BACK TO THE NEW: MILLENNIALS AND THE SUSTAINABLE FOOD MOVEMENT

By Laurie Ristino*

Nothing should be made by man's labour which is not worth making, or which must be made by labour degrading to the makers.
— William Morris

Social movements are sometimes old ideas reconstituted through the prism of a new age. Thus, the arts and crafts movement was a return to handicraft in the fractured age of industrialism.[1] In America, Frank Lloyd Wright was its iconic, architectural practitioner, steeped in craft, but embracing a modern vision. A feature of humanity is that as we push forward, we reach back seeking to anchor the soul.[2]

---

* Director, Center for Agriculture and Food Systems and Associate Professor of Law, Vermont Law School. I wish to thank my research associate, Katie Hannon Michel, for her excellent assistance in researching this article and her valuable editorial suggestions.

1. ELIZABETH CUMMING & WENDY KAPLAN, THE ARTS AND CRAFTS MOVEMENT 9 (1991). *See also* Monica Obniski, *The Arts and Crafts Movement in America*, in *Heilbrunn Timeline of Art History*, THE METROPOLITAN MUSEUM OF ART (June 2008), http://www.metmuseum.org/toah/hd/acam/hd_acam.htm (presenting a history of the arts and crafts movement in the United States).

2. *See* Paul Kingsnorth, *Dark Ecology*, ORION, Jan./Feb. 2013, (invoking the scythe as a metaphor for regaining human autonomy, freedom, and control through the use of pre-industrial technologies in a "technoindustrial" age, and stating that "[i]f you want human-scale living, you

It is through this lens that I have come to see the movement of the millennial generation back to the land to produce sustainable food.[3] Backed by citizen knowledge and the media savvy of a post-modern world, the sustainable food movement is marked by a desire to return to the land's natural bio-dynamics. It is built upon a generalized awareness wrought by the 1970s environmental movement, but eschewing its limitations. This article describes the sustainable agriculture and food movement in relation to conventional agriculture and food. It argues that, for the movement to fulfill its promise as a viable alternative to conventional agriculture, the legal and policy framework that is necessary to support it must institutionalize its core values.

This article is divided into three sections: the first orients the reader by providing a brief history of American agricultural development from Industrialization through the post-1985 farm bill. The second section describes the emergence of the sustainable farming and food producer movement, which has accelerated in the second decade of the millennium. The third section argues that a robust legal framework is needed to support and give shape to the coalescing sustainable agriculture and food policy, that this framework must reflect the movement's values and ethos, and that the law is, in fact, capable of this.

I. AN EXTREMELY TRUNCATED HISTORY OF MODERN AGRICULTURE IN AMERICA

> But the most striking difference of all was that in 1940 America had rivers on both coasts teeming with salmon, abalone steak was a basic dish in San Francisco, the New England fisheries were booming with cod and halibut, maple trees covered the Northeast and syruping time was as certain as a calendar, and flying squirrels still leapt from conifer to hardwood in the uncut forests of

---

doubtless do need to look backward"); James Howard Kunstler, *Back to the Future*, ORION, July/Aug. 2011, (arguing that, due to environmental exigencies, the cities of the future will need to return to a "human scale" and will look more like the cities of "a distant yesteryear").

3. *See* LINDSAY LUSHER SHUTE ET AL., NATIONAL YOUNG FARMERS COALITION, BUILDING A FUTURE WITH FARMERS: CHALLENGES FACED BY YOUNG, AMERICAN FARMERS & A NATIONAL STRATEGY TO HELP THEM SUCCEED 10 (2011) (stating, "[t]he young men and women pursuing agriculture today have a different profile than generations past: they come from diverse backgrounds and experiences, they embrace sustainable growing practices, and many did not grow up on a family farm. Their families may have abandoned rural areas for the city many generations ago. Pursuing a farming career is a return to these roots."); *See generally* Neil D. Hamilton, *America's New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers*, 22 FORDHAM ENVTL. L. REV. 523 (2011) (regarding younger generations returning to the farm and government support structures).

> Appalachia. All of this has changed. It is terrifying to see how much we have lost in only seventy years.[4]
>
> —Mark Kurlansky

The transformation of American agriculture in the last century is startling.[5] The roots of that transformation lie in the Second Industrial Revolution of the last quarter of the nineteenth century, which among other things, changed agriculture from a backbreaking, manual affair, to an efficient, industry in only a few decades.[6] The history of modern American agriculture, including its complex, deep-rooted relationship to the federal government, tends to be unknown to most Americans. The inventions, policies, and economics that transformed agriculture are mere footnotes in our American history books—a reflection of American society's remove from the source of food production. As a result of our disengagement, food production and the policies that shape it have largely been a mystery to Americans; in that knowledge void, the myth of farming as pastoral and inherently noble has persisted.[7] Given this, a brief summary of the industrial transformation of agriculture in the last century and the interplay between farming and the federal policies is necessary to frame the import of the modern food and farming revolution.

Basic farming tasks—the tilling and preparing of the soil—was done by plows pulled by horses, mules, or oxen, until tractors were widely adopted in the 1930s.[8] Leading up to this time, Americans designed many improvements to the plow, including the use of new materials (from iron to steel by a blacksmith named John Deere); construction of beams and moldboards (for pushing the soil back to earth); and refined blade angles to facilitate shedding of soil.[9] By 1902, the first production tractor, a leviathan built by Hart-Parr, was introduced to market. For most farmers, the tractor

---

4. MARK KURLANSKY, THE FOOD OF A YOUNGER LAND 5 (2009).

5. *See* BRUCE L. GARDNER, AMERICAN AGRICULTURE IN THE TWENTIETH CENTURY 8 (2002); PAUL K. CONKLIN, A REVOLUTION DOWN ON THE FARM 97-99 (2008) (writing that "rapid changes in . . . machinery, electrification, chemical inputs, and plant and animal breeding" provided the necessary conditions for startling growth in agricultural productivity, labor efficiency, and yields per acre from 1935 until the mid-1980s).

6. *See generally* GARDNER, *supra* note 5, at 8–47 (regarding the changes in agricultural method).

7. *See* Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 935, 93840 (2010) (tracing the roots of the mythologies surrounding farming back to Jefferson's writing on agrarianism—the idea that farming was uniquely worthy from other human industry, manifesting a governmental paternalism towards agriculture and "agricultural exceptionalism" in the environmental regulatory treatment of agriculture).

8. *See generally* CONKLIN, *supra* note 5, at 1–18.

9. *Id.* at 5–6.

was too expensive, heavy (at thirty-five thousand pounds), and impractical, except for use on large western expanses.[10] In 1917, Henry Ford introduced a cheaper tractor, greatly impacting the market. Throughout the 1920s until the 1930s, innovations resulted in tractors that were cheaper, smaller, more maneuverable, and able to plow and plant seeds. By the early 1900s, drills for planting row crops and grains, as well as fertilizing, were in use and largely replaced hand sowing and fertilizing.[11]

For many crops, harvesting was the most labor-intensive stage, with grains involving a three-step process (cutting stalks, threshing, and winnowing out the chaff).[12] Advances in cultivation began during the American Revolution with the cradle replacing the scythe. Then by 1835, a more costly tool, the reaper and binder, revolutionized harvest. The development of combines, the most expensive farming inventions of the nineteenth century, was underway in the period leading up to the 1880s.[13] Combines harvested grains, removed the grain from the stalk, and separated the chaff. Early combines were pulled by giant steam engines, weighing up to forty thousand pounds, impractical for most farmers until improvement led to their widespread use in the East in the 1940s.[14] The invention of barbed wire in the nineteenth century began to displace split rail fencing, transforming the cattle industry.[15] With the mechanization of agriculture, farmers increasingly specialized their crop production to take advantage of economies of scale in the marketplace.[16] Although there were regional differences in agriculture production, in general, mechanization resulted in farmers being less self-reliant, as they became dependent on industrial infrastructure for transport and distribution, and bankers to help finance larger operations.[17]

By the 1870s, as industrialization gained momentum, the number of Americans engaged in farming dropped below fifty percent of the population as America rapidly urbanized.[18] At the same time, the aforementioned advances in technology increased production on farms,

---

10. *Id.* at 16–17.
11. *Id.* at 7.
12. *Id.* at 8.
13. *Id.* at 11.
14. *Id.* at 11.
15. *Id.* at 8–9.
16. *See id.* (stating that by 1930 most farmers only grew one or two "money crops").
17. R. DOUGLAS HURT, AMERICAN AGRICULTURE: A BRIEF HISTORY 165–218 (Purdue Univ. Press rev. ed. 2002).
18. R. DOUGLAS HURT, PROBLEMS OF PLENTY: THE AMERICAN FARMER IN THE TWENTIETH CENTURY 3 (2002). *See generally* HURT, *supra* note 17 (discussing regional farming practices and the evolution of technology in agriculture).

decreasing reliance on manual labor.[19] By the turn of the century, many farmers were doing better economically than ever before, with the exception of southern farms, where agriculture was locked into a system of tenancy and poverty, resulting from a legacy of slavery.[20]

A recurring theme in American agriculture is the use of the power of the collective to ensure the well-being of farmers. During the Industrial Revolution, cooperative organizations emerged in England as a way for the working poor to leverage power.[21] The use of collectives by groups to gain economic clout had a long history in the United States, with the first cooperative established by Benjamin Franklin.[22] Cooperatives gained new agricultural prominence in the 1930s when the Hoover Administration, in attempt to stabilize agricultural prices during the Depression, encouraged farmers to join cooperatives to gain leverage in the market.[23]

In America, the Granger movement, or the Patrons of Husbandry, was founded in 1867, and gained momentum in the 1870s, when rising railroad transportation costs, falling crop prices, and Congress' reduction of paper money devastated farmers' livelihoods.[24] The Granger movement organized locally to regulate railroad transportation costs for grain and establish grain houses for the benefit of farmers.[25] Arising during the Progressive Movement, many granges supported a host of reforms, including women's suffrage, government control of railroads, and free mail delivery in rural areas.[26] Although the power of the Granger movement waned throughout

---

19. *See generally* CONKLIN, *supra* note 5, at 4 (stating, "[g]radual improvements in agricultural productivity before 1930 involved two factors: reduced labor for each acre cultivated, and improved yields per acre).

20. *Id.* at 3.

21. *See Cooperatives in the U.S., European Influences*, UNIV. OF WIS.-MADISON, CTR. FOR COOPERATIVES, *available at* http://www.uwcc.wisc.edu/whatisacoop/history/ (last visited Nov. 10, 2013); Karen Zimbelman, *History of Cooperatives*, COOPERATIVE DEV. FOUND., http://www.cdf.coop/history-of-cooperatives/ (last visited Nov. 10, 2013). *See generally* SYDNEY ELLIOT, THE ENGLISH COOPERATIVES (1937) (regarding the cooperative movement in Great Britain).

22. Zimbelman, *supra* note 21.

23. *See* CONKLIN, *supra* note 5, at 52–53.

24. *See* SVEN D. NORDIN, RICH HARVEST: A HISTORY OF THE GRANGE, 1867–1900, at 3–12 (1974) (regarding the causes of the rise of the Grange movement in the US). *See* HURT *supra* note 17, at 203–213 (describing the rise of the Granger movement and stating, "[a]fter the Civil War, farmers in the great Plains and South experienced problems created by surplus production, high railroad rates, and mortgage indebtedness" at 203).

25. *See* Michael Kazin, *Populism & Agrarian Discontent,* GILDER LEHRMAN INST. OF AM. HISTORY, http://www.gilderlehrman.org/history-by-era/populism-and-agrarian-discontent/resources/grange-movement-1875 (last visited Nov 10, 2013).

26 HURT, *supra* note 18, at 205.

the years, the organization still exists, and grange halls in rural America continue to serve a community function.[27]

A consistent and powerful factor in the development of modern American agriculture was (and still is) the federal government. The relationship of farmers to the federal government and federal policy is key to understanding the complexities underlying current agriculture policy as embodied by the farm bill—what we grow and why. Early governmental support included federal and state funding of infrastructure (roads, railroads, and canals), disposal of federal lands to homesteaders, and land grants for public schools and universities.[28] As industrialization gained momentum, a concern for the prosperity of the agriculture sector arose in policymakers. Consequently, in 1862, the first of the Morrill Land Grant Acts was passed, establishing land grants for colleges for the purpose of teaching agricultural and the mechanical arts, as well as to provide access to higher education to all social classes.[29] Starting in 1887, Congress began funding the agricultural research stations under the auspices of the land grant universities.[30] In 1914, the Smith Lever Act created cooperative extension, the purpose of which was to transfer knowledge from the land grant universities to farmers (a task the land grant universities had failed to do successfully on their own).[31] In 1916, the Wilson Administration supported the Federal Farm Loan bill,[32] which for the first time provided federal funds to support farms by providing long-term loans for mortgages.[33] Thus, by the beginning of the 20th century, the federal government had established a central role in agriculture research,

---

27. *See also* About Us, NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY, http://www.nationalgrange.org (last visited Nov. 10, 2013) (claiming 2,100 active grange halls throughout the U.S.).

28. *See* CONKLIN, *supra* note 5, at 19.

29. Justin Smith Morrill (1810–1889), born just down the road from Vermont Law School, was first a Vermont Representative, and then a Senator. He was the chief sponsor of the Land Grant College Acts of 1862 and 1890, which established many public universities and colleges. Morrill had wanted to go to college but did not have the means to do so. The Land Grant Acts provided the opportunity for the working class and minorities to obtain a higher education. He is also known as one of the founders of the Republican Party. *See* MORRILL HOMESTEAD, http://www.morrillhomestead.org/ (last visited Nov. 10, 2013) (providing a biography of Morrill and a description of the Land Grant Colleges).

30. *See* The Hatch Act of 1887, ch. 314, § 1, 24 Stat. 440 (current version at 7 U.S.C. § 361a (2012)). *See generally* Lou Ferleger, *Uplifting American Agriculture: Experiment Station Scientists and the Office of Experiment Stations in the Early Years After the Hatch Act*, 64 AGRIC. HIST. 5 (1990).

31. The Smith-Lever Act of 1914, 7 U.S.C. §§ 341–49 (2012).

32. Federal Farm Loan Act of 1916, Pub. L. No. 64-158, 39 Stat. 360 (repealed 1971).

33. HURT, *supra* note 18, at 26.

development, and the agricultural economy.[34] The farm related legislation in the 1930s further deepened the relationship between the federal government and farmers.[35]

This relationship is based upon (at worst) a political paternalism that the nobility of the famer and farm life, in part a legacy of Jeffersonian agrarianism, should be preserved in the face of urbanization.[36] At the same time, federal policies and programs ironically led to the adoption of modern farming techniques and the commodification of agriculture, thereby actually moving agriculture away from the pastoral ideal. By the 1920 census, for the first time in America, more people lived in the cities than in rural America.[37]

At the beginning of the twentieth century, the combined effect of government support and the industrial revolution was unprecedented farmer prosperity. But, farmer prosperity would turn out to be cyclical, impacted by domestic and international commodity prices, wars, trade, climate, and other events.[38] During World War I, an increased demand for American commodities kept prices high. With demand high, farmers borrowed money to buy new lands to cultivate.[39] These prosperous years, however, were

---

34 *See* Mary Jane Angelo, *Corn, Carbon, and Conservation: Rethinking U.S. Agricultural Policy in a Changing Global Environment*, 17 GEO. MASON L. REV. 593, 621 (2010) (describing government support for agriculture in the early nineteenth century, including land grants, and funding for agricultural research); Julie Andersen Hill, *Bailouts and Credit Cycles: Fannie, Freddie, and the Farm Credit System*, 2010 WIS. L. REV. 1, 10–16 (2010) (describing the history of the Federal Farm Loan Act and government involvement in the agricultural economy); *See* CONKLIN, *supra* note 5, at 19 (describing how government support for agriculture increased after the Civil War, including support for "research, regulatory legislation, subsidized irrigation projects, and accessible, low-interest credit," all of which paved the way "for the farm legislation of the New Deal").

35. *See* Hill, *supra* note 34, at 16–17.

36. William S. Eubanks, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 217 (2009) ("When Jefferson became president in 1801, 95% of the nation's population worked full-time in agriculture. Although this percentage has declined significantly over the past two centuries, Jeffersonian agrarianism left an indelible imprint on the United States and 'remains to this day an important component of our national rural identity and is embedded in farm politics and policies'") (internal citation omitted). *See generally* DANIEL IMHOFF, FOOD FIGHT: THE CITIZEN'S GUIDE TO THE NEXT FOOD AND FARM BILL 37–42 (2nd ed. 2012) (describing the history of Jeffersonian agrarianism).

37. NAT'L AGRIC. STAT. SERV., USDA, 1920 CENSUS OF AGRICULTURE 23 (1920) (stating, "[o]f the total population in 1920, 51,406017, or 48.6 per cent, were classified as rural, while in 1910 the rural population formed 54.2 per cent of the total. There has been a gradual decrease in the percentage of the population classified as rural since the classification was established by the Bureau of the Census. In 1920, however, for the first time, the rural population formed less than one-half of the total").

38. *See generally* JASON HENDERSON ET AL., AGRICULTURE'S BOOM-BUST CYCLES: IS THIS TIME DIFFERENT?, Fourth Quarter 2011 FED. RESERVE BANK OF KAN. CITY ECON. REVIEW 83; MIKE BOEHLJE ET AL., CTR. FOR COMMERCIAL AGRIC., IS THE CURRENT FARM PROSPERITY SUSTAINABLE? (2012) (analyzing present farm prosperity in light of the inherently cyclical nature of the agriculture industry).

39. *See id.* at 84 (stating, "[b]y the late 1910s, robust export demand during the war sent agricultural commodity prices and farm incomes climbing . . . by the end of the war in 1919, U.S.

followed by the depression of the late 1920s and 1930s. The farm population fell to 30.5 million, while farms grew bigger in size.[40] Prices dropped precipitously due to less demand. At the same time, farmers over-produced, leading to a glut and, ultimately to a mass dumping of crops.[41] Farmers lobbied for government involvement and assistance.[42] In response, the federal government employed various strategies, each largely unsuccessful, in an attempt to control commodity prices.[43]

The Roosevelt Administration, with the support and pressure of various farm groups,[44] stepped in to help farmers, as it did for other sectors of the economy, with sweeping legislation. Specifically, in 1933, Congress passed the Agriculture Adjustment Act,[45] which, among other things, authorized the federal government to pay farmers not to produce commodities as a way to help control commodity prices. In the 1930s, Congress also established the Rural Electrification Administration, which had a fundamental impact on farm life by providing electricity to rural America.[46]

---

agricultural exports had almost doubled pre-war levels"), 90 (describing how farmers' took advantage of low interest rates during World War I "to finance land purchases and other capital expenditures").

40. *See* HURT, *supra* note 18, at 46.

41. *See* CONKLIN, *supra* note 5, at 66 (stating, "[t]he first year of the AAA was full of both confusion and controversy" leading to "the plowing under of part of a growing cotton crop and the slaughtering of pigs and sows," and producing only a slight reduction in surpluses); *See also* Jon Lauck, *After Deregulation: Constructing Agricultural Policy in the Age of "Freedom to Farm,"* 5 DRAKE J. AGRIC. L. 3, 7–11 (2000) (describing the evolution of economic regulation in agricultural markets leading up to the Great Depression, and explaining how the Agricultural Adjustment Act was a direct reaction to overproduction and agricultural market failure). *See generally* Gary D. Libecap, NAT'L. BUREAU OF ECON. RESEARCH, THE GREAT DEPRESSION AND THE REGULATING STATE: FEDERAL GOVERNMENT REGULATION OF AGRICULTURE: 1884–1970 6–19 (1998), *available at* http://www.nber.org/chapters/c6893.pdf.

42. IMHOFF, *supra* note 36, at 42 (stating, "[h]istorian Bernard DeVito wrote that 'farmers throughout the West were always demanding further government help and then furiously denouncing the government for paternalism, and trying to avoid regulation'"); JOHN MARK HANSEN, GAINING ACCESS: CONGRESS AND THE FARM LOBBY, 1919–1981, at 6 (1991) (stating, "[i]n the mid-1920s . . . the agricultural lobbying groups proved their superiority to political parties in meeting the election needs of Midwestern rural legislators . . . moreover, the chronic agricultural depression convinced lawmakers that the popularity of the farm relief issue would not soon subside . . . .[A]ccordingly, members of the Agriculture Committee from the Midwest established strong working relationships with the farm groups"). *See also* Theda Skocpol & Kenneth Finegold, *State Capacity & Economic Intervention in the Early New Deal*, 97 POLITICAL SCI. Q. 255, 258 (1982) (describing the rise of the American Farm Bureau Federation as a major lobbying force after the Agricultural Adjustment Act); HURT, *supra* note 18, at 52.

43. *See* CONKLIN, *supra* note 5, at 66.

44. HURT, *supra* note 18, at 66–96 (providing an overview of New Deal legislation impacting the agricultural sector).

45. Agricultural Adjustment Act, ch. 25, Title 1, 48 Stat. 31 (1933) (codified in scattered sections of 7 U.S.C).

46. *See* HURT, *supra* note 18, at 89.

Congress would follow-up the Agricultural Adjustment Act of 1933 with several other pieces of agricultural legislation,[47] ultimately leading to what is considered the first farm bill in 1965. These laws focused on stabilizing prices of commodity crops as they were considered representative crops.[48] Specifically, the Frazier-Lemke Bankruptcy Act of 1934[49] (prevented banks from repossessing farms); Bankhead-Jones Farm Tenant Act of 1937[50] (authorized the government to purchase distressed ("dust bowl") lands and established a credit program for tenant farmers to purchase lands); Agricultural Adjustment Act of 1938[51] (replaced the Agricultural Adjustment Act of 1933, which was declared unconstitutional, and established the Commodity Credit Corporation, the entity responsible for paying commodity support payments and purchasing surplus crops); Agricultural Act of 1948[52] (made reforms to the 1938 Act, including establishing mandatory commodity payments at ninety percent parity, which had the effect of farmers increasing production to match profit margins of the war years); Agricultural Act of 1949[53] (established the school lunch program and authorized donation of surplus food to "friendly" countries); Agricultural Act of 1954[54] (established flexible price support for various commodities); Agricultural Act of 1956[55] (authorized payments to

47. The original Agricultural Adjustment Act of 1933 focused on decreasing surpluses of seven commodities: wheat, cotton, corn, rice, tobacco, hogs, and dairy products. *Id.* at 69. The Act focused on these "basic commodities" as opposed to fruit and vegetable crops for three reasons: 1) because these seven commodity crops "influenced the prices of other commodities," 2) they were each "running a surplus," and 3) their production and distribution could be easily regulated because of their processing requirements. *Id.* Today, the five major commodity crops receiving the bulk of farm bill support are corn, soybeans, wheat, cotton, and rice. *See* ENVTL. WORKING GRP., *Farm Subsidy Primer*, EWG FARM SUBSIDY DATABASE, http://farm.ewg.org/subsidyprimer.php (last visited Nov. 10, 2013) (providing a basic introduction to the current subsidy system, and stating that although support is primarily targeted at the five major commodity crops, sugar and milk are also heavily regulated and have a separate price support system under the farm bill).

48. *See* HURT, *supra* note 18, at 69 (discussing the reasons the Agricultural Adjustment Act targeted specific crops). S*ee also* ENVTL. WORKING GRP., *The United States Summary Information*, EWG FARM SUBSIDY DATABASE, http://farm.ewg.org/region.php?fips=00000 (last visited July 16, 2013) (regarding commodity crop prices over the last 20 years).

49. Frazier-Lemke Farm Bankruptcy Act of 1934, Pub. L. No. 73-486, 48 Stat. 1289 (repealed).

50. Bankhead-Jones Farm Tenant Act of 1937 (Farm Tenant Act), 50 Stat. 522 (codified as amended at 7 U.S.C. §§ 1010–1012 (2012)).

51. Agricultural Adjustment Act (AAA) of 1938, Pub. L. No. 75-430, 52 Stat. 31 (codified as amended in scattered sections of 7 U.S.C.).

52. Agricultural Act of 1948, Pub. L. No. 80-897, 62 Stat. 1247 (codified as amended in scattered sections of 7 U.S.C.).

53. Agricultural Act of 1949, Pub.L. No. 81-439, 63 Stat. 1051 (codified as amended in scattered sections of 7 U.S.C.).

54. Agricultural Act of 1954, Pub. L. No. 83-690, 68 Stat. 897 (codified as amended in scattered sections of 7 U.S.C.).

55. Agricultural Act of 1956, Pub. L. No. 84-540, 70 Stat. 188 (codified as amended in scattered sections of 7 U.S.C.).

farmers to remove land from production for a period of time with the intent to reduce commodity production and control prices); and Farm Credit Act of 1971[56] (consolidated existing elements of farm credit law to support farmers and ranchers). In sum, the various laws passed by Congress continually attempted to control price and supply of commodities through land retirement or various types of commodity payments.[57]

Approximately every five years, beginning in 1965, Congress began passing omnibus legislation popularly referred to as the farm bill. The farm bill sets forth federal policy regarding food, agriculture, and, as it has evolved, a broad range of other areas. The farm bills are: Food and Agricultural Act of 1965;[58] Agricultural Act of 1970;[59] Agricultural and Consumer Protection Act of 1973;[60] Food and Agriculture Act of 1977;[61] Agriculture and Food Act of 1981;[62] Food Security Act of 1985;[63] Food, Agriculture, Conservation, and Trade Act of 1990;[64] Federal Agriculture Improvement and Reform Act of 1996;[65] Farm Security and Rural Investment Act of 2002;[66] and Food, Conservation, and Energy Act of 2008.[67] By 2008, the farm bill (the last farm bill as of this writing) had

---

56. Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 583 (codified as amended in scattered sections of 12 U.S.C.).

57. *See* IMHOFF, *supra* note 36, 37–42; CONKLIN, *supra* note 5, at 63–76.

58. Food and Agriculture Act of 1965, Pub. L. No. 89-321, 79 Stat. 1187 (codified as amended in scattered sections of 7 U.S.C).

59. Food and Agriculture Act of 1965, Pub. L. No. 89-321, 79 Stat. 1187 (codified as amended in scattered sections of 7 U.S.C).

60. Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, 87 Stat. 221 (codified as amended in scattered sections of 7 U.S.C.).

61. Agricultural Act of 1977, Pub. L. No. 95-113, 91 Stat. 913 (codified as amended in scattered sections of 7 U.S.C.).

62. Agriculture and Food Act of 1981, Pub. L. No. 97-98, 95 Stat. 1213 (codified as amended in scattered sections of 7 U.S.C.).

63. Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (codified as amended in scattered sections of 7 U.S.C.). The Food Security Act of 1985 is notable for its inclusion of the so-called Swampbuster and Sodbuster provisions in the Conservation Title (title II). These provisions linked farm payments to conservation compliance, the reduction of soil erosion, and the prohibition of converting wetlands for the purposes of crop production. These provisions were fairly radical given the past policies of the federal government to encourage cultivation. These same provisions were hotly debated by Congress in the 2012–2013 farm bill process. *See also* NAT'L. SUSTAINABLE AGRIC. COAL., FARMING FOR THE FUTURE: A SUSTAINABLE AGRICULTURE AGENDA FOR THE 2012 FOOD AND FARM BILL 39–42 (2012) (discussing the changes needed to the 2012–2013 farm bill).

64. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359 (codified as amended in scattered sections of 7 and 16 U.S.C.).

65. Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888 (codified as amended in scattered sections of 7 and 16 U.S.C.).

66. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (codified as amended in scattered sections of 7 and 16 U.S.C.).

67. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651. The 2008 Farm Bill is notable because it supports local food systems, recognizes that agricultural lands

swelled to thirteen titles with a cost of about $973 billion in mandatory outlays over a decade long period.[68] The largest portion of this outlay at $764 billion is the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps; the second biggest outlay are the combined commodity programs, with crop insurance totaling $84 billion and farm commodity price and income supports at $59 billion; followed by outlays for conservation at $62 billion.[69]

The number of acres in cropland has fluctuated somewhat over time (e.g., 325 million acres in 1910[70] compared to 408 million acres in 2007[71]). However, the composition of the crops has changed significantly, and the yield per acre has skyrocketed. For example, the acreage in oats (used to feed horses), rye, buckwheat, and flaxseed have precipitously declined since the early 1900s.[72] The acreage in soybeans, negligible in the early 1900s, has now increased to over 70 million acres, the second largest field planted crop in the United States (corn being the largest).[73] The changes in crop composition were due to multiple factors, including the movement to mechanized production, global demand, and federal subsidies.[74] These changes also included the dominance of homogenous crops to maximize production efficiencies, resulting in the loss of crop diversity, a critical

---

provide valuable ecosystem services, and includes provisions that support beginning and socially disadvantaged farmers. *See id.*

68. RENÉE JOHNSON & JIM MONKE, CONG. RESEARCH SERV., NO. RS22131, WHAT IS THE FARM BILL? 2, 4 (2012).

69. *Id.* at 6.

70. GARDNER, *supra* note 5, at 19.

71. CYNTHIA NICKERSON ET AL., USDA, ECON. RESEARCH SERV., MAJOR USES OF LAND IN THE UNITED STATES 1 (2011).

72. *Compare* USDA, NAT'L. AGRIC. STATISTICS SERV., 1920 CENSUS OF AGRIC., INDIVIDUAL CROPS 749, 758, 762, 783 (1920) (reporting 37,991,002 harvested acres of oats, 7,679,005 harvested acres of rye, 742,627 harvested acres of buckwheat, and 1,260,687 harvested acres of flaxseed in the United States in 1919); *with* USDA, NAT'L. AGRIC. STATISTICS SERV., 2007 CENSUS OF AGRIC. 87, 481, 474, 478 (2009) (reporting 1,509,149 harvested acres of oats, 267,361 harvested acres of rye, 24,760 harvested acres of buckwheat, and 347,367 harvested acres of flaxseed in the United States in 2007).

73. *See Soybeans & Oil Crops: Background*, USDA: ECON. RES. SERV., http://www.ers.usda.gov/topics/crops/soybeans-oil-crops/background.aspx (last updated Oct. 10, 2012); *See also Major Crops Grown in the United States*, U.S. ENVTL. PROT. AGENCY, http://www.epa.gov/agriculture/ag101/cropmajor.html (last updated April 11, 2013) (providing a breakdown of the major crops grown in the U.S.).

74. In addition to influencing crop composition, federal subsidies also keep commodity crop prices substantially lower than prices on non-commodity crops like fruits and vegetables, which do not receive federal dollars. These price differences ultimately impact America's food choices, since prices for food items produced using ingredients derived from commodity crops tend to be lower. *See Commodity Policy & Agricultural Subsidies*, YALE RUDD CTR. FOR FOOD POLICY & OBESITY, http://www.yaleruddcenter.org/what_we_do.aspx?id=81 (last visited Nov. 10, 2013) (discussing how industrialization, increased food yields, and subsidies have lowered the price of select foods).

element of food security.[75] It is estimated that at one time humanity used about 7,000 species to meet its needs.[76] Now, humankind only cultivates about 150 species, and most people live off of around twelve species.[77]

Corn is a prime example of the role of government policies in the creation and maintenance of demand. The link between federal policy, corn production, and corn's ubiquity in our food system has been well explored by, among others, journalist Michael Pollan.[78] Corn now accounts for ninety percent of the total feed grain with most of the crop used to feed livestock.[79] Due to rising corn prices, the acres of corn planted in 2012 were the highest since 1937.[80] The impact of commodity prices is systemic. For example, between 2008 and 2011, rising commodity prices resulted in the conversion of 27.3 million wetlands, grasslands, and other habitats into agricultural land. These losses occurred mainly in the Great Plains, many areas of which were devastated by drought in 2012, compounding natural resources impact.[81]

In 1910, farmers harvested an average of twenty bushels of corn per acre. By the 1990s, corn yield had risen to 170 bushels an acre.[82] Huge

---

75. *See generally* José Esquinas-Alcázar, *Protecting Crop Genetic Diversity for Food Security: Political, Ethical, and Technical Challenges*, 6 NATURE REVIEWS: GENETICS 946 (2005); COMM'N ON GENETIC RES. FOR FOOD & AGRIC., FOOD & AGRIC. ORG. OF THE UNITED NATIONS, SECOND REPORT ON THE STATE OF THE WORLD'S PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE 3–22 (2010); *Who We Are?*, GLOBAL CROP DIVERSITY TRUST, http://www.croptrust.org/content/who-we-are (last visited Aug. 31, 2013) (regarding the current diversity of human cultivation and diet, as pertaining to crop production.).

76. Esquinas-Alcázar, *supra* note 75, at 947.

77. *Id.*

78. MICHAEL POLLAN, THE OMNIVORE'S DILEMMA 19 (2006) ("There are some forty-five thousand items in the average American supermarket and more than a quarter of them now contain corn."). *See also* KING CORN (Mosaic Films Inc. 2007) (examining the role of government subsidies in perpetuating America's top commodity crop.).

79. *See Corn Background*, USDA, ECON. RESEARCH SERV., http://www.ers.usda.gov/topics/crops/corn/background.aspx (last updated June 18, 2013).

80. *Acreage*, USDA, NAT'L. AGRIC. STAT. SERV., ISSN: 1949-1522 33 (2012).

81. *See Acres of Grassland, Wetlands, Shrub Land Converted to all Crops, by County, 2008-2011*, STAR TRIBUNE, http://www.startribune.com/newsgraphics/165156076.html (last visited Nov. 10, 2013) (illustrating the acreage conversion on county scale from 2008–2011). *See also* SCOTT FABER ET AL., ENVTL. WORKING GRP., PLOWED UNDER: HOW CROP SUBSIDIES CONTRIBUTE TO MASSIVE HABITAT LOSSES (2012) (regarding habitat loss and agricultural conversion in 2008–2011); U.S. GOV'T. ACCOUNTABILITY OFFICE, AGRICULTURE CONSERVATION: FARM PROGRAM PAYMENTS ARE AN IMPORTANT FACTOR IN 77 LANDOWNERS' DECISION TO CONVERT GRASSLAND TO CROPLAND, GAO-07-1054 (2007) (discussing how the 2012 drought compounded the environmental and economic tragedy as wetlands were converted for cropping only to be struck by drought, resulting in crop insurance claims underwritten by the American taxpayer). *See generally* BRUCE BABCOCK, ET AL., ENVTL. WORKING GRP., TAXPAYERS, CROP INSURANCE, AND THE DROUGHT OF 2012 (2013) (exploring the perverse incentives and taxpayer funding in American crop insurance programs).

82. *See* CONKLIN, *supra* note 5, at 20; *See Corn Background*, USDA, ECON. RESEARCH SERV., http://www.ers.usda.gov/topics/crops/corn/background.aspx (last updated June 18, 2013).

productivity gains by the mid-twentieth century[83] were driven by increased inputs such as chemical fertilizers and herbicides, the technology for which was developed for the munitions and related military industries that supplied the wars of the twentieth century.[84] In other words, these dramatic increases in productivity over the twentieth century were fueled by intensive carbon usage.[85]

Concurrent with the increase in monoculture commodity production, the total number of farms has decreased from a high of 7 million farms in 1935 to 1.9 million farms in 1997.[86] Midsized farms have continued to decline and the remaining farms are larger in acreage.[87] Larger farms comprise a relatively small proportion of farm households, but they account for the bulk of agricultural production.[88] Unlike like smaller farms, which generally rely on off-farm income, these larger farms rely on farm profits for a higher percentage of household income.[89] Government payments accounted for five to eight percent of total gross cash farm income over the last several years.[90] The consolidation and disappearance of small[91] and mid-size farms is the result of policies and an economic structure that favors economies of scale and intensive capital investment.[92]

---

83. CONKLIN, *supra* note 5, at 97–99.

84. *Id.* at 108–11.

85. *See* IMHOFF, *supra* note 36, at 13949 (noting that "[o]n average, at least 10 calories of fossil fuel are used for every calorie of industrial food eaten" and that "[n]itrogen fertilizes, synthesized from natural gas, are the backbone of high-yield industrial farming, consuming more than one-third of the energy used in U.S. agriculture"); CONKLIN, *supra* note 5, at 111–12 (writing that from 1950–1980 farmers rapidly increased the use of fossil fuel based fertilizers in order to address soil deficiencies and maintain high yields).

86. USDA, OFFICE OF COMMC'N., AGRICULTURE FACT BOOK 2001–2002, 24 (2003).

87. *Id.* (stating that "farms with fewer than 50 acres and farms with more than 500 acres have both increased their share of total farms since 1974, but midsize farms' share has declined").

88. *See* USDA, Farm Bill Forum Comment Summary and Background, Farm Family Income 2 (2006), *available at* http://www.usda.gov/documents/FARM_FAMILY_INCOME.pdf (referencing 18% of farms with sales of $100,000 or more produce about 88% of total farm sales, and over 80% of farm commodity program payments go to these farming operations).

89. *Id.*

90. *Id.*

91. *See* USDA, OFFICE OF COMMC'N., *supra* note 86 (stating that the number of small farms with 1–49 acres declined from 2.7 million in 1935 to about half a million in 1974). *But see* USDA, NAT'L. AGRIC. STAT. SERV., 2007 CENSUS OF AGRIC., *Small Farms*, *available at* http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/small_farm.pdf (showing a slight increase in the number of small farms, defined by sales not acreage, from 2002–2007).

92. *See* HURT, *supra* note 17, at 134 (describing how increased petroleum costs and limited export markets following the Arab-Israeli War in 1973 put a squeeze on farm profits and spurred consolidation and increases in average farm acreage). *See generally* ROBERT A. HOPPE ET AL., USDA, ECON. RESEARCH SERV., SMALL FARMS IN THE UNITED STATES: PERSISTENCE UNDER PRESSURE (2010) (discussing the shift from small commercial farms to larger farms).

At the same time, the median age of farmers has increased from forty-five in 1900 to fifty-seven in 2007.[93] Rural America is also aging. In 2008, 16.1% of the rural population was sixty-five years or older compared to 12.4% of metropolitan populations.[94] Further, rural America is still losing population, with 56.3% of rural counties experiencing population loss compared to 17.9% population loss in metropolitan areas between 2000 and 2008.[95] Yet, the majority of the American landmass, 71% in the forty-eight contiguous states, is still rural.[96]

Farm real estate accounts for 84% of United States farm assets.[97] Consequently, land values are an indicator of farm well-being. Farm ownership is generally the single largest asset and is, therefore, the principal source of collateral for loans.[98] Farmland values have dramatically increased in recent years due to the rise in commodity prices and direct payments, which are linked to acreage not crop production.[99] This rise in value has also created a fundamental barrier to farming for new or limited resource famers.[100] Importantly, it is estimated that within the next twenty years, 70% of agricultural lands will change hands.[101] These statistics paint a picture of rural America, critical to the overall well-being of the nation, at an economic and environmental crossroads. At the same time, the challenges facing rural America also lay the groundwork for transformational change.

In sum, American agriculture has radically changed over the previous century, fueled by economics, technology, chemical inputs, and federal policy. These factors resulted in a consolidation of American farms into larger producers focused on commodity production, with tremendous resource inputs required to grow crops. Along the way, a mass exodus of rural America occurred, and with it, inexorable separation of people from

---

93. GARDNER, *supra* note 5, at 95; USDA, NAT'L. AGRIC. STAT. SERV., 2007 CENSUS OF AGRIC., *Farmers by Age*, *available at* http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Demographics/farmer_age.pdf (last visited Nov. 10, 2013).

94. USDA, BRIEFING ON THE STATUS OF RURAL AMERICA 8, *available at* http://www.usda.gov/documents/Briefing_on_the_Status_of_Rural_America_Low_Res_Cover_update_map.pdf (last visited Nov. 10, 2013).

95. *Id.* at 9.

96. *Land Use Status and Trends 2007*, USDA, NATURAL RES. CONSERVATION SERV., http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/nri/?cid=stelprdb1083124 (last visited Nov. 10, 2013).

97. NICKERSON ET AL., *supra* note 71 at 1.

98. *Id.*

99. *Id.* at 18–27.

100. SHUTE ET AL., *supra* note 3, at 25–27.

101. *See*, USDA, COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE, FAMILY FARM FORUM, *FARM TRANSITION* 1 (April 2008), *available at* http://www.csrees.usda.gov/nea/ag_systems/pdfs/farm_transitions_update.pdf.

the food they eat, impacting the diversity of farms in rural America and transforming the regional foodshed into an international one. All this has culminated against the backdrop of a world that is undergoing massive transformation wrought by climate change,[102] which will alter where and what food is grown, with the pressure to feed a global population projected to reach nine billion by 2050.[103]

II. A TRANSFORMATIONAL MOMENT

Infamously, in their article, *The Death of Environmentalism*, Michael Shellenberger and Ted Nordhaus lambasted the environmental movement's failure to address the cataclysm of climate change.[104] Their argument, criticized by many, nevertheless made insightful points about the narrowness of the movement, and, therefore, its self-imposed limitations. In part, they attacked environmentalists' narrow definition of what constitutes "environmental" and the nearly hubristic failure of the movement to engage the interests of other potential allies.

> Some believe that this framing is a political, not just conceptual, problem. "When we use the term 'environment' it makes it seem as if the problem is 'out there' and we need to 'fix it,'" said Susan Clark, Executive Director of the Columbia Foundation, who believes the Environmental Grantmakers should change their name. "The problem is not external to us; it's us. It's a human problem having to do with how we organize society. This old way of thinking isn't anyone's fault, but it is all of our responsibility to change."[105]

Their provocation reflects what some Generation Xers suspect and millennials intuit—the solutions to the 'environmental' issues we face (systemic, irreversible) will not be found in traditional environmental

---

102. *See generally* U.N. FOOD & AGRIC. ORG., CLIMATE CHANGE AND FOOD SECURITY (2008) (assessing the impacts of climate change on global food supply). *See also* FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (September 2013), *available at* http://www.ipcc.ch/report/ar5/wg1/ (setting forth with likely confidence significant global temperature increases throughout the coming decades).

103. *World Population Projected to Reach 9.6 Billion by 2050*, U.N. DEP'T. OF ECON. & SOC. AFFAIRS (June 13, 2013), http://www.un.org/en/development/desa/news/population/un-report-world-population-projected-to-reach-9-6-billion-by-2050.html.

104. *See generally* MICHAEL SHELLENBERGER & TED NORDHAUS, THE DEATH OF ENVIRONMENTALISM (2004) (asserting that the current environmental movement is ineffective in its messaging and achievement of its goals).

105. *Id.* at 12.

law.[106] The stark manifestations of climate change bring the limitations of traditional environmental law into sharp focus. Our traditional legal taxonomy (environmental, energy, corporate) is a hindrance to solving human/environmental problems because these divides perpetuate linear problem-solving.

However, instead of proclaiming that environmentalism is dead—I make this argument: it is alive and well. But, the practitioners do not necessarily call it "environmentalism" because such an ethos is internalized within the movement itself. Moreover, the new 'environmentalists', if you will, are eschewing traditional law taxonomies and mixing legal disciplines in new and creative ways.[107]

The new food and agriculture movement[108] is Exhibit A in this theory. In 2011, Time magazine proclaimed that "Foodies Can Eclipse and Save the Green Movement."[109]

> Even as traditional environmentalism struggles, another movement is rising in its place, aligning consumers, producers, the media and even politicians. It's the food movement, and if it continues to grow it may be able to create just the sort of political and social transformation that environmentalists have failed to achieve in recent years. That would mean not only changing the way Americans eat and the way they farm —away from industrialized, cheap calories and toward more organic, small-scale production, with plenty of fruits and vegetables—but also altering the way we work and relate to one another. To its most ardent adherents, the food movement isn't just about reform—it's about revolution.[110]

---

106. *See generally* Lauric Ristino & Sam Kalen, *Is Environmental Law Serving Society?*, 26-SPG NAT. RESOURCES & ENV'T 52 (2012).

107. *See, e.g.*, AMY CORTESE, LOCAVESTING: THE REVOLUTION IN LOCAL INVESTING AND HOW TO PROFIT FROM IT (2011). For example, the "locavesting" or "Slow Money" movement works towards social and environmental change through community investment in small business, which involves creative navigation of complex securities laws and finding new ways to structure corporations. *Id.* at vii-x. Locavesting is directly inspired by the Slow Food movement; thus, the two movements have much in common. *Id.* at 147. Local food businesses and other small enterprises are the beneficiaries of this movement, which takes back investing from Wall Street. *Id.* at 147–158. Whereas Wall Street is deeply impersonal, offering few discernible benefits to local communities given the remove and diversion of tremendous wealth into largely paper exercises, locavesting works at a human scale. *Id.* at 31–46.

108. *See generally* Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL'Y 45 (2008) (assessing the growing local food movement).

109. Bryan Walsh, *Foodies Can Eclipse (and Save) the Green Movement*, TIME, Feb. 15, 2011, *available* at http://www.time.com/time/health/article/0,8599,2049255,00.html#ixzz2LrNfGezZ.

110. *Id.*

Food and agriculture are ripe for this new kind of environmentalism for two fundamental reasons: our framework of existing environmental laws often provides exceptions or simply fails to address the environmental impact of producing food and fiber;[111] and traditional agriculture law largely evolved to support conventional, large scale agriculture, which fails to provide sustainable legal solutions for local agriculture and food.

This revolution did not occur over night. The roots of the new food movement began over forty years ago in 1960s counter-culture as a reaction to the industrialized food system described in Part I. The amoeba-like reach of the counter-culture movement was embodied in the youth of Steve Jobs who, as a commune-going, apple harvester by day, built computer chips at night, thereby merging flower power with technology. The end result was to wrest computing from giant corporate mainframes and into the hands of the individual.[112] More obviously, the mother of farm-to-plate, Alice Waters, was also a product of 1960s California, where she graduated from Berkeley in 1967 and studied abroad in France, inspired by what another influential culinary icon, Julia Childs, had experienced years before.

> I had been very politically disillusioned and I was definitely part of a counter culture movement at Berkeley, remembers Waters, and I had come back from France, utterly inspired by the food and by those little places that served food, the places that welcomed the neighborhood and bought at the markets nearby. I remember clearly thinking—'that's how I want to live my life, that's what I want'. It was in that sort of naïve place that I opened Chez Panisse. It was never any question for me that if I had good food—people would come. At least all my friends would come! And I was appealing absolutely to the people of the counterculture.[113]

Famous food writer, editor and former Berkeley restaurant owner, Ruth Reichl discussed the origins and trajectory of the new food movement with Michael Pollan. Pollan stated "[t]he conversation about food does begin

---

111. *See generally* J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 ECOLOGY L.Q. 263 (2000) (exposing agriculture as one of the last frontiers of environmental regulation by cataloging the exceptional treatment accorded to agriculture in American environmental law); *See also* Eubanks, *supra* note 36, at 28 (providing a comprehensive review of the environmental and health impacts of American farm policy as embodied in the farm bill).

112. *See* WALTER ISAACSON, STEVE JOBS 52–59 (2011) (discussing Steve Jobs time working at both the All One Farm and Atari).

113. Jessica Hundley, *Interview with Chef/Activist Alice Waters*, INTERVIEWS WITH ICONS (Mar. 30, 2011), http://interviewswithicons.wordpress.com/2011/03/30/interview-with-chefactivist-alice-waters/.

back in the 70s. People don't realize it. They think the food movement began with me or Eric Schlosser [who wrote Fast Food nation in 2001]."[114] Reichl responded that "[f]or me it began with Frankie Lappé. Changed my life. Diet for a Small Planet, 1971."[115] Thus, the roots of the current food movement are over forty years deep, grounded in the counter-culture, but slowly, over decades, being absorbed into the mainstream as the popular food culture has taken hold.[116]

A new generation is now taking to the land, perhaps unknowingly building upon the foundation of the counter-culture movement. The members of the new food movement have alternatively been referred to as the New Agrarians[117] or Greenhorns.[118] This generation grew up in a technology-soaked, food-aware culture unlike their Baby Boomer or Generation X parents. They should not be mistaken for their hippie forebearers.[119] Importantly, Millennials came of age after the heyday of 1970s environmentalism and have no recollection of the glaring and visually apparent environmental problems (e.g., rivers on fire) that these environmental laws handily addressed.[120] Professor Neil Hamilton has

---

114. Interview by Ruth Reichl with Michael Pollan, author (June 2013) (on file with Smithsonian Magazine).

115. *Id. See also* FRANCIS MOORE LAPPÉ, DIET FOR A SMALL PLANET (20th Anniversary ed. 1991) (critiquing grain-fed meat production and to link meat production practices to global food insecurity). DIET FOR A SMALL PLANET eventually sold over three million copies.

116. One example of the mainstreaming of the food culture is the growing popularity and corporatization of organic foods. *See* Philip H. Howard, *Consolidation in the North American Organic Food Processing Sector, 1997-2007*, 16 INT'L. J. OF SOCIOLOGY OF AGRIC. & FOOD 13, at 27 (providing a pictorial representation of the consolidation of the organics industry).

117. *See, e.g.*, Hamilton, *supra* note 3 (identifying members of the new food movement as "New Agrarians"). Although the term "agrarian" is often used interchangeably with "agricultural," the two terms have distinctly different meanings. CONKLIN, *supra* note 5, at 180. "Agrarian" has a social or political meaning, which extols the virtues of rural society over urban society. *See id.* Thomas Jefferson embraced the agrarian ethos and built Jeffersonian Democracy around the belief that farmers were the most valuable citizens and the truest Republicans. *See id.* at 181; *See* Schneider, *supra* note 7, at 939–940 (contending that agrarianism also has a more radical political meaning, that is, as a political proposal to take land from the rich and redistribute it to the poor and citing the persistence of the Jeffersonian idealized farmer as one reason for America's lingering belief in the illusion of agricultural pastoralism). CONKLIN, *supra* note 5, at 180. This notion of agrarianism goes back to Rome's Agrarian Laws, which put limits on the amounts of land anyone could hold and redistributed land from the rich to the poor. John P. McCormick, *"Keep the Public Rich, But the Citizens Poor: Economic and Political Inequality in Constitutions, Ancient and Modern,"* 34 CARDOZO L. REV. 879, 884–85 (2013).

118. *See generally*, GREENHORNS, http://www.thegreenhorns.net/ (last visited Nov. 10, 2013) (introducing the newest iteration of the green food movement).

119. *See* Beth Hoffman, *How 'Millennials' are Changing Food as we Know It*, FORBES (Sept. 4, 2012), *available at* http://www.forbes.com/sites/bethhoffman/2012/09/04/how-millenials-are-changing-food-as-we-know-it (providing an interesting take on how Millennials will use consumer spending power to change the food system).

120. *See* RICHARD J. LAZARUS, THE MAKING OF ENVIRONMENTAL LAW 59 (2004) (describing how the Cuyahoga River fire and the Santa Barbara oil spill in 1969 served as "visual confirmation" of environmental problems, and motivated environmental lawmaking).

described the New Agrarians as 'cultural creatives'[121] who generally have the following characteristics:

- Facility with technology
- Marketing skills to develop new economic activities[122]
- Embrace farms as a food business which can serve as a platform for other entrepreneurial endeavors[123]
- Capacity and leadership to generate local development
- Value sustainability and environmental conservation, not as a burden but as a responsibility
- Commitment to the idea of community
- Relationship-oriented (to the consumer, neighboring farmers, and the land)
- Believe farming and producing food is a social good[124]

Fundamental to this movement are the democratic principles that it embraces.[125] "Food Democracy" is a framework for making food more responsive to citizens' needs (health, access, quality) and decentralizing control of production.[126] The timing of this new movement is serendipitous for a multiplicity of reasons. Given the increasing age of farmers, the need to increase food security due to climate uncertainty and global population pressures, the American obesity crisis,[127] and the unsustainable resource inputs into conventional farming, these new farmers are critically needed.[128]

---

121. Hamilton, *supra* note 3, at 526. I concur with Professor Hamilton's synthesis of the core attributes of the New Agrarians, having observed first hand these qualities in the new farmers of Vermont and in the students at the Vermont Law School, many of whom have worked on farms, founded their own CSAs, and worked in farm to plate establishments.

122. Fable Farm, in Barnard, Vermont, provides one example of creative marketing and entrepreneurship; during the summer, Fable Farm makes its diversified offerings available through a Community Supported Agriculture Program, and puts on open-air theater events complete with dinner made from farm produce. Fable Farm advertises farm events and sells tickets via their website and various social media. *See* FABLE FARM, http://fablefarm.org/ (last visited Nov. 10, 2013) (discussing the various opportunities the farm offers to get involved).

123. For example, in Barnard, Vermont, a collective of farmers is pioneering a cooperative business model to gain access to greater farm acreage. At the same time, they offer multiple activities on their farm, including potlucks, a mini farmers' market, music events, and Community Supported Agriculture shares, all integrated with a strong sense of community and creativity. *Id.*

124. Hamilton, *supra* note 3, at 525–28.

125. *See generally* Neil Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. OF AGRIC. L. 118 (2011).

126. *See generally* TIM LANG, FOOD INDUSTRIALIZATION AND FOOD POWER: IMPLICATIONS FOR FOOD GOVERNANCE, GATEKEEPER SERIES, NO. 114, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT (2004); Neil D. Hamilton, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 12–13 (2004).

127. *Obesity*, USDA ECON. RESEARCH SERV., *available at* http://www.ers.usda.gov/topics/food-choices-health/obesity/background.aspx#.UewXu5jIIbA4 (last

However, legal and policy infrastructure that developed over the last century in support of large-scale conventional farming does not provide an appropriate legal structure or tools for the new food movement.[129] This is true on multiple fronts, including scale, capitalization, risk management, marketing, distribution, and processing, among others. Accordingly, the last section of this article sets forth recommendations toward a framework for the developing law of sustainable food and agriculture systems.

III. CREATING A NEW LEGAL FRAMEWORK FOR SMALL FARMS & FOOD ENTREPRENEURS

> It is the pervading law of all things organic and inorganic, of all things physical and metaphysical, of all things human and all things superhuman, of all true manifestations of the head, of the heart, of the soul, that the life is recognizable in its expression, that form ever follows function. This is the law.
>
> —Louis Sullivan[130]

This paper proposes that a new legal framework, with specific principles that guide its development, is essential to ensure that the new food movement[131] thrives and is durable as a viable alternative to

---

visited Jul. 21, 2013) (explaining that today, nearly two of three American adults are overweight or obese).

128. Importantly, a significant number of the "new agrarians" who are rising-up to support a more democratic food system are minorities, women, and veterans. *See* Hamilton, *supra* note 3, at 524–25.

130. *See also* Emily Broad Leib & Amanda Kool, *Using Cross-Practice Collaboration to Meet the Evolving Legal Needs of Local Food Entrepreneurs*, NAT. RESOURCES & ENV'T (forthcoming) (explaining that: "…as the U.S. food chain grew and consolidated, so did the legal and regulatory regime that governs the food system. The existing body of laws is intended to apply to massive food industries and is thus ill-equipped to govern small-scale, local food enterprises. While local and state governments have in some instances stepped in to encourage policy changes that would accommodate the shift in consumer demand toward local food by encouraging entrepreneurs to step into this field, there are still many legal barriers that stand between local food entrepreneurs and the customers they hope to serve. Even in places where local laws and policies are tailored to small-scale food enterprises, barriers to market entry still persist, especially for entrepreneurs who lack the resources to conduct legal research or retain counsel to assist in developing their enterprises.").

130. Louis H. Sullivan, *The Tall Office Building Artistically Considered*, LIPPINCOTT'S MAG., Mar. 1896, at 403–09. The famous phrase "form follows function" was coined by architect Louis Sullivan, one of the great American architects, arguably one of the 'fathers' of architectural modernism.

131. In this paper, I generally use the term "new food movement" instead of "new agrarian movement," or any other label. The term "new food movement" is intended to include not only farmers, but also food entrepreneurs such as retailers, restaurateurs, and value-added and artisanal food producers. Even though the focus of this paper is the food movement, the recommendations made here also apply to fiber and biomass production, which are especially critical for sustainability and economic development in the highly wooded areas of the country. *See generally* SUSTAINABLE ECON. INITIATIVE, ECONOMIC RESURGENCE IN THE NORTHERN FOREST (2008), *available at*

conventional agriculture. The legal needs of small and mid-sized farmers and food entrepreneurs are different from large-scale producers because of their size, localization, resource limitations, business goals, customer base, and liability risk, among other differences. This translates into the need for advocacy that is tailored to address the unique legal challenges facing small farmers and entrepreneurs in areas such as food safety,[132] food marketing, processing,[133] and distribution. In addition, innovative tools are needed to address fundamental barriers to new farmer entry such as land access and tenure, which require legal mechanisms to address.[134] Because of the different legal needs of the new food movement, lawyers and policymakers have an exciting and unique opportunity to build legal tools and infrastructure. Inherent in the development of this new infrastructure should be the intention to avoid replicating past pitfalls while creating law that furthers public policy goals of sustainability, equity, access, economic development,[135] human and animal health, and food security.

This article proposes the following foundational legal elements for the new food movement. Each of the elements is consistent with, and perpetuates, the overarching ethos of the movement that supports a food democracy.

A. The Unique Legal Needs of the New Food Movement

---

http://www.northernforest.org/data/uploads/docs/SummaryEconomicResurgence.pdf (providing one example of a region-wide strategy for community development and forest protection).

132. Custom slaughter and the raw milk debates are examples of how the conventional legal system is a mismatch for small-scale food. *See* Allison Condra, *Food Sovereignty in the United States: Supporting Local & Regional Food Systems*, 8 J. FOOD L. & POL'Y 281, 288–90 (2012) (providing an overview of laws impacting slaughter and raw milk production at the local, state, and federal levels).

133. *See* USDA, KNOW YOUR FARMER, KNOW YOUR FOOD COMPASS 40–45 (2012) (describing the challenges that meat and poultry producers face in accessing local markets because of the meat processing facility consolidation).

134. American traditional ownership models of fee or leasehold interests are often high barriers for new farmers because of expensive land costs or land insecurity due to the failure to memorialize leasehold relationships. *See* Annette M. Higby et al., CENTER FOR SUSTAINABLE AGRICULTURE, UVM EXTENSION, A LEGAL GUIDE TO THE BUSINESS OF FARMING IN VERMONT 67 (2006), *available at* http://www.uvm.edu/farmtransfer/LegalGuide.pdf. Moreover, when leaseholds are only for short periods, new farmers have little incentive to invest in building up the soil, and installing and maintaining farm infrastructure. *See generally* Edward Cox, *A Lease-Based Approach to Sustainable Farming, Part I: Farm Tenancy Trends and the Outlook for Sustainability on Rented Land*, 15 DRAKE J. AGRIC. L. 369 (2010) (describing how short term tenancy leads to lesser investment into agricultural and land health).

135. *See generally* Ben Hewitt, *The Town that Food Saved*, GOURMET, (Oct. 20, 2008) *available at* http://www.gourmet.com/travel/2008/10/hardwick-revival (providing an example of how innovative food and agricultural enterprises spurred economic development in Hardwick, Vermont); THE CTR. FOR AN AGRIC. ECON., http://www.hardwickagriculture.org/ (last visited Nov. 10, 2013) (a Hardwick, Vermont nonprofit addressing economic development by helping to build a sustainable food system).

As a threshold matter, the legal and policymaking communities must recognize that the legal needs of the new food movement are different from conventional agriculture, and therefore, creative legal tools are needed to serve this population. This fact is not necessarily intuitive. To date, the focus of local government, non-profits, and others has occurred around policy infrastructure for the sustainable food movement.[136] However, nearly every step in the sustainable food chain requires law to support it. The policy work done to date is a fine start, but without the legal infrastructure to undergird policy, it will have limited traction in our rule of law society. For example, as noted above, the need for unique land tenure arrangements to make land affordable for new farmers requires the creative use of legal tools (e.g., cooperatives, conservation easements, novel contractual relationships, leases, or a combination thereof). Other areas where legal issues are unique for small farms that require specialized advocacy are labor and employment issues because small farms often must rely on internship programs or other volunteer labor.[137]

Until recently, the legal Academy has been slow to embrace food and agriculture law, which was once the province of "Big Ag" schools in the Midwest, and generally focused on traditional agricultural law.[138] Now, there is a burgeoning interest in the food and agriculture law and law schools have taken notice by starting new centers.[139] The challenge will be to harness this energy, amplify efforts, and avoid duplication in order to support the far-reaching, durable food movement. Importantly, the legal products created must be made accessible to food producers. This will

---

136. *See, e.g.*, VERMONT SUSTAINABLE JOBS FUND, http://www.vsjf.org/ (last visited Nov. 10, 2013) (created by the Vermont legislature in 1995, VSJF provides grants and loans to individuals and businesses to support the green economy, with a current focus on strengthening the state's food system through the Farm to Plate Investment Program). *See also Farm to Plate Strategic Plan*, VT. FOOD SYSTEM ATLAS, http://www.vtfoodatlas.com/plan/ (last visited Nov. 10, 2013) (describing the goals and plans of the Vermont Farm to Plate program).

137. *See, e.g.*, *How it Works*, WWOOF, http://wwoofinternational.org/how-it-works/ (defining "Woofers" (or Willing Workers on Organic Farms) as volunteer farm laborers. There are national and international organizations where individuals can find matching farms to work).

138. Drake Law School and, to some extent, the University of Arkansas School of Law are the historical exceptions. *See Agricultural Law Center*, DRAKE LAW, http://www.law.drake.edu/academics/agLaw/ (last visited Nov. 10, 2013); *See LL.M. Program*, UNIV. OF ARK. SCHOOL OF LAW, http://law.uark.edu/academics/llm/ (last visited Nov. 10, 2013).

139. Established in 2012, Vermont Law School's Center for Agriculture and Food Systems was arguably the only academic center to focus on law and policy that marries environmental law with the new food law and policy, and agriculture law (as reflected in the work of Neil Hamilton). *See Center for Agriculture and Food Systems*, VT. LAW SCHOOL, http://www.vermontlaw.edu/Academics/Environmental_Law_Center/Institutes_and_Initiatives/About.htm (last visited Nov. 10, 2013). For a short primer on the emergence of the new field of Food Law and Policy, see generally Baylen Linnekin, et al., *The Future of Food Law and Policy: The Responsibility of Lawyers in the Academy and Beyond* (Oct. 2013), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2342872.

require lawyers and the law schools to rethink how they communicate and reach out to this population.[140]

B. Sustainability

The new food legal framework and the tools that comprise it need to be designed to support sustainable solutions. Admittedly, the term "sustainable" is fuzzy. In this legal framework, sustainable is meant at a minimum to mean both economically and environmentally sustainable. Regarding economic sustainability, the new food movement will not survive if farmers and food entrepreneurs cannot make livable wages that compensate for the hard work of producing America's food. History has shown that the pressure to attain economies of scale ("get big or get out"[141]) undermined small and mid-sized farmers in America. In order to avoid this fate, the new food movement—its small, mid-sized farms, and entrepreneurs—must be supported by law, policies, and government financial assistance programs.[142]

In addition, the new legal framework must support legal relationships and responsibilities that prioritize land stewardship. In part, this is done inherently by supporting diverse and small operations. The law supports stewardship and conservation when it provides advocacy for community supported agriculture, farmers markets, and gleaning programs, by reducing the carbon footprint and food waste, and by keeping food local. But, another key factor is ensuring that conservation is incorporated into farming at the outset, and before environmental issues arise. This will require modifications in the farm bill and improved access for new famers to the resources the farm bill can provide.[143]

---

140. *See generally* Lauric Ristino, *In Support of Practical Legal Scholarship*, NAT. RESOURCES & ENV'T., Spring 2013, at 55–57 (regarding the need to incorporate practical knowledge and science into law writings).

141. This was infamously uttered by 1970s era Secretary of Agriculture, Earl Butz, who also championed breaking out lands to plant crops "fence row to fence row." *See* Tom Philpott, *A Reflection on the Lasting Legacy of 1970s USDA Secretary Earl Butz*, GRIST (Feb. 8, 2008, 1:31 AM), http://grist.org/article/the-butz-stops-here/.

142. The Farm Bill has begun to recognize the many barriers that beginning farmers face as they strive to enter the profession, and has targeted some resources to them. *See, e.g.*, Beginning Farmer and Rancher Development Program, 7 U.S.C. § 3319(f) (2008) (highlighting the government programs aimed at small beginning farmers). Likewise, other recent USDA initiatives such as "Know Your Farmer, Know Your Food" are an example of the kind of programs and policies that are needed to support the new food movement. *See Know Your Farmer, Know Your Food*, USDA, http://www.usda.gov/wps/portal/usda/knowyourfarmer?navid=KNOWYOURFARMER (last visited Nov. 10, 2013). However, the ultimate success of the movement will require a deeper paradigm shift on the part of the Department to allocate greater resources to local and regional food systems.

143. SHUTE ET AL., *supra* note 3, at 32–34 (providing policy recommendations for improving access to Farm Bill programs for beginning farmers, such as the Environmental Quality

One of the key aspects of the sustainable food movement is its grounding in, and reclaiming of, community. Thus, the legal tools that are developed should reflect this value. One aspect of community-based values in the new food movement is its embrace of the sharing economy. In a sharing economy, social relationships, not price points, are the basis for resource allocation.[144] Further, sharing economies facilitate sustainable use of resources because resources are shared (e.g., processing equipment, farm machinery, and land) reducing duplication and waste.

The use of collective structures for land tenure, food production, marketing, and distribution is being innovated by farmers and food producers, as well as investors. Law is needed to create and document these structures so that the resulting relationships are successful.

> Cooperatives—businesses based on a model of democratic ownership that arose out of the dislocations of the Industrial Age—are enjoying a revival in everything from energy to food. In Wisconsin, as an epic clash between unions and a budget-slashing governor played out in the state capital, the state's rural cooperatives were demonstrating that more harmonious and productive models are possible.[145]

The ideals of community and mutual reliance (American values as old as the West) are being exhibited in the farm to restaurant model as well. For this model to work as an intimate relationship between the diner and the farm, which diners seek, restaurateurs and famers must forge unique relationships, ultimately memorialized in contracts, which reflect a shared risk of seasonality, climate, and supply.[146] Further, such a relationship engages the restaurateur in forming supply chains with farmers, thereby creating markets to support local farmers.

Incentives Program (EQIP) and Conservation Stewardship Program (CSP); Hamilton, *supra* note 3, at 529–46 (arguing that the USDA should make new farmers a key priority, and providing policy recommendations to facilitate increased USDA support for new farmers).

144. *See generally* JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES (2013) (presenting the concept of the sharing economy, as well as concrete legal frameworks necessary to facilitate its existence).

145. CORTESE, *supra* note 107, at x.

146. Interview by Food Talk Radio with Dave Brodrick, Kurt Lessard, and Jason Merrill, Worthy Burger Co-Owners, for Vermont Law School Center for Agriculture and Food Systems (March 29, 2013), *available at* http://www.vermontlaw.edu/Academics/Environmental_Law_Center/Institutes_and_Initiatives/Food_Radio.htm.

As the new food movement grows, one key challenge for the law will be to maintain the nature of these relationship-based agreements while providing legally sufficient certainty.

C. Customizability/Innovation

As noted above, some legal infrastructure may be created without changing overarching federal or state laws and regulations.[147] It is here that significant innovation is occurring. For example, to reduce barriers of food processing and food distribution, food hubs are being created. At a food hub, cost and scale barriers are reduced through a sharing of facilities. Food hubs can be non-profits, hybrid business organizations, or for-profits.[148] The choice of legal structure, which reflects the relationship of the farmers and producers that use such facilities, is necessarily a legal one based on the mission of the food hub.

Entities like food hubs fall under the general category of social enterprises. In the context of the food movement, social enterprise law is where business and environmental law meet. As the Social Enterprise Alliance explains, a social enterprise possesses the following characteristics:

- It directly addresses an intractable social need and serves the common good, either through its products and services, or through the number of disadvantaged people it employs.
- Its commercial activity is a strong revenue driver, whether a significant earned income stream within a non-profit's mixed revenue portfolio, or a for-profit enterprise.
- The common good is its *primary* purpose, literally "baked into" the organization's DNA, and trumping all others. [149]

The use of social enterprise structures by the new food movement reflects the deeply creative nature of the movement as well as the need for customizable solutions given the diversity of food production and

---

147. The corollary is true as well. When federal laws preempt local laws, such as in the case with food safety, legal changes will take longer because they will require movement in the status quo and then statutory amendment. *See* Condra, *supra* note 132, at 308–10 (describing federal preemption issues impacting the production and marketing of local foods).

148. JAMES MATSON ET AL., USDA, RURAL DEV., THE ROLE OF FOOD HUBS IN LOCAL FOOD MARKETING, SERV. REPORT 73, 12–19 (2013).

149. *The Case for Social Enterprise Alliance*, SOC. ENTER. ALLIANCE, https://www.se-alliance.org/why#whatsasocialenterprise (last visited Nov. 10, 2013).

entrepreneurism that is occurring (and necessarily must occur to rebuild a diverse, localized food source).[150]

Another way in which the new food movement is fertile ground for innovating legal solutions is in new capitalization mechanisms, such as slow money strategies, angel investors, and crowd-funding.[151] These mechanisms for raising capital to grow businesses provide a much-needed alternative to conventional financing because many small farmers and food entrepreneurs cannot service traditional debt. Alternative capitalization strategies avoid catastrophes like the farm debt collapse of the 1980s, which ruined many small and mid-sized farmers.[152] But, alternate capitalization mechanisms require legal solutions to avoid running afoul of securities laws and to ensure transparency for all parties, who often are members of the same community, engaging in the transaction. One example of creative capitalization is that of High Mowing Seeds, an organic seed company in Vermont.[153] High Mowing raised capital through a convertible debt offering where investors provided capital with returns occurring after five years. Investors could choose to convert their investment to shares; then a debt note, and receive their money back with interest, or maintain ownership in the company and receive dividends.[154]

D. Scale

The legal infrastructure and tools must be scaled to the sustainable food movement so that the law does not crush the movement in cost and process. For example, a risk assessment for food safety, which provides information on liability and indemnification, needs to be specific to smaller producers and retailers. Risk associated with the activities of a larger scale producer or retailer is not necessarily the same level of risk associated with a smaller producer or retailer given the number of potential people impacted and

---

150. For example, King Arthur Flour is organized as a L3C, a modified form of the limited-liability corporation for businesses with a social purpose. *See* Bruce DeBoskey, *How to Profit From Doing Good*, THE DENVER POST, Aug. 21, 2011, *available at* http://www.denverpost.com/business/ci_18721769 (last updated Aug. 21, 2011) (discussing how businesses can be profitable while still giving back to the community).

151. Crowd funding is when a group of individuals pool their money to support a wide variety of activities, often having a socially positive purpose. CORTESE, *supra* note 107, at 127.

152. *See* HURT, *supra* note 17, at 135–38 (detailing the federal government's role in aiding farmers during the twentieth century farm debt collapse).

153. HIGH MOWING SEEDS, http://www.highmowingseeds.com/ (last visited Nov. 10, 2013).

154. Jack Kittredge, *High Finance at High Mowing*, NATURAL FARMER, Fall 2012, at B1-B5, *available at* http://www.highmowingseeds.com/pdfs/media/High%20Finance%20at%20High%20Mowing.pdf.

method of production as well as other factors. Accordingly, regulation and liability spreading mechanisms should be adjusted.[155]

At the same time, the law can provide solutions that allow small farmers to scale-up without growing larger, thereby achieving greater economies of scale necessary to successfully compete in the marketplace while remaining small and local. These sharing economies tools include cooperative structures for aggregation, distribution, and marketing of farm products.[156]

E. Diversification

The new food movement has as a core value diversification.[157] This is in direct contrast to the monocultures that characterize conventional agriculture. Diversification occurs in at least two ways: on an individual farm and within the food system. Diversification is critical for several reasons, including building resiliency as to the supply of food; facilitating economic resiliency on the farm; and improving environmental

---

155. *See* NAT'L. SUSTAINABLE AGRIC. COAL., FOOD SAFETY ON THE FARM: POLICY BRIEF AND RECOMMENDATIONS 6–8, 14 (2009) (noting that there is a significant gap in research and understanding about where in the supply chain produce actually becomes contaminated, and arguing that centralized processing and distribution may play a larger role in food contamination than growing and harvesting produce on small farms for direct sales to consumers).

156. *See, e.g., Mission Statement and History of Good Natured Family Farms*, GOOD NATURED FAMILY FARMS, http://www.goodnaturedfamilyfarms.com/Mission_Statement.html (last visited Nov. 10, 2013) (a coalition of over 150 independent farms in Kansas—including meat, dairy, and produce operations—who engage in cooperative aggregation, distribution, and marketing under the Good Natured Family Farms label). *See also Farm Fund*, COMMUNITY FOOD CO-OP, http://www.communityfood.coop/participate/giving-back/farm-fund/ (regarding the Community Food Co-op in Bellingham, Washington that allocates a portion of its surplus revenues to a revolving loan fund which makes grants to local farms and food programs, many of whom sell their products in the co-op's two stores). *See also* Shonna Dreier & Minoo Taheri, WALLACE CENTER, INNOVATIVE MODELS: SMALL GROWER AND RETAILER COLLABORATIONS (2008), http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5091495 (analyzing the benefits of the Good Natured Family Farms model). *See generally* ADAM DIAMOND & JAMES BARHAM, USDA, AGRIC. MKTG. SERV., MOVING FOOD ALONG THE VALUE CHAIN: INNOVATIONS IN REGIONAL FOOD DISTRIBUTION (2012) (including a description of La Montañita Food Co-op in New Mexico, which invested in local distribution infrastructure for local producers and established a fund to provide collateral to local producers for bank loans).

157. *See* USDA, NAT'L. AGRIC. STAT. SERV., 2007 CENSUS OF AGRIC., *Agricultural Diversification Fact Sheet*, *available at* http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Economics/agricultural_diversification.pdf ("Agricultural operations in the United States are becoming more diverse as farmers and ranchers look beyond commodity production to find new ways of generating income."); ZOE BRADBURY ET AL., GREENHORNS, GUIDEBOOK FOR BEGINNING FARMERS – ZINE VERSION 46-47 (2010), *available at* http://www.thegreenhorns.net/wp-content/files_mf/1335219697greenhorns_guide_sept2010_web.pdf (recommending diversified cropping systems for beginning farm operations).

outcomes.[158] Given that food production is at the mercy of climate, building resilient systems is critical to ensure healthy local economies, especially as extreme weather events increase. Thus, the legal framework needs to be flexible enough to deal with multiple forms of agricultural production, often on the same farm, tailoring legal tools to the needs of the individual farm and food system.

Diversified farming systems[159] are a set of methods and tools that work with the natural ecosystem of a plot of land or landscape to sustainably produce food. Crop polycultures are planted and animals are grazed in ways that replenish the land and make more efficient use of nutrients. One well-known example of using a whole system approach to farming is Polyface Farm, made famous by Michael Pollan's *Omnivore's Dilemma* and featured in the films, *Food, Inc.*[160] and *Fresh*.[161] At Polyface, cattle are rotated through pastures followed by poultry that pick through cattle droppings for insects and other nutrients. Given the diversity of operations and lack of economies of scale, the law is needed to provide solutions that allow for scalability and reduce market barriers (cooperatives, social enterprise, sharing arrangements).

F. Social Justice and Equity

Legal tools should be designed to support access to healthy food in multiple dimensions, including within and between rural and urban communities; by all people, regardless of socio-economic class; and to the means of food production (land, equipment, and markets). The food security and health of our citizens,[162] environment, and animals[163] depends

---

158. *See generally*, Adam S. Davis et al., *Increasing Cropping System Diversity Balances Productivity, Profitability and Environmental Health*, PLOS ONE (Oct. 10, 2012), http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0047149 (showing how diversity is better for agricultural productivity and health).

159. *See generally* Claire Kremen et al., *Diversified Farming Systems: An Agroecological, Systems-based Alternative to Modern Industrial Agriculture*, 17 ECOLOGY & SOC'Y, no. 4, art. 44 (2012), *available at* http://www.ecologyandsociety.org/vol17/iss4/art44/ (last visited Nov. 10, 2013) (analyzing diversified farming practices).

160. *See Food Inc.* (Robert Kenner Films & Participant Media 2009).

161. *See Fresh* (produced by Ana Sofia Joanes 2009). *See also* POLLAN, *supra* note 78, at 122–33 (discussing the sustainable mechanisms in place at Polyface Farm and the ideals of the man who runs it).

162. *See* ORAN B. HESTERMAN, PH.D., FAIR FOOD: GROWING A HEALTHY, SUSTAINABLE FOOD SYSTEM FOR ALL 30–33 (1st ed. 2011) (identifying diet-related illness and lack of healthy food access in low-income communities as key problems in the U.S. food system);. *See generally* MICHELE VER PLOEG ET AL., USDA, ECON. RESEARCH SERV., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES (2009) (analyzing the correlation between obesity and food choices and availability). *See also Obesity*, USDA, ECON.

on the kind of access that only progressive policy supported by law can facilitate. For example, city ordinances regulating urban farming can facilitate access to local, sustainable food by streamlining the zoning process, using best practices developed by other urban centers, and legal access to abandoned lots and rooftops.[164] Legal frameworks have the ability to remove barriers to access by ensuring food-friendly zoning, sufficient resource conservation (such as limiting run-off), access to water, access to financial assistance to support such initiatives, and solutions to address contaminated sites (Brownfields).[165]

Another example of the how this new legal framework can support the social equity principle is gleaning programs.[166] Gleaning is the collection or harvesting of produce that would otherwise be discarded at the farm, restaurant, packing facility, or backyard as waste. The food is then distributed to food shelves and pantries. Gleaning initiatives have a multiplicity of benefits, including, reducing food waste, providing nourishment to low-income citizens, and reducing dependency on imported food.[167] To expand the role of gleaning, legal resources are needed to address liability. This is especially true when gleaning includes any degree of processing, the creation of incentives (e.g., tax credits) to compensate

---

RESEARCH SERV., *available at* http://www.ers.usda.gov/topics/food-choices-health/obesity/background.aspx#.UewXu5jIIbA4 (last visited Nov. 10, 2013).

163. PEW COMM'N ON INDUSTRIAL FARM ANIMAL PROD., PUTTING MEAT ON THE TABLE 22–39 (2008), *available at* http://www.ncifap.org/_images/PCIFAPFin.pdf (describing environmental and animal welfare issues resulting from industrial meat production).

164. *See e.g.*, SEATTLE, WASH., ORDINANCE 123378 (2010), *available at* http://clerk.ci.seattle.wa.us/~archives/Ordinances/Ord_123378.pdf (last visited Nov. 10, 2013) (addressing urban farms, community gardens, raising of poultry, and the sale of food grown by city residents); CLEVELAND, OHIO, CODE OF ORDINANCES §§ 336.01–336.05 (2007) (allowing community gardens and produce stands within an Urban Garden District, among other uses).

165. *See generally* ALLISON HAGEY ET AL., GROWING URBAN AGRICULTURE: EQUITABLE STRATEGIES AND POLICIES FOR IMPROVING ACCESS TO HEALTHY FOOD AND REVITALIZING COMMUNITIES (2012), *available at* http://www.fairfoodnetwork.org/sites/default/files/UrbanAg_FullReport.pdf (proposing urban agriculture as a method of cleaning-up contaminated sites); Patricia E. Salkin & Amy Lavine, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?*, 22 FORDHAM ENVTL. L. REV. 599 (2011); Jim Smith, *Encouraging the Growth of Urban Agriculture in Trenton and Newark Through Amendments to the Zoning Codes: A Proven Approach to Addressing the Persistence of Food Deserts*, 14 VT. J. ENVTL. L. 71 (2012).

166. For example, a Vermont-based non-profit called Salvation Farms runs a variety of programs, including traditional gleaning programs, to "move surplus food from farms to those who need it." *See* SALVATION FARMS, http://www.salvationfarms.org/ (last visited Nov. 10, 2013) (discussing the organization's mission to use surplus foods to feed people in need).

167. Food waste is a tremendous issue in this country. In 2011, more than 36 million tons of food waste was generated. Food waste is the single largest component of municipal solid waste. *See Reducing Food Waste for Businesses*, U.S. EPA, http://www.epa.gov/foodrecovery/ (last updated Sept. 24, 2013) (indicating why and how businesses can recover their food waste).

farmers for their produce; and template governance documents to help perpetuate gleaning organizations.

Importantly, any conception of social justice in the new food movement must also include the physical and economic wellbeing of the workers who grow, harvest, and otherwise produce our food. However, the social justice of farm and restaurant workers[168] has a tendency to be marginalized in the new movement dialog. International trade agreements and domestic agriculture policy result in a farm labor system fueled by immigrant labor.[169] Much of this labor force is undocumented, with attendant issues such as low wages and poor or dangerous working conditions as well as a disproportionate impact on women and children.[170] For the new food movement to be true to its values and offer a viable alternative to conventional food production, the treatment of farm and food workers must be addressed. This requires engagement in national policy as well as the adoption of state laws and policies that improve the circumstances of immigrant workers, such as the basic ability to acquire a driver's license.

CONCLUSION

Agriculture in America radically transformed in a short period of time, fueled first by industrialization and then by technologies developed in the mid-twentieth century. From the late 1800s onward, the federal government, through a complex relationship courted by agriculture, played a critical role in agriculture through policy, including price supports. A grandchild of 1960s counter-culture, a new food movement, fueled by the millennial generation, has emerged. The new food movement is next generation environmentalism, eschewing the limitations of traditional environment law. The new food movement embraces multiple disciplines to, at its best, revitalize community, conserve limited resources, and practice democratic ideals. But, the new food movement, its agrarians, farmers, and food producers cannot prosper and perpetuate without a new legal framework. This article proposes that the new framework must embody the values that inform and fuel the new food movement and sets forth those central values from which the legal tools can be built in support of an equitable, healthy food system for all people.

---

168. *See generally,* Saru Jayaraman, Behind the Kitchen Door, (2013) (detailing the difficult work conditions and poverty level wages of many restaurant workers, many of whom are people of color. Jayaraman is the founder of Restaurant Opportunities Centers United, an organization that works to improve the wages and working conditions for America's ten million restaurant workers).

169. Nancy Ehrenreich and Beth Lyon, *The Global Politics of Food: A Critical Overview*, 43 U. MIAMI INTER-AM L. REV. 17–19 (Fall 2011)..

170. *Id.*