

## RECENTRING FOOD LAW AND POLICY: CONNECTING PEOPLE AND PLACE

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The challenges facing our food systems are largely well known. Our current models of production, harvesting, and consumption are causing major destruction to the environment, uprooting communities from their land and means of production, disrupting social relations, and dramatically changing diets for people across the globe as well as here in Canada.<sup>1</sup> It is equally clear that how we govern—specifically, the laws, policies, and regulations that shape our food system—and the ideologies about growth, development, efficiency, safety, and so on that underlie them create and enable these challenges.<sup>2</sup> Scholars and practitioners

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- <sup>1</sup> For sources discussing the state of Canadian food systems, see e.g. Valerie Tarasuk, Tim Li & Andrée-Anne Fafard St-Germain, “Household Food Insecurity in Canada, 2021: Research to Identify Policy Options to Reduce Food Insecurity” (2022) PROOF, online (pdf): <<https://proof.utoronto.ca/>> [perma.cc/AHT3-3FHP] (on food insecurity); Human Rights Watch, “‘My Fear Is Losing Everything’: The Climate Crisis and First Nations’ Right to Food in Canada” (21 October 2020), online (report): <<https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada>> [perma.cc/NMW9-NY2T] (on food security and the state of food systems in the North) [Human Rights Watch]; Nadia Lambek, “Social Justice and the Food System” in Heather McLeod-Kilmurray, Angela Lee & Nathalie Chalifour, eds, *Food Law and Policy in Canada* (Toronto: Thomson Reuters, 2019) (on general challenges facing Canada’s food system) [Lambek]; K Kerk, CZ Levkoe & R Roy, *Community Food System Report Card* (Ontario: Thunder Bay & Area Food Strategy, 2023), online: <<https://foodsystemreportcard.ca/wp-content/uploads/2023/01/FSRC2022-B-JAN2023-WEB.pdf>> [perma.cc/A5C2-HFJY] (on challenges facing Thunder Bay). For sources discussing the state of global food systems, see e.g. Walter Willet et al, “Food in the Anthropocene: The EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems” (2019) 393:10170 *Lancet* 447 [EAT-Lancet Commission]; International Panel of Experts on Sustainable Food Systems “Another Perfect Storm?” Special Report by IPES-Food (May 2022), online (pdf): <<https://ipes-food.org/wp-content/uploads/2024/03/AnotherPerfectStorm.pdf>> [perma.cc/K3LM-ZXD9] [IPES Food]; High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, “Food Security and Nutrition: Building a Global Narrative Towards 2030” (2020), online (pdf): Food and Agriculture Organization of the United Nations <<https://openknowledge.fao.org/>> [perma.cc/2WLX-A833] [HLPE].
- <sup>2</sup> Angela Lee, Heather McLeod-Kilmurray & Nathalie Chalifour, “Introduction: Food Law and Policy in Canada” in Heather McLeod-Kilmurray, Angela Lee, & Nathalie Chalifour, eds, *Food Law and Policy in Canada* (Toronto: Thomson Reuters, 2019) (discussing the role of food law and policy) [McLeod-Kilmurray et al]; Lambek, *supra* note 1 (discussing how Canada’s food laws and policies often marginalize actors within the food system and create conditions of vulnerability); Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity” (September 2012) Metcalf Foundation, online (pdf): <<https://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>> [perma.cc/S6PG-C9CB] (discussing the impact of Canada’s laws on migrant agricultural workers) [Faraday]; Sarah

have demonstrated the need for diversified and resilient food production, harvesting, and consumption models that restore Earth's vitality, ensure economic viability for farmers and other food supply chain actors, and contribute to food systems that work for people and for the planet.<sup>3</sup> We also know that transitions to sustainable and equitable food systems need to be rooted in partnerships with Indigenous communities, ensure social and environmental justice, and enable democratic control and accountability.<sup>4</sup> The questions we now need to ask are, how do we get there? And what role can (and should) law and policy play in this transition?

In November 2023, a collection of legal academics, lawyers, scholars from other disciplines, municipal and public sector officials, community workers, activists, students, and others met in Thunder Bay, Ontario, to discuss these very questions. The conference—*Recentering Food Law and Policy: Connecting People and Place*—was co-organized by the Canadian Association for Food Law and Policy<sup>5</sup> and the Bora Laskin Faculty of Law. Our goal was to approach the questions differently than is commonly done. Often conversations around

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Berger Richardson, “From Slow Food to Slow Meat: Slowing Line Speeds to Improve Worker Health and Animal Welfare in Canadian Abattoirs” (2021) 59:1 Alberta L Rev 99 (discussing the impact of food safety standards on workers’ rights); Christiana Miewald, Sally Hodgson & Aleck Ostry, “Tracing the Unintended Consequences of Food Safety Regulations for Community Food Security and Sustainability: Small-Scale Meat Processing in British Columbia” (2015) 20:2 Local Env 237 (discussing the impact of food safety standards on farmers); Sarah Berger Richardson & Nadia Lambek, “Federalism and Fragmentation: Addressing the Possibilities of a Food Policy for Canada” (2018) 5:3 Can Food Stud 28 (discussing the challenges of food system governance caused by Canada’s federal structure).

3. See e.g. Human Rights Watch, *supra* note 1; Faraday, *ibid*; EAT-Lancet Commission, *supra* note 1; IPES Food, *supra* note 1; HLPE, *supra* note 1.
4. On partnerships with Indigenous communities, see Human Rights Watch, *supra* note 1; Charles Levkoe et al, “The Indigenous Food Circle: Reconciliation and Resurgence through Food in Northwestern Ontario” (2019) 9:B J Agric, Food Sys, Community Devel 101; Michael A Robidoux & Courtney W Mason, eds, *A Land Not Forgotten: Indigenous Food Security and Land-Based Practices in Northern Ontario* (Winnipeg: University of Manitoba Press, 2017); Priscilla Settee & Shailesh Shukla, eds, *Indigenous Food Systems: Concepts, Cases, and Conversations* (Toronto: Canadian Scholars, 2020); Amanda Wilson et al, “Strengthening Sustainable Northern Food Systems” (2020) 7:3 Arctic 292. On democratic food systems, accountability, and food justice, see Nathan Bellinger & Michael Fakhri, “The Intersection between Food Sovereignty and Law” (2013) 28:2 Nat Resources & Env 45; Priscilla Claeys & Karine Peschard, “Transnational Agrarian Movements, Food Sovereignty, and Legal Mobilization” in Marie-Claire Foblets et al, eds, *The Oxford Handbook of Law and Anthropology* (Oxford: Oxford University Press, 2022); Priscilla Claeys & Nadia Lambek, “In Search of Better Options: Food Sovereignty, the Right to Food and Legal Tools for Transforming Food Systems” in Nadia CS Lambek et al, eds, *Rethinking Food Systems: Structural Challenges, New Strategies and the Law* (Dordrecht: Springer, 2014); Charles Levkoe & Amanda Wilson, “Policy Engagement as Prefiguration: Experiments in Food Policy Governance through the National Food Policy Dialogue in Canada” in Peter Andrée et al, eds, *Civil Society and Social Movements in Food System Governance* (London: Routledge, 2019); Charles Levkoe et al, “Civil Society Engagement in Food Systems Governance in Canada: Experiences, Gaps and Possibilities” (2023) 12:2 J Agric, Food Sys, Community Devel 267; Peter Andrée et al, eds, *Civil Society and Social Movements in Food System Governance* (London: Routledge, 2019).
5. The Canadian Association for Food Law and Policy (CAFLP) is a “network and community of lawyers, legal academics, law students and others working or studying in the broad field of food law and policy in Canada and abroad. Through conferences, continuing education, the production/sharing of resources and information, scholarship and collaborative research networks, the CAFLP stimulates dialogue, connects practice and the academy and vice versa, supports students, promotes awareness of food law and policy issues and advances the field and practice of food law and policy in Canada and abroad.” See Canadian Association for Food Law and Policy, “About” (last accessed 5 December 2024), online: <<https://foodlaw.ca/caflp/about>> [perma.cc/DG6C-9ZEF].

food law and policy—and food system governance more broadly—happen in and focus on Canada’s southern urban centres. While agriculture, fishing, or northern food insecurity might feature on the agenda, an integrated and comprehensive examination of the challenges and opportunities faced by northern, remote, rural, and Indigenous food systems is often missing. As we gathered at the Bora Laskin Faculty of Law, we aimed to centre the experiences of these regional food systems and the communities that depend on them while also exploring the interconnections between our local, regional, and national food systems.

The result was three days of intense conversation, collective learning, new connections, and, of course, this Special Issue of the *Lakehead Law Journal*.<sup>6</sup> The authors in this collection embody the conference theme, each offering reflections and analysis from a vantage point outside the “centre.” While their focus (or “centre”) is not uniformly rural, remote, northern, and Indigenous food systems, the authors each offer a new take on a well-travelled issue. Two of the papers centre voices not normally at the heart of policy making: new entrant farmers and Canada’s culturally diverse communities. In doing so, they examine governance structures from the perspective of traditionally underrepresented food system actors and ask what sorts of laws and policies might be implemented to support these populations. The other two papers critique loci of power within food systems. Taking on industrial agriculture and the so-called promise of lab-produced meats, the authors argue for shifting toward more ecological and just forms of production and the need to have proper laws and policies in place to both enable this transition and hold actors accountable for their claims of sustainability. The authors each reflect in their own way on the constant drive for “innovation” in food systems and what may be lost when innovation focuses on technologies that have damaging impacts on the environment and concentrate power in the hands of a few actors.

We turn first to the papers that recentre new food systems actors. In “Putting Down Roots: Assessing New Entrant Programs for Dairy and Broiler Farmers in Ontario,” Van Boekel explores challenges faced by new entrant farmers. These farmers are often the first in their families to farm in Canada or are returning to farming after generations away from the land. While a story is often told of an aging farmer population and dwindling numbers of family farmers, these new entrants are bucking the trend. They want to return to the land—or in Van Boekel’s terms, “put down roots.” They are often excited about exploring environmental approaches to agriculture and want to offer an alternative to the industrial agriculture model that is increasingly pervasive in Canada. And yet they face many challenges, some of which stem from current supply management schemes. Van Boekel argues that while supply management systems in Canada have many benefits, policy fixes in the form of new entrant programs are needed to ensure fair access and participation for these farmers. For Van Boekel, these new policy initiatives should allow farmers who lease rather than own their farmland to access animal quotas. He similarly argues for the leasing of quotas to new entrants. Van Boekel also proposes that supply management schemes should support new entrants who use alternative production approaches, such as organic, free range, and small-scale production (citing examples of new ideas such as the Artisanal or Specialty Breeds Chicken Programs). Allowing these new farmers access to supply management, Van Boekel argues, will ensure our

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<sup>6</sup> For those interested in learning more about the conference proceedings, a full program is available on the website of the Canadian Association for Food Law and Policy. See “Canadian Association for Food Law and Policy” (last accessed 5 December 2024), online: <<https://foodlaw.ca/home2023>> [perma.cc/DFY3-MG3P].

food system is not concentrated in the hands of a few actors with giant farms while increasing food system diversity and allowing for farmer renewal.

Sioufi Stansbury also seeks to place often-ignored food system actors at the centre of her analysis. In her article “Immigrant Communities in Canada and the Right to Culturally Appropriate Food” she tackles the under-researched topic of meeting the food needs of Canada’s diverse populations and communities. She reminds us that the human right to food is about the right to adequate food, where adequacy is determined by a number of factors, including cultural preferences.<sup>7</sup> It is also the right to feed oneself and ones’ community with dignity.<sup>8</sup> She clarifies that these ideas distinguish the right to food (and food sovereignty) from food security, the pervasive way in which hunger in Canada is discussed. Her paper highlights that Canada is in violation of its international obligations to respect, protect, facilitate, and provide the right to food. These violations are not only clear in the high rates of food insecurity in Canada but importantly in the failure of government to address questions of access to culturally appropriate food when developing policy solutions. For Sioufi Stansbury, the right to food cannot be realized unless diverse communities are centred in policymaking and the accessibility and availability of culturally appropriate food are taken into account. She discusses the distinction between culturally acceptable and culturally appropriate food and emphasizes that what is culturally appropriate is not static but “dynamic, shifting, and the subject of disagreements within cultural groups.” Finally, she tackles the benefits of enabling local production and control of food systems and choices, juxtaposing them against the need to sometimes import culturally appropriate foods that cannot be produced in Canada. This paper highlights relationships: between people, food, and the environment; between physical and mental, spiritual, and emotional health; between food sovereignty and dignity; and between food systems and various justice goals.

As noted above, the other two papers in this Special Issue tackle approaches to food systems governance that prioritize scientific innovation and industrialization over what the authors see as more sustainable, equitable, and ethical approaches. Both papers see a distinct place for law and policy in ensuring these better approaches. Dylan and Brennan’s article, “Regulating the 3D Printing of Meat: Animal Ethics, Environmental Benefits, and Human Health Issues in Canadian Law,” discusses the effects of new technologies in the food system and the ethical and policy implications they bring to the forefront. The authors argue that while the 3D printing of meat has the potential to tackle many of the ills of industrial farming of animals, it must be adequately regulated. For the authors, this means applying the precautionary principle to ensure food security but also to ensure that the animal welfare, environmental, and human health promises of 3D-printed meat are actually achieved. Highlighting Canada’s poor record on animal welfare laws, disturbing new ag-gag laws, and our failure to meet climate change obligations, the paper is a clear example of why law and policymaking must take a food systems approach to tackling the complex and intertwined challenges of just and sustainable food, including the risks of increased industrialization of our food systems.

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7. “General Comment No 12 on the Right to Adequate Food,” UNESC, 20th Sess, UN Doc E/C.12/1999/5 (1999) at para 7, online (pdf): <<https://documents.un.org/doc/undoc/gen/g99/420/12/pdf/g9942012.pdf>> [perma.cc/94GK-U9HY].

8. United Nations Office of the High Commissioner for Human Rights (OHCHR), “Fact Sheet No 34, The Right to Adequate Food” (1 April 2010) at 9, online (pdf): <<https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>> [perma.cc/55RR-XWFFY].

Tramhel seeks to decentre industrial agriculture as the only solution for feeding the planet in her paper “Policy Support for Agroecology in Canada: Lessons from the Global South.” She begins with debates on what “sustainable” agriculture and food systems mean, from technological innovations for improving precision and efficiency to more ecocentric concepts and even systemic changes to consumption patterns and “low-growth levels of human development.” She notes that the recent COPS of both the UN Biodiversity Convention and Climate Change Convention include the term “agroecological practices.” She clarifies that “agroecology (AE) is defined as ‘a holistic and integrated approach that simultaneously applies ecological and social concepts and principles to the design and management of food and agricultural systems. It seeks to optimize the interactions between plants, animals, humans and the environment while taking into consideration the social aspects that need to be addressed for a sustainable and fair food system.’” She then proposes nine changes necessary to an “improved policy environment for AE in Canada.” She supports each proposed change with a case study from the Global South: Tanzania, India, Cuba, Haiti, Ecuador, Costa Rica, the Philippines, El Salvador, and Columbia. In describing the case studies, she highlights enabling law and policy supports that facilitate the move to more agroecological production.

Together, these papers offer a rich set of arguments for how law and policy can address needed changes in our food systems, grounded in challenging the status quo by looking at a problem anew or from a different perspective. While each paper tackles different challenges, they reflect a number of commonalities, largely about the values that should underlie our food laws and policies. Van Boekel, Tramhel, and Dylan and Brennan all seek ways to enable and facilitate alternatives to large-scale production models, such as using law and policy to support newcomer farmers aiming to produce at smaller scales, to create enabling environments for agroecology, or to challenge the constant drive for big-science-based innovation as the means for addressing food system challenges through strict regulation. Two of the papers also look to alternative governance models, specifically food sovereignty as a means to address the challenges brought on by current food systems governance models. For Sioufi Stansbury, grounding a food system in food sovereignty would better ensure the accessibility and availability of culturally appropriate food. For Van Boekel, reorienting governance models toward food sovereignty would give farmers more opportunities to use alternative farming methods—something that would lead to greater diversity in what is produced, which in turn could support more availability of culturally appropriate food.

In addition to the individual contributions of the articles, this Special Issue also contributes to the emerging field of food law and policy in Canada. This new field of inquiry has been developing in Canada for just under a decade.<sup>9</sup> Just as Canada has governed the food system in silos, legal academics for many generations studied food systems through siloed lenses, looking at specific sectors in isolation. But today, a growing group of legal scholars and students are researching how law and policy shapes our food systems in a more systemic and interdisciplinary manner and offering students an opportunity to study food law and policy

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<sup>9</sup> On the development of food law and policy in Canada, see key collections of texts: McLeod-Kilmurray et al, *supra* note 2; Ottawa L Rev (2019) 50:1 (containing a number of papers presented at the second Canadian Association for Food Law and Policy conference). See also Canadian Association for Food Law and Policy (last accessed 5 December 2024), online (association website): <foodlaw.ca> [perma.cc/QXK8-VLWL]. On parallel developments in the United States, see Baylen J Linnekin & Emily M Broad Leib, “Food Law & Policy: The Fertile Field’s Origins and First Decade” (2014) 2014:3 Wis L Rev 557; Emily M Broad Leib & Baylen J Linnekin, “Food Law & Policy: As Essential Part of Today’s Legal Academy” (2017) 13:2 J Food L & Pol’y 228.

while in law school.<sup>10</sup> This Special Issue offers a new set of papers taking on this systemic approach. It helps pave the way for future developments in the field, and hopefully more just, equitable, and sustainable food systems in the future.

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<sup>10</sup> In recent years, food law and policy courses have been taught at the University of Ottawa Faculty of Law (in both the Common Law and French Civil Law programs), at McGill Faculty of Law, and at Western University Faculty of Law.