

PUBLIC HEALTH AND U.S. FOOD & AGRICULTURE POLICY

SUMMER 2018

PROFESSOR WILLIAM S. EUBANKS II

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Course Description

It is often argued that individual food choice is the ultimate exercise of personal responsibility in our society. But what if that conventional wisdom was challenged, instead recognizing that a complex web of agricultural and food laws substantially influences what ends up on our plates, and ultimately affects the health of individuals and communities. These policies, and the regulatory mechanisms supporting them, play a vital role in determining health outcomes for our nation, and accordingly will be explored in depth in this course. In the context of these policies, the course will cover diverse public health issues including the U.S. Farm Bill, nutrition assistance programs (SNAP, WIC, and school meal programs), food access, obesity and malnutrition, food safety and foodborne diseases, genetically engineered foods, organic and other certification and food labeling schemes, and the debate about food systems and sustainability. Because many of these issues are newly emerging topics, student participation in discussions is strongly encouraged. The course will conclude with a short research paper and a brief presentation on a topic of the student's choice.

This course is an elective. There are no prerequisites, but Administrative Law or Environmental Law is strongly recommended.

The class will meet from July 9 to July 19 (Monday through Thursday), 9:00am to 12:00pm, with two 10-minute breaks. I will likely schedule at least one guest lecture to provide diverse perspectives for students, to spark ideas of interest for papers and presentations, and to offer insight into the types of careers that exist in this field.

Class Readings

Our primary textbook will be FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW (edited by Angelo, Czarnecki, and Eubanks), ISBN: 1585761605. The textbook will be supplemented with readings that have been selected from diverse sources (law review articles, government agencies, scientific and advocacy organizations, and mainstream media) to ensure that all viewpoints are analyzed and discussed. All readings are required unless marked as **OPTIONAL**. Optional readings might be discussed briefly in class, but are intended primarily to provide additional reading for students interested in a particular topic, as well as to provide ideas for paper topics. Students are expected to read each required document before that day's class and to be prepared to critically analyze the topics found therein during class discussions. *Please note there are readings for the first day of class.*

The weblinks can be accessed by copying them from the syllabus and pasting them into a web browser. **Please note that if a weblink goes onto a second line in the syllabus, you may have to delete a space (where the link break occurs) when pasting the link into your web browser.** If any of the weblinks are found to be non-operational, please email the professor immediately and a replacement link will be provided if one is available.

Final Exam and Grading

In lieu of a final exam, there will be a short (5-10 page, double-spaced) research paper on a topic of the student's choice. The research paper will be due no later than noon on Sunday, July 22. **All final papers must be emailed to the professor (beubanks@meyerglitz.com) in Microsoft Word format.** On July 19, students will present to the class a short (5-10 minute) oral presentation (Powerpoint optional) summarizing the topic on which the student has chosen to write her or his final paper. In an effort to avoid duplicative research by students, all paper/presentation topics must be approved by the professor by 4:00pm on Thursday, July 12. Students may discuss topics with the professor before or after class, during class breaks, during office hours, or by email.

Grading will be conducted as follows: 20% of a student's grade will be based on class participation; 20% of a student's grade will be based on the short (approximately 8-10 minute) oral presentation on a topic of her/his choice (to be discussed with and approved by the professor); and the final 60% of a student's grade will be based on the short research paper (5-10 pages, double-spaced) on the same topic. The paper will be graded on content, critical thinking and analysis, use of source materials, grammar/spelling, and proper citation pursuant to the 20th edition of the Bluebook.

Class Schedule

CLASS 1 (July 9): The Farm Bill: What It Is, What It Isn't, and Its Impact on Our Nation's Environment and Public Health

- Chapter 1 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – A Brief History of U.S. Agricultural Policy and the Farm Bill
- Congressional Research Service (CRS), *What is the Farm Bill?*, available at <https://www.fas.org/sgp/crs/misc/RS22131.pdf>
- Farm Bill Law Enterprise, *Farm Bill Process in a Nutshell*, available at <http://www.farbilllaw.org/wp-content/uploads/2017/10/Farm-Bill-Process.pdf>
- Various Authors, *How A National Food Policy Could Save Millions of American Lives*, available at http://www.washingtonpost.com/opinions/how-a-national-food-policy-could-save-millions-of-american-lives/2014/11/07/89c55e16-637f-11e4-836c-83bc4f26eb67_story.html

- Marion Nestle, *The Farm Bill Drove Me Insane*, available at <http://www.politico.com/agenda/story/2016/03/farm-bill-congress-usda-food-policy-000070>
- **OPTIONAL** – Chapter 2 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – An Overview of the Modern Farm Bill
- **OPTIONAL** – Farm Bill Law Enterprise, *Background Library* available at <http://www.farbilllaw.org/background-library/>
- **OPTIONAL** – Congressional Research Service, *The 2014 Farm Bill: Summary and Side-by-Side* (only read pages 1-19), available at <http://nationalaglawcenter.org/wp-content/uploads/2014/02/R43076.pdf>
- **OPTIONAL** – Scott Marlow (RAFI-USA), *The Farm Bill Tree: Understanding the Logic of the Farm Bill*, available at <http://rafiusa.org/blog/the-farm-bill-tree-understanding-the-logic-of-the-farm-bill/>
- **OPTIONAL** – Jack Hedin, *My Forbidden Fruits*, available at <http://www.nytimes.com/2008/03/01/opinion/01hedin.html>
- **OPTIONAL** – National Sustainable Agriculture Coalition (NSAC), *Grassroots Guide to the Farm Bill*, available at <http://sustainableagriculture.net/publications/grassrootsguide/>
- **OPTIONAL** – Fleischhacker & Gittelsohn, *Carrots or Candy in Corner Stores?: Federal Facilitators and Barriers to Stocking Healthier Options*, available on Lexis or Westlaw at 7 IND. HEALTH L. REV. 23, or at <https://journals.iupui.edu/index.php/ihlr/article/viewFile/16561/16703>
- **OPTIONAL** – Union of Concerned Scientists, *The \$11 Trillion Reward*, available at http://www.ucsusa.org/assets/documents/food_and_agriculture/11-trillion-reward.pdf

CLASS 2 (July 10): Food Security and Justice: Hunger, Obesity, Access, and Federal Programs (WIC, SNAP, and School Meals)

- USDA Econ. Research Serv., *Report Summary: Household Food Security in the U.S. in 2016*, available at https://www.ers.usda.gov/webdocs/publications/84973/err237_summary.pdf?v=42979
- Food Research and Action Center, *How Hungry Is America?*, available at <http://frac.org/wp-content/uploads/food-hardship-2016-1.pdf>
- USDA, *WIC At A Glance*, available at <http://www.fns.usda.gov/wic/about-wic-wic-glance>
- Chapter 13 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Food Statutes (only read pages 233-240)
- Washington Post, *The Crippling Thing About Growing Up Poor Is That Stays With You Forever*, available at <https://www.washingtonpost.com/news/wonk/wp/2016/02/12/the-crippling-thing-about-growing-up-poor-that-stays-with-you-forever/>

- USDA, *CNR Before and After Sample School Lunch Menu*, available at https://www.fns.usda.gov/sites/default/files/cnr_chart.pdf
- American Journal of Preventative Medicine, *Moving Beyond the Debate Over Restricting Sugary Drinks in the Supplemental Nutrition Assistance Program*, available at [http://www.ajpmonline.org/article/S0749-3797\(16\)30464-0/fulltext](http://www.ajpmonline.org/article/S0749-3797(16)30464-0/fulltext)
- The Food Trust, *Healthy Food Financing Initiative*, available at http://thefoodtrust.org/uploads/media_items/hffi-one-pager.original.pdf
- **OPTIONAL** – Congressional Research Service, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42505.pdf>
- **OPTIONAL** – USDA Econ. Research Serv., *Access to Affordable and Nutritious Food: Measuring and Understanding Food Deserts and Their Consequences*, available at http://www.ers.usda.gov/media/242675/ap036_1_.pdf
- **OPTIONAL** – J. Amy Dillard, *Sloppy Joe, Slop, Sloppy Joe: How USDA Commodities Dumping Ruined the National School Lunch Program*, available on Lexis or Westlaw at 87 OR. L. REV. 221, or at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133157
- **OPTIONAL** – USDA Econ. Research Serv., *The National School Lunch Program: Background, Trends, and Issues*, available at http://ers.usda.gov/media/205594/err61_1_.pdf
- **OPTIONAL** – USDA Econ. Research Serv., *Does SNAP Decrease Food Insecurity? Untangling the Self-Selection Effect*, available at http://www.ers.usda.gov/media/184824/err85_1_.pdf

CLASS 3 (July 11): The Debate over Food Systems (Local, Regional, National, and Global) and How Food Systems Affect Ecosystems and Public Health

- Blake Hurst, *The Omnivore's Delusion: Against the Agri-Intellectuals*, available at <http://www.aei.org/publication/the-omnivores-delusion-against-the-agri-intellectuals/>
- USDA Econ. Research Serv., *Report Summary: Trends in U.S. Local and Regional Food Systems*, available at https://www.ers.usda.gov/webdocs/publications/42805/51174_ap068_report-summary.pdf?v=42083
- Various Authors, *Do Farm-To-School Programs Really Make a Difference?*, available at <http://www.tandfonline.com/doi/pdf/10.1080/19320240802244025>
- Pages 4-18 of National Farm to School Network, *State Farm to School Legislative Survey 2002-2017*, available at <http://www.farmtoschool.org/Resources/State%20Farm%20to%20School%20Legislative%20Survey%202002-2017.pdf>

- Explore NSAC's Local Food Bill website, available at <http://sustainableagriculture.net/our-work/local-food-bill/>
- **OPTIONAL** – Explore the National Farm to School Network's website, available at <http://www.farmtoschool.org/index.php>
- **OPTIONAL** – Farm to Institution New England, *Producer Perspectives: The New England Farm to Institution Market*, available at <https://www.farmtoinstitution.org/sites/default/files/imce/uploads/FINE%20Producer%20Report.pdf>
- **OPTIONAL** – J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263 (2000) (pp. 265-92 only), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1623&context=elq>
- **OPTIONAL** – The Kojo Nnamdi Show, *Food Politics: Against 'Eating Local,'* available at <http://thekojonnamdishow.org/shows/2011-11-30/food-politics-against-eating-local/transcript>
- **OPTIONAL** – Jayson Lusk & Bailey Norwood, *The Locavore's Dilemma*, available at <http://www.econlib.org/library/Columns/y2011/LuskNorwoodlocavore.html>
- **OPTIONAL** – J.M. Greene, *Localization: Implementing the Right to Food*, 14 *DRAKE J. AGRIC. L.* 377
- **OPTIONAL** – NSAC Funding Guide for Local Food, available at <http://sustainableagriculture.net/wp-content/uploads/2008/08/6.18-FINAL-Food-System-Funding-Guide2.pdf>

CLASS 4 (July 12): Food Safety: Diseases and Outbreaks in the Industrial System

- Sara M. Benson, *Guidance for Improving the Federal Response to Foodborne Illness Outbreaks Associated with Fresh Produce*, available on Westlaw at 65 *FOOD & DRUG L. J.* 503 (2010)
- Chapter 13 of *FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Food Statutes* (only read pages 226-27)
- Explore FDA, *Food Safety Modernization Act: Frequently Asked Questions*, available at <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247559.htm>
- Explore FDA, *Final Preventive Controls Rule Summary*, available at <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334115.htm>
- Explore FDA, *Final Produce Rule Summary*, available at <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>
- Politico, *Who's Watching The Chickens?*, available at <http://www.politico.com/agenda/story/2016/03/federal-agency-food-safety-regulation-000068>
- Sustainable Table, *rBGH*, available at <http://www.sustainabletable.org/797/rbgh>

- Chapter 5 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Industrialization of Animal Agriculture: Connecting a Model with its Impacts on the Environment
- **OPTIONAL** – Congressional Research Service, *Implementation of FSMA*, available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43724.pdf>
- **OPTIONAL** – *Rose Acre Farms v. United States*, 559 F.3d 1260 (Fed. Cir. 2009)
- **OPTIONAL** – GAO, *Antibiotic Resistance: Federal Agencies Need to Better Focus Efforts to Address Risk to Humans from Antibiotic Use in Animals*, available at <http://www.gao.gov/assets/250/242186.pdf>
- **OPTIONAL** – Robyn O’Brien, Tedx Austin Discussion about food allergies, available at <http://www.youtube.com/watch?v=r1x1rCNVVGGA>

CLASS 5 (July 16): Certification Schemes, Labeling, and Public Health: The National Organic Program and Beyond

- Chapter 13 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Food Statutes (only read pages 228-233)
- Organic Trade Association, *Nutritional Considerations*, available at <http://www.organicitsworthit.org/organic-food-article/nutritional-considerations>
- USDA Econ. Research Serv., *Report Summary: Emerging Issues in the U.S. Organic Industry*, available at https://www.ers.usda.gov/webdocs/publications/44406/17257_eib55fm_1_.pdf?v=41055
- USDA Econ. Research Serv., *Report Summary: Marketing U.S. Organic Foods: Recent Trends from Farms to Consumers*, available at https://www.ers.usda.gov/webdocs/publications/44430/11008_eib58_reportssummary_1_.pdf?v=41055
- Explore Organic Consumers Association’s Safeguard Organic Standards website, available at <http://www.organicconsumers.org/sos.cfm>
- Michelle Traher, *USDA Organic Certification for the Innovative Farmer*, available on Lexis or Westlaw at 19 J. CONTEMP. LEGAL ISSUES 254
- Explore U.S. Food and Drug Administration’s Labeling and Nutrition Guide, available at <http://www.fda.gov/downloads/Food/GuidanceRegulation/UCM265446.pdf>
- CNN, *Healthy Foods Have Most of Us Confused, Survey Finds*, available at <https://www.cnn.com/2017/05/16/health/healthy-foods-confusion-study/index.html>
- Explore Vermont Law School, *Food Labeling Facts*, available at <http://www.foodlabelfacts.org/>

- CSPI, *Executive Summary: Rigged: Supermarket Shelves for Sale* (only read pages i-iv), available at https://cspinet.org/sites/default/files/attachment/Rigged%20report_0.pdf
- **OPTIONAL** – Chapter 17 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Future of Food Eco-Labeling: A Comparative Analysis
- **OPTIONAL** – U.S. Govt. Accountability Office, *Food Labeling: FDA Needs to Reassess its Approach to Protecting Consumers from False or Misleading Claims*, available at <http://www.gao.gov/new.items/d11102.pdf>
- **OPTIONAL** – Laurie Beyranevand, *Generally Recognized as Safe? Analyzing Flaws in the FDA's Approach to GRAS Additives*, available on Lexis or Westlaw at 37 VT L. Rev. 887 (2013), or at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2353837
- **OPTIONAL** - *Coyle v. Hornell Brewing Co.*, 2010 U.S. Dist. LEXIS 59467 (D. N.J. 2010) or 2010 WL 2539386
- **OPTIONAL** – *Sanderson Farms, Inc. v. Tyson Foods, Inc.*, 547 F. Supp. 2d 491 (D. Md. 2008)

CLASS 6 (July 17): Genetic Engineering in the Food System

- United Nations Food and Agriculture Organization, *Pros of GMOs*, available at <http://www.fao.org/english/newsroom/focus/2003/gmo7.htm>, and *Cons of GMOs*, available at <http://www.fao.org/english/newsroom/focus/2003/gmo8.htm>
- Chapter 6 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – Genetically Modified Organisms and the Environment
- Chapter 12 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – Agriculture, Food, and the National Environmental Policy Act (only read pages 207-211 and 219-221)
- Rebecca Bratspies, *Is Anyone Regulating? The Curious State of GMO Governance in the United States*, available on Lexis or Westlaw at 37 VT L. Rev. 923 (2013), or at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2278211
- *Center for Food Safety v. Vilsack*, 718 F.3d 829 (9th Cir. 2013)
- Center for Food Safety, *The GE Labeling Debate*, available at http://www.centerforfoodsafety.org/files/labeling_fact-sheet_35682.pdf
- NSAC, *GMO Labeling Bill Becomes Law: What Now?*, available at <http://sustainableagriculture.net/blog/gmo-labeling-bill-now-what/>
- Explore FDA's Website Discussing the Agency's Approval of GE Salmon for Human Consumption, available at <https://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/GeneticEngineering/GeneticallyEngineeredAnimals/ucm280853.htm>

- **OPTIONAL** – Union of Concerned Scientists, *The Rise of Superweeds*, available at http://www.ucsusa.org/assets/documents/food_and_agriculture/rise-of-superweeds.pdf
- **OPTIONAL** -- FDA, *Voluntary Guidance for Industry Concerning Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants*, available at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm059098.htm>
- **OPTIONAL** – Mary Jane Angelo, *Regulating Evolution for Sale: An Evolutionary Biology Model for Regulating the Risks Posed by Genetically Modified Organisms*, available on Lexis or Westlaw at 42 WAKE FOREST L. REV. 93, or at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1537284
- **OPTIONAL** – *Geertson Seed Farm v. Monsanto*, 130 S. Ct. 2743 (2010)

CLASS 7 (July 18): Pesticides, Farm Laborers, and the Future of Food

- Chapter 3 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Environmental Impacts of Industrial Fertilizers and Toxic Pesticides
- Chapter 8 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – The Federal Insecticide, Fungicide, and Rodenticide Act
- NPR, *Busted: EPA Discovers Dow Weed Killer Claim, Wants It Off The Market*, available at <http://www.npr.org/sections/thesalt/2015/11/25/457393114/busted-epa-discovers-dow-weedkiller-claim-wants-it-off-the-market>
- Chapter 18 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – Into the Future: Building a Resilient Agricultural System for a Changing Global Environment
- Civil Eats, *Food and More: Expanding the Movement for the Trump Era*, available at <http://civileats.com/2017/01/16/food-and-more-expanding-the-movement-for-the-trump-era/>
- **OPTIONAL** – Chapter 15 of FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW – Achieving a Sustainable Farm Bill
- **OPTIONAL** – USDA Econ. Research Serv., *Profile of Hired Farmworkers*, available at <http://www.ers.usda.gov/Publications/ERR60/ERR60.pdf>
- **OPTIONAL** – U.S. Govt. Accountability Office, *Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and their Children*, available at <http://www.gao.gov/assets/230/229013.pdf>
- **OPTIONAL** – Mary Jane Angelo, *The Killing Fields: Reducing the Casualties in the Battle Between U.S. Species Protection Law and U.S. Pesticide Law*, 32 Harv. Envtl. L. Rev. 95 (2008)

CLASS 8 (July 19): Student Presentations

FINAL PAPERS: DUE NO LATER THAN NOON ON SUNDAY, JULY 22, 2018