

The Case of the White Moustache

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In the mid-nineteenth century Horatio Alger published a series of fiction stories about Americans going from ‘rags-to-riches’ and the rewards they gained from their successes. These myths describe individuals working their way up through society, overcoming class, poverty, and adversity to obtain prosperity, honor, and freedom. Over the last five decades these stories have expanded to include entrepreneurs overcoming governmental barriers in the marketplace. The following case study is an example of one such company, The White Moustache (TWM) attempting to overcome the towering dairy regulations in the state of California to get the necessary permits to sell their artisan yogurt.

Background

The Dairy Industry in California

California’s first dairy law was passed in 1878 and intended to prevent the false advertising of non-butter products as butter. In 1895 the State Dairy Bureau came into being, and is now part of the California Department of Food and Agriculture (CDFA). The CDFA oversees the dairy industry under its Milk and Dairy Food Safety Branch (Milk and Dairy Food Safety Branch History 2012, 1). The most significant of the dairy laws passed after the creation of that Bureau was the 1915 Pure Milk Act. These laws defined and regulated the pasteurization of milk, prohibited the re-pasteurization of milk, and set forth the standards for grading milk products (Milk and Dairy Food Safety Branch History 2012, 2). By 1937 dairy producers were required to hold up to six permits in order to legally sell their commodities (Milk and Dairy Food Safety Branch History 2012, 3). Ten years later the regulations regarding pasteurizing were further expanded when

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operators were compelled to take tests and obtain licenses in order to continue their business and rules regard the classification of milk were established (4).

The White Moustache

After the 1979 revolution in Iran the new government began to enact policies that disfavored religious minorities, including Zoroastrians like the founders of The White Moustache. These founders, the Dashtaki family, immigrated with many other Zoroastrians to Orange County, California from Iran in 1984 (*Beware of the Yogurt* 2011). Here they became a part of the dynamic and vibrant community of immigrants, hipsters, and entrepreneurs that give Southern California its cultural vibrancy. In January of 2010, Homa Dashtaki had the idea to use her father's homemade yogurt recipe to start a business providing artisan yogurt (The White Moustache's Facebook page). Combining her father's yogurt with his iconic moustache, their yogurt company began.

Making The White Moustache's Yogurt

In order to understand the regulations that prevented TWM from selling their yogurt it is important to first understand how they make their yogurt. The Dashtakis handcraft their yogurt using traditional methods taught to Homa by her father, which have been in their family for generations. D.J. Rotham, one devout fan of TWM yogurt, has created a rap trilogy (available on YouTube¹), the second part of which describes their process. First, Homa purchases whole milk from the grocery store. This milk has already been pasteurized and it is the same milk available at any grocery store in California (*Saga of the White Moustache Part II: "The Glory Days"*). Next the milk is slowly heated up and gently simmered by hand over stovetop. Upon reaching a specific temperature the yogurt cultures are added. These two ingredients are then incubated gently under blankets overnight so the fermentation process can take place. The next day the yogurt is ready for consumption. For the brand's Greek style yogurt, the product

¹ http://www.youtube.com/watch?v=Ha-XJ1_X9Dk (Part I)
http://www.youtube.com/watch?v=_s6yQXNApHY (Part II)

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is further hand-strained for hours in order to obtain its thick and creamy consistency.

One of the most important aspects of this yogurt is the traditional process, which is both labor and time intensive. TWM is committed to providing a quality yogurt made by a family with a real passion for their product. It took the The White Moustache (TWM) over a year to finalize their traditional yogurt process and obtain the necessary county permits and eventually seek out markets where they could sell it.

The Market for Artisanal Yogurt in the United States

Across the United States campaigns encouraging citizens to eat locally grown food have led to a steep increase in the number of farmers markets (see Figure 1.1 in the Appendix). This increase has led to extreme competition between vendors for space in farmers markets. TWM took notice of this trend and first began to look at farmers markets in the area, where handcrafted goods such as theirs are often sought after. The competition among vendors at farmers markets has pushed prices to a level where the goods offered there are often comparable or cheaper than identical products in supermarkets (see Figure 1.2 in the Appendix) (Claro 2010).

From 2010 to 2011 the number of farmers markets across the United States grew by 17% (Jackson 2011). California is home to almost 10% of the Farmers Markets in the United States (see Table 1.1 in the Appendix). The Los Angeles, San Diego, and Orange County areas where TWM was selling their yogurt have 33% of California's share of farmers markets (see Table 1.1). As Table 1.1 also depicts, the market for cheese and prepared foods in farmers markets in that area of California is quite competitive because 27% and 30% of vendors sell those two goods, respectively.

More broadly, Greek artisan yogurts have become quite popular among the trendy, health-conscious population in the U.S. (Wang 2011; Ziobro 2012). According to Euromonitor International Inc. Greek yogurt sales grew by 67% across the globe in 2011 (Ziobro 2012). And because Greek yogurt is considered to be an artisan yogurt (similar to yogurt produced by TWM) the price charged is

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much higher than traditional yogurt. In 2011 for example, Greek yogurt sales in the U.S. were a \$6 billion industry, of this Greek yogurt sales accounted for over 25% of the revenue, but only 16% of sales (Ziobro 2012). Because of this explosion in demand large companies such as Yoplait and Danone have started producing their own artisan yogurts. TWM entered the market at a perfect time, two years before the health benefits of this yogurt began to gain national recognition, giving them considerable time to establish their brand, territory, consumer base, and get the necessary permits; or so they thought.

Regulatory Compliance on the County Level

TWM was aware that their company would need permits at the county level and they began to seek these in March of 2010 after trade-marking their company's name. Selling goods at a farmer's market in Orange County requires a permit that currently costs \$224 (HCA Environmental Health Division, 2011). TWM had to get one permit for each farmers market they entered, and each permitting process would be different depending on which county that market was located.

In order to get these permits Homa had to prove her yogurt was being made in a certified commercial kitchen. There are federal, state, and local regulations for these kitchens from the U.S. Department of Agriculture, under the Food Safety Inspection Services. The California Department of Public Health then carries out the local inspection of these kitchens. These kitchens must also demonstrate compliance with local zoning ordinances and business codes. All kitchen equipment must comply with the Uniform Mechanical Code and must be specially designed for a commercial kitchen; equipment intended for home use is illegal. Additionally, these kitchens must follow local environmental regulations, and in California these often vary by city and county. In San Francisco for instance there are special air quality restrictions and energy-saving provisions that must be followed by commercial kitchens (Marcus n.d.). Inspections of these facilities are also performed regularly.

As TWM was attempting to get these permits they also had to seek a food handler's permit because they were handing out samples of their yogurt. This

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permit is necessary for any individual who will be handling food that has not been prepackaged. There are also additional special food licenses that might be required depending on the type of food served, for example organic food requires its own license to be held before it can be distributed (Marcus n.d.). This process was a particularly lengthy for TWM as the only options presented by the county required plastic container sampling and the Dashtakis were looking for a more eco-friendly process.

TWM also had to apply for and receive several licenses to allow them to operate a business. First, a general business permit from the local city planners must be obtained. The California State board of Equalization must then grant a sales tax license. And if in the future TWM wanted to expand and hire any employees they would have to receive a business identification number from the federal government.

The White Moustache Enters the Market

This entire process took TWM almost a full year (The White Moustache's Facebook page). Throughout this entire county-level permitting process not one regulator mentioned any necessary state-level permits to The White Moustache. During this time TWM also began the process of getting a booth at a local Farmer's Market, which is a difficult and competitive process.

The first market TWM was accepted into was the Huntington Beach Farmer's Market, which currently has a waiting list of about three months. By December 13, 2010 TWM had secured a spot at the Huntington Beach Farmers Market (The White Moustache's Facebook page). By their second showing at Huntington Beach their yogurt was selling out (fifteen gallons a week) and they were doubling their supply (The White Moustache's Facebook page). By February 21 of 2011 they had been welcomed into another farmers market, at Irvine Ranch. Less than one month later they were welcomed into one of the most exclusive farmers markets in the state at Laguna Beach (The White Moustache's Facebook page, March 19, 2010).

At this time TWM was only producing about twenty to thirty gallons of yogurt a week because of the time necessary to produce the yogurt (Beware of the

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yogurt 2011). Because of competition in these farmers markets and a company desire to break into the marketplace by providing a competitively priced product TWM only charged \$3-5 per jar of yogurt and were making only about \$300 a week (*Beware of the yogurt* 2011). They had not yet been able to produce at a level to make their venture profitable before their story went from Horatio Alger to Franz Kafka.

Enter the State Regulators

It was on the very morning of that first showing at Laguna Beach that the State of California was harassing TWM for not having the necessary state permits. They immediately classified her small production at a local Egyptian restaurant as a 'dairy plant', thus subjecting her to the 1915 Pure Milk Act, multiple state permits, and state licensing requirements (The White Moustache's Facebook page, March 24, 2011). TWM was forced to halt production of their yogurt until they became compliant with state law, and potentially could have been fined significantly or sent to prison if they continued commercial production.

The section of California's dairy code that applies to TWM has not been updated since 1947. After a meeting on March 29, 2010 the CDFPA gave TWM three options: 1) build a dairy plant and automate the entire yogurt making process; 2) Make the yogurt in another state and ship it into the state of California; or 3) Petition for updates to the 1915, 1937, and 1947 regulations (The White Moustache's Facebook page). (These three options will be discussed at length below.) TWM then attempted to contact the Governor, Jerry Brown, their state representatives, and the media in attempts to move forward with their business and remain in the state of California. TWM even reached out to their Facebook followers and asked them for help with their petition.

The White Moustache has been working with the CFDA since March of 2011 (over one year) to get their dairy plant permit (The White Moustache's

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Facebook page). During that time newspapers across the world² profiled her business after an article from *The Economist* was published highlighting their difficulties. On July 8th the CDFA inspected the commercial kitchen in which the TWM was operating as well as their equipment. By September TWM discovered that the petition they had sent to California Governor Jerry Brown's office complaining about the treatment received from CDFA had been forwarded on to the CDFA to respond to. CDFA in turn replied to TWM with a warning letter that their stance on TWM had already been given (The White Moustache's Facebook page, September 26, 2011). TWM appropriately replied to this letter on their Facebook page calling the move "Kakfa-esque [sic]".

The State of Oregon quickly noticed the plight TWM was suffering from and made a politically motivated outreach to their company. The Secretary of State, Kate Brown, personally invited Homa and her co-workers to tour the state, local dairy plants, and offered to help them navigate the permitting process in Oregon if they chose to move their business there (Stiles 2011). Kate Brown noted that while there are federal regulations TWM would have to meet, she would help the business quickly gain all the necessary state and local permits (Stiles 2011).

After months and wrestling with regulators in California, TWM was granted permission to plead their case before the head of the CDFA, Karen Ross (The White Moustache's Facebook page, December 6, 2011). That meeting resulted in a slim opportunity that TWM could obtain a dairy plant permit if they could show that their process was scientifically equivalent to what is required under the current regulations. The company spent months preparing a report; they hired legal representation and met with dairy experts from California Polytechnic State University (The White Moustache's Facebook page, December 22, 2011; February 7, 2012). On April 2, 2012 they submitted their final, seventy-

² Castillo, Ignacia. 2011. "El calvario de la reina del yogurt casero en California." *Las Ultimas Noticias*, May 30. <http://www.lun.com/Pages/NewsDetail.aspx?dt=2011-05-30&NewsID=143711&BodyID=0&PaginaId=25>.
"U.S. against Iran – now the scene of yogurt." 2011. *Haaretz*, May 23. http://translate.google.com/translate?js=n&prev=_t&hl=iw&ie=UTF-8&layout=2&eotf=1&sl=iw&tl=en&u=http%3A%2F%2Fwww.haaretz.co.il%2Fhasite%2Fspages%2F1228858.html.

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eight page report to the CDFA who now has thirty days to respond (The White Moustache's Facebook page).

Regulations

The CDFA considers TWM's yogurt to be a 'Grade A' product, as such it must be produced under more sanitary conditions than a Grade B product (e.g. cheese), for instance. Grade A milk must contain certain levels of bacteria as measures in bacteria per milliliter (Food and Agricultural Code Section 35781). After pasteurization the milk must then be cooled to 45°F or cooler (35782). The fat content allow in market milk is also regulated. If milk meets the standards found in Food and Agricultural Code Section 35781-35788 the milk can then be labeled: "Certified milk, Guaranteed milk, or Grade A milk." (35788). As for the legislation requiring TWM's yogurt to be considered a Grade A product, we were unable to find any legislation, code, or regulations that classify yogurt as a Grade A product. Given that these were the regulations referenced when closing down the operation, the CDFA evidently treats yogurts as Grade A.

The basic problem that the CDFA has with The White Moustache is that they do not pasteurize the milk used in their product in the same facility where it is processed and packaged. This regulation comes from the 1947 Milk and Milk Products Act that revised many of the codes regulating dairy industries.

According to this law:

"All market milk and market milk products, and all milk for manufacturing purposes and manufactured milk products, shall be pasteurized at the plant where processed and packaged ..." (Food and Agricultural Code Section 34008(a)).

Here is where the Catch-22 occurs. If TWM were to re-pasteurize the milk used in their yogurt they would have to reheat the milk to 110° F, which would change the flavor and ruin the yogurt entirely. Also, the 1915 Pure Milk Act prohibits the re-pasteurization of milk products (except under certain circumstances that we were unable to determine, despite calls to the CDFA). Unless TWM changed their

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product to a frozen yogurt or frozen dairy dessert, they do not qualify for an exemption under this Act (Food and Agricultural Code Section 34008(2)).

Yogurt as defined by the California Department of Food and Agriculture is: “Fermented milk, lowfat milk, or skim milk, sometimes protein–fortified. Fruit, flavors and sugars may be added. Milk solids content is commonly 15 percent. Most yogurt is high in protein and low in calories. Sometimes referred to as refrigerated yogurt to distinguish from frozen yogurt, an ice cream–like product.” (Glossary Index 2012).

There is a distinction between yogurt and frozen yogurt, thus removing the possibility of TWM classifying their product as a frozen dairy to avoid the 1947 law. The only regulation that specifically addresses yogurt is 3 CCR § 627. It requires yogurt and other dairy producers to list a quality assurance date on their products. Despite hours of searching we were not able to find any other references to yogurt within the California Code of Regulations.

If TWM decided to comply with the regulations they would have to build their own Grade A dairy plant. To comply with those regulations TWM would have to install a pasteurizer with a recorder, a filler, mechanical capper to screw the lids on her jars, and a culture tank (*Beware of the yogurt* 2011). However, compliance with these regulations would fundamentally change TWM as a company and the yogurt as a product. One of their goals is to provide the same yogurt to their consumers that were eaten by their family for generations. To achieve this the yogurt must be hand stirred for hours. Using machines to make their product means that the yogurt loses the unique quality, taste, and characteristics their customers love.

The White Moustaches second option is to move out of state and ship the yogurt into the State of California and then the producers can choose to not meet California’s requirements. There is an entire chapter of the California Code of Regulations devoted to the rules regarding shipping milk products into California, once these dairy products are in the state of California there many regulations regarding their sale. The state regulates their location in the store;

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these products must be kept physically distant from those made for sale in the state. Also, cartons must say “FOR SALE OUTSIDE OF CALIFORNIA” in font at least .5 inch high (3 CCR § 473).

In order to stick with their company’s mission TWM chose the third option. As described above they developed a plan that would allow them to produce a high quality product, even with a permit however, TWM would not be exempt from all regulations. There are a multitude of other regulations that TWM has to comply with if they continue to produce their yogurt in the State of California. One regulation, found in 3 CCR § 470, determines where the label must be applied on a product depending on the type of container that is used.

Analysis

Economic Profit and Schumpeterian Rent

For an accountant, profit represents the money that is left over once a business has paid all of its bills. We will represent accounting profit (AP) as simply revenue (R) less costs (C) ($AP = R - C$). For an economist there are more costs associated with being in business than there are for an accountant. One major area is opportunity cost. Opportunity cost (OC) represents the value of the next best option. Economic profit (EP) is revenue minus costs and opportunity costs ($EP = R - (C + OC)$; we’ll add one more variable shortly after explaining OC better).

Let’s assume that the cost of complying with regulation for TWM totals \$100,000. We will make two additional assumptions (both of which are unlikely): 1) the Dashtakis can easily come up with the funds necessary to become compliant; and 2) Once compliant, no additional funds will be required for TWM to remain compliant. For an accountant, TWM will become profitable once this investment has been recovered. To become profitable in the economic sense, however, the Dashtakis must also compensate themselves for what they *would have earned* had they invested the \$100k somewhere else. If they could invest their money in a savings account with a 5% interest rate, for each year their \$100k is invested in TWM it must return at least \$5,000 in value in order for TWM to be economically profitable.

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The good news is that economists also factor in other benefits beyond revenue. Many entrepreneurs enjoy being their own bosses and building their own businesses. They are not only looking for money; they are looking to create something new. These non-monetary benefits (NMB) are not reflected in our equation above (we just counted revenue as R), so we'll add these in now: $EP = (R + NMB) - (C + OC)$.

Here's the catch: when the economy reaches equilibrium in basic economic theory, $EP = 0$. That is to say in the long run there are no economic profits. Revenue plus non-monetary benefits will equal costs plus opportunity costs. The argument is that if you are making an economic profit, other entrepreneurs will enter your industry and competition will drive your economic profit to zero³. One technical term for economic profits is "rent." People collect "rents" in a variety of different ways. One example is the way companies lobby for regulations that protect them from competition.

One 20th century economist, Joseph Schumpeter, took issue with the theory of long run equilibrium and zero economic profit. Basically, he argues that the economy is constantly reinventing itself. Old industries are destroyed and new ones are created, so there are always economic profits to be gained, as the economy never reaches a real equilibrium. He calls the process "Creative Destruction." These rents (called Schumpeterian or Entrepreneurial Rents) go to the pioneers – the entrepreneurs who take risks in an uncertain world to start new ventures.

Entrepreneurs face an army of risks when they seek their Schumpeterian Rents. The marketplace is both uncertain and fickle. There is no guarantee that people are going to pay the price you need to make to turn a profit – in fact, there's no guarantee that people will purchase your product at all. As the case of The White Moustache demonstrates, government regulation adds another layer of uncertainty.

³ This doesn't mean the company is not profitable or healthy, it just means that it has been made equal to the next best opportunity in terms of profitability. For this reason, in economics sometimes we call zero economic profit a "normal profit."

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Regulations, in general, are absolutely terrible reading. They are dense and technical, and legislators do not have entrepreneurs in mind when they write them. They have lawyers in mind, which is appropriate as they are writing law. The problem is that entrepreneurs are not lawyers. Even if Homa Dashtaki had read through the entire code of regulations affecting the dairy industry in California before selling TWM yogurt at a farmers market, it is likely that she would have thought the sections that eventually shut her down would not even apply to her small business. This regulatory ‘risk’, which is one the Dashtakis thought they had dealt with by complying with all county-level regulations, has proven enough to keep TWM from even having the chance to fail or succeed in the market.

The Problem with Press

As soon as *The Economist* published an article describing TWM’s journey many blogs re-published the article and it received widespread attention. Although this extra attention has had some positive benefits for TWM, it also has pitfalls. Many of the outlets that picked up TWM story have a particular ideological agenda, and see regulations such as California’s as “anti-business.” These motives feed into a much larger national dialogue about the competing needs for economic growth and regulation. TWM is an interesting and engaging story that highlights ways in which regulations can kill businesses at a point when economic growth is one of the primary concerns of the American public. The problem for TWM is that they have become a pawn in a much larger game. Groups critical of regulation (especially over-regulation) lob TWM like a grenade against the executive branch of the State of California.

Unfortunately it is not human nature to take criticism well, especially if that criticism is public. Government officials are no different than the rest of humanity in this regard - they are not angels, which compounds TWM’s problem. A regulatory agency does not need to take a fine-toothed comb to every business in their purview in order to be effective. Instead, it is enough that they carry a fine-toothed comb, and that there is a credible threat of taking it to any given business. The ability to regulate effectively without regulating exhaustively is

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good from a cost-perspective as it means an agency can have a lean staff and still regulate a significant number of businesses or individuals. Consider audits from the IRS as an example - it would be tremendously costly to audit every individual's and company's tax submission, but random audits go a long way in promoting compliance. Since they are not expected to regulate everybody all of the time, regulators often have wide breadth in terms of deciding whom to inspect, how frequently, and how thoroughly. Being on an agency's bad side is undesirable for a business, and it is possible that the press TWM has received has put them squarely in the CDFA's crosshairs.

Receiving press garnered national attention for TWM, but it hasn't solved their regulatory woes. In fact, it may be making them worse. In a follow up piece to *The Economist* Homa commented, "It became clear that if we wanted to get back into business in California, which seemed like a total long-shot anyway, we were better off not (further) ruffling the feathers of the birds who could help us out." (Kluth 2011). After the large, unexpected amount of press their business received, they were apprehensive about potential backlash from regulators.

On Regulation in the Food Industry

Around the turn of the 20th century, assembly-line production was forever changing and expanding the ability to produce in the modern world. Workers became much more productive as they performed a small number of tasks and new technologies became available. These production gains made their way into food production as well. As the industry changed, it became more difficult for Americans to know where their food was coming from. Upton Sinclair's 1906 novel *The Jungle* famously described the unsanitary conditions in Chicago's meat packing industry. Sinclair (a socialist) wanted to highlight the terrible working conditions, but his description of the industry proved to be more memorable than his characters' plights. He later wrote "I aimed at the public's heart and by accident I hit it in the stomach." (Olsson 2006). The public outrage associated with *The Jungle* eventually led to regulations to protect consumers from potential quality issues in the food they purchase. These modern regulations served to protect consumers from opaque processes that put food on their table. Previously

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they had not been necessary as purchasing locally both allowed for greater visibility and immediate feedback mechanisms.

Part of the appeal of artisanal foods is that they are a throwback to simpler times. For this reason, some states have exceptions for artisanal or cottage producers (*Beware of the yogurt* 2010). Since California does not, TWM must face the same regulations as California milk producers. The difference is that California milk producers can afford lobbyists. Lobbyists are industry's number one tool for making sure that regulations do not become so onerous that the industry cannot function. TWM can only lobby for itself, but a small group with limited funding and no expertise in dealing with legislators is generally insufficient for driving a change of the status quo through modern government.

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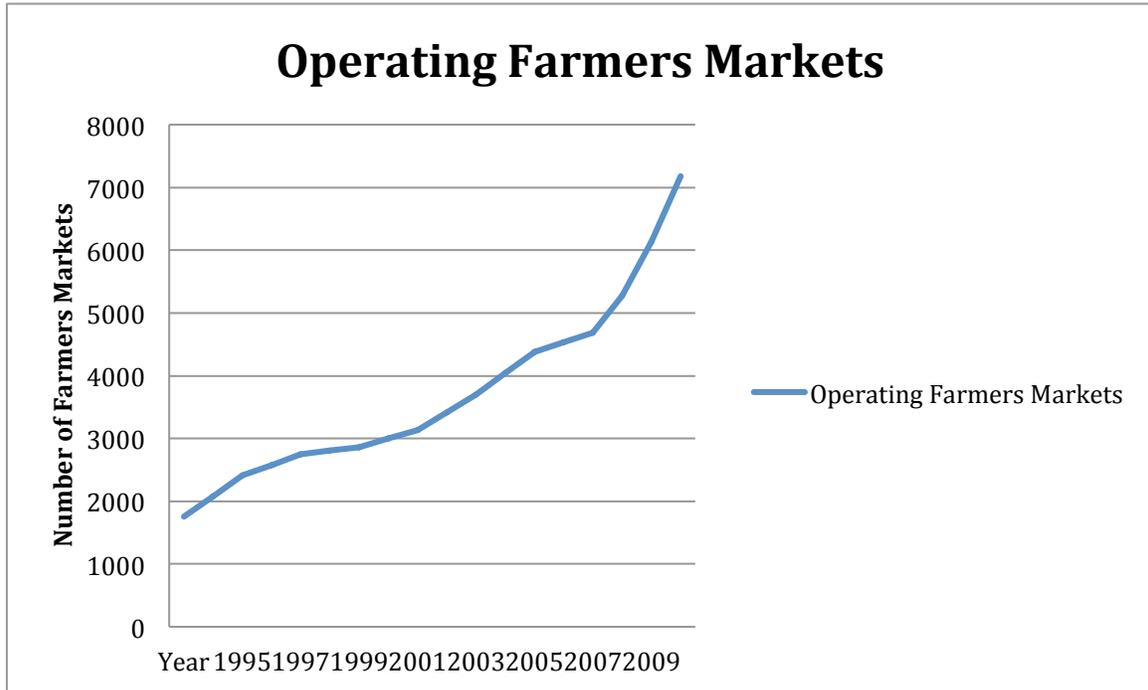
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Appendix

Figure 1.1
Increase in Farmers Markets



Data from U.S. Department of Agriculture, Agriculture Marketing Service,
<http://www.ams.usda.gov/AMSV1.0/FARMERSMARKETS>

Figure 1.2

Prices as Farmers' Markets versus Grocery Stores (2010)
 (Graph from "Vermont Famers' Markets and Grocery Stores: A Price Comparison. <http://nofavt.org/pricestudy>)

