
The Intersection Between Food Sovereignty and Law

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People use different terms when discussing food politics—food security, food justice, right to food, and food sovereignty. Corporations, governments, international institutions, and social movements all use these terms to argue how the production, distribution, and consumption of food should change. These terms are at the center of a very contentious political debate about how and why food matters and what is to be done to change the current global food system.

When considering different policy agendas and approaches to implementing these different concepts, law gains more prominence in the debate. Here at the University of Oregon Law Food Resiliency Project, we're mapping out the discussions in order to understand what role law can play in food politics. When developing a law, people must make difficult decisions and implement a particular plan. There's a risk that attempting to implement food politics into law may stifle the potential of food politics to substantively transform socioeconomic inequality. We're therefore investigating what role law can have in the food politics debate while at the same time ensuring multiple perspectives are viable and that the widest range of possibilities remains open.

Many scholars and activists suggest that food sovereignty is the most transformative approach and has the greatest potential to foster dramatic change in food and agricultural policies. Yet, it is only recently that people have started to try putting food sovereignty into practice through law. That's why we're focusing our research on the food sovereignty movement.

Via Campesina, a transnational movement comprised mostly of producers, developed the term "food sovereignty" in 1996. See Hannah Wittman et al., *The Origins & Potential of Food Sovereignty*, in *FOOD SOVEREIGNTY: RECONNECTING FOOD, NATURE & COMMUNITY* 1, 2 (Hannah Wittman et al. eds., 2010). The most basic definition is that food sovereignty is about all peoples, nations, and states' ability to democratically control their own food and agricultural policies. At the Forum for Food Sovereignty in 2007, about 500 delegates from more than eighty countries adopted the Declaration of Nyéléni, which states:

Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. [...] It

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offers a strategy to resist and dismantle the current corporate trade and food regime, and directions for food, farming, pastoral and fisheries systems determined by local producers and users.

Nyéleni, *DECLARATION OF THE FORUM FOR FOOD SOVEREIGNTY* (Feb. 27, 2007), www.nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf.

The food sovereignty concept is inherently broad in its sense of geographic scale and also in terms of the magnitude of change that it envisions; It has social, political, cultural, and environmental elements. It is defined in a way that appreciates that governments are important in creating community autonomy, but also that governments can be part of the problem. Because the idea of food sovereignty arises from a transnational movement, it allows us to see policies addressing local food and agriculture as questions of global politics and economics.

The food sovereignty movement has been successful in identifying the shortcomings of the current food system by focusing on transnational corporations and international trade regimes. There remains, however, some uncertainty about *how* (if at all) food sovereignty is something that actually could be achieved. In order to gain a better understanding of what food sovereignty may look like in practice, we consider different approaches that are being used around the world to try implementing food sovereignty. We focus on two cases studies, each employing a different implementation method. The first is a case study from Blue Hill, Maine, where the town adopted a food sovereignty ordinance in 2011. The second case study is from Ecuador, where food sovereignty was written into the constitution in 2008.

Until recently, food sovereignty has largely been seen as a social and political movement. When considering how to implement food sovereignty, however, law begins to enter the picture. At this point, it's not clear what role, if any, law should play in the food sovereignty movement. Nevertheless, we suspect that in order for the food sovereignty movement to achieve its purpose—a dramatic transformation of the global food system—law has an important role to play.

While the case studies here focus on using a community ordinance and a constitutional provision to implement food sovereignty, it's worth noting that other legal approaches are also being used. Some nations have passed food sovereignty legislation; an example is Nicaragua's *Law of Sovereignty, Food Security and Nutrition*. Ley No. 693, 18 June 2009, *Ley de Soberanía y Seguridad Alimentaria y Nutricional*, LA GACETA, DIARIO OFICIAL, 16 July 2009. There's also at least one regional trade agreement, the *Bolivarian Alliance for the Americas*, that includes food sovereignty as one of its objectives.

Food Security and Sovereignty Agreement, Feb. 2, 2009, <http://tinyurl.com/l8xbj2b>. Here, we focus on the community ordinance and constitutional provision approaches because they are two of the more common methods being used and offer an interesting comparison.

Blue Hill, Maine: A Community Ordinance Approach to Food Sovereignty

Blue Hill is a small coastal town in Maine with a population of approximately 2,700 people. In April 2011, Blue Hill passed a food sovereignty ordinance titled, "Local Food and Community Self-Governance Ordinance." Nine other towns in Maine, as well as numerous cities and towns across the country, have adopted food sovereignty ordinances.

Blue Hill's ordinance exempts producers and processors of local foods from state licensing and inspection requirements as long as their products are sold directly to consumers for personal consumption. See BLUE HILL, ME., LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE (Apr. 7, 2011), at www.farmtoconsumer.org/news_wp/wp-content/uploads/2013/05/ME_2011_03_localfoodlocalrules-ordinance-template.pdf. The ordinance references the U.S. Declaration of Independence, the Maine Constitution, and two Maine statutes as authority to enact the ordinance. *Id.* at § 4. Importantly, the ordinance also contains a section that proactively addresses the anticipated argument that state and federal law preempts local laws. That section states: "[i]t shall be unlawful for any law or regulation adopted by the state or federal government to interfere with the rights recognized by this Ordinance." *Id.* at § 6.1. This is an example of how the food sovereignty movement is attempting to take sovereignty away from the exclusive jurisdiction of the state and federal government and put it in the hands of individual communities.

Less than a week after the Blue Hill ordinance was passed, Walter Whitcomb, commissioner of the Maine Department of Agriculture, Food and Rural Resources, sent a letter to the town explaining that the ordinance conflicts with state food licensing and inspection laws and therefore, is preempted. See Faith DeAmbrose, *Department of Agriculture to Towns: State Law Preempts Local Food Rules*, ISLAND AD-VANTAGES (May 13, 2011). The letter went on to say that anyone who failed to comply with state laws would be subject to enforcement, including the imposition of fines. See Deirdre Fulton, *Food Sovereignty Goes to Court*, THE PORTLAND PHOENIX (Jan. 11, 2012), <http://tinyurl.com/6lgqdd5>. Despite the warning, Blue Hill residents continued to act as if the ordinance was valid.

On November 3, 2011, seven months after Blue Hill adopted its food sovereignty ordinance, the state of Maine and Walter Whitcomb filed a lawsuit against a Blue Hill dairy farmer, Dan Brown, in the Hancock County Superior Court. The complaint alleged that Brown was violating Maine's food safety laws by selling his dairy products at farmers markets and a farm stand without a state license. The media immediately responded to the lawsuit with headlines such as "Food Sovereignty Goes to Court." *Id.*

One of Brown's defenses asserts that Blue Hill's ordinance exempts him from state licensing requirements. Not surprisingly, the state refutes this defense, arguing that state law preempts the ordinance. Initially, the court rejected motions for summary judgment by both parties and sent the parties to mediation. However, after unsuccessful mediation talks, the

case headed back to court. Then, on April 27, 2013, just four days after oral arguments, Justice Ann Murray for the Hancock County Superior Court granted summary judgment for the state and issued an injunction against Brown until he obtained a license from the state to sell his dairy products.

In her opinion, Justice Murray explained that "[n]othing in the Blue Hill ordinance clearly states that the town intended to include milk within the definition of 'local food,' and considering the ordinance in the context of Title 22 [a state law that exempts farmers markets and farm stands from state licensing requirements but does not exempt dairy products], one could readily conclude that it was not intended to exempt dairy products from licensure." *Maine v. Brown*, No. CV-11-70, slip op. at 8 (Hancock Cnty. Me. Apr. 27, 2013). The court went on to find that even "if the Blue Hill Ordinance were to be read in the light Brown attempts to portray it, that ordinance would clearly frustrate the purpose of the state law. . . ." *Id.* According to the court, because the Maine legislature has subjected milk products to stricter food safety regulations than other products, the Blue Hill Ordinance cannot exempt individuals from the state's licensing requirements. *Id.* Thus, at least with regard to the sale of raw milk and other dairy products, Justice Murray's ruling makes it clear that state law preempts the ordinance. It's noteworthy though that Justice Murray's opinion did not invalidate the entire ordinance.

In June, Brown was ordered to pay \$1,138 in fines and court fees for illegally selling his milk products. Mario Moretto, *Blue Hill Raw Milk Seller Ordered to Pay \$1,000 in Fines, Court Fees*, BANGOR DAILY NEWS (June 18, 2013). At the penalty hearing, Mr. Brown asked Justice Murray to rescind her earlier decision against him, which she declined to do. *Id.* Brown has vowed to appeal all charges against him to the Maine Supreme Judicial Court. *Id.* For many observers, the lawsuit against Dan Brown was an important test case to see how courts would respond to the type of food sovereignty ordinances enacted by Blue Hill. Notwithstanding the defeat in court, food sovereignty advocates in Blue Hill, and throughout Maine, appear to be even more motivated to pursue their food sovereignty agenda. Recently, the focus appears to have shifted somewhat from the community-level ordinances to passing statewide legislation. There has been significant emphasis on one bill in particular, LD 1282, which would exempt raw milk producers selling less than 20 gallons a day from state licensing and inspection requirements. 126th Leg. 1st Reg. Sess. (Me. 2013). While the bill passed both the House and Senate, Maine's Governor, Paul LePage, vetoed it. Letter from Governor Paul LePage to Members of the 126th Leg. (July 8, 2013). While the governor said he supported the sale of raw milk on farms, he vetoed the bill because he did not support the sale of raw milk at farmers markets. *Id.* It remains to be seen whether a modified version of the bill allowing farm sales of milk will eventually be enacted. While the veto of LD 1282 is a blow to the food sovereignty movement in Maine and to farmers like Dan Brown, it's not likely to end the fight to get food sovereignty-related legislation passed in Maine.

While the food sovereignty ordinances passed by ten towns in Maine are still on the books, relying on one of the ordinances as a defense for failing to comply with state laws would be risky at this point. There seems to be a growing realization that state legislation will be necessary to further the goals of food sovereignty in Maine and to gain legitimacy for the community ordinances.

Ecuador: A Constitutional Approach to Food Sovereignty

In contrast to Blue Hill, Ecuador has taken a much different path in trying to implement food sovereignty. In 2006, left-leaning Rafael Correa was elected as Ecuador's new president (and later reelected for a third term in 2013). After taking office, he convened a Constituent Assembly to write a new constitution. Seeing this as an important opportunity to shape agricultural policy in Ecuador, the country's major rural and indigenous movements formed a coalition called La Mesa Agrária and worked to get food sovereignty incorporated into Ecuador's constitution. The new constitution, Ecuador's twentieth, was approved by voters in 2008 and included several sections that addressed food sovereignty. For example, Article 281 states that, "[f]ood sovereignty constitutes an objective and strategic obligation of the State to guarantee that people, communities, pueblos, and nationalities achieve self-sufficiency with respect to healthy and culturally appropriate food on a permanent basis." Republic of Ecuador Constitution Oct. 20, 2008, tit. VI, ch. 3, art. 281. Article 281 then enumerates fourteen specific responsibilities of the state, including supporting small farms, promoting organic food production, and protecting domestic food production over food imports. *Id.* Additionally, Article 401 declares Ecuador to be a country free of genetically modified seeds and crops, except in the interest of national security. *Id.* at tit. VII, ch. 2, art. 401.

After the Constitution was adopted in 2008, efforts shifted to get legislation passed to implement the food sovereignty provisions of the constitution. On February 17, 2009, the National Congress, by an overwhelming majority, approved Ecuador's Organic Law on the Food Sovereignty Regime. See 17 Feb. 2009, *Ley Orgánica del Régimen de la Soberanía Alimentaria*, 5 May 2009. The law provided support for organic farming, sought to avoid further monocultures, provided access to credit for small farmers, banned the import of genetically modified foods, and supported changes in land ownership structures. *Id.*

However, a month later, President Correa sent the bill back to Congress, vetoing the sections that reformed the structure of land ownership, banned the import of food containing genetically modified organisms (GMOs), and limited the production of biofuels in Ecuador. Both the legislature and social movements in Ecuador have questioned the influence of agribusiness in President Correa's partial veto of the law. It's noteworthy that the same month the president partially vetoed the law, his government withdrew support for Acción Ecológica, one of Ecuador's major environmental groups that had been promoting food sovereignty.

Importantly, Ecuador's constitution makes achieving food sovereignty a responsibility of the state—the enforceability and effectiveness of Ecuador's constitutional provision depends on how the president, legislature, and the courts treat it. This is a much different situation than in Blue Hill, where the community members are responsible for enforcing the ordinance.

Case Study Reflections

These two case studies raise at least four interesting questions and observations about the food sovereignty movement. First, what are the pros and cons of a bottom-up (i.e., community ordinance) approach as compared to a top-down (i.e., constitutional provision) approach when trying to implement food

sovereignty? As previously mentioned, one of the key elements of food sovereignty is democratic control over how food is produced and distributed. In many ways, the bottom-up approach appears to encompass this aspect of food sovereignty better than the top-down approach. Community ordinances embrace the idea of having a democratically controlled food system at the community level. This is exactly what you see in Blue Hill, where the town's ordinance explicitly takes sovereignty away from the state and puts it in the hands of the community. In fact, the community ordinance challenges our firmly held notions of bottom-up versus top-down by proclaiming the community to be the "top." That is, at least with respect to food, the community ordinance, not a state or federal law, is the supreme law of the land. However, as demonstrated with the recent decision in Brown's case, a finding of state preemption can undermine the community ordinance approach. Paradoxically, after suffering a loss in court, food sovereignty advocates in Maine are focusing their efforts on legislative reform, which could be seen as reinforcing the idea that state law is the supreme law.

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On the other hand, due to the global nature of the food system, the top-down approach may be better equipped to address some of the more systemic problems in the food system. Furthermore, having a constitutional provision or legislation in place sends a strong message of support for subsequent actions at the community level and would likely avoid the state preemption issue that was litigated in Brown's case. However, there are reasons to be skeptical about the effectiveness of a constitutional provision, mainly because of questions about the enforceability and justiciability of constitutional provisions. Ecuador, for example, lacks a clear constitutional standing doctrine, which leaves significant uncertainty about who can bring an action and what he or she would need to show to establish standing. See Mary E. Whittemore, *The Problem of Enforcing Nature's Rights Under Ecuador's Constitution*, 20 PAC. RIM L. & POL'Y J. 659, 665 (2011).

Whether food sovereignty is implemented through community ordinances or constitutional provisions, it remains a grassroots movement. This is true in both Maine and Ecuador, where social movements, made up of farmers, consumers, health advocates, rural development proponents, and others, were the impetus for change. Because of the magnitude

of reform that the food sovereignty movement envisions, it's unlikely that state or national governments will promote a food sovereignty agenda without strong grassroots pressure.

A second question these case studies raise is how the expansive definition of food sovereignty affects the various implementation approaches and their effectiveness. One of the most prominent writers on global food politics has described food sovereignty as a "big tent" approach with diverse and contradictory trajectories and an inconsistent core set of ideas. Raj Patel, *Food Sovereignty*, 36 J. PEASANT STUD. 663, 666 (2009). One benefit of having a broad definition of food sovereignty is that it allows many different groups to participate in the food sovereignty movement. Groups working on diverse issues, be it GMOs, culturally appropriate foods, or sustainable farming methods, all can link their project to the food sovereignty movement.

However, the "big tent" approach also poses a challenge and sets the stage for a struggle within the movement about what food sovereignty means and how best to achieve it. For example, while the Blue Hill ordinance focuses on exempting local producers and processors from state licensing requirements, certainly a component of food sovereignty, one could argue that the ordinance does not go far enough. It does not address access to land or seeds for farmers, sustainable farming practices, gender inequalities, or many of the other issues that the food sovereignty movement tries to encompass.

This debate about what food sovereignty means raises the uncomfortable issue of one group of people imposing their idea of food sovereignty on other people—something that seemingly contradicts the idea of sovereignty. Thus, *who* gets to define food sovereignty becomes an important part of how food sovereignty is implemented.

Thirdly, the case studies illustrate some of the challenges and obstacles that test the resolve of the food sovereignty movement. Almost everywhere you look there is some form of opposition: community ordinances being preempted by state or federal law, the justiciability of constitutional provisions, powerful agribusinesses fighting to maintain the status quo, environmental problems that threaten to undermine efforts to transform the food system, and international trade laws, to name just a few of the hurdles that need to be overcome. Blue Hill's ordinance, substantially weakened by a judicial decision, and Ecuador's constitutional provision, which is being undermined by powerful agribusinesses and political wrangling, are testaments to the challenge of putting food sovereignty into practice.

Food Sovereignty and Food Safety

An additional challenge for the food sovereignty movement is a tension between how much control the state or individual communities should have over food production and processing, especially with regard to food safety and public health. In Maine for example, food sovereignty ordinances have received pushback from some local organic farmers who think the state, not individual communities, should be responsible for ensuring that food meets the requisite health and safety standards. Others, however, think that food sovereignty means individual consumers should be able to decide what to buy and whom they buy it from and should accept personal responsibility for their choices. The food safety issue is particularly relevant now

in the debates about raw milk sales that are occurring throughout the United States. Whether responsibility for food safety and public health rests with individual consumers, communities, or state and federal agencies is contested even among food sovereignty proponents.

Food Sovereignty in Practice

Finally, it's worth considering how the law, and especially lawyers and judges, will affect the implementation of food sovereignty. While food sovereignty generally is seen as part of a social and political movement, it is important to evaluate how a wide range of existing laws make implementing food sovereignty a challenge. These include laws concerning seed patents, government subsidies, and World Trade Organization practices that affect agricultural products. Additionally, as more food sovereignty ordinances, state laws, and constitutional provisions are adopted around the world, there is a greater likelihood that lawyers and judges will begin to play a more important role in food sovereignty debates.

In Maine, Justice Murray was the first judge to weigh in on the validity of a food sovereignty ordinance. It remains to be seen what influence her decision and reasoning will have in other Maine counties and states that have passed similar ordinances. In Ecuador, the relatively detailed constitutional provision on food sovereignty opens up the possibility for challenges to state actions that could be interpreted as violating the constitutional right to food sovereignty. For example, the importation of GMOs could arguably be challenged for violating the ban on GMOs contained in Article 401 of Ecuador's constitution, which remains in place, notwithstanding President Correa's veto of legislation implementing the provision. Thus, with more food sovereignty laws on the books and the possibility of more legal challenges, either to enforce a food sovereignty law or to challenge its validity, lawyers and judges likely will play a more prominent role in the food sovereignty debates in the future and could have an important influence on the direction the food sovereignty movement takes. Whether this helps or hinders the movement remains to be seen, but at this point, current laws are not helping the food sovereignty movement.

Therefore, we propose that as the food sovereignty movement matures and diversifies it needs to be accompanied by legal transformations. The initial task would be to track the different laws that attempt to implement and potentially impede food sovereignty. With this, an understanding of how such laws operate will contribute to debates over defining food sovereignty. But the most difficult task would be to develop, enact, and implement laws that ensure the food sovereignty movement remains supple to changing global politics and resilient to global ecology.

No matter what term is used in food politics, what matters to us is to fundamentally change how food is made, delivered, and eaten on a global scale. Notwithstanding the numerous difficulties in trying to achieve food sovereignty, we're excited about the movement as a growing number of people around the world are fighting to define and implement food sovereignty. Blue Hill, Maine, and Ecuador are at the heart of the debates and will be important places to follow as the movement continues to grow. 🌱