

10-1-2011

The Global Politics of Food: A Critical Overview

Nancy Ehrenreich

Beth Lyon

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Nancy Ehrenreich and Beth Lyon, *The Global Politics of Food: A Critical Overview*, 43 U. Miami Inter-Am. L. Rev. 1 (2011)

Available at: <http://repository.law.miami.edu/umialr/vol43/iss1/3>

This Foreword is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

LatCrit South-North Exchange

The Global Politics of Food: Sustainability and Subordination

The Global Politics of Food: A Critical Overview

©Nancy Ehrenreich & Beth Lyon*

Like many other arenas of life, the world of food is a world of politics and power. Inequalities of power and privilege across the globe affect who has access to food and who does not, who controls its production and who is harmed by that production, how consumptive choices are constructed and constrained, and whether

* Professor of Law and William M. Beaney Memorial Research Chair, Denver University Sturm College of Law and Professor of Law, Villanova University School of Law. We thank Shawn Hogue, Anthony Hearn, and the entire editorial board of the *Inter-American Law Review* for their hard work on our article and this Symposium. We also thank the Villanova University Community Interpreter interns who transcribed two of the pieces contained in the Symposium. We are grateful to the sponsors of the 2010 South-North Exchange: Departamento de Derecho, Universidad Iberoamericana; Latina and Latino Critical Legal Theory, Inc. ("LatCrit"); University of Miami School of Law; University of Denver Sturm College of Law; and the Center for Global Justice, Seattle University School of Law. We appreciate as well the collaborative support of our conference co-organizers, Dr. José Luis Caballero Ochoa, Coordinador de la Maestría en Derechos Humanos, Universidad Iberoamericana, and Dr. Miguel Rábago Dorbecker, Académico e Investigador del Departamento de Derecho, Universidad Iberoamericana. We also thank Professors Alejandro Nadal, Colin Crawford, Carmen González, and Hugo Rojas for their critical assistance in the early planning stages of the conference. Although any errors contained in this essay are ours, we gratefully acknowledge the excellent research work of the Denver University Sturm College of Law Faculty Library Liaison Diane Burkhardt, Denver Law Research Assistants Emily Cregar and Yashreeka Huq, and Villanova Law Research Assistants Joseph Canamucio, Gina Carrillo and Andrea May, as well as the assistance of Steven Baum (J.D., University of Denver Sturm College of Law, 2011) and the many other forms of research support we received from our respective institutions. We appreciate as well all the work and support of the editors of the *University of Miami Inter-American Law Review* and Professor Frank Valdés in bringing this symposium to fruition. Finally, our sincere thanks to Professor Jorge Esquirol for very helpful feedback on an earlier version of this work, to Professor Carmen González for insightful and important edits to a later draft, and, to Professor González and Professor Alejandro Nadal for their inspirational leadership in the field of food politics and their generosity in helping us to explore it. As the dedication page of this issue explains in more detail, the symposium is dedicated to the memory of Professor Keith Aoki, a longtime LatCrit member, an incisive critic of intellectual property law's impact on food, and a dear friend.

eating is seen as a complex, biosocial activity or as nothing more than instrumental bodily maintenance. While each of these areas of inquiry could be explored in volumes, not pages, this Introduction merely attempts to give an overview, identifying the disparate strands of the vast field of food politics and suggesting some of their intersections.

This symposium memorializes the discussions held at the eighth annual meeting of the South-North Exchange on Theory, Culture and Law (“SNX”),¹ held on May 6-8, 2010, in Mexico City, Mexico, and organized by Latina and Latino Critical Legal Theory, Inc. (“LatCrit”). This gathering brought together 33 academics and activists from seven different countries² to exchange ideas and information on “The Global Politics of Food: Sustainability and Subordination.”

The SNX is an annual event held by LatCrit, an organization of academics and activists dedicated to bringing a critical, interdisciplinary and transnational perspective to legal scholarship and legal policy debates.³ The global politics of food is a particularly appropriate topic for the SNX to explore, for food issues reveal the interconnectedness of a vast array of seemingly unrelated systems – systems of international trade, rural development, public health, education, environmental protection, and social meaning-making (among others). Food is a critical concern; agriculture occupies more than half the world’s population and nearly one-third of the Earth’s land surface,⁴ and every member of the human race relies on its product.

A focus on food also demonstrates the cross-hemispheric connections among systems of race, class, and gender subordination – as well as environmental degradation and cruelty to animals. The industrial model of farming that poisons farm workers with pesticides in Mexico⁵ also depletes the nutritional value of the fruit

1. Information about the seven previous conferences, and the symposia publishing their results, can be found at: <http://www.latcrit.org>.

2. Those countries were Brazil, Canada, Dominican Republic, France, Mexico, the United States, and the United Kingdom.

3. For more on LatCrit, visit the organization’s website: www.latcrit.org.

4. Jennifer Clapp & Doris Fuchs, eds., *Agrifood Corporations, Global Governance, and Sustainability: A Framework for Analysis*, in *CORPORATE POWER IN GLOBAL AGRIFOOD GOVERNANCE* 13 (Jennifer Clapp & Doris Fuchs, eds., 2009).

5. Industrial agriculture has been defined as “chemical-intensive, monocultural farming techniques.” Carmen G. González, *Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage*, 17 *BERKELEY LA RAZA* L.J. 65, 74 (2006) [hereinafter *Mythology of Free Trade*].

they grow,⁶ and pollutes the environment during both the growing and the shipping processes.⁷ The papers presented at this conference (many of which are printed here) revealed some of the many ways in which the complex systems that produce and deliver food reflect and reinforce global systems of power and privilege, affecting the most intimate recesses of human life – work, health, child-raising, identity, eating. In what follows, we set out some of the concerns and issues that prompted the conference and highlight the ways in which the papers published in this symposium contribute to current academic and policy discussions about food policy and the law.

I. CHALLENGING THE DOMINANT VIEW

For ease of discussion here we divide food issues into two different domains – production and consumption. By production we mean how the cultivation of agricultural products affects *inter alia* human labor, the quality of the food produced, animal welfare, the environment, and human economic well-being – at both the domestic and international levels. In consumption we include issues of distribution of and access to food, consumer health (and its relationship to diet), education and information dissemination, and deployment of racializing ideologies of “good” and “bad” consumption. Of course, the production and consumption domains interrelate and overlap, and both structural adjustment⁸ and “free trade” policies, the handmaidens of corporate agriculture,⁹ are

6. See Donald Davis, *Declining Fruit and Vegetable Nutrient Composition: What is the Evidence?* 44 HORTSCIENCE 15 *passim* (2009) (summarizing “three kinds of evidence pointing toward declines during the last 50-100 years in the concentration of some nutrients in vegetables and perhaps also in fruits available in the United States and the United Kingdom”); see also discussion *infra* Part I.B.1.

7. See discussion *infra* pp. 20-23.

8. Structural adjustment policies of the World Bank and International Monetary Fund impose certain economic conditions on developing countries that borrow money from those entities. They generally require “free market”-oriented reforms, including deregulation and/or privatization of domestic enterprises and the opening of domestic markets to international competition. Structural adjustment programs have been widely criticized for having actually *harmed* (rather than helped) developing economies, by (among other things) facilitating the exploitation of their resources by powerful foreign corporations. For one definition of structural adjustment, see James B. Greenberg, *A Political Ecology of Structural-Adjustment Policies: The Case of the Dominican Republic*, 19 CULTURE & AGRIC. 85 (Sept. 1997).

9. In this piece, we use the terms “corporate agriculture” and “agribusiness” interchangeably, and we intend both of them to refer *not* to any and all agricultural undertakings that are incorporated, but rather to the transnational corporations described in the quote below, see *infra* note 13.

central to each.¹⁰ Nevertheless, we will employ this somewhat artificial distinction for ease of organization of the discussion presented here.

This Introduction explores briefly the ways in which, despite the existence of alternative models, the dominant approaches to food policy obscure and legitimate the widespread food insecurity, poor health, environmental degradation, and labor exploitation produced by current systems of food production and consumption. Many of the themes sounded here are developed in the papers presented in this symposium. As those papers reveal, world trade law and policy are justified by an entrenched “free market fundamentalism”¹¹ that must continue to be challenged. In addition – as we’ll note in discussing the consumption domain – mainstream food discourses in the areas of health, nutrition, and education also obscure the systemic causes of food inequalities, and the role of food law and policy in perpetuating them.¹²

A. *The Production Domain*

*Since [the mid-1970s], corporations have diversified into multiple facets of the food sector, including commodity trading, food processing and retailing, as well as seed and agricultural chemical production. . . . They have stretched their operations both vertically and horizontally, to the point that it no longer makes sense to speak of national food systems because the agrifood TNCs [transnational corporations] are so globally integrated in their operations.*¹³

10. In other words, international trade rules and structural adjustment programs operate on both the productive and the consumptive levels. For instance, trade negotiations commonly seek to open markets for producers, in order, in part, to lower costs for consumers. See US. Dept. of Commerce & Office of Consumer Affairs, *The North American Free Trade Agreement (NAFTA): What It Means for Consumers*, <http://www.library.unt.edu/gpo/oca/nafta.htm> (last visited April 20, 2011) (stating that consumers “should . . . care about the NAFTA” because trade barriers “can significantly increase the cost of the product”) Furthermore, structural adjustment programs limit the state’s role and resources in constructing internationally competitive markets, including limiting the subsidies and welfare available to national consumers. See Carmen G. González, *The Global Food Crisis: Law, Policy, and the Elusive Quest for Justice*, 13 YALE H. RTS. & DEVEL. L.J. 462, 469 (2010) [hereinafter *Global Food Crisis*] (noting that structural adjustment programs mandate the “curtailment of government services and subsidies”).

11. Daniel Bonilla et al., *Reality, Theory, and Make-Believe World: The Fundamentalism of the “Free” Market*, 5 SEATTLE J. SOC. JUST. 499, 500 (2007).

12. See *infra* Part I.B.

13. See González, *Mythology of Free Trade*, *supra* note 5, at 4. Clapp and Fuchs further describe “agrifood transnational corporations” as follows: “They dominate the production and international trade in food and agricultural items, and are also key

1. Introduction.

Agricultural production around the world is increasingly dominated by a small number of large, multinational corporations.¹⁴ This global expansion of agribusiness has been facilitated by domestic subsidies, international monetary policy, and so-called “free trade” agreements.¹⁵ The economic power of corporate agriculture, as well as the farming methods it uses, pose serious threats to the agricultural sectors of poor countries in the Global South (and hence, to their economies), to the health of people across the globe, and to the environment.¹⁶ While the effects of this corporatization of agriculture are international in scope,¹⁷ this Introduction will illustrate them by focusing on conditions in the Americas, with particular attention to the United States and Mexico.

2. Impact of Subsidies, Trade Agreements and Structural Adjustment on Agricultural Sectors of the Global South.

Within the United States, the agricultural sector has been subsidized for decades.¹⁸ Originally, that subsidization was justified by the predominance (at that time) of small-scale agriculture, which was thought to be uniquely vulnerable to weather and the market.¹⁹ Although large corporations now dominate food production in the United States²⁰ the subsidies continue, justified by a political discourse that still invokes the image of the small “family

players in the processing, distribution, and retail sectors . . . Many of these firms operate in numerous countries and at more than one level along the global food chain.” Clapp & Fuchs, *supra* note 4, at 1.

14. See *infra* note 61.

15. See discussion *infra* pp. I.A.2.

16. See discussion *infra* Part I.B.3.

17. See, e.g., VANDANA SHIVA, *STOLEN HARVEST: THE HIJACKING OF THE GLOBAL FOOD SUPPLY passim* (1999).

18. Mark Bittman, Op-Ed., *Don't End Agricultural Subsidies, Fix Them*, N.Y. TIMES (March 1, 2011, 8:53 PM), <http://query.nytimes.com/gst/fullpage.html?res=9A0CEFD8133EF931A35750C0A9679D8B63>.

19. See ANTONIO LA VINA, ET AL., *REFORMING AGRICULTURAL SUBSIDIES: “NO REGRETS” POLICIES FOR LIVELIHOODS AND THE ENVIRONMENT* 7 (2006).

20. U.S. DEPT. OF AGRICULTURE NAT'L AGRICULTURAL STATISTICS CTR., 2007 CENSUS OF AGRICULTURE: UNITED STATES SUMMARY AND STATE DATA, p. 9, Table 2, available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/index.asp (last visited May 28, 2011) (pointing out that the largest agricultural businesses in the U.S. (producing over \$1 million of foodstuffs per year) account for \$175.8 billion of production out of a total agricultural production of \$297.2 billion— 59.1%).

farm.”²¹ Today, more than providing needed governmental support to vulnerable U.S. farmers, the central impact of agricultural subsidies has been to benefit the bottom line of large, corporate agricultural interests, allowing them to sell their products below the actual cost of production.²² At the same time, multi-national accords like the North American Free Trade Agreement (NAFTA),²³ along with structural adjustment programs imposed on countries by the International Monetary Fund,²⁴ have made the agricultural sectors in poorer countries of the Global South more vulnerable to foreign competition.²⁵ While trade agreements between rich and poor countries demand that the latter open their markets (including agricultural markets) to foreign products and entities, those agreements often still allow countries of the Global North to maintain their agricultural subsidies – subsidies that Southern countries do not have the resources to match.²⁶ Combined together, farm subsidies, “free trade” agreements, and international monetary policy have created significant competitive advantages for multinational agri-food companies, causing disastrous effects on the small farmers, economies, and overall food security of Mexico and other countries of the Global South.²⁷

(a) *The Efficiency Myth.*

As a number of critical analysts have elaborated in their

21. See *Hearing to Review Derivatives Legislation Before the H. Committee on Agriculture*, 111th Cong. 1 (2009) (statement of Tom Buis, President, National Farmers Union); see also Editorial, *Fertilizer From the Farm Lobby*, THE BOSTON GLOBE (May 26, 2009), http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2009/05/26/fertilizer_from_the_farm_lobby/.

22. *Mythology of Free Trade*, *supra* note 5, at 68 (listing U.S. products exported at below cost of production, ranging from 10% below (corn and soybeans) to 47% below (cotton)). U.S. farmers’ agricultural subsidies totaled \$18 billion in 2006. MARIE-MONIQUE ROBIN, *THE WORLD ACCORDING TO MONSANTO: POLLUTION, CORRUPTION, AND THE CONTROL OF OUR FOOD SUPPLY* 294 (2008).

23. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993), available at <http://www.sice.oas.org/trade/nafta/naftatce.asp>. [hereinafter NAFTA].

24. For a detailed discussion of how the structural adjustment programs have harmed the economies of developing nations, see Timothy A. Canova, *Global Finance and the International Monetary Fund’s Neoliberal Agenda: the Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 38 U.C. DAVIS L. REV. 1547, 1556-57 (2000).

25. See discussion *infra* Part I.B.2.

26. See, e.g., González, *Global Food Crisis* *supra* note 10, at 466 (“[The General Agreement on Tariffs and Trade (GATT)] succeeded in reducing tariffs on manufactured goods, but permitted agricultural protectionism to flourish in the United States and Western Europe.”).

27. See discussion *infra* pp. 10-15.

work, trade policies supported by the U.S. and other countries of the Global North, as well as structural adjustment programs strongly influenced by those countries, have combined to produce an international food system that favors the rich at the expense of the poor.²⁸ Both trade policy and international monetary policy are based upon theories espousing neoclassical economics and formally equal access to international trade. Like most “free market” and formal equality approaches, “free trade” policies all too often exacerbate existing inequalities, harming especially small farmers and other rural poor people. Just as formal equality among unequal individuals is likely to produce disparate results,²⁹ “[f]ormal equality among nations with vastly unequal economic power will only reinforce the dominance of the North by failing to address the entrenched economic imbalances rooted in centuries of Northern colonial exploitation and decades of Northern protectionism.”³⁰ International monetary policy also favors the rich over the poor. By incentivizing neoliberal economic reforms such as “deregulation, privatization of industry and government services, reduction of government spending, financial liberalization, promotion of foreign investment, and enhanced protection of private property rights,”³¹ it has weakened social safety nets, reduced subsidies and governmental support for farmers, and exposed local producers to highly subsidized foreign competition.³²

28. See, e.g., González *Mythology of Free Trade*, *supra* note 5, at 83-84 (“[T]he neoliberal economic reforms promoted by the World Bank, the IMF, and the WTO deprive Southern governments of the ability to mitigate the power of transnational agribusiness . . .”); M. RODWAN ABOUHARB & DAVID CINGRANELLI, HUMAN RIGHTS AND STRUCTURAL ADJUSTMENT 67 (2007) (“Free-market economics generate winners and losers. Recent work has linked free trade with increased economic inequality.”); *Tricks of the Trade: Injustices in the Global “Free-Trade” Food System*, NEW INTERNATIONALIST MAG., January/February, 2003, available at http://www.thirdworldtraveler.com/Food/Tricks_Trade.html (“The global trade system, dominated by rich-world corporations, keeps poor countries poor.”).

29. For one example of the many discussions of how formal equality reinforces existing inequalities, see CATHARINE MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN 10-27 (1979).

30. *Mythology of Free Trade*, *supra* note 5, at 75.

31. Carmen G. González, *An Environmental Justice Critique of Comparative Advantage: Indigenous Peoples, Trade Policy, and the Mexican Neoliberal Economic Reforms*, 32 U. PA. J. INT’L L. 723, 727 (2011).

32. See, e.g., *id.* at 740-46 (describing the effect of neoliberal economic restructuring on Mexican corn agriculture). See generally, Canova, *supra* note 24 (describing effects of neoliberal monetary policy on developing nations’ economies); Timothy A. Canova, “Financial Liberalization, International Monetary Dis/Order, and the Neoliberal State,” 15 AM. U. INT’L. L. REV. 1279, 1285 (2000) (arguing that “the dominant neoliberal narratives and discourses . . . blame the developing countries for their lack of access to scarce capital and, thereby, call for a range of structural

The interests of corporate agriculture and the conventional neoclassical wisdom regarding trade and economic policy dovetail precisely: both seek, first and foremost, efficiency. Of course, most corporations will seek to maximize profits by increasing output while reducing costs. That goal is similarly shared by mainstream agricultural economists, whose assumption that the problem is food shortages rather than unequal distribution leads to the conclusion that producing more for less is the answer to the problem of world hunger.³³ From this perspective, both genetically modified foods that are resistant to pests and large-scale, monoculture farming techniques that allow more food to be grown for less money are central to solving the planet's food problems.³⁴ Similarly, this view sees small-scale farming as an inefficient luxury that the world can no longer afford.³⁵ Unaddressed by this

adjustment and policy changes in those countries, including liberalization, privatization, central bank autonomy, and austerity.”).

33. See, e.g., FOOD AND AGRICULTURE ORG., FAO AT WORK: 2009-2010, GROWING FOOD FOR NINE BILLION 3 (2010), available at <http://www.fao.org/docrep/013/am023e/am023e00.pdf> (“Food production will have to increase by 70 percent to feed a population of nine billion people by 2050.”). This perception is erroneous, however. Studies have shown that there is already sufficient food on the planet. The problem is one of unequal distribution – including diversion of foodstuffs from local nutritional use to use as exports. See *Global Food Crisis*, *supra* note 10, at 463-64 (describing and critiquing the mainstream view and concluding, “food insecurity is a function of poverty rather than food scarcity . . .”); THOMAS BARFIELD, THE DICTIONARY OF ANTHROPOLOGY 250-51 (2000) (“Food shortage, and in its extreme form, famine, can be caused by difficult climatic, political or other socioeconomic conditions that affect a whole region or country. Food shortage is often linked simplistically to food production failures caused by such natural disasters as drought, cyclones of crop plagues, but inadequate storage, heavy taxation, or export demands, as well as other market and political factors, can also reduce food supplies within a region. . . Most shortages attributed to natural causes in Africa and Asia (as well as in nineteenth-century Ireland), are entitlement failures, because food exists but the victims of starvation cannot afford it and lack the political power to secure disaster relief.”).

34. See, e.g., Marc Williams, *Feeding the World? Transnational Corporations and the Promotion of Genetically Modified Food*, in CORPORATE POWER IN GLOBAL AGRIFOOD GOVERNANCE 155, 166-67 (Jennifer Clapp & Doris Fuchs eds., 2009) (citing efficiency as one of the three arguments made by agrifood firms in favor of GMO foods).

35. PETER HAZELL, STEVE WIGGINS, & ANDREW DORWARD, *The Future of Small Farms: Synthesis Paper*, in WORLD DEVELOPMENT REPORT 2008 36 (2008), available at <http://wdronline.worldbank.org/worldbank/a/nonwdrdetail/87> (“Agriculture and small farms have played a major role in development and poverty reduction in the past, but changing global conditions and donor policies, and the characteristics of today's poor countries are widely acknowledged as making this much more difficult today. . . unless key policy makers adopt a more assertive agenda towards small farm agriculture, there is growing risk that there will soon be a dramatic increase in rural poverty and waves of migrants to urban areas that could overwhelm available job opportunities, urban infrastructure and support services.”).

focus on efficiency are the effects that “efficient” farming methods have on domestic economies, food quality, worker safety, and the health of the environment.

Like corporations and agricultural analysts, trade policy makers also emphasize efficiency. The principle of “comparative advantage,” which underlies much of modern trade law, emphasizes that each nation needs to produce and export the products it can most efficiently produce, eschewing other products.³⁶ Because the “free market” is seen as the mechanism for accomplishing an efficient balance of trade wherein each nation uses its comparative advantage, this dominant view endorses the elimination of trade barriers and the development of narrow, specialized export economies in poor countries. Within the Western hemisphere, for example, both NAFTA and the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR)³⁷ are seen as having opened borders to the free flow of goods and services, thereby creating a regional system of self-serving, nationalist trade policies that nevertheless are ultimately beneficial to all.³⁸ Under this view, “free market”-focused development and trade systems are the ticket to prosperity for a poor country. Providing evidence of the widespread adherence to this view, attorneys from the Mexican litigation firm, Litiga OLEe (Litiga, Organización Estratégico de Derechos Humanos/Litiga, Strategic Organization for Human Rights) described in their SNX presentation how a judge hearing their challenge to genetically modified corn had scolded them for failing to realize that Monsanto’s product could end world hunger, making them feel accused of being “an obstacle to development.”³⁹

However, as Professor Carmen González has explored in her work (and discusses briefly in her introduction to the first cluster of papers in this symposium), in actuality trade and development

36. See González, *Mythology of Free Trade*, *supra* note 5, at 71-72 (describing the principle of comparative advantage).

37. Dominican Republic-Central America Free Trade Agreement, August 5, 2004, 19 U.S.C. § 4001, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text>.

38. See, e.g., CAFTA-DR, OFFICE OF THE U.S. TRADE REP., <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta> (last visited Oct 7, 2011) (“This agreement is creating new economic opportunities by eliminating tariffs, opening markets, reducing barriers to services, and promoting transparency. It is facilitating trade and investment among the seven countries and furthering regional integration.”).

39. Panel Transcript: Impact Litigation against the Cultivation of Genetically Modified Maize in Mexico, 43 U. MIAMI INTER-AM. L. REV. 267, 274-75 (2011) (authors’ translation).

policies are neither efficient nor fair.⁴⁰ Thus, discourses of agricultural efficiency and free trade merely obfuscate a reality of economic domination and exploitation.

(b) *The Mexican Example.*

The case of Mexico is a striking example of how subsidies in wealthy countries can combine with trade agreements and structural adjustment programs to produce extremely harmful power imbalances between Northern and Southern agricultural interests.⁴¹ The result of that combination in this hemisphere has been a biased trade regime that has seriously harmed both domestic agricultural interests and the broader economy in Mexico and elsewhere.

For example, by allowing subsidized U.S. agricultural products tariff-free access to Mexican markets, NAFTA exposed local growers of corn and other products to withering competition with international corporate agriculture.⁴² Subsidies to U.S. growers increased production, which in turn depressed prices.⁴³ Ironically, free food aid provided to Mexico in emergencies also lowered prices and thereby undermined the market for corn and other products, destroying the long-term economic security of the very people the aid was designed to help.⁴⁴ Ultimately, corn prices

40. See, e.g. González, *Global Food Crisis* *supra* note 10, at 469 ("Structural adjustment . . . introduced a double standard that continues to plague world agricultural trade: protectionism for the wealthy and free markets for the poor.").

41. On the effects of "free trade" policies, see *supra* pp. 6-9.

42. Rick Rellinger, *NAFTA and U.S. Corn Subsidies: Explaining the Displacement of Mexico's Corn Farmers* PROSPECTJOURNAL.UCSD.EDU (April 2010), <http://prospectjournal.ucsd.edu/index.php/2010/04/nafta-and-u-s-corn-subsidies-explaining-the-displacement-of-mexicos-corn-farmers/>; see generally Timothy Wise, *Agricultural Dumping under NAFTA: Estimating the Costs of U.S. Agricultural Policies to Mexican Producers* 1 (Global Dev. & Env't Inst., Working Paper No. 09-08, Dec. 2009), available at <http://www.ase.tufts.edu/gdae/Pubs/wp/09-08AgricDumping.pdf> ("With the opening of the Mexican economy under the North American Free Trade Agreement (NAFTA), Mexican agriculture came under new competitive pressures from U.S. exports. High U.S. farm subsidies for exported crops, which compete with Mexican products, have prompted charges that the level playing field NAFTA was supposed to create is in fact tilted heavily in favor of the United States.").

43. See also *Harvesting Poverty: The Unkept Promise*, N.Y. TIMES, Dec. 20, 2003, at A20, cited in González, *Global Food Crisis*, *supra* note 10, at 463 n.12.

44. González *Global Food Crisis*, *supra* note 10, at 463 (citing JAMES WESSEL, *TRADING THE FUTURE: FARM EXPORTS AND THE CONCENTRATION OF ECONOMIC POWER IN OUR FOOD SYSTEM* 168 (1983)). Food aid has of course traditionally been designed to help the donor nation as well as the recipient. See Jennifer Clapp, *Corporate Interests in US Food Aid Policy: Global Implications of Resistance to Reform*, in *CORPORATE POWER IN GLOBAL AGRIFOOD GOVERNANCE* 125 (Jennifer Clapp & Doris Fuchs eds., 2009) [hereinafter, *Corporate Interests*] ("Tied, in-kind food aid [aid tied to

dropped dramatically.⁴⁵ Many small subsistence farms (formerly the main source of the Mexican corn crop⁴⁶) failed⁴⁷ in the face of competition with large, U.S. corn growers who could afford to weather the falling prices by selling their subsidized product below the cost of production.⁴⁸ With food imports to Mexico growing from US\$1,790 million in 1982 to US\$20,800 million in recent years, trade liberalization policies combined with NAFTA to trap the country in the status of a net food importing nation. As Dr. José Luis Calva notes in his symposium article, Mexico has been an “enormous laboratory of neoliberal experimentation.”⁴⁹

As the Symposium attendees learned from viewing the documentary film, “The World According to Monsanto,” the introduction of patented genetically modified seeds into the international food system risks further increasing the burden on local Mexican growers, as well as threatening crucial biodiversity in Mexico’s

commodities grown in the donor country] has historically been used as a surplus disposal mechanism.”). On the negative impact of U.S. food aid practices on the nations receiving that aid, see *id.*

45. González, *Mythology of Free Trade*, *supra* note 5, at 84. See Michael Pollan, *A Flood of U.S. Corn Rips at Mexico*, Commentary, L.A. TIMES, April 23, 2004, <http://michaelpollan.com/articles-archive/a-flood-of-u-s-corn-rips-at-mexico/> (stating that corn prices in Mexico dropped 50% between 1994 and 2004); MARIE-MONIQUE ROBIN, *THE WORLD ACCORDING TO MONSANTO: POLLUTION, CORRUPTION, AND THE CONTROL OF OUR FOOD SUPPLY* 245 (2008) (“It is estimated that between 1994 and 2002, the price of Mexican corn fell by 44 percent, forcing many small farmers to head for city slums.”); Rellinger, *supra* note 42 (“Despite a minor two-year recovery, the price of corn continued to plummet and reached 50% of its pre-NAFTA levels by the end of the decade.”).

46. See ALEJANDRO NADAL, *THE ENVIRONMENTAL & SOCIAL IMPACTS OF ECONOMIC LIBERALIZATION ON CORN PRODUCTION IN MEXICO* 43, 44 (2000).

47. According to the Carnegie Endowment, Mexican agriculture lost 1.3 million jobs by 2003. JOHN J. AUDLEY ET AL, *NAFTA’S PROMISE AND REALITY* 17, 20 (2003), available at <http://www.carnegieendowment.org/files/nafta1.pdf>. Thus, while Mexican corn production remained at pre-NAFTA levels, after the trade agreement was implemented the producers changed from small farmers (who could not compete with the subsidized U.S. growers) to large agri-businesses (whose methods allowed them to grow their crop for less). Within a year of the implementation of NAFTA’s trade policies, “the Mexican corn industry suffered a loss of nearly six hundred corn producers.” Rellinger, *supra* note 42.

48. Rellinger, *supra* note 42. U.S. growers “dumped” corn and other products on developing markets at below cost when the market became glutted. *Global Food Crisis*, *supra* note 10, at 470. And unlike industrial workers, small farmers usually cannot easily find alternative work. See Doris Fuchs, et al., *Retail Power, Private Standards, and Sustainability in the Global Food System*, in CLAPP & FUCHS, *supra* note 4, at 40.

49. José Luis Calva, *La Producción de Alimentos en México en el Marco de las Políticas Neoliberales y del TLCAN*, 43 U. MIAMI INTER-AM. L. REV. 43, 43 (2011) (authors translation).

main staple, corn.⁵⁰ GMO seeds significantly increase the costs of growing corn, for farmers must buy the seeds themselves (rather than using some from the previous year's harvest) and then must support the crop with expensive fertilizers and pesticides not required for indigenous varieties.⁵¹ Moreover, even during the country's recently-ended moratorium on importing GMO corn,⁵² modified corn seeds were found in non-GMO Mexican fields.⁵³ Such contamination of the corn crop creates not only the risk that small farmers will be forced to use expensive farming techniques to support the corn they find in their fields, but also the risk that they will be exposed to patent infringement lawsuits for the corn they involuntarily and perhaps unknowingly cultivate.⁵⁴ This uncontrolled spread of GMO seeds also raises the prospect of a loss of product diversity, as the seeds contaminate fields of indigenous corn.⁵⁵

While at first blush the loss of crop diversity might seem to be nothing more than an aesthetic harm (as yellow corn replaces purple, blue, black and orange varieties), crop uniformity actually has much more serious ramifications. Genetic diversity is the farmer's insurance policy, protecting him or her from losing an entire harvest in case of blight, drought or other disaster that affects some varieties but not others. Moreover, preserving crop diversity is especially important as the globe faces climate change. Given that it is too early to precisely predict the location and nature of droughts, floods or infestations of new pests that the future might bring, now is not the time to reduce the number of seed options available to farmers. Mexico's many indigenous vari-

50. THE WORLD ACCORDING TO MONSANTO (Image et Compagnie et al. 2008). Critics argue that, "existing inequalities in economic and political systems [of poor countries] may be exacerbated by the introduction of GM crops, thus increasing rather than decreasing hunger." Williams, *supra* note 34, at 169.

51. ROBIN, *supra* note 22, at 244-45.

52. The moratorium was passed in 1998, *id.* at 244, and lifted in March of 2009. Veronica Guerrero, *Mexico Oks GM Corn*, 27 NATURE BIOTECH. 404 (May 2009). Even during the moratorium, 40% of the corn imported into Mexico was transgenic. ROBIN, *supra* note 22, at 245.

53. ROBIN, *supra* note 22 at 246.

54. *Id.* See, e.g., *Schmeiser v. Monsanto Canada Inc.*, [2004] 1 S.C.R. 902, para. 72 (Can.) (holding plaintiff liable for use of patented seeds, even though original seeds might have blown onto plaintiff's land without permission, because that did not explain plaintiff's harvesting crop from the resulting plants).

55. Mexico has over 150 varieties of corn. ROBIN, *supra* note 22, at 244. Its long and rich corn cultivation tradition plays a central part in the nation's economy and cultural identity. *Id.* See also, González, *Mythology of Free Trade*, *supra* note 5, at 73-4. At least two researchers have found that transgenic corn is producing genetic anomalies in corn growing in Mexican fields. ROBIN, *supra* note 22, at 246-47, 253-54.

eties of corn, for example, will be vital to plant breeders seeking to promote particular traits.⁵⁶

Finally, during the recent food crisis rising, not falling, corn prices were the issue. Fueled by food commodities speculation following the U.S. housing bubble burst and growth in the biofuels industry which has significantly increased demand for corn,⁵⁷ the price of corn spiked dramatically.⁵⁸ As a result, the price of tortillas, the main staple of the Mexican diet, rose precipitously,⁵⁹ putting them out of reach of many consumers and prompting food riots.⁶⁰ As this series of events illustrates, now that Mexico relies on importing food rather than growing its own, it is subject to rapid and unpredictable food price fluctuations – fluctuations controlled by a monopolized and largely unregulated (or, at least, ineffectually regulated) agribusiness industry.⁶¹

In sum, U.S. domestic subsidies, food aid, elimination of protective trade barriers, biofuel production, and GMO patents created a “perfect storm” for the Mexican economy. They enabled American corn producers to flood the Mexican market with low-priced corn which wiped out a huge portion of Mexican producers,⁶² and eventually (when the GMO crops arrived) to raise the price of the commodity that they had come to monopolize through the dumping. The catastrophic effects of this series of events included: farmer unemployment and migration to urban areas⁶³ (followed, in some cases, by emigration to the United States), loss of biodiversity⁶⁴ (Mexico has traditionally produced over 150 vari-

56. See Carmen G. González, *Genetically Modified Organisms and Justice: the International Environmental Justice Implications of Biotechnology*, 19 GEO. INT'L. ENVTL. L. REV. 583, 607-10 (2007).

57. See González *Global Food Crisis*, *supra* note 10, at 472.

58. See Michael Pollan, *You Are What You Grow*, MICHAELPOLLAN.COM (April 22, 2007) <http://michaelpollan.com/articles-archive/you-are-what-you-grow/>.

59. During 2007, the price of tortillas rose 40% in one month. CAROLINA BANK MUÑOZ, *TRANSNATIONAL TORTILLAS: RACE, GENDER, AND SHOP-FLOOR POLITICS IN MEXICO AND THE UNITED STATES* 27 (2008).

60. See *infra*, at Part I.B.1. (discussing the effect of higher domestic food prices on increased consumption of unhealthy “fast food” in Mexico).

61. Of all the corn exported from the United States, 82% is exported by only three companies. PETER M. ROSSET, *FOOD IS DIFFERENT: WHY WE MUST GET THE WTO OUT OF AGRICULTURE* 46 (2006) (*cited in* González, *Global Food Crisis*, *supra* note 10, at 471 n.60). For additional data on concentration in both the production and processing sectors of various foodstuffs, see Clapp & Fuchs, *supra* note 4, at 5.

62. Rellinger, *supra* note 42.

63. *Id.* (“Since the 1994 implementation of NAFTA, massive rural to urban migration took place within Mexico as agrarian farmers moved to metropolitan centers.”).

64. González, *supra* note 31, at 758.

eties of corn⁶⁵), environmental and energy impacts (due to industrial farming techniques and long-distance importing of corn into Mexico from the U.S.),⁶⁶ and severe nutritional deficits among Mexico's poor⁶⁷ (whose diets have deteriorated now that local corn is unaffordable for them). The decimation of Mexican small corn farming, along with trade rules opening Mexico to foreign investment has, in turn, increased opportunities for large food retailers such as Walmart and fast-food companies such as McDonald's to enter the Mexican market,⁶⁸ further weakening the Mexican diet (and threatening small grocers as well).⁶⁹

Moreover, many of the phenomena listed above have disproportionately affected Mexico's indigenous population. The indigenous peoples of Mexico comprise nearly a third of the indigenous population of Latin America. Many of them are (or were) farmers. For such cultivators, the loss of livelihood that so many farmers have faced often represents a loss of lands that have been occupied for generations, a loss of communities that supported traditions and languages that are centuries old, and ultimately a loss of cultural integrity. The harmful effects of the policies discussed above therefore threaten not only a crucially important food and source of livelihood for the Mexican people but also the historical roots and ancient civilizations of the nation as well.

Mexico's experience demonstrates that the economic assumptions that have informed and structured the food production domain are flawed. Rather than supporting the economies of poor countries, U.S. and U.S.-supported trade and development policies are effecting a new form of colonialism that perpetuates, rather than diminishes, Northern corporate and economic hegemony throughout the world. Those policies have opened new opportunities for multinational corporations in the Global North to extract wealth from nations of the Global South at the expense of the very people the policies purport to help. During the colonial era, European and North American powers forcibly extracted humans

65. ROBIN, *supra* note 22, at 244.

66. For a brief discussion of the environmental effects of the corporatization of agriculture, see *infra*, at Part I.A.3.

67. For further discussion of nutritional deficits in the Mexican diet, see *infra* pp. 33-34.

68. "[T]he liberalization of foreign direct investment rules in developing countries has facilitated the rapid expansion of supermarkets in the global South, most of which are owned by major international retail corporations." Clapp & Fuchs, *supra* note 4, at 5. Global trade in processed foods is growing, and already accounts for 66% of agricultural trade. *Id.* at 4.

69. Fuchs et al., *supra* note 48, at 47.

(chattel slaves from Africa, severely exploited workers from Asia, etc.) and natural resources (for example gold, ivory, and minerals) from less powerful nations around the world, effecting a radical redistribution of wealth and resources.⁷⁰ Through those extractions, they destroyed indigenous societies and exterminated indigenous peoples. Today, economies of the Global North are appropriating the food crops that have formed the very foundation of the subsistence food systems in Mexico and elsewhere for centuries. And that appropriation is threatening the very existence of indigenous peoples – ironically, at the same moment when international law is beginning to recognize their rights.⁷¹

(c) *A Colonial Legacy?*

The various Northern attempts to control Southern agricultural practices described above are arguably the legacy of a long history of colonial interference in indigenous cultivation. Interference with agricultural practices was a common and often contentious element of colonial rule. For example, quinoa, a protein-balanced grain cultivated in the Andean region as long ago as 3000 BC, was considered a sacred plant by the Incans when they confronted the Spanish empire. The Spanish rejected quinoa for both cultural and religious reasons. They preferred to derive their protein from meat and grow familiar European grains,⁷² and they also opposed quinoa because of its non-Christian religious associations.⁷³ In the 1940s, Peru began to import large quantities of

70. On the economic impact of slavery on West African nations see JOSEPH E. INIKORI & STANLEY L. ENGERMAN, *THE ATLANTIC SLAVE TRADE: EFFECTS ON ECONOMIES, SOCIETIES, AND PEOPLES IN AFRICA, THE AMERICAS, AND EUROPE* (Joseph E. Inikori & Stanley L. Engerman eds., 1992).

71. S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 332 (2d ed. 2004).

72. See *Quinoa: History*, ANNADANA, http://www.annadana.com/actu/new_news.cgi?id_news=108 (last visited June 6, 2011) (explaining that the Spanish rejected quinoa because they preferred the western grains, sheep, and cattle they had brought with them).

73. Jordan Erdos, *Atawallpap Mikhunan: Quinoa, Mother Grain of the Incas*, PLANETA.COM (Dec. 1999), <http://www.planeta.com/planeta/99/1199quinoa.html> (explaining that during the colonial period in South America, “quinoa use was associated strictly with native populations, leading to an undesirable perception of the seed as belonging to the lower class.”). See also *id.* (“It is believed that the Incas considered quinoa to be a sacred plant. Religious festivals included an offering of quinoa in a fountain of gold to the sun god, Inti. . . [and] ancient Incans worshipped entombed quinoa seeds as the progenitors of the city.”). Interestingly, today the price of quinoa is rising, in response to the Global North’s discovery of its valuable nutritional properties; as a result, this important Andean product is no longer affordable to the poor of that region. Simon Romero & Sara Shahriari, *Quinoa’s*

U.S.-produced wheat, and production of quinoa dropped to an all-time low.⁷⁴ In Sierra Leone, British colonial officials forced local peasants to stop intercropping short-staple cotton with food crops, a traditional method that had “controlled erosion, kept down plant pests, and preserved food security.”⁷⁵ The British insisted on the monoculture of long-staple cotton, which in short order led to severe field erosion when predictable heavy rains came.⁷⁶

Similarly, today, as Scott Brainard recounts in his Symposium piece on Indonesian agriculture, the Indonesian government, backed by international financial institutions, has pushed that nation’s agricultural sector towards harmful monoculture palm oil production.⁷⁷ The impetus behind this move, Brainard concludes, is not principally race-based or nationalistic, but rather reflects a capitalist state’s desire (along with private capital) to control the means of production. Whether brought about by colonial regimes, international financial institutions, national governments, or transnational corporations, the results of Northern colonialist interventions into poor Southern countries’ agricultural sectors appear to be the same: ahistorical and decontextualized agricultural policies with negative long-term environmental and humanitarian impacts.

Global Success Creates Quandary at Home, N.Y. TIMES, Mar. 19, 2011, at A6, available at <http://www.nytimes.com/2011/03/20/world/americas/20bolivia.html?pagewanted=all> (discussing Quinoa prices in Bolivia).

74. *Id.* (“Further decline occurred in Peru in the 1940s when the government began to import large amounts of wheat. Between 1941 and 1974, quinoa cultivation plummeted from 111,000 acres to 32,000 acres.”).

75. WILLIAM EASTERLY, *THE WHITE MAN’S BURDEN: WHY THE WEST’S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* 281 (2006).

76. *Id.*

77. Scott Brainard, *The Impact of Indonesian Agricultural Policies on Indigenous Populations, Natural Resources and the Economy: The Limits of Democratic Self-Determination under Capitalist Regimes*, 43 U. MIAMI INTER-AM. L. REV. 163, 186 (2011) (“[T]he results of a recent internal audit of the private sector arm of the World Bank, the International Finance Corporation (IFC) . . . reveal in detail how the World Bank is currently funding a number of multinational oil palm trading groups operating in Indonesia, despite having been made aware of the fact that the oil palm plantations these groups have invested in explicitly and consistently violate the World Bank’s own Performance Standards for loans, due to their negative environmental and social effects.”) (citing OFFICE OF THE COMPLIANCE ADVISOR/ OMBUDSMAN, CAO AUDIT OF IFC’S INVESTMENT IN: WILMAR TRADING, DELTA-WILMAR CIS, WILMAR WCAF, DELTA-WILMAR CIS EXPANSION, 2-3 (June 19, 2009), available at http://www.forestpeoples.org/documents/ifi_igo/ifc_wilmar_cao_audit_report_jun09_eng.pdf).

3. Who Pays the Price: Effects on Agricultural Workers and the Environment.

The corporatization of subsistence crops turns the most basic elements of poor nations' diets into products that must be purchased from powerful multinational corporations at inflated prices.⁷⁸ At the same time, it forcefully converts subsistence farmers, who must now buy their food with currency, into wage and migrant laborers to be exploited by corporate agriculture in their countries and abroad.⁷⁹ In short, rural poor communities and farm workers bear the brunt of their nations' inability to control the economic impacts of corporate agriculture, and women and children bear a disproportionate share of that burden. "[T]he vast majority of the world's people – 70 percent – earn their livelihoods by producing food. The majority of these farmers are women."⁸⁰ Moreover, farmers' loss of their lands has a particularly egregious impact on indigenous peoples who experience the intersecting effects of race, class and culture. "[T]rade liberalization imposes particular risks on traditional land-based cultures whose collective identities are rooted to their ancestral territories and resources."⁸¹ Thus, when indigenous farmers are forced to abandon subsistence production and migrate to urban areas, they lose not only their lands but their cultural identity as well. Migration not only transforms them into surplus labor but also accelerates their disappearance as a distinct people.

Since the majority of migration for agricultural work in the United States is unregulated and unauthorized, the transformation of subsistence farmers into wage laborers exposes those workers to dangerous, expensive travel through smuggling and trafficking to labor in Northern farm fields, joining a passive, silenced labor pool.⁸² In the United States, for instance, the notion

78. See *supra* pp. 12-13; see also González, *Mythology of Free Trade*, *supra* note 5, at 90 ("[T]he South's 'comparative advantage' in agricultural production was imposed rather than chosen. . . It is important for progressive legal scholars to shatter the myth that the North's economic dominance is the product of free trade and free capital flows [rather than of] . . . the colonial and postcolonial plunder of the South's resources . . .").

79. See *infra* text accompanying notes 80-104.

80. VANDANA SHIVA, *STOLEN HARVEST: THE HIJACKING OF THE GLOBAL FOOD SUPPLY* 7 (2000).

81. *The Mythology of Free Trade*, *supra* note 5, at 774.

82. See, e.g., Linda Valdez, *The Issue: Human Smuggling: Wily Criminals Snare Prey on Border*, ARIZONA REPUBLIC, May 7, 2006, at V4 (discussing violent nature of human smuggling and its effect on American immigration law); Julie Watson, *Smugglers Profit from Increased Border Security*, CONTRA COSTA TIMES, April 9, 2006,

of “vulnerable farmers” has been used not only to justify protective trade regimes as described above, but also to support the exclusion of farm workers in the U.S. from several important protective labor laws. For example, unauthorized workers may not seek monetary lost-wage remedies under the National Labor Relations Act.⁸³ Farm workers and domestic workers are the only two groups excluded entirely from the NLRA, which establishes the right to form unions and engage in collective bargaining.⁸⁴ Indeed, as a direct legacy of the racialized history of slave labor in U.S. agriculture, farmworkers were originally excluded from all of the New Deal protections⁸⁵— a situation that has been only partially corrected through subsequent legislation.⁸⁶ Farmworkers still have no federal right to overtime pay,⁸⁷ and nonpayment of wages owed is a recurring problem in the farm fields of the nation.⁸⁸ Working conditions in the fields of industrial agriculture include daily exposure to harmful pesticides and fertilizers,⁸⁹ heat exhaustion

at F4; David Spener, *Peril on the Migrant Trail; Immigrants Face Death, Danger to Reach U.S.*, SAN ANTONIO EXPRESS-NEWS, June 8, 2003, at 1H; see also U.S. GOV'T ACCOUNTABILITY OFFICE, ILLEGAL IMMIGRATION: BORDER-CROSSING DEATHS HAVE DOUBLED SINCE 1995; BORDER PATROL'S EFFORTS TO PREVENT DEATHS HAVE NOT BEEN FULLY EVALUATED, GAO-06-770 (Aug. 2006), available at <http://www.gao.gov/new.items/d06770.pdf>.

83. 29 U.S.C. §§ 151-69 (1935).

84. National Labor Relations Act, 29 U.S.C. § 152(3) (2006); see also *Frequently Asked Questions – NLRB*, NATIONAL LABOR RELATIONS BOARD, <http://www.nlrb.gov/faq/nlrb> (last visited May 25, 2011).

85. See Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1336 (1987) (explaining that excluding farm workers was routine in New Deal Legislation because in order to pass New Deal reforms President Roosevelt needed to compromise with southern congressmen); see also Juan F. Perea, *The Echoes of Slavery: Recognizing the Racists Origins of the Agricultural and Domestic Worker Exclusion From the National Labor Relations Act*, 72 OHIO ST. L.J. 95, 96 (2011).

86. Since the New Deal era exclusions, farm workers have been brought into the social security system. See, e.g., *Social Security (US)*, N.Y. TIMES, (last updated Sept. 13, 2011), http://topics.nytimes.com/top/reference/timestopics/subjects/s/social_security_us/index.html (explaining that Social Security coverage was extended to Farm Workers in the 1950's).

87. 29 U.S.C. § 213(a)(6) (2004).

88. ZAMA COURSEN-NEFF, FIELDS OF PERIL: CHILD LABOR IN US AGRICULTURE, 29, 30 (2010), <http://www.hrw.org/reports/2010/05/05/fields-peril> [hereinafter FIELDS OF PERIL] (citing, among other examples, a survey of 500 Latino immigrant workers in five states, where 41% of workers reported they had not been paid for work performed).

89. Linda A. McCauley, et al., *Studying Health Outcomes in Farmworker Populations Exposed to Pesticides*, 114 ENVTL. HEALTH PERSP. 953, 954 (2006) (“[Organophosphate pesticides] are associated with well-known acute health problems such as nausea, dizziness, vomiting, headaches, abdominal pain, and skin and eye problems.”) The authors also cite studies finding correlations between

and dehydration,⁹⁰ grueling repetitive motion labor,⁹¹ and piece-work pay rates that induce rushed, unhealthy body movements.⁹² In addition, as factory farming practices become predominant throughout the U.S.,⁹³ laborers working in the animal farming industry experience worsened working conditions as well.⁹⁴ Such conditions include exposure to huge quantities of manure which can have a variety of health effects including nausea and severe headaches.⁹⁵ The vast majority of the U.S. farm workers suffering these harms are undocumented Mexican immigrants, forced by the economic devastation in their own country (caused by the processes described above) to emigrate to work as laborers in the North.⁹⁶

In the United States and elsewhere, the low pay and poor working conditions that characterize agricultural work disparately affect women and children. In the rural areas of the United

pesticide exposure and such chronic health problems as respiratory disorders, memory problems, dermatologic conditions, cancer, depression, neurological deficiencies, miscarriages, and birth defects. *Id.*

90. See Eric Hansen & Martin Donohoe, *Health Issues of Migrant and Seasonal Farmworkers*, 14 J. HEALTH CARE FOR POOR & UNDERSERVED 153, 158 (2003).

91. See FIELDS OF PERIL, *supra* note 88, at 43-44 (explaining that musculoskeletal disorders caused by lifting heavy weights, holding awkward positions, and prolonged repetitive motions “constitute nearly half of all agricultural occupational illness and injuries in the United States.”).

92. *Id.* at 45 (“The use of piece-rate pay strategies encourages inappropriate haste and shortcuts and may well heighten injury risk.”).

93. Factory farming, in which many thousands of animals can be confined in very tight, close-packed conditions, has grown significantly (in both size and number of such farms) in the last decade. FOOD & WATER WATCH, FACTORY FARM NATION: HOW AMERICA TURNED ITS LIVESTOCK FARMS INTO FACTORIES (2010), available at <http://documents.foodandwaterwatch.org/FactoryFarmNation-web.pdf>. The animals on a single factory farm “can produce more sewage than most large cities. . .” *Id.* The growth of these farms is an indirect result of the commodity subsidies discussed above, which, by depressing the cost of corn and other livestock feed, created an indirect subsidy for large-scale animal farming. *Id.* at vi.

94. See Kelley J. Donham, et al., *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENVTL. HEALTH PERSP. 317-18 (2007) (citing numerous studies of adverse health effects caused by high levels of ammonia and hydrogen sulfide emitted by swine-feeding operations).

95. *Id.*

96. OFFICE OF THE ASSISTANT SEC’Y FOR POLICY, U.S. DEP’T OF LABOR, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2001-2002: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS (2004), <http://www.doleta.gov/agworker/report9/chapter1.cfm#summary> (finding 53% of hired crop workers lacked authorization to work in the U.S. in 2001-2002) [hereinafter NAWS]; see also WILLIAM KANDEL, PROFILE OF HIRED FARMWORKERS, A 2008 UPDATE 12 (2008), available at <http://www.ers.usda.gov/publications/err60/err60.pdf> (citing NAWS data for 2004-06 indicating that about 50% of crop workers lacked work authorization).

States where farm workers live, children make up 35% of the population. The poverty rate in these areas is 37.1% for female-headed households, which is over double the rate for male-headed households (16.6%).⁹⁷ North America's thousands of child farmworkers⁹⁸ enjoy fewer legal protections than do other child workers,⁹⁹ despite the fact that agricultural labor is amongst the most dangerous occupation in the United States.¹⁰⁰ Hundreds of children die or are seriously injured each year while working on U.S. farms. And the twenty one percent of farmworkers who are women¹⁰¹ routinely suffer the additional harms of severe sexual harassment and sexual assault¹⁰² on the job. They also experience

97. USDA ECONOMIC RESEARCH SERVICE, RURAL POVERTY AT A GLANCE (2004), available at <http://www.ers.usda.gov/publications/rdr100/rdr100FULL.pdf>.

98. See *Fields Of Peril*, HUMAN RIGHTS WATCH, 16-17 (May 5, 2010) <http://www.hrw.org/en/reports/2010/05/05/fields-peril-0> (explaining that counting child farm workers is difficult but that farm operators reported hiring 211,588 children under the age of 18 in 2006, and that this number excludes family farms, contractors, and those working off the books).

99. U.S. GOV'T ACCOUNTABILITY OFFICE, CHILD LABOR IN AGRICULTURE: CHANGES NEEDED TO BETTER PROTECT HEALTH AND EDUCATIONAL OPPORTUNITIES 5, GAO/HEHS 98-193 (1998). See also *FIELDS OF PERIL*, *supra* note 88, at 71-72 (detailing differences in legal protections for agricultural and non-agricultural child workers).

100. The latest tables for fatal and nonfatal occupational injuries published by the Bureau of Labor Statistics report rates for animal farmers of 15.1 fatalities per 100,000 full-time workers and 6,700 injuries per 100,000 full-time workers. Crop farmers suffer fatalities at a rate of 30.6 per 100,000 full-time workers and injuries at a rate of 4,700 per 100,000 full-time workers. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, CENSUS OF FATAL OCCUPATIONAL INJURIES, 2009, http://bls.gov/iif/oshwc/cfoi/cfoi_rates_2009hb.pdf (2010); INCIDENCE RATE AND NUMBER OF NONFATAL OCCUPATIONAL INJURIES BY INDUSTRY AND OWNERSHIP, 2009, <http://bls.gov/iif/oshwc/osh/os/ostb2427.pdf>. Only fishing and some construction and extractive occupations have higher incidences of injuries and fatalities. *Id.*

101. NAWS, *supra* note 96, at chap. 2 (finding 21% of cropworkers to be women), <http://www.doleta.gov/agworker/report9/chapter2.cfm#gender>.

102. Maria L. Ontiveros, *Lessons from the Fields: Female Farmworkers and the Law*, 55 ME. L. REV. 157, 169 (2002) (citation omitted) ("Ninety percent of female farmworkers report that sexual harassment is a major problem. Female farmworkers are constantly badgered for dates and sexual favors. If they reject these requests they are fired or find themselves with lower pay and inferior job assignments. They are routinely touched, groped, and assaulted. If they complain or resist, their work assignments suffer."). The isolated nature of the work makes women farmworkers particularly vulnerable to sexual assault and harassment. Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women*, 16 VIOLENCE AGAINST WOMEN 237, 245 (2010) (explaining that working in remote, isolated areas, in physically exposing positions, and near tall bushes or vines that can conceal a harasser's action all make women farmworkers more vulnerable to unwanted comments, stares, and grabbing). Women also suffer sex discrimination in other terms and conditions of work. See Maria M. Dominguez, *Sex Discrimination & Sexual Harassment in Agricultural Labor*, 6 AM. U. J. GENDER & L. 231, 240-42 (1997) (explaining that employers give women farmworkers fewer hours of work and pay women less compared to men, and at times refuse to hire or promote women).

lost pregnancies¹⁰³ and other reproductive health issues as a result of pesticide exposure and other harsh conditions of work.¹⁰⁴

Environmental damage represents another critical dimension of the politics of food, though one that we will only touch on here. The consolidation and globalization of large corporate agribusiness, the Green Revolution,¹⁰⁵ and international food aid had drastic and lasting effects on the environment. International food aid in the wake of World War II depressed global food prices, causing farmers in the Global South to abandon agricultural production and migrate to urban areas, causing decline in domestic food production. The Green Revolution, which sought to combat world hunger by increasing food production, replaced diverse food crops with high-yielding monocultures.¹⁰⁶ Such monoculture, made possible by the use of uniform, Northern-produced seeds and agrochemicals, resulted in “soil degradation. . .depletion of freshwater resources, contamination of water supplies by pesticides and fertilizers, loss of biological diversity, and loss of ecosystem resilience.”¹⁰⁷ Monoculture crops’ inability to resist pests led to increased use of synthetic pesticides, while soil degradation produced increased reliance on chemical fertilizers — both supplied by “transnational corporations headquartered in the industrialized world.”¹⁰⁸ These products in turn have contaminated water

103. See, Hansen & Donohoe, *supra* note 90, at 158 (“Prolonged standing and bending, overexertion, dehydration, poor nutrition, and pesticide or chemical exposure contribute to an increased risk of spontaneous abortion, premature delivery, fetal malformation and growth retardation, and abnormal postnatal development.”).

104. See *id.*

105. The stated goal of the Green Revolution was “to reduce world hunger by applying modern science and technology to the task of boosting crop yields.” Carmen G. González, *Trade Liberalization, Food Security, and the Environment: the Neoliberal Threat to Sustainable Rural Development*, 14 *TRANSNAT’L L. & CONTEMP. PROBS* 419, 440 (2004) [hereinafter *Trade Liberalization*]. But the program produced several harmful environmental effects, including loss of crop genetic diversity, pesticide resistance among pests, reduction in “ecologically sustainable” farming practices and loss of local knowledge about those practices, and salinization of soils (due to intensive irrigation required by industrial agriculture). *Id.* at 445-49.

106. Although the Green Revolution was highly successful in increasing food production, it also increased food insecurity, benefitting affluent producers without providing social and economic reforms to improve the lot of poor rural farmers who could not afford the fertilizers and new irrigation technologies. Thus, it ultimately failed to address the inequitable distribution of food and production resources, as well as leading to environmental devastation from pesticides, fertilizers and erosion. *Id.* at 440-50. As discussed *supra*, at the text accompanying footnotes 72-77, these pressures were an extension of colonial interference in local farming methods, often with disastrous results.

107. González, *Trade Liberalization*, *supra* note 105, at 424.

108. *Id.* at 423, 24.

reserves¹⁰⁹ in rural areas and created serious workplace hazards,¹¹⁰ affecting isolated communities of farmworkers with little voice or visibility. For example, according to the Environmental Protection Agency's conservative estimate, each year ten to twenty thousand farmworkers in the United States experience physician-diagnosed pesticide illnesses, and injuries.¹¹¹ Similarly, Symposium contributor Professor Pamela Vesilind describes the harmful impacts on Southern and Northern rural communities of hog containment area feeding operations, or "CAFOs," including runoff from manure lagoons and air contaminated with dried dung particles.¹¹² Thus, the environmental damage has both long-term implications for global public health and more immediate harmful effects on workers and local populations.

Another environmental cost of multinational, export-oriented agriculture is the energy consumed in the production and distribution of food. Long distance shipping wastes energy and increases harmful pollution: for example, fresh produce in the United States travels on average 1,500 miles (2414 kilometers) before being consumed.¹¹³ As Symposium presenter Professor Doug West points out, over 95% of food consumed by indigenous people inhabiting the northern reaches of Canada is "imported, industrial food."¹¹⁴ This long-distance food distribution consumes incredible amounts of energy. A 2002 study from the Johns Hopkins Bloomberg School of Public Health estimated that, using our current agricultural system, three calories of energy are needed to create one calorie of edible food. However, that was just on average; some foods take far more. Grain-fed beef, for instance, requires thirty-five calories

109. *Id.* at 471.

110. Eric Hansen and Martin Donohue, *supra* note 90, at 155, 157.

111. See GENERAL ACCOUNTING OFFICE, PESTICIDES: IMPROVEMENTS NEEDED TO ENSURE THE SAFETY OF FARMWORKERS AND THEIR CHILDREN, GAO/RCED-00-40, p. 12 (March 2000) (noting that the EPA's 1999 estimate is its most recent, and also that this estimate "represents serious underreporting"). The Department of Labor estimates that seven percent of farmworkers with children age five and under take their children into fields with them. See *id.* at 6.

112. Pamela Vesilind, *The Path of Least Resistance Leads to Humane Labeling: A Proposal for Addressing Health Concerns about "Factory Farm" Foods*, 43 U. MIAMI INTER-AM. L. REV. 141, 153-54 (2011).

113. MARTIN C. HELLER & GREGORY KEOLEIAN, LIFE CYCLE-BASED SUSTAINABILITY INDICATORS FOR ASSESSMENT OF THE U.S. FOOD SYSTEM 1, 40 (2000), available at http://css.snre.umich.edu/css_doc/CSS00-04.pdf.

114. Doug West, Address at the Lat Crit South North Exchange 2010: The Global Politics of Food (May 8, 2010) (noting that such "industrial" foods have significantly increased the incidence of diabetes and heart disease in indigenous Canadian communities).

of energy for every calorie of beef produced.¹¹⁵ And of course, long-distance trucking not only consumes petroleum but also produces carbon dioxide which both contributes to global warming and is absorbed by plant life, thereby reducing their ability to store protein.¹¹⁶ (Thus, long-distance transport contributes to depleted nutrition in both the foodstuffs being shipped and those still in the fields.) Finally, the gasoline necessary for that transport is not inconsequential; it has been estimated to take “about 7.3 units of (primarily) fossil energy to produce one unit of food energy in the U.S. food system.”¹¹⁷

Much of the damage caused by the corporatization and globalization of agriculture has been invisible, in part because it disproportionately affects subordinated countries and communities.¹¹⁸ Other invisible victims of corporate agriculture are the animals raised for consumption. Unspeakable cruelty is routinely visited upon those animals,¹¹⁹ and their fate usually plays a negligible role in agriculture debates — although it occasionally becomes more visible than that of poor people,¹²⁰ piling irony upon inhumanity. Recently, however, issues of concern to middle class consumers in the North have sparked more visible discussion about the impacts of industrialized agriculture on workers, rural com-

115. Leo Horrigan et al, *How Sustainable Agriculture Can Address the Environmental and Human Health Harms of Industrial Agriculture*, 110 ENVTL. HEALTH PERSP. 445, 448 (2002), available at <http://ehp03.niehs.nih.gov/article/fetchArticle.action?articleURI=info:doi/10.1289/ehp.0211044> (exposing that foods shipped long distances also have to be harvested earlier; they are then treated with harmful gasses to ripen and/or sprayed with radiation to accommodate the long trip to market).

116. *Agriculture*, GLOBAL CHANGE, <http://www.globalchange.gov/images/cir/pdf/agriculture.pdf> (last visited Oct. 10, 2011).

117. HELLER & KEOLEIAN, *supra* note 113, at 42. This figure includes not only the energy required for food production, but also that required for food storage and preparation. Other studies cited in this piece put the figure at 1:10. *Id.* Thus, it is perhaps not too much of a stretch to say that industrial agriculture has even contributed to US oil-seeking aggressions in the Middle East. *Id.*

118. *See supra*, section I.A.1.

119. *See Vesilind, supra* note 112, at 23-4. “Breeding sows spend their entire reproductive lives lying immobile in gestation crates, unable to nuzzle young piglets or shift their bodies to avoid pain.”; *see also* KEN MIDKOFF, *THE MEAT YOU EAT: HOW CORPORATE AMERICA HAS ENDANGERED THE FOOD SUPPLY* 71 -77 (St. Martins Press, 1st ed. 2004) (“The life of a broiler chicken is not a life, as we would describe it”) (providing a description of “A Broiler Chicken’s Life,” including crowding that routinely results in death by crushing, routine transportation of “semi-live” chickens).

120. The reader may recall, for example, McDonald’s proud announcement of its “Sustainable Land Management Commitment.” *See* Nanette Maxim, *McDonald’s Courts Sustainability*, SLASHFOOD (March 11, 2011), <http://www.slashfood.com/2011/03/11/mcdonalds-courts-sustainability/> (describing and critiquing the limited nature of the SLMC program).

munities, and animals. In a vivid example, Professor Vesilind notes that, “It took the swine flu (rebranded ‘H1N1’ by the hog industry) to highlight how the agricultural landscape in Mexico has changed” from small family farms to large, CAFO-based factory farms.¹²¹ As food scandals affecting broader segments of the population have brought growing public scrutiny of food safety and GMOs, corporations are “much more active in attempting to influence. . . debates” on agriculture and environment, creating contentious and skewed policy climates such as that depicted in “The World According to Monsanto.” The result of that corporate manipulation is a mounting number of credible accounts of politicized interference with academic freedom;¹²² aggressive and irresponsible limitations on independent research;¹²³ and academic conflicts over biotech funding for research.¹²⁴ Attention to these issues is relatively recent, however, and has resulted in virtually no policy change or corporate reform.

4. Conclusion.

As the foregoing discussion has revealed, the domain of food production is one of the most vivid illustrations of the colonial and subordinating effects of Northern trade and development policies. Close examination reveals that that domain is not the arena of

121. Vesilind, *supra* note 112 at 142 (citations omitted).

122. The most egregious case in the food area is that of University of California at Berkeley biology professor Ignacio Chapela. The firestorm generated in response to his research revealing the presence of GMO corn in Mexican fields led to denial of his application for tenure at Berkeley. See ROBIN, *supra* note 22, at 245-53. (He was later awarded tenure). Charles Burrell, *Embattled UC Teacher Is Granted Tenure: Critic of Campus' Ties with Biotech Lost Initial Bid*, SAN FRANCISCO CHRONICLE, May 21, 2005, at B1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f/c/a/2005/05/21/BAG8VCSGL41.DTL> (last visited April 25, 2011); see also Len Lazarick, *Chicken Manure Lawsuit Stirs Vigorous Senate Debate*, CORRIDORINC (March 25, 2010), <http://www.corridorinc.com/corridor-news-mainmenu-119/4194-chicken-manure-lawsuit-stirs-vigorous-senate-debate> (stating that “[t]he longest and most contentious debate” in the 2010 Maryland Senate budget deliberations dealt with forcing the University of Maryland Law School clinics to provide detailed information about their caseload, including client identity, because the clinic had sued poultry farms and alleged the farms dumped poultry manure).

123. See, e.g., Doug Gurian-Sherman, Op-Ed., *See No Seeds, No Independent Research: Companies that Genetically Engineer Crops Have a Lock on What We Know about Their Safety and Benefits*, L.A. TIMES, Feb. 13, 2011, at A36, available at <http://www.latimes.com/news/opinion/commentary/la-oe-guriansherman-seeds-20110213,0,2052370.story> (“In 2009, 26 university entomologists — bug scientists — wrote a letter to the Environmental Protection Agency protesting restricted access to seeds. The letter went public, but not most of the writers’ identities. They were afraid of retaliation from the companies that might further hamper their research.”).

124. Burrell, *supra* note 122, at B1.

high-efficiency production and free-market delivery that it is often depicted to be. Rather, it is one in which industrialized nations (and the multinational corporations that increasingly influence those nations' policies and politics¹²⁵) use their political and economic power to control trade agreements and international financial institutions in ways that reap benefits for their own economies and businesses while threatening the global eco-system and further impoverishing and exploiting the world's poor and hungry.

Nevertheless, small but important pockets of resistance deserve celebration and support. Movements to protect traditional farming practices, such as La Via Campesina,¹²⁶ Coalition of Imokalee Workers¹²⁷ and Farmworker Justice,¹²⁸ have emerged in recent decades as a voice for small farms, farm workers, and other people affected by corporate-dominated food production. Organic farming has also made a mark. Although it forms a relatively small part of U.S. agricultural production,¹²⁹ organic farming has

125. For a general discussion of the influence of multinational agricultural entities on both domestic and international agricultural policies and programs, see Clapp & Fuchs, *supra* note 4. For discussion of the political influence of corporate food growers on the U.S. Congress, see Clapp, *Corporate Interests*, *supra* note 44, at 137-41.

126. Formed in 1993, La Via Campesina is a coalition of "about 150 local and national organizations in 70 countries from Africa, Asia, Europe and the Americas. . . represent[ing] about 200 million farmers." See *What is La Via Campesina?*, VILLACAMPESINA.ORG, http://viacampesina.org/en/index.php?option=com_content&view=category&layout=blog&id=27&Itemid=44 (last visited April 20, 2011) (describing an "international movement which brings together millions of peasants, small and medium-size farmers, landless people, women farmers, indigenous people, migrants and agricultural workers from around the world. It defends small-scale sustainable agriculture as a way to promote social justice and dignity. It strongly opposes corporate driven agriculture and transnational companies that are destroying people and nature.") .

127. See *About CIW*, COALITION OF IMMOKALEE WORKERS, <http://www.ciw-online.org/about.html> (last visited May 26, 2011).

128. Farmworker Justice is a Washington, D.C.-based advocacy organization that "seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice." See *About Farmworker Justice – Our Mission and Vision*, <http://www.fwjjustice.org/about-farmworker-justice> (last visited April 20, 2011).

129. Organic farmland in the United States and Canada represents 0.7% of the agricultural land across those two countries. HELGA WILLER & LUKAS KILCHER, *THE WORLD OF ORGANIC AGRICULTURE. STATISTICS AND EMERGING TRENDS* 29 (2011). As of 2005, organic farming represented only 0.5% of all U.S. agricultural production ("a little over 4 million" acres of "cropland"). *Id.* at 26. In another example of class-based access to healthy food, Latin America is now dedicating 1.4% of its farmland to organic production, *id.* at 28, but nearly all of this is exported to Europe, Japan and North America, with a small residual amount going to small wealthy pockets in capital cities in the Global South. *Id.* Latin America contains 23% of the world's organic agricultural land. *Id.*

expanded rapidly in the United States in the last decade, with a growth rate of 19% in all but one of the last five reported years.¹³⁰ The European Union has strongly rejected genetically modified foodstuffs¹³¹ and anti-WTO activism has drawn worldwide attention to the flaws of international trade policies.¹³² Poor nations are refusing to accept economic conditions that international financial institutions seek to impose upon them¹³³ and even the World Bank recently acknowledged that structural adjustment policies used in the past had not always produced the intended results.¹³⁴

B. *The Consumption Domain.*

Just as the effects of industrial agricultural production fall most heavily on marginalized groups, so the structure and ideology of food consumption have a disparately negative impact on poor, rural populations disproportionately composed of people of color. As food quality declines (due to industrialized production), eating well becomes more and more a matter of class privilege. While poor diet is often attributed to poor personal eating habits, inadequate consumption is better understood as a function of economic status – a product of poverty. But with public discourse

130. CAROLYN DIMITRI & LYDIA OBERHOLTZER, U.S. DEP'T OF AGRIC. MARKETING U.S. ORGANIC FOODS 1, 10 (2009) ("Growth rate for organic farmland in the United States started to increase in the late 1990s, and except for 2002, the year in which national organic standards were implemented, continued to increase with an average growth rate of 19% from 2000 to 2005.").

131. See, e.g., *20 Questions on Genetically Modified Foods*, WORLD HEALTH ORGANIZATION, 5-6 http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf (last visited Oct. 10, 2011) ("The public concerns about GM food and GMOs in general have had a significant impact on the marketing of GM products in the European Union (EU). In fact, they have resulted in the so-called moratorium on approval of GM products to be placed on the market. Marketing of GM food and GMOs in general are [sic] the subject of extensive legislation.").

132. See James Cox, *Anti-Globalization Activists: Divided They Make a Stand*, USA TODAY, Sept. 27, 2002, at 1B, available at http://www.usatoday.com/money/markets/world/2002-09-26-imf-protests_x.htm ("Since Seattle, the World Bank, IMF and World Trade Organization have issued *mea culpas*, admitting that they were doing too little to help the world's poorest people and vowing to improve. All three institutions have made themselves more open and invited more input from critics.").

133. See, e.g., *Developing Nations Reject IMF Rules on Capital Inflows Controversy*, MERCOPRESS.COM (Apr. 15, 2011), <http://en.mercopress.com/2011/04/15/developing-nations-reject-imf-rules-on-capital-inflows-controversy> (explaining that G24 ministers recently rejected an IMF proposal and are fighting for flexibility and discretion).

134. See, e.g., Inday Espina Varona, *Conflicts Prompt World Bank to Change Engagement Strategy*, ABS-CBNNEWS.COM (May, 10 2011), <http://www.abs-cbnnews.com/-depth/05/09/11/conflicts-prompt-world-bank-change-engagement-strategy> (explaining that the World Bank has recognized that "[t]he old era of structural adjustment is essentially over.").

still treating healthy eating as a matter of “choice,” the risk increases that eating norms common to economic elites in Northern nations will be coercively imposed on marginalized populations. And instrumental understandings of food as nothing more than fuel for the body raise the specter of a radically diminished understanding of the cultural, physical, and emotional benefits of eating.

1. Equality in Consumption: the Importance of Access to Quality Food.

(a) *Falling Food Quality.*

Consistent with the focus on efficiency in traditional trade policy analyses, mainstream analysts treat unequal food consumption patterns as relating to inefficiency. Hunger must be addressed by figuring out how to provide more and cheaper food to the world’s population.¹³⁵ But little attention is paid in this efficiency discourse to the harmful impacts on food *quality* (and on poverty) that flow from increasing the amount of food produced. As discussed above, the type of agriculture being exported by multinational corporations requires extensive and growing use of fertilizers and pesticides,¹³⁶ which are harmful not only to workers in the fields but also to consumers.¹³⁷ In fact, it has become clear in recent decades that there is an inverse relationship between the efficiency of food production and the quality of foods produced.¹³⁸

135. See generally Anup Shah, *Solving World Hunger Means Solving World Poverty*, GLOBAL ISSUES, <http://www.globalissues.org/article/8/solving-world-hunger-means-solving-world-poverty> (last updated Oct. 24, 2010) (asserting that a common theme is that world hunger can be solved by producing more food, and arguing that in reality people are hungry due to poverty and unequal distribution of food).

136. See discussion *supra*, at I.A.3.

137. See McCauley, note 89 *supra*, at 954.

138. See Donald R. Davis, *Declining Fruit and Vegetable Nutrient Composition: What is the Evidence?*, 44 HORTSCIENCE 15 (2009) (“[S]ide-by-side plantings of low- and high-yield cultivars of broccoli and grains found consistently negative correlations between yield and concentrations of minerals and protein, a newly recognized genetic dilution effect . . . [T]he USDA’s data thus suggest that yields have increased more in vegetables than in fruits, which may help explain the findings of larger nutrient declines in vegetables.”); Donald R. Davis, et al., *Changes in USDA Food Composition Data for 43 Garden Crops, 1950 to 1999*, 23 J. AM. COLL. NUTRITION 669, 669 (2004) (describing food quality declines “between 1975 and 1997. . . in 12 common vegetables”); see also *Study Suggests Nutrient Decline in Garden Crops over Past 50 Years*, UNIVERSITY OF TEXAS AT AUSTIN (Dec. 1, 2004), http://www.utexas.edu/news/2004/12/01/nr_chemistry/ (describing 2004 study by University of Texas biochemist Donald Davis and quoting Professor Davis: “Emerging evidence suggests that when you select for yield, crops grow bigger and faster, but they don’t necessarily have the ability to make or uptake nutrients at the same, faster rate.”).

The impact of this relationship is suggested by the decreases in nutritional value that have accompanied the rise of corporate agriculture. In a recent study of 43 fruits and vegetables, University of Texas biochemist Donald Davis found that “their nutrient value has declined in recent decades while farmers have been planting crops designed to improve other traits,” especially yield.¹³⁹ Of 13 nutrients examined in the study, six have declined in the crops studied – some by as much as 38 percent: “[T]he average vegetable found in today’s supermarket is anywhere from 5% to 40% lower in minerals than those harvested just 50 years ago.”¹⁴⁰ Thus, at the same time that internal subsistence farming in Southern countries is being decimated by incursions of Northern agribusinesses, and the cost of foodstuffs is (at times) dramatically rising, the *quality* of nutrition provided by the new, mass-produced foods is decreasing. In sum, monoculture corporate agriculture is not only producing economic and environmental devastation, but is also decreasing the quality of food.

(b) *The Ideology of Consumptive Choice.*

In addition to attending to the political economy of food consumption (and its nutritional impact), it is also important to examine the ideological edifice that has been constructed around the human activity of eating. Exploring the ideology of consumption can greatly enrich our understanding of both domestic and international inequalities in access to a healthy diet. Although the focus here will be primarily on the United States, conditions there presage likely future developments in Mexico and elsewhere in the Global South. As free market economics and corporate agriculture are exported to and imposed upon those nations, Northern ideologies of consumption are likely to filter more and more into poor countries as well.

Thus, we draw attention here to another dominant narrative about food consumption – a narrative that is reflected in both U.S. media and law. That story is about healthy eating and consumer choice. Healthy eating is often depicted as first-and-foremost about individual decision making and self discipline.¹⁴¹ Informed

139. Study Suggests Nutrient Decline in Garden Crops Over Past 50 Years, *supra* note 138.

140. *Id.*

141. See Michael Pollan, *The Food Movement, Rising*, N.Y. REV. BOOKS, May 20, 2010, <http://www.nybooks.com/articles/archives/2010/jun/10/food-movement-rising> [hereinafter *Rising*] (noting that the food industry prefers for the national food conversation to focus on “personal responsibility”); see also Lori Dorfman & Lawrence

and health-conscious consumers will eat well and be healthy, while those who are more ignorant or self-indulgent will fall prey to the expanding North American (and, increasingly, Central and South American) waistline.¹⁴² Healthy food might not necessarily taste good (witness the popular image of tofu), but consumers need to realize that it's good for them and accordingly be willing to eat it – and make their children do so as well. Poor people in particular are seen as preferring to eat unhealthy foods, needing to change their diets, and less informed about and/or receptive to modern nutritional information.¹⁴³ And despite evidence to the contrary, immigrants are assumed to bring unhealthy eating practices with them to the United States.¹⁴⁴

Under this “healthy eating” view, a central way to address poor diets is to improve the dissemination of information so that consumers will make better choices.¹⁴⁵ If the perils of bad eating can be impressed upon individuals, they will finally forego the fast-food burger and embrace the funny-tasting bean sprouts. Although obesity experts have generally turned away from the personal choice paradigm,¹⁴⁶ legislators and policy makers operat-

Wallack, *Moving Nutrition Upstream: The Case for Reframing Obesity*, 39 J. NUTR. EDUC. BEHAV. 39, S45-S50 (2007) (noting that “[c]urrently, nutrition is described primarily as a matter of individual responsibility”); Lawrence O. Gostin, *Law as a Tool to Facilitate Healthier Lifestyles and Prevent Obesity*, 297 J. AM. MED. ASSOC. 1, 87-90 (2007) (“Individuals make personal choices about their diet, exercise, and lifestyle, so disease is often thought of as a matter of personal, not governmental, responsibility.”); Rachel I. Weiss & Jason A. Smith, *Legislative Approaches to the Obesity Epidemic*, 25 J. PUB HEALTH POL’Y 3, 379-90 (2004) (“Against a backdrop of government agriculture subsidies and economic protectionism, health is generally regarded as the sole responsibility of the individual consumer.”).

142. See, e.g., Mark Bittman, *Food’s New Foot Soldiers*, N.Y. TIMES, Aug. 24, 2011, at A21, (describing the new federal FoodCorps program as part of “the war against ignorance in food”).

143. See, e.g., *Nourishment; Limit Food Stamp Purchases to Nutritious Food*, THE HOUSTON CHRON., Oct. 26, 2000, at A34 (stating that poor people who use food stamps are not disciplined or knowledgeable enough to make healthy food purchases and that they instill poor eating habits in their children); Marissa Villa, *Healthy Living Advice Lost on U.S. Hispanics*, CONEXIÓN, June 7, 2007, at 14A (stating that many U.S. Hispanics know what a healthy life style requires but do not follow a healthy lifestyle, and that more needs to be done to inform Hispanics on how to fit diet and exercise into their lifestyle).

144. See *infra*, text accompanying 189 and 190.

145. Activist Michael Pollan notes that Michelle Obama has rejected this “consumer choice” approach when she stated in a speech to the Grocery Manufacturers Association in March of 2010 that the industry “doesn’t just respond to people’s natural inclinations – it also actually helps to shape them. . . .” *Rising*, *supra* note 141.

146. Neil Munro, *The End of Obesity*, NATIONAL JOURNAL, (Feb. 5, 2010, 11:07 A.M.) http://www.nationaljournal.com/njmagazine/nj_20100206_2550.php (discussing the

ing under this paradigm continue to focus on increasing consumer information (the food pyramid, caloric labeling) so as to improve consumer choices – rather than on increasing the affordability of healthy food or reforming food production processes to change the quality of the products available for consumption.¹⁴⁷

Similarly, the expansion of corporate food grocers and restaurants, such as Walmart and McDonald's, into nations of the South tends to be seen as boosting the economy and expanding individual liberty (*i.e.*, increasing choice¹⁴⁸ and access to affordable foods for individual consumers), rather than as threatening consumer health in those nations.¹⁴⁹ By treating individuals' eating habits as the main contributor to poor diets, this "healthy eating" ideology obscures the role of governmental policies and corporate practices in producing poor nutrition. As noted above, these individualist, free-market-based understandings of consumer diet are likely to expand into Mexico and other poor nations along with capitalist economic structures and "free trade" ideology.

(c) *Access, not Choice; Subordination, not Self-Indulgence.*

However, as in the production domain, there is an alternative way to look at issues of food quality and healthy consumptive practices. Under this view, food policy is yet another arena of class- and race-based inequality and the rhetoric of consumer choice is an obscurantist discourse that blames the economically disempowered for their subordination.¹⁵⁰ Where traditionalists

2003 publication of an influential NIH study showing that educating more than 1700 Native American third graders on diet "resulted in no significant reduction in body fat." "[T]he campaign to promote dietary knowledge has largely disappeared. . . because 'it doesn't work.'" (quoting nutrition expert Professor Paul Ernsberger).

147. See, *e.g.*, Weiss & Smith, *supra*, note 141, at 139 (arguing that "[n]ew legislative initiatives . . . re-emphasize an ideology of personal responsibility by shifting the personal costs of obesity onto the consumer and foreclosing cost-sharing with industry through tort litigation.").

148. See Doris Fuchs, et al., *Retail Power, Private Standards, and Sustainability in the Global Food System*, in CLAPP & FUCHS, *supra* note 4, at 40.

149. On the power of retail food companies and their harmful impacts on poor countries, see *id.* at 29-59. Walmart is "by far the largest" global retailer of food. *Id.* at 33. On the use of private corporate "standards" to convey that these foodstuffs are of high quality, see *id.* at 35-40.

150. See, *e.g.*, Beckah Mandell, *Feasts of Oz: Class, Food, and the Rise of Global Capitalism*, 20 S. CAL. INTERDISC. L.J. 93, 105-06 (2010) ("The act of eating an unhealthy meal in a fast food restaurant . . . will create and police a new underclass for the twenty-first century. The marks of this class—obesity, ill health, increased violence, and diminished school performance—will be obscured under rhetoric of

see ignorance and self-indulgence, a critical food analysis sees violations of civil and human rights.¹⁵¹

Under this alternative view, unhealthy eating is primarily a product of inadequate income, not ignorance. And consumption can best be improved not (only) by increasing food quantity and consumer information, but equally (and perhaps more) importantly, by addressing the effects of economic disparities on food consumption – in short, by increasing consumer *access* to healthy food. From this perspective, the introduction of cheap fast food into foreign markets (markets where farmers have been forced to move to cash cropping and therefore no longer grow subsistence crops for their own families¹⁵²), as well as the proliferation of advertising and media programming targeted to children,¹⁵³ look like part of an insidious process of compromising consumer health for corporate profit. From this perspective, the dominant discourse on food consumption obscures power inequalities, casting economic subordination as uninformed, self-destructive behavior.

Law is complicit in the social inequalities that characterize the consumption domain today. In the United States, an inadequate regulatory system has created a two-tiered food regime in which the affluent can buy organic products but the rest are left with inferior foodstuffs. The Food and Drug Administration has inadequately regulated food quality for decades.¹⁵⁴ Not only have

personal responsibility and personal choice.”); Nareissa Smith, *Eatin’ Good? Not in This Neighborhood: A Legal Analysis of Disparities in Food Availability and Quality at Chain Supermarkets in Poverty-Stricken Areas*, 14 MICH. J. RACE & L. 197 (2009) (describing how fresh foods and wide range of choices are not available in grocery stores in low-income neighborhoods, if grocery stores are there at all); Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CAL. L. REV. 2221, 2222 (2007) (“Food oppression is structural because it is not the product of individual acts of discrimination, but stems rather from the institutionalized practices and policies of government and the fast food industry.”).

151. For a discussion of food issues as human rights issues, see González, *Global Food Crisis* *supra* note 10, at 474.

152. See discussion *supra* Part I.A.2.(b).

153. See *infra* text accompanying notes 173-77.

154. See Matthew Hay Brown, *Food Safety Reforms by Favored Lawmakers, Industry in Accord after Salmonella Outbreak*, BALTIMORE SUN, Feb. 15, 2009, at 1A (“Critics say the outbreak has revealed several gaps in the nation’s food safety system, including a personnel shortage that has led the FDA to contract out inspections to state officials, the lack of a program to trace food from the farm to the table, the ability of companies to keep tests results revealing contamination to themselves, and the inability of the federal government to order recalls without their cooperation.”); U.S. GOV’T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS SEAFOOD SAFETY: FDA NEEDS TO IMPROVE OVERSIGHT OF IMPORTED SEAFOOD AND BETTER LEVERAGE LIMITED RESOURCES (2011), available at <http://www.>

contamination scandals become routine (with lettuce,¹⁵⁵ tomatoes,¹⁵⁶ spinach,¹⁵⁷ eggs,¹⁵⁸ and peanuts¹⁵⁹ all having been recalled as dangerous to consumers just within the past nine years), but also food quality itself has been allowed to seriously deteriorate. Industrial farming of vegetables, fruits, and livestock significantly diminishes the nutritional value of these foods while raising levels of toxicity.¹⁶⁰ Our vegetables and fruits are less nutritious than they used to be;¹⁶¹ dangerous growth hormones and antibiotics are routinely delivered in our poultry and meat products;¹⁶² irradiation that risks a wide variety of health effects is used to preserve food shipped long distances;¹⁶³ harmful chemicals are routinely applied to foods to increase shelf-life and alter taste and appear-

gao.gov/htext/d11286.html ("FDA's oversight program to ensure the safety of imported seafood from residues of unapproved drugs is limited . . .").

155. *E. coli in Lettuce Linked to Illness: FDA Issues Alert on Romaine Brand after 29 Fall Sick*, CHICAGO TRIBUNE, July 30, 2002, at 9.

156. Sonia Narang & Ken McLaughlin, *Is it Safe? As Salmonella Strikes Tomato Supply, Food Experts Help Answer the Question on Every Consumer's Mind*, SAN JOSE MERCURY NEWS, June 12, 2008, at 1C.

157. *See Worst Product Recalls of All Time*, HUFFINGTON POST (Apr. 25, 2010, 5:12 AM) http://www.huffingtonpost.com/2010/02/23/the-worst-product-recalls_n_472340.html?slidenumber=wfd6XDN2FV4%3D&slideshow#slide_image ("In 2006, at least 187 people became sick and at least one died after eating bagged spinach tainted with *E. coli* bacteria."); *Spinach Recalled Over Salmonella*, CHICAGO TRIBUNE, Aug. 30, 2007, at 9; Marla Cone, *E. Coli's Spread is Still a Mystery*, L.A. TIMES, Oct. 14, 2006, at 1.

158. *See* Jeff Casale, *Safety, Cover in Focus after Huge Egg Recall*, BUS. INS., August 30, 2010, at 1. In addition, four children died in Washington State in 1993 from eating Jack-in-the-Box hamburgers contaminated with *E. coli*. *Rising*, *supra* note 141.

159. *See* Casale, *supra* note 158, at 1 (describing 2009 peanut-product recall).

160. On the impact that large, corporate methods of farming have had on food safety and quality in poor countries, see Fuchs, et al., *supra* note 48, at 48-50.

161. *See supra* text accompanying note 139-40.

162. *See* Rose Marie Williams, *What's in the Beef?* TOWNSEND LETTER, 150 (Oct. 1, 2001) (describing antibiotics and reproductive hormones in meat); Jeanne Bernick, *A Quiet Revolution*, 126 FARM JOURNAL 32 (2002) (describing use of antibiotics in farm animals); Jeffrey S. Bland, *Take the Drugs Out of Our Meat Supply*, SEATTLE TIMES, July 29, 1994, at B5; Marissa Cevallos, *Meat Contaminated with Resistant Bacteria*, L.A. TIMES (April 15, 2011), available at <http://articles.latimes.com/2011/apr/15/news/la-heb-meat-bacteria-20110415>.

163. Irradiation has been shown to cause a wide variety of serious negative effects in animals, including "premature death, mutations, fetal death . . . immune system dysfunction, fatal internal bleeding, a rare form of cancer, . . . tumors, nutritional deficiencies, and stunted growth." PUBLIC CITIZEN, QUESTIONING IRRADIATION: A HISTORY OF RESEARCH INTO THE SAFETY OF IRRADIATED FOODS 3 (2003), available at <http://documents.foodandwaterwatch.org/questioningirradiation.pdf>; *see also* Donald B. Louria, *Food Irradiation: Unresolved Issues*, 33 CLINICAL INFECTIOUS DISEASES 378, 378 (2001).

ance;¹⁶⁴ and these dangers are often found in products marketed specifically to children¹⁶⁵ or supplied by the government to children in school lunches.¹⁶⁶

Of course, healthier and cleaner products are available in upscale supermarkets around the globe, but at prices out of reach of even the average consumer, much less those on low incomes. Moreover, in the United States, governmental subsidy programs make the most harmful foods more accessible (e.g., corn syrup, a harmful sweetener that is omnipresent in the U.S. diet), but do not cover the healthiest foods (such as vegetables, whole grains, and fruits).¹⁶⁷ And underfunding of U.S. schools has forced many of them to allow processed- and fast-food producers to flood school cafeterias with harmful, cheap products.¹⁶⁸

As Alejandro Calvillo, founder and director of El Poder del Consumidor (The Power of the Consumer) and a leading Mexican consumer activist, explained in his keynote presentation at the conference,¹⁶⁹ the diet of the average Mexican consumer is deteriorating in similar ways as well.¹⁷⁰ There, as in other parts of the Global South, the arrival of the worst elements of the North American diet (especially soft drinks) – foods that are cheap, new, and

164. Melinda Fulmer, *Shelf Life's New Age: Packaging Technology Continues to Stretch Definition of 'Fresh,'* CHICAGO TRIBUNE, Sept. 19, 2001, at 6; Jane E. Brody, *Preservation Process Can Be Confusing to the Consumer*, HOUSTON CHRON., May 5, 1985.

165. See Jill Kurp Maher et al., *Food Advertising on Children's Television*, 3 YOUNG CONSUMERS 41, 43 (2006) ("The leading and major source of [television] advertising content directed to children is supplied by the food industry. Looking directly at the top ten advertisers on Nickelodeon. . . the packaged food companies represented over a third of advertising dollars spent in 2000 . . .").

166. See, e.g., *Irradiated Foods Banned from Washington DC's School Lunch Program*, BEYOND PESTICIDES (May 21, 2004), http://www.beyondpesticides.org/news/daily_news_archive/2004/05_21_04.htm (stating that D.C. public schools voted not to serve irradiated beef (beef exposed to ionizing radiation which kills bacteria but also produces known and suspected carcinogens) after the U.S. Department of Agriculture approved the use of irradiated beef in the National School Lunch Program).

167. See Libby Quaid, *Subsidies, Dietary Guides Don't Match: the Government Wants more Fruit and Vegetable Intake but it Funds Farmers of Less-Healthy Foods*, PHILADELPHIA INQUIRER, Aug. 11, 2005 at A08.

168. See Charles Mahtesian, *Newest Fast-Food Strips: In School Cafeterias "the Kids Love it, the Parents Love it,"* SAN FRANCISCO EXAM'R, July 4, 1993, at B8; Keay Davidson, *Fast Food Companies Moving into U.S. Schools: Burgers, Tacos aren't very Nutritious, but They're Cheap*, SAN FRANCISCO EXAM'R, March 22, 1995, at A3.

169. Alejandro Calvillo, *Our Obesigenic Environment*, Presentation at the South-North Exchange Conference in Mexico City, Mexico (May 8, 2011).

170. The consumption of soft drinks, for example, has mushroomed in Mexico over the last 15 to 20 years. According to Professor Calvillo, "Mexican families spend on average more on soft drinks than on eggs, beans or tortillas," and consumption of fruits and vegetables fell by nearly a third during that same period. *Id.*

often associated in media and popular consciousness with progress and wealth — has contributed to epidemics of obesity and diabetes,¹⁷¹ heart disease,¹⁷² and other medical conditions.¹⁷³ Calvillo attributes the “obesigenic environment” in Mexico not to “bad individual habits,” but rather to four systemic factors: “nutritional education, food labeling, product marketing, and the school system.”¹⁷⁴ As in the United States, poor quality foods dominate in Mexican schools and soft drinks, rather than water, are the most available beverage.¹⁷⁵ While food labeling is improving, child-directed ads for junk food — such as ads using English and/or popular cartoon characters that appeal to youngsters — play on children’s suggestibility to influence their purchases at school and preferences at home.¹⁷⁶ Just as Nestlé has a history of being willing to make profits off of the sale of its dangerous and expensive infant formula to women in poor countries, today companies such as Coke, Kellogs, Pepsi, and Nestlé appear to be willing to sacrifice school children’s health to the corporate bottom line.¹⁷⁷

In sum, the consumption arena, like production, is characterized by fundamental disparities, with quality food products simply being out of reach of poor consumers. While the quality of food-stuffs has decreased across the board in recent years, the problem of access to affordable, nutritious food is far more severe for those with fewer resources, underlining the importance of understanding consumption as a human right rather than a mere personal preference.

171. “Mexico has one of the highest levels of childhood obesity, next only to the United States.” *Id.* And of course, obesity is associated with both diabetes and heart disease.

172. See *Epidemiology: Why are Cardiovascular Diseases a Problem in Latin America?*, HEART DISEASE WEEKLY, May 12, 2002, at 17; *Obesity Rise Linked to Disability Increase among Elderly in Latin America and the Caribbean*, OBESITY, FITNESS, & WELLNESS WEEK, Aug. 14, 2010 at 306 [hereinafter *Obesity Rise among Elderly*].

173. *Obesity Rise Among Elderly*, *supra* note 172, at 306 (describing diabetes and arthritis in addition to cardiovascular disease).

174. Calvillo, *supra* note 169 (“Children in Mexico have five opportunities to eat in 4½ hours of school”). The foods available at and around the school are calorically rich and sugary, with few fruits and vegetables and “an absence of safe drinking water.” *Id.*

175. See *Fizz, Fat and Junk Food in Mexico*, IRISH TIMES, Jan. 8, 2008, at 2 (describing Mexico as “a country where the urban poor often have easier access to cola than to water”). See also Calvillo, *supra* note 169.

176. Calvillo, *supra* note 169 (attributing the obesity epidemic among children to (among other things) child-directed ads for junk food — such as ads using English labeling and popular cartoon characters to appeal to youngsters).

177. *Id.* (referencing products from each of the companies listed).

2. Degradation of the Cultural Meaning of Eating.

Consumption is a complex social practice that is affected not only by material inequalities and informational deficits, but also by ideological and discursive mechanisms that subtly “normalize” consumptive behavior in gendered,¹⁷⁸ racialized,¹⁷⁹ and class-biased ways.¹⁸⁰ Thus, current food regimes in the United States can be seen as disciplinary, in a Foucauldian sense. Under Foucault’s theory,

the primary function of modern disciplinary systems [is] to correct deviant behavior. The goal is not revenge (as in the case of the tortures of premodern punishment) but reform, where, of course, reform means coming to live by society’s standards or norms. Discipline through imposing precise norms (“normalization”) . . . is pervasive in our society: e.g., national standards for educational programs, for medical practice, for industrial processes and products.

The examination (for example, of students in schools, of patients in hospitals) is a method of control that combines hierarchical observation with normalizing judgment. . . . It both elicits the truth about those who undergo the examination (tells what they know or what is the state of their health) and controls their behavior (by forcing them to study or directing them to a course of treatment).¹⁸¹

From this perspective, governmental information (such as the food pyramid), school nutrition programs, dietary advice provided through public health clinics, and many other interventions can easily (and unwittingly) devolve into imposition of culturally-specific and hegemonic standards of consumption on individuals or groups perceived to be nonconforming. While efforts to inform parents and to improve the quality of foods consumed by children are important and useful, such developments risk transforming the

178. See, e.g., SUSIE ORBACH, *FAT IS A FEMINIST ISSUE: THE ANTI-DIET GUIDE FOR WOMEN* 16 (1997) (describing the widespread rates of obesity and overeating among American women and the increase of diet-focused discourse that advances them); see also Susan Bordo, *Anorexia Nervosa: Psychopathology as the Crystallization of Culture*, XVII PHILOSOPHICAL FORUM 17, 73 (1985-86) (asserting that cultural wrongs underlie the disorders of anorexia nervosa and bulimia).

179. See, e.g., Ruth Striegel-Moore & Linda Smolak, *The Role of Race in the Development of Eating Disorders*, in THE DEVELOPMENTAL PSYCHOPATHOLOGY OF EATING DISORDERS 259 (Linda Smolack, Michael P. Levine & Ruth Striegel-Moore eds. 1996) (explaining race’s influence on the development of eating disorders).

180. See cites listed *supra*, note 143 (noting that poor people are seen as eating unhealthy foods).

181. Michel Foucault, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/foucault/> (last visited Oct. 10, 2011) (citations omitted).

basic bodily function of eating into yet another arena of expert (and self-)surveillance of, and control over, daily human habits.¹⁸² This is especially so if material inequalities among consumers are left unaddressed, for a national program to promote “good eating” could easily devolve into yet another mechanism by which some individuals (and more dangerously perhaps, some parents) become labeled “good” eaters/parents and others “bad.”¹⁸³ Even prevailing normative standards of “professional” appearance¹⁸⁴ could become coercive norms deployed by all-too-often culturally biased government agencies to further regulate the daily lives of the poor – and to hold them to standards that are impossible for them to meet.¹⁸⁵ Finally, U.S.-generated notions of good eating could ultimately be applied as well to countries of the Global South, through development policies that impose Northern definitions of “healthy” consumption on those nations. Similarly, in

182. See generally MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* VOL. I (applying Foucault's theory on coercive normalization and pervasive surveillance of bodily functions to sexuality); see also Susan Bordo, *The Body and the Reproduction of Femininity*, in SUSAN BORDO, *UNBEARABLE WEIGHT: FEMINISM, WESTERN CULTURE, AND THE BODY* 165 (1995) (“The body is . . . a *practical*, direct locus of social control. . . . Our conscious politics, social commitments, strivings for change may be undermined and betrayed by the life of our bodies – not the craving, instinctual body . . . but what Foucault calls the ‘docile body,’ regulated by the norms of cultural life.”).

183. Cf. LINDA M. BLUM, *AT THE BREAST* 160-67 (describing the construction of African American mothers who decide not to breastfeed as “bad” mothers); see also DOROTHY ROBERTS, *KILLING THE BLACK BODY* 8, 23 (1997) (describing coercive and punitive control over African-American women exercised through law and its justification through tropes of bad mothering).

184. See Deborah L. Rhode, *The Injustice of Appearance*, 61 *STAN. L. REV.* 1033, 1033-43 (2009). Such professional norms are typified by corporate (North) America's biases against large bodies, lack of grooming, and other signs of divergence from the rather Protestant corporate equation of bodily control with self-control. *Id.*

185. See e.g., *In re Brittany T.*, 835 N.Y.S.2d 829, 829 (N.Y. Fam. Ct. 2007) *rev'd*, 852 N.Y.S.2d 475 (N.Y. App. Div. 2008) (holding that it is in best interest of a morbidly obese child to be removed from parents (who had, according to the trial court, willfully failed to address her medical condition), and citing several other cases that reached similar conclusions but were later reversed on appeal); see also Rick A. Maese, *Seizure of Overweight Child Gains International Media Interest*, *ALBUQUERQUE TRIBUNE*, Aug. 31, 2000, at A1 (discussing one somewhat idiosyncratic case as evocative of the potential risk of punitive dietary policing. The State of New Mexico took Anamarie Martinez-Regino from her parents at age three, because of their inability to address her morbid obesity and contested governmental allegations that the parents had strayed from the girl's diet. After three months and the intervention of an attorney, Anamarie was returned to her parents. Despite government monitoring of a continued diet and exercise regimen, her unusual height and obesity remain a “medical mystery” to this day); and SUSAN AYERS & RICHARD DE VISSER, *PSYCHOLOGY FOR MEDICINE* 8 (2011) (interpreting medical uncertainty as poor parenting, with the result that a low income, immigrant child was wrongly taken from her family).

colonial times, European food was imposed on local populations for religious, race, and class reasons that ran counter to public health and cultural norms.¹⁸⁶

The danger of racially and socioeconomically inflected practices of normalization draws attention to the importance of cultural sensitivity in consumption-focused programs and regulations. As Professor Ernesto Hernández-López notes in his symposium piece on the politics of taco truck regulation in Los Angeles, “cultural values are heavily embedded in food practices.”¹⁸⁷ And research has demonstrated that shifts in food preference involve a complex and subtle process that, in adults, cannot be mandated except in the most dire shortage emergencies.¹⁸⁸ In a related account, Christopher Curran and Professor Marc-Tizoc Gonzalez discuss the efforts of an African American community in Oakland to positively “chang[e] eating habits while simultaneously preserving and strengthening the traditional food culture of the black community.”¹⁸⁹ Such projects are important interventions against the prevalent assumption that food traditions among people of color are inferior to Northern food traditions. The fact that Mexicans in the United States have worse diets than those in their home country gives the lie to that assumption.¹⁹⁰ Thus, eating habits must be transformed from within with the respectful support of policymakers, not by government fiat.

The nascent discourse of “good eating” could also ultimately have the ironic effect of reducing consumption to an instrumental body-maintenance type of activity, stripped of its associations

186. See Part I.A.2.(c).

187. Ernesto Hernández-López, *LA's Taco Truck War: How Law Cooks Food Culture Contests*, 43 U. MIAMI INTER-AM. L. REV. 231, 233 (2011).

188. See, e.g., Helen Macbeth & Sue Lawry, *Food Preferences and Taste: an Introduction*, in FOOD PREFERENCES AND TASTE: CONTINUITY AND CHANGE 7 (1997) (“Preferences are expressed as an equation, which balances the benefits of nutritional value, taste and satiety against the costs of time spent, energy expended and probable toxicity”); Wulf Schiefenhövel, *Good Taste and Bad Taste: Preferences and Aversions as Biological Principles*, in FOOD PREFERENCES AND TASTE: CONTINUITY AND CHANGE 55-64 (1997) (using brain pathway analysis to argue that “disgust is . . . instrumental in the nutritional niches which human populations occupy”).

189. Christopher J. Curran & Marc-Tizoc González, *Food Justice as Interracial Justice: Urban Farmers, Community Organizations and the Role of Government in Oakland, California*, 43 U. MIAMI INTER-AM. L. REV. 205, 214-15 (2011).

190. See Jennifer B. Unger et al., *Acculturation, Physical Activity, and Fast-Food Consumption Among Asian-American and Hispanic Adolescents*, 29 J. COMM. HEALTH 467, 468-69 (2004) (“Among Hispanics, acculturation to the US typically is accompanied by a shift from corn tortillas to processed flour tortillas, increased consumption of cookies and high-fat salad dressings, and decreased consumption of beans and fruit drinks.”).

with culture, community, creativity, pleasure, sensuality, and human flourishing.¹⁹¹ As one culinary historian noted, “the Puritan obediently disapproves of taking pleasure in food. He eats to maintain strength in order to get on with the serious business of earning his bread by the sweat of his brow.”¹⁹² A striking current example of this utilitarian view of food as nothing more than bodily fuel is the current effort by the military to produce an “improved” form of K-rations (now called MREs – “meals ready to eat”) that consists of nothing more than a pill that soldiers would swallow to supply them with daily nutrients.¹⁹³ Aside from the effect such non-mechanical “eating” might have on oral health,¹⁹⁴ other potential dangers of this program stem from the likelihood that it would eventually bleed from the military context into the civilian market.¹⁹⁵

That prospect makes evident the risks of current trends towards reduced food diversity, increased homogeneity and processing, and eat-on-the-run daily habits. As eating becomes reduced to a mechanism for fueling bodies, the risk is that the bodies of U.S. workers, who already put in more hours per year than those in many other countries,¹⁹⁶ will increasingly be seen merely as machines to be “managed” in order to maximize corporate profits.¹⁹⁷ After all, if a pill provides adequate sustenance,

191. See JANET FLAMMANG, *THE TASTE FOR CIVILIZATION: FOOD, POLITICS, AND CIVIL SOCIETY* (2011) (“Significant social and political costs have resulted from fast food and convenience foods[:] grazing and snacking instead of sitting down for leisurely meals, watching television during mealtimes instead of conversing, viewing food as fuel rather than sustenance, discarding family recipes and foodways, and denying that eating has social and political dimensions.”); *cited with approval in Rising*, *supra* note 141.

192. See LESLIE BRENNER, *AMERICAN APPETITE: THE COMING OF AGE OF A CUISINE* 305 (1999) (citation omitted).

193. See Daniel H. Wilson, *Dude, Where’s My Jetpack?*, DISCOVER (Feb 27, 2007), http://discovermagazine.com/2007/feb/jetpack-future-technologies/article_view?b_start:int=0&-C= (describing CMs (“compressed meals”), which deliver the same calories as MREs but weigh 1/3 as much, as well as the military’s effort to create “a pill that will allow soldiers to operate at peak performance during prolonged periods of starvation” and a patch to deliver nutrients through the skin).

194. See, e.g., Reidun Juvkam Daeffler, *Oral Care*, in *NURSING IN HOSPICE AND TERMINAL CARE* 83, 93 (Barbara M. Petrosino & David Dush, eds. 1986) (noting the importance of chewing and saliva production in maintaining the health of the mouth).

195. From sports utility vehicles to microwaves, many products currently used by civilians originated as military projects. Paul Bubny, *Military Basics for Civilian Use*, ARMY/NAVY STORE & OUTDOOR MERCHANDISER, Dec. 2008, at 28.

196. Organisation for Economic Co-Operation and Development, *Average Annual Hours Actually Worked per Worker*, OECD STAT EXTRACTS (April 9, 2011, 12:48 PM), <http://stats.oecd.org/Index.aspx?DatasetCode=ANHRS>.

197. See Michael Pollan, *The Futures of Food*, N.Y. TIMES MAGAZINE (May 4, 2003),

why do workers need lunch breaks? Purely instrumental eating already takes a toll on U.S. health, as eating-on-the-go options are often the least healthy ones and rushed and distracted eating makes people vulnerable to overconsumption.¹⁹⁸ Shortened lunch breaks and other reflections of an increasingly utilitarian view of consumption could exacerbate this dehumanizing disembodiment of eating.

The effects of a normalizing, utilitarian discourse that sees consumption as both evidence of good citizenship and a mechanism for fueling workers' bodies will likely be felt most directly by those at the lower end of the socioeconomic ladder: those whose lives are more closely regulated (by employers, social workers, etc.) and whose long, often double-job work days, thin wallets, and geographic location in urban "food deserts"¹⁹⁹ or rural areas²⁰⁰ leave them few healthy eating options.²⁰¹ Consider, for example, this discussion of West Oakland by Curran and Gonzalez in their symposium article: "West Oakland . . . , with an average household

available at <http://michaelpollan.com/articles-archive/the-futures-of-food/> (describing food companies' efforts to increase profits by selling "food systems" that they claim provide more health benefits than actual foods themselves). The disembodiment of eating is reminiscent of discourses that see pregnant women through a technological lens: as machines for the production of children. See, e.g., EMILY MARTIN, *THE WOMAN IN THE BODY: A CULTURAL ANALYSIS OF REPRODUCTION* 36, 44-45 (1989) (arguing that science constructs menopause and menstruation as "failures" of "the authority structure in the body" and of "production") ("[A] kind of horror for us is *lack* of production: the disused factory, the failed business, the idle machine.").

198. See Jonah Lehrer, *Blame it on the Brain: The Latest Neuroscience Research Suggests Spreading Resolutions Out over Time is the Best Approach*, WALL ST. J. (Dec. 26, 2009), <http://online.wsj.com/article/SB10001424052748703478704574612052322122442.html?mod=article-outset-box> (citing studies showing that "willpower. . . requires real energy," and that making good food choices requires "controlling the spotlight of attention.").

199. For an interactive map showing the dearth of grocery stores and quality food in low-income urban neighborhoods, see U.S. DEP'T AGRIC, USDA INTRODUCES ONLINE TOOL FOR LOCATING "FOOD DESERTS" (May 2, 2011), available at <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/05/0191.xml&contentidonly=true> ("A food desert is a low-income census tract where either a substantial number or share of residents has low access to a supermarket or large grocery store.").

200. Ironically, local grocery stores in many of the rural areas where foods are grown lack quality produce. See *Fertile S.D. Full of "Food Deserts,"* ARGUS LEADER (May 11, 2011) ("Rural America has become an industrial food desert of its own. . . . It's not growing food, it's growing feed or fuel. . . . The Midwest used to be the breadbasket of the world. Now they just grow corn and soybeans.") (quoting professor of nutrition at New York University).

201. Professor Peter Singer and activist Jim Mason describe a family whose "food choices exemplify the Standard American Diet" in this way: "Jake, who does the family shopping, generally goes to her local Wal-Mart Supercenter because it is hard to beat their prices, and she can get everything in one stop." PETER SINGER & JIM MASON, *THE ETHICS OF WHAT WE EAT: WHY OUR FOOD CHOICES MATTER* 7 (2006).

income of \$20,000 per year and where 35% of the residents do not have easy access to a car to travel the distance it takes to find a grocery store, is afflicted by . . . lack of access to nutritious food. The incidence of diabetes in West Oakland is three times higher than in the rest of Alameda County.”²⁰² The health effects of diet in that city are striking evidence of race and class subordination, not signs of flawed consumer choices.

Despite these less-than-salutary patterns, as in the production domain, there are auspicious developments to celebrate in the consumption sphere as well. Food consumers (primarily elite and primarily Northern) have adopted several conscious practices that are in various stages of popularization, including: consumption of fair trade products;²⁰³ consumption of foods from organic/natural/sustainable farms; locavore eating/local food sourcing/Community Supported Agriculture;²⁰⁴ consumption of free-range²⁰⁵ and vegetarian/vegan-fed animals,²⁰⁶ and participation in boycotts of food retailers based on the sources of their raw materials.²⁰⁷ And the new federal FoodCorps program (a branch of AmeriCorps), which works to improve nutrition education, promote school gardens, and address food lunch quality in U.S. schools, demonstrates at least some quantum of governmental recognition of consumption

202. Curran & González, *supra* note 189, at 213 (citing VALERIE LUU, AN INCONVENIENT STORY: FOOD INSECURITY IN WEST OAKLAND (2009), available at <http://www.cityonahillpress.com/2009/01/15/an-inconvenient-story-food-insecurity-in-west-oakland/>).

203. See, e.g., FAIR TRADE FED’N, INTERIM REP. ON FAIR TRADE TRENDS 6 (2008), available at <http://www.fairtradefederation.org/ht/a/GetDocumentAction/i/6944> (fair trade sales in United States and Canada increased 106% between 2004 and 2006).

204. See *id.* at 18. (highlighting results from a recent poll conducted for a growers’ cooperative in Wisconsin showing that a majority of consumers believe that smaller scale, local farms produce food in safe, sustainable ways). See also *Know Your Farmer, Know Your Food*, U.S. DEP’T AGRIC., http://www.usda.gov/wps/portal/usda/knownyourfarmer?navtype=KYF&navid=KYF_MISSION (last visited Oct. 10, 2011) (noting that in 1986, there were two community supported agriculture programs; today, there are over 4,000. There are more than 6,100 farmers’ markets in the U.S., and the two top trends for 2011, according to the National Restaurant Association, are “locally sourced meats and seafood” and “locally grown produce.”).

205. See, e.g., Cindy Sutter, *Rethinking Meat: Treating Food Animals Humanely Becomes More Mainstream*, BOULDER DAILY CAMERA, Sept. 5, 2007, at F01 (“[C]onsumers are driving the market. Free range hardly existed five or 10 years ago.”).

206. See, e.g., Kim Severson, *Cattle Drive to Your Table*, LONG BEACH PRESS-TELEGRAM, June 28, 2002, at U29 (describing trend in high-end Bay Area and New York restaurants toward serving only grass-fed beef).

207. See, e.g., Wes Smith, *Group Champions Migrants*, ORLANDO SENTINEL, June 6, 2005, at A1 (describing boycott of Taco Bell organized by Coalition of Immokalee Workers that resulted in corporation’s agreeing to increase pay to workers who harvest tomatoes for its suppliers).

issues and willingness to address them.²⁰⁸

Hernández-López's story of the "Taco Truck Wars," in which *loncheros* successfully litigated for the right to operate on the streets of gentrified L.A. neighborhoods,²⁰⁹ contrasts evocatively with the struggles of the attorneys of Litiga OLE to prevent experimental cultivation of GMO corn in Mexico. While the victory of the taco truck owners is a hopeful sign in terms of increased cultural tolerance in Los Angeles, the challenges faced by Litiga OLE are a reminder of the lack of political space and means that prevent most subordinated communities from changing the manner in which they are forced to feed themselves.

In sum, the emphasis on efficiency and the attendant rise of large agribusinesses have not only devastated the agricultural sectors of the Global South but have also caused a deterioration of food quality world-wide. Increasingly, healthy food is far more available to the wealthy few than to the rest, while the poor diets of the many are blamed on poor choices rather than economic subordination. Food is not only transforming into a homogeneous, mass-produced commodity, but also threatens to become a vehicle for the disciplinary surveillance of the disempowered and yet another mechanism for racialized and ethnicized control and exploitation of the poor.

II. CONCLUSION

Dominant understandings of food production and consumption perpetuate domestically and globally destructive policies that have increased food insecurity, as well as exacerbating existing inequalities and diminishing health. Broad dissemination of alternative, critical perspectives is sorely needed to counteract mainstream discourses that consistently cast these issues in the classical liberal terms of free market, trickledown economics and choice-based, individual rights. Fortunately, many modern constitutions establish food as a fundamental right,²¹⁰ and the Interna-

208. See, Bittman, *supra* note 142; See also, Kirk Johnson, *Schools Restore Fresh Cooking to the Cafeteria*, N.Y. TIMES, Aug. 17, 2011, at A1 (describing local school programs to improve school lunches).

209. Hernández-López, *supra* note 187, at 244-45.

210. In a comprehensive survey taken in 2003, the Food and Agriculture Organization found that the constitutions of 22 countries "mak[e] direct mention of the right to food, applicable to the whole of the population" (listing Bangladesh, Brazil, Democratic People's Republic of Korea, Ecuador, Ethiopia, Guatemala, Guyana, Haiti, Islamic Republic of Iran, Malawi, Namibia, Nicaragua, Nigeria, Pakistan, Panama, Puerto Rico, Republic of Moldova, South Africa, Sri Lanka,

tional Covenant on Economic, Social, and Cultural Rights, article 11 of which protects the right to adequate food,²¹¹ now has 169 states parties and 69 signatories.²¹² Hopefully these documents presage the rise of a new understanding of the importance of food to human flourishing and human equality, and of the need to analyze food problems in global, systemic, and race-, gender- and class-sensitive ways. Ideally advocates and governments will heed symposium author Peter Halewood's call for "food sovereignty:" "a robust right of nutritional and agricultural self-determination."^{*}

As critical thinkers and activists develop such alternative frameworks through which to conceptualize the human entitlement to food security and to imagine alternative strategies to effect change, it is crucial that they collaborate and exchange ideas with each other, both about the on-the-ground issues in individual countries and about the ways that critical theory can highlight the power dimensions of current practices and discourses concerning food. Thus, it is especially important for international conferences like the South-North Exchange on the Global Politics of Food to take place. Cross-hemispheric food-related systems and practices can best be addressed by cross-hemispheric communica-

Suriname, Uganda, Ukraine), while an additional 11 (plus some in the initial group) provide a right to food for specific populations, and 47 constitutions proclaim a broader right, such as an adequate standard of living, that is interpreted to include the right to food. *See* Food and Agric. Org. of the U.N., Econ. and Soc. Dev. Dep't., Recognition of the Right to Food at the Nat'l Level (2005) (Annex II) *available at* http://www.fao.org/docrep/meeting/007/j0574e.htm#P108_17273 (last visited April 28, 2011). Moreover, the following international accords specifically list the right to food or adequate nutrition as a basic right: Universal Declaration of Human Rights, U.N. Doc. A/RES/217, G.A. Res. 217 (Dec. 10, 1948) [hereinafter UDHR]; Internat'l Covenant on Econ., Social and Cultural Rights, U.N. Doc. A/6316, G.A. Res. 2200A (XXI), at art. 11 (Jan. 3, 1976) [hereinafter ICESCR]; Convention on the Rights of the Child, G.A. Res. 44/25, (Sept. 2 1990) at art. 27.3 [hereinafter CRC], and the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. Doc. A/34/46 (Sept. 3, 1981) at arts. 12.2, 14 [hereinafter CEDAW]. *See also* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, THE RIGHT TO FOOD IN PRACTICE: IMPLEMENTATION AT THE NATIONAL LEVEL 4 (2006) (discussing UDHR, ICESCR, and CRC); MARGARET VIDAR, STATE RECOGNITION OF THE RIGHT TO FOOD AT THE NATIONAL LEVEL 15, 22, 24 (2006) (discussing ICESCR, CEDAW, and CRC).

211. ICESCR, *supra* note 209, art. 11(1).

212. *See* U.N. Treaty Collection, Chapter IV: Human Rights, Econ. Int'l Covenant on Econ., Social and Cultural Rights, (Apr. 29, 2011, 06:03:18 EDT PM), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

* Peter Halewood, Trade Liberalization and Obstacles to Food Security: Toward a Sustainable Food Sovereignty, 43 INTER-AM. L. REV. 113, 114 (2012).

tion, understanding, and activism. Hopefully the rich and productive exchange of ideas that occurred at this SNX conference, along with the articles in this symposium, will contribute to the development of a more complex, nuanced and humanistic understanding of the global politics of food.