Antitrust in Food and Farming Under President Trump

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The American food and farm economy has become extremely consolidated over the last several decades. Four companies control[1] about 80% of beef slaughter, 65% of pork slaughter, and over 50% of chicken processing markets. Anheuser-Busch InBev controls over 50% of the beer consumed in the U.S, even after its divestiture of MillerCoors. Seeds and agrochemicals are controlled by just a handful of firms, and three pending mega-mergers in that sector promise to shrink the number of major global players to four.

Consolidation has devastated many farming and rural communities by driving hundreds of thousands of independent farmers off the land. The rise of factory farming and consolidated animal feeding operations has led to the pollution[2] of air, soil, and waterways. Workers in the food supply chain face low wages and dangerous working conditions, as a recent Oxfam America report[3] details. A wave of mergers has displaced wealth from rural communities and sent it to coastal cities[4] or abroad.

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1. HOWARD, PHILLIP H. CONCENTRATION AND POWER IN THE FOOD SYSTEM: WHO CONTROLS WHAT WE EAT? (2016).

2. Christina Cooke, *North Carolina's Factory Farms Produce 15,000 Olympic Pools Worth of Waste Each Year*, CIVIL EATS (June 28, 2016), http://civileats.com/2016/06/28/north-carolinas-cafos-produce-15000-olympic-size-pools-worth-of-waste/.

3. *Lives on the Line*, OXFAM AMERICA 19, 19-34 (Oct. 26, 2015), https://www.oxfamamerica.org/publications/lives-on-the-line/.

4. Brian Feldman, *The Real Reason Middle America Should Be Angry*, WASH. MONTHLY (Mar. 2016), http://washingtonmonthly.com/magazine/maraprmay-2016/the-real-reason-middle-america-should-be-angry/.

The rise of monopolistic corporate power and control over our food system was not inevitable. On the contrary, we can trace it largely to weak antitrust enforcement by the federal government. Since Ronald Reagan took power in 1981, every administration has embraced an extreme laissez faire approach to regulation. During this period, antitrust regulations have only rarely been used to protect the open markets of farmers and ranchers.

There are many reasons why rural Americans voted in such strong numbers for Donald Trump last November. One of the most important of these reasons was that many of America's farmers and ranchers, as well as those who depend on America's rural economy, believed that the Obama Administration had largely failed to defend rural livelihoods and markets over the last eight years. For many, the distrust of the Democratic Party went back to pro-corporate policies put in place by the Clinton Administration in the 1990s. To understand how to address crucial food policy issues in the age of Trump, we must understand the pro-corporate policies of the last quarter century, a large share of which were adopted by Democratic presidents.

How Did We Get Here?

In 2008, candidates Barack Obama and Joe Biden published a 13-page[5] platform titled *Real Leadership for Rural America*. In it, the two then-senators declared that rural Americans had "not been well-served" by federal policymakers. Under an Obama Administration, they pledged that "misguided" policies would give way to coordinated local and federal efforts to improve the lives and wellbeing of rural communities.

Candidates Obama and Biden promised a better quality of life and an increase in economic opportunity for many. In addition, they promised to "strengthen anti-monopoly laws" and "make sure that farm programs were designed to help family farmers, as opposed to large, vertically integrated corporate

5. Obama for America, *Real Leadership for Rural America*, 1 (Oct. 16, 2007), http://sustainableagriculture.net/wp-content/uploads/2015/04/RuralPlanFactSheet-1.pdf.

agribusiness."[6] They promised farmers greater access to markets along with more transparency and more control over their own lives.

Early on, President Obama actually tried to deliver on these promises. In 2010, the Department of Justice and the Department of Agriculture hosted[7] a series of listening sessions around the country to hear from farmers about how consolidation affected their ability to make a living. Ranchers reported that meatpackers were exerting great power over their regional economies, which pushed down market prices. Packing plant workers reported receiving lower and lower wages. Chicken farmers reported being paid through an opaque "tournament system,"[8] in which they and their neighbors competed in a zero-sum battle for wages.

In response, Obama's Agriculture Secretary Tom Vilsack pledged to write rules that would empower the Grain Inspection, Packers, and Stockyards Administration (GIPSA), a body within the USDA meant to enforce the Packers and Stockyards Act (PSA), to fight against the abusive practices of consolidated meatpackers. The PSA was passed in 1921, and was meant to uphold competition in the meat industry. GIPSA was formed in 1994 with the intention of protecting open markets in agriculture, though it had been found[9] to be suppressing investigations into the very companies it was meant to regulate.

The GIPSA rules, then, would mark a new chapter in antitrust enforcement in agriculture.

However, Secretary Vilsack delayed publication of the rules for more than five years, until the last month he was in office. This left too little time for the Obama Administration to get the rules fully implemented. President Trump's team has yet to implement the rules.

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6. *Id*. at 2.
7. Lina Khan, *Obama's Game of Chicken*, WASH. MONTHLY (Nov. 2012), http://washingtonmonthly.com/magazine/novdec-2012/obamas-game-of-chicken/
8. *Id*.
9. *Id*.

In addition to that disappointment, farmers saw the Obama Administration back down on Country of Origin Labeling (COOL), which was designed to let consumers know where their meat was raised. The Obama team did so under pressure from the WTO. The retreat on COOL deprived independent ranchers of a crucial tool necessary to maintain a competitive edge in an international beef market increasingly dominated by multinational corporations.

Farmers also saw the Obama Justice Department and Federal Trade Commission fail to address continued consolidation of corporate power in the food system. For example, the Administration allowed mega-deals between Kraft and Heinz, Ahold and Delhaize, JBS's acquisition of Cargill's pork business, and Bayer's pending acquisition of Monsanto – only one of three enormous proposed deals in the agrochemical sector. Each of these mergers displaced jobs and further closed off markets available to rural producers.

Trump, So Far

For much of the Obama Administration, the crisis in rural America was masked by high prices of grains, livestock, and land. By the time Donald Trump took office in January, however, rural Americans and particularly farming communities were facing another economic crisis[10] marked by falling prices for grains, livestock, milk and land. Indeed, many ranches and dairy farms are likely to shutter this year as the effects of several unprofitable seasons pile up.

President Trump hasn't revealed much about his stances on food policies, nor has he spoken about how consolidation might be affecting the agricultural economy. However, we can glean some information from his actions thus far and particularly from his appointments. The signs indicate that Trump is on track to take a bad situation and make it worse.

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10. Jesse Newman & Patrick McGroarty, *The Next American Farm Bust is Upon Us*, WALL ST. J. (Feb. 8, 2017), https://www.wsj.com/articles/the-next-american-farm-bust-is-upon-us-1486572488.

President Trump's Secretary of Agriculture, Sonny Perdue, is perhaps the clearest indication of how his administration will support corporate agricultural interests. During his time as governor of Georgia, Perdue was an ally to the state's large poultry industry. Though not related to the Perdue chicken empire, as governor, Perdue did support expansion[11] for multiple poultry giants. His alliance with Big Chicken has earned him rousing support[12] from the National Chicken Council, the board that represents entrenched interests in the poultry industry. Critics have also pointed to Purdue's campaign donations from Monsanto and Coca-Cola as indications that his agriculture policy will serve the interests of corporate players.

Another indicator is President Trump's appointments in the realm of trade policy. On the campaign trail, President Trump spoke of the need to protect American industry from imports and off-shoring. In office, however, one of his first actions was to name Terry Branstad, the former governor of Iowa, as his ambassador to China. While in office, Branstad's largest donor[13] was the head of a major pork and ethanol production company in Iowa that has interests in Brazil.

Similarly, on banking and finance, candidate Trump often echoed the language of Democratic candidates like Bernie Sanders and attacked Wall Street predators. Since taking office, however, he has elevated[14] Goldman Sachs executives Steven

11. Press Release, Gov. Sonny Perdue, *Perdue Farms Plans Major Expansion in Georgia*, (July 14, 2005), http://sonnyperdue.georgia.gov/00/press/detail/0,2668,78006749_79688147_93050140,00.html.

12. Press Release, National Chicken Council, *NCC Statement on Former Georgia Governor Sonny Perdue's Nomination for Secretary of Agriculture* (Jan. 18, 2017), http://www.nationalchickencouncil.org/ncc-statement-on-former-georgia-governor-sonny-perdues-nomination-for-usda-secretary/.

13. Tom Philpott, *Trump Just Wrapped Up a Nice Double Gift to the Meat Industry*, MOTHER JONES Dec. 8, 2016), http://www.motherjones.com/environment/2016/12/trump-just-wrapped-nice-double-gift-meat-industry.

14. Matt Porzio, *Trump Appointments Signal Shift on Mega-Mergers, Antitrust Enforcement*, FORBES (Jan. 17, 2017), https://www.forbes.com/sites/mattporzio/2017/01/17/trump-appointments-signal-shift-on-mega-mergers-antitrust-enforcement/#577d4c396d57.

Mnunchin and Gary Cohn to run the Treasury and to serve as his most senior advisor on economic issues.

President Trump has yet to name any antitrust regulators, so his philosophy remains unclear. The President has, however, found a key transition advisor in Josh Wright, director of the Global Antitrust Institute and former commissioner for the Federal Trade Commission. Mr. Wright has strongly promoted consolidation and recently supported a proposed merger between Sysco and US Foods before it was blocked by a federal judge in 2015. Further, President Trump's nominee for the Supreme Court, Neil Gorsuch, has a track record[15] of supporting big business and concentrated power over competitive and open markets.

In his one action since the election that concerns antitrust and the rural economy, Donald Trump showed no qualms about signaling approval for a giant merger in exchange for vague promises regarding jobs. On January 17, just days before taking office, President-Elect Trump held a closed-door meeting with executives from agrochemical giants Bayer and Monsanto. The two companies are seeking approval for their $66 billion merger. After the meeting, Bayer promised the merger would create 3,000 American jobs, despite the fact that there is little evidence that mega-mergers of this size ever result in the creation of new jobs. To the contrary, mergers of this size tend to result in job loss.

What Could Trump Do?

If President Trump does in fact decide to take on consolidation and monopolization and treat each as central economic issues, there are several food policies he could adopt that would demonstrate a real commitment to rural and agricultural communities.

15. Zephyr Teachout, *Neil Gorsuch Sides With Big Business, Big Donors, and Big Bosses*, WASH. POST (Feb. 21, 2017), https://www.washingtonpost.com/posteverything/wp/2017/02/21/neil-gorsuch-always-sides-with-big-business-big-donors-and-big-bosses/.

1. Kill the Checkoff Tax

Checkoff tax programs are designed ostensibly to promote the consumption of certain farm commodities by subsidizing research and marketing. Checkoffs, which are administered by the Department of Agriculture, now cover more than 20 different farm products including beef, pork, cotton, soy, and eggs.[16] About $750 million is collected annually in checkoff taxes.[17]

Over the years, however, several checkoff programs have been accused of misdirecting funds for political activity. In 2015, a Federal Office of Information Act request led to the discovery that executives of the American Egg Board, which oversees the egg checkoff tax, had planned to take down a vegan mayonnaise company they saw as a threat. In 2016, the Ranchers-Cattlemen Action Legal Fund sued[18] Montana's beef checkoff program, alleging that it promotes only conventional beef and not beef produced by smaller-scale, more sustainable growers. Similarly, checkoff taxes have been used[19] to promote the interests of big corporate producers rather than independent farmers.

In July 2016, Senators Cory Booker (D-NJ) and Mike Lee (R-UT) introduced legislation to reform the national checkoff program. The Commodity Checkoff Program Improvement Act would prohibit the Department of Agriculture from contracting with organizations that engage in political activity to run checkoff programs. It would also ban checkoff programs from engaging in anti-competitive behavior and would require more

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16. Gary Williams, et al., *Overview: Commodity Checkoff Programs,* CHOICES, 2nd Quarter 2006, at 53, http://www.choicesmagazine.org/2006-2/checkoff/2006-2-checkoff.pdf.

17. Chanjin Chung, et al., *Producer Support for Checkoff Programs: The Case of Beef*, CHOICES, 2nd Quarter 2006, at 79, http://www.choicesmagazine.org/2006-2-checkoff/2006-2-checkoff.pdf (stating that the majority of the $750 million collected annually through mandatory checkoff programs has been invested in generic advertising and promotional programs).

18. Complaint at 3-5, *Ranchers-Cattlemen Action Legal Fund v. Tom Vilsack*, No. 4:16-cv-00041-BMM-JTJ, (U.S. District Court for the District of Montana, May 2, 2016).

19. Sid Mahanta, *Big Beef*, WASH. MONTHLY (Jan. 2014), http://washingtonmonthly.com/magazine/janfeb-2014/big-beef/.

transparency around the spending of checkoff funds. These reforms would, among other things, take away the power of corporate meatpackers to use mandatory tax funds for their personal benefit.

President Trump could support this legislation and push for further checkoff reform to rein in what has been turned into a slush fund for corporate meatpackers.

2. Protect the Farmer from Unfair Contracts and Manipulation

As noted above, one of the early actions the Obama Administration took to address consolidation in agriculture was to commit to using GIPSA to fight against unfair contracts and other abusive practices from meatpackers. But Congress, after extensive lobbying from corporate meatpackers, repeatedly blocked funding to GIPSA in a series of appropriations bills. It took a scathing segment by late-night host John Oliver to shame Congress into funding GIPSA in 2016. And it was only in December 2016, in the waning hours of his tenure, that Secretary Vilsack actually published the rules. The rules are still in limbo, however, due to President Trump's early action to freeze federal regulations.

President Trump could approve the Farmer Fair Practices Rules and push Congress to continue to fund GIPSA's implementation of the PSA. These actions would demonstrate a commitment to the rural economy and show support from the President to the to standing up for the rural communities who helped elect him.

3. Prohibit Meatpackers from Owning Land and Animals

For much of the 20th century, state level laws across America prohibited slaughterhouses from owning animals and land. Those laws, called "packer bans,"[20] aimed to ensure that

20. Leah Douglas, *The Last State Standing Against Corporate Farming Weighs a Change*, FORTUNE (Mar. 24, 2015), http://fortune.com/2015/03/24/nebraska-hog-farming-packer-ban/.

farmers would have access to fair and open markets without having to compete with herds owned by the meatpackers themselves. Direct ownership allows these companies to regulate supplies and prices, and ultimately to cut independent ranchers off from the market.

Beginning in the early 2000s, however, those laws were steadily overturned due to lobbying and political influence of giant meatpackers. In one recent instance, lawmakers in Nebraska voted to overturn the state's packer ban, a 15-year-old law that prevents corporations from owning land and livestock in the state. Nebraska was only the latest in a series[21] of efforts to overturn such legislation, which at one time existed in nearly every major agricultural state. One of the main backers of that effort is the pork processor Smithfield Foods, which is now owned by the Chinese company WH Group.

In late 2016, Senator Chuck Grassley (R-IA) introduced[22] legislation that would ban meatpackers anywhere in the United States from owning animals. A national packer ban would limit the power of meatpackers to own their entire supply chain, and thereby protect competitive markets for farmers. President Trump, by supporting this legislation, would demonstrate to his supporters that he will seriously work to loosen the grasp of the monopolistic meatpackers on rural farmers and communities.

4. Let Eaters Know Where Their Meat Comes From

Consumers have come to expect transparency about the origins of many products. Take clothing, where every garment contains a tag that tells you where your shirt or pants were made. From 2009 to 2015, consumers were granted this transparency when it came to knowing where their meat had been grown and slaughtered.

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21. Leah Douglas, *Nebraska's Livestock Market Faces Death by Big Meat Lobbying*, FORTUNE (Feb. 5, 2016), http://fortune.com/2016/02/05/nebraska-livestock-market/.

22. Press Release, Senator Chuck Grassley, Grassley Presses for Ban on Packer Ownership of Livestock, (May 11, 2016), http://www.grassley.senate.gov/news/news-releases/grassley-presses-ban-packer-ownership-livestock.

Country of Origin Labeling (COOL) went into effect for meat products in 2009. Independent American ranchers and farmers broadly supported COOL because they saw an advantage by being able to market and advertise American-raised meat.

But the large-scale corporate processors that dominate the U.S. meat industry all operate in multiple countries. Thus, it should come to no surprise, that these companies have lobbied both inside and outside the United States to overturn the COOL law. In 2015, the WTO decided in favor[23] of a lawsuit brought by Canada and Mexico that alleged the labeling put those countries' meats at a disadvantage in the American market. The Obama Administration opted not to challenge the WTO decision, despite President Obama's strong endorsement of COOL during his candidacy.

President Trump should seek to reinstate COOL, thereby shoring up domestic producers and American-grown meat. Bringing COOL back would equip independent ranchers with a tool to maintain a competitive edge against monopolistic meatpackers.

Conclusion

A majority of rural Americans voted for Donald Trump last November hoping for a president who would deliver on promises of economic renewal and prosperity. Without addressing how monopolistic corporate power is devastating the rural economy, Trump has little hope of demonstrating his commitment to those voters.

President Trump has ample opportunity to live up to his promises to help independent farmers and ranchers. Thus far, however, he has shown little indication as to whether he intends to take on the concentrations of power that threaten America's

23. Linda Wheeler, *WTO Shoots Down US Meat-Labeling Rule*, THE HILL (May 18, 2015), http://thehill.com/regulation/242385-wto-rules-against-us-appeal-to-keep-country-of-origin-labeling-rule.

rural communities. His appointment of a pro-corporate Secretary of Agriculture and reliance on advisers whose pro-big business ideologies are well known suggest President Trump will only double-down on the lax antitrust regulation of the Obama years.

In the near term, this will harm independent farmers and ranchers by squeezing their wages and restricting their market access, perhaps to the point of bankruptcy for some. In the longer term, it may well mean that political discontent in America's heartland will not only continue – but grow more extreme.