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Dairy Tales: Global Portraits of Milk and Law

Jessica Eisen, Xiaoqian Hu & Erum Sattar*

Cow's milk has enjoyed a widespread cultural signification in many parts of the world as "nature's perfect food."¹ A growing body of scholarship, however, has challenged the image of cow's milk in human diets and politics as a product of "nature," and has instead sought to illuminate the political, scientific, colonial and postcolonial, economic, and social forces that have in fact defined the production, consumption, and cultural signification of cow's milk in human societies. This emerging attention to the social, legal, and political significance of milk sits at the intersection of several fields of academic inquiry: anthropology, history, animal studies, development studies, gender studies, food studies, postcolonial and decolonial studies, and more. In each of these contexts, milk is not only the product of an animal, but also a product of human social, cultural, and legal choice.

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¹ See E. MELANIE DUPUIS, *NATURE'S PERFECT FOOD: HOW MILK BECAME AMERICA'S DRINK* (N.Y. Univ. Press 2002); ANNE MENDELSON, *MILK: THE SURPRISING STORY OF MILK THROUGH THE AGES* (Alfred A. Knopf 2008); ANDREA S. WILEY, *RE-IMAGINING MILK* (Routledge 2011); DEBORAH VALENZE, *MILK: A LOCAL AND GLOBAL HISTORY* (Yale Univ. Press 2011); Mathilde Cohen, *Of Milk and the Constitution*, 40 HARV. J. L. & GENDER 115 (2017). While this introductory article primarily discusses cow's milk, it should be noted that in some jurisdictions, the milk of other non-human animals is more common in human diets. See, e.g., Erum Sattar, *Towards Industrial Dairy Farming in Pakistan? The End of Small Farms and the Transformation of Cattle-Rearing Practices*, 16 J. FOOD L. & POL'Y (forthcoming 2020) (discussing the relative prominence of buffalo milk in Pakistan).

This special volume of the *Journal of Food Law & Policy* brings together a series of “dairy tales,” each of which addresses some distinct, jurisdictionally-grounded aspect of the legal forces shaping milk production, distribution, and consumption. Taken together, these explore a particular and under-studied dimension of milk studies—the relationship between *law* and milk—from an interdisciplinary and interjurisdictional perspective. Jurisdictions canvassed in this volume include Canada, China, Pakistan, Trinidad and Tobago, Ukraine, and the United States. Through these studies, legal relations around milk are revealed as being shaped by race, class, ethnicity, gender, and animality. They are further revealed as being driven both by broad colonial, economic, and social forces, and by the choices, experiences, and power relationships of particular interspecies communities.

The present collection enriches existing explorations of milk within and across jurisdictions. As the interdisciplinary study of milk has amply demonstrated, milk is often represented in distinct and, at times, contradictory ways: as a symbol of purity and nature² and a symbol of advanced capitalism and commercialization;³ as an emblem of a distant agrarian past and as a harbinger of futuristic and technoscientific food production;⁴ as a universally revered and nutritionally perfect food⁵ and as a consumer product whose global reach is attributable to coercive colonial and economic practices;⁶ as

² See DUPUIS, *supra* note 1; WILEY, *supra* note 1; Jessica Eisen, *Milked: Nature, Necessity and American Law*, 34 BERKELEY J. GENDER L. & JUST. 71 (2019).

³ See, e.g., RICHIE NIMMO, *MILK, MODERNITY AND THE MAKING OF THE HUMAN: PURIFYING THE SOCIAL* (Routledge 2010).

⁴ See PETER ATKINS, *LIQUID MATERIALITIES: A HISTORY OF MILK, SCIENCE AND THE LAW* (Ashgate 2010); KENDRA SMITH-HOWARD, *PURE AND MODERN MILK: AN ENVIRONMENTAL HISTORY SINCE 1990* (Oxford Univ. Press 2014); Melanie Jackson & Esther Leslie, *Unreliable Matriarchs*, in *MAKING MILK: THE PAST, PRESENT AND FUTURE OF OUR PRIMARY FOOD* (Mathilde Cohen & Yoriko Otomo eds., 2017); Taija Kaarlenkaski, ‘*Machine Milking is More Manly than Hand Milking*’: *Multispecies Agencies and Gendered Practices in Finnish Cattle Tending from the 1950s to the 1970s*, 7 ANIMAL STUD. J. 76 (2018); Richie Nimmo, *The Mechanical Calf: On the Making of a Multispecies Machine*, in *MAKING MILK: THE PAST, PRESENT AND FUTURE OF OUR PRIMARY FOOD*, *supra* note 4; Deidre Wicks, *Demystifying Dairy*, 7 ANIMAL STUD. J. 45 (2018).

⁵ See DUPUIS, *supra* note 1; WILEY, *supra* note 1; ALISSA HAMILTON, *GOT MILKED?* (HarperCollins Publishers 2015).

⁶ See Mathilde Cohen, *Animal Colonialism: The Case of Milk*, 111 AM. J. INT’L L. UNBOUND 267 (2013); Yoriko Otomo, *The Gentle Cannibal: The Rise and Fall of Lawful Milk*, 40 AUSTRALIAN FEMINIST L. J. 215 (2014); Greta Gaard, *Toward a Feminist Postcolonial Milk Studies*, 65 AM. Q. 595 (2013); Iselin Gambert & Tobias Linné, *From Rice Eaters to Soy Boys: Race, Gender, and Tropes of ‘Plant Food Masculinity’*, 7 ANIMAL STUD. J. 129 (2018); Vasile Stănescu, *‘White Power Milk’: Milk, Dietary Racism, and the ‘Alt-Right’*, 7 ANIMAL STUD. J. 103 (2018). See also

a source of salutary and familial inter-species connection⁷ and as a source of animal abuse, exploitation, and harm—often in terms that echo and magnify gendered harm within human communities.⁸

The present collection stands to enrich and complicate these accounts. The colonial and post-colonial dimensions of dairying are engaged in the contexts of Trinidad and Tobago (Merisa Thompson, this issue) and Canada and the United States (Kelly Struthers Montford, this issue). Distinct political and economic structures shaping and being shaped by dairy relations are studied in the socialist and post-socialist jurisdictions of China (Xiaoqian Hu, this issue) and Ukraine (Monica Eppinger, next issue). The relationships between market interventions, technological change, and intensification of dairy production are the focus of inquiries respecting Pakistan (Erum Sattar, next issue) and the United States (George Frisvold, next issue). The details of regulatory interventions—regarding official dietary guidelines and animal protection, respectively—are explored in Canada (Maneesha Deckha, this issue) and in a cross-jurisdictional study of Canada and the United States (Jessica Eisen, next issue).

Tracing the history of dairy in Trinidad and Tobago, Thompson reveals a complex and evolving interplay between colonialism, animality, race, gender, and commercialization. She

ANDREA FREEMAN, *SKIMMED: BREASTFEEDING, RACE AND INJUSTICE* (Stanford Univ. Press 2019).

⁷ C.f. Jocelyne Porcher & Tiphaine Schmitt, *Dairy Cows: Workers in the Shadows?*, 20 *SOC'Y & ANIMALS* 39 (2012).

⁸ See, e.g., KATHRYN GILLESPIE, *THE COW WITH EAR TAG #1389* (Univ. of Chi. Press 2018); Kathryn Gillespie, *Sexualized Violence and the Gendered Commodification of the Animal Body in Pacific Northwest US Dairy Production*, 21 *GENDER, PLACE & CULTURE: J. FEMINIST GEOGRAPHY* 1321 (2014); Carol J. Adams, *Feminized Protein: Meaning, Representations, and Implications*, in *MAKING MILK: THE PAST, PRESENT AND FUTURE OF OUR PRIMARY FOOD*, *supra* note 4; Carol J. Adams, *Provocations from the Field: Female Reproductive Exploitation Comes Home*, 7 *ANIMAL STUD. J.* 1 (2018); Melissa Boyde, *The Dairy Issue: Practicing the Art of War*, 7 *ANIMAL STUD. J.* 9 (2018); Mathilde Cohen, *Regulating Milk: Women and Cows in France and the United States*, 65 *AM. J. COMP. L.* 469 (2017); Cohen, *supra* note 1; Kendra Coulter, *Beyond Human to Humane: A Multispecies Analysis of Care Work, Its Repression, and Its Potential*, 10 *STUD. SOC. JUST.* 199 (2016); Jessica Eisen, *Milk and Meaning: Puzzles in Posthumanist Method*, in *MAKING MILK: THE PAST, PRESENT AND FUTURE OF OUR PRIMARY FOOD*, *supra* note 4; Eisen, *supra* note 2; Greta Gaard, *Critical Ecofeminism: Milk Fauna and Flora*, in *MAKING MILK: THE PAST, PRESENT AND FUTURE OF OUR PRIMARY FOOD*, *supra* note 4; Gaard, *supra* note 6; Iselin Gambert, *Got Mylk? The Disruptive Possibilities of Plant Milk*, 84 *BROOK. L. REV.* 801 (2019); Yamini Narayanan, "Cow is a Mother, Mothers Can Do Anything for Their Children!" *Gaushalas as Landscapes of Anthropatriarchy and Hindu Patriarchy* 34 *HYPATIA* 195 (2019); Otomo, *supra* note 6.

begins with a puzzle: that milk is prominent in Caribbean diets despite high levels of lactose intolerance within the population. The history she details by way of explanation engages the intermingling of legal and economic power throughout various periods in the twin-island nation's history. Prior to colonization, Indigenous populations had no connection to either cattle or cow's milk. Livestock was first brought to the Caribbean by the Spanish as part of the colonial project to improve landscapes and peoples. The taste for milk and dairy produce was first imported by Europeans who established and ruled over an export-driven plantation economy that increasingly relied on the labor of enslaved African people. It was, on Thompson's account, the shifting of British legislative power to local administrators, the abolition of slavery and the attendant arrival of indentured laborers from India, that shaped the development of more robust domestic dairy economies. Arriving in Trinidad and Tobago with their own religious and cultural attachments to dairy, and with significant skills in dairying, Indian women in particular were central to the early local dairy economy. Colonial powers thus introduced milk to this jurisdiction not only through direct imposition, but also through the importation of another colonized population who brought their distinct local dairy practices with them. Throughout this process and beyond, colonial and postcolonial European power continued to shape this emerging economy and food practice—first, through regulations respecting sanitization and adulteration, and, later, through the arrival of Nestlé and the corporation's marketing and distribution of dairy products. In Thompson's account, these forces worked both to reinforce particular ideologies around the consumption of cow's milk and, ultimately to displace the dwindling local market.

Struthers Montford's article examines a number of recent legislative and litigation initiatives in the United States aiming to legally prevent plant-based products from using the word "milk" in their marketing and product naming (e.g., soymilk, almond milk, etc.). Struthers Montford argues that these recent efforts must be understood in the context of colonial introduction and imposition of milk and dairying in North America. On Struthers Montford's account, milk has formed an integral component of the European colonial project in North America, inextricably linked to the suppression and control of Indigenous peoples, legal systems, and lands. Milk, she argues, has been culturally linked to white supremacy, with this link, in turn, tied to a pervasive cultural coding of milk as a universal and perfect food. In Struthers Montford's view, recent litigation and legislative efforts to preserve animal milk's status as the standard and normative "milk" are best

understood as a continuation of the colonial project of domesticating North American peoples, animals, lands, and legal orders.

Hu frames China's dairy tale under the meta-narrative of milk as a vehicle for nation building, unveiling milk's multifaceted roles in colonialism, globalization, and the recent hardening of authoritarianism in China. In her narrative, military conquering, (semi-)colonialism, and advocacy by domestic elites propelled the cultivation of a taste for milk in modern China—a state in which milk had not formed part of the traditional diet, and in which lactose malabsorption remains prevalent. Among the reasons for dairy's growing role in China, Hu argues, are the international forces that were unleashed after China's entry into the World Trade Organization in 2001. Together, these shifts worked to flood the Chinese market with cheap dairy imports from the United States, Europe, and New Zealand, crushing the small Chinese farms created by China's property regime. According to Hu, what happened to Chinese dairy farmers is a microcosm to what globalization has meant for rural Chinese citizens: Since 2001, 155 million farmers and their sons and daughters have been pushed out of agriculture and out of their communities and pulled into factories and cities far away from home. The socio-economic dislocation and the subsequent governmental programs of social protection, Hu opines, may be creating a populist base receptive to paternalist governance and a political strongman in defiance of Western, particularly American, (neo)liberalism.

Eppinger's piece tracks Ukraine's Soviet and post-Soviet dairy histories, revealing dynamic interrelationships between international forces, national policies, and highly local individual and collective relationships amongst dairy maids and cows. Unlike many jurisdictions canvassed in this collection, Ukraine stands out as a place in which dairying has deep historic roots as a local practice, as opposed to more recent introduction through colonialism or economic globalization. Eppinger describes contemporary Ukrainian dairying as a primarily small-scale, often household-based, practice in which cows are hand-milked by dairy maids who know and name each individual cow. In an analysis foregrounding gender and agency, dairy maids are at the centre of Eppinger's account, shaping and responding to dramatic changes in local, national, and international contexts—from Soviet collectivization, to devastating famine, to official and unofficial decollectivization, to the emergence of an increasingly internationalized and corporatized food system. As Eppinger elaborates, Ukraine's dairy maids have not passively received the consequences of these transformations,

but have actively engaged and shaped the local manifestations of these national and international shifts.

Sattar's article explores the dynamic relationships between local dairy producers and international development agencies in Pakistan—one of the world's largest milk producers. As Sattar explains, milk production and consumption are widely regarded in Pakistan as integral to a natural and wholesome way of life. Tracing the history of the country's vast agricultural economy to British colonial rule and beyond, Sattar shows that dispersed small farmers and landless agricultural workers are now the primary producers of raw milk. Sattar details the increasing presence of foreign and national conglomerates working to integrate these small producers into modern value chains in order to supply urban consumers with modern packaged brands. This development trajectory for the dairy sector has emerged as a national priority of the Pakistani government, partly in response to well-funded projects of international development agencies such as the United States Agency for International Development (USAID). The increasing presence of corporate entities paying cash for milk has supplied crucial income to small farmers. However, Sattar argues, this corporatization and commercialization of milk has also compelled a focus on efficiency that has driven consolidation of dairy operations, imperiling the interests and survival of the very same small farmers whom the corporations and development agencies purport to aid. At the same time, Sattar explains, this search for efficiency has profound consequences for the lives of animals in dairying.

Frisvold traces the industrial and regulatory history of the United States dairy sector over the past century, with a focus on the role of market regulation. Frisvold's account traces the role of government in the establishment and maintenance of dairy cooperatives, and the subsequent support of dairy production through the ebb and flow of policies such as direct government purchases of dairy products, import controls and export subsidies, and disposal of domestic dairy surpluses through foreign relief, the School Lunch Program, and other social programs. As Frisvold explains, these governmental interventions have interacted with technological transformations, industry consolidation, and demographic shifts to create the United States' contemporary dairy economy: one in which most dairy products now come from large operations housing hundreds or thousands of cows, increasingly reliant on computers and highly specialized in their focus on dairy production (e.g., no longer growing their own forage or raising heifers on site). Frisvold emphasizes that dairy currently occupies a significant role in the

United States' diets and economies, and concludes by charting emerging regulatory and market challenges within the dairy sector. He notes, in particular, regulatory responses to the environmental and climate impact of dairy operations as well as proposed market interventions to protect dairy producers in the face of growing consumer interest in plant-based milk alternatives.

Deckha explores the relationship between personal dietary choices and official nutritional and agricultural policy in her study of recent changes to the Canada Food Guide. Deckha's contribution adopts a critical animal studies lens, interrogating the extent to which animal advocates critical of dairying should "celebrate" the recent "de-emphasis on dairy products" in the latest government-issued Canada Food Guide. Deckha's study concludes that, while there may be some cause for encouragement, this should be tempered by an appreciation for the cultural durability of animal-product consumption in Canada—particularly in light of studies demonstrating the intersection between animal-based diets and politics of gender, race, and social stratification. Moreover, Deckha notes, the official food guide's retreat from dairy represents only one component of governmental involvement in the food system. As Deckha observes, many other elements of Canadian governmental power are still deployed to support dairying—perhaps most notably through the maintenance of an elaborate system of supply management that continues to protect the Canadian dairy industry.

Eisen's article examines regulatory approaches to the protection of cows used for dairy in Canada and the United States. In particular, Eisen focuses on the role of private actors in standard-setting across both jurisdictions. As Eisen details, both jurisdictions deploy a range of approaches to farmed animal welfare protections. Across jurisdictions, however, a common thread is the reliance, in varying modes and degrees, on private industry actors to set legal standards for animal use and care. As Eisen explains, agricultural use of animals often engages or requires harmful practices for the convenience and economic benefit of producers, noting tail docking and calf separation as areas of special concern in the dairy sector. In this context, Eisen argues, the official and unofficial delegation of animal welfare standard-setting to producers is particularly problematic. In developing this critique, Eisen calls for the embrace of public law values—such as transparency, accountability, and impartiality—as crucial elements of meaningful animal protection regimes.

It should be emphasized that these case studies do not represent a comprehensive or even representative sampling of jurisdictions with significant dairy histories. For example, India's complex system of dairy cooperatives, and the unique constitutional and legal status accorded to cows in that jurisdiction, are not addressed in any detail.⁹ Nor is France, another major dairy-producing and dairy-consuming jurisdiction that has attracted the interest of legal scholars, given dedicated treatment.¹⁰ The issues and lenses canvassed are also selective—ranging from animal welfare, to dietary guidelines, to colonialism. The glaring concerns of climate change, environmental justice, and workers' rights related to dairying are just a few examples of directions not offered dedicated treatment in this volume, but well-deserving of further study.¹¹ The aim of this volume is to offer a glimpse into the complex and polyvalent forces and discourses engaged by milk and dairy, not to

⁹ See, e.g., ANDREA S. WILEY, *CULTURES OF MILK: THE BIOLOGY AND MEANING OF DAIRY PRODUCTS IN THE UNITED STATES AND INDIA* (Harv. Univ. Press 2014); Andrea S. Wiley, *Growing a Nation: Milk Consumption in India Since the Raj*, in *MAKING MILK: THE PAST, PRESENT AND FUTURE OF OUR PRIMARY FOOD*, *supra* note 4; Mathilde Cohen, *The Comparative Constitutional Law of Cows and Milk: India and the United States*, 7 *INDIAN J. CONST. L.* 1 (2017); T. N. Madan, *Wither Indian Secularism*, 27 *MOD. ASIAN STUD.* 667, 687 (1993); Narayanan, *supra* note 8; Yamini Narayanan, *Jugaad and Informality as Drivers of India's Cow Slaughter Economy*, 51 *ENV'T & PLAN. A: ECON. & SPACE* 7 (2019); Yamini Narayanan, *Cow Protection as 'Casteised Speciesism': Sacralisation, Commercialisation and Politicisation*, 41 *SOUTH ASIA: J. SOUTH ASIAN STUD.* 331 (2018); Yamini Narayanan, *Cow Protectionism and Bovine Frozen-Semen Farms in India*, 26 *SOC'Y & ANIMALS* 13 (2018); Krithika Srinivasan & Smitha Rao, *Meat Cultures in Globalizing India*, 39 *ECON. & POL. WKLY.* 13 (2015).

¹⁰ See Cohen, *supra* note 8. See also U.S. DEP'T OF AGRIC, DAIRY: WORLD MARKETS & TRADE (2019), <https://apps.fas.usda.gov/psdonline/circulars/dairy.pdf> (providing a jurisdictional accounting of the world's largest milk exporters, producers, and consumers).

¹¹ But see George B. Frisvold, *The U.S. Dairy Industry: The Role of Technological and Institutional Change*, 16 *J. FOOD L. & POL'Y* (forthcoming 2020) (providing a brief treatment of climate change). On dairying and climate change, see, e.g., Fredrik Hedenus, Stefan Wirsenius & Danieal J.A. Johansson, *The Importance of Reduced Meat and Dairy Consumption for Meeting Stringent Climate Change Targets*, 124 *CLIMATE CHANGE* 79 (2014); Stefan Wirsenius, Fredrik Hedenus & Kristina Mohlin, *Greenhouse Gas Taxes on Animal Food Products: Rationale, Tax Scheme and Climate Mitigation Effects*, 108 *CLIMATE CHANGE* 159 (2011). On dairying and environmental justice, see, e.g., *Environmental Racism*, FOOD EMPOWERMENT PROJECT, <https://foodispower.org/environmental-and-global/environmental-racism/> (last visited May 16, 2020). On dairy and workers' rights, see, e.g., Julia Jagow, *Dairy Farms and H-2A Harms: How Present Immigration Policy Is Hurting Wisconsin and Immigrant Workers*, 2019 *WIS. L. REV.* 1269; CARLY FOX, REBECCA FUENTES, FABIOLA ORTIZ VALDEZ, GRETCHEN PURSER & KATHLEEN SEXSMITH, *WORKERS' CTR. OF CENT. N.Y. & WORKER JUSTICE CENT. OF N.Y., MILKED: IMMIGRANT DAIRY FARMWORKERS IN NEW YORK STATE* (2017).

offer a comprehensive or final word on this rich and evolving area of study.

Selective as the enclosed studies may be, they nonetheless provide important critical and comparative insights. First, it is notable that every ostensibly ‘local’ ‘dairy tale’ is deeply intertwined with global economic and political imperatives—even as each tale also speaks to cultural and material contexts that are highly particular to the jurisdiction(s) under consideration. Second, the dairy tales presented here seem in some aspects to mirror or track broad social and economic developments, while in other aspects these tales illuminate milk’s truly exceptional social and cultural properties. Third, across jurisdictions, milk occupies complex social positions, engaging pressing and interconnected issues of human social and economic justice, questions about our relationship with the earth and its resources, and our obligations to the millions of animals globally who live and die at the center of our dairy relations. In other words, these case studies demonstrate that milk’s legal statuses and histories are at once local and interconnected, human and beyond, specific to this unique substance and resonant with broader patterns and relationships.

This collaborative project has uniquely engaged scholars with a wide range of perspectives on dairy production and consumption. Some in our group came to the project supportive of some or all aspects of dairy production and consumption as sources of important positive social, nutritional, and economic good. Others in our group approached the topic of dairying from a deeply critical posture, concerned about dairy’s negative environmental and social impacts, and about the isolation, kinship disruption, and physical harm experienced by many animals whose lives are defined by their use in dairy production. Still, others were relatively agnostic on these questions, having arrived at their study of dairy more obliquely, as peripheral to other questions at the core of their research agendas.

There were challenges and opportunities that arose in our efforts to bring together scholars with a range of disciplinary and ideological orientations toward their shared object of study: milk. Milk engages entrenched and vastly divergent intuitions about humans, animals, economics, and ‘the common good,’ making conversation across difference particularly challenging—and particularly important—in this field. Any effort to identify a single coherent approach or perspective across these articles would necessarily minimize the complexity of the divisions that shaped our engagement on these questions. While we did not leave this process

more united in our intuitions about the costs and benefits of human use of cow's milk, we did leave convinced of the value of dialogue across these differences. As milk studies—and milk *legal* studies—continue to develop, we hope that this collection serves as a model for engagement across academic disciplines, jurisdictions, and ethical commitments.