

September 2022

## Food, Freedom, Fairness, and the Family Farm

Robin Rotman

*University of Missouri School of Law*

Sophie Mendelson

*University of Missouri*

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### Recommended Citation

Robin Roman & Sophie Mendelson, *Food, Freedom, Fairness, and the Family Farm*, 125 W. Va. L. Rev. 1 (2022).

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## FOOD, FREEDOM, FAIRNESS, AND THE FAMILY FARM\*

Robin Rotman\*  
Sophie Mendelson\*\*

### ABSTRACT

*The concept of the “family farm” holds powerful sway within the American narrative, embodying both nostalgia for an imagined past and anxiety for a future perceived to be under threat. Since the founding of the United States, this cultural ideal has been invoked in support of a rosy vision of agrarian democracy while obscuring the ways in which the U.S. Department of Agriculture’s codified definition of “family farm” has unfairly aggregated advantages for the benefit of a particular kind of family (nuclear) and farmer (white, male, straight). At the same time, consumers are misled by an under-interrogated conflation of family farming with “good” farming practices. There exists a pervasive fear among Americans that the family farm is at risk of disappearing, and that something must be done to save it. This Essay analyzes the history of family farms in the United States and contends that reclaiming, not rescuing, is what needs to be done. As an alternative to preserving an institution whose benefits have always been constrained by gender, race, and wealth, we propose instead re-orienting efforts toward three concepts rooted in the family farm ideal but which we believe to possess greater transformative potential: fairness—the distribution of benefits along the agrifood chain to ensure adequate compensation and access; self-determination—the ability for communities to make their own decisions within the food system; and “good” farming—the specific practices that could lead to a more just, humane, and sustainable food system.*

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\* A draft of this manuscript was presented on January 5, 2022, at the New Voices Session of the Agricultural and Food Law Section at the Annual Meeting of the Association of American Law Schools. The authors offer their sincere thanks to Prof. Marie Boyd, Section Chair, and to the senior scholars and peers who provided feedback on the draft. The authors also gratefully acknowledge the valuable research assistance provided by Sarah Walters, JD candidate at the University of Missouri.

\* Robin Rotman, JD, is an assistant professor of energy and environmental law and policy at the University of Missouri.

\*\* Sophie Mendelson graduated from the University of Missouri School of Natural Resources in 2020, with an MS in Agroforestry.

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I. INTRODUCTION

In the United States, the “family farm” exists both as a form (an arrangement of agricultural economics and labor) and an ideal (a concept around which American selfhood continues to be constructed). The former is codified in law, whereas the latter remains ambiguous, carrying a nebulous set of associations. By examining those associations, this Essay seeks to contextualize the evolution of the family farm ideal within U.S. history in order to better understand its cultural and political functions, and questions whether the legal definition of “family farm” supports these functions.

The United States Department of Agriculture (USDA) defines “family farm” as:

A Farm (or Ranch) that produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence; whose owners are primarily responsible for daily physical labor and strategic management; whose hired help only supplements family labor; and, whose owners are related by blood or marriage or are Immediate Family.<sup>1</sup>

The regulatory purpose of this definition is to determine eligibility criteria for the Value-Added Producer Grant Program administered by USDA’s Rural Business-Cooperative Service. The Program offers Planning Grants (to fund development of feasibility studies, business plans, and marketing plans) and Working Capital Funds (which directly support processing and marketing of agricultural products). This definition of “family farm” is also utilized by the

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<sup>1</sup> 7 C.F.R. § 4284.902 (2021).

USDA in its Census of Agriculture, which it performs every five years.<sup>2</sup> According to the USDA website, “[f]or America’s farmers and ranchers, the Census of Agriculture is their voice, their future, and their opportunity.”<sup>3</sup>

Scholars, too, have weighed in on the definition of the family farm, introducing the concept of “consubstantiation,” meaning an interpenetration of family and farm in such a way that one cannot be separated from the other.<sup>4</sup> Consubstantiation, they argue, is what differentiates a family farm from a family-owned business that happens to be agricultural in nature but that may not represent a complete melding of land, labor, and livelihood. This concept of “consubstantiation” is reflected in a prevailing American cultural conception that the family farm is a salt-of-the-earth nuclear family working together to steward the land and put food on the nation’s tables.<sup>5</sup>

Frequently, there is an elision between this vision of the traditional, wholesome family farm and other arguably desirable aspects pertaining to the food system such as fair labor practices, responsible environmental stewardship, humane treatment of food animals and working animals, embeddedness within the local economy, and a commitment to community wellbeing.<sup>6</sup> Whether actually related to the organizational form of household agriculture or not, all of these associations hitch a ride when discussions turn, as they inevitably do, to the uncertain future of the family farm.

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<sup>2</sup> *Census of Agriculture*, USDA NAT’L AGRIC. STAT. SERV., <https://www.nass.usda.gov/AgCensus/> (last visited Sept. 10, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., Harold Brookfield, *Family Farms Are Still Around: Time to Invert the Old Agrarian Question*, 2 GEOGRAPHY COMPASS 108, 110 (2008); Göran Djurfeldt, *Defining and Operationalizing Family Farming from a Sociological Perspective*, 36 SOCIOLOGIA RURALIS 340, 341–44 (2008); see also Elizabeth Garner & Ana Paula de la O Campos, *Identifying the “Family Farm”*: An Informal Discussion of the Concepts and Definitions 16–17 (Food & Agric. Org. of the U.N., ESA Working Paper No. 14–10, 2014).

<sup>5</sup> Stephen Carpenter, *The Relevance of Family Farms Today*, FARMERS’ LEGAL ACTION GRP. 8 (Mar. 2013), [https://www.flaginc.org/wp-content/uploads/2013/03/CLE\\_SC.pdf](https://www.flaginc.org/wp-content/uploads/2013/03/CLE_SC.pdf) (“family farmers . . . work hard, work well, and receive little in return for their efforts . . . [j]ournalistic and memoir-oriented writing probably provides as good a guide as any to life on farms.”).

<sup>6</sup> See generally Thong Meas, Wuyang Hu, Marvin T. Batte & Timothy A. Woods et al., *Substitutes or Complements? Consumer Preference for Local and Organic Food Attributes*, 97 AM. J. AGRIC. ECON. 1044 (2014); Jennifer Sowerwine, Christy Getz & Nancy Peluso, *The Myth of the Protected Worker: Southeast Asian Micro-Farmers in California Agriculture*, 32 AGRIC. & HUM. VALUES 579 (2015); Sarah Taber, *America Loves the Idea of Family Farms. That’s Unfortunate.*, INTELLIGENCER (June 16, 2019), <https://nymag.com/intelligencer/2019/06/america-loves-the-idea-of-family-farms-thats-unfortunate.html>.

There is,<sup>7</sup> and has been for quite some time,<sup>8</sup> a prevailing sentiment that the American family farm and all that it represents is disappearing and needs to be saved. The Rockwellian imagery of stern-faced men and women, children carrying milk pails and cradling chickens, red barns, hard work, simplicity, and corn on the cob—this is all poised to be lost, destroyed by looming agribusiness interests and crumbling rural economies. America is heartsick, we are told, with its heartland withering, and its lifeblood—the fabled family farm—fading into memory.

In fact, while the total number of farms in the United States has undergone a marked decline, from a peak of 6.8 million in 1935 to approximately 2 million today, it is nonetheless almost shocking to find, given the dominant narrative, that as of 2020, 98% of farms in the United States met the USDA definition of “family farm.”<sup>9</sup> These multiple disjunctures—between definition and associations and between census data and sentiment—beg further probing. If the family farm’s definition falls so short of capturing its pathos, then should the definition be amended? And if the family farm’s documented presence conflicts so profoundly with collective anxieties over its demise, then what, if anything, *is* at risk of being lost?

In this Essay, we turn our attention to these questions. First, we describe the development of the American family farm as form and ideal, from the colonial yeoman farmer to the current era of consolidation and concomitant yearning for a lost agricultural authenticity. Second, we examine how the legal and the cultural concept of “family farm” has enabled the persistent oppression marginalized groups, such as black, indigenous, and people of color farmers. Finally, we propose an alternative orientation towards the elements of “good” farming and food production.

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<sup>7</sup> See, e.g., Chris McGreal, *How America’s Food Giants Swallowed the Family Farms*, THE GUARDIAN (Mar. 9, 2019) <https://www.theguardian.com/environment/2019/mar/09/american-food-giants-swallow-the-family-farms-iowa>; Alena Semuels, *They’re Trying to Wipe Us Off the Map: Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019, 1:16 PM) <https://time.com/5736789/small-american-farmers-debt-crisis-extinction/>; Alyssa Schukar, *Once We’re Gone, We’re Not Coming Back*, N.Y. TIMES (Nov. 23, 2021) <https://www.nytimes.com/2021/11/23/business/taxes-family-farm.html>.

<sup>8</sup> See, e.g., William Adams, *Natural Virtue: Symbol and Imagination in the American Farm Crisis*, 39 GA. REV. 695 (1985); Steven Bahls, *Preservation of Family Farms—The Way Ahead*, 45 DRAKE L. REV. 311 (1997); Michael Bunce, *Thirty Years of Farmland Preservation in North America: Discourses and Ideologies of a Movement*, 14 J. RURAL STUD. 233 (1998); Brookfield, *supra* note 4, at 121; Carpenter, *supra* note 5.

<sup>9</sup> Christine Whitt, Jessica E. Tudd & James M. MacDund, *America’s Diverse Family Farms: 2021 Edition*, USDA ECON. RES. SERV. 4 (Dec. 2021), <https://www.ers.usda.gov/publications/pub-details/?pubid=102807>; *The Number of U.S. Farms Continues to Decline Slowly*, USDA ECON. RES. SERV. (June 3, 2022), <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58268>.

## II. THE FAMILY FARM: THEN AND NOW

This Section traces the evolution of agriculture in America, analyzing legal, economic, political, and social aspects of farms and farmers over time. It chronicles the yeoman farmers of colonial New England, western expansion and homesteading in the 1800s, industrialization and vertical integration of the agrifood industry<sup>10</sup> in the 1900s, and the farmers of today. Although a comprehensive discussion of the dispossession and genocide of the indigenous inhabitants of what is now the United States of America is beyond the scope of this Essay, this Section briefly touches on the issue.

### A. *Early American Household Agriculture*

The yeoman farmer is perhaps the most emblematic figure of early American agrarianism, embodying two projects that underpinned the late 18th century task of American state building in the years surrounding the Revolutionary War. One project was to differentiate the new American from his European forebears. Agriculture provided a significant setting for this national bildungsroman, given its implications for land, property, freedom, and autonomy. The American farmer was *not* a peasant, early articulators of the yeoman mythology asserted; rather, he was a freeholder, un beholden to a feudal master, or any master for that matter, but himself, his land, and God.<sup>11</sup> This configuration of loyalties—nature linked to property, property to independence, independence to equality, virtue, and civil liberty—formed the very foundation of American democracy, and set it apart from the Old World’s crowded dependencies.<sup>12</sup> The yeoman farmer defined American freedom and spirit.

But, “you can’t change your nature and mode of consciousness like changing your shoes,” D.H. Lawrence notes in his 1923 *Studies in Classic American Literature* regarding early America’s effort to distance itself from Britain.<sup>13</sup> Despite the Founding Fathers’ insistence otherwise, the agriculture of colonial and early American New England bore a striking resemblance to the peasant agriculture of the European countryside.<sup>14</sup> Both were subsistence, rather

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<sup>10</sup> “Agrifood” is a term that encompasses crop and livestock production, post-harvest handling, storage, transportation, processing, food distribution, food marketing, food consumption, and agricultural and food waste disposal.

<sup>11</sup> Adams, *supra* note 8, at 697.

<sup>12</sup> *Id.* at 698; Bunce, *supra* note 8, at 244.

<sup>13</sup> D. H. LAWRENCE, *STUDIES IN CLASSIC AMERICAN LITERATURE* 29 (2d ed. 1923).

<sup>14</sup> Amy D. Schwartz, *Colonial New England Agriculture: Old Visions, New Directions*, 69 *AGRIC. HIST.* 454, 478 (1995).

than market, oriented, and both relied upon family labor.<sup>15</sup> Unlike European peasants, however, New England's household farmers were able to own land.<sup>16</sup>

Private land ownership was crucial to the other state-building project: staking a claim to the abundant natural resources of the New World. The character of the yeoman farmer operationalized this imperial impulse as a rural idyll with a puritanical twist. This new landscape was vast and rich in resources but, as author and farmer John Hector St. John de Crevecoeur put it in his 1782 *Letters from an American Farmer*, only through "sobriety, honesty, and industry" could men transform these raw materials into products and earn a respectable living.<sup>17</sup> Thomas Jefferson spoke more directly about the virtue of agriculturalists, declaring that "those who labour the earth are the chosen people of God."<sup>18</sup> From this orientation, the settler land grab ceased to be theft, and became, instead, moral reclamation: the chosen people laboring to bring forth God's agrarian vision and the new American state's dominion.

Property rights created by the U.S. government enabled its citizens (that is, whites) to accumulate wealth that could be passed along to subsequent generations.<sup>19</sup> And although most New England farms were small, some also became prosperous.<sup>20</sup> These small, successful New England operations are likely the closest historical example to the mythic family farm with their family ownership, family labor, relative self-sufficiency, Christian values, and hard-work-to-viable-livelihood conversion. And yet, the very characteristic that makes them fodder for nostalgia may also be responsible for their evanescence: that is, their capacity for generating capital.<sup>21</sup> Because once there was capital, then came industry, and once there was industry, there went the farms.<sup>22</sup> The "there" they went was West.

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<sup>15</sup> Christopher Clark, *Rural America and the Transition to Capitalism*, 16 J. EARLY REPUBLIC 223, 226 (1996); Heo Jang, *A Conceptual Comparison of Peasant and Family Farm Economy*, 22 J. RURAL DEV. 67, 72 (1999).

<sup>16</sup> Michael M. Bell, *Did New England Go Downhill?*, 79 GEOGRAPHICAL REV. 450, 456 (1989).

<sup>17</sup> Adams, *supra* note 8, at 697; see J. Hector St. John De Crèvecoeur, *From Letters from an American Farmer (1782)—Letter III "What is an American"*, AMERICAN LITERATURE I, <https://viva.pressbooks.pub/amlit1/chapter/from-letters-from-an-american-farmer-1782-hector-st-john-de-crevecoeur/>.

<sup>18</sup> Bunce, *supra* note 8, at 241; Thomas Jefferson, *Notes on the State of Virginia*, JEFFERSON QUOTES & FAM. LETTERS, <https://tjrs.monticello.org/letter/2355>.

<sup>19</sup> Clark, *supra* note 15, at 228.

<sup>20</sup> Bell, *supra* note 16, at 457–58; Clark, *supra* note 15, at 226.

<sup>21</sup> Bell, *supra* note 16, at 456–57.

<sup>22</sup> *Id.* at 465–66; Clark, *supra* note 15, at 231–32.

### B. *Westward Expansion*

As increased capitalization and population pressure drove New England toward industrialization, those same pressures pushed farming westward.<sup>23</sup> Settlers moved west in pursuit of a particular version of republican independence: that of the white man enabled by land access “to support a household of dependents, whose deference and labor he would, in turn, command[]” and to be a leader in his community.<sup>24</sup> Property ownership, in the form of the family-sized farm, “thus undergirded both citizenship and manhood,” and the West was where it was possible.<sup>25</sup> Or it would be, once the land could be cleared of the Native peoples whose sovereignty posed both threat and nuisance to the republic’s expansion.

Laws, such as the Indian Removal Act of 1830,<sup>26</sup> displaced Indigenous people from their homelands onto reservations, resulting not only in near-term genocide by means of assault, exposure, and disease but also a deep and lasting disruption of traditional foodways and nutrition as tribal nations were relocated into alien landscapes that had been deemed worthless by the settler government.<sup>27</sup> Despite the profound violence—both direct and indirect—that Native Americans experienced at the hands of the U.S. government, they successfully adapted their subsistence strategies to reservation conditions.<sup>28</sup> Faced with this failure to eradicate the indigenous peoples, federal policy turned to assimilation as the next best means of dealing with ‘the Indian problem’—and this meant transforming Native Americans into family farmers.<sup>29</sup>

Notwithstanding stereotypes of Native Americans as nomadic hunter-gatherers, some of the tribal nations living in North America farmed prior to settler contact. Those nations that did farm, however, commonly organized their agricultural practices at the community, rather than household, level. This community-farming approach continued once they were displaced to reservations, where collective farming strategies enabled not only survival on marginal lands but also the maintenance of cultural autonomy.<sup>30</sup> This agricultural success posed a competitive threat to settler plains farmers, who were struggling

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<sup>23</sup> Clark, *supra* note 15, at 233.

<sup>24</sup> Michael A. Blaakman, *The Home Frontier: Households, Gender, and National Expansion in the Early Republic*, 39 J. EARLY REPUBLIC 149, 151 (2019).

<sup>25</sup> *Id.*

<sup>26</sup> Indian Removal Act of 1830, Pub. L. No. 21-148, 4 Stat. 411 (repealed 1980).

<sup>27</sup> David Rich Lewis, *Still Native: The Significance of Native Americans in the History of the Twentieth-Century American West*, 24 W. HIST. Q. 203, 207 (1993).

<sup>28</sup> *Id.* at 205–07.

<sup>29</sup> *Id.* at 203.

<sup>30</sup> Zoe Matties, *Unsettling Settler Food Movements: Food Sovereignty and Decolonization in Canada*, 7 CUIZINE: J. CANADIAN FOOD CULTURES, no. 2, Dec. 22, 2016, at 1, [www.erudit.org/en/journals/cuizine/1900-v1-n1-cuizine02881/1038478ar/](http://www.erudit.org/en/journals/cuizine/1900-v1-n1-cuizine02881/1038478ar/); Taber, *supra* note 6.



to eke out livelihoods as yeoman, and an existential threat to settler exceptionalism.<sup>31</sup> In order to neutralize these threats, the U.S. federal government initiated a policy of allotment via the Dawes Act of 1887.<sup>32</sup> Through allotment, the federal government sought to assimilate Native people into larger American culture by dividing up tribal lands into individual parcels owned by individual tribal members.<sup>33</sup> By forcing the conversion of community property into private property, allotment intended to inculcate the Native peoples with Anglo notions of land ownership and land cultivation.<sup>34</sup> But rather than converting Indigenous communities into clusters of prosperous family farms, the result of allotment was further devastation in the form of failing farms, lost land, impoverishment, and social turmoil.<sup>35</sup>

As the forced removal and reorganization of Native communities was underway, the fantasy of white patriarchal autonomy made possible by (newly) vacant western farmland blossomed. As Abraham Lincoln saw it, agricultural property ownership would enable “men, with their families—wives, sons, and daughters—who work for themselves on their farms” to evade the oppressions of the Old World and create, in its place, a new world of independence and freedom.<sup>36</sup> It would also enable the U.S. government to transfer some of the responsibility of defending its claim to the volatile West to private citizens with a personal stake in maintaining access to their land seized from Tribal nations.<sup>37</sup>

These motivations underpinned the Homestead Act of 1862, signed into law by President Lincoln, which granted 160 acres of Western land to U.S. citizens willing to settle on the land and cultivate it.<sup>38</sup> The policy was designed to ensure not only that Western lands would be occupied, and thus secured as part of the nation, but additionally to ensure that they would be occupied by the family farmers of the North, rather than the South’s planters and slaves.<sup>39</sup> The passage of the Homestead Act represented a win for members of the former Free Soil Party, a coalition opposing the westward expansion of slavery that

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<sup>31</sup> Matties, *supra* note 30.

<sup>32</sup> Dawes Act of 1887, Pub. L. No. 49-105, 24 Stat. 388 (1887) (codified at 25 U.S.C. §§ 331–333) (repealed 1934) (also known as the General Allotment Act of 1887).

<sup>33</sup> Ian Michael Smith, *From Subsistence to Dependence: The Legacy of Reclamation and Allotment on Quechan Indian Lands, 1700–1940* (May 2010) (M.A. thesis, University of Montana) (on file with the Maureen and Mike Mansfield Library, University of Montana).

<sup>34</sup> *Id.*

<sup>35</sup> Lewis, *supra* note 27, at 205–06; Matties, *supra* note 30.

<sup>36</sup> Adams, *supra* note 8, at 704 (quoting Abraham Lincoln, Annual Address Before the Wisconsin State Agricultural Society (Sept. 30, 1859), in *SELECTED WRITINGS AND SPEECHES OF ABRAHAM LINCOLN*, N.Y.: HENDRICKS HOUSE, 1980 at 79).

<sup>37</sup> *Id.*

<sup>38</sup> Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392 (1862).

<sup>39</sup> Adams, *supra* note 8, at 704–05.

ultimately merged with the Republican Party prior to Lincoln's election, and which blossomed after the South's secession in the lead-up to the Civil War.<sup>40</sup>

Passage of the Homestead Act in 1862 reaffirmed the role of the family farm, firmly centering real property ownership within the American notion of freedom.<sup>41</sup> Yet, the extent to which the Homestead Act actually supported the development of family farms has been debated.<sup>42</sup> the distribution of land under the Homestead Act was plagued by fraud on the parts of timber, cattle, and mining interests who utilized dummy entrymen (among other strategies) to obtain land under false pretenses.<sup>43</sup> Similar attempts to populate the western territories with yeoman farmers in the late 1700s and early 1800s—when the federal government sold tracts too large for individual settlers to afford—the Homestead Act ultimately enabled speculation companies to claim ownership in land that farmers then had to lease from them.<sup>44</sup>

As a result, only about one-eighth to one-sixth of the Homesteaded lands were actually transferred directly to farmers.<sup>45</sup> Settler farmers who could not obtain land directly from the government had few choices but to purchase from corporations which, along with the railroads, benefitted from direct federal land grants and loans, had begun to exercise monopolistic control over land and resources in the Great Plains, forcing many farmers to enter into considerable debt.<sup>46</sup> Put another way, while the Homestead Act of 1862 ultimately resulted in private ownership of over 268 million acres of public land,<sup>47</sup> it also ensured that indebtedness would be as fundamental a part of the family farm as blood ties.

Equally incomplete is the idea that the family farm is *the* prototypical American form of agriculture. Despite its cultural significance and political utility, household agriculture was far from a universal farming structure even among settler farmers.<sup>48</sup> Rather, the arrangement of agricultural labor that ultimately prevailed in any given region of the United States was intimately related to the nation's varied geography and socio-economic conditions. In the South, plantation agriculture dominated prior to the Civil War, and upon emancipation, estate owners retained control by transitioning to sharecropping arrangements rather than ceding resources and power in a manner that would

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<sup>40</sup> Wayne D. Rasmussen, *The Family Farm in Historical Perspective*, THE CHARLES L. WOOD AGRIC. HIST. LECTURE SERIES 1, 2 (1990).

<sup>41</sup> *Id.*

<sup>42</sup> Max J. Pfeffer, *Social Origins of Three Systems of Farm Production in the United States*, 48 RURAL SOCIO. 540, 555 (1983).

<sup>43</sup> *Id.*, at 555; Richard Edwards, *Changing Perceptions of Homesteading as a Policy of Public Domain Disposal*, 29 GREAT PLAINS Q. 179, 188 (2009).

<sup>44</sup> Rasmussen, *supra* note 40, at 2.

<sup>45</sup> Pfeffer, *supra* note 42, at 555.

<sup>46</sup> *Id.* at 556; Edwards, *supra* note 43, at 185.

<sup>47</sup> Pfeffer, *supra* note 42, at 556.

<sup>48</sup> Carpenter, *supra* note 5, at 10.

have enabled a shift to independent family farming for either freedmen or the white poor.<sup>49</sup> In California, corporate farms reliant upon wage labor predominated, facilitated by legalized discrimination that kept immigrant workers from East Asia and Mexico out of urban employment and dependent upon agricultural jobs with suppressed wages and harsh labor conditions.<sup>50</sup>

But in the Great Plains, corporate agriculture initially failed to gain a foothold, and the family farm prevailed.<sup>51</sup> The availability of land for settlement, courtesy of the Indian Removal and Homestead Acts, and the availability for urban work, together disincentivized white people from consenting to wage labor in the agricultural sector.<sup>52</sup> Additionally, Plains agriculture was enormously high-risk due to the intensity and variability of weather events, making it challenging for farms to justify the high cost of maintaining waged workers.<sup>53</sup> As such, despite experiments in large-scale wage-based wheat production (i.e., the bonanza farms of the late 1800s), an agricultural wage labor force was prohibitively challenging to maintain within the social and economic context of the Great Plains.

Family farms became the dominant form of Midwestern agriculture. In the Midwest, family farms outcompeted corporate farms because of their flexible, internal labor supply and ability to self-exploit that labor when needed and withdraw it when not, as well as their lack of a requirement for a surplus product beyond household needs.<sup>54</sup> And so family farms became the dominant form of Midwestern agriculture not because they were profitable, but because they did not need to be profitable in order to survive into the next growing season.

### C. *Twentieth Century Turmoil*

Yet, while western leaders of the 19th century celebrated the family farms of the Great Plains as evidence of manifest destiny, their rhetoric of righteous independence did little to support family farmers themselves. By the early 20th century, rural America was in decline—so much so that a group of concerned progressives organized themselves into the Country Life Movement, which advocated for improved living conditions and the preservation of a “traditional” rural lifestyle in hopes of stemming the tide of country residents

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<sup>49</sup> Pfeffer, *supra* note 42, at 550; Carpenter, *supra* note 5.

<sup>50</sup> Pfeffer, *supra* note 42, at 543; Carpenter, *supra* note 5.

<sup>51</sup> Pfeffer, *supra* note 42, at 555.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 557.

<sup>54</sup> Harriet Friedmann, *World Market, State, and Family Farm: Social Bases of Household Production in the Era of Wage Labor*, 20 COMPAR. STUD. SOC'Y & HIST. 545, 559–60 (1978); Brookfield, *supra* note 4, at 114 (drawing upon the foundational work of Russian rural sociologist Alexander Chayanov).

fleeing impoverished farms for work in urban industrial centers.<sup>55</sup> At this point, the term ‘family farm’ was still seldom used to describe the target of these concerns; however, by the time the Dust Bowl and the Great Depression vastly accelerated rural outmigration in the 1930s, “family farm” took a place of greater significance.<sup>56</sup> As the federal government rolled out the New Deal, the family farm became the conceptual linchpin of rural programming, from crop subsidies to 4-H youth sex-education classes promoting heterosexual marriage to the USDA’s championing of the patriarchal nuclear family as the solution to declining rural birth rates.<sup>57</sup> It was no longer just the farm that federal agricultural agencies were concerned with, but increasingly, the family.

This concern for families—specifically, white heterosexual landowning families that overcame hardship through hard work, entrepreneurialism, and perseverance—became a cultural and political touchstone in the years after World War II.<sup>58</sup> Following the triumph over fascism, socialism now loomed on the horizon, with the U.S.S.R. emerging as the preeminent threat to American global power. As the Cold War escalated and efforts to draw lines between “us” and “them” became increasingly severe, the “traditional American family” (intimately connected to notions of private property, whether located in suburbia or on the farm) was added to the arsenal of virtues meant to protect against the new, collectivist world order that the U.S.S.R. threatened to bring about.<sup>59</sup> By the mid-1950s, the term “family farm” held a deep meaning in the American psyche—not so much as a legal definition related to land ownership or labor relations, but as the “very embodiment of *tradition*—a bucolic realm shielded from the onslaught of modern technology.”<sup>60</sup>

Although this notion of the traditional family farm was somewhat fabricated, the mid-century technological explosion and accompanying reorganization of agrifood sector that it was imagined to shield against was real and acutely felt by Great Plains farmers. By the mid-1950s, large-scale corporations—grain-traders, food processors, slaughterhouses, meatpackers, supermarket chains, and restaurant chains—had supplanted farmers as the focal point of American agriculture.<sup>61</sup> Through vertical integration and corporate consolidation, this massive shift in the locus of food systems power effectively

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<sup>55</sup> Rasmussen, *supra* note 40, at 5; Shane Hamilton, *Agribusiness, the Family Farm, and the Politics of Technological Determinism in the Post-World War II United States*, 55 *TECH. & CULTURE* 560, 568 (2014).

<sup>56</sup> Hamilton, *supra* note 55, at 570.

<sup>57</sup> Rasmussen, *supra* note 40, at 11; Isaac Sohn Leslie, Jaclyn Wypler & Michael Mayerfield Bell, *Relational Agriculture: Gender, Sexuality, and Sustainability in U.S. Farming*, 32 *SOC’Y & NAT. RES.* 853, 855 (2019).

<sup>58</sup> Calo, *supra* note 47, at 14; Hamilton, *supra* note 55, at 571.

<sup>59</sup> Hamilton, *supra* note 55, at 571.

<sup>60</sup> *Id.* at 573.

<sup>61</sup> *Id.* at 580.

restructured the agricultural world, and with it, the concept of food, away from “a physiological necessity that has important cultural and social meanings” and subsistence value to “a commodity to be produced as cheaply as possible and sold to the highest bidder.”<sup>62</sup>

American agricultural operations became increasingly beholden to international markets and monetary policy.<sup>63</sup> A domestic grain surplus in the 1950s and 1960s, caused by innovations in agricultural machinery and chemicals, attracted foreign buyers who entered contracts with U.S. producers. These foreign buyers ultimately drained the U.S. agricultural surplus, causing prices for wheat and corn to skyrocket by the mid-1970s. Responding to market incentives, U.S. farmers increased production even further by purchasing additional acreage and sometimes taking on significant debt in order to do so.<sup>64</sup> Domestic U.S. tax, agricultural, and economic policy encouraged agricultural investment, too, contributing to an agricultural ‘boom’ buoyed by the belief that America’s family farmers would “feed the world” and get rich doing so.<sup>65</sup>

But where there’s a boom, there’s usually a bust. The massive increase in production that initially led to increased farm prosperity also resulted in significant inflation, which was made worse by the 1970s oil crisis. In response, the Federal Reserve implemented contractionary monetary policy, raising interest rates dramatically in the late 1970s. These high interest rates increased the cost of farm operations and discouraged investment in land, sending the agricultural sector into a nosedive that was exacerbated by reduced foreign demand for U.S. agricultural exports.<sup>66</sup> The 1980s farm crisis sent approximately one-third of American farmers into debt distress as the assets that farmers had used to collateralize their loans (most notably, land) depreciated with breathtaking speed.<sup>67</sup>

The private property regime around which the family farm ideal had been organized collapsed on itself. In response, the national narrative engine rallied around family farmers. Hollywood made movies depicting epic struggles between steadfast farm families and greedy corporations; Willie Nelson launched Farm Aid, organizing musicians around the plight of farmers under duress; and the Reagan administration leveraged the national zeitgeist to promote conservative values as the only means to preserve—or rather, return to—

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<sup>62</sup> Mary K. Hendrickson, Philip H. Howard & Douglas H. Constance, *Power, Food and Agriculture: Implications for Farmers, Consumers and Communities* 3 (Univ. Mo. Coll. Agric., Food & Nat. Res., Div. Applied Soc. Sci. Working Paper, 2017) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3066005](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3066005) (choose “Open PDF in Browser”).

<sup>63</sup> Barry J. Barnett, *The U.S. Farm Financial Crisis of the 1980s*, 74 AGRIC. HIST. 366, 367–68 (2000).

<sup>64</sup> *Id.* at 370–72.

<sup>65</sup> *Id.* at 370.

<sup>66</sup> GEORGE HANC, HISTORY OF THE EIGHTIES: LESSONS FOR THE FUTURE 24 (1997).

<sup>67</sup> Barnett, *supra* note 63, at 375–76.

America's true pastoral self.<sup>68</sup> But that past version of rural America—whether rooted in reality or myth—proved difficult to reclaim.

#### *D. The Family Farm Today*

In the decades following the 1980s farm crisis, the nature of the family farm has fundamentally changed. Words like “disappearing,” “shrinking,” “vanishing,” “lost,” “disastrous,” “abandoned,” “despair,” and “threat” riddle contemporary discourse around family farms,<sup>69</sup> speaking to a “gnawing subtext of anxiety” over the fate of this fabled institution.<sup>70</sup> Yet, as we noted at the beginning of this Essay, 98% of U.S. farms today meet the USDA's definition of ‘family farm.’<sup>71</sup> To understand why there is such intense concern over the disappearance of family farms, when they still account for nearly all American farms, it is necessary to recall that farms, in general, are shrinking in numbers. In 2020, direct on-farm employment accounted for only 1.4% of jobs in the United States,<sup>72</sup> and in 2021 there remained only approximately 2.05 million farms in the United States.<sup>73</sup> That is down from peaks of nearly 50% of the population in 1870 and 6.8 million farms in 1935, respectively.<sup>74</sup> So while family farms, as defined by the USDA, remain a vast majority of U.S. farms, those farms have become fewer and fewer over the past century, either shuttered or subsumed into larger operations, and America is a far less agrarian society than it once was.

Today, fewer than 40% of the approximately two million U.S. farms report farming as the primary occupation of the farm operator. The majority of

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<sup>68</sup> Adams, *supra* note 8, at 706.

<sup>69</sup> Bunce, *supra* note 8, at 236; Fred Kirschenmann, G. W. Stevenson, Frederick Buttel & Thomas A. Lyson et al., *Why Worry About the Agriculture of the Middle?*, FOOD & THE MID-LEVEL FARM: RENEWING AN AGRICULTURE OF THE MIDDLE 3, (Thomas A. Lyson, G.W. Stevenson & Rick Welsh eds., MIT Press 2008); Melanie J. Wender, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment*, 22 VILL. ENV'T L.J. 141, 144 (2011); Bonnie Braun, *Farm Family Stressors: Private Problems, Public Issue*, 4 NCFR POL'Y BRIEF 1, 1–2. (2019).

<sup>70</sup> Adams, *supra* note 8, at 709.

<sup>71</sup> Whitt, Tudd & MacDund, *supra* note 9, at 4.

<sup>72</sup> *Ag and Food Sectors and the Economy*, USDA ECON. RES. SERV., <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/> (last updated Feb. 24, 2022); see also *2017 Census of Agriculture Part 51, Geographic Area Series*, U.S. DEP'T AGRIC. (Apr. 2019), [https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf). (The USDA is expected to release the 2022 Census of Agriculture in the coming months).

<sup>73</sup> *Farming and Farm Income*, USDA ECON. RES. SERV., <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/> (last visited Sept. 1, 2022).

<sup>74</sup> Patricia A. Daly, *Agricultural Employment: Has the Decline Ended?*, 104 MONTHLY LAB. REV. 11, 12 (1981); see also *Farming and Farm Income*, *supra* note 73.

small family farms (defined by the USDA as those with less than \$350,000 in gross cash farm income annually) have an operating profit margin in “the high-risk red zone” of less than 10%.<sup>75</sup> In 2020, the median farm income of farmers who listed farming as their primary occupation was a loss at -\$1,198.<sup>76</sup> Although some farmers may strategically seek to take a loss in order to limit tax liability, the fact remains that many farmers operate on very thin margins due primarily to market forces.

The “pluriactivity” necessitated by this cocktail of high risk and low farm income—meaning, the taking of off-farm work in order to support the survival of the farm—is a far cry from the robust self-sufficiency of the yeoman ideal.<sup>77</sup> And rather than the independence promised by agrarian ideology, farmers now find themselves perhaps more constrained than ever in their ability to make autonomous choices regarding the management of their operations, with implications not only for the resilience of individual farms, but additionally for our shared natural resources, climate, and food supply.<sup>78</sup> Consumers experience the fall-out of these constraints firsthand: food access, whether oriented around ethical eating parameters or simply affordable nutrition, is increasingly inadequate in the United States.<sup>79</sup> As power continues to accrue to the largest and most-integrated corporate food interests, everyone else feels the squeeze.

### III. IS WHAT WE ARE “LOSING” WORTH “SAVING”?

General decline in farm numbers likely explains some portion of public concern for the fate of family farms. But as we demonstrated in the previous section, the cultural conception of the American family farm is much richer than the criteria set forth by the USDA and has imaginative roots stretching back to the founding of the nation. When people express concern that the family farm is disappearing, unless they are agricultural economists, it is likely that they are referring to this imagined family farm—something that the USDA does not define and, therefore, cannot count.

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<sup>75</sup> Whitt, Tudd & MacDund, *supra* note 9, at 8.

<sup>76</sup> Whitt, Tudd & MacDund, *supra* note 9, at 3; *Farm Household Income and Characteristics*, USDA ECON. RES. SERV., <https://www.ers.usda.gov/data-products/farm-household-income-and-characteristics/farm-household-income-and-characteristics/#Farm%20Household%20Forecast> (last visited Sept. 12, 2022) (select data set: “Principal farm operator household finances, by ERS farm typology, 2020”).

<sup>77</sup> Brookfield, *supra* note 4, at 116–17.

<sup>78</sup> Hendrickson, Howard & Constance, *supra* note 62, at 10.

<sup>79</sup> Mary Story, Karen M. Kaphingst, Ramona Robinson-O’Brien & Karen Glanz, *Creating Healthy Food and Eating Environments: Policy and Environmental Approaches*, 29 ANN. REV. PUB. HEALTH 253, 261 (2008); Katie M. Abrams, Courtney A. Myers & Tracy A. Irani, *Naturally Confused: Consumers’ Perceptions of All-Natural and Organic Pork Products*, 27 AGRIC. & HUM. VALUES 365, 369–71 (2010).

For some, the imagined family farm may represent the rugged individualism and “bootstrapping” tenacity of the iconic Ingalls family of the *Little House* books—the first of which was published in 1932 and remained, along with the series’ second book, one of the most commonly required texts in fourth grade social science classrooms in the United States through the end of the 20<sup>th</sup> century.<sup>80</sup> For others, the family farm may represent America’s moral compass: the ability to see through the smoke and mirrors of industrial agriculture’s “reductionist science and determinist economics”<sup>81</sup> and to live, instead, committed to good stewardship—as articulated by poet, novelist, and essayist Wendell Berry (n.d.), who eulogizes the era of rural virtue, simplicity, and self-reliance in which he grew up on a family farm in Kentucky.<sup>82</sup> Still for others, the disappearing family farm has most to do with environmental sustainability and investment in the community. For example, *Meas et al.* found that consumers associate “local” and “organic” practices so closely with small family farms that the three function as interchangeable variables when it comes to consumer preference—although as in practice they can be entirely unrelated.<sup>83</sup>

These permutations of “the family farm that is at risk” marshal an uncomplicated concern for a drama where there are clear heroes and villains: the scrappy, wholesome family farm versus the impersonal voracity of industrial agriculture. But this clarity relies on a certain selectivity when it comes to remembering what the family farm has been and meant over the United States’ history. It also relies on the false assumption that family farms and industrial agriculture are mutually exclusive categories.

The glorification of the family farm as something that is wholly beneficial, an ideal to be strived for under all circumstances, evades the ways in which the concept’s construction is inherently exclusive, privileging those with comparatively greater privilege to begin with over farmers who must additionally contend with other vectors of marginalization. The most overt example of the family farm’s exploitation in support of a dogmatically idealized way of life is the system of allotment imposed upon indigenous peoples living on reservations. As noted in the previous section, allotment was an explicitly assimilationist policy, designed to force indigenous people to give up traditional ways and “become” (or at least behave) white; much as Indian boarding schools of this era

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<sup>80</sup> Julie Tharp & Jeff Kleiman, *Little House on the Prairie and the Myth of Self-Reliance*, 11 *TRANSFORMATIONS: J. INCLUSIVE SCHOLARSHIP & PEDAGOGY* 55, 56 (2000). In the era of subsidies and contract farming, the Ingalls’ frontier independence (exaggerated by Wilder’s daughter, Rose Wilder Lane, who edited the books to better reflect her own Libertarian politics) might be the thing at risk of disappearing. *Id.* at 58–59.

<sup>81</sup> Wendell Berry, *Renewing Husbandry*, *ORION MAG.*, <https://orionmagazine.org/article/renewing-husbandry/> (last visited Sept. 1, 2022).

<sup>82</sup> *Id.*

<sup>83</sup> Meas et al., *supra* note 6, at 1061.



were founded, in words attributed to Carlisle Indian School founder Captain Richard Henry Pratt, to “kill the Indian. . . and save the man.”<sup>84</sup>

The relationship between African American farmers and the family farm is also charged. When Union General William T. Sherman met with African American leaders in 1865, they explained to him that in order to secure their freedom, it would be necessary for freed slaves to own land.<sup>85</sup> As a result, Sherman issued Field Order #15 stating that freedmen would receive access to land parcels won from the southern coastal states, with the option to purchase after leasing and working the land for three years.<sup>86</sup> News of this order spread rapidly, transforming into a promise of “forty acres and a mule” that drew freed slaves to occupy nearly 400,000 acres of South Carolina, Georgia, and Florida coast in the hopes of gaining title.<sup>87</sup> For a brief moment, it looked like Congress would support Sherman’s move to welcome African American agriculturalists into the institution of the American family farm, authorizing the Freedmen’s Bureau to make confiscated land available for sale.<sup>88</sup> President Andrew Johnson, however, squashed that hope, reversing Sherman’s order and directing that the land be restored to its former owners; of the tens of thousands of freedmen who had taken up farming in reliance on Sherman’s promise, only 2,000 managed to retain their land.<sup>89</sup>

This reversal represented the first of a series of broken promises and abuses suffered by African American farmers beginning Reconstruction and lasting into the modern day. Following the Civil War, Black Codes were implemented throughout the South that restricted how freed people could build their families (by way of anti-miscegenation laws), access land (by restricting property rights), and control their own labor (through vagrancy laws, which could be interpreted broadly to criminalize unemployment and forms of self-employment that were not recognizable to whites)—all key ingredients of the family farm.<sup>90</sup> Many white people simply refused to sell land to black people.<sup>91</sup>

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<sup>84</sup> See, e.g., Gene Demby, *The Ugly, Fascinating History of the Word ‘Racism’*, NPR (Jan. 6, 2014), <https://www.npr.org/sections/codeswitch/2014/01/05/260006815/the-ugly-fascinating-history-of-the-word-racism>.

<sup>85</sup> Roy W. Copeland, *In the Beginning: Origins of African American Real Property Ownership in the United States*, 44 J. BLACK STUD. 646, 653 (2013).

<sup>86</sup> Waymon R. Hinson, *Land Gains, Land Losses: The Odyssey of African Americans Since Reconstruction*, 77 AM. J. ECON. & SOCIO. 893, 902 (2018).

<sup>87</sup> Copeland, *supra* note 85, at 655–56.

<sup>88</sup> *Id.*; see also Jess Gilbert, Gwen Sharp & M. Sindy Felin, *The Decline (and Revival?) of Black Farmers and Rural Landowners: A Review of the Research Literature* 14 (Land Tenure Ctr., Univ. Wis.-Madison, Working Paper No. 44, 2001); Reynolds, *supra* note 49.

<sup>89</sup> Copeland, *supra* note 85, at 653.

<sup>90</sup> Hinson, *supra* note 86, at 904–07; Stephen Middleton, *Repressive Legislation: Slave Codes, Northern Black Laws, and Southern Black Codes*, OXFORD RSCH. ENCYCLOPEDIA AM. HIST., Feb. 2020, at 12–13.

<sup>91</sup> Copeland, *supra* note 85, at 649; Hinson, *supra* note 86, at 910.

Most states did little to create access to credit for freed slaves, making it nearly impossible for African American farmers to purchase land even in the rare circumstances in which it was available to them.<sup>92</sup> Lynching was used as a scare tactic to further discourage African American land ownership.

These practices, both *de jure* and *de facto*, created significant barriers for African American farmers within the family farm model. This is evident in the 1902 agricultural census, which found that approximately 30% of white farmers were tenant farmers, whereas nearly 75% of African American farmers operated under tenant contracts at that time.<sup>93</sup> African American farm ownership peaked at 15 million acres in 1920.<sup>94</sup> During the remainder of the 1900s, however, discriminatory practices within the USDA, combined with predatory inheritance laws, resulted in widespread dispossession and foreclosure of African American farms, reducing the number of farm acres owned by African Americans to approximately two million by the end of the 20th century.<sup>95</sup> The 1999 *Pigford v. Glickman* class-action lawsuit finally achieved compensation for African American farmers who had incurred losses as a result of decades of USDA discrimination.<sup>96</sup>

In the face of these challenges, African American farmers devised alternative structures that enabled the pooling of resources and efforts in order to persevere under the harsh conditions of structural and overt racism.<sup>97</sup> Farmer cooperatives such as those belonging to the Federation of Southern Cooperatives provided African American farmers legal, educational, and financial assistance, and enabled them to exercise leverage that they could not have had as individual households.<sup>98</sup> Of particular importance was legal assistance in the preparation of wills, to prevent partition sales in the event of heirs' property disputes.<sup>99</sup> The fact that farming cooperatives are excluded from the USDA definition of "family farm" because they are not organized at the level of the anglicized nuclear family is itself a demonstration of racism. Farming cooperatives are the product of ingenuity and persistence in the face of barriers. When these qualities are displayed by white farmers, they are celebrated (and financially subsidized) as exemplars of the American spirit, but when they are demonstrated by non-white farmers, they are discredited or undermined.

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<sup>92</sup> Hinson, *supra* note 86, at 918.

<sup>93</sup> *Id.* at 905.

<sup>94</sup> Jess Gilbert, Gwen Sharp & M. Sindy Felin, *supra* note 88, at 2.

<sup>95</sup> *Id.* at 2; Hinson, *supra* note 86, at 918.

<sup>96</sup> Copeland, *supra* note 85, at 656–57; *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008).

<sup>97</sup> See Tabler, *supra* note 6; see also Reynolds, *supra* note 49.

<sup>98</sup> Jess Gilbert, Gwen Sharp & M. Sindy Felin, *supra* note 88, at 15.

<sup>99</sup> *Id.*

More generally, the family farm concept, as organized around the white patriarchal nuclear family, has not always made room for other kinds of families. Peoples whose families (or modes of family-farm integration) do not reflect this narrow conception of an acceptable American family have historically faced barriers in accessing programs to support family farms.

“Gender and sexual dynamics—shaped by race and class—affect who is considered a farmer, land management decisions, and access to resources like land, subsidies, and knowledge,” *Leslie et al.* write in their study of the intersection of sustainable farming and queer relationality.<sup>100</sup> Historically, queer couples could not legally marry and therefore could not count as a “family” for purposes of the USDA definition of “family farm.” While that barrier has recently been removed, queer families of other forms continue to be excluded, as do some female-headed households.

Some immigrants to the United States structure family farming operations in their traditional manner, extending beyond the nuclear family to include larger kinship networks. For instance, refugee farmers from Southeast Asia, such as Hmong, Iu-Mien, and Lao farmers, traditionally operate their family farms using unpaid, reciprocal labor provided by extended family and clan networks.<sup>101</sup> In California, however, this is illegal. Laws designed to prevent the abuse of laborers on industrial farms, including those owned by families, restrict all unpaid labor to members of the “immediate family” of the principal operator. And in California, “only nuclear family members make up the ‘immediate family.’” Non-nuclear family members cannot participate in labor sharing arrangements, even when they live in the same household as nuclear family members.<sup>102</sup> By conducting family farming in a manner that aligns with their own cultural conceptions of family, but not the American framework, these farmers are at best excluded from governmental agricultural benefits programs and at worst subject to legal enforcement actions. Of course, extended family networks are not immune to exploitation, but their wholesale disallowance as a farming structure fails to differentiate between abusive and consensual workplaces in such a way that undermines the livelihoods of entire ethnic communities.

Another assumption in need of troubling—that family farms and industrial agriculture are separate and opposing forces within the agrifood system—has implications for consumer food system literacy. As demonstrated by consumer preference studies and qualitative research, consumers are prone to associate family farming with notions of sustainability, as well as other values-

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<sup>100</sup> Leslie, Wypler & Bell, *supra* note 57, at 853.

<sup>101</sup> Sowerwine, *supra* note 6, at 579.

<sup>102</sup> *Id.* at 580.

based attributes such as fair labor, smallness, and localness.<sup>103</sup> Jeff Pratt situates these characteristics under the umbrella of “authenticity,” a “self-confirming semantic field” that he accuses the contemporary eater of being enthralled by despite only being able to define in the negative.<sup>104</sup> It is very challenging to define authenticity: what does it mean for a food or farmer or farming practice to “be authentic?” (The question being, authentic *to what?*) It is much easier to define what authenticity is not, and when it comes to food, the relative consensus is that authentic food and farming is *not industrial*.<sup>105</sup> So if the family farm is associated with these characteristics that consumers perceive as authentic, it would follow, then, that the family farm is also *not industrial*.

And yet, because the USDA defines a family farm by ownership and labor practices, the family farm designation has no relation to the kind of agriculture that a farm pursues. Just as Walmart is a family business in that it is majority-owned by a family, so too can large, industrial-style farms be family farms, if they are majority-owned and operated by people who are related by blood or marriage; there is no moral determinism to farming based on structure alone.<sup>106</sup> Family farms have the potential to be as diverse in their “goodness”—whether that be in relation to the environment, livestock, workers, or their broader communities—as, well, families. If we eaters are committed to learning to support “good” farming with our eating choices, then we need to stop asking, “How do I want the people producing my food to be legally and biologically related to one another?” and start asking ourselves, “How do I want the people growing my food to make choices about environmental impact, treatment of animals, labor practices, and regional economies?” The family farm has long operated as a stand-in for these far messier criteria, but it is a poor (and inaccurate) substitution. It is time to wade into the muck.

#### IV. RECLAIMING THE “FAMILY FARM”

Until this point, this Essay has offered a critique of the “family farm,” both as a USDA regulatory definition and as a broader concept in the American experience. We have discussed the ways in which its wholesale embrace obscures histories of inequity within the U.S. agrifood system, some of which persist into the present. But simply because a concept demands critical interrogation does not mean there is nothing of value in it. To the contrary, since

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<sup>103</sup> Jeff Pratt, *Food Values: The Local and the Authentic*, 27 *CRITIQUE OF ANTHROPOLOGY* 285, 288–89 (2007); Cristina Grasseni, *Family Farmers Between Re-Localisation and Co-Production*, 20 *ANTHROPOLOGICAL NOTEBOOKS* 49, 50 (2014); Meas et al., *supra* note 6, at 1061.

<sup>104</sup> Pratt, *supra* note 103, at 293.

<sup>105</sup> *Id.* at 293–97.

<sup>106</sup> C. Clare Hinrichs & Patricia Allen, *Selective Patronage and Social Justice: Local Food Consumer Campaigns in Historical Context*, 21 *J. AGRIC. & ENV'T ETHICS* 329, 348 (2008).

we have asked how the family farm concept causes harm, we find it necessary to also ask if there are any aspects of the family farm—be they real or imagined—that are worth keeping as we look to the future of American agriculture. To do so requires looking through the concept’s gendered, racialized, and heteronormative presentations in order to see whether there are any underlying principles or aspirations that, if excavated and repurposed, might have the potential to generate a more just, sustainable food system. Rooted in and imagining beyond the family farm ideal, we propose three such orientations: (1) fairness, (2) self-determination, and (3) “good” farming.

### A. *Fairness*

The concept of fairness is fundamental to the family farm mythology. Although narrowly conceived in terms of who might participate, fairness is the idea underpinning Jefferson’s vision of an agrarian democracy, imagined as free of the hierarchies and oppressions of the Old World and predicated upon the character of the yeoman farmer: one of the “chosen people of God” who “labor the earth”, and in return, earn the right not only to the steward the fruits of their labor, but to participate fully in the democratic process.<sup>107</sup> Even as the United States has evolved from an agrarian society to a predominantly urban one, this perspective has persisted: a study of U.S. programs aimed at addressing food system inequities found that preserving “family farming” was the main vehicle these programs used to promote fairness.<sup>108</sup> This approach is problematic, however, because the definition of “family farm” captures farms and farmers with privilege and resources as much as it captures those without.<sup>109</sup> Further, the fact that a farm is a “family farm” does not, in itself, disrupt the market relationships that contribute to inequity within the agrifood system.<sup>110</sup>

The concept of fairness can give rise to approaches that make short-term positive change within the current agrifood paradigm while simultaneously paving the way for deeper transformation.<sup>111</sup> As part of that transformative process, it will be necessary to acknowledge the theft of various forms of agricultural capital from America’s Indigenous peoples, African Americans, and certain immigrant groups. One mechanism that has been proposed to this end is

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<sup>107</sup> Bunce, *supra* note 8, at 241.

<sup>108</sup> Danial Jaffee, Jack Kloppenburg & Mario Monroy, *Bringing the “Moral Charge” Home: Fair Trade Within the North and Within the South*, 69 RURAL SOC. 169, 189 (2004).

<sup>109</sup> Hinrichs & Allen, *supra* note 106, at 348.

<sup>110</sup> Jaffee, Kloppenburg & Monroy, *supra* note 108, at 189.

<sup>111</sup> See generally Philip H. Howard & Patricia Allen, *Beyond Organic and Fair Trade? An Analysis of Ecolabel Preferences in the United States*, 75 RURAL SOC. 244 (2010); Jaffee, Kloppenburg & Monroy, *supra* note 108, at 189–91; Andrew Walton, *What is Fair Trade?*, 31 THIRD WORLD Q. 431, 441–43 (2010).

reparations.<sup>112</sup> Early examples of national-level reparations include the Indian Claims Commission, established by Congress in 1946, which ultimately awarded \$1.3 billion, or on average \$1000 per person of Native American ancestry.<sup>113</sup> Of course, this is a far from perfect solution that is itself rooted in settler colonialism and capitalism. Some Tribal Nations, such as the Western Shoshone, have refused to accept compensation for lands that they argue are protected by treaty rights, in spite of federal efforts to force distribution of funds and move forward with land seizures.<sup>114</sup>

With respect to African Americans, Rep. Sheila Jackson Lee (D-TX) introduced a bill in 2019 to study and develop a proposal for reparations to the descendants of enslaved Africans.<sup>115</sup> Sen. Cory Booker (D-NJ) introduced the bill in the Senate, where it has been referred to the Committee on the Judiciary.<sup>116</sup> In 2020, Sen. Booker, joined by co-sponsors Sen. Elizabeth Warren (D-MA) and Sen. Kirsten Gillibrand (D-NY), introduced the Justice for Black Farmers Act; it was reintroduced in 2021.<sup>117</sup> The bill would, among other things, create an Equitable Land Access Service within the USDA in order to purchase farmland on the open market and provide the land in grants to existing and aspiring black farmers. Grassroots advocacy for reparations is also underway, such as the Reparations Map for Black-Indigenous Farmers created by Soul Fire Farm.<sup>118</sup>

A transformative process grounded in fairness also involves addressing contemporary agricultural market inequities by redistributing benefits and burdens within the agrifood chain. Globally, agricultural producers complain of receiving a diminishing share of the final sales price.<sup>119</sup> Vertically-integrated transnational players—processors, distributors, importers, and retailers—use their power to shape both agricultural and commodity markets.<sup>120</sup> Proponents of fair trade advocate for experimenting with strategies to bypass market intermediaries so that farmers can retain a larger share of product value and provide a higher wage to laborers.<sup>121</sup>

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<sup>112</sup> Jessica L. Gilbert & Rebekah A. Williams, *Pathways to Reparations: Land and Healing Through Food Justice*, 13 HUM. GEOGRAPHY 228 (2020).

<sup>113</sup> Erin Blakemore, *The Thorny History of Reparations in the United States*, HIST. (Aug. 29, 2019), <https://www.history.com/news/reparations-slavery-native-americans-japanese-internment>.

<sup>114</sup> Reynolds, *supra* note 49.

<sup>115</sup> Commission to Study and Develop Reparation Proposals for African-Americans Act, H.R. 40, 116th Cong. (2019).

<sup>116</sup> S. 1083, 116th Cong. (2019).

<sup>117</sup> Justice for Black Farmers Act of 2021, S. 4929, 116th Cong. (2020); Justice for Black Farmers Act of 2021, S. 300, 117th Cong. (2021).

<sup>118</sup> See *Reparations Map for Black-Indigenous Farmers*, SOUL FIRE FARM, <https://www.soulfirefarm.org/get-involved/reparations/> (last visited Sept. 12, 2022).

<sup>119</sup> Jaffee, Kloppenburg & Monroy, *supra* note 108, at 187–88.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 188.

But what about consumers? One of the central paradoxes of the American food system as it currently operates is that food is both too cheap (for producers and laborers to be adequately compensated) and too expensive (for many consumers to afford in a nutritious manner). This reality unproductively pits consumers against producers. As an alternative, a redistributive model that targets middlemen and corporate players who disproportionately benefit at the expense of both producers and consumers would cut through this false antagonism in order to work toward a fair price to producers without transferring the financial burden to vulnerable consumers.

A domestic U.S. fair trade program could support this effort by drawing on elements of success in international fair trade programs. It could support: fair pricing parameters and longer contract terms; more (and more favorable) credit opportunities for farmers; living wages and safer working conditions for agrifood chain workers; market pathways that bypass middlemen in order to make prices affordable for consumers; and the development of transparency.<sup>122</sup> Initiatives such as the Domestic Fair Trade Alliance and the Equitable Food Initiative are engaged in implementing such protocols. Data indicates that these criteria do improve the quality and stability of farmers' livelihoods, while also emphasizing the importance of a multi-pronged approach that does not rely solely upon market-based solutions to address market-based injustices.<sup>123</sup>

### B. *Self-Determination*

Together with fairness, notions of independence and self-sufficiency are central to the American ideal of the family farm. That is, the ability of farmers to make their own choices about their lands and their livelihoods in ways that are aligned with their values.<sup>124</sup> Taken to an extreme, this preoccupation with autonomy becomes isolationist—every man for himself, with no responsibility to the collective or the environment. Yet when the scope of concern is expanded to include not only family farmers but also food workers and consumers, these principles—and the fear of their loss—speak to the diminishment of non-corporate agency within the modern U.S. agrifood paradigm.

The ongoing concentration and vertical integration of the agrifood chain have enabled global conglomerates to co-opt decision-making power away from grassroots actors, that is, both producers and consumers.<sup>125</sup> This consolidation

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<sup>122</sup> *Id.* at 174.

<sup>123</sup> Hinrichs & Allen, *supra* note 106, at 346.

<sup>124</sup> Adams, *supra* note 8, at 697; Clark, *supra* note 15, at 227; Blaakman, *supra* note 24, at 151; Taber, *supra* note 6.

<sup>125</sup> Hendrickson, Howard & Constance, *supra* note 62, at 11-12; *see also* Irene Musselli Moretti, *Tracking the Trend Towards Market Concentration: The Case of the Agricultural Input Industry*, U.N. Conf. on Trade and Dev. (Apr. 20, 2006), [https://unctad.org/en/Docs/ditccom200516\\_en.pdf](https://unctad.org/en/Docs/ditccom200516_en.pdf) (describing worldwide trends in agrifood consolidation from 1994–2005).

reduces choice in several ways, by eliminating available options (e.g., which inputs to use and who to buy them from) so that outcomes become increasingly predetermined, and by creating conditions of intense financial pressure that force producers and consumers to contemplate decisions that are out of line with their values.<sup>126</sup> Whether in determining how to deal with animal waste or how to stretch a minimum wage paycheck to cover the nutritional needs of a family, these constrained choices have considerable implications for both society and the planet.

Crucial to creating conditions where community-level self-determination could be possible is the enforcement of antitrust regulations, such as the Packers and Stockyards Act, that could decrease the amount of power wielded by monopolistic agrifood interests.<sup>127</sup> Since the Reagan Era, the U.S. Department of Justice has largely avoided using the antitrust tools at its disposal, in the name of promoting an open agricultural market.<sup>128</sup> Enforcement would entail merger reviews, break-ups of firms, monitoring of and consequences for anti-competitive behavior, and preventing companies from owning multiple segments of the production chain within a sector (e.g., meatpackers owning cattle ranches).<sup>129</sup> Additionally, because the corporations that control the agrifood chain extend beyond national boundaries, coordination of antitrust enforcement among national and international bodies would be critically needed.<sup>130</sup>

Simultaneous to reducing the powers of consolidated interests, there is a need to increase the power of producers, food chain workers, and consumers. For farmers and ranchers, technical support for the development of producer cooperatives should be strengthened, as well as the exercise of collective bargaining rights for producers associations under the Capper Volstead Act.<sup>131</sup> The expansion of collective bargaining rights for farmworkers, too, beyond the few states that have independently adopted them,<sup>132</sup> would mark a significant

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<sup>126</sup> See Harvey S. James & Mary K. Hendrickson, *Perceived Economic Pressures and Farmer Ethics*, 38 AGRIC. ECON. 349, 349 (2008).

<sup>127</sup> Packers and Stockyards Act of 1921, 7 U.S.C.A. § 181 et. seq. (West 2022).

<sup>128</sup> Leah Douglas, *Antitrust in Food and Farming Under President Trump*, 13 J. FOOD L. & POL'Y 78, 79 (2017).

<sup>129</sup> See Doug O'Brien, *Policy Approaches to Address Problems Associated with Consolidation and Vertical Integration in Agriculture*, 9 DRAKE J. AGRIC. L. 33 (2004).

<sup>130</sup> C. Robert Taylor & Diana L. Moss, *The Fertilizer Oligopoly: The Case for Global Antitrust*, AM. ANTITRUST INST. (Oct. 4, 2013), <https://www.antitrustinstitute.org/work-product/the-fertilizer-oligopoly-the-case-for-global-antitrust/>.

<sup>131</sup> O'Brien, *supra* note 129, at 38.

<sup>132</sup> Including Arizona, California, Idaho, Kansas, Louisiana, Maine, Massachusetts, Nebraska, Oregon, and Wisconsin. *Collective Bargaining Rights for Farmworkers*, NAT'L AGRIC. L. CTR. (July 14, 2022), <https://nationalaglawcenter.org/collective-bargaining-rights-for-farmworkers/>; Laura Jordan, *States Granting Collective Bargaining Rights to Agricultural Workers*, CONN. GEN. ASSEMB.: OFF. OF LEGIS. RSCH. (Sept. 13, 2000), <https://www.cga.ct.gov/2000/rpt/2000-R->



increase in the opportunity for self-advocacy afforded to those workers; the same is true for food service workers.

Consumers, including those with limited financial resources, must also have greater access to decision-making power when it comes to food and nutrition. This would entail not only expanding federal food assistance so that recipients receive greater resources to work with when shopping for food, but also reducing restrictions on how benefits can be used so that eaters can exercise greater autonomy regarding their diets.<sup>133</sup> Freedom of choice with respect to food is particularly important in the case of Tribal Nations, because federal food aid has been used as yet another tool of assimilation with deleterious impacts upon metabolic health and cultural continuity of Indigenous communities in North America.<sup>134</sup> Food choice, including a resurgence of traditional diets, supports broader goals of tribal self-determination, self-governance, and environmental and community health, regardless of whether traditional foods are grown on “family” farms or otherwise.<sup>135</sup>

Advocating for these changes will require a shift within the food movement, away from consumer activism and toward collective political organizing.<sup>136</sup> In the early 2000s, the popular arm of the loosely defined “Alternative Food Movements” leaned into a “Vote with Your Fork” theory of change that focuses on individual economic actors.<sup>137</sup> The Vote with Your Fork approach has more recently been characterized as limiting, because it locates all of a person’s power within their consumer capacity, which is automatically constrained by financial resources, and also forces people to choose between

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0894.htm#:~:text=Ten%20states%20statutorily%20allow%20agricultural,%2C%20Oregon%2C%20and%20Wisconsin).

<sup>133</sup> Steven Carlson, Joseph Llobrera & Brynne Keith-Jennings, *More Adequate SNAP Benefits Would Help Millions of Participants Better Afford Food*, CTR. ON BUDGET & POL’Y PRIORITIES, (July 15, 2021), <https://www.cbpp.org/research/food-assistance/more-adequate-snap-benefits-would-help-millions-of-participants-better>.

<sup>134</sup> Charlotte Coté, “Indigenizing” Food Sovereignty. *Revitalizing Indigenous Food Practices and Ecological Knowledges in Canada and the United States*, 5 HUMANS. 10, (2016).

<sup>135</sup> *Id.*

<sup>136</sup> Alberto Alonso-Fradejas, Saturnino M. Borrás Jr., Todd Holmes, Eric Holt-Giminez et al., *Food Sovereignty: Convergence and Contradictions, Conditions and Challenges*, 36 THIRD WORLD Q. 431, 432–33 (2015).

<sup>137</sup> See Liz Grauerholz & Nicole Owens, *Alternative Food Movements*, 1 INT’L ENCYCLOPEDIA OF THE SOC. & BEHAV. SCIS. 566, 566 (2015), [https://www.researchgate.net/publication/303960152\\_Alternative\\_Food\\_Movements](https://www.researchgate.net/publication/303960152_Alternative_Food_Movements) (defining alternative food movements as “[n]ew social movements surrounding food systems, especially the production of food products and their consumption. . . These movements emerged primarily as a response to a food production system that has become increasingly industrialized, standardized, and impersonal since the mid-twentieth century.”); see also *Voting With Your Fork*, SMITHSONIAN, <https://americanhistory.si.edu/food/resetting-table/voting-your-fork> (last visited Sept. 12, 2022) (describing the history of the Vote with your Fork movement); Michael Pollan, *Voting With Your Fork*, N.Y. TIMES: ON THE TABLE BLOG (May 7, 2006), <https://michaelpollan.com/articles-archive/voting-with-your-fork/>.

available options when the desired choice may not yet exist.<sup>138</sup> Collective political action, in contrast, affords a much greater opportunity for influencing policy that can generate new choices and redistribute decision-making power to the grassroots. International, indigenous-led movements for food sovereignty offer significant guidance for this type of political food systems organizing, with self-determination as a central priority.<sup>139</sup>

### C. “Good” Farming

The family farm ideal hinges upon the character of the non-specific “good farmer.” Rather than indicating any particular agricultural practices, his “goodness” is rooted in the qualities of his personhood (hard-working, upstanding, Christian, strong, paternal, etc.) and his relationship to a nostalgic brand of American masculinity. This brand of “goodness” is not particularly helpful when attempting to enact transformative change within the food system. But what if, rather than discarding the concept completely, we took the opportunity to demand more of it?

Many non-farmers already associate the family farm with specific types of agricultural practices that they believe to be desirable—or “good.”<sup>140</sup> As we have demonstrated, these associations are not reliable: the fact that a farm is operated by a family does not constrain the types of agricultural practices that the family might choose to employ. The problem, however, is not that consumers desire a better food and farming system, but rather that many have hitched their wagon to the wrong horse thinking it will get them where they want to go, instead of considering and specifically advocating for the practices and outcomes that they believe to be beneficial.

The opportunity exists, then, to get specific about what we food system participants want, and shift toward advocating for those things in a manner that is decoupled from the type of farm (or distributor, or retailer) that is delivering them. These might include the use of agroecological principles in order to enhance environmental sustainability and the regenerative capacity of agriculture, the humane treatment of food and working animals, embeddedness

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<sup>138</sup> J. M. Dieterle, *Agency and Autonomy in Food Choice: Can We Really Vote with Our Forks?*, 35 J. AGRIC. ENV'T. ETHICS 3–5 (2022), [https://www.researchgate.net/publication/358787921\\_Agency\\_and\\_Autonomy\\_in\\_Food\\_Choice\\_Can\\_We\\_Really\\_Vote\\_with\\_Our\\_Forks](https://www.researchgate.net/publication/358787921_Agency_and_Autonomy_in_Food_Choice_Can_We_Really_Vote_with_Our_Forks).

<sup>139</sup> Eric Holt Giménez & Annie Shattuck, *Food Crises, Food Regimes and Food Movements: Rumblings of Reform or Tides of Transformation?*, 38 J. PEASANT STUD. 109, 129–30 (2011); Alonso-Fradejas et al., *supra* note 136, at 432–33; Hendrickson, Howard & Constance, *supra* note 62.

<sup>140</sup> Pratt, *supra* note 103, at 61; Grasseni, *supra* note 103, at 50; Hamilton, *supra* note 55, at 582; Meas et al., *supra* note 6, at 1061; Michael Carolan, *Ethical Eating as Experienced by Consumers and Producers: When Good Food Meets Good Farmers*, J. CONSUMER CULTURE, Jan. 2020, at 4–5.

within local and regional economies, land-based reparations, making way for Indigenous communities to tend to traditional foodways, and the provision of affordable and culturally appropriate nutrition—among other possibilities, both more granular and more visionary.

## V. CONCLUSIONS

America's relationship with the family farm is long and (quite literally) storied. At turns, the family farm has carried the parable of agrarian democracy, manifest destiny, perseverance in the face of corporate might, and a way of life at risk of loss. It has also carried other stories, less frequently told: of land theft, forced assimilation, dreams dashed by discrimination and violence, and the more subtle mechanisms of othering that keep some people outside of America's sense of itself. This Essay contends that it matters not only how the family farm has functioned over the last two and a half centuries, but additionally, what it has meant—and what it continues to mean as we face urgent social and environmental pressure to transform the ways in which we produce, process, distribute, market, and access food.

We believe that preservation of the family farm is inadequate to the task of food system transformation, because even at the institution's best and fullest expression, its liberatory potential has always been constrained by gender, race, and wealth. Rather than continuing to emphasize the family farm's particular configuration of kinship, labor, and property, we find it more generative to explore and experiment with aspects of the family farm ideal that offer broader potential for redistribution of power within the food system, across scales, forms, and sectors. We propose three concepts as starting points. Fairness—the distribution of benefits along the food chain to ensure adequate compensation and access—targets inequitable market arrangements within the existing agrifood paradigm. Self-determination—the ability for communities to make their own decisions about the way they produce, distribute, access, and consume food—addresses the power imbalances that result in constrained choice for actors along the agrifood chain. Finally, “good” farming—the specific practices that might result in a more equitable, healthier food system—asks food system participants to consider the details of what a “better” food system would look like and the steps required to achieve that vision.

Ultimately, we offer this critique of the American family farm ideal not because we believe the household form of agriculture to be inherently negative, but rather because America's singular cultural focus on the family farm as the answer to our agrifood woes discourages the consideration of other possibilities that more directly challenge the social and environmental abuses of our food system. In order to build towards greater equity and resilience within the realm of food and agriculture, it is necessary to engage multiple strategies simultaneously at every scale and within every agrifood sector. The family farm may be one piece of that puzzle, but we cannot allow our imaginations to stop there.