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ESSAY

RECONSIDERING FEDERALISM AND THE FARM: TOWARD INCLUDING LOCAL, STATE AND REGIONAL VOICES IN AMERICA'S FOOD SYSTEM

*Margaret Sova McCabe**

“ . . . the supervision of agriculture and other concerns of a similar nature, all those things in short which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction.”

- The Federalist No. 17¹

Why is the relationship between our food system and federalism important to American law and health? It is important simply because federal law controls the American food system. This essay considers how federal law came to structure our food system, and suggests that though food is an essential part of our national economy, the dominating role of the federal government alienates citizens from their food system. It does so by characterizing food as a primarily economic issue, rather than one that has ethical, health, and cultural components. However, state and local governments have much to offer in terms of broadening the scope of food system considerations. This essay first provides a simplified overview of American food system influences.² It also touches on the major legal principals affecting the system. Finally, it highlights three examples of how to include local, state, and regional voices in food system reforms. These examples are: the food system indicator tool, farm to school programs, and food policy councils. These solutions illus-

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1. THE FEDERALIST NO. 17 (Alexander Hamilton).

2. If nothing else, the American food system is complicated. Excellent resources for developing a deeper understanding of the American food system are available at <http://www.nationalaglawcenter.org>.

trate that the best food system reforms require the exercise of federal, state, and local powers in ways that maximize the individual's ability to influence and participate in the food system.

In our modern history, the federal government's exercise of the commerce clause is the primary influence on the American food system. While historically the United States has seen great shifts between a powerful federal government and states' rights, state and local governments play a lesser role in the food system, despite having important police powers related to it.³ The state and local role is shaped largely by efforts to participate in, or comply with, federal programs such as Supplemental Nutrition Assistance Program (SNAP) or the National School Lunch Program, on behalf of its citizens.

There can be no doubt that the federal government controls the American food system.⁴ Nor is there any doubt that significant federal control is appropriate. In fact, this dominant federal control made sense in our history, as this essay later explains. However, unless reforms to the food system include local, state, and regional contributions and control, chances at curbing food-related diseases, improving poor nutrition, and reconnecting with the natural environment will diminish. This essay argues that New Deal federalism and its progeny created distance between Americans and their food, contributing to the sense that Americans do not shape the food system, but allow it to shape us.⁵

3. See generally JULIE SAMIA MAIR ET AL., *THE USE OF ZONING TO RESTRICT FAST FOOD OUTLETS: A POTENTIAL STRATEGY TO COMBAT OBESITY* (2005); see also A. Bryan Endres & Jody M. Endres, *Homeland Security Planning: What Victory Gardens and Fidel Castro Can Teach Us in Preparing for Food Crises in the United States*, 64 *FOOD & DRUG L.J.* 405, 407 (2009) ("The federal government has not considered the role of regional and local food networks in its national homeland security planning. Instead, federal homeland security, as it relates to agriculture and food, assumes the status quo of conventional agriculture one that heavily relies on petro-chemical inputs that continue to skyrocket in price and negatively impact the environment, concentrated production and processing markets, and transportation to service distant customers.").

4. See, e.g., Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008); 7 U.S.C. § 601 (2006).

5. See Ernest A. Young, *State Sovereign Immunity and the Future of Federalism*, 1999 SUP. CT. REV. 1, 3 (noting Madison, in *The Federalist* 45 and 46, recognized that "the states' ultimate security lies in the confidence of the people. That confidence expresses itself through the political process . . . but ultimately turns upon the continuing relevance of state government institutions to the day-to-day lives of the citizenry. The greatest danger to federalism, therefore, is that the expanding regulatory concerns of the national government will leave the states with nothing to do.").

Much American food system criticism is leveled at federal programs. The primary complaint is that citizens are at the mercy of big agribusiness, which is backed by big government policy. The most well known example of this big government policy is the Farm Bill, which provides for crop subsidies and other federal crop production policies.⁶ There are other significant federal influences such as anti-trust regulation⁷ and marketing orders,⁸ but these are not as debated in popular culture. However, all three have significant influence on the size of agribusiness and what it produces. The popular perception is that big agribusiness is bad for the American food system. Regardless of the truth behind this perception, the reality is that many food system reformers believe that big agribusiness is bad. As a result, it is important to examine the extent to which the federal government plays a role in promoting a national and monolithic food system.

Today, reformers working on projects as diverse as the farm-to-school programs and fast food zoning bans share a common goal: giving individual citizens a voice in the food system. However, the historical roots of food and federal government programs have muted the individual's voice, and even the states' influence, because they rested on the notion that states could not be trusted to effectively regulate agricultural markets or provide food to their populations.⁹

Food law and health issues have become so big – with economic, public health, and cultural components – that it is easy to find the situation hopeless. These issues include food related diseases, weak food security, food deserts, animal welfare, immigration policy, and agricultural production methods. Specific examples include: (1) a Farm Bill that promotes production of industrialized crops for shelf-stable foods that contribute to increased food-related disease rates (such as obesity, heart disease, and diabetes) rather

6. See Food, Conservation, and Energy Act of 2008, *supra* note 4.

7. Modern anti-trust issues are also a growing concern for the federal government. See Agriculture and Antitrust Enforcement Issue in Our 21st Century Economy, 74 Fed. Reg. 43,725 (Aug. 27, 2009); see also Geoffrey Manne, *The Seeds of an Anti-Trust Disaster in Iowa*, FORBES STREET TALK BLOG (Mar. 11, 2010, 7:56 PM) [http://blogs.forbes.com/streettalk/2010/03/11/the-seeds-of-an-antitrust-disaster-in-iowa/\(commenting on the federal government's inquiry into consolidation in the seed industry\)](http://blogs.forbes.com/streettalk/2010/03/11/the-seeds-of-an-antitrust-disaster-in-iowa/(commenting%20on%20the%20federal%20government%27s%20inquiry%20into%20consolidation%20in%20the%20seed%20industry)).

8. Agricultural Adjustment Act, 7 U.S.C. §§ 601-674 (2006); Marketing Agreements and Orders; Fruits Vegetables, Nuts, 7 C.F.R. § 900 (2009).

9. See, e.g., Wickard v. Filburn, 317 U.S. 111 (1942); Dean Milk Co. v. City of Madison, Wis., 340 U.S. 349 (1951).

than a wide variety of fruits, vegetables, and grains; (2) a conflicted National School Lunch program that has a dual policy of commodity crop consumption and child nutrition; and (3) food security programs that do not cover the cost of a healthy diet. These issues touch every American in some way and these issues are symptoms of a food system lacking political balance and long-term sustainability.

Today, a person has little legal power to shape the food system, other than voting wisely for government representatives or with her pocketbook at grocery stores, restaurants, and markets. Analyzing our food system's roots in federalism will help us shape solutions in a way that will not only allow greater contributions from local and state governments, but also a better system of checks and balances on federal food policy. Leveraging various government powers in new ways in the food system will also give the individual more power in making food policy choices.

Simply put, federal agricultural policy has a direct effect on public health. However, federal food system policy views food primarily as an economic issue – and this makes sense given that Congressional food policy is empowered primarily by the commerce clause. Additionally, the federal power over the food system has its roots in stabilizing market prices and rural economies, not in considering health and the environment. However, as concerns over food-related disease and nutrition mount it should be obvious that we must no longer view food as a purely economic issue.¹⁰

On the positive side, there are many talented people from diverse disciplines proposing powerful solutions and approaches to food system issues. Law is the mechanism that can give life to these solutions and approaches.

FEDERALISM ON THE FARM IN THE NEW DEAL: A BRIEF OVERVIEW

In 1933, Americans were shocked when the government intentionally slaughtered pigs and plowed up cotton crops in the name of economic stability.¹¹ The plan, executed by the Agricultural Adjustment Administration (AAA), was one in a series of steps intended to

10. See Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 935, 959 (2010) (noting there is no "forum for consideration of ethical issues in food" and suggesting a more holistic approach for the future).

11. KENNETH S. DAVIS, *FDR: THE NEW DEAL YEARS 1933 – 1937*, 270-71 (1986).

raise food prices.¹² While this may seem strange given the immediate hunger of Americans suffering during the Great Depression, the greater need was economic recovery – and that started on the farm.¹³ Henry Wallace, the first head of the AAA, described agriculture as a business, stating, “[a]griculture cannot survive in a Capitalist society as a philanthropic exercise.”¹⁴ Wallace, and the Roosevelt administration, knew that the agricultural markets were broken and needed structure to function properly.

However, the New Deal’s economic approach to the food system’s structure could be viewed as taxpayers’ philanthropy in support of farmers and promotion of agricultural production that was not reflective of our nation’s nutritional, environmental, or economic realities. The most fundamental aspect of New Deal agricultural policy was that it was about the economy – not nutritional policy (though this was seen as a possible beneficial side effect). That legacy remains today, as government policy views food foremost as an economic issue. Reviewing the New Deal agricultural policy illuminates, in part, how federal controls of our modern food system began.

The original scheme, embodied in the AAA,¹⁵ was ruled unconstitutional in 1936.¹⁶ However, subsequent amendments, embodied in the Agricultural Marketing Adjustment Act of 1937 (AMAA), retained its core principles, which, seventy-two years later, have changed little. One of these principles was stabilizing agricultural market pricing.¹⁷ At the time, surpluses drove prices down, resulting in farmers faltering. President Roosevelt believed that recovery from the Depression started on the farm and that the government had to take “emergency steps” to control the markets.¹⁸

12. *Id.* at 269. Another part of the plan included establishing the Commodity Credit Corporation. *Id.* at 282.

13. *Id.* at 270.

14. DAVID M. KENNEDY, *FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR 1929-1945* 206 (1999).

15. *See* Agricultural Adjustment Act of 1933, ch. 25, 48 Stat. 31 (1933), *amended by* Agricultural Adjustment Act of 1935, ch. 641, 49 Stat. 750 (1935).

16. *United States v. Butler*, 297 U.S. 1 (1936).

17. *See United States v. Rock Royal Co-op, Inc.*, 307 U.S. 533 (1939).

18. However, later historians have argued that the AAA was viewed as not only an emergency measure, but rather the long-term solution to agricultural market control. JIM POWELL, *FDR’S FOLLY: HOW ROOSEVELT AND HIS NEW DEAL PROLONGED THE GREAT DEPRESSION* 215 (2003). Readers should also consider the usefulness of the AMAA during USDA Secretary Earl Butz’s administration, when the federal goal was to reduce food costs.

Accordingly, Congress declared the AAA's purpose to be avoidance of "the disruption of the orderly exchange of commodities in interstate commerce."¹⁹ Congress's further purpose was to avoid market disruption that could harm "the purchasing power of farmers' thus destroying the value of agricultural assets to the detriment of the national public interest."²⁰ These purposes remain codified today. Ironically - though this sentiment was rejected thoroughly by *Wickard v. Filburn* - in 1936, the Supreme Court noted that the original act "invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government."²¹ Later, in *Filburn*, the Court found that a Farmer Filburn could no longer save wheat for his family, or his own use, because such use of his crop could disrupt the national economy. Perhaps this moment was the true start of American acceptance of globalization.

Today, the AMAA shapes American food availability by regulating the quality and quantity of over twenty-five commodity crops.²² The original purpose of the act remains the same today - to protect farmers and consumers from price fluctuations by creating stable markets. However, the type of crops, and their relationship to public health, appears to be of little federal concern (perhaps due to Constitutional limitations on Congressional authority to regulate for the public health).

Ultimately, the Supreme Court invalidated much of the New Deal legislation on the ground of improper delegation.²³ However, the Court finally accepted that the government's efforts to regulate food markets were constitutionally acceptable under the commerce clause, and desirable for the public good, so long as they did not reach into matters of local commerce.²⁴ Indeed, by 1997 the Su-

19. *Rock Royal*, 307 U.S. at 543-45.

20. *Id.* at 544.

21. *Butler*, 297 U.S. at 68.

22. 7 U.S.C. § 608c(6)(I) (2006); see *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 494 (1997) (Souter, J., dissenting) ("First, the Act authorizes paid advertising programs in marketing orders for over 25 listed fruit, nuts, vegetables, and eggs, but not for any other agricultural commodity. The list includes onion but not garlic, tomatoes but not cucumbers, Tokay grapes but not for any other grapes and so on. The selection is puzzling.") (citations omitted).

23. *E.g.* *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

24. *Rock Royal*, 307 U.S. at 570 ("The people of the great cities depend largely on an adequate supply of pure fresh milk. So essential it is for health that the consumer has been willing to forego unrestricted competition from low cost territory to be assured of the producer's compliance with sanitary requirements, as enforced by municipal health authorities.").

preme Court had wholly accepted that the AMAA constitutionally and properly replaces free market competition in certain commodity crops with collective production controlled through federal marketing orders.²⁵

Congress's exercise of its commerce clause power under the AMAA to stabilize markets is problematic because it reduces much of domestic food production to a closed system between the federal government and producers, leaving individual consumers with the limited role of choosing to buy what is grown (or not). Add to the marketing-orders system the influence of the Farm Bill's commodity crop provisions (such as subsidies) and there is little room for public health considerations or individual preference in the American food system.

FOOD AND MONEY: POST WORLD WAR II AND THE SECOND BILL OF RIGHTS

President Roosevelt articulated the connection between the economy, food, and food security in 1944. He proposed a "Second Bill of Rights," which fundamentally recognized that having a job was the most important component to an individual's right to food. Specifically, Roosevelt's January 11, 1944 State of the Union Address declared:

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed.

Among these are:...

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

25. *Glickman*, 521 U.S. at 461 (holding USDA regulations requiring California fruit producers to contribute to generic advertising for California fruit commodity crops did not violate the First Amendment rights of producers).

The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.²⁶

The right to food in the Second Bill of Rights is an economic one. This is a crucial point – Roosevelt did not call for a right to food – he called for a right to earn wages that would in turn allow purchase of food. Roosevelt's policies sought to realize the right to wages through economic growth, which further reinforced the need for crop price supports. Without supports, farmers risked plunging prices in times of surplus, resulting in economic slowdown. Therefore, the federal control exerted over commodity crops became a hallmark of American agricultural policy.

Here, we should pause to consider the effect of the New Deal on Farmer Filburn. Before the New Deal, Filburn was able to feed himself and his family from his farm. Afterward, he was not – at least without risking federal penalty. This was a monumental shift. The court justified the penalty on Filburn for growing excess wheat in this way:

It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial impact on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market and if induced by rising prices tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce . . . Congress . . . properly . . . considered that wheat consumed on the farm where grown if wholly outside the scheme of regulation would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.²⁷

Thus, in 1942 the commerce clause began to reframe the way farmers thought of production – it was now for interstate and international markets, and not necessarily the local community and family. This policy now symbolizes a major way that our food system does not represent our health and nutrition needs, but rather an outdated economic need. Coupled with this outdated view of food systems, is an outdated view of how local and state governments can contribute to its strength.

26. THE PUBLIC PAPERS & ADDRESSES OF FRANKLIN D. ROOSEVELT, 1944-45 VOLUME, at 40-42, 41 (Samuel I. Rosenman ed. 1950).

27. *Wickard v. Filburn*, 317 U.S. 111, 128-29 (1942).

FOOD, MONEY, AND POWER: THE RISE OF THE
ADMINISTRATIVE STATE

The New Deal also reflected a new vision of the administrative state.²⁸ Its design vested power in federal administrators to “exercise... control over the varying phases of our economic life.”²⁹ The concept of insulating decision makers from “factional power” by relying on those administrators’ technical expertise was enticing to reformers seeking to avoid powerful political pressures.³⁰ However, the approach is problematic in two respects. First, in practice our federal agencies are not insulated from factional power. In fact, many have argued that the food industry’s influence over the USDA and FDA is a prime example of ineffective federal regulation.³¹ Second, the New Deal reformers “believed that the presidency and regulatory agencies provided better opportunities than state and local government for democratic self-determination.”³²

This lack of trust in state and local government is important to food law today in essential ways. First, it overlooks the fact that states hold the police power to regulate for public health. Even more fundamentally, it overlooks the fact that democratic self-determination is an individual right, not a federal responsibility. Combined, these factors necessitate the reconsideration of how local and state government can effectively contribute to a better food system, and special consideration of how the individual fits in the rubric.

Even though individuals hold international human rights to food, American courts do not find these rights enforceable against the federal government unless some other constitutional issue, such as equal protection or due process is at issue.³³ As health problems related to our food system become more serious for individuals,

28. See Cass Sunstein, *Constitutionalism After the New Deal*, 101 HARV. L. REV. 421 (1987).

29. *Id.* at 443 (citing JAMES LANDIS, *THE ADMINISTRATIVE PROCESS* 16 (1938)).

30. *Id.* at 457.

31. *E.g.*, MICHELE SIMON, *APPETITE FOR PROFIT* 146-65 (2006); KELLY D. BROWNELL, *FOOD FIGHT* 243 (2004); MARION NESTLE, *FOOD POLITICS* 95-111 (2003).

32. Sunstein, *supra* note 28, at 501.

33. See *Boehm v. Superior Court*, 223 Cal. Rptr. 716, 721 (App. 5th Dist. 1986) (“We conclude that the [general assistance] grant fixed by the County must include an appropriate allowance for each of the basic necessities of life: food, clothing, housing (including utilities), transportation and medical care.”); Emily H. Wood, *Economic, Social, and Cultural Rights and the Right to Education in American Jurisprudence: Barriers and Approaches to Implementation*, 19 HASTINGS WOMEN’S L.J. 303, 311 (2008).

economic and public health goals must become consistent to improve the human condition at an individual level. Achieving consistency between economic and public health policy is not as easy as simply passing a National Food System law, or national school lunch program³⁴ because, as alluded to above, the fundamental legal authority necessary to address economic and public health aspects of the food system differ. Rather, a consistent policy harmonized to maximize economic and public health in the food system should leverage the unique legal powers of the federal, state, and local governments.

Such leveraging will provide greater opportunity for citizen involvement in the food system. Recall that while Americans may have a moral right to food, they have no individual legal right. In the absence of a legal right to food, citizens are not in control of the food system – the Constitution vests that control in government. Two examples illustrate this principle.

A poor child in south central Los Angeles will likely receive breakfast and lunch from her school through the National School Lunch Program (NSLP). To receive those meals, the child depends on local and state administrators' compliance with the federal NSLP regulations. Established in 1946, the NSLP's dual purpose is to "safeguard the health and well-being of the Nation's children *and* to encourage the domestic consumption of nutritious agricultural commodities and other foods."³⁵ The NSLP is now viewed by some as a means of turning children into a dumping ground for our agricultural surpluses, which are highly processed and distributed nationwide.³⁶ Today, children who are served by traditional NSLP cafeterias must rely on the "technical expertise" of the federal government to determine what their food system looks like. The child and her parents play little role, but shouldn't they?

Remaining in south central Los Angeles, let us suppose the same child's dinner comes from Burger King because it is cheap, calorie dense, and convenient. If the child's favorite Burger King closes, it will not be replaced with another fast food outlet because the city has a moratorium on such establishments. Widely publicized as the first example of using zoning as a public health tool, the moratorium is the exercise of the police power in response to higher

34. E.g., J. Amy Dillard, *Sloppy Joe, Slop, Sloppy Joe: How USDA Commodities Dumping Ruined the National School Lunch Program*, 87 OR. L. REV. 221, 223 (2009).

35. KATHERINE RALSTON ET AL., U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM: BACKGROUND, TRENDS, AND ISSUES 1 (July 2008).

36. See, e.g., Dillard, *supra* note 34, at 223-25.

than national obesity rates in the area it covers. Critics complain that it is a paternalistic and likely ineffective way to address obesity rates. Proponents see it as one way “local communities can use zoning laws to create a retail market that offers healthier foods.”³⁷ If nothing else, the moratorium is provocative. But the question remains: does exercising the local police power to prohibit fast food restaurants really change the local food system?

Another timely example comes from California’s Santa Clara County. There, in 2010, the county adopted an ordinance that prohibits restaurants from giving toys with any meal sold, if that meal does not meet certain nutritional standards.³⁸ The county ordinance specified the nutritional standards with limits for calorie, sodium, fat, and sugar content in the meals.³⁹ The county justified this ordinance with data from an obesity report, showing that one in four of the county’s 7th, 9th, and 11th graders was overweight or obese, and one in three toddlers was also overweight or obese.⁴⁰ The Los Angeles and Santa Clara County regulations illustrate that local government possesses powerful tools to curb eating habits that data suggest are related to fast food.

We could view the Los Angeles moratorium or the Santa Clara regulation as local government agitating against the results of federal agricultural policy (a policy that has provided abundant, cheap, and processed food). If we accept the proponents’ view that it is warranted exercise of the police power, then closely dissecting this statement reveals an essential truth: when it comes to food, public health and the economy are inextricably linked. Thus, food system regulation requires a complex, delicately balanced exercise of government powers, as well as the exercise of that power in ways that empower the individual’s role in the food system.

THE FUTURE OF FOOD IS NOW

An essential element of a more effective food system is individual empowerment to shape it. In two of his compelling works, *The Future of Food* and *Appetite for Change*, food system scholar Warren Belasco chronicles how food reflects social policy and norms – or developing norms in the case of the 1960s “counter culture.” Whether it was Malthusian population theory or Chef Alice Waters’

37. MAIR, *supra* note 3, at 1.

38. Santa Clara County, Cal., Ordinance No. NS300.820 (Apr. 27, 2010).

39. *Id.*

40. *Id.*

introduction of slow food to American culture, food “movements” have a powerful influence on food systems. These grass roots movements are important, but so too are formal efforts to engage local, state, and regional voices in food system reform.⁴¹ These formal efforts, in large part, bring grass roots efforts to government. They share common components: a recognition of federal influence, a connection to local and regional concerns, and the integration of social justice goals.

At the base of food system reform are fundamental questions: how is the current structure ineffective and what do solutions offer? In order to answer these questions, government relies on open debate and data analysis, but Washington is over-run with special-interest lobbyists that influence the process far too much.

However, the University of New Hampshire is developing a solution, known as the Food System Indicator Tool. The Food System Indicator Tool allows the charting of current food system practices that are not sustainable.⁴² Examples of “business as usual” trends include farmland loss, food insecurity, and food-related disease rates. The tool then allows users to chart policy solutions against the trend, visually showing how the proposed solution might change the trend. The tool’s solution wedges are based on data gathered from public sources such as the USDA’s National Agricultural Statistics System (NASS) and U.S. census data. The tool allows objective and transparent policy analysis based on specific data sets, which has a powerful potential to neutralize lobbying influences.

Importantly, it also allows users to examine regional and state impacts of wedge solutions. This allows a refined understanding of the interaction between local, state, and regional policies. As a result, all levels of government can examine and plan what solutions are most appropriate and effective for the region, based on objective, transparent data. An added bonus is that by viewing how a policy can positively influence a region, states will be encouraged to leverage resources regionally, reducing the possibility that the New Deal-era federalism concerns about state anti-competitive behavior will recur. The Food System Indicator Tool is in its infancy. Yet, its innovative approach has great potential to contribute to food system

41. *E.g.* Illinois Food, Farms, and Jobs Act, Pub. Act 095-0145 (2007) (creating a “Local and Organic Food and Farm Task Force” to establish a plan for policy and funding recommendations to expand and support the State food system).

42. The Food System Indicator Tool is not yet available publically. However, it is modeled on the Carbon Solutions New England “Decarbonizer,” <http://www.carbonsolutionsne.org/projects/decarbonizer/> (last visited Nov. 6, 2010).

reforms by allowing objective analysis of local, state, and regional policy solutions.

Return to south central Los Angeles for a moment. The child eating in the NSLP there has a vastly different experience than a child attending the Berkeley, California schools. That is because Berkeley is a farm-to-school district. Farm to school programs are “based on the premise that students will choose to eat more healthy foods, such as fruits and vegetables, if the foods are fresh, locally grown, picked at the peak of their flavor, and supplemented by educational activities that link them with the food cycle from seed to table.”⁴³ What is important about these programs is that each one is unique, allowing communities to tailor school lunch programs to local agriculture, educational system, and community preferences.⁴⁴

Though not officially supported by the federal government, most farm-to-school programs are funded through the NSLP, just as traditional “hot lunch” programs are funded. Farm-to-school emphasizes good agricultural stewardship as well as economic innovation, by bringing students into the food system not just as consumers, but also as producers and planners. If students are engaged in the food system and understand that they have the ability to change it, then they are more likely to advocate for their basic human right to quality food. They are also more likely to make the economics of a modern food system workable. However, the pressing task today is reformation of NSLP to provide greater funding and flexibility for districts to adopt or improve upon the farm to school approach. Reform like this will likely require rethinking the relationship between NSLP and commodity crops – a major step for the NSLP, but one that is necessary for empowering children to learn that all citizens have responsibility for the food system.

The food system indicator tool and farm to school programs will have the most impact if they are part of a larger plan adopted by a state Food Policy Council. Professor Neil Hamilton of Drake Uni-

43. ANUPAMA JOSHI & ANDREA M. AZUMA, NAT'L FARM TO SCH. NETWORK, BEARING FRUIT: FARM TO SCHOOL PROGRAM EVALUATION RESOURCES AND RECOMMENDATIONS 533 (2009); *see also Farm to School*, USDA (Oct. 18, 2010), <http://www.fns.usda.gov/cnd/F2S/about.htm#Involvement> (noting developments such as the Fresh Fruit and Vegetable Program in 2002 and 2010 pilot program for community garden pilot program).

44. Though Farm to School programs are not workable year round in all climates or environments there are other ways that local initiatives can improve school lunch programs, which the federal government is recognizing. *See* Healthy, Hunger-Free Kids Act of 2010, S. 3307, 111th Cong. § 204 (2010) (local school wellness policy implementation); *Id.* at § 243 (access to local foods and school gardens).

versity Law School captured the power of food policy councils in his 2002 article, *Putting a Face on Our Food: How State and Local Food Policies can Promote the New Agriculture*.⁴⁵ Hamilton fully recognizes that state government should play an important role in supporting agriculture through direct marketing, support of institutional buying such as farm to school, and eco-labeling.⁴⁶ Hamilton also identifies that the food systems approach embraced by food policy councils is not in use because the federal system, and its powerful political factions, currently dominate the dialogue.⁴⁷

Further, food policy councils present powerful opportunities for everyday citizens to be involved in the food system. They present opportunities for different voices in the system to meet, cooperate, and create sustainable, profitable relationships. Further, state councils have the potential to form regional relationships, using innovations like the food system indicator tool to monitor and improve food systems. Additionally, state and regional food councils together represent power from the bottom up. This power can influence change in federal policy by gathering national support for what works at the state and local level. Using information from state food policy councils the federal government could select projects to fund, or adopt more effective rules in response to food policy council input. Finally, food policy councils could be a reliable source of information for lawmakers about what is truly happening in the food system at the community level, rather than relying on federal government reports and lobbyists.

Food law and health is one of the most important topics facing America today.⁴⁸ Food system health relates directly to public and economic health. To the extent that the federal government has played a large role in creating what many believe is an unhealthy, unsustainable food system, the federal influence on the food system should be reduced. I do not suggest that the federal government plays no role, only that food system reform will require mechanisms that maximize all government powers, while recognizing their distinct differences. If we ignore the federalism dynamic when consid-

45. 7 DRAKE J. AGRIC. L. 408 (2002).

46. *Id.* at 419-20.

47. *Id.* at 408-09, 445.

48. *E.g.* WHITE HOUSE TASK FORCE ON CHILDHOOD OBESITY, SOLVING THE PROBLEM OF CHILDHOOD OBESITY WITHIN A GENERATION 1, 3 (May 2010), available at http://www.letsmove.gov/pdf/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf.

ering food system reforms, we will continue to deny citizens a food system that is healthy, sustainable, and profitable.

