

A Seat at the Table: New Voices Urge Farm Bill Reform

D. Lee Miller

ABSTRACT. The Farm Bill is complicit in crises of public health, the environment, and rural decay. Its fractured approach to policy reflects the handiwork of interest groups rather than a coherent strategy to support a thriving and equitable food system. Subsidies flow to the largest farms while raising barriers for new and sustainability-minded entrants. The failure to adequately confront agriculture's environmental harms is devastating ecosystems, accelerating climate change, and threatening the long-term productivity of the land. This is all to produce the foods that have left consumers to grapple with diet-related epidemics and, for poor consumers, impossible choices between cheap and nutritious foods. The emerging field of food law and policy can help articulate a better vision for Farm Bills through research, critical analysis, and public engagement. As debate around the 2018 Farm Bill begins, new collaboration across leading law school programs is beginning to do just that.

INTRODUCTION

Every five or so years, Congress passes omnibus legislation known as the "Farm Bill," which authorizes hundreds of services and programs bearing on every aspect of the U.S. food system.¹ The Farm Bill guides and often dictates the who, what, when, where, and how of growing and eating in the United States: who grows food and who gets to eat it; what is grown and what is processed from those raw materials; when crops are planted and when animals are slaughtered; where crops are planted and where consumer products wind up;

1. The most recent farm bill is the Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (Feb. 7, 2014).

how food is grown and how it is eaten. But the Farm Bill does not answer *why* it prefers labor efficiency over alternative systems that make more efficient use of land, energy, and water; why the structure of major farm programs regressively rewards scale and punishes diversification; or why the mix of food crops it most heavily subsidizes bears little resemblance to the government's own recommended diet. This Essay focuses attention on these *why* questions by critiquing past Farm Bills and proposing how the emerging field of food law and policy can help policymakers do better.

Interrogating the rationale behind these policies holds special importance for those communities who regularly confront the Farm Bill's cascading consequences. For eighty years, the Farm Bill has molded the landscapes of small-town and rural America, where President Trump won by a margin of sixty to thirty-four percent of the vote.² To understand the importance of the Farm Bill to rural America, consider the U.S. Department of Agriculture (USDA), which is funded by the Farm Bill. USDA is the lead federal agency tasked with advancing rural development.³ It is unique among other large federal agencies in that approximately fifty percent of its program funding is directed toward rural counties.⁴ Moreover, the Agency's roughly 100,000 employees work in approximately 4,500 locations across the United States.⁵ Since the Farm Bill is among the biggest federal drivers of economic development in rural areas, it seems likely that the executive branch will focus on its rural constituency.

The Farm Bill funds agricultural subsidies and conservation programs that directly channel tax dollars to rural constituencies. The Farm Bill also contains nonagricultural provisions that aid rural America. For instance, the Farm Bill devotes an entire title to rural development.⁶ This title addresses programs ranging from Business Development Grants to the Access to Broadband Tele-

-
2. Dan Balz, *Rural America Lifted Trump to the Presidency. Support Is Strong, but Not Monolithic.*, WASH. POST (June 17, 2017), http://www.washingtonpost.com/politics/rural-america-lifted-trump-to-the-presidency-support-is-strong-but-not-monolithic/2017/06/16/df4f9156-4ac9-11e7-9669-250d0b15f83b_story.html [<http://perma.cc/Q9RE-9P7B>].
 3. See Rural Development Policy Act of 1980, Pub. L. No. 96-355, 94 Stat. 1171 (1980).
 4. TADLOCK COWAN, CONG. RESEARCH SERV., RL31837, AN OVERVIEW OF USDA RURAL DEVELOPMENT PROGRAMS (2016).
 5. U.S. DEP'T OF AGRIC., *Our Agency*, <http://www.usda.gov/our-agency> [<http://perma.cc/7RYG-9LWQ>] (specifying more than 4500 locations in the U.S. and abroad); U.S. DEP'T OF AGRIC. FOREIGN AGRIC. SERV., *Overseas Post Directory*, http://apps.fas.usda.gov/overseas_post_directory [<http://perma.cc/YDE2-SMJV>] (specifying a total of ninety-five locations outside the U.S.).
 6. The most recent Farm Bill includes the Agricultural Act of 2014, Pub. L. No. 113-79, tit. VI, 128 Stat. 649 (Feb. 7, 2014).

communications Services in Rural Areas Program, and much more.⁷ Rural voters, and not just farmers, will be paying attention to the next Farm Bill.

With many provisions of the current Farm Bill set to expire in October 2018, the clock is ticking. Congress is currently in the process of drafting a new Farm Bill, a process seemingly designed to air recurring grievances over the cost and administration of the food safety net, while simultaneously slaking the thirst of powerful commodity and crop insurance lobbies with lucrative adjustments to major farm programs. Delays in nominating and confirming a new Secretary of Agriculture, as well as contentious House and Senate budget negotiations, have complicated progress.⁸ Still, congressional leadership has repeatedly promised that the new Farm Bill will be “on time.”⁹

This Essay argues that the legal academy, and not just rural voters and farmers, should be paying close attention to the Farm Bill, for it has much to contribute to advancing environmental, public health, and rural causes. Part I surveys critiques of the modern Farm Bill, focusing on its role in perpetuating harms to farmers, rural communities, the natural environment, and public health. Part II then introduces the emerging field of food law and policy and explores how the field might generate solutions to some of the problems discussed in Part I. The Essay concludes with a few closing thoughts about the future of food law and policy.

1. THE MODERN FARM BILL: FAILING FARMERS, THE ENVIRONMENT, AND PUBLIC HEALTH

The Farm Bill is expensive and expansive. At the time of its enactment, the Congressional Budget Office scored the current Farm Bill, the Agricultural Act of 2014,¹⁰ as spending nearly a trillion dollars between 2014 and 2023.¹¹ The

7. COWAN, *supra* note 4, at 7.

8. Alan Bjerga, *Trump Sows Dismay in Rural America with Late Agriculture Choice*, BLOOMBERG (Jan. 4, 2017), <http://www.bloomberg.com/news/articles/2017-01-05/trump-sows-dismay-in-rural-america-with-late-agriculture-choice> [<http://perma.cc/929W-KPH3>]; Catherine Boudreau & Helena Bottemiller Evich, *Conway's Crusade: Getting to a 'Yes' on a Budget To Save the Farm Bill*, POLITICO (July 10, 2017), <http://www.politico.com/story/2017/07/10/mike-conaways-save-the-farm-bill-240356> [<http://perma.cc/G8U7-SJ8Y>].

9. Ron Sterk, *House Ag Chairman Expects Timely Farm Bill*, FOOD BUS. NEWS (Aug. 9, 2017), http://www.foodbusinessnews.net/articles/news_home/Regulatory_News/2017/08/House_ag_chairman_expects_time.aspx?ID=%7B612C9A8A-14E0-4C68-BoFA-F9339CBCFE95%7D [<http://perma.cc/4U83-XYPF>].

10. Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (Feb. 7, 2014).

11. DOUGLAS W. ELMENDORF, CONG. BUDGET OFFICE, Pub. 45049, H.R. 2642, THE AGRICULTURAL ACT OF 2014 (2014).

2014 Farm Bill's twelve titles cover varied subjects, including commodities and crop insurance policy, conservation, nutrition, food access, forestry, energy, research, fruit and vegetable production, credit, international trade, and rural development.¹²

Despite its breadth, the 2014 Farm Bill fails to adequately address the needs of our modern food system.¹³ From a big-picture perspective, the Farm Bill fails in part because its policy as a whole is incoherent, with provisions written and implemented without a unified purpose and often operating in orthogonal directions.¹⁴ There are many reasons for this, including interest group capture. For instance, the agribusiness industry spent over \$154 million lobbying Congress in 2013, when the last Farm Bill passed Congress, eclipsing the defense industry's \$139 million.¹⁵ It should surprise no one that Farm Bills are written in silos by a revolving door of special interests. But interest group capture is not the only reason the Farm Bill falls short. Many of the Farm Bill's failures stem from a disinterested and misinformed public, and from an academy, legal and nonlegal, that has shown little interest in getting food and agriculture policy right.¹⁶

The result has been a series of Farm Bills that favor large-scale farms over small-scale farms,¹⁷ commodity crops over "specialty crops" like fruits and vegetables,¹⁸ and extractive farming practices over regenerative ones that integrate, for example, soil-enhancing crop rotations, crop diversification, and no-till systems.¹⁹ Past Farm Bills have failed to employ policies and programs that adequately conserve our nation's natural resources, promote public health, and

12. For a general and excellent overview of the 2014 Farm Bill, including title-by-title summaries of its programs, see RENEE JOHNSON & JIM MONKE, CONG. RESEARCH SERV., RS22131, WHAT IS THE FARM BILL? (2017).

13. See William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 214 (2009); Mark Bittman et al., *How a National Food Policy Could Save Millions of American Lives*, WASH. POST (Nov. 7, 2014), http://www.washingtonpost.com/opinions/how-a-national-food-policy-could-save-millions-of-american-lives/2014/11/07/89c55e16-637f-11e4-836c-83bc4f26eb67_story.html [<http://perma.cc/62NX-PU3H>].

14. Sarah Morath calls the Farm Bill a "wicked problem" for trying to address food system issues with many disparate programs administered by at least eight separate agencies. See Sarah J. Morath, *The Farm Bill: A Wicked Problem Seeking a Systematic Solution*, 25 DUKE ENVTL. L. & POL'Y F. 389 (2015).

15. CENTER FOR RESPONSIVE POLITICS, *Ranked Sectors: 2013*, OPENSECRETS.ORG, <http://www.opensecrets.org/lobby/top.php?showYear=2013> [<http://perma.cc/T4M8-WA7N>].

16. See *infra* Part II.

17. Eubanks, *supra* note 13 at 228.

18. *Id.* at 237.

19. *Id.* at 251-268.

meet the needs of poor and rural communities.²⁰ In the remainder of this Part, I discuss how the 2014 Farm Bill fails farmers and the rural communities in which they live, the natural environment, and public health.

First, the Farm Bill fails farmers and the rural communities they inhabit. Thomas Jefferson, in a letter to John Jay expounding on the agrarian ideal, wrote, “Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, & they are tied to their country & wedded to its liberty & interests by the most lasting bonds.”²¹ Unfortunately, the modern Farm Bill does not support a thriving agricultural sector capable of attracting new farmers and sustaining rural communities. The age of the average farmer has crept above fifty-eight, and farmers over age seventy-five outnumber those under thirty-five by more than a two-to-one ratio.²² The number of new farmers continues to decline.²³ As farm machinery has replaced farm labor, there has been an exodus which poses an existential threat to rural life.²⁴ As economic opportunity continues to decrease, local tax bases wither, rural governments provide fewer public goods, and more citizens leave.²⁵

The United States’ fraying rural fabric is evident in dilapidated Main Streets and drug epidemics that now disproportionately strike small-town and rural America. In many states, farm consolidation has increased the midpoint acreage—half of all cropland acres are on farms with more cropland than the midpoint—by more than 100 percent since 1982.²⁶ This trend toward larger farms displacing smaller farms favors processed-food inputs, which are easily

20. For a fuller account of the Farm Bill’s environmental and public health failings, *see id.*
21. Letter from Thomas Jefferson to John Jay (Aug. 23, 1785), http://avalon.law.yale.edu/18th_century/let32.asp [<http://perma.cc/K63N-GPDX>].
22. U.S. DEP’T AGRIC. NAT’L AGRIC. STATISTICS SERV., *2012 Census Highlights: Farm Demographics* (May 2014), http://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics [<http://perma.cc/ZKE6-R7GG>].
23. *Id.*
24. Alana Semuels, *The Graying of Rural America*, ATLANTIC (June 2, 2016), <http://www.theatlantic.com/business/archive/2016/06/the-graying-of-rural-america/485159> [<http://perma.cc/74PQ-GX6Y>] (“[Farming] is more automated than ever, and a farm can be run with far fewer people than ever before. In 1900, some 40 percent of the population worked in agriculture, a century later, only 2 percent did. Similar dynamics have overtaken logging, mining, and other resource-extraction industries. In some ways, rural America, more than much of the rest of the country, is the victim of productivity gains. And in rural America, fewer other opportunities materialize to replace the jobs the machines take.”).
25. *Id.*
26. James M. MacDonald et al., *Farm Size and the Organization of U.S. Crop Farming*, U.S. DEP’T AGRIC. 7-9 (Aug. 2013), http://www.ers.usda.gov/webdocs/publications/45108/39359_err152.pdf?v=41526 [<http://perma.cc/CL75-S5T2>].

mass-produced, over perishable but nutrient-dense crops that are more often cultivated by smaller farms.²⁷ Farm Bill policies support this consolidation through broad-based commodity programs and the federal crop insurance program.²⁸

Second, the Farm Bill fails to protect the environment. In many ways, the Farm Bill does not just fail to protect the nation's air, water, soil, and biodiversity—it affirmatively harms them. For example, Farm Bill programs incentivize farmers to grow crop varieties that increasingly rely on chemical fertilizers and pesticides.²⁹ These fertilizers run off of fields and create hypoxic (low oxygen) environments downstream in rivers, lakes, and oceans, leading to fish deaths and “dead zones,” some spanning thousands of square miles.³⁰ Runoff also pours nitrate-laden water into drinking water sources, where, if left untreated, it can cause blue baby syndrome, thyroid problems, and cancer.³¹

Above ground, the production systems favored by Farm Bill programs devour fossil fuels³² and produce eighty percent of U.S. nitrous oxide emissions, a greenhouse gas with almost three hundred times the global warming impact of carbon dioxide.³³ The Farm Bill has no climate change title, and it includes only scattered initiatives addressing how agriculture should adapt to impending climate-change-induced shifts in rainfall, temperature, and vegetation patterns that will restructure agriculture over the coming decades.³⁴ Not only have decades of conservation programs failed to arrest agriculture's toll on ecosystems

27. See generally MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* 85-100 (2006).

28. See MacDonald et al., *supra* note 26, at 41-45.

29. See Eubanks, *supra* note 13, at 226-228, 255-59.

30. See Donald Scavia, *Nutrient Pollution: Voluntary Steps Are Failing To Shrink Algae Blooms and Dead Zones*, CONVERSATION (July 31, 2017, 3:23 PM), <http://theconversation.com/nutrient-pollution-voluntary-steps-are-failing-to-shrink-algae-blooms-and-dead-zones-81249> [<http://perma.cc/H5CW-MLXK>].

31. See Anne Weir Schechinger, *Lawsuit Dismissal Spells Bad News for Iowa Water Quality*, AGMAG (Mar. 21, 2017), <http://www.ewg.org/agmag/2017/03/lawsuit-dismissal-spells-bad-news-iowa-water-quality> [<http://perma.cc/666S-U4YT>]; see also *Water Contamination*, CENTERS FOR DISEASE CONTROL & PREVENTION (Oct. 11, 2016), <http://www.cdc.gov/healthywater/other/agricultural/contamination.html> [<http://perma.cc/68MR-VXV9>] (discussing the health effects of contaminated water on humans and livestock).

32. See Eubanks, *supra* note 13, at 266-68.

33. *Overview of Greenhouse Gases: Nitrous Oxide Emissions*, ENVTL. PROT. AGENCY, <http://www.epa.gov/ghgemissions/overview-greenhouse-gases#nitrous-oxide> [<http://perma.cc/T4JR-XVWQ>].

34. Charles Walthall et al., *Climate Change and Agriculture in the United States: Effects and Adaptation*, USDA Technical Bulletin 1935, U.S. DEP'T OF AGRIC. 1-6 (Feb. 2013), [http://www.usda.gov/oce/climate_change/effects_2012/CC%20and%20Agriculture%20Report%20\(02-04-2013\)b.pdf](http://www.usda.gov/oce/climate_change/effects_2012/CC%20and%20Agriculture%20Report%20(02-04-2013)b.pdf) [<http://perma.cc/7S6V-PU5N>].

and public health, they have failed to prepare agricultural producers for the challenges of global climate change and local resource depletion.

The Farm Bill also fails to adequately address the growing national problem of food waste. The Farm Bill *could* comprehensively address food waste by standardizing date labels, strengthening liability protections for donated food, supporting state and municipal organic waste bans, and coordinating food waste reduction efforts across federal agencies, to name a few recent proposals.³⁵ Approximately forty percent of the food grown in the United States goes uneaten.³⁶ When food is wasted, so are the natural resources used to produce and transport that food. To take one example, researchers estimate that more than twenty-five percent of America's fresh water consumption is used to grow food that is ultimately wasted.³⁷ Americans waste 160 billion pounds of food per year,³⁸ or about ten times the per capita waste of Southeast Asia,³⁹ in a country where over twelve percent of households are food insecure.⁴⁰

Finally, the Farm Bill fails to support or protect public health. The Farm Bill *could* help stem the tide of diet-related disease by, for example, reducing commodity supports for sweeteners and by diverting research dollars from commodity production to healthy food production.⁴¹ And it *could* improve public health outcomes, for example, by increasing benefits under the Special Supplemental Nutrition Program for Women, Infants, and Children, expanding access to electronic benefit transfer machines at healthy food outlets like farmers markets, and funding local food procurement through schools.⁴² Instead, about one third of Americans are obese and another third are considered

-
35. See Emily Broad Leib et al., *Opportunities to Reduce Food Waste in the 2018 Farm Bill*, HARV. FOOD L. & POL'Y CLINIC 3, 9-11, 17-18, 22-23 (May 2017), http://www.chlpi.org/wp-content/uploads/2013/12/Opportunities-to-Reduce-Food-Waste-in-the-2018-Farm-Bill_May-2017.pdf [<http://perma.cc/V6PF-WKMK>].
36. Dana Gunders, *Wasted: How America Is Losing Up to 40 Percent of Its Food from Farm to Fork to Landfill*, NAT. RES. DEF. COUNCIL 4 (Aug. 2012), <http://www.nrdc.org/sites/default/files/wasted-food-IP.pdf> [<http://perma.cc/9N29-CRNC>].
37. Kevin D. Hall et al., *The Progressive Increase of Food Waste in America and Its Environmental Impact*, 4 PLOS 1, 2 (2009).
38. JONATHAN BLOOM, *AMERICAN WASTELAND: HOW AMERICA THROWS AWAY NEARLY HALF OF ITS FOOD (AND WHAT WE CAN DO ABOUT IT)*, at xi-xii (2010).
39. Gunders, *supra* note 36, at 13.
40. *Key Statistics & Graphics*, U.S. DEP'T AGRIC. (Sept. 6, 2017), <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx> [<http://perma.cc/U2GR-C6QR>].
41. See *A Fair Farm Bill for Public Health*, INST. FOR AGRIC. & TRADE POL'Y 7 (May 2007), http://www.iatp.org/files/258_2_98598.pdf [<http://perma.cc/8F8R-K7BJ>].
42. See *id.*

overweight,⁴³ conditions with proven links to heart disease and diabetes.⁴⁴ Obesity rates are even higher among black (48.1%) and Hispanic (42.5%) populations.⁴⁵ Obesity is a serious concern because it is associated with poorer mental health outcomes, reduced quality of life, and is the leading cause of death in the United States and worldwide.⁴⁶ It has been estimated to cost as much as \$190.2 billion per year to treat⁴⁷ and offers a clear indictment of the inequities present in the current U.S. food system.

Farm Bill policies shoulder much of the blame. On the agricultural side, the Farm Bill has long favored commodity producers with generous direct, price, and insurance subsidies.⁴⁸ These subsidies advantage corn-based sweeteners, refined fats, as well as meat and dairy products derived from animals fed diets of artificially cheap commodities.⁴⁹ Disfavored are the fruits, vegetables, and legumes preferred by nutritionists, including USDA's own nutrition guidelines.⁵⁰ Producers of healthy foods do not receive the subsidies of their commodity-producing counterparts, which puts healthy foods at a marked price disadvantage compared to the less nutritious calories grown on most farm acres.⁵¹

-
43. *Behavioral Risk Factor Surveillance System Prevalence and Trends Data: 2016 Weight Classification by Body Mass Index*, CTRS. FOR DISEASE CONTROL & PREVENTION, http://nccd.cdc.gov/BRFSSPrevalence/rdPage.aspx?rdReport=DPH_BRFSS.ExploreByLocation&rdProcessAction=&SaveFileGenerated=1&irbLocationType=States&islLocation=99&islState=&islCounty=&islClass=CLASS14&islTopic=TOPIC09&islYear=2016&hidLocationType=States&hidLocation=99&hidClass=CLASS14&hidTopic=TOPIC09&hidTopicName=BMI+Categories&hidYear=2016&irbShowFootnotes=Show&rdICL-iclIndicators=_BMI5CAT&iclIndicators_rdExpandedCollapsedHistory=&iclIndicators=_BMI5CAT&hidPreviouslySelectedIndicators=&DashboardColumnCount=2&rdShowElementHistory=&rdScrollX=0&rdScrollY=0&rdRnd=69582 [<http://perma.cc/UF64-VKA4>]
44. *Adult Obesity Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 29, 2017), <http://www.cdc.gov/obesity/data/adult.html> [<http://perma.cc/7EKW-KRDJ>].
45. *Id.*
46. *Id.*
47. See John Cawley & Chad Meyerhoefer, *The Medical Care Costs of Obesity: An Instrumental Variables Approach*, 31 J. HEALTH ECON. 219, 226 (2012) (extrapolating from data from a sample population in 2005).
48. See Eubanks, *supra* note 13, at 216-240 (providing a history of commodity supports within the Farm Bill from 1933 to the modern day).
49. *Agriculture and Health Policies in Conflict: How Food Subsidies Tax Our Health*, PHYSICIANS COMM. FOR RESPONSIBLE MED., <http://www.pcrm.org/health/reports/agriculture-and-health-policies-ag-versus-health> [<http://perma.cc/V22H-XH57>].
50. *Id.*
51. Scott Fields, *The Fat of the Land: Do Agricultural Subsidies Foster Poor Health?*, 112 ENVTL. HEALTH PERSP. A820, A821-22 (2004).

The effects of imbalanced subsidization are compounded by the design of the Farm Bill's food access programs. The Farm Bill authorizes the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps, alongside several smaller nutrition programs.⁵² SNAP served over 46.6 million Americans in 2014, providing an average of \$125.01 per person per month with which to purchase food.⁵³ At roughly four dollars per day, it is little wonder that SNAP beneficiaries favor cheap but empty calories over costlier but healthier alternatives.

Of course, this brief introduction to the shortcomings of the Farm Bill lacks the breadth and depth that the topic deserves. For example, this Part ignores the ways in which the Farm Bill implicates the energy sector,⁵⁴ international trade⁵⁵ and aid,⁵⁶ immigration and labor,⁵⁷ antitrust,⁵⁸ and more. The key takeaway from this Part is that the United States can and must do a better job when it comes to drafting its Farm Bills. The field of food law and policy can help.

-
52. Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat 649.
53. Food & Nutrition Serv., *Supplemental Assistance Nutrition Program*, U.S. DEP'T AGRIC. (Sept. 8, 2017), <http://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf> [<http://perma.cc/EYV9-MWTR>].
54. See generally MARK A. MCMINIMY, CONG. RESEARCH SERV., R43416, ENERGY PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79): STATUS AND FUNDING (Feb. 22 2016), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43416.pdf> [<http://perma.cc/N68T-PUCT>].
55. See generally RANDY SCHNEPF, CONG. RESEARCH SERV., R43817, 2014 FARM BILL PROVISIONS AND WTO COMPLIANCE (Apr. 22, 2015), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43817.pdf> [<http://perma.cc/P3U5-ACZ4>].
56. See generally RANDY SCHNEPF, CONG. RESEARCH SERV., R41072, U.S. INTERNATIONAL FOOD AID PROGRAMS: BACKGROUND AND ISSUES (Sept. 14, 2016), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41072.pdf> [<http://perma.cc/QGH3-9VTP>]; U.S. House of Representatives Committee on Agriculture, *Hearing: The Next Farm Bill: The Future of International Food Aid and Agricultural Development Before the H. Comm. on Agriculture* 115th Cong. (Jun 7, 2017), <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=106062> [<http://perma.cc/MQJ7-6HHU>].
57. See Jim Bogart, *Immigration, Farm Bill Top D.C. Agenda*, USA Today (Aug. 22, 2017), <http://www.usatoday.com/story/news/2017/08/22/immigration-farm-bill-top-d-c-agenda/591928001> [<http://perma.cc/R9VG-NZKP>]; Ali Luety, *Witnesses Push Immigration Reform, Mechanization Research at Ag Panel Hearing*, AGRI-PULSE (July 12, 2017), <http://www.agri-pulse.com/articles/9561-witnesses-push-immigration-reform-mechanization-research-at-ag-panel-hearing> [<http://perma.cc/8RMG-NYH8>].
58. See generally JOEL L. GREENE, CONG. RESEARCH SERV., R41673, USDA'S "GIPSA RULE" ON LIVESTOCK AND POULTRY MARKETING PRACTICES, <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41673.pdf> [<http://perma.cc/PJK4-23D6>].

II. A NEW ROLE FOR FOOD LAW AND POLICY

Food law and policy as a distinct legal field emerged within the past decade. Previously, legal knowledge and scholarship relevant to the production, distribution, and regulation of food focused on the bifurcated disciplines of food and drug law and agricultural law.⁵⁹ Food and drug law focuses on the FDA's powers to regulate food (and drug) safety and marketing, while agricultural law studies laws impacting farmers. Food law and policy draws these disciplines into a more comprehensive study of the laws and regulations that shape our food system.⁶⁰ Recent scholarly work in food law and policy tackles such diverse topics as natural resource stewardship,⁶¹ social justice,⁶² rural life,⁶³ and global health.⁶⁴ Others bridge food law and policy to older established legal disciplines, including First Amendment law,⁶⁵ international law,⁶⁶ and bankruptcy law.⁶⁷ Still others apply a fisheye lens to bring the entire field into focus.⁶⁸ Field-specific casebooks and readers are growing in number.⁶⁹ Unifying these scholarly efforts, and encouraging the emergence of food law and policy as a distinct scholarly field, is the belief that a holistic understanding of all the laws and policies affecting how we produce, regulate, distribute, and consume

-
59. Baylen J. Linnekin & Emily M. Broad Leib, *Food Law & Policy: The Fertile Field's Origins and First Decade*, 2014 WIS. L. REV. 557, 559 (2014).
60. See *id.* at 559-60.
61. See, e.g., Laurie Ristino & Gabriela Steier, *Losing Ground: A Clarion Call for Farm Bill Reform To Ensure a Food Secure Future*, 42 COLUM. J. ENVTL. L. 59 (2016).
62. See, e.g., Andrea Freeman, *The 2014 Farm Bill: Farm Subsidies and Food Oppression*, 38 SEATTLE U. L. REV. 1271 (2015).
63. See, e.g., Neil D. Hamilton, *Keeping the Farm and Farmer in Food Policy and Law*, 11 J. FOOD L. & POL'Y 9 (2015).
64. See, e.g., Emilie K. Aguirre, *The Importance of the Right to Food for Achieving Global Health*, 9 GLOBAL HEALTH GOVERNANCE 164 (2015).
65. See, e.g., Stephen D. Sugarman, *Should Food Businesses Be Able To Use the First Amendment To Resist Providing Consumers with Government-Mandated Public Health Messages?*, 5 FOOD & DRUG LAW POL'Y F. 1, 1 (2015).
66. See, e.g., Michael Fakhri, *Food as a Matter of Global Governance*, 11 J. INT'L L. & INT'L REL. 68 (2015).
67. See, e.g., HENRY J. SOMMER ET AL., NAT'L CONSUMER LAW CTR., *Chapter 12 Bankruptcy: Family Farmer and Family Fisherman Reorganization*, in CONSUMER BANKRUPTCY LAW AND PRACTICE (11th ed. 2016).
68. See, e.g., Laurie Beyranevand & Emily M. Broad Leib, *Making the Case for a National Food Strategy in the United States*, 72 FOOD & DRUG L.J. 225 (2017); Susan A. Schneider, *Predicting the Future: Our Food System in 2025*, 11 J. FOOD L. & POL'Y 21 (2015).
69. See, e.g., JACOB GERSEN, MARGOT POLLANS AND MICHAEL ROBERTS, *FOOD LAW AND POLICY: CASES AND MATERIALS* (Aspen Press, forthcoming); SUSAN A. SCHNEIDER, *FOOD, FARMING AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* (2d ed. 2016).

food is necessary to fix many of the systemic problems addressed in Part I of this Essay.

The field of food law and policy began to emerge in the early-to-mid-2000s. Scholars believed that an integrated field, borrowing heavily from food and drug law, on the one hand, and agricultural law, on the other, was necessary to address the food challenges in the United States.⁷⁰ In time, scholars have begun to situate the rise of food law and policy, alternatively called “food systems law,” within the broader taxonomical framework of legal fields.⁷¹ Baylen Linnekin and Emily Broad Leib have rigorously catalogued the rise of food law and policy as an independent legal field.⁷² As the field has developed, other scholars have thoughtfully explored the opportunities that this rise presents to law students and law schools.⁷³

More recent scholarly work embraces the field’s role in informing, guiding, and shaping public discourse around the laws and policies that regulate the production and consumption of food.⁷⁴ In my view, this is where the field is heading. The creation of a new legal field does far more than result in the creation of new law classes, clinics, professorships, and careers, as essential as these are. The creation of a new legal field also provides an opportunity to reexamine hard problems from a new perspective, and to do so in concert with a group of committed and engaged scholars, practitioners, and students. This, in turn, can result in major legal reform and restructuring. J.B. Ruhl and James Salzman correctly argue that “the creation of a new field can serve political ends by legitimating a social movement, enhance efficiency by providing a focal area for technical expertise, ensure effectiveness by reorienting laws and policies in a

-
70. See generally Peter Barton Hutt, *Food Law & Policy: An Essay*, 1 J. FOOD L. & POL’Y 1 (2005) (introducing the *Journal of Food Law and Policy* as a publication for the developing food law and policy field); Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935 (2010) (arguing for a new study of food law and policy).
71. See Stephanie Tai, *Food Systems Law from Farm to Fork and Beyond*, 41 SETON HALL L. REV. 109, 117-24 (2015).
72. See generally Linnekin & Broad Leib, *supra* note 59 (documenting the origins of the study of food law and policy); see also Tai, *supra* note 71, at 133-58.
73. See, e.g., Allison Condra, *Forging Careers in Food Law and Policy: Challenges and Opportunities for Law Schools*, 10 J. FOOD L. & POL’Y 1 (2014); Kim Kessler & Emily Chen, *Food Equity, Social Justice, and the Role of Law Schools: A Call to Action*, GLOBAL FOOD INITIATIVE (Nov. 2015), <http://law.ucla.edu/~media/Files/UCLA/Law/Pages/Publications/Resnick%20Global%20Food%20Initiative%20Report.ashx> [<http://perma.cc/L2B6-WT8F>].
74. See, e.g., Emily M. Broad Leib & Susan A. Schneider, *A Call to Action: The New Academy of Food Law & Policy*, 13 J. FOOD L. & POL’Y 1 (2017); Kessler & Chen, *supra* note 73; Ristino & Steier, *supra* note 61.

more productive structure, or some combination of all three.”⁷⁵ As the field of food law and policy begins to find its footing, it will have real-world effects outside the pages of legal journals and the walls of conferences and symposia.

Perhaps most importantly, the field has a great deal to offer the quest for a more effective and equitable Farm Bill. What might this look like in practice? My colleagues and I at Harvard Law School’s Food Law and Policy Clinic have spent the past year shepherding one such effort. The Farm Bill Law Enterprise (FBLE) unites leading food, agriculture, public health, and environmental programs spanning seven law schools⁷⁶ with the Food Law Student Network (FLSN).⁷⁷ FBLE leverages the expertise of its partners through shared learning and coordinated research on diverse facets of the Farm Bill, identifying and proposing improvements, and building a shared platform to engage in public debate around federal food and agriculture policy. In addition, FBLE provides law students throughout the country with research opportunities through the FLSN.

FBLE is driven by a shared mission:

[T]o work toward a farm bill that reflects a thoughtful consideration of the long-term needs of our society, including economic opportunity and stability, public health and nutrition, public resources stewardship, and fair access and equal protection.

We accomplish this mission through joint research, analysis, and advocacy and by drawing on the experience of our members, collaboratively building deeper knowledge, and equipping the next generation of legal practitioners to engage with the farm bill.⁷⁸

-
75. J.B. Ruhl & James Salzman, *Climate Change Meets the Law of the Horse*, 62 DUKE L.J. 975, 989 (2013).
 76. Led by Harvard Law School’s Food Law and Policy Clinic, FBLE’s partners are: Harvard Law School’s Environmental Policy Initiative and Emmett Environmental Law Clinic, Harvard Law School’s Health Law and Policy Clinic, Drake Law School’s Agricultural Law Center, UCLA Law School’s Resnick Program for Food Law and Policy, Vermont Law School’s Center for Agriculture and Food Systems, Yale Law School’s Environmental Protection Clinic, Duke Law School’s Environmental Law & Policy Clinic, and Pace University’s Elizabeth Haub School of Law’s Food Law Initiative.
 77. The Food Law Student Network is a national student-run organization that “serves as a hub to exchange ideas, knowledge, and practical skills, while building enduring connections among students and professionals to support the next generation of food law and policy advocates.” *About FLSN*, FOOD L. STUDENT NETWORK, <http://foodlawstudentnetwork.org/about> [<http://perma.cc/F46Q-44U8>].
 78. FARM BILL LAW ENTERPRISE, *About Us*, <http://www.farmbilllaw.org/about/#mission> [<http://perma.cc/Z7QX-Q9G5>].

It is a dual mission that plainly recognizes a first-order need for capacity building. Although our faculty partners have deep subject matter expertise in various areas of law, including many aspects of food law and policy, most brought only limited experience with the Farm Bill. Similarly, students from across the country joined with passion, but they also tended to lack experience with the Farm Bill. Thus, the first step was to engage both faculty and students in organized background research and writing that could be shared amongst partners and used to identify policy interventions.

This fall, FBLE pivots toward the other half of its mission: engaging with the Farm Bill in the public sphere. FBLE's website provides a central hub for these activities, including the background materials prepared over the past year, responsive analysis to marker bills and draft Farm Bills, and a guide to help the public engage with the opaque and confusing Farm Bill legislative process.⁷⁹ However, the website's centerpiece will be four reports published over the coming months. Each report focuses on a theme and addresses the concerns identified in Part I of this Essay. The reports include specific recommendations that are both pragmatic and that begin to address the core weaknesses of current Farm Bill policy.

FBLE's first report, to be released in November under the title "Diversified Agricultural Economies," addresses the homogenization of both agricultural production and agricultural producers. As discussed in Part I, Farm Bill policy has long favored a handful of commodity crops grown in expansive monocultures. These policies, along with USDA's systemic discrimination against black, Latino, Native American and women farmers throughout the 1980s and 1990s,⁸⁰ helped produce a landscape where by 1999 over ninety-eight percent of agricultural land was owned by white Americans.⁸¹ FBLE believes that the Farm Bill should aim to galvanize a new wave of farmers that reflects the diversity of the nation, and enable those farmers to make a decent livelihood growing a diversity of nutritious crops for sale within thriving local and regional markets. This is a multigenerational vision, but FBLE makes specific recommendations for how—even in the current political climate—the next Farm Bill can take small steps in the right direction.

79. FARM BILL LAW ENTERPRISE, <http://FarmBillLaw.org> [<http://perma.cc/JEN2-JY8C>].

80. See TADLOCK COWAN & JODY FEDER, CONG. RESEARCH SERV., R40988, *GARCIA V. VILSACK: A POLICY AND LEGAL ANALYSIS OF A USDA DISCRIMINATION CASE* (2013) (discussing USDA discrimination against Latino, Native American, and female farmers); TADLOCK COWAN & JODY FEDER, CONG. RESEARCH SERV., RS20430, *THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS* (2013) (discussing USDA discrimination against black farmers).

81. Jess Gilbert et al., *Who Owns the Land? Agricultural Land Ownership by Race/Ethnicity*, 17 *RURAL AMERICA* 55, 56 tbl.1 (2002).

For example, the Farm Bill should aggressively promote access to land for beginning and socially disadvantaged farmers. Two such efforts, the Conservation Reserve Program's Transition Incentives Program (CRP TIP)⁸² and the Land Contract Guarantee Program (LCGP),⁸³ have only scratched the surface. In addition to bolstering programs like CRP TIP and LCGP, which apply to marginal land and suffer from underutilization, respectively, Congress should consider bolder opportunities to put land into the hands of targeted populations. For example, many aging landowners might sell rather than wait to transfer land upon death if they received a capital gains tax break. Such breaks would be limited to sales to qualified purchasers who meet certain demographic criteria and commit to an approved conservation plan.

To take a second example, the Whole Farm Revenue Protection (WFRP) pilot allows farmers with diversified crop systems to access insurance protection at reasonable rates for the first time. It should receive permanent authorization in the next Farm Bill. Furthermore, the program should be expanded and simplified to draw in additional small and beginning farmers, who traditionally struggle to access credit for lack of affordable insurance. WFRP should aggressively reward crop diversification and other agroecological production choices that inherently lower on-farm risks while generating positive environmental externalities.

These are just two examples of many policy interventions that have come out of FBLE's work on diversifying agriculture. FBLE will publish three additional reports in the coming months. "Public Health, Nutrition and Equity" is concerned with protecting SNAP as an entitlement program while enabling SNAP recipients to fully access program benefits and make healthier food choices. "Productivity & Risk Management" addresses the complex interactions between large-scale production agriculture, the risks presented by both weather and market volatility, and public conservation and environmental goals. Finally, "Governance, Transparency and Accountability" will propose process-oriented improvements across USDA.

CONCLUSION

Though there are many critiques of the Farm Bill, there exists a dearth of legal and policy proposals investigating and providing suggestions for transformational change of the Bill to meet twenty-first century needs. As Olivier De Schutter, former United Nations Special Rapporteur on the Right to Food, and his colleagues recently wrote: "The food system resulting from these policies

82. 7 C.F.R. § 1410.64 (2012).

83. 7 U.S.C. § 1936 (Supp. IV 2010).

has created economic and path dependencies that complicate reform, leaving us with a set of institutions and policy vehicles that are incapable of tackling the problems of the food system – problems that go far beyond food and farming.”⁸⁴

The ascendance of food law and policy as a field provides an unprecedented opportunity to break off from the path dependencies identified by De Schutter and his colleagues. Short-term reform is possible if the emerging discipline of food law and policy can focus the energy of scholars, practitioners, and students in a cooperative effort to revise the laws governing the U.S. food system. In the long-term, systemic change is also possible. If food law and policy can make this vision a reality, then American farmers, consumers, and the environment will all benefit.

Lee Miller is an inaugural Yale Law Journal Public Interest Fellow at the Food Law and Policy Clinic at Harvard Law School. He is deeply grateful to Emily Broad Leib, Joshua Galperin, and Graham Downey, and to the food system workers who feed and nourish this work. Thanks also to the editors of the Yale Law Journal for their patient and valuable editing. All errors are my own, and opinions do not necessarily reflect those of the Farm Bill Law Enterprise.

Preferred Citation: D. Lee Miller, *A Seat at the Table: New Voices Urge Farm Bill Reform*, 127 YALE L.J. F. 395 (2017), <http://www.yalelawjournal.org/forum/a-seat-at-the-table>.

84. Mark Bittman et al., *A National Food Policy for the 21st Century*, MEDIUM (Oct. 6, 2015), <http://medium.com/food-is-the-new-internet/a-national-food-policy-for-the-21st-century-7d323ee7c65f> [<http://perma.cc/RQ27-Q9HA>].