

MOVING TOWARD FOOD DEMOCRACY: BETTER FOOD, NEW FARMERS, AND THE MYTH OF FEEDING THE WORLD

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I. INTRODUCTION—THINKING ABOUT FOOD DEMOCRACY

I have been immersed in Iowa’s rural and farm culture since growing up on my parent’s Adams County farm. For almost thirty years I have had the honor of teaching Agricultural Law at the Drake University Agricultural Law Center. Our work at Drake has given me a front-row seat and the vantage point of direct involvement in many progressive developments in agriculture and food policy, on issues ranging from sustainable agriculture, small farm policy, food policy councils, access to healthy food, land tenure, and supporting the next generation of America’s farmers. I have written and examined these issues, focusing on the role law and policy can play in helping create more opportunities for farmers, consumers, communities, and the land. I am optimistic about the results of current developments and their potential to create a more sustainable and just food and farming system in the United States. These developments will operate in the context of what I describe as food democracy.¹ Our desire for better food, more information and choices, and preference for local action and personal involvement all reflect strong democratic tendencies and a growing awareness that as citizens, our actions can help shape a more sustainable food future.

The goal of this essay is to consider some of the current developments in the U.S. food system with an emphasis on sustainability and its connection to food, farming and the land. Much has happened on the American food and agri-

1. See generally Neil D. Hamilton, *Food Democracy and the Future of American Values*, 9 *DRAKE J. AGRIC. L.* 9 (2004); Neil D. Hamilton, *Food Democracy II: Revolution or Restoration?*, 1 *J. FOOD L. & POL’Y* 13 (2005).

culture scene since I first wrote about the idea of food democracy seven years ago. Many developments are very positive and reflect the underlying value and power of food democracy as a lens through which to view what is happening in our food system. The 2008 presidential campaign of Barack Obama served as a rallying point for people working to create more opportunity in America, and he spoke eloquently about improving our nation's food system and addressing issues like hunger and childhood obesity. After his election in November 2008, a new group named Food Democracy Now formed, in part, to promote a slate of food democracy-friendly candidates for Secretary of Agriculture.² The slate was coined the "Sustainable Six." In a few short weeks, nearly 90,000 people signed the on-line petition endorsing the candidates.³ I was honored to be included among the six but never suffered the delusion of being tapped for the position. When the President selected my friend, and former Iowa Governor Tom Vilsack, as Secretary, I heartily endorsed the choice and was pleased to attend his Senate confirmation hearing in January 2009. In his first months as Secretary, Vilsack took a series of actions that gave new life to the ideas of food democracy. For example, on Abraham Lincoln's birthday in 2009, he announced the creation of USDA People's Garden Project to add gardens at USDA facilities around the nation and use them to connect people with the pleasures and power of gardening and food production.⁴ Today, there are over 1200 People's Gardens as a result of the USDA initiative, and new school gardening grants are being offered to teach students about agriculture production practices.⁵ The Secretary's first major appointment, selecting Kathleen Merrigan as Deputy Secretary, showed a new era and attitude had arrived at USDA. As a staffer for Senator Leahy in the 1980s, she helped write the nation's organic food law, and as a USDA official in the Clinton years, she helped administer the law.⁶ More recently, as a Tufts professor, she taught food and agricultural policy classes to a new generation of food

2. See Letter from Food Democracy Now to President Obama, available at <http://www.fooddemocracynow.org/letter> (last visited May 23, 2011).

3. Jane Black, *Where Policy Grows: Iowan Dave Murphy Is Challenging the Corporate Farming of America*, WASH. POST, Mar. 25, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/24/AR2009032400754.html>.

4. Press Release, USDA, Vilsack Establishes the People's Garden Project on Bicentennial of Lincoln's Birth (Feb. 12, 2009), available at www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2009/02/0042.xml.

5. Livia Marqués, *A Movement that Began in 2009 Spread in 2010*, USDA BLOG (Jan. 12, 2011, 4:28 PM), <http://blogs.usda.gov/2011/01/12/a-movement-that-began-in-2009-spread-in-2010/>.

6. *USDA Biographies: Deputy Secretary of Agriculture Kathleen A. Merrigan*, USDA, http://www.usda.gov/wps/portal/usda/usdahome?contentid=biography_merrigan.xml&contentidonly=true (last visited May 23, 2011).

democrats.⁷ As Deputy, she has brought a broader appreciation for the full range of issues in America's food system, especially issues relating to consumers, healthy food, and alternative agricultural production. Her hand can be seen in the third example of Secretary Vilsack's new approach at USDA—the creation of the Know Your Farmer Know Your Food campaign.⁸ This department-wide initiative is designed to connect consumers and farmers and to broaden USDA's purview to include small farmers, direct marketers, and others who receive little attention from commodity programs. Understandably, the Secretary's attention to these new audiences and issues generated opposition and a backlash from the representatives of Big Agriculture and the farm and commodity organizations who resent having to share any of USDA's love with others.⁹ But the Secretary is adamant the USDA and America's farm and food policy must include and respect all forms of production and all types of farmers. In that regard, he has taken a special interest in ending the legacy of USDA discrimination against black farmers, Native Americans, and other minorities, in part through resolving the civil rights litigation these groups have filed against the USDA.¹⁰

Other developments have not been as positive for the values of food democracy, which illustrates how the path to justice may not always be straight or fast. Incidents such as the 2010 "bad egg" episode in Iowa exemplify the work ahead of the nation in addressing food safety, especially in industrial scale production systems. Controversies over production technologies, such as Round-up Ready alfalfa and sugar beets, animal welfare in poultry and livestock production, and feed containing antibiotics as growth promoters all create opportunities for public debate regarding the appropriate role of government regulation in agri-

7. *Id.*

8. See Press Release, USDA, USDA Launches "Know Your Farmer, Know Your Food" Initiative To Connect Consumers with Local Producers To Create New Economic Opportunities for Communities (Sept. 15, 2009), available at <http://www.usda.gov/wps/portal/usda/usda/home?contentidonly=true&contentid=2009/09/0440.xml>; KNOW YOUR FARMER, KNOW YOUR FOOD, <http://www.usda.gov/wps/portal/usda/knowyourfarmer?navid=KNOWYOURFARMER> (last visited May 23, 2011).

9. See Letter from Senator John McCain to Sec'y of Agric. Tom Vilsack (Apr. 27, 2010), available at www.agri-pulse.com/uploaded/knowyourfarmers.pdf (criticizing the Know Your Farmer initiative, describing it as "completely detached from the realities of production agriculture" and "aimed at small, hobbyist and organic producers whose customers" are affluent urban locavores).

10. See Ashley Southall, *Senate Approves Payment of Black Farmers' Claims*, N.Y. TIMES, Nov. 20, 2010, at A12 (concerning the action taken in the lame duck session of Congress to approve \$1.15 billion to settle claims in an outgrowth of the litigation known as *Pigford v. Glickman*); Press Release, Cohen Milstein Sellers & Toll, PLLC, Native American Farmers, Ranchers and USDA Reach Historic Settlement (Oct. 19, 2010), available at www.cmht.com/media/pnc/6/media.896.pdf (describing the settlement in the case *Keepseagle v. Vilsack*, which was a nationwide class action alleging discrimination regarding USDA farm loans to Native Americans).

culture. Other topics function much like barriers to fair and full policy discussions. For example, the claim that America “feeds the world” is used to stunt discussion of alternative production systems, and USDA’s classification of almost half of America’s farms as “Residential/lifestyle farms”¹¹ reflects a bias against small farms and new entry into agriculture. This essay will address both of these myths and describe their tendency to divert attention from sustainable alternatives.

The issues shaping food democracy range from the growth in the better food movement to the backlash from farm groups claiming unfair public attention through films like *Food, Inc.* and the books of Michael Pollan. All of these issues, both positive and negative, are part of the rich stew of democratic debate shaping the future of America’s food and farm system. My goal in addressing these topics is to be candid and honest. My comments are not intended to offend, but they may provoke, and if so, this is how it should be—it is one of our most important roles and duties as academics.¹²

II. THINKING ABOUT WHAT IS ON YOUR PLATE CAN CHANGE THE FUTURE

One key influence for my work on food and farm policy was serving for twenty-one years on the advisory board of the Leopold Center for Sustainable Agriculture at Iowa State University. The Center is a master-stroke of legislative vision designed to create a more sustainable agricultural system for Iowa. The Center was created in the 1987 Groundwater Protection Act,¹³ and is funded in part from taxes on nitrogen fertilizer and pesticide registrations.¹⁴ I joined the Board at its inception and helped expand the Center’s work to include not just natural resources issues—but also economic and social sustainability. With Rich Pirog, former associate director of the Center,¹⁵ I led several Center initiatives on community food systems, farmer supply chains, and related issues.

We all have work and moments in life that stand out as pivotal—perhaps not at the time but upon reflection. One of mine was in 1996, when I attended the annual Des Moines Rotary Rural Urban Day at the Hotel Fort Des Moines.

11. Econ. Research Serv., USDA, *ERS Farm Typology for a Diverse Agricultural Sector*, AGRIC. INFO. BULL., Sept. 2000, available at <http://www.ers.usda.gov/publications/aib759/aib759.pdf> [hereinafter *ERS Farm Typology*].

12. Let me add, the remarks in this essay are mine and should not be attributed to Drake University, the Law School, or anyone I may call my friend.

13. IOWA CODE § 266.39(2) (2011).

14. IOWA CODE § 455E.11(2)(b)(3)(a) (2011).

15. Press Release, Leopold Ctr. for Sustainable Agric., Leopold Center’s Pirog Accepts New Position at Michigan State (Feb. 8, 2011), available at http://www.leopold.iastate.edu/news/newsreleases/2011/020811_pirog.html.

The speaker was then Governor Branstad who unveiled the Iowa Department of Economic Development's new promotional campaign. The theme was "Iowa, the Future is on Our Plate," but my plate held an industrial chicken breast, peas, carrots, white rice—and a slice of cheesecake. Perhaps I was taking his comments too literally, but I could not see Iowa, or our future, on my plate. I subsequently wrote about the meal in my "Food Chain" Opinion Editorial for the Des Moines Register. It was a theme I returned to several times in the over eighty columns that followed, and it is even more true today—if we want to make Iowa the food capital of the world, we should begin by making it the food capital of Iowa.

Another meal, just one year later, added a second dimension to the importance of asking what is on our plates? In the summer of 1997, the Leopold Center hosted an annual conference for 400 people at the Scheman Center, and Rich Pirog worked with the staff there to source an all-Iowa meal. As we prepared to enjoy the incredible lunch, he introduced the farm families who had raised the food. It was a very moving moment. But the meal was just part of the story.

Afterwards, the Scheman food staff told Rich the Leopold Center was the first group to ever ask if they could serve an Iowa-grown meal. So after thousands of ISU events and years of farm group meetings, no one had asked, "Can we eat some food we raise in Iowa?" Today, this question is being asked with greater frequency across our state and nation. People recognize that by asking where our food comes from, we can use the power of our appetites to create opportunities for farmers and food producers. This is a recognition shared by many companies working to integrate "sustainability" and social responsibility into their marketing and production efforts.¹⁶ Consider the example of Walmart. As the nation's largest grocer, it has had an ambitious corporate policy to promote sustainability for many years.¹⁷ It has worked with officials at the University of Arkansas Business School and the Applied Sustainability Center to identify how its food purchasing can be integrated into individual farmers' marketing and production decisions.¹⁸ In October 2010, the company announced a new initiative to

16. See, e.g., Frederick Kaufman, *What's New for Dinner*, ONEARTH, Aug. 24, 2010, available at <http://www.onearth.org/article/whats-new-for-dinner> (discussing how the move toward "sustainability" in food marketing may shape the future of agriculture and its impact on the environment).

17. See WAL-MART STORES, INC., WALMART GLOBAL SUSTAINABILITY REPORT: 2010 PROGRESS UPDATE 5 (2010), available at <http://cdn.walmartstores.com/sites/sustainabilityreport/2010/WMT2010GlobalSustainabilityReport.pdf>.

18. Innovate Arkansas Staff, *UA Sustainability Center's Grant from Wal-Mart to Create 'Agile Agriculture' Program*, INNOVATE ARK. (Nov. 10, 2008, 11:08 AM), <http://innovation.arkan>

focus on sustainable agriculture and promote the use of local foods throughout its stores.¹⁹

III. THE GOOD NEWS ABOUT BETTER FOOD, NEW FARMERS, AND FOOD POLICY

Let's start with some good news about food democracy. There is a groundswell of interest around the issues of food, health, and farming. Consumers are looking for healthier and better food; governments are looking for more effective food policies; and many people, young and old, are looking for ways to farm and be part of the expanding sustainable food movement.²⁰ Books about food and movies like *Food, Inc.* are giving the public a broader perspective about our food system. This interest cannot come at a better time because never has our nation needed a healthier approach to what we eat and how we raise food. Nor have we needed more a new generation of people with fresh ideas and approaches to farming. The great news is: we have real opportunities to support these citizens as a key part of a sustainable system. Both in the marketplace and through policy. Consider some of the following examples of these trends.

A. *Energy of the New Farm-New Food Movement Growing*

The energy, passion, and enthusiasm shown around better food, urban agriculture, new farmers, and related issues is deep and growing. The issues are broad-based and wide-spread, with tens of thousands of people drawn to them. From late August 2010 to January 2011, I made over a dozen trips around the U.S., traveling over 30,000 miles from Oregon to Boston, from Los Angeles to New York City, from San Francisco to Fayetteville, and from New Orleans to Washington D.C. I spoke at, or visited, a dozen conferences and universities, and met with hundreds of people taking part in this movement. They ranged from chefs to community activists, from young farmers to urban gardeners, from leaders of non-profits to food entrepreneurs, and from federal officials to organizers of local food policy councils. They all share an interest in how their work with food and farming can create brighter futures for their families, for consumers, for communities, and for the nation. Healthy, nutritious food is the foundation of

sasbusiness.com/article/109652/ua-sustainability-centers-grant-from-wal-mart-to-create-agile-agriculture-program.

19. See Stephanie Clifford, *Wal-Mart To Buy More Local Produce*, N.Y. TIMES, Oct. 15, 2010, at B1.

20. I discuss some of these developments in a related essay *Farms, Food, and the Future: Legal Issues and Fifteen Years of the "New Agriculture"* appearing in a forthcoming issue of the *Journal of Environmental Law and Litigation* from the University of Oregon.

this movement, so how we answer the question who will produce the healthy food the nation needs will be central to the policy debate.

B. Healthy Food and Direct Marketing Are Key Opportunities

Attention to the importance of access to healthy foods and improving America's diet and nutrition is bringing new energy to food and farm policy discussions, such as the work of the Centers for Disease Control and Prevention in promoting healthy communities by awarding grants to improve access to healthy food.²¹ Promoting local food production and direct-farm marketing can help improve the nutritional health of the nation.²² There is a critical link between expanding the opportunities for direct-farm marketing and supporting farmers, especially the new generation. Many of those interested in farming are motivated by the opportunity to raise food and sell it to members of their communities. Many see food production as a form of public service and want to enlist in helping provide a better food future for the nation. In this regard, it is possible to view farmers as important partners in the work many agencies and institutions are doing to improve America's health. Policies that expand direct marketing of fresh produce and improve food access, especially for low-income citizens and underserved communities, are important in this effort. USDA has a significant opportunity to use its broad array of existing programs and authorities to support these goals. For example, providing free universal wireless access for electronic benefits transfer at the nation's farmers markets would support new farmers and expand food access.²³ The Wholesome Wave Foundation has pioneered an innovative program using private funds to double food stamps (now called Supplemental Nutrition Assistance Program or SNAP) if the funds are used to purchase produce from farmers markets,²⁴ an approach being copied in twenty different

21. *Investments in Communities: CDC's Role in Activating Local Change*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/healthycommunitiesprogram/communities/index.htm> (last updated Mar. 28, 2011).

22. See, e.g., *Principles of a Healthy, Sustainable Food System*, AM. PLANNING ASS'N (2010), www.planning.org/nationalcenters/health/pdf/HealthySustainableFoodSystemsPrinciples.pdf (providing the joint set of principles to define a healthy, sustainable food system utilized by the Am. Dietetic Ass'n, Am. Nurses Ass'n, Am. Planning Ass'n, and Am. Pub. Health Ass'n). The principles set forth by this group were designed to establish a foundation for advocating for improved food policies at all levels of government.

23. See Press Release, USDA, USDA Announces Grants for Farmers Market Promotion Program (Oct. 14, 2010), available at <http://www.usda.gov/> (search "USDA Announces Grants for Farmers Market Promotion Program" and select "10/14/10" press release from the results).

24. *Double Value Coupon Program*, WHOLESOME WAVE, <http://wholesomewave.org/what-we-do/double-value-coupon-program/> (last visited May 23, 2011).

states around the nation.²⁵ One project they are testing is an effort in Massachusetts for doctors to “prescribe” fresh produce to address obesity.²⁶

C. *Increasing Attention to Childhood Nutrition and Improving School Food*

There is a growing awareness in the nation about the link between nutrition and diet-related illnesses and obesity, especially in the context of children and school meals. One well-publicized effort to demonstrate how school food systems can be reformed involved the popular English chef, Jamie Oliver, and his work in Huntington, West Virginia, to reform school meals.²⁷ Increased attention on nutrition and expanding markets for locally grown fruits and vegetables as one method to improve healthy food options have resulted in a significant number of innovative and experimental efforts.²⁸ The issue of childhood nutrition and funding for school lunch programs triggered a major conflict within the nutrition and hunger communities when the House faced a vote in October 2010 to fund the Childhood Nutrition Act.²⁹ The Act was designed to raise the reimbursement rate for school meals, for the first time in a generation, and establish new guidelines to improve the health and nutrition of school food.³⁰ The conflict was over whether to endorse the Senate version of the legislation, which was controversial because the increased costs were paid for with reductions in future-year SNAP benefits,³¹ or the House version, with higher funding but no future reduction of SNAP.³² Many organizations, working in the hunger arena, were very aggressive

25. Valerie Bauman, *More Farmers Markets To Accept Food Stamps*, THE HUFFINGTON POST (Aug. 26, 2008, 3:27 AM), http://www.huffingtonpost.com/2008/08/26/more-farmers-market-s-to-a_n_121152.html.

26. Natasha Singer, *Eat an Apple (Doctor's Orders)*, N.Y. TIMES, Aug. 13, 2010, at B1.

27. See Tracy Sutton, *School Lunch Revolution*, JAMIE OLIVER'S FOOD REVOLUTION (Apr. 1, 2010), <http://www.jamieoliver.com/news/school-lunch-revolution>; see also Kim Severson, *A TV Show and Congress Tackle School Lunches*, N.Y. TIMES, Mar. 31, 2010, at D2 (describing the public attention drawn to the lack of quality in some school lunches and Congressional efforts to change it through Child Nutrition legislation).

28. Kim Severson, *Told To Eat Its Vegetables, America Orders Fries*, N.Y. TIMES, Sept. 25, 2010, at A1 (discussing two decades of initiatives, dietary guidelines, and the growth of farmers markets aimed at increasing America's vegetable consumption).

29. See Healthy, Hunger-Free Kids Act of 2010, S. 3307, 111th Cong. (2010); Melissa Boteach, *Don't Cut One Hunger Program To Pay for Another*, CENTER FOR AM. PROGRESS (Sept. 28, 2010), http://www.americanprogress.org/issues/2010/09/child_nutrition_bill.html.

30. S. 3307 § 201(3)(A)(i), (3)(B) (to be codified at 42 U.S.C. § 1753(b)).

31. *Id.* § 442; see Boteach, *supra* note 29.

32. Boteach, *supra* note 29; see Robert Pear, *Some Obama Allies Fear School Lunch Bill Could Rob Food Stamp Program*, N.Y. TIMES, Sept. 24, 2010, at A15 (showing strong opposition by groups such as the Food Research Action Center and Catholic Charities USA).

in resisting the Senate version,³³ and their opposition led to Congress recessing for the November elections without taking a vote.³⁴ But when faced with the election results and the prospect of no action and no increased funding in 2011, House members who had resisted the Senate version, voted in the lame-duck session to approve the legislation.³⁵ The legislation passed the House by a vote of 264 to 157³⁶ and was signed by the President, who with the First Lady has made addressing childhood hunger and obesity cornerstones of domestic policy.³⁷

First Lady Michelle Obama has used her ability to speak to the nation to bring important new attention to the issues of children's health, nutrition, and obesity.³⁸ One part of this campaign has been the "Let's Move" Initiative designed to encourage more physical activity as a way to address obesity.³⁹ A second component is to work with the nation's restaurant owners to consider offering smaller portions and children's meals with healthier options.⁴⁰ Additionally, she has worked with food companies to improve the health profile of the foods they market.⁴¹ In January 2011, her efforts received a significant boost when Walmart, now the nation's largest retailer, announced a five-year initiative to improve the health profile of foods being sold by lowering the salt, fat, and sugar content and by working to lower the prices for fruits and vegetables.⁴²

33. See Robert Pear, *supra* note 32.

34. See *Bill Summary & Status: 111th Cong. (2009-2010), S. 3307, All Congressional Actions*, Thomas, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN03307:@@X> (last visited May 23, 2011) [hereinafter *Bill Summary & Status*].

35. See *id.*; Robert Pear, *Congress Approves Child Nutrition Bill*, N.Y. TIMES, Dec. 3, 2010, at A16.

36. *Bill Summary & Status, supra* note 34 (passing the House on December 2, 2010).

37. See, e.g., *About Let's Move*, LET'S MOVE, <http://www.letsmove.gov/about> (last visited May 23, 2011).

38. *Id.* ("In the end, as First Lady, this isn't just a policy issue for me. This is a passion. This is my mission. I am determined to work with folks across the country to change the way a generation of kids thinks about food and nutrition.").

39. *Id.*

40. See Sheryl Gay Stolberg & William Neuman, *Restaurant Nutrition Draws Focus of First Lady*, N.Y. TIMES, Feb. 7, 2011, at A11.

41. See Sheryl Gay Stolberg, *Wal-Mart Shifts Strategy to Promote Healthy Foods*, N.Y. TIMES, Jan. 20, 2011, at B1.

42. *Id.*

IV. NEW FARMERS—THE NEXT GENERATION OF FARMERS ARE CRITICAL FOR FOOD DEMOCRACY

There is no more important challenge facing our nation's food and farming sector than who will be the next generation of America's farmers.⁴³ At a time when our nation is searching for a healthier food future, who will raise this food is a critical question. The good news is there is growing interest by young people, farm kids, and others alike to be involved in food production. This group, to name a few, consists of young people like the returning veterans who are part of the Combat Boots to Cowboy Boots initiative in Nebraska⁴⁴ and student interns at the U.C. Santa Cruz farm I visited in August. One of those interns, Danelle Myer, has moved home to her parents farm near Logan, Iowa to become one of Iowa's newest farmers. She represents an exciting dimension of the new farmer movement and the role women play in creating these new farms and food businesses, the subject Temra Costa wrote about in her book, *Farmer Jane*.⁴⁵ Our nation and rural communities need the energy of young people and new families to help steward the land, produce our food, and build the rural economy. Our challenge is developing a comprehensive approach and national commitment to help the next generation of farmers. The following are some of the important developments relating to new farmer policy.

A. Secretary Challenges Congress with the Goal of Creating 100,000 New Farms, Raising Expectations for USDA Leadership

When Secretary of Agriculture Vilsack appeared before the Senate Committee on Agriculture, Nutrition and Forestry at the Farm Bill Oversight Hearing on June 30, 2010, he departed from his prepared remarks and articulated his concern about the declining farm population and the need to revitalize rural America.⁴⁶ The Secretary made a bold proposal to Congress:

43. See Agric. Law Ctr., *Beginning Farmers*, DRAKE UNIV. LAW SCH., <http://www.law.drake.edu/academics/agLaw/?pageID=beginningFarmers> (last modified Feb. 17, 2011) (the Drake Agricultural Law Center has a major initiative relating to policy and education on new farmer issues).

44. Neb. Coll. of Technical Agric., *Combat Boots to Cowboy Boots*, UNIV. OF NEB., <http://ncta.unl.edu/web/ncta/CombatCowboyBoots> (last visited May 23, 2011) (supporting beginning farmer and rancher ownership initiatives for military veterans).

45. See generally TEMRA COSTA, *FARMER JANE: WOMEN CHANGING THE WAY WE EAT* (2010).

46. See *Farm Bill Oversight: Hearing Before the S. Comm. on Agric., Nutrition & Forestry*, 111th Cong. 7 (2010) (statement of Tom Vilsack, Secretary of Agriculture) (on file with author) (providing an unofficial transcript of the June 30, 2010 hearing statement as prepared by Farm Policy.com).

Let me suggest one idea that this committee might consider. . . . Why not set as a goal for the 2012 Farm Bill the ability to add at least 100,000 additional farmers in the area of the small farming and commercial operations? Why not establish local advisory councils in communities across the country [to] identify, recruit, encourage and assist young people to consider a life in farming?⁴⁷

This important statement is the first time in modern history the leader of the USDA has supported the goal of bringing more people into farming. The reaction among sustainable agriculture and young farmer groups to the Secretary's challenge has been predictably supportive, with many groups volunteering to be part of the effort and anxious to learn more about how the USDA plans to pursue the goal. The interest in the topic is putting new pressure on the USDA to identify opportunities for supporting new farmers. While some efforts are explicit, such as the new Beginning Farmer and Rancher Development Program authorized by the 2008 Farm Bill,⁴⁸ other opportunities are less obvious, such as the high tunnel pilot program. For example, in 2009, the USDA acting through the Natural Resources Conservation Service (NRCS) implemented an innovative three-year pilot program providing small grants and up to ninety percent cost sharing to farmers for the construction of high tunnels or low-cost greenhouse structures.⁴⁹ The program, officially known as the NRCS Seasonal High Tunnel Pilot Program, was available in the forty-three states that chose to participate and proved to be very popular.⁵⁰ By November 2011, over 2400 hoop house contracts worth over \$13 million had been signed, and states with over 100 tunnels included: Alabama, Alaska, Iowa, Minnesota, Missouri, Pennsylvania and Wisconsin.⁵¹ The pilot is an innovative example of USDA using existing programs, in this case the Environmental Quality Incentives Program (EQIP), to assist farmers working to expand their growing season.⁵² Projects like this raise the question of what else USDA officials might do to support the Secretary's goal of adding 100,000 new farmers.

47. *Id.*

48. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 7410 Stat. (codified as amended at 7 U.S.C. § 3319(f) (Supp. 2009)).

49. Press Release, Natural Res. Conservation Serv., USDA, USDA Provides Update on Seasonal High Tunnel Pilot (Jan. 7, 2011), *available at* http://www.nrcs.usda.gov/news/releases/2011/high_tunnels_1.7.2011.html.

50. *Id.*

51. See Natural Res. Conservation Serv., *Seasonal High Tunnels Funded in Fiscal Year 2010*, USDA, <http://www.nrcs.usda.gov/programs/success-stories/hightunnels/2010tunneldollars.html> (last updated Nov. 10, 2010).

52. *High Tunnel Pilot Study*, HIGHTUNNELS.ORG, <http://www.hightunnels.org/news.htm> (last visited May 23, 2011).

B. *New Generation of Farmers May Challenge the Traditional Culture of Agriculture*

The interest of young people in food and agriculture is almost overwhelming and such a stark difference from the past when it appeared few young people wanted anything to do with farming, raising livestock, or working the land. But the situation has changed, and it presents real opportunities to bring new energy, fresh ideas, and young talent to the farm, food, and rural sectors. Interest from a new generation of potential farmers, many with non-agricultural backgrounds, is challenging the agricultural culture in many ways. Some points of difference between traditional farmers and many in the new generation include a commitment to organic farming, reliance on direct marketing, different views on the proper care for livestock, and less enthusiasm for new “silver bullet” technologies. The new interest cuts across economic, geographic, racial, ethnic and educational lines. On a mid-November weekend, over 450 mostly black, urban youth gathered at Brooklyn College for the first Black Farmers and Urban Gardeners Conference to learn how they can be part of the food and farming movement.⁵³ Two weeks later, in early December, over 260 (a capacity crowd) of mostly white, well-educated, young college grads from middle-income families gathered fifty miles away for the National Young Farmers Conference at the Stone Barns Center for Food and Agriculture.⁵⁴ While the audiences were different, their interests and the forces attracting them to food and farming were similar.

C. *Agricultural Institutions May Not Be Well-Designed to Serve New Farmers*

In many ways the traditional system and tools for serving the needs of agriculture, such as Farm Service Agency loans, farm organizations, and extension programs, are not well-designed or equipped to address these new farmers. Nor are they well-designed to assist the nation and communities in harnessing their energy and interest in building healthier food systems. Consider these examples of how the new audiences do not fit well within existing farm support programs.

53. *Black Farmers & Urban Gardeners Conference: Growing Health, Wealth, & Justice in Our Communities*, BLACK FARMERS & URBAN GARDENERS CONF., <http://www.blackfarmers.conf.org> (last visited May 23, 2011).

54. *YF Conference*, STONE BARNS CENTER FOR FOOD & AGRIC., <http://www.stonebarns.center.org/our-work/young-farmers-initiative/young-farmers-conference/> (last visited May 23, 2011).

1. *Non-traditional New Farm Audiences*

Many young college graduates interested in farming did not grow up in agriculture and did not receive the training, education, or indoctrination that accompanies growing up on the farm. This means they have a steeper learning curve about food production; also, the farms they want to create may not be of the same type or scale as the commodity farms that dominate the attention of agricultural officials and programs. Their lack of experience puts a premium on the existence of programs such as on-farm internships and apprenticing to obtain experience and ground test their interest in becoming farmers. This lack of experience means that when new farmers apply for financing from commercial lenders or the USDA Farm Services Agency, it is difficult to show three years of farming experience or the records required for many farm-lending programs.⁵⁵ While these potential farmers may not have grown up on farms, most have taken classes on food politics, read Michael Pollan's books, been active with The Real Food Challenge trying to put local foods in the campus cafeteria, or worked on the college farm. These experiences fire their passion to be involved with food and farming and the politics of both.

2. *Urban Agriculture*

One of the "hottest" topics in the area of community food systems and healthy food access is urban agriculture. The term can mean many things, but typically it focuses on expanding the opportunities to produce more of the food consumed from within the community. Additionally, it focuses on making it possible for more people to be involved in food production through community gardens and residents "farming" their own properties. While urban agriculture is increasingly discussed as part of the national food scene, it is a difficult topic for USDA and other agricultural institutions to address. It is outside the established system of farm programs. USDA has little presence in urban areas, so suggestions that it should expand its reach raise political and cultural issues, such as, for some critics, whether urban agriculture is a "legitimate" issue for USDA to embrace.⁵⁶ The success of urban agricultural programs, such as Will Allen's Growing Power in Milwaukee,⁵⁷ demonstrates the potential to grow significant amounts of food and train many new farmers while encouraging economic progress and job creation, often in impoverished areas. Growing Power's large

55. See Farm Serv. Agency, USDA, Three-Year Production History (2007), available at http://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA2003_071231V01.pdf.

56. See Letter from John McCain to Tom Vilsack, *supra* note 9.

57. See Elizabeth Royte, *Street Farmer*, N.Y. TIMES, July 5, 2009, at MM22.

commercial composting operation shows how urban farms can be at the leading edge of green technologies and be community assets.⁵⁸

3. *Internships and Apprentice Relations*

Because many people who want to be involved with farming and food production did not grow up on farms, creating ways to offer such experience is critical to nurturing those who believe they want to farm. Rural communities and farmers raising commodities don't have a history of using "interns" or offering intentional education and training for outsiders, instead relying on family labor or hiring local employees. Even for farmers who use interns, such as direct marketers and diversified produce farms, the relations raise legal issues over compliance with wage and hour rules and other labor laws.⁵⁹ The reality is—we need new models focused on the education and training needs of new farmers rather than the labor needs of existing farms. One problem is that we have not treated creating new farms as a form of job creation or career choice and have not promoted farming as a form of rural economic development.

4. *Returning Veterans Are a Critical New Farmer Audience*

One group of potential new farmers with an especially powerful story and political impact are the veterans returning from America's current wars. Secretary of Agriculture Vilsack frequently points out the disproportionate share of those from rural communities in the service. Nearly forty-five percent are from rural communities, even though the rural population is around sixteen percent of the nation.⁶⁰ Fortunately, a significant number of the returning veterans

58. See *Our History*, GROWING POWER, INC., www.growingpower.org/our_history.htm (last visited May 23, 2011) for information about Will Allen and Growing Power.

59. The issue of how state labor laws might apply to on-farm internships has become a controversial issue in several Western states, with the most likely legal result being that regardless of what they are called, the legal relationship is one of employment. In 2010, the State of Washington passed a law that created a pilot program exempting those who hired interns from wage requirements if the project was sanctioned by the state. See WASH. REV. CODE ANN. § 49.12.465 (West 2008 & Supp. 2011); WASH. ST. DEP'T OF LABOR & INDUS., SMALL FARM INTERNSHIP PILOT PROJECT (2011), <http://www.lni.wa.gov/WorkplaceRights/files/2010FarmInternshipFAQ.pdf>. The topic of how to address legal and policy issues in training and educating new farmers is also the subject of my forthcoming article in the *Fordham Environmental Law Review*.

60. Ezra Klein, *Vilsack: 'I Took It as a Slam on Rural America.'* WASH. POST (Mar. 8, 2011, 10:30 AM), http://voices.washingtonpost.com/ezra-klein/2011/03/vilsack_i_took_it_as_a_slam_on.html.

are interested in becoming farmers.⁶¹ Helping these potential new farmers, literally turning combat boots into cowboy boots, represents one of the most important and symbolic opportunities for the USDA to make real the commitment to create 100,000 new farmers. One relatively simple approach would be to offer a “fast-track” for veterans in connection with FSA farm ownership loans, such as allowing the required three years of farming experience to be satisfied with military service.⁶² Several organizations are working to improve the farming opportunities for veterans, most notably the Farmer Veteran Coalition, and they want to partner with USDA and others to identify and address concerns of veterans and help coordinate new farmer support efforts.⁶³

As this discussion has shown, there are many important opportunities to help create a more sustainable food future and move the nation down the road toward a food democracy. But in a nation as diverse as ours with an agricultural system of historic scope and tradition, there is no shortage of debate or differing perspectives on what the future should hold for food and farming. In the next section, our attention will shift to some developments that may pose obstacles to advancing the ideals of food democracy.

V. “RESIDENTIAL/LIFESTYLE” FARMS—DISMISSIVE LABELS HIDE THE VIRTUES OF SMALL FARMS

One challenge in the public policy debates over farm and food policies is how we speak about those who farm or want to, especially smaller farms. In the late 1990s, I served as Vice-Chair of the USDA National Small Farm Advisory Committee, and from that work, I recognized one challenge. Under USDA definitions any farm with sales less than \$250,000 is a small farm,⁶⁴ meaning ninety percent of all U.S. farms are small farms.⁶⁵ In Iowa, almost eighty percent are classified as small.⁶⁶ But in our nation, no one wants to be a small anything, so it is no surprise few farm groups or officials advocate for small farmers.

61. For a discussion of the farmer-veteran issue, see generally Patricia Leigh Brown, *Helping Soldiers Trade Their Swords for Plows*, N.Y. TIMES, Feb. 6, 2011, at A18.

62. See Farm Serv. Agency, *supra* note 55.

63. See *About FVC*, FARMER VETERAN COAL., <http://www.farmvetco.org> (last visited May 23, 2011).

64. ECON. RESEARCH SERV., *Farm Structure: Glossary*, USDA, <http://www.ers.usda.gov/Briefing/FarmStructure/glossary.htm> (last updated Apr. 19, 2005).

65. See NAT'L AGRIC. STATISTICS SERV., USDA, 2007 CENSUS OF AGRICULTURE: UNITED STATES SUMMARY AND STATE DATA 234 tbl.64 (2009), available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf.

66. *Id.* at 296 tbl.2 (showing 92,856 total Iowa farms and 73,979 farms with between less than \$1000 and \$250,000).

A troubling example of how ill-chosen labels can support institutional bias in the farm system concerns the way the USDA classifies farms in the U.S. In 2000, the USDA Economic Research Service (ERS) developed a new “typology” to characterize different types of farms.⁶⁷ From my perspective, the effort made things worse. Most notably, ERS created a description—“Residential/lifestyle” farm to describe farms with sales less than \$250,000 and an operator who does not list farming as his or her primary occupation.⁶⁸ It should be no surprise that over 800,000 or over one-third of America’s farms were classified as residential/lifestyle farms,⁶⁹ including almost 30,000 of Iowa’s 92,856 farms.⁷⁰ Another 456,000 farms are classified as “retirement” farms,⁷¹ including over 13,500 in Iowa.⁷²

The current ERS classification or typology of farms is based on the value of sales and the operator’s primary occupation, but it creates an anomalous situation that both distorts the reporting of many important agricultural statistics and creates institutional biases in addressing the needs of many citizens. While the issue of how to define a farm and what to count is beyond the scope of this essay, it is important to recognize how the USDA’s institutional biases toward size and value of production may contribute to the history of discrimination and be an obstacle to supporting new farmers. The messages sent by using the value-laden and pejorative label “residential/lifestyle farm” (which includes over 36% or 800,000 of all U.S. farms and 1.2 million operators)⁷³ are that these farms are less important than others and the farmers less deserving of attention because their motivation is a lifestyle or home rather than just farming. When you add in the 20% of farms (over 400,000) classified as “retirement” farms (an equally unhelpful and value-laden term), it means over 57% or almost 1.3 million of America’s farms (and almost 1.9 million farm operators) are classified in this manner.⁷⁴ So much for recognizing the value of having people who desire to live in rural America, own and steward farmland, raise children in the country, or live on the farm once they age! Even if we assume the motives for selecting the labels were benign, these dismissive classifications send exactly the wrong messages to

67. See *ERS Farm Typology*, *supra* note 11; see also Econ. Research Serv., USDA, *America’s Diverse Family Farms: Assorted Sizes, Types, and Situations*, AGRIC. INFO. BULL., May 2001, at 1, 2, available at <http://www.ers.usda.gov/publications/aib769/aib769.pdf> [hereinafter *America’s Diverse Family Farms*].

68. See *America’s Diverse Family Farms*, *supra* note 67.

69. NAT’L AGRIC. STATISTICS SERV., *supra* note 65, at 234 tbl.64.

70. *Id.* at 621 tbl.46.

71. *Id.* at 234 tbl.64.

72. *Id.* at 621 tbl.46.

73. *Id.* at 246 tbl.64.

74. *Id.* at 234 tbl.64, 246 tbl.64.

farmers, policymakers, and USDA employees about the importance of putting more people back on the farm and living in rural America. Using these terms helps underpin the myth that small farms are unimportant and have little role to play in either feeding people or caring for the land. The truth is—the nation can use a few million more residential/lifestyle farmers and the virtues they bring!

Singling out sales and primary occupation as the defining measure underpins an institutional bias against many farmers, new and old. This same coded bias underlies the increasingly common use of the term “production agriculture,” a redundant term used primarily by those with a political motive to distinguish themselves from people they do not feel deserve to be called farmers.

VI. THE MYTH OF “FEEDING THE WORLD” OR HOW SELF-DELUSION CAN CLOUD GOOD JUDGMENT

The terms used to describe many small farms are problematic for many reasons, but they also relate to a second myth that is perhaps more dangerous to the development of sustainable agriculture and the values of food democracy. This is what I call the myth of “Feeding the World.” It is an expression everyone has heard, and it is a wonderfully inspiring, motivating phrase. There is nothing wrong with hearing inspiring and motivating words. For instance, my mother was convinced I was a genius and would tell me so. The danger with such words, however, whether my mother’s or agriculture’s, is deluding ourselves into believing the labels are true. The U.S. does not feed the world nor did the world ever ask us to. More importantly, we could not if it did, and we should not try—not if it means destroying our agricultural resources in the attempt. This is not to say American agriculture does not play an important role in helping the rest of the world feed itself, we do. Exports are very important to U.S. farmers. But, we do not feed the world.

If you doubt this statement, here are some statistics to prove the point. In 2009, U.S. exports, as a percentage of the rest of the world’s production, were only 7.2% for corn and oilseeds (our largest export categories) and much lower for all other commodities.⁷⁵ While it is true we exported almost 60% of the corn that moved in world trade,⁷⁶ the reality is most corn, and other foods, are consumed where they are produced.⁷⁷ The relative amount of the world’s food sup-

75. TRADE & MKTS. DIV., FAO, FOOD OUTLOOK: GLOBAL MARKET ANALYSIS 76, 85 (2010), <http://www.fao.org/docrep/013/al969e/al969e00.pdf>.

76. *Id.* at 76.

77. *See, e.g., id.* (showing that only about 11% of the world’s corn produced in 2009 was exported); *see also* Alberto Jerardo, *The U.S. Ag Trade Balance . . . More Than Just a Number*, AMBER WAVES, Feb. 2004, *available at* <http://www.ers.usda.gov/AmberWaves/February04/Feature>

ply that moves across national borders is small. There are many political and economic reasons for this, including the domestic-political desire for food self-sufficiency and the logistics and energy requirements of moving large quantities of basic foodstuffs long distances. Undoubtedly, world trade will be an important part of American agriculture, but basing our policies on the misguided belief we either do or must feed the world is foolhardy and dangerous.

If we were serious about feeding the world, especially the over one billion who hunger at night, it would require us to reconsider many fundamental issues. Our attitude toward climate change is one example. I attended part of the COP 15 talks in Copenhagen and can tell you that farmers from around the world know they are being directly impacted by a changing climate. But in the U.S., farm groups take pride in having led the effort to block Congressional action on the issue.⁷⁸ If the United States was serious about feeding the world, it is unclear how burning over sixty percent of Iowa's corn crop as fuel promotes this goal. This doesn't mean ethanol policy is bad for our state or nation, but it has an impact on world food prices and supplies. Our support for biofuels does mean we should be honest in matching our words and actions when it comes to claims of feeding the world.

The danger in the myth of "feeding the world" isn't just the misperception it leaves, but how it is used as a tool to prevent further discussion and to end conversations. Think how often you hear the response, "Well that is nice—but it won't feed the world." The "that" may be local food, organic production, or small-holder farms in the developing world. Helping the world develop more sustainable food supplies means many things: empowering small farmers and women, building institutions for training and education, and developing legal systems that allow for the development of productive and profitable farms.⁷⁹ Taking a broader approach, or a more democratic perspective, to answering the needs of farmers and consumers both in the United States and abroad will help us identify more effective and equitable answers and solutions. But the future of a secure food supply for the world cannot be premised on the notion American farmers can or should somehow shoulder this responsibility alone.

s/USTradeBalance.htm (showing U.S. trade imports at thirteen percent reflects Americans wanting what American farmers cannot produce or as cheaply as foreign producers).

78. For a discussion of the issue of climate change and its relation to American agriculture, see Neil D. Hamilton, *Farming an Uncertain Climate Future: What COP 15 Means for Agriculture*, 2011 U. ILL. L. REV. 341 (2011).

79. The role of law in helping promote agricultural development was the subject of my recent article. See Neil D. Hamilton, *Feeding the World's Future: Agrarian Justice and the Rule of Law*, 13 DRAKE J. AGRIC. L. 545 (2008).

VII. LEOPOLD, THE LAND ETHIC, AND STEWARDING THE LAND

There is a third critical legal issue facing our state and nation that will influence our ability to develop a sustainable farm and food future—our attitude about how we treat the land and the responsibilities that come with owning it. My path to law school was somewhat non-traditional, obtaining degrees in forestry and economics from Iowa State University and spending time on then-Congressman Harkin's staff. But my Adams County farm roots and love of nature meant agriculture was always in focus. In forestry school, I was introduced to the writings of Aldo Leopold, an Iowan and a forester. He helped articulate the foundation of the ecology movement—what we recognize today as environmental concerns. Leopold, for whom the Sustainable Agriculture Center at Iowa State University is named, described a land ethic in this way: “An ethic, ecologically, is a limitation on freedom of action in the struggle for existence. An ethic, philosophically, is a differentiation of social from anti-social conduct. These are two definitions of one thing.”⁸⁰

In perhaps his most powerful metaphor, Leopold wrote, “[w]hen the logic of history hungers for bread and we hand out a stone, we are at pains to explain how much the stone resembles bread.”⁸¹ He then described some of the stones we serve in lieu of a land ethic: an economic system that values little other than production, an educational system that teaches no ethical obligation to the land, and a political system that promotes conservation based primarily on economic self-interest.⁸² From a legal perspective, the way our society answers Leopold's call to stewardship is central to establishing the relations between man, society, and the land. These relations are also a reflection of our belief in democratic institutions, which balance private actions and ownership with responsibility to the public and the social welfare of the community. Leopold was not alone in decrying the way we treat the land in our country. Another Iowan, Henry A. Wallace, Secretary of Agriculture and Vice-President under FDR, wrote in the forward to *Soils & Men: The 1938 Yearbook of Agriculture*, “[t]he social lesson of soil waste is that no man has the right to destroy soil even if he does own it in fee simple. The soil requires a duty of man which we have been slow to recognize.”⁸³

80. ALDO LEOPOLD, *A SAND COUNTY ALMANAC: AND SKETCHES HERE AND THERE* 202 (1987); see also Neil D. Hamilton, *Feeding Our Green Future: Legal Responsibilities and Sustainable Agricultural Land Tenure*, 13 *DRAKE J. AGRIC. L.* 377, 379 (2008) (discussing Aldo Leopold's book and essays).

81. LEOPOLD, *supra* note 80, at 210.

82. See *id.* at 210-14.

83. Henry A. Wallace, *Forward to USDA, SOILS AND MEN: YEARBOOK OF AGRICULTURE* 1938, at v (1938).

My purpose in quoting Leopold and Wallace isn't just to point out that we have known for decades about our responsibility to steward the land. The key is to know these ideas are embedded in Iowa law. In a 1943 case *Benschoter v. Hakes*, the Iowa Supreme Court considered whether the legislature could regulate the owners of Iowa farmland in terminating farm tenancies.⁸⁴ In holding a law that requires advanced notice in order to end a farm lease to be constitutional, the Court held:

It is quite apparent that during recent years the old concept of duties and responsibilities . . . has undergone a change. Such persons, by controlling the food source of the nation, bear a certain responsibility to the general public. They possess a vital part of the national wealth, and legislation designed to stop waste and exploitation in the interest of the general public is within the sphere of the state's police power.⁸⁵

Today that law is one of the main protections for farm tenants who farm well over half of Iowa's land.

Consider Iowa Code section 161A.43 of our soil conservation law. It reads:

To conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil and water conservation districts.⁸⁶

In 1979, the Iowa Supreme Court faced a challenge to the law requiring landowners to comply with soil loss limits set by the soil conservation district.⁸⁷ In *Woodbury County Soil Conservation District v. Ortner*, the Court ruled:

It should take no extended discussion to demonstrate that agriculture is important to the welfare and prosperity of this state. It has been judicially recognized as our leading industry. . . .

The state has a vital interest in protecting its soil as the greatest of its natural resources, and it has the right to do so.⁸⁸

84. See generally *Benschoter v. Hakes*, 8 N.W.2d 481 (Iowa 1943) (holding that the law which requires advanced notice prior to farm tenancy termination is constitutional).

85. *Id.* at 487.

86. IOWA CODE § 161A.43 (2011).

87. See *Woodbury Cnty. Soil Conservation Dist. v. Ortner*, 279 N.W.2d 276 (Iowa 1979).

88. *Id.* at 278 (citation omitted).

These cases establish the duty that owners of Iowa farmland have, not just to protect the soil, but also to act in the public interest. Time has shown it is not quite that easy to enforce soil conservation. While USDA data indicates millions of acres of Iowa farmland lose soil at rates exceeding the limits,⁸⁹ soil conservation districts are largely unwilling to initiate actions to enforce Iowa's law. Many political and social reasons explain this behavior, though it is difficult to excuse. A recent explanation may have been given this Fall. A Des Moines Register article by Perry Beeman described the Iowa Policy Project, finding that only two percent of the nitrogen and phosphorous applied in Iowa is on yards and golf courses—culprits which agricultural groups often point to as the source of Iowa's water quality problems.⁹⁰ David Osterberg, co-author of the Policy Project, noted that ““We need to get past people trying to shift our focus to smaller sources of pollution Our central challenge to clean water in Iowa is, without question, our agricultural practices.””⁹¹

Rick Robinson, the Iowa Farm Bureau's environmental policy director, was quoted as saying the focus should be on solutions not blame, noting, ““People who point fingers at farmers are behind the curve The discussion has moved on to what is cost-effective.””⁹² So perhaps this is the new land ethic in Iowa, one based solely on economic self-interest of the landowners. Is it this easy for us to ignore the lessons of history or the rule of law? Is asking someone to accept responsibility for their actions “pointing fingers”? Our attitude of treating the land as simply an economic matter was the key log Leopold said we must change if we are serious about protecting the land. The question we will have to face: Are Iowa's landowners willing to accept responsibility or acknowledge their social duty to protect the land and the water? I believe that many of them are, but as the news article shows, there are some who believe Iowa's “new” test for land stewardship should be unless the public pays me, I can do whatever is in my economic interests regardless of the effect on the land or water.⁹³ If this is the answer we choose, then we should not wonder why Iowa's water quality continues to decline, our soils erode, and our natural resources disappear. Thankfully, if we have the wisdom to listen, the legal legacy of the Iowa courts should lead us to a different answer.

89. See NAT'L RES. CONSERVATION SERV., USDA, 2007 NATIONAL RESOURCES INVENTORY: SOIL EROSION ON CROPLAND 4, 20 (2010), available at http://www.nrcs.usda.gov/technical/NRI/2007/2007_NRI_Soil_Erosion.pdf.

90. Perry Beeman, *Farm Runoff Blamed for Fouled Waterways*, DES MOINES REG., Sept. 28, 2010, at B2.

91. *Id.* (quoting David Osterberg, Executive Director of the Iowa Policy Project).

92. *Id.* (quoting Rick Robinson, Environmental Policy Director of the Iowa Farm Bureau).

93. See generally *id.* (discussing Farm Bureau's support of incentive-based programs).

Today one might think our attitude to protecting farmland would be influenced by the increasing value and importance of farmland. It was recently reported that Iowa farmland values increased an average of 15.9% in 2010 to \$5064 an acre.⁹⁴ Given that we have over 30.7 million acres of farmland in the state,⁹⁵ the increase in value in 2010 alone was worth over \$21 billion. While we value our farmland, it is worth noting the amount of Iowa farmland decreased by over one million acres between 2002 and 2007.⁹⁶ For those familiar with Iowa to picture what that looks like, it is equal to 5.5 Dickinson Counties or 2.2 Kossuths. There are many explanations for the decrease in farmland, even in the face of increasing demand for corn ground, but major contributors are our unrestrained attitude toward urban sprawl and its first cousin, the undisciplined way Iowa allows communities to voluntarily annex more farmland for development.

Helping landowners act on their concerns about land stewardship is one of the goals of the Sustainable Agricultural Land Tenure project, an initiative the Center has undertaken with the Leopold Center.⁹⁷ In February 2011, the Center released the new Sustainable Farm Leasing Guide and other educational resources to assist farmers and landowners in finding ways to steward the land.⁹⁸ These concerns are especially important at a time when the concentration of land with older landowners means a large portion of Iowa will change hands in the next decades. The increases in absentee owners, and the corollary of increasing tenancy, make efforts to promote a land ethic even more important.

VIII. CONSUMER CONCERNS DRIVE DEMAND FOR BETTER FOOD

The future of food democracy will ultimately be measured by the manner in which public policy issues relating to food are addressed. In the last year, there have been a number of important legal developments relating to food policy, all which contribute in their own way to the future of food democracy.⁹⁹ Cen-

94. Press Release, Iowa State Univ. Extension, Average Value of Iowa Farmland Reaches \$5,064 in 2010 (Dec. 15, 2010), available at <http://www.extension.iastate.edu/news/2010/dec/161501.htm>.

95. NAT'L AGRIC. STATISTICS SERV., *supra* note 65, at 278 tbl.1.

96. *Id.* at 347 tbl.8.

97. Press Release, Leopold Ctr. for Sustainable Agric., Sustainable Agricultural Land Tenure Project Creates New Resources for Iowa Farmland Owners (Mar. 2, 2011), available at http://www.leopold.iastate.edu/news/newsreleases/2011/030211_land.html.

98. See <http://sustainablefarmlease.org/> and the various resources available there.

99. It was predictable that conflicts over issues of food safety and consumer choice would enter the national political and cultural debate. For an interesting discussion of these issues, see Brent Cunningham & Jane Black, *The New Front in the Culture Wars: Food*, WASH. POST, Nov. 27, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/26/AR2010112603494.html>.

tral to many of the developments discussed below is the question of consumer motivations. Many factors contribute to why consumers purchase the foods they do, exemplified through the steady growth in demand for organic food and the increasing number of farmers markets in the U.S. While the USDA will never acknowledge organics as a food safety or perhaps even a quality issue, it is clear many consumers perceive organic foods as safer. Organic food is one of the only ways consumers, who choose to do so, can avoid purchasing foods made with genetically modified ingredients. The last year has seen a number of important legal developments relating to food safety and related issues.

A. *Genetically Modified Salmon*

The newest chapter in the continuing debate about marketing and labeling genetically modified foods concerns recent FDA actions to approve the sale of genetically modified salmon.¹⁰⁰ While the FDA action had been long expected, it set off another round of debate not just on safety, but also whether consumers should have the right to know the salmon they are purchasing was genetically modified. The FDA is expected to rule no labeling is required, which follows U.S. precedent relating to other foods.¹⁰¹

B. *Federal Scrutiny Increases Potential for Regulations on Feeding Antibiotics*

One long-running controversy relating to food safety and livestock production practices has been the extensive feeding of antibiotics at subtherapeutic rates as a way to promote growth and suppress disease. The medical profession has long had concerns about how the overuse of antibiotics, especially those used to treat illness in humans, helps create the environment in which disease-resistant bacteria can evolve. Dr. Margaret Hamburg, head of the Food and Drug Administration, has been the voice on these concerns. It has been widely reported that FDA will propose new rules on using antibiotics to feed livestock, notably in the swine and poultry sectors.¹⁰² Critics of the practice point to the experience of

100. See Andrew Pollack, *Genetically Altered Salmon Get Closer to the Table*, N.Y. TIMES, June 26, 2010, at A1.

101. See Lyndsey Layton, *FDA Rules Won't Require Salmon Labels*, WASH. POST, Sept. 19, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/18/AR2010091803808.html>; Andrew Pollack, *Panel Leans in Favor of Engineered Salmon*, N.Y. TIMES, Sept. 21 2010, at B3.

102. See, e.g., Erik Eckholm, *Meat Farmers Brace for Limits on Antibiotics*, N.Y. TIMES, Sept. 15, 2010, <http://query.nytimes.com/gst/fullpage.html?res=9905EFDA143AF936A2575AC0A9669D8B63&scp=2&sq=&pagewanted=1>; Editorial, *We Are What We Eat*, N.Y. TIMES, Sept. 22, 2010, at A24; see also DAVID KIRBY, ANIMAL FACTORY: THE LOOMING THREAT OF INDUSTRIAL

Denmark, a major livestock producer, which banned antibiotics in feed without major disruption to production.¹⁰³ While livestock groups like the National Pork Producers Council are fighting any FDA action,¹⁰⁴ it may be only a matter of time until the practice is restricted either through regulation or voluntary action by drug manufacturers.

C. State Action on Animal Welfare Raises New Challenges for Farmers

A topic of concern to livestock producers is the issue of animal welfare, in particular, efforts led by the Humane Society of the United States to place the issue before voters. Proposition Two, passed in California in 2008, to outlaw battery cage production of eggs and other practices such as tethering sows,¹⁰⁵ is viewed as a major threat by many farm groups.¹⁰⁶ The issue of animal welfare, especially as applied to egg production, is a significant economic issue in Iowa, given the state's position as the leading egg producer. In early April 2010, the Humane Society unveiled a video alleged to show abuses in an Iowa egg facility.¹⁰⁷ The livestock industry is fighting back, in part by challenging the legitimacy and motivations of groups promoting these reports, in particular the Humane Society.¹⁰⁸ Livestock groups argue the animal welfare initiatives are misguided efforts that will drive up food prices, cause shortages, and put farmers out of business. Advocates argue they are trying to end the abusive practices the industry uses to increase efficiency at the cost of unneeded animal suffering. The reality is, in many ways, a clash of different cultures and perspectives on food production. The controversy over animal welfare took another turn when the Governor of Ohio urged an agreement between animal welfare advocates and live-

FIG, DAIRY, AND POULTRY FARMS TO HUMANS AND THE ENVIRONMENT 402 (2010); Donald Kennedy, *Cows on Drugs*, N.Y. TIMES, Apr. 18, 2010, at WK11 (presenting Op-Ed by former FDA Commissioner).

103. See Kennedy, *supra* note 102.

104. See Eckholm, *supra* note 102.

105. CAL. HEALTH & SAFETY CODE §§ 25990-25994 (West 2010).

106. Jesse McKinley, *A California Ballot Measure Offers Rights for Farm Animals*, N.Y. TIMES, Oct. 24, 2008, at A12.

107. See *Appalling Cruelties at Nation's Top Egg Producers*, HUMANE SOC'Y OF THE U.S. (Apr. 7, 2010), http://www.humanesociety.org/news/news/2010/04/investigation_rose_acre_rembRANDT_040710.html.

108. See Ben Goad & Janet Zimmerman, *Humane Society of the United States' Image Reshaped by Beef Recall*, THE PRESS-ENTERPRISE, Aug. 17, 2008, http://www.pe.com/localnews/inland/stories/PE_News_Local_S_humane17.34c29c1.html.

stock groups, which puts in place a process that will eventually end certain practices, such as cage production of eggs, in the state over time.¹⁰⁹

The animal welfare issue is a prime example of a topic where the agricultural sector believes the public has been misinformed and farmers have been mistreated by the type of information found in the popular media. The film *Food, Inc.*, which was nominated for an Academy Award, was perceived by many in agriculture as being anti-farmer, though an honest viewing of the movie finds little to support that view. Instead, the film, much like the books by Michael Pollan and others, can be seen as being anti-industrial agriculture. Much of the conflict and confusion over the impact of these sources relates to the distinction between “factory farms,” a term Pollan and others use to portray much of commercial agriculture, and “family farms,” a term farmers of all types and sizes claim. One response of the traditional farm groups has been to mount their own education and public relation campaign to counter what they see as consumer misinformation. For example, the National Cattlemen’s Beef Association has invested funds in “MBA,” an education program on some college campuses to train a new cadre of Masters of Beef Advocacy to counter the critics of agribusiness, such as Michael Pollan.¹¹⁰

1. *California Law Requires Eggs Imported After 2015 To Meet Animal Welfare Standards*

In July 2010, the state of California added another significant legal wrinkle to the animal welfare debate when the Governor signed A.B. 1437, a bill that requires all whole eggs sold in the state after January 1, 2015, come from hens that have been raised under the same guidelines as set out in Proposition 2.¹¹¹ The new California law raises significant issues about the impact of state laws on interstate commerce and has special resonance in Iowa, which provides forty percent of California’s imported eggs.¹¹²

109. See Erik Eckholm, *Farmers Lean to Truce on Animals’ Close Quarters*, N.Y. TIMES, Aug. 12, 2010, at A18 (also discussing the politics and implications of this issue).

110. See Wes Enzinna, *Big Meat vs. Michael Pollan*, MOTHER JONES (Nov.-Dec. 2010), <http://motherjones.com/environment/2010/11/michael-pollan-backlash-beef-advocacy> (highlighting the beef industry campaign to end the “Pollan-ation” of American college students).

111. A.B. 1437, 2009 Leg., Reg. Sess. (Cal. 2009) (codified as amended at Cal. Health & Safety Code § 25995 (West 2010)).

112. Scott Hensley, *Egg Recalls Ripple Through Food Supply*, SHOTS: NPR HEALTH BLOG (Aug. 24, 2010, 12:58 PM), <http://www.npr.org/blogs/health/2010/08/24/129400562/ag-recall-ripples-through-food-supply>.

2. Iowa “Bad Egg” Episode Challenges Integrity of Nation’s Food Safety System and Industrial-Scale Production

One of the biggest news food stories of 2010 concerned the recall of over 500 million eggs produced by Wright County Egg and an affiliated company Hillandale Farms owned and operated by Jack DeCoster and associates in Iowa. The episode involves the all too familiar recall of a food product due to contamination with salmonella, discovered after the CDC tracked an outbreak affecting over 1500 people.¹¹³ The story involved all the usual and expected elements:

- a. the “bad actor” farm operator with a long history of legal problems and compliance issues now branded an “outlaw” by politicians and other producers;
- b. the opportunity for food scientists to remind consumers of their “responsibility” and the growing need to treat some common foods as hazardous substances;
- c. the recriminations and disbelief that under our food safety rules no agency at the state or federal level ever inspected these facilities (or arguably was required to);
- d. the requisite finger-pointing between various levels of federal, state, and local officials about who should have known what and when;
- e. the flight of consumers from “industrial eggs” and the search for locally grown eggs with surging demand at farmers markets and interest in “growing your own;”
- f. the subsequent discovery of earlier tests showing the facility had knowledge of significant levels of salmonella contamination; sub-

113. There have been a multitude of articles on the Wright County Egg story. *See, e.g.*, Philip Brasher, *Egg Recall: Earlier Farm Tests Found 73 Cases of Salmonella*, DES MOINES REG., Sept. 15, 2010, at A1; Gardiner Harris, *Egg Producer Says His Business Grew Too Quickly*, N.Y. TIMES, Sept. 23, 2010, at B6; Gardiner Harris & William Neuman, *Salmonella Found in '08 at Egg Farm*, N.Y. TIMES, Sept. 15, 2010, <http://query.nytimes.com/gst/fullpage.html?res=9F00E5DC1F3BF936A2575AC0A9669D8B63>; William Neuman, *Growing Concern About Tainted Eggs After Recall*, N.Y. TIMES, Aug. 21, 2010, at B1; Elizabeth Weise, *Egg Industry Resorts To Blaming the Victim in Recall, Critics Say*, USA TODAY, Aug. 30, 2010, http://www.usatoday.com/money/industries/food/2010-08-29-egg-safety_N.htm.

sequent on-site investigations that revealed “shocking” conditions of filth and pests at the locations; and

- g. the expected litigation by lawyers representing people who became ill eating the eggs, with efforts to make the cases into a national class action.

IX. CONGRESS PASSES FOOD SAFETY REFORM DURING LAME DUCK SESSION

One of the most significant agriculture and food legislative actions facing Congress in 2010 was the effort to significantly reform America’s food safety laws. The bad-egg incident and other food safety scares provided additional fuel to the debate and increased expectations Congress would act. The House passed the legislation in the summer, but the Senate was not able to take action before the November elections.¹¹⁴ However, it is hard to believe the objections from just one Republican Senator were enough to block action on the food safety law until the lame duck session, illustrating what some might argue is the institutional dysfunction of the U.S. Senate to be able to act even when the leadership of both parties is in agreement.¹¹⁵ The road to ultimate passage of the bill was somewhat tortured because even after the Senate returned in November, the first effort to pass the bill was considered unconstitutional since it created new fees that had not originated in the House.¹¹⁶ The House and Senate were finally able to muster support to pass the law¹¹⁷ and in early January 2011 the President signed H.R. 2751 into law.¹¹⁸ One issue that complicated consideration of the law was how it might impact local food producers, such as farmers market vendors and CSA growers, by requiring fees to obtain licenses from FDA and setting traceability requirements and food safety standards. The Sustainable Agriculture Coalition

114. See FDA Food Safety Modernization Act, S. 510, 111th Cong. (2009); Food Safety Enhancement Act of 2009, H.R. 2749, 111th Cong. (2009). For a thorough discussion of the food safety debate, see Kristin Choo, *Hungry for Change*, A.B.A. J., Sept. 1, 2009, available at http://www.abajournal.com/magazine/article/hungry_for_change/.

115. Majority Leader Reid announced on September 16, 2010, the Senate would not be able to act on the long-pending Food Safety Bill H.R. 2749 because of objections from Senator Tim Coburn, R-Oklahoma. See Gardiner Harris, *Senate Bill Addressing Food Safety Is Stalled*, N.Y. TIMES, Sept. 19, 2010, at A22.

116. Associated Press, *Fixing Error, Senate Passes Food Bill Again*, N.Y. TIMES, Dec. 20, 2010, at A15.

117. See *id.*; William Neuman, *House Passes Overhaul of Food Laws*, N.Y. TIMES, Dec. 22, 2010, at B1.

118. See Paul E. Benson et al., *President Obama Signs Food Safety Modernization Bill Into Law*, NAT’L L. REV. (Jan. 5, 2011), <http://www.natlawreview.com/article/president-obama-signs-food-safety-modernization-bill-law>.

worked with its members to support a series of amendments that addressed many of these concerns.¹¹⁹

X. CONCLUSION—FOOD DEMOCRACY IS AN INGREDIENT IN OUR SUSTAINABLE FUTURE

Having devoted this essay and others to the theme of food democracy, it should come as no surprise that I am optimistic about the future. I recently read Prince Charles' book *Harmony* and found it to be a valuable discussion, in part because he reminds us how important it is to appreciate the role of beauty in nature and the importance of human enjoyment as values in creating a sustainable future.¹²⁰ The issues of beauty, enjoyment, and personal satisfaction are often overlooked in our discussions of law and policy and economics. But these issues are fundamental to our lives, and their pursuit—the pursuit of happiness—is what leads us to the choices we make, whether that is to leave college and seek a future as a farmer, to raise a flock of chickens in the backyard, to plant a garden with your kids, or to share with your family and friends delicious food you bought from a farmer you know. All these actions have as a common theme the ideals of enjoyment and personal choice. The legal issues discussed in this essay also share many common elements, ranging from questions of who will farm to what we will eat, but underpinning all of them is the future. From my perspective the forces underlying many developments, most notably the interest of a new generation of people in farming and the desire by consumers for better food, are powerful, positive and unstoppable. They reflect opportunities for individuals, for communities, for businesses, and for the nation.

Our food future is bright—we have no other choice. In the days and years ahead, we will all eat, there will be food on the shelves and in the markets, someone will own the land, and someone will farm it. But what the farming and food system looks like and how it is structured and functions will be influenced by our actions, as citizens, as landowners, and as business people. Our actions will shape how sustainable the food system is and how well it serves the needs of society and individuals. The laws we write, the goals we pursue, and the choices we make help determine the health of the system we create. Sustainability is not something somebody else does for us—it is something we choose in the decisions we make and the foods we eat.

119. For a discussion of the amendments, go to <http://sustainableagriculture.net/blog/senate-food-safety-bill/>. The legislation exempts direct sales, but the issue of food safety will always be an important challenge for local producers.

120. CHARLES HRH THE PRINCE OF WALES, *HARMONY: A NEW WAY OF LOOKING AT OUR WORLD* (2010).