

2018

Cooperation or Compromise? Understanding the Farm Bill's Omnibus Legislation

Margaret Sova McCabe
University of Arkansas, Fayetteville

Follow this and additional works at: <https://scholarworks.uark.edu/jflp>



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

Recommended Citation

McCabe, M. S. (2018). Cooperation or Compromise? Understanding the Farm Bill's Omnibus Legislation. *Journal of Food Law & Policy*, 14(1). Retrieved from <https://scholarworks.uark.edu/jflp/vol14/iss1/5>

This Essay is brought to you for free and open access by the School of Law at ScholarWorks@UARK. It has been accepted for inclusion in *Journal of Food Law & Policy* by an authorized editor of ScholarWorks@UARK. For more information, please contact scholar@uark.edu, uarepos@uark.edu.

—Journal of—
FOOD & LAW
—POLICY—

Volume Fourteen

Number One

Spring 2018

COOPERATION OR COMPROMISE? UNDERSTANDING THE FARM BILL AS OMNIBUS LEGISLATION
Margaret Sova McCabe

A PUBLICATION OF THE UNIVERSITY OF ARKANSAS SCHOOL OF LAW

Cooperation or Compromise? Understanding the Farm Bill as Omnibus Legislation

Professor Margaret Sova McCabe*

“Since the early days of the revolution, the founding fathers had fought together for the future of their country. But . . . divisions had slowly begun to form between them that, once hardened, would lead to the formation of the United States of America’s first political parties. Key to their emergence were fundamental differences in what the revolutionaries believed ought to be the fabric of American society – the dream of a nation of farmers versus the vision of a merchant and trader elite.”¹

I. Introduction: Making Food Law with Omnibus Legislation

Is the development of American food law and policy benefited or burdened by a Farm Bill (“the Bill” or “Bill”) that sets appropriations and policy for commodities, conservation, trade, nutrition, credit, rural development, forestry, and energy?² On one hand, a broad Bill that ties together many pieces of the food system under one legislative process could be a brilliant way to infuse systems thinking and alignment into a complex, politicized realm. On the other, the Bill, as omnibus legislation, could simply represent a classic case of logrolling³ that does little

* Professor of Law; Faculty Fellow, Rudman Center for Justice, Leadership & Public Service, University of New Hampshire School of Law. Professor Sova McCabe has been selected as Dean of the University of Arkansas School of Law and assumed her duties on July 1, 2018.

¹ ANDREA WULF, *FOUNDING GARDENERS: THE REVOLUTIONARY GENERATION, NATURE, AND THE SHAPING OF THE AMERICAN NATION* 83 (Vintage Books 2011).

² See generally Agriculture Act of 2014, P.L. 113-79, 128 Stat. 649 (2014).

³ TED A. DONNER & BRIAN L. CROWE, *ATTORNEY’S PRACTICE GUIDE TO NEGOTIATIONS* § 12:46 (2d ed. 1995 & Supp. 2009) (“Logrolling is often described as a concession tactic that is difficult to utilize in competitive negotiations because it involves one side’s conceding his or her lesser concerns for the other side’s more substantial concerns, in

to promote a deeply coordinated, systematic approach to one of the most important components of stable democracy and the economy: food and its production.

The distinction between urban and rural agendas in U.S. food law and policy stretches back to the country's political roots, as the introductory quote captures.⁴ As time has passed, the issues and demographics have evolved to shift dominance from agrarian interests to the urban agenda.⁵ However, one thing remains constant: producing and consuming affordable, accessible food is essential to all Americans. Given that the Bill represents our nation's traditional process for setting food law and policy, this essay explores the modern influence of the urban-rural divide and how omnibus legislation has bridged that gap. That bridging remains essential to developing balanced food law and policy, but with each Bill it becomes increasingly apparent that without overarching, bi-partisan goals for the American food system the process will continue to be bogged down in divisive politics that are fueled, in part, by the Bill's omnibus nature.

Omnibus legislation is typically "[a] single bill containing various distinct matters, usu[ally] drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provision."⁶ By definition, omnibus legislation produces compromise.⁷ But, should the American food system be a compromise? Are there ways that the policy tensions sought to be resolved with omnibus legislation could instead be made more transparent to law makers and citizens with the goal of aligning

order to encourage a 'high joint benefit.' Logrolling has also been, perhaps more often described as a tactic that involves a process of 'aggregating dissimilar provisions in one [proposal] in order to attract the support of diverse groups...' Logrolling is thus a common tactic for legislators to employ although there is considerable disagreement over whether walking from one log to another in such a manner is an appropriate or even ethical practice in government.").

⁴ See WULF, *supra* note 1, at 83.

⁵ See CHRISTOPHER BOSSO, *FRAMING THE FARM BILL: INTERESTS IDEOLOGY, AND THE AGRICULTURAL ACT OF 2014* 35-43 (University of Kansas Press 2017) (discussing the policy evolution in U.S. agriculture from the 30s to modern day).

⁶ *Bill*, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁷ Glen S. Krutz, *Tactical Maneuvering on Omnibus Bills in Congress*, 45 AM. J. OF POL. SCI. 210, 211 (2001).

interests to spur innovation, rather than simply positioning for compromise?

This essay wants readers to consider whether we should reimagine the Bill as an opportunity to set rural and urban policy in ways that maximize economic supports in both areas. This essay emphasizes that such a reimagining would align the American population's interest in a reliable, affordable, and healthy food supply rather than settling for the Bill to be an every-five-year opportunity to simply logroll support for commodities and nutrition programs. While the latter scenario clearly has had its benefits for both titles over the years, the political dynamics of the 2014 Farm Bill illustrate that the simplistic tension may no longer be useful. However, that possibility should not lead us to conclude that continuing to use the omnibus vehicle is not in the interests of farmers and consumers.

II. The Farm Bill 1949 – 2014: Slowly Changing Traditions

In 1933, as President Roosevelt moved to address the devastation the Dust Bowl wrought on many farmers and the agricultural markets, he acknowledged that “free-market agricultural economics [were] over for good.”⁸ Congress first moved to control markets with the Agricultural Adjustment Act of 1933.⁹ And, five years later, the Agricultural Adjustment Act of 1938 became the first omnibus farm bill.¹⁰ It offered payments to farmers, price supports, and crop insurance among other tools that represented government management of agricultural markets.¹¹ The Act also authorized the use of these tools for five years so that Congress could shape agricultural market management

⁸ TIMOTHY EGAN, *THE WORST HARD TIME: THE UNTOLD STORY OF THOSE WHO SURVIVED THE GREAT AMERICAN DUST BOWL* 133 (2006) (discussing the origins of The Agricultural Adjustment Act as well as describing, in detail, the devastation the Dust Bowl wrought on its landowners and farmers).

⁹ Agriculture Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31 (1933).

¹⁰ Bosso, *supra* note 5, at 35, 37 (discussing the origins of the farm bills in the Agriculture Adjustment Act of 1933 and 1938).

¹¹ Agriculture Act of 1938, Pub. L. No. 75-430, 52 Stat. 31 (1938); *see* Bosso, *supra* note 5, at 37-38.

in response to economic shifts.¹² As 2014 would illustrate, the 1949 Congressional revision to the 1938 market management techniques – known as the ‘permanent law’ – remains highly relevant to the success of each Bill.¹³ If no Bill passes, then the commodity programs set by these laws once again become ‘the law of the land.’¹⁴ Thus, the procedural mechanism of omnibus legislation has been part of American food law and policy nearly from the inception of government intervention in agricultural markets.¹⁵ And, the existence of the ‘permanent law’ is a powerful tool to prompt Congressional action, lest it let farm policy supports revert to 1949 levels.

Through the 50s and 60s, the American economy would shift dramatically, moving from rural to urban.¹⁶ President Kennedy’s victory has been identified as one starting point for seeing the shift in influencing food policy from rural interests to urban ones.¹⁷ This is because Kennedy’s victory was propelled by urban and suburban voters – signaling that support for rural issues and interest was set to decline.¹⁸ And, it did. By 1973, it was necessary for the ‘farm bloc’ to accept that “no bill supporting commodity programs would ever get enough votes beyond the Agriculture Committees unless it also did something for nutrition.”¹⁹ This marriage survives today, even following a 2014 attempt at separation, as discussed below. Significantly, nutrition

¹² Bosso, *supra* note 5, at 37.

¹³ Kate Giessel, *On the Permanence of Permanent Law: An Argument for the Continued Presence of the Permanent Law Provisions in the Farm Bill*, 13 CARDOZO PUB. L. POL’Y & ETHICS J. 765, 767 (2015).

¹⁴ See Neil Hamilton, *The 2014 Farm Bill: Lessons in Patience, Politics, and Persuasion*, 19 DRAKE J. OF AGRIC. L. 1, 23 (noting that the 2014 effort to replace the 1949 permanent law to ease future pressures to pass a Farm Bill failed); see Bosso, *supra* note 5, at 38 (emphasizing that though an arcane point, the suspension of the permanent law in each farm bill creates an incentive for Congress to pass a new Bill).

¹⁵ See Giessel, *supra* note 13, at 766.

¹⁶ MIRANDA N. SMITH ET AL., NAT’L INFO. MGMT. & SUPPORT SYS., HOW MIGRATION IMPACTS RURAL AMERICA I (2016), http://w3001.apl.wisc.edu/pdfs/b03_16.pdf.

¹⁷ Bosso, *supra* note 5, at 58.

¹⁸ *Id.*

¹⁹ *Id.* at 59.

appropriations accounted for 80% of 2014 spending.²⁰

There are several excellent analyses of the political dynamics surrounding the details of 2014 Farm Bill.²¹ The richness of the political process is beyond the scope of this essay, but readers are encouraged to review some of those analyses as the 2018 votes approach. For the purposes of this essay's discussion of whether omnibus legislation is helpful or harmful to the Bill, three key attributes of the 2014 Bill are relevant:

- The Farm Bill at one point was split into two bills in the House – removing nutrition provisions from the remainder of the Bill.²² This break from the tradition set in 1973 is the reflective of some politicians' desire to decouple food system interests to push for more radical changes in the law.
- In the final outcome, neither party could claim political victory and the omnibus process served to secure many compromises in important areas such as conservation, crop insurance, dairy, and SNAP.²³
- Innovation and food system change continued to advance as evidenced by funding of 'progressive' programs such as support for fruits, vegetables, organics, and significant initiatives to fund healthy food financing and food and agriculture learning.²⁴

²⁰ *Projected Spending Under the 2014 Bill*, U.S. DEP'T. OF AGRIC., ECON. RES. SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/projected-spending-under-the-2014-farm-bill/> (last updated Jan. 16, 2018).

²¹ See, e.g., Bosso, *supra* note 5; see, e.g., Hamilton, *supra* note 14; see, e.g., Stephen Ansolabehere & Kattalina Berriochoa, *Why does the American Public Support Redistributive Logrolls? An Analysis of Policy Preferences for the 2014 Farm Bill* (May 2016), https://www.princeton.edu/csdp/events/Ansolabehere05122016/Draft-Ansolabehere-Berriochoa-Who-Benefits_-v2.pdf.

²² Hamilton, *supra* note 14, at 5.

²³ See Bosso, *supra* note 5, at 156 ("In some ways, and all the noise aside, passage of the Agricultural Act of 2014 resembled the normal Farm Bill process. It was just messier than usual, to be sure, but Congress ultimately got the job done, and in the end, it did so with bipartisan majorities."); see Hamilton, *supra* note 14, at 35 ("[f]or the Tea Party members who believed the farm bill process could be used to gain major reforms, the final bill was a disappointment.").

²⁴ See Agriculture Act of 2014, Pub. L. No. 113-79, §4209, 128 Stat. 649, 829; see, e.g. Food and Agriculture Service Learning Program, 7 U.S.C. §7633 (2014).

All three points have a common denominator. They are, in part, a product of the omnibus process. The first – the splitting of the bill – was a direct attack on the benefits of the omnibus approach and could signal that a contentious 2018 process will again cause peeling off of major issues to achieve particular outcomes or political victories. The second two illustrate that omnibus legislation both protects ‘the middle’ by requiring compromise (which is likely where most citizens’ interest are represented) and creates space for cross-aisle and cross-sector dialogue to advance the food system.

With the protective effect of omnibus legislation in mind, we should also consider how food law and policy benefit from an expansive bill. Marion Nestle has described the Bill this way:

There isn’t anything in American agriculture, farming, and health that this bill doesn’t touch, but there is no overarching agenda. The Farm Bill is simply a collection of government-supported programs, each with its own collection of lobbyists, proponents, and opposing forces. You get the sense that everyone said, “Let’s just throw this program in.” There is nothing rational in the Farm Bill.²⁵

While some would find rationality in the Bill, it is simply not coherently designed based on a common understanding of the goals of the American food system. Regardless of its rationality or design, the Bill has played a critical role in maintaining a stable food system by supporting farmers and eaters with federal dollars deployed in the way that its titles’ subject matter experts have determined optimal.²⁶ However, because there are disparate and broad ranging areas of expertise and seemingly no political

²⁵ Interview by Louisa Kasdon with Marion Nestle, Paulette Goddard Professor of Nutrition, Food Studies, and Public Health, N.Y.U., in New York, New York (Jan. 16, 2012), <http://23.23.183.38/2012/01/16/5-courses-with-marion-nestle#.Wtup8ljwbIU> [hereinafter Nestle Interview].

²⁶ See AUSTIN IGLEHEART & ARTHUR SCOTT, NAT’L ASS’N OF COUNTIES, FARM BILL 101: AN OVERVIEW OF NACO PRIORITIES THROUGHOUT THE FARM BILL 4-6 (2018), http://www.naco.org/sites/default/files/documents/FARM%20BILL%20101_0.pdf.

process designated to align the desired outcomes of each title with a coherent, overarching food policy, the Farm Bill falls short of synthesizing many important components of the food system. And, in that sense, omnibus legislation, without clear underlying values is a blunt instrument ill-suited for the challenges facing the American food system domestically and internationally.

The Farm Bill is the principal driver of U.S. food law and policy. It is also economic legislation that subsidizes the American food system – either in the way it stabilizes agricultural markets with a variety of economic tools or by providing means for needy Americans to purchase foods through feeding programs such as the Supplemental Nutrition Assistance Program (“SNAP”).²⁷ Since 1973, when ‘food stamps’ were added to the Farm Bill, it has been characterized as a legislative tool to promote economic security for rural communities and the farmers who live in them by ensuring that elected officials, who are principally from urban and suburban areas, will vote for their needs because they are inextricably linked to the need for the food security offered by SNAP.²⁸ Senators McGovern and Dole are credited with creating this strategy,²⁹ but 45 years later the question is whether the oversimplification of the rural-urban logroll and the rise of partisan politics threatens to stagnate or stymy future Bills.

III. Farm Bill 2018: Reframing the Omnibus as Opportunity

Food is political. But, under the politics are some universal truths that reveal why continuing an expansive Bill creates

²⁷ See INST. OF MED., NAT’L RES. COUNCIL OF THE NAT’L ACAD., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: EXAMINING THE EVIDENCE TO DEFINE THE BENEFIT ADEQUACY 44 (Julia A. Caswell & Ann L. Yaktine eds., National Academies Press 2013).

²⁸ See Rich Morin, *The politics and demographics of food stamp recipients*, PEW RESEARCH CENTER (July 12, 2013), <http://www.pewresearch.org/fact-tank/2013/07/12/the-politics-and-demographics-of-food-stamp-recipients/> (demonstrating party constituents’ participation in SNAP motivates support of program by that party’s elected officials).

²⁹ See Dorothy Samuels, *There Was a Time When Ending Hunger Was a National Goal for Republicans and Democrats*, NEW YORK TIMES (May 20, 2013), <https://www.nytimes.com/2013/05/21/opinion/food-stamp-politics.html>.

opportunities for a better food system for all, if politicians and stakeholders are willing to see it that way. First, America needs a rural population to support agricultural production and to steward natural resources. Second, America needs an urban population to support commerce and to create broad economic activity. The two domains – even considered in tension by Jefferson and Hamilton³⁰ – are not mutually exclusive or independently viable. Thus, lawmakers who see the benefit in providing a safety net to both farmers and eaters do their constituents a great service because they adopt a food system approach. Of course, the size of the safety nets and market controls will likely always be fodder for vociferous debate, but delinking nutrition titles from farm supports does little to advance that debate in a principled manner.

Food system thinking is critical because food is critical to economic, human, and environmental health. Food is obviously a human need. Food production is also key driver of environmental and human health. For example, agriculture contributes significantly to water pollution and air quality.³¹ Similarly, links between eating patterns and environmental health are emergent principals for developing nutritional guidance.³² Additionally, human health conditions such as obesity, diabetes, and heart disease are linked to diet.³³ Finally, food production and processing creates important economic activity.³⁴ In different regions of the country and across different demographics, production and

³⁰ See WULF, *supra* note 1, at 82-84 (discussing the philosophical differences between the two and analyzing how those differences manifest in political approaches to federalism and Constitutional powers).

³¹ See JAVIER MATEO-SAGASTA ET AL., FOOD AND AGRIC. ORG OF THE U.N., INT'L WATER MGMT. INST., WATER POLLUTION FROM AGRICULTURE: A GLOBAL REVIEW 1 (2017), <http://www.fao.org/3/a-i7754e.pdf>; see *Agriculture: Agriculture and Air Quality*, EPA, <https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality> (last updated Mar. 23, 2018).

³² See Margaret Sova McCabe, *Eating for the Environment: The Potential of Dietary Guidelines to Achieve Better Health and Environmental Health Outcomes*, 47 ENVTL. L. 741, 755-59 (2017).

³³ See, e.g., Alice Lichtenstein et al., *Diet and Lifestyle Recommendations Revision 2006: A Scientific Statement From the American Heart Association Nutrition Committee*, 114 *Circulation* 82 (2006).

³⁴ See COMM. FOR THE ECON. DEV. OF THE CONFERENCE BD., ECONOMIC CONTRIBUTION OF THE FOOD AND BEVERAGE INDUSTRY 6, 28-30 (2017), <https://www.ced.org/pdf/>

consumption needs vary. And, while the Bill has long served to connect disparate parts of the food system, its lack of intentional systems design does little to build a permanent bridge among them.

When I began thinking about the effect of omnibus legislation on the Bill in 2008, it did not strike me that the procedural tool was beneficial to a better food system. In fact, it seemed to me that many years of logrolling had done little to advance the food system. And, Marion Nestle identifies why: “there is no overarching agenda.”³⁵ To be sure, there are agendas and plenty of lawmakers, lobbyists, and special interests who check as many items on their agendas as possible as they trade, shape, and compromise. But, what if there were an explicit, transparent unifying, overarching agenda? Then, the collection of disparate programs is articulated through that agenda and the benefits, synergies, and opportunities to leverage rural and urban contributions to a functional food system is more possible. The pieces of a unified agenda already exist –

- American food policy rests on the fundamental goal of providing abundant, affordable food to all of its people.³⁶
- Urban areas rely on the rural population for food production.³⁷
- Rural areas produce raw materials and there must be adequate infrastructure in those areas to support the rural population.³⁸
- All Americans should have access to a food safety net that permits them to access nutritious food. Good nutrition is also fundamental, but more controversial.
- Agricultural production methods have profound impacts on environmental health, including top soil, water quality,

[Economic Contribution of the Food and Beverage Industry.pdf](#)

³⁵ Nestle Interview, *supra* note 25.

³⁶ CONG. RESEARCH SERV., AN OVERVIEW OF USDA RURAL DEVELOPMENT PROGRAMS 21 (2016), https://www.everycrsreport.com/files/20160210_RL31837_d27aabf3a20b5e31f4203c3c7307e6cclcdd6649.pdf.

³⁷ *See id.* at 1.

³⁸ *See id.* at 26.

and air quality³⁹ and producers may need incentives to sustainably steward the environment.

There are other ideas that are likely more controversial, but given that they have been raised in the public discourse over the last two Bill cycles, they are included here. They should at least be recognized as representative of significant voter interest by legislators.

- Producing food that is affordable, healthy, environmentally sustainable, and economically viable is the common goal of federal farm and nutrition policy.
- The food system should include, and will benefit from, a variety of producers – from large mono-cropping operations to diverse family farms. Access to capital and to farm supports should be equitable and designed to promote farming viability across all sectors of production.
- Farm and food law and policy should align with environmental and public health goals.
- Though there may be disagreements concerning the amount and method of supporting farm and food programs, their importance to the overall security and well-being of the American people transcends partisanship.

There is no formal requirement that Congress articulate the values that inform any legislation. However, given the unique traditions of the Bill and the profound influence it has on all citizens, the Congressional Committees and the leadership responsible for them would make a significant contribution to American food law and policy if they undertook this task. Without a more transparent, bi-partisan agenda the Bill will likely be vulnerable to contentious political wrangling that does little to advance a food system that supports farmers and eaters in achieving economic, environmental, and human health.

Conclusion

³⁹ See MATEO-SAGASTA ET AL., *supra* note 31; see *Agriculture: Agriculture and Air Quality*, *supra* note 31.

The Farm Bill is *the* mechanism for setting American food law and policy. Since 1938, the use of omnibus legislation has been used to effectively secure compromise amongst disparate economic (and political) interests. However, as political discourse becomes more divisive and Congress less functional in the use of its legislative power,⁴⁰ the Farm Bill process would benefit from a greater articulation of the overarching values that inform American farming and food lawmaking. Without such an organizing principle, the organic compromise that is inherent to omnibus legislation will likely be lost resulting in either failed Farm Bills or further polarization around food issues. Such polarization does little to serve farmers or eaters and also inhibits our ability to create economic and policy conditions that support a functional, healthy, and prosperous food system.

⁴⁰ JOSH CHAFETZ, *CONGRESS'S CONSTITUTION: LEGISLATIVE AUTHORITY AND THE SEPARATION OF POWERS 1* (Yale University Press 2017) (“Observers call Congress ‘the broken branch’ and lament that, ‘[g]ripped by stalemate, America’s chief lawmaking body can barely muster the ability to make law.’”) (quoting Michael J. Teter, *Gridlock, Legislative Supremacy, and the Problem of Arbitrary Inaction*, 88 NOTRE DAME L. REV. 2217, 2217).