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Local Rule through the Lens of Food Sovereignty

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Local Rule through the Lens of Food Sovereignty

Senior Project Submitted to
The Division of Social Studies
of Bard College

by
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Annandale-on-Hudson, New York

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An immense thank you to:

Roger Stuart Berkowitz

My mom

Simon Gilhooley

Pinar Kemerli

Sarah Soucek

Walker Blood

Table of Contents

Introduction.....	1
Chapter I: National Implementation of Food Sovereignty.....	7
Chapter II: Cottage Food Laws.....	15
Chapter III: The Local Food and Community Self-Governance Ordinance.....	32
Chapter IV: Federalism.....	49
Part I: Political Theory.....	50
Part II: The Courts.....	57
Part III: Contemporary Theory and Application of federalism.....	62
Conclusion.....	70
Bibliography.....	73

Introduction

Demand for local eating has skyrocketed over the past five years despite locally produced foods making up a fraction of agricultural sales in the United States.¹ Farmers' markets and farm-to-table restaurants have flourished and many vegetarians and organic food fanatics have embraced the eco-conscious and culturally resonate label of "locavore". The local food movement does not only look at the types of food consumed, but also considers where these foods are grown, produced, or raised. Some locavores even adopt a mileage radius for where their food can come from, often ranging from 50 to 300 miles.

Local eating can appear as another fleeting diet fad; however, its history and purpose are rooted deeper in human connections and cultural ways of life. In many cultures, food is more important than simply gathering at a dinner table with those you love; food is also a source of connection to one's land and history. Since the domination of world agribusiness and the priority to increase world food production over anything else, people around the globe have lost their connection to food that honors and defines cultural norms as well as eating practices. Increasingly, world food culture centers around cheap, transportable, and reliable foods above all.

Our international food business not only ignores the culture of food but also operates at the expense of food laborers throughout the lines of production and distribution. Small, rural, and often Indigenous communities across the globe have been undercut by the global food production system, brushing aside traditional food-producing practices as well as other cultural traditions.² These themes of health, community corrosion, and unjust labor practices demand

¹ Martinez, "Local Food Sales Continue to Grow Through a Variety of Marketing Channels."

² Jones, Fink Shapiro, and Wilson, "Assessing the Potential and Limitations of Leveraging Food Sovereignty to Improve Human Health."

disruption of world agribusiness. A transformation of a market and food system that is connected to areas across the globe is an unfathomable concept, but executed at a small scale opens possibilities for change. This senior project will explore the power of local governments in adopting food production processes that unite communities, promote healthy eating, and adopt ethical labor standards.

Governmental structures play a fundamental role in regulating food, critical in protecting citizens but can simultaneously infringe upon freedom for one's right to consume healthy, local, or culturally appropriate food that they see fit. At a local level, there is more opportunity for participation in decision making such as town hall meetings, creating opportunities to understand new perspectives. The increase of freedom to participate or implement self-government enables people to exercise freedom through their food choices at the cost of potential health risks or the birth of prejudice through a smaller governing body. This senior project will explore how freedom through food choice can be enabled within local government through the lens of "food sovereignty". I will argue that local government is the best-fit body to implement ethical food production practices that are catered to a community. Food sovereignty has a unique place in a federalist country like the United States, where the 20th-century national laws and regulations have become the default when it comes to food.

In chapter I, I will begin by examining the approach to food sovereignty in Ecuador, a country with very different traditions than the United States. Ecuador's Constitutional Amendment incorporates food sovereignty ideas such as farmland protection and consistent funding for conservation groups in the national constitution. This national approach to food sovereignty will serve as a contrast to the United States, where laws promoting healthy and

ethical eating come at a local level. In chapter II, I will look at state cottage food laws in America to see how a state can accurately represent the needs of its population through food laws. The needs of a state population can vary widely, depending on geographic location, values, and societal norms. States abundant with farms, such as California or Minnesota, may require more pesticide usage laws and farmworker protection statutes. In coastal states like Maine or Washington state, the demand for laws that prevent overfishing will be a higher priority. I will argue that although state laws can be catered to the specifics of a population, local government permits more participation amongst citizens and is more representative of a community. In chapter III, I will examine a wave of town ordinances across Maine that aimed to promote local eating and get rid of state and national food production laws. This chapter will demonstrate the ability local government has to unite a town population over efforts to increase freedom in food choice, despite political affiliations. Chapter IV will be a multidimensional look at federalism in the United States, and how the significance of the township has been squandered in America's history. I will dissect political theory, history, and court cases to portray the importance of local government in America. These chapters will contribute to the argument that local government is most fit to create rules concerning the food production standards that are the best fit for its population.

The term food sovereignty was originally defined by the national peasant movement, Via Campesina in 1995. The organization describes food sovereignty as, "The right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their food and agriculture systems. It puts the aspirations and needs of those who produce, distribute, and consume food at the heart of food systems and

policies rather than the demands of markets and corporations”.³ In hopes to create a goal that encapsulates all the elements of what Via Campesina cares about, the organization crafted the term “food sovereignty”. On their web page about food sovereignty, Via Campesina explains that simply addressing an issue such as food insecurity can leave other aspects of global food distribution unresolved or neglected. This original definition of food sovereignty is holistic in how it covers sustainability, hunger, food workers, and land, yet it leaves room for adaptation depending on where food sovereignty is being implemented.

I will argue that realistic implementations of food sovereignty in the United States will stem from local authorities because of America’s unique federal government. The federalism chapter will show that the dual federalist interpretation of federalism has impeded local authority, demanding a more robust understanding of federalism. The national government of the United States aims to protect consumers from harmful products rather than grant nutritious and ethical eating and production opportunities at every point in the food chain. If a state, town, or city wishes to promote accessibility to local foods or give workers more rights, they may have to step out of the bounds of federal law. Food sovereignty appears as an idyllic, achievable manner to disrupt world agribusiness, but in practice would mean disrupting the American lawmaking structure currently in place.

To understand food sovereignty in this context, the background and overall mission of Via Campesina are relevant. Via Campesina is a farmers’ organization that organizes to serve rural farmers, Indigenous people, migrant food laborers, and more. The organization also focuses on women in the farm industry, who make up a large portion of it but are often underrepresented.

³ Amorim, “Food Sovereignty: 25 Years in the Making.”

Via Campesina was born in 1993 to help small-scale farmers' organizations that were struggling, many of whom had slipped through the cracks because of the Green Revolution, a national agricultural revolution where agrochemicals were used to ensure farmers could grow with more abundance.⁴ The 90s was a decade of capitalist expansion throughout the globe, yet farmers and food workers were not necessarily profiting because of it. There were legislative changes that promoted more trade amongst nations at a lower cost and with fewer regulations. Via Campesina describes this moment on their website saying, "At that time, agricultural policies and agribusinesses were becoming globalized and small farmers needed to develop a common vision and struggle to defend it. Small scale farmers' organizations also wanted to have their voices heard and to participate directly in the decisions that were affecting their lives". Via Campesina saw the lack of representation for these small farm organizations combined with the harm being done to the environment as well as various Indigenous cultures. Food laborers have been at the heart of Via Campesina's mission from the time they were established, distinguishing them from other organizations that may only focus on food rights in terms of health and environmentalism.⁵

Via Campesina's core definition of food sovereignty, putting the aspirations of those who produce, distribute, and consumer at the heart of the food system will appear in different manifestations throughout my senior project. In Ecuador, food sovereignty will be defined by environmental protections, and at first, the banning of GMO seeds. In Oregon, food sovereignty will show through being able to buy particular products from farmers, whereas in Wyoming it will mean the ability to distribute locally farmed food without state regulation. In the scenario of towns across Maine, allowing farmers to sell dairy and meat products without licensing, creates a

⁴ Moore, "Cheap Food & Bad Money."

⁵ Moore.

more free state for its citizens. In every situation, food sovereignty can look different based on the needs of the population.

Chapter I: National Implementation of Food Sovereignty

The incorporation of food sovereignty into Ecuador's Constitution permeates the country's entire political ecosystem. In Ecuador, food production practices link rural farmers to a long lineage of people working in agriculture in the same capacity. Around 30% of Ecuador's employment sector consists of food workers, demanding that this line of work be protected for its historical roots and environmental protection needs.⁶ This serves as a juxtaposition to the United States, where the national government aims to protect citizens from foodborne illness; Any effort to promote local, healthy, or culturally significant food laws stems from local government. Along with Bolivia, Mali, and more countries, Ecuador implemented food sovereignty by amending its Constitution. In 2007, president Rafael Correa rewrote the country's constitution, and the right to food was established as a significant aspect of the revision.

Due to the work of small social movements, in 2008 specific food sovereignty goals were added to the constitution, while later on a legal framework was devised to establish what this would look like.⁷ Ecuador has an abundant history of rural farming of food that is distributed through traditional trade. This constitutional amendment focused on cultivating these traditional practices as well as encouraging agricultural distribution methods that are best for the country. Due to the compliance of president Correa and the exhaustive efforts of these social groups, they seized the opportunity for agricultural transformation. Food sovereignty can have varying definitions depending on the place it's implemented, but in the case of Ecuador, social groups and government actors came up with this definition:

Collective identities that mobilize for food sovereignty, for the right to land and territory, the right to resources to produce on that land, gender equality, agroecology, the

⁶ "Employment in Agriculture (% of Total Employment) (Modeled ILO Estimate) - Ecuador | Data."

⁷ "Ecuador Grapples with Food Sovereignty."

conservation of mangrove fisheries and artisanal fishing practices, the respect of Indigenous and traditional knowledge and the recognition of cultural and ethnic diversity.⁸

This portion of the senior project will explore how food sovereignty is being implemented at a Constitutional level, and how social actors in Ecuador motivated it to happen. I argue that for a country that holds historic food production and distribution as a top priority, a constitutional amendment is a fitting way to govern, but it does come with consequences. These consequences include the lack of opportunities for every group to convene in the decision making process to craft laws catered to their communities, as well as the changes that come with every new president when laws are made at a national level. This chapter will serve as a juxtaposition for the United States and show why a constitutional implementation of food sovereignty would be unfit for the United States.

During the 1960s in Ecuador, land reforms resulted in the restructuring and privatization of rural areas, which led to a shift in the economy and life in general. During this period, the government focused on agricultural efficiency, not setting limits on farm sizes allowing for huge areas to be bought. In the following decades, Ecuador continued to “modernize” by implementing policies that aimed to increase agricultural production for global distribution. Parts of the population such as Afro-Ecuadorians, peasants, and environmentalists have long resisted this land privatization and opposed efforts to modernize. These groups experienced the repercussions of expansion deeply; many people who have resided in specific areas for generations were edged out and forced to go elsewhere.⁹ Social movements have long rejected

⁸ Peña, “Social Movements, the State, and the Making of Food Sovereignty in Ecuador,” 2016.

⁹ Bellinger and Fakhri, “The Intersection between Food Sovereignty and Law.”

these policies and worked towards a transformation of the political system. Specifically, the Indigenous Social Movement has resisted government actions and triggered social change across the country, catalyzing the historical mobilization of 1990. The Levantamiento Nacional Indígena (Indian Uprising), was a 10-day protest that protested land disputes in highland provinces. The Indigenous Ecuadorians demanded to get back the land that was theirs. The uprising consisted of 160 Indigenous people occupying the Santo Domingo Cathedral and later creating barriers with rocks across the Pan-American highway and other roads. Along with other obstructions, this resistance disrupted food distribution, showing how reliant Ecuador was on Indigenous farming. This act of protest ended with the government agreeing to talk out a 16-point agenda that prioritized giving land back to Indigenous communities among other things. From the pre-modern lives of Indigenous Ecuadorians to the efforts to reclaim land and sovereignty, Indigenous movements have been essential in reclaiming Ecuador.¹⁰

Awareness of the history behind Indigenous movements and the heavy reliance on Indigenous agricultural practices allows for a deeper understanding of how a food sovereignty amendment was passed in Ecuador. In 2007, the Ecuadorian Electorate approved the creation of a new constitution. The new Constitution would be based on the Kichua Indigenous tradition of Sumak Kawsay, translating to “good living”. The concept was to base politics of development around a harmonistic relationship between humans and nature, to provide an alternative for neo-liberal and capitalist policies. This includes regulating the privatization of land and water, as

¹⁰ Peña, “Social Movements, the State, and the Making of Food Sovereignty in Ecuador,” January 1, 2016.

well as enabling people to access nutritious and local food. To implement this ideology, the 2008 drafting process of the new constitution was fundamental. The process was fueled by multiple groups, allowing for social organizations to directly negotiate with political allies.

There was a shift to the left due to President Rafael Correa, which made it easier for these social groups to get representation in the constituent assembly. Taking advantage of this swing to the left, social organizations and non-governmental organizations created roundtables to work out what a food sovereignty amendment will look like. This roundtable approach consisted of members of these various groups sitting with government representatives to come to specific recommendations about how to implement food sovereignty. These recommendations included: guaranteeing food sovereignty, promoting agrarian reform, developing a model for territorial development sustainably and equitably, guaranteeing the rights of farmers, and continuing to develop a sovereign and intercultural nation. These ideas dealt with territory, mining, water rights, and community, as well as food sovereignty, but fell under the umbrella of the harmony between humans and nature.¹¹ Although the amendment was implemented at a national level, this intimate town-hall manner of crafting the recommendations mimics how towns across Maine made their ordinance to promote local eating and self-government. The difference in Ecuador is that social organizations were still acting as the voice of the people, leaving the opinion of many citizens left out.

¹¹ Peña.

While the roundtable way of communicating was fruitful in some categories, state officials and social organizations clashed in others. GMOs or genetically modified organisms proved to be a divisive topic. The state actors and agencies supported the use of GMOs to increase food production and grow the economy. Social groups and non-government organizations were opposed to the introduction of GMOs in Ecuadorian agriculture because of the potential harm to the environment and the desire to keep Ecuador's agriculture natural. Ecuadorians from various backgrounds have different reasons to oppose GMOs, perceiving them to be inherently counter to the concept of food sovereignty. Fortunately, both sides were able to come to a compromise regarding the use of GMOs. Article 401 of the Constitution states Ecuador is GMO-free, but the president may introduce GMOs with the approval of the National Assembly.¹² This section was put in place as the first of its kind in 2008, but in 2012 President Correa publicly announced that this amendment was a "grave mistake". Correa argues that using GMOs in agricultural production would be an exemplary use of food sovereignty. His thinking is supported by a food security lens; Correa perceives the benefits of GMOs in feeding more people while outweighing their cons. This support of GMOs opened doors for new laws regarding seed distribution, one law proposed to allow GMO seeds into the country for scientific research. Shortly before leaving office in 2017, Correa managed to make this constitutional amendment to allow GMO seeds to be used for research in Ecuador. Although this seems like a harmless amendment, many social groups and farmers were outraged with its passing.¹³

¹² Bruil, "In Defense of Their Food, Ecuadorians Protest Unconstitutional Entry of GMOs."

¹³ Bruil.

Those who were opposed to this amendment argued that no research for GMO seeds would be funded without the possibility to profit from the results. This creates a slippery slope scenario with the use of GMO seeds, even though they were not being used in Ecuador during the passing of the amendment. Although this new rule is not directly allowing GMO usage in Ecuador, it is opening a door for GMO usage that many want to keep shut. With the strong disapproval from NGOs and Indigenous movements, groups quickly mobilized with this news in Ecuador. Protests began immediately surrounding the constitutional change and people began to think of alternatives to preventing GMOs in the country.

In a 2017 article explaining the constitutional changes regarding GMOs, Janneke Bruil writes, “We are also working with provinces and municipalities to declare ‘GMO-free zones’. New alliances are being built, with other people and organizations affected by the new law, including agro exporters who risk losing markets such as in the case of organic banana producers”.¹⁴ The reliance on provinces and municipalities shows the issue with having food distribution and production laws at a constitutional level; Not everyone will agree on how food ethics are implemented, demanding the need for a local authority to govern on a smaller scale. For some areas in Ecuador, GMO seed research could mean helping farmers financially, while others could interpret GMO seeds to harm the environment. This illustrates why the most fitting decision making body for food sovereignty laws is on a small, local scale.

¹⁴ Bruil.

Other aspects of implementing food sovereignty in Ecuador would involve providing financial support for conservation movements, promoting consumer health through nutrition, enacting food safety implementations, active ancestral territory preservation, as well as protections for mangrove fisheries and hunting areas. One-third of Ecuadorians live in rural areas, which is why protecting these areas is so vital. For Ecuador, having the right to healthy food transcends local and accessible eating and relates directly to land access and rights. The functioning of Ecuadorian food sovereignty is described as, “represents peasants, small and medium-scale farmers, rural women, farmworkers, and indigenous organizations that promote food sovereignty as an alternative model for agriculture based on ethics and values in which culture and social justice ensure a future without hunger”.¹⁵ As a country defined by its heavy agricultural reliance, integral to the economy, and therefore the well-being of many residents, passing agricultural reform dealt with far more than feeding the population. Unlike a small-scale ordinance, implementing these amendments at a constitutional level was far more complex in its attempts to satisfy an entire population, resulting in not everyone being happy.

Aspects of the new amendment mimicking the decision making processes of local government proved to be most successful. The roundtable speaking opportunities with political members and Ecuadorians allowed for the voice of select citizens to be heard, giving them a role in contributing to the amendment. These conversations happened for years after the initial constitutional change and led to real change such as the de-privatization of certain pieces of land

¹⁵ Bernstein, “Food Sovereignty: A Critical Dialog.”

and the protection of mangrove fisheries. Through the decision making process, social organizations have gained leverage in making these decisions, as well as different community members.¹⁶ Unfortunately, President Correa lost faith in the benefits of food sovereignty in the country years after the amendment passed, creating space for the research of GMO seeds and further support from supermarkets.

This illuminates the issue with the national implementation of specified food laws. If a president or congress disagrees, there is a chance for all of the changes to be undone. In the setting of a town or city, people can convene to talk about the food needs of their community and craft an ordinance together. The needs of a community may change, but as long as there are opportunities to discuss the needs of the population, local government is the best avenue for food distribution and production practices that are fit for a community. By looking at Ecuador, I portrayed the flaws in the national implementation of food sovereignty, as well as took note of what was successful. Next, I will look at cottage food laws in the United States to demonstrate how they are also too broad. By looking at each level of government, I will prove that local authority is the best fit for catering food laws for an individual population.

¹⁶ Peña, “Social Movements, the State, and the Making of Food Sovereignty in Ecuador,” 2016.

Chapter II: Cottage Food Laws

The United States has not taken a constitutional approach to implement food sovereignty such as in Ecuador but rather uses national power to establish nationwide food safety standards. These standards dictate all realms of food production and distribution. Spanning from pesticide usage in farming to the accurate labeling of food, there is a multitude of laws that serve to ensure that food is entirely safe to consume. Aside from national regulation, food laws are also created by state legislature, and lastly, local governments. I will argue that crafting food production and distribution laws that are suited for a population is best executed at a local level, but looking at unique state food laws will illustrate how the needs of different populations can vary. Showing these diverse needs in state populations will show how catering food laws to the local level will be the most precise way to ensure the needs of a community are met.

Individual states have adopted exceptions for national food laws relating to certain food products, which fall under the category of cottage food laws.¹⁷ State cottage food laws vary, but in general, they allow someone to legally prepare food in their home kitchen and sell it within the state where it is prepared.¹⁸ All states except for Hawaii and New Jersey have some sort of cottage food law, ranging from almost complete freedom of commerce for homemade goods in Wyoming, to more stringent sales of products only from farmers in Oregon.¹⁹ Cottage food laws have been gaining in popularity over the last 10 years, although people have always been operating out of their home kitchens, legally or not.

¹⁷ “Cottage Food Laws By State - Rules, Tips, Links, Everything Important.”

¹⁸ “Cottage Food | Washington State Department of Agriculture.”

¹⁹ “Recent State Reforms for Homemade Food Businesses.”

This chapter will explore how state cottage food laws can enhance the freedom of consumers to eat products that they believe are beneficial to them. State law is more catered to its population than national law, bringing us one step closer to the ideal food law-making body at the local level. By looking at the states, Oregon and Wyoming, the benefits of Cottage Food laws will be explored. Oregon is a primary example because its more conservative cottage food laws are similar to those of many other states. Oregon has also done extensive record-keeping relating to the results of its cottage food laws, thus being a reliable example to examine. Wyoming is a more radical state in terms of its food regulations, which appears in how many food regulations it has eliminated for citizens to buy and sell food locally. Wyoming is an anomaly in terms of its cottage food laws, making it an interesting example for its more extreme way of deregulating food distribution laws. Both states will illustrate how cottage food laws are an already existing avenue for food sovereignty in the United States, and depending on the state, are representative of a population's food ideology. Although they undermine national food regulations, they are a widely accepted avenue for implementing laws. I will argue that cottage food laws are a pre-existing way of implementing food sovereignty aspirations of a state, but they are still too broad in how many communities they serve to represent. This will support my thesis that laws that cater to a communities' food ethic needs and promote community organizing are best made at a local level.

The federal government's role in food regulation is important to understand when analyzing how cottage food laws operate. Regardless of philosophical beliefs and the

environment, the federal government is primarily focused on protecting consumers' health through food regulation. Official federal and state policies aim to keep consumers safe from harmful diseases and bacteria. This manifests through pesticide standards for farming conditions, food labeling requirements, and food preservation temperatures. The United States Department of Agriculture and the Food and Drug Administration are the bodies of power controlling food regulation in the United States; their stringent policies have kept outbreaks of foodborne illness to a minimum. Occasionally there are outbreaks of contaminated lettuce or meat; salmonella or E. Coli are dangers more present in some foods than others.²⁰ When an unsafe food product is distributed across the United States, the effects run rampant, resulting in the hospitalization or even death of over a hundred Americans per year. According to the Global Food Security Index, the United States ranks in the top ten for overall food safety and security standards and even higher for food safety overall.²¹

These statistics show that these strict regulations for food are effective in controlling the spread of foodborne illness thereby limiting annual breakouts. Consuming safe foods is easily taken for granted in the United States because it's a process invisible to many. The bounty at the grocery store undergoes a myriad of steps in gaining approval for distribution, relieving consumers of the burden of determining food safety. Critics of cottage food laws or less regulated buying and selling of food, often have fears that when these regulations are removed, there is more space for illness or even death. Those in support of cottage food laws and less

²⁰ "17 of the Worst Foodborne Illness Outbreaks in U.S. History."

²¹ "Global Food Security Index (GFSI)."

regulation are prepared to assume the responsibility of choosing safe foods. Depending on the extent of the cottage food law, the policy may place this responsibility back onto the producer and the consumer, providing many an opportunity to reclaim their dignity and freedom in what they eat.

In an article defining cottage food laws by Kelly Damewood titled, *When Does a Cottage Food Law Become a House Food Law?* Damewood writes:

Cottage food laws help small-time producers make modest profits. They can help new or young producers get their food businesses off the ground, and they can help small farmers diversify and generate income. Economics aside, some food safety advocates question whether exempting producers from standard processing requirements like licensed kitchens increase the risks of foodborne illness outbreaks.²²

States usually wish to promote the selling of homemade and local goods within communities but also see the dangers of foodborne illnesses that may arise without the oversight from agencies such as the FDA or USDA. This recognition of the risks that come with deregulation manifests in states processing vastly different approaches to the selling of homemade goods without licensing, driven by different motivations and reasonings. As the political atmosphere around local eating and freedom of food choice rises, cottage food laws will become increasingly relevant. This chapter will look at Oregon and Wyoming's implementation of cottage food laws and how far a state can go to properly represent its people's desires to see the future of ethical food consumption and production in their state.

²² Damewood, "When Does a Cottage Food Law Become a House Food Law?"

Oregon's cottage food laws are considered moderate compared to other state cottage food laws. The state's first cottage food law was passed in 2011, known as the Farm Direct Marketing Law; it has since passed other laws loosening restrictions for homemade food goods. The law allows farmers to sell goods like pickles and jams from their home kitchens to Oregon consumers. An infographic published by Oregon State University Extension Service created for farmers included under the law, clearly states the specificities of the Farm Direct Marketing Law. It begins, "Oregon's Farm Direct Marketing Law allows farmers to turn what they grow into low-risk, value-added products like jams and pickles, and to sell them directly to consumers without being licensed food processors".²³ The law is made to include jams, and pickles as stated, but also frozen, acidified, or lacto-fermented fruits or vegetables. This is a narrow threshold considering all the products that a farmer may sell; it exempts meat, dairy, fresh fruits and vegetables, and more. Along with these mandates, the product also needs to be sold directly to the consumer; the farmer must grow all of the ingredients used in the product, the farmer must process the product, and the farmer must follow a recipe approved by the process authority. This list of criteria is extensive, prohibiting chances for products to be made haphazardly or dangerously.

The products adhering to the law also must be marked stating, "This product is homemade and is not prepared in an inspected food establishment".²⁴ This makes it clear to the consumer that the food they are purchasing is not at the same threshold as other food items and it

²³ Runkel, Gwin, and Streit, "Oregon's Farm Direct Marketing Law: Producer-Processed Value-Added Products."

²⁴ Runkel, Gwin, and Streit.

is at the consumers' discretion to consume the food or not. Although there is little room for foodborne illness, Oregon's Farm Direct Marketing Law has been more closely studied than other states, serving as a good measure of the benefits and issues involved in loosening food regulations. To determine whether the Farm Direct Marketing Law positively represented the food goals and aspirations of both citizens and farmers, I will explore the foodborne illness outbreak data and logistics, and then examine personal testimonies to measure how impactful the law was.

The political atmosphere in Oregon is generally interpreted as liberal, being defined for actions such as being the first state to legalize drug possession.²⁵ Unlike highly debated social topics such as abortion or gun control where the divide between democrat and republican is often clearly marked, food politics are often much more convoluted and politically diverse. Farmers come from varied backgrounds, some are part of generations of a family business, and some are idealistic, young people interested in agrarian ideals and reconnecting with the land.²⁶ A wide array of consumers enthusiastically endorse the benefits of local eating, but those wary about foodborne illnesses and the consequences of governing agencies stepping back are just as plentiful. This is why in 2011, when Oregon's cottage food law was passed, it was highly debated in congress for all different reasons.

To look at the benefits and drawbacks of such a law, it is important to know its original goal. In a research article published by the Journal of Agriculture, Food Systems, and

²⁵ Selsky, "Oregon 1st State to Decriminalize Possession of Drugs | AP News."

²⁶ Gray, *Labor and the Locavore: The Making of a Comprehensive Food Ethic*.

Community Development, titled, *Farm Direct at five years: An early assessment of Oregon's farm-focused cottage food law*, the authors explore the impacts and reasoning for Oregon's 2011 cottage food law. The goal of their cottage food law is defined as, "removing barriers to low-risk value-added processing to expand microenterprise opportunities for small-scale producers and food entrepreneurs—with concomitant benefits to communities—while protecting public health by narrowly defining the exemption and adding labeling requirements".²⁷ This quotation addresses the need to promote food sales outside of a supermarket, while simultaneously retaining enough barriers to protect consumers. Different states interpret which foods are low-risk enough to sell without licensing or certification. To craft an effective state-wide cottage food law, it must appeal to both ends of the food safety spectrum. To receive approval from congresspeople with varying opinions, the Oregon cottage food law was crafted by people with opposing perspectives on how freely people can sell food. This medley of voices banning together to create a cottage food law would satisfy those worried about foodborne illness and those hoping to have more choice regarding the farmed foods they consume. This type of law-making is closer to the small-scale governing that Tocqueville and antifederalists saw as vital to American democracy, which will be further explored in the federalism chapter. By looking at cottage food laws and then local ordinances, it will be clear that local government is most suited to craft food laws representative of its people.

²⁷ Gwin, Brekken, and Trant, "Farm Direct at Five Years."

In Farm Direct at five years: An early assessment of Oregon's farm-focused cottage food law, the authors conclude that there were no cases of foodborne illness linked to the Farm Direct Marketing law during the time of the study. For their methods, the authors explain that Oregon prioritizes foodborne illness investigation and is one of six states that has the title of a CDC Integrated Food Safety Center of Excellence, proving themselves as competent collectors of foodborne illness data. This title is secured by the systems in place such as mandating labs and clinicians to report any foodborne illness to the county health department, which then completes an investigation. The CDC then obtains these records for their database, which allows them to collect data on Oregon counties and foodborne illnesses.²⁸ Having a system like this one in check for measuring foodborne illness outbreaks makes measuring the safety of a cottage food law such as the Farm Direct Marketing law easier. This system confirmed that the law did not lead to anyone getting sick and can be used as leverage for people focused on getting a more expansive state-wide cottage food law or to further loosen regulations.

Whether or not anyone has gotten sick as a result of the law is irrelevant if farmers are not operating within its constraints. In the study, the authors conclude,

At 18 of the 20 markets we visited, farmers were selling value-added products under Farm Direct Marketing Law. These products were identifiable by their required labels. Several market managers said they had seen a steady increase over the years since the law was passed in the number of farmers using it and the number and variety of products.²⁹

²⁸ Gwin, Brekken, and Trant, 88.

²⁹ Gwin, Brekken, and Trant, 93.

Not only are people using the law to their benefit, but the number of people operating under it is increasing. The authors received this information from managers, who keep records of items that are selling at their markets. Farmers taking advantage of the law to sell goods without the threat of an illness outbreak allows community members to fully appreciate the goods they are consuming. Since the time of the study, another Oregon cottage food law has passed to allow low-risk baked goods to be sold from home kitchens. Expanding the types of products that may be sold under Oregon cottage food laws has resulted in increasing the number of farmers and bakers operating under the law.

Now that it is clear that there were no illnesses or deaths linked to the passing of the Farm Direct Marketing Law at the time of the study, I can look at the advocacy side of the law as well as the community benefits. The consumer response to the law is significant because it can reflect whether or not the state-tailored food standards are representative of its citizens. Since cottage food laws are a relatively new way for states to make their regulations in terms of food, the new support or disapproval will be accurately representative of the law's effects. Unlike data for foodborne illness or sales, the impact that the law had on farmers and consumers is more difficult to measure. This is partially due to the romantic perspective that people may have when it comes to cottage food laws, before feeling the actual benefits of the laws, people may already hold the perspective that more primitive styles of food trade are superior.

These are the agrarian ideals that Margaret Gray, author of *Labor and the Locavore*, speaks of when contextualizing the boom in local farming and eating that has been flourishing

for the last 10 years. Gray explains that not only are consumers seeking more local goods, but young people are also focusing on farming to meet their desires to return to nature.³⁰ Despite this romanticization of the loosening of food regulations, I will show that all types of Oregon citizens approve of the Farm Direct Marketing Law, as well as a new Oregon cottage food law that has passed since the study. The feedback evaluated here will speak to the impacts of both of these cottage food laws.

In reference to the Farm Direct Marketing law, many farmers raved about the extra profit they were making along with the decrease in food waste. These are more quantitative methods to measure the benefit of the law, where I want to explore how the law impacted community relationships or health. In an article produced by the Capital Press exploring the benefits of the Farm Direct Marketing law, it states, “As one market manager said, ‘Every product that can be created in a community and sold at the market or a farmstand or CSA is one more thing that can actually be bought there, in rural communities that lack grocery stores’”.³¹ This is in reference to how oftentimes rural communities may lack abundant groceries stores, sometimes people are within a closer distance to a convenience store or gas station, making it easier for them to choose a processed food product over a fresh one. This farmer is talking about how this small step of allowing farmers to sell their home kitchen food products promotes local eating in a community, giving people in rural areas more food choices than they may otherwise have. Food security or food deserts have been a highly talked about topic in recent years, particularly which

³⁰ Gray, *Labor and the Locavore: The Making of a Comprehensive Food Ethic*.

³¹ Plaven, “Oregon ‘Cottage Food’ Law Showing Benefits.”

communities and groups of people have more access to healthy food.³² The Farm Direct Marketing Law and the later passed cottage food law in Oregon both have supporters making arguments claiming that the laws combat food insecurity, but there is no qualitative data on this. This connection between satisfied farmers and more access to healthy food for consumers is upholding Via Campesina's definition of food sovereignty in a way best suited for Oregon.

In an article produced by the Public News Service concerning the second Oregon cottage food law that was passed, the author quotes an Oregon Food-Bank public policy advocate. This advocate raves about the impact of establishing more channels for farmers to sell their goods and the positive impact on the advocate's work at food banks. The article quotes, "What this allows you to do is produce goods in your home kitchen," she said. "And it's direct sales only - I mean, we really see this as neighbors feeding neighbors, creating really self-sufficient communities".³³ This comment was made as the bill was being passed, meaning that this was more speculation and hope rather than a measured analysis. One hopes this comment, coming from an Oregon Food Bank public policy advocate, is representative of the positive impact the Farm Direct Marketing law may have on low-income Oregon residents. Anticipating benefits of cottage food laws from not only farmer's market frequenters and farmers, but Oregon residents of all backgrounds can become a reality if the law pushes Oregon toward food sovereignty. Steps toward food sovereignty will look different to populations within every state, having more access to products produced directly from state farms may benefit those residing in more rural areas,

³² Beaulac, Kristjansson, and Cummins, "A Systematic Review of Food Deserts, 1966-2007."

³³ Thomas, "Oregon Legislature Passes Home Baking Bill."

whereas easier access to homemade baked goods could benefit urban populations as well as the rural population.

Although the law strives to make it more convenient to buy from your neighbor, it is also important to note that this way of grocery shopping is a privilege itself. Similar to agrarianism where one is depending on the earth to find virtue, this idea of relying on a neighbor and one's self-sufficiency is also a romanticization of the past when barter-and-trade was the means for survival. This sentiment may be comforting- that the state enabling people to sell preserved food items and baked goods without licensing will connect communities in ways that supermarkets cannot. There is no doubt that this perception is true for some people, but it is necessary to consider the diverse types of people who have access to this manner of food distribution. Supermarkets have every type of food, making it the most practical way to shop for most people, especially those who don't get to shop leisurely for groceries because of other more important tasks on their agenda. Being able to buy bread from your neighbor and your pickles from the farm down the road is a privilege in itself and is not an option for some communities.

Looking at the romanticization and privilege within these conversations is essential when determining the relationship between cottage food laws and food sovereignty movements. The Farm Direct Marketing Law was not enacted to promote historical farming practices, nor to disrupt global agribusiness, but it was established in the spirit of the Oregon people. In the next chapter, viewing how a local ordinance promotes the production and distribution of locally farmed food, it will be made clear that at a local level there is more opportunity for citizens to

voice their opinions and determine the effectiveness of the law. Cottage food laws are crafted in congress, making their substance unknown to some citizens. This automatically undermines the virtue of cottage food laws, if not every invested group of the population can voice their opinion, the law is not fitting for the entire population. The next state I will look at, Wyoming, has a small population, making it a unique state for examining the success of its cottage food legislation. The state of Wyoming's cottage food law is more extreme and possibly even more aligned with its population's values, which is what I will look to next. Wyoming's small size brings me one step closer to the ultimate implementation of food laws that accurately represent a population, which is at the local level.

Wyoming has the most far-reaching cottage food law, which was originally enacted as the Wyoming Food Freedom Act in 2015.³⁴ The law made it legal to freely sell most homemade foods, excluding products like meat and more perishable items. Already, this is radical compared to Oregon's law, solely allowing for the distribution of products that have been pickled or made into a jam in some capacity.³⁵ Since the Wyoming law's passing, it has grown to include eggs and homemade drinks, while only excluding specific high-risk foods that require freezing or refrigeration.³⁶ Most recently, the Food Freedom Act has expanded to allow for ranchers to sell meat under the premise of a "herd share", which is defined by a consumer who already owns an animal, and can thus legally buy its meat, even without federal standards and guidelines.³⁷ Meat

³⁴ Lachance, "Wyoming's Pioneering Food Freedom Act May Expand to Allow the Sale of Locally Grown Eggs."

³⁵ "Wyoming - Cottage Food Law."

³⁶ Lachance, "Wyoming's Pioneering Food Freedom Act May Expand to Allow the Sale of Locally Grown Eggs."

³⁷ Linnekin, "New Wyoming Law Lets Local Ranchers Sell Cuts of Meat Directly to Consumers."

is an area that is generally untouched by states enacting cottage food laws, it carries more risk for foodborne illness resulting in strict national government regulations. The effort to discover a way to legally sell meat from farms exemplifies how important it is to the Wyoming people to promote the circulation of food from farms rather than grocery stores.

In an article discussing this new meat-centered amendment and how it will affect Wyoming farmers, it states, “Carlson tells me the fact the Wyoming law lowers costly barriers to entry for ranchers like her—for example, she won't have to transport her animal-share cattle to an out-of-state feedlot—will help her high-quality grass-fed beef compete on price with larger competitors”.³⁸ Although meat is not as freely distributed as other products under the law, in this article, ranchers are already expressing the advantages of selling meat directly to consumers. Carlson, the rancher interviewed, also explains that her beef is leaner and priced more competitively than grocery stores, therefore members of the community should have better access to it.

The article concludes with, “More than five years after Wyoming passed the Food Freedom Act, the law has benefited farmers and ranchers, small entrepreneurs, and consumers throughout the state. And it just keeps getting better”.³⁹ Before this, it also states that there have been no links to foodborne illness because of the law, but it is important to note that the Wyoming food safety reporting process is less extensive than that of Oregon. From this article, it is clear that some ranchers desire the state to allow even more foods to be sold under the law,

³⁸ Linnekin.

³⁹ Linnekin.

even though the Food Freedom Act is much broader than other cottage food laws across the country. When comparing her beef to the grocery store beef, Carlson claims her beef is less expensive and leaner, seemingly a superior product overall. Is this a reasonable tradeoff for the potential illness that can be spread from consuming unregulated meat?

In an article published by the Institute for Justice in response to the expansion of Wyoming's Food Freedom Act, the author states:

The food freedom movement is spreading across the country, creating new economic opportunities, especially for women and rural communities. Instead of having to pay tens of thousands of dollars a year to rent a commercial kitchen and comply with burdensome food licensing regulations, people can now turn their home kitchens into business incubators.⁴⁰

This piece by the Institute for Justice is cushioned by romantic ideals, particularly the pitch-like tone that it perpetuates. While noticing the romantic tone that the piece takes on, from these articles it appears that the Wyoming Food Freedom act is a manifestation of the attitude of the Wyoming people. With a large number of rural citizens, it makes sense that the national food standards would be unfit. By endorsing these deregulations as well as the vocal population's desire for more drastic measures to be taken, it is clear that the Wyoming Food Freedom Act is a reflection of how the vociferous members of the Wyoming population wish to consume. It is one step closer to the voice of the people truly manifesting at a local level, which I will show in the next chapter.

⁴⁰ Sibilla, "Governor Signs Bill Expanding Wyoming Food Freedom Act."

By analyzing the data produced five years after Oregon's Farm Direct Marketing Law was passed, regarding foodborne illness and implementation of the law, it was obvious that the law was being exercised at its full potential. The absence of linked illnesses was used as a further reason for supporters of food freedom to preach about the benefits of the Farm Direct Marketing law, which included "self-sufficient communities" or providing local food in rural areas lacking grocery stores. Oregon farmers and consumers sacrificed some security that informs national regulation and instead focused on a strengthened sense of community that emerges when farmers are able to sell their homegrown and homemade goods themselves. Although citizens claim that a sense of community was strengthened, I still argue that at a state level, groups are left out of crafting a food law that is catered to them.

Viewing the Wyoming Food Freedom Act next to the Farm Direct Marketing law exemplifies how states' interests differ from one another and hold fundamentally opposing ideologies. The population of Wyoming continues to strive toward achieving complete food freedom enabling citizens to buy and sell food products avoiding the risk of the government intervening and ending the food production. For Wyoming Citizens, the government regulation of food interferes with food distribution practices that serve to unite people. In upcoming years, how the federal government chooses to defy the convictions of the Wyoming population will dictate how expansive cottage food laws can be in the United States. Depending on Wyoming's success in controlling foodborne illness and overall execution of the law, other states may become inspired to loosen their food regulations as well. Cottage food laws already exist as an

avenue for disrupting preexisting food production and distribution standards, but even a state law can be overly broad in taking into account the unique needs of its population. In my penultimate showcasing of the various ways that food regulations can most represent a population's specific inclinations and desires regarding their food consumption at a local level, I will examine town ordinances in Maine.

Chapter III: The Local Food and Community Self-Governance Ordinance

In chapter I, I looked at Ecuador's constitutional amendment to incorporate environmental conservation and food production protections to promote food sovereignty. In chapter II, I examined cottage food laws in Oregon and Wyoming that represented the food production and distribution priorities of each state. How each law was crafted resulted in successfully increasing access to local food but did not succeed in acknowledging the varied needs of different municipalities existing within a different state or country. This chapter will illustrate how a town ordinance can increase access to local foods as well as create opportunities for community members to convene in creating a set of standards best suited for their community. I will also briefly examine the role of local government through political theory to contextualize how ordinances operate in the United States. I will show that the local government is the most effective body in promoting the will of the people when establishing laws that cater to the food distribution and production needs of a community.

For many, food is a means of self-expression and freedom rather than a necessity purchased from a grocery store. This is why government regulation of food is perceived as a hindrance by people who believe they can determine what is best to consume.⁴¹ The increased popularity of farmers' markets illustrates this yearning to return to local eating through barter and trade, yet for many, particularly those in rural areas, it is not enough.⁴² Farmers' markets are still subject to regulation and licensing, government powers that conflict with the values of those

⁴¹ Bellinger and Fakhri, "The Intersection between Food Sovereignty and Law."

⁴² Martinez, "Local Food Sales Continue to Grow Through a Variety of Marketing Channels."

with deeply set philosophies around food and freedom. Like all questions revolving around personal freedom, individuals question why the government is assumed to possess more knowledge than the individual. Many citizens of rural areas consider these regulations to benefit big farms, farms contributing to the impacts of world agribusiness by keeping food prices and wages for farmworkers low. Rural citizens and those who share these ideologies related to food freedom believe that world agribusiness undercuts one's ability to consume freely and disrupts age-old practices of community farming.

This chapter will examine an ordinance that spread across Maine municipalities and successfully evaded these regulations, seeking to achieve food sovereignty through the consumers' regaining agency over their consumption. I will prove that local government is best suited for crafting food regulations because it is most closely aligned with the will of the people. The Local Food and Self Government Ordinance defied state laws to give back agency to Maine citizens. I will argue that this is a reasonable tradeoff for the positive impact it has in uniting communities and enhancing freedom of food choice.

Determined to undo the current federalist governmental structure of the United States, small towns across Maine have used localism to achieve food sovereignty. The Local Food and Community Self-Governance Ordinance was created in hopes of bringing back small-scale food distribution practices as well as promoting local eating. The original Local Food and Community Self-Governance Ordinance was drafted in 2010 by a group of five farmers, farmworkers, and farm patrons from Sedgewick, Maine. The ordinance exempts small-scale producers from state

licensing and inspection, as long as the foods produced are sold from the producer to the consumer directly and remain within the boundaries of the community.⁴³ Creators of the ordinance took inspiration from the towns of Shapleigh and Newfield; they worked with the local government to adopt an ordinance protecting their town's water sources from drilling by Nestle. The ordinance was also based on efforts in Wyoming to establish food freedom legislation. The Local Food and Community Self-Governance Ordinance focused on reducing the economic burden that farmers experienced from federal and state food safety regulations that ultimately cost them thousands of dollars.

As well as removing onerous regulations and licensing requirements, people from these communities also wanted to regain decision making abilities regarding the origins of their food. Farmers handling small herds of animals regarded these aspects of obtaining licensing and being subject to inspection as unnecessary for distributing safe products; they knew they were competent judges of their products' safety for their community. A regulation that inconvenienced farmers is a law regarding on-farm poultry handling which mandated new equipment and procedures that proved expensive for small-scale poultry farmers.⁴⁴ For farmers with just a few dozen chickens, spending thousands of dollars on new equipment or updated facilities is not reasonable. For the meager amount of profit being made from a side business selling poultry, complying with these laws could result in financial loss. Similarly, for state dairy and raw milk regulations, the law required anyone distributing these products to have separate rooms for

⁴³ "Local Food and Community Self-Governance Ordinance: Frequently Asked Questions."

⁴⁴ Bob St. Peter and Perry, "The Right to Eat Local."

milking, bottling, and making cheese. Farmers producing dairy on this scale didn't find it necessary to build these spaces simply for sharing dairy products with local community members. These were the types of people that the mandate sought to serve; those who gain from selling extra food products to neighbors and friends but do not seek to create an entire business out of it.⁴⁵

For small-scale poultry workers and milk sellers alike, the sentiment that the government is not necessary for deeming what people should consume is shared. The Local Food and Community Self-Governance Ordinance was quickly adopted by small towns across Maine, not only as a means to eat better food, but to push the boundaries of local control and government. Calls for centralizing government are not new phenomena; the push to transform government manifested through neighborhood patrols, town hall meetings, and even citizen assemblies.

Town meetings occur annually in towns across Maine and elsewhere, usually allocating the town budget and dealing with an array of relevant issues. This was one of the first steps after creating the ordinance, as well as calling a public meeting to ensure citizens could freely discuss the ordinance. Once the widespread discussion is held, a town meeting is called for the town's selectman to vote on the passing of the ordinance.⁴⁶ This process was seemingly smooth for towns across Maine, not because of the boundaries of the town or state bringing them together, but the shared ideologies regarding localism manifesting through food freedom beliefs. This exercise of political participation is the fundamental way for democracy to be exercised in the

⁴⁵ "ME - Blue Hill - Local Food and Community Self-Governance Ordinance of 2011 | Animal Legal & Historical Center."

⁴⁶ St. Peter and Perry, "The Right to Eat Local."

United States, according to political thinkers, such as Tocqueville, which will be explored further in the following chapter. This unification, based on ideas geared to reform food standards, is what sets local government apart from national or state reform. There is more opportunity for speaking and listening to fellow citizens.

The role of a town ordinance is not immediately apparent in legal knowledge. For this reason, I will locate the place that local government currently occupies within America's political climate, before continuing to the specifics of the Local Food and Community Self-Government Ordinance. To many, it is perceived that government power is passed on through municipalities, from federal, to state, to city, to town. In terms of management and bureaucracy, this is true, but in terms of tangible power, it is primarily held at the national level. These questions of at which level is the power held in a state have been voiced in recent years. From cities becoming sanctuaries for Muslim people under Trump's "Muslim Ban", to federal mask mandates throughout COVID 19, it becomes increasingly difficult to determine which body holds the most power.⁴⁷ Cities and towns presume they know what is best for their citizens-that housing migrants is a community value, or choosing not to mandate masks allows its citizens more freedom. The history and theories regarding local government through federalism are expanded upon in the Federalism chapter of my senior project, but this chapter will examine local government and how it functions in the case of Maine.

⁴⁷ "Timeline of the Muslim Ban."

In a legal article focused on localism by Richard C. Schragger, he interprets Supreme Court cases dealing with localism. The primary case in which Schragger explores localism is *Chicago v. Morales*, where the court struck down Chicago's gang congregation ordinance which granted police the power to determine if people gathering in a public place were gang members. The court decided that police officers deeming whether or not someone is a gang member is allowing too much discretion to the officers; the vagueness is a violation of Due Process under the Fourteenth Amendment.⁴⁸ In this case, the justices focused on the substance of the ordinance in question rather than looking at the benefits of localism as a whole. Those in favor of localism perceive that local police officers have a better understanding of the community than Supreme Court Justices- that giving agency to local institutions is a better way to meet the needs of a community.⁴⁹ Towns across Maine successfully organized to pinpoint regulations that burdened their communities and crafted an ordinance that was advantageous to their food needs.

Along with *Morales*, the Supreme Court has historically been opposed to granting more power to local governments. Although this case has nothing to do with food, the sentiment of local communities having power is shared. Schragger writes, "A burgeoning literature calls for deference to local decisions addressing the quality of life on streets and in particular neighborhoods, and suggests that norms of street (and other) behavior be set locally".⁵⁰ In examining the Local Food and Community Self-Governance Ordinance, it is clear that Maine residents feel the same way about who should set norms in a community. Schragger also goes on

⁴⁸ "Chicago v. Morales."

⁴⁹ Schragger, "The Limits of Localism."

⁵⁰ Schragger, 383.

to discuss the nonphysical boundaries that create a community, such as political or religious practices. He states, “I argue for a shift from a discourse of localism, which takes territorially defined communities as a given, to a discourse of alternative localisms, which understands communities as products of contested political norms, arising simultaneously with the borders that define them”.⁵¹ In looking at more than simply food sovereignty in Maine but the U.S. as a whole, the contested political norms regarding decentralizing government serve to band people together when fighting for local food sovereignty. Especially within the scenario of Maine, citizens are less focused on the health benefits of raw milk and local chicken and place more emphasis on the social and political benefits that occur with eating locally. Even in small towns, borders are often constructed based on class, race, or political background, but this borderless support for localism the author speaks of transcends these norms. Maine consists of citizens of the far left and far right, yet the passing of the Local Food and Community Self-Governance Ordinance was widely supported because of the community value based on the local rule for food.

Although it is clear that localism acts as the underlying drive for the Local Food and Community Self-Governance Ordinance, there are other benefits that supporters recognize as well. In an article by Sarah Schindler for the Ohio State Law Journal, Schindler writes about the environmental and health benefits that arise with local food sovereignty ordinances. She writes,

Indeed, one of the strongest arguments that tie local food to environmental goals is that local food systems can help improve resiliency, which is an important topic in recent environmental literature... The idea is that if there are a number of local or regional food

⁵¹ Schragger, 385.

systems in place, people will be less reliant on production from a single geographic area, or of a single monoculture crop.⁵²

Resiliency is an environmental benefit directly aligned with the profound philosophical beliefs around localism and reinforces self-sufficiency in a physical sense with food products whereas localism does this philosophically. Along with this ability for a community to continue functioning when the industrial agriculture system is fluctuating, local food practices also avoid the issues that develop with world agribusiness farming practices. Practices such as over-cultivating land, excessive use of oil, and soil runoff from livestock that further pollutes the environment, are reduced when food production practices are performed on a smaller scale.⁵³ Although these varied environmental benefits are not what motivated small towns in Maine to enact their food sovereignty ordinances, these positive side effects could contribute to an individual's support for the ordinance. Since the government has failed to enforce measures to protect the environment from the harms of industrial farming, local governments are choosing to create their regulations to protect the planet.

Although not all Mainers embrace the perspective that the Local Food and Community Self-Governance Ordinance is an act created to protect the government, citizens of all types rave about the ordinance's benefits. These positive side effects could contribute to an individual's support for the ordinance. A resident from the town of Greenwood, Amy Chapman, explained, "Greenwood's food sovereignty ordinance allows me to make pies and other baked goods in my

⁵² Schindler, "Food Federalism." 385.

⁵³ Gustin, "Greenhouse Gas Emissions From Food Production Are Far Greater Than Previous Estimates Suggest."

home kitchen and sell them directly to customers without having to be licensed by the state”.⁵⁴

Stories of people operating their home kitchens as small, local businesses, were widespread when analyzing feedback regarding the ordinance. The necessity of obtaining a license for their second or third source of income posed a hindrance, discouraging people from selling altogether. Chapman goes on to say that if people are curious about her process or the ingredients she uses, she is always transparent about her process. This small-scale selling of homemade goods or farm products is the main way in which people are practicing within the ordinance's parameters but some use it as a stepping stone to creating larger businesses.

For Michelle Shutty of Greenwood, her coffee roasting business emerged from the ordinance. She explains, “The ordinance gave me a chance to quickly and easily introduce my product to customers in my community at the local farmers market and allowed me to determine that there was enough demand and interest to warrant starting the business, before putting forth the effort of getting licensed”.⁵⁵ Both stories illustrate the capacity the ordinance has in bolstering the community and local economy. People can comfortably sell their pies to neighbors and friends without needing approval from the state, and entrepreneurs can experiment with their ideas before investing in licensing and facilities because of the freedoms the ordinance grants.

Supporters of the ordinance have been vocal, but with such a controversial rule, comes backlash as well. In response to those pointing to the importance of state and federal food safety laws, ordinance supporters claim that there is a risk with any consumption. On a frequently asked

⁵⁴ Bayly, “One Year after Becoming Law, Food Sovereignty in Maine Has Taken Hold.”

⁵⁵ Bayly.

question page regarding the ordinance in the town of Brownfield, an answer to safety concerns says this: “There are no guarantees in any system and despite the vast array of FDA, USDA, and other governmental agencies oversight, there continue to be food safety problems in the industrial food chain. The source of the food, the number of hands touching the food, and the processing of the food all exacerbate the problem of maintaining food safety”.⁵⁶ This mindset was widespread throughout these communities, allowing the ordinance to pass unanimously in four of the towns with the lowest town approval being 50% in one of the towns.

Even though people with different ideologies and political standings came together in agreement about the Local Food and Community Self-Governance Ordinance, not all could get on board. Kevin Poland, a farmer from Brooklin, Maine, has been a strident opponent of the ordinance. In an NPR article, journalists quote him saying, “It has nothing to do with encouraging local farming,’ ‘There's plenty of that here. What there should be more encouragement of is food safety. The state of Maine has laws that work.’ And the laws that are in place are there to keep consumers safe, he says”.⁵⁷ Poland’s differing opinion specifically had to do with the idea that the ordinance defied state law. He regarded it as hazardous for farmers not to operate under safety guidelines when preparing meat and dairy; he then started reporting farmers who were selling their goods illegally. This led to Poland getting ejected from various farm groups and spurned by other farmers.

⁵⁶ “Local Food and Community Self-Governance Ordinance: Frequently Asked Questions.”

⁵⁷ Godoy, “Farm Free Or Die! Maine Towns Rebel Against Food Rules.”

This unabashed opposition to the ordinance is a positive outcome of the Local Food and Community Self-Governance Ordinance. A common concern that people often have regarding small government is apprehension that fewer voices can mean fewer opinions, creating less space for opposition. With fewer groups available to citizens; many fear being nullified by the majority opinion. Fortunately, Poland did find a platform to share his beliefs but the act of reporting other farmers served to fuel feelings of betrayal from those he reported which undermined their reception of his message. Perhaps if Poland hadn't alienated himself from the community, others would have felt more willing to stand with him in his opposition to the ordinance. On such a small scale, town community meetings exist as a safe space for people to listen to one another about differing opinions.

Not only did some concerned citizens not agree with the ordinance, but the federal government did not as well. A Blue Hill farmer, Dan Brown, was sued in 2011 for selling raw milk at a roadside stand near his home. For years, Brown had been preparing food in his farmhouse kitchen and selling this food at his small farm stand and local farmers' market. The town he lived in had less than 1000 residents. One of the items he sold was raw milk, a product that has become re-legalized in some states, including Maine. He owned one cow that produced all of his milk, which was too much for himself and his family, but not enough to distribute through retail.

The Maine law states raw milk can be sold directly from the farm it is produced from and must contain fewer bacteria than the legal threshold. It also mandates proper labeling, subjects

sellers to facility and product inspections, as well as states the need for certain licensing. In Maine, you must purchase a \$25 license to sell unpasteurized milk. Approximately 20 states in the United States allow raw milk in the retail sector, but not the commercial. Raw milk is not served in restaurants. The risks associated with raw milk arise in the consumption of contaminated raw milk from a cow that had meningitis or another transferrable illness; pasteurization eliminates this risk. Although the sale of raw milk is legal in Maine, there are strict standards in place for all dairy to avoid contamination issues. Brown was accused of violating three state laws: Not having a license for selling milk; selling raw milk without clearly marking it as such, and operating a food establishment without a license. Brown's farm stand business consisted of an 8 by 11-inch sign reading "raw milk". Brown also participated at the local farmers' market under the jurisdiction of the Local Food and Community Self-Governance Ordinance.⁵⁸ Brown was a prime example of what a vendor practicing under the ordinance could look like. Brown stated that his actions were entirely legal under the ordinance, despite his defying state laws. He was one of many farmers operating in this manner, but his situation was chosen by the state of Maine to clearly draw the lines between state law and the variations of the Local Food and Community Self-Governance Ordinances.

Justice Ann Murray of the Hancock Superior Court ruled that Brown was not protected under the Blue Hill Ordinance and that towns of Maine cannot be exempt from state law. Justice Murray deemed it unlawful for Brown to sell without proper milk licensing and banned him from

⁵⁸ Bidgood, "Maine Court Fight Pits Farmers Against State and One Another."

selling until he obtained these licenses. In her decision, Murray did not directly address the significance of the role of the local authority, but rather kept her decision in the context of the violation of state law. She stated that with or without the ordinance, dairy products must be subject to stricter regulation than other food items, making the role of state law critical to keeping people healthy. Murray found that the state had already implemented relaxed regulations for farmers' markets selling consumers' goods, excluding dairy products. The argument is fueled by the belief that it is the state's responsibility to protect consumers from potentially hazardous dairy products, and eliminating this regulation would pose a serious health risk. Murray addressed the dangers of freely selling dairy products rather than the specificities and power of the ordinance.⁵⁹

In Brown's defense, he claimed that in 2006 a state employee informed him that his small farm stand was operating legally and that it was wrong of that state to be changing its laws confusingly. At that time, he was told he did not need a license to sell raw milk from his small stand. Along with this fact, Brown pointed out that in 2009, when oversight of dairy farms in Maine was shifted over to a different state agency, where the enforcement of dairy laws was renewed, he was notified he was out of compliance. Armed with this fact, Brown argued that it was illegal for the state to change the rules because he built his business based on the employee's information published in 2006. As a penalty, Brown received a \$1000 fine for his actions and was ordered to cease operations of his dairy business until he received proper licensing. Justice

⁵⁹ Berleant, "Court Rulings in Dan Brown Case Offer Narrow Interpretation of Local Ordinance."

Murray refrained from striking down the ordinance entirely, giving Brown hope that he could win on appeal.⁶⁰

The case went up to the Maine Supreme Court, becoming an even more significant emblem in the food sovereignty movement. Justice Murray had found Brown guilty on all three counts-not having a license for selling milk; selling raw milk without clearly marking it as such, and operating a food establishment without a license. There was little discussed regarding the role of the ordinance itself. Similar to Justice Murray, the Maine Supreme Court also found ways to avoid the question of the local authority. The Maine Supreme Court stated, “We construe the plain language of the Blue Hill Local Food Ordinance to exempt local food producers and processors only from municipal licensing and inspection requirements”.⁶¹ In the opinion, the Court made it clear that as long as citizens act within the bounds of that state law, the ordinance remains valid. This quote focuses on the ordinance's construction to allow Blue Hill food producers and processors to sell directly to consumers, without worrying about Blue Hill laws. For this reason, the court did not speak extensively about the role of the food freedom ordinances across Maine, as they assumed they were all operating within state laws.

Regardless of the Court’s choice not to speak extensively about the role of the ordinance, Maine has historically protected the role of local governments. Maine has a “home rule” Amendment in its Constitution, which grants towns or cities the right to enact laws in a municipality that do not run counter to state law. This aspect of the Constitution strives to elevate

⁶⁰ State of Maine v. Dan Brown, Han-13-345 Justia 1 (2014).

⁶¹ State of Maine v. Dan Brown, Han-13-345 Justia 1 (2014).

communities and local authority and has been a vital component of the Maine Constitution for close to 50 years, serving as a significant aspect of Maine law. Home rule implementations are demonstrated differently depending on the state and issue at hand.

In her article about Food Federalism, Sarah Schindler writes, “In some jurisdictions, if a local ordinance governs a purely local issue, the local government’s rule can trump a state rule on the same topic. In other home rule jurisdictions, the locality can only act if the state has not. If the state decides to speak on an issue, and the state and local rules conflict, the state will win”.⁶² In the case of Maine, it was clear that selling raw milk without safety protocols in place was in direct opposition to state law, making this exercise of local power void. The actual idea of selling food goods to neighbors is an idea that Maine would otherwise cultivate, as long as people were not acting in defiance of state food safety laws. This is why the court focused on the shortcomings and dangers of local law undermining food safety guidelines but did not extensively examine the powers of local government.

The Maine Supreme Court’s decision on Dan Brown’s case was not surprising. A quotation in a local newspaper from one town’s selectman reads, “We made it very clear at the town meeting when [voters] passed [the ordinance] that state law trumps local law. If anyone is surprised by that, they shouldn’t be.”⁶³ It wasn’t a mystery that a small-town ordinance does not hold weight against state law, but serves as a step in returning agency to towns rendered powerless under the state’s control. Although selling raw milk or dairy products without a license

⁶² Schindler, “Food Federalism.”, 773

⁶³ Berleant, “Court Rulings in Dan Brown Case Offer Narrow Interpretation of Local Ordinance.”

is not possible for these farmers, they can bypass various barriers when selling other foods. Other towns can look to this ruling and become motivated to implement their ordinances promoting food sovereignty through direct trade, knowing that the Maine Supreme Court allowed it in this capacity.⁶⁴ The passing of the Local Food and Community Self-Governance Ordinance within municipalities across Maine signaled to the state government that this issue is a priority for the people.

Regarding this signaling, Schindler writes, “This could, perhaps, result in certain federal carve-outs, or a rethinking of the scale of regulation that is necessary and appropriate in the context of food safety and food systems”.⁶⁵ This demand for citizens to control what they consume while cultivating community relationships, a desire to step away from world agribusiness, and a drive to shape their needs around geographic location, defines this citizenry's desires and must become better understood by the state and federal governments. Even more so than cottage food laws in Oregon and Wyoming, the Local Food and Community Self-Government Ordinance enables more direct political participation of citizens in these towns and states, thus enhancing democracy. The passing of the Local Food and Community Self-Government Ordinance epitomizes how local government is most effective for establishing food production and distribution laws for its citizens.

In the beginning, farmers, farmworkers, and citizens convened to craft an ordinance suited to their community. They determined which regulations weren't serving the community

⁶⁴ Schindler, “Food Federalism.” 779

⁶⁵ Schindler, 781

members and created an ordinance to allow citizens to launch businesses or sell to their neighbors with more ease. Next, through town hall meetings and voting, the ordinance passed to become local law. Other towns used Sedgewick's ordinance as a foundation to craft their own, reworking it to address the specific needs and goals of the community. The ordinance resulted in an outpouring of support and claims of community gain, making it a success in enhancing community and increasing access to local foods. The next chapter will walk through the role of local governments alongside state and federal governments by analyzing political theory, dissecting court opinions, and looking at American history.

Chapter IV: Federalism

To better understand the relationship between national food regulation, state cottage food laws, and local ordinances, I will examine the history of federalism and its role in the United States Government today. The distribution of powers within the American government is a foundational aspect of the system envisioned by the framers of the Constitution. Their democratic ideology manifests most obviously through the state and national governments dividing power of actions such as law-making and tax collection. When these systems are challenged, which happens when state and local governments clash, questions about the role of federalism in our government emerge. Throughout the pandemic, mask mandates have been a highly politicized struggle between state and local governments. Citizens were left wondering which body of government to obey when a mayor's order defied a state mandate, creating the question of which body has jurisdiction over a municipality.

People often interpret the law-making body closest to them, such as a mayor or governor, to create laws most suited for their environment. This sentiment is shared by both people and political theorists, that leaders who are familiar with a community are most well suited to lead it. Federalism is most commonly understood as dual federalism, where the states and federal government exercise separate powers simultaneously. In this definition, there is no room for local government, or local lawmaking, such as the ordinances in Maine passing. This chapter will look at the history of federalism to better understand the role of local governments in law-making. First, I will dissect historical and contemporary political theory to exemplify how

theorists have envisioned and perceived the role of local government to have in the United States. From here, I will discuss how the framers did or didn't incorporate local government into the Constitution. Next, I will view court cases to analyze how the contemporary judicial system interprets local municipalities' place in a federalist system. Finally, I will look at the possibilities of local government through the lens of political theory.

Part I: Political Theory

To support my claim that local authority is the best governing body to implement food laws, I will now look at political thinkers who recognized the value of local government as well. Montesquieu was a political thinker who the founding fathers drew upon while crafting the Constitution. In *The Spirit of the Laws*, Montesquieu pioneered the burgeoning concepts forming around the separation of powers in government. He claimed that to promote liberty, the three powers must be separate and act independently to prevent power from concentrating in one branch. This idea rested on the philosophy that to have freedom and liberty, power must be pluralized. It cannot rest in the hands of one body, which creates a risk of tyranny.⁶⁶

Under the section, "Distinctive Properties of a Republic," in *The Spirit of the Laws*, Montesquieu writes, "In an extensive republic the public good is sacrificed to a thousand private views; it is subordinate to exception, and depends on accidents. In a small one, the interest of the public is most obvious, better understood, and more within the reach of every citizen; abuses have less extent, and of course, are less protected".⁶⁷ At this point in *The Spirit of the Laws*,

⁶⁶ Montesquieu, *The Spirit of the Laws*.

⁶⁷ Montesquieu, 120.

Montesquieu was referring to the distribution of power under a republic, but goes on to describe how bodies of government should be determined based on the nature of the population. In this quote, he speaks of an extensive republic compared to a small republic, specifically that a small republic is more responsive to the will of the people. In the early days of America, states exemplified this sentiment. During the Gilded Age and before, states acted more independently while still uniting under the National Government. This idea of the interest of the public being most obvious under a small republic is a concept that the Founding Fathers did not incorporate directly into the Constitution. As seen in Maine, it is natural for communities to gather around a common goal despite the amount of authority they have.

Perhaps the political thinker most strongly associated with the significance of local authority in America is Alexis de Tocqueville. In *Democracy in America*, Tocqueville claims that the spirit of democracy in America emerges through the townships. Tocqueville states that towns and villages are naturally self-governing bodies, manifesting in New England in the 18th and 19th centuries. Tocqueville states,

Local assemblies of the people constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science: they bring it within the people's reach, and teach them how to use and enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty.⁶⁸

This ability to govern on a small scale stems from the citizens' patriotic love of their home and environment, as well as their perceived equality with fellow citizens. This familiarity with one's

⁶⁸ de Tocqueville, *Democracy in America*.

town, fellow neighbors, and elected selectmen permit decision making processes to be more evenly distributed between the selectmen and the citizens. It is important to note, that even though New Englanders at the time experienced the equality granted to them by the Constitution, enslaved people and women had virtually no rights. Tocqueville viewed the American townships as the most direct form of liberty for the people. This early-held understanding of American democracy still holds true- as illustrated in earlier chapters, the smallest form of government, located through towns across Maine, created the most catered and concise ordinance that aligned most directly with its citizens. Since Tocqueville, other political thinkers have reexamined the place of the township in American democracy.

A later political thinker who has critiqued the national government's ability to distribute power equally is Hannah Arendt. Arendt believed that the failure to incorporate townships into the Constitution was the most significant mistake of the founding fathers. Rather than explicitly granting local governments power so that the American citizens can participate in government on a small scale, the founders focused on representation in the democracy so that power would be held at different levels. In the chapter "The Revolutionary Tradition and Its Lost Treasure," found in her book *On Revolution*, Arendt writes:

The failure of the founders to incorporate the township and the town-hall meeting into the Constitution, or rather their failure to find ways and means to transform them under radically changed circumstances, was understandable enough. Their chief attention was directed toward the most troublesome of all their immediate problems, the question of representation, and this to such an extent that they came to define republics, as distinguished from democracies, in terms of representative government.⁶⁹

⁶⁹ Arendt, *On Revolution*, 236.

Though Arendt recognizes the utmost importance in creating a democratic republic that aspires to distribute power across different planes of government such as federal and state, she interprets this form of representation to be incomplete. Simply having a political actor represents a body of citizens is useful for decision making on a large scale, but when this representation is the full extent of the citizen's political action, the system fails. Arendt perceived that the American people only really hold power on election day when they can cast a personal vote to participate directly in politics.⁷⁰ The absence of townships in the Constitution failed to carve out space for frequent opportunities to enable citizens to come together to speak about politics, which is what Arendt regarded as the most direct center of power. Without citizens acting and deciding to follow rules and authority, laws would be meaningless. Citizens deciding to act within the law allows society to function, which is why it is important to make space for people to share ideas and discuss their thoughts. Although federalism aimed to distribute power to allow for different positions of people to have authority, it failed to create a power source for citizens to access directly.

This need for federalism to extend greater than the federal and state hemispheres originates from Arendt's theory that only power can check power. A body of people or a single source of power cannot stand up in the face of a state or united body, only another source of power can put it in check. After dissecting the history and roots of man-made laws in societies such as Rome and France, Arendt speaks of how these laws are meaningless without the voice of

⁷⁰ Arendt, 238.

a higher being. Laws are simply commandments without this higher body standing behind them. Arendt writes, “Only to the extent that we understand by law a commandment to which men owe obedience regardless of their consent and mutual agreements, does the law require a transcendent source of authority for its validity, that is, an origin which must be beyond human power”.⁷¹ This quotation illustrates how laws are nothing without greater authority; people only respect laws and authority when faith exists in the body controlling it. This is why allocating the authority to bodies such as townships is so vital. With these bodies simply enforcing laws, they don’t hold the same respect and authority as the supreme bodies such as the state and federal governments.

Arendt perceives power to be adequately distributed across the branches of government and through different political spheres, but she sees the main goal of the Constitution to increase power rather than limit it. In the chapter, *Foundation I*, of *On Revolution*, Arendt writes,

Clearly, the true objective of the American Constitution was not to limit power but to create more power, actually to establish and duly constitute an entirely new power centre, destined to compensate the confederate republic, whose authority was to be exerted over a large, expanding territory, for the power lost through the separation of the colonies from the English crown.⁷²

She writes that the 13 colonies and the contributors of the Mayflower Contract did this eloquently. Both groups banded together as a united body to articulate how to constitute themselves. Rather than creating a document to preside over different states and factions, the Constitution sought to make more points of power to avoid tyranny. Arendt believed that a main

⁷¹ Arendt, 189.

⁷² Arendt, 154.

priority of the American government was creating more power, meaning smaller bodies convening to create suitable laws, such as the Local Food and Community Self-Governance Ordinance.

One of the newfound sources of power the Constitution granted to Americans was the Supreme Court. Along with the idea of decentralized government and townships serving as the foundation of America, Arendt also speaks of the unique power that the Supreme Court possesses. Other countries looked to their leaders as the source of authority, whereas Americans had faith that the Supreme Court would uphold the Constitution and interpret it most fittingly.⁷³ Later, I will look at Supreme Court Cases that have determined the place of local government in the United States, showcasing the power of the court when determining which bodies are most fit to govern. The framers heavily considered the importance of small government and participation, but also had faith in the courts to interpret the constitution so judges could decide in correlation with the will of the people. But, as we will see in *Hunter v. City of Pittsburgh* the court decided that townships are simply extensions of the state, confirming Arendt's judgment that the exclusion of the local government from the Constitution is the primary failure of the founders. This attempt to pluralize power resulted in the court interpreting the Constitution in the scope of Dual Federalism even though the importance of local government was shown by history and theorists. I will continue to use Arendt's argument in favor of local government, accompanied by Thomas Jefferson, whose ideas contributed to her work.

⁷³ Hannah Arendt Center for Politics and Humanities at Bard College, *VRG*.

Thomas Jefferson was a firm believer that a limited federal government was most important in creating a strong nation. He saw that the best way to achieve freedom was through small-scale government. In his First Inaugural Address, Jefferson said, “All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression”.⁷⁴ The importance of the voice of the minority was a priority for all of the founding fathers while crafting the Constitution, but Jefferson foresaw grave dangers with a centralized government and feared the limitations that came with representative democracy. To him, the minority possessing equal rights meant having the opportunity to participate in government.

Arendt used these Jeffersonian concepts as support for her philosophies about why it was a grave mistake not to explicitly expand federalism to the townships under the Constitution. Jefferson was an advocate of a Ward republic, where the country would be divided into wards, which was inspired by England, feudal European countries, and New England where there were bodies of individuals and families divided into groups based on their locations. This idea of wards was not taken on by America as a whole, but there are aspects of the country such as school districts of voting precincts.

Similar to Jefferson, Arendt saw these small divisions of Government as fundamental to American freedom. She wrote, “The basic assumption of the ward system, whether Jefferson

⁷⁴ Jefferson, “First Inaugural Address | The Papers of Thomas Jefferson.”

knew it or not, was that no one could be called happy without his share in public happiness, that no one could be called free without- out his experience in public freedom, and that no one could be called either happy or free without participating, and having a share, in public power”.⁷⁵

Arendt extended this value in the Ward system to happiness and freedom for American citizens, that the ability for everyone to participate in local government is so important to America that it directly affects each person. With the Local Food and Community Self-Governance Ordinance in Maine, it is clear that these feelings of happiness and freedom are directly connected to a town’s ability to convene and govern themselves in a manner that is most fitting to them.

Part II: The Courts

I will also consider how federalism has functioned and transformed throughout time in its relation to the Supreme Court. Farmer Dan Brown’s case only made it up to the Maine Supreme Court because it solely dealt with Maine laws and a Maine citizen. The court chose to focus its ruling on Brown’s violation of food safety protections in Maine, not the role of the Local Food and Community Self-Governance Ordinance. This was considered a win among food sovereignty circles. A state court allowing for local ordinances to stand to promote local eating and community, as long as it is within the bounds of state law, was an undeniable victory. This may motivate other towns to craft their own ordinances that promote food consumption practices that cater to their specific needs. With more food-focused ordinances, the courts may produce more jurisdiction over the rule of local government moving forward. To further understand the Maine

⁷⁵ Arendt, *On Revolution*, 255.

Supreme Court's opinion and the history of the courts in dealing with local rule, I will now look at historic Supreme Court cases that have dictated the power local governments hold today.

In a 1907 Supreme Court case, *Hunter v. City of Pittsburgh*, the Court diminished the role of the township to simply an extension of the state. This landmark case was decided in 1907 when the Supreme Court deemed it constitutional for the cities of Pittsburgh and Allegheny to merge into one authority. The case was prompted by an election for members of both cities to vote in favor of merging into a single city or not. Most citizens voted in favor to merge, but a majority of these voters were from the city of Pittsburgh. This resulted in the court ruling in favor of Pittsburgh, despite the opposition from the smaller municipality.

Under the idea that cities are nothing but agents of the state, the court decided that their local government and laws possess no power against the Constitution. The defining quotation from the Court opinion asserts, "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them".⁷⁶ This distinguishes the role of municipalities as simply an extension of the state- that they can only act within the bounds of what is dictated by the state. This is a direct manifestation of dual federalism, the state and federal governments are acting in their separate spheres, and local governments are only there for logistical functions. The court lays out the powers of the state by saying:

⁷⁶ *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907)

The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.⁷⁷

This is reiterating the idea that localities are bureaucratic extensions of the states; they simply manage and acquire property within a defined area. The Court's findings oppose the Jeffersonian ideals that many Americans hold onto, wherein self-reliance is closely intertwined with the concept of individual freedom and the desire to institute and manage community self-governance. *Hunter v. City of Pittsburgh* plays an important role in distributing local power in its conclusion that the state is supreme. This sentiment is echoed in the Maine Supreme Court's decision in Dan Brown's case; the Court made it clear that the Town of Blue Hill can govern as it chooses, as long as it stays within the scope of the state.

Lastly, in examining relevant court cases regarding federalism and delegating local powers, I will look at the role of local governments in passing the Supreme Court Decision legalizing gay marriage, *Obergefell v. Hodges*. This is relevant for proving that local government is most effective in implementing food regulations that cater specifically to a community because it demonstrates how a local ordinance can drive national change. A common ideology for judges and theorists to hold is the belief that states adopting laws about a certain issue signals the values

⁷⁷ *Hunter v. City of Pittsburgh*, 207 U.S. 178-179 (1907)

of the American people to the judiciary. In an article entitled *Localism and Constitutional Change*, Michèle Finck looks at the history of gay marriage and how localism amplified the issue to seize the national stage. Fink says that the first level of this was for cities or towns to pass anti-discrimination laws. This started with primarily more liberal-leaning cities but soon spread to over 165 cities by 1999. Passing laws like this placed pressure on the federal government to act within the ideology of the states in protecting gay marriage under the constitution.

Legalizing gay marriage started on a small scale of first striking down anti-sodomy laws, then focusing on anti-discrimination laws, to then having individual states legalize gay marriage before it was recognized nationally. Finck writes,

By virtue of a 2008 California Supreme Court decision *In re Marriage Cases*, California became the second state to recognize same-sex marriages. In the wake of this decision, three other state legislatures extended marriage rights to homosexuals, illustrating that due to porosity, initiatives at one area influence those in others and that the performativity of the local measures extends beyond the borders of one state.⁷⁸

This common pattern of one state acting and others following is relevant to a myriad of laws but the timeline for gay marriage illustrates the power that local government has in working towards change for federal policy. In the article's conclusion it states, "On the contrary, municipalities are creators of local norms that can pollinate legal and constitutional change at the state and federal levels. This thesis is substantiated with regard to the creation and evolution of gay rights in the United States".⁷⁹ This role of local governments "pollinating" legal and constitutional changes is

⁷⁸ Finck, "The Role of Localism in Constitutional Change," 89.

⁷⁹ Finck, 85.

a large part of talking about the unforeseen roles that local governments can have. Although federalism is commonly perceived as the relationship between the federal government and then the state government, the issue of gay rights illustrates how municipalities can contribute to dramatic societal change that makes its way up the federal level.

Hunter v. City of Pittsburgh demonstrates how the Supreme Court dismissed local governments as mere extensions of the state, but *Obergefell v. Hodges* illuminates the significant role that municipalities within cities or states had in legalizing gay marriage. As a precedent case for the Supreme Court, *Hunter v. City of Pittsburgh* places the Local Food and Community Self-Governance Ordinance in relation to previous cases regarding local authority. *Obergefell v. Hodges* illustrates the potential that local governments have in influencing both state and federal governments. These two cases show despite the dismissal of local authority in both Dan Brown's cases, municipalities can make changes in their food production and distribution practices and potentially impact the nation as a whole. Next, I will look closer at the birth of federalism in America through the lens of contemporary political theorists to see the framers' true intentions for how local government should function in the United States. This will prove that the crafting of the Local Food and Community Self-Governance Ordinance in Maine towns is the most effective way to craft catered food laws and enhance freedom.

Part III: Contemporary Theory and Application of Federalism

Although the distribution of powers was a primary part of framing the constitution, the framers left ambiguity regarding the power of local governments. In *American Federalism and the Diffusion of Power: Historical and Contemporary Perspectives* Harry N. Scheiber gives historical background and analysis of the foundation of federalism in the United States. Scheiber writes,

The Framers, gathered at Philadelphia in the historic founding convention of 1787, did not have in mind ‘increased autonomy’ that the central government might grant the states. Nor did they consider themselves as being in the business of obliterating distinctions between state authority and powers, on the one hand, and the authority and real power of the central government they were forming, on the other.⁸⁰

Scheiber goes on to write that during the crafting of the Constitution, the framers solely wished to construct a loose framework, that they lacked technical jargon to fully describe the system they wished to create. The Constitution delegates powers to the federal government, but there is ambiguous language and room for interpretation by the courts. Primarily, these original understandings of separation of powers dealt with dual federalism, the state, and federal government acting as separate powers in the same sphere. The role of the states being able to operate under their own free will, to have the ability to rise against the federal government if needed, was part of the constitutional framing that was most important to the framers. They left room for interpretation by the courts to determine the role of municipalities when they act in opposition to the state. As seen in *Hunter v. City of Pittsburgh* and *State v. Brown*, the courts

⁸⁰ Scheiber, “American Federalism and the Diffusion of Power,” 624.

have decided local governments are solely bureaucratic bodies of the state, any power for local authority has long been dismissed.

In the 19th century, railroads transformed both the American economy and the way of life for American citizens. With this societal change came the demand for railroad regulation for interstate commerce and railway routes. Congress left more legislation untouched, allowing for the states to craft many of their own laws up until the Interstate Commerce Act of 1887. Scheiber writes,

If one of the tests of a federal system is that it assures the constituent governments will retain significant power, the American system prior to 1861 conformed well to the ideal. Not only was the doctrine of federal supremacy hedged in by the jurists in the ways already indicated, but Congress elected to leave dormant many of the powers that the Supreme Court indicated it might properly exercise, either concurrently with the states or exclusively if it wished.⁸¹

Along with railroad regulation, different areas of policy such as education, property, civil rights, and criminal law, were left to the discretion of the states. This is still true in the manner that states determine how they tax their citizens, create statewide curriculum guidelines, and mandate laws to measure and punish criminal acts. What is different though, is the federal laws creating outlines for these state lines to operate within. One reason which contributed to the states' success under the ideals of dual federalism was how small the states were before 1861. Discussion-based or town-hall-style decision making was practicable because of the small population, allowing for the free flow of perspectives.

Rather than identifying with a national party, parties were usually organized at a state level. Scheiber writes, “Multiple political organization,’ with parties organized on a state basis

⁸¹ Scheiber, 632.

primarily, and with significant variation in the party constituencies and ideological preferences from one state to another, helped to institutionalize the ‘dualism’ of loyalty to both state and nation”.⁸² People established groups based on personal ideologies rather than standards of a particular party, it was normal to belong to different groups, creating space to respect both state and federal rules. Although this non-partisan, intimate approach to democracy is seemingly ideal, aspects such as not having federal standards for civil rights reveals the issue with not having federal regulation.

During this period, the laws of slavery were also left to the states, allowing states to decide on permitting slavery themselves. As the country has grown and developed, federal law has grown to reflect the values of Americans that include abolishing slavery, universal suffrage, and more recently, gay marriage. Looking back through the lens of food regulation, through agencies such as the FDA, it’s clear that food is heavily regulated, not giving much power to the states. States like Oregon and Wyoming creating their food sovereignty laws is reminiscent of the early days of dual federalism, where states acted within their values rather than reflecting the country as a whole. This notion of crafting parties based on personal ideologies rather than party loyalty is also present in the crafting of the Local Food and Community Self-Governance ordinances across Maine. People pushed aside political allegiances to come together around promoting food practices that served their community.

Scheiber is referencing the dualism between state and country that people brought with them to gatherings such as town hall meetings. This historical perspective on federalism focuses on the relationship between the country and the states, but, as the country has grown, more levels

⁸² Scheiber, 634.

of government have been needed to truly represent all areas of the population. These early concepts of federalism were also meant to apply to the dynamics between local government and the state government, the tension that is most prominent when looking at scenarios such as the Local Food and Community Self Governance Ordinance in Maine. In an article titled, *Progressive Policy-Making on the Local Level: Rethinking Traditional Notions of Federalism*, by Matthew J. Parlow, Parlow reflects upon federalism at the local level. The Constitution does not mention the role of local government, but many scholars, including Parlow, interpret the original purpose of local government as a means to carry out the duties of the state at a smaller level.

Parlow argues that the role of local government is much more significant than was anticipated by the constitutional framers. Parlow writes,

Many cities and counties are now significantly more powerful, socially, economically, and politically than when they were created and their powers-or lack thereof-originally devised. In fact, one might even argue that cities' economic strength, large populations, and political importance make them more powerful and influential than some states.⁸³

He goes on to look at the populations of cities like New York City and Los Angeles, where the populations exceed those of many states. Power in densely populated states manifests through more representation in the House of Representatives and also often in terms of receiving a large percentage of public goods and services. Parlow makes the case that the role of local government has become much more significant than the framers may have anticipated and that the relationship between the local government and state government has become more prominent than that of federal and state.

⁸³ Parlow, "Progressive Policy-Making on the Local Level: Rethinking Traditional Notions of Federalism," 373.

Parlow argues that local government permits people to participate further in decision making. Having a smaller scale for people to talk about issues makes it easier to find consensus, as well being among fellow community members may make it easier to understand different perspectives. He states, “In many ways, local governments have led the way in many areas of public policy where the federal and state governments have either failed, avoided issues altogether, or been unable to reach an agreement because of the divergent interests of their constituencies”.⁸⁴ Gridlock in Congress is a common complaint from citizens all over the country, decreasing the scale at which decisions are made makes room for people to express their opinions as well as listen to others in their community. Although federalism originally accounted for the two spheres of the states and the federal government, the function of local government proves to be a major benefit of federalism that the constitution did not account for. Local governments have pushed through policies dealing with COVID, immigration, gay marriage, and abortion, at times when the federal government cannot find a consensus. When the state and federal governments failed to promote local eating and freedom of food choices in Maine, citizens made ordinances that catered to their needs.

A lens that Parlow employs to look at localities taking issues into their own hands is immigration. Parlow writes, “Local governments have recently waded into the highly politicized policy arena of immigration regulation. The proliferation of such laws may be due, in part, to a perception that the federal government has failed to properly address illegal immigration in a

⁸⁴ Parlow, 375.

manner that the public deems satisfactory”.⁸⁵ Immigration is a matter that many Americans take personally, blaming immigrants for lack of jobs or an increase in taxes. Immigration in the context of labor and the job force is much talked about. In New York state, roughly 35% of all workers in the food sector are foreign-born.⁸⁶ Although this chapter is not about immigrant food workers, it is important to note their significant role in contributing to the food system of the United States. This being said, immigration is an issue different regions have taken into their own hands, through ordinances and bans. The next section will illustrate how ordinances can be used to restrict people’s freedom as well as promote it.

Albertville, Alabama is a location where citizens used local government to exclude immigrants. In a podcast episode of *This American Life*, titled *Our Town, Part-Two*, one of the hosts speaks of the anti-immigration laws passed in response to non-native-born workers working in the town’s chicken processing plants. Miki Meek says,

They make English the official language of Albertville... Not everything passes, like the proposal to force Latino businesses to translate their signs into English, or their proposal that would fine anyone who keeps their Christmas lights up past January 31st, or anyone who has indoor furniture on their porch outdoors, or broken vehicles on their lawn.⁸⁷

This snippet from the podcast episode showcases the different routes that a town can take to discourage immigrants from residing in a town. Although this list is of ordinances that were entertained but failed to pass, this “broken windows” approach to immigration is seen in municipalities throughout the country. The ACLU published a story talking about how this form

⁸⁵ Parlow, 376.

⁸⁶ “Covid-19: Immigrant Workers Are Essential in Securing U.S. Food Supply Chain”

⁸⁷ “Our Town - Part Two.”

of over-policing impacts immigrants more than other groups of people in the U.S. It states, “These consequences are even more harmful to noncitizens for whom any brush with the criminal legal system, even a traffic violation, opens them up to being arrested, detained, and deported by ICE”.⁸⁸ Small towns such as Albertville and others that targeted immigrants through small-scale ordinances stand as examples of how local governments can work to regulate or control its citizens. Similar to how Maine towns were unhappy with the state government’s handling of food laws, places implementing these “broken window” style laws are displeased with how the federal government has handled immigration, so they implement small-scale ordinances that hope to prohibit immigrants.

Despite this ability to create ordinances to deter immigrants, there also are towns and cities that use their power under federalism to embrace immigrants openly. Parlow writes, “For example, many cities have designated themselves sanctuary cities by adopting non-cooperation laws or policies that make their boundaries safe-havens for undocumented immigrants. In this regard, sanctuary cities mandate that their employees not enforce federal immigration laws, nor cooperate with, or coordinate with, federal immigration enforcement”.⁸⁹ As mentioned before, in 2017 President Donald Trump enacted an Executive Order that banned foreigners from seven predominantly Muslim countries for 90 days and stopped entry to the United States for all Syrian refugees. In response, Washington State filed a lawsuit against the Trump Administration, not even a week after the ban was enacted. Along with filing this lawsuit, cities like Seattle declared

⁸⁸ “ICE Uses the Failed ‘Broken Windows’ Mentality, With Deadly Consequences.”

⁸⁹ Parlow, “Progressive Policy-Making on the Local Level: Rethinking Traditional Notions of Federalism,” 378.

themselves as sanctuary cities, meaning they will not arrest someone simply for being undocumented.⁹⁰ This is an example of how cities can choose to operate separately from the federal government. In the efforts to deter immigrants, municipalities added ordinances and bans, adding to the law to target immigrant communities. In the effort to welcome and support immigrants, municipalities opted out of the law, deciding to allow people to live freely even if they resided illegally. Immigration illustrates how a national, highly politicized issue can trickle down to the states and local governments, allowing them to respond to federal laws in ways that are most suitable to them. It is clear from these increasingly relevant scenarios of local mandates in response to a federal rule that federalism is far greater than the original concepts of dual federalism.

⁹⁰ Voice, "Immigration 101."

Conclusion

By looking at different levels of government that passed food laws to promote freedom of local food choice; I argued that local governments are most appropriate for crafting food laws that cater to a community. In chapter I, I examined Ecuador's constitutional amendment promoting land conservation and historic agricultural practices. Ecuador served as an example of how a national food sovereignty amendment may not entirely represent all the groups within a country and could be subject to change with every new president. I argued that the United States is so deeply mixed both in its varying food distribution and production needs and political ideologies, that local government is the best suited to implement food laws that cater to its community.

In chapter II, I explored cottage food laws in Oregon and Wyoming to see how states are deviating from federal food standards to promote the food ethic values of their people. For Oregon, the state promoted local food distribution by making it easier for farmers to sell preserved agricultural products from their farms. In Wyoming, the state eliminated many food regulations to allow the open distribution of food products from farmers directly to consumers. I argued that by looking at the different needs of both Oregon and Wyoming, it becomes clear that the most representative food laws will be made at a local level. These two different states had completely different aspirations in the regulation of local foods, but these aspirations were still not entirely suited for the whole population. In the third chapter, I examined the Local Food and Community Self-Governance Ordinance to exemplify how local government is most capable of

crafting food laws that enhance local eating, food distribution, and self-government. I argued that the practice of towns across Maine individually convening to create ordinances addressing their community and food needs is the most effective way to implement food sovereignty. Finally, in my fourth chapter on federalism, I examined the role of local governments in American history. I used political theory, court cases, history, and contemporary examples to reveal the various ways in which the role of local government is a fundamental part of American Democracy.

A recent Maine constitutional amendment illuminates the power of local governments in mobilizing state-wide change. After dozens of Maine towns adopted their versions of the Local Food and Community Self-Governance Ordinance, the state recognized the “Right to Food”, as a fundamental right. In 2021, Maine citizens voted to pass a constitutional amendment stating:

All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.⁹¹

The language of the amendment is vague, leaving room for Maine courts to interpret how the amendment will be implemented. This could mean upholding state confines of pre-existing food regulations or becoming more relaxed with licensing and regulation laws to promote the amendment. Its passing was backed by Libertarians, Democrats, and Republicans, illustrating how the amendment is representative of the state as a whole. Unlike cottage food laws or the

⁹¹ Desrochers and Lemieux, “Maine’s Mysterious New ‘Right to Food.’”

constitutional amendment in Ecuador, Maine's amendment was triggered by towns across the state signaling the priority that food freedom laws represent to its people.

This recently passed amendment bolsters my argument that local government is most efficacious for creating individualized laws that promote local food distribution and consumption. The act of towns gathering around a cause that is significant to their community is a practice that theorists such as Arendt and Tocqueville interpreted as fundamental to democracy in the United States. Towns crafted ordinances specific to their needs, showing the Maine state government that this is an issue that must be protected by the Constitution. The towns are still free to make ordinances specific to the needs of their communities but accompanied by state protection upholding a "right to food".

By discussing food laws that enhanced community and local eating from the federal level of Ecuador, to the state level through cottage food laws in Wyoming and Oregon, and finally, the local level in Maine, I illustrated that local government is most appropriate in applying suitable food sovereignty laws. Through exploring the ways local government has been a part of federalism, despite the common definition pertaining to dual federalism, I placed local government as a fundamental aspect of American Democracy. Finally, Maine's new Constitutional Amendment adds further evidence that the role of local government transcends labeling as a bureaucratic extension of the state, but as an institution for change led by the citizens. Local government is fundamental to American democracy and is the body most suited for crafting food laws that not only encourage healthy and local eating but promote community organizing while honoring the will of the people.

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