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Farming and Eating

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"The cities have not made the country. On the contrary, the country has compelled cities. Without the former the latter could not exist. Without farmers there could be no cities."[1]

The infrastructure of food in modern society—refrigeration, food processing, transportation—and the global scale of the "hinterland" obscure the complex, mutually dependent relationship between cities and rural lands. Links remain, however. Most cities no longer rely on proximate rural lands for their food supply. They do depend, however, on distant agricultural lands where, despite a recent upsurge in urban agriculture, the vast majority of food is produced. Likewise, farmlands remain dependent on urban areas—where the vast majority of food customers live.

This interdependence generates a strong mutual interest between urban and agricultural communities. The long-term viability of the agricultural sector is essential both for rural livelihoods and for sustenance. Threats to this viability include climate change-induced extreme weather (including drought, flooding, heat waves, freezes, etc.), invasive species, declining soil health, and loss of pollinators, among others.[2]

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1. WILLIAM CRONON, NATURE'S METROPOLIS, 97 (1991) (quoting a Chicago resident from 1893).

2. *See* Sonja J. Vermeulen et al., *Climate Change and Food Systems*, 37 ANNUAL REV. ENVIRON. RESOUR. 195, 202-08 (2012) (providing a survey of literature evaluating potential consequences of climate change for agriculture); Olivier de Schutter, *Agroecology and the Right to Food*, Report presented at the 16th Session of the United Nations Human Rights Council [A/HRC/16/49] at 3 (concluding that "increasing food production to meet future needs, while necessary, is not sufficient. . . . [S]hort-term gains will be offset by long-term losses if it leads to further degradation of ecosystems, threatening future ability

Modern food production practices create a second direct link between urban and rural areas. As I have discussed elsewhere, farming practices generate environmental harms that impose a direct cost on both urban and rural populations.[3] Drinking water is the best example of this.[4] All across the country, agricultural pollution such as arsenic, nitrates, and microbial contaminants migrate from fields and feedlots into source water for municipal water supplies and private wells. This contamination threatens public health and drives up drinking water costs.[5] The weight of these externalities is also borne by agricultural communities, including farm workers, farm owners and operators, and other members of rural communities.[6] These two threads—shared dependence on agricultural productivity and shared weight of agriculture's externalities—remind us that the food system is a connected whole.

Despite these common threads, the dominant perception in the United States today is that urban and rural agricultural interests are in opposition and are possibly even mutually exclusive. This perception is false. This essay argues that the "us versus them" rhetoric that dominates food and agriculture policy today drives a wedge between farmers and food consumers. Together, farmers and food consumers could form a powerful coalition to challenge the true obstacle to sustainable and equitable food production: concentration of market and political

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to maintain current levels of production").

3. Margot J. Pollans, *Drinking Water Protection and Agricultural Exceptionalism*, 77 OHIO ST. L.J. 1195 (2016).

4. But it is not the only example. Others include contribution to smog in urban and rural areas. *See, e.g.*, Nate Berg, *Why Does California's Central Valley Have Such Bad Air Pollution*, CITY LAB (Sept. 28, 2011), http://www.citylab.com/weather/2011/09/behind-pollution-californias-central-valley/207/;. Agriculture also makes significant contributions to global greenhouse gas emissions, totaling around eight percent in the U.S. EPA, Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2015, at 5-1 (Feb. 15, 2017), https://www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf; Sonja J. Vermeulen, Bruce M. Campbell, & John S.I. Ingram, *Climate Change and Food Systems*, 37 ANNU. REV. ENVIRON. RESOUR.195 (2012).

5. Pollans, *supra* note 3, at 1221-23.

6. Doug Gurian-Sherman, *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations*, UNION OF CONCERNED SCIENTISTS, 5 (April 2008), https://www.organicconsumers.org/sites/default/files/cafos_uncovered.pdf.

power elsewhere along the food chain.[7]

Even within the food movement, demonization of the agriculture industry is common. In the last decade, the food movement has identified concerns with a long list of production-side food system problems—the prevalence of unhealthy processed foods and their public health impacts, especially among children; exploitative labor practices throughout the supply chain; inhumane animal welfare practices; genetic modification; and a host of environmental problems that result from extensive monoculture.[8] Using a combination of market pressure and political advocacy, various fronts of the food movement have achieved commitments for reduced use of animal antibiotics, better living conditions for pigs and chickens, mandatory composting, soda taxes, and much more.[9] As consumer focus on food has increased, environmental organizations have also entered the fray, launching food and agriculture programs that seek to address agricultural pollution.[10]

The food movement's best-known leaders have reflected this critical attitude toward the food industry. For example, in an op-ed in the *New York Times*, Mark Bittman wrote: "Many food

7. This includes the agricultural input (pesticides, seeds, fertilizer, farm equipment), food distribution and processing, food retail, and restaurant sectors.

8. Michael Pollan, *Food Movement, Rising,* N.Y. BOOKS (June 10, 2010), http://www.nybooks.com/articles/2010/06/10/food-movement-rising/.

9. Jennifer Hackett, *Subway Joins Other Fast-Food Giants to Cut Back on Antibiotics*, SCIENTIFIC AMERICAN, (Oct. 28, 2015), https://www.scientificamerican.com/article/subway-joins-other-fast-food-giants-to-cut-back-on-antibiotics/; Cal. Health & Safety Code § 25990 (Deering 2016) (animal living conditions); Prevention of Farm Animal Cruelty Act, 2016 Mass. Acts 333; Mandatory Recycling and Composting Ordinance, S.F., Cal. Ordinance 100-09 (June 9, 2009); 310 Mass. Code Regs. 19.017(3) (2016) (food waste ban); Philadelphia, PA, Code § 19-4100 (2016) (soda tax); Oakland, Cal., Ordinance 86161 (May 3, 2016) (soda tax).

10. Peter Lehner, *Fixing Our Broken Food System*, EARTHJUSTICE BLOG (Mar. 25, 2016), http://earthjustice.org/blog/2016-march/fixing-our-broken-food-system. Sierra Club, NRDC, and other environmental organizations have all started agriculture programs in the last ten years. One of Sierra Club's program, Fair Table, supports a transition to agricultural methods that maximize biodiversity and preserve natural resources. *See* Sierra Club, *Fair Table,* SIERRA CLUB, http://www.sierraclub.org/fair-table (last accessed Feb. 27, 2017). For a comprehensive list of Sierra Club's agriculture and food policies and practice guidelines, *see* Sierra Club, *Agriculture and Food*, SIERRA CLUB, http://www.sierraclub.org/policy/agriculture/food (Feb. 28, 2015).

production workers labor in difficult, even deplorable, conditions, and animals are produced as if they were widgets. It would be hard to devise a more wasteful, damaging, unsustainable system."[11] In that same newspaper, Michael Pollan recently commented: "What ideas does Big Food have? One, basically: 'If you leave us alone and pay no attention to how we do it, we can produce vast amounts of acceptable food incredibly cheaply.'"[12] Dan Barber, another leading food movement voice, recently called monoculture reprehensible.[13] According to the food movement narrative, industrial farming is responsible for many of our food system's ailments.[14]

Although the criticism is typically aimed at "big food," it often paints with a broad brush.[15] This makes it easy for "big food" advocates to characterize the food movement as anti-farmer. As John Collison of the Oklahoma Farm Bureau, explained, "We're the ones that raise millions and millions of animals every single day, and take care of them. They're our livelihood. We're not going to treat our business badly."[16] During the 2012 Farm Bill reauthorization process, then-House Agriculture Committee Chairman Congressman Frank Lucas, R-Okla., echoed this sentiment in stating his opposition to coupling conservation requirements to eligibility for crop insurance: "Farmers and ranchers are the best possible stewards of their

11. Mark Bittman, *A Food Manifesto for the Future*, N.Y. TIMES (Feb. 1, 2011), http://opinionator.blogs.nytimes.com/2011/02/01/a-food-manifesto-for-the-future/.

12. Michael Pollan, *Big Food Strikes Back: Why did the Obamas Fail to Take on Corporate Agriculture?,* N.Y. TIMES (Oct. 5, 2016), https://www.nytimes.com/interactive/2016/10/09/magazine/obama-administration-big-food-policy.html?_r=0.

13. Author's notes from the talk (Dec. 9, 2016). Monoculture is defined as "the cultivation or growth of a single crop or organism especially on agricultural or forest land." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/monoculture.

14. *See, e.g.*, Wes Jackson, Letter in LETTERS TO A YOUNG FARMER: ON FOOD FARMING, AND OUR FUTURE (MARTHA HODGKINS, ED. 2017) (describing the logic of farming in an industrial society, focusing on yield, technology, and industrialization).

15. "Big food" refers to the highly concentrated segments of the food industry, including food processors, distributors, and retailers.

16. Logan Layden, *Oklahoma 'Right to Farm' Push About More Than Agricultural Practices,* KGOU (Feb. 26, 2015), http://kgou.org/post/oklahoma-right-farm-push-about-more-agricultural-practices.

land. They are already successfully using conservation practices to protect our natural resources."[17] Given these defensive responses to food movement rhetoric, it is not surprising many farmers—only a very small percentage of whom could reasonably be characterized as "big food" insiders[18]—find the movement offensive.

The Trump administration has not only further politicized this divide, but also has picked a side. The Trump-Pence campaign adopted and sharpened the existing urban versus rural, environment versus farmer, us versus them rhetoric, going so far as to accuse the EPA of "doing all [it] can to take [farmers'] land, [] profits, and [] livelihood."[19] A list of talking points, obtained by Politico during the campaign, included the following statements:

- "The Trump-Pence Secretary of Agriculture will defend American Agriculture against its critics, particularly those who have never grown or produced anything beyond a backyard tomato plant."

- "The Trump-Pence administration will use the best available science to determine appropriate

17. Press Release, House Committee on Agriculture, Lucas Applauds American Farm Bureau's Opposition to Linking Conservation Compliance to Crop Insurance (Oct. 9, 2013), http://agriculture.house.gov/news/documentsingle.aspx?DocumentID=1228. *See also* Kip Tom, Food Tank Panel, https://www.youtube.com/watch?v=QR6ptMyh8FM, (starting at 19:17: "Our family has been on the farm since 1837, and I've got 8 generations behind me farming, and it is important to them to protect that resource as anybody, because we want to have them for future generations.")

18. USDA, *Family Farms are the Focus of New Agriculture Census Data*, (March 17, 2015), https://www.usda.gov/wps/portal/usda/usdahome?contentid=2015/03/0066.xml (noting ninety-seven percent of farms are family owned).

19. Talking Points, Document on File with the Author. Perhaps the epitome of the urban versus rural entrenchment is the post-election dialogue on such sites as Breitbart News, minimizing the significance of the split between the electoral college and the popular vote by pointing to the fact that Hillary Clinton won primarily in "elite coastal counties" whereas Donald Trump won "by a landslide in the heartland." Michael Patrick Leahy, "Donald Trump Won 7.5 Million Popular Vote Landslide in the Heartland," *Breitbart News* (Nov. 15, 2016), http://www.breitbart.com/big government/2016/11/15/donald-trump-won-7-5-million-popular-vote-landslide-mainstream-america/.

regulations for the food and agriculture sector; agriculture will NOT be regulated based upon the latest trend on social media."[20]

- "The Trump-Pence Administration will be an active participant in writing a new and better Farm Bill and delivering it on time! Our farmers deserve a good farm bill written by those who are thankful for our remarkable food system in this country."[21]

These campaign positions suggest three things. First, they reject the premise that our food system may be in need of reform. Focusing on the metrics of food safety, food prices, and production levels, our food system is indeed "remarkable."[22] Putting these metrics front and center makes it harder to justify development of environmental and public health regulations, which might undercut success along all of these metrics.[23] Second, they advocate limiting decisionmaking to those involved with food production. By narrowly defining the stakeholders in the food and agriculture policy debate, this language preferences certain kinds of issues—production costs and regulatory burdens—over others, such as agricultural externalities and food consumption-related concerns. Finally, and relatedly, they prioritize "big food" interests. In addition to the promise to protect development and use of biotechnology, the talking points also promise to reduce corporate taxation rates, a promise that holds value not for farmers, but for food processors, distributors, retailers, and agriculture input manufacturers.[24]

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20. Although this talking point does not explicitly mention genetic engineering, it is almost certainly intended to support that practice.

21. Talking Points for National Advisory Committee for Agriculture and Rural Issues, Trump/Pence Campaign (document on file with author).

22. According to Wang, et al., *Agricultural Productivity Growth in the United States: Measurement, Trends, and Drivers*, USDA Economic Research Report 189, 5 (July 2015), "U.S. Agricultural Output has more than doubled (up 156 percent) since 1948."

23. *But see* Margot Pollans & Emily Broad Leib, *Defining Food Safety for the 21st Century* (draft on file with author) (arguing that environmental protection is itself a critical element of food safety).

24. Early Trump Administration policies have not been all good for "big food"; immigration crack downs, shifts in trade policy, and proposed cuts to farm safety net

These trends have continued into the early days of the Trump Administration. It has delayed Obama-era consumer-oriented laws such as restaurant menu-labeling requirements and organic animal-welfare standards.[25] Despite promises to support farmers and prioritize rural economic development, the administration has sought budget cuts for rural programs at every opportunity,[26] and the Secretary of Agriculture has proposed restructuring the USDA to remove the Rural Development Mission Area.[27] It has also shown a propensity to side with industry in nearly all of its policy positions, and so far and agriculture is no different.[28] It is not likely the Trump

programs including crop insurance all threaten the cheap inputs on which big food relies.

25. Interim Final Rule; Extension of Compliance Date, Food & Drug Admin., 82 Fed. Reg. 20,825 (May 4, 2017) (extending compliance deadline for menu nutrition labels by one year); Final Rule; Delay of Effective Date, Agriculture Marketing Service, 82 Fed. Reg. 9967 (Feb. 9, 2017) (delaying effective date of organic livestock and poultry rule by six months to give agency additional time to consider the policy).

26. Helena Bottemiller Evich, "Ag Gets Dismissed by Trump Budget," *Politico Morning Agriculture Report* (May 24, 2017), http://www.politico.com/tipsheets/morning-agriculture/2017/05/24/ag-gets-dismissed-by-trump-220482
(describing big cuts in President Trump's proposed budget to USDA staff, supplemental nutrition assistance, farmworker training, and nonpoint source pollution mitigation); Helena Bottemiller Evich et al., "Trump Wants Cuts to USDA, FDA 2017 Funding," *Politico Morning Agriculture Report* (March 28, 2017),
http://www.politico.com/tipsheets/morning-agriculture/2017/03/trump-wants-cuts-to-usda-fda-2017-funding-219458
(describing proposed cuts to rural business loan programs among others).

27. Nat'l Sustainable Agriculture Coalition, "USDA Trades Away Rural Development," *NSAC Blog*, (May 12, 2017),
http://sustainableagriculture.net/blog/trading-away-rural-development/
(arguing that eliminating the mission area is a "demotion").

28. Take, as evidence of this thus far, President Trump's nomination of Sonny Perdue as Secretary of Agriculture. When Perdue served as Georgia's governor, he "supported factory farm expansion . . . and opposed air quality regulation." Ricardo J. Salvador & Nora Gilbert, *Sonny Perdue Vows to Make American Agriculture Great Again—but for Whom?,* THE GUARDIAN (Jan. 29, 2017),
https://www.theguardian.com/sustainable-business/2017/jan/29/sonny-perdue-agriculture-secretary-farming-american-agribusiness; . He has also expressed skepticism of climate change. Id. Given his track record, it is not surprising that many industry groups have been supportive of his nomination. Bartholomew Sullivan, *Industry Groups Mostly Positive to Perdue Nomination*, USA TODAY, (Jan. 19, 2017),
http://www.usatoday.com/story/news/politics/2017/01/19/industry-groups-mostly-positive-perdue-nomination/96795034/; Nikolai Kuznetsov, *The Next Agriculture Secretary Could Be Great for Agribusiness*, FORBES, (Feb. 10, 2017),
http://www.forbes.com/sites/nikolaikuznetsov/2017/02/10/the-next-agriculture-secretary-

administration will lead the charge to reframe the food and farming debates towards recognition of the shared interested of farmers and eaters.

Separated by political allegiances and public rhetoric, neither farmers nor consumers are well positioned to facilitate systemic change. While food movement advocates call on farmers to select different crops and to change their farming practices, these calls typically ignore or downplay the scope and scale of transition costs. For a farmer shifting from one crop to another, transaction costs might include significant capital investment in different types of equipment and acquisition of technical knowledge.[29] Some transitions may take several growing seasons, resulting in multiple years of lost profits.[30] Adoption of more environmentally-friendly farming practices might also require new spending, such as capital investment or retraining, or result in lost profit associated with practices such as fallowing fields. Many farmers are hesitant to shift to new crops because they may lack viable access to markets for those new crops.[31] Many farmers also enter into production contracts with aggregators, processors and retailers.[32] These contracts often "create pressures on producers to deliver standardized

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could-be-great-for-agribusinesses/#52e5e4c31e79.

29. Joysee M. Rodriguez, et al., *Barriers to Adoption of Sustainable Agriculture Practices: Change Agent Perspectives*, 24 RENEWABLE AGRIC. & FOOD SYSTEMS 60, 61-62 (2009) (cataloguing various barriers to transition).

30. *Id.*

31. Tamar Haspel, *Monocrops: They're A Problem, But Farmers Aren't The Ones Who Can Solve It*, WASH. POST, (May 9, 2014), https://www.washingtonpost.com/lifestyle/food/monocrops-theyre-a-problem-but-farmers-arent-the-ones-who-can-solve-it/2014/05/09/8bfc186e-d6f8-11e3-8a78-8fe50322a72c_story.html?utm_term=.e62976916d98 (last visited Feb. 9, 2017); Committee on Twenty-First Century Systems Agriculture, *Toward Sustainable Agricultural Systems in the 21st Century*, NATIONAL RESEARCH COUNCIL 271-74 (2010), http://www.nap.edu/catalog/12832/toward-sustainable-agricultural-systems-in-the-21st-century (describing how consolidation in food processing and retail may hinder access to markets and transitions to sustainability on farms).

32. *See*, *e.g.*, Christopher R. Kelley, *Agricultural Production Contracts: Drafting Considerations*, 18 HAMLINE L. REV. 397 (1995); James MacDonald, *Trends in Agricultural Contracts*, 30(3) CHOICES 1, 3 (2015) (production contracts cover about 35% of all agricultural products by value); James MacDonald et al., *Contracts, Markets, and Prices: Organizing the Production and Use of Agricultural Commodities*, Econ. Res. Serv. Agric. Econ. Rep. No. 837, v (Nov. 2004).

products and varieties to meet specified standards."[33] To meet those standards, farmers are sometimes "force[d] . . . to use production practices . . . that might not be suited to local ecological conditions."[34] As a result, such contracts "might create disincentives for the use of some farming practices that could enhance sustainability."[35]

Exacerbating these structural barriers is the fact that farming is a tough business. Farm income is highly volatile.[36] A large percentage of farm households supplement farm income with off-farm income; average farm income represents only 15% of farm household income.[37] Even among farms with gross sales over $250,000, which account for 82% of value of U.S. farm production, off-farm income represents 25% of total household income.[38] Both small and medium-sized farms—which constitute the vast majority of farms—often operate at very low or negative profit margins.[39] For these farms even small regulatory burdens can be the difference between economic viability and failure.[40] Low operating profit margins are a barrier

33. Committee on Twenty-First Century Systems Agriculture, *supra* note 31, at 275.

34. *Id*.

35. *Id.*

36. Nigel Key, Daniel Prager, & Christopher Burns, "Farm Households Experience High Levels of Income Volatility," *Amber Waves* (Feb. 22, 2017), https://www.ers.usda.gov/amber-waves/2017/januaryfebruary/farm-households-experience-high-levels-of-income-volatility/ (finding that income on commercial farms grossing over $350,000 fluctuated within a range of $110,000 between 1999 and 2004). Median household income on farms was $76,725 in 2015. Principal farm operator household finances, by ERS farm typology, 2015, https://www.ers.usda.gov/webdocs/DataFiles/Farm_Household_Income_and_Characteristics__17977/table02.xls?v=42704. But household income of farm families exceeds household income of non-farm families most of the time. Dept. of Agric., Envtl. and Dev. Econs., *Farm Policy Background: Income of U.S. Farm vs. Nonfarm Population*, FARMDOCDAILY (July 3, 2013), http://farmdocdaily.illinois.edu/pdf/fdd030713.pdf

37. *Id.* "While not commonly discussed, it appears that an important prerequisite for farming in the 21st Century in the U.S. is to have a second (or more) source of income not from the farm. Nonfarm income not only increases total household income but also is an important risk management strategy." *Id.*

38. *Id*. On these farms, average household income is $205,215.

39. 41.6 % of midsize farms, with gross cash farm income between $350,000 and $999,999, operate in the profit margin "critical zone." Robert Hoppe, *Profit Margin Increases with Farm Size*, AMBER WAVES (Feb. 2, 2015), For various types of small farms, the number ranges from 55.8% to 76.2%.. *Id.*

40. U.S. FOOD & DRUG ADMIN., ANALYSIS OF ECONOMIC IMPACTS—

to both regulatory compliance and voluntary change. Profit margins tend to be low because farmers often cannot raise prices to match increased production costs. Indeed, as a result of extreme concentration among buyers (food distributors, processors, and retailers) farmers often face near-monopsony situations—with only one or a handful of potential buyers, farmers must sell at whatever price and terms of purchase are offered to them.[41]

In recent years, progressive policy makers have focused attention on these structural barriers, developing a variety of mechanisms designed to shift power from processors, distributors, and retailers back to growers and to help growers overcome transition barriers. At the state and local level, lawmakers and advocates have supported the opening of food hubs, which help smaller farmers access markets from which they would otherwise be excluded.[42] At the federal level, in December 2009, the USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) finalized rules "establishing basic standards of fairness and equity in contracting in the

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STANDARDS FOR THE GROWING, HARVESTING, PACKING AND HOLDING OF PRODUCE FOR HUMAN CONSUMPTION 318 (2013), http://www.fda.gov/downloads/Food/FoodSafety/FSMA/UCM334116.pdf (explaining that "FDA believes farm operators are likely to make behavioral adjustments that would alleviate the impact of a regulation on their net returns. Farm operators may decide to increase their off-farm income (that is, income coming from a source other than the farm, for example, if the farm operator has an additional occupation) in or order to provide more total income to the farm operation).

41. *See* Robert J. Myers et al., *A Century of Research on Agricultural Markets*, 92 AM. J. AGRIC. ECON. 376, 378 (2010) (explaining the effects of competition and consolidation at the processing level on farm economies).

42. James Barham et al,, Regional Food Hub Resource Guide 29, 34-39 (April 2012), https://www.ams.usda.gov/sites/default/files/media/Regional%20Food%20Hub%20Resource%20Guide.pdf (describing funding federal programs that provised financial support for food hubs). The USDA defines a food hub as "a centrally located facility with a business management structure facilitating the aggregation, storage, processing, distribution, and/or marketing of locally/regionally produced food products." Jim Barham, *Getting to Scale With Regional Food Hubs*, USDA Blog (Dec. 14, 2010, 3:20 PM), http://blogs.usda.gov/2010/12/14/getting-to-scale-with-regional-food-hubs/.
Similarly, federal and state farm to institution programs help match growers with institutional purchasers such as schools, prisons, and hospitals, and provide those institutions incentives to purchase directly from farms.

poultry industry."[43] In December 2016, the GIPSA proposed additional rules that seek to correct a serious power imbalance between poultry processors—typically large corporations—and poultry producers—typically small and medium sized farmers.[44] Similarly, USDA conservation programs, particularly those such as the organic crosswalk program, provide growers funding to adopt more sustainable farming practices. Conservation programs cover some direct transition costs.[45] Although these programs are growing in number and reach, they remain limited in scope.

On the food consumption side, consumers face similar limitations on their ability to influence systemic change. Collectively, consumers can be a powerful market force. Individual consumers, however, face structural barriers that impede their ability to make sustainable choices. These barriers hinder consumers' ability to effect change.[46] Such barriers include physical access to sustainable products,[47] affordability of sustainable products,[48] and availability of information about

43. GIPSA, Questions and Answers for Poultry Final Rule, https://www.gipsa.usda.gov/psp/poultry/poultry_rule_QA.pdf; Poultry Contracts, Initiation, Performance, and Termination, 74 Fed. Reg. 63,271 (Dec. 3, 2009) (to be codified at 9 C.F.R. pt. 201), https://www.gipsa.usda.gov/federalregister/fr09/12-3-09.pdf.

44. *See* Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act, 81 Fed. Reg. 92,703 (proposed Dec. 20, 2016) (to be codified at 9 C.F.R. pt. 201).

45. Nat. Resources Conservation Serv., Conservation Stewardship Program's Contribution to Organic Transitioning – The Organic Crosswalk 1 (2012), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1047037.pdf; *see also* 16 U.S.C. § 3838g(g).

46. *See generally* Michael Maniates, *Individualization: Plant a Tree, Buy a Bike, Save the World*?, CONFRONTING CONSUMPTION (THOMAS PRINCEN, MICHAEL MANIATES, & KEN CONCA, EDS. 2002).

47. Particularly in rural areas, where consumer options may be extremely limited, consumers have few choices. *See* Ken Peattie, *Green Consumption: Behavior and Norms*, 35 ANN. REV. OF ENVT. & RESOURCES 195 (2010), http://www.annualreviews.org/doi/full/10.1146/annurev-environ-032609-094328# (citing studies of localized green consumption behaviors that reveal barriers to sustainable consumption in rural areas).

48. For instance, a 2010 study by the USDA's Economic Research Service found price premiums for organic foods ranging from seven percent to eighty-two percent. Andrea Carlson, *Investigating Retail Price Premiums for Organic Foods*, Amber Waves (May 24, 2016), https://www.ers.usda.gov/amber-waves/2016/may/investigating-retail-price-premiums-for-organic-foods/; *Organic Agriculture FAQ: Why is Organic Food More*

sustainability.[49] Although labeling and marketing campaigns have achieved some important successes, particularly related to animal welfare and animal antibiotics use, these successes are narrow in scope. Ultimately, relying on consumers to solve the problems of the food system puts an unfair and unrealistic burden on them to change aspects of their lives that are beyond their control.[50]

Even when organized into coherent movements, neither farmers nor consumers have the power, acting independently from each other, to reshape food systems. Yet both are legitimate stakeholders in food policy debates. They have well-aligned interests in preserving the viability of the food supply and reducing the agricultural externalities that threaten our collective health and well-being. Indeed, many farmers strive to make good environmental choices, even if they do not use the word "environmental" to describe those choices.[51] For most

Expensive than Conventional Food?, Food and Agriculture Organization of the United Nations, http://www.fao.org/organicag/oa-faq/oa-faq5/en/ (last visited Feb. 12, 2017), (listing reasons why organic food is more expensive than the conventional variety). Affordability is also a serious problem for food system workers (including farm workers, food prep workers, and food retail workers) who make up one sixth of the nation's workforce and are, on average more food insecure. Food Chain Workers Alliance, *The Hands That Feed Us: Challenges and Opportunities for Workers Along the Food Chain* 20 (June 6, 2012), http://foodchainworkers.org/wp-content/uploads/2012/06/Hands-That-Feed-Us-Report.pdf.

49. Information serves as a barrier to sustainable decision making not just because consumers do not have access to all of the relevant information necessary to make informed choices but also because consumers do not have the tools necessary to weigh the numerous variables to compare the relative sustainability of various products.

50. Margot J. Pollans, *The Labeling Shortcut*, SLATE (May 5, 2016), http://www.slate.com/articles/health_and_science/science/2016/05/the_fda_s_quest_to_define_natural_won_t_give_us_better_food.html. This is not to say that consumers should bear no responsibility for the food system, but perhaps that responsibility is better exercised at the ballot box than at the grocery store. Big food interests have invested considerably lobbying dollars into forwarding the personal responsibility and freedom of choice narratives that underlies the consumer-choice oriented model of food system change.

51. Hiroko Tabuchi, *In America's Heartland, Discussing Climate Change Without Saying 'Climate Change*, N. Y. TIMES (Jan. 28, 2017), https://www.nytimes.com/2017/01/28/business/energy-environment/navigating-climate-change-in-americas-heartland.html?_r=0. Farming is, after all, an exercise in conservation. In the first half of the nineteenth century, east coast farmers facing soil exhaustion had a choice: move west in search of new land or farm differently, farm better. This characterization of the choice takes the perspective of an American farmer in the Early

farmers, however, anti-regulatory organizations such as the Farm Bureau continue to offer a more appealing narrative than pro-regulatory consumer and environmental organizations.

"Big food" benefits from the splintering of constituencies. These companies know that farmers are not powerful enough to drive a new policy landscape. Recognizing that consumers are more powerful, "big food" interests have worked to characterize them as anti-farmer—a savvy, if cynical, misdirection that distracts from the real source of food system problems.

It is time to form a coalition comprised of farmers, food consumers, and environmentalists.[52] This coalition must be strong enough to embrace not just the New Wave farmers who have already positioned themselves as an alternative to big food, but also the "conventional" farmers who, for lack of any sensible alternative, have allied themselves with "big food."[53] This coalition should be sensitive to the challenges of farming

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Republic. Of course, there was not actually "new" land, there was simply Native American territory that had not previously been farmed using European agronomy and husbandry practices. On the choice between conservation and emigration west. *See* STEVEN STOLL, LARDING THE LEAN EARTH: SOIL AND SOCIETY IN NINETEENTH-CENTURY AMERICA 19-25 (2002). We face the same choice today, except there is no "new" land left.

52. There is one context, in the modern era, in which farm and urban interest have historically aligned to fight for policy at the federal level: hunger and food cost. This single-issue alliance has perpetuated the myth the food price is the primary cause of hunger and that keeping food prices low is the primary solution. This narrative makes it harder to solve the poverty problems that cause hunger and to address any of the externalities of agriculture. *See, e.g.*, Ian Kullgren, *FLOTUS Digs in on Future of White House Garden, Let's Move!*, POLITICO (Oct. 6, 2016), http://www.politico.com/tipsheets/morning-agriculture/2016/10/flotus-digs-in-on-future-of-white-house-garden-lets-move-216714 (juxtaposing my critique with the position of the Farm Buearu). As an example of this concern, see USDA response to EPA 2008 Advance Notice of Proposed Rulemaking regarding use of the Clean Air Act to regulate greenhouse gas emissions; USDA argued that "if EPA were to exercise the full suite of the Clean Air Act regulatory programs outlined in the draft ANPR, we believe that input costs and regulatory burden would increase significantly, driving up the price of food and driving down the domestic food supply." EPA, Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44354, 44376 (Jul. 30, 2008). The USDA's response did not consider the value of benefits resulting from reducing agriculture's greenhouse gas footprint (including those accruing to farmers themselves).

53. This alliance serves the interests of big food, and, in fact, some have argued that "agribusiness and its boosters intentionally portray their interests as the interests of 'American agriculture.'" Salvador & Gilbert, *supra* note 26.

and sustainable transitions, but it must also recognize food consumers as legitimate stakeholders in food production policy whose interests extend beyond keeping food cheap.

One potential focus for such an alliance could include investment in infrastructure designed to overcome structural barriers facing both producers and consumers. This includes not only physical infrastructure such as food hubs, rural broadband, and seed banks, but also information infrastructure such as farmer and consumer training programs and support infrastructure such as access to adequate legal services and childcare. Pilot programs already exist in all of these areas, but their capacity is limited.

This coalition has more to offer farmers than does "big food" because it promises something more meaningful than insulating farmers from regulation. Instead, it offers to reduce the power of the food processors, retailers, and distributors who currently hold farmers captive. Working together, farmers and consumers can share in the value that "big food" has monopolized. The coalition would serve as a counterpoint to the corporate food interests that currently govern the terms of our food regulatory system and policy debates. Farming and eating go hand in hand. Our agriculture policy should reflect that.