

EVERYDAY FORMS OF VIOLENCE:

FARMERS' EXPERIENCES OF REGULATION IN THE CANADIAN DAIRY INDUSTRY

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Introduction

In the field of socio-legal research, one of the more interesting theoretical developments in recent years has been the legal pluralism debate in anthropology (Pospisil 1971, Moore 1978, Griffiths 1986, Merry 1988, Vanderlinden 1989). Empirical studies of multiple legal orders have long interested anthropology (Nadel 1942), and an explicit focus on the colonial or post-colonial situation ultimately stimulated theoretical developments which have since reached into the ethnographic investigation of law in every setting. These developments have challenged definitions of the law as a social institution central to social order. In a recent volume of the *Journal of Legal Pluralism*, for example, Greenhouse and Strijbosch (1993: 3) introduce a set of papers on industrialized societies by noting that legal pluralism refers to "the presence or coincidence in a certain social field of more than one legal order". Vanderlinden (1989: 153-154) writes that pluralism is a "condition, thus a way of being, of existing" for the individual who in daily life is confronted with several, often contradictory, regulatory orders. Pluralism is not eliminated by the modern bureaucratic state's attempts at legal "hegemony" (Griffiths 1986: 3); in fact, the state often promotes pluralism (Galanter 1981: 21). In doing so, it has created a condition of existence for many people which I believe warrants more attention.

This paper traces some of the experiences of a set of such people, dairy farmers in an eastern maritime province of Canada. In doing so, it raises four particular theoretical issues with implications for future research. First, the paper demonstrates how rules proliferated in one, small regulatory field¹ (the New

1 The term 'field' is used in this paper in a multidimensional way. The

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Brunswick dairy industry between 1972 and 1992) to the point where law was experienced as a barrier rather than an aid to farmer interests. Second, I show how rules created barriers primarily through their interaction, which often had unforeseen consequences. Third, I explore the consequences of bureaucratization in this small, regulatory field. By bureaucratization I refer to structured organizations applying the rational use of regulation to solve problems. With their concomitant emphases on efficiency and management such organizations in turn often create a Kafka-esque amorality (see John Ralston Saul 1992). In the New Brunswick case, this was particularly true as historical contingencies were brought to bear. Finally, given that farmers are the target of many such regulatory fields, each creating perfectly legitimate and rational regulation but made without consideration of how the total regulatory picture affects the target group, I suggest certain implications for law as it is experienced by the individual as well as some directions for future research.

Methodology

The concept of semi-autonomous social fields, which Moore (1978: 57) defines as rule-generating entities which can coerce or induce compliance from individual members, is a significant methodological development in legal pluralism, providing a means to focus on the role of law in society. These fields originate in such diverse contexts as politics, religion, economics and common interest associations; examples include workers' unions, professional societies, and

general meaning is of an area which is defined and which has identifiable boundaries, however permeable. Following Sally Falk Moore (1978: 55-58), I use it to refer to a social arena of behavior which is characterized by a certain class of individuals as in a voluntary association, a business, or a set of professionals. As Moore (1978: 56) observes, "between the body politic and the individual, there are interposed various smaller organized social fields to which the individual 'belongs'", and these are more or less formally organized. One of the features of complex societies is that these fields are linked together and interact in a complex chain and one of the mechanisms by which they do this relates to the way that an individual simultaneously belongs to many different fields. As Griffiths (1986: 35) points out, the advantage of this view of the structure of social space, is that we are not concerned with 'things' but with 'social loci' which "can be perceived and defined in an endless variety of ways depending on the perspective and purposes of the observer". For example, where such social fields have the power to generate rules and enforce them, we are speaking of a 'legal field', which from the perspective of the individual who must cope with several, may become a 'legal jungle'.

veterans' associations. Their potential as forces of normative generation within small social fields makes them ideal for the study of specific problems in the relationship between rule and behavior (see Griffiths 1986, Merry 1988, von Benda-Beckmann 1988). Within these fields, law is a "distinctive manner of imagining the real" (Geertz 1983: 173), and as such forms a "discourse" which people employ under specific circumstances (von Benda-Beckmann 1983: 236-37). They tend to be rather volatile fields, but tracing the emergence of and conformity to rules and regulations is made easier by this and by their manageable dimensions (see Moore 1978: 54-58).

The concept of semi-autonomous social fields is not without problems (von Benda-Beckmann 1988, Rodman 1993), but its importance is in danger of being obscured by misunderstandings. For example, these fields should not be conceived of as impenetrable, bounded entities of an institutional character but rather as more or less bounded but always permeable, and always intersecting with other fields of social interest and activities (Griffiths 1986: 35). There is no doubt that much of the 'law' which the average person experiences, including rules about where they can live, how they can conduct their business, what social safety nets are available to them and other important considerations come from just these sorts of fields. As von Benda-Beckmann (1988: 899) notes, we need to better understand the operation of these semi-autonomous social fields, including the sources of the rules they generate and the effects of their interactions with other such fields within the same society.

In 1992 I began a research project which employed the concept of semi-autonomous social fields and which was designed to address some of von Benda Beckmann's questions. It focused on the New Brunswick Milk Marketing Board, which is a producer organization formed to administer supply management in the dairy industry of one Canadian province.² I conducted 43 long (qualitative) interviews (McCracken 1988) averaging two and a half hours each. These interviews were primarily with both past and present farmer-members of the marketing board, drawn from a sample which proportionally represented dairy

² Funding support for this research came from the Social Sciences and Humanities Research Council of Canada and from the University of New Brunswick Research Fund. A preliminary draft of this paper was presented to the Symposium of the Commission on Folk Law and Legal Pluralism, 13th International Congress of Anthropological and Ethnological Sciences, 29 July - 5 August, 1993. I am grateful to participants in the Symposium for their critical comments, especially Keebet von Benda-Beckmann. I would also like to acknowledge the invaluable assistance of Darcy Dignam, research assistant on the project.

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farmer numbers in all regions of the province. Interviews also included smaller numbers of board employees, dairy processors, and government bureaucrats. These interviews specifically elicited responses on how the regulatory order had emerged over time and how this had affected farmer strategies over the past twenty-five years. Through these interviews I became interested in the situation of the individual who 'receives' law, often as a result of membership in many different and sometimes contradictory, regulatory fields. Most people today have their behavior regulated to a high degree (e.g. Marcus 1992, van der Velde 1991, 1992). Dairy farmers are an excellent example of such regulated lives, as the dairy industry has a long history of bureaucratic regulation. It soon became obvious to me that the larger society had very little understanding as to how this affects farmer lives.

Regulation in the Canadian Dairy Industry - Problems of Rational Planning

As an 'essential food', the supply fluctuations, health implications and quality standards of milk products have been subject to regulation in many western countries since the turn of the century (Manchester 1983, Church 1985). Since milk degrades quickly and becomes unsafe under any but the most rigorous handling conditions of production, storage, transportation and sales, there have long been municipal zoning laws, Board of Health rules, Department of Agriculture control over herd health and improved farming practises and other regulations affecting dairy farmer behavior. In the early 1970s this already complex regulatory arena was made more complex when the Canadian government turned access to certain domestic agricultural markets into a resource to be divided among a limited set of qualified users. Production for such markets could then be rationally managed on the basis of market shares called quotas. This 'supply management' regime resulted in new layers of bureaucracy and associated regulation. In the case of milk, for example, both federal and provincial agents emerged, including the federal Canadian Dairy Commission (a crown corporation) and a number of provincial commissions and milk marketing boards. Together, these entities manage the distribution of milk quota among and its use by Canadian farmers. In the province of New Brunswick, a producer-operated Milk Marketing Board was formed in 1973 with a membership of over 1500. In 1992, my interviews among a sample of the remaining 500 members discovered that the organization had developed in a number of unforeseen ways. This paper particularly focuses on the problem of production management within the quota system, a problem that relates to the special nature of milk production.

Manchester (1983) identifies seven areas which make the dairy industry unique in agriculture, including specialized inputs, rate of output, entry or exit problems,

quality control, harvesting characteristics, marketing problems, and inherent instabilities due to the biological nature of the source. Several other factors could be added to this list, including the rapid development of alternative dairy and non-dairy products, and the highly competitive and politicized nature of the world trade in agricultural products. This special nature of milk production and marketing is all too frequently forgotten by economists and policy analysts (see Grubel and Schwindt 1977; Veeman 1982), and bears reiterating.

Unlike most agricultural crops, milk harvesting is done twice a day, year round and the product must be maintained in expensive refrigerated tanks until it can be shipped and consumed. Marketing must occur regularly to preserve peak quality, and requires expensive transportation machinery, advance scheduling and a capital-intensive, high-technology package to safely convert raw milk into food products. Since all agricultural products have become increasingly subject to global trade and politics, marketing patterns are rapidly changing. And in this volatile market, the rate of milk output is uniquely inflexible, despite recent technological innovations. You have to bring more cows on stream to increase milk production, and to reduce it you have to dry cows off. Production levels also have an inherent instability with levels varying daily, monthly and seasonally due to changes in feed sources, environmental conditions, and animal health. These same factors can also affect product taste and quality. Entry and exit from dairy farming requires capital structure shifts which are significant, even for the heavily-capitalized modern farm operations of today. The specialized inputs of dairy operations, including milking machines, highly mechanized milking barns and the dairy cattle themselves, have little or no value in other farm uses. While Canadian supply management was conceived as a means to address many of these problems, the special nature of dairy production and marketing continues to plague rational administrators.

The Rational Response: the New Brunswick Milk Marketing Board

The New Brunswick Milk Marketing Board is a rule-generating entity with the capacity to sanction infractions; many of the Board's powers are delegated. It was created by the provincial government to enact supply management within the province and many of its regulations are subject to review by a provincial government watchdog known as the Farm Products Marketing Commission. It is also responsible for implementing decisions taken by the federal Canadian Dairy Commission, although it is free to choose the means of doing so. However, the Board has carved out a significant niche of power during its years of development. In 1992, its responsibilities included directing milk to various markets, billing processors and paying producers, administering quota, milk transportation, calculating cost of production and negotiating price increases, advertising and promotions, public relations and lobbying for dairy farmers. In addition, it has

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stimulated the development of, and now has complicated legal ties with, several farmer-owned, commercial, transport and processing corporations. To complicate matters, the Board also cooperates with other agencies in the areas of agriculture, environment, labor, rural credit, and health and public safety on everything from extension programs (udder health, computerization, forage management), to debt administration, quality control (safety standards, taste, butterfat content, oxidization), herd improvement and environmental protection. A single example may show how these agencies interact. When a farmer receives Milk Marketing Board notification that his milk will not be picked up, this refusal could have originated with the Board of Health (on the basis of regular laboratory tests for somatic cell count or contaminants such as penicillin) or at the transport corporation for failure to maintain his driveway, or at the Milk Marketing Board for failure to conform to quota guidelines.

To market their milk legally, producers must hold quota, be a member of the Board, and support its financial operation through levies against their milk income. The New Brunswick Milk Marketing Board is run by a staff of 13, under the supervision of a Board of Directors comprised of ten farmers who are elected to represent various regions within the province. In interviews farmers often expressed the view that the Board was a democratic organization; however, many also expressed resentment that regulations were not 'grass roots' in origin, being developed by the staff and Directors in response not only to local conditions, but also to national and international conditions. Whatever their source, regulations have increased markedly in number and in complexity since the inception of the Milk Marketing Board, creating new problems for farmers. One of the clearest examples of this is in the area of quota.

Increasing Regulation: Quota in the Canadian Dairy Industry

Levels of production in a dairy operation are set by quota which represents a share of the total available market for dairy products. In the Canadian dairy industry there are two such markets: the industrial market for processed dairy products, and the fluid (table milk) market. Industrial milk is regulated by Market Sharing Quota (MSQ) which is calculated at the national level by the Canadian Dairy Commission, and then allocated among the Canadian provinces on the basis of historical production levels. Fluid Milk Quota (FMQ) is calculated at the provincial level on the basis of local demand, and along with MSQ is issued to farmers by the designated provincial agencies, which in the case of New Brunswick is the Milk Marketing Board.

Quota is one of the most contentious issues in supply management. It is a particular irritant for many economists, who view supply management as a

government-endorsed cartel and argue that quota represents a financial barrier to new entrants and that quota regimes are unnecessarily complex (Grubel and Schwindt 1977, Veeman 1982, Schmitz 1983, Faminow and Benson 1984). From the farmers' point of view, forced as they are to operate within quota guidelines, there are other, more important issues, such as who owns quota, how should its value be established and, most importantly, given the special nature of milk production, how can production regimes be managed to stay within quota limitations? Although all of these issues have resulted in disputes (and some court cases) between farmers and the agencies that administer supply management, the last issue alone has generated more problems and more regulation, than any other.

FMQ and MSQ have been misnomers ever since all milk production was brought to a single, high standard of quality, making it possible to supply both the table and industrial markets from the same source. Today fluid quota is calculated on the basis of a 'continuity supply', designed to meet the demands of the table consumption market, which fluctuate both within the week and seasonally. The industrial market is largely satisfied by milk which cannot be disposed of on the fluid market. In New Brunswick, when a farmer ships out milk, as much as possible of it will be sold as fluid milk and thus will count against production limits set by his fluid quota holdings. The remainder will go as industrial milk at a lower price, and will count against his industrial quota holdings. The majority of New Brunswick dairy operations have both kinds of quota.³ Calculating the amounts of milk needed to fill quota, as well as financing the purchase of and managing production within FMQ and MSQ have become severe problems for New Brunswick farmers, as will be demonstrated.

Acquiring Quota

Quota transfer in New Brunswick was subject to relentlessly increasing regulation between 1973 and 1992. Dairy farms in operation in 1973 were allocated quota

3 In the anthropology of modern bureaucracies, there can never be even the illusion of timelessness. In August 1993 while I was presenting a version of this paper in Mexico City, the quota system described herein was changed to a 'one-quota system'. In December of 1993, while I was in the process of revising the paper for publication, Canada's supply management system was abandoned when the Federal government agreed to drop Article 11 and became a signatory to the latest agreements on the General Agreement on Tariffs and Trade. As of early 1994, when this paper is being put into final form, dairy farmers in New Brunswick do not know what the future of their industry will be.

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based on the type of milk they produced and the levels of production they were able to reach after an advertised lead time. Any FMQ acquired after that time had to be purchased; MSQ was freely available until the mid-1980s, after which time it had to be purchased as well. Since the number of New Brunswick dairy farm operations have dropped considerably while those remaining have increased in size, the majority of farmers operating today have had to buy quota. When they did so, they had three choices; in order of diminishing expense, they could buy FMQ, or used MSQ, or unused MSQ. Differences in prices between FMQ and MSQ relate to two things, prices for milk in the fresh versus the industrial market, and the different way in which the two types of quota are calculated. FMQ is the most expensive quota to buy because prices for milk destined for the fluid milk market are higher than those in the industrial milk market. FMQ is calculated on daily litres of production while MSQ is calculated on annual kilograms of butterfat. Thus, when a farmer sells MSQ on the exchange, his holdings have to be divided into used and unused portions to distinguish that percentage of the annual production limit already filled from that available to be filled in the first year of purchase. Buyers pay slightly less for MSQ which they will not be allowed to fill until the new dairy year.

From 1973 to 1983, quota could be acquired in many ways, which included but were not restricted to quota transfers within families, temporary transfers due to catastrophe, transfers by purchase of herd alone, transfers by purchase of herd and farm, and transfers between business partners. This made for significant flexibility to accommodate fluctuations in farm operation output. However, soon there were complaints that some of these methods enabled 'sharp operators' to make connections and acquire quota unfairly. The Board responded by establishing a monthly quota exchange to facilitate quota purchases, and also moved to restrict the non-sale transfer options. Soon new complaints arose that the quota exchange was being used to speculate in variations in quota prices which prompted a series of new regulations, culminating in significant barriers to quota acquisition. The monthly exchange, for example, operates by setting a "market clearing price" of quota based on "that price at which a volume of quota offered for sale equals the volume of quota bids for purchase" (New Brunswick Milk Marketing Board 1992a: Sec. 2(p)). Offers to buy or sell, stating the amount of quota involved and the desired prices, must reach the Board offices by a specific date to be included in a particular month's exchange. Offers to sell quota at prices higher or offers to purchase quota at prices lower than those established in that monthly exchange, will not be successful. Quota prices have been rising steadily, increasing seven-fold between 1982 and 1991. It can now cost in excess of \$8,000 to acquire sufficient quota for one cow's annual production. Most farmers borrow the money to purchase quota, but they do not know until their bid has been judged successful, how much quota they have bought (or sold), or at what price.

There are three significant areas of contention in the present system; all three involve Board practises which shift quota from farmers to the Board and subsequently can cost farmers a financial loss. In the first practise, the Board takes a portion (an assessment of between 15 and 25%) of all quota offered for sale by farmers. In the second practise, the Board acts to 'balance the exchange' by buying and selling quota itself in order to better match supply and demand in any given month. In the third practise, the Board confiscates unsold quota after three quota exchanges. The Board can make a reasonable management case for all three of these practises. For example, the Board assessment which is taken on all quota sold provides for a 'float' of quota to cushion quota cuts and to fund graduated entry programs for new farmers. The Board's power to buy and sell quota on the exchange arises because the amount of quota offered for sale and wanted for purchase in any month can be extremely variable, and the Board argues that this practise benefits everyone using the exchange. Finally, the confiscation regulation arises from the difficulty of administering production to meet the demand for milk when there is quota issued but not being filled. Farmers who have gone out of production need to be prevented from keeping their quota on the exchange indefinitely while waiting for higher prices.

However, in each case farmer dissatisfaction is also logical. Most farmers in business today have had to buy a significant portion of their existing quota. The assessment taken on all quota sold represents a financial loss to the farm operation, and consequently there has been increasing farmer resistance to it. This finally culminated in a court case in 1993 in which a group of farmers argued that quota was their property and the Board had no right to seize it. The court refused to rule on who actually owned the quota, whether the Board who issued it or the farmer who paid for it, holding that it did not have jurisdiction over the case (*McCarthy et al. v New Brunswick Milk Marketing Board*). According to the New Brunswick supply management legislation, only the government-appointed Farm Products Marketing Commission could rule on a dispute involving the Board. This Commission approved the assessment rule in the first place and supports the view that the Board is the owner of quota and that farmers only pay for the privilege of using it. This situation has led some farmers to question the Commission's role as dispute mediator, given its involvement in approving the rules under dispute.

Perhaps because of these types of problems with the exchange, farmers often prefer to acquire quota in other ways. In 1988, only 28% of the total quota transfers went through the quota exchange. However, the alternatives have not remained problem free, and so-called abuses have led the Board to tighten the rules for each type. For example, family transfers could formerly be made to all kinds of relatives, including brothers, uncles or nephews; they are now restricted to "immediate family" defined as: "grandfather, grandmother, father, mother, son, daughter" (New Brunswick Milk Marketing Board

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1992a: Sec 2(1)). Accusations of quota speculation rackets led to restrictions on transfers of milking herds, transfers of ongoing operations, and transfers into partnerships or corporations; quota transferred by these methods cannot be sold again within specified time limits. Allegations of 'convenience partnerships' and 'false corporations' resulted in new rules to ensure the original owner of quota remained a bona fide member of any new business operation utilizing it. Catastrophe transfers are now made only at the Board's discretion. The end result of such increasing restriction is that managing production within quota guidelines has become extremely difficult.

Managing Production Within Quota Guidelines

The basic rules for maintaining production levels set by quota are quite simple. If a dairy operation falls below 90% of the production volume set by the quota it holds, the amount of quota which represents that underproduction is confiscated by the Board. Overproduction, on the other hand, is addressed by financial levies, currently set at \$40 per hectoliter, which are used by the Canadian Dairy Commission to acquire, store, market or dispose of surplus production. But, as more than one farmer observed, cows are not taps that you can turn on and off, or adjust to control the volume of output. Therefore, a certain amount of flexibility is seen by farmers to be an essential aspect of any production regulation system; in fact, however, as the New Brunswick Milk Marketing Board operated over time, the initial flexibility in the system was eroded. Increasingly, as farmers struggled to remain within quota production levels, each new strategy they devised was undercut by regulation from the Board.

For example, when the system began, the normal farmer strategy was to overproduce slightly to avoid loss of quota. The original overproduction levies did not act as a deterrent; farmers viewed the lower after-levy return as an acceptable price for the increased amount of milk sold and for the protection of their quota holdings. After higher levies were introduced, farmers responded by balancing overproduction at one point in the dairy year with underproduction at another. Since production was calculated semi-annually, a levy assessed or quota confiscated could be recouped later if total production during the subsequent period brought the annual balance within quota limits. Also, the Board refunded farmers proportionately at the end of the dairy year if the annual provincial production did not exceed total provincial MSQ allotments. Farmers began to rely on a juggling act in which some money paid out in levies or quota seized during the early part of the year was later returned. Those are now spoken of as 'the good old days'. Unfortunately, regulation increased at the same time as other historical developments increased farmer problems.

Cumulative Contingencies

Economic and political events in Canada and on the international scene have culminated in new pressures on Canadian dairy operations. These events have sometimes directly added to the regulatory burden farmers face. But more often they have placed an increasing emphasis on 'efficiency' in the management strategies of the regulatory bodies which has indirectly increased regulatory output.

For example, in the late 1980s the Canadian government introduced an unpopular 7% Goods and Services Tax (GST) which in most provinces is applied 'pyramid' fashion with provincial sales taxes assessed on top of the federal ones. In New Brunswick, for example, the two taxes were assessed on products at the cash register in such a way that the consumer paid over 20% in sales taxes. Canadians responded by travelling across the border in large numbers to shop in the GST-free United States. In 1989 New Brunswick fluid milk sales fell almost 8% as Canadian shoppers in the States picked up cheaper milk along with their other purchases. This drop in local demand was exacerbated by health-concern related 'lifestyle changes' including lower-fat diets which resulted in a lower overall national consumption of dairy products. And the decline in domestic demand coincided with increased international pressure on Canada's supply management system during negotiations on the General Agreement on Tariffs and Trade (GATT); disposing of excess on the world market was politically unacceptable. The Canadian Dairy Commission correspondingly become more concerned about surplus production. The Commission increased the pressure on provincial agencies to control overproduction, and unilaterally made cuts in the industrial quota holdings to reduce production levels.

As a result of this series of events, in 1991 New Brunswick dairy farmers were faced with a serious problem. Less and less of their milk output could be marketed as fluid milk and thus be used to fill their fluid quota (FMQ). Despite this, farmers still had to maintain fluid production levels at 90% or better to avoid losing FMQ. Meanwhile, ever-larger amounts of their milk output had to be sold as industrial milk (at a lower price), thus filling production levels set by their industrial quota (MSQ). But the Canadian Dairy Commission was periodically cutting back on farmer MSQ holdings. Further, since sale volumes in the fluid and industrial markets were only known after the fact, when the monthly producer statements were received, farmers were finding it impossible to know how closely they were approximating the production levels set by their two kinds of quota. Many farmers gambled that, on average, 75% of their milk would be sold as fluid and the rest would go as industrial milk. However, fluid sales dropped below 68% and most farmers did not have sufficient MSQ to cover the milk that had to go to industrial markets instead. This forced many operations to pay overproduction

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levies of thousands of dollars on this industrial milk, despite the fact that their FMQ production levels remained unfilled. The interaction of numerous Canadian dairy regulations, as well as the effects of international trade tensions, meant that farmers were placed in a no-win situation.

The simplest and most direct approach to solving these problems was the periodic purchase and sale of either FMQ or MSQ to cover shortfalls in production of the former and overproduction in the latter. However, this option was unworkable because the assessment taken on all quota sold made it too costly. Further, quota cuts and changing milk sales patterns reduced farm income at the same time that the capital costs of acquiring more quota became prohibitive. Most farmers were reluctant to purchase more quota for other reasons, as well. First, future quota cuts could result in farmers having to pay for quota that was lost to cutbacks before it could pay for itself. Second, the trend in the GATT talks, taken together with the Free Trade Agreement with the United States, and the North American Free Trade Agreement with Mexico convinced many farmers that their government planned to discontinue supply management, making quota valueless, a prediction reinforced by later events.⁴

Other solutions were countered with changes to the regulations. For example, some farmers juggled their production regime in order to supply more milk early in the dairy year and gradually dry off cows as industrial quota production limits were approached. The Board moved to block this strategy, arguing it would make it difficult to satisfy the fresh milk market towards the end of the dairy year. Under the old regulations, farmers were allowed to average their output over three months so that underproduction in one month could be balanced by overproduction within the next few months. Under the new rules, fluid quota had to be met on a monthly basis and farmers had quota confiscated if they failed to maintain quota levels for two months in a row. In addition, MSQ production had to be spread out over the year (New Brunswick Milk Marketing Board 1992b). The interaction of these various regulations, both those directed at quota transfer and those directed to the maintenance of quota production levels, was such that farmers had no legitimate route that they could use to address changing production and demand levels and to offset quota cuts.

⁴ In fact the Prime Minister fulfilled these expectations when he announced in December 1993 that there would be no government compensation for quota when supply management ended. His argument was that quota had not cost farmers anything and if they had speculated and bought their neighbor's quota, that was their problem (Daily Gleaner 1993: 1).

Some farmers sold butter or cheese at the farm gate to circumvent the Milk Marketing Board; a court case in another province demonstrated that the numbers of such 'rogue' farmers was probably on the increase across Canada (British Columbia Milk Marketing Board v. Bari Cheese et al., 1993). And there were also reports of some 'cow tourism' such as van der Velde (1991) found in Holland, where farmers illicitly lent each other cows to balance production levels. In practical terms, however, farmers could not lease, lend, borrow or 'finesse' quota quickly enough to balance production problems. Managing production became an exercise in frustration. Cows were brought on-stream in response to underproduction only to have the farm enterprise overshoot quota production limits in the next month. Faced with the increasing costs of shipping the overproduction they felt was necessary to prevent confiscation of quota, farmers were left with few alternatives, the most popular one being milk dumping.

Bureaucracy and Everyday Forms of Violence

The impact of such cumulative contingencies on individual farmers is difficult to convey. Reading through the interview transcripts, I am struck over and over again by the level of frustration and sense of personal failure farmers express. As owners and managers of large capital operations, they recognize that by normal economic calculations, their business would be seen as unsuccessful. Average annual returns on investment of labor, time, money and energy are ridiculously low; family members who contribute labor normally go unpaid, creating strains in relationships; debt loads are high and cash flow problems chronic; public support for farmers is low, farmers' political clout is declining as the rural sector of the population declines, and bureaucratic regulation in their industry continues to increase. More than one farmer expressed the opinion that they were idiots to remain in the business. While Canadians are all familiar with the chronic state of crisis in our agricultural sector, it was surprising to find it unrelieved in those sectors supported by supply management, where a rational bureaucracy was in place to support farmer interests.

New Brunswick dairy farmers express the conviction that things would be worse without supply management; on the other hand, each liter of milk poured down a drain, or each levy assessment made against their milk cheque, gives them a sense of failure.⁵ Over the years of increasing regulation, their particular production

5 For example, any farmer who admitted to dumping milk, spoke at the same time of the criminal nature of this act given world hunger. Interestingly, this was expressed as self blame: "We should be feeding the hungry - not pouring this down the drain!"

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management problems have increased rather than decreased, and in many ways the Milk Marketing Board as an organization does not seem to be 'on their side'. An example is the milk price-setting formula used by the Board. It is based on the actual cost of production and is calculated on a cost-per-liter basis. A random sample of farm operations is surveyed to collect the cost data. However, before the final averaging is done, thirty percent of the "least efficient" (i.e. highest cost per liter) producers are removed from the data base, and the resulting price is based on the remainder. Each time the price is recalculated this way, another thirty percent of farmers find themselves categorized as 'inefficient producers'. While this is a rational approach to promoting industry efficiency, it harms individual farmers, who find themselves confronted with a Kafka-esque organization whose reasoning often escapes them.

For example, most farmers I interviewed openly admitted to not understanding various central aspects of the Board operations. Examples included issues of incomprehensible monthly statements, the way the prices are arrived at on the quota exchange, the claim that the Board's purchases and sales of quota were 'balancing the exchange', the failure to cut FMQ to respond to lower sales volumes, and the workings of the regional representation at annual meetings. Farmers who raised these questions with Board directors or staff reported that they were often made to feel stupid or incompetent. In a very real sense, the Board has become just another faceless organization that farmers have to deal with on the basis of very little understanding.

Is there a Scapegoat?

When people seek a rational explanation for the Kafka-like experiences of farmers, Board members and Milk Marketing Board staff, the outcome is often scapegoating. Free trade, the GST, GATT, NAFTA, greedy processors, retail kickbacks, insensitive politicians, and even aunts who cross-border shop and then ask you to plow their garden, have all been targeted for blame during interviews. Of the many players in the Canadian dairy industry, are any true culprits with responsibility for the farmers' situation? It is easy to blame the provincial Milk Marketing Board, and a number of farmers interviewed did so, although many others disagreed. In fact, the Board has its own set of difficulties, which Directors claim many farmers do not understand.

Milk pricing, for example, is one of the most contentious and politically sensitive issues the Board faces. Consumers and the media blame supply management if milk prices increase. For this reason the New Brunswick Milk Marketing Board has elected not to ask the Farm Products Marketing Commission for a fluid milk price increase, despite the fact that data collected during the past several 'cost of production' studies has suggested the need for one. The Board fears a public

backlash and a further drop in sales. Many potential strategies that would assist farmers in meeting production level problems exacerbate Board marketing problems, and the reverse is also true. For example, despite overproduction problems, the Board must have a 'production sleeve' to meet unexpected consumption increases and processing plant demand fluctuations. This means that farmers must continue to produce at levels slightly above actual consumption figures and bear the cost through overproduction levies when the milk cannot be sold to fluid processors. These sorts of situations create stresses between farmers and their milk marketing board which are not easily resolved.

The Board's relations with dairy processors in the province are similarly fraught with difficulty. Since milk transport costs are born by the Board through transport levies against farmer income, the dairy processors have centralized plant operations by shutting plants down in more remote regions of the province. This has forced the Board into transporting longer distances, increasing farmer transportation levies and resulting in increased farmer frustration with the Board. However, there is little provincial competition remaining in the processing industry as the number of dairies has steadily declined; the Board has little choice if it is to maintain milk markets. Meanwhile, the dairies have their own set of problems which make them ineligible as scapegoat candidates.

In New Brunswick, consumption levels are not high enough to maintain continuous processing, and even the larger, centralized plants only run four days of the week. The plants must have sufficient milk on hand for processing days and cannot take milk during non-processing days as quality and shelf-life problems already affect customer satisfaction. These and other processor problems are related to the low population density and widely scattered settlement patterns of the province, as well as to consumers' weekly cycle of buying patterns. The national dairy scene and supply management restrictions also create problems for processors at the provincial level. While the Milk Marketing Board has advice from the Canadian Dairy Commission that farmers need to reduce some milk component production levels, particularly butterfat, local processors have experienced shortages. For example, a butter plant recently issued a plea to farmers to increase production of the butterfat component since there was insufficient for their projected sales in newly-discovered, overseas markets. Meanwhile, in the atmosphere surrounding the GATT negotiations, the Board was aware that the country could not dispose of any more skim milk powder (a by-product of the manufacture of cheese and butter), and that the Federal government refused to provide price supports for industrial milk destined for overseas dairy product markets. Subsequently, they advised farmers to ignore this plea, even though it would help address their production level problems.

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While individual farmers are faced with problems of juggling production levels, the Board also finds it difficult to juggle the sometimes contradictory supply and demand messages it gets from its market and from the Canadian Dairy Commission. Processors meanwhile cannot make sense of a management regime in which they shut down for lack of butterfat while producers pay levies to dispose of excess milk. What many outsiders view as a result of contradictory policies or poor management begins to look rather like Medusa's head when examined in more detail.

And New Brunswick dairy farmers are not only subject to marketing boards, but to many other regulatory fields. Mapping these regulatory fields involves recognizing the several arenas of social action in which dairy farmers participate. For example, New Brunswick dairy farmers are members of: 1) several kinds of farming organizations restricted to dairy production (purebred cattle associations, processing cooperatives, national lobby groups); 2) several kinds of general farming organizations (such as national and provincial agricultural associations); 3) groups targeted by government bureaucracy (the self-employed, employers, rural producers, military veterans, woodlot owners, etc.); 4) various politico-administrative units including municipalities, provinces and the nation state. At the government level alone, this makes them subject to all kinds of regulation, originating in sources as diverse as debt review boards, departments of environment, highways, health and safety, employment and agriculture. Each of these creates regulation which impinges directly or indirectly on farmers. A few examples may illustrate this point.

Those New Brunswick dairy farmers who are involved in purebred cattle operations can already see a conflict looming as a result of the proposal to introduce the use of recombinant bovine growth hormone (BGH) into Canada. This hormone increases the milk productivity of individual heifers, and may be necessary to make Canadian dairy farmers competitive in any environment of 'free trade' in dairy products with the United States. But the purebred associations resist the adoption of this technology because it 'fouls' the production records of purebred stock and makes selective breeding difficult. Farmers are already concerned that any 'leaner, meaner' dairy industry in Canada may force farmers to use the hormone while purebred associations ban its use.

Beyond the specific concerns of dairy farming, many dairy operations in New Brunswick confront regulations which affect all rural producers. The Department of Environment, for example, has regulations preventing livestock from grazing within a specified distance from any water course, nor are livestock to cross a water course in their regular turn-out to pasture without safeguards. As one farmer pointed out to me, during the spring, half of his property is cross-crossed with 'water courses' making it impossible to comply with these regulations.

Regulations limiting the spreading of manure on fields to certain times of the year are similarly illogical given local environmental conditions.

Dairy farmers also have to deal with regulation not specifically geared to farmers; one example relates to conflict between consumer information and product labelling regulations enacted at the national level, and the dairy industry's efforts to counteract declining milk consumption. The industry is aware that many consumers are misled by milk packaging and erroneously assume that "two percent milk" refers to the fact that two percent of the fat has been removed. Given concerns about the fat content of dairy products, the industry hoped to label two percent milk as "ninety-eight percent fat free"; however, government regulations on food labelling in Canada prevent this. The national welfare and unemployment insurance schemes are another example of legislation which originates with the federal government and which has an indirect affect on farmers. Many farmers face difficulty in getting farm laborers and they argue that the regulations controlling eligibility in these schemes work against seasonal rural labor demands. Provincial legislation also comes under attack from farmers. For example, the Department of Highways in New Brunswick enacted weight-restriction legislation designed to protect secondary road surfaces from damage resulting from heavy transport equipment use during the months when spring run-off destabilizes the road surface. This legislation failed to consider the position of dairy farmers, most of whom live on secondary highways, and all of whom require regular milk pickup by tractor-trailer tanks exceeding the weight limitations. Although the Department of Highways was ultimately convinced to exempt the milk trucks from this legislation, farmers still must break several traffic regulations and highway restrictions whenever they move their own farm equipment from field to field using local highways.

These few examples demonstrate the process which I call Kafka-ization. The number of rules that a farmer is subject to increases every day. Many of these come from regulatory sources having a direct bearing on farming; even in this restricted sphere, many are contradictory and a lot seem arbitrary. In many cases, farmers must break the rules in order to conduct their business. Other 'indirect' regulatory fields impinge on farmers and some interact with regulations directed at farmers in ways clearly unanticipated by the legislators. As one farmer commented, while Board regulations result in many farmers having to dump milk to remain within production guidelines, future regulation by the Department of Environment may leave them with no place to dump it.

Theoretical Implications and Future Directions for Research

This paper focuses on 'felt law', that is, law as it is experienced by the individual. It demonstrates that the individual can be and often is placed in extremely difficult

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positions, where law is experienced as a highly fragmented and frustrating regulatory environment rather than a pillar of social order. In James Scott's book (1985), *Weapons of the Weak*, he chronicles the various everyday forms of resistance which 'peasants' are able to deploy to resist domination. This article investigates another side of modern life; that is, the everyday forms of violence experienced by those individuals who are the targets of regulation as employed in modern bureaucratic societies. The preliminary findings of this ongoing research suggest that we need to direct future research efforts to a better understanding of these everyday forms of violence. Towards this end, Moore's concept of the semi-autonomous social field is an "appropriate subject of study" in that it provides an excellent window on the world of experienced law. Interviewing many members of the New Brunswick Milk Marketing Board allowed me to focus on a specific regulatory field as well as a specific social field of action. This has led to the recognition of several important theoretical issues as well as several suggested areas of future research.

For example, after interviewing many dairy farmers, I realized that, while they experience law as a regulatory nightmare, they continue to conceptualize law as an internally and logically consistent institution. While both rank and file members and the Milk Marketing Board directors acknowledge that regulations have gotten more complex and more oppressive, most also emphasize the necessity for rules. Farmers are generally supportive of supply management with its associated bureaucracy; most see no better way to go about implementing it. Most farmers seem to turn to rule-creation as the only legitimate route to problem solving. They obviously view legal institutions and processes as efficacious and cannot see beyond this instrumental view of the law to explain how the institutions produce such unsatisfactory results in their individual lives. Farmers rarely see beyond the image of legal institutions in order to better understand their own experiences as subjects of the law.

For me, this raised the problem of how the individual grapples with the meaning of their experiences, which in turn brought to mind Taussig's (1987) use of Joseph Conrad to explore 'the construction of the colonial reality' and associated 'cultural logics of meaning' for the Putumayo rubber frontier at the end of the nineteenth century. Taussig explicitly contrasts these 'symbolic' cultural logics of meaning with our present demand for the 'rational explanation' (Taussig 1987: 246). But as he notes elsewhere (Taussig 1992), the present-day 'rational' cultural logics of the western world create their own cultural spaces. I would argue that the concepts of legal centrism and rational bureaucracy serve as dominant cultural logics of meaning in creating those spaces.

Legal centrism, or the belief that law is central to social order (Collins 1982: 10-12), combined with the "determined application of reason" to bureaucratic

organization (Saul 1992) has created an enduring cultural space in western societies. This space allows violence to be done to any individual who stands at the intersection points of the multiple legal and bureaucratic jurisdictions of our world, by supporting the argument, for example, that in achieving social goals, the needs of the many outweigh the harm done to a few. If Conrad provides a window onto the heart of darkness in the Putumayo, Kafka does the same for the trial of modern life.⁶ In his introduction to a volume on agrarian law, for example, Franz von Benda-Beckmann (1992: 12) comments on the "Kafka-like experiences" of rural people such as the Dutch farmers who fall under the jurisdiction of both national and European Community dairy regulation. I heard about similar Kafka-esque experiences, some of which are recounted in this paper. Such experiences occur despite a high level of farmer involvement in the administration of Canadian supply management.

How can we explain these "Kafka-like experiences"? Why does law not behave in a rational manner once set on its course? Why do we not get the outcomes we plan for? I believe von Benda-Beckmann suggests part of the answer when he writes:

Both the magic charm and scapegoat vision of law are based upon structuralist-functionalist assumptions, the idea that legal structures and norms directly cause or determine action and its consequences. (Benda-Beckmann (1989: 130).

When people orient their behavior towards this instrumental idea of law, problem solving through law creates rational and powerful bureaucratic institutions to administer the resulting legal constructs. This is one source of 'semi-autonomous social fields'. But as John Ralston Saul (1992) points out, the rational, and especially the efficient, bureaucratic institution is amoral in that it is not subject to nor concerned with moral or ethical judgement or distinction. The goal of such institutions is to administer the law efficiently. And since there are increasing numbers of them in our highly bureaucratized societies, the individual who is the target of the regulations of more than one of them is confronted with numberless and difficult demands with which it is often impossible to comply fully. Therein lies the source of the violence. As a dominant cultural logic of meaning, the structural functional view of social engineering through regulation has found increasing expression in the years following the Second World War, as bureaucracy becomes the answer to the ever-increasing complexity of our lives. Our faith in reason may not be misplaced, but perhaps our faith in blind justice is. As Vanderlinden (1989: 153) argues, we need to get beyond the tendency of the

6 Taussig (1993: xiii, 254-5) employs a different Kafka text in his work on mimesis and alterity. See also generally Pawel 1984; Thorlby 1972.

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State system to "conceal the inevitable failure of its totalitarian ideal", and one aspect of this is to recognize that individuals do not experience a single, rational, regulatory order, but a multiplicity of sometimes contradictory ones.

One literary critic writes that at the beginning of this century, only Kafka and Weber "were fully and creatively aware" that "ours is an age of unprecedented institutionalization" (Stern 1976: 25). Kafka is often credited for inventing the literary expression of the fundamental distrust in which we hold our social institutions, and for exposing the 'non-private and institutional' character of the evil they can do (Ibid: 25). But Kafka goes farther than this because his protagonists are not mere victims. In *The Trial*, Joseph K only becomes worried about his 'case' when he becomes aware of the 'great organization' which is at work on it (Kafka 1937: 45). Paradoxically, it is also then that he feels some pride in the 'complexity' of 'his trial'. As farmers discussed their experiences with me, I often felt an echo of Joseph K in their approach to the Milk Marketing Board - although it was hurting them personally, it was a great and important organization which was benefitting farmers as a whole. As Stern (1976: 35) points out, Joseph K's arrest amounts "to some strange validation" - farmers also see their experiences as a strange validation of the power of the system to do good or evil. Stern (Ibid: 37) later speaks of "bondage to the law", and farmers certainly felt bound by a legal centrist notion that only rules can solve problems. Perhaps what is also validated in Kafka's novels and short stories, is simultaneously our present cultural logics of meaning and our own profound distrust in them. We distrust our social institutions because they so often fail us as individuals. On the other hand, we can conceive of no more rational, utilitarian, efficient way to organize ourselves and achieve group goals. While our social institutions so often visibly act in an amoral manner, they continue to offer up the hope of solutions to intractable problems - not to mention avenues of power. Kafka's Joseph K., was after all, a powerful man in one of the major institutions of our day, the modern banking enterprise. And yet this could not save him, perhaps because his death validated the system he lived by. As one farmer said:

I'm not looking after myself as an individual. I'm looking after myself as a whole, as a market system. Do it! [Referring to cutting fluid quota.] If it hurts me, I'll take the hurt, but let's make the system better!

This implies, of course, that there is a single unitary system which is the problem, when in fact this farmer, like so many other members of modern democratic societies, is the target of many different regulatory systems. And these systems operate without an awareness of how their regulations are experienced by real people, living in a world of rapidly multiplying regulation. My research into the lives of New Brunswick dairy farmers continues to track the extent to which

multiple regulatory sources are creating intersecting sets of regulations with unintended consequences.

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