

# Maine's Mysterious New 'Right to Food'

*Is this addition to the state's constitution a libertarian advance or a Trojan horse?*

◆ BY PIERRE DESROCHERS AND PIERRE LEMIEUX

Last November, Maine voters approved a “Right to Food” amendment to the state’s constitution by a healthy 61%–39% margin. The new section of Article I reads as follows:

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.

Each chamber of the Maine legislature had, with more than the required two-thirds majority, approved sending the amendment to referendum, though the chambers’ Republicans were less enthusiastic than the Democrats. During the referendum campaign, the amendment was supported by a wide coalition that included politicians from both parties. It was opposed by several established organizations, including the Maine Municipal Association, some agricultural organizations, and groups defending animal rights or opposing animal cruelty. Maine is the first state to adopt such an amendment, although many states have constitutionalized rights to hunt, fish, farm, and (in Minnesota since 1906) sell garden and farm products without a license.

On its face, a constitutionally recognized right of individuals “to grow, raise, harvest, produce and consume the food of their own choosing” seems unobjectionable and even sounds libertarian. Indeed, some of Maine’s libertarians supported the amendment. John Andrews, a Libertarian member of the Maine

House of Representatives, wrote on Facebook that “it’s a proactive restriction upon government being able to interfere in an individual’s access to their own nourishment.” Republican Justin Fecteau, another state representative, rhapsodized:

While most bills are simple text written in statute in order to convey a message, this resolution, to establish a right to food, is pure poetry. Whether it is the theory of Evolution or of Creationism, the Right to Food is the Original Right of all living beings.... This isn’t a bill, it isn’t a resolution, it’s a manifesto of our Original Right. It’s a public health statement, it’s an affirmation of our relationship with Mother Earth, and it speaks to the spirit of Maine.

On the other hand, the amendment contains some strange language. The idea of a right to food, employing such 18th-century terminology as “natural, inherent and unalienable,” looks out of place. The expression “right *to*” suggests a positive right to obtain something as opposed to a formal right *of* doing something without interference. Does that mean the government will guarantee food to everybody? The campaigners for the amendment did try to explain to the good people of Maine that this was not their intent.

So, what was their intent? Given the disparate claims of the coalitions on both sides of the referendum, there doesn’t appear to be a single, clear answer. The amendment seems to mean different things to different people, and those individual meanings themselves sometimes aren’t logically consistent.

## ANTI-GMO? ANTI-TRADE?

Some people, including in the legislature, believe the “right to save and exchange seeds” targets genetically modified organisms (GMOs). It looks like an attack on the contractual freedom between GMO seed companies and the farmers who buy from them. After all, no one is preventing interested parties from growing and exchanging seeds that are in the public domain,

PIERRE DESROCHERS is an associate professor in the Department of Geography, Geomatics, and Environment at the University of Toronto, Mississauga and coauthor of *The Locavore's Dilemma* (Public Affairs, 2012). PIERRE LEMIEUX is affiliated with the Department of Management Sciences of the Université du Québec en Outaouais and a *Regulation* contributing writer who lives in Maine.



especially “heirloom” or “heritage” varieties. Companies such as Bayer CropScience do license recently developed seeds that provide uniquely beneficial features, such as herbicide and pest resistance, and deliver greater yields. So maybe the amendment is a protection against “Big Seed”?

But what protection is needed? Farmers only buy GMO seeds if they provide a better return on investment than available alternatives. Although a few large hi-tech seed companies have a relatively large market share in a few crops (e.g., corn, soybean, cotton), the world counts thousands of seed companies and public research institutions that constantly develop new varieties of cereal grains, fruits, and vegetables. Mordor Intelligence, a market research firm, estimates that non-GMOs account for 32.1% of world seed market sales. According to the same source, the three major seed producers (Bayer CropScience, Cortega Agriscience, and Syngenta International AG) have a 32.8% combined share of the world market — far from a monopoly.

Still, this is what some amendment advocates seem to have in mind, as well as fears of genetic modification. During the campaign, state Rep. William Faulkingham rhetorically asked, “Will Monsanto own all the seeds, and will we have gotten so far from our roots that we won’t even have natural seeds anymore?” (Monsanto was purchased by Bayer in 2018.)

But it is not correct to glorify as completely “natural” the plants that our ancestors modified through conventional plant breeding. Domesticated plants were cross-bred and selected to make them more productive and disease resistant. On this topic, the prestigious United Kingdom science academy Royal Society has issued a statement that reads in part:

For thousands of years we have used conventional breeding approaches to convert plants that compete well in the wild, to plants that perform well in agriculture. The result is our modern crop varieties, which are much higher yielding and more

nutritious than their wild ancestors, but which compete poorly in the wild.

The statement goes on to explain why, to produce such hybrid plants, it is sometimes necessary or easier for scientists to “take a gene and insert it directly into a plant.” So, though “genetic modification” may sound scary, there’s little new here that hasn’t been going on for thousands of years of agriculture.

**Trade?** The discourse in favor of the Maine amendment was also peppered with anti-trade rhetoric and suggestions that local governments should wield wide powers against free trade and thus economic freedom. State Rep. John Andrews reproduced an ad by the Sportsman’s Alliance of Maine complaining that “more of our food is coming from places like China.” The Maine Organic Farmers and Gardeners Association said that “Maine has the natural resources and knowledge base to sustain itself with healthy food in perpetuity, though we rely on imports for well over 90% of our food.”

“Feeding ourselves with the food *we* produce for *ourselves*, represents the highest expression of self-determination and dignity,” opined Maine Black Community Development (emphasis in original). Some Right to Food advocates claimed that one purpose of the amendment is to “support Maine food self-sufficiency,” as if this trumped the right of a consumer to buy imported food if he finds it preferable.

Both sides of the referendum argued for government control on private economic choices. Support for the Right to Food amendment was often rooted in a dislike of freedom of contract and free exchange. And the amendment’s opponents often attacked it for threatening regulations on production and thus on consumer sovereignty.

### THE FOOD SOVEREIGNTY MOVEMENT

The Right to Food amendment is related, at least intellectually, to a global movement called “Food Sovereignty.” Back in 2017, Maine Senate Majority Leader Dale Jackson sponsored the Food Sovereignty Act. The law, signed by then-governor Paul LePage, declared that “it is the policy of this State to encourage food self-sufficiency for its citizens.” Although the law contained agrarian rhetoric such as “the preservation of family farms and traditional foodways through small-scale farming and food production,” its practical significance was to challenge existing state regulations against direct sales from food producers to consumers by allowing local governments to adopt countervailing regulations. But the legislation had only a limited effect on state regulations and didn’t affect federal regulations of meat and poultry.

After the passage of the Food Sovereignty Act, Sarah Schindler, then a professor at the University of Maine Law School, noted in a 2018 article in the *Ohio State Law Journal* that “as the concept of food sovereignty has made its way to the United States, the term has taken on a bit of a libertarian bent.” In her opinion,

the American movement “seems to manifest as a desire to avoid regulations that currently govern food production.”

The international food sovereignty movement arose about a quarter-century ago to oppose “neoliberal” attempts to liberalize, privatize, and deregulate agricultural markets. Many key players in this movement act under the umbrella of an organization called *La Via Campesina* (“The Peasant Road” or “The Peasant Way” in Spanish). This broad coalition includes subsidized and protected European farmers, uncompetitive producers in less advanced economies, supporters of alternative food production systems (e.g., small scale, organic, regenerative, agro-ecological), skeptics of food safety regulations (e.g., raw milk activists, opponents of “unnatural” food additives and preservatives), anti-corporate and anti-globalization activists and scholars, and international non-governmental organizations (usually subsidized).

The wording of the Maine amendment seems inspired by *La Via Campesina*’s website, which calls for “the recovery of traditional systems for the conservation, maintenance and exchange of local seeds and the inalienable collective rights of peasants over their seeds.” This reactionary agenda assumes that government planning and exchange restrictions, rather than individual freedom of contract and trade, is the most beneficial way forward for “peasants” everywhere. The food sovereigntists’ stated goal is to shield small-scale family farms from foreign competition and technology. They typically support government subsidies, quotas, and restrictions.

Most food sovereigntists also promote the collective rights of what they identify as disadvantaged groups such as women and indigenous people, while expressing long-standing environmentalist concerns and values such as local self-sufficiency and small-scale craftsmanship. Invoking the right of local people to define their own agricultural systems without interference from competition, food sovereigntists further postulate a right to “culturally appropriate” food, which is not to be treated like other commodities.

University of Bern agricultural economist Philipp Aerni observes that because of the diversity of its constituents, the food sovereignty movement is now “largely united by what it opposes rather than what it stands for and what changes it envisions for the future.” Indeed, *La Via Campesina*’s website devotes a section to what it stands *against*, subsumed under the headings of capitalism, free trade, transnational companies, agribusiness, and patriarchy. For William Kerr of the University of Saskatchewan, the food sovereigntists’ stance is just “old protectionism in somewhat recycled bottles.”

### THE BENEFITS OF TRADE

The main argument against this so-called food sovereignty is that its strictures are only desirable if individuals follow them voluntarily. The reason why many, if not most, individuals do not buy food locally — assuming that “locally” has a clear meaning — is that it generally costs less to buy it from elsewhere. Trade, either between different parts of the country or between different parts

of the world, is beneficial because everyone can buy from the most efficient producers — efficient as judged by the consumers, not by some philosopher-kings.

As economist Frank Taussig wrote more than 100 years ago, “It may be said that very good pineapples can be grown in Maine, if only a duty be imposed sufficient enough to equalize the cost of production between the growers in Maine and those in more favored climes.” Such pineapples would merely require some very expensive greenhouses and labor. In *The Wealth of Nations*, Adam Smith said something similar about wine in Scotland: “By means of glasses, hotbeds, and hotwalls, very good grapes can be raised in Scotland, and very good wine too can be made of them at about thirty times the expense for which at least equally good can be brought from foreign countries.”

The fact that only 1.3% of Maine employment is occupied in agriculture supports the observation that the region has only limited comparative advantage in that industry. Moving manpower from more productive sectors to agriculture would reduce the production of what Mainers can do competitively.

A general caveat is in order. That local governments should regulate local food systems may seem to have a “libertarian bent,” to use Schindler’s expression, but localism does not provide a justification for restricting an individual’s freedom to import his food from as far away as he wishes or to sell his agricultural

products as far away as he may find customers. Economic freedom is the ultimate form of self-government.

#### THE MAINE AMENDMENT’S EFFECTS

So, what ultimately is the significance of Maine’s new Right to Food? The answer will probably come from the courts. The explanations provided by the measure’s supporters are muddled. It’s not even clear what problem the amendment is intended to address. Only a small minority of Maine voters must be aware of the problems surrounding the right to food and food sovereignty.

As economists say, the individual voter remains “rationally ignorant.” He knows that his vote has an infinitesimal probability of changing the referendum (or election) result. And so he has little motivation to do the research necessary for an informed vote because his vote is not decisive. For the same reason, he has little incentive to vote at all. According to data from the Maine Secretary of State’s Office, the referendum turnout was 38% of the estimated voting-age population, which suggests that only 23% (38% × 61%) of the electorate approved the amendment.

Some of the amendment’s opponents voiced the concern that it can be interpreted in very different ways. Given its kinship with the worldwide Food Sovereignty movement, it may prove to be a linguistic Trojan horse, which well-meaning classical liberals and conservatives have naively welcomed to Maine. R

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