Cornography: Perverse Incentives and the United States Corn Subsidy

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CORNOGRAPHY: PERVERSE INCENTIVES AND THE UNITED STATES CORN SUBSIDY

Anthony Kammer*

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I. INTRODUCTION

Among the most important functions we have afforded to the U.S. Congress is the power to reshape social and economic incentive structures through legislation. Proceeding from the enumerated powers under the Constitution and using a complex toolbox of legislative and regulatory innovations, the federal legislature has enormous power to transform the types of behavior that people will perceive as self-interested throughout our economy and thus how those same people are likely to act. Congress can, among other things, create new forms of criminal and civil liability, establish entitlement systems, subsidize industries, encourage behavior through the tax code, regulate interactions among producers and consumers, set market ground-rules, and limit the scope of permissible activity.

As Congress uses these tools to alter incentives, new market configurations emerge and interests shift, often in unanticipated ways. Even minor changes in incentives can have enormously magnified effects as parties respond to new rules and changed price signals. Given the dynamic nature of our economy, legislation designed to target one problem inevitably causes unexpected changes in other places. The "law of unintended consequences," as Robert Merton phrased it,¹ is among the primary reasons that legislation is and must remain a highly iterative process, open always to improvement and reconfiguration in light of new information. Doubtless some entities develop an interest in the preservation of the status quo, but in a representative democracy, we would expect that only those policies whose consequences correspond to the demands of the broader public would remain in effect over time. The system of corn subsidies provides an instructive, if not nightmarish, example of the unintended consequences that legislated incentive structures can produce when not regularly reevaluated and highlights the processes that are preventing that reevaluation from taking place.

Initially created in the 1930s to stabilize agricultural prices during the Great Depression, agricultural subsidies and price supports have since turned food production markets upside down. These subsidies alter incentives for corn growers, agricultural producers, processors, and the manufacturers of countless corn-based products and produce ripple effects throughout other sectors of the economy. Rather than aiding family farmers, the subsidy system now in place primarily benefits large

commercial growers and gives farmers the incentive to grow more no matter how much corn is already on the market. The secondary effects—such as over-stimulating high-fructose corn syrup (HFCS), ethanol, and factory-farmed meat production—only scratch the surface of the Farm Bill’s impact. By paying large subsidies out of the U.S. tax base, Congress is funding preventable environmental degradation, deepening our fossil-fuel dependence, accelerating America’s obesity and diabetes epidemics, and contributing billions of dollars to annual healthcare costs. Internationally, American subsidies have upset commodity prices, pushed countless farmers out of work, fueled political instability, and even promoted farm-labor immigration into the United States. In short, the U.S. Farm Bill redraws markets and warps incentives far beyond the domestic market in grain and corn. As Michael Pollan wrote regarding the bill, “the nation’s agricultural policies operate at cross-purposes with its public health objectives.”

Despite mounting political opposition, U.S. regulators and legislators have proven unwilling to confront these externalities and continue to actively fund Farm Bill after Farm Bill. The American citizenry continues to bear the ultimate costs and risks associated with bad and politically unassailable policies in the form of direct tax expenditures, increased energy prices, skyrocketing obesity rates, higher healthcare costs, and shorter lives, but that message has done little to alter the behavior of elected representatives. Corn subsidies stand as a testament to the larger failures of our legislative system and expose the difficulties that the U.S. campaign finance and lobbying systems pose to maintaining a legitimate public-private divide.

The persistence of America’s burdensome agricultural policies can only be properly understood when viewed in the context of the incentives and structural constraints facing policymakers themselves. Congress and the USDA also face incentives of their own, and the legislation they produce reflects that fact. These incentives, however, have become interlinked, through our lobbying and campaign finance systems, with the very same private sector interests Congress is entrusted with regulating, offering perhaps the most cogent explanation for why these harmful policies remain in place. As long as incentives for legislators are linked with those of narrowly-defined interest groups, the only institution capable of recalibrating agricultural policy is likely to remain unwilling to address the environmental and healthcare problems now confronting our country,

even those problems actively made worse through legislative decisions like the corn subsidy. In the short-term, interest groups should respond to the new political ecosystem, but eventually Congress must somehow come to terms with its own corrosive conflicts of interest if policymaking is to remain responsive to the needs of the voting public.

This article will depict the complex market-system that agricultural policies—whether intentionally or not—have given rise to and then describe how these policies produce effects that radiate throughout the larger economy. This article then attempts to explain that this state-created market-system has itself been shaped by the incentive structures of a legislative system increasingly characterized by political gridlock, fragmentation, and special interest money. While the primary focus of this article is on corn subsidies, it is not meant as a criticism of corn subsidies per se or even agricultural subsidies generally. Rather, the two problems this article aspires to highlight are: 1) that subsidies are reproduced with little understanding of their systemic impact beyond the agricultural system; and 2) that because of the particular way the American legislative process currently operates, there are few incentives for legislators to even articulate a coherent food policy or agricultural policy that might justify such spending decisions.

Part II of the article provides a brief historical account of corn subsidies and related agricultural regulations. Part III examines the current administration of federal corn subsidies; the incentives that subsidies create for corn growers, food producers, manufacturers, and consumers; and several salient healthcare and environmental costs these subsidies have imposed. Part IV examines those features of our federal political landscape that make effective legislation and regulation in this area such a formidable challenge. Finally, this article concludes with the observation that restoring reasonable price signals in our food system will require us to move away from deficiency payment systems—and that getting there will require us to confront deeper structural problems with the way agricultural legislation is passed and implemented.

II. A SHORT HISTORY OF AGRICULTURAL SUBSIDIES AND RELATED LEGISLATION

The current farm payment system in the United States is only intelligible when viewed in its historical context. The history of agricultural bills in the United States follows a pattern of large-scale, transformative legislation passed in response to a national emergency, followed by decades of drift, rent-seeking, and incremental adjustments. Federal agricultural legislation has historically been concerned with three
overarching objectives: 1) insulating grain markets from both market and weather-related shocks; 2) protecting family farms; and 3) increasing agricultural output. It is significant that the Farm Bill is only recently being reexamined in light of its impact on the environment and domestic healthcare costs. As in many areas of legislation, agricultural policy has been characterized by “punctuated equilibrium,” periods of rapid transformation that are followed by periods of relative inactivity, during which time new stakeholders emerge who often seek, through mechanisms described in Section IV, to protect their interests and resist transformative legislation until another emergency forces change.

This Part provides a brief overview of the major federal agricultural legislation and subsidies programs, with particular attention given to the social and political conditions that shaped these bills. It begins with an early history of agricultural regulation and then describes the subsidy system introduced during the New Deal and World War II. This Part concludes with a short history of agricultural legislation since the late 1940s, when the multi-year Farm Bill emerged, and the federal response to the 1970s Food Crisis, which gave rise to the modern subsidy system.

A. An Early History and the Recurring Themes of Agricultural Regulation

Since America’s founding, cries to preserve small family farms have been a regular voice in national policy debates, often even in matters extended beyond merely agricultural concerns. The independent and self-sufficient farmer, connected to the land and informed by deep-rooted traditions, is a persistent image of American identity and remains central to a number of continuing ideological debates. The Jeffersonian agrarian
republic invoked the starkly autonomous farmer, and Jefferson placed the independent agrarian citizen at the center of his entire political ideology. Into the nineteenth century, the image of the self-sufficient farmer helped energize legislation such as the Homestead Act, which granted public lands to settlers in order to increase the settlement of land outside the original thirteen colonies. Lincoln, in his final address to Congress, famously referred to the USDA as “The People’s Department.” As in the Congressional response to the Great Depression, protecting family farmers was often one explicit justification for agricultural legislation. Even as technological innovation and commercialization transformed farming into an industrial practice, this rhetoric has retained political currency and continues to frame agricultural debates.

Early agricultural legislation focused on ways that scientific and technological advancements could increase productivity and output. The 1862 creation of the USDA and the Morrill Land Grant College Act, for instance, emphasized the adoption of new technological methods and envisioned a “free” state in which one citizen would be legally barred from selling milk from his cow to another citizen. Even King George III would have laughed at that idea.”)


sought "to support colleges of agriculture and mechanical arts."\(^\text{12}\)

Similarly, the Smith-Lever Act of 1914 formed an official partnership between land-grant universities and the USDA, known as the National Institute of Food and Agriculture (NIFA).\(^\text{13}\)

This Act established a system whereby land-grant universities received federal funds to invest in agricultural education and extension work, while NIFA helped ensure those funds were spent in accordance with USDA priorities.\(^\text{14}\) With the full support of Congress and the USDA, technological advancements enabled massive increases in productivity, leading to consolidation and larger farm operations. Ironically, while public rhetoric surrounding agricultural policy often invokes the family farmer,\(^\text{15}\) federal policy has proven unable to stave off commercial farming and the decline of the family farm.\(^\text{16}\) In fact, as Brian Riedl of the conservative and libertarian Heritage Foundation described in a New York Times online discussion, "[s]etting aside the Norman Rockwell imagery, farm subsidies are America's largest corporate welfare program."\(^\text{17}\)

Another recurring objective of U.S. agricultural legislation has been the need to insulate farmers and the food supply from excessive uncertainty created by both seasonal weather fluctuations and economic instability. During World War I, for instance, NIFA sought to address war-related farm labor shortages by expanding the acreage used to grow wheat and implementing new USDA production and food conservation policies.\(^\text{18}\)

Following the war, in an effort to stabilize grain prices and prevent market


\(^{14}\text{Id.}\)

\(^{15}\text{See, e.g. Chuck Hassebrook, Room for Debate, Cap the Subsidies to Big Farms, N.Y. TIMES, Nov. 21, 2010, http://www.nytimes.com/roomfordebate/2010/11/21/do-farm-subsidies-protect-national-security/put-a-cap-on-subsides-to-big-farms. ("Many Democrats who wrap themselves in rhetoric about saving the little guy are equally timid when it comes to reigning in mega-farm subsidies.").}\)

\(^{16}\text{See Keeney, D. and L. Kemp. How to Make it Work: Required Policy Transformations for Agroecosystem Restoration. Presented at the 89th Annual Meeting of the Ecological Society of America, Portland, Oregon, 1–6 (August 2004).}\)


\(^{18}\text{See History of Extension, supra note 15 ("The extension service's first big test came during World War I, when it helped the nation meet its wartime needs by: Increasing wheat acreage significantly, from an average of 47 million acres annually in 1913 to 74 million in 1919.").}\)
manipulation, Congress passed the 1922 Grain Futures Act\(^1\), which placed restrictions on exchanges in grain futures by establishing a regulated exchange and created a number of disclosure requirements.\(^2\) This Act was later replaced by the Commodity Exchange Act, which regulates the exchange of broader categories of commodities options and futures without singling out agricultural commodities.\(^3\) This rationale for regulating the agricultural sector became particularly acute during the early 1930s, when severe droughts and a prolonged economic recession threatened to disrupt the food supply, put hundreds of thousands of farmers out of work, and send grain prices spiraling out of control.

Of course, these themes represent only the public justifications given for agricultural legislation and food subsidies and ring their most accurate when viewed alongside the large-scale legislative responses to national emergencies that were presented by the Great Depression and the Food Crisis of the 1970s. Behind the scenes, another set of recurrent themes drives agricultural legislation, and those themes have had more to do with the needs and interests of incumbent industry groups and influential agricultural business lobbies. The remainder of this Part describes the major historical events that defined agricultural policy and the resultant legislation. The mechanisms and pressure points through which lobbyists and interest groups came to exert the influence they did is taken up more fully in Part IV below.

**B. Agricultural Policy through the Depression, the New Deal, and World War II**

The first large-scale direct subsidies were established as a response to unstable economic conditions in the agricultural sector caused by the Great Depression and the 1930s Dust Bowl. These payment programs were meant to provide welfare-like support to farmers and to prevent food prices from entering a deflationary spiral.\(^4\) Farmers were among those hardest hit

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1. See The Grain Futures Act, 7 U.S.C. § 1 (2010). The Act when originally passed in 1922 was entitled “Commodity Exchange Act” but the title was amended in 1936 to “The Grain Futures Act.” Id.


3. Id.

by the depression, and at the time, over 20% of the American workforce was engaged in agricultural employment.\textsuperscript{23} Under President Hoover, Congress passed the Agriculture Marketing Act of 1929 and established the Federal Farm Board, which was authorized to lend to farmers and to purchase surplus crops in order to stabilize prices.\textsuperscript{24} Despite entrusting the Federal Farm Board with a $500 million dollar fund to stabilize prices and increase lending to the agricultural sector, this bill was unable to stop crop prices from falling.\textsuperscript{25}

As crop prices continued to fall though the early 1930s, farmers grew additional crops to compensate for lost earnings, which led to further surpluses and drove the price of crops lower still. Congress reacted by passing two major agricultural bills as part of President Franklin Delano Roosevelt’s broader New Deal efforts to stabilize markets and stop this downward price cycle.\textsuperscript{26} The Commodity Credit Corporation (CCC) was created in 1933\textsuperscript{27} and authorized to buy, sell, lend, and make payments in order “to stabilize, support, and protect farm income and prices.”\textsuperscript{28} Congress also passed the Agricultural Adjustment Act of 1933,\textsuperscript{29} which created the Agricultural Adjustment Administration (AAA)\textsuperscript{30} and

\begin{itemize}
  \item agricultural production to raise price per unit and a primary policy tool designed to stabilize agricultural commodity prices and thus farm income and closures.”.
  \item See generally R. B. Heflebower, \textit{Price Stabilization under the Farm Board}, 12 \textit{J. Farm Econ.} 595 (Oct. 1930).
  \item See \textit{History of USDA’s Farm Service Agency}, USDA \textit{Farm Service Agency} (Jan. 9, 2008), \url{http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=ham-ah}.
  \item \textit{About the Commodity Credit Corporation}, USDA \textit{Farm Service Agency} (Aug. 20, 2008), \url{http://www.apfo.usda.gov/FSA/webapp?area=about&subject=landing&topic=sao-cc}.
  \item \textit{Agricultural Adjustment Administration}, supra note 29.
\end{itemize}
established subsidies for farmers who left their land fallow. These subsidies were designed to reduce crop surpluses and were paid for by taxing companies that processed agricultural goods. The 1933 Act also created a system of land allotments, which, in conjunction with the 1935 Soil Conservation and Domestic Allotment Act, worked to prevent over-farming and to avoid crop surpluses. The Supreme Court in 1936, however, intervened and held that the taxation and redistribution scheme in the Agricultural Adjustment Act was a usurpation of state powers in violation of the Tenth Amendment.

Agricultural problems persisted, and public support mounted for some type of agricultural support system. Following Franklin Delano Roosevelt’s 1937 court-packing plan and the famous “switch in time that saved nine,” the Supreme Court began backing away from its opposition to New Deal legislation. In 1938, Congress successfully passed the Agricultural Adjustment Act of 1938, which instituted the farm subsidy policies first introduced in the 1933 legislation and opened the way for subsequent Farm Bills. The 1933 legislation provided mandatory price supports for corn, cotton, and wheat that would guarantee a baseline level of production and keep supply levels in alignment with market demand. The government accomplished this by making sure the price of a commodity never deviated too far from its parity price relative to farmers’ expenses. In order to keep the price and supply levels at desired level, the AAA was authorized under the 1938 Act to extend loans to farmers to grow additional staple commodities, such as corn, during good years, which were stored by the government and could then be released when yields were

32. See Agricultural Adjustment Administration (AAA), supra note 29.
33. See History of Agricultural Price-Support and Adjustment Programs, supra note 31, at 11.
34. See United States v. Butler, 297 U.S. 1, 68 (1936).
36. See generally id. (discussing the conflict between FDR and the Supreme Court and how the Court shifted).
38. History of Agricultural Price-Support and Adjustment Programs, supra note 31 at iv, 4.
39. See id. at 3-4 (explaining how parity prices were calculated).
low.\(^{40}\) The 1938 Agricultural Adjustment Act remains part of the permanent background law for commodity programs and farm income supports, and would revert into effect if at any time a superseding bill is not in effect.\(^{41}\) Although it has since been superseded by subsequent legislation, the 1938 Act continues to cast its shadow over the administration of subsidies to the present.

\(C.\) The Rise of the Multi-year Omnibus Farm Bill

Farm policy in the post-war years focused on mitigating the harms of rising rural poverty while trying to stop overproduction in the agricultural sector that widespread poverty encouraged.\(^{42}\) These goals were achieved through a combination of direct assistance programs, subsidies for farmers who agreed to take land out of production, and by making credit more readily available.\(^{43}\) The decades following World War II, however, were characterized by the consolidation of smaller farms into larger, more industrial operations,\(^{44}\) a fact that helps explain the origin of more concentrated lobbying interests that emerged during this time. The other major change in agricultural policy seen during the post-war period was the multi-year Farm Bill, a policy that was meant to provide policy-makers with opportunities to make regular, comprehensive changes to food and agricultural policy,\(^{45}\) but instead provided more frequent intervals for lobbyists to influence the legislation.

The Agricultural Act of 1949,\(^{46}\) in amended form, is known as the permanent legislation, and like the 1938 Act and the 1948 Commodity Credit Corporation Charter Act (CCCCA), remains part of the background


\(^{43}\) See id.

\(^{44}\) See id.


agricultural law to the present day. The 1949 Act provided legal
authorization to the CCC to reallocate surplus foods, including corn and
other staples, to school lunch programs, poor Americans, and
internationally to friendly nations as development aid. The CCC was
given corporate charter in 1948 and was authorized under the 1949 Act to
administer the USDA’s farm price and income support commodity
programs and agricultural subsidies.

Beginning in 1965, Congressional agricultural legislation took the
form of multi-year (usually five-year) omnibus Farm Bills that touched on
nearly every aspect of food and agricultural policy in the country. A
report by the Congressional Research Service gives the following
explanation for its development:

Although many [food and agricultural] policies can be and
sometimes are modified through freestanding authorizing
legislation or as part of other laws, the omnibus, multi-year
farm bill provides a predictable opportunity for
policymakers to address agricultural and food issues more
comprehensively. . . . The omnibus nature of the bill can
create broad coalitions of support among sometimes
conflicting interests for policies that individually might not
survive the legislative process.

The Food and Agriculture Act of 1965 was the first such multi-year farm
legislation and contained a combination of federal commodity and farm-

47. See C. Edwin Young and Paul C. Westcott, The 1996 U.S. Farm Act Increases
Market Orientation, USDA ECONOMIC RESEARCH SERVICE FN1 (1996), available at


49. About the Commodity Credit Corporation, USDA FARM SERVICE AGENCY,
&topic=sao-cc.

50. According to the House Committee on Agriculture: The U.S. farm bill is the
primary agricultural and food policy tool of the federal government. The multi-year,
comprehensive omnibus bill contains federal commodity and farm support policies, as
well as other farm-related provisions. It usually amends some and suspends provisions
of permanent law, reauthorizes, amends, or repeals provisions of preceding temporary
agricultural acts, and puts forth new policy provisions for a limited time into the
future. . . . Nine bills between 1965 and 2002 are generally agreed to be farm bills; the
2008 farm bill, the Food, Conservation, and Energy Act of 2008, is the tenth.

Farm Bill, House COMMITTEE ON AGRICULTURE, http://agriculture.house.gov/single

51. JOHNSON AND MONKE, supra note 45.
support policies. The 1965 Act established mandatory acreage allotments, planting restrictions, marketing quotas, and payment and diversion programs for a number of agricultural products. These provisions were effective for only a limited number of years or until another comprehensive Farm Bill renewed them. As the first omnibus multi-year Farm Bill, the 1965 Act continues to serve as Congress’ basic template for farm policy. According to a Congressional Research Service Report, the Farm Bill “include[s] titles on commodity programs, trade, rural development, farm credit, conservation, agricultural research, food and nutrition programs, marketing, etc.”

The Agricultural Act 1970 was the next of many multi-year Farm Bills. The 1970 Act relied on parity pricing, along with a farmland set-aside program and market certificates that were redeemable for pre-specified amounts of CCC-owned commodities. The 1970 Act additionally made several more restrictive aspects of the 1965, such as acreage allotments and marketing quotas, open to voluntary participation by farmers and for the first time imposed caps on payments to any single agricultural producer. Because farming costs had been steadily increasing, smaller farms continued to be consolidated into larger ones, and in order to continue farming competitively, farmers at all levels needed greater access to credit. A new Farm Credit System was created in 1971 by the federal Farm Credit Act, which paved the way for some of the controlled market-orientation and the deregulation of many previously subsidized non-agricultural goods that took place during the Nixon Administration.

53. See id.
57. Annual payments were limited to $55,000 per producer per crop. The Agricultural Act of 1970, P.L. 91-524 (1970); see also FARM COMMODITY LEGISLATION: CHRONOLOGY, 1933-98 (Geoffrey S. Becker, ed.) (1999).
58. See Timeline of Farming in the U.S., American Experience, supra note 42.
59. See id.
D. The Food Crisis of the 1970s and the Farm Bill Subsidy Spigot

By the late 1970s, concerted industry lobbying efforts found a sympathetic ear in the Nixon administration and succeeded in bringing about a controlled process of market orientation and selective deregulation. As described below, a number of programs were instituted to provide agricultural producers with cheaper access to credit, a policy which tended to favor even more consolidation. Other reforms included the relaxation of acreage requirements and other policies that gave farmers greater flexibility over what to grow. One notable form of deregulation that did not take place, however, was the elimination of agricultural subsidies. Instead, as a response to the food crisis of the early 1970s, a new system of price guarantees was put in place to ensure adequate supply. Once those subsidies had been implemented, interest groups worked diligently to ensure that, whatever other market-oriented policies were passed, these subsidies were not discontinued. As Michael Pollan wrote for the NEW YORK TIMES MAGAZINE, "[t]he shift from an agricultural-support system designed to discourage overproduction to one that encourages it dates to the early 1970's."61

The 1973 Agriculture and Consumer Protection Act was a transformative bill that authorized subsidies in response to a global food crisis marked by a severe worldwide decline in production.62 The 1973 Act created several rural development and conservation programs; authorized disaster response; amended the food stamp program; and, most notably, initiated the system of target prices and deficiency payments.63 This bill represents perhaps the most significant shift in American farm policy since the Great Depression.64

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64. Charlene C. Kwan, Fixing the Farm Bill: Using the “Permanent Provisions” in Agricultural Law to Achieve WTO Compliance, 36 B.C. ENVTL. AFF. L. REV. 571, 598 (2009) (“In a complete reversal of policy, post-1973 farm policies sought to ‘give[e] farmers incentive to produce as much as possible.’”) (citing Tom Philpott, Food First: Institute for Food and Development Policy, The 2007 Farm—and Food—Bill, BACKGROUNDER, Fall 2006, at 1, 3).
Agricultural business had been lobbying for targeted deregulation for decades, and President Nixon’s Secretary of Agriculture, Earl Butz, took up this cause within the administration, arguing that overproduction and a resultant drop in the price of commodity grains would increase exports and facilitate the production of ethanol and synthetic sweeteners. In the wake of the failed Russian Wheat Deal and the World Food Crisis of the early 1970s, Secretary Butz advocated for the elimination of support systems and took the position that the problems associated with food surpluses could best be reduced through free trade. With rejoinders to farmers to “get big or get out” and to grow corn “fencerow to fencerow,” Butz helped usher in a new era of agricultural production. Butz dismantled supply management policies and sold off government storage bins and food reserves. Even before the Food Crisis, he had overseen the passage of The 1972 Rural Development Act, which cut financial assistance to rural communities and discontinued subsidies for a number of non-agricultural products. But rather than subjecting the agricultural sector to market forces as his public comments proposed, Butz oversaw the implementation of a new set of industry-favorable market regulations, the system of target prices and deficiency payments, payments that commodity producers would receive anytime the market price fell below the Congressionally specified target price. As described in Part III, deficiency payments continue to characterize the administration of subsidies for corn and other covered commodities and remain a central component of subsequent farming legislation.

The next such omnibus Farm Bill, the Food and Agriculture Act of 1977, increased price and income supports for farmers, set acreage allotments, and created the two-tier pricing support system, which paid

66. See id.
68. The Facts Behind Kind Corn, supra note 65.
69. See Timeline of Farming in the U.S., American Experience, supra note 42.
70. See Farm Boom of the 1970s, Farming: 1970s to Today, supra note 67.
farmers different prices for amounts grown in excess of quota amounts. The allotment and two-tiered support system were intended to keep the market supply in commodities stable by simultaneously encouraging farmers to comply and to use allotted acreage for the crops specified by the government. The bill was followed in 1981 by the Agriculture and Food Act, which set four-year target prices for a number of commodities and established marketing quotas. The quota, allotment, and price-setting provisions of these bills support the proposition that Congress was using subsidies to control price fluctuations and ensure a stable food supply. The caps that were first introduced in the 1970 Act indicate that larger industrial farmers were benefiting from the subsidy programs and that subsidy programs had expanded beyond the welfare rationale that motivated the original depression-era legislation.

The next of these multi-year omnibus Farm Bills, the Food Security Act of 1985, served to reduce commodity prices and income supports for farmers. Amendments to the 1985 Act changed acreage-based subsidy calculations and gave USDA discretion to require cross-compliance for feed grains rather than mandating them. Subsequent amendments in the 1986 and 1987 budget reconciliation bills required advance deficiency payments to be made to producers at a minimum of 40% for wheat and feed and set annual deficiency payment limitations at $50,000 per person per crop. The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 largely kept in place the existing subsidy delivery systems but introduced several modest reform provisions that were intended to increase

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74. See WOMACH, supra note 54, at 113; History of Agricultural Price-Support and Adjustment Programs, 1933-84: Background for 1985 Farm Legislation, supra note 31, at 31-32.
76. See WOMACH, supra note 54, at 13.
78. See generally id.
80. Id.
83. Id. at 91; See also Omnibus Budget Reconciliation Act of 1986; Appropriations Bill, P.L. 99-591 (1987).
market-orientation and reduce subsidy-dependence.\textsuperscript{85} It did so by setting target prices at 1990 levels and by giving farmers greater flexibility in choosing what they would grow.\textsuperscript{86} The 1993 Omnibus Budget Reallocation Act (OBRA)\textsuperscript{87} continued this topical approach to improving market orientation by eliminating USDA's role in determining whether land must be set aside for conservation or for commodity crops such as corn, by reducing payments based on acreage.\textsuperscript{88}

In 1996, Congress passed the omnibus Federal Agriculture Improvement and Reform Act (FAIR).\textsuperscript{89} The bill was touted as a move to simplify direct payment systems, alter the delivery of subsidies and loan payments, and delink support payments from the market price of commodities, replacing those payments with a fixed income payment tied to acreage.\textsuperscript{90} The bill additionally modified stockholding, export subsidies, and food aid programs.\textsuperscript{91} According to the United Nations Food and Agriculture Organization, "[o]n the whole, the FAIR Act reinforces market-oriented policies, which had been initiated in 1985 and seeks to reduce government intervention."\textsuperscript{92} However, the attempt to overhaul the deficiency payment system proved rather lackluster. Although the 1996 FAIR Act technically eliminated deficiency payments and replaced them with production flexibility contract payments, the Farm Security and Rural Investment Act of 2002\textsuperscript{93} reinstituted deficiency payments as counter-

\textsuperscript{86} See id. at vii.
\textsuperscript{88} See id. at Subtitle C—Agricultural Trade, Sec. 1301-02.
\textsuperscript{91} See The review of the 1996 farm legislation in the United States, supra note 90.
\textsuperscript{92} See id.
cyclical payments with somewhat different payment calculations.\textsuperscript{94} The move to end deficiency payments was in fact even more half-hearted and short-lived than the preceding sentences suggest. Even during the short period between 1996 and 2002, the system that replaced the target-based deficiency model actually awarded subsidies on a per acre basis dependent on previous deficiency payment receipts—in effect pegging payments to the standard Congress was purportedly moving away from.\textsuperscript{95} Farms receiving large payments under the deficiency payment system continued to receive “transition” per-acreage Production Flexibility Contracts (PFCs), which were decoupled from market supply determinations but which remained linked to amounts received under the deficiency payment system.\textsuperscript{96} As researchers at the libertarian Cato Institute noted, “although the new PFC subsidy payments are formally independent of production, they still encourage oversupply.”\textsuperscript{97} This transition hardly had time to begin before Congress intervened again. As market prices began falling in 1998, Congress responded with a number of emergency spending bills providing money to farmers, despite indications two years earlier that it would end such payments.\textsuperscript{98} This short-lived attempt at scaling back agricultural subsidies, predictably, did little to alter the incentives created under the prior deficiency and target payment systems. In reality, as the Office of Budget Management (OMB) predicted and the USDA ERS has since documented, agricultural subsidy payments continued to rise over that period.\textsuperscript{99}

The failed 1996 attempt at transitioning away from deficiency payments seemed to discourage Congress from following through with its deregulatory push. In 2002, the latest omnibus Farm Bill, the Farm Security and Rural Investment Act of 2002,\textsuperscript{100} reintroduced a system of deficiency payments similar to those eliminated in 1996, this time under the name counter-cyclical payments (CCPs) which paid farmers the

\textsuperscript{94} See WOMACH, supra note 54, at 99.
\textsuperscript{95} See Mary Burfisher and Jeffrey Hopkins, Farm Payments: Decoupled Payments Increase Households’ Well-Being, Not Production, USDA ECONOMIC RESEARCH SERVICE: AMBER WAVES (Feb. 2003), http://www.ers.usda.gov/AmberWaves/Feb03/Features/FarmPayments.htm.
\textsuperscript{96} See Chris Edwards and Tad DeHaven, Farm Subsidies at Record Levels As Congress Considers New Farm Bill, CATO INSTITUTE 4 (Oct. 18, 2001), http://www.cato.org/pubs/briefs/bp70.pdf.
\textsuperscript{97} Id. at 5.
\textsuperscript{98} See id. at 2.
\textsuperscript{99} See id. at 2-3.
difference whenever the market price for a commodity fell below a Congressionally specified target price. Although the 2002 Farm Bill faced significant opposition from both Democrats and Republicans in the Senate, the final version of the bill did succeed in implementing lower caps on the total combined subsidies paid to individual farmers at $275,000, half the previous limit.

The most recent Farm Bill was the Food, Conservation, and Energy Act of 2008. The final 2008 Farm Bill kept in effect most of the subsidy programs in the 2002 Farm Bill, notwithstanding the record profits that farmers had been earning. The 2008 Act adjusted eligibility requirements and crop insurance programs, and retained provisions that continued to provide direct payments and counter-cyclical payments at precisely the same rates as the 2002 Farm Bill did between 2004 and 2007. Its passage was somewhat controversial and reveals the shifting political considerations now bearing on the continuation of U.S. commodity subsidies. The European Union, joined by Brazil, Argentina, Canada, and others, filed a complaint with the World Trade Organization against the United States asking for U.S. agricultural subsidies to be discontinued because of their distortive effects on international markets. George W. Bush attempted to veto the bill, citing the same concerns listed in the complaint and noting that it deviated from free-market principles, but he was unable to move the Senate off of its support for the existing subsidy programs.

104. See 2008 Farm Bill Side-by-Side, supra note 72.
106. See 2008 Farm Bill Side-by-Side, supra note 72.
107. See id.
III. THE INCENTIVE ARCHITECTURE OF THE CORN SUBSIDY

Agricultural subsidies were a sensible policy response to the deflation that threatened American grain prices in the early 1930s and to address the food shortages of the early 1970s. The legislative response to these two crises was not to provide short-term cash injections, but to stabilize food production by completely altering the market pressures confronting corn farmers and other grain producers. The subsidies in the Farm Bill, however, gave rise to incentives that had little relationship to actual market demand, and furthermore, were not tailored properly to address only the issue of maintaining a stable food supply. Because of agriculture's relationship to other sectors of the economy, agricultural legislation has impacted far more than the stability of agricultural prices.

Corn growers received over $56 billion in federal subsidies between 1995 and 2006, and it is expected that subsidies to corn growers may soon exceed $10 billion per year. This direct outlay from the U.S. tax base is only the beginning. To understand the full array of costs associated with this legislation, corn subsidies cannot be viewed simply as recurring payments from the federal treasury to farmers. Farm Bill subsidies represent a much more comprehensive reconfiguration of incentives: they are a game-changing event that produces systemic consequences far beyond the markets in corn and commodity foods. The Farm Bill "sets the rules for the American food system—indeed to a considerable extent for the world's food system."111

This Part seeks to examine the mechanisms through which the corn subsidy provisions of the Farm Bill impact institutions and market structures beyond the market in commodity corn. Section A provides an account of the deficiency payments, direct payments, and non-recourse loans that deliver agricultural subsidies. Section B describes the effect of these subsidies on the relative cost of other foods and explores the impact of subsidies on meat production and other secondary corn products, such as those containing corn-derived high-fructose corn syrup. Section C examines the healthcare expenses and increased costs, particularly those related to the rising incidence of obesity and diabetes that are attributable to

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111. See Pollan, supra note 2.
overconsumption of corn-based food products and corn-fed animal products. Section D looks at the environmental costs associated with excessive corn production, and Section E considers the effect of U.S. corn subsidies on global food prices and on international labor markets.

A. Deficiency Payments, Guarantees, and a Glut of Corn

As the U.S. House Committee on Agriculture describes it, "[t]he U.S. farm bill is the primary agricultural and food policy tool of the federal government."\(^{112}\) Corn subsidies affect the price of nearly everything in the American food supply. This Section begins with a description of the current administration of corn subsidies and how they affect prices, with specific emphasis given to the use of deficiency payments in recent Farm Bill legislation. Beyond subsidies' immediate effects on the price of corn and other commodity grains, this Section attempts to distinguish two separate, but related processes through which subsidies lead to market distortions throughout our food system. First, corn subsidies directly reduce the manufacturing costs of all corn-containing products (an almost endless list of products that contain refined sugars, corn syrup, corn starch, coloring, etc.) and the costs of corn-fed animal products. This in turn reduces consumer prices for these same products. Second, the relative price of nonsubsidized (and often healthier) alternatives to these products is made artificially high. The resulting reduced market share for nonsubsidized alternatives translates into fewer market participants, further exacerbating the less-than-optimal levels of competition that could be making healthier or higher-welfare alternative foods more available.

It is worth exploring more in-depth how the payment system contemplated in the Farm Bill legislation operates. There are three systems for agricultural support: 1) deficiency or counter-cyclical payments; 2) direct payments; and 3) non-recourse marketing loans. These three support systems, and their interaction, produce a drastic change from the incentives associated with traditional understandings of supply and demand. The following summary of the first of these, deficiency payments, excerpted from Jasper Womach's CRS Report for Congress, is a useful starting point:

The crop-specific deficiency payment rate was based on the difference between the legislatively set target price and the lower national average market price during a specified

time. The total payment was equal to the payment rate, multiplied by a farm’s eligible payment acreage and the program payment yield established for the particular farm. In the latter years of the program, farmers could receive up to one-half of their projected deficiency payments at program signup. If actual deficiency payments, which were determined after the crop year, were less than advance deficiency payments, the farmer was required to reimburse the government for the difference.\textsuperscript{113}

Congress, in other words, will compensate farmers for the difference anytime the price falls below the legislative target. Although Congress nominally eliminated the deficiency payment program with the 1996 legislation,\textsuperscript{114} the counter-cyclical payments (CCPs) reintroduced in 2002 operate in essentially the same way, by paying farmers the difference when the market price for a commodity falls below the target price.\textsuperscript{115}

Secondly, and without regard to annual fluctuations in price or yield, direct payments of a fixed amount are available to commodity producers on a per-bushel basis.\textsuperscript{116} Direct payments are available regardless of whether the market price is above or below the CCP target.\textsuperscript{117} If the market price is below the CCP target, the farmer will receive the difference between the market price and the target, in addition to the legislatively determined direct payment amount.\textsuperscript{118} Under the 2002 Farm Bill, for example, farmers were guaranteed $2.60 from 2002–03 and $2.63 from 2004–2007 per bushel of corn under the deficiency payment system, on top of which they would receive an additional direct payments of 28 cents per bushel.\textsuperscript{119} If the market price in fact rose above the Congressionally created floor, Congress would continue to pay direct subsidies at the rate of 28 cents per bushel.\textsuperscript{120} The 2008 Farm Bill keeps the $2.63 target and the 28-cent direct payment through the end of calendar year 2012.\textsuperscript{121}

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\item \textsuperscript{113} WOMACH, \textit{supra} note 54, at 73.
\item \textsuperscript{114} Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, (1996); see also WOMACH, \textit{supra} note 54, at 73.
\item \textsuperscript{115} See, e.g., WOMACH, \textit{supra} note 54, at 73.
\item \textsuperscript{116} 2008 Farm Bill Side-by-Side, \textit{supra} note 72.
\item \textsuperscript{117} Id.
\item \textsuperscript{118} Id.
\item \textsuperscript{119} Id. See also The 2002 Farm Bill: Title 1 Commodity Programs, USDA (May 22, 2002), http://www.ers.usda.gov.
\item \textsuperscript{120} 2008 Farm Bill Side-by-Side, \textit{supra} note 72.
\item \textsuperscript{121} Id.
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According to accepted economic models of supply and demand, an increase in the supply of corn would drive prices down. Production, accordingly, should only continue up to the point that the market price is larger than the cost of production. That is, farmers would stop growing corn if they were losing money on it. The problem is that the deficiency-payments-plus-guarantee system of the recent Farm Bill makes sure that can never happen. The price supports described here have eliminated these market forces completely. By providing payments above the market value, no matter what price the market reaches, the government over-stimulates production, which further suppresses the market price while doing nothing to reduce the availability of government price supports. The result is a feedback loop without any signs of slowing down. Congress pays corn growers no matter how many bushels they churn out; the incentive is to always grow more, irrespective of market forces. As Laurence Lessig observed in his TED lecture, Citizens: The Need and the Requirements, "[s]ome economists estimate that the cost of growing corn is actually negative. You get paid to grow corn." This is not a functioning market. The principles of supply and demand do not operate here. By offering to extend payments whether prices rise or fall, Congress has literally handed a blank check to corn growers.

The third major component of the federal agricultural support system is the marketing loan program. "A key part of the federal farm subsidies since the New Deal[,] this program was designed to provide short-term financing to pay farm expenses before crops were sold, but it has morphed into simply another multi-billion-dollar subsidy program." Under the original system, the government extended loans to farmers to allow them to pay operational expenses before harvest, and after the crops were sold, 

122. Presentation of Laurence Lessig at TED San Antonio, Citizens, The Need and the Requirements—Our Nation Desperately Needs Citizens, YOUTUBE (Oct. 16, 2010), http://www.youtube.com/watch?v=Xz3RdkO824A. See also Alicia Harvie and Timothy A. Wise, Sweetening the Pot: Implicit Subsidies to Corn Sweeteners and the U.S. Obesity Epidemic, GLOBAL DEVELOPMENT AND ENVIRONMENT INSTITUTE: TUFTS UNIVERSITY, http://www.ase.tufts.edu/gdae/Pubs/rp/PB09-01SweeteningPotFeb09.pdf ("GDAE estimated that corn and soybeans were priced 23% and 15% below their average production costs, respectively, in the nine-year period following the 1996 Farm Bill, 1997-2005.").

farmers would then repay the government.\textsuperscript{124} But because the loans were non-recourse, farmers faced no penalty for not repaying when crop prices were low except that they would forfeit their crops to the government.\textsuperscript{125} This, in effect, serves as an additional subsidy to corn growers, because whenever the market price falls below the loan amount, the rational economic strategy growers follow is to accept the government’s marketing loan. On top of this de facto subsidy, taxpayers also bear the expense of maintaining the government’s commodity stockpiles.\textsuperscript{126} The marketing loan program also makes a second option, loan deficiency payments (LDPs), available to farmers, which enables farmers to receive the subsidy without actually structuring the payment as a secured nonrecourse loan.\textsuperscript{127} Together the total cost of these programs between 1995 and 2010 totaled $77.1 billion.\textsuperscript{128} That averages approximately $4.8 billion in annual transfers to corn producers.\textsuperscript{129}

\textbf{B. Distorting Price Signals Throughout the Food Supply}

This broken incentive system invites farmers to produce endlessly. This results in a glut of corn that needs someplace to go. As corn flooded the marketplace, its purchase price fell further and further relative to other foodstuffs.\textsuperscript{130} Corn, in the form of high-fructose corn syrup, quickly became a cheaper source of sugar than sugar cane.\textsuperscript{131} Similarly, corn became a cheap feed grain for industrial animal producers, and corn even became an input for ethanol energy producers, despite the fact that it yields

\textsuperscript{124} See \textit{id.}
\textsuperscript{125} See \textit{id.} (citing Farm and Commodity Policy: Basic Mechanisms of Programs, USDA BRIEFING ROOM; ECONOMIC RESEARCH SERVICE, \url{www.ers.usda.gov/briefing/FarmPolicy/malp.htm}).
\textsuperscript{126} See \textit{id.}
\textsuperscript{128} 2011 Farm Subsidy Database, ENVIRONMENTAL WORKING GROUP (June 2011), \url{http://farm.ewg.org/}.
\textsuperscript{129} See \textit{id.}
\textsuperscript{130} See, e.g. Tom Laskawy, \textit{Tax Junk Food, but also subsidize veggies}, GRIST (May 20, 2009), \url{http://www.grist.org/article/tax-the-bad-and-subsidize-the-good}.
\textsuperscript{131} Michael Pollan, \textit{High-Fructose Corn Syrup Not Necessarily Worse Than Sugar}, HUFFINGTON POST (Oct. 28, 2011), \url{http://www.huffingtonpost.com/2011/10/28/michael-pollan-high-fructose-corn-syrup-sugar_n_1064246.html} (“High-fructose corn syrup is cheaper than sugar, so it traditionally was pumped into a lot of foods, including savory items.”).
half of the ethanol per acre of other sugar sources.\textsuperscript{132} Corn also has only a breakeven energy ratio while other sources have a ratio of 8 to 1.\textsuperscript{133} This tendency of surplus commodities to find their way into other parts of the market or into the supply chain is an expected, predictable economic outcome, as is an increase in consumption. "Since the Nixon administration, farmers in the United States have managed to produce 500 additional calories per person every day (up from 3,300, already substantially more than we need); each of us is, heroically, managing to put away 200 of those surplus calories at the end of their trip up the food chain."\textsuperscript{134} Compare the availability of corn to what happened in the lead up to the recent financial crisis, when the over-availability of cheap credit resulted in the proliferation of harmful financial products such as subprime mortgages and teaser rate credit cards that led to overextended consumer spending.\textsuperscript{135} This is not to suggest that innovation in food products poses analogous systemic risks. The point is, rather, that because corn is cheap and plentiful, new uses for it are constantly being innovated. Although the overall amount of food that people can eat is somewhat inelastic, the market in specific foods is less so, particularly when the food product in question can be used as an input and put to other ends.\textsuperscript{136} All of that excess corn needed some place to go.

Consider the following passage from an essay by John Mackey, the founder and CEO of Whole Foods, on the impact of corn subsidies on meat production:

> Each year, the federal government doles out billions of dollars to the U.S. factory farming industries, especially to keep artificially low the prices of corn and soybeans, largely used as farmed animal feed. These large corporations receive taxpayer money, and while this does filter down to a certain extent to cheaper animal-


\textsuperscript{133} See id.

\textsuperscript{134} MICHAEL POLLAN, THE OMNIVORES DILEMMA, 310 (1st ed. 2006).

\textsuperscript{135} See Adam J. Levitin, Foreword: The Crisis without a Face: Emerging Narratives of the Financial Crisis, 63 U. MIAMI L. REV. 999 (July 2009) ("Low interest rates caused investors looking for high rates of return [to] move[ ] to riskier investments.").

\textsuperscript{136} NATIONAL RESEARCH COUNCIL (U.S.). COMMITTEE ON FOOD CONSUMPTION PATTERNS, ASSEMBLY OF LIFE SCIENCES (U.S.), ASSESSING CHANGING FOOD CONSUMPTION PATTERNS Appendix A at 58-59 (2001).
based foods, it also distorts markets tremendously. These subsidies allow animal products to be sold far below their true costs.

Take corn subsidies, for example. Simply put, government subsidizing of corn subsidizes the factory farm animal production system, which is largely dependent on corn for feed. Eliminating corn subsidies is a first step to valuing animals more accurately. If those subsidies were taken away, animal products in general would become more expensive, and it is likely that less meat, eggs, and milk would be bought as a result—a positive outcome for our health, economy, environment, and the animals themselves. In addition, if corn were not subsidized by the government, higher welfare products like grass-fed beef would become more economically competitive in the market with beef from cattle confined on feedlots—another way of giving customers a fair alternative.137

Meat and dairy production is a major, albeit indirect, recipient of the subsidies for feed crops such as corn. According to data from the USDA, in 2009 over 40% of corn grown in the United States was used as feed for animals.138

A report by the Institute for Agriculture and Trade Policy estimates that below-cost feed crops reduce operating costs for poultry and hog producers and concludes that "these corporations' overall costs could be as much as 7-10% higher if they compensated farmers fairly for the feed components that they produce."139 Citing a recent Tufts University study, Tom Philpott estimated that between 1997 and 2005 the combined subsidies passed on to chicken, pork, beef and high-fructose corn syrup

producers exceeded $26.5 billion. The lower prices for producers have increased profit margins, but these reduced costs have also been passed on to consumers and further increased the availability of meat and dairy products.

As Heather Schoonover and Mark Muller have noted, "[t]he ability of fast-food restaurants to put hamburgers on the 99¢ value menu can also be linked to cheap commodities." A 2008 study by A. Hope Jahren and Rebecca A. Kraft used carbon and nitrogen stable isotopes to infer the source of feed to meat animals, and the influence of increased corn production is undeniable. A writer for Wired Science summarized Jahren and Kraft’s findings thusly: "[c]hemical analysis from restaurants across the United States shows that nearly every cow or chicken used in fast food is raised on a diet of corn." Together, meat and dairy products make up the largest sources of cholesterol and saturated fat in the American diet.

Another important and much-researched topic is the effect of corn subsidies on the cost of products that are high in sugar, most notably in the form of high-fructose corn syrup. As a result of subsidies, sugar tariffs, and increased production, the price of corn fell relative to the price of sugar. Once a Japanese researcher, Dr. Y. Takasaki, developed an affordable industrial production method for converting corn starch into high-fructose corn syrup, it became far more cost-effective for a broad range of food manufacturers and producers to rely on synthesized corn sugars such as high-fructose corn syrup rather than cane sugar as a primary sweetener. This was particularly true given the low price of corn that resulted from over-stimulated production attributable to the agricultural

140. Philpott, Why are we propping up corn production again?, supra note 138 (citing Harvie and Wise, supra note 122).
143. Brandon Keim, Fast Food: Just Another Name for Corn, supra note 110.
subsidies in place during the 1970s. As was true for meat production, these lower manufacturing costs translated into increased production and lower prices for end consumers for a broad range of HFCS-containing foods. Benforado, Hanson, and Yosifon made the following observation:

While it would be intuitive to imagine this as a good thing for the health of Americans—a way to increase the consumption of vegetables—it turns out that most of the subsidy does not go toward producing fresh ears of corn for the local farmers market, but rather into producing inexpensive, high-calorie, highly-processed foods like soda, candy, and hotdogs.

It is incredibly doubtful that then Secretary of Agriculture Butz, or anyone in Congress, anticipated this precise outcome, but once industry gradually began to identify a strong dependence on the corn subsidy, the position that the subsidy was operating in the public interest became less plausible. Archer Daniels Midland (ADM), for example, is one of the nation’s leading manufacturers of high-fructose corn syrup and other corn-based sweeteners, and in 1995, at least 43% of its profits came from government subsidized activities. High-fructose corn syrup is now found in over 40% of all products in the supermarket. A recent study in the American Journal of Clinical Nutrition found that, “by 2004, HFCS provided roughly 8% of total energy intake compared with total added sugar... accounting for 17% of total energy intake.” It is not just corn subsidies adding to this discrepancy in price between high-fructose corn syrup and refined sugar. The U.S. also imposes tariffs and quotas on imported cane sugar, further exacerbating the relative price differences between high-fructose corn syrup and other forms of sugar and stimulating

146. See The Facts Behind King Corn, supra note 65, at 2.
148. Bovard, supra note 147.
149. Presentation of Laurence Lessig, supra note 122.
the market toward greater dependences, innovations, and markets of scale involving high-fructose corn syrup and other corn-derived sugars.

The Institute for Agriculture and Trade Policy's 2006 study, *Food Without Thought: How U.S. Farm Policy Contributes to Obesity*, used data from the USDA Economic Research Service (ERS) to document a number of changes in U.S. food consumption. One of their most significant findings, as reported by the New York Times, is that, ""between 1985 and 2000 the cost of [unsubsidized] fresh fruits and vegetables increased nearly 40% while the price of soft drinks [the main ingredient of which is corn-based HFCS] decreased by almost 25 percent, adjusted for inflation." Fast food and supermarket nutrition studies have similarly shown that while one dollar buys "1,200 calories of potato chips and cookies; spent on whole foods like carrots, the same dollar buys only 250 calories." In the period between 1997 and 2003, the average cost of vegetables increased by 17%, while the cost of a Big Mac went down by 5.4%, and the cost of a bottle of Coca-Cola decreased by 35%. William Eubanks discussed these types of findings in his comprehensive article on the negative economic effects of the Farm Bill and drew the following conclusion:

Thus, food products highly subsidized under the Farm Bill such as HFCS-laden sodas, candy, and other unhealthy processed foods actually saw their supermarket prices decrease as a result of subsidy-propelled market distortion, while unsubsidized fruits and vegetables saw a spike in price. It is quite clear where consumer choice went as a result of the inequitable system that makes unhealthy sodas cheap and nutritious food expensive.

The combined facts that the Farm Bill stimulates the production of cheap corn-derived sugars while doing little to support farmers growing fresh produce help explain the growing price gap between healthy and unhealthy foods. While acknowledging that some critics of the corn subsidy, such as Michael Pollan, “might be overstating” the causal link to the price of

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152. Schoonover & Muller, supra note 141 at 6.
154. Pollan, supra note 134, at 107-08.
155. Presentation of Laurence Lessig, supra note 122.
157. See Pollan, supra note 2.
high-fructose corn syrup, an independent study by researchers at the Tufts University Global Development and Environment Institute made the following findings:

U.S. farm policy effectively lowered corn prices and HFCS production costs, offering HFCS producers an implicit subsidy of $243 million a year, a savings of $2.2 billion over the nine-year period, and over $4 billion since 1986. For soda bottlers, the main consumers of HFCS and among those most heavily implicated in public health concerns, the savings amounted to nearly $100 million per year, $873 million over the nine-year period, and nearly $1.7 billion since the wholesale adoption of HFCS by the soda industry in the mid-eighties.\(^{158}\)

The USDA has similarly recognized that increasing the price of HFCS-sweetened products would lead to significant reductions in consumption.\(^{159}\) While consumption taxes could begin to accomplish that objective, eliminating the active indirect subsidization of high-fructose corn syrup production offers either an alternative or a supplemental means of reducing consumption.\(^{160}\) and cutting subsidies would avoid some of the political opposition that would almost certainly accompany any proposed consumption tax.

C. The Effect of Commodity Subsidies on Diet, Nutrition, and Healthcare Costs

The problem is not just that corn-based products are relatively cheaper than competitors as a result of subsidy payments. These foods are

\(^{158}\) Harvie and Wise, supra note 122, at 1.

\(^{159}\) Travis A. Smith, Biing-Hwan Lin, and Rosanna Morrison, Taxing Caloric Sweetened Beverages To Curb Obesity, USDA ECONOMIC RESEARCH SERVICE: AMBER WAVES (Sep. 2010), http://www.ers.usda.gov/AmberWaves/September10/Features/TaxingCaloricBeverages.htm (“ERS researchers found that a 20-percent tax on caloric sweetened beverages could reduce consumption, calorie intake, and body weight even after accounting for increased consumption of alternative beverages.”).

\(^{160}\) A recent study of the implicit subsidy to HFCS manufacturers found that “[i]f corn had been priced at its true cost, HFCS-55 prices (the major sweetener for soft drinks) would have been an estimated 8.8% higher.” Harvie and Wise, supra note 122, at 4 (citing John C. Beghin and Hellen H. Jensen, Farm Policies and Added Sugars in US Diets, (Ctr. for Agricultural and Rural Development: Iowa State University, Working Paper 08-WP 462, 2008), available at http://www.card.iastate.edu/publications/dbs/pdffiles/08wp462.pdf).
Michael Pollan states this quite poignantly where he writes, "absurdly, while one hand of the federal government is campaigning against the epidemic of obesity, the other hand is actually subsidizing it by writing farmers a check for every bushel of corn they can grow." As noted previously, farmers in the U.S. produce 500 more calories per person every day than they did in the early 1970s, and Americans consume an additional 200 of those calories. Many of those calories are from corn, corn-fed animal products, or from high-fructose corn syrup specifically. "Studies suggest that we metabolize high fructose corn syrup differently than ordinary sugar, and consumption of high fructose corn syrup is a major factor in weight gain." There is also some evidence that high-fructose corn syrup does not send the same satiety signals to the brain as sugar consumption. To make matters worse, the way in which high-fructose corn syrup is metabolized by the liver raises additional health concerns and "can result in higher levels of triglycerides, which are associated with heart disease and stroke."

In a major 2004 study about the relationship between food costs and obesity, epidemiologist Adam Drewnowski demonstrated that price distortions have a significant and overwhelmingly negative affect on what

161. Specifically, high-fructose corn syrup and corn as animal feed have reduced the manufacturing costs for soda, snacks like chips and candy bars, and meat. These lowered costs result in lower prices for consumers and encourage consumption in excess of a free-market equilibrium. See supra, Section II, Part B.
162. Pollan, supra note 61.
163. Pollan, supra note 131, at 103.
164. See What Are We Eating? What the Average American Consumes in a Year, VISUAL ECONOMICS, http://www.visualeconomics.com/food-consumption-in-america_2010-07-12/ (citations omitted) (stating the average American eats 56 pounds of corn per year).
165. See id. (stating the average American eats 62.4 pounds of beef, 46.5 pounds of pork, and 60.4 pounds of chicken per year).
169. Id. at 13.
Americans eat.170 “[D]iets based on refined grains, added sugars, and added fats are more affordable than the recommended diets based on lean meats, fish, fresh vegetables, and fruit.”171 Pollan summarized these findings, writing, “Drewnowski concluded that the rules of the food game in the U.S. are organized in such a way that if you are eating on a budget, the most rational economic strategy is to eat badly—and get fat.”172 As described above, subsidies have reduced the real cost consumers pay for a range of sugar- and fat-laden products, while healthier foods such as unprocessed fruits and vegetables have seen significant real price increases.173 Changes in relative prices, in no small way attributable to government subsidies for corn and soybeans, are affecting how Americans eat for the worse, even undercutting the USDA’s own dietary guidelines.174

These price differences correspond to predictable increases in the consumption of calories from corn-derived foods high in fats and simple sugars.175 The following graph from USDA Economic Research Service demonstrates how much increased consumption of corn sweeteners has contributed to overall sweetener consumption in the United States:

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170. See generally Drenowski Adam, Obesity and the food environment: dietary energy density and diet costs, 27 American Journal of Preventative Medicine, Oct. 2004, at 154, reprinted in AN ECONOMIC ANALYSIS OF EATING AND PHYSICAL ACTIVITY BEHAVIORS: EXPLORING EFFECTIVE STRATEGIES TO COMBAT OBESITY (J.O. Hill, R. Sturm, & C.T. Orleans, eds.).
171. Id. at 154.
172. Pollan, supra note 2.
173. See supra notes 153-157 and accompanying text.
175. “Many consumers choose the most cost-effective means of obtaining necessary calories, which unfortunately is found in unhealthy foods because of price distortion under the Farm Bill.” Eubanks, supra note 156, at 288.
Benforado, Hanson, and Yosifon have explained the “causal chain,” as follows: “subsidies lowered the cost of corn; cheap corn lowered the cost of sweet, processed foods; lower prices on things like soda increased consumption; and consuming more of these types of foods made us gain weight.”

Consumption of HFCS-sweetened beverages has been linked to greater weight gain and an increased risk of Type 2 diabetes in women. Health professionals also recognize that “calories from those subsidized foods are partly responsible for the epidemic of childhood obesity and the increased incidence of diabetes.” Over half of all newly diagnosed diabetes cases since 1980 are in people under the age of 18, a rate that was unthinkable a few decades earlier. Industry groups, such as the Corn Refiners Association, assert that high-fructose corn syrup is no more harmful than cane sugar, although studies by the American Medical Association continue to emphasize the need for continued epidemiological

177. Benforado, Hanson, and Yosifon, Broken Scales, supra note 147, at 1794.
180. Presentation of Laurence Lessig, supra note 122.
Irrespective of that debate and the relative harms of cane sugar and high-fructose corn syrup, there is overwhelming and indisputable evidence that high-fructose corn syrup has contributed to a major increase in the overall consumption of high-caloric sweeteners, and as sweetener consumption has increased, there has been a corresponding increase in diabetes, obesity, and other weight-related health issues.\textsuperscript{183} By some estimates, healthcare costs for obesity and for weight-related diabetes exceed $147 billion annually.\textsuperscript{184} The Society of Actuaries Committee on Life Insurance Research believes the actual total costs are far higher.\textsuperscript{185} Beyond diabetes, obesity increases the risk of heart disease and stroke and imposes a number of costs associated with mobility and increased morbidity.\textsuperscript{186} “We estimate that total annual economic cost of overweight and obesity in the United States and Canada caused by medical costs, excess mortality and disability is approximately $300 billion in 2009.”\textsuperscript{187} A 2006 study revealed that “obese patients spent an average of $1,429 more for their medical care than did people within a normal weight range,”\textsuperscript{188} costs which taxpayers end up paying for in the form of increased expenditures on government healthcare programs. In his article, \textit{A Rotten System}, William Eubanks describes how deeply corn subsidies undercut the needs of our health care system: “as taxpayers, we are paying agribusiness and food processors through Farm Bill subsidies and then turning around and spending more tax dollars on the rising health care costs driven by the same agribusiness and food processing giants that stock our shelves with unhealthy food.”\textsuperscript{189}

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\textsuperscript{183.} See generally George Bray, Samara Nielsen, and Barry Popkin, \textit{Consumption of high-fructose corn syrup in beverages may play a role in the epidemic of obesity}, 79 American Journal of Clinical Nutrition 537 (Apr. 2004).

\textsuperscript{184.} Presentation of Laurence Lessig, \textit{supra} note 122; see also Anderson JW and Jhaveri MA, \textit{Reductions in medications with substantial weight loss with behavioral intervention}, 5 Curr Clin Pharmacol 232 (Nov. 2010).


\textsuperscript{187.} Behan and Cox, \textit{supra} note 187.


\textsuperscript{189.} Eubanks, \textit{supra} note 156, at 287.
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D. The Environmental Costs and Ecological Impact of Commodity Subsidies

"[I]ndustrialized commodity crop farming is putting strains on natural systems."\(^\text{190}\) Corn production is an extremely land- and resource-dependent industry, and as John Mackay wrote, "[b]y focusing solely on making food as cheap as possible, we have often overlooked the grave environmental costs—which will some day be hard economic costs."\(^\text{191}\) Not all of these costs are deferred, however. The corn industry's dependence on fossil fuels, for example, produces both long-term externalities, and in the short-term adds to the cost of gasoline and adds risk to the agricultural sector by linking food costs to the cost of oil.\(^\text{192}\) Gareth Collins has further documented that "[m]odern farming practices contribute heavily to environmental problems like: water pollution, hypoxia zones, biodiversity loss, and soil erosion."\(^\text{193}\) Le Seur and Abelkop have noted the difficulty parsing apart the environmental burdens or tracing them directly to individual commodities like corn:

It would be too massive an undertaking for a single article to catalog all of the socioeconomic, public health, and environmental impacts to which commodity subsidies contribute. It is also an oversimplification to assign specific impacts to commodity subsidies, which are interlocking pieces in a more complex market reality. Such analysis is the proper role of an EIS.\(^\text{194}\)

For precisely this reason, this article does not attempt to offer an exhaustive list or to make any exacting attributions. There is considerable research available about many of the most salient environmental harms associated


\(^{191}\) Mackey, supra note 137.


\(^{193}\) Collins, supra note 190, at 27.

with American agricultural subsidies, and this Section is meant to provide only a brief introduction.

Growing corn turns out to be extremely energy inefficient as it is currently practiced. Michael Pollan described the extent to which this biological process that can convert sunlight into stored energy in the form of food has, through perverse industrial systems, actually come to require more fossil fuel inputs than the energy actually contained in the food. 195 Consider the following excerpt:

When you add together the natural gas in the fertilizer to the fossil fuels it takes to make the pesticides, drive the tractors, and harvest, dry, and transport the corn, you find that every bushel of industrial corn requires the equivalent of between a quarter and a third of a gallon of oil to grow it—or around fifty gallons of oil per acre of corn. (Some estimates are much higher.) Put another way, it takes more than a calorie of fossil fuel energy to produce a calorie of food; before the advent of chemical fertilizer the Naylor farm produced more than two calories of food energy for every calorie of energy invested. From the standpoint of industrial efficiency, it’s too bad we can’t simply drink the petroleum directly. 196

For reasons described above, the federal subsidy encourages fencerow-to-fencerow production, incentivizing fertilizer dependence, oil-dependent industrial farming techniques, and does not provide farmers any incentive to rotate crops to take advantage of natural efficiencies. Without pressure to keep costs below the market price, farmers’ dependency on fossil fuels is encouraged even beyond the already unsustainable levels stipulated through market pricing mechanisms.

Millions of acres of conservation land have already been diverted to corn production, 197 and researchers have projected that as many as 2.9 million additional acres may be diverted to meet short-term demand for ethanol. 198 Sections of the Farm Bill are often at cross-purposes with respect to land conservation. In 2002, for example, the Farm Bill reintroduced counter cyclical (i.e. deficiency) payments for corn, grain, and other commodities, which stimulated increased production, and at the same

196. Id.
197. See La Seur and Abelkop, supra note 194, at 202-05.
198. See id. at 206.
time set aside nearly $22 billion for expanded conservation programs, which led a New York Times reporter to write that “the [2002] farm bill could become the most sweeping environmental legislation since the Clean Air Act of 1990.”

Somewhat surprisingly, the USDA has never been required to offer a full environmental impact statement (EIS) for its implementation of most major Farm Bill policies. The National Environmental Policy Act of 1969 (NEPA) requires an EIS before the enactment of any “legislation and other major Federal actions significantly affecting the quality of the human environment.” But, as Le Seur and Abelkop have demonstrated, the USDA has only made segmented attempts at NEPA compliance even as “the scope and ecological impact of the Farm Bills have swelled in recent decades.” While the environmental harms listed in the preceding paragraphs are by no means exhaustive, the fossil-fuel dependence of subsidized corn producers, the indirect subsidization of resource intensive meat production, soil erosion, water pollution and other aquatic degradation, greenhouse gas (GHG) emissions, and the diversion of land designated for conservation are all variously implicated in our current commodity support systems. Le Seur and Abelkop have noted the difficulty parsing apart the environmental burdens or tracing them directly to individual commodities like corn, but, they emphasize, the USDA is the agency that has a statutory mandate to begin making this effort.

E. Destabilizing Effects on International Food Prices and Global Labor Markets

An astounding 38.7% of the world’s corn is grown in the United States. Much of that corn is consumed domestically, converted into ethanol, or dedicated to meat production or other secondary manufacturing products such as high-fructose corn syrup and plastics. However, a large portion of corn is exported and has a significant effect on the global price. The USDA ERS reported the United States’ share of world corn exports averaged in excess of 60 percent between 2003 and 2008. In 2010, the

199. Becker, supra note 102.
203. See id. at 211-216.
U.S. exported four times more corn than the second largest corn exporter, Argentina. The predictable result of the U.S. saturation of the global market in corn is the depression of corn prices, and this is precisely what has come to pass. While this produces tangible benefits and lowers costs for consumers and international producers who rely on corn, that is not the end of the story.

Perhaps the single most cited harm that results from the suppression of agricultural prices is the disruption of family and community farming practices in other parts of the world. Families throughout Africa, Asia, and Latin America that have grown food for generations are no longer able to earn a sustainable income. Regardless of what crops these farmers were growing, the abundance of artificially cheap American corn reduces demand for their crops to be consumed in their own country, either directly or as feed or another industrial input. The New York Times, reporting on the devastating impact that ‘free-trade’ agreements and entry into the World Trade Organization (WTO) produced had in the Philippines where farmers were unable to compete with subsidized American agribusiness:

Instead of making any gains, the Philippines has lost hundreds of thousands of farming jobs since joining the W.T.O. Its modest agricultural trade surpluses of the early 1990s have turned into deficits. Filipinos...increasingly view the much-promoted globalization as a new imperialism. Despair in the countryside feeds a number of potent anti-government insurgencies.

A number of international human rights and labor advocates attempted to give voice to those suffering under this situation in a book called *Manifestos on the Future of Food & Seed*, underscoring, among other


207. See Uncle Sam’s Teat: Can America’s farmers be weaned from their government money?, THE ECONOMIST, Sep. 7, 2006, available at http://www.economist.com/node/7887994 (“America’s farm subsidies, unlike Europe’s, have become more, rather than less, trade-distorting. Most of the direct cash is lavished on crops, particularly corn (maize), soyabeans (sic), rice, cotton and wheat, often depressing world prices.”).


209. See id.

210. Id.
things, how crucial the political economy of food remains among many of
the world’s people.211 The problem goes far beyond simply putting a strain
on family farmers and indigenous populations. Displaced farmers swell the
number of unemployed, and foreclosed-on farmers then come to the cities
with their families, fill urban ghettos, and contribute to political and social
unrest.212 As Michael Pollan observed,

By making it possible for American farmers to sell their
crops abroad for considerably less than it costs to grown
them, the farm bill helps determine the price of corn in
Mexico and the price of cotton in Nigeria and therefore
whether farmers in those places will survive or be forced
off the land, to migrate to the cities—or to the United
States.213

Nobel Prize-winning economist Joseph Stiglitz has also written on the
devastating distortions to third-world prices that subsidies have caused,
noting that U.S. prices reduce farm incomes around the world and make it
harder for farmers to sustain themselves and their families.214

This is not just a problem in the abstract. The European Union and a
number of its trade partners have at various times indicated their
dissatisfaction with U.S. subsidies as these programs have been
characterized as protectionist, disruptive to free trade, and even, at times, as
outright harmful.215 The WTO, for instance, following a complaint brought
by Brazil against the United States, determined that some U.S. subsidy
programs for cotton were prohibited.216 “West Africa was similarly
devastated by declining cotton prices spurred by American cotton subsidies
which led West African farmers to state, ‘[t]he more we produce, [t]he

211. See MANIFESTOS ON THE FUTURE OF FOOD & SEED 6-7 (Vandana Shiva, ed.
2007).
212. See generally RAMI ZURAYK, FOOD, FARMING, AND FREEDOM: SOWING THE
ARAB SPRING, (2011) (discussing food and agricultural policies in the Middle East).
213. Pollan, supra note 2.
214. According to Stiglitz, “when subsid(e)s lead to increased production with
little increase in consumption, as is typicd with agricultural commodities . . . [the result
is] lower prices for producers, lower incomes for farmers, and more poverty among
poor farmers in the Third world.” Eubanks, supra note 161, at 234 (citing Joseph
Stiglitz, The Tyranny of King Cotton, PROJECT SYNDICATE (Oct. 8, 2006),
http://www.project-syndicate.org/commentary/stiglitz76; DANIEL IMHOFF, FOOD FIGHT:
THE CITIZEN’S GUIDE TO A FOOD AND FARM BILL 33, 72-73 (2007)).
215. See EU joins WTO complaint against U.S. corn subsidies, supra note 108.
216. See id.
more we export, the poorer we get.” William Eubanks summarized the emerging global consensus regarding the U.S. subsidy program as follows: “[d]eveloping nations and international institutions such as the World Bank have placed increased pressure on the United States and the European Union to phase out agricultural export subsidies over the past decade, but developed nations have made few efforts to eliminate such subsidies.”

International agricultural markets, insurance systems, and recent financial product innovations may provide some safeguard against seasonal and regional risks, and domestic grain shortages are far less of a danger to any one nation’s food supply than in previous decades. These same financial innovations, however, have resulted in a large transfer of wealth to sophisticated institutional investors while making food less accessible. And while the relationships between commodity subsidies, derivatives, and more recent financial product innovations such as long-only index funds can be extremely difficult to parse apart, the United States government’s role generates significant moral hazard, contributes to disruptions in traditional market pricing, and further fuels political unrest throughout the developing world. The cost of a spike in food costs, whether driven through speculation or other shocks to international food prices, could cause massive inflation. Although the existence of agricultural subsidies might appear to some to mitigate a rise in prices, that conclusion overlooks the fact that inflation will increase production costs across the board and further ignores that many indigenous farmers have been driven off their land as a result of market-distortive trade policies.

Furthermore, events throughout the Middle East in early 2011 should underscore the extent to which agricultural prices and unemployment more

217. Eubanks, supra note 156, at 234 (citing IMHOFF, supra note 214, at 79).
218. Id.
219. See Risk Management in Agriculture, Towards Market Solutions in the EU, DEUTSCHE BANK RESEARCH (Sept. 17, 2010), http://www.dbresearch.de/PROD/DBR INTERNET_EN-PROD/PROD0000000000262553.PDF.
generally can quickly transform into civil unrest significant social uprisings. The hostility and political unrest produced by these price distortions, to the extent that those price distortions can be attributed to U.S. policies, have the potential to contribute to anti-American sentiment. Laurence Lessig has criticized the hypocrisy of the United States' "free-trade" strategy, which combines forced international enforcement of copyrights while simultaneously using corporate welfare subsidies to inundate global agricultural markets with American commodities, noting "[w]hile the US sings the virtues of free trade to defend maximalist intellectual property regulation, we poison the free trade that developing nations care about most—agriculture—by subsidizing farming in the industrialized world to the tune of $300 billion annually."

The WTO, as noted previously, has proposed sanctions against the United States because of these practices, and other nations have, at times, refused to participate in trade negotiations with the U.S.

IV. U.S. POLITICAL STRUCTURES PREVENT BAD FOOD POLICIES FROM GETTING BETTER

Corn subsidies are an unpopular policy with both the political left and right. Free-market advocates and libertarians have long decried the market distortions and inefficiencies that corn subsidies create. Republican House Speaker John Boehner, for instance, has compared the Farm Bill to a "slush


225. See generally Kaufman, supra note 221 (noting that financial deregulation in U.S. agricultural commodities has contributed to global price instability); RANDY SCHNEPF, CONG. RESEARCH SERV., BRAZIL'S AND CANADA'S WTO CASES AGAINST U.S. AGRICULTURAL DIRECT PAYMENTS (2010), available at http://www.nationalag lawcenter.org/assets/crs/RL34351.pdf (summarizing two complaints filed at the World Trade Organization against the U.S. for market-distorting direct subsidies and export subsidies.)


227. See id.
fund,\textsuperscript{228} and corn subsidies have come under fire from a number of prominent right-libertarian organizations.\textsuperscript{229} Similarly, opposition from liberal and progressive organizations is increasingly vocal and has coalesced around the subsidies’ environmental impact, the unintended healthcare consequences, and the fact that the nation’s wealthiest corporations receive a disproportionate share of governmental subsidies.\textsuperscript{230} Even the powerful Iowa Farm Bureau Federation, which represents 99 Iowa counties, no longer supports federal direct payments to farmers.\textsuperscript{231} What can possibly explain the persistence of such a harmful and unpopular law?

Legislative drift—the process by which legislation grows out-of-touch with its original purposes—and lobbying activities among vested stakeholders are central to any honest answer to this question. Emergency subsidies made sense as measures to stabilize prices and the supply of corn and other grains during the Great Depression and the shortages of the 1970s. But through a combination of a lack of general political will and the dedicated lobbying of vested interest groups, these emergency measures have become ingrained in our bureaucracies and national administrative practices. The conditions under which this legislation was passed continue diverging from the environmental and public health realities we now confront. Despite the bill’s ever-escalating irrelevance to our current societal predicaments, the USDA, EPA, FDA, and other agencies—and increasingly Congress itself—are hamstrung in their ability to eliminate or modify our system of crop subsidization and its consequences in accordance with reasonable and widely shared public policy objectives. Lobbying and campaign finance rules have played a vital role in propping up this broken system. As historian Burton Folsom wrote, the subsidy survived, “[n]ot because it worked well, but because farmers lobbied to

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\textsuperscript{229} See Michael Tanner, \textit{Republicans are Weak on Farm Subsidies}, CATO INSTITUTE, (Feb. 9, 2011), available at \url{http://www.cato.org/publications/commentary/republicans-are-weak-farm-subsidies}; Ryan McMaken, \textit{A few ways that governments distort food markets}, LUDWIG VON MISES INSTITUTE: MISES ECONOMICS BLOG (Feb. 21, 2012), \url{http://blog.mises.org/21130/a-few-ways-that-governments-distort-food-markets/}.

\textsuperscript{230} See, e.g. Eubanks, supra note 156, at 233 (citing IMHOFF, supra note 219, at 33).

\textsuperscript{231} See Dan Piller, \textit{Iowa Farm Bureau: end direct payments}, DES MOINES REGISTER BLOG (Sep. 3, 2010), \url{http://blogs.desmoinesregister.com/dmr/index.php/2010/09/03/iowa-farm-bureau-end-direct-payments/}.
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President George W. Bush actually threatened to veto the most recent Farm Bill in 2008 for unfairly redistributing tax money and distorting public trade, but the Senate rejected subsidy caps and responded to the veto threat with a 79-14 vote in favor of the existing form.\textsuperscript{233} Incidents such as this give rise to a serious concern that senators' dependence on campaign contributions and lobbying money matters more than the policy preferences of their constituency and even more than party loyalties.

The persistence of this legislation can actually shine some light into the most intractable problems in the current functioning of our political and governmental institutions. A clear understanding of these political and structural problems is necessary to address the ways that the United States props up its broken agricultural sector, and perhaps more importantly, to begin effectively organizing the interests affected. By drawing attention to the fragmented structures through which farm policy is created and implemented, this Part of the article is meant to highlight the structural barriers that preclude more effective and public-interested policy-making in the areas of food and agricultural policy. A particular emphasis is placed on explaining how fragmentation increases the number of points of influence that lobbyists have and thereby makes it easier for special interests and industry experts to lobby more effectively than less-informed members of the public.

While admittedly the concerns addressed in the following Sections are interrelated, this analysis is divided into three parts. Part A addresses the narrowness of the statutory authority given to the relevant agencies in order to implement food policy and the coordination problems that regulatory balkanization has produced in this area. Part B considers the structural features of Congress, including the Congressional committee system, which, in the context of Farm Bill legislation, lead to the overrepresentation of the concerns of the agricultural sector at the expense of the public health, environmental, and other economic considerations. Part C postulates that lobbying and campaign fund-raising, taken in conjunction with the other structural features of Congress have made effective legislation in this area less probable.


\textsuperscript{233} See Bjerga, \textit{supra} note 109.
A. Agency Fragmentation, Regulatory Capture, & the Illusion of a Food Policy

For at least a century, one major fixture of the U.S. food agricultural regulatory systems has been its highly balkanized structure. Responsibilities are split between the USDA, the U.S. Food & Drug Administration (FDA), the Environmental Protection Agency (EPA), and numerous other state and federal agencies. By one measure, the food safety system alone is "composed of fifteen federal agencies that work under thirty foundational statutes." Extensive balkanization introduces collective action and coordination problems and makes legislating and regulating in this area more difficult. In the context of subsidies, Farm Bills and the related authorizing statutes often limit agency discretion, making it burdensome or impossible for an agency like the USDA, for example, to take healthcare costs or environmental factors into account in determining how subsidy payments could more effectively be allocated.


236. See GEOFFREY S. BECKER, CONG. RESEARCH SERV., RS 2084, FARM COMMODITY PROGRAMS: A SHORT PRIMER (2002) (discussing the scope of USDA...
Although some commentators have pointed out the benefits of regulatory specialization, fragmentation has been a recurring source of criticisms since the USDA and FDA were first separated in 1940.\textsuperscript{237}

The balkanized and fragmented structure of the food regulatory system has been cited as a major impediment to effective government action and to the development of more reasonable food policy.\textsuperscript{238} The administrative structure of our government has partitioned agricultural policy, energy policy, environmental policy, and healthcare policy across several agencies and has provided insufficient resolution or coordination mechanisms. Even more remarkably, a single issue can often be spread over multiple agencies in a baroque, almost indecipherable manner.\textsuperscript{239} This issue is analogous to one THE WASHINGTON POST helped expose during its 2010 report titled \textit{Top Secret America}, which showed that in the realm of national security there existed “over 45 organizations [that] could be broken down into 1,271 sub-units.”\textsuperscript{240} Even though the situation in the realms of agricultural, food, and health policy is not quite as drastic, fragmented agency structures make coordinated or collective decision-making more difficult, time-consuming, and costly throughout the federal government.\textsuperscript{241} The practice of splintering responsibility and treating

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statutorily required support programs and USDA Discretionary Support programs under Section 32 of P.L. 320, a 1935 law).


\textsuperscript{239} Consider, for example, that the food safety system alone is “composed of fifteen federal agencies that work under thirty foundational statutes.” \textit{Reforming the Food Safety System, supra} note 234 at 1345-46 (citations omitted).


\textsuperscript{241} See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-318SP, REPORT TO CONGRESSIONAL ADDRESSEES, OPPORTUNITIES TO REDUCE POTENTIAL DUPLICATION
interrelated and overlapping issues as though they were discrete issues produces inconsistency across agencies, duplicates activities, and increases coordination costs. This diminishes accountability, and more subtly, it places blinders around administrators and limits the possible factors and courses of action that any one agency can take into consideration.242

A cross-agency resolution mechanism would offer one possible fix,243 but such an approach would likely encounter administrative law problems and, to the extent that considerable power were transferred, would likely face resistance in Congress. Alternatively, Congress could, as a number of scholars and organizations have recommended in the context of food-safety laws, consolidate agency responsibility into a single food-regulatory entity that is capable of making the necessary policy determinations and taking the necessary steps toward effective implementation.244 In early 2012, President Obama laid out a proposal for the consolidation of six trade agencies that emphasized that combining agencies could reduce costs, improve services, streamline bureaucratic redundancies, and enable


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agencies to focus on their primary purposes. Another approach would be to follow the model of statutes such as NEPA, as described above, and mandate that agencies consult and take into account certain relevant factors before proceeding with their implementation strategies. NEPA requires that environmental considerations be taken into account by all government agencies, but as litigation has revealed, courts have interpreted such statutes as a procedural requirement like those imposed under the Administrative Procedure Act and not as a guarantee of any substantive outcome. In other words, even if the USDA conducted a full environmental impact analysis of its subsidy programs under NEPA like Le Seur and Abelkop propose, it would impose no substantive legal requirement to desist from any of the environmental harms it identified.

At present, there is no requirement that the USDA take into account the back-end healthcare costs that are created through its existing commodity programs, but if NEPA litigation offers any guidance, such a requirement would have to assume a different statutory framework.

This problem of fragmentation is not a product of the agencies themselves so much as the authorizing statutes that delimit how responsibility is divided among agencies and even how responsibilities are divided within a single agency. The USDA’s statutory scheme, for instance, has resulted in the separation of nutrition guidelines from subsidy administration. The statutory obligations and subsequent agency subdivisions reinforce somewhat arbitrary divisions even within the agency itself. As Michael Pollan has noted, these internal divides require the agency to regulate at cross-purposes with itself. Administrative law serves as a further limitation on agency discretion.

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249. See La Seur and Abelkop, supra note 194 at 211-16.
250. See Lemon, 448 F.Supp.2d at 104 (holding that preparation of a supplementary impact statement pursuant to NEPA would not “force defendants to alter their allegedly injurious course of action here.”). See also Carrie Lowry La Seur and Adam D.K. Abelkop, supra note 194 at 224-25.
251. Pollan, supra note 2.
252. It is important to note that there is no reason to assume greater administrative discretion would yield better policy results in this area. Given some of the other factors
her article, *The Ascent of the Administrative State and the Demise of Mercy*, argues that, "the rise of the administrative state has made unchecked discretion an anomaly in the law, and a phenomenon to be viewed with suspicion."253 In other words, the rise of the administrative state is a story of empowering a large government entity to regulate in the public interest while at the same time constricting their decision-making abilities through judicial oversight and narrow statutory interpretation.254

Another of the largest problems posed by a fragmented agency system is that it presents a large number of influence points where industry and special interest pressure can be exerted. And it is a much easier task for companies with a stronger financial stake in regulatory decision-making to keep up with influence points and technical questions than average members of the voting public.255 To give an example: one of the greatest challenges to the USDA’s ability to implement effective food policy comes from the agency’s dependence on and connections to the industrial entities it is charged with overseeing. Regulatory capture, a term used by public choice economists to describe the situation in which a government regulatory agency implemented to act in the public interest instead advances the economic interests and special interests of the industry it is charged with regulating.256 This problem is sometimes referred to as “client politics,” which “occurs when most or all of the benefits of a program go to some single, reasonably small interest (an industry,
profession, or locality) but most or all of the costs will be borne by a large number of people (for example, all taxpayers)."\textsuperscript{257}

A number of charges of regulatory capture at the USDA were made in the wake of the 2004 mad cow disease scare when the USDA refused to require industry-wide testing and even went so far as to ban a willing beef producer from testing his cattle for the disease.\textsuperscript{258} \textit{The Wall Street Journal} similarly speculated that industry pressures are responsible for the failure of the USDA under President Obama to require an environmental impact statement to consider the impact of its decision to permit the planting of genetically modified alfalfa.\textsuperscript{259} Another recurrent complaint about the USDA has been its inability to articulate dietary guidelines that address the severity of the obesity epidemic facing this country given the weight of industry pressure on the agency's rulemaking process.\textsuperscript{260} A recent study by the Harvard School of Public Health observed that the 2010 Dietary Guidelines were a considerable improvement over previous USDA publications, but that they still failed to reflect the scientific consensus about what a healthy diet entails.\textsuperscript{261} The researchers see this failure as likely related to the role that "powerful food industry groups—the Grocery Manufacturers Association, the Sugar Association, the National Milk Producers Federation, and the National Cattleman's Beef Association, among them," play during the USDA's scientific review process and during public hearings.\textsuperscript{262}

With respect to commodity subsidies, the conflict of interest extends past the simple fact that a considerable number of USDA employees depend on the existence of subsidies for their own jobs. To the extent that

\textsuperscript{257} JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 76 (1989).
\textsuperscript{259} See Holman Jenkins, Let's Restart the Green Revolution: Food prices are up, and output and productivity is falling behind. Not enough attention is being placed on regulation-induced stagnation, WALL ST. J., Feb 11, 2011, available at http://online.wsj.com/article/SB10001424052748703445904576118020915591658.html.
\textsuperscript{260} See, e.g., MARION NESTLE, FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH (2d ed. 2007).
\textsuperscript{262} See The Nutrition Source, supra note 261.
the USDA has discretion over the administration and delivery of commodity subsidies, industry representatives likewise have a considerable role in influencing agency determinations, both during public hearings,263 through the submission of industry-funded findings, and through wide-scale media campaigns, such as the rather infamous Sweet Surprise campaign of the Corn Refiners Association.264 Because representatives from the USDA regularly have the opportunity to partake in the drafting of Farm Bill legislation and occasionally appear before Congress regarding its authorizing statutes, their willingness to testify adversely to the interests of their clientele, particularly when their agency’s jobs are potentially at stake, creates a conflict of interest that jeopardizes the possibility that the USDA will ever support food policies that serve the broader public’s nutritional needs.

B. Congressional Committees & the Illusion that Farm Bills only Affect Farming

There are a number of structural features of Congress that help explain the unpopular Farm Bills’ remarkable persistence. The corn subsidy served a useful public purpose when it was first passed, but the process of legislative drift has allowed subsidy administration to develop in one direction while the background economy develops in another. However, the Farm Bill presents a special case. This bill has to be actively reauthorized by Congress every five years, so the simple process of changing background conditions cannot fully explain what is going on. There is a great deal of political inertia surrounding the Farm Bill, in part because its deleterious effects have not been overwhelmingly borne by any single interest group, but also because the bill, despite its relative unpopularity, has never engaged or mobilized the larger population sufficiently to catalyze its repeal or to stop its recurring reauthorization. This Section identifies several structural aspects of the U.S. legislative process that enable the type of interest group overrepresentation, which is the topic of Section C. The breakdown that leads to the continued legislative renewal of the Farm Bill every five years actually reveals a

deeply entrenched and unnecessary corporate welfare regime and in many ways reveals how out of touch our current political system is at responding to the problems facing our country. Not only can Congress not address problems, it cannot even stop actively funding the ones it creates and perpetuates.

The congressional committee system contributes to the problem in several ways as well. Like the compartmentalization and balkanization problems affecting the agencies charged with the administration of Farm Bill legislation, Congressional committees face coordination problems and arbitrary divisions of responsibility. A single committee is often charged with drafting and revising the majority of the Farm Bill. Although eventually the full legislative body will have a chance to propose revisions and ultimately vote on the bill, the interests of the drafting committee, typically the agricultural committee with the strongest economic ties to farm states, tend to predominate through to the bills’ final versions. These problems are rendered more significant by the fact that the Farm Bill is largely viewed—by both representatives and their constituents alike—as purely agricultural legislation and not, more accurately, as affecting the health, welfare, and environmental interests of a broad cross-section of Americans.

The Senate, for example, has separate committees for Agriculture, Nutrition and Forestry; Appropriations; Energy and Natural Resources; Environment and Public Works; Health, Education, Labor and Pensions. Although these committees, and certainly others not listed here, may have interests deeply connected to a broad conception of food and agricultural policy, Farm Bill legislation is entrusted to the Agricultural Committees. The broken Senate rules, such as the overuse of the filibuster and secret holds, along with the near-absence of debate on the Senate floor, make this deliberative and representative failure even more acute.

The process of assigning Farm Bill legislation to the House and Senate Agricultural Committees, compounded by popular misunderstandings about the bill’s effects, effectively shields the bill from the kind of debates that the United States needs to have. Michael Pollan has expressed this concern quite powerfully:

266. See United States Senate Committees Home, United States Senate, http://www.senate.gov/pagelayout/committees/d_three_sections_with_teasers/committees_home.htm (last visited June 18, 2012).
267. See id.; Farm Bill, supra note 265.
[Y]ou would think the farm-bill debate would engage the nation’s political passions every five years, but that hasn’t been the case. If the quintennial antidrama of the “farm bill debate” holds true to form this year, a handful of farm-state legislators will thrash out the mind-numbing details behind closed doors, with virtually nobody else, either in Congress or in the media, paying much attention. Why? Because most of us assume that true to its name, the farm bill is about “farming,” an increasingly quaint activity that involves no one we know and in which few of us think we have a stake. This leaves our own representatives free to ignore the farm bill, to treat it as a parochial piece of legislation affecting a handful of their Midwestern colleagues. Since we aren’t paying attention, they pay no political price for trading or even selling their farm-bill votes. The fact that the bill is deeply encrusted with incomprehensible jargon and prehensile programs dating back to the 1930s makes it almost impossible for the average legislator to understand the bill should he or she try to, much less the average citizen. It’s doubtful this is an accident.268

The committee system has also made it possible for private sector lobbyists to target fewer representatives and to frame their interests more narrowly, far more narrowly than the scope of issues in the public interest affected by agricultural legislation. A recent study by The Center for Responsive Politics and THE FISCAL TIMES found, in the words of one journalist, that “[m]embers of many influential committees receive a disproportionate share of their campaign contributions from people and corporate political action committees with business before them.”269

The more general problem, beyond its enabling effect on special interests, is that the committee structure creates a veto point270 and gives a

268. Pollan, supra note 2.
270. See generally Thomas H. Hammond, Veto Points, Policy Preferences, and Bureaucratic Autonomy in Democratic Systems, in George A. Krause and Kenneth J.
narrow subset of legislators the ability to make determinations that extend far beyond their intended purview. In March of 2011, for example, the House Agricultural Committee, in an effort to reduce the Congressional budget, endorsed a letter supporting cuts in the Supplemental Nutrition Assistance Program (SNAP), which helps low-income Americans purchase food.\textsuperscript{271} A record 46.5 million Americans received SNAP in December of 2011.\textsuperscript{272} Given the ways in which the committee system makes targeted campaign contributions and lobbying easier, it is perhaps unsurprising that the House Agricultural Committee indicated that it would rather cut SNAP than cut automatic subsidies to farms.\textsuperscript{273} These are precisely the deals that the committee structure helps broker. As Michael Pollan has noted, "[i]t's an old story: the 'hunger lobby' gets its food stamps so long as the farm lobby can have its subsidies."\textsuperscript{274} Although the largest single expenditure under the 2010 Farm Bill did go to fund nutrition programs like SNAP,\textsuperscript{275} such large-scale determinations about entitlement cuts to basic nutrition programs are not the sort of decisions that a handful of legislators should decide for the entire country without greater Congressional deliberation. And absent the structural pressure to engage in a more comprehensive "farm bill debate," the possibility of an overhaul in federal food policy remains unlikely.

C. Lobbyists, Interest Groups, & the Illusion of Public Choice

As described in the preceding paragraphs, the breadth of issues impacted by the Farm Bill sits somewhat awkwardly with the fact that such


\textsuperscript{275} See Lynne Finnerty, Cutting Farm Programs Would be a Pyrrhic Victory, \textit{AMERICAN FARM BUREAU FEDERATION} (June 27, 2011), \textit{http://www.fb.org/index.php?action=newsroom.focus&year=2011&file=fo0627.html} ("Nutrition programs, on the other hand, have grown, accounting for a whopping 80 percent of the farm bill in 2010, compared to 52 percent in 2002.").
a limited subdivision of Congress exercises such disproportionate influence over the bill’s drafting. The Agricultural Committee is dominated by members of Congress from farm states, which carries serious implications for the interest group politics of the Farm Bill. There is no traditional partisan split that sustains the agricultural subsidy regime, and as previously discussed, subsidies have vocal critics on both sides of America’s political divide. The problem is, rather, one of legislative and regulatory capture, and there is considerable evidence that private farm sector lobbying affects both Republicans and Democrats alike. As Tim Feinholz reported, House Agricultural Committee Chairman Frank Lucas (R-OK) has reported $445,714 in political contributions from the agricultural industry over the course of his career, and ranking Democrat Collin Peterson (D-MN) has reported $809,097 in agricultural sector donations.

According to standard public choice and public interest theories of economic regulation, Congressional action should be expected to correct for market failures and externalities and to establish corrective measures within areas of activities unreachable by market forces. As a practical matter, however, costs that are dispersed over large areas or disaggregated groups of individuals receive disproportionately less representation when compared to cohesive, well-defined economic interests. Farming legislation is no exception. In fact, the Farm Bill offers a powerful illustration of the limits of public interest and public choice theories of legislation within our current legislative system. The reason the Farm Bill offers such a powerful example is that, unlike many issues where liberal and conservative legislators disagree considerably over what policies are in the “public interest,” agricultural subsidies have few political defenders on either side of the aisle. Rather than act as a rational economic actor to correct for externalities, such as the environmental and healthcare costs the bill exacerbates, Congress continues to actively fund and perpetuate them through subsidies that free-market advocates find objectionable. Public

276. Matt Yglesias, Embracing Regulatory Capture, THINK PROGRESS (Jan. 4 2011), http://yglesias.thinkprogress.org/2011/01/embracing-regulatory-capture/ (describing the process of “regulatory capture” affecting Congress, a phenomenon “wherein private interests seize control of the policymaking apparatus for their own interests”).
277. Feinholz, supra note 273.
choice accounts of legislation cannot adequately explain the Farm Bill’s persistence.

The more general failure of public interested legislation in recent decades can be understood as a breakdown in one of the United States’ most fundamental mechanisms for collective action. Senators and Congresspersons, taken individually, have enormous economic pressure to fundraise, and well-financed special interest groups, particularly with a direct financial stake in legislative outcomes, can help them meet their individual targets to an extent that the more diffuse public cannot. Thus, rather than aggregating voter preferences or addressing problems that impact broad but uncoordinated members of the public, legislators’ individual incentives will often diverge systematically from the interests of their constituents or even legislators’ own policy preferences. Consistent with interest group models of economic regulation, individual incentives of legislators give rise to market-like competition among interest groups hoping to secure votes, and as result, collective action solutions are impaired. Signals from constituents about their conception of a public good become simply one among many competing considerations a legislator seeking reelection may respond to. As a practical matter, interest groups, community organizations, nonprofits, corporations, consumers, and other entities seeking to advance more public-interested regulatory platforms still organize and form mechanisms for exerting pressure on legislators. But beyond the collective action difficulties facing these diffuse interest groups lies the more intractable barrier: the economic incentives faced by individual legislators can preclude legislators from voting in accordance with even with their own conception of the public interest. With such incentive structures in place, concerted industry lobbying and the absence of a concentrated public interest lobbying group

to counteract that influence have imperiled the possibility that public choice mechanisms will operate to produce public goods or, more modestly, reduce the number of non-Pareto-improving market interventions.\textsuperscript{283}

This breakdown can be seen by looking at interest groups' interactions with legislators and then observing the legislative compromises that emerge. Lobbying and our system of privately funded political campaigns are essential to any an explanation for America's inability to legislate, particularly regarding issues such as corn subsidies where the public welfare interests run counter to a concentrated and articulate corporate interest. As Barbara Atwell wrote, "[o]ne of the likely obstacles to reforming America's weight problem is the food industry itself. The politics of food cannot be underestimated."\textsuperscript{284} Nutrition expert and New York University Professor Marion Nestle made a similar observation during a recent interview with National Public Radio (NPR): "[t]he other source of corruption, of course, is the way we fund election campaigns. As long as corporations are funding the campaigns of our congressional representatives, we're not going to get laws passed that favor public health. Our laws are going to continue to favor corporate health."\textsuperscript{285}

Without even needing to allege that any illegal corruption transpired or that \textit{quid pro quo} campaign contributions were exchanged for the continued support of subsidy payments, the problems inherent in this design nonetheless disrupt public choice and effective representation in the public interest. Scholars have noted that even legally permissible forms of lobbying influence undermine the legitimacy of our democratic representative institutions.\textsuperscript{286} The perception of corruption likewise undermines democratic trust and has been cited as a major reason to reform existing campaign finance restrictions\textsuperscript{287} and served as a compelling state

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\item \textsuperscript{283} See P. Jean-Jacques Herings and Herakles Polemarchakis, \textit{Pareto improving price regulation when the asset market is incomplete} (Dept. of Economics, Yale University, Working Paper No. 01-31, 2001), available at http://www.econ.yale.edu/seminars/microt/mt03/polemarchakis-030305.pdf ("Price regulation, which operates anonymously, on market variables, can be such a Pareto improving policy, even when the welfare effects of rationing are taken into account.").
\item \textsuperscript{284} Atwell, \textit{supra} note 168, at 17 (citations omitted).
interest in the Supreme Court’s First Amendment since *Buckley v. Valeo*.\(^\text{288}\) The improved access that lobbyists have to legislators, the financial dependencies that legislators develop on their largest campaign contributors, and the subtle ways in which contributions foster more favorable impressions among legislators together undermine the representative process that serves as the premise of our legislative system of government. Absent these influences, it would be difficult to comprehend how harmful, unpopular legislation like the commodity subsidies within the Farm Bill would persist or even came to pass in the first place.

Lobbying from agricultural companies is considerable. When taken alongside the committee system and the large influence that several Midwestern representatives exert over agricultural policy, even modest industry contributions when properly targeted can have a significant effect. At the time of the 1973 deregulatory move within agriculture, which was spearheaded by then Secretary of Agriculture Earl Butz, subsidies primarily benefitted a handful of large companies such as Cargill and ADM, which came to dominate the high-fructose corn syrup industry.\(^\text{289}\) As Charles Krafoff wrote, “it wasn’t precisely a windfall, since ADM had done a great deal to engineer this outcome.”\(^\text{290}\) It is no coincidence that Butz’s free market rhetoric and admonition to “get big or get out” aligned so closely with the interests of the nation’s largest commodity producers.\(^\text{291}\) Cargill

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\(^{289}\) See *The Facts Behind King Corn*, supra 65, at 1-2.


\(^{291}\) The following passage is instructive and suggests ADM did far more than issue public statements favoring the administration’s deregulatory policies: “During the Watergate Investigation, Special Prosecutor Archibald Cox indicted then-ADM CEO Dwayne Andreas for giving $100,000 in illegal contributions to Hubert Humphrey’s 1968 Presidential campaign. But Andreas was nothing if not bipartisan. Richard Nixon’s secretary Rose Mary Woods, testified that during Nixon’s 1972 campaign
and ADM had actually advocated publicly with Butz and the Farm Bureau for selective deregulatory policies and liberalized international trade policies. Nor is it surprising that the largest industrial growers were the primary beneficiaries of governmental subsidies and saw persistent increases in market share since their implementation, despite a major purported rationale for the subsidy being to support small-scale, family-owned farms. Consider the following 2008 graph from the USDA Economic Research Service, which indicates that while commercial farms constituted only 12% of farms in the U.S. they received an impressive and disproportionate 62% of government agricultural payments:

Andreas handed her an envelope containing $100,000 in $100 bills. Between 1975 and 1977 Andreas gave $72,000 in ADM stock to the children of David Gartner, senator Humphrey’s chief of staff at the time, whom President Jimmy Carter in 1977 named to head the Commodity Futures Trading Commission (he was later forced to resign when the details of the ADM gift came to light).” Id.

292. See Id.; The Facts Behind King Corn, supra note 65, at 1; Philpott, Food First, supra note 69.

293. Alan Bjerga, Most U.S. Farm Subsidies Go to 10% of Recipients, Group Says, BLOOMBERG, (May 4, 2010) http://www.bloomberg.com/news/2010-05-04/almost-two-thirds-of-u-s-farm-aid-goes-to-10-of-recipients-group-says.html; Hassebrook, supra note 15 (“When the Center for Rural Affairs analyzed Agriculture Department spending, we found that the U.S.D.A. spent twice as much subsidizing the 20 largest farms in each of 13 leading farm states as it spent on rural development (business and entrepreneurial development, housing and infrastructure).”).

294. See, e.g., id. (“Some elected officials who crow the loudest about cutting unnecessary spending seem to be among the most vociferous defenders of unlimited subsidies to the nation’s largest farms. The hypocrisy on this issue, however, is not limited to Republican budget hawks. Many Democrats who wrap themselves in rhetoric about saving the little guy are equally timid when it comes to reigniting in mega-farm subsidies.”).
Contributions from major agricultural interests have shown little sign of abating. According to the nonprofit Public Campaign, "[o]ver the past 12 years, the industry has spent $1.5 billion on lobbying and campaign contributions at the federal level." As Laurence Lessig recently noted in a talk calling for reforms to America’s campaign finance system, "companies that build on corn spend millions of dollars to continue to get government subsidies for corn." Other researchers have observed that it is not only growers, but also food producers and manufacturers who depend on cheap and abundant corn-derived products such as high-fructose corn syrup, who are lobbying for the continuation of subsidies that prevent the actual costs of agricultural production from being borne by businesses. ADM, a major recipient of the private benefits conferred through corn subsidies, has continued to donate generously to a number of presidential and senatorial campaigns and sponsored the 2008 Democratic National Convention. According to ADM’s website on

299. See Bovard, *supra* note 147.
corporate responsibility, the company’s stated philosophy on political contributions is the following:

ADM and ADMPAC, a political action committee funded by our employees’ voluntary contributions, therefore support candidates for political office and organizations that share our pro-growth vision, our aspirations for the future of global agriculture, and our commitment to the people who depend on it for their lives and livelihoods. We strongly believe that this political activity is in the best interests of our stockholders, customers and employees.301

In 2010, ADM Corporate gave $340,750 in federal and state campaigns, and ADMPAC gave another $183,000.302

Subsidies are not the only aspect of farming legislation that lobbyists have taken an interest in. Other efforts to correct for imbalances resulting from these price supports have been similarly impeded. Lawrence Lessig also observed that the sugar industry has taken an approach that unwittingly complements the corn lobby to the detriment of the public’s health by seeking tariffs and legislation that will keep the cost of cane sugar artificially high, a practice that helped entrench high-fructose corn syrup in the American diet.303 THE WASHINGTON POST reported that “[d]uring the 2004 election cycle, two Florida sugar companies gave a total of $925,000 to election coffers.”304 Consider the following passage from Barbara Atwell’s paper on the healthcare costs of America’s de facto food policy:

The food industry has also been proactive in its efforts to ensure that the tobacco litigation experience will not be repeated in the food industry. . . . Lobbying is taking place to urge states to enact laws that prevent lawsuits for personal injuries related to obesity. These “commonsense consumption” laws would place accountability for obesity

302. Id.
Coronoigraphy on the consumer, making it more difficult to sue food manufacturers. . . . A number of advocacy groups, in particular, the National Restaurant Association, have advocated for this legislation.305

Because of the diversity of special interests clamoring to influence laws pertaining to agricultural and dietary issues, the resulting policies are uneven and bear little resemblance to any articulable food policy. That a bill can be cobbled together from diverse interests by no means implies that a deliberative consensus was reached; it simply means enough diverse interests received sufficient benefit to tolerate the remaining portions of the legislation. As Johnson and Monke noted, "[t]he omnibus nature of the bill can create broad coalitions of support among sometimes conflicting interests for policies that individually might not survive the legislative process."306

There is no suggestion that the campaigning and lobbying actions of ADM or others described in the preceding paragraphs are illegal. The ADM example, like countless more since, clarifies why democratically preferred and public interested policies have proven unattainable: legislators and other political actors are financially beholden to the very interests they purport to regulate. When you combine the fact that both major political parties suffer from this kind of financial dependence with the pressure the two-party system puts on voters to maintain solidarity with their parties to prevent a seemingly worse alternative from being elected, any effective mobilization of the electorate around this issue is likely to remain elusive. With respect to food policy, the public choice model and median voter theories of politics are not operating in the United States.

V. CONCLUSION

The combined direct and indirect costs of the corn subsidy are astronomical. The average annual tax expenditures on corn supports is nearly $5 billion for the past 16 years, with a total of over $77.1 billion.307

306. Johnson and Monke, supra note 45.
307. Farm Subsidy Database, supra note 128.
A disproportionate share of that figure went to the largest commercial producers and went on to subsidize a number of products of "dubious social utility," including ethanol, high-fructose corn syrup, and concentrated animal feeding operations (CAFO) animal products. The Farm Bill as it currently exists also exacerbates America's epidemic of diabetes, obesity, and coronary diseases, contributes massively to healthcare costs, lost productivity, and other inefficiencies associated with these conditions. The legislation also indirectly contributes to increases in the price of fossil fuels, adds deferred costs in the form of a number of irreversible environmental harms, including soil erosion, water pollution, global warming, and the development of antibiotic resistant bacteria associated with the CAFO farms that corn subsidization has rendered profitable. The costs of this legislation also include the increased incidence of starvation, immigration, and political instability that it promotes internationally, all of which over time impose additional cost burdens on U.S. taxpayers. The combined costs are massive.

The case for regulation here is far stronger than in areas where (forgive the pun) the legislature has not already occupied the field. The problem is not merely that the U.S. government should intervene in a failed market to reduce the externalities or to stabilize commodity prices; the problem is that the government actively funds the continuation of those very same externalities it should be limiting while a handful of private entities pocket the benefits of those public expenditures. As Mark Bittman phrased it, "[t]he point is that this money, which is already in the budget, could encourage the development of the kind of agriculture we need, one that prioritizes caring for the land, the people who work it and the people who need the real food that’s grown on it." Because of the conflicts of interest at the core of our political institutions, these near-universally reviled market distortions have become entrenched and, practically speaking, have become part of the background of the way things are. This state of affairs prompted Hanson, Benforando, and Yousef to remark that, "policymakers tend to treat [subsidies] as part of the unseen natural situation, and thus tend to be blind to their health effects and, more specifically, their contribution to the obesity epidemic." The same could be said with respect to the environmental, socioeconomic, and global labor and hunger crises that this legislation to some degree helps

308. Farm and Commodity Policy, supra note 295.
309. Philpott, supra note 139.
310. Bittman, supra note 228.
311. Adam Benforado, Jon Hanson, & David Yosifon, Broken Scales, supra note 147, at 1792.
create. Commentators like Michael Pollan have expressed the somewhat cynical hope that changes will come once the healthcare and insurance industries start footing the bill for our failed food policies.\textsuperscript{312} But waiting around for a problem to get worse so that corporate interests and public concerns realign is hardly a solution. The perverse incentives perpetuated by current commodity subsidy programs are perhaps all that can be expected until Americans confront the structural problems and perverse incentives that constitute the legislative process in the United States.
