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Moving in Opposite Directions? Exploring Trends in Consumer Demand and Agricultural Production

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MOVING IN OPPOSITE DIRECTIONS?
EXPLORING TRENDS IN CONSUMER DEMAND AND AGRICULTURAL PRODUCTION

Susan A. Schneider†

I. INTRODUCTION ................................................................. 400
II. THE FOOD MOVEMENT: CONSUMER INTEREST IN FOOD
    QUALITY ............................................................................. 401
III. CURRENT UNITED STATES AGRICULTURAL PRODUCTION ... 408
    A. Concentration in the Agricultural Production Industry:
       Statistics and Trends ....................................................... 408
    B. Factors Driving the Consolidation of Agricultural
       Production ................................................................. 413
       1. The Industrialized Model for Production ....................... 414
       2. Types of Products in United States Agricultural
          Production .................................................................. 415
IV. RECONCILING CONSUMER INTEREST AND THE UNITED STATES
    FOOD SYSTEM .................................................................. 420
    A. Consumer Purchasing Power .............................................. 421
    B. A Resurgence of Agrarianism in New Farmers ................. 426
    C. Looking Forward: Government Support and Climate Change in
       a New Administration ..................................................... 430
V. CONCLUSION ....................................................................... 432

I. INTRODUCTION

This article explores two divergent trends in the American food system: (1) consumer demand for “real” food that is sustainably produced and (2) the economic and political forces that continue to encourage consolidation and industrialization in agricultural production. It first considers consumer preferences for their food

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system, noting the evolution of the food movement from elite to mainstream in its significance. It then explores the latest data regarding agricultural production from the Census of Agriculture, revealing strong movement in a seemingly opposite direction from the consumer food movement. The article concludes by offering some signs that the future may provide hope for reconciliation, moving our food system in a positive, healthy, and sustainable direction.

II. THE FOOD MOVEMENT: CONSUMER INTEREST IN FOOD QUALITY

Over the past decade, there has been a dramatic increase in U.S. consumers’ interest in their food and our overall food system. This interest is seen in the growing popularity and prevalence of food and food system books, media reports, documentaries, blogs, advocacy organizations, and even cooking programs that not only evidence this growing and prevalent interest, but also fuel it.1

Many universities, anxious to build on student interest, have developed food studies programs, which have now hit the “academic mainstream.”2 Law schools have seen a marked rise in food law and policy courses, as well as clinics that connect agricultural law with food law.3 The Academy of Food Law & Policy, a new nonprofit professional association of professors who teach in this area, was formed in 2016.4 Uniting these initiatives is an effort to approach food policy and our overall agricultural and food system from the perspective of consumers’ needs and sustainability concerns.

While the contours of the food movement may be varied, four related goals can be identified. First, the movement seeks “good food,” which is defined by a variety of related characteristics,

including healthy, natural, and wholesome—often prioritizing quality over cost savings. Second, it calls for more information about how food is produced and greater transparency regarding production and processing, and it ultimately rejects practices that are found to be inappropriate. Third, it reflects concern for sustainability and the environmental effect of food production and food waste. And fourth, it seeks a return to more local and regional sourcing of food. Defined as such, the food movement combines the goals of public health advocates, environmentalists, social justice advocates, and those concerned with farm animal welfare.

The 2016 Grocery Shopper Trends Survey conducted by the Food Manufacturers Institute confirms these interests.\(^5\) Consumer concern about the health significance of their food choices is evidenced by a variety of factors that combine good food with other categories.\(^6\) Sixty-six percent of consumers seek products that do not contain ingredients associated with health conditions or concerns.\(^7\) This includes the avoidance of foods that are perceived to have high amounts of sodium, sugar, and trans fats.\(^8\) Beyond the negatives, “‘fresh, less processed’ food continues to be a priority for shoppers as they seek cues for minimal processing,” as well as for avoiding “negative ingredients.”\(^9\)

Consumer interest in how food is produced is similarly high, and this interest sometimes merges with concerns that also relate to health.\(^10\) Survey results show that a strong majority of consumers (74%) consider pesticide and herbicide residues a health risk.\(^11\) This is up from 71% in 2015.\(^12\) Sixty-four percent consider antibiotic use in livestock production to present a health concern, an increase from 2015, when only 60% expressed this concern.\(^13\) As the survey notes, “‘hormone-free’ registers both as more healthy and as more sustainable.”\(^14\)

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6. See id. at 28–34.
7. Id. at 28.
8. Id. at 31.
9. Id. at 34.
10. Id. 28–34.
11. Id. at 34.
12. Id.
13. Id.
14. Id. at 28.
Consumer preferences regarding food production practices include other factors, such as fair labor standards and animal welfare. As explained by labor advocate Pete Castelli with regard to his efforts to help organize fast-food workers in California, “[i]f people care about where their food comes from, they will care about the people who are preparing it.” Michael Pollan, prominent author of many articles and books about the food industry, noted that “[i]f we are ever to right this wrong, to produce food sustainably and justly and sell it at an honest price, we will first have to pay people a living wage so that they can afford to buy it.” According to a 2016 Consumer Reports survey, “[m]ost consumers (79%) are willing to pay more per pound for fruits and vegetables produced by workers who earned a living wage and were treated fairly.”

With regard to animal welfare standards, the Grocery Shopper Trends Survey found that 21% of consumers preferred “shopping at stores that they believe use only sources that treat animals humanely.” However, much higher numbers are evidenced when consumers are questioned about the specific products they purchase or their general concerns for animal welfare. An American Society for the Prevention of Cruelty to Animals (ASPCA) survey found approximately 75% of consumers were “concerned about the welfare of animals raised for food.” Similarly, a study by the industry-supported Animal Humane Association reported:

- 94.9% of consumers stated that they were “very concerned about farm animal welfare,” and

[References and footnotes provided]
• 75.7% stated that they were “willing to pay for humanely raised meat, dairy, and eggs.”

Environmental concerns are also of great interest to many U.S. consumers. A 2014 poll conducted for Cone Communications found that 81% of consumers want food options that “protect the environment” and 74% said they “want companies to do a better job of explaining how their products affect the environment (presumably in a truthful way).” A 2013 survey found that 71% of consumers were “worried about pesticides in their food” and 74% would prefer “to eat food produced with fewer pesticides.”

The use of pharmaceuticals in livestock production is an area at the intersection of consumers’ interests in health, animal welfare, and the environment. The 2016 Consumer Reports survey revealed that:

• Many consumers reported being extremely or very concerned that routinely feeding healthy animals antibiotics and other drugs may allow animals to be raised in crowded and unsanitary conditions (68%), create new bacteria that cause illnesses that antibiotics cannot cure (65%), lead to environmental pollution (53%), or artificially promote growth (51%).

• Most (84%) consumers think the government should require that meat from healthy animals routinely fed antibiotics be labeled as ‘raised with antibiotics.’

• The overwhelming majority (88%) of consumers think the government should require that meat raised with hormones/ractopamine be labeled as such.

22. Id.


25. Ractopamine is a drug classified as a beta agonist that is used as a feed additive to increase weight gain, improve feed efficiency, and produce leaner meat. Approved for use in the United States, it has been banned in many other countries. See Susan A. Schneider, Beyond the Food We Eat: Animal Drugs in Livestock Production,
• Most (87%) consumers think animals should not be given hormones, ractopamine or other growth promoting drugs.26

Local and regional sourcing of food reflects a variety of interests, including concern for the local economy, food quality, and how food was produced. The Grocery Shopper Trends Survey found that 29% of shoppers “prefer shopping [at] grocery stores they believe support the local economy.”27 A much higher percentage of shoppers voiced this preference when specifically asked about locally produced food, particularly fruits and vegetables.28 The 2014 Cone Communications survey found that 89% of consumers “think about where items are produced, [and] that two-thirds would pay more for a local product.”29

Bringing together this quartet of consumer concerns, the 2015 Consumer Reports survey found that consumers are concerned about a number of “environmental, safety and social responsibility objectives”30. For the overwhelming majority of food shoppers, key objectives include supporting local farmers (91% of consumers), supporting companies with good working conditions/fair pay to workers (89%), reducing exposure to pesticides (89%), protecting the environment from chemicals (88%), providing better living conditions for animals (84%), and reducing antibiotic use in food (82%). Avoiding artificial ingredients (79%; a notable increase from 69% in 2014) and GMOs (75%) are also key objectives for many.31

As a clear indication of a distinct trend, Consumer Reports confirms that the percentage of consumers who express these interests has grown in recent years.32 Its surveys ask consumers to indicate whether certain objectives are “very important,” “important,” or “not important” to their purchasing decisions.33

26. CONSUMER REPORTS NAT’L RESEARCH CTR., supra note 17, at 3 (emphases omitted).
28. Schiller, supra note 25 (reporting on the Cone Communications Survey).
29. Id.
30. CONSUMER REPORTS NAT’L RESEARCH CTR., supra note 17, at 3.
31. Id.
32. Id.
33. Id.

http://open.mitchellhamline.edu/mhlr/vol43/iss2/3
Shifts from “important” to “very important” occurred across all categories from 2014 to 2015:

- Concern about “reducing pesticide exposure” was “very important” to 63% of consumers in 2015; in 2014, it was only 45%.34
- Concern about “protecting [the] environment from chemicals” was “very important” to 62% of consumers in 2015; in 2014, it was only 47%.35
- Concern about “reducing antibiotics in food production” was “very important” to 54% of consumers in 2015; in 2014, it was only 37%.36
- Concern about “supporting fair pay/working conditions” for agricultural and food workers was “very important” to 59% of consumers in 2015; in 2014, it was only 46%.37
- Concern about “better living conditions for farm animals” was “very important” to 52% of consumers in 2015; in 2014, it was only 40%.38
- Concern about “avoiding GMOs” was “very important” to 52% of consumers in 2015; in 2014, it was only 39%.39
- Concern about “avoiding artificial ingredients” was “very important” to 48% of consumers in 2015; in 2014, it was only 31%.40

The rise of the organic industry provides further testament to consumers’ changing preferences. Over the last decade, the growth in sales of organic foods has been remarkable and consistent.42 Each year, more and more consumers are choosing organic, with 2015 hitting a new organic product sales “benchmark of $43.3 billion, up a robust 11 percent from the previous year’s record level and far outstripping the overall food market’s growth rate of 3 percent.”43

34. Id.
35. Id.
36. Id.
37. Id.
38. Id.
39. Id.
40. Id.
41. Id.
43. Id.
The industry saw its largest annual dollar gain ever in 2015, adding $4.2 billion in sales, up from the $3.9 billion in new sales recorded in 2014. Of the $43.3 billion in total organic sales, $39.7 billion were organic food sales, up 11 percent from the previous year, and non-food organic products accounted for $3.6 billion, up 13 percent. Nearly 5 percent of all the food sold in the U.S. in 2015 was organic.

In his 2004 essay *Food Democracy*, Neil Hamilton discussed consumers’ increasing interest in their food as a growing social movement:

[I]t is undeniable a major social transformation is underway in our nation’s food, one that has the potential to reshape our food system, creating one more reflective of democratic values. The signs of this are all around us. You can see it in the foods we eat (Have you purchased anything organic lately?), in the issues being debated (Was obesity such a concern five years ago?), and in the discussions in farms and kitchens, boardrooms and dining rooms, in every corner of the land. You may be part of the social movement yearning for a food democracy, perhaps without realizing it. If you shop at the farmers’ market, buy organic food, tend a garden, or eat at restaurants serving fresh local foods, then you are part of the food democracy movement. If you are a food democrat, or want to be, in reality you are joining a larger social movement, one resting on community involvement and personal creativity, in which our identity and values are reflected through the lives we lead. The growth in farmers markets, the demand for high quality, more satisfying foods, the influence of chefs in shaping our views of food, our passion for gardening, even our worries about food safety, nutrition, and health, all these key forces are driving changes in our food system. These developments are about more than just food. They are the visible expression of democratic tendencies in society and they are the evidence and the confirmation of an emerging food democracy.

In 2010, Michael Pollan observed that there were many diverse groups involved in the food movement—groups with concerns regarding not only local food and direct contact with producers but

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44. Id.
46. Id. at 24.
also child nutrition, animal welfare, environmental protection, food sovereignty, food safety, obesity, farmland preservation, and food security, to provide only a partial list. At that time, he noted that they were united by “little more than the recognition that industrial food production is in need of reform because its social/environmental/public health/animal welfare/gastronomic costs are too high.”

As the food movement has taken shape in recent years, Hamilton’s prediction of an “emerging food democracy” has begun. It is evident in the statistics involving consumer preferences and also in the voices of the new movement leaders. However, it is not evident in many of the major agricultural production trends. Arguably, “industrial food production” as described by Pollan is growing in dominance. The next section presents a description of American agriculture that is in stark contrast to consumer trends.

III. CURRENT UNITED STATES AGRICULTURAL PRODUCTION

While consumer-interest trends move markedly toward good food, social justice in food production practices, sustainability, and an emphasis on local sourcing, mainstream agricultural production has continued its march toward concentration, industrialization of production practices, and production of food products associated with unhealthy eating patterns. Agricultural production appears at odds with consumer preferences.

A. Concentration in the Agricultural Production Industry: Statistics and Trends

As a continuation of a longstanding trend, U.S. agricultural production has become more concentrated, with a smaller number of larger farms producing more and more of the overall value. In 2002, farms with more than one million dollars in sales produced 47% of all production; in 2007, they produced 59% of U.S. agricultural sales. In 2012, farms with more than one million dollars in sales produced 65% of all production; in 2007, they produced 74% of U.S. agricultural sales.

48. Id.
50. NAT’L AGRIC. STATISTICS SERV., U.S. DEP’T OF AGRIC., 2007 CENSUS OF
dollars in sales produced 66% of total farm sales.\textsuperscript{51} In 2012, farms with agricultural sales of more than five million dollars produced 32% of the total value.\textsuperscript{52} The most recent data shows that in 2015, farms with over one million dollars in sales accounted for only 3% of U.S. farms, but sold 55% of total farm production.\textsuperscript{53}

In U.S. crop production, large farms now dominate.\textsuperscript{54} A 2013 United States Department of Agriculture (USDA) Economic Research Service (ERS) report relying on pre-2012 Census of Agriculture data reported that while most cropland was operated by farms with less than 600 crop acres in the early 1980s, current cropland production is on farms with at least 1100 acres, with many farms five and ten times that size.\textsuperscript{55} Mid-point farm size increased in forty-five states and doubled in sixteen states, with the largest increases seen in the Corn Belt and Northern Plains.\textsuperscript{56} Farms producing the major field crops of corn, cotton, rice, soybeans, and wheat also doubled in size.\textsuperscript{57} In fruit and vegetable production, the mid-point increased for thirty-five of thirty-nine different crops, with an average increase of 107%.\textsuperscript{58}

Cropland has been shifting to larger farms. The shifts have been large, centered on a doubling of farm size over 20–25 years, and they have been ubiquitous across States and commodities. But the shifts have also been complex, with land and production shifting primarily from mid-size commercial farming operations to larger farms, while the count of very small farms increases. Larger crop farms still realize better financial returns, on average, and they are


\textsuperscript{52} Id.

\textsuperscript{53} See Farming and Farm Income, supra note 49.


\textsuperscript{55} Id.

\textsuperscript{56} Id.

\textsuperscript{57} Id.

\textsuperscript{58} Id.
able to make more intensive use of their labor and capital resources, indicating that the trends are likely to continue.59

Similarly, the USDA ERS has recognized the “striking transformation” of the livestock industry.60 In 2009, an ERS report noted that “[f]ifty years ago, the majority of livestock were produced on diversified independent farms—farms that were diverse in both the types of livestock raised and the variety of crops raised.”61 Today, the majority of the livestock raised in the United States are produced on very large specialized farms.62

The number of livestock and poultry produced in the United States has doubled to over two billion head per year, while the number of farms has decreased by 80%.63 The vast majority of livestock and poultry “are no longer raised on pasture, but in confinement, allowing more intensive concentration with very large numbers of animals per facility.”64 This “transformed system of livestock production in the United States is not based solely on economies of scale.”65 It is also dependent on the use of drugs to enhance growth of the animals, alter their physiology, and provide short-term disease prevention while animals are under stressful and crowded conditions.66

Concentration is particularly apparent in the livestock and poultry industries. Looking specifically at cattle production, most cattle are initially raised on farms and ranches that remain relatively dispersed but are then sent to feedlots for “finishing,” i.e., for high-energy feed rations for growth and weight gain before slaughter.67 Feedlots with capacity for one thousand head or more now market between 80 to 90% of fed cattle; feedlots with capacity for 32,000

59. Id. at i.
61. Schneider, supra note 25, at 230.
62. MACDONALD & McBRIE, supra note 60, at 1.
64. Id.
65. Id. at 231.
66. Id.
67. See id. at 237.
head or more sell approximately 40%, with the largest feedlots feeding 100,000 cattle at a time. While U.S. sales of poultry and eggs showed a 15% increase from 2007 to 2012, the number of farms with poultry and egg sales decreased by 8%. Large, specialized farms accounted for 98% of sales in 2012, for a total sales volume of $42 billion. While there are an increasing number of small, independent growers raising poultry for themselves and for sale, contract growers raising poultry for a processor represent the dominant model of production. For example, in 2012, contract production accounted for 48% of broiler farms but 96% of broiler production. Few commercial growers produce fewer than 100,000 broilers in a year. Contract production “continues to shift to larger operations, from a production locus of 300,000 broilers in 1987, to 520,000 in 2002, and 600,000 by 2006.”

The egg industry has also become very concentrated. According to the American Egg Board, there are over 175 companies that own flocks of 75,000 laying hens or more, and these flocks represent about 99% of all the laying hens in the United States. There are approximately sixty egg-producing companies with flocks of more than one million hens, responsible for approximately 83% of total egg production. Seventeen of these companies have greater than five million hens each.

In the dairy sector, concentration is also evident. In 2002, the largest 24% of dairy farms produced 74% of the total value of sales of dairy products. In 2007, these large farms produced 81% of dairy

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69. MACDONALD & McBRIDE, supra note 60, at 12.
71. Id. at 2.
72. See id.
73. Id.
74. Schneider, supra note 25, at 234.
75. MACDONALD & McBRIDE, supra note 60, at 7.
77. Id.
78. Id.
products.\textsuperscript{80} Data from 2012 shows an 8% decline in the number of dairy farms, but an increase in dairy sales.\textsuperscript{81} As large dairies continue to grow, the amount of smaller farms is decreasing\textsuperscript{82}:

Between 2007 and 2012, the proportion of milk cow inventory on smaller operations declined and the proportion on larger operations increased. Operations with fewer than 1,000 milk cows accounted for 60 percent of the U.S. milk cow inventory in 2007 and 51 percent in 2012. Operations with 1,000 or more milk cows accounted for 49 percent of 2012 inventory, up from 40 percent in 2007.\textsuperscript{83}

The hog sector continues the trend toward more specialization and concentration. The 2007 Census reported a 9% decline in the number of hog farms since 2002, while sales increased 46%.\textsuperscript{84} This trend continues. In 2012, sales were up 25%, but the number of farms that specialized in hog production was down 29%.\textsuperscript{85} More hogs are now raised on fewer, larger, and more specialized farms.\textsuperscript{86}

The movement toward larger farms is consistent with a decline in the number of farms and the number of farmers. The 2012 Census of Agriculture counted 2,109,303 U.S. farms, down over 4% from the prior Census in 2007.\textsuperscript{87} Previously, the 2007 Census had shown an

\textsuperscript{80} Id.


\textsuperscript{82} N\'AT\'L AGRIC. STATISTICS SERV., U.S. DEP\'T OF AGRIC., ACH12-14, 2012 CENSUS HIGHLIGHTS, DAIRY CATTLE AND MILK PRODUCTION, supra note 81, at 2.

\textsuperscript{83} Id.


\textsuperscript{86} See id.

\textsuperscript{87} N\'AT\'L AGRIC. STATISTICS SERV., U.S. DEP\’T OF AGRIC., ACH 12-13, 2012
increase—an exception to the general trend. Other than in 2007, the number of farms reported has declined in each census since World War II. The number of farmers reported is also down. The 2012 Census counted 3,180,074 farmers, a decline of 3% from 2007.

B. **Factors Driving the Consolidation of Agricultural Production**

Consolidated agriculture—a small number of very large farms—does not necessarily preclude the delivery of food products in line with the new consumer preferences expressed in the food movement. Large farms are certainly capable of producing good food that is healthy, natural, and wholesome. Large farms could put quality of production before quantity of production and could produce food with transparency, rejecting practices that are inappropriate or unsustainable. At least theoretically, large farms could be situated such that local food, defined broadly, is available in many urban markets.

This is not the model, however, that has driven the consolidation of agriculture, nor is it the model that now defines most of the large farms that produce the majority of U.S. food. Two factors are critical: the model of production used and the products

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89. Id.

90. The majority of the 2.1 million farms are small farms, measured by sales, and the majority are supported by off-farm income. Seventy-five percent had farm sales of less than $50,000 in 2012, and almost 57% had sales less than $10,000. Nat’l Agric. Statistics Serv., U.S. Dep’t of Agric., 2012 Census of Agriculture Highlights: Farm Demographics: U.S. Farmers by Gender, Age, Race, Ethnicity, and More 4 (2014), https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/Highlights_Farm_Demographics.pdf.
produced. These two factors, as applied to mainstream U.S. agriculture, work against attainment of the food movement’s goals.

1. The Industrialized Model for Production

The large, consolidated farms that are now responsible for the majority of U.S. food production most often employ an industrialized model for production. At its core, this model focuses on the large-scale production of a highly specialized product. Production is driven by a desire to produce a standardized product at the lowest per unit price possible, utilizing biological, chemical, and mechanical technologies and often capturing markets through vertical integration. Specialization, however, comes at the price of diversity. Monoculture cropping creates a greater need for fertilizer, pesticides, and herbicides:

Monoculture farming relies heavily on chemical inputs such as synthetic fertilizers and pesticides. The fertilizers are needed because growing the same plant (and nothing else) in the same place year after year quickly depletes the nutrients that the plant relies on, and these nutrients have to be replenished somehow. The pesticides are needed because monoculture fields are highly attractive to certain weeds and insect pests.

Similarly, the close confinement of many genetically similar animals in small spaces increases stress, reduces animal welfare, and renders animals vulnerable to disease—creating a greater need for

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91. See generally Schneider supra note 25, at 230.
92. See id. at 230–31.
94. See generally NAT’L RESEARCH COUNCIL, ALTERNATIVE AGRICULTURE: COMMITTEE ON THE ROLE OF ALTERNATIVE FARMING METHODS IN MODERN PRODUCTION AGRICULTURE (1989) (criticizing industrialized agricultural production methods and explaining the lack of environmental sustainability of monocultures in agricultural production); see also Expanding Monoculture, UNION OF CONCERNED SCIENTISTS (Jan. 9, 2012), http://www.ucsusa.org/food_and_agriculture/our-failing-food-system/genetic-engineering/expanding-monoculture.html#WA0ncZMrKIY.
technological remedies such as antibiotics and other pharmaceuticals.  

Environmental effects showcase the problems with the industrial model, such as the nitrate contamination of the Des Moines water system, hypoxia in the Gulf of Mexico, and the loss of pollinators due to habitat destruction and pesticide contamination.

2. Types of Products in United States Agricultural Production

The types of products that U.S. agriculture produces are also at odds with consumer preferences within the food movement. Corn is the primary crop in the United States, accounting for more than 95% of the total feed grain production. More than ninety million acres of land are planted with corn. Most of the corn produced is used for livestock feed, supporting the industrialized meat and poultry industry. Other uses for this abundant corn crop include a multitude of food and industrial products such as corn oils, corn starches, beverages, industrial alcohols, fuel ethanols, and sweeteners like high fructose corn syrup.

This level of corn production, supported by federal farm policies, is in sharp contrast to the ideal production of good food. The 2015-2020 Dietary Guidelines for Americans published by the USDA and the Health & Human Services Department (HHS) calls...
for limiting calories from added sugars, including those derived from corn, such as dextrose (corn sugar) and high fructose corn syrup. Moreover, the Guidelines advocate for a “healthy eating pattern,” which is defined as including a “variety of vegetables from all of the sub-groups;” “fruits, especially whole fruits;” “grains, at least half of which are whole grains;” “fat-free or low-fat dairy products and/or fortified soy beverages;” a “variety of proteins, such as seafood, lean meats, poultry, eggs, legumes, nuts, seeds, and soy;” and oils. Saturated fats, trans fats, added sugars, and sodium are to be limited. Corn production for added sugars and as livestock feed for the meat industry is clearly not in line with healthy dietary recommendations.

In contrast to the ninety million acres of corn production, the 2012 Census of Agriculture reported only 4.5 million acres devoted to vegetable production, a decline from 4.7 million acres in 2007. Potatoes are by far the dominant vegetable crop grown in the United States, a product with the ominous distinction of containing more pesticide residues by weight than any other item of fresh produce. Despite the Dietary Guidelines’ recommendation for a “variety of vegetables from all of the sub-groups,”—including dark leafy greens, orange and yellow vegetables, and beans—potatoes, tomatoes, and lettuce dominate U.S. production. Indeed, the

105. Id.
106. Id. Note that the Scientific Report of the 2015 Dietary Guidelines Advisory Committee advocated for reduced meat consumption (particularly red and processed meats) and factoring in the sustainability of food production when considering a healthy and sustainable diet; however, in the face of industrial and political pressure, these recommendations were rejected by the USDA and the HHS in the final report. Allison Aubrey & Maria Godoy, New Dietary Guidelines Crack Down on Sugar. But Red Meat Gets a Pass, NPR (Jan. 7, 2016, 7:00 AM), http://www.npr.org/sections/thesalt/2016/01/07/462160303/new-dietary-guidelines-crack-down-on-sugar-but-red-meat-gets-a-pass.
110. Tracie McMillan, The U.S. Doesn’t Have Enough of the Vegetables We’re Supposed
United States does not produce sufficient vegetables for Americans to meet the Dietary Guidelines’ recommendations.111 “[W]hile the USDA’s own dietary guidelines recommend that adults consume 2.5 to 3 cups of vegetables a day, the agency’s researchers found that only 1.7 cups per person are available.”112

Similarly, the amount of land dedicated to fruit and tree-nut production is also dwarfed by corn acreage. According to the 2012 Census, 5.5 million acres were used to produce fruit, tree nuts, and berries.113 This was a 4% increase from 2007, with the increase reflected in tree-nut production (up 14%) and berries (up 11%).114 The Census found that “[t]he number of acres in non-citrus fruit production was up 2 percent since 2007, but acres in citrus production declined 13 percent.”115

While the demand for organic food continues to increase at record levels, U.S. organic production has lagged.116 There is a significant gap between supply and demand, with food processors and retailers scrambling for organic products.117 USA Today reported that “[s]hortages of some organic products has [sic] led to sky-high prices. And more livestock producers, hungry for organic feeds, are importing from overseas because they can’t find enough in the U.S.”118 Laura Batcha, executive director of the Organic Trade Association, was quoted as stating that “[t]he biggest thing holding back growth isn’t demand, it’s shortages.”119

Perhaps the greatest disconnect between the food movement and mainstream agriculture is observed in the animal welfare

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111. Id.
112. Id.
114. Id.
115. Id.
117. See id.
118. Id.
119. Id.
debate. The food movement espouses agricultural production targeted toward its goals of having greater information about how food is produced, seeking transparency regarding production, and rejecting practices that are found inappropriate. Concerns regarding animal welfare in concentrated livestock, poultry, and egg-production facilities reveal a conflict between trends in the food movement and trends in agricultural production. As animal-production facilities have shifted to closely confined living conditions and become larger and more concentrated, animal-welfare concerns have increased.

Animal-welfare advocates criticize many of the standard practices in an industrial farming setting. These include:

- rearing large numbers of livestock or poultry in close confinement with little or no room for natural movement and activity (e.g., housing sows in small gestation crates, chickens in battery cages);
- isolating veal calves in small crates;
- performing surgery such as docking hog tails, dehorning cattle, and trimming poultry beaks (so that confined animals do not hurt each other or their handlers) [without anesthesia];
- permitting commercial movement of non-ambulatory livestock ("downers") that are disabled due to sickness or injury; and
- not fully stunning poultry (which are not covered by the humane slaughter act) and, sometimes, livestock (most of which are covered) before slaughter.

Indeed, while some in the agricultural industry have attempted to characterize these concerns as an undercover effort to oppose meat consumption, concern for animal welfare is a common core value associated with most of today’s consumers and the trending food movement. Many in the agricultural industry—some with


121. Id.

122. See, e.g., Lara Durben, In the Fight for Animal Agriculture, Who Wins?, SUCCESSFUL FARMING (Oct. 21, 2016), http://www.agriculture.com/family/women-in-agriculture/the-fight-for-animal-agriculture-who-wins (criticizing undercover research on industrial-scale cage-free chickens and concluding, "I just wish a small group of activists hell-bent on ending meat consumption (and make no mistake—that’s what they want) would stop trying to make those choices for me").
significant sums of money invested in current livestock production practices—have reacted strongly to these animal-welfare concerns and to the threat of animal-welfare laws that could affect their production practices. “Right to Farm” initiatives, statutes, and state constitutional amendments have been proposed, with passage in Missouri and North Dakota. These actions have been largely focused on the perceived threat from animal-welfare advocates and in reaction to states that have enacted bans on gestation crates, banned veal crates, or imposed a mandatory size minimum on crates for egg-laying chickens.

Agricultural organizations have formed to advance this viewpoint, such as Protect the Harvest, a group that advertises three corresponding objectives on its website:

- INFORM America’s consumers, businesses and decision-makers about the threats posed by animal rights groups and anti-farming extremists.
- PROTECT our freedoms and way of life by creating lasting legal safeguards for farmers, ranchers, hunters, anglers, and animal owners.
- RESPOND to the activities of radical groups by opposing their efforts to pass laws or enact regulations that would restrict our rights, limit our freedoms, and hinder our access to safe, affordable food.

Fear and concern on the part of animal agriculture is understandable. Producers who work under contract are doing what they are told to do by integrators, and producers have amassed huge debt in order to fund their production facilities. Many practices subject to criticism have been approved by animal science professionals anxious to continue the trend toward less and less

123. The Missouri amendment was approved in 2014. Mo. Const. art. 1, § 35 (2016); see also Missouri Right-to-Farm, Amendment 1 (August 2014), Ballotpedia, https://ballotpedia.org/Missouri_Right-to-Farm,_Amendment_1_(August_2014) (last visited Dec. 28, 2016).
124. The North Dakota amendment was approved in 2012. See N.D. Const. art. 11, § 29 (2016); see also North Dakota Farming and Ranching Amendment, Measure 3 (2012), Ballotpedia, https://ballotpedia.org/North_Dakota_Farming_and_Ranching_Amendment,_Measure_3_(2012) (last visited Dec. 28, 2016).
125. See generally Kaelin Bowling, Old MacDonald Had a Right-to-Farm: Putting a Humane Twist on Missouri’s Right-to-Farm Amendment, 22 Drake J. Agric. L. 137 (2017).
costly production. A developed understanding of the sentience of farm animals is a relatively recent discovery. Nevertheless, when faced with surveys revealing overwhelming concerns on the part of their customers, it seems counterproductive for agricultural producers to deny those concerns and relegate such concerns to “radical groups.”

Similarly, several farm states have passed “ag-gag” statutes, seeking to limit the ability of anyone to photograph or video-record the activities on a farm or meat-processing facility.\textsuperscript{127} States have passed these statutes in reaction to recordings made by animal-welfare advocates and released to the public.\textsuperscript{128} While the activities revealed have generally been illegal, and the corporations affected have taken corrective action, the industry has attempted to address the problem by limiting access.\textsuperscript{129} The suppression of information about what goes on inside our food production and processing facilities runs directly counter to the food movement’s desire for greater transparency. As consumers seek to know more about where their food comes from and how it is produced, mainstream agriculture and the closely connected meat industry appear anxious to move in the opposite direction.

This survey of trends and practices in mainstream agricultural production reveals an industry in stark contrast to the consumer trends reflected in the food movement. Can these trends, seemingly moving in opposite directions, come together?

\section*{IV. RECONCILING CONSUMER INTEREST AND THE UNITED STATES FOOD SYSTEM}

Given the vested and powerful interests of the food and agricultural industries, change does not come easily. However, two factors show promise for invoking change and reconciling our food system with food movement values: (1) consumer purchasing power in a capitalistic economy, and (2) resurgence of agrarianism in new farmers. Each would benefit from the support of the government to both minimize obstruction and encourage positive change, but it appears that the Trump administration will be unlikely to provide this support.

\textsuperscript{128} See id.
\textsuperscript{129} See id.
A. Consumer Purchasing Power

Agriculture is in the business of producing goods for sale. There are many reasons why farmers may tend to forget this basic point. Markets can be complex and attenuated, affected by global production and demand, influenced by the commodity futures exchange, and complicated by convoluted supply chains. Federal farm policy influences a farmer’s production decisions, often in a way that counters market forces. Platitudes such as “feeding the world” can instill a sense of arrogance as U.S. agriculture decides what “the world” should eat. But, ultimately, in a market economy, the demands of consumers carry much weight.

Michael Pollan wrote about the power of consumer demand as early as 2006. He urged that “[y]ou can simply stop participating in a system that abuses animals or poisons the water or squanders jet fuel flying asparagus around the world. You can vote with your fork, in other words, and you can do it three times a day.” Implicit in Pollan’s argument, however, is the assumption that consumers have the means to do so. The good food movement has been criticized as being elitist, favoring those who are affluent enough to afford the highest quality food, e.g., fresh and organic food.

The statistical trends, reported in the first section of this article, show broad-based support indicating that the desire for good food transcends class. Access and affordability issues remain, but progress has been made. The rise of urban agriculture has helped to increase access through community gardens, farmers’ markets, and organized urban farming enterprises. Growing Power is an example:

Growing Power is a national nonprofit organization and land trust supporting people from diverse backgrounds, and the environments in which they live, by helping to provide equal access to healthy, high-quality, safe and affordable food for people in all communities. Growing Power implements this mission by providing hands-on training, on-the-ground demonstration, outreach and technical assistance through the development of

131. Id.
133. See supra, Part II.
Community Food Systems that help people grow, process, market and distribute food in a sustainable manner.\textsuperscript{134}

Pollan spoke again of consumer power in a recent article referring to consumers as “Big Food’s” vulnerability.\textsuperscript{135} He described this force for change as:

[T]he conscience of the American eater, who in the past decade or so has taken a keen interest in the question of where our food comes from, how it is produced and the impact of our everyday food choices on the land, on the hands that feed us, on the animals we eat and, increasingly, on the climate. Though still a minority, the eaters who care about these questions have come to distrust Big Food and reject what it is selling. Looking for options better aligned with their values, they have created, purchase by purchase, a $50 billion alternative food economy, comprising organic food, local food and artisanal food. Call it Little Food. And while it is still tiny in comparison with Big Food, it is nevertheless the fastest-growing sector of the food economy.\textsuperscript{136}

Indeed, there are many signs that these consumers are being heard. Many of the surveys discussed in the first section of this article were performed by and for industry. Retailers, often the first to react to changing consumer preferences, are responding by demanding that their suppliers provide more and more products that fall in line with food movement expectations. While their commitment to change may sometimes be more show than substance, the trends are unmistakable. A few examples of retailer responses to consumer preferences include:

- Organic foods, once limited to natural food stores, are now commonly found in traditional grocery stores.\textsuperscript{137}


\textsuperscript{135} See Michael Pollan, Big Food Strikes Back, N.Y. TIMES MAG. (Oct. 5, 2016), http://www.nytimes.com/interactive/2016/10/09/magazine/obama-administration-big-food-policy.html (describing “Big Food” as “the $1.5 trillion industry that grows, rears, slaughters, processes, imports, packages and retails most of the food Americans eat”).

\textsuperscript{136} Id.

Organic Trade Association reported that “[a]s supermarkets, big box stores, membership warehouse clubs, and other outlets continued to up their organic offerings, organic options have become more available than ever before.”\textsuperscript{138} For example, in 2014, for the first time ever, conventional grocery stores sold 50% of organic food.\textsuperscript{139}

- The Florida tomato workers’ Fair Food Movement, which calls for retailers to pledge their support for improved farmworker conditions, has had great success.\textsuperscript{140} Included in the pledge is the agreement to pay a “penny a pound” more for tomatoes with the penny passing through to the farmworkers.\textsuperscript{141} Nine corporate retailers representing 90% of the industry have agreed, including YUM Brands (the parent company of Taco Bell, KFC, Pizza Hut, etc.) and Walmart, the world’s largest food retailer.\textsuperscript{142}

- Restaurants and beverage providers have similarly committed to good-food-related practices. For example, Starbucks recently announced that it would require its dairy, meat, and egg products suppliers to follow new humane animal-welfare standards.\textsuperscript{143} Dunkin’ Donuts announced its commitment to work toward sourcing cage-free eggs and gestation crate-free pork for sale in its stores in the United States and worldwide.\textsuperscript{144} Au Bon Pain’s vision is to “reduce the impact that [their] operations have on the environment through sustainable practices and source reduction initiatives. [They] will continue to seek products that are

\textsuperscript{138.} Organic Trade Ass’n, \textit{supra} note 137.
\textsuperscript{139.} Watrous, \textit{supra} note 137.
\textsuperscript{140.} \textit{See generally} Campaign for Fair Food, \textsc{Coalition of Immokalee Workers}, http://www.ciw-online.org/campaign-for-fair-food/ (last visited Dec. 22, 2016).
\textsuperscript{141.} \textit{Id}.
inherently more sustainable and partner with suppliers that are committed to sustainable practices and social responsibility.”

- Most major food companies and food providers now have a social responsibility and sustainability division that incorporates sustainable production and packaging in their supply chain. Many of the leading food and beverage companies have come together to fund the Sustainability Consortium, a non-governmental organization and academic partnership of industry players that seeks to “accurately quantify and communicate the sustainability of products” by developing a system of quantifying environmental and social sustainability that is accessible to buyers and sellers of products, including food and beverage products.

- Walmart is the largest retailer to announce a new policy on animal welfare and antibiotic use, as part of its Commitment to a Sustainable Supply Chain. The announcement proclaimed Walmart’s support for the “‘Five Freedoms’ of animal welfare.” Included in the announcement is a call to suppliers to “[f]ind and implement solutions to address animal welfare concerns in housing systems . . . .” In sharp contrast to “ag-gag” laws, the notice uses the term


149. Walmart U.S. Announces New Animal Welfare and Antibiotics Positions, WALMART (May 22, 2015), http://news.walmart.com/news-archive/2015/05/22/walmart-us-announces-new-animal-welfare-and-antibiotics-positions. The “Five Freedoms” are: (1) freedom from hunger, thirst, and malnutrition; (2) freedom from discomfort; (3) freedom from pain, injury, and disease; (4) freedom from fear and distress; and (5) freedom to engage in normal patterns of animal behavior. Id.
“transparency” seven times in the one-page announcement.150

Similarly to these food-retailer initiatives, some food processors are reformulating their products, shifting toward good food standards, as demanded by consumers. Examples include the efforts of “food giants” Hershey, ConAgra, and General Mills to “winnow[] their ingredient lists to as few elements as possible” in an attempt to satisfy consumers who “care deeply about what’s in their food and insist on recognizing the ingredients.”151 General Mills also announced a new animal-welfare policy, including its support for the “Five Freedoms” and a pledge to source exclusively from cage-free egg suppliers for its U.S. food-processing operations.152

Very few of the initiatives referenced above have occurred because of government regulation. They have come about due to consumer preference, corporate leadership, and concern for the future of businesses. However, as retailers and food processors tout their positions on their products and in their advertisements, the role of government remains significant. Strong federal and state laws mandating accurate labeling and honest advertising must be in place and enforced in order to protect consumers from deceit.

Consumers are also affecting the market by increasingly exercising their purchasing power to buy their food products directly from farmers. The increase in number of farmers’ markets provides additional evidence of consumer influence. There were only 1755 farmers’ markets in 1994;153 in 2014, there were 8268.154 Farmers’ markets represent only one category of direct farmer sales, with other categories including farm stands and community-sponsored agriculture (CSAs).155 In 2010, the USDA ERS reported:

150. See id.
155. Community-sponsored agriculture farms are a “direct-farm marketing [and] production model.” Community Supported Ag Farm, MINN. GROWN,
Direct-to-consumer sales of agricultural products account for a small, but fast-growing segment of U.S. agriculture, increasing by $399 million (49 percent) from 2002 to 2007, and by $660 million (120 percent) from 1997 to 2007. According to the 2007 Census, 136,800 farms, or 6 percent of all farms in the United States, sold $1.2 billion worth of farm products directly to consumers, or 0.4 percent of all agricultural sales. If non-edible products are excluded from total agricultural sales, then direct-to-consumer sales as a percentage of agricultural sales increases to 0.8 percent in 2007. Direct-to-consumer marketing is also a small but growing share of U.S. at-home food consumption. In 2007, direct-to-consumer sales grew to 0.21 percent of total home consumption, compared to 0.15 percent in 1997.\footnote{The 2012 Census indicated that direct-to-consumer sales increased 5.5 percent between 2007 and 2012, although the total volume of sales remained unchanged.\footnote{One explanation for the flat sales growth is that so many commercial grocery outlets now purchase and sell local food. Consumers no longer have to purchase directly to achieve their goal of purchasing locally. Indeed, farmers now sell directly to local grocery stores and restaurants.\footnote{Again, these changes in food purchasing patterns have largely been driven by consumer demand.}}}

B. A Resurgence of Agrarianism in New Farmers

As noted, some in agriculture strongly resist the change called for by the food movement, viewing it as potentially hostile and threatening to their livelihoods. However, the changing consumer preferences present important new markets for farmers, and the

\begin{itemize}
  \item http://minnesotagrown.com/product/community-supported-agriculture-csa-farms (last visited Dec. 22, 2016). A CSA farm sells memberships directly to consumers and those consumers receive produce on a regular basis. See id.
  \item Low et al., supra note 154, at 3.
\end{itemize}
wise businessmen and women are those that embrace new opportunities when they arise.

Indeed, a growing number of farmers are finding a successful business model in a “new agriculture” that embraces the food movement rather than fights against it. For these farmers, transparency is not intimidating; it is part of their marketing plan. Humane standards of raising livestock are a badge of honor, often certified and approved for use on their product label. The idyllic picture of the family farm on their package is not just a gimmick—it really is their farm.

Some of these farmers may simply be tapping into consumer demand the way that any retailer reads the market. But others represent modern-day agrarians that appreciate our dependence on the land, natural resources, and natural processes. They understand the wisdom of author and environmental activist Wendell Berry when he stressed that “good farming” was “the proper use and care of an immeasurable gift.” They are intent on preserving and improving the quality of their soil, protecting the water, and producing food they are proud to sell.

Just as changes in the food system can be observed in the marketplace, changes can also be found in agriculture as farmers seek out this good farming as an improvement on industrialized practices. Examples of this new agriculture include:

- Acreage certified as organic increased 20% in 2015, with certified organic farms now operating 4.4 million acres of certified land. “Certified farms were transitioning an additional 151,000 acres of land into organic production in 2015, primarily to grow crops.”

- Rotational or management-intensive grazing, which divides larger pastures into smaller units to rest the pasture and improve forage, is a practice known to improve plant health and soil quality. This grazing practice, once the norm in

161. Id.
diversified Midwest farming operations, but then lost to a
generation of farmers, has seen a resurgence in recent years. "In 2012, across the country, 288,719 farms practiced
rotational grazing."\(^{163}\)

- Farmers are focusing on soil health as a means of promoting
agricultural productivity and resilience, while encouraging
sustainability in agricultural production is gaining
momentum. Practices such as cover crops have now gone
mainstream.\(^{164}\)

- A new industry of private certification services has been
created to link farm practices to consumer preferences.
Examples include: "Animal Welfare Approved,"\(^{165}\)
"Certified Humane Raised and Handled,"\(^{166}\) and "American
Grass-Fed."\(^{167}\)

- Some grocery stores seek farm suppliers that allow them to
market their products with increased transparency, labeling
them according to production practices. Global Animal
Partnership’s “5-Step® Animal Welfare Rating System,”
used by Whole Foods Markets, provides a prominent
example.\(^{168}\)

- Certain farms have been able to establish national and
international brands based on their farming practices,
advertising transparency and certifications in sustainable
methods. Examples include Niman Ranch,\(^{169}\) White Oak
Pastures,\(^{170}\) and Applegate Natural & Organic Meats.\(^{171}\)

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\(^{163}\) Id.


Many of these farmers are beginning farmers (defined by USDA as those with less than ten years of experience), women farmers, and/or minority farmers—those not invested in today’s production agriculture or perhaps disserved by its focus on expensive equipment and chemicals. They are military veterans, likely supported through the inspirational Farmer Veterans Coalition. They can be trendy, as demonstrated by the hashtag #iamamodernfarmer, enamored with a lifestyle that puts them close to nature, or they can be sophisticated agroecologists. These diverse groups are united by their efforts to approach farming in a way that is consistent with the four tenants of the food movement—a desire to produce good food, the use of transparent production practices, a concern for sustainability, and a return to the local and regional sourcing of food.

Though farmers at the high end of production and sales are profitable, farmers at the lower levels of sales, including many beginning farmers and farmers who practice new sustainable initiatives, often experience financial stresses. The USDA reports that in the United States, farm business survival is low, largely because of these marginal operations. Only 55.7% of all farms having positive sales in 2007 had positive sales in 2012. Beginning farmers had an even lower rate of positive sales. Farmers who marketed directly to their consumers, however, had a somewhat higher survival rate than farmers who marketed through traditional channels. For beginning farmers this improved rate was 54.3% compared to 47.4%.

175. See Low et al., supra note 154, at 13.
176. Id.
177. Id.
178. Id.
C. Looking Forward: Government Support and Climate Change in a New Administration

Given industry pressures, inherent risks of farming, and low overall profitability of farming for beginning farmers and small farming operations, agricultural lawyers, accountants, business advisors, and other professionals are needed to teach and stress the importance of running the new farm as a business and not simply as a good food mission. Bills need to be paid and economic sustainability is critical to business survival.

Climate change will act as a disrupter that challenges agricultural production and patterns for consumption.179 No industry is more dependent on weather than agriculture. Severe weather disruptions, a sign of increasing climate stress, have already made their mark on our food system. As noted by agricultural law scholar Nicole Civita, “resilience” is needed to prepare for agriculture’s “volatile future.”180 Sustainable, transparent production systems can provide that resilience, but consumers must support them in order to ensure their profitability.

Many in President Obama’s administration, and in particular the USDA under the leadership of Secretary Tom Vilsack, did much to support the tenets of the good food movement. Programs such as “Know Your Farmer, Know Your Food” were established to support direct and local food sourcing.181 The USDA provided financial assistance through loans to beginning farmers, with new programs established specifically for small farming operations that needed small loans.182 Farmers’ markets, farm-to-school programs, and other programs that support local and regional food sources received USDA loans and grants, as well as technical assistance.183

established innovative programs, such as allowing SNAP benefits to be used at farmers’ markets.\textsuperscript{184} Crop insurance, once largely limited to traditional commodity crops, was expanded to include organic crops and many fruits and vegetables.\textsuperscript{185} While some of these initiatives can be undone by future government action, many will have a lasting impact that transcends a change in the administration.

At the time of this writing, President Trump’s administration is beginning its work. How the administration’s farm and food policies will unfold is unknown. It appears, however, that the incoming administration will likely take a far different approach toward agriculture. Policy briefings promise a sharp turn away from environmental and sustainability concerns and toward policies that aggressively favor conventional farming practices and large farming operations. As a candidate, Trump infamously called climate change a hoax perpetrated by the Chinese.\textsuperscript{186} A “Talking Points” memo from the campaign included the promise to “defend American Agriculture against its critics, particularly those who have never grown or produced anything beyond a backyard tomato plant.”\textsuperscript{187}

Regarding climate change, Trump may well be forced to change course. Already, business leaders have demanded support for a continuation of the climate-change-reduction efforts by the Obama administration. Days after the election, more than 300 U.S. companies sent an open letter to President-elect Trump urging him to support the Paris climate accord.\textsuperscript{188} Scientists continue to chart the changing climate, producing more evidence that the new President will ignore at his peril.

\textsuperscript{186} Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 6, 2012, 11:15 AM), https://twitter.com/realdonaldtrump/status/265895292191248385?lang=en (“The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.”).
\textsuperscript{187} Ian Kullgren, \textit{Trump Team’s Ag Talking Points}, POLITICO (Nov. 14, 2016, 10:00 AM), http://www.politico.com/tipsheets/morning-agriculture/2016/11/trump-teams-ag-talking-points-217990.
The notion that agriculture can be defended from its critics is a self-defeating dichotomy, as critics are also consumers. Thus, agriculture’s critics are the very people that agriculture needs for its economic support. Consumers have always been the backbone of the food movement. The election of Trump does not mean that they have changed their minds about good food. Indeed, the total number of consumers who advocate for a change in their food system, moving it toward their definition of good food, may well be greater than the roughly 25% of eligible voters who ultimately put Trump into the presidency. These consumers, however, will need to join the ranks of those who actively resist efforts to turn back the clock on efforts to improve our food system and protect our environment. The election of Trump may well be seen as a call to action.

V. CONCLUSION

The goal of moving our food system toward one that is focused on producing good food with transparency, socially responsible practices, and sustainability is not a goal that will easily be deterred, and trends indicate that it is gaining public support. Ultimately, the success of the food movement will be in expanding the number of consumers who care about their food and then connecting those consumers with the farmers, food processors, and retailers who can provide food to their standards. Both direct connections and indirect economic support systems must be formed. The food movement faces many challenges in our complex global market and in today’s reactionary political climate; however, the unsustainability of our current system will likely become more and more apparent. We all will come to depend on the resilient food system that the food movement seeks to create.
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