

SYMPOSIUM

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Keynote Address[†]

Farms, Food, and the Future: Legal Issues and Fifteen Years of the “New Agriculture”

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I have been involved with agriculture since the moment of my conception on our 200-acre family farm in Mercer Township, Adams County, Iowa; land that has been in my family since the 1870s. Thirty-five years ago, I was a college intern for a young first-term Congressman from southwest Iowa, Tom Harkin, who today serves as chair of the U.S. Senate Committee on Health, Education, Labor, and Pensions, where he is known as a champion of childhood nutrition and food safety, and twice served as chair of the Senate Agriculture committee. My experience in 1975 helped lead to law school, where I found my passion and future in what is now called agricultural law. My professional career of more than thirty years has been spent as a lawyer and law professor focusing on legal issues affecting farmers, agriculture, food, land, and rural development. I have taught classes on most aspects of agriculture and food law, written numerous books and articles for farmers and lawyers, and lectured widely on a variety of topics: in particular those relating to sustainable agriculture, direct marketing, and policies to create opportunities in our food and farming system.

I

PROGRESS AND THE NEW AGRICULTURE

Fifteen years ago, my article *Tending the Seeds: The Emergence of a New Agriculture in the United States*, published in the inaugural issue of our *Drake Journal of Agricultural Law*, set out a vision for the new food system I believed was emerging in the United States.¹ It was a food system based on growing demand for local food production, using food policy councils to craft laws to support healthy food systems and vibrant communities, and based on a policy environment that helped create new opportunities for people to farm and steward the land. Those insights and that article, as well as several other articles, grew out of my work on both sustainable agriculture and a sabbatical spent travelling the country to visit many of the people and organizations that were leading the way to this new food future. In hindsight I now recognize my search was also an effort to find optimism and hope in our food system. In traditional farm country these sentiments were in short supply, as the people were still

¹ Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 DRAKE J. AGRIC. L. 7 (1996). See also Neil D. Hamilton, *Greening Our Garden: Public Policies to Support the New Agriculture*, 2 DRAKE J. AGRIC. L. 357 (1997).

reeling from the farm debt crisis of the 1980s and stumbling toward the new industrialized future that awaited them.²

At that time my interest was in how we can use the law as a tool to help promote the promising developments creating new opportunities for farmers, consumers, communities, and the land. In the years that followed, I have been fortunate to have a front row seat working with organizations and political leaders helping make the vision of the New Agriculture a reality. Hopefully, in small ways my work has helped lay the foundation for some of the new programs and policies that are supporting the New Agriculture today: actions such as creating food policy councils, including the Iowa Food Policy Council I chaired for six years for then-Governor Vilsack;³ the expansion of direct marketing opportunities, including the 1998 book I wrote for the USDA, *The Legal Guide for Direct Farm Marketing*, which is still in demand;⁴ and promotion and educational efforts to support local food movements, such as the Buy Fresh Buy Local effort the Drake University Agricultural Law Center has administered in central Iowa for many years.⁵

I will now discuss a series of current legal and policy developments now underway in the United States which are shaping America's farm and food future, continuing our movement toward the New Agriculture predicted fifteen years ago; I will also describe some of the examples and opportunities for how lawyers and law students can use the law to help influence the direction and impact of these social movements. The critical lesson of the last fifteen years is that while the mechanisms of law and justice may appear to move slowly, when they are measured over time our progress toward a more just, progressive, and democratic society is inexorable.⁶

² See Neil D. Hamilton, *Agriculture Without Farmers? Is Industrialization Restructuring American Food Production and Threatening the Future of Sustainable Agriculture?*, 14 N. ILL. U. L. REV. 613, 630–37 (1994); Neil D. Hamilton, *Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 DRAKE L. REV. 289 (1997).

³ See generally Neil D. Hamilton, *Putting A Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 DRAKE J. AGRIC. L. 407 (2002).

⁴ See NEIL D. HAMILTON, *THE LEGAL GUIDE FOR DIRECT FARM MARKETING* (1999).

⁵ See Neil D. Hamilton, *Agricultural Law Center 2008–09 Report: Celebrating 26 Years of Serving the Agricultural and Legal Communities*, DRAKE U. AGRIC. LAW CENTER (July 1, 2009), <http://www.law.drake.edu/academics/agLaw/docs/welcome2009AnnualRpt-0809AnnualReport.pdf> (discussing Drake's work on Buy Fresh Buy Local for the Greater Des Moines area).

⁶ 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>

II
EIGHT FORCES
SHAPING OUR FUTURE FOOD AND FARMING SYSTEM

From my perspective, there are at least eight key forces shaping the future of food and farming, especially relating to the continuing development of a food system more responsive to concerns over healthy foods, creating opportunities for new farmers, and the impact on land stewardship. It is valuable to consider why each development is happening, the type of legal challenges or obstacles associated with the development, and how law and policy may be used to help make progress on the issue. The eight forces are:

1. The increasing interest in becoming involved in farming;
2. The growing interest in food policy and the role of law;
3. The expanding forms of direct farm marketing;
4. Continued growth in consumer interest in eating “better” foods;
5. The growth in urban agriculture;
6. Renewed attention to childhood obesity, nutrition, and school food;
7. Food artisans and using food for rural economic development; and
8. The relation between farmland ownership and sustainable land tenure.

Of course, there are many other important forces coursing through America’s agriculture sector, such as the future of federal farm programs, the growth in the bio-fuels sector, and the role of foreign trade, but the eight issues this essay will address are familiar to most readers because they are happening all around us in every region and every community. Consider this brief review of how we see these eight forces in action in our states.

A. New Interest in Farming

It is clear many people in the younger generation are seeking the opportunity to be involved with raising food and caring for the land. Growth in student-run college farms and support for organizations such as Real Food Challenge are happening on campuses across the nation. The demand for on-farm internships and opportunities to work

</2010/11/26/AR2010112603494.html> (discussing how the differences in attitudes over food may be the latest front in the American clash over political and cultural values).

and learn about farming outpace the availability of those jobs, and also raise unique challenges about the application of labor laws to education and training positions.

In my mind, there is no more important challenge facing our nation's food and farming sectors than who the next generation of American farmers will be. This is why Drake's Agricultural Law Center teamed up with the USDA Risk Management Agency, Farm Credit, and dozens of other partners to hold a two-day forum titled America's New Farmers: Policy Innovations and Opportunities.⁷ The good news is that there is wide interest in the topic and recognition of its importance. More than 200 people from forty states attended the forum and shared promising examples of actions being taken at the local and state levels to support new farmers. Discussions addressed the challenges of financing new farmers and of working with landowners to make land available for new operations.

Our nation and rural communities need the energy of new families to help steward the land, produce our food, and build the rural economy. But we have yet to develop a comprehensive approach or national commitment to helping the next generation of farmers, and time is of the essence. The aging farm population, the concentration of land with older owners, transfers to off-farm or often out-of-state heirs, and increasing farm tenancy all create significant challenges to the sustainability of agriculture, the health of rural communities, and even the design of farm programs.

The 2008 farm bill took several important steps to address new farmers, including funding the Beginning Farmer and Rancher Development Grants, targeting Farm Service Agency loans to new and beginning farmers, and directing the new USDA Office of Advocacy and Outreach to coordinate beginning farmer efforts.⁸

⁷ Wash., D.C. (March 4–5, 2010). See *Beginning Farmers*, DRAKE U. AGRIC. LAW CENTER, <http://www.law.drake.edu/academics/agLaw/?pageID=beginningFarmers> (last visited Mar. 29, 2011) (containing information from the forum such as podcasts of the fifty speakers, including remarks by Secretary of Agriculture Vilsack).

⁸ The USDA administers a variety of programs for new farmers, many of which were created by the 2008 farm bill. See *2008 NRCS Farm Bill Conservation Programs*, NAT. RESOURCES CONSERVATION SERVICE, <http://www.nrcs.usda.gov/programs/farbill/2008/index.html> (last updated Mar. 10, 2011); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, 122 Stat. 1651 (2008). These programs included new competitive grants under the Beginning Farmer and Rancher Development Program totaling more than \$17 million in grants in 2009 and 2010. See *Grants Beginning Farmer and Rancher Development Program*, NAT'L INST. FOOD & AGRIC., <http://www.csrees.usda.gov/fo/beginningfarmerandrancher.cfm> (last updated Oct. 26, 2010). The Conservation Reserve Program Transition Incentives Program offers financial incentives to landowners who

There are numerous other opportunities to support new farmers; one such opportunity is to build on the many state programs that attempt to match new farmers with landowners and retiring farmers. The California Farm Link⁹ is a good example, as is the growth in new farmer training and incubator efforts, such as the Land Stewardship Project Farm Beginnings work happening in Minnesota and Illinois.¹⁰

There is even an opportunity to create a national New Farmer Corps to create public service opportunities in the food and agriculture sector, an idea I described in a widely circulated opinion piece in the *Des Moines Register* after the November 2008 election.¹¹ In May 2010, a group met in Detroit to craft a Food Corps pilot project within AmeriCorps designed to help people work with school gardens and educate kids about nutrition, food, and farming. The initiative has received funds from AmeriCorps and several foundations, and by the fall of 2012 more than fifty new volunteers will be working in schools across the country—another example of how ideas to help improve our food and farming system can be turned into reality and opportunity.¹²

B. Food Policy Councils

The creation of local food policy councils, such as the Portland-Multnomah Council in Oregon, are creating forums for citizens to improve how the food economy works, from food access to sustainable design. The idea is to empower a group of representatives from across the food system to propose policy changes to local officials. The Drake Agricultural Law Center helped fund the creation of new food policy councils for several years under a cooperative

assist new farmers obtain access to land exiting the Conservation Reserve Program. See *Fact Sheet*, FARM SERVICE AGENCY, U.S. DEP'T AGRIC. (May 2010), http://www.fsa.usda.gov/Internet/FSA_File/tip051410.pdf (USDA fact sheet). The Department has also reappointed the Advisory Committee on Beginning Farmers and Ranchers, and is looking to the new Office of Advocacy and Outreach to help lead a focused effort to develop more effective effort to support new farming operations.

⁹ See CALIFORNIA FARMLINK, <http://www.californiafarmlink.org> (last visited Mar. 29, 2011) (providing information on programs offered by California farm link).

¹⁰ See *Farm Beginnings*, LAND STEWARDSHIP PROJECT, <http://www.landstewardshipproject.org/farmbeg.html> (last visited Mar. 29, 2011) (providing information about the Land Stewardship Project and its Farm Beginnings program).

¹¹ Neil Hamilton, *Obama Should Launch a New Farmer Corps*, DES MOINES REGISTER, Dec. 1, 2008, at 7A, available at <http://www.law.drake.edu/academics/agLaw/docs/press-obamaLaunchNewFarmerCorps.pdf>.

¹² See FOOD CORPS, <http://www.food-corps.org> (last visited Mar. 29, 2011) (the Food Corps initiative).

agreement with the USDA Risk Management Agency.¹³ Today many of the communities that are implementing comprehensive plans to increase urban agriculture are doing so by creating or acting on recommendations of local food policy councils.¹⁴

On August 16, 2010, the Seattle City Council approved Council Ordinance 123378 updating the city's land use code as relates to urban agriculture.¹⁵ The action was taken as part of the 2010 Year of Urban Agriculture initiative and is designed to address issues relating to urban farms, community gardens, and the ability of city residents to sell food grown on their property.¹⁶ The ordinance expands the locations where farmers' markets can be operated and authorizes use of rooftop greenhouses.¹⁷ The ordinance also addresses the increasingly popular "city chicken" issue and establishes rules for maintaining backyard flocks.¹⁸ In September, Los Angeles adopted a new food agenda that included creating a food policy council and the issuance of a major report concerning the city's food system.¹⁹ Many states have made such efforts. For example, in August 2010,

¹³ See *Question and Answers*, ST. & LOC. FOOD POL'Y COUNCILS, <http://www.statefoodpolicy.org/?pageID=qanda> (last visited Mar. 29, 2011).

¹⁴ See *id.*; *Policy Guide on Community and Regional Food Planning*, AM. PLAN. ASS'N, <http://www.planning.org/policy/guides/adopted/food.htm> (last visited Mar. 29, 2011).

¹⁵ Seattle, Wash., Ordinance 123378 (Aug. 23, 2010) (to be codified as amended at SEATTLE MUNICIPAL CODE §§ 23.40.002, 23.42.052, 23.43.006, 23.43.040, 23.44.006, 23.44.040, 23.45.504, 23.45.506, 23.45.508, 23.45.514, 23.45.545, 23.47A.004, 23.47A.011, 23.47A.012, 23.48.010, 23.49.008, 23.50.012, 23.50.020, 23.54.015, 23.84A.002, 23.84A.014, and 23.84A.036 (2010)).

¹⁶ See *2010: Year of Urban Agriculture*, SEATTLE.GOV, <http://www.seattle.gov/urbanagriculture/> (last visited Mar. 29, 2011).

¹⁷ Seattle, Wash., Ordinance 123378 (Aug. 23, 2010) (to be codified as amended at SEATTLE MUNICIPAL CODE §§ 23.40.002, 23.42.052, 23.43.006, 23.43.040, 23.44.006, 23.44.040, 23.45.504, 23.45.506, 23.45.508, 23.45.514, 23.45.545, 23.47A.004, 23.47A.011, 23.47A.012, 23.48.010, 23.49.008, 23.50.012, 23.50.020, 23.54.015, 23.84A.002, 23.84A.014, and 23.84A.036 (2010)).

¹⁸ See *Resources for Residents Who Want to Raise Chickens in Seattle*, SEATTLE.GOV, http://www.seattle.gov/council/urbanagriculture/chickens_in_city.htm (last visited Mar. 29, 2011).

¹⁹ See L.A. FOOD POLICY TASK FORCE, *THE GOOD FOOD FOR ALL AGENDA: CREATING A NEW REGIONAL FOOD SYSTEM FOR LOS ANGELES* (2010), available at http://goodfoodlosangeles.files.wordpress.com/2010/07/good-food-full_report_single_072010.pdf. See also Mary MacVean, *Panel Seeks to Use L.A.'s Abundance of Fresh Food in Fight Against Childhood Obesity*, L.A. TIMES (Oct. 4, 2010), <http://articles.latimes.com/2010/oct/04/local/la-me-food-policy-20101004>.

Massachusetts approved Chapter 277, Acts of 2010, establishing the Massachusetts Food Policy Council.²⁰

C. Farmers' Markets

The growth in farmers' markets and ways for consumers to connect with farmers is transforming not just the economics of farming but linking people to those who help feed them. In August 2010, the USDA released a report showing that there are now more than 6100 farmer's markets in the country.²¹ In May 2010, the Iowa Department of Agriculture and Land Stewardship released a survey showing that in 2009, Iowa's 223 farmers' markets contributed close to \$60 million in direct sales and an additional \$12 million in personal income to Iowa's economy. Farmers' markets are in many ways the most critical element in not just the local food movement, but in the trend toward a new agriculture.

Consider the many ways in which farmers' markets contribute to the food system: they offer opportunities for residents to buy fresh healthy food directly from the farmers who grow the food; they offer farmers relatively low-cost methods to access large numbers of consumers in concentrated places; farmers are able to sell their products at retail prices and generally for cash; farmers' markets are increasingly being used as important places for the delivery of food assistance programs, such as SNAP or food stamp benefits, and are being used to test innovative methods, such as doubling benefits for fresh produce to increase the access to healthy food by people of limited means;²² and the farmers' markets are critical tools for urban planning and efforts to revitalize neighborhoods by stabilizing land values and increasing public use—the result has been that in some

²⁰ Act of Aug. 9, 2010, ch. 277, 2010 Mass. Acts __ (to be codified at MASS. GEN. LAWS ch. 20 § 6C (2010)), available at <http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter277> (providing the text of the statute).

²¹ See *Farmers Markets and Local Marketing*, AGRIC. MARKETING SERVICE, <http://www.ams.usda.gov/AMSv1.0/FARMERSMARKETS> (last updated Mar. 29, 2011) (USDA farmers market directory).

²² Wholesome Wave Foundation has developed an innovative program using private funds to double food stamp benefits (now supplemental nutrition assistance program or SNAP) if the funds are used to purchase produce from farmers. See Natasha Singer, *Eat an Apple (Doctor's Orders): Produce by "Prescription" Seeks to Address Childhood Obesity*, N.Y. TIMES, Aug. 13, 2010, at B1, available at <http://www.nytimes.com/2010/08/13/business/13veggies.html> (discussing the project and the effort in Boston to have doctors prescribe fresh produce to address obesity).

regions there is more demand to create farmers' markets than there are available farmers.

One year ago the USDA launched a new Know Your Food Know Your Farmer campaign to promote local food and to identify how USDA programs can assist this development.²³ In April 2010, several Republican Senators, led by John McCain, sent a letter to the Secretary of Agriculture criticizing Know Your Farmer and efforts to support local markets as “completely detached from the realities of production agriculture” and “aimed at small, hobbyist and organic producers whose customers” are affluent urban locavores.²⁴ These characterizations of the markets, farmers, and shoppers are inaccurate and unhelpful. When testifying before the House Agriculture Committee in May 2010, I suggested that “few of the 30,000 central Iowans [at the] opening day [of] the Des Moines farmers market [on] May 1st would either recognize or deserve the label ‘affluent locavore.’”²⁵ Instead, “[t]hey are hard working Iowans [who were] looking for fresh local food, an opportunity to socialize with friends after a long winter, and the chance to spend some money and reconnect with the 200 farmers and vendors who make up the market.”²⁶

If you look at a farmers' market and see only the shoppers, you are looking at just one side of the equation. If you follow the pickups and vans back home to Mingo and Lacona, and the hundreds of small towns where farmers live, then you will see farmers counting the day's sales on their kitchen tables. There you will find urban money flowing back to farms and rural towns where it is spent and invested by thousands of farms and businesses. These farms will not feed the world, but no one said they would. They do help feed millions of citizens and support thousands of family farms—and they create opportunities for new farmers to get a foothold in agriculture.

²³ See KNOW YOUR FARMER KNOW YOUR FOOD, <http://www.usda.gov/wps/portal/usda/knowyourfarmer?navid=KNOWYOURFARMER> (last visited Mar. 29, 2011).

²⁴ See Susan Schneider, *Senators Challenge “Know Your Farmer” Program*, AGRIC. L. (Apr. 29, 2010, 8:42 AM), <http://aglaw.blogspot.com/2010/04/senators-challenge-know-your-farmer.html> (discussing the letter).

²⁵ See *Hearing to Review U.S. Agriculture Policy in Advance of the 2012 Farm Bill with Agriculture Economists and Academics Before the H. Comm. on Agric.*, 111th Cong. 2 (2010) (testimony of Professor Neil D. Hamilton, Professor and Director, Agricultural Law Center, Drake University) available at <http://www.law.drake.edu/academics/aglaw/docs/agLaw-testimonyHouseAgCommittee.pdf>.

²⁶ *Id.*

D. Consumer Interest in Better Food

It is apparent that a growing share of eaters want to know more about their food and are looking for foods they believe to be better—better in a number of ways. Nobody goes to the farmers' market because the grocery stores are out of food or because our food supply is unsafe. The millions of eaters who buy local have many motivations for spending money with local farmers. Similarly, the continued demand for organic food is evidence of the consumer's desire for food believed to be better in some way, even though it may often be more expensive. Food safety fears, interest in organic foods, attention to nutrition, and concern over animal welfare issues are just some of the many reasons consumers decide to purchase products produced or marketed in ways to communicate more satisfaction. The reality is that many consumers are not necessarily looking for cheaper food—they are looking for better food, whatever that means to them.

For example, many factors contribute to why consumers purchase organic food, including food safety concerns. The USDA will never acknowledge organics as a food safety or even quality issue, but it is clear many consumers perceive organic foods as being safer. Organic food is one of the only ways consumers can avoid purchasing foods made with genetically modified ingredients. The last year has seen a number of developments relating to food safety and genetically modified food, and one side effect has been to increase demand for organic or locally grow food. Consider these two examples:

1. 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.²⁷ The FDA action had long been expected. It set off another round of debate not just on the safety of the salmon but on whether consumers should have the right to know when the salmon they are purchasing has been

²⁷ See, e.g., Andrew Pollack, *Genetically Altered Salmon Get Closer to the Table*, N.Y. TIMES, June 26, 2010, at A1, available at <http://www.nytimes.com/2010/06/26/business/26salmon.html>.

genetically modified.²⁸ The FDA is expected to rule that no labeling is required, keeping with the U.S. precedence relating to other foods.²⁹

2. *Federal Scrutiny May Restrict Feeding Antibiotics as Growth Promoters*

One long-running controversy relating to food safety and livestock production is the extensive feeding of antibiotics at sub-therapeutic 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, may help create an environment in which disease-resistant bacteria can evolve. These concerns have found an important voice in Dr. Margaret Hamburg, head of the FDA. In 2010 it was widely reported that the FDA would propose new rules on using antibiotics to feed livestock, notably in the swine and poultry sectors.³⁰ Critics of the practice point to the experience of Denmark, a major livestock producer, which banned the practice without disrupting production.³¹ While livestock groups such as the National Pork Producers Council are fighting any FDA action on the matter,³² it may only be a matter of time until the practice is restricted.

²⁸ See *id.*; *Do We Have a Right to Know If Our Food Has Been Genetically Modified?*, ALEX JONES' INFOWARS.COM (Oct. 5, 2010), <http://www.infowars.com/do-we-have-a-right-to-know-if-our-food-has-been-genetically-modified/>.

²⁹ See, e.g., Lyndsey Layton, *FDA Rules Won't Require Labeling of Genetically Modified Salmon*, WASH. POST, Sept. 18, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/18/AR2010091803520.html>; Andrew Pollack, *Panel Leans in Favor Of Engineered Salmon*, N.Y. TIMES, Sept. 20, 2010, at B3, available at <http://www.nytimes.com/2010/09/21/business/energy-environment/21salmon.html>.

³⁰ See, e.g., Erik Eckholm, *U.S. Meat Farmers Brace for Limits on Antibiotics*, N.Y. TIMES, Sept. 15, 2010, at A14, available at <http://www.nytimes.com/2010/09/15/us/15farm.html>; Editorial, *We Are What We Eat*, N.Y. TIMES, Sept. 22, 2010, at A24, available at <http://www.nytimes.com/2010/09/22/opinion/22wed4.html>. See also DAVID KIRBY, *ANIMAL FACTORY: THE LOOMING THREAT OF INDUSTRIAL PIG, DAIRY, AND POULTRY FARMS TO HUMANS AND THE ENVIRONMENT* (2010); Donald Kennedy, *Cows on Drugs*, N.Y. TIMES, Apr. 18, 2010, at WK11, available at <http://www.nytimes.com/2010/04/18/opinion/18kennedy.html> (op-ed by former FDA Commissioner).

³¹ See *FMI Backgrounder: Low-Level Use of Antibiotics in Livestock and Poultry*, FOOD MARKETING INST., <http://www.fmi.org/docs/media/bg/antibiotics.pdf> (last visited Mar. 29, 2011).

³² See generally *Antimicrobials/Antibiotics*, NAT'L PORK PRODUCERS COUNCIL, <http://www.nppc.org/issues/antimicrobials.htm> (last visited Mar. 29, 2011).

E. Urban Agriculture

One response to the growing demand for locally grown food has been to increase the opportunity for agriculture to happen close by, even in the city.³³ On August 29, 2010, the popular show CBS Sunday Morning aired the segment “Field of Greens: The Growth in Farmers Markets.”³⁴ The show documented the trend towards urban farms, including rooftop gardens and the related expansion of farmers’ markets.³⁵ The growth in urban agriculture—perhaps best symbolized by the “city chicken” movement—has led a number of major cities to examine their land use and zoning laws and enact policies designed to promote opportunities for urban agriculture.³⁶ In this way, many communities are working to support urban agriculture by amending local zoning ordinances to remove obstacles which might prevent the growth of urban farming in a city’s food system. For example, by allowing people to plant gardens on their lots or allowing food raised at community gardens to be sold at farmers’ markets, cities can open new opportunities for farmers and consumers alike.³⁷ One of the most powerful and inspirational examples of an urban agriculture initiative is Growing Power, the organization created and led by Will Allen in Milwaukee, Wisconsin.³⁸ Mr. Allen, who received a MacArthur genius grant award for his work on urban agriculture, is a frequent speaker at conferences around the nation promoting this opportunity.

³³ See, e.g., Kim Severson, *For a Healthier Bronx, A Farm of Their Own*, N.Y. TIMES, June 23, 2010, at D1, available at <http://www.nytimes.com/2010/06/23/dining/23bronx.html>.

³⁴ CBS Sunday Morning: *Field of Greens: The Growth in Farmers Markets* (CBS television broadcast Aug. 29, 2010), available at <http://www.cbsnews.com/stories/2010/08/29/sunday/main6816240.shtml>.

³⁵ See *id.*

³⁶ The topic of urban agriculture has been the subject of several recent legal articles. See, e.g., Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225 (2010); Kathryn A. Peters, *Creating a Sustainable Urban Agriculture Revolution*, 25 J. ENVTL. L. & LITIG. 203 (2010).

³⁷ See Julie Scharper, *City Farms Could Flourish Under New Zoning Code: Planners Want to Make Baltimore Healthier, More Walkable*, BALT. SUN (June 14, 2010), http://articles.baltimoresun.com/2010-06-14/news/bs-md-ci-zoning-public-health-20100613_1_zoning-code-thomas-j-stosur-draft-code. See also *Planning/Food Policy Task Force*, BALTIMORECITY.ORG, <http://www.baltimorecity.gov/Government/Agencies/Departments/Planning/FoodPolicyTaskForce.aspx> (last visited Mar. 29, 2011) (Baltimore Food Policy Council).

³⁸ See GROWING POWER, INC., <http://www.growingpower.org> (last visited Mar. 29, 2011) (providing information about Growing Power and its programs).

In June 2010, Kansas City joined the ranks of major urban areas enacting comprehensive amendments to land use rules designed to promote the expansion of urban agriculture. The efforts were led by the work of the Kansas City Food Policy Council and the Kansas City Center for Urban Agriculture—two of the nation’s leading organizations on the topic. The amendments come after a multiyear process to develop, review, and refine the regulations, and include an eighteen-month implementation review process by the city council. The ordinances address many issues including the ability of homeowners to grow produce in their front yard for their own consumption or to sell.³⁹

F. Nutrition, Health, and School Food

Perhaps the most exciting addition to the study of agricultural law in the last fifteen years has been the evolution to include food law issues. In this area the nation’s new attention to nutrition, obesity, and other directly related diseases—especially among children—is opening new fields of study and policy action. President Obama and First Lady Michelle Obama’s support for healthy eating and ending childhood hunger and obesity have given the topics extensive press coverage; for example, consider the press coverage given to the White House Garden.⁴⁰ Their efforts are bringing new attention to gardening, food, and the relation to children’s health, and those efforts have led to actions such as the new farmers’ market on Vermont Avenue, the First Lady’s public involvement in the debate over childhood obesity, and the Let’s Move campaign.⁴¹

There is a growing debate in the nation over nutrition- and diet-related illnesses, in particular obesity 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

³⁹ See KAN. CITY CENTER FOR URB. AGRIC., <http://www.kccua.org> (last visited Mar. 29, 2010) (providing information about the various actions taking place in Kansas City).

⁴⁰ See, e.g., Marian Burros, *Obamas to Plant Vegetable Garden at White House*, N.Y. TIMES, Mar. 20, 2009, at A1, available at <http://www.nytimes.com/2009/03/20/dining/20garden.html>; Natasha Metzler, *Michelle Obama Expands the White House Garden*, THE CHRISTIAN SCI. MONITOR (Apr. 1, 2010), <http://www.csmonitor.com/The-Culture/Gardening/2010/0401/Michelle-Obama-expands-the-White-House-garden>; Jason Djang, *The Story of the White House Garden*, THE WHITE HOUSE BLOG (Aug. 31, 2009, 2:00 PM), <http://www.whitehouse.gov/blog/The-Story-of-the-White-House-Garden/>.

⁴¹ See *FRESHFARM Markets, by the White House*, FRESHFARM MARKETS, http://freshfarmmarkets.org/markets/white_house.html (last visited Apr. 5, 2011); LET’S MOVE, <http://www.letsmove.gov> (last visited Apr. 5, 2011).

Jamie Oliver and his work to change the school food practices of Huntington, West Virginia.⁴² Increased attention to nutrition and opportunities to expand markets for locally grown fruits and vegetables are methods to improve healthy food options and have resulted in a significant number of innovative and experimental efforts.⁴³ The issue of childhood nutrition and funding for school lunch programs triggered a major controversy in the nutrition and hunger communities in October 2010. Congress faced a vote on whether to endorse the Senate version of the legislation, which was controversial because increased costs would be paid through reductions in future SNAP benefits, or the House version with higher funding and no raid of SNAP. The political reality is that the choice came down to the Senate bill or no action, in part due to the calendar of Congressional action.⁴⁴

G. Rural Development

Over the last fifteen years, the topic of agricultural law—or least how we approach it from an academic and teaching opportunity—has expanded to include issues of food law and issues of rural economic development. In this regard, there is a growing recognition of how the work of food artisans—the people investing their lives and money to produce food products as cheese makers, brewers, bakers and wine makers—are themselves a key element in economic development and the health of the farm and food economy—especially for rural America. One key theme of the USDA under Secretary Vilsack has been the need to revitalize rural America, and the USDA has developed an aggressive program to utilize the various authorities of Rural Development and other USDA programs to assist this effort. The Secretary has identified what he describes as the five pillars of rural development around which USDA is building its efforts, including broadband, renewable energy and biofuels, regional food

⁴² See Kim Severson, *A TV Show and Congress Tackle School Lunches*, N.Y. TIMES, Mar. 31, 2010, at D2, available at <http://www.nytimes.com/2010/03/31/dining/31lunch.html>.

⁴³ See Kim Severson, *Told to Eat Its Vegetables, America Orders Fries*, N.Y. TIMES, Sept. 25, 2010, at A1, available at <http://www.nytimes.com/2010/09/25/health/policy/25vegetables.html> (discussing the difficulties in getting people to eat more vegetables).

⁴⁴ See Robert Pear, *Some Obama Allies Fear School Lunch Bill Could Rob Food Stamp Program*, N.Y. TIMES, Sept. 24, 2010, at A15, available at <http://www.nytimes.com/2010/09/24/us/24food.html> (discussing the issue).

systems and supply chains, forest restoration and private land conservation, and ecosystem market incentives.⁴⁵

One pillar of the USDA's efforts to revitalize rural America focuses on using local and regional food systems to create new economic opportunities for farmers and food artisans. One challenge in building a sustainable local food system is the availability of the wide range of services and support businesses necessary to allow farming to remain efficient and profitable. One important opportunity is the growing demand for locally raised meat.⁴⁶ A significant challenge for farmers hoping to respond to the demand for locally raised meat and livestock products is the availability of slaughter facilities.⁴⁷ That is why the Glynwood Center, an agricultural policy think tank working in the Hudson Valley, spearheaded a million-dollar initiative to create one of the first mobile livestock processing facilities in the East.⁴⁸ The role of building local food systems to support rural economic revitalization was the subject of a 2009 book, *The Town that Food Saved*.⁴⁹

H. Sustainable Land Tenure

The final force to discuss concerns the growing recognition that land tenure—questions about who owns farmland and the legal relations under which it is farmed, such as tenancy—influences not just the future of farming but also the sustainability of the agricultural systems. How changes in landownership and tenure may impact the future of agriculture is the subject of a joint Sustainable Agricultural

⁴⁵ *Hearing to Review U.S. Agriculture Policy in Advance of the 2010 Farm Bill Before the H. Comm. on Agric.*, 111th Cong. (2010) (statement of Hon. Tom Vilsack, Secretary U.S. Department of Agriculture), available at <http://agriculture.house.gov/testimony/111/h042110/Vilsack42110.pdf>.

⁴⁶ See, e.g., Kim Severson, *In New York, Local Meat is Easier to Find*, N.Y. TIMES, June 9, 2010, at D1, available at <http://www.nytimes.com/2010/06/09/dining/09livestock.html>.

⁴⁷ See, Katie Zezima, *Push to Eat Local Food Is Hampered by Shortage*, N.Y. TIMES, Mar. 28, 2010, at A16, available at <http://www.nytimes.com/2010/03/28/us/28slaughter.html>.

⁴⁸ See *Programs: Glynwood's MHS Solving the Regional Slaughterhouse Problem Now*, GLYNWOOD, <http://www.glynwood.org/programs/modular-harvest-system/> (last visited Feb. 25, 2011) (providing information about the Glynwood Center, and the mobile livestock harvest project).

⁴⁹ See BEN HEWITT, *THE TOWN THAT FOOD SAVED: HOW ONE COMMUNITY FOUND VITALITY IN LOCAL FOOD* (2009) (discussing the economic, social and political issues involved in efforts to develop stronger local food systems and use them as the basis of rural economic revitalization).

Land Tenure project between Drake University Law School and the Leopold Center for Sustainable Agriculture at Iowa State University, titled The Sustainable Agricultural Land Stewardship project. The effort has a special focus on farm leasing practices as they relate to stewardship and on the proliferation of other legal agreements impacting farmland. The concentration of land in the hands of older landowners—more than sixty percent of Iowa’s land is owned by those over sixty-five—means that in the next decade a significant amount of land will go through some form of transition.⁵⁰ The concentration of land is accompanied by increases in absentee ownership and increases in farm tenancy.⁵¹

III

THE FUTURE OF THE NEW AGRICULTURE

My parents farmed for more than fifty years, and my wife Khanh and I have sold food locally for more than fifteen years. There are two things we experience every season that my parents never did. They never set the price for what they sold—corn was worth what was on the chalkboard and cattle brought what the buyer offered. But when we deliver fifty pounds of fresh-picked, ripe tomatoes to a customer’s back door we set the price. Second, and perhaps even more important to the idea of being a farmer, is that my parents never had the satisfaction of anyone thanking them for raising their food. No one came to the farm and said “Ham and Zella, those were the best soybeans we ever ate.” It didn’t make my folks worth any less as farmers, but it did make it possible for them to feel disconnected from and even in conflict with the consumers.

When we go out to eat and see our Sunstead Farm listed on the menu and see diners enjoying the food we grow, it brings a powerful

⁵⁰ See MICHAEL DUFFY & DARNELL SMITH, FARMLAND OWNERSHIP AND TENURE IN IOWA, 2007 (2008), available at https://www.econ.iastate.edu/sites/default/files/publications/papers/paper_13013.pdf; Rod Swoboda, *Iowa Study Shows Trends in Farmland Ownership*, WALLACES FARMER (Jan. 16, 2009), <http://www.wallacesfarmer.com/story.aspx/iowa/study/shows/trends/in/farmland/ownership/21348> (explaining that the concentration into the hands of older Iowans is a demographic fact of aging and wealth, but it does set up a significant transfer over the next several decades).

⁵¹ See generally Neil D. Hamilton, *Feeding Our Green Future: Legal Responsibilities and Sustainable Agricultural Land Tenure*, 13 DRAKE J. AGRIC. L. 377 (2008), available at <http://www.law.drake.edu/academics/agLaw/docs/agPublications-feedingOurGreenFuture.pdf> (discussing these issues). See also SUSTAINABLE FARM LEASE, <http://www.sustainableaglandtenure.com> (last visited Feb. 26, 2010) (discussing the SALT project more comprehensively, including the Sustainable Farm Leasing Guide).

sense of satisfaction. When someone tells my wife “those baby beets were the best ever” it is like receiving another paycheck. It may not pay the gas bill, but is the psychological encouragement to put in the hard work it takes to raise food. In our national food system we have severed many of the connections between people and their food, between farmers and eaters—and we have paid a price for doing so. Efforts to build local and regional markets make good economic sense, help reestablish connections, and increase America’s understanding of farming. Local markets put a face on our food and benefit all the farmers. Our farm may be different than my parents’ farm, but they are both farms. It is important that we as a nation recognize all farms, regardless of their size, and all consumers, regardless of their means, as deserving both of our support and of equal treatment under the law. In the words of St. Paul etched on USDA’s Whitten Building, “The husbandman that laboreth must be the first partaker of the fruits.” I have written about many of the forces described in this essay as being part of the movement toward a food democracy, a powerful social force I believe is at work in our country creating more opportunities for farmers, eaters, communities, and rural residents alike.⁵²

This year I am on sabbatical and focusing my attention on what I believe are some of the most critical issues facing our future: who will be the next generation of America’s farmers, how can we manage the transition of the nation’s farmland from the current generation of owners to the next, and how can communities use food policies to address not just nutrition and health but sustainability and economic opportunity. As this essay shows, the good news is there are many exciting and valuable efforts underway across the nation working to address these issues. For those in the legal community who work with the tools and technologies of justice, there are a multitude of ways the law and lawyers can play key roles in designing the new programs, developing the government policies to support them, and addressing the very real legal issues involved with creating new farm businesses, transferring America’s farmland to a new owners, and creating food systems based around local production, healthy food, and sustainable practices.

⁵² See Neil 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) (discussing the concept of Food Democracy).

