawmakers behind the DPA have leveraged broader anxieties about the nutritional state of the American population to justify a bill that explicitly uses law to “promote the regular intake of dairy everyday.”<sup>140</sup>

According to the DPA, the entire American population—in particular, adolescent boys, adolescent girls, and adult women—fail to meet the daily-recommended intake of dairy products as outlined in the American nutritional guidelines.<sup>141</sup> The DPA states that not only do youth fail to consume the recommended 3 cups per day as set out in the guidelines, but that dairy consumption tends to drop off during adulthood such that “more than 80 percent of the entire population of the United States does not meet the daily dairy intake recommendation.”<sup>142</sup>

The authors of the DPA take for granted milk's supposed health benefits and place it in the diet of humans, although various

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<sup>138</sup> Stănescu, *supra* note 20.

<sup>139</sup> See *U.S. Senators Tammy Baldwin and Jim Risch Stand Up for America's Dairy Farmers*, SENATOR TAMMY BALDWIN (Mar. 14, 2019), <https://baldwin.senate.gov/press-releases/dairy-pride-2019>.

<sup>140</sup> Dairy Pride Act, S. 792, 116th Cong. § 1 (2019). As discussed in the introduction, various food commentators and experts warn of an impending American crisis catalyzed by bad food choices. Obesity, diabetes, and heart disease are some of the problems that are supposedly plaguing Americans to the point that the quality and length of individual lives will be diminished, the security of the nation is threatened, proper parenting is impeded, and healthcare costs will be unsustainable. Anna Kirkland, *The Environmental Account of Obesity: A Case for Feminist Skepticism*, 36 SIGNS 463–85 (2011); MICHAEL POLLAN, *FOOD RULES: AN EATER'S MANUAL* (Penguin Books 2009); Talia L. Welsh, *Healthism and the Bodies of Women: Pleasure and Discipline in the War Against Obesity*, 1 J. FEMINIST SCHOLARSHIP 33, 35 (2011).

<sup>141</sup> S. 792 § 2.

<sup>142</sup> *Id.*

studies have contested the necessity of dairy for human health. For example, studies have shown the following: high milk consumption is linked to higher rates of mortality for cohorts of men and of women, and women also experience an increased likelihood of hip fracture;<sup>143</sup> neither a high calcium diet nor one high in milk consumption decreases the risk of hip fractures in women;<sup>144</sup> consumption of milk during childhood is related to an increased risk of colorectal cancer;<sup>145</sup> and diets high in dairy are related to an increased likelihood of mortality for men diagnosed with nonmetastatic prostate cancer.<sup>146</sup>

Yet, the authors of the DPA claim that when consumed in the manner directed by current national nutritional guidelines—guidelines that, in their original form, would not have included dairy<sup>147</sup>—dairy products “contribute about 67 percent of calcium, 64 percent of vitamin D, and 17 percent of magnesium”<sup>148</sup> of an individual’s daily recommended amounts. The nutritional profile of dairy contained in the DPA is essential to these politicians’ ontology of milk, however, it is apparently not the only factor. For example, the Act does not contemplate whether a plant-based product that is nutritionally identical to animal-milk could be considered “milk.”

As mentioned previously, the DPA authors contend that plant-based milks mislead consumers because these products do not have the same volume of vitamins and nutrients per serving as animal milks.<sup>149</sup> Yet, because they are labeled as milk, DPA authors claim that consumers would purchase vegan milks under the assumption that all products labeled as milk are nutritionally equivalent to animal milk.<sup>150</sup> However, the authors do not detail the nutritional differences between milks from cows, goats, or sheep. Here, the authors advance their claim on the basis that animal milks are both the alimentary and nutritional norm from which all other products

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<sup>143</sup> Karl Michaëlsson et al., *Milk Intake and Risk of Mortality and Fractures in Women and Men: Cohort Studies*, 349 *BMJ*, October 27, 2014, at 1, 3–4.

<sup>144</sup> Diane Feskanich et al., *Calcium, Vitamin D, Milk Consumption, and Hip Fractures: A Prospective Study Among Postmenopausal Women*, 77 *AM. J. CLIN. NUTR.* 504, 508 (2003).

<sup>145</sup> Jolieke C. van der Pols et al., *Childhood Dairy Intake and Adult Cancer Risk: 65-y Follow-up of the Boyd Orr Cohort*, 86 *AM. J. CLIN. NUTR.* 1722, 1726 (2007).

<sup>146</sup> Meng Yang et al., *Dietary Patterns After Prostate Cancer Diagnosis in Relation to Disease-Specific and Total Mortality*, 8 *CANCER PREV. RES.* 545, 545–46 (2015).

<sup>147</sup> James Hamblin, *How Agriculture Controls Nutrition Guidelines*, *THE ATLANTIC* (Oct. 8, 2015), <https://www.theatlantic.com/health/archive/2015/10/ag-v-nutrition/409390/>.

<sup>148</sup> Dairy Pride Act, S. 792, 116th Cong. § 2 (2019).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*



deviate, thereby narrowly delimiting alimentary relationships according to a substance-based ontology<sup>151</sup> in which nutrition and health are the only objectives worthy of consideration.

The nutrition-based concerns of the DPA authors dovetail with a specific vision of national biopolitics<sup>152</sup> in which the national food guide is a tool meant to direct the dietary options provided by state institutions and inform the consumption habits of individuals.<sup>153</sup> By appealing to the current Dietary Guidelines for Americans, the DPA positions human health as the only matter worthy of consideration regarding the definition of food.<sup>154</sup> As per the DPA:

The Dietary Guidelines state that most Americans are not meeting recommended intake for the dairy food group. Consumption of dairy foods provides numerous health benefits, including lowering the risk of diabetes, metabolic syndrome, cardiovascular disease, and obesity. . . . The Dietary Guidelines state that dairy foods are excellent sources of critical nutrients for human health, including vitamin D, calcium, and potassium, all of which are under consumed by people of the United States.<sup>155</sup>

This passage evinces how the DPA uncritically relies on the Dietary Guidelines to bolster their position.

Yet, the DPA's stated aim of promoting the daily consumption of dairy because the Dietary Guidelines recommend these products directly contradicts the original version of the 2015-2020 Dietary Guidelines proposed to Congress in 2015.

The development of the 2015-2020 Dietary Guidelines referenced throughout the DPA provides insight into the contingent and politicized nature of food ontologies. The Dietary Guidelines

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<sup>151</sup> Lisa Heldke, *An Alternative Ontology of Food: Beyond Metaphysics*, 15 *RADICAL PHIL. REV.* 67, 67–88 (2012).

<sup>152</sup> Biopolitics refers to the state's administration of and intervention into its populations at the level of the body. This form of intervention is done in a managerial way to optimize life and social wellbeing, what Foucault calls "making life." Unlike negative forms of power, such as sovereign power, in which the state has the authority to kill, biopolitics still retains this authority, but does so through non-intervention and/or neglect—i.e., "letting die." See MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 139 (Vintage Books Edition 1978).

<sup>153</sup> FOOD & DRUG ADMIN., *DIETARY GUIDELINES FOR AMERICANS 2015-2020*, at xi (2015) [hereinafter *DIETARY GUIDELINES FOR AMERICANS*].

<sup>154</sup> S. 792 § 2.

<sup>155</sup> *Id.*

are updated every 5 years.<sup>156</sup> For the 2015 revision, an expert panel of 15 academic researchers was assembled to make recommendations to the US House Committee on Agriculture.<sup>157</sup> After analyzing the findings of over four thousand peer-reviewed studies, the expert panel recommended that issues of environmental sustainability inform the guidelines.<sup>158</sup> The expert panel's acknowledgement of the need for food sustainability arguably shows that human nutrition must also consider the way in which food is produced.<sup>159</sup> Given the resource consumption and emissions entailed in animal agriculture, as well as the health impacts of meat, and the fact that grain used to feed farmed animals for their meat could be directly consumed by humans (thereby alleviating global food shortages), the expert panel said it would be inconsistent to recommend animal-based diets for the nation given the impact for both American and global populations.<sup>160</sup> Moreover, the expert panel stated that, in terms of human health, diets higher in plant-based foods were preferable.<sup>161</sup>

This was the first time that the relationships and effects of food production were acknowledged by an expert panel and brought to the attention of the House Committee on Agriculture overseeing the dietary guidelines.<sup>162</sup> The recommendations were met with fierce resistance, including backlash from the meat industry, which provides considerable financial support for the implementation of the guidelines.<sup>163</sup> Meat industry lobbyists threatened to withdraw their funding for the implementation of the nutrition guidelines if the final version of the guidelines did not recommend eating meat.<sup>164</sup> Congressmen Mike Conaway condemned the expert committee for “exceeding its scope” and Congressman David Scott condemned the

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<sup>156</sup> DIETARY GUIDELINES FOR AMERICANS, *supra* note 153, at 2.

<sup>157</sup> *Id.* at 7.

<sup>158</sup> FOOD & DRUG ADMIN., SCIENTIFIC REPORT OF THE 2015 DIETARY GUIDELINES ADVISORY COMMITTEE: ADVISORY REPORT TO THE SECRETARY OF HEALTH AND HUMAN SERVICES AND SECRETARY OF AGRICULTURE 5 (2015) [hereinafter REPORT OF THE 2015 DIETARY GUIDELINES ADVISORY COMMITTEE]; Hamblin, *supra* note 147.

<sup>159</sup> *Id.*

<sup>160</sup> REPORT OF THE 2015 DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 158, at 289.

<sup>161</sup> *Id.* (stating that “[c]onsistent evidence indicates that, in general, a dietary pattern that is higher in plant-based foods, such as vegetables, fruits, whole grains, legumes, nuts, and seeds, and lower in animal-based foods is more health promoting and associated with lesser environmental impact . . .”).

<sup>162</sup> Hamblin, *supra* note 147.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

committee for failing to recognize that US agriculture is “the single most important industry in the world.”<sup>165</sup>

For their part, pro-dairy politicians stated that the most pressing issues to be addressed by the dietary guidelines were not those of sustainability, but were about guaranteeing “that students have access to appealing and nutritious dairy products.”<sup>166</sup> Republican Congressman, Glenn Thompson of Pennsylvania, effectively foreshadowed the DPA by stating that efforts to facilitate milk consumption are a matter of state policy and asked the committee: “What can we do to remove policies that hinder milk consumption, and to promote policies that could enhance milk consumption?”<sup>167</sup> Because of the economic, cultural, and political position of animal-based industries, neither sustainability nor an overall recommendation for plant-based diets were included in the 2015 guidelines.<sup>168</sup>

The final 2015-2020 guidelines rely on a constrained understanding of nutrition in which nutrition is operationalized as being about the health of the individual eater and the national population.<sup>169</sup> These guidelines reflect an ontology of food in which relations, such as the impact and ethics of food production, are ignored in favor of a substance-based food ontology that supports dominant interests. The politics shaping the final Dietary Guidelines show how state nutrition programs can be used to support and create markets for agricultural industries.

These political and legal efforts to preserve animal-based milk ontologies are unfolding in colonial contexts in which domination has been made possible through the institution of capitalistic relationships. Fundamentally, these lawsuits and the proposed DPA attempt to use law to preserve a specific production process in which the very point of animal labor is to produce surplus that takes the form of milk, eggs, and meat.

As Dinesh Wadiwel has argued, life in general is the target of a capitalism that ensnares nature’s energy—ecological, animal, and that of racialized humans, especially.<sup>170</sup> Inasmuch as the “wage” for humans is kept deliberately low as to prevent workers from

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*; see generally DIETARY GUIDELINES FOR AMERICANS, *supra* note 153.

<sup>169</sup> DIETARY GUIDELINES FOR AMERICANS, *supra* note 153, at xi.

<sup>170</sup> Moore, *supra* note 36, at 115; Dinesh Wadiwel, *Chicken Harvesting Machine: Animal Labor, Resistance, and the Time of Production*, 117 S. ATL. Q. 527, 535-36 (2018).

purchasing the means of production and then freeing themselves of the captivity of wage labor, the wage then only allows humans the “freedom” to choose the manner in which they spend their wages. For Wadiwel, the grain fed to farmed animals is commensurable to the wage paid to humans in that the end result is ultimately the same: humans purchase subsistence (e.g., food), while animals are directly provided the subsistence to reproduce their labour capacity.<sup>171</sup>

The distinction is that animals in the food industry exist as “hybrid” forms of capital, made up of “*both constant and variable capital*. Food animals are deployed *as both* a raw material that will be ‘finished’ as a product by the production process *and simultaneously* labor that must work on itself through a ‘metabolic’ self-generative production.”<sup>172</sup> It is this specific form of animal-based labor that “real” milk ontologies seek to preserve milk and other dairy products as the result of a specific production process: animals as the property of capitalists who are worked upon by human labors and whom labor upon their own bodies.<sup>173</sup>

I argue that within a context of colonial humanism, it is capitalism’s investment and ordering of the natural that the DPA and “real” milk lawsuits seek to protect. It is my position that these legal battles to re-secure milk ontologies—and, consequently, a specific mode of producing “milk”—are made possible because of prevailing and biased nutritional science, a drive to protect mainstream American identities, and the interests of pro-dairy parties. If “milk” was not largely defined by a particular process (i.e., the complete milking of hooved mammals)<sup>174</sup> and nutritional content, then the terrain on which to argue over its “realness” or “fakeness” would be absent.

#### A. *Law and Nutritional Standards*

The DPA frames milk as a nutritionally superior food product for which an animal-based standard of identity must be maintained.<sup>175</sup> While the DPA’s ontology of food frames dairy products as foods that should be uncritically consumed to benefit the health of the individual, these health claims are steeped in enduring legacies of milk as a perfect and complete food essential to children’s development.<sup>176</sup> Current legal efforts that aim to secure “milk” as being only animal-based by appealing to its nutritional superiority

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<sup>171</sup> Wadiwel, *supra* note 170, at 530.

<sup>172</sup> *Id.* at 535.

<sup>173</sup> *Id.*

<sup>174</sup> Dairy Pride Act, S. 130, 115th Cong. § 4 (2017).

<sup>175</sup> *Id.* at § 2(8).

<sup>176</sup> DuPuis, *supra* note 27, at 74. See generally NIMMO, *supra* note 76.

are consistent with how milk has been used to further racist and biopolitical aims.<sup>177</sup>

It is unclear whether the supporters of the DPA are arguing that the FDA must enforce their regulations on the grounds that plant-based milks are fake *because* they are nutritionally unequal to cow's milk, or whether their fakeness is because plant-based milks are simply not the secretions of a lactating cow. Regardless, both claims defer to the force of law to position animal-based foods as the "real" food, from which imposters must be measured. While Congresspersons base their advocacy on nutritional equivalencies and the legal standard of identity as defined by the federal regulations, the social position of dairy exceeds its nutritional value and its contribution to the economy; it is deeply tied to hetero-normative notions of rural whiteness.<sup>178</sup> It then might be the case that the whiteness of milk (materially and ideologically) is inseparable from its connections to "wholeness," "completeness," and "purity." Extending this, I would argue that according to the dairy industry and its proponents, "real" milk cannot exist in non-white hands or in non-white spaces.<sup>179</sup> Thus, the "traditional family values" associated with the dairy industry and other rural agrarian industries are at stake.<sup>180</sup>

The DPA was introduced by Senator Baldwin from Wisconsin, where dairy farmers brand themselves as "America's Dairyland."<sup>181</sup> At \$45.6 billion USD per year,<sup>182</sup> dairy constituted approximately 43% of the agricultural economy of the state in

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<sup>177</sup> DUPUIS, *supra* note 27, at 90–124; Stănescu, *supra* note 1.

<sup>178</sup> Kelly Struthers Montford, *The "Present Referent": Nonhuman Animal Sacrifice and the Constitution of Dominant Albertan Identity*, 8 PHAENEX 105, 107–10 (2013); DUPUIS, *supra* note 27, at 92–97.

<sup>179</sup> See generally Cohen, *supra* note 81, at 130–31 (discussing the role of US courts and the constitution in milk's whiteness).

<sup>180</sup> See also Gwendolyn Blue, *If It Ain't Alberta, It Ain't Beef: Local Food, Regional Identity, (Inter)National Politics*, 11 FOOD, CULTURE, & SOC'Y 69 (2008) [hereinafter Blue, *If It Ain't Alberta*]; Gwendolyn Blue, *Branding Beef: Marketing, Food Safety, and the Governance of Risk*, 34 CAN. J. COMM. 229, 240–41 (2009); Kelly Struthers Montford, *The "Present Referent": Nonhuman Animal Sacrifice and the Constitution of Dominant Albertan Identity*, 8 PHAENEX 105, 114 (2013).

<sup>181</sup> Dairy Pride Act, S. 130, 115th Cong. (2017) (providing that the DPA was introduced by Senator Baldwin from Wisconsin). See, e.g., Hope Kirwan, *Is Wisconsin Still 'America's Dairyland' Or Does It Need a New Slogan?*, NPR (Nov. 1, 2017), <https://www.npr.org/sections/thesalt/2017/11/01/561427862/is-wisconsin-still-americas-dairyland-or-does-it-need-a-new-slogan>.

<sup>182</sup> DAIRY FARMERS OF WISCONSIN, PROUDLY WISCONSIN DAIRY FACTS (2019), <https://dfwblobstorage.blob.core.windows.net/ewcmediaccontainer/eatwisconsincheese/media/content/statistics/proudly-wisconsin-dairy-facts.pdf>.

2017.<sup>183</sup> The Dairy Farmers of Wisconsin emphasize that their dairy is nutritious and provide a multitude of programs for habituating dairy consumption in the diets of children and youth.<sup>184</sup> A section of their website, “Meet our Farmers” features profiles on Wisconsin dairy families.<sup>185</sup> Features often include videos and family photos of white, able-bodied farmers and their families, the name of their farm, how many milking cows their farm has, the number of generations supported by the farm, how many people they employ, and the (wholesome) values shaping their business.<sup>186</sup> They are often pictured with their heteronormative spouses and children, depicted as brothers, fathers, and/or sons working together.<sup>187</sup> One feature profiles a woman farmer, positioning her business as a feminist achievement.<sup>188</sup>

For his part, Congressman Welch lists “Fighting for Vermont’s Farmers” as one of his key political issues, which features a picture of himself and a young woman inside of a barn with dairy cows.<sup>189</sup> For Welch, agriculture is deeply related to regional identity and economy.<sup>190</sup> In a letter to the Secretary of the US Department of Agriculture, Welch and other congress members state:

As representatives from New England, where family dairy farms are an important piece of our culture, history, and economy . . . New Englanders have been milking cows since the 1600s. . . what our farmers see in action from the USDA is not reflected in your sentiment about the future of small *family* dairy farming.”<sup>191</sup>

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<sup>183</sup> Steven C. Deller, *The Contribution of Agriculture to the Wisconsin Economy: An Update for 2017* 1, UNIV. WIS. MADISON, <https://cced.ces.uwex.edu/files/2019/08/Contribution-of-Ag-to-WI-Econ-4-Update.pdf>.

<sup>184</sup> *Dairy Education*, DAIRY FARMERS OF WIS., <https://www.wisconsinmilk.org/Youth-and-Schools/Dairy-Education> (last visited July 9, 2020).

<sup>185</sup> *Meet Our Farmers*, DAIRY FARMERS OF WIS., <https://www.wisconsinmilk.org/Our-Farms/Our-Farmers> (last visited February 5, 2020).

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Issues*, CONGRESSMAN PETER WELCH, <https://welch.house.gov/issues> (last visited Feb. 28, 2020) (Welch includes a page on his list of issues discussing his support for Vermont dairy farmers).

<sup>190</sup> *Fighting for Vermont’s Farmers*, CONGRESSMAN PETER WELCH, <https://welch.house.gov/issues/fighting-vermont-s-farmers> (last visited Feb. 28, 2020) (captioning a photo on this issue page with the statement: “Peter is working hard to support Vermont’s farmers, especially struggling dairy farmers who are facing unprecedented economic challenges.”)

<sup>191</sup> Letter from Members of Congress to Sonny Perdue, Secretary, U.S. Dep’t of Agric. (Oct. 24, 2019), <https://courtney.house.gov/sites/courtney.house.gov/files/10>

Like dairy lobbyists and advocates before him, Congressman Welch invokes images of farming as a way of life that protects and reproduces “the family.” As such, an economic threat to farming industries is perceived as a cultural threat to traditional family values.<sup>192</sup> This focus shows that the family remains central to biopolitical strategies of alimentary normalization.<sup>193</sup> I contend that it is under the auspices of protecting “the family” (read: white, heterosexual, monogamous, and nuclear) and the values associated with the family farm, that legal efforts to preserve animal-based food ontologies are mobilized and supported. Therefore, legal milk ontologies constitute sites of struggle where “colonial reproductive politics,”<sup>194</sup> nutrition, and the domestication of land, animals, and mammalian milk intersect. Given that dairy has been integral to colonialism’s terraforming drive and requires the severing of relations between humans and nature, the severing of animals from their offspring and milk, and the transformation of dairy animals at the level of species, how we understand “real” milk in the Anthropocene exceeds the chemical composition of dairy and labeling technicalities so often the focus of lawsuits.

## VI. Conclusion

Much like colonial norms, dairy has been trafficked as natural and universal despite being a deliberate aspect of nation-making in settler contexts of Canada and the US. Animal agriculture is a mechanism that has used domesticated animals imported from Europe to transform and lay property claims to Indigenous lands.

It is my position that dairy fundamentally remains a colonial mechanism operating at the nexus of whiteness, able-bodiedness, humanism, and capital—which has at its core, the will to dominate the natural via domestication. It is also my position that domesticated animals in the settler contexts of Canada and the US continue to be ordered through a colonial legal grid that renders them intelligible as exclusively property and almost always as resources. Such colonial ontologies of animality are premised on a tidy species separation between humans and animals, with this translating into humans interpreting nature and animals as in need of human intervention. While the universalism of colonial ontologies is

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.24.2019%20New%20England%20Delegation%20Letter%20to%20Sec%20Perdue.pdf.

<sup>192</sup> See Blue, *If It Ain't Alberta*, *supra* note 180, at 72–75 (discussing the link between food production and local identity).

<sup>193</sup> JOHN COVENEY, *FOOD MORALS, AND MEANING: THE PLEASURE AND ANXIETY OF EATING* 152–53 (Psychology Press 2000).

<sup>194</sup> Cohen, *supra* note 3, at 270.

positioned as the inevitable outcome of historical processes, this should instead be recognized as a deliberate and foundational shift in relations. This supposed universalism continues to be challenged by an Indigenous metaphysics of interrelatedness.

It is my position that the dairy industry is only realizable through the institution of western ontologies of life that attach to and are remade through the institutions of nutritional science, the nation-state, and the family—all of which are undergirded and reconfigured by colonial structures. The contingencies of these ontologies are evident in plant-based milks, which trouble<sup>195</sup> the animal-capital production process that remains extremely profitable. While lawsuits and the DPA are, on their surface, disputes over labeling, I suggest that these are also legal strategies invested in the maintenance of colonial food ontologies and a specific method of milk production: animal-based dairying.

How plant-based milk products and dairy products made using cellular technology rather than animal agriculture will be regulated present opportunities for resisting both food norms and the colonial intervention and control of reproduction. This presents an opportunity for food law to move away from creating and bolstering dairy markets. Legally decentering milk from its position as the “real” standard from which all others deviate would not only entail a financial divestment from dairy industries that have detrimental environmental effects, but it would also challenge the total commodification of animal life, and meaningfully address an industry and its products that are correlated with disproportionate negative health effects for many non-white individuals.<sup>196</sup> Foundationally, divorcing milk from dairy would resist the severing of relationships between humans, animals, and the environment that are foundational and necessary to settler colonialism, racial capitalism, and animal agriculture. Such legal ontologies are all the more pressing in the Anthropocene.

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<sup>195</sup> See generally Iselin Gambert, *Got Mylk?: The Disruptive Possibilities of Plant Milk*, 84 BROOK. L. REV. 801 (2019) (providing a feminist, cultural, and legal analysis of the interruptive potential of non-dairy milks).

<sup>196</sup> Cohen, *supra* note 81, at 179–80.