

**LAWYERS AS PROBLEM-SOLVERS, ONE MEAL AT A TIME: A
REVIEW OF BARBARA KINGSOLVER'S *ANIMAL, VEGETABLE,
MIRACLE***

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OVERVIEW

Barbara Kingsolver's *Animal, Vegetable, Miracle: A Year of Food Life*¹ is a must-read for lawyers and legal scholars in the areas of food law, environmental law, agricultural law, and education law. Indeed, I recommend it to anyone interested in the future of the planet or our children.

In the book, Barbara Kingsolver chronicles her family's year of eating locally grown food. Known for her fiction,² her storytelling abilities are a highlight of the book. I definitely got caught up in learning whether her daughter's egg business would take off. And Kingsolver's story about her heritage turkeys is as suspenseful as a murder mystery. The book, however, is not a light read. In contrast to a book like Al Gore's *An Inconvenient Truth*,³ it is dense and lacks gripping photos or other helpful visuals.

The overarching point of Kingsolver's book is that Americans should eat more locally grown food. Doing so will give rise to what Kingsolver describes as a positive "food culture."⁴ A positive "food culture" makes eating more enjoyable (think fresh from the garden tomatoes rather than those trucked in to the grocery from miles away with little taste). But a positive "food culture" also promises more: to be part of the solution to several of the major problems facing us at the start of the twenty-first century, such as global warming and childhood obesity.⁵

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1. BARBARA KINGSOLVER, *ANIMAL, VEGETABLE, MIRACLE: A YEAR OF FOOD LIFE* (2007).

2. I have read and enjoyed BARBARA KINGSOLVER, *PIGS IN HEAVEN* (1993) and BARBARA KINGSOLVER, *THE BEAN TREES* (1988). My favorite Barbara Kingsolver book, however, is another nonfiction one—BARBARA KINGSOLVER, *HOLDING THE LINE: WOMEN IN THE GREAT ARIZONA MINE STRIKE OF 1983* (1989).

3. AL GORE, *AN INCONVENIENT TRUTH: THE PLANETARY EMERGENCY OF GLOBAL WARMING AND WHAT WE CAN DO ABOUT IT* (2006).

4. KINGSOLVER, *supra* note 1, at 17.

5. *Id.* at 15, 19-21. For legal reading on global warming, see Matthew D. Zinn, *Adapting to Climate Change: Environmental Law in a Warmer World*, 34 *ECOLOGY L.Q.* 61 (2007); Judi Brawer, *The New "Hot" Topic in Environmental Law: Global Warming*, 50 *ADVOC.* 17 (June-July 2007). For a symposium on the child obesity epidemic, including legal solutions, see Symposium, *Childhood Obesity*, 35 *J.L. MED. & ETHICS* 7 (2007). For legal reading suggesting a need for legislative and regulatory action "if substantial progress is to be made on the childhood obesity problem," see Marlene B. Schwartz & Kelly D. Brownell, *Actions Necessary to Prevent Childhood Obesity: Creating the Climate for Change*, 35 *J.L. MED. & ETHICS* 78, 79 (2007). For a proposal of a complete ban, in all grades at all times, on all foods in competition with National

Kingsolver does not make her points only through stories or in a subjective manner. Instead, she takes a position on many issues, sometimes controversial ones, and she defends the positions in a detailed and well-supported manner. In fact, one of the few drawbacks of the book is that she sometimes hits the reader over the head with her opinion, despite her explicit claims not to do so.

Kingsolver's husband, Steven L. Hopp, an environmental studies professor, and her eldest daughter, Camille Kingsolver, also contribute to the book. Hopp writes sidebars on many of the significant issues discussed by Kingsolver. Camille Kingsolver offers weekly menus with recipes for many quick and delicious sounding meals that can be made with foods that are in-season in the eastern United States.

Overall, Kingsolver tends to focus on individual actions which, when taken by large numbers of people, will promote eating locally grown food.⁶ Indeed, she explicitly states her distrust for the law: "We will change our ways significantly as a nation not when some laws tell us we *have* to (remember Prohibition?), but when we *want* to."⁷ Certainly, however, the law might contribute in myriad ways to establish a positive "food culture" that encourages people to eat locally grown food. For instance, cities might provide public transportation to, or free parking at, farmers' markets; city programs might give away heirloom seeds, like some cities now give away trees; federal agricultural policy might protect heirloom seeds; or tax credits or flexible spending accounts might be set up for purchases at farmers' markets.

In fact, many of the issues that Kingsolver addresses are legal ones, and many of the implications of her arguments also bear on legal topics. The sidebars written by Hopp often also address legal issues. This review discusses the legal issues raised by the book and provides annotation to relevant legal articles.⁸

School Lunch Program meals, see Ellen Fried & Michele Simon, *The Competitive Food Conundrum: Can Government Regulations Improve School Food?* 56 DUKE L.J. 1491 (2007). For a proposal advocating federal regulation of junk food advertising aimed at children, see Michele Simon, *Can Food Companies be Trusted to Self-Regulate?: An Analysis of Corporate Lobbying and Deception to Undermine Children's Health*, 39 LOY. L.A. L. REV. 169 (2006). For a proposal to assign responsibility to food companies for reducing obesity rates in a specific pool of children, see Stephen D. Sugarman & Nirit Sandman, *Fighting Childhood Obesity Through Performance-Based Regulation of the Food Industry*, 56 DUKE L.J. 1403 (2007). For arguments that lawsuits that seek to reduce childhood obesity do not provide a solution to childhood obesity, see Theodore H. Frank, *A Taxonomy of Obesity Legislation*, 28 U. ARK. LITTLE ROCK L. REV. 427 (2006); Sarah Taylor Roller et al., *Obesity, Food Marketing and Consumer Litigation: Threat or Opportunity?*, 61 FOOD & DRUG L.J. 419 (2006). For a proposal to reduce childhood obesity by changing food labeling, see Todd J. Zywicki et al., *Obesity and Advertising Policy*, 12 GEO. MASON L. REV. 979, 1005-11 (2004).

6. See KINGSOLVER, *supra* note 1, at 20.

7. *Id.* at 338.

8. For an interesting legal article discussing "the need for innovative approaches . . . to help create opportunities for food production in local economies," see Neil D. Hamilton, *Greening our Garden: Public Policies to Support the New Agriculture*, 2 DRAKE J. AGRIC. L. 357, 358 (1997); see also Neil D. Hamilton, *Plowing New Ground: Emerging Policy Issues in a Changing Agriculture*, 2 DRAKE J. AGRIC. L. 181 (1997).

EATING NON-LOCALLY GROWN FOOD CONTRIBUTES TO GLOBAL
WARMING AND CHILDHOOD OBESITY

In the opening chapter, Kingsolver chronicles her family's move from Tucson, Arizona to southwestern Virginia and establishes her goal to create a positive "food culture" for her family.⁹ Hopp's sidebar on "oily food" points out that if every United States citizen ate one meal a week of organic locally grown food, we would save 1.1 million barrels of oil every week.¹⁰

The chapter raises two primary problems, each of which involve a legal aspect, to which eating locally might provide a partial solution. First, eating non-locally grown food contributes to global warming because of the necessary transportation.¹¹ Second, the agricultural industry and many food corporations pack extra and unnecessary calories into the foods that children in particular tend to eat. These repercussions would be avoided by eating locally grown foods.¹² Moreover, the chapter discusses Kingsolver's view that the Federal Farm Bill ("Farm Bill") has a negative effect on small farmers and makes consumers less healthy.¹³ Kingsolver also suggests, though does not tout, reinstating food-production classes into school curriculums.¹⁴

RESTRUCTURING THE FEDERAL FARM BILL TO
HELP POOR FAMILY FARMERS

Kingsolver tells of the "Appalachian Harvest" label and the model nonprofit organization, Appalachian Sustainable Development, that makes the label possible.¹⁵ The nonprofit organization provides family farmers with "special training, organic certification, reliable markets, and a packaging

9. KINGSOLVER, *supra* note 1, at 1-22.

10. *Id.* at 5.

11. *Id.* Kingsolver also includes an interesting discussion of vegetarianism in the book. She explains how her position is similar to but different from that of a vegetarian. She does not eat much meat because of animal rights—the right of an animal to live a decent life even if intended as human food. She quotes Wendell Berry, "If I am going to eat meat, I want it to be from an animal that has lived a pleasant, uncrowded life outdoors, on bountiful pasture, with good water nearby and trees for shade. And I am getting almost as fussy about food plants." *Id.* at 222. But Kingsolver's opinion seems to be that local eating is better for the environment than vegetarianism. While her case appears persuasive, no statistics are provided for whether eating non-locally grown vegetarian food or eating locally grown, non-vegetarian food consumes more electricity or contributes more to global warming. The reader cannot evaluate whether, for those living in the United States, the water, feed and other resources used to raise locally grown free-ranging animals are actually less than those expended in growing and then transporting non-locally grown vegetarian products.

12. *Id.* at 15.

13. *Id.* at 18-19.

14. *Id.* at 9.

15. KINGSOLVER, *supra* note 1, at 202. The "Appalachian Harvest" label assures customers that the vegetables are a "healthy food" from a local farm. The farms are in Virginia, North Carolina, and Tennessee, and the vegetables are sold only in those markets. Without the resources provided by Appalachian Sustainable Development, the participating local farmers would not likely be able to sell their vegetables in chain supermarkets.)

plant.”¹⁶ But, when California tomatoes come in a few dollars less, the Appalachian Harvest farmers lose their market at the local groceries.¹⁷ Kingsolver points out that the transportation costs on the California tomatoes were tax deductible.¹⁸

In the related sidebar, Hopp takes up the theme of how the Farm Bill further contributes to the disadvantageous position of poor family farmers.¹⁹ At the behest of agribusiness lobbyists, the Bill’s formula for subsidies, based on crop type and volume, amounts largely to corporate welfare.²⁰ A small allotment for locally grown foods existed in the 2002 Farm Bill: there was “some support for farmers’ markets, community food projects, and local foods in schools.”²¹ However, this support totaled less than .5 % of the Farm Bill budget.²² Hopp concludes that “we’re looking for a dramatically restructured Farm Bill” that supports family farmers and healthy food in schools.²³

LEGISLATING LOCALLY GROWN FOOD AND ADVOCATING LOCAL PROGRAMS THAT PROMOTE A POSITIVE “FOOD CULTURE”

Kingsolver discusses how “[c]itizen-led programs from California to New York are linking small farmers with school lunch programs and food banks.”²⁴ Kingsolver looks to the European Union as a model. She discusses how “[t]he

16. *Id.*

17. *Id.* at 210-11.

18. *Id.* at 211.

19. *Id.* at 206-07; see also Beau Hurtig, *The 2002 Farm Bill: One Small Step for Family Farmers, One Giant Leap Towards Corporate Production in Iowa*, 29 J. CORP. L. 199 (2003).

20. KINGSOLVER, *supra* note 1, at 206. The most recent Farm Bill was passed on June 18, 2008 after Congress overrode a veto by President George W. Bush. The Associated Press, *Congress Overrides Farm Bill Veto, Again*, MSNBC, June 18, 2008, <http://www.msnbc.msn.com/id/25244839>. The Farm Bill is described as one of the largest funded Farm Bills ever passed, amounting to \$289 billion dollars over the next five years. *Id.* While the Bill did contain subsidies to larger growers, the majority of the money (about \$209 billion) went to various food and nutrition programs. David Herszenhorn & David Stout, *Defying President Bush, Senate Passes Farm Bill*, N. Y. Times, May 15, 2008, <http://www.nytimes.com/2008/05/15/washington/15cnd-farm.html>. The Bill also contained a larger increase in funding than previous Farm Bills for Farmer’s Markets, Sustainable Community Energy Programs, and the Fresh Fruit and Vegetable Program, which targets elementary schools with high numbers of children receiving free and reduced-price school meals. The Bill increased funds for this program to ensure participating schools in all fifty states have the ability to provide fresh fruits and vegetables to their students. Jean Daniel, U.S. Department of Agriculture, *USDA Readies Fresh Fruit and Vegetable Purchases For Elementary Schools*, No. 0208.08 (August 6, 2008), available at http://www.usda.gov/wps/portal/lut/p/_s.7_0_A/7_0_1OB/.cmd/ad/.ar/sa.retrievecontent/.c/6_2_1UH/.ce/7_2_5JM/.p/5_2_4TQ/_th/J_2_9D/_s.7_0_A/7_0_1OB?PC_7_2_5JM_contentid=2008%2F08%2F0208.xml&PC_7_2_5JM_parentnav=LATEST_RELEASES&PC_7_2_5JM_navid=NEWS_RELEASE. While this is likely not the dramatic restructuring Hopp is calling for, inroads have been made.

21. KINGSOLVER, *supra* note 1, at 207.

22. *Id.*

23. *Id.*

24. *Id.* at 115.

European Union—through government agencies and enforceable laws—is now working to preserve its farmlands, its local food economies, and the authenticity and survival of its culinary specialties.”²⁵ She discusses similar regional actions in the United States, such as local agencies in the Midwest that are “mandating the purchase of locally grown organic food in schools, jails, and other public facilities.”²⁶ She also discusses school garden programs in the San Francisco Bay Area and in Durham, North Carolina.²⁷

Hopp’s related sidebar is about various laws that promote eating locally grown food.²⁸ First, he discusses how “[j]unk foods have been legally banned from many lunchrooms and school vending machines.”²⁹ Second, he discusses the 2004 National School Lunch Act amendment in which “Congress authorized a seed grant for the Farm to Cafeteria program.”³⁰ The program “promot[es] school garden projects and acquisition of local foods from small farms.”³¹ Third, he discusses how more than one-third of states have active farm-to-school programs.³² These programs promote farm visits and presentations by local farmers. Fourth, he discusses the United States Department of Agriculture’s (“USDA”) Special Supplement Nutrition Program for Women, Infants, and Children (“WIC”).³³ The WIC program includes a Farmers’ Market Nutrition Program which provides local food coupons to purchase fresh produce from farmers’ markets and roadside stands.³⁴ Finally, he discusses how Woodbury County, Iowa mandated in 2006 that the county, “subject to availability, ‘shall purchase . . . locally produced organic food when a department of Woodbury County serves food in the usual course of business.’”³⁵

INABILITY TO MANDATE SUSTAINABLE AGRICULTURE AND THE DRAWBACKS OF ORGANIC CERTIFICATION

Kingsolver points out flaws in the organic certification process. She claims that many perfectly organic operations are not certified because certification costs approximately 700 dollars a year.³⁶ She provides an example of a local farmer for whom the certification holds little value because her customers know her personally.³⁷ On the other hand, industrial organic companies have

25. *Id.* at 179.

26. *Id.*

27. KINGSOLVER, *supra* note 1, at 323.

28. *Id.* at 324-25.

29. *Id.* at 324.

30. *Id.*

31. *Id.*

32. *Id.*

33. KINGSOLVER, *supra* note 1, at 325.

34. *Id.*

35. *Id.*

36. *Id.* at 121.

37. *Id.*

pressured regulators such that “[s]ome synthetic additives are now permitted” despite the label.³⁸

Kingsolver also claims that “free-range” labels do not really mean free. A free-range animal is one that is “not fed in confinement.”³⁹ Yet, often times industrial farmers have only one door to the yard, and they keep it shut for much of the time so that the chickens do not learn to go out of their coop.⁴⁰ Kingsolver concludes: “A process as complex as sustainable agriculture can't be fully mandated or controlled; the government might as well try to legislate happy marriage.”⁴¹

I, however, am not fully convinced that legislation is inappropriate simply because the system has flaws. One laudable goal of organic certification is to inform and protect consumers. Certainly a sliding-scale or subsidy could be offered for the small farmer who cannot afford the 700 dollars for an organic certification. Moreover, rules could require the industrial farmers to provide chickens the opportunity to leave their coops, and rules could provide consumers the right to site visits (like parents have a right to visit day care centers). Additionally, labeling could be changed to state, “small farm,” or to denote whether the product is locally grown, rather than simply stating “certified organic.”

INDUSTRIAL AGRICULTURE AND PATENTABLE PLANT VARIETIES CONTRIBUTE TO THE LOSS OF BIODIVERSITY

Kingsolver explains how modern consumers “taste less than 1 percent of the vegetable varieties that were grown here a century ago.”⁴² Non-hybrid varieties of plants have significantly decreased.⁴³ We are losing the heirloom and land races which are the old varieties of plants. Kingsolver provides the compelling statistic that Seed Savers' Exchange offers “twice as many vegetable varieties as are offered by all U.S. and Canadian mail-order seed catalogs combined.”⁴⁴ She discusses how the Plant Variety Protection Act of 1970, which protects plant varieties as intellectual property, contributes to this loss of plant varieties.⁴⁵ Kingsolver also notes that “[a]n estimated 67 million birds die each year from pesticide exposure on U.S. farms.”⁴⁶

38. *Id.* at 122.

39. A. Bryan Endres, *United States Food Law Update: Food Safety Planning, Attribute Labeling, and the Irradiation Debate*, 4 J. Food L. & Pol'y 129, 138 (2008). Often consumers expect that a free-range chicken has grazed on grasses just as an animal on an open range would. *See id.*

40. KINGSOLVER, *supra* note 1, at 122.

41. *Id.* at 123.

42. *Id.* at 49.

43. *Id.* at 52.

44. *Id.* at 55.

45. *Id.* at 50-51. For an extensive legal discussion of the Plant Variety Protection Act of 1970, see Jim Chen, *The Parable of the Seeds: Interpreting the Plant Variety Protection Act in the Furtherance of Innovation Policy*, 81 NOTRE DAME L. REV. 105 (2005).

46. KINGSOLVER, *supra* note 1, at 221. For legal articles on the topic of pesticide pollution and loss of wildlife habitat, see John H. Davidson, *The Federal Farm Bill and the Environment*, 18 NAT. RESOURCES & ENV'T 3 (2003); Stacey Willemsen Person, *International Trade:*

In Hopp's related sidebar, he tells the story of Percy Schmeiser, a farmer who was found liable by a Federal Court of Canada for a patent violation when pollen drift and seed contamination had incorporated Monsanto's patented variety into the crop he planted.⁴⁷ The Canadian Supreme Court upheld the decision although it awarded no compensation to Monsanto.⁴⁸ Now, in Bruno, Saskatchewan, the canola farmers have sued Monsanto and Aventis for making it impossible to grow organic canola because of pollen drift and seed contamination.⁴⁹

As for the U.S., Hopp explains that "[t]wenty-four U.S. states have proposed or passed various legislation to block or limit particular GM [genetically modified] products, attach responsibility for GM drift to seed producers, defend a farmer's right to save seeds, and require seed and food product labels to indicate GM ingredients (or allow 'GM-free' labeling)."⁵⁰ In 2006, however, the House of Representatives passed the National Uniformity for Food Act.⁵¹ If passed, the Act would have preempted approximately 200 state-initiated food safety and labeling laws.⁵² The American Frozen Food Institute, ConAgra, Cargill, Dean Foods, Hormel, and the National Cattlemen's Beef Association endorsed the Act.⁵³ The Consumers Union, the Sierra Club, the Union of Concerned Scientists, the Center for Food Safety, and thirty-nine state attorneys general opposed it.⁵⁴

Pushing United States Agriculture Toward a Greener Future?, 17 GEO. INT'L ENVTL. L. REV. 307 (2005); cf. John H. Minan, *The Clash Between Farmers and the Endangered Species Act: "Whose Water Is It?"*, 37 URB. LAW. 371 (2005) (discussing how agricultural water use, rather than pesticide pollution, affects endangered species).

47. KINGSOLVER, *supra* note 1, at 50. For legal case analyses, see Philippe Cullet, *Monsanto v. Schmeiser: A Landmark Decision Concerning Farmer Liability and Transgenic Contamination*, 17 J. ENVTL. L. 83 (2005); A. David Morrow & Colin B. Ingram, *Of Transgenic Mice and Roundup Ready Canola: The Decisions of the Supreme Court of Canada in Harvard College v. Canada and Monsanto v. Schmeiser*, 38 U. BRIT. COL. L. REV. 189 (2005); Edward Yoo & Robert Bothwell, *Schmeiser v. Monsanto: A Case Comment*, 42 ALBERTA L. REV. 553 (2004).

48. KINGSOLVER, *supra* note 1, at 50.

49. Kathryn Garforth & Paige Ainslie, *When Worlds Collide: Biotechnology Meets Organic Farming in Hoffman v. Monsanto*, 18 J. ENVT. L. 459 (2006) (providing a legal case analysis).

50. KINGSOLVER, *supra* note 1, at 51. For a discussion of the legal barriers to mandatory GM food labeling and an argument advocating voluntary labeling, see Carl R. Galant, Comment, *Labeling Limbo: Why Genetically Modified Foods Continue to Duck Mandatory Disclosure*, 42 HOUS. L. REV. 125 (2005).

51. KINGSOLVER, *supra* note 1, at 51.

52. *Id.* For an argument that the federal government should pass a bill requiring disclosure of GM modified foods, see Jamie E. Jorg Spence, Note, *Right to Know: A Diet of the Future Presently Upon Us*, 39 VAL. U. L. REV. 1009 (2005).

53. KINGSOLVER, *supra* note 1, at 51.

54. *Id.* Hopp advises that more information is available on this topic at www.biotech-info.net or www.organicconsumers.org. *Id.* at 51-52.

GOVERNMENT REGULATION PREVENTS SMALL FARMERS FROM SELLING
DAIRY PRODUCTS

Kingsolver tells the story of how she attended a cheese-making school run by a famous cheese-maker.⁵⁵ The story leads to one of the more interesting factual discussions in the book about how only a minority of adults are lactose tolerant.⁵⁶

Cheese-making also raises the legal topic of the regulation of the dairy industry, including regulations governing cheese production. Kingsolver explains that “restrictions in most states make it impossible for small dairies to sell directly to the consumer.”⁵⁷ She advocates pasteurizing your own raw milk.⁵⁸

Kingsolver’s support for her position is threefold. First, she describes the famous cheese-maker as claiming that “most outbreaks of listeria and other milk-borne diseases occur in factory-scale dairies.”⁵⁹ The cheese-maker said that the outbreaks do not occur “among small dairies and artisans where the center of attention is product quality.”⁶⁰ Second, Kingsolver says that one pediatrician, who is not alone, says families should drink organic dairy.⁶¹ He believes that growth hormones are not safe because too many girls are entering puberty early.⁶²

Third, Kingsolver provides anecdotal evidence based on personal contacts, and she cites to regulations which she believes are overly burdensome to the small farmer.⁶³ She knows two small farmers who claim that standards for licensing are impossible to meet.⁶⁴ She says:

Most states' dairy codes read like an obsessive compulsive's to-do list: the milking house must have incandescent fixtures of 100 watts or more capacity located near but not directly above any bulk milk tank; it must have employee dressing rooms and a separate, permanently installed hand-washing facility (even if a house with a bathroom is ten steps away) with hot and cold water supplied through a mix valve; all milk must be pasteurized in a separate facility (not a household kitchen) with its own entrance and separate, paved driveway; processing must take place daily; every batch must be tested for hormones (even if it's your cow, and you gave it no hormones) by an approved laboratory.⁶⁵

55. *Id.* at 132-36.

56. *Id.* at 137.

57. *Id.* at 134.

58. *Id.*

59. KINGSOLVER, *supra* note 1, at 134.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. KINGSOLVER, *supra* note 1, at 134.

Kingsolver concludes that she may be violating Virginia state law by producing cheese for her own consumption.⁶⁶ She notes:

Many other raw food products—notably poultry from CAFO's [Concentrated Animal Feeding Operations]—typically carry a much higher threat to human health in terms of pathogen load, and yet the government trusts us to render it safe in our own humble kitchens. But it's easy to see how impossibly strict milk rules might gratify industry lobbyists, by eliminating competition from family producers.⁶⁷

I am not absolutely convinced by Kingsolver's support for her position. No statistics are provided to support the cheese-maker's claim that milk-borne diseases do not frequent small dairies. Nor are statistics provided which rule out causes other than growth hormones as accounting for early puberty. And I have known or heard of more than one "small farmer" who is more concerned with turning a profit than with product quality. I have heard of one such farmer who impersonated being a local organic farmer when she was actually purchasing the produce from a wholesaler.

As for the regulations, they certainly appear cumbersome, but some appear to make sense. For instance, hormone testing makes sense because the consumer cannot know whether a farmer does or does not give a cow hormones.⁶⁸ If some of the other regulations are overly burdensome for a small farmer and not necessary to insure safety for a small farm, perhaps a workable alternative exists. For instance, the government might place fewer restrictions on small dairy farms but require that their products inform the consumer that certain standards have not been met.

THE FEDERAL GOVERNMENT'S INADEQUATE RESPONSE TO FOOD CONTAMINATION AND THE RISK OF "MAD COW" DISEASE

In one sidebar, Hopp addresses the issue of food contamination.⁶⁹ He states that the federal government does not have the power to recall a shipment of contaminated ground beef.⁷⁰ It can only ask the company to issue a recall.⁷¹ He goes on to explain that "the federal government does not release

^{66.} *Id.* at 135.

^{67.} *Id.*

^{68.} For a legal discussion of labeling laws governing Recombinant Bovine Somatotropin Hormone and guidance for states seeking to establish mandatory labeling laws, see Jennifer R. Thornley, Note, *Got "Hormone-Free" Milk?: Your State May Have Enough Interest to Let You Know*, 76 IND. L.J. 785 (2001).

^{69.} KINGSOLVER, *supra* note 1, at 230-31.

^{70.} *Id.* at 230.

^{71.} *Id.* The reader is left to wonder whether the federal government typically has authority to issue a recall on other food products and whether some other type of government, such as the states, has the authority to issue a recall.

information on where the contaminated beef is being sold, considering that information propriety.”⁷²

Hopp also discusses the failure of the federal government to stop the spread of what is commonly known as “mad cow disease.”⁷³ He believes the United States should follow Britain’s lead, as Japan has.⁷⁴ During the 1980s, the British prohibited feeding cow meat back to other cows.⁷⁵ They tested every cow over two years old at the time of slaughter and removed all “downer” cows (those unable to walk on their own).⁷⁶ In this way, they “virtually eradicated” mad cow disease.⁷⁷ In contrast, the United States only restricts feeding cow tissue to other cows.⁷⁸ Farmers can still “allow cows to be fed to other animals (like chickens) and the waste from the chickens to be fed back to the cows.”⁷⁹ The protein which causes mad cow disease can readily survive that cycle.⁸⁰ In fact, “[o]ne company tried to test all its beef, but the USDA declared [the testing] illegal.”⁸¹

PROMOTING URBAN GARDENS AND SURROUNDING CITIES WITH DIVERSIFIED SMALL FARMS

Kingsolver tells the story of the trip Hopp and she took to Italy.⁸² The story opens with the description of her view from the plane: “[a] stone’s throw from the bustle of Rome’s international airport, this elderly farmer was plowing with harnessed draft horses.”⁸³ She describes delicious-sounding locally grown meals eaten throughout Italy, not only by her, but by the local population.⁸⁴ She states that in Italy, if a place serves food, then “*food is the point.*”⁸⁵

Hopp’s related sidebar advocates all the positive benefits of urban gardens.⁸⁶ In so doing, it implicitly touches on the legal issues of urban planning and zoning.⁸⁷ Kingsolver also implicitly touches on these issues

72. *Id.*

73. *Id.* at 230-31. Hopp explains that the human variant of mad cow disease is Creutzfeldt-Jakob disease. *Id.* at 230. For proposals to reduce the public health risks of mad cow disease in the United States, see Thomas O. McGarity, *Federal Regulation of Mad Cow Disease Risks*, 57 ADMIN. L. REV. 289 (2005); Michael B. Abramson, *Mad Cow Disease: An Approach to its Containment*, 7 J. HEALTH CARE L. & POL’Y 316, 353-62 (2004).

74. KINGSOLVER, *supra* note 1, at 230.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 230-31.

79. *Id.* at 231.

80. KINGSOLVER, *supra* note 1, at 231.

81. *Id.*

82. *Id.* at 242-58.

83. *Id.* at 243.

84. *Id.* at 244-45.

85. *Id.* at 244.

86. KINGSOLVER, *supra* note 1, at 250.

87. For a legal discussion of current state and local ordinances governing community gardening, see Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies*

when she discusses the small diversified farms all around the cities in Italy. Indeed, urban Italians vacation on these farms because there is a booming *agriturismo* business in Italy.⁸⁸

OTHER LEGAL ISSUES

In his sidebar “How to Find a Farmer,”⁸⁹ Hopp discusses the Farmer-to-Consumer Direct Marketing Act of 1976. This Act is said to guarantee that food at farmers’ markets is “fresh and local.”⁹⁰

Kingsolver discusses her support for family farmers of tobacco.⁹¹ She states that federal price supports for tobacco officially ended in 2005,⁹² and no high value crop has replaced tobacco.⁹³ She suggests organic vegetables and sustainable lumber may replace the crop.⁹⁴ I think her idea is workable enough that she need not spend so much time lamenting the end of tobacco.

Kingsolver also discusses the National Animal Identification system whereby “the USDA now plans to attach an ID number and global positioning coordinates to every domestic animal in the country.”⁹⁵ She expects that “[f]orcing half a million farmers to register . . . will be tougher than getting Afghan farmers to quit growing poppies.”⁹⁶

CONCLUSION

Ultimately, I am persuaded. I agree with Kingsolver that eating locally is part of the solution to many of the major problems facing us at the start of the twenty-first century, such as global warming and childhood obesity. I disagree, however, with her limited vision of the law. The law is one way of educating the public and changing opinion and one avenue for mobilizing democratic action. The law can certainly contribute in myriad ways to make eating locally

Transforming Urban Open Space, 3 N.Y. U. J. LEGIS. & PUB. POL’Y 351 (1999-2000). For a brief discussion of Baton Rouge Louisiana’s “radical” plan which mandates green zoning in the development code, see Robert Fox Elder, *Protecting New York City’s Community Gardens*, 13 NYU ENVTL. L.J. 769, 794 (2005).

88. KINGSOLVER, *supra* note 1, at 253.

89. *Id.* at 37.

90. *Id.*

91. *Id.* at 74-75.

92. For a legal argument that elimination of the regulatory quota system for tobacco is a taking without just compensation, see Matthew Nis Leerberg, Note, *Takings and Statutory Entitlements: Does the Tobacco Buyout Take Quota Rights Without Just Compensation?*, 55 DUKE L.J. 865 (2006).

93. KINGSOLVER, *supra* note 1, at 75.

94. *Id.*

95. *Id.* at 161. For a legal discussion of the system and a related argument that a negligence standard, instead of strict liability, should be applied in food-borne illness cases, see Jackson W. Adams, Comment, *Cow 54, Where Are You? Producer Liability and the National Animal Identification System*, 23 J. CONTEMP. HEALTH L. & POL’Y 106 (2006).

96. KINGSOLVER, *supra* note 1, at 162.

grown food a reality for more people. The law can and should promote a positive “food culture.”⁹⁷

97. Should you be interested in other non-legal writings on the issues addressed in this article, I recommend the following books: FRANCES MOORE LAPPE, *DEMOCRACY'S EDGE: CHOOSING TO SAVE OUR COUNTRY BY BRINGING DEMOCRACY TO LIFE* (2006); JARED DIAMOND, *COLLAPSE: HOW SOCIETIES CHOOSE TO FAIL OR SUCCEED* (2005); FRANCES MOORE LAPPE, *DIET FOR A SMALL PLANET* (11th ed. 1990); MICHAEL ABLEMAN, *ON GOOD LAND: THE AUTOBIOGRAPHY OF AN URBAN FARM* (1998); MICHAEL ABLEMAN, *FROM THE GOOD EARTH: A CELEBRATION OF GROWING FOOD AROUND THE WORLD* (Sharon AvRutick ed., 1993).