

*Sarah Milov*

---

## Promoting Agriculture: Farmers, the State, and Checkoff Marketing, 1935–2005

This article provides a historical overview of the development of U.S. government-mandated commodity promotion. This form of promotion, known colloquially as the “checkoff,” is responsible for such memorable slogans as “Beef: It’s What’s for Dinner,” as well as research intended to boost consumption of agricultural products. The article argues that checkoffs represent an associational form of governance in which private organizations achieve public aims. Though they have been frequently challenged in courts and have garnered scrutiny from public health activists, checkoffs have been a durable form of agricultural regulation because they hide the heavy hand of government with the rhetoric of markets and self-help.

1988 was a bad year for beef. The Surgeon General’s *Report on Nutrition and Health* was published to great fanfare and popular interest just at the height of summer barbecue season. Its message was not reassuring: Americans were eating too many fatty foods, and they were getting sick because of it. Specifically, they were eating too many animal proteins—meats. Meat was cited as a “major dietary source of fat in the American diet,” associated with increased risk for obesity, diabetes, stroke, coronary heart disease, and some types of cancers. The Surgeon General, the bearded and bear-like C. Everett Koop, was no utopian vegetarian or principled ascetic. He enjoyed steak, macadamia nuts, and dry martini. Koop also had a reputation as a truth-teller, above partisanship and reproach: he spoke out against the tobacco industry and was forthright on AIDS when few in the Reagan Administration acknowledged the disease. Placing the *Report on Nutrition* in the tradition of the landmark

The author would like to thank David Singerman, Brian Balogh, Rebecca Stoil, and the anonymous reviewers at the *Business History Review* for their helpful feedback and suggestions. Special thanks are also due to participants in the Harvard Business School’s Political Economy of Food workshop and to participants in the Johns Hopkins Seminar on American Capitalism for reading early iterations of the article.

*Business History Review* 90 (Autumn 2016): 505–536. doi:10.1017/S0007680516000714  
© 2016 The President and Fellows of Harvard College. ISSN 0007-6805; 2044-768X (Web).

1964 *Report on Smoking and Health*, which announced that cigarettes caused disease and death, Koop framed the American diet as a major public health crisis. “The Report reveals clearly that the health of Americans could be improved by changing the diet to one that contains less fat,” he explained at the press conference announcing the *Report’s* release.<sup>1</sup> Per capita beef consumption continued on a downward slide that began during the previous decade.<sup>2</sup>

It turned out that American cattlemen were prepared to meet the public health challenge with a public relations (PR) offensive. In May, cattle raisers voted to levy upon themselves an assessment of \$1 per head of cattle. These funds would be spent on beef promotion and research. The Surgeon General’s warning gave the cattlemen a goal and a strategy. In order to “establish beef as an accepted food for the majority of diets,” organized cattle producers needed to “keep beef on the minds of all consumers,” as well as to “make an impression on the health care community.”<sup>3</sup> By 1990, cattlemen were spending over \$30 million annually to restore beef’s place at the American dinner table by emphasizing its cultural and nutritional significance. They bought ads on television, radio, and in magazines; they built retail promotions at nearly thirty thousand supermarkets nationwide; and they courted all segments of the consuming public. Noting that more children “are eating out today than ever before,” the cattlemen included beef-centered recipes for kids as part of a strategy to “help restaurants attract children.” The restaurant promotion complemented the cattlemen’s school-based youth outreach. In a set of wall posters intended for classroom display, “The Munchsters” helped children “develop language skills”—skills they could later use to ask their parents for a hamburger. And to reassure parents, cattle producers facilitated the distribution of hundreds of thousands of pro-beef infant nutrition pamphlets to obstetricians and pediatricians.<sup>4</sup> This was but a part of the broad targeting of “health care

<sup>1</sup> C. Everett Koop, “Press Conference to Release *The Surgeon General’s Report on Nutrition and Health*,” 27 July 1988, Profiles in Science, U.S. National Library of Medicine, accessed 1 Sept. 2016, <https://profiles.nlm.nih.gov/ps/access/QQBQV.pdf>.

<sup>2</sup> James MacDonald, Michael Ollinger, Kenneth Nelson, and Charles Handy, *Consolidation in U.S. Meatpacking*, Agricultural Economic Report AER-785, Economic Research Service, USDA (1999), 3, accessed 1 Sept. 2016, [http://www.ers.usda.gov/webdocs/publications/aer785/18011\\_aer785\\_1\\_.pdf](http://www.ers.usda.gov/webdocs/publications/aer785/18011_aer785_1_.pdf).

<sup>3</sup> Beef Board, *Annual Report: October 1, 1987–September 30, 1988*, 4, accessed 1 Sept. 2016, <http://www.beefboard.org/financial/files/CBB%20Annual%20Report%20FY1988.pdf>.

<sup>4</sup> Beef Board, *Annual Report: October 1, 1988–September 30, 1989*, 14, accessed 1 Sept. 2016, <http://www.beefboard.org/financial/files/CBB%20Annual%20Report%20FY1989.pdf>; Beef Board, *Annual Report: October 1, 1989–September 30, 1990* (hereafter *1990 Annual Report*), 13–14, accessed 1 Sept. 2016, <http://www.beefboard.org/financial/files/CBB%20Annual%20Report%20FY1990.pdf>.

professionals”—a key audience for the gospel of beef “because of the confidence consumers place in them as a source of nutrition information.”<sup>5</sup>

These promotional efforts—waged with varying degrees of subtlety—would seem to exemplify the power of small, coordinated private interests to shape the attitudes, beliefs, and bodies of the broader American public. But this public relations blitz was not planned or financed through a private trade association. It was paid for by the government-mandated contributions of American cattle producers. The Beef Promotion and Research Act of 1985 inaugurated producer-financed promotion for the cattle industry, known among farmers and ranchers as the “checkoff.” Farmers today are still bound by this law to pay an assessment of one dollar per head of cattle at the time of its sale. This money is collected by state beef councils, which keep a portion of it to spend locally. The remaining funds are sent to the Cattlemen’s Beef Board (CBB), which pays for beef research and national promotional campaigns—making sure Americans remember that beef is what’s for dinner.

Checkoff programs exist for hundreds of other commodities at both state and federal levels. Whether the product is beef or honey or pistachios or Christmas trees, the checkoff functions in essentially the same way: Producers pay a mandatory assessment on a per unit basis of each marketed commodity. The funds collected from these assessments go to a producer-controlled board, which uses them to pay for advertising and research. The statutes that enable the creation of checkoff programs require that advertising be *generic*—that is, advertisements cannot tout the virtues of specific varieties, farms, or producers. For students of political economy, the idea of commodity advertising might seem counterintuitive. As historian William Cronon has memorably shown, the development of national commodity markets implies stability and interchangeability of the material unit.<sup>6</sup> If an egg is an egg, and cotton is cotton, why should producers invest in advertising their farm products at all? The history of checkoff marketing underscores that for American producers, commodities do not exist in an ideal form apart from state policy. These commodities exist in the imaginations of many Americans because the government has determined that expanding markets are vital to the welfare of producers and the “general economy of the nation.”<sup>7</sup>

Checkoffs target consumer demand, and so producer groups have reached for them during market slumps. In the 1970s, egg producers lobbied Congress for a checkoff as American egg consumption reached

<sup>5</sup> Beef Board, *1990 Annual Report*, 13–14.

<sup>6</sup> William Cronon, *Nature’s Metropolis: Chicago and the Great West* (New York, 1991).

<sup>7</sup> Beef Promotion and Research Act of 1985, 7 U.S.C. §§ 2901–2911 (1985).

all-time lows in the wake of concerns about cholesterol; in the 1980s, pork and beef producers did the same thing in response to ever-growing chicken consumption and the farm crisis of the 1980s.<sup>8</sup> These campaigns have yielded some of the most memorable slogans of the late twentieth century: “Pork: The Other White Meat,” “The Incredible Edible Egg,” “Got Milk?” and the Motown-crooning California Raisins. Today, nine out of ten American farmers contribute to a checkoff program, raising an estimated \$1 billion for producer-funded marketing activities.<sup>9</sup> But a smaller proportion of farmers want to pay for them—a fact underscored by the three separate challenges to the checkoff system that reached the Supreme Court in the late 1990s and early 2000s. The Court’s most recent decision upheld the beef checkoff as an instance of “government speech.” That is, it ruled that “Beef: It’s What’s For Dinner” was not the speech of a private trade association, but rather a message from the U.S. government.<sup>10</sup> As government speech, checkoff advertising is therefore exempt from First Amendment scrutiny.

This article traces the evolution of checkoff programs: their inception as state-level initiatives in the early part of the twentieth century, their kudzu-like growth in the latter decades of the century, and finally, their recent heated contestation in the courts. Checkoffs constitute an important site of American political, agricultural, and economic life; by a legislative act, farmers have collectively shaped consumer consciousness while helping to restructure internal industry dynamics as well as global consumption patterns. Perhaps because historians of farm and food policy have tended to focus on overt forms of government intervention, the checkoff has received scant attention from historians. And because federal checkoff programs emerged relatively recently, in the 1980s, their policy history remains unwritten. William Winders’s authoritative study of twentieth-century farm policy makes no reference to farmer-funded promotion; nor do checkoffs appear in American political development scholarship, which has frequently used agriculture as a

<sup>8</sup> “The Egg and You: A Scramble for Sales,” *Los Angeles Times*, 1 Aug. 1976.

<sup>9</sup> John M. Crespi and Richard J. Sexton, “U.S. Generic Advertising and Promotion Programs,” in *U.S. Programs Affecting Food and Agricultural Marketing*, ed. Walter J. Armbruster and Ronald D. Knutson (New York, 2013), 171.

<sup>10</sup> A subset of First Amendment Constitutional law, the scholarship on government speech is vast and rapidly evolving. The concept has been invoked in debates ranging from the labeling of agricultural products to the sponsorship of license plates by the Sons of Confederate Veterans. For an introduction to the topic, see Mark Yudof, *When Government Speaks: Politics, Law, and Government Expression in America* (Berkeley, 1983); Steven H. Shiffrin, “Government Speech,” *UCLA Law Review* 27, no. 3 (1980): 565–655; Randall P. Bezanson and William Buss, “The Many Faces of Government Speech,” *Iowa Law Review* 86 (Oct. 2001): 1377–1511; and Joseph Blocher, “Viewpoint Neutrality and Government Speech,” *Boston College Law Review* 52, no. 3 (2011): 695–767.

case study in interest group politics, state capacity, and welfare state expansion.<sup>11</sup> Checkoffs have also escaped scrutiny from historians of business and advertising, despite the fact that the relationship between the government and the private sector has been a core interest of business historians since Louis Galambos announced the arrival of the “organizational synthesis” on the pages of this journal nearly a half century ago.<sup>12</sup> Indeed, aside from agricultural economics, a discipline closely aligned with the institutions and industries that administer checkoff programs (and, in many instances, a discipline paid by checkoff funds to evaluate the programs), the greatest scrutiny of checkoffs has tended to come from food writers and those working in the field of nutrition.<sup>13</sup> Parke Wilde, a former agricultural economist at the U.S. Department of Agriculture (USDA) and current professor of food policy at Tufts University, has emerged as a leading critic of checkoffs. Highlighting the ways in which checkoffs pervert national nutritional goals, Wilde has publicized embarrassing facts that suggest the contradictory character of the USDA as a bureaucracy that oversees both nutrition and commodity promotion.<sup>14</sup> As Wilde and other critics have observed, checkoffs produce corporate alliances that would appear to run counter to the USDA’s nutritional goals.

It is tempting to understand the proliferation of checkoff programs in the 1980s as part of a broader political-economic shift toward “the market” as the underlying concept of political-economic

<sup>11</sup> For instance, William Winders’s recent reassessment of twentieth-century American agriculture policy omits discussion of them. Winders, *The Politics of Food Supply: U.S. Agricultural Policy in the World Economy* (New Haven, 2009). On interest group politics, see John Mark Hansen, *Gaining Access: Congress and the Farm Lobby, 1919–1981* (Chicago, 1991); and William P. Browne, *Cultivating Congress: Constituents, Issues, and Interests in Agricultural Policymaking* (Lawrence, Kans., 1995). For state capacity literature, see Kenneth Feingold and Theda Skocpol, *State and Party in America’s New Deal* (Madison, Wis., 1995); and Daniel Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton, N.J., 2001). On the agricultural welfare state, see Adam Sheingate, *The Rise of the Agricultural Welfare State: Institutions and Interest Group Power in the United States, France, and Japan* (Princeton, N.J., 2001).

<sup>12</sup> Louis Galambos, “The Emerging Organizational Synthesis in Modern Business History,” *Business History Review* 44, no. 3 (1970): 279–90.

<sup>13</sup> Gary W. Williams and Oral Capps Jr., “Measuring the Effectiveness of Checkoff Programs,” *Choices: The Magazine of Food, Farm, and Resource Issues* 21, no. 2 (2006): 73–78. Shane Hamilton observed similarly that journalists writing in the muckraking tradition have recently found success in “exploiting consumers’ concerns over the ‘dark side’ of their meals’ origins.” Hamilton, “Introduction,” *Business History Review* 83, no. 3 (2009): 237.

<sup>14</sup> Parke Wilde, “Federal Communication about Obesity in the Dietary Guidelines and Checkoff Programs,” *Obesity* 14, no. 6 (2006): 967–73. Wilde also maintains a blog that functions as sort of a watchdog on the USDA’s statements on nutrition: *U.S. Food Policy: A Public Interest Perspective*, accessed 1 Sept. 2016, <http://usfoodpolicy.blogspot.ca>. For a recent industry-centered perspective on checkoffs, see Marta Zaraska, *Meathooked: The History and Science of Our 2.5-Million-Year Obsession with Meat* (New York, 2016).

thinking.<sup>15</sup> After all, the congressional acts that authorized the pork and beef checkoff were explicitly market-oriented in their intent, justifying the checkoff as a tool to strengthen the “industry’s position in the marketplace.”<sup>16</sup> But the language of markets should not imply the absence of regulation. Federal checkoffs passed in the 1980s were frequently more restrictive than their state-level antecedents, eliminating provisions for grower refunds of checkoff dues. The history of checkoffs reveals deep continuities between collective, sector-based New Deal-era regulation and a more recent embrace of markets.

For many food and agriculture critics, checkoffs are ethically, politically, and morally distasteful. But they emerge from a long-standing tradition within American political development. I argue that checkoffs embody a kind of “agricultural associationalism,” in which private organizations are vested with state power in order to achieve public aims. Checkoffs do not represent the state’s capitulation to “Big Ag” interests—as many food critics are apt to argue.<sup>17</sup> Rather, checkoffs have emerged historically as a tool for achieving long-standing policy goals: the management of commodity supply and the boosting of farmer income. Checkoffs force us to think about the structure of American political economy and the nature of consumer choice. They have long been a site where state regulatory initiatives and corporate interests have blended freely.

Synthesizing more than five decades of scholarship on American political life, historian Brian Balogh has recently called on historians to rethink the terms with which they characterize political institutions. Abandoning the liberal-conservative dichotomy, Balogh’s associational framework focuses attention upon “the ways in which Americans have braided public and private actions, state and voluntary-sector institutions, to achieve collective goals without undermining citizens’ essential belief in individual freedom.”<sup>18</sup> Of course, associational governance structures do not reflect or ensure consensus, nor are they democratic in terms of facilitating access to state power. Indeed, the interest groups and trade associations that bear the closest relationship to the government tend to benefit “affluent families and powerful industries” above all.<sup>19</sup>

<sup>15</sup> Daniel Rodgers, *Age of Fracture* (Cambridge, Mass., 2011), 41–76.

<sup>16</sup> Beef Promotion and Research Act of 1985; Pork Promotion, Research and Consumer Information Act of 1985, 7 U.S.C. §§ 4801–4819 (1985).

<sup>17</sup> See, for instance, Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (Berkeley, 2007).

<sup>18</sup> Brian Balogh, *The Associational State: American Governance in the Twentieth Century* (Philadelphia, 2015).

<sup>19</sup> Suzanne Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy* (Chicago, 2011), 26.

Effacing the hand of the state in the creation and operation of the beef checkoff—the program was merely born, it simply serves farmers—has been crucial to its success. Checkoffs can be seen as an example of what political scientist Suzanne Mettler calls “the submerged state.”<sup>20</sup> They illustrate the power that state-organized, state-empowered producers wield in shaping consumption. Just as the associational framework blurs partisan binaries, so too does it reshape narratives about the rise of consumerism in the second half of the twentieth century. The proliferation of checkoffs as part of the farm policy toolkit suggests that producers have played an overlooked role in the rise of the consumer economy. National checkoffs emerged as postwar America embraced material abundance as a central and legitimizing fact of the American way of life.<sup>21</sup> Indeed, the very first federal commodity promotion scheme—a subsidy for the advertising and promotion of “wool, mohair, sheep, or goats, or the products thereof”—was enacted in 1954, the same year that historian David Potter influentially argued that abundance lay at the heart of the American “national character.”<sup>22</sup> Historians of consumption have usefully excavated the ways in which the state has actively encouraged consumption in the twentieth century—including fitful measures to regulate consumer safety in the Progressive era, an embrace of consumer spending as a route to recovery during the Depression, the postwar commitment to Keynesian prescriptions for full employment, and a renewed emphasis on product and environmental safety in the latter decades of the twentieth century.<sup>23</sup> As a tool for the regulation of abundance, checkoffs are of particular interest to historians of consumption, drawing attention to the ways in which the political economy of production shapes consumer habits. Checkoff advertising did not emerge as a consequence of the rise of consumer culture in America generally, or the expansion of the advertising industry specifically—though the arrival of the checkoff certainly benefited the large advertising firms that handled the accounts of their commodity clients. Rather, checkoffs are a creature of state policy, part of the fabric of what political scientist Adam Sheingate has called “the

<sup>20</sup> Ibid.

<sup>21</sup> Robert M. Collins, *More: The Politics of Economic Growth in Postwar America* (Oxford, 2000).

<sup>22</sup> National Wool Act of 1954, Pub. L. No. 83-690, 68 Stat. 910–913 (1954); David Potter, *People of Plenty: Economic Abundance and the American Character* (Chicago, 1954).

<sup>23</sup> James Harvey Young, *Pure Food: Securing the Federal Food and Drug Act of 1906* (Princeton, N.J., 1989); Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (New York, 2003); Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America* (Princeton, N.J., 2005); Richard Harris and Sidney Milkis, *The Politics of Regulatory Change: A Tale of Two Agencies* (New York, 1989); Samuel Hays, *Beauty, Health, and Permanence: Environmental Politics in the United States, 1955–1985* (New York, 1987).

agricultural welfare state.”<sup>24</sup> Checkoffs illustrate the embeddedness of agricultural commodities and the demand for them within a political-economic system that privileges certain producers over consumers.

This article begins with an overview of agriculture policy in the twentieth century. I suggest that attention to checkoffs can substantially recast our understanding of the relationship between the state and agricultural markets. It then moves to the historical origins of compulsory commodity promotion, which appeared first at the state level in the 1930s and then at the federal level in the postwar era. Emerging as an associational response to the persistent problem of overproduction, checkoffs soon became a way for producers to combat negative perceptions of their commodity. Though they have proliferated while direct farm subsidies have diminished, checkoffs have never gone uncontested. The final section of this article examines lawsuits brought by dissident producers over the pork and beef checkoff programs. The beef checkoff suit, which reached the Supreme Court in 2004, laid bare the ironies of agricultural associationalism: only by revealing the hand of the state could the fiction of producer control be maintained.

### The Origins of Associationalism

Agricultural associationalism has a long political history.<sup>25</sup> Before the New Deal’s inauguration of supply management, farmers had made halting and largely unsuccessful efforts at marketing their products cooperatively in order to raise prices. Indeed, cooperative marketing was explicitly encouraged by the Republican administrations of the 1920s, and especially by Herbert Hoover. As secretary of commerce, Hoover saw cooperative marketing organizations as the agricultural node of what he called “associationalism,” or governance through sector and professional interest groups.<sup>26</sup> Such associations, he hoped, could responsively construct and execute efficient, enlightened policy without building up the federal bureaucracy—modernizing the individualistic, entrepreneurial character of American institutions while avoiding the stultification of bureaucracy.

The Capper-Volstead Act, passed in 1922, was the signature piece of associational legislation passed on behalf of farmers, granting farm cooperatives exemption from antitrust laws. This meant that an

<sup>24</sup> Sheingate, *Rise of the Agricultural Welfare State*.

<sup>25</sup> Charles Postel, *The Populist Vision* (New York, 2007); Victoria Saker Woeste, *The Farmer’s Benevolent Trust: Law and Agricultural Cooperation in America, 1865–1945* (Chapel Hill, N.C., 1998).

<sup>26</sup> Ellis Hawley, “Herbert Hoover, the Commerce Secretariat, and the Vision of an ‘Associative State,’ 1921–1928,” *Journal of American History* 61, no. 1 (1974): 118–19.

association of peach farmers, for example, could join together in the processing, handling, and marketing of their commodities with the aim of minimizing competition from other, noncooperative peach farmers. Cooperatives were understood to be analogous to labor unions: collectivities that bargained for prices or wages on behalf of their members.

Associationalism was spectacularly unsuccessful for farmers because it did nothing to remedy the fundamental problem facing agriculture in the 1920s: overproduction. In the absence of legal compulsion, there was nothing to deter free-riding farmers from taking advantage of the higher prices negotiated by the cooperative. The failure of agricultural cooperatives in the 1920s highlighted what economist Mancur Olson would later term a “collective action” problem. Individual action will not produce collective goods such as a price floor on hogs or generic beef advertising with funds raised from voluntary contributions. As Olson observed in *The Logic of Collective Action*, the temptation to free ride increases with the size of the group, and thus legal compulsion and the use of “selective incentives” are the primary tools available to large associations of interest—whether unions, business cartels, or agricultural cooperatives. Even an unselfish farmer would not “necessarily restrict production to raise farm prices,” as many cooperative marketing schemes anticipated, because “he would know that his sacrifice would not bring a noticeable benefit to anyone.”<sup>27</sup> Overproduction was rational: for many farmers it made good sense not to join a cooperative and produce to the hilt in the hopes that the co-op would have bargained up the price of produce. This problem was only made worse by falling prices, which had reached an all-time low by 1927.

Once Franklin Roosevelt took office, agriculture featured prominently in national economic recovery efforts. The watershed Agricultural Adjustment Act (AAA), passed as part of the flurry of legislative activity known as the “hundred days,” inaugurated the basic pillars of modern farm policy: price supports and supply controls achieved through compulsion. In exchange for curtailing production, farmers of certain commodities were eligible to receive a guaranteed minimum support price from the government. The Supreme Court ruled the first AAA unconstitutional in 1936 because its support payments were financed by a tax on processors, but Congress passed a similar, substitute measure in 1938 that financed government supports through general treasury revenues. After World War II, subsidies were expanded to cover a greater number of commodities and the level of support was raised.<sup>28</sup>

<sup>27</sup> Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, Mass., 1965), 64.

<sup>28</sup> Winders, *Politics of Food Supply*, 7–10.

New Deal interventions changed American agriculture profoundly, but they were not wholly new. Even though the AAA occasioned unprecedented levels of state intervention into the agricultural economy, it neither was top-down nor repudiated the associationalism of the previous decade. The farmer-controlled committees that administered and enforced the supply control system reflected an associational philosophy that relied on the coordinating leadership efforts of local elites in executing government policy. As David Hamilton has persuasively argued, the New Deal's expansion of governmental powers was "intended to facilitate—not replace—cooperative and voluntary efforts among farmers."<sup>29</sup> Politically, the commodity-based price supports of the New Deal transformed American agriculture policy into commodity policy. By the 1960s, organizations representing farmers who produced government-supported commodities came to play a defining role in congressional farm policymaking.<sup>30</sup>

New Deal agriculture policy did not thwart overproduction—far from it. Farm output outstripped demand for most of the years between 1930 and 1970. Machines, chemicals, and more intensive cultivation practices made American farmers vastly more efficient.<sup>31</sup> During World War II and its immediate aftermath, foreign consumers absorbed much of this excess output. But throughout the 1950s, stocks of food and fiber swelled at taxpayer expense. Government-owned stocks of commodities grew from \$1.3 billion in 1952 to \$7.7 billion in 1959. As government-held stocks swelled, support prices shrank, but the principle of supply management remained intact, albeit at stingier levels.<sup>32</sup> It endured all the way until the passage of the Federal Agriculture Improvement and Reform (FAIR) Act of 1996, which eliminated price supports and production controls in an effort to bring American farmers closer to a free market in agriculture. But the problem of overproduction could also be framed as a problem of *underconsumption*. In the absence of effective controls on supply, farmers and agricultural officials turned toward the checkoff to address persistent, problematic abundance. Checkoffs were tools of demand management—tools that first supplemented and later eclipsed supply management, as the federal government turned away from more overt

<sup>29</sup> David Hamilton, *From New Day to New Deal: American Farm Policy from Hoover to Roosevelt, 1928–1933* (Chapel Hill, N.C., 1991), 242.

<sup>30</sup> Hansen, *Gaining Access*, 111; Winders, *Politics of Food Supply*, 6. Winders attributes debates over farm policy after 1950 to divisions between cotton and wheat producers, who favored supply management, and corn producers, who favored "market-oriented" agriculture.

<sup>31</sup> Agricultural productivity has doubled since 1948, while the number of farms has fallen, farm size increased, and crop specialization intensified.

<sup>32</sup> Hansen, *Gaining Access*, 109.

interventions into the agricultural economy in the last years of the twentieth century.

### From Overproduction to Underconsumption

Checkoffs originated at the state level, where legislatures saw them as a means to boost consumption during the Great Depression. In 1935, the Florida legislature levied a tax on growers of oranges, grapefruits, and tangerines. That money was used to fund advertising campaigns intended to whet the national appetite for sunshine-state citrus. The tax was overseen by the Florida Citrus Commission, a board that blended state control with industry prerogatives. The commission's members were appointed by the governor and confirmed by the state senate, but appointees were generally "practical citrus men," including growers, packers, processors, and shippers.<sup>33</sup> News of the commission's creation was especially heralded by the advertising industry. The "advertising news and notes" section of the *New York Times* observed in November 1937 that bone-chilled northeasterners would soon get an eyeful of Florida's orange sunshine. For the following six months, "Subways, elevated and suburban lines and buses serving the metropolitan districts of New York and Boston" would serve as space for ads touting Florida oranges, inviting passengers to imagine sunnier, sweeter places.<sup>34</sup> The agency initially handling the commission's account, Ruthrauff & Ryan, was a powerhouse in the ad world, with accounts including Lifebuoy soap (on whose behalf the euphemism "B. O." was invented), Gillette, Wrigley, and Tums. Florida citrus growers approached advertising with the seriousness and financial commitment that a state-mandated assessment could afford.

The Florida Citrus Commission was created in the midst of the Depression, as nearly every state in the nation looked to promote its internal resources—agriculture, industry, tourism—to find fresh revenue streams for bone-dry state coffers. According to a study conducted by the Council of State Governments on this new phenomenon, "by 1939, every state in the union except Delaware made legal provisions to distribute information regarding its attraction and peculiar advantages."<sup>35</sup> Even amidst this increased promotional activity, the citrus commission stood out. The citrus excise tax gave the organization a budget of \$750,000. The amount of money that went to promote Florida's oranges, tangerines, and grapefruits was greater than the amount

<sup>33</sup> Council of State Governments, *Advertising by the States* (Chicago, 1940), 12.

<sup>34</sup> "Advertising News," *New York Times*, 16 May 1936; "Advertising News," *New York Times*, 20 Nov. 1937.

<sup>35</sup> Council of State Governments, *Advertising by the States*, 3.

that went to promote the entirety of activities or products of any state except for Pennsylvania, which appropriated \$788,000 to promote its tourism, agriculture, and industry.<sup>36</sup>

Soon after the commission was established, a suit was brought against it by the C.V. Floyd Fruit Company, which alleged that the tax was an unconstitutional property tax and that its imposition denied citrus growers their due process rights. The C.V. Floyd Fruit Company also argued that the tax was not imposed for a valid public purpose—that the State of Florida had, essentially, made a public purpose out of a private interest. The Florida Supreme Court disagreed, ruling in 1937 that the tax was in fact an excise tax, not a property tax, and that the State of Florida had a legitimate interest in promoting state agriculture. In the landmark *C.V. Floyd Fruit Co. v. Florida Citrus Commission*, the citrus advertising tax was interpreted as a private instrument of the state: Its power to exact a tax upon oranges, grapefruits, and tangerines entering the market was ruled to be a legitimate extension of the state's police power. The citrus commission did make a public purpose out of a private interest, but given the importance of the citrus trade to the state of Florida, this was justified and desirable. With the Florida court's ruling as a constitutional green light, several other states passed legislation authorizing producer assessments: Idaho vegetables (1937), Michigan apples (1939), Iowa milk (1937).<sup>37</sup>

The *Floyd* decision expanded the range of activities that states could support in the name of the public interest. They seized upon the checkoff as a tool to ensure that consumer demand for tobacco would match its vast supply. The vehicle for promoting North Carolina-grown tobacco was a nonprofit corporation called Tobacco Associates. Its first president was the man who had administered the New Deal tobacco program during the 1930s, underscoring the institutional linkages between the New Deal-initiated regime of supply management and the postwar focus on demand. The language of the Tobacco Associates enabling act therefore emphasized the importance of tobacco to North Carolina's economy, deeming that the "promotion of export trade in flue-cured tobacco . . . is proper, desirable, necessary and in the public interest."<sup>38</sup> But like the Florida Citrus Code, the Tobacco Associates referendum was initiated at the behest of a private organization. Tobacco Associates

<sup>36</sup> *Ibid.*, 6.

<sup>37</sup> Henry Kinnucan and Stanley Thompson, *Commodity Advertising and Promotion* (Ames, Iowa, 1992).

<sup>38</sup> N.C. Gen. Assemb., An Act to Enable Flue-Cured Tobacco Farmers in North Carolina to Hold a Referendum and to Promote through Organized Effort the Export Sale of Flue-Cured Tobacco, S.B. 255, *State of North Carolina Session Laws and Resolutions* (Raleigh, N.C., 1947), 647–48.

typified the intermingling of public and private interests: from its introduction on the floor of the North Carolina General Assembly by the chair of the body's House Agricultural Committee (who was also a member of the North Carolina Farm Bureau) to the drafting of its charter and bylaws by the state's former governor and soon-to-be senator, J. Melville Broughton.<sup>39</sup>

Like Florida's Citrus Code, North Carolina's Tobacco Associates Act relied upon a two-step process. First, a referendum would be held to determine grower support for the organization. If more than two-thirds of eligible voters approved the plan to levy a tax of ten cents per tobacco acre, the levy would come into force for the fall marketing season. The two-thirds popular approval required to trigger Tobacco Associates collections was not arbitrary. The USDA required the same percentage of farmers to approve the production restriction regulations and the federal marketing orders that formed the basis of much of agriculture policy during the twentieth century. For farmers across America, 67 was the magic percentage that transformed coercion—compulsory crop reduction or mandatory assessments to pay for research and promotion—into a fact of life.

The law required that Tobacco Associates take out advertising space in newspapers to announce the referendum date and polling places. As a result, the referendum was likely understood as an act initiated and undertaken by the State of North Carolina or the USDA, not a private group. After all, the publicity requirements suggested that the referendum was a public event; the spaces that the referendum occurred in were usually state spaces, such as schools; and the referendum's success relied upon the same turnout as the federal tobacco program—the government initiative with which tobacco farmers were the most familiar. Initial financing for Tobacco Associates came from growers as well as other members of the broader tobacco economy—all except for cigarette manufacturers. This widespread sectoral support established a pattern that other checkoffs would follow. Even though tobacco growers bore the assessment, Tobacco Associates was enthusiastically supported by warehouse owners, bankers, leaf dealers, and merchants because their businesses stood to benefit—to free ride, really—from the increased sales of tobacco.<sup>40</sup>

North Carolina Democrat Harold Cooley, the powerful chair of the House Committee on Agriculture, helped to nationalize the checkoff

<sup>39</sup> Broughton's campaign for Senate touted his legal work for Tobacco Associates as evidence of his record of "Progressive Public Service." See "Advertisement: Former Governor J. Melville Broughton," *Lexington (N.C.) Dispatch*, 13 May 1948.

<sup>40</sup> R. Flake Shaw to Gentlemen, 19 Feb. 1947, box 1, folder 1, North Carolina Farm Bureau Papers, North Carolina State University Special Collections, Raleigh, N.C. Today, a similar situation exists in which the major meatpackers enthusiastically support the pork and beef checkoffs—sometimes more enthusiastically than producers themselves.

mechanism. While Tobacco Associates eyed foreign outlets for American flue-cured tobacco, other growers eyed Tobacco Associates as a model for self-financed promotion. Despite production controls, surpluses mounted in the 1950s, occasioning rancorous political debates over the future of American agriculture policy. Ezra Taft Benson, Eisenhower's famously conservative and controversial secretary of agriculture, led the charge against the high price support system inaugurated by the New Deal.<sup>41</sup> He was flanked by the American Farm Bureau Federation (AFBF) in a shared mission to usher in an era of market-oriented agriculture. Southern cotton and tobacco growers, and their Democratic representatives, recoiled at Secretary Benson's deep and religious aversion to collective action achieved through government management.<sup>42</sup> Benson fanned the flames by repeatedly insisting that the price support system represented a "trend toward socialism in agriculture," and that state interventions in agriculture "weaken[ed] initiative" and "destroy[ed] character."<sup>43</sup>

Checkoffs were a potential alternative and supplement to the price support system. Rather than decreasing production, they offered the tantalizing solution of augmenting consumption. The national stomach rather than the national purse would underwrite American agriculture. Farmers who continued to look toward government as an indispensable organizer of chaotic agricultural markets were most likely to see checkoffs as a tool for dealing with the surplus problem. As congressional Democrats held hearings throughout the 1950s to offer their own visions of a long-range farm program, growers' calls for federal commodity checkoffs became more insistent.

In 1957 and 1958, Congress considered legislation that would have authorized a nationwide checkoff on livestock to finance a meat promotion program. Supporters of the legislation argued that a checkoff, which would come in the form of an automatic deduction on the sale of livestock, offered a way for livestock raisers to help themselves. Of course, generic commodity advertising was not new, as hundreds of cotton maids, tobacco queens, and "porkettes" around the country could attest.<sup>44</sup> But for cattlemen, the checkoff promised to immediately raise

<sup>41</sup> Wesley McCune, *Who's Behind Our Farm Policy?* (New York, 1956).

<sup>42</sup> Edward L. Schapsmeier and Frederick H. Schapsmeier, "Farm Policy from FDR to Eisenhower: Southern Democrats and the Politics of Agriculture," *Agricultural History* 53, no. 1 (1979): 352–71.

<sup>43</sup> Edward L. Schapsmeier and Frederick H. Schapsmeier, "Eisenhower and Ezra Taft Benson: Farm Policy in the 1950s," *Agricultural History* 44, no. 4 (1970): 373, 370.

<sup>44</sup> Jenny Barker Devine, "Hop to the Top with the Iowa Chop': The Iowa Porkettes and Cultivating Agrarian Feminisms in the Midwest, 1964–1992," *Agricultural History* 83, no. 4 (2009): 477–502.

the amount of money available for advertising that had so far only been conducted on a voluntary basis. Compulsion was necessary to make collective action meaningful.

Harold Cooley ardently defended checkoffs at these hearings, touting the success of the program in boosting tobacco growers' incomes and sending American tobacco around the world. He was opposed by the AFBF, which, in the words of its president, Charles Shuman, cast checkoffs as "an invasion of individual freedom of choice."<sup>45</sup> Opponents seized upon the language of compulsion to characterize collectively financed advertising. At the 1957 hearings on the subject of meat promotion, Cooley sparred with AFBF general counsel for more than thirty minutes on the merits and mechanics of compulsion versus voluntarism under the checkoff system.

Repeatedly invoking Tobacco Associates as a successful checkoff program—and one that the North Carolina Farm Bureau actively supported—Cooley sought to expose the AFBF's position as muddled and hypocritical, while also positing the checkoff as a legitimate, uncontroversial, and long-standing feature of agriculture policy. "When we pass this bill, we just say to the livestock producers that they have the same rights and privileges that the citrus fruit people have . . . , that the tobacco people have . . . , that everybody else has. What is wrong with letting the livestock people have the same rights which other groups have?"<sup>46</sup> Cooley overstated the case. The citrus and tobacco associations were enabled by state legislation. With the passage of the National Wool Act in 1954, checkoffs went federal—and shepherds subsequently voted overwhelmingly in favor of continuing compulsory wool promotion.<sup>47</sup> Cooley's intervention shows ways in which state promotion programs paved the way for federal legislation, while also confirming the AFBF's suspicion that checkoff programs would pave the way for commodity-specific policies.

Meat promotion did not make it into the final bill amending the Packers and Stockyards Act. But the battle over the principle of collective compulsion continued. With the passage of the 1966 Cotton Research and Promotion Act, farmers and government embarked on the most expansive venture in commodity promotion to date. At the bill's hearings, Cooley once again sparred with AFBF representatives, this

<sup>45</sup> "Wool Checkoff Dispute May Be Decisive in Establishing Spokesman for Farmers," *Wall Street Journal*, 6 Oct. 1959, 7.

<sup>46</sup> *Promote Meat Consumption: Hearings on H.R. 11330 Before the House Comm. on Agriculture*, 85th Cong. (1958), 122.

<sup>47</sup> "Wool Checkoff Dispute," 7; "Sheep Farmers Vote Heavily for 'Checkoff,'" *Wall Street Journal*, 7 Oct. 1959, 28.

time with the stalwart and terse Charles Shuman, the organization's president. Cooley held up Tobacco Associates as a model of a well-functioning promotion organization, arguing that the structure of the tobacco checkoff—the per unit assessment and the right to a refund—was a legal model for the proposed cotton promotion bill. Shuman objected to the political economy of delegated authority, arguing that legislation that “gives the power of the government to tax producers and then turn[s] that money over to a non-governmental agency” was unconstitutional.<sup>48</sup> Ultimately, Cooley prevailed. The passage of the 1966 Cotton Promotion and Research Act signaled the arrival of a new era in agricultural marketing—one in which expanding domestic consumption was explicitly understood as a tool for safeguarding production programs and boosting farmer income. Checkoffs served as a state-created safety valve for the unsustainable surpluses mounting in government warehouses. Like the Food for Peace program, which was launched in 1954, the same year as the Wool Act, checkoffs helped producers to imagine American and foreign consumers as a vast stomach to be stretched and stuffed with the help of the government.

Law requires that checkoff programs periodically evaluate their own effectiveness—a word that is anything but straightforward and can refer to a variety of metrics including sales, prices, profits, market share, and consumer awareness.<sup>49</sup> For producers, the most important studies are those that evaluate contributor return on investment—how much “bang for the buck” checkoffs yield. Most studies—many of which are commissioned by the producer boards themselves—suggest that the checkoff yields a good return on (mandatory) investment. For instance, a 2006 evaluation of the beef checkoff suggested that every dollar collected by the checkoff returned more than \$11 to the beef industry.<sup>50</sup> But agricultural economists will also admit that the checkoff's return on investment for individual producers is notoriously challenging to

<sup>48</sup> *Cotton Research and Promotion Program: Hearings on H.R. 12322 Before the House Comm. on Agriculture*, 89th Cong. (1966), 73.

<sup>49</sup> Williams and Capps, “Measuring the Effectiveness,” 73–78.

<sup>50</sup> Harry M. Kaiser, “An Economic Analysis of the Cattlemen's Beef Promotion and Research Board Demand-Enhancing Programs,” Report to the Cattlemen's Beef Board, 25 June 2014, accessed on 15 May 2016, [https://www.beefboard.org/evaluation/files/ROI%202014/FINAL%20REPORT\(1\).pdf](https://www.beefboard.org/evaluation/files/ROI%202014/FINAL%20REPORT(1).pdf). Kaiser, an agricultural economist at Cornell who directs the university's Commodity Promotion Research Program, was hired by the Beef Board to perform an econometric study of the program's performance. Other evaluations have estimated slightly lower, but still substantial, returns. Ronald Ward, an agricultural economist, estimated returns from the checkoff dollar at \$5.55. It should be noted that many studies evaluating the efficacy of checkoffs, including the two cited here, are commissioned by the very commodity boards that administer checkoff programs. Williams and Capps, “Measuring the Effectiveness,” 73.

quantify because of the many factors shaping commodity price and overall volume of sales.<sup>51</sup> Many farmers do not see the benefits of their mandatory contributions; agricultural economists often write about the benefits of generic marketing in terms of the negative hypothetical: “Dairy farmers received about 46 cents more than they would have received if they had not contributed the 15 cent mandatory checkoff assessment.”<sup>52</sup> But farmers see the costs of the checkoff clearly and immediately. In 1993, at the very same time that agricultural economists issued that sanguine evaluation of the dairy program, Congress heard testimony to the contrary. Such returns were not at all evident to Terry Hall, a dairy farmer from Maryland who owned fifty milk cows on seventy rented acres. In the ten years of the Dairy Board’s operation, life had become harder for Hall: prices were down and costs up. The effect of increased demand (Americans’ increasing consumption of milk, cheese, and butter) had not resulted in higher prices for milk. In light of his hard experience—“tight management practices require that I do away with things that are not beneficial”; “no new equipment of any kind and no health insurance for my wife and three children”—Hall posed a question clear in its moral force: “How can you say these checkoffs are beneficial when I’m being paid less than I was 10 years ago?”<sup>53</sup>

The discrepancy between the worlds inhabited by smaller producers and checkoff boosters lies, to some degree, in the fact that the two groups are not evaluating the same phenomena. Checkoffs are touted as beneficial to contributors, but farmers still experience yearly volatility in prices, frequently due to oversupply. Perhaps most galling to farmers like Hall is that other sectors of agribusiness benefit from checkoffs, even though they are not required to contribute to promotion programs. Hall condemned the dairy program as a self-propagating racket, insulated by his contributions from the harsh market he experienced: “The people who work for these promotion agencies are guaranteed an income whether my product price goes up or down.”<sup>54</sup> And though they do not pay mandatory assessments, grocery stores, large food companies, and restaurants benefit from advertisements touting the nutritional properties of beef, pork, eggs, and cheese.

<sup>51</sup> Olan D. Forker and Ronald W. Ward, “Commodity Checkoff Programs: A Self-Help Marketing Tool for the Nation’s Farmers?” *Choices: The Magazine of Food, Farm, and Resource Issues* 8, no. 4 (1993): 21.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Producer-Funded Livestock Research and Promotion Programs: Hearing Before the Subcomm. on Livestock of the Comm. on Agriculture*, House of Representatives, 103rd Cong. 27 (1993).

<sup>54</sup> *Ibid.*

Domestic demand is a primary target for checkoffs, but foreign markets receive special attention from commodity boards. Funds from the beef, lamb, corn, sorghum, and soybean checkoff finance the U.S. Meat Export Federation (USMEF), a vertically integrated trade association that represents different components of the meat industry: producers, packers, processors, traders, and farm organizations. The USMEF is an associational institution, a private nonprofit that operates with mandatory checkoff dues and grants from the USDA's Foreign Agricultural Service and Market Development Program funds. Just 5 percent of USMEF's budget comes from private sources, such as membership dues, whereas USDA grants constitute 38 percent of the federation's \$37 million in total revenue. Checkoff monies, particularly those derived from the beef and pork programs, account for 56 percent of its revenues.<sup>55</sup>

The USMEF was chartered in 1975 as a cooperating agency that partnered with the USDA's Foreign Agricultural Service (FAS), an agency established in 1953 to promote the sale of U.S. agricultural goods abroad. With the passage of Public Law 480, better known as the Food for Peace program, the FAS played an increasingly important role in overseeing American commodity flows toward developing markets. Private-sector "cooperators" like the USMEF were the free-enterprise face of what was a very decidedly state-centered goal of alleviating commodity surpluses while winning the hearts, minds, and stomachs of the developing world during the Cold War. "Bread, not guns, may well decide mankind's future today," wrote Minnesota senator Hubert Humphrey in a 1958 government report entitled *Food and Fiber as a Force for Freedom*. Surveying the operations of Food for Peace, Humphrey characterized the law as "a passport for the entry of United States trade and techniques into world markets" that would also "supply the greater economic needs of free peoples, and serve as a deterrent to war."<sup>56</sup> One year after the USMEF's establishment, one Iowa rancher testified at a Senate hearing on the Agricultural Trade Act of 1978. Noting his "fundamental support" for "the activities of Government which assist or facilitate programs to expand foreign markets for our products," the cattleman nonetheless hoped to maintain a safe distance between the USMEF as a "private sector organization" and the activities of the FAS and official trade representatives. "One reason for cooperators' effectiveness in other countries is [that] . . . they have not been identified as

<sup>55</sup> JDS Professional Group, *United States Meat Export Federation, Inc.: Financial Statements as of September 30, 2014 and 2013*, 4 Nov. 2014, accessed 1 Sept. 2016, <https://www.usmef.org/downloads/USMEF-2014-Audited-Financial-Stmt.pdf>.

<sup>56</sup> Hubert H. Humphrey, *Food and Fiber as a Force for Freedom*, report to Senate Comm. on Agriculture and Forestry, at 2 (Washington, D.C., 1958).

‘Government.’”<sup>57</sup> Once checkoff dollars began to finance the USMEF in the late 1980s, American meat abroad became more “Government” than ever. Whereas the “promotional state” of the late nineteenth and early twentieth century was characterized by “private impulses, more than government policy,” the late-twentieth-century promotional state has rested on a hidden bedrock of state-compelled collective action.<sup>58</sup>

Headquartered in Denver—but with offices in South Korea, Japan, Hong Kong, China, Singapore, Russia, Taiwan, Mexico, and Belgium—the USMEF strives to open foreign markets to U.S.-produced beef, pork, and grains. Its techniques are largely the same as those utilized by the checkoff: trade shows, market research, advertising, PR, consumer education on meat utilization, and recipe suggestions.

Since 1980, exports have played an increasing role in the American beef industry—a bright spot for a commodity whose place on the American family dinner plate was increasingly usurped by chicken. Between 1989 and 2003—the year that bovine spongiform encephalopathy (BSE or “mad cow disease”) temporarily shut the door on U.S. beef—exports more than doubled.<sup>59</sup> While increased consumption of meat has been associated with economic development, and globalization has increased overall trade volume, American farmers have nonetheless underwritten the costs of promoting American-style meat consumption in targeted markets. Earlier this year, the Shanghai office of the USMEF hosted a dinner for 158 Chinese meat industry officials. At the meeting of the U.S. Meat Traders Club, importers, distributors, retailers, and food service officials talked meat over a meal of U.S. St. Louis spareribs with chocolate barbecue sauce and roasted U.S. pork butt with cider barbecue sauce.<sup>60</sup> In Japan, which had been the primary importer of American beef prior to the 2003 BSE outbreak, a “Southwest Barbecue Team” comprised of U.S. cattlemen and a Texas pitmaster conducted seminars and cooking demonstrations at the Tokyo Prince Hotel Garden. The hotel’s executive chef expressed pleasant surprise at the tenderness achieved using the Americans’ “low-and-slow” cooking method.<sup>61</sup>

<sup>57</sup> *Agricultural Trade Act of 1978: Hearings Before the Subcomm. on Department Investigations, Oversight, and Research of the Comm. on Agriculture*, House of Representatives, 95th Cong. 64 (1978).

<sup>58</sup> Emily Rosenberg, *Spreading the American Dream: American Economic and Cultural Expansion, 1890–1945* (New York, 1982), 38.

<sup>59</sup> USDA, Economic Research Service, “U.S. Beef Trade,” accessed 1 Sept. 2016, <http://www.ers.usda.gov/topics/animal-products/cattle-beef/trade.aspx>.

<sup>60</sup> U.S. Meat Export Federation (USMEF), “Meat Trader’s Club, SIAL Food Show Highlight USMEF-Shanghai Activities,” accessed 1 Sept. 2016, <https://www.usmef.org/news-statistics/member-news-archive/meat-traders-club-sial-food-show-highlight-usmef-shanghai-activities>.

<sup>61</sup> USMEF, “Southwest Barbecue Team Delivers Flavor to Japanese Foodservice Industry, Consumers,” accessed 1 Sept. 2016, <https://www.usmef.org/news-statistics/member-news-archive/southwest-barbecue-team-delivers-flavor-to-japanese-foodservice-industry-consumers>.

American meat exporters await the business expected to result from the Trans-Pacific Partnership Agreement that currently awaits ratification. The checkoff's role in financing trade-promoting broker organizations like the USMEF is a potent reminder of the state's role in creating "free markets."

### Pizza Politics

Between 1954 and today, dozens of generic promotion programs have been authorized by Congress and hundreds more operate within individual states.<sup>62</sup> They do more than promote commodity consumption through advertisements like the famous "Pork: The Other White Meat" or the "Got Milk?" campaigns. Checkoff dollars also fund scientific research intended to portray industries in a favorable light. For the commodity boards, research is an extension of public relations. For example, in the 1993 dairy hearings, the president of one cooperative was frank in his belief that checkoff dollars were needed to support research to counter the "harmful dietary propaganda" of "radical animal rights activists" like People for the Ethical Treatment of Animals (PETA).<sup>63</sup>

For this reason, checkoffs have raised concerns in public-health quarters. A growing body of research in the history of science suggests that industry has played a large—if often overlooked—role in creating science that is used to prevent unfavorable regulation. In their evocatively titled *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming*, Naomi Oreskes and Erik Conway argue that "a small network of doubt mongers," generally financed by industry and conservative think tanks, have sponsored scientists skeptical of the scientific consensus surrounding cigarettes, acid rain, ozone depletion, and global warming.<sup>64</sup> Such work draws attention to the politics of knowledge production in contemporary regulatory battles. Although the parallels between climate change denialism and beef boosterism may not seem obvious, a significant proportion of checkoff money finances scientific-sounding PR efforts. In its

<sup>62</sup> Geoffrey Becker, "Federal Farm Promotion ('Check-Off') Programs," CRS Report to Congress No. 95-353, Congressional Research Service, Library of Congress, 20 Oct. 2008, [http://www.nodpa.com/checkoff\\_2008%20report%20on%20check%20off%20programs.pdf](http://www.nodpa.com/checkoff_2008%20report%20on%20check%20off%20programs.pdf).

<sup>63</sup> *Producer-Funded Livestock Research and Promotion Programs: Hearing Before the Subcomm. on Livestock of the Comm. on Agriculture*, House of Representatives, 103rd Cong. 27 (1993).

<sup>64</sup> Naomi Oreskes and Erik Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York, 2010). See also David Michaels, *Doubt Is Their Product: How Industry's Assault on Science Threatens Your Health* (Oxford, 2008); and Robert Proctor and Londa Schiebinger, eds., *Agnotology: The Making and Unmaking of Ignorance* (Palo Alto, Calif., 2008).

quest to court health professionals, the beef checkoff not only funded the production and distribution of pro-beef nutritional materials to doctors, nurses, and dieticians, it also funded research into *how best* to propagandize to these professionals. “Better informed physicians,” the Beef Board noted, “were more positive toward beef.”<sup>65</sup> Beyond these offensive strategies, the beef checkoff also funded defensive efforts to “debunk negative myths about beef and the U.S. cattle industry.” The board’s 1993 annual report cited victories in this realm that included calming consumer fears after an E. coli outbreak at Jack in the Box fast-food restaurants and the launch of a “Myth Busters” program aimed at “blunting and negating misinformation disseminated by anti-beef activists who attract all too much media coverage with their questionable, but highly theatrical public relations statements.” The Beef Board struck a tone redolent of the industrial goliaths fighting the activist Davids of the past—a tone not unlike the chemical industry’s dismissal of Rachel Carson as hysterical or Big Tobacco’s insistence that only “zealots” would partition a restaurant into smoking and nonsmoking sections.

Checkoff funding has facilitated partnerships between commodity producers, the USDA, and fast-food establishments, underscoring the way in which government and private interests have coproduced not only the shape of the American economy, but also the shape of Americans’ bodies. In 2002, cattlemen financed partnerships with Dunkin’ Donuts, Quiznos, and Taco Bell that resulted in a harvest of beefy products: the Steak, Egg and Cheese breakfast sandwich; the Bistro Beef sub; and the steak Grilled Stuft Burrito.<sup>66</sup> Building on such promotional success, the checkoff program partnered the following year with Domino’s Pizza, introducing America to the Philly Cheese Steak Pizza, “made with premium quality sirloin steak.”<sup>67</sup> Pizza has been a particularly capacious vehicle for commodity disposal. Enacted in 1983, the dairy checkoff is currently the largest of the federal checkoff programs, with assessments totaling over \$200 million per year from producers of fluid milk and other dairy products. Although more than half of this money is collected from fluid-milk producers, milk consumption in the United States has been on a steady decline; but thanks to the checkoff program’s assiduous industry partnerships, cheese consumption has soared. For instance, with the blessing of the USDA, the dairy checkoff has spent millions of dollars to increase American pizza consumption, including a promotional partnership with Domino’s Pizza. The USDA’s

<sup>65</sup> *Ibid.*, 17.

<sup>66</sup> Beef Board, *2002 Annual Report: Connecting Cattlemen to Consumers*, 4, accessed 1 Sept. 2016, <http://www.beefboard.org/uDocs/ACF17B5.pdf>.

<sup>67</sup> Beef Board, *2003 Annual Report: Investing in Beef Safety, Nutrition & Promotion*, 6, accessed 1 Sept. 2016, <http://www.beefboard.org/uDocs/2003%20Annual%20Report.pdf>.

report to Congress on the partnership noted, “The promotional activities with Domino’s included new product lines, use of more cheese than had been provided on similar items in the Domino’s chain before the partnership, and the introduction of specialty cheeses into the company’s recipes. In short, the assistance of dairy dollars was instrumental in positively affecting the pizza category, a category that is very important to the dairy industry.”<sup>68</sup> Checkoff dollars also went toward Pizza Hut’s development of the 3-Cheese Stuffed Crust Pizza and the “Summer of Cheese” advertising campaign. Similarly, a \$35 million partnership between the dairy checkoff program and Domino’s resulted in the engineering of an even cheesier pizza—an industry trend that other delivery chains soon followed.<sup>69</sup>

Agricultural associationalism has epistemological consequences.<sup>70</sup> Checkoff money shapes what we know about food, financing research intended to boost commodity consumption. Such research has funded applied agricultural science, such as an effort by university scientists to “develop a low-fat ground beef product.” The acceptability of this checkoff chuck was tested by the USDA, which used the beef in the national school lunch program.<sup>71</sup> In 1989, the checkoff funded research at Texas A&M University that was later used by the USDA to “reflect the modern meat case more accurately” by codifying the nutrient composition of beef cuts.<sup>72</sup> As historians of science have suggested, industry-funded science frequently produces knowledge that works toward the profitability of the industry. In 1994, for instance, the beef checkoff financed a study conducted at the Baylor College of Medicine that “showed lean beef to be the equal of chicken when it comes to lowering cholesterol.” Through further promotional efforts of the Beef Board, “some 27 million consumers quickly learned that what they thought

<sup>68</sup> Parke Wilde, “USDA Reports on Pizza Consumption and on Dairy Checkoff Program Initiatives to Increase Pizza Demand,” *U.S. Food Policy* (blog), 7 Feb. 2014, <http://usfoodpolicy.blogspot.ca/2014/02/usda-reports-on-pizza-consumption-and.html>.

<sup>69</sup> Michele Simon, “Whitewashed: How Industry and Government Promote Dairy Junk Foods,” *Eat Drink Politics*, June 2014, <http://www.eatdrinkpolitics.com/wp-content/uploads/SimonWhitewashedDairyReport.pdf>.

<sup>70</sup> Few studies investigate the overall outcomes of checkoff-funded research. One analysis of research funded by the dairy checkoff “did not find consistent evidence that checkoff funded projects were more likely to support an obesity prevention benefit from dairy consumption.” But, as the authors note, “industry sources are more likely to fund research on certain questions, which hold promise for results that are more favorable to the industry.” By merely asking certain types of questions, checkoffs can still shape the kind of scientific knowledge produced. Parke Wilde, Emily Morgan, Jesse Roberts, Andrea Schpok, and Tawny Wilson, “Relationship between Funding Sources and Outcomes of Obesity-Related Research,” *Physiology and Behavior* 107, no. 1 (2012): 175.

<sup>71</sup> Beef Board, *1990 Annual Report*, 17.

<sup>72</sup> *Ibid.*

they knew about beef wasn't necessarily true."<sup>73</sup> The pork checkoff has similarly funded pro-pork knowledge, including studies intended to allay concerns about animal welfare, environmental degradation, and human nutrition.<sup>74</sup> Though these studies are frequently conducted at major research institutions, particularly land grant colleges where researchers are increasingly dependent upon industry grants, the knowledge they create should not be considered politically neutral. In drawing attention to the ways in which organized producers and the state have historically shaped the market for meat, cheese, bacon, and ice cream, the associationalist framework forces us to reckon with the political dimensions of scientific research, as well as scientific pronouncements by the state.

### Farmers' Beef over Checkoffs

Producers themselves have challenged the checkoff far more effectively than health and consumer advocates. Numerous farmers have followed in the footsteps of the C.V. Floyd Fruit Company in challenging its constitutionality. In the 1990s and 2000s, separate challenges from pork, beef, and mushroom producers reached the U.S. Supreme Court. Opponents of the checkoff have argued that the program abridges their constitutional rights. But the specific nature of producers' rights infringement is impossible to disentangle from the fact that checkoff programs have been perceived to favor big farms and meat packers. For corporate-scale operations, the checkoff poses relatively less financial strain than it does on smaller operators, particularly during lean times.<sup>75</sup> And processors and retailers free ride on commodity-demand stimulation that they did not pay for. "I believe the campaign subsidizes the people who sell beef," explained one Wyoming cattleman in 2004. "The producers sell cattle."<sup>76</sup>

Opponents voiced two major types of complaints: those centering on the distribution of program benefits and those focused on administrative accountability. Recent controversy over the pork checkoff illustrates both sets of concerns. Declaring that "pork and pork products are

<sup>73</sup> Beef Board, *1994 Annual Report 10: Strength Through Unity*, accessed 1 Sept. 2016, <http://www.beefboard.org/financial/files/CBB%20Annual%20Report%20FY1994.pdf>.

<sup>74</sup> Pork Checkoff, "Pork Checkoff Funded Research Grants," accessed 1 Sept. 2016, <http://www.pork.org/pork-checkoff-research/pork-checkoff-funded-research-grants>.

<sup>75</sup> The challenge to the Beef Board began in the late 1990s, when beef prices had fallen so low that many operators found it difficult to cover production costs. Ronald A. Parsons Jr., "Cattle on a Thousand Hills: Reflections on the Beef Checkoff Litigation," *South Dakota Law Review* 57, no. 3 (2012): 431.

<sup>76</sup> "Supreme Court Hears Case on Constitutionality of Ad Program," *Chicago Tribune*, 9 Dec. 2004.

basic foods that are a valuable and healthy part of the human diet,” Congress passed the Pork Promotion, Research and Consumer Information Act as part of the 1985 Farm Bill. After more than 70 percent of producers voted their assent in a referendum, the pork checkoff went into effect in 1987. As with other federal checkoffs, the Department of Agriculture did not directly oversee the program; rather, the 40 cents per hundred-weight checkoff funds are collected and administered by the National Pork Board (NPB)—a body bacon-wrapped in several other layers of associational bureaucracy. The fifteen members of the Pork Board are nominated by the Pork Act Delegate Body (PADB). The 155-member PADB is itself a product of private-public governance, as its membership is culled from nominations to the secretary of agriculture submitted by state pork associations, farm organizations, and individual hog producers. As if appointment to one of the various bodies governing the checkoff funds was not complicated enough, an NPB Nominating Committee screens and interviews candidates for Pork Board seats and presents its report to the delegating body.<sup>77</sup> This layered nomination and appointment process engendered a sense that the Pork Council was an elite body fortified by opaque procedures intended to keep it that way. And appointees to the governing board remove all doubt about whose interests are served by the checkoff. For example, a former executive at Smithfield Foods, the world’s largest pork processor, is the current chief executive officer (CEO) of the NPB.<sup>78</sup>

For smaller producers, changes in the pork industry in the 1990s exacerbated the sense that the checkoff not only excluded them from governance but also put them out of business. For the first twelve years of the pork checkoff’s existence, the total number of hog operations fell by more than 244,000. At the same time, large packers like Smithfield Foods began to integrate vertically, overseeing operations “from squeal to meal” by raising their own hogs for slaughter. In 1998, amidst a surplus of swine, hog prices fell spectacularly, down to prices unseen since the mid-1960s—and the lowest ever when adjusted for inflation.<sup>79</sup> Engulfed by a sense of crisis, some farmers turned against the checkoff as representing both a useless expense and a gift to the large corporations that profited while hog producers went under. As the farmer’s share of

<sup>77</sup> Pork Checkoff, *Report of the National Pork Checkoff Nominating Committee to the National Pork Producers (Pork Act) Delegate Meeting* (report prepared for National Pork Industry Forum, Kansas City, Mo., March 6–8, 2014), <http://porkcdn.s3.amazonaws.com/sites/all/files/documents/NomBook2.pdf>.

<sup>78</sup> Smithfield Foods, “Animal Care Management,” in *2014 Sustainability and Financial Report*, accessed 1 Sept. 2016, <http://www.smithfieldfoods.com/integrated-report/animal-care/animal-care-management>.

<sup>79</sup> Edward Lotterman, “District Hog Prices Hit Historic Lows,” *fedgazette*, 1 Jan. 1999, <https://www.minneapolisfed.org/publications/fedgazette/district-hog-prices-hit-historic-lows>.

retail prices fell to new lows, the 45 cents per hundredweight assessment began to look like a transfer of wealth from farmers to pork processors and advertisers. "Since the checkoff has been mandatory, I've paid in nearly \$5,000," explained one Minnesota hog farmer in 1998. "What did I get for my money? The lowest hog prices ever and a drastically lower share of the retail dollar."<sup>80</sup>

Federal checkoff legislation includes a self-destruct provision, allowing farmers to vote on its termination and disburse unused funds.<sup>81</sup> If 10 percent of producers sign a petition calling for a referendum, the secretary of agriculture can call a referendum permitting producers to terminate the program by a majority vote.<sup>82</sup> The Campaign for Family Farms, a coalition of farm groups from Minnesota, Missouri, Iowa, Illinois, Wisconsin, Indiana, and Kentucky, collected 19,000 signatures from disgruntled farmers all over the country—enough to persuade Secretary Dan Glickman to hold a referendum on the checkoff's continuation.

The Pork Council had already been keeping an eye on dissident farm groups as a way of safeguarding the checkoff program. Using nearly \$50,000 in checkoff funds, the Pork Council hired a Washington-based public relations firm to investigate the Campaign for Family Farms.<sup>83</sup> The "probe" by the PR firm—a company whose other prominent clients included the embattled R.J. Reynolds Tobacco Company and Philip Morris—revealed a deep anxiety on the part of big hog producers.<sup>84</sup> "They see us as a threat because we've exposed their corporate agenda," explained a hog farmer whose dissident group was subject to investigation.<sup>85</sup> It also confirmed the suspicion that the checkoff had literally financed the corporate consolidation that was running smaller producers out of business. The September 2000 referendum was framed as a David and Goliath showdown by the checkoff's opponents, including country superstar and Farm Aid president Willie Nelson. "It looks like the system is determined to keep the small family farmer and all small business people down in this country," Nelson announced outside his tour bus in Iowa. Supporters, on the other hand, argued that all farmers—big and small—benefited from the research and promotion

<sup>80</sup> "Activists Seek to End Corporate Gravy Train," *Nevada Daily Mail*, 16 Apr. 1999, 11. For more on the internecine battles within the hog industry, see Carolyn Johnson, *Raising a Stink: The Struggle over Factory Hog Farms in Nebraska* (Lincoln, Neb., 2003).

<sup>81</sup> Suspension and Termination of Orders, 7 U.S.C. § 4812(b)(1)(A).

<sup>82</sup> Parsons, "Cattle on a Thousand Hills," 432–33.

<sup>83</sup> Stacy M. Carter, "Mongoven, Biscoe & Duchin: Destroying Tobacco Control Activism from the Inside," *Tobacco Control* 11, no. 2 (2002): 112–18.

<sup>84</sup> Sheldon Rampton and John Stauber, *Trust Us, We're Experts: How Industry Manipulates Science and Gambles with Your Future* (New York, 2001), 128–30.

<sup>85</sup> "Groups Denounce Checkoff for Probe," *Southeast Missourian*, 15 Feb. 1997, 9A.

funded by the checkoff and that compulsion was necessary to prevent free riding.<sup>86</sup>

Despite fears that the decade-long hemorrhage of small farmers would tilt referendum participation toward industrial producers, the checkoff's foes were vindicated at the polls. Though the Pork Council spent some \$4 million to defeat the referendum, hog farmers voted 15,951 to 14,396 to eliminate the program.<sup>87</sup> For a brief period of time, it seemed as though the pork checkoff was headed to slaughter. But the USDA under the Bush administration, headed by Secretary of Agriculture Ann Veneman, seemed to confirm suspicions that it was not just the Pork Council that was out to get small farmers—it was the government as well, a fact underscored by the presence of the Pork Council CEO on the Bush administration's transition team at the Department of Agriculture.<sup>88</sup> Veneman threw out the results of the referendum, pointing toward improprieties in the initial collection of petition signatures. Under Veneman, the USDA saw the checkoff as instrumental for achieving the policy aim of "market enhancement." The Pork Council, for its part, continued to insist that the checkoff represented farmer self-help despite the referendum's result.

When checkoffs have been challenged in the courts, state and federal governments have argued assiduously that the assessments represent a compelling state interest. In *Glickman v. Wileman Brothers & Elliott, Inc.*, the USDA strenuously defended the checkoff against a challenge from California plum and nectarine growers. A group of California fruit growers contended that the generic advertising paid for by their dollars amounted to "compelled speech," violating their First Amendment rights. California tree fruit was regulated by the 1937 Agricultural Marketing Agreement Act. This New Deal-era legislation has been central to supply management in American agriculture, enabling the secretary of agriculture to restrict the quantity of a commodity so as to maintain "orderly marketing conditions for agricultural commodities in interstate commerce" by calibrating supply to anticipated demand. Farmers argued that their assessments paid for advertisements for things they did not grow. The growers were vindicated in the Ninth Circuit, and so the government, under the name of Secretary Glickman, appealed to the Supreme Court, arguing that abolition of the checkoff would undermine the very essence of the collective economic principles

<sup>86</sup> "Farm Advocate Willie Nelson Works to Bring an End to Pork Checkoff," *Wilmington (N.C.) Morning Star*, 13 May 2000.

<sup>87</sup> In some areas, the spread between yes and no votes was stark. In Iowa, which leads the nation in hog production, 60 percent of farmers voted against the checkoff.

<sup>88</sup> "Hog Farmers Criticize Veneman for Not Terminating Checkoff," *High Plains Journal*, 1 Jan. 2001.

that lay at the heart of U.S. agriculture policy.<sup>89</sup> After a poor oral argument by the respondent's counsel—one that resulted in a subsequent malpractice suit brought by the farmers—the Supreme Court ruled in favor of the government.<sup>90</sup> Justice John Paul Stevens framed the issue of the compelled subsidy not as one of free speech, but as one of economic policy. Checkoffs were consistent with the collective marketing of agricultural products that had existed since the New Deal. “The basic policy decision that underlies the entire statute rests on an assumption that in the volatile markets for agricultural commodities the public will be best served by compelling cooperation among producers in making economic decisions that would be made independently in a free market,” Stevens wrote for the narrow 5–4 majority. “It is illogical, therefore, to criticize any cooperative program authorized by this statute on the ground that competition would provide greater benefits than joint action.”<sup>91</sup>

The Court's affirmation of agricultural associationalism did not settle the issue for the dissident pork producers. Indeed, a challenge to a mushroom advertising scheme renewed opponents' hopes for the abolition of mandatory assessments. In 1999, the Sixth Circuit Court of Appeals ruled that the Mushroom Promotion Act of 1990 was unconstitutional. The court's logic in *Glickman* had rested on interpreting the checkoff as an extension of the marketing order that had long abrogated the individual rights of producers in order to raise farm income. But, as lawyers for United Foods, a Tennessee-based food processor, argued, the mushroom act was not part of any larger regulatory scheme—no federal marketing orders governed the production of mushrooms. The Sixth Circuit Court agreed, writing that compelled speech was justified only “in the context of extensive regulation.”<sup>92</sup> In 2001 the USDA's appeal reached the Supreme Court. As was true in the *Glickman* case, attorneys general of numerous states joined together to submit an amicus brief in support of the government. Because states administer hundreds of analogous checkoff programs—many of which are unconnected to broader collectivized marketing schemes—they had a stake in the Court's decision. Their amicus brief emphasized the extent to which checkoffs, while not part of a broader regulatory scheme, constituted a form of economic regulation in and of themselves. Indeed, in an era in which the state was attempting to divest itself of the most overt forms of market

<sup>89</sup> “Brief for the petitioner,” *Glickman v. Wileman Brothers & Elliott, Inc.*, 521 U.S. 457 (1997).

<sup>90</sup> Timothy Russell Johnson and Jerry Goldman, *Good Quarrel: America's Top Legal Reporters Share Stories from the Supreme Court* (Ann Arbor, Mich., 2009), 75.

<sup>91</sup> *Glickman*, 521 U.S. 457.

<sup>92</sup> *United Foods, Inc. v. USDA*, 197 F.3d 221 (6th Cir. 1999).

interventions—tariffs, quotas, price floors, direct subsidies—checkoffs were one of the remaining tools for stabilizing farm prices.<sup>93</sup> The USDA also emphasized the independent regulatory role played by checkoffs. More importantly, it suggested that commodity boards ought not to be considered separate from government, arguing that the passage of the mushroom act “may be appropriately viewed as establishing a program of government speech,” thus blunting any First Amendment objection to the program. In oral argument, the justices chastised the state’s lawyers for not raising the government speech argument at an earlier stage in the litigation, a point reiterated in the Court’s opinion. In a 6–3 decision that did not address the government speech argument, the Supreme Court upheld the Sixth Circuit’s ruling in *United Foods*, ruling the mushroom act unconstitutional. In the absence of broader regulations, stand-alone checkoffs had to fall.

In the wake of *United Foods*, the pork checkoff’s supporters and opponents sought clarity from the courts. *Michigan Pork Producers Association v. Campaign for Family Farms* was decided by a U.S. district court in Michigan the following year, becoming a decisive victory for anticheckoff activists. Judge Richard Enslen’s decision began with Thomas Jefferson (“to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical”) and ended with the declaration that the Pork Act “is at the bottom unconstitutional and rotten.” The decision in *Michigan Pork Producers* rested comfortably upon the logic of the *United Foods* decision: that pork, like mushrooms, was “not subject to a collectivized marketing order” and therefore checkoffs were not part of a larger regulatory scheme. But Judge Enslen also used the opinion to issue a philosophical denunciation of collectivized advertising. He was remarkably sensitive to producers’ claims that generic commodity advertising—despite high returns to the industry as a whole—could have detrimental economic impacts on individual producers. If such producers “had control of their own advertising dollars, they might spend it in different ways . . . for example a campaign to sell family farm products and to discourage the consumption of mass produced pork.” And they surely would not fund the “research” and “education” programs that “propagate the view that large commercial farming operations are humane.” Indeed, Enslen seemed skeptical of the entire concept of generic advertising, noting that the campaign to sell pork as “the other white meat” discourages the sale of bacon and ham. Whether “considered on either

<sup>93</sup> “Brief of amici curiae states of California, Colorado, Delaware, Michigan, Nebraska, Nevada, Ohio, Pennsylvania, and Washington in support of petitioners,” *United States v. United Foods, Inc.*, 533 U.S. 405 (2001).

philosophical, political or commercial grounds,” checkoffs involve “a kind of outrage which Jefferson loathed.” For Enslin, “the government has been made tyrannical by forcing men and women to pay for messages they detest.”<sup>94</sup>

### Conclusion

Agriculture in the twentieth and twenty-first centuries has been far from a Jeffersonian endeavor. While anticheckoff activists celebrated a string of legal victories and the satisfaction of reading media denunciations of their foes, lawyers for the government were honing the “government speech” argument—a defense for checkoffs left open by the *United Foods* decision.<sup>95</sup> A case on the constitutionality of the beef checkoff tested the appeal of the state’s argument. The U.S. Supreme Court heard the case of *Johanns v. Livestock Marketing Association* in late 2004. Like pork producers, cattlemen had spent the late 1990s battling chronically low prices that frequently did not cover the cost of production. Under economic strain, many chafed at paying an assessment for advertising when they were losing money on each head of cattle they sold. And, like hog raisers who wanted to differentiate their bacon from generic “white meat,” American cattlemen resented the fact that imported beef was also given a boost by generic beef promotion.<sup>96</sup> As in the case of pork, Secretary Veneman appeared unconcerned with petitions from producers calling for a referendum.<sup>97</sup>

The arguments presented to the Supreme Court were, in many ways, an extension of the conversation started by *United Foods*. The solicitor general arguing on behalf of the USDA emphasized the close connection between the Beef Board and the USDA to support the argument that “Beef: It’s What’s For Dinner” should be interpreted as government speech. The Beef Board comprises members nominated by the agriculture secretary from a pool of names supplied by producers. To save the checkoff program, lawyers for the government were, in effect, drawing the submerged state to the surface. The Beef Board, for its part, did not conceive of itself as a government entity. Boosters repeatedly

<sup>94</sup> Michigan Pork Producers v. Campaign for Family Farms, 174 F. Supp. 2d 637 (W.D. Michigan, 2001).

<sup>95</sup> Mark Champoux, “Uncovering Coherence in Compelled Subsidy of Speech Doctrine: *Johanns v. Livestock Marketing Association*” *Harvard Journal of Law and Public Policy* 29, no. 3 (2005) 1107–17; *The New York Times*, hardly a routine observer of farm news, published two opinion pieces denouncing the pork checkoff in the wake of the *Michigan Pork Producers* case: “The Other Political Pork,” 10 Nov. 2002 and “Unconstitutional Farm Checkoffs,” 1 Nov. 2003.

<sup>96</sup> Parsons, “Cattle on a Thousand Hills,” 432–33.

<sup>97</sup> *Ibid.*

emphasized the checkoff as an example of producer-driven “self-help.” And annual reports describe the 111-member Beef Board as comprising cattlemen (and a few women) “nominated by fellow producers in their respective states or regions.”<sup>98</sup> For cattlemen—a rock-ribbed Republican bunch generally opposed to federal power, particularly on behalf of the environment, land management, labor, and product safety—the idea that the Beef Board was government was anathema. For example, the Beef Board’s 2002 annual report, titled “Connecting Cattlemen to Consumers,” described the checkoff program in distinctly market-oriented terms; the checkoff “fulfills its charge by making connections: It connects beef product innovators with manufacturers, safety researchers with processors, beef nutritionists with health influencers.”<sup>99</sup> The checkoff program was merely a conduit for information, a transducer for the “flow of market signals back to producers—in short, connecting cattlemen to consumers.”<sup>100</sup> There is no federal government in this narrative of cowboy capitalism. And yet, only by being called “government” could this market in information, influence, innovation, and, of course, beef flow freely.

*Johanns* affirmed the beef checkoff as a tool for state policy and, therefore, not subject to First Amendment scrutiny. “The Message set out in the beef promotions is from beginning to end the message established by the Federal Government,” wrote Justice Scalia for the ideologically diverse 6–3 majority. Congress, through the promulgation of the Beef Act, and the secretary of agriculture “have set out the overarching message and some of its elements, and they have left the development of the remaining details to an entity whose members are answerable to the Secretary.”<sup>101</sup> Ironically, saving the checkoff meant revealing the hand of government. By calling checkoff promotion “government speech,” the ruling seemingly recast associationalism as the work of a strong state. And yet, to deem commodity research and promotion the work of government underscores the extent to which the state has helped producers shape consumer tastes. Unbeknownst to many, American agricultural policy has conscripted foreign populations, as well as Americans, as vehicles for surplus disposal. Agricultural associationalism forces historians to reckon with the strength of producers and the guiding hand of the state in the global marketplace for food and fiber. With state compulsion, American producers have not only stocked supermarket shelves, but also supplied the slogans and the science that give meaning to consumption.

<sup>98</sup> Beef Board, *2003 Annual Report*, 12.

<sup>99</sup> Beef Board, *2002 Annual Report*, 3.

<sup>100</sup> *Ibid.*, 1.

<sup>101</sup> *Johanns v. Livestock Marketing Association*, 544 U.S. 550 (2005).

And what of that meaning? Checkoffs can conjure dystopian visions of a state-sponsored manufacturing of desire, one worthy of any New Left critiques of the stupefaction of society through mass consumption.<sup>102</sup> When the government asks if you've "Got Milk?" the correct answer is, presumably, "not enough"—despite rising obesity rates that suggest otherwise. And yet, recurring challenges to the checkoff program suggest something fundamental about agricultural associationalism: it runs counter to cherished myths about American society and the economy. Dating back to the nation's founding, reverence for the idea of markets and individual choice and the veneration of the small farmer have chafed against state policy operating through economically privileged groups. Part of the power of associationalism is that it has allowed the "myth of the weak American state" to flourish—even in the face of centuries' worth of evidence to the contrary.<sup>103</sup>

Checkoffs are government-mandated self-help. If this sounds paradoxical, that is because we assume a tidy division between government and the economic groups they regulate. Such an assumption has particular resonance in agriculture, where the language and imagery of Jeffersonian agrarianism has idealized farmers as independent producers—dependent of government and politically virtuous because of this independence. And yet for most of the twentieth century, agricultural producers have been nothing if not dependent: dependent upon turbulent global commodity markets, dependent upon the federal government—through programs like the checkoff, subsidies, loans, and disaster assistance—to smooth out the turbulence. Government interventions into agricultural markets have grown in tandem with the rhetoric of markets and self-help. This twinned expansion of state and market has lifted some classes of farmers above others as surely as it has arranged the family dinner plate. Especially in moments of contestation, checkoffs draw our attention to the associational institutions that shape production and consumption in America—the boards, the referenda, the laws, lobbying organizations, and research labs. In the spaces between state and society, production and consumption, these institutions call for further scholarly attention that can make sense of the contradictions of modern American agriculture. Only then will concepts at the core of the checkoff—compelled self-help, generic branding, and producer-driven consumerism—sound as natural as lean pork.

<sup>102</sup> See, for example, Vance Packard, *The Hidden Persuaders* (New York, 1957); Herbert Marcuse, *One-Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (Boston, 1964).

<sup>103</sup> William J. Novak, "Myth of the 'Weak' American State," *American Historical Review* 113, no. 3 (2008): 752–72. See also Brian Balogh, *A Government Out of Sight: The Mystery of Authority in Nineteenth-Century America* (New York, 2009).

. . .

SARAH MILOV is assistant professor of history at the University of Virginia. Her current book project, *Growing the Cigarette*, is a history of American tobacco in the twentieth century. It highlights the role of the American state in the rise and fall of domestic and global cigarette consumption. Her interests lie at the intersection of political history, legal history, and the history of consumption in modern America.