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For many consumers, the modern food label serves as the sole source of information regarding any individual food product. While it may be considered informative in some respects, it is often enigmatic in others. The present debate regarding the creation of a federal regulation to define use of the term "healthy" exemplifies the difficulties associated with seemingly subjective food labeling claims. The law requires manufacturers to include certain facts on food labels. However, they are permitted to include additional voluntary statements related to the healthfulness of the food product, the presence or absence of certain ingredients, and information related to production and growing methods, among other things. These claims have the potential to cause consumers a great deal of confusion, particularly with regard to their veracity. Many scholars have analyzed First Amendment limits on the Food and Drug Administration's (FDA) ability to restrict specific types of claims, yet few have addressed the issue of whether the agency can and should restrict claims unable to be supported by significant scientific agreement due to the inherent subjectivity of the claim. This Essay proposes FDA adopt such an approach as a means of effectuating the Federal Food, Drug, and Cosmetic Act's purpose of protecting consumers from false or misleading food product labels. As an alternative, if FDA is unwilling to restrict those claims altogether, this Essay suggests the agency could require curative disclaimers on labels, as they do for qualified health claims, that are not supported by significant scientific agreement.

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This Essay explores the potential role of the tort system to plug the regulatory gap created by the reluctance of the Food and Drug Administration (FDA) to reduce the use of antibiotics in animal food production despite increasing evidence that this practice increases the risk of human infections that cannot be treated by available antibiotics. This regulatory gap could be addressed if plaintiffs were able to establish that antibiotic use is a product defect, but this will be difficult because of the requirements of proof in a tort action including establishing that a defendant was the cause of the plaintiff's antibiotic-resistant infection. Despite these hurdles, a plaintiff could potentially succeed, which may be the only way to deter the risk to the public caused by the use of antibiotics in animal food production until FDA acts to protect the public.

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Agricultural companies are merging at a remarkable rate. The ensuing ag-biotech behemoths will have unprecedented control over global food production. The companies claim that this industry consolidation will not only benefit shareholders, but will serve the public by promoting food security and environmental sustainability. This Article tests those claims and finds them wanting.

Labeling Genetically-Engineered Foods: An Update from One of the Front Lines of Federalism..... 609
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Consumers in the United States have increasingly demanded that manufacturers of foods that are either directly genetically engineered or that contain genetically-engineered (GE) ingredients label their products as such. In general, federal law—in the form of the Food, Drug, and Cosmetic Act (FDCA)—lodges primary authority for approving and regulating the labeling of GE foods in the Food and Drug Administration (FDA), but FDA has been reluctant to mandate labeling of GE foods. In light of this federal regulatory void, states have proposed their own GE food labeling requirements, generating protests from manufacturers and federalism challenges in the form of federal preemption claims.

In July 2016, Congress settled this federalism conflict, mandating that the Secretary of Agriculture promulgate federal regulations to govern GE food labeling and preempting state labeling requirements. This Article explores the history of GE food labeling federalism in the United States, concluding that the 2016 statute leaves the relationship between state and federal authority fairly clear, but creates new ambiguities regarding the relationship of FDA and the FDCA to the United States Department of Agriculture and the new law.

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Current approaches to Clean Water Act and farm bill conservation programming are not effectively addressing agricultural runoff in the United States. Waters in the United States are reeling from the effects of nutrient pollution. Clean Water Act and farm bill policies can be revised and integrated to support a small-scale watershed planning and implementation approach that will more effectively restore nutrient-impaired waterbodies. This Article provides an overview of relevant foundational planning principles and complex problem-solving theories and provides concrete Clean Water Act and farm bill policy recommendations, which are rooted in on-the-ground state and local level policy and project experience.

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Obesity is increasingly viewed as a major health problem across the world. Obesity presents both external and internal costs. Obesity alone may be responsible for some $2 trillion in medical costs and lost productivity, representing significant external costs. Internal costs occur because people make eating and drinking choices without being aware of the eventual damage to their health. Obesity also carries environmental costs. Consumption of certain energy-dense foods made from corn and soy (including meat) increases soil erosion and water pollution from fertilizer use. Governmental policy encourages the production of such crops. Being overweight decreases physical activity and personal mobility, leading to increased use of motor vehicles. Environmental factors such as sprawl and transportation policy affect obesity rates. When people cannot walk or take public transportation to work, they spend more time in their cars. They have less time to exercise and prepare healthy meals. Hence, both obesity's effect on the environment and the environment's effect on obesity lead to increased carbon emissions and exacerbate climate change. Taxes can potentially control both the external and internal costs of obesity. By increasing the cost of certain foods, taxes can discourage their consumption. A number of national and subnational jurisdictions have enacted such taxes, including Denmark, Finland, France, Mexico, the Navajo Nation, and the city of Berkeley, California in the United States.

This Article will examine a variety of economic instruments for controlling obesity, including regulation, taxes, and nudges. The relative success of governmental measures to reduce tobacco use are also examined to see what lessons might be learned. Finally, the Article will explore existing U.S. tax provisions to consider how modification of such provisions might help with the problem of obesity.

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Agriculture and food production contribute significantly to greenhouse gas emissions and environmental pollution. Shifting human dietary patterns has the potential to reduce such environmental harms while also promoting human health. Government policy, in the form of the United States Dietary Guidelines (USDG), recommends what Americans should eat and could play an important role in shifting the food system to one that is more sustainable. However, the USDG are an overlooked aspect of U.S. food policy. While many countries have moved to synthesize environmental goals with dietary guidance, the United States has taken the opposite approach. In 2015, despite recommendations from the expert panel appointed under the Federal Advisory Committee Act (the Dietary Guidelines Advisory Committee), which recommended including sustainability considerations in the 2015 USDG, the Secretaries of Health and Human Services and Agriculture rejected those recommendations reasoning that the sustainability perspective was beyond the scope of the USDG-enabling statute. This Article examines why that decision was wrong and how, based on international examples and sound science, the federal government should see the USDG as a powerful food system policy tool that can be used to promote human and environmental health in the 21st century.

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Anastasia Telesetsky

While the global seafood business is valued at approximately $148 billion, many commercial fishing stocks are struggling to recover. Large seafood-importing States such as the United States should avoid fish that have been illegally captured or that are harvested using poor environmental practices, such as not reporting discards associated with the harvest. Traceability is a critical component of food law: to inform consumers not just of the origin of the food but also of the transit of a food through a complex supply chain. The United States has recently adopted a new rule on traceability designed to combat illegal fishing imports. As this Article suggests, the federal rule, as drafted, will be unlikely to change much in industry practice without additional targeted investments in traceability, including better implementation of wildlife crime whistleblower statutes, a more comprehensive set of environmental reporting standards for seafood sold in the United States or transiting through the United States, and additional support for the industry to better manage fishery-related processing waste.