

## Alternative modes of governance: organic as civic engagement

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Accepted: 15 September 2008 / Published online: 5 December 2008  
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**Abstract** A major strategy in the creation of sustainable economies is the establishment of alternative market institutions, such as fair trade and local market systems. However, the dynamics of these alternative markets are poorly understood. What are the rules of behavior by which these markets function? How do these markets maintain their separate identity as “alternative”: apart from the conventional (“free”) market system? Building on Lyson’s notion of civic agriculture, we argue that alternative markets maintain themselves through civic engagement. However, we argue that the civically-engaged practices of alternative markets are poorly understood. We seek, therefore, to begin a conversation about the everyday forms of civic engagement in alternative practice and to do this we introduce a few useful conceptual tools. Building upon ideas in science studies about the collaboration of scientists (Hess, *Alternative pathways in science and industry*, 2007) we argue that civic markets have their own “market fields” and “modes of governance” (Bulkeley et al., *Environment and Planning A* 39:2733–2753, 2007), their own fields of social interaction in which rules of behavior become stabilized and determine how the market works. The creation of a social field also requires the demarcation of boundaries, referred to in the science studies literature as “boundary work” (Gieryn, *Cultural boundaries of science: Credibility on the line*, 1999). We apply the idea of boundary work to understand how alternative market actors maintain

boundaries between alternative and conventional markets. Finally, studies of collaboration in science have often centered on the object created through these interactions, an object that is partially material and partially a product of knowledge, what (Rheinberger, *Toward a history of epistemic things: Synthesizing proteins in the test tube*, 1997) calls an “epistemic object.” We use this idea to understand that the creation of alternative objects of exchange, such as organic food, are epistemic objects in that they combine both particular materialities and particular ways of knowing. Using these concepts, we will carry out a close analysis of the mode of governance in the national organic market, looking specifically a recent governance crisis in organic agriculture known as the Harvey lawsuit.

**Keywords** Alternative · Alterity · Alternative economies · Organic agriculture · National Organic Standards · Governance · Civic engagement · Harvey lawsuit · National Organic Program · Inulin

### Abbreviations

CSA	Community Supported Agriculture
FOS	Fructooligosaccharides
NOP	National Organic Program
NOSB	National Organic Standards Board
OFPA	Organic Food Production Act
OCA	Organic Consumers Association
OTA	Organic Trade Association
USDA	United States Department of Agriculture

### Introduction

Scholars studying alternative economies (such as localism and fair trade) have recently turned to the rural sociology

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and geography of alternative food system networks to inform their work (see McCarthy 2006 for an overview). As a result, there is increasing interest in studies of direct marketing, farmers' markets, Community Supported Agriculture (CSAs), organic, local and ethical or "fair-trade" markets as models for alternative and environmentally sustainable economies in general (Hess 2007). Among scholars of alternative food systems, however, the imagining of these networks as an iconic ideal to the conventional system has not gone entirely unchallenged. Some more critical studies have questioned the claims of true economic alterity in alternative food systems, arguing that the promises of sustainability, equality and local empowerment deserve careful scrutiny (Guthman 2004a, b; Allen et al. 2003; DuPuis and Goodman 2005). While some argue that these critical approaches have "not always been informed by an adequate recognition of the achievements and potentials of such approaches" (Kloppenburger and Hassenein 2006, p. 417), we hold that critical analyses of alternative social movements are in fact the best contribution academia can make to positive and effective social change and that the current marginality of alternative food systems argues for a clear-eyed view of alternative economies that will avoid the pitfalls of past romantic utopian social movements (see DuPuis 2006 for an elaboration of this argument). Hopefully, critical analyses will enable alternative social movements to hold up better than similar movements in the past, from Fruitlands to food coops (Belasco 1993).

It is time, however, to add a constructive side to the critical approach. Specifically, beyond pointing up weaknesses in alternative food system approaches, we need to ask the empirical and micro-political questions about alterity-creation (the creation of alternative modes of interaction) as an everyday process—as a process that reproduces itself on a day-to-day basis. Are there forms of practice that characterize these alternative markets? For example, how do these markets maintain their legitimacy as "alternative" and apart from the conventional ("free") market system? In other words, how do we go about opening up the "black box" of trust and network cohesion so often referred to in actor-network and social capital approaches to alternative food systems? (DuPuis 2006; DuPuis and Block 2008).

We will attempt to answer these questions by examining the question of legitimacy in the creation of alternative market governance. We will focus in this paper on one particular case study: the Harvey lawsuit and its resolution. We will begin by introducing a few conceptual tools to help us understand the creation of alterity as a process. Specifically, we will draw upon the literature on "modes of governance" (Bulkeley et al. 2007) and three major concepts from Science Studies: "boundary work," (Gieryn

1999) "research field" (Hess 2007, drawing on Bourdieu) and Rheinberger (1997) conceptualization of "epistemic objects." We draw upon Science Studies for two reasons. First, alternative economy approaches have paid too little attention to the role of knowledge production as a social and political part of alternative practices (Goodman and DuPuis 2002). Secondly, the micropolitics of collaboration (Tsing 2005) in the creation of a new objects and practices—that which is black-boxed in studies of alternative food systems—is a current important focus in science studies, which has been examining how scientists collaborate to create new objects and systems.

In 2002, a Maine organic blueberry grower and professional certifier, Arthur Harvey, sued the USDA contending that the agency's implementation of national organic standards were not consistent with the mandates laid out in the Organic Foods Production Act (OFPA), legislation passed by Congress as part of the 1990 Farm Bill. Through several court cases Harvey successfully argued that, among other things, the OFPA prohibited the use of synthetic substances in organic food processing and that the OFPA-established procedures for allowing non-organic, non-synthetic (agricultural) substances into organic food manufacturing should be more closely followed.

The Harvey lawsuit provides a unique opportunity to use the conceptual tools of science studies around collaboration to explore how a group of actors sought to maintain a mode of governance as legitimately alternative (independent and not co-opted by the conventional system). Using the conceptual tools of "boundary work," "experimental fields" and "epistemic objects," we will examine the ongoing strategies by which legitimacy was contested and maintained in this case. We will begin by introducing these tools.

### Conceptualizing alternative market fields

Science studies scholars have recently turned to examining the micropolitics of collaborations in the creation of new fields of interaction. These careful, intricate studies of scientists' interactions in "research fields," have shown how scientists collaborate in the creation of particular objects of study, such as the process by which scientists began to focus on *Drosophila* flies as "model organisms" for scientific study (Keller 2002). In a more general way, Rheinberger focuses on what he calls the "epistemic objects" created by these collaborations, objects that are both material and conceptual (Rheinberger 1997).

We would argue that looking at alternative foods—organic, fair trade, local—as epistemic objects (both material and conceptual) can help further our understanding of alternative food systems as everyday practice. The

objects are the creation of public, social interaction within a larger set of ideas, organizations and materialities. These objects would not exist without a set of collaborations and conceptions that reflect alternative practices. In other words, parallel to scientific systems of collaboration, we can think about alternative economies as embedded in their own “market fields” as forms of “knowing and growing” (Goodman and DuPuis 2002). In other words, “markets” here do not necessarily mean just buyers and sellers, they also include the entire field of actors, objects and ideas that affect the exchange of commodities along the value chain, including government (both as regulators and as rural development policymakers), NGOs, business and citizens lobbying groups, and consumers, organized or not as well as ideas about what is a “good” economy, a “good” life and a “free” market.

Within market fields, specific markets become stabilized into modes of governance: “the inter-firm relationships and institutional mechanisms through which non-market coordination of activities in the [marketing or “value”] chain is achieved” (Humphrey and Schmitz 2000, p. iv). A mode of governance is a process rather than a “form”: It is not simply particular criteria or a set of standards, such as purity, naturalness, localness or other definitions of quality (although these rules can apply and these ideas can be part of the field of discourse). It is “the rationalities, agencies, institutional relations, and technologies of governing that coalesce around particular objectives and entities to be governed” (Bulkeley et al. 2007). A mode of governance is therefore a set of rules, a set of knowledges (“rationalities”) and a structure of collaborations for day-to-day decision-making. It includes the social world that is part of these practices in terms of both the subjectivities of the actors and the material objects that are produced.

Much of what has been written about organic governance has involved documenting the dilution of organic standards by industrial interests (Mutersbaugh 2005; Guthman 2004a). These studies show how industrial capitals have a desire “to outflank” the biological systems that traditionally have lain at the heart of food production” (Murdoch et al. 2000). Conversely, rural development strategy work, particularly in the EU (Morgan et al. 2006), has focused on alternative food systems as providing countervailing power to less powerful food systems actors, particularly consumers and smaller producers. While we agree that the political economy of organic is important, especially the issue of large-scale industrial food company power in overtaking and “watering down” what is considered “natural” in organic, the story we seek to tell here is somewhat different. We focus on the creation of the organic mode of governance as a process of collaboration (Tsing 2005) “through which rationalities, technologies, authorities, and subjectivities are created and sustained”

(Bulkeley et al. 2007, p. 5). The focus on modes of governance is therefore concerned with the question of how we govern ourselves rather than specific judgments about whether or not we govern ourselves well (Dean 1999). In other words, our work here does not seek to judge whether or not organic is truly “natural.” Instead, we aim to understand the processes by which market actors believe in the legitimacy of organic as “natural” and in the legitimacy of the organic food system as “good governance.”

Thomas Lyson’s work on “civic agriculture” represents some of the groundbreaking work in the study of the micro-politics of alternative food systems as a type of alternative mode of economic governance (Lyson and Geisler 1992), culminating in his book, *Civic Agriculture* (2004) which ties today’s movements to a history of past forms of economic alterity-creation in US agriculture. Bell (2004), Kloppenburg et al. (2000) and Hassanein (1999) have also shown that alternative agriculture is a dynamic, interactive process that relies on civic engagement. The idea that civic engagement is a part of market governance combines two major sociological perspectives. First are the notions of civic engagement most prominently put forth by Putnam (2001) and Bellah (1996), building strongly on de Tocqueville’s theories of association. Research by economic sociologists has also demonstrated that markets are socially “embedded”: creations of their particular social and political context (Granovetter 1985). The creation of modes of governance is therefore a social activity. Civic engagement is particularly important in the creation of modes of governance and there are a number of potential alternative markets that can come out of civic processes.

Therefore, while this study is not concerned with the creation of an “authentic” organic system, it is concerned with how notions of legitimacy, fairness and credibility are created and destroyed in the practices around the creation of alternative market fields. One thing that characterizes alternative economies is that fact that if people—particularly consumers, although also farmers—think governance is illegitimate, they may exit the field, return to the conventional field and thereby threaten the continued existence of the alternative market. Jessop (2002), in his identification of multiple modes of governing, called trust-based systems modes of “unconditional solidarity.” Organic, we would argue, depends on solidarity but it does not have the benefit of unconditionality. It must remake its legitimacy in continual practice. As Lyson’s (2004) work on alternative food system networks has shown, actors maintain the legitimacy of consumer-producer solidarity in these networks through civic practices that maintain the trust in and authority of market actors. The modes of governance perspective therefore opens up the black box of trust and solidarity to understand the micro-politics of alternative networks. Understanding modes of alternative market governance

therefore enables us to understand how and when the rules of interaction are set in ways that allow a maintenance of notions of fairness and trust.

If one looks at organic agriculture from a modes of governance perspective, one can also argue that organic marketing strategies will always include public deliberation and that the vitality and growth of these markets will always depend upon democratic engagement. The creation of alternative markets involves negotiations over the way commodities are made and sold, and “supply” and “demand” is the mutually-constituted product of these interactions. Civic markets are those that are created through this transparent public conversation. Because both trust and solidarity are important to the maintenance of participation in alternative markets, modes of governance in alternative markets are more “civic” than conventional markets. However, this observation is not unique to the food sector. For example, social scientists have studied the ways in which governments create water and electricity markets through rules of transaction and participatory public processes (Pechman 1993; Haddad 2000).

Of course, new forms of private market contracting have also arisen, turning farmers into providers of custom niche products for particular purchasers (Guthman 2004a). These are basically private contract systems of bilateral (one-on-one) trade. As students of the history and political economy of agricultural market institutions have noted, these bilateral contract markets have largely replaced the traditional, more public and transparent, auction-based markets for agricultural commodities (Lyson 2004). “Civic markets,” in contrast, describe a more public form of exchange in which the rules are transparent and are generally open and negotiable by a larger group of buyers and sellers.

Civic markets also have their own embedded controversies, their own ways in which fairnesses and unfairnesses arise. For example, part of the process of boundary creation involves exclusion (DuPuis and Block 2008). “Boundary conflicts” (Hess 2007) can arise, which can threaten the legitimacy of these markets. If exclusion is seen as illegitimate, then these alternative modes of governance will lose legitimacy, or at least fail to engage more than a small niche public. The extent to which each of these alternative markets expand is to a great extent dependent on whether or not buyers and sellers find them worth participating in—credible and legitimate—because they perceive these markets as offering a more attractive—or more fair—deal.

### Civic markets as boundary work and object creation

Within the market field, producers and consumers collaborate to create the “symbolic capital” (Bourdieu 1984) of

legitimacy for the organic object. In this process, the organic object gains worth as a legitimate alternative in the eyes of consumers. This leads to greater value-added for the producer, because the consumer is willing to pay this value. Part of this process involves “boundary work”: the discursive and material processes necessary to make a distinction between the organic and the conventional food object. “Boundary work,” in science studies, is a concept that describes the work that people do establishing, maintaining and struggling over the existence of boundaries between what is considered science and what is considered not science (Gieryn 1999). This idea has been extended to encompass work on the preservation of other forms of symbolic, technical, and social boundaries (Lamont and Molnár 2002). “Object conflicts” (Hess 2007) describes the kinds of politics around the collaborative creation of objects in a field. We argue that many aspects of civic markets, as alternative markets outside of conventional trade, concern the public political discussion about the setting of market boundaries, that is, the determination of who/what can participate in the market and who/what cannot, who/what is “conventional” and who/what is “alternative,” whether the alternative is defined by locality (such as Napa wines or French Terroir), process (such as biodynamic), or actual market venue (such as who gets space in the local farmers’ market or the local food coop).

Not all market boundaries are between conventional and alternative forms of exchange. For example, milk market orders demarcate which processing plants (and their dairy farmer patrons) are participants in the fluid milk market and which are outside of this market (DuPuis and Block 2008). In some cases, the market is an actual market, like the milk market or the farmers’ market, while in other cases (such as locality or organic) the market may be a niche segment in a broader market, such as organics sold in a section of a grocery store. In either case, there is a determination of market membership, in terms of who is allowed to participate in an exchange based on a particular market value, such as organic or fair trade. The marker that represents this determination is usually a label, which signals to the consumer that the product—generally sold at a premium—promises a particular value not promised in conventional trade. The participant in this exchange gains a commodity but also an added form of worth: the organic nature of that commodity. Yet, what that organic nature consists of is an object of struggle and the establishment and stabilization of the organic commodity as an object that legitimately conveys this worth to the consumer (as opposed to duping the consumer into paying more for something that does not convey the actual worth promised) is important to the creation of the alternative system.

Necessary to these civic processes is the notion of credibility, or “legitimacy.” The creation of an object of

value requires a belief by the consumer that the object is in fact worth paying more for. The process of boundary work in the science profession involves what can count as scientific knowledge and what cannot. It is tied in to notions of who is a legitimate scientist as the creator of that knowledge (Gieryn 1999; Lamont and Molnár 2002). Therefore, boundary work is a kind of creation of “distinction” (Bourdieu 1984) that gives credibility and authority for “legitimate domination” (Weber 1947) to the object created and to the creator of that object. Without this process of boundary creation, the alternative market cannot exist as a market that repays producers for the creation of greater value.

### The Harvey case

The history of the Harvey case is part of a longer story of the nationalization of organic standards.<sup>1</sup> The development and implementation of these standards has been a highly contested process, largely between organic agriculture movement advocates and USDA officials who saw “organic products as commodities while ignoring the socio-ecological processes and practices of organic production” (Vos 2000). The Harvey case provides a strong illustration in favor of the idea that the creation of a legitimate, or credible, organic object requires an ongoing civic process in organic market governance. In the Harvey struggle around the creation of the organic object, boundary setting was a primary issue, in which representatives of industrial food processors acted on behalf of a standards-based definition of organic to maintain their power in the market, while organic movement actors advocated more process-based definitions in order to maintain the legitimacy of the organic object. This move has threatened a civic, more negotiated definition of organic as an alternative mode of governance, which has led this alternative mode into a legitimacy crisis.

Arthur Harvey, an organic product grower, certifier and consumer, filed a lawsuit against the USDA in 2002, after the organic standards became law (Harvey v. Venemen 2002). He alleged that multiple parts of the USDA’s organic standards (Final Rule, 2000) were not consistent with the Organic Foods Production Act (OFPA 1990), the law that mandated the standards’ creation. Initially, Harvey lost on all counts. However, he appealed the decision. On January 26, 2005, a Maine Appellate court ruled for Harvey on three of the nine counts (counts 1, 3, and 7) he brought against the USDA (Harvey v. Veneman 2005). The

following discussion will look specifically at counts one and three, which cover the issue of substances allowable in organic production although not defined as organic.<sup>2</sup>

The National Organic Standards Board (NOSB) is a standing citizen advisory board comprised of farmers, consumers, certifiers, industry representatives and environmentalists who meet regularly and often publicly to consider proposed changes to the organic standards. Part of the NOSB mandate, relevant to the Harvey case’s counts on substances allowed in organic products, is making recommendations for the addition or exclusion of substances on a ‘National List of Exempted and Prohibited Substances’ (hereafter referred to as The National List). This list describes the non-organic substances allowed for use in organic agricultural production and processing. This list is divided into several parts, listed here with examples: (1) Synthetic substances allowed in agricultural production (e.g. ethylene for fruit ripening); (2) Non-synthetics *not* allowed in production (e.g. arsenic and tobacco dust); (3) Synthetics allowed and prohibited in livestock production (e.g. aspirin is allowed, strychnine is not); (4) Non-agricultural, non-organic, *non-synthetic* substances allowed in organic food processing (e.g. yeast); (5) Non-agricultural, non-organic, *synthetic* substances allowed in organic food processing (e.g. cellulose used as an anti-caking agent and ascorbic acid); and (6) Non-organically produced agricultural products allowed as up to 5% of the ingredients in certified organic products (e.g. non-organic hops). Substances in the latter category, namely non-organic agricultural products, are allowed in a certified organic product when their organic counterpart is not “commercially available.” Products can be certified as organic when at least 95% of their ingredients are organic. Thus, non-organic agricultural products deemed unavailable in organic form (and added to the National List) can comprise up to 5% of certified organic products, unless the product is labeled as “100% organic”, in which 100% of the ingredients must be certified organic. The National List has increasingly become an area of contention as processed food corporations enter the organic market and petition for the addition of various processing additives (the subject of count three) or non-organic products not “commercially available” in organic form (as in count one).

In the first count filed against the USDA, Harvey argued that the USDA’s regulations implementing the OFPA could be interpreted as allowing for a “blanket exemption” for the use of non-organic agricultural substances in certified organic products when “not commercially available in organic form” (Harvey v. Veneman 2005). Harvey claimed

<sup>1</sup> We use the term “case” in “the Harvey case” to refer to the legal battles surrounding Arthur Harvey’s charges against the USDA and their resolutions as an example of recent controversies over organic foods production. Our use does *not* refer to one particular court case—there were *several* court actions in the Harvey example.

<sup>2</sup> Count 7, on organic feed requirements for organic dairy cattle, has had important ramifications in that sector. That ruling deserves a paper of its own, but will not be discussed here.



that the practice of allowing individual organic certifiers to determine “commercial unavailability” of a given substance, which would allow up to 5% of this substance into food labeled “organic” exempted these substances from essential public review processes. The court agreed with Harvey and issued a declaratory judgment mandating clearer guidelines and greater restrictions on the use of non-organic agricultural products. The court demanded that the USDA create clarified regulations and follow the (more public) procedure for allowing non-organic products into organic production by submitting each ingredient petition to the National Organic Standards Board before it is added to the National List.

Count three was arguably the most significant of the rulings in favor of Harvey. Here, he successfully challenged synthetic (non-agricultural) substances’ inclusion on the National List. Synthetic substances have become increasingly integral components in the production and processing of organic foodstuffs. Harvey charged that allowing synthetics into production contradicted the plain language of the OFPA, which stated that certified processing operations “shall not, with respect to any agricultural product... add any synthetic ingredient during the processing or any postharvest handling of the product” (7 USC 6501–6523, 1990). The court agreed, finding that the law explicitly forbade the introduction of synthetic additives into production processes. The inconsistencies between the OFPA (no synthetics allowed) and the standards in practice (synthetics widely used) illuminated by the Harvey case were to be addressed by drafting and implementing new clarified USDA National Organic Program (NOP) regulations that would eliminate synthetics from the standards within 2 years.

These rulings led to a scramble in which various organic market actors—USDA regulators, the NOSB, the Organic Trade Association (OTA), certifiers, farmers and consumers (represented by the growing Organic Consumers Association (OCA))—argued for or against the various aspects of the decision. Interested parties disagreed on whether to amend the OFPA in Congress or to resolve the contradiction through the USDA NOP rule-making process that is open to public comment (see Cummins 2005).

That decision was never negotiated. While Harvey declared the case a victory for small-scale organic producers, the OTA, the leading organic industry group, underplayed the Harvey decisions, calling them a “court ruling [that] found a few technical inconsistencies between the 1990 organic law and the final standards” (OTA 2005a). The OTA then lobbied Congress directly to draft legislation that would correct these “inconsistencies.” That legislation, known in public discussion as “The OTA Rider,” was attached to the Agriculture Appropriations Act of 2006 and signed into law on November 10, 2005.

Without opportunity for public input or broad Congressional debate, The OTA Rider altered the OFPA to comply with the standards as they were implemented by the USDA. In effect, this eliminated the basis of Harvey’s argument in count three by changing the OFPA to permit synthetics so that organic food processing could continue as before.

The OTA Rider also had an impact with respect to count one, which dealt with the procedures for allowing non-organic agricultural ingredients onto the National List. Specifically, The OTA Rider authorized the Secretary of Agriculture to use expedited procedures for listing non-organic agricultural substances in the event of an “emergency.” The OTA Rider legislation, in this case, defined “emergency” as an economic emergency for large-scale processors unable to source adequate organic inputs. Although these “emergency procedures” have not yet been defined or used, they left open the possibility of adding substances to the National List without a public review process. In other words, in addition to nullifying Harvey’s successful court challenge on the allowance of synthetic materials into organic foods processing (count three), the OTA Rider also has potentially changed the USDA mode of governance for the management of the boundary between organic and non-organic commodities as based on issues of economic market disruption in the food processing industry, rather than on the original intent of the OFPA to create legitimate standards between producers and consumers based on public deliberation.<sup>3</sup>

The Harvey controversy shows us a civic struggle between parties defining organic as a standard and those who had a more deliberative definition of organic as an alternative mode of governance. The Harvey lawsuit was not the only place that concerns over ‘National List’ procedures had been raised by those understanding organic practice as a process. In 2004 Jim Riddle, the former chairman of the NOSB, wrote an open letter to the Secretary of Agriculture asking the USDA’s National Organic Program (which oversees the national organic regulations) to restore the “due process” in standards setting (Riddle 2004, p. 1). Citing several examples, Riddle argued that the USDA had insufficiently incorporated NOSB and public input when deciding whether certain substances should be placed on the National List. Riddle (2004, p. 1) wrote, “I urge you to ensure that the NOP actually do what it is supposed to do under the OFPA and require that proper administrative procedures be followed when new policies, letters, and directives are formulated and new technical advisory panels are contracted.” The USDA did not immediately comply with Riddle’s requests. They were,

<sup>3</sup> For another argument concerning the public regulatory move from principles of public welfare to principles of defending business against market disruption, see DuPuis and Gareau (2008).

however, forced to by the court's decision in favor of Harvey on the first count.

While both a producer and a certifier, Harvey did not have legal standing to sue the USDA over this process based on these identities. He therefore sued as a consumer concerned about the quality of organics communicated by the label. The court decision in favor of Harvey compelled the USDA to follow the “due process” Riddle argued for in his letter (Harvey v. Veneman 2005). Harvey allies in the case—groups of organic food and agriculture advocates called ‘Friends of the Court’—were also aware of the NOSB's important role in maintaining a deliberative mode of governance. They argued that The OTA Rider not only threatened organic but also threatened the status of the NOSB as an arena for ongoing civic discussion about the boundaries of organic (Harvey v. Veneman 2005):

Congress also sought to create mechanisms within the OFPA that would allow organic farming and food handling to continue to evolve. As a consequence, Congress left some gaps in the law. Congress specified the public, participatory process that was to be used to fill in the remaining details of the requirements of the organic certification program authorized by OFPA. In addition to formal rule-making, that process included appointment by the Secretary of a 15-member National Organic Standards Board (“NOSB”) to develop a proposed “National List”...

In the media, Harvey spoke primarily as a producer and certifier, expressing concern about the legitimacy and goals of organic market governance. In an interview with a Maine newspaper, he characterized his challenges to the USDA as a move that would be largely a benefit to small farmers, rather than the “factory farmers” who have been rapidly entering into the organic market seeking the profits associated with the high value produce (Cavallaro 2002). Harvey argued that less powerful actors, often working to adhere to an ecological, process oriented definition of organic should have voice in the market's construction.

The OTA's media statements, however, ascribed to a more static standards-based logic than Harvey or the NOSB. OTA understood the “alternative” organic market to be necessarily defined by competition with the larger “conventional market,” rather than seeing organic as operating under a unique mode of governance founded on different principles: “Market led growth is only possible if organic farmers and processors compete on level ground with non-organic farmers and processors” (OTA 2005b). Foreshadowing the rider that would overturn main provisions in the decision, the OTA characterized the Harvey case as highlighting “technical inconsistencies” in the market-facilitating standards that were implemented in 2002 (OTA 2005a). OTA executive director, Katherine

DiMatteo, was of the opinion that the standards should “remain intact to minimize disruption and marketplace confusion and to protect the growing marketplace for organic farmers” (Ibid.).

Consequently, subsequent to the Harvey rulings, the OTA worked for months on what they called “a discreet, very limited, legislative action” that would restore their notion of “strong organic standards” (OTA 2005c). Their “discreet” standards making did not incorporate any sort of public input or deliberation, although their lobbying did not take place in isolation: the OTA's network extended into Congress. According to *The New York Times* (Warner 2005, p. 1), Abigail Blunt, wife of then interim House majority leader, Representative Roy Blunt, lobbied on behalf of Altria (an umbrella corporation then included Kraft Foods and Phillip Morris) and alongside the OTA to get the OTA Rider passed. Though this was not necessarily the cause of The OTA Rider's passage, it did help stifle Congressional debate (and participation of Congressional members historically engaged in the maintenance of organic standards) by moving discussion into a closed-door committee meeting. For example, Iowa Democratic Senator Tom Harkin decried the committee's action on the Senate floor: “...behind closed doors and without a single debate, the Organic Foods Production Act was amended at the behest of large food processors without the benefit of the organic community reaching a compromise. To rush provisions into the law that have not been properly vetted, that fail to close loopholes, and that do not reflect a consensus, only undermines the integrity of the National Organic Program” (quoted in OTA Members' Open Letter/Arnold et al. 2005, p. 3)

This form of lawmaking is representative of practices that challenge the legitimacy of the boundaries around organic as epistemic object. In their practice, the OTA failed to recognize, or worked to obscure, the necessity of a deliberative mode of governance for the maintenance of organic as a legitimate value-added commodity. The OCA, the consumer organization, decried The OTA Rider as a “sneak attack” and understood the authorization of the “emergency procedures” described above as an explicit challenge to an inclusive mode of governance. For large food businesses, the demise of organic represents only the elimination of a market niche. For other economic actors, the demise of organic represents the loss of livelihood or of a valued alternative food and agricultural production choice, one that contests the legitimacy of industrial agriculture and relied upon civic process.

Therefore, the practice of creating legitimate organic products entails negotiating boundaries around both what (organic, non-organic, synthetic?) is legitimate, where (under what jurisdiction: legislative, legal court or government agency?) and who (consumers? Processors?)

Farmers?) are allowed to participate in civic deliberation over the organic object (see also Ingram 2007). Boundary work in this case occurred in multiple jurisdictions, in which the various parties had different standings. In the agency jurisdiction, the NOSB, representing different actors in the organic food system—farmers, certifiers, processors, retailers, scientist, environmental advocates and consumers—had power over the definition of the market boundary when the standards were created. The OCA and the NOSB challenged exclusive modes of governance and Harvey was granted agency in court as a consumer of organic products. Frustrated in the courts and with the power the courts had reclaimed for the NOSB, the OTA went to Congress to pursue its interests.

The OTA Rider most clearly demonstrates the exclusive mode of governance adopted by organic industry actors. To reiterate, it changed two main OFPA provisions: it allowed synthetics back into organic food processing by overturning Harvey's third count and authorized "emergency procedures" for adding non-organic agricultural products into organic foods. Rather than resorting to emergency procedures, the NOSB chose to uphold the Harvey court decision and to hold public hearings on count three, the exemptions on the use of non-organic agricultural products' use in certified organic foods. This procedure, described in detail below, calls for a public comment period and NOSB hearings on industry petitions to include a substance on the National List. The next section follows this process of adding non-organic agricultural ingredients onto the National List by looking more closely at these NOSB hearings and their role in the creation of the organic epistemic object. That is, we examine what practices, such as boundary work, enabled specific objects to gain an identity as organic and how the legitimacy of the object was maintained through a civic process of collaboration and deliberation and degraded when those processes were dominated by particular powerful actors, specifically actors in the industrial economy.

### **NOSB hearings: the creation of organic epistemic objects**

According to the court's ruling on Harvey's first count, certifiers of organic products are no longer able to provide a "blanket exemption" for using non-organic agricultural products in organic foodstuffs when they determine an organic alternative to be not "commercially available." That is, a certifier is not allowed to individually decide whether or not a non-organic product can be used in certified organic products based on an organic food manufacturer's claims that the organic version is not available. Excluding the yet to be defined "emergency

procedures," the OTA Rider allows, the declaratory judgment granted Harvey on count one and requires that the public, participatory process of petition, NOSB review and public comment to is followed when the NOSB and USDA NOP make decisions about "commercial availability" and the appropriateness of each non-organic ingredient petitioned to be added to the National List. The court gave organic food processors 2 years after the ruling to comply by having their non-organic ingredients (previously allowed by individual certifiers) undergo NOSB review; this deadline came on June 9, 2007. On this date, any products that included previously certifier-approved non-organic agricultural products not on The National List would be rendered non-compliant with USDA organic standards. In order to comply with the Harvey rulings, organic food processors busily petitioned the NOP for the addition of non-organic "minor ingredients" (5% or less of an organic product) to the National List of allowable substances when an organic version isn't "available."

After a petition is submitted, the NOSB committee members review the appropriateness of the petition, consult technical advisory panels, consider public comments, hold a public hearing, take a vote and make a recommendation to the USDA's NOP on whether or not the petitioned substance ought to be included in organic. The opportunity for public participation in both the comment period and at the NOSB public meetings or hearings on substances is central to maintaining the legitimacy of the organic object throughout this boundary work. Organic industry representatives requested that over 600 non-organic minor ingredients be allowed for use in organic foods. In order to quickly move through The National List review process for each of the 600 substances and avoid lapses in compliance for the products in question, the USDA initially determined that a public comment period of a short 7 days would be sufficient. In this one week, the USDA received approximately 1,250 public comments; some of which expressed concern about the less-inclusive mode of governance demonstrated by the extremely short public comment period. In response, the USDA lengthened the public comment period to 60 days.

The USDA therefore received petitions from industry wishing to continue the use of non-organic agricultural products and collected public comments on the in/exclusion of these ingredients, and the NOSB held public hearings where interested individuals had the opportunity to speak. After these hearings, the USDA and the NOSB decided to include 38 commercially unavailable, non-organic agricultural substances in organic as minor ingredients.

The following three examples of substances considered in the NOSB hearings illustrate the way in which boundary work creates epistemic objects, looking closely at how



particular objects were included or excluded from the organic label. We discuss the public conversation—in the NOSB public hearings, but also in trade and mass publications and other public sources that discussed the NOSB decisions—for three non-organic objects that the NOSB accepted onto The National List: hops, intestinal casings and Inulin/fructooligosaccharides. In the process of examining the discussion around these objects, the nature of boundary work and the creation of these substances as epistemic objects become clear. Also, the analysis of the micropolitics of object creation and boundary creation opens up the black box to show how these boundary and object-creation processes create or deteriorate consumer trust. In each case, the maintenance of a legitimate organic (epistemic) object depends upon the mode of governance used in the negotiation of the boundary around the material organic objects produced for market.

### Hops

One ingredient determined to be not sufficiently available in organic form, and therefore on the list of 38, was hops, an essential ingredient used in the brewing of beer. The National List defines “minor ingredients” as less than 5% of the ingredients in a product. In the case of beer, which is 90% water, there are few remaining certifiable ingredients—the other ingredients in beer are malted grains like barley and fermentation ingredients like yeast. Therefore, hops, while not an unimportant component of beer making, generally comprises 5% or less of the ingredients in beer. This is a significantly different case from most other minor ingredients on the National List, which tend to be food-based non-organic flavorings and food colors (such as carrot-based annatto), rather than a central ingredient in the production of the substance.

The process of determining commercial availability is laid out in the OFPA and requires the processor to document the lack of supply of a particular ingredient in its petition, by showing where an ingredient is made and how much is made (on a global basis). However, whether or not this supply is sufficient depends upon the quantity demanded by producer. Large food producers and processors such as Anheuser-Busch, in the case of organic beer production, need organic products in such a quantity that they may not in fact be available in such vast quantities.

Such findings elide the question of whether or not the boundaries constructed around the organic market ought to change the definition of organic in order to let such actors participate. As has been well documented and referenced by others (Mutersbaugh 2005; Guthman 2004b), the entrance of powerful food manufacturers into the organic market has had a tendency to dilute both movement ideals within the market as well as marginalize those who seek to

maintain a process-based focus. In the case of the hops exemption, the dilution of standards is clear. The precedent is set for any large-scale processor to demand non-organic input exemptions if these inputs are not available on a large scale. In other words, any processor could request an exemption to sell a non-organic ingredient as part of an organic product if it comprises less than 5% of the product and if there is no large-scale organic production system that allows for the creation of the quantities necessary for these processors.

The particularities of taste are also allowed as legitimate defenses of a producer’s need for a certain kind of non-organic ingredient. In these public hearings and petitions beer-makers also argued for exemptions to use non-organic hops if they decide that a beer’s desired taste requires certain hops that are not available in organic form (USDA 2007a). That is, even if a beer company could source some kind of organic hops in sufficient quantities, or requires a relatively small amount based on their production level, it can be easily argued that the organic hops are not the right hops. Needless to say, these exemptions can work for smaller companies as well. Nonetheless, for ingredients like hops, that are essential to beer brewing but which comprise a small percentage of the final product, the exemption degrades the value of organic hops in the market, since it is no longer necessary for any brewer to buy organic hops for the production of organic beer, even though smaller producers had previously been using organic hops as an input in their products. Consequently, Anheuser-Busch can now compete on the same (organic) playing field with these smaller beer companies, but with the economies of scale to offer their product to consumers at a lower price, leaving these smaller companies to compete on the basis of price and thus search for cheaper, non-organic hops. This will seriously affect the ability of small organic hops producers to survive, since organic hops no longer has value as an epistemic object (with value both as a product and as a concept).

This sleight-of-hand has not gone unnoticed in media discussion about organic: a Los Angeles Times article reported that Anheuser-Busch, in a flier aimed at selling their two new lines of organic beer to wholesalers, urged retailers to “Capitalize on this growing market with Wild Hop Lager and Stone Mill Pale Ale” (Wilson 2007). The same article went on to report that a smaller producer of organic beer, Milwaukee’s Lakefront Brewery, has had no trouble finding organic hops and was confused as to why it was unfeasible for Anheuser-Busch to arrange for their purchase or production, a statement likely contingent upon their small relative size. In addition, vociferous public comments against such actions, even in an extremely short comment period of 7 days, showed a strong reaction against the addition of non-organic hops to the list (USDA 2007b).

## Intestine casings

The National List of exemptions includes a bovine product, intestine casings. Under the exemption, non-organic intestine casings can be used in products labeled “organic.” The Organic Consumers Association (2007), a consumer advocacy and lobby group, was quick to note in its comments that such an exemption degrades the value that consumers find in organic beef labeling:

Surveys of organic consumers find that a high percentage of beef eating organic consumers choose organic products to avoid diseases associated with conventional meat production. Specifically, the organic beef industry has enjoyed a considerable boom as more consumers are concerned with bovine spongiform encephalopathy (BSE) which has only been detected in animals raised conventionally.

In this case, consumers have been using the organic system as a form of protection from what many consider a failed inspection system in the conventional beef production sector (Pollan 2002). Yet, while the scientific proof necessary to condemn conventional beef does not exist, organic beef has been able to gain value as an epistemic object created through a collaborative process that would not allow for BSE (and hormone) contamination in the epistemic object, since organic beef requires organic feed (and no animal parts). Therefore, part of the value of organic beef comes from the failings of the conventional beef system. By allowing in a non-organic beef ingredient, organic meat production has broken the boundary between BSE risk and no BSE risk. This is a significant boundary rupture that could degrade the legitimacy and therefore the value-added of organic beef as a whole.

## Inulin/fructooligosaccharides (FOS)

These are nutraceutical ingredients that were added to the list because of health claims. As the interim final rule states: “The inclusion of this non-digestible carbohydrate is thought to promote a more favorable intestinal microbial composition which may be beneficial to human health” (7 CFR Pt. 205). Once again, this provides a significant rupture of boundaries, in which a “functional food/nutraceutical” input definition of healthy food replaces the more common organic definition of healthy food as created through pesticide free, sustainable agricultural growing processes. Other exempted ingredients, such as non-organic fish oil, were allowed because of their use increases omega-3 fatty acids in the product. In this case, the functionality of the food as an input trumps the more process-based definition of healthy commonly associated with organic.

However, one board member’s comments in the NOSB hearings illustrate the ways in which the definition of organic differs from definitions of health. FOS supporters made substantial claims for the benefits of this substance in terms of calcium uptake and painted dark pictures about the downside of removing this product from organic food. For example, nutritionist Coni Francis, of Stoneyfield Farms, decried the prevalence of digestive diseases in the American populace, as well as calcium deficiency among children: “Now, if we think that those of us who are in our 50s and 60s are looking at an issue with osteoporosis, I am very frightened about what’s going to happen when these children reach their 30s and 40s” (Francis 2007). This calcium deficiency story, so familiar to milk industry promoters, was being used to justify the inclusion of non-organic materials on the National List. However, one committee member rejected this argument, responding: “I think that the side effects of a poor diet are not necessarily the responsibility of organic agriculture” (Riddle 2007).

In addition to boundary work around the distinction of substances as health-inputs or representative of healthy production processes, the addition of FOS/Inulin also problematizes other boundaries important to the maintenance of organic standards. First is the boundary between synthetic and non-synthetic ingredients. At these March 2007 National Organic Standards Board (NOSB) public hearings NOP personnel noted that they began their review of ingredients by trying to make a strong definitional distinction between synthetic and non-synthetic ingredients, as well as agricultural versus non-agricultural ingredients. However, they abandoned the creation of these definitions, leaving the boundary somewhat ambiguous, and leaving NOSB board members uncertain as to how to define certain ingredients. For example, addressing a commentator on flavorings, one board member commented: “When does an organic essence stop being agricultural, after how many cuts and splits. You know, where do we draw a line and so we’ll be looking for industry expertise such as yours to help us determine when does something stop being agricultural and become non-agricultural through the distillation process” (National Organic Standards Board Hearings, March 28, 2007, p. 349). Thus non-agricultural/agricultural, and synthetic/non-synthetic ambiguities in definition played on ambiguities between “the natural” and “the artificial” which were so much a part of the birth of the organic movement (Vos 2000) and contributed to the ambiguities and boundary struggles between organic and non-organic. In this case, however, the NOSB was giving industry the power to draw the boundary line between the natural and the artificial.

The discussion of FOS also brought to the fore a question of the function of the ingredient. As the discussion developed, it became clear that FOS was not only a

nutraceutical, it was also a preservative. As the Stoneyfield Farm representative noted, they had decided to use FOS as an ingredient: “Because it improves the product, as far as now we are shipping more product further. And when it gets handled, you have more whey separation, and so forth. And because of the added benefit of the calcium absorption. With so much competition on the shelves right now, in natural and in mass market, we are much deeper into mass market now, that having, if you have choice between two markets and one says on it, increases calcium absorption by 30%, that’s a very important claim for our, you know, it’s an important attribute for our consumers” (NOSB public hearings, March 27th, 2007, p. 71). In this comment, it is possible to see once again the ways in which the forces of the mass market as competitor and as requiring a more preserved product for mass distribution bring to the fore new ways of understanding the organic as epistemic object and as formulated through the definition and setting of boundaries.

### Conclusion: the organic legitimacy crisis

As the Harvey case shows, the entry of industrial organic actors and mass market competition does more than simply dilute organic standards: it ruptures the boundaries of the organic epistemic object and reorients the focus of the boundary work between the natural and the artificial (Ingram 2007). This reorientation narrows the debate over the merits of petitioned inputs while removing from view the troubling re-ordering of the organic object that occurs when the door is opened to different boundary settings. This is particularly clear in the third count, the challenge of the inclusion of synthetics on the National List. As the OTA stated, “The rules themselves are written so that standards evolve as new organic ingredients become available,” and “As organic products become available to replace ingredients on the [National] list, OTA will work to see associated synthetics dropped from acceptance” (OTA 2005c). Here, substitution becomes the norm and organic ingredients can be re-substituted for synthetics as an organic version becomes available. The OTA language indicates the priority of input-oriented, product focused (processing) standards contrary to what the voices in the organic food and farming movement have expressed in their agroecological process-oriented construction of organic.

This examination of the public discourse around three ingredients on The National List of exceptions to the organic rule shows that the legitimacy of organic is dependent on its mode of governance as a complex and deliberative civic process rather than the simple setting of standards. Some actors in the organic community recognize this fact. For example, one certification industry member,

in his assessment of the changes described above, wrote in a Midwest organic trade publication:

... all of us – certifiers, farmers, processors, retailers – are dependent on consumer trust in the integrity of the organic label, and a clear understanding of just what it means to be organic ... You give your 110% and I’ll give mine, then together we improve perceptions about us both. Organic production has real value, but how that plays out in the marketplace has to do with perceptions (Walker 2006, p. 11).

These comments reveal how organic industry actors understand that the deterioration of consumer trust is a real threat to organic as a legitimate alternative economy. However, is the problem a weakening of standards or a weakening of the modes of governance around the negotiation of standard boundaries? Representatives of industrial agriculture see the maintenance of trust as the creation of a simple standard deny the need for ongoing processes or alternative modes of governance. Previous studies of organic labeling have emphasized the ways in which “standards dilution” degenerates consumer trust, and the ways in which industrial organic try to dilute standards. However, the other important problem with industrial organic is the denial by industry actors of the importance of transparency and civic engagement.

The agroecological community has responded to the Harvey case by arguing that the changes threatened the continued existence of organic itself. Immediately after Harvey’s successful challenge on three of his nine counts filed against the USDA, Michael Sligh, founding chair of the National Organic Standards Board, said: “Basic principles of good government process and the integrity of the USDA Organic seal were at stake” (CFS 2005). Joseph Mendelson, a representative for the Center for Food Safety (CFS), stated that the Harvey rulings “affirmed the basic principle that no one—not even the United States Department of Agriculture—is above the law” (Ibid.). However, skeptical of the USDA’s power, and echoing Harvey’s own distrust, the OCA stated: “We do not trust the USDA—because of their long and obvious track record in promoting chemical-intensive agriculture, corporate globalization, and genetic engineering—to determine and police these standards and practices.” Going on, the OCA threatened to create an alternative labeling system “if the USDA and the dominant companies in the OTA continue to ignore consumer and organic community expectations, especially the expectations of small and medium-sized farmers, retailers and companies” (OCA 2005a).

In a ‘Friends of the Court’ brief submitted during the Harvey lawsuit, several sustainable agriculture advocates argued that “consumers and farmers will not accept ‘exceptions’ to the law, and that their reaction to these

exceptions could deliver a fatal blow to the organic market. Any lessening in the integrity of the National Organic Program and of the USDA Organic seal will have a deleterious effect upon the options in the marketplace...” (Harvey v. Veneman 2005). This statement reflects a real threat to the continuing legitimacy of the organic market, suggesting that the market could quickly lose meaning for participants if market governance boundaries deteriorate.

Consumer groups continued with this argument in light of the OTA’s legislation that amended the OFPA subsequent to the Harvey rulings. As mentioned, the OTA rider attached to the 2006 Agriculture Appropriations Act (2005) amended the OFPA without public comment or NOSB input, rather than reworking NOP regulations, a method that would have been subjected to such a process. This action eliminated the need for collaborative negotiation over additives while allowing synthetics back into production processes. At this juncture, the Organic Consumers’ Association (OCA) derided the OTA’s “sneak attack.” The OCA stated, “In the broadest and most basic sense, the OTA rider takes away the organic community’s leading role in setting and monitoring organic standards for processed organic foods, and instead places this power in the hands of the USDA and industry” (OCA 2005b). NOSB member Riddle also weighed in on the issue saying, “Nothing was ever put on the table. There was no inclusive, open discussion of changing the law, until it was actually introduced to members of Congress, and then it saw the light of day.” He added, “It’s very disturbing that the law was changed without an inclusive process” (Riddle 2005).

In response, several organic producers are arguing for an “opt-out” position on organic (Vos 2000). Eliot Coleman, a Maine farmer and writer renowned for his four-season organic growing practices, has gone so far as to refuse USDA certification altogether. When interviewed about the Harvey case he stated, “When we said organic, we meant local, healthful, mutually respectful growers and eaters... that isn’t reflected in the paint-by-the-numbers organic certification” (Cavallaro 2002). Coleman went on to criticize what he deemed “large, industrial, el cheapo food” and solidified his opting out of a USDA-certified organic agriculture that allows for the addition of synthetic materials to aid in the production of food. Harvey also outlined a new mode of ‘beyond organic’ organic governance saying: “Farmers like me, at some point, will drop out of a decaying system because we are not prisoners of USDA and OTA ... Farmers and local manufacturers will organize around a new certification system based on several ideas...[including] total transparency which means making public the organic plan of every operation—which under the present system, is a dead secret” (Harvey 2006).

In summary, the Harvey case illustrates what happens when the legitimacy of a mode of governance is under

threat. Members of the public, organic consumer advocates, news media spokespeople, NOSB representatives and farmers expressed concern over not only the outcomes, but also the methods by which industry actors negotiated boundaries around organic. These methods of boundary work and knowledge creation, particularly in the case of the OTA rider, were seen as a “sneak attack”, rather than an inclusive negotiation. Industry organic actors re-oriented and limited discussion by focusing on market-facilitation and the merits of allowable inputs instead of process. It was not necessarily industry representative participation that created a crisis of legitimacy in organic, but the way in which their power was exercised to close deliberation. The retention of a deliberative mode of governance, therefore, is necessary to define, on an ongoing basis, what exactly is to be communicated by the organic label. In particular, this deliberation needs to pay attention to whether or not changes to the organic standards might serve to legitimize or de-legitimize the credibility of the market based on what is included in the definition of the ‘organic object’.

In the Harvey case, the USDA accommodated the interests of competitive mass market-oriented actors that prioritizes durable, transportable, value-added foods and an “undisrupted” market. However, alternative modes of governance are designed to disrupt dominant economies through new forms of economic interactions and new actors. Only through the careful analysis of the micropolitics of organic object creation, and the understanding of organic as a disruptive form of knowing and growing, does the importance of organic as mode of governance become clear.

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