

# THE NEW DEAL AND FOOD INSECURITY IN THE “MIDST OF PLENTY”

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## I. INTRODUCTION

“Food insecurity—Limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.”<sup>1</sup>

Across the nation, escalating obesity rates coupled with attendant health consequences are generating the interest of health officials and in several in-

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1. MARK NORD ET AL., USDA, FOOD ASSISTANCE AND NUTRITION RESEARCH REPORT NO. 2, PREVALENCE OF FOOD INSECURITY AND HUNGER, BY STATE, 1996-1998, at 2 (1999) [hereinafter FOOD INSECURITY], available at <http://www.ers.usda.gov/publications/fanrr2/fanrr2.pdf>.

stances, instigating litigation against food providers.<sup>2</sup> In *Pelman v. McDonald's Corporation*, for example, plaintiffs alleged that McDonald's advertising practices promoted their "children's over-consumption of fast-food products."<sup>3</sup> The plaintiffs complained that fast-food consumption of McDonald's products resulted in obesity with a host of health related illnesses.<sup>4</sup> The plaintiffs alleged McDonald's violation of the state's consumer protection laws constituted negligence.<sup>5</sup> The court, however, in granting McDonald's motion to dismiss, rested in part on the principles of personal responsibility and the knowledge of consumers in purchasing fast food products.<sup>6</sup>

This article generally considers the court's focus on personal responsibility, but specifically considers the plight of malnourished consumers residing in the "midst of plenty"—yet barred from vital and sustainable food sources in their local community because of the lack of free choice in food selection. This article asserts the *Pelman* court ignored that "[m]any forces, most outside the consumer's direct control, shape food demand and food consumption."<sup>7</sup>

Food demand and consumption are closely linked to the nation's agricultural agenda and thereby drives part I of this article's focus. From the New Deal to the contemporary period, the agricultural agenda has not only exerted control over the nation's food supply, but has also dictated the type of products, the manner and distribution in which the food supply is made available to consumers.<sup>8</sup> A second area of concern thus emerges from the nutrition-related health

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2. See, e.g., Ali H. Mokdad et al., *The Spread of the Obesity Epidemic in the United States, 1991-1998*, 282 JAMA 1519, 1519 (1999) (The increasing prevalence of obesity is a major public health concern, since obesity is associated with several chronic diseases. The authors define obesity as "a body mass index  $\geq 30$  kg/m<sup>2</sup>," with a noted increase in the prevalence of obesity from 12% in 1991 to 17.9% in 1998.).

3. *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 512 (S.D.N.Y. 2003).

4. *Id.* at 516.

5. *Id.* at 520.

6. See *id.* at 532-33 (stating it is well-known that fast food contains attributes that are bad for individuals and the plaintiff's choice to eat at McDonalds was freely made).

7. EILEEN KENNEDY ET AL., USDA, AGRIC. INFO. BULLETIN NO. 750, INTRODUCTION: ON THE ROAD TO BETTER NUTRITION, in AMERICA'S EATING HABITS: CHANGES AND CONSEQUENCES 2 (Elizabeth Frazão ed., 1999) [hereinafter AMERICA'S EATING HABITS], available at <http://www.ers.usda.gov/publications/aib750>; see generally Mary E. Corcoran et al., *The Welfare of Children After Welfare Reform: Food Insufficiency and Material Hardship in Post-TANF Welfare Families*, 60 OHIO ST. L.J. 1395 (1999) (examining Michigan welfare recipients affected by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

8. The focus of this article is on the food products subsidized by federal regulation that are proving harmful to communities of color. Nonetheless, the nation's food policies have, at times, included nutrient studies as to subsidized commodities. See generally CAROLE DAVIS & ETTA SALTOS, USDA, AGRIC. INFO. BULLETIN NO. 750, DIETARY RECOMMENDATIONS AND HOW THEY HAVE CHANGED OVER TIME, in AMERICA'S EATING HABITS 33, 34-35 (Elizabeth Frazão ed.,

deficiencies facing impoverished communities of color.<sup>9</sup> Agricultural law and policies are failing to reach geographically compact communities of color in economically distressed hunger zones. Faced with disappearing markets and a lack of sustainable food sources, consumers are forced to patronize fast-food outlets, convenience stores and gas stations—all options with direct causal connections to health related concerns.<sup>10</sup> Examining this nutritional void reveals the causal linkages between the negative externalities of the nation's food system and health of the impoverished.<sup>11</sup> Without vital and sustainable food products, a number of the impoverished face escalating rates of obesity, diabetes, hypertension and related

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1999) (providing a historical view of "early food guidance" from 1900 to the 1940s), *available at* <http://www.ers.usda.gov/publications/aib750>; *see also* USDA, USDA NUTRIENT DATABASE FOR STANDARD REFERENCE, RELEASE 14, COMPOSITION OF FOODS RAW, PROCESSED, PREPARED (2001), *available at* [http://www.nal.usda.gov/fnic/foodcomp/Data/SR14/sr14\\_doc.htm](http://www.nal.usda.gov/fnic/foodcomp/Data/SR14/sr14_doc.htm).

9. *See* JAYACHANDRAN N. VARIYAM ET AL., USDA, *Preface to USDA's HEALTHY EATING INDEX AND NUTRITION INFORMATION 1* (1998) (stating that "[n]utrition is the bridge between agriculture and health" and deaths from disease associated with dietary excesses—coronary heart disease, some types of cancer, stroke, and noninsulin-dependent diabetes mellitus—account for nearly two-thirds of the deaths each year in the United States), *available at* <http://www.ers.usda.gov/publications/TB1866/TB1866.pdf>; *see also* ALAN D. MATHIOS & PAULINE IPPOLITO, AGRIC. INFO. BULLETIN NO. 750, USDA, HEALTH CLAIMS IN FOOD ADVERTISING AND LABELING: DISSEMINATING NUTRITION INFORMATION TO CONSUMERS, *in* AMERICA'S EATING HABITS 189, 189 (Elizabeth Frazão ed., 1999) (stating that "[i]n the United States, diet is now believed to be linked substantially to 4 of the top 10 causes of death"), *available at* <http://www.ers.usda.gov/publications/aib750>; JOANNE F. GUTHRIE ET AL., USDA, AGRIC. INFO. BULLETIN NO. 750, WHAT PEOPLE KNOW AND DO NOT KNOW ABOUT NUTRITION, *in* AMERICA'S EATING HABITS 243, 243-247 (Elizabeth Frazão ed., 1999) (showing a dietary connection to hypertension, heart disease and cancer), *available at* <http://www.ers.usda.gov/publications/aib750>.

10. *See* Denise Palmari et al., *Multiple Perspectives on Nutrition Education Needs of Low-Income Hispanics*, 23 J. CMTY. HEALTH 301, 302 (1998) (stating that low socioeconomic status and geographic isolation, due to a limited number of mountain passes, adversely influences the nutritional status, income and education of the residents [in rural southern Colorado]).

11. Latinos and African-Americans, in some instances, cannot digest certain commodities subsidized by agricultural legislation and policies. Milk can also be characterized as a racial issue. For example, a number of people in communities of color are lactose intolerant. Almost 90 percent of African-Americans and most Latinos, Asians, and Southern Europeans lack the genes necessary to digest lactose, the primary sugar in milk. *See* Shanti Rangwani, *White Poison*, COLORLINES, Winter 2001-02, *available at* [http://www.arc.org/C\\_Lines/CLArchive/story4\\_4\\_02.html](http://www.arc.org/C_Lines/CLArchive/story4_4_02.html). Sugar, another heavily subsidized commodity, is also affecting obesity rates. Added sugar consumption has "nearly doubled between 1909-1998." *See* ECON. RESEARCH SERV., USDA, *Major Trends in U.S. Food Supply, 1909-99*, 23 FOOD REV. 8, 15 (Rosanna Morrison ed., 2000) (showing a graph of total caloric sweeteners, cane and beet sugar, and corn sweeteners), *available at* <http://www.ers.usda.gov/publications/foodreview/jan2000/frjan2000b.pdf>.

cardiovascular illnesses.<sup>12</sup> The alarming increases in the obesity rate among children of color who are denied access in their diet further emphasize this point.<sup>13</sup>

The purpose of this article, however, is not to criticize individuals of varying shapes and sizes<sup>14</sup> or the culture of communities of color for their diet.<sup>15</sup> An examination of western influences which have introduced foodstuffs contrary to indigenous and native diets would broaden the scope of this article beyond its stated purpose. Notwithstanding this point, a growing body of research exists, analyzing the consequences of western influences on native diets.<sup>16</sup>

Health considerations present yet a third purpose that drives the concern of the limited, or uncertain availability of, nutritionally adequate and safe foods in distressed communities.<sup>17</sup> Because “nutrition is the bridge between agriculture

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12. ELIZABETH FRAZÃO, USDA, AGRIC. INFO. BULLETIN NO. 750, HIGH COSTS OF POOR EATING PATTERNS IN THE UNITED STATES, in AMERICA'S EATING HABITS 5, 5-6 (Elizabeth Frazão ed., 1994) (examining leading causes of death in the United States and linking dietary patterns to coronary heart disease, certain types of cancer and stroke and stating that diet plays a “major role” specific to diabetes, hypertension, and obesity), available at <http://www.ers.usda.gov/publications/aib750>.

13. See Richard S. Strauss & Harold A. Pollock, *Epidemic Increase in Childhood Overweight, 1986-1998*, 286 JAMA 2845, 2845 (2001) (stating childhood obesity in the U.S. continues to increase rapidly, particularly among African-Americans and Hispanics).

14. Larger-sized individuals can in fact be healthy. See Elizabeth Fernandez, *Pursuing Fat Chances in a Slim World: Obese Women Say they Can Be Fit Enough, even to Teach Aerobics*, S.F. CHRON., Mar. 18, 2002, at A1; Elizabeth Fernandez, *Teacher Says Fat, Fitness Can Mix: S.F. Mediates Complaint Jazzercise Showed Bias*, S.F. CHRON., Feb. 24, 2002, at A21.

15. For example, in a few major metropolitan areas, newly arrived immigrants are introducing a wide variety of commodities previously not sold in the United States. See, e.g., Ed Avis, *Ethnic Biz Owners Say “Bring it On”: As Mainstream Competitors and Gentrification Move in, Grocers are Undaunted but will Have to Adapt*, CRAIN'S CHI. BUS., Feb. 10, 2003, at SB1; Sharon Thompson, *Beyond “Tex-Mex” and Tacos, Hispanic Cuisine is Spicing up U.S. Palates*, LEXINGTON HERALD LEADER, Feb. 16, 2003, at 1.

16. The value of corn in certain native cultures provides an example of an ancient sacred, religious, and cultural relationship. Compare the consequences of globalization on corn and its impact on Mexican tortillas as in the North American Free Trade Agreement; see generally Lorna Aldrich & Jayachandran N. Variyam, *Acculturation Erodes the Diet Quality of U.S. Hispanics*, 23 FOOD REV. 51 (2000) (stating that as Mexican-origin women move from first to second generation, the quality of their diet deteriorates as they abandon traditional foods such as beans, rice and tortillas), available at <http://www.ers.usda.gov/publications/foodreview/jan2000/frjan2000i.pdf>. The North American Free Trade Agreement contracts the governments of Mexico, Canada, and the United States to the creation of the world's largest free market. See North American Free Trade Agreement, 19 U.S.C. §§ 3301-3473 (2000).

17. See FOOD INSECURITY, *supra* note 1, at 1 (reporting that “9.7 percent of U.S. households—about 10 million households each year” are food insecure); see also VARIYAM ET AL., *supra* note 9, at Preface (“The American diet—high in fat, saturated fat, and sodium, and low in calcium and fiber-containing foods such as fruits, vegetables, and whole grains—is associated with increased risk for several chronic diseases.”).

and health,"<sup>18</sup> it renders imperative a return to the "golden period" of agriculture—the New Deal era—for additional insights on how federal policies have impacted food security.<sup>19</sup>

During the 1930s, the nation witnessing tremendous economic hardship expedited New Deal legislation and reconfigured governmental participation in the nation's food chain.<sup>20</sup> The New Deal approached the problem of feeding the nation by entrusting Congress to promulgate a national agricultural agenda in periodic increments.<sup>21</sup> Responding to the impoverishment of the times, the New Deal legislation represents one of the most significant government interventions in agriculture.<sup>22</sup> The New Deal, moreover, marked a defining moment in history and retains its legacy due to the resulting economic and social framework it created. Its jurisprudential importance is often underscored, moreover, from ongoing academic inquiries as to whether New Deal legislation construed a "constitutional moment."<sup>23</sup>

To eliminate the harmful conditions afflicting the nation's impoverished—hunger, food shortages, and economic shortfalls—the New Deal mobilized a new presence within the Department of Agriculture.<sup>24</sup> The New Dealers

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18. *See id.*

19. *See* Mordecai Ezekiel, *Economic Philosophy of the New Deal*, 16 J. Bus. 4, 4 (1936); *see generally* THEODORE SALOUTOS & JOHN HICKS, *TWENTIETH CENTURY POPULISM, AGRICULTURAL DISCONTENT IN THE MIDDLE WEST 1900-1939* (Univ. of Neb. Press, 1951) (giving a history of events leading up to and through the New Deal enactments); GAO, GAO/OCG-99-2, *MAJOR MANAGEMENT CHALLENGES AND PROGRAM RISKS, DEPARTMENT OF AGRICULTURE* (1999) (providing history of food stamp program and mission of USDA), available at <http://www.gao.gov>; Harold F. Breimyer, *Agricultural Philosophies and Policies in the New Deal*, 68 MINN. L. REV. 333 (1983).

20. *See generally* Jim Chen & Edward S. Adams, *Feudalism Unmodified: Discourses on Farms and Firms*, 45 DRAKE L. REV. 361 (1997) (attributing the foundational ideology of agriculture as one constituting agricultural supremacy).

21. *See* Ezekiel, *supra* note 19; SALOUTOS & HICKS, *supra* note 19; Breimyer, *supra* note 19.

22. The scope of agricultural legislation remains extensive and beyond the focus of this essay, but for a few references *see, e.g.*, Agricultural Adjustment Act of 1933, Pub. L. No. 10, 48 Stat. 31 (codified as amended at 7 U.S.C. §§ 601-626 (1999)); Bankhead-Jones Act of 1935, 7 U.S.C. §§ 427, 427j (1994); Taylor Grazing Act of 1934, 43 U.S.C. §§ 315-315r (1994).

23. *See, e.g.*, William E. Forbath, *Constitutional Change and the Politics of History*, 108 YALE L.J. 1917 (1999); Kurt T. Lash, *The Constitutional Convention of 1937: The Original Meaning of the New Jurisprudential Deal*, 70 FORDHAM L. REV. 459 (2001).

24. *See* Jess Gilbert, *Eastern Urban Liberals and Midwestern Agrarian Intellectuals: Two Group Portraits of Progressives in the New Deal Department of Agriculture*, 74 AGRIC. HIST. 162, 162-63 (2000) (stating that two groups of progressive reformers occupied the USDA during the first years of the New Deal).

characterized their efforts as “experimental social science,”<sup>25</sup> with an emphasis on consumer input and selection.<sup>26</sup> Within the realm of agricultural history, this “entirely new presence in the USDA”<sup>27</sup> thereby connects the New Deal of the past with the nation’s agricultural agenda of the present.

To a large extent, New Deal efforts are reflected in the “[e]ighty-nine percent of American households” currently identified as food secure.<sup>28</sup> With almost 50,000 products available for consumption, “[n]o country in the world has a more bountiful food supply than the United States.”<sup>29</sup> Yet “a legacy of questions,”<sup>30</sup> specific to the eleven percent that remain food insecure, underscores a fourth purpose of this article. Specifically, this article asks why a nation of plenty is causing hunger zones across the nation.<sup>31</sup> Failures in the nation’s food agenda illustrate a paradox with abundance and excess for many, while “approximately 26 million Americans” require yearly food assistance from governmental and non-governmental sources.<sup>32</sup> Hunger, moreover, is expanding into

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25. Mordecai Ezekiel, *Experimental Social Science*, in President Franklin D. Roosevelt Library (May 1935).

26. See Mordecai Ezekiel, *Some Suggestions for Controlling Price Aspects of Codes and Agreements*, in President Franklin D. Roosevelt Library (Aug. 7, 1935) (stating “the ‘New Deal’ philosophy rests upon restoring and maintaining buying power for the mass of consumers”).

27. Gilbert, *supra* note 24, at 163. Some credit the ideological basis of the New Deal to John Dewey. See Alan Lawson, *The Cultural Legacy of the New Deal*, in FIFTY YEARS LATER: THE NEW DEAL EVALUATED 155, 159-60 (Harvard Sitkoff ed., 1985) (“Dewey argued that persons most fully realized their individuality in association with others. A society in which persons, acting together, are ‘continuously planning,’ rather than submitting to a planned dogma, and in which the primary decision-making unit is the local, ‘face-to-face’ community, would best ensure both the general welfare and the fullest development of individual character and talent.”).

28. See MARK NORD ET AL., USDA, FOOD ASSISTANCE AND NUTRITION RESEARCH REPORT NO. 29, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES, 2001, at 3 (2001) [hereinafter HOUSEHOLD FOOD SECURITY], available at <http://www.ers.usda.gov/publications/fanrr29/fanrr29.pdf>.

29. ROBERT W. FOGEL, USDA, AGRIC. INFO. BULLETIN NO. 750, *Preface to AMERICA’S EATING HABITS* (Elizabeth Frazão ed., 1999), available at <http://www.ers.usda.gov/publications/aib750>.

30. See ROBERT EDEN, *Introduction: A Legacy of Questions*, in THE NEW DEAL AND ITS LEGACY: CRITIQUE AND REAPPRAISAL I (Robert Eden & Jon L. Wakelyn eds., 1989) (discussing the effects of the New Deal programs).

31. The inability to access alternative sustainable food is underscored in this essay. See, e.g., Robert E. Pierre, *Chicago Neighbors Plot a way to Healthier Food; With Produce Scarce, Residents Grow Their Own*, WASH. POST, Aug. 14, 2002, at A03 (describing a low-income Chicago neighborhood’s successful farmers market that is bringing fresh produce to the area).

32. Press Release, Sen. Peter G. Fitzgerald, Fitzgerald Co-Sponsors Hunger Relief Plan (Jan. 25, 2001), at 2001 WL 5419440 (last visited Jan. 28, 2005).

new areas of the nation's population such as the "working poor,"<sup>33</sup> which serve to ultimately distance and offset characterizations of hunger as a "myth."<sup>34</sup>

Part II next shapes a prism that highlights the agricultural agenda from a race and class perspective.<sup>35</sup> This section underscores the need to expand the nation's current farm programs beyond the current narrow focus. It calls for a return of the crusade of the past,<sup>36</sup> but offers a key distinction. This congressional development of the nation's food agenda should consider the specific and particular details of malnourished communities of color.

Consequently, excluded from vital food, the malnourished must rely on faulty governmental food programs or food charities that are unable to provide an adequate diet. Additionally, individuals disallowed free will in the selection of their dietary needs enlarges the class of those confronting food security beyond the impoverished. Groups such as the elderly face barriers because of the non-availability of diverse food products for their consumption. The specific focus of this section is thus to question the nation's food programs that fail to connect the agricultural agenda to the negative externalities and consequences flowing from that agenda, directly impacting the ten percent identified as "food insecure".

Part III provides a brief historical context of the New Deal within the framework of the two competing political forces which defined the New Deal legislation. Two camps of ideological thought dominated initial New Deal poli-

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33. As to the distinctions between clinically and medically defined hunger and food insecurity, see Eileen Kennedy, *The New Faces of Food Insecurity and Hunger*, 37 NUTRITION TODAY 154, 155 (2002) (critique of media's characterization of food insecurity and hunger linked to clinical signs of malnutrition). See also David H. Holben, *An Overview of Food Security and its Measurement*, 37 NUTRITION TODAY 156 (2002) (enumerating stages of food insufficiency).

34. Compare ROBERT E. RECTOR, THE HERITAGE FOUND., THE MYTH OF WIDESPREAD AMERICAN POVERTY,, (Backgrounder No. 1221, 1998) (stating that USDA surveys provide little evidence of widespread under-nourishment of the poor), available at <http://www.heritage.org/Research/Welfare/BG1221.cfm>; with Fitzgerald, *supra* note 32, and Cheryl Wetzstein, *Poverty Rates Fall to Record Low Levels: Critics Disagree on Decline Causes*, WASH. TIMES, Oct. 22, 2000, at C4, and Sally Ruth Bourrie, *Fully Employed, But Hungry: More in Oregon Face Hard Choices*, BOSTON GLOBE, Dec. 17, 2000, at A8, and Karen Seccombe, *Families of Poverty in the 1990s: Trends, Causes, Consequences, and Lessons Learned*, 62 J. MARRIAGE & FAM. 1094 (2000) (critique and analysis of the causes and effects of poverty and the consequences of the increasing number of Americans living in poverty).

35. While people of color comprise a critical component in the production of the nation's food systems, they confront various levels of structural exclusion from the federal agricultural regulatory process. See Agricultural Fair Practices Act, 7 U.S.C. §§ 2301-2305 (2000); 29 U.S.C. § 213(a)(6) (2000) (exempting farm workers from minimum wage and maximum hour provisions of FLSA).

36. See generally RICHARD S. KIRKENDALL, SOCIAL SCIENTISTS AND FARM POLITICS IN THE AGE OF ROOSEVELT 11, 29 (Univ. of Mo. Press, 1982) (outlining the hopes and ambitions of those planning the New Deal).

cies.<sup>37</sup> The first consisted of “urban liberals” who participated primarily in the legal and consumer division of the Agricultural Adjustment Administration (“AAA”).<sup>38</sup> The second, composed of “agrarian intellectuals,” dealt with the AAA’s commodity sections.<sup>39</sup>

Agricultural historians detail the class differences and ideological distances between the two groups that ultimately led to a “Purge of the Liberals.”<sup>40</sup> A resultant “tragedy of New Deal agricultural policy”, as Professor Gilbert asserts, was the loss of the alternative voices seeking to link New Deal programs with the dispossessed.<sup>41</sup> This section thus considers yet another aspect of the New Deal legislation. Specifically, it examines hunger zones across the nation, a direct consequence of agricultural policies resulting from the purge.

Part IV examines the causation strands that shape the present agricultural landscape.<sup>42</sup> This section links the impact of federally subsidized food with distressed communities confronting health issues from the absence of alternative sustainable and vital food sources.<sup>43</sup> This section further considers the costs and impact of the nation’s food agenda on consumers. In reaching back to the earlier goals of New Dealers concerned with the “dispossessed,” this essay urges linking the nutritional value agricultural programs provide as a condition precedent for continued governmental support.

In conclusion, this article rejects the status quo approach that led to the purge of voices that sought a more consumer-oriented farm and food policy. In contrast, it favors an approach that includes diverse and alternative views that are un-tethered to the politics of the moment. This inquiry ultimately advocates a return to Willard Cochrane’s multi-dimensional analysis in the drafting of future

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37. See Gilbert, *supra* note 24, at 162.

38. *Id.*

39. *Id.*

40. *Id.* at 179-80.

41. *Id.* at 180.

42. See generally FOOD INSECURITY, *supra* note 1, at 1 (stating the connection to food insecurity and hunger with the states draws from “[m]any of the efforts that comprise the national nutrition safety net are carried out at [s]tate and local levels.” In addition, the authors report on the connection between federal and state law. For example, “[s]tate governments play a major role in administering national programs such as the Food Stamp Program, WIC (Special Supplemental Nutrition Program for Women, Infants and Children), and the School Lunch and School Breakfast Programs.”); KEITH MEYER ET AL., AGRICULTURAL LAW, CASES AND MATERIALS 14-35 (West 1985) (showing that agricultural law encompasses the realm of federal and state regulatory structures that expedite food production in the United States and entry into foreign markets).

43. See generally VARIYAM ET AL., *supra* note 9, at iii-iv (stating that minorities are handicapped by minimal levels of nutrition information which leads to a low Healthy Eating Index).



farm bills.<sup>44</sup> In sum, this essay evidences Cochrane's theory of situational knowledge, applying its doctrinal precepts to communities of color and linking them to the farm agenda of subsidized commodities.<sup>45</sup>

## II. FOOD INSUFFICIENCY AND COMMUNITIES OF COLOR: LET THEM EAT CAKE?

"Hunger—the uneasy or painful sensation caused by a lack of food. The recurrent and involuntary lack of access to food."<sup>46</sup>

While the issues addressed within this article relate to the nations' impoverished generally, the immediate class considered encompasses communities of color confronting food insufficiency, malnutrition and causally related ill-health. Specific attention thus targets Indians, Chicanas/os, and African-Americans witnessing destitute circumstances and confronting low availability of food. In sum, this section focuses on disallowing free will in diet choice and a reliance on harmful alternatives.<sup>47</sup>

This investigation stems from USDA data showing that "[o]nly [five] percent of African-Americans, as compared with [eleven] percent of Whites, have a good diet. . . ."<sup>48</sup> In addition, the data also show "[s]ixteen percent of American Indians have a poor diet, and [seventy-four] percent have a diet that needs improvement."<sup>49</sup> These impoverished communities, moreover, are situated in states with food producers who benefit directly from federal subsidies accruing in the billions of dollars.<sup>50</sup>

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44. See WILLARD W. COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE: A HISTORICAL ANALYSIS* 4, 5 (2d ed. 1993).

45. See generally Devon G. Peña, *Subversive Kin*, in *CHICANO CULTURE, ECOLOGY, POLITICS* 12 (1998) (citations omitted).

46. FOOD INSECURITY, *supra* note 1, at 2 (citing S.A. Anderson, *Core Indicators of Nutritional State for Difficult-to-Sample Populations*, 120 *J. NUTRITION* 1557 (1990)).

47. See generally JOSEPH DALAKER, U.S. DEP'T. OF COMMERCE, *POVERTY IN THE UNITED STATES: 2000-1 (2001)* (stating in 1999, poverty rates for African-Americans were 23.6% and 22.8% for Hispanics), available at <http://www.census.gov/prod/2001pubs/p60-214.pdf>.

48. CTR. FOR NUTRITION POL'Y AND PROMOTION, USDA, 6 *NUTRITION INSIGHT, REPORT CARD ON THE DIET QUALITY OF AFRICAN-AMERICANS* 1 (July 1998), available at <http://www.usda.gov/cnpp/INSIGHT6c.PDF>.

49. CTR. FOR NUTRITION POL'Y AND PROMOTION, USDA, 12 *NUTRITION INSIGHT, THE DIET QUALITY OF AMERICAN INDIANS: EVIDENCE FROM THE CONTINUING SURVEY OF FOOD INTAKES BY INDIVIDUALS* 1 (Mar. 1999), available at <http://www.usda.gov/cnpp/Insights/insight12.PDF>.

50. See GAO, GAO-01-606, *FARM PROGRAMS: INFORMATION ON RECIPIENTS OF FEDERAL PAYMENTS* 1 (June 2001) [hereinafter *FEDERAL PAYMENTS*] ("Payments to farmers under federal farm programs have reached an historic high—over \$20 billion in fiscal year 2000"), available at <http://www.gao.gov>.

A. *Poverty and Food Insecurity*

"[A]s many as 12 million [American] children each year go without food at some point every month. . . ."<sup>51</sup>

Although the rate of food insufficiency ranges from state to state,<sup>52</sup> census figures reveal that African-Americans and Hispanics were more likely to be poor than non-Hispanic Whites.<sup>53</sup> Shaping the contours of this investigation is the food security gap between communities of color and the producers receiving government support.<sup>54</sup> Ironically, this food security gap surfaces in states that are active in food production. Census figures associate poverty with food insecurity and not the lack of access and its nexus with federally generated agricultural wealth.<sup>55</sup> For example, while the state of California is a leading agricultural producer, it boasts a sizeable population of color and has a child hunger or food insecurity rate of twenty-three percent (the national average is eighteen percent).<sup>56</sup> In the agriculturally-rich state of New Mexico, 19.3 percent of its residents are identified as impoverished.<sup>57</sup> Texas is the home of the winter garden district, yet with native communities of color it reports 12.9 percent impoverished.<sup>58</sup> Completing the paradox, Ohio, the site of immeasurable agricultural wealth, also lists 900,000 of its children as food insecure.<sup>59</sup>

The nation's poor reside in both rural and urban communities and nationally, an average of 9.7 percent of people are identified as food insecure.<sup>60</sup> The U.S. Census Bureau reports that the poverty rate and number of people liv-

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51. Seccombe, *supra* note 34, at 1103.

52. See FOOD INSECURITY, *supra* note 1, at 1.

53. See Seccombe, *supra* note 34, at 1095.

54. See, e.g., Lester C. Thurow, *Poverty Settles in Great Plains*, USA TODAY, Sept. 30, 2002, at A13 (noting the groups with the highest poverty rates included Native Americans with 24.5%; 22.7% of African-Americans; 21.4% of Hispanics, and 10.2% of Asians and Pacific Islanders").

55. Compare DALAKER, *supra* note 47, with HOUSEHOLD FOOD SECURITY, *supra* note 28.

56. See Carla Rivera, *Study Faults State on Child Issues: California is Found to Lag Most States in Various Measures of Providing for its Youth*, L.A. TIMES, Oct. 23, 2002, at B7 (stating "[d]espite high levels of wealth, California compares poorly with many other states in providing adequate education, health care and economic security for young children and their families"); see also CONTESTED EDEN: CALIFORNIA BEFORE THE GOLD RUSH (Ramón A. Gutiérrez & Richard J. Orsi eds., 1998) (discussing California's natural resources in an historical setting).

57. DALAKER, *supra* note 47, at 11.

58. FOOD INSECURITY, *supra* note 1, at 3.

59. Kristen Convery, *Quick Fixes Needed to Satisfy Hunger Problem, Report Says*, DAYTON DAILY NEWS, Feb. 1, 2001, at 3B; see also DALAKER, *supra* note 47, at 11 (stating that 11.1% of Ohio residents live in poverty).

60. Food Insecurity, *supra* note 1, at 1.

ing in poverty rose in 2001 and 2002 and is increasingly expanding.<sup>61</sup> States with impoverished Latinas/os, Native Americans, or African-Americans, nonetheless, agree with the notion that people are hungry in their home communities.<sup>62</sup>

For example, in New Mexico, 15.1 percent of the state's population emerges as food insecure.<sup>63</sup> Mississippi, with a significant African-American population, identifies 14.0 percent of its households as food insecure.<sup>64</sup> Texas, the home of communities and other populations of color, reports 12.9 percent households as food insecure.<sup>65</sup> Arizona, with native communities and other communities of color, reports 12.8 percent facing food insecurity.<sup>66</sup> California, with a robust agricultural economy, lists 11.4 percent of households as food insecure.<sup>67</sup>

Adding to the "luckless, the unemployed, or the down-and-out" class of the food insecure are the working poor, characterized as the "new hungry."<sup>68</sup> The elderly, facing bare cupboards and/or relying on pre-mixed, fast-food items, or facing mobility difficulties, further enlarge the realm of the food insecure.<sup>69</sup> With decreasing corporate contributions, the hungry, who seek assistance from food banks where available, are forced to rely on "\$45 in carrots, potatoes, rice, lentils, and other items" as monthly rations.<sup>70</sup>

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61. See BERNADETTE PROCTOR & JOSEPH DALAKER, U.S. DEPT. OF COMMERCE, POVERTY IN THE UNITED STATES: 2002, at 2 (Sept. 2003) (stating in 2002, the poverty rate increased from 11.7% to 12.1%, with 34.6 million Americans living in poverty), available at <http://www.census.gov/prod/2003pubs/p60-222.pdf>.

62. See generally CTR. FOR NUTRITION POL'Y & PROMOTION, USDA, *supra* note 49 (citing poor diet quality statistics among American Indians); Shonda Novak, *N.M. Among Nation's Poorest*, SANTA FE NEW MEXICAN, Sept. 27, 2000, at A1 (stating New Mexico tied with Louisiana for the highest poverty rate in the U.S.).

63. FOOD RESEARCH & ACTION CTR., NEW DATA SHOW HUNGER AND FOOD INSECURITY AFFECTING FAMILIES IN ALL STATES, CURRENT NEWS & ANALYSIS, Oct. 15, 1999, at <http://www.frac.org/html/news/usdafoodsecuritypr-drop.html> (last visited Jan. 30, 2005).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Naomi R. Kooker, *The New Hungry: No Longer Only Jobless, Homeless: Feeding Today's Hungry Requires Planning*, *Outreach*, BOSTON GLOBE, Jan. 21, 2001, at 1; see also Bourrie, *supra* note 34.

69. See Lisa M. Klesges et al., *Financial Difficulty in Acquiring Food Among Elderly Disabled Women: Results from the Women's Health and Aging Study*, 91 AM. J. PUB. HEALTH 68, 74 (2001) (relating malnutrition to specific health and financial conditions common in older persons); see also Maureen West, *Hispanic Elderly in Large Numbers will Endure Poverty in Retirement Not-So-Golden Years*, ARIZ. REPUBLIC, Aug. 10, 2000, at B1.

70. Kooker, *supra* note 68; see Klesges et al., *supra* note 69, at 74 (stating among community-dwelling, older, disabled women, financial difficulty acquiring food is common.).

Accordingly, the need for sustainable food choices in their immediate geographical areas deprives individuals of free will and choice in their dietary selections.<sup>71</sup> While hereditary factors may play a role in individual health, the pertinent factor contributing to poor health and malnutrition is the absence of diverse food products in distressed communities across the nation.<sup>72</sup>

In *Pelman v. McDonald's Corporation*, the defendants asserted that “any food or drug necessarily involves some risk of harm, if only from over-consumption.”<sup>73</sup> Yet, financially distressed communities either eat inconsistently, or are forced to rely on faulty governmental food programs or food charities that disallow an adequate diet. In addition, with increasing rates of food insecure communities placing greater reliance on food banks and charities, the true status of hunger falls outside the realm of governmental statistical reporting.<sup>74</sup> Malnutrition, poverty, and hunger not only promote physical and emotional damage with the impoverished class, but also have a direct impact on obesity rates and ill-health.<sup>75</sup>

### B. Geography and Food Access

Nutrition and diet are directly linked to food access, but the emphasis of this essay encompasses inaccessible sustainable food choices in both rural and urban communities of color. Geographical distances compound the absence of alternative and sustainable food in regions across the country. Several communities of color, for example, are situated great distances from healthy food sources, and this isolation emphasizes the complexity of the issues presented herein.<sup>76</sup>

While many of the causes extend beyond the focus of this article, both rural and urban communities face challenges accessing sustainable food products. For example, factors that prevent food choice include the unavailability of well-stocked food markets and the consolidation of grocery markets that concentrate

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71. The Economic Research Service of the USDA compiles data on food consumption. It considers for example, food supply data and food disappearance data “reflect[ing] the amount of the major food commodities entering the market”. ECON. RESEARCH SERV., USDA, *supra* note 11, at 8.

72. See, e.g., *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 539 (S.D.N.Y. 2003).

73. *Id.* at 531 (citing RESTATEMENT (SECOND) OF TORTS § 402A, cmt. i (1965)).

74. See Kooker, *supra* note 68.

75. See JULIE C. BOLEN ET AL., CDC, SURVEILLANCE SUMMARIES 49(SS02);1-60, STATE-SPECIFIC PREVALENCE OF SELECTED HEALTH BEHAVIORS, BY RACE AND ETHNICITY—BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM, 1997 (Mar. 2000), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4902a1.htm>.

76. See, e.g., Barbara Ferry, *Poor Benefit from Pueblos' Food-Commodities Program*, SANTA FE NEW MEXICAN, Oct. 29, 2000, at A4 (discussing the difficulties many poor families in rural New Mexico have getting food outside reservation boundaries).

stores outside low-income geographic areas.<sup>77</sup> The dearth of diverse food retailers lessens free will thus shapes diets and suggests the root of some of the challenges confronting the nation's poor.<sup>78</sup> And while this article's emphasis is consideration of impoverished hunger zones, this issue also encompasses the non-poor, who confront mobility difficulties and also face ill-supplied food markets as their primary or only choice of food.<sup>79</sup>

In placing communities of color who witness the "limited or uncertain availability of nutritionally adequate and safe foods"<sup>80</sup> at the center of inquiry, this article focuses on the geographical distances disallowing them access to nutritional food sources. Yet contrary to the general thesis of free will in a consumer's diet, a resultant alternative for some communities of color, as depicted in the *Pelman* decision, includes the concentration of less than healthy food products.<sup>81</sup> Some geographically-compact minority regions are left with but one choice—fast food chains—commonly associated with high concentrations of fat, sugar, and salt.<sup>82</sup> The *Pelman* court, moreover, illustrates the widespread understanding as to the "quality" of food offered by the fast-food industry with the court stating: "It is well-known that fast food in general, and McDonald's products in particular, contain high levels of cholesterol, fat, salt, and sugar, and that such attributes are bad for one."<sup>83</sup> One author underscores this point with his assertion that it was the:

[p]oor and their increasing need for cheap meals consumed outside the home that fueled the development of what may well be the most important fast-

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77. The impact of vertical integration of agricultural markets exemplifies this issue. See generally THOMAS L. VOLLRATH, USDA, AGRIC. INFO. BULLETIN NO. 784, NORTH AMERICAN AGRICULTURAL MARKET INTEGRATION AND ITS IMPACT ON THE FOOD AND FIBER SYSTEM (2003), available at <http://www.ers.usda.gov/publications/aib784>.

78. See, e.g., Leon Bradley, *Walk a Mile in Another's Shoes, Pushing a Cart*, TIMES-PICAYUNE, Dec. 31, 2000, at M6.

79. Interview after interview with urban dwellers expose the contrast between inner city markets lacking wholesome food, fruits and vegetables with the healthy alternatives available in specialty markets. This disparity emphasizes the class distinctions in access to vital food alternatives. (Notes on file with the author).

80. FOOD INSECURITY, *supra* note 1.

81. See, e.g., Greg Critser, *Let them Eat Fat: The Heavy Truths About American Obesity*, HARPER'S MAGAZINE, Mar. 2000, at 41-42; Erik Assadourian, *The Hunger for Profit*, WORLD WATCH, Sept.-Oct. 2002, at 34 (a book review discussing the fast food industry and how it attempts to influence the dissemination of health and nutrition information through lobbying).

82. The effect of fast food on diet is providing clues on the health aspects of eating french fries and "other fried or baked starchy foods." Lauran Neergaard, *Amino Acid a Cancer Suspect: Find Provides Clues to French Fry Issue*, CHI. TRIB., Sept. 30, 2002, at 7.

83. *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 532 (S.D.N.Y. 2003).

food innovation of the past twenty years, the sales gimmick known as “supersizing.”<sup>84</sup>

In observing his neighborhood, the author reports that the “supersize bacchanal goes into high gear at about five p.m., when the various urban caballeros, drywalleros, and jardineros get off work and head for a quick bite.”<sup>85</sup>

The connections between fried and starchy food products and cancer are attracting the attention of the media as well as health officials and are generating public concern.<sup>86</sup> Feasible alternatives, however, are not presented to communities in distress. And while the nutritional value of fast food products is highly suspect, some report that the industry further misinforms the public with misrepresentations as to the nutritional qualities of its food products.<sup>87</sup> “Big Food thrives on ignorance and does everything it can to perpetuate it.”<sup>88</sup>

The biased, non-diverse approach in the nation’s farm and food policies thereby produce consequences that directly impact the nation’s poor. The negative externalities flowing from agricultural subsidies are evident in the explosion of low quality food foisted on the poor. By failing to connect the health and nutrition needs of the nation’s hungry with the nation’s agricultural agenda, the current regime in expediting food production has created an inhospitable nutritional environment where malnourishment can thrive.

### C. Health Disparities in Communities of Color

“[A]pproximately one out of every [ten] Mexican Americans aged [twenty] years and older has diabetes.”<sup>89</sup>

Several factors directly link diet and nutrition with the health-related issues underscored herein. Health effects related to hunger also create psychological and emotional distress in conjunction with the lack of physical well-being.<sup>90</sup> Even so, the physical aspects of malnutrition and ill-health best emphasize the

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84. Critser, *supra* note 81, at 42.

85. *Id.*

86. See, e.g., Neergaard, *supra* note 82.

87. See, e.g., Neal D. Barnard, *Big Food’s Greasy Secrets*, PALM BEACH DAILY BUS. REV., Feb. 10, 2003, at A6.

88. *Id.*

89. DIV. OF MEDIA RELATIONS, CDC, CDC REPORTS HISPANICS ARE DIAGNOSED WITH DIABETES AT TWICE THE RATES OF WHITES (Jan. 15, 1999), available at <http://www.cdc.gov/od/oc/media/pressrel/r990115.htm>.

90. See Lori L. Reid, *The Consequences of Food Insecurity for Child Well-Being: An Analysis of Children’s School Achievement, Psychological Well-Being, and Health* 12 (Fla. State Univ., Working Paper, 2000), at <http://ideas.repec.org/p/wop/jopovw/137.html> (last visited Jan. 30, 2005).

lack of sustainable food sources. One important ramification includes obesity rates pledging a nation rich in agricultural resources

The escalating rate of obesity afflicting the nation illustrates the relationship between the lack of sustainable food and the health of communities of color. To emphasize an earlier point, this article is not directed toward the obese; rather the emphasis is on nutritional considerations specific to obesity. Accordingly, while some individuals may be classified "obese," they are considered nonetheless, healthy.<sup>91</sup> In contrast, the focus of this article centers on a class-based analysis involving poverty stricken communities of color, with an emphasis on their lack of choice and attendant diet related illnesses.

The nation's girth, nonetheless, is attracting the attention of public health officials.<sup>92</sup> Across the nation, approximately one-fifth of all Americans are identified as "obese."<sup>93</sup> Children are categorized as most at risk and now comprise at least fifteen percent of all Americans identified as "overweight."<sup>94</sup> California data, reflecting a heavily populated Latina/o region, reports 22.0 percent as obese, with 22.3 percent of Blacks falling into the obese category.<sup>95</sup> By comparison, 15.3 percent of individuals of European ancestry ("White") are reported as obese.<sup>96</sup>

The data is causing some health officials to characterize the "growth" of Americans as an "epidemic."<sup>97</sup> Likewise, a corresponding rise in cardiovascular disease, cancer, and other injuries that are closely related to obesity are also generating controversy.<sup>98</sup> Health officials assert that if "left unchecked almost all

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91. See, e.g., Fernandez, *Pursuing Fat Chances in a Slim World*, *supra* note 14; Fernandez, *Teacher Says Fat, Fitness Can Mix*, *supra* note 14.

92. See SPARKS CO., INC., NUTRITION POLICY AND THE OBESITY DEBATE: THE OBESITY PROBLEM—MORE CALORIES, LESS ACTIVITY I (2003), *available at* <http://www.mda.state.mn.us/ams/whitepapers/nutrition.pdf>.

93. See, e.g., BOLEN ET AL., CDC, *supra* note 75.

94. See CDC, DEFINING OVERWEIGHT AND OBESITY (June 2004), *at* <http://www.cdc.gov/nccdphp/dnpa/obesity/defining.htm> (last visited Jan. 30, 2005).

95. BOLEN ET AL., CDC, *supra* note 75.

96. See generally Neil Steinberg, *Cholesterol Highest Here: Study*, CHI. SUN-TIMES, Mar. 25, 2000, at 6.

97. THE MED. REPORTER, OBESITY EPIDEMIC INCREASES DRAMATICALLY IN THE UNITED STATES: CDC DIRECTOR CALLS FOR NATIONAL PREVENTION EFFORT (Oct. 1999), *at* <http://medicalreporter.health.org/tmr1099/obesity.html> (last visited Jan. 30, 2005).

98. NEW YORK-PRESBYTERIAN, UNIVERSITY HOSPITALS OF COLUMBIA AND CORNELL, CARDIOVASCULAR DISEASES, *at* [http://www.nyp.org/health/cd\\_rom\\_content/adult/cardiac/obesity.htm](http://www.nyp.org/health/cd_rom_content/adult/cardiac/obesity.htm) (last visited Jan. 30, 2005); SCIENCE DAILY, UNIV. OF MINN., OBESITY LINKED TO ANOTHER CANCER-LEUKEMIA IN OLDER WOMEN (Nov. 12, 2004), *at* <http://www.sciencedaily.com/releases/2004/11/041108020544.htm> (last visited Jan. 30, 2005).

Americans will be overweight within a few generations.”<sup>99</sup> While the matter of obesity encompasses a range of behavioral issues and genetic considerations, the emphasis here is on the absence of diversity in the nation’s diet leading to ill health.

For example, the increased rate of diabetes, just one health risk flowing from obesity, disproportionately affects communities of color and is reaching epidemic proportions.<sup>100</sup> As reported recently, “[i]n the United States, disparities in risk for chronic disease and injury exist between non-Hispanic whites and persons belonging to other racial or ethnic groups.”<sup>101</sup> These disparities are exacerbated because people of color also tend to lack health care and the information required to reduce health-risk behavior.<sup>102</sup>

The above conditions and circumstances are best appreciated with a historical assessment of food production legislation and processes that have largely rejected the initial intent of the New Deal and policies of the past.

### III. THE NEW DEAL AND AGRICULTURE

“In the frequently innovative social-program atmosphere of the New Deal 1930s, agriculture was not a bystander or even an incidental happenstance participant.”<sup>103</sup>

While this essay is primarily concerned with the hunger of the present, the topic requires addressing the New Deal period and its place in agricultural history. It is beyond its purpose, however, to discuss whether Congress correctly expanded its regulatory authority or the impact of New Deal legislation on principles of constitutional fidelity.<sup>104</sup>

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99. Critser, *supra* note 81, at 41; *see also* VARIYAM ET AL., *supra* note 9, at ii (reporting that a “1 % reduction in intake of fat and saturated fat and a 0.1% reduction in intake of cholesterol would prevent over 56,000 cases of CHD and cancer, avoid over 18,000 deaths, and save over 117,000 life-years over 20 years,” and estimating that “improved dietary patterns could save \$43 billion in medical care costs and lost productivity”).

100. *See Age-Specific Excess Deaths Associated with Stroke Among Racial/Ethnic Minority Populations*, MORBIDITY & MORTALITY WKLY. REP., Feb. 11, 2000 (stating that excess deaths among racial/ethnic groups compared with non-Hispanic whites might be the result of greater prevalence of risk factors for stroke, such as obesity, uncontrolled hypertension, physical inactivity, poor nutrition, diabetes and smoking).

101. BOLEN ET AL., *supra* note 75.

102. *Id.*

103. Breimyer, *supra* note 19, at 333.

104. New Deal legislation and its impact on law are long characterized as a constitutional revolution. Notwithstanding this constitutional lens, a number of cases heard by the United States Supreme Court involved critical agricultural issues. *See, e.g.*, *Nebbia v. New York*, 291 U.S. 502 (1934) (involving the milk industry and substantive due process); *United States v. Carolene Prods. Co.*, 304 U.S. 144 (1938) (analysis of the Filled Milk Act); *A.L.A. Schechter Poultry Corp. v.*



This focus, in contrast, contemplates how the lack of alternatives in the promulgation of the New Deal continues to taint the dissociation between the nation's food production and the nation's food impoverished.<sup>105</sup>

#### A. *The Agricultural Agenda: Revisiting a Crusade*

"Public health is one, if not the, critical issue in society."<sup>106</sup>

Several factors directly link diet and nutrition with the health-related issues that underscore the focus of this article. Malnourishment not only causes hunger, but also highlights the psychological and emotional distress that directly hinder an individual's physical well-being.<sup>107</sup> The physical aspects of malnutrition and ill-health, nonetheless, are rooted in the lack of sustainable food sources. While an expansive literature review on New Deal legislation extends beyond the purpose of this essay, a brief review of New Deal programs is necessary to compare the initial goals of New Dealers with the current needs of the disenfranchised.<sup>108</sup>

World War I in the 1920s and the Great Depression of the 1930s, along with the nation's economic policies, brought tremendous hardship for rural and urban America.<sup>109</sup> In response, a period of instrumental political activism and agricultural populism also emerged.

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United States, 295 U.S. 495 (1935) (holding the National Recovery Act unconstitutional). For a more recent account of the New Deal and its impact on constitutional norms, see Barry Cushman, *Rethinking the New Deal Court*, 80 VA. L. REV. 201 (1994); Stephen Gardbaum, *New Deal Constitutionalism and the Unshackling of the States*, 64 U. CHI. L. REV. 483 (1997).

105. See, e.g., Jess Gilbert & Carolyn Howe, *Beyond "State vs. Society": Theories of the State and New Deal Agricultural Policies*, 56 AM. SOC. REV. 204, 204 (1991) ("The social and economic policies of the New Deal offer rich empirical grounding for current debates in political sociology between so-called 'society-centered' and 'state-centered' perspectives.").

106. *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 517 (S.D.N.Y. 2003).

107. See generally J. WILLIAM LEVEDAHL & VICTOR OLIVEIRA, USDA, AGRIC. INFO. BULLETIN NO. 750, DIETARY IMPACTS OF FOOD ASSISTANCE PROGRAMS, in AMERICA'S EATING HABITS 307 (Elizabeth Frazão ed., 1999) (outlining food assistance programs and how they affect the diets of the recipients), available at <http://www.ers.usda.gov/publications/aib750>.

108. For example, "[i]n the halls of the Department of Agriculture, Jerome Frank and his allies pleaded the cause of the politically voiceless sharecroppers and tenants. They found AAA Director Chester Davis sympathetic to their aims even though, like his predecessor Peek, he thought the main purpose of the Triple A was farm recovery rather than overhauling the rural power structure." WILLIAM E. LEUCHTENBURG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL, 1932-1940, at 139 (Henry Steele Commager & Richard B. Morris eds., 1963).

109. See generally Mordecai Ezekiel, *Schisms in Agricultural Policy: The Shift in Agricultural Policy Toward Human Welfare*, 24 J. FARM ECON. 463, 463 (1942) (stating "[p]ublic policy is the outgrowth of many forces").

Agrarian populists were not dissuaded from producing New Deal legislation, even though these individuals were often located great distances from urban political centers of influence and control.<sup>110</sup> A key legacy of the New Deal was agricultural policy; the programs were based on an economic-driven framework which continues to influence present agricultural policy. In looking to New Deal goals, Mordacai Ezekiel informs us that the intent was to do away with:

1. The ability of speculative gambling to control the welfare of workers and farmers;
2. The right of individuals to control great masses of property for their own private profit to the public detriment;
3. The right of industrial leaders to place maintenance of interest and profits above maintenance of human life, employment, and payrolls; and
4. The right of industrial leaders to pay themselves enormous salaries or bonuses while their workers starve.<sup>111</sup>

A broad mix of social thinkers and an action-driven agenda thereby marked the beginning of a golden period for agricultural enterprise. Social scientists, attorneys, agricultural groups, and others brought divergent views to agricultural policy discussions. Consequently, agricultural policy was a driving thrust of federal involvement which followed the enactment of the Agricultural Adjustment Act. Its stated purpose was represented as relieving the economic plight of rural America.<sup>112</sup>

The New Deal represents a period in which progressive farmers, innovative thinkers, and various social scientists produced agricultural law<sup>113</sup> and poli-

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110. See generally Donald E. Voth, *A Brief History and Assessment of Federal Rural Development Programs and Policies*, 25 U. MEM. L. REV. 1265 (1995) (giving further context on rural development); see also The Farm Security and Rural Investment Act of 2002, 7 U.S.C. §§ 7901-8002 (Supp. II, 2002); 7 U.S.C. § 921 (2000) (bonds and note guarantees, expanding 911 access, and enhancement of access to broadband service in rural areas).

111. Mordecai Ezekiel, *Ultimate Aims of the New Deal*, in President Franklin D. Roosevelt Presidential Library.

112. See DWIGHT MACDONALD, HENRY WALLACE: THE MAN AND THE MYTH 47 (1947) (explaining the “conflict between the old-line farm leaders, who had traditionally dominated the policy of the Department, and a group of urban liberals brought in by the New Deal.”).

113. See Agricultural Adjustment Act of 1938, 7 U.S.C. §§ 1281-1293 (2000) and amendments culminating with The Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. §§ 7201-7334 (2000) and most recently, The Farm Security and Rural Investment Act of 2002, 7 U.S.C. §§ 7901-8002 (Supp. II, 2002); see also Mary Summers, *Putting Populism Back in: Rethinking Agricultural Politics and Policy*, 70 AGRIC. HIST. 395 (1996); Jess Gilbert, *Democratic Planning in Agricultural Policy: The Federal-County Land-Use Planning Program, 1938-1942*, 70 AGRIC. HIST. 233 (1996).

cies instrumental in structuring the agricultural agenda.<sup>114</sup> "[A]grarian intellectuals", led in part by Henry A. Wallace, and several economists in the Bureau of Agricultural Economics helped define New Deal goals.<sup>115</sup> Activist lawyers Jerome Frank and Alger Hiss, characterized as "urban liberals", constituted in contrast, a "new presence in the USDA."<sup>116</sup> Both groups, however, diverged in New Deal aims.

"Urban liberals" attempted to link New Deal legislation with the disenfranchised. Alger Hiss, for example, urged that cotton planters should be required to retain the same number of tenant farmers during the life of their New Deal contract.<sup>117</sup> In opposition to the Hiss proposal, the "office of General Counsel" was "wiped out" and several attorneys were "ousted" from the Legal Division of the USDA.<sup>118</sup> "Liberals viewed the 'purge' [a]s the triumph of the planters and processors over the advocates of a 'social outlook in agricultural policy'."<sup>119</sup> After the purge, the New Deal programs limited its range on supporting "six basic crops" instead of rural people.<sup>120</sup>

### B. *The Agricultural Agenda Act and "Social Engineering"*

In 1936, New Deal economic adviser Mordecai Ezekiel declared in numerous speeches and articles that:

[t]he business and financial collapse of the winter of 1932-33 . . . did not follow further the traditional method of dealing with depressions. . . . That method—of letting deflation run its course to the bitter end—would have meant the complete bankruptcy of nearly all business concerns, still more widespread unemployment and human distress, and perhaps complete disintegration of our complex system of production and exchange before a new rebirth of activity

114. See generally KIRKENDALL, *supra* note 36, at 30-31 (discussing how President Roosevelt and his staff developed various plans for farm relief); SALOUTOS & HICKS, *supra* note 19 (discussing agricultural politics in the Midwest and its influence on farm legislation, as well as recognizing regional farming communities and differences).

115. Gilbert, *supra* note 24, at 162 (identifying key actors in the Department of Agriculture as Milburn Lincoln Wilson, Howard Ross Tolley, L.C. Gray, Carl C. Taylor and Bushrod W. Allin); see also Susan Ware, *Women and the New Deal*, in FIFTY YEARS LATER: THE NEW DEAL EVALUATED 113, 113-32 (Harvard Sitkoff ed., 1985) (discussing the instrumental role women played in the New Deal).

116. Gilbert, *supra* note 24, at 162-63.

117. LEUCHTENBURG, *supra* note 108.

118. *Id.*

119. *Id.*

120. DON PAARLBERG, *Tarnished Gold: Fifty Years of New Deal Farm Programs*, in THE NEW DEAL AND ITS LEGACY 39, 42 (1989) (stating "[w]ith the passage of time, a new and unadvertised agenda emerged. The programs became preferential, profligate, and perennial.").

would begin. . . . Instead of deflating further, the New Deal sought to increase economic activity by restoring the buying power of consumers, and thus to bring recovery without additional sacrifice and suffering.<sup>121</sup>

The economic principles driving New Deal legislation thus involved cutting production to eliminate surplus crops of basic commodities and establishing parity prices through the Agricultural Adjustment Act (“AAA”).<sup>122</sup>

President Roosevelt’s speech on the Agricultural Adjustment Act illustrates the goals of New Deal legislation as:

[A] plan for the adjustment of totals in our major crops, so that from year to year production and consumption would be kept in reasonable balance with each other, to the end that reasonable prices would be paid to farmers for their crops and unwieldy surpluses would not depress our markets and upset the balance.<sup>123</sup>

The operating principle of the AAA demonstrates that in exchange for voluntary reduction of production acreage, farmers would receive direct government benefits and/or rental payments.<sup>124</sup> The AAA promoted financial assistance, *inter alia*, to the nation’s food producers and reflected a closely aligned relationship between food producers and government programs.<sup>125</sup> In its final form, the AAA ensured that Congress would provide the nation with a new farm bill every five years well into the future.<sup>126</sup>

It is clear that New Deal drafters initially intended farm and urban relief an experiment. Ezekiel, for example, wrote that the “[t]he activities now starting under the AAA constitute a gigantic series of social experiments.”<sup>127</sup> The New Deal, moreover, was inspired by concern for low income consumers.<sup>128</sup> As Ezekiel asserted, “[t]he New Deal will modify special privilege for the few so far as is necessary to provide security for the many.”<sup>129</sup> Nevertheless, the concern of “urban liberals” for the poor, sharecroppers, migrant, and seasonal workers fell

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121. Ezekiel, *supra* note 19.

122. Agricultural Adjustment Act of 1938, ch. 30, 52 Stat. 31.

123. Franklin D. Roosevelt, Extemporaneous Address on A.A.A. to Farm Groups, in 4 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 175 (1938), available at <http://newdeal.feri.org/speeches/1935e.htm>; see also Breimyer, *supra* note 19, at 333 (stating that the “[u]nrest in the countryside, including instances of violence, partially explained Roosevelt’s and Congress’s prompt attention to agricultural problems.”).

124. See 7 U.S.C.A. § 1282 (1999).

125. See *id.*

126. See *id.*

127. Ezekiel, *supra* note 25.

128. The New Deal and its agricultural policies were comprised of various components with human welfare also constituting an ingredient of agricultural policy. See Ezekiel, *supra* note 111, at 467.

129. Ezekiel, *supra* note 111.

largely outside the scope of the federal benefits that would instead, benefit growers and producers primarily.<sup>130</sup> And while "[t]he New Deal was not to blame for the social system it inherited . . . New Deal policies made matters worse."<sup>131</sup>

The New Deal debate considered the plight of the sharecropper who suffered continual hardship due to decreasing commodity prices and increasing costs of agricultural inputs; however, because sharecroppers and farm workers did not own land, their problems were considered politically off limits.<sup>132</sup> For example, although "[t]he AAA's reduction of cotton acreage drove the tenant and the cropper from the land . . . landlords, with the connivance of local AAA committees which they dominated, cheated tenants of their fair share of benefits."<sup>133</sup>

"[T]he passage of time" witnessed "a new and unadvertised agenda. . . . [t]he programs became preferential, profligate, and perennial."<sup>134</sup> Specifically, agricultural historian Dan Paarlberg identified six crops that were "preferential to start with" and included "cotton, corn, wheat, rice, peanuts, and tobacco."<sup>135</sup> Although dairy products soon joined the elite group, Paarlberg emphasized, "[m]ore [crops were] left out than [were] included."<sup>136</sup> New Deal beneficiaries were privy to a realm of economic and regulatory support, even so, much of the policymaking was left to the growers of the "big six" and the few crops added thereafter. When considered as a whole against the backdrop of urban and rural poor, agrarian "democracy" appears incompatible with acceptable "democratic" standards.<sup>137</sup> Other consequences of New Deal legislation that have proven harmful to segments of consumers include federal funds to select commodities

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130. See Norman Thomas, Speech for National Sharecropper's Week (Mar. 6-13, 1938) (transcript available at the Franklin D. Roosevelt Presidential Library); see also Mordecai Ezekiel, Radio Talk on Sharecroppers (Mar. 11, 1938) (discussing the plight of sharecroppers might be best addressed by having them move off the farm and seek urban employment) (transcript available at the Franklin D. Roosevelt Presidential Library).

131. LEUCHTENBURG, *supra* note 108, at 137.

132. See generally MACDONALD, *supra* note 112, at 47 (stating the traditional farm bloc, represented chiefly by the Farm Bureau Federation, opposed the urban liberals' attempts to "change the status of . . . tenants or hired hands"); see also Donald L. Parman, *New Deal Indian Agricultural Policy and the Environment: The Papagos as a Case Study*, 66 AGRIC HIST. 23, 23-33 (1992) (stating that in a larger sense, "the New Deal programs were self defeating").

133. See LEUCHTENBURG, *supra* note 108, at 137; see also Gilbert & Howe, *supra* note 106, at 233 (noting the USDA's "national system of local institutions that joined farmers and government officials together to plan public policy"). For further context on this agricultural purge, see generally Gilbert, *supra* note 25.

134. PAARLBERG, *supra* note 120, at 42.

135. *Id.*

136. *Id.*

137. See, e.g., Gilbert, *supra* note 24 (referencing the political battles that destroyed "alternative voices" and some of the losses of New Deal goals).

without consideration of potential harmful nutritional impact on significant numbers of consumers.<sup>138</sup>

### C. “In the Land of Plenty”

“The United States shares the belief that hunger is a fundamentally unacceptable human condition—whether it exists on American soil or anywhere in the world.”<sup>139</sup>

From the New Deal period to the contemporary period, the federal agricultural agenda not only controls the food supply, but also dictates its application to the American public. The nation’s food legislation facilitates food programs, promotes agricultural program education, provides direct and counter-cyclical payments, and provides marketing assistance loans and deficiency payments to agricultural producers.<sup>140</sup> A realm of additional programs, such as research and nutritional programs, also define the nation’s farm bill.<sup>141</sup> Consequently, the New Deal legislation has been an economic success for some agricultural producers.

The economic girth and status of the nation’s agricultural network, one of the largest sectors in the national economy, is sustained by over twenty billion dollars allocated in subsidies.<sup>142</sup> The USDA is in charge of feeding the nation and assesses itself as:

[o]ne of the nation’s largest federal agencies, employing over 100,000 people and managing a budget of almost \$60 billion. Its 29 agencies and offices are responsible for operating more than 200 programs that, among other things, support the productivity and profitability of farming and ranching, protect the

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138. See, e.g., STEVEN M. LUTZ ET AL., USDA, AGRIC. INFO. BULLETIN NO. 750, NATIONAL SCHOOL LUNCH AND SCHOOL BREAKFAST PROGRAM REFORMS: POLICY DEVELOPMENT AND ECONOMIC IMPACTS, *in* AMERICA’S EATING HABITS 371 (1999), available at <http://www.ers.usda.gov/publications/aib750>.

139. USDA Sec. Dan Glickman, Remarks on Behalf of the United States of America to the World Food Summit (Nov. 13, 1996), available at <http://www.usda.gov/news/releases/1996/11/0603>.

140. See Farm Security and Rural Investment Act of 2002, 7 U.S.C.A. §§ 7911-7918, 7931-7939 (West 1999 & Supp. 2004).

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

142. See GAO, FARM PROGRAMS, *supra* note 50, at 1, 5 (stating “[i]n 1999 corn and wheat accounted for about 64% of commodity payments. All states received a portion of these payments. However, six states—Iowa, Illinois, Texas, Kansas, Nebraska, and Minnesota—together received almost half of the payments in 1999.”) Comparatively, in fiscal year 1999, \$17 billion was spent on Temporary Assistance for Needy Families (“TANF”), \$27 billion on Supplemental Security Income and \$108 billion on Medicaid. Ann Vandeman, *Food and Nutrition Assistance Research: ERS Small Grants Program*, POVERTY RESEARCH NEWS, Mar.-Apr. 2001, at 3, available at [http://www.jcpr.org/newsletters/vol5\\_no2/vol5\\_no2.pdf](http://www.jcpr.org/newsletters/vol5_no2/vol5_no2.pdf).

natural environment, ensure food safety, improve the well-being of rural America, promote domestic marketing and the export of food and farm products, conduct biotechnology and other agriculture research, and provide food assistance to Americans who need it.<sup>143</sup>

While this massive amount of economic assistance and other governmental support holds the nation's food systems afloat, it fails its mandate because food assistance is not provided to all Americans who need it.<sup>144</sup> Instead, educational missives direct consumers to eat healthy.<sup>145</sup>

#### D. *New Deal Legislation and the "Abuela" Factor*<sup>146</sup>

"Low socioeconomic status and geographic isolation, due to a limited number of mountain passes, adversely influence the nutritional status, income and education of the residents of this area."<sup>147</sup>

The New Dealers "purged" from the USDA sought to feed an impoverished nation, reduce class distinctions, and to alleviate harmful economic conditions plaguing the country.<sup>148</sup> In contrast, the New Dealers that remained at USDA infused significant capital into key commodities and employed an extensive regulatory process that continues to shape agricultural law and policies to this day.<sup>149</sup> From the New Deal to the present, America's underlying ideological bias supports key agricultural interests and accordingly tethers the hungry to the present agricultural agenda.<sup>150</sup>

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143. GAO, GAO/OCG-99-2, MAJOR MANAGEMENT CHALLENGES AND PROGRAM RISKS: DEPARTMENT OF AGRICULTURE 6 (1999), available at <http://www.gao.gov>.

144. See Judith Davis, et al., *Food Assistance Programs on a Montana Indian Reservation*, POVERTY RESEARCH NEWS, Mar.-Apr. 2001, at 10, available at [http://www.jcpr.org/newsletters/vol5\\_no2/vol5\\_no2.pdf](http://www.jcpr.org/newsletters/vol5_no2/vol5_no2.pdf).

145. Assadourian, *supra* note 81.

146. The term translated into English means "grandmother". LAROUSSE ENGLISH SPANISH DICTIONARY (1987).

147. Palmari et al., *supra* note 10, at 302.

148. See generally Gilbert & Howe, *supra* note 105, at 211-12 (discussing the "urban liberals" political ideology and stating they supported the interests of small farmers, sharecroppers, and farm workers).

149. See generally *id.* at 213-14 (explaining the USDA's remaining institutional structure was linked to the landlords and dominant farm interests).

150. See, e.g., Anne Hull, *First on Menu: Food Stamps; At Agriculture Department, Bost Seeks to Increase Participation in Federal Program*, WASH. POST, Aug. 8, 2001, at A17 (stating anti-hunger advocates estimate that "between 200,000 to 400,000 Texans could have been on the food stamp rolls but weren't" and that "the federal government's quality control measures make states too focused on lowering error rates, causing too many eligible recipients to slip through the cracks").

Currently, two major components of agricultural law and policy seemingly seek to offset nutritional deficiencies affecting communities of color. The first component involves the regulatory structure, agencies, and programs that affect the nation's impoverished.<sup>151</sup> Included in this component are the various food programs assisting destitute individuals, the homeless, and school aged children,<sup>152</sup> with some attempts made at welfare reform.<sup>153</sup> A second focus includes educational efforts, such as promoting a pyramid food chain that, in theory, suggests free will and choice.<sup>154</sup>

The fact that federal agricultural programs target hunger across the nation would appear to render this inquiry moot. Food insecurity is defined as a "[l]imited or uncertain availability of nutritionally adequate and safe foods."<sup>155</sup> The definition is similar to the one used by the Federal Food Stamp program in justifying government intervention in consumer diets. For example, the stated purpose of the Food Stamp Program is, "to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households."<sup>156</sup> This would appear to underscore governmental intent and assure citizens that hunger in the nation is on the decline.

Second, government agencies seek to "educate" constituents so they can make "intelligent" food choices.<sup>157</sup> Moreover, agencies attempt to ensure that families who qualify for support actually apply for food assistance.<sup>158</sup> The sum of

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151. See, e.g., ECON. RESEARCH SERV., USDA, VULNERABLE POPULATIONS, in BRIEFING ROOM (2003), available at <http://www.ers.usda.gov/Briefing/VulnerablePopulations>.

152. See, e.g., *id.*

153. See 42 U.S.C. § 601 (2000).

154. See Young Shim et al., *Many Americans Falsely Optimistic About Their Diets*, 23 FOOD REV. Jan.-Apr. 2000 at 44, 46 (measuring diet quality by "evaluating how an individual's diet stacks up to the 10 dietary recommendations in the Dietary Guidelines for Americans and the Food Guide Pyramid").

155. FOOD INSECURITY, *supra* note 1.

156. 7 U.S.C. § 2011 (2000).

157. See GAO, GAO/RCED-96-92, AGRICULTURAL RESEARCH: INFORMATION ON RESEARCH SYSTEM AND USDA'S PRIORITY SETTING, (1996) (stating the USDA has the responsibility for strengthening higher education in food and agricultural sciences through programs to enhance teaching programs in agriculture), available at <http://www.gao.gov>; see also VARIYAM ET AL., USDA, *supra* note 9, at 14 (responding to data that "while the tastes and preferences of non-White and Hispanic meal planners lead them to choose a more healthful diet, their relative lack of nutrition information reduces their ability to choose a better quality diet.").

158. See generally Debra Greenwood, *Education is Key to Welfare Reform*, BUFFALO NEWS, Dec. 31, 2000, at 3F (stating that a study had shown that half of those eligible for food stamps did not receive them); Craig McDonald, *In Texas, The Truth Can Hurt*, DALLAS MORNING NEWS, Feb. 4, 2001, at 5J (with "only about a third of the people who qualify" provided with food stamps); FOOD INSECURITY, *supra* note 1, at 3 (reporting on percentage of households identified as food insecure).



federal efforts target hunger and harmful health related consequences. An example of the educational component of federal programs is the promotion of the nation's formulated food pyramid to Latinia/o communities. Another example of the education directed approach is the multi-level nutrition intervention for low-income Hispanics ("LIH") and the professionals and paraprofessionals serving them.<sup>159</sup> This educational attempt was designed around three points. The first sought to identify the nutritional education needs and preferred means of receiving nutrition information.<sup>160</sup> The second sought to identify the LIHs barriers/motivators to dietary behavior change.<sup>161</sup> And the third sought to assess the feasibility of using *abuelas* as educators in feeding their families.<sup>162</sup> The study was a response to the low-income "Hispanics" residing in twelve rural Colorado counties.<sup>163</sup> The report that followed listed a variety of major "barriers to dietary change," ranging from financial limitations, lack of time, and family customs/habits.<sup>164</sup>

Although the attempt to use *abuelas* was worthwhile, the feasibility of their use as paraprofessionals to educate their impoverished families was limited, because this approach did not consider geographic connections to alternative food sources. In general, leaving sustainable alternatives or choices outside the scope of economically distressed ethnic communities forces them to confront further ill-health resulting from food insufficiency. In sum, a survey of the agricultural landscape reveals many unintended victims of farm policy. Moreover, the nation's attempts to feed the unintended hungry victims that result from such policies often fall short.

#### IV. THE AGRICULTURAL LANDSCAPE OF THE PRESENT

Federal economic aid to agricultural business originated in the New Deal era and continually proves that legislation and policies shape the agricultural landscape.<sup>165</sup> For example, by limiting government support payments to com-

159. See Palmari et al., *supra* note 10, at 301.

160. *Id.*

161. *Id.*

162. *Id.*

163. The authors employ "'Hispanic' to mean anyone of Mexican-American, Spanish, or Latin American origin though [the] population was primarily Mexican-American." Among the San Luis Valley Hispanics, "[g]enetic factors increase predisposition to nutrition related disorders such as non-insulin dependent diabetes mellitus." *Id.* at 302.

164. See *id.* at 301-316.

165. See Thomas K. McCraw, *The New Deal and the Mixed Economy, in FIFTY YEARS LATER: THE NEW DEAL EVALUATED* 54 (Harvard Sitkoff ed., 1985). Cf. The Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. §§ 7201-7334 (2000) [hereinafter "1996 Farm Bill"]. The 1996 Farm Bill dramatically changed governmental support from a policy based on

modities traditionally grown by white farmers, the exclusion of people of color from the benefits of the nation's food system was further cemented.<sup>166</sup>

Commodity over-production is a characteristic of today's farming practices, and it indicates the success of production-oriented farm legislation. Nonetheless, its "success" is difficult to reconcile with a disturbing presence of hungry communities in a vastly wealthy nation.<sup>167</sup> Without matching the nutritional needs of the food insecure as a condition precedent to subsidized agricultural production demonstrates a disassociation that is proving harmful to certain populations in the nation. For example, sugar is a heavily subsidized commodity that is infiltrating the food chain and costing consumers billions,<sup>168</sup> and is greatly influencing consumer diets.<sup>169</sup> Moreover, African-American community members are often unable to digest milk, yet this heavily subsidized commodity, and the associated milk cartels, provide yet another example of a commodity presenting health difficulties.<sup>170</sup> Even the USDA's School Lunch Program is rethinking its role in providing subsidized commodities to school children based on alarming

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managing crop production and supporting farm income through a variety of payment mechanisms and supply restrictions to a policy that allows producers flexibility in what they plant and provides fixed, but declining, income support payments through fiscal year 2002.

166. Lou Gallegos, *A Tough Row to Hoe*, HISPANIC BUS. Oct. 2002, at 28 ("Latino Farmers are more likely to raise livestock or specialty crops (such as fruit, tree nuts, or vegetables) and less likely to raise row crops (such as corn or wheat). Therefore, they are less likely to be eligible for USDA support payments."); see also Miriam J. Wells, *Ethnic Groups and Knowledge Systems in Agriculture*, 39 ECON. DEV. & CULTURAL CHANGE, 739 (1991). USDA discriminatory policies also confronted operators of color. See generally Cassandra Jones Havard, *African-American Farmers and Fair Lending: Racializing Rural Economic Space*, 12 STAN. L. & POL'Y REV. 333 (2001) (examining USDA discriminatory credit policies).

167. See generally HOUSEHOLD FOOD SECURITY, *supra* note 28 (stating that eleven percent of American households were food insecure at least some time during the year).

168. See GAO, GAO/RCED-00-126, SUGAR PROGRAM: SUPPORTING SUGAR PRICES HAS INCREASED USERS' COSTS WHILE BENEFITING PRODUCERS 6 (2000) (stating that "[t]he primary beneficiaries of the sugar program's higher prices are domestic sugar beet and sugarcane producers who, we estimate, received benefits of about \$800 million in 1996 and about \$1 billion in 1998"), available at <http://www.gao.gov>; Greg Critser, *How Sweet it is! Corn Farmers Are Handed a Plum*, TULSA WORLD, June 16, 2002, at G2 (stating "[i]t's not just the Farm Belt—and its faithful Republican voters—who were handed a victory with the farm bill. . . . It's also the snack-food industry, the beef industry and, in all likelihood, the makers of plus-size pants.").

169. The sweetener industry also includes high-fructose corn syrup manufacturers whose subsidized expansion is "revolutionizing" the snack food market. See Critser, *supra* note 168 (stating that "sweet things tend to be filled with empty calories that provide little nutrition" and that high-fructose corn syrup "may cause potentially harmful metabolic changes" to the liver).

170. As to the historical impact of milk on people of color, see FLORENCE C. SHIPEK, CALIFORNIA INDIANS REACTIONS TO THE FRANCISCANS, in NATIVE AMERICAN PERSPECTIVES ON THE HISPANIC COLONIZATION OF ALTA CALIFORNIA 480, 490 (Spanish Borderland Sourcebooks, 1991) (1985) (stating "few Indians could digest milk and that it was in fact contributing to the dysentery and deaths").

increases in childhood obesity and the decline in the health of the nation's children.<sup>171</sup>

While the negative externalities arising from the nation's farm policies are attracting the public's interest, hunger and health related issues such as obesity in communities of color and its nexus to the agricultural agenda fails to devote sufficient attention to the lack of free will. Instead, issues of food access are being eclipsed by three other concerns that dominate the nation's food systems. All three fail to draw into question the geographical proximity that would permit vital access to food that is "helpful" to the human condition.

The first issue contemplated is criticism of the subsidies paid to growers and producers.<sup>172</sup> The USDA's traditional position favors select commodities<sup>173</sup> and production types and remains the foundational backbone of agricultural farm policies.<sup>174</sup> The nation's farm policies are marked by over-production, coupled with vertical integration of the agricultural marketplace; these policies fail to reconcile their conflict with hunger and the ill effects on sizeable portions of the population.<sup>175</sup>

A second issue is vertical integration and the forces specifically promoting larger agricultural enterprises at the expense of diversity, both real and actual, which is driving the present demise of independent farm owner-operators.<sup>176</sup>

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171. See KEECHA HARRIS, W.K. KELLOGG FOUNDATION, THE USDA SCHOOL LUNCH PROGRAM: NEW APPROACHES TO MEETING THE DEMANDS OF CHILD HEALTH AND NUTRITION IN THE 21ST CENTURY (July 2002), available at [http://www.findarticles.com/p/articles/mi\\_hb3482/is\\_200207](http://www.findarticles.com/p/articles/mi_hb3482/is_200207).

172. See, e.g., Elizabeth Becker, *Land Rich in Subsidies, and Poor in Much Else*, N.Y. TIMES, Jan. 22, 2002, at A14.

173. See generally Farm Security & Rural Reinvestment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (codified as amended in scattered sections of 7 U.S.C.) (stating the types of commodities subsidized by the nation's farm bill include corn, cotton, rice, wheat, milk, and sugar).

174. See, e.g., *Amoco Prod. Co. v. S. Ute Indian Tribe*, 526 U.S. 865, 868 (1999) (mentioning "Congress sought to encourage the settlement of the West by providing land in fee simple absolute to homesteaders who entered and cultivated tracts of a designated size for a period of years."); see also Guadalupe T. Luna, *An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor*, 1 U. PA. J. LAB. & EMP. L. 487, 491-97 (1998).

175. See INGOLF VOGELER, THE MYTH OF THE FAMILY FARM: AGRIBUSINESS DOMINANCE OF U.S. AGRICULTURE 89, 89-103 (Westview Press 1981); see generally William D. Heffernan, *Agriculture and Monopoly Capital*, 50 MONTHLY REV. 46 (July-Aug. 1998) (discussing vertical integration, horizontal integration, and integration among various segments of the food systems).

176. See Jill J. Barshay, *Rein in Food Giants, Farmers Say*, STAR-TRIB., Apr. 19, 1999, at 1A (stating "small farmers . . . scold federal officials from the Justice and Agriculture departments for not taking action against what they see as the unfair practices of giant food conglomerates"); Becker, *supra* note 173 (discussing the "plantation effect"—because large farmers get the largest subsidies, they are buying out the small farmers, leading to a rapid decline of family farms and the rise of old-fashioned tenant farming); Andrew Donohue, *Federal Farm Aid Reaches Record \$28 Billion but Watchdog Groups Say the Subsidies are Still Helping Large Farms the Most*, STAR-

Finally, a third matter capturing the public's attention includes food safety issues. These "big three" are considered next.

#### A. *Subsidies and the Nation's Food Bills*

A key issue illustrating a consequence of the New Deal legacy and its relationship to consumers involves federal cash subsidies provided to select producers pursuant to the nation's farm bills.<sup>177</sup> The history of financial support to various commodities and producers/growers from the New Deal period is complex, with a density of law that fails to emphasize the matter of nutrition and its impact on consumers. Heavily subsidized commodities that gain the benefit of the law's protection include corn, wheat, sugar, and milk.<sup>178</sup>

Commodities, however are not subsidized based on their nutritional value as food. These subsidies often lead to overproduction and the subsidized surplus is foisted on the public regardless of the consequences. This paradox of surplus food being directed to food insecurity has been acknowledged at times by USDA officials:

The result is the familiar paradox of scarcity in the midst of plenty; of the coexistence of surplus and shortage. Nowhere is the contrast more marked than between agricultural surpluses and nutritional deficits; nowhere does the remedy seem so simple and obvious—use the surplus crops or surplus acres to provide more and better food for those whose diets are below optimum.<sup>179</sup>

Yet, even proof of heavily subsidized commodities' harmful nutritional value does not cease federal economic support nor attaches a causal relationship as a condition precedent in obtaining federal income support.<sup>180</sup>

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TRIB., Oct. 3, 2000, at 6A; Scott Kilman, *Criticism of U.S. Crop Subsidies Grows*, ASIAN WALL ST. J., Aug. 21, 2002, at M7 ("A lot has changed since the farm program was born. . . . Subsidies were designed to attack rural poverty. Today, farmers are a small part of the rural sector.").

177. See, e.g., FEDERAL PAYMENT, *supra* note 50, at 1 (stating that "[p]ayments to farmers under federal farm programs have reached an historic high—over \$20 billion in fiscal year 2000").

178. See, e.g., GAO, GAO/T-RCED-95-133, FARM PROGRAMS: DISTRIBUTION OF USDA INCOME SUPPORT PAYMENTS 1-2 (1995) [hereinafter DISTRIBUTION] (identifying the sizeable government benefits that go to just a few farms), available at <http://www.gao.gov>; James Warren, *Sweet Land of Subsidy: From Food Stamps to Price Supports, Farm Bill's Roots Run Deep*, CHI. TRIB., Sept. 3, 1995 (discussing the myriad types of federal farm support laws, including milk marketing orders).

179. J.P. CAVIN ET AL., USDA, AGRICULTURAL SURPLUSES AND NUTRITIONAL DEFICITS, *in* 1940 YEARBOOK OF AGRICULTURE: FARMERS IN A CHANGING WORLD 329, 330 (Gove Hambidge ed., 1940).

180. See JUDY PUTNAM & SHIRLEY GERRIOR, USDA, AGRIC. INFO. BULLETIN NO. 750, TRENDS IN THE U.S. FOOD SUPPLY, 1970-97, *in* AMERICA'S EATING HABITS, 133, 151-53 (Elisabeth Frazão ed., 1999) (stating that "Americans have become conspicuous consumers of added sugars

An attempt to de-emphasize the scope of governmental intervention in agriculture and concurrent subsidies was framed in the Federal Agricultural Improvement and Reform Act of 1996 ["1996 Farm Bill"].<sup>181</sup> The 1996 Farm Bill demonstrated congressional efforts attempting to "make federal farm programs more market-oriented and to reduce the amount of support that the government guarantees producers."<sup>182</sup> Congress imposed fixed, but declining, payment limits on the amount of federal funds that accrue to various farm owner-operators.<sup>183</sup> The legislation, however, split along partisan lines thereby delaying promulgation.<sup>184</sup> The range of corporate agricultural enterprises untouched by the nation's 1996 Farm Bill underscores the distance between New Deal ideals and the present.<sup>185</sup>

Problems from the 1996 Farm Bill became evident after its implementation, with one critic asserting, "[b]y most measures, the 1996 Freedom to Farm law has failed. It hasn't saved tax money, it hasn't brought prosperity to farmers and it didn't get the government out of agriculture."<sup>186</sup> For example, the 1996 Farm Bill left economic protections in force for growers and producers, but also arguably lead to the increasing demise of smaller owner-operators.<sup>187</sup> Ultimately,

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and sweet-tasting foods and beverages. . . Sugar—including sucrose, corn sweeteners, honey, and molasses—is in a sense, the number one food additive."), available at <http://www.ers.usda.gov/publications/aib750>.

181. See The Farm Security and Rural Investment Act of 2002, 7 U.S.C. §§ 7901-8002 (Supp. II, 2002); see also Jeffrey A. Peterson, *The 1996 Farm Bill: What to (Re)Do in 2002*, 11 KAN. J.L. & PUB. POL'Y 65, 65 (2000) (stating that "[d]eregulation of America's agricultural policy, or 'freedom to farm' was intended to be the first substantial change in almost sixty years of government support").

182. GAO, GAO/RCED-97-45, COMMODITY PROGRAMS: IMPACT OF SUPPORT PROVISIONS ON SELECTED COMMODITY PRICES 1 (1997), available at <http://www.gao.gov>.

183. See Jon Lauck, *After Deregulation: Constructing Agricultural Policy in the Age of "Freedom to Farm,"* 5 DRAKE J. AGRIC. L. 3, 23 (2000); FOOD AND AGRIC. SECTION, CONG. RESEARCH SERV., CRS REP. NO. 96-304 ENR, THE 1996 FARM BILL: COMPARISON OF SELECTED PROVISIONS WITH PREVIOUS LAW (Apr. 1996) (discussing how a drastic change in the 1996 Farm Bill dramatically curtailed subsidies after intense and heated debate. For example, the bill replaced "the traditional crop-specific income supports, known as target price deficiency payments, with 7-year 'production flexibility contracts' under a 'New Agricultural Market Transition Program'"), available at <http://www.ncseonline.org/NLE/CRSreports/Agriculture/ag-22.cfm>.

184. See Lauck, *supra* note 183, at 21-22.

185. See generally *id.* (discussing the select major crops that were still receiving subsidies even under the 1996 Farm Bill).

186. Tom Webb, *Freedom to Farm Law Ineffective, Analysts Say*, ST. PAUL PIONEER PRESS, Oct. 15, 1999.

187. See 147 CONG. REC. S13,915-01 (daily ed. Dec. 20, 2001) (statement of Sen. Voynovich).

Congress responded with emergency aid, largely rendering the market driven support of various commodities meaningless.<sup>188</sup>

The nation's newest agricultural legislation—the Farm Security and Rural Investment Act of 2002 (“FSRIA”) is also drawing criticism due to its cost as well as its rejection of a free market approach. FSRIA lasts for six years, as contrasted with the five-year period of earlier farm bills.<sup>189</sup> The measure authorizes income support for wheat, feed grains, upland cotton, rice, and oilseeds through three programs.<sup>190</sup> Specifically funded are direct payments, counter-cyclical payments and loan deficiency payments.<sup>191</sup> The initial cost to consumers of FSRIA is \$19 billion a year.<sup>192</sup>

### B. *Loss of Diversity in the Nation's Food Systems*

While government intervention spawned an ever-widening girth in the nation's food system, omissions from the regulatory process also weakened rural social policy. A number of subsidies promote corporate ownership of rural and food production enterprises at the expense of independent ownership. This continues to draw criticism, but as yet, no meaningful conditions have been imposed on federal subsidies.<sup>193</sup> Whether by design or default, continued subsidies for select commodities fail to trigger payment limitations, so large, traditional enterprises continue to enjoy federal payments.<sup>194</sup> This directly impacts large classes of individuals, such people of color, seeking status as independent owner/operators of agricultural enterprises.<sup>195</sup>

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188. See generally Scott Kilman, *Criticism of U.S. Crop Subsidies Grows*, ASIAN WALL ST. J., Aug. 21, 2002, at M7 (stating institutionalized federal subsidies and bailouts merely protect farmers from responding to market forces).

189. See Farm Security and Rural Investment Act of 2002, 7 U.S.C. § 7918 (Supp. II 2002).

190. *Id.* at §§ 7901-7939.

191. See Dan Childs, *The New Farm Bill: Something for Everyone*, AG NEWS & VIEWS: ECONOMICS, July 2002, available at <http://www.noble.org/ag/economics/farmbill2002/index.htm>.

192. See Editorial, *Farm Subsidies and The Poor*, CHIC. TRIB., Aug. 31, 2002, at N24.

193. See, e.g., Barshay, *supra* note 176; Donohue, *supra* note 176; Becker, *supra* note 172.

194. See COMM'N ON THE APPLICATION OF PAYMENT LIMITS FOR AGRIC., USDA, REPORT OF THE COMMISSION ON THE APPLICATION OF PAYMENT LIMITATIONS FOR AGRICULTURE (Sept. 2003) (noting that federal farm subsidies primarily accrue to the largest operators thereby driving out smaller competition), available at <http://www.usda.gov/ocel//oce/Document%20Archive/payments/payment-commission.htm>.

195. See, e.g., Emily Gersema, *Black Farmers Rally for Equity on Loans*, DESERET NEWS, Aug. 22, 2002, at A12; Bill Miller, *Native American Farmers Seek Class Action in Suit Against USDA*, WASH. POST, Nov. 1, 2000, at A13.

A slight increase in farm owner-operators of Latina/o background is slowly surfacing, yet many of them fall outside the scope of the nation's farm support programs.<sup>196</sup> Latino farm owner-operators for example, are not primarily growers or producers of heavily subsidized commodities, but instead, these farmers cultivate diverse food systems.<sup>197</sup> In contrast to monoculture farming interests that benefit from significant subsidies, diverse Latina/o farming practices present challenges for those seeking to enter or stay in the agricultural sector.<sup>198</sup> Other difficulties in operating an enterprise include, *inter alia*, rejections or delays in credit applications or displacement from property.<sup>199</sup> The inability to qualify for governmental grants also derails the opportunity to fully participate in the agricultural sector.<sup>200</sup>

The nation's lack of diversity in food production also raises a concern about the on-growing expansion of agribusiness, with concrete ties to questionable food and workforce safety.<sup>201</sup> The negative externalities arising from vertical integration and the associated impact on Hispanic workers employed in agro-maquilas presents an additional consideration.<sup>202</sup> Agro-maquilas include the slaughter-houses which employ vast numbers of immigrants who witness or experience body injuries when providing fast food chains with meat for hamburgers and other food products.<sup>203</sup>

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196. See Fred Alvarez, *Farm Worker to Farmer; Family Operations Are in Decline but not Among Latinos*, LOS ANGELES TIMES, June 22, 2001, at A1 (stating "[u]nlike huge grain farmers in the Midwest, most small California growers do not have federal subsidies to help them through the tough times").

197. *Id.*

198. *Id.*

199. See GAO, GAO/RCED-99-38, USDA: PROBLEMS CONTINUE TO HINDER THE TIMELY PROCESSING DISCRIMINATION COMPLAINTS (1999), available at <http://www.gao.gov>; see also GAO, GAO/RCED-97-41, FARM PROGRAMS: EFFORTS TO ACHIEVE EQUITABLE TREATMENT OF MINORITY FARMERS (1997), available at <http://www.gao.gov>.

200. See *id.*; Harvard Sitkoff, *The New Deal and Race Relations, in FIFTY YEARS LATER: THE NEW DEAL EVALUATED* 93 (Harvard Sitkoff ed., 1985) (discussing the historical perspective of African-Americans and their early relationship with the Roosevelt administration, suggesting that the New Deal took unprecedented steps towards racial equality).

201. See, e.g., Joel B. Obermayer, *State Researchers Link Hog Farms to Health Problems*, NEWS & OBSERVER, May 8, 1999, at A3 (citing the adverse health effects of large hog farms in rural communities).

202. See Bill Bell Jr., *Milan, Mo., Has Welcomed a Meatpacking Plant and with it Come Daunting Problems*, ST. LOUIS POST-DISPATCH, Apr. 2, 2000, at A8.

203. See, e.g., Lola Alapo & Amanda Barrett, *Family Goes to Court over Worker's Death*, NEWSDAY, June 13, 2002, at A34 (employee killed when a blade broke loose from a food processing machine in New York); Wil Cruz & Daniel Barrick, *Addressing Immigrant Workers' Hardships/Groups Hear Stories of Injuries Neglected*, NEWSDAY, Aug. 24, 2002, at A06; Thomas Maier, *Death on the Job/Immigrants at Risk/Forgotten Victims/Agency Rarely Investigates On-The-Job Deaths of Immigrants*, NEWSDAY, July 23, 2001, at A07; Karen Olsson, *The Shame of Meat-*

### C. Food Safety

Yet another illustration of the harmful consequences resulting from the industrialization of agriculture includes outbreaks of harmful pathogens in the nation's food supply.<sup>204</sup> Food safety issues range from inadequate food preparation and environmental pesticide contamination<sup>205</sup> to the transmission of food contaminants via food handling. Bacteria-tainted meat in canneries and other food processors, for example, is engendering illness or death, thereby gaining the attention of governmental officials and the public.<sup>206</sup> Food safety issues arising from the appearance of botulism, *e.coli* O157:H7, listeria, salmonellosis, and other food borne illnesses also adversely affect consumers.<sup>207</sup> Listeria agents, for example, which can be found in hot dogs, induce illness, miscarriage, or death in small children all of which lead to a distrust in our present industrialized food system.<sup>208</sup>

Entrusted with the "health" of consumers, federal law sustains a long history of involvement in food production and food safety. The USDA, for example, retains a vast network of educational extension offices to protect the nation's health and has approached the issue with great force.<sup>209</sup> A list of regulatory structures proven to be instrumental to the safety of the nation's food supply includes the USDA, Food Safety and Inspection Service, the Food and Drug Administra-

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packing, THE NATION, Sept. 16, 2002, available at <http://www.thenation.com/doc.mhtml?i=20020916&s=olsson>; John Tedesco, *Corpus Christi, Texas-Based Meat Packing Company Employs Many Immigrants*, SAN ANTONIO EXPRESS-NEWS, April 15, 2002.

204. See U.S. Senate Appropriations Comm.: *Hearing on Dep't of Health and Human Services Fiscal Year 2001 Budget Before the Senate Subcomm. on Labor, Health and Human Servs., Educ. and Related Agencies*, 106th Cong. (2000) (statement of Donna Shalala, Sec. of Health & Human Servs.) (discussing "76 million illnesses, 325,000 hospitalizations, and 5,000 deaths each year" due to food-related hazards).

205. See 7 U.S.C. § 136 (2000).

206. See, e.g., FOOD SAFETY & INSPECTION SERV., USDA, REP. NO. 082-2002 EXP, RECALL NOTIFICATION REPORT (Sept. 20, 2002) (listing a 4,639 pound ground beef recall due to *e.coli* contamination), available at <http://www.fsis.usda.gov/OA/recalls/rnrfiles/rnr082-2002.htm>.

207. See GAO, GAO/RCED-96-96, FOOD SAFETY: INFORMATION ON FOODBORNE ILLNESS 3-4, 8-9 (1996), available at <http://www.gao.gov>.

208. See GAO, GAO-02-902, MEAT AND POULTRY: BETTER USDA OVERSIGHT AND ENFORCEMENT OF SAFETY RULES NEEDED TO REDUCE RISK OF FOODBORNE ILLNESSES 2 (2002), available at <http://www.gao.gov>.

209. See GAO, GAO/RCED-98-224, FOOD SAFETY: OPPORTUNITIES TO REDIRECT FEDERAL RESOURCES AND FUNDS CAN ENHANCE EFFECTIVENESS 1 (1998) ("[m]ultiple federal agencies . . . carry out . . . responsibilities under 35 different laws and spend over \$1 billion annually." This money is spent, *inter alia*, on "the development of educational messages on food safety."), available at <http://www.gao.gov>.



tion ("FDA") and the Department of Health and Human Services ("HHS").<sup>210</sup> The jurisdiction of HHS is broad, as it extends to all food productions.<sup>211</sup> The Agricultural Marketing Service, the Environmental Protection Agency, state and local governments, the International Plant Protection Convention, and the Codex Alimentarius, however, represent but a few programs and agencies considering the public's health in the global arena.<sup>212</sup> Other regulatory protective measures include the Federal Food and Drug Act of 1906,<sup>213</sup> the Federal Food, Drug, and Cosmetic Act of 1938,<sup>214</sup> the Federal Insecticide, Fungicide, and Rodenticide Act of 1947,<sup>215</sup> and also the Organic Foods Production Act of 1990.<sup>216</sup>

Regarding food production, a number of academic and media investigators have considered the issue of "how safe is safe" when examining high-tech alterations and mass production of basic commodities. This media exposure has led many consumers to debate the risks and benefits of such food and food systems.<sup>217</sup> Organic food has gained appeal as an alternative to mass-produced food, as consumers seek alternative sources of food and oppose highly-processed food products.<sup>218</sup> This effort represents but a small measure of the public's concern over food safety.

Federal officials, however, appear to be paying little attention to newer insights on the consequences of farm and food policy. Children, the recipients of

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210. Food recalls also fall under the Food Safety Inspection Service. *See* FOOD SAFETY & INSPECTION SERV., USDA, FACT SHEETS, FSIS FOOD RECALLS (2004) (enumerating the process, evaluation of a recall situation, and classification of harm with notification to the public), *available at* [http://www.fsis.usda.gov/fact\\_sheets/fsis\\_food\\_recalls/index.asp](http://www.fsis.usda.gov/fact_sheets/fsis_food_recalls/index.asp). By contrast, the Food and Drug Administration advises state and local governments on food safety standards.

211. *See id.*

212. *See id.* at 4 (listing 12 different federal agencies responsible for food safety).

213. Federal Food and Drug Act of 1906, 21 U.S.C. §§ 1-15 (2000) (repealed 1938) (prohibiting interstate commerce of misbranded and adulterated food).

214. Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. §§ 301-397 (2000) (prohibiting acts regarding adulteration or misbranded foods, *inter alia*, and their introduction or delivery into interstate commerce).

215. Federal Insecticide, Fungicide and Rodenticide Act of 1947, ch. 125, 61 Stat. 163 (codified as amended at 7 U.S.C. §§ 136-136y (2000)).

216. Organic Foods Production Act of 1990, 7 U.S.C.A. §§ 6501-6522 (West 1999 & Supp. 2004).

217. *See* GAO, FOOD SAFETY, *supra* note 209, at 4; *United States v. Roggy*, 76 F.3d 189 (1996) (criminal conviction arising from the misapplication of an unlabeled pesticide on raw oats used in making cereal for General Mills); GAO, GAO/RCED-95-228, MEAT AND POULTRY INSPECTION: IMPACT OF USDA'S FOOD SAFETY PROPOSAL ON STATE AGENCIES AND SMALL PLANTS (1995) (outlining USDA's Hazard Analysis and Critical Control Points system for ensuring food safety), *available at* <http://www.gao.gov>.

218. *See* AGRI-FOOD TRADE SERV., AGRIC. & AGRI-FOOD CANADA, TRENDS . . . FOOD IN THE UNITED KINGDOM: ORGANIC RETAILING (Mar. 2001), *available at* <http://atn-riac.agr.ca/europe/e3147.htm>.

national school lunch programs, are experiencing food borne illnesses, but the USDA's food safety procurement provisions do not apply to schools.<sup>219</sup> School lunches, moreover, are directly tied to supporting agricultural commodity programs without regard to the ill effects on children of color.<sup>220</sup> Food generated illnesses, including unreported, untreated, and misdiagnosed cases, encompass over 80 million incidents annually and continue to raise public concern.<sup>221</sup> Beyond the number of individual illnesses, the additional costs associated with medical treatments, productivity losses, and premature deaths due to common human pathogens in food sum to an estimated total cost of \$6.9 billion each year.<sup>222</sup> In addition, the growth of "high-tech foods", presenting their own unique issues, continue to confuse consumers regarding entry of recombinant genes in the food supply.<sup>223</sup>

The framework of government concentration on select commodities fails to prevent harmful pathogens in the nation's food supply; moreover, as a result of the framework, the direction of education and agricultural research emphasizes the consolidation of the nation's food systems. The health disparities, malnutrition and harm that flow from current farm and food policies comes at a massive overt and covert cost to the general public, but it is borne disproportionately by the impoverished.

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219. GAO, GAO/RCED-00-53, SCHOOL MEAL PROGRAMS: FEW OUTBREAKS OF FOODBORNE ILLNESS REPORTED 4-5 (2000) (stating there were 20 outbreaks of foodborne illnesses in schools reported in 1997 and food safety provisions in the USDA's procurement policies and procedures do not apply to schools), available at <http://www.gao.gov>.

220. See generally *id.* at 3 (mentioning the USDA donates food for consumption in public school lunches).

221. See, e.g., A. J. Battistone et al., *Food Safety*, in ARIZONA COMPARATIVE ENVIRONMENTAL RISK PROJECT, SECTION 3: HUMAN HEALTH Ch. 4 (1995) (detailing an Arizona study addressing problems that arise from food and water contamination), available at [http://earthvision.asu.edu/acerp/section3/Chp\\_04HH.html](http://earthvision.asu.edu/acerp/section3/Chp_04HH.html).

222. GAO, GAO-01-973, FOOD SAFETY: CDC IS WORKING TO ADDRESS LIMITATIONS IN SEVERAL OF ITS FOODBORNE DISEASE SURVEILLANCE SYSTEMS 1 (2001), available at <http://www.gao.gov>.

223. Reference the use of bioengineered bovine somatotropin (BST), a version of a naturally-occurring hormone that increases the production of milk and thereby promotes economy of scale in the agricultural sector. See generally *Biotechnology Issues: Statement Before the Sen. Comm. on Agric., Nutrition, and Forestry*, 106th Cong. (1999) (statement of Ralph W.F. Hardy, President, Nat'l Agric. Biotechnology Council). The issue of genetically altered food products is drawing much attention but is beyond the purpose of this review. See, e.g., June Carbone & Margaret McLean, *Genetically Modified Foods: The Creation of Trust and Access to Global Markets*, 20 BUS. & PROF. ETHICS J. 79 (2001) (discussing genetically modified foods and the public distrust of them).

#### D. Summary

New Deal legislation entrusted Congress with the task of feeding the nation and revitalizing rural and urban sectors. Identified as "experimental social science,"<sup>224</sup> New Deal agricultural law and policies considered consumers facing destitute circumstances. The purge of alternative voices in policy positions within the USDA derailed the full participation of the dispossessed within the nation's food policies and food politics.

The agricultural agenda has targeted domestic hunger.<sup>225</sup> Diminishing the "[l]imited or uncertain availability of nutritionally adequate and safe foods"<sup>226</sup> that affect some consumers, the attempts fail to eradicate hunger. Current programs include a small range including one government program that emphasizes its purpose as: "to safeguard the health and well-being of the [n]ation's population by raising levels of nutrition among low-income households."<sup>227</sup> Additional programs targeting hunger also range, *inter alia*, from the Women, Infants, and Children Nutrition Program,<sup>228</sup> to the distribution of agricultural surpluses.<sup>229</sup> Supportive administrative agencies and programs include, for example, the USDA Food and Nutrition Assistance programs charged with working as individual programs and in concert with all other programs to provide a nutrition safety net for children and low-income adults.<sup>230</sup> The United States Department of Agriculture also promotes an educational mission that emphasizes food pyramids, with the goal of promoting dietary levels for those in need.<sup>231</sup>

224. Ezekiel, *supra* note 25.

225. Domestically, the nation promotes fifteen food assistance programs, and the USDA is charged with administering the majority of them. Consider that food assistance is limited and federal restrictions disallow several concrete classes. See, e.g., 7 C.F.R. § 273.4 (2003) (food stamp eligibility citizenship restrictions); 7 C.F.R. § 273.5 (2003) (students must be enrolled at least half-time at higher education institutions); 7 C.F.R. § 273.9 (2003) (gross income limitations). Additional challenges include defining the term "household" as used in § 273.9. See *Lyng v. Castillo*, 477 U.S. 635, 636-43 (1986) (interpreting in part whether groups of more distant relatives and unrelated persons living together constitute a 'household').

226. See FOOD INSECURITY, *supra* note 1.

227. 7 U.S.C. § 2011 (2000).

228. See, e.g., Child Nutrition Act of 1966, 42 U.S.C. §§ 1771-1791 (2000); 7 C.F.R. § 226.23 (2003) (free and reduced-priced meals); 7 C.F.R. § 246 (2003) (supplemental nutrition program for women, infants and children).

229. See, e.g., 7 C.F.R. § 247 (2003) (commodity supplemental food program).

230. See generally ECON. RESEARCH SERV., USDA, FOOD AND NUTRITION ASSISTANCE PROGRAMS (2004) (discussing features of various assistance programs), at <http://www.ers.usda.gov/briefing/FoodNutritionAssistance/FANRP> (last visited Feb. 8, 2005).

231. See, e.g., 7 U.S.C. § 5341 (2000) (establishing dietary guidelines); The Food Guide Pyramid, Federal Citizen Information Center, at [http://www.pueblo.gsa.gov/cic\\_text/food/food-pyramid/main.htm](http://www.pueblo.gsa.gov/cic_text/food/food-pyramid/main.htm) (last visited Feb. 8, 2005).

Occasionally, hunger surfaces as a congressional concern. For example, key attention to food insufficiency re-surfaced in the 1960s and resulted in several federal-directed food assistance programs. The Federal Food Stamp Program illustrates one such effort to alleviate hunger and malnutrition among the more needy segments of our society.<sup>232</sup>

One of the objectives of these programs, including reducing the stock of surplus agricultural commodities purchased by the federal government, attempting to stabilize farm prices and incomes. "The level of food assistance depended on the amount of available surplus commodities, increasing when surpluses were large and falling when surpluses decreased."<sup>233</sup> This illustrates that one of the objectives was to reduce the stocks of surplus agricultural commodities and feeding the malnourished merely a convenient way to dispose of the surplus stock on hand.

The distribution of surplus agricultural commodities hinges on the whims of legislative action as well as the availability of surplus commodities, with experimentation governing the process. Falling to the dictates of the politics of the moment illustrates other negative aspects affecting the malnourished, including, for example, conditional access to food stamp assistance through qualification "standards" mandated by federal law.<sup>234</sup> Consequently, several hunger zones remain outside the realm of the agricultural regulatory process, and forces certain categories of hungry to rely on non-governmental sources for food basics in the interim.

Consequently, several hunger zones remain outside the realm of the agricultural regulatory process, and the USDA promotes food pyramids to guide American consumers in the selection of their dietary choices with a focus on key food groups.<sup>235</sup> The nation's food supply is presently characterized as the "most varied and abundant in the world,"<sup>236</sup> with an average of 50,000 products available to consumers.<sup>237</sup> This fact would appear to render the New Deal intent a

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232. 7 U.S.C. § 2011 (2000).

233. LEVEDAHL & OLIVEIRA, *supra* note 107, at 308.

234. *See, e.g.*, 7 C.F.R. §§ 273.3-273.10 (2003) (listing requirements for food stamp eligibility); *Tucker v. Hardin*, 430 F.2d 737 (1970) (affirming a rule requiring communities to pay local distribution costs as a prerequisite to receiving surplus agricultural commodities).

235. *See* C. EDWIN YOUNG & LINDA SCOTT KANTOR, USDA, AGRIC. INFO. BULLETIN NO. 750, MOVING TOWARD THE FOOD GUIDE PYRAMID: IMPLICATIONS FOR U.S. AGRICULTURE, *in* AMERICA'S EATING HABITS 403, 403 (Elizabeth Frazão ed., 1999), *available at* <http://www.ers.usda.gov/publications/aib750>.

236. LINDA SCOTT KANTOR ET AL., USDA, ESTIMATING AND ADDRESSING AMERICA'S FOOD LOSSES, *FOOD REV.*, Jan.-Apr. 1997, at 2.

237. *Id.*

great success. Yet, the above discussed problems call for re-examination of current federally supported agricultural law and policies.

"A legacy of questions" as to hunger across the nation, attendant health difficulties, and geographical barriers renders imperative scrutiny of current farm legislation.<sup>238</sup> With diet-related illnesses generally escalating across the nation, but specifically in communities of color, the present call is to review the policies of the past. With the consideration of the purpose, scope, and intent of government legislation that tethers agricultural law and policy to those falling outside governmental subsidized produced food.

Whether by intent or omission, the lack of alternatives in destitute neighborhoods coupled with little opportunity to promote their well-being calls for a return to the populism of the past with one key distinction. The relevancy of this distinction is addressed next.

#### V. "THERE SHALL BE NO HUNGER HERE:" AN ALTERNATIVE?<sup>239</sup>

"Laws are created . . . where individuals are somehow unable to protect themselves and where society needs to provide a buffer between the individual and some other entity—whether herself, another individual or a behemoth corporation that spans the globe."<sup>240</sup>

Long ago, the United States Supreme Court wrote:

Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest.<sup>241</sup>

Nonetheless, government controls support contract rights that are detrimental to consumers and are proving harmful to geographically concise communities of color. Where food is available, the geography of impoverished regions requires reliance on fast food chains or less diverse markets with harmful consequences. Yet, sheltering the fast food industry from consumers are its advo-

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238. See generally EDEN, *supra* note 30 (discussing effects of the New Deal programs).

239. DIV. OF INFO., USDA, THERE SHALL BE NO HUNGER HERE (July 1940), in President Franklin D. Roosevelt Library (stating "America's bins and warehouses are full to overflowing with food and fiber").

240. Pelman v. McDonald's Corp., 237 F. Supp. 2d 512, 516 (S.D.N.Y. 2003).

241. Nebbia v. New York, 291 U.S. 502, 523 (1934) (citations omitted).

cates—as one senator asserted, “people should be responsible for what they choose to eat and shouldn’t be allowed to sue if they get fat.”<sup>242</sup>

New Deal legislation transpired during a period of agricultural populism and political debate, with various parties opposing federal intervention. The New Deal legacy reveals a defining moment on the agricultural landscape with the populism of the past serving lofty ideals. New Dealer Mordecai Ezekiel asserted its most unique feature was that, “consumers for the first time were given a definite place in government policy making.”<sup>243</sup> The underlying basis of the New Deal philosophy further rested upon restoring and maintaining buying power for the mass of consumers.<sup>244</sup> Increased profits to the favored few are incidental, perhaps unavoidable, in achieving this end. Further, while time and the influence of global markets have since taken the New Deal legislation, the agricultural economy and rural policies in a different direction, this article maintains a new crusade is required.

Identified as a grand “social experiment,” the New Deal illustrates the value of innovative intervention in farm and food policy through legislation. As such, it can illuminate a path for future agricultural programs and policies. The negative consequences of today’s agricultural agenda are evidence of Congressional indecision—periodic expansion of programs followed by retreat.<sup>245</sup>

Congressional proclamations, for example, provide that agricultural intentions are to “assist consumers to obtain an adequate and steady supply of . . . commodities at fair prices.”<sup>246</sup> At times, Congress has broadened the scope of consumer protection. For example, Congress declared the policy under the Agricultural Act of 1961 was:

In order to more fully and effectively improve, maintain, and protect the prices and incomes of farmers, to enlarge rural purchasing power, to achieve a better balance between supplies of agricultural commodities and the requirements

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242. James R. Carroll, *Senator Opposes Obesity Lawsuits*, THE COURIER J., July 15, 2003, at 1A (stating Kentucky Sen. McConnell will introduce legislation to shield fast-food restaurants and the rest of the food industry from lawsuits by customers who claim what they ate made them overweight).

243. Abstract of Speech by Mordecai Ezekiel, *Farmers and Consumers*, (Aug. 1, 1935), in Franklin D. Roosevelt Presidential Library (stating the “New Deal has consciously recognized the consumer” and they gained access to the process through three organizations: the “A.A.A., N.R.A., and the National Emergency Council” that included “special units . . . to present the consumers point of view.”)

244. *See id.*

245. *See, e.g.*, GAO, GAO/RCED-95-107, COTTON PROGRAM: COSTLY AND COMPLEX GOVERNMENT PROGRAM NEEDS TO BE REASSESSED 3 (1995) (stating the cotton program has “evolved into a costly and complex maze” that needs to be streamlined), *available at* <http://www.gao.gov>; DISTRIBUTION, *supra* note 179.

246. 7 U.S.C. § 1282 (2000) (declaration of AAA 1938 policy).

of consumers therefore [sic], to preserve and strengthen the structure of agriculture, and to revitalize and stabilize the overall economy at reasonable costs to the [g]overnment, it is hereby declared to be the policy of Congress to—

. . .  
(d) utilize more effectively our agricultural productive capacity to improve the diets of the [n]ation's needy persons;

(e) recognize the importance of the family farm as an efficient unit of production and as an economic base for towns and cities in rural areas and encourage, promote, and strengthen this form of farm enterprise;

. . .  
(g) assure consumers of a continuous, adequate, and stable supply of food and fiber at fair and reasonable prices.<sup>247</sup>

Presently, however, agricultural economics are failing the nation's constituents who face hunger, malnutrition, and ill health. The existing regulatory framework fails to expand beyond the policies of the present, which are supported by the massive infrastructure and self-interest that hold the nation's food system afloat at the expense of consumer health.<sup>248</sup> In the case of *Nebbia v. New York*, involving a conviction for violation of a New York Milk Control Board order in fixing milk prices, Supreme Court Justice McReynold's dissent delineated several constitutional purposes of government intervention to protect consumers.<sup>249</sup> His concrete examples included emergency legislation, contractual relations and the overthrow of a Minnesota statute "designed to protect the public against obvious evils incident to the business of regularly publishing malicious, scandalous and defamatory matters, because of conflict with the XIV Amendment."<sup>250</sup> In his opposition to the statute at issue, Justice McReynolds wrote "[i]t takes away the liberty of twelve million consumers to buy a necessity of life in an open market. It imposes direct and arbitrary burdens upon those already seriously impoverished with the alleged immediate design of affording special benefits to others."<sup>251</sup> Taking Justice McReynold's dissent and placing it within a contemporary timeframe expedites reconsideration of promoting the health and well-being of distressed communities.

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247. Agricultural Act of 1961, Pub. L. No. 87-128, 75 Stat. 294 (codified as amended at 7 U.S.C. § 1282 (2000)).

248. See, e.g., NAT'L DIGESTIVE DISEASES INFO. CLEARINGHOUSE, NIH, NIH PUB. NO. 03-2751, LACTOSE INTOLERANCE (Mar. 2003) (stating 30 to 50 million Americans suffer from some form of dairy intolerance; symptoms include stomach cramps, intestinal bloating, diarrhea, headaches and nausea, and as many as 75% of all African-Americans and American Indians are lactose intolerant), available at <http://www.digestive.niddk.nih.gov/ddiseases/pubs/lactoseintolerance>.

249. See *Nebbia*, at 539-59 (1933).

250. *Id.* at 547.

251. *Id.* at 557.

While the New Deal directly produced unprecedented government intervention in economic affairs,<sup>252</sup> a parallel government involvement in economic affairs dates back to earlier historical periods. Through “trial and error,”<sup>253</sup> the nation’s agricultural agenda evidences a range of adopted and discarded policies and legislation and shows a return to the intent of those long purged from the New Deal.<sup>254</sup> Specifically, the nation’s future farm bills must emphasize the link between sustainable health directed choices and the agricultural agenda, especially for those residing in geographically challenged food areas. Examining and linking communities far removed from the seat of decision-making to the nation’s farm bills presents a valuable opportunity. It not only permits reflection on the nature of the agricultural agenda and its vulnerabilities, but it also promotes a shift in farm law and policies, and a return to voices long-silenced during a turbulent period.

This article accordingly suggests a “multi-dimensional” approach. Willard Cochrane defines agricultural development as:

[A] multi-dimensional concept. The many dimensions include: improvements in the average real income of members of society, the eradication of poverty, changes in the organization and location of production activities resulting in increased output, changes in technological arrangements leading to increased output, changes in social institutions leading to improvements in production and distribution, and changes in the human agent—physical, mental, and attitudinal—resulting in increased worker productivity. More specifically, by agricultural development we mean both an increase in the output of goods and services and changes in the technical organizational, social, and institutional arrangements by which that output is produced and distributed.<sup>255</sup>

Rather than narrowly and blindly subsidizing and promoting the status quo agricultural agenda, agricultural policy should focus on a reassessment of subsidized commodities and their link to nutritional value and impact on communities in distress.

In sum, a return to the arguments of the past that championed the disenfranchised would include the testimony of nutritionists providing linkages to Cochrane’s multi-dimensional approach. This calls for a return of past pragmatism in structuring the agricultural landscape. It would encompass conditioning governmental subsidies and federal economic support based on a commodity’s nutritional value and the impact on race and class. A re-assessment would pro-

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252. See generally KIRKENDALL, *supra* note 36 (discussing the role social scientists played in developing New Deal policies).

253. COCHRANE, *supra* note 44, at 3.

254. See MEYER ET AL., *supra* note 42, at xviii, xix (1985) (stating that government regulation is more extensive in agriculture than any other area of the economy).

255. COCHRANE, *supra* note 44, at 5.



mote diversity in the nation's food systems and would underscore its theoretical construct. This emphasis would seek out the impoverished and target geographically limited communities. It would, in sum, stop tainting subsidized agriculture with the specter of the malnourished.

## VI. CONCLUSION

Long ago, with the purge of the "urban liberals," America lost the voices that sought to associate the dispossessed with the nation's agricultural laws and policies. The resulting disassociation between the agricultural agenda and the negative externalities<sup>256</sup> bearing on communities of color reveals a greater realm of externalities not considered in today's food policies and ongoing subsidization of select commodities.

A massive infrastructure supporting the New Deal legacy, demonstrates the realm of government intrusion in the nation's diet. Food promotes international relations, is used for peace purposes, facilitates globalization, and inspires political and religious beliefs. Current food programs, nonetheless, fail eradicating hunger to non-existent standards.<sup>257</sup> Malnourishment is difficult to reconcile with the innumerable ways the nation's food system is employed without linking its nutritional value with geographically challenged communities. Linking geographical disparities between food sources and communities in distress is difficult to reconcile with agricultural surpluses. It furthermore illustrates one strand of consequences flowing from the nation's isolationist economic policies.

In contrast, the lens employed here requires an assessment of the lack of "choice" facing discrete populations in the nation's urban and rural spheres. Without contemplating the linkages between subsidized commodities, their nutritional value, and the geographical distances that disallow free will, we are left with an unimaginable reality and consequence. Sadly and specifically, hungry and malnourished children with escalating health difficulties will continue to reside in "the midst of plenty."<sup>258</sup>

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256. Marion Clawson & Benjamin C. Dysart III, *Public Interest in the Use of Private Lands: An Overview*, in PUBLIC INTEREST IN THE USE OF PRIVATE LANDS 4 (Benjamin C. Dysart III & Marion Clawson eds., 1989) (stating negative externalities exist where "one person or group makes the decision while another bears some of the costs").

257. See 7 U.S.C. §§ 1691, 1701 (2000) (discussing the United States policy to use its abundant agricultural productivity to enhance the food security of developing countries).

258. Compare Kelly Brewington, *The Poor Children: Lost Souls in Lake County*, ORLANDO SENTINEL, Dec. 17, 2000, at 1 (stating the poor who rely on food pantries are often forced to eat foods loaded with sugar and carbohydrates because that is all that is donated), with Ron Hall, *Start Healthy Habits in Kids*, IOWA CITY PRESS-CITIZEN, Oct. 7, 2002, at 6 (advocating teaching healthy eating habits to children but failing to consider lack of access to sustainable food products).