

Pace University

DigitalCommons@Pace

---

Elisabeth Haub School of Law Faculty  
Publications

School of Law

---

Spring 2017

## Eating Is Not Political Action

Joshua Ulan Galperin

*Elisabeth Haub School of Law at Pace University*

Graham Downey

*Yale Law School*

D. Lee Miller

*Duke University School of Law*

Follow this and additional works at: <https://digitalcommons.pace.edu/lawfaculty>



Part of the [Agriculture Law Commons](#), [Environmental Law Commons](#), and the [Food and Drug Law Commons](#)

---

### Recommended Citation

Joshua Ulan Galperin, Graham Downey & D. Lee Miller, Eating is not a Political Action, 17 J. Food L. & Pol'y 113 (2017), <https://digitalcommons.pace.edu/lawfaculty/1185/>.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Elisabeth Haub School of Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact [dheller2@law.pace.edu](mailto:dheller2@law.pace.edu).

## **Eating is not Political Action**

**Joshua Galperin,\* Graham Downey\*\*  
& D. Lee Miller\*\*\***

There seems to be near universal desire to achieve the benefits of collective political action. That desire, however, does not extend to actual governance.<sup>1</sup> As a result, politics—in the United States at least—is a series of promises that we can have our cakes and eat them too.

We want affordable and accessible health insurance, for instance, but not the mandate to purchase insurance that experts say is necessary to make it accessible and affordable.<sup>2</sup> This tension between desirable ends and the compromises we must make to get there is a difficult challenge for policymakers. Put simply, it is much easier for Americans to agree on what they want than on the sacrifices necessary to get there. Nowhere is this goal-tactic chasm more challenging than at the intersection of food and the environment.

---

\* Joshua Galperin is on the faculty at Yale University where he has appointments in the Law School and the Yale School of Forestry and Environmental Studies and directs the Environmental Protection Clinic.

\*\* Graham Downey was a visiting legal scholar with the United States Department of Agriculture's Know Your Food program. He is also the founder of Potluck and a 2016 graduate of Yale Law School where he was co-founder of the Food Law Society.

\*\*\* D. Lee Miller is a Yale Law Journal Public Interest Fellow at the Harvard Food Law and Policy Clinic and a 2016 graduate of the Yale Law School where he was also a co-founder of the Food Law Society.

1. See WOLFGANG STREECK, *HOW WILL CAPITALISM END?* (2016) (especially Chapter 3 "Citizens as Consumers" on the rising appeal of being a "consumer" of government services rather than meeting the demands of being a "citizen" engaged in compromise).

2. See Richard Gonzales, *Only 26 Percent Of Americans Support Full Repeal Of Obamacare, Poll Finds*, NPR (Dec. 2, 2016), <http://www.npr.org/sections/thetwo-way/2016/12/02/504068263/kaiser-poll-only-26-of-americans-support-full-repeal-of-obamacare> ("Overall, the survey finds that some key provisions of Obamacare are very popular among Democrats and Republicans. For example, 85 percent favor keeping young adults on their parents' insurance plan until age 26. Sixty-nine percent like the prohibitions on insurance companies denying coverage based on pre-existing conditions. The most unpopular feature of Obamacare? Only 35 percent favor the individual mandate requiring all people to sign up for health insurance or pay a fine.").

Agricultural and environmental imagery pervade the American cultural narrative. Picture pristine waters flowing through purple mountains majesty above the fruited plains where the solitary farmer toils, his red barn on the horizon.<sup>3</sup> Food, agriculture and the environment inspire core, distinct, American mythologies but they are also closely intertwined.<sup>4</sup> Food production demands environmental inputs, and a healthy environment requires thoughtful food production.<sup>5</sup> Humans, of course, need both to survive and thrive.<sup>6</sup>

Between their cultural significance and their necessity for survival, food and the environment demand special attention in policymaking, particularly where they overlap. Unfortunately, this nexus has primarily been subject to passive advocacy unyoked from values and explicit goals.

As the goal-tactic policymaking chasm has widened, one common strategy to bridge the gap is passive policy.<sup>7</sup> Passive policy is largely premised on a belief that government should be value-neutral. Individuals can define the “good life,” but government has no say in the matter; government may only protect individuals’ right to pursue values through market-mediated transactions.<sup>8</sup> At best, this passive neutrality provides

---

3. *America the Beautiful*, LIBRARY OF CONGRESS, <https://www.loc.gov/item/ihas,200000001/> (last visited Mar. 27, 2017).

4. E.g., JEDEDIAH PURDY, *AFTER NATURE* (2015); Margot J. Pollans, *Drinking Water Protection and Agricultural Exceptionalism*, 77 OHIO ST. L.J. (forthcoming); 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).

5. See, e.g., Richard White, *Are You an Environmentalist or Do You Work for a Living?: Work and Nature*, in UNCOMMON GROUND 171, 174 (William Cronon, ed., 1996).

6. 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 (2009).

7. E.g., Daniel C. Esty, *Red Lights to Green Lights: From 20th Century Environmental Regulation to 21st Century Sustainability*, 47 ENVTL. L. (forthcoming 2017) (describing a new environmental regime that would reduce regulatory burden and increase business choice for the purpose, in part, of generating greater compromise); Fredric D. Krupp, *New Environmentalism Factors in Economic Needs*, WALL ST. J. (Nov. 20, 1986), <https://www.wsj.com/articles/SB117269353475022375> (proposing a third state environmentalism that eschews the ideological underpinnings of traditional environmental protection).

8. E.g., Douglas R. Williams, *Environmental Law and Democratic Legitimacy*, 4

information to foster markets in which participants make individual choices that emerge into accidental action.<sup>9</sup> Proponents of this paradigm argue that better information allows consumer-citizens to make decisions in pursuit of their true needs and desires, while the cumulative force of consumer behavior leads to industry practices that reflect consumer preferences.<sup>10</sup> Critics note that it undermines democratic legitimacy by enshrining the status quo and weighting preferences according to wealth rather than individual political agency – promoting a world of one dollar, one vote.<sup>11</sup>

Given the express, longstanding, and physically essential role of food and the environment, such blind neutrality makes little sense for government and even less sense for advocates. Yet this strategy has become commonplace.

Instead of neutral, passive policy, the special role of both food and the environment demands thoughtful, assertive, intentional policymaking. More importantly, it demands thoughtful, assertive, intentional advocacy. Otherwise, policymakers will feel too little pressure to bridge the goal-tactic chasm on their own initiative. Assertive advocacy, and the assertive policy it generates, will allow the public, through votes and voices, as citizens and democratic participants, to direct lawmakers to create intentional, goal-oriented policy using tactics that are robust and lasting.

The next Part of this essay will further describe the distinctive place and unique importance of food and the environment to our culture and physical wellbeing. Part III will survey the types of policy that are prevalent in today's political

---

DUKE ENVTL. L. & POL'Y F. 1, 1-2 (1994).

9. E.g., Jason J. Czarnecki & Katherine Fielder, *The Neoliberal Turn in Environmental Regulation*, 2016 UTAH L. REV. 1, 1-2 (2016); ZYGMUNT BAUMAN, *LIQUID MODERNITY* (2000) (markets are like "swarms" of insects they appear to have direction and cohesion but lack purpose). See also DAVID SINGH GREWAL, *NETWORK POWER* 2, 2-3 (2008).

10. See David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 LAW & CONTEMP. PROBS. 1, 3, 5-6 (2014).

11. See Amy Kapczynski, *The Cost of Price: Why and How to Get Beyond Intellectual Property Internalism*, 59 UCLA L. REV. 970, 978 (2012).

climate. Part IV is a plea to give robust, assertive policymaking a chance. This final part will describe some of the policy strategies that rise to meet the challenge of supporting the intricate food and environmental systems on which we rely.

## II. Passivity or Intent: Affirmative Advocacy for Food and the Environment

There is growing awareness that food and the environment do not just overlap. Rather, they are fundamentally intertwined and, thus, policy is needed to jointly foster healthy food and healthy environments.<sup>12</sup> Aldo Leopold and Wendell Berry, among others, argue that by eating we become responsible for the environmental consequences of our choices.<sup>13</sup> Michael Pollan calls eating “a political act.”<sup>14</sup> But an act is not an answer. By eating we become responsible for the way our actions impact food and environmental systems, but choices about what we eat are not sufficient to realize that responsibility. Eating inevitably connects us to farmers and their land, but it does not provide a mechanism for coming to political understandings about how food should be grown or how land should be used.

Chicken production, just one example of the important physical link between food and the environment, reveals the deep political responsibility that eating creates but does not resolve.

When we eat chicken, and 95 percent of us do, we can be almost certain that chicken was produced by one of a handful of giant agribusinesses.<sup>15</sup> These agribusinesses, called integrators, control 97 percent of all U.S.-raised chickens, and in 2014 the

---

12. See, e.g., MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA* 4 (2006).

13. ALDO LEOPOLD, *A SAND COUNTY ALMANAC* (1949); WENDELL BERRY, *THE UNSETTLING OF AMERICA* (1977); but cf. PAUL B. THOMPSON, *THE SPIRIT OF THE SOIL* 90, 90-93 (1995) (for a critical summary of these and similar views).

14. Joe Fassler, *The Wendell Berry Sentence that Inspired Michael Pollan's Food Obsession*, *THE ATLANTIC* (Apr. 23, 2013), <https://www.theatlantic.com/entertainment/archive/2013/04/the-wendell-berry-sentence-that-inspired-michael-pollans-food-obsession/275209/>.

15. CHRISTOPHER LEONARD, *THE MEAT RACKET* 3 (2014).

top two integrators alone controlled more than 40 percent.<sup>16</sup> The integrator's business model produces extremely cheap and plentiful chicken by shifting risk to farmers, rural communities, and the environment.<sup>17</sup> Integrators do not own chicken barns, employ or make long-term commitments to the farmer, take responsibility for birds that die on the farm, or handle the birds' manure and its significant water pollution implications.<sup>18</sup>

Dispersed widely enough, chicken manure can be a useful fertilizer, but when concentrated, it becomes a toxic pollutant.<sup>19</sup> For example, when poultry production first concentrated on the Delmarva Peninsula, run-off from poultry farms nearly destroyed the Chesapeake Bay watershed.<sup>20</sup> The poultry industry's rampant pollution happens largely unchecked due in part to agriculture's exemption from many environmental laws.<sup>21</sup> Even when the poultry industry is subject to pollution controls, integrators evade legal responsibility by shifting the burden of waste management to individual farmers who are rarely paid by the integrator for waste management costs.<sup>22</sup> Because these individual farmers are usually heavily indebted, they are also judgment proof, making enforcement nearly

---

16. James M. MacDonald, *Technology, Organization, and Financial Performance in U.S. Broiler Production*, USDA ERS, EIB 126 at 4 (June 2014) [hereinafter *Broiler Production*].

17. C. Robert Taylor & David A. Domina, *Restoring Economic Health to Contract Poultry Production*, 4 (May 2010), <http://www.dominalaw.com/documents/Restoring-Economic-Health-to-Contract-Poultry-Production.pdf>.

18. Farmers Legal Action Group, *Assessing the Impact of Integrator Practices on Contract Poultry Growers* 106 (Sept. 2001), <http://www.flaginc.org/publication/assessing-the-impact-of-integrator-practices-on-contract-poultry-growers/> (finding that all integrator contracts make farmers responsible for dead birds, and all make the farmer responsible for waste, though some accomplish that by omission since farmers must remove litter before they can receive a new flock).

19. The Pew Charitable Trusts, *The Business of Broilers* 19, 19-20 (Dec. 2013), <http://www.pewtrusts.org/en/research-and-analysis/reports/2013/12/20/the-business-of-broilers-hidden-costs-of-putting-a-chicken-on-every-grill> [hereinafter *The Business of Broilers*].

20. *Broiler Production*, *supra* note 16, at 23; *The Business of Broilers*, *supra* note 19, at 20.

21. See, e.g., J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263, 263 (2000).

22. *Unleashing America's Prosperity to Create Jobs and Increase Wages*, DONALDJTRUMP.COM (Aug. 8, 2016), <https://www.donaldjtrump.com/press-releases/unleashing-americas-prosperity-to-create-jobs-and-increase-wages>.

impossible and ultimately shifting the burden to the public and environment.<sup>23</sup>

This is a clear political problem that spans health, environment, economic independence, the farming and agricultural culture, the legal rules around business entities, bankruptcy, and much more. Consumer choices alone—food choices alone—cannot change the structure of this industry. Eating will not solve these problems.

### **III. Compromise Is A Practical Necessity, Not An Advocacy Goal**

For at least three decades, environmental policy makers have settled for passive policy, attempting tweaks and value-neutral compromise rather than reaffirming the shared values that birthed modern environmentalism.<sup>24</sup> For environmentalism, passive advocacy has had too little substantive success in addressing dynamic environmental problems.<sup>25</sup> Nor is passivity even a useful tool for achieving compromise since it fails to stake a values claim against which to compromise. The lesson from the environmental experience of the last three or four decades is that we must make assertive demands in order to motivate real democratic participation and to build—albeit slowly—the cultural foundation for more effective, lasting, and meaningful policy.

It is obvious to us that the rush towards passive or “neutral” policy, as opposed to articulating core values and finding workable compromises, has become the norm in food policy just as it is for traditional environmental policy.

Consider that the highest profile battle in food policy over

---

23. *The Business of Broilers*, *supra* note 19, at 1.

24. Joshua Galperin, *Thirty Years of Third Stage Environmentalism*, HUFFINGTON POST (Nov. 28, 2016), [http://www.huffingtonpost.com/entry/thirty-years-of-third-stage-environmentalism\\_us\\_583c7fc5e4b037ba5d6ae4ad](http://www.huffingtonpost.com/entry/thirty-years-of-third-stage-environmentalism_us_583c7fc5e4b037ba5d6ae4ad).

25. Joshua Galperin, *'Desperate environmentalism' won't save the planet*, L.A. TIMES (Oct. 29, 2015), <http://www.latimes.com/opinion/op-ed/la-oe-galperin-environmental-desperation-20151029-story.html>

the past several years concerned mandatory labeling of foodstuffs produced with genetically modified organisms (GMOs). The advocates who dominated the anti-GMO movement consistently marshaled their unverified claims<sup>26</sup> that GMOs present (or could present) a food safety risk, and called for policy that is quintessentially passive: a label. Labels allow consumers to exercise their individual preferences, avoiding perceived risks to individual health. Labels do little to nothing to address the actual, population-level risks of GMOs, such as consolidation of the seed industry and the rise of increasingly herbicide-resistant weeds.<sup>27</sup> Addressing these concerns requires more than a label; it requires new antitrust regulations backed by forceful arguments concerning sovereignty and corporate power.<sup>28</sup>

Similarly, government efforts to substitute passive consumer choice mechanisms for democratic governance in the federal Dietary Guidelines has proven inadequate. Updated every five years on the advice of an advisory committee populated with riders of the revolving door,<sup>29</sup> and overseen by a department whose main objective is promotion of American agriculture,<sup>30</sup> the guidelines have routinely ignored advances in dietary science beginning with the inaugural guidelines published in 1980.<sup>31</sup> These guidelines have aligned with the U.S.'s assertive, goal-oriented policy that produces maximum calories as cheaply as possible; they add only a passive policy

---

26. David H. Freedman, *The Truth About Genetically Modified Food*, SCI. AM., <https://www.scientificamerican.com/article/the-truth-about-genetically-modified-food/>

27. David A. Mortensen et al., *Navigating a Critical Juncture for Sustainable Weed Management*, 62 AMERICAN INSTITUTE OF BIOLOGICAL SCIENCES 75 (2012), <http://www.bioone.org/doi/2bs110.1525/bio.2012.62.1.12>.

28. 2015-2016 & 2016-2017 Boards of the Yale Food Law Society, *An Open Letter to the People*, MEDIUM (Mar. 25, 2016), <https://medium.com/@gpdowney/an-open-letter-to-the-people-87268f9e41bf#cuqsk55r>.

29. Markham Heid, *Experts Say Lobbying Skewed the U.S. Dietary Guidelines*, TIME (Jan. 8, 2016), <http://time.com/4130043/lobbying-politics-dietary-guidelines/>

30. Kelly D. Brownell & Kenneth E. Warner, *The Perils of Ignoring History: Big Tobacco Played Dirty and Millions Died. How Similar is Big Food?*, 87 THE MILBANK Q. 259, 276 (2009) (“While working to promote healthy eating, the USDA at the same time has as its main objective the promotion of American agriculture (selling more food), so one goal typically prevails over the other when the two conflict.”).

31. Nina Teicholz, *The Scientific Report Guiding the US Dietary Guidelines: Is It Scientific?*, BMJ (Sept. 23, 2015), <http://www.bmj.com/content/351/bmj.h4962>



that tepidly admonishes citizen-consumers not to overeat.<sup>32</sup> Although the most recent guidelines update increasingly recognizes the benefits of fruits and vegetables,<sup>33</sup> given the history it should be no surprise then that two-thirds of Americans are overweight or obese.<sup>34</sup>

When passive policy looks beyond consumer choice, it often lands just barely beyond, on voluntary incentives. To take a single example, the Conservation Reserve Program (CRP) makes yearly rental payments to producers that take environmentally sensitive land out of agricultural production for 10-15 year periods.<sup>35</sup> It may seem obvious that producers should not be planting on “environmentally sensitive land” to begin with, especially given market conditions characterized by oversupply and prices below production costs. Further, the undesirability of this land for crop production raises serious questions of CRP’s effectiveness—or “additionality”—given that farmers may not have otherwise used the reserved land.<sup>36</sup> More troubling, once CRP contracts expire the producer is free to put the land back in to production, which can immediately negate any environmental benefits from the preceding decade.<sup>37</sup> Despite its shortcomings, advocates like the Environmental Defense Fund and the Nature Conservancy have praised this as a “win-win” strategy.<sup>38</sup> Such praise undermines efforts to create

---

32. See JULIE GUTHMAN, *WEIGHING IN: OBESITY, FOOD JUSTICE AND THE LIMITS OF CAPITALISM* 94-96 UNIVERSITY OF CALIFORNIA PRESS (2011).

33. U.S. Dept. of Health and Human Services and U.S. Dept. of Agriculture, *2015-2020 Dietary Guidelines For Americans*, 8<sup>TH</sup> Edition, Key Recommendations, (Dec. 2015), <https://health.gov/dietaryguidelines/2015/guidelines/chapter-1/key-recommendations/>

34. U.S. Dept. of Health and Human Services, *Overweight and Obesity Statistics* (Oct. 2012),

<http://www.niddk.nih.gov/health-information/health-statistics/Pages/overweight-obesity-statistics.aspx>; KM Flegal et al., *Prevalence of Obesity and Trends in the Distribution of Body Mass Index Among US Adults, 1999-2010*, 307 *JAMA* 491 (2012).

35. USDA, *Conservation Reserve Program*, <https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/index> (last visited Feb. 28, 2017).

36. See Erik Lichtenberg, *Conservation, the Farm Bill, and U.S. Agri-Environmental Policy*, 29 *CHOICES*, no. 3, 2014, [http://www.choicesmagazine.org/UserFiles/file/cmsarticle\\_385.pdf](http://www.choicesmagazine.org/UserFiles/file/cmsarticle_385.pdf).

37. Nat’l Wildlife Fed’n, *Maintaining the Benefits of Expiring CRP*, <https://www.nwf.org/What-We-Do/Protect-Habitat/Healthy-Forests-and-Farms/Farm-Bill/Farm-Bill-Success-Stories/Success-Expiring-CRP.aspx> (last visited Apr. 10, 2017).

38. Env’tl. Def. Fund, *USDA Conservation Reserve Program Initiative Praised by Conservation Group* (Mar. 2, 2012),

more assertive solutions. If CRP is a “win,” there is little reason to strive for more effective policy.

Ironically, CRP is modeled off successful and goal-oriented post-war policies designed to control supply and keep prices high enough to support farmer livelihoods. These policies were successful because they meaningfully regulated—as opposed to merely incentivizing—behavior and directly addressed an explicit goal of limiting production.

Finding shared goals, making them explicit, and developing a meaningful policy to accomplish them is indeed difficult, but it becomes impossible when even advocates refuse to name the values that drive them and fail to commit forcefully to the tactics necessary to achieve their goals. Only when advocates embrace the values that make food and the environment such central parts of the American story can advocacy live up to the essential demands of the food and environment nexus.

#### **IV. Assertive Policy Advocacy Is A Commitment To Inclusive Democracy, Not A Promise of More Regulation**

The fabled picture of food and the environment does not arise by chance. It arises because each is important culturally and physically. Given their essentiality, we must demand more intentionality. Further, we must demand policies not only because they are possible, but also because they are thoughtful, effective, goal oriented, and purposeful. While the current trajectory and political climate do not bode well for this assertive policy, there are a few examples that can give us hope and direction moving forward.

The Whole Farm Revenue Protection (WFRP) program, for instance, is a pilot program designed to meet the 2014 farm bill requirement that USDA develop a “Whole Farm Diversified Risk Management Insurance Plan.”<sup>39</sup> It came about after more

---

<https://www.edf.org/news/usda-conservation-initiative-praised>; Kris Johnson, *A Benefit of the Conservation Reserve Program: Paying Farmers to Grow Clean Water*, COOL GREEN SCIENCE, THE NATURE CONSERVANCY (Jul. 1, 2016), <http://blog.nature.org/science/2016/07/01/a-benefit-of-the-conservation-reserve-program-paying-farmers-to-grow-clean-water/>.

39. See generally Agricultural Act Of 2014, Pub. L. No. 113-79, 128 Stat 649 (codified in scattered sections of 7 U.S.C.).

than a decade of demands, primarily from the National Sustainable Agriculture Coalition and its members, to create a risk management program responsive to the needs of diversified operations.<sup>40</sup> These operations tend to be smaller and often lack access to the subsidies available to large commodity producers.<sup>41</sup> In contrast to prevailing risk management programs, the WFRP program embodies values-driven policymaking that cracks a door to more ambitious reforms within agricultural risk management. As a result of the program, new and smaller-scale farmers face reduced administrative requirements, receive increased subsidies,<sup>42</sup> and subsidy rates rise along with on-farm crop diversity.<sup>43</sup> Thus, WFRP's very terms recognize that public support for agricultural risk planning can progressively benefit small and beginning farmers to support rural livelihoods and communities, while—by supporting small, diversified, often organic farms—aggressively valuing agro-ecological production that enhances natural resources and promotes public health.<sup>44</sup> These are shared cultural values and we do ourselves no favors by pretending they are not valid political goals.

Sometimes these shared values are already obvious. Other times leadership can help develop those values. For example, over the last eight years food served in schools has profoundly changed for millions of children. These changes were made possible, in large part, by the moral leadership of First Lady Michelle Obama.<sup>45</sup> In the 2010 Healthy Hunger-Free Kids Act,

---

40. See Nat'l Sustainable Agric. Coal., *Whole Farm Revenue Protection for Diversified Farms* (Sept. 2016), 40 See Nat'l Sustainable Agric. Coal., *Whole Farm Revenue Protection for Diversified Farms* (Sept. 2016), <http://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/whole-farm-revenue-protection-for-diversified-farms/>.

41. *Id.*

42. USDA FED. CROP INS. CORP., *WHOLE-FARM REVENUE PROTECTION PILOT HANDBOOK 39* (FCIC 18160, 2016), [http://www.rma.usda.gov/handbooks/18000/2016/16\\_18160-1h.pdf](http://www.rma.usda.gov/handbooks/18000/2016/16_18160-1h.pdf).

43. USDA Risk Mgmt. Agency, *Whole-Farm Revenue Protection* (Apr. 2016), <http://www.rma.usda.gov/pubs/rme/wfrpfactsheet.pdf> (last visited Apr. 10, 2017).

44. UN Human Rights Council, *Report Submitted by the Special Rapporteur On the Right to Food, Oliver De Schutter 6* (Dec. 20, 2010), [http://www.srfood.org/images/stories/pdf/officialreports/20110308\\_a-hrc-1649\\_agroecology\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20110308_a-hrc-1649_agroecology_en.pdf).

45. Helena B. Eivich & Darren Samuelsohn, *The Great FLOTUS Food Fight*,

the First Lady helped establish new nutritional goals and provided needed money to improve kitchen facilities.<sup>46</sup> One of the most significant changes was the Community Eligibility Provision.<sup>47</sup> “Community Eligibility” means that schools with high rates of poverty can provide free lunch to all students.<sup>48</sup> By streamlining the process of reimbursement, Community Eligibility solves two major problems. First, it de-stigmatizes free lunch – ensuring that students who need the meal will be able to freely participate.<sup>49</sup> For another, it reduces the paperwork burden for poor students, their schools and families.<sup>50</sup> In the past, and potentially the future if Congress rolls back the rule, a child may be denied food because they forgot to bring in their paperwork. Or, a teenager might prefer to go hungry rather than enduring the embarrassment of being seen in the free breakfast line. Community Eligibility is not only important because it is more efficient (though it is), but because of the basic principle that all children deserve food.<sup>51</sup> If the provision is to survive the coming years it will need to be defended on moral grounds. Of course, the same is true for a healthy food system across the board.

## V. Conclusion

Balancing achievability and desirability does not mean finding a place in the middle. It means balancing what is immediately doable while actively trying to change what is possible. The current of policy advocacy and policymaking in food and the environment is pulling decidedly towards

---

POLITICO (March 17, 2016), <http://www.politico.com/agenda/story/2016/03/michelle-obama-healthy-eating-school-lunch-food-policy-000066> (describing both the ups and downs of the First Lady’s fight for reform).

46. Healthy, Hunger Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (codified in scattered sections of 42 U.S.C.)

47. *Id.* § 104 (“Eliminating individual applications through community eligibility”).

48. USDA Food and Nutrition Service, *School Meals: Community Eligibility Provision*, <https://www.fns.usda.gov/school-meals/community-eligibility-provision> (last visited Feb. 23, 2017).

49. Food Research & Action Center, *Community Eligibility*, <http://frac.org/community-eligibility> (last visited Feb. 23, 2017).

50. *Id.*

51. Jane Black, *Revenge of the Lunch Lady*, HUFFINGTON POST HIGHLINE (Feb. 9, 2017), <http://highline.huffingtonpost.com/articles/en/school-lunch/>.

immediacy. Were immediacy—and the passivity it demands—leading to great achievements, there would be little to critique about the current. Unfortunately, as the examples in Part III demonstrate, we have achieved too little progress to give political or substantive credit to passivity.

Thankfully, there is hope in intent. Whether looking at the nation's foundational environmental laws, the grand scale of its early food and agriculture policies, or the various models identified in Part IV, developing policy that reflects and shapes cultural values, clearly articulates goals, and seeks to shape values moving forward can become a reality.

For many progressive advocates, of course, we are ignoring something essential: The election of President Trump and a Congress that is openly hostile towards progressive policy and environmental protection.<sup>52</sup> While implementing passive policy may seem like the only imaginable achievement in the short term, pursuing values-free positions will only weaken progressive causes. We must strive for more. If there is anything we can learn from President Trump's campaign, it is that speaking in plain terms about core values (as reprehensible as his are) can change what is politically possible. Without boldly speaking about our own goals, even when we are sure they will not be enacted tomorrow, we will be unable to write a new American mythology.

---

<sup>52</sup> E.g., Devin Henry & Timothy Cama, *Pruitt Confirmation Sets Stage for Trump EPA Assault*, THE HILL (Feb. 20, 2017), <http://thehill.com/policy/energy-environment/320176-pruitt-confirmation-sets-stage-for-trump-epa-assault>.