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## Trading Acres

**ABSTRACT.** Farms are places where people live their lives, sustain their families, and produce food and fiber for the wider community. Today, however, farms are becoming assets swept up into global financial channels – converting from repositories of agrarian ideals into paper playthings for the very rich. This transformation of farmland reflects broader patterns of financialization occurring across multiple elements of daily life and compounds wider crises of concentration and industrialization in agriculture. But as an active land grab unfolds across rural America, farmland’s recent capture by absentee investors is especially concerning, threatening rural livelihoods, agricultural and food-system resilience, economic and spatial justice, and – in our estimation – democracy itself.

In this Article, we argue that Wall Street’s arrival at rural America’s gate is not merely a market trend but rather the product of deep social choices governing the accumulation of investor wealth: property, corporate, and securities law. We explore the ways in which these definitional features of the American legal system – from the primacy of market logics to a range of biases that skew spatial, temporal, and social relations – create the conditions for the profound transformation now underway: the process by which farmland – a basic and essential rural resource – is being integrated into the modern capital economy.

Today’s rural land grab is meeting little resistance. But historically, investor-owned farmland was seen as a deep and politically motivating threat to rural life. We analyze past attempts to rein in the financialization of farmland and argue that many failed because modest doctrinal reforms provide no match for the deeper legal structures privileging profit-driven investment, even in land. Sophisticated financial actors easily maneuver to exploit definitional loopholes and other opportunities for evasion, resulting in what we frame as a pattern of “playing shell games with finance.” After exploring past reforms, we turn to modern obstacles to change and conclude that, despite these ongoing challenges, opportunities still exist to address the harms that follow from financialized farmland ownership.

Such reforms, however, require legal and policy frameworks that create more robust systems of democratic land governance, rural community resilience, and sustainable food production. We end with possible interventions aimed at building this more equitable and sustainable future, emphasizing movement work that democratizes rural land relations and values the deeply rooted knowledge and experience of the people who live in and care about the countryside.

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“All bread must be broken  
so it can be shared. Together  
we eat this earth.”

— Margaret Atwood<sup>1</sup>

## INTRODUCTION

In a recent campaign advertisement, Congressman Mike Flood, a Nebraska member of the U.S. House of Representatives, stands in a just-harvested corn-field, a green tractor and blue sky behind him, and draws a firearm from the holster clipped to his jeans. Above him floats a red spy balloon, emblazoned with the Chinese flag. Turning to shoot the balloon, Flood declares: “I’m fighting to . . . stop China from buying Nebraska farmland.”<sup>2</sup>

Approximately twenty states already limit foreign land ownership in some form, and a “flurry of bills” in state legislatures now seek to expand these bans by “[preventing] foreign ownership of agricultural land.”<sup>3</sup> Reflecting a rare bipartisan consensus, both Senator Elizabeth Warren and former Vice President Mike Pence have called to restrict foreign involvement in United States agriculture.<sup>4</sup> And more recently, the second Trump Administration announced its National Farm Security Action Plan, with protection of American farmland listed as a top priority (but purchases by foreign countries or adversaries identified as the only threat).<sup>5</sup>

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1. MARGARET ATWOOD, *All Bread*, in TWO-HEADED POEMS 108, 109 (1978).
2. Cami Mondeaux, *House Republican Releasing New Ad Featuring Chinese Spy Balloon in High-Stakes Nebraska*, WASH. EXAM'R (Oct. 15, 2024, 5:19 PM), <https://www.washingtonexaminer.com/news/campaigns/congressional/3190194/house-republican-new-ad-featuring-chinese-spy-balloon-nebraska> [https://perma.cc/ZGU3-EPFS].
3. Eva Tesfaye, *U.S. Lawmakers Push Bills to Restrict Foreign Ownership of Farmland*, NAT'L PUB. RADIO (May 30, 2023, 4:21 PM ET), <https://www.npr.org/2023/05/30/1178919301/foreign-land-ownership> [https://perma.cc/FCC5-BHTZ].
4. See, e.g., Team Warren, *Leveling the Playing Field for America's Family Farmers*, MEDIUM (Mar. 27, 2019), <https://medium.com/@teamwarren/leveling-the-playing-field-for-america-s-family-farmers-823d1994f067> [https://perma.cc/Q74H-RZL8] (explaining Elizabeth Warren's position during her 2020 U.S. presidential campaign); Tyler Cowen, *Warren Steals a Page from Trump*, BLOOMBERG (Mar. 29, 2019, 7:30 AM EDT), <https://www.bloomberg.com/view/articles/2019-03-29/elizabeth-warren-s-agriculture-policy-steals-a-page-from-trump> [https://perma.cc/VH7L-VUX7]; Ryan McCrimmon, *China Is Buying Up American Farms. Washington Wants to Crack Down*, POLITICO (July 19, 2021, 4:30 AM EDT), <https://www.politico.com/news/2021/07/19/china-buying-us-farms-foreign-purchase-499893> [https://perma.cc/4QHY-AKF6] (noting Mike Pence's views).
5. See *Farm Security Is National Security*, U.S. DEP'T OF AGRIC. (2025), <https://www.usda.gov/sites/default/files/documents/farm-security-nat-sec.pdf> [https://perma.cc/DS62-G722].

Although dramatic shifts in farmland ownership are indeed occurring across rural America, foreign investment is only a very tiny fraction of what is, instead, a much broader domestic land grab arriving at rural America's proverbial gate. Today's primary farmland buyers are private-equity funds, public and private real-estate investment trusts (REITs), pension funds, university endowments, and high-net-worth individuals.<sup>6</sup> The presence of foreign actors—who often lease, not own, land<sup>7</sup>—pales in comparison to this much broader *financialized* takeover of farmland ownership.<sup>8</sup> Investor interest in U.S. farmland has spawned an array of “shiny new investment vehicles” designed to “accommodate and encourage investors’ newfound passion for soil,” along with a new financial ecosystem of agricultural asset managers and financial sponsors who have “popped up like mushrooms on a giant log.”<sup>9</sup>

This increasingly financialized landscape is a dramatic departure from the traditionally bucolic vision of rural America anchored by smallholder farmers.<sup>10</sup>

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6. See MADELEINE FAIRBAIRN, FIELDS OF GOLD: FINANCING THE GLOBAL LAND RUSH 27, 35, 38, 44 (2020); *see also id.* at 41-43 (outlining investor frustration at the “tight” market and a general “mismatch” between desired investment scale (huge) and many farm sizes (small in comparison)). For example, according to painstakingly researched studies of Nebraska farm-ownership transfers from 2018 to 2022, only one of the top one hundred Nebraska land buyers had clear foreign ownership: “Blackshirt Feeders LP, a cattle feedlot in Dundy County [was] partially owned by Canadian citizens.” Destiny Herbers, *Who’s Buying Nebraska? Foreign Companies Deeply Involved in Farmland – But Not How You Think*, FLATWATER FREE PRESS (Nov. 29, 2023), <https://flatwaterfreepress.org/whos-buying-nebraska-foreign-companies-deeply-involved-in-farmland-but-not-how-you-think> [https://perma.cc/WM5K-SUKW]; Yanqi Xu & Destiny Herbers, *Quick Hit: Who’s Buying Nebraska?*, FLATWATER FREE PRESS (Nov. 16, 2023), <https://flatwaterfreepress.org/whos-buying-nebraska-top-farmland-buyers-by-money-and-land> [https://perma.cc/DBP8-34GJ]. Canada and Italy have interests in about two percent of Nebraska farmland, but almost all of this is in the form of renewable-energy projects. Herbers, *supra*. Even before Flood’s ad, Nebraska had since 1889 “prohibited” foreign purchasing or leasing of farmland for extended terms, albeit with “some” notable “exceptions.” J. David Aiken, *Big Changes to Law Governing Foreign Land Ownership*, FARM PROGRESS (July 2, 2024), <https://www.farmprogress.com/commentary/big-changes-to-nebraska-law-governing-foreign-ownership> [https://perma.cc/MC6K-MZKM].

7. Johnathan Hettinger, *As Foreign Investment in U.S. Farmland Grows, Efforts to Ban and Limit the Increase Mount*, COUNTER (June 6, 2019), <https://theiterator.org/foreign-owned-farmland-increase-food-security-legislation> [https://perma.cc/BDR5-SN6Y]. Much of this alarm over foreign investment seems to exaggerate national-security risks and draws on concerning racialized prejudices. See Fatma Marouf & Vanessa Casado Pérez, *Property and Prejudice*, 98 S. CAL. L. REV. 305, 307-12 (2024).

8. See *infra* notes 36-38, 78-79 and accompanying text; cf. GRETA R. KRIPPNER, CAPITALIZING ON CRISIS: THE POLITICAL ORIGINS OF THE RISE OF FINANCE 2-10 (2011) (defining financialization).

9. FAIRBAIRN, *supra* note 6, at 2, 43.

10. See Jim Chen & Edward S. Adams, *Feudalism Unmodified: Discourses on Farms and Firms*, 45 DRAKE L. REV. 361, 371 (1997).

American farms have long been envisioned as both family-owned and locally rooted, evoking powerful American ideals of rural landowners who work hard, steward well, and care for neighbors.<sup>11</sup> Central to this vision is the widespread distribution of owner-occupied farmland,<sup>12</sup> which reflects America's legacies of civic republicanism and democratic, agrarian land ownership.<sup>13</sup> But today, reality is increasingly divorced from these long-held ideals.

In 1977, when a Midwest bank floated plans to create one of the first farmland investment vehicles – an entity called Ag-Land Trust – Congress erupted into widespread bipartisan outrage.<sup>14</sup> Promoters planned to raise \$50 million in equity financing from pension funds in order to “buy about 20 farms of about 640 acres each,” with the intent to “lease them to local farmers” and provide “annual income for pension funds who invest in [Ag-Land].”<sup>15</sup> In response, Congress held three days of hearings, and out of nearly fifty people giving statements, only Ag-Land Trust’s own representatives were in favor.<sup>16</sup> One of South Dakota’s senators at the time called the proposal “a highhanded attack on the basic premise

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11. See *infra* Section I.A.

12. See, e.g., AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 53 (2010) (“In a society organized as a democracy of landholders, in which most individuals held a relatively equal distribution of property, political authority and decision making could be dispersed widely.”). This owner-operator model of family-based farming also carries significant political power, shaping domains as diverse as agricultural and trade policy, the federal estate tax, and local land-use law. See Kathleen DeLaney Thomas, *Tax and the Myth of the Family Farm*, 110 IOWA L. REV. 1811, 1813–14 (2025) (documenting the role of this model in estate-tax law); Jessica A. Shoemaker, *Fee Simple Failures: Rural Landscapes and Race*, 119 MICH. L. REV. 1695, 1697–98 (2021) (documenting the role of this model in property law); Noa Ben-Asher & Margot J. Pollans, *The Right Family*, 39 COLUM. J. GENDER & L. 1, 8 (2020) (documenting the role of this model in family law).

13. See *infra* notes 67–76 and Sections IV.A, V.A.

14. See FAIRBAIRN, *supra* note 6, at 29–32 (putting the Ag-Land Trust proposal in the context of the wider farmland-investment landscape); Roger D. Colton, *Old Macdonald (Inc.) Has a Farm . . . Maybe or Nebraska’s Corporate Farm Ban: Is It Constitutional?*, 6 U. ARK. LITTLE ROCK L. REV. 247, 250 (1983) (describing opposition to Ag-Land).

15. 123 CONG. REC. 3330 (1977).

16. FAIRBAIRN, *supra* note 6, at 30 (noting consensus in opposition to this particular proposal and also that some testimony went “so far as to suggest that federal legislation should be created to ensure that no proposal like this could ever get off the ground”). For further insight on the debates surrounding this proposal, see *Ag-Land Trust Proposal: Hearings Before the Sub-comm. on Fam. Farms, Rural Dev., and Special Stud. of the H. Comm. on Agric.*, 95th Cong. 8–15 (1977) [hereinafter *Ag-Land Trust Proposal*]; and *Ag-Land Trust Proposal*, *supra*, at 36–44, which includes statements of representatives from Merrill Lynch and Continental Illinois Bank.

of the family farm system,”<sup>17</sup> while a representative from Missouri stated that “this land power grab by the big financeers [sic]” would “be the deathknell for the small family farm.”<sup>18</sup> National headlines amplified public concerns.<sup>19</sup> A month later, the bank withdrew its proposal.<sup>20</sup>

The widespread outcry over the Ag-Land Trust proposal of the 1970s contrasts sharply with the increasingly financialized reality of modern American agriculture. Today, financialized ownership of U.S. farmland is much more commonplace<sup>21</sup>: “[A]t least 300 private equity funds are specifically oriented towards food and agriculture.”<sup>22</sup> Other institutional investors play major roles as well. Consider the retirement-services provider Teachers Insurance and Annuity Association of America (TIAA), well known for managing “accounts for educators, researchers, and public service workers.”<sup>23</sup> Describing its asset-manager subsidiaries Nuveen and Westchester Group, TIAA bills itself as the “top manager of farmland assets in the world, with more than 2 million farm acres under its control.”<sup>24</sup> According to reports, these investments include “vast landholdings in the Mississippi Delta, where Black farmers have been largely displaced from their farms as a result of land theft.”<sup>25</sup> In 2024, a university data-journalism class and a nonprofit newsroom spent months investigating, “Who is buying

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<sup>17</sup>. *Farmland Investment Plan Attacked*, DES MOINES REG., Jan. 29, 1977, reprinted in 123 CONG. REC. 3783 (1977). The state’s other senator had recently criticized corporate farming as a “descent into a state of corporate feudalism.” James Abourezk, *Agriculture, Antitrust and Agribusiness: A Proposal for Federal Action*, 20 S.D. L. REV. 499, 499–500 (1975).

<sup>18</sup>. *Ag-Land Trust Proposal*, *supra* note 16, at 44.

<sup>19</sup>. E.g., Richard L. Lyons, *Hill Balks at Bank’s Plan for Farmland Investment*, WASH. POST, Feb. 19, 1977, at A2.

<sup>20</sup>. FAIRBAIRN, *supra* note 6, at 29.

<sup>21</sup>. Tracking the phenomenon can be empirically challenging, however, given complex, often-inconsistent land records and the opacity of multilayered ownership structures. See *infra* Section II.B.

<sup>22</sup>. *Barbarians at the Barn: Private Equity Sinks Its Teeth into Agriculture*, GRAIN (Sep. 29, 2020), <https://grain.org/en/article/6533-barbarians-at-the-barn-private-equity-sinks-its-teeth-into-agriculture> [https://perma.cc/FSY2-S444].

<sup>23</sup>. Dana Cronin & Johnathan Hettinger, *A Giant Investment Firm Paid a University to Study One of Its Biggest Assets—Farmland*, NAT’L PUB. RADIO (Nov. 15, 2021, 3:00 AM CST), <https://www.kcur.org/2021-11-15/a-giant-investment-firm-paid-a-university-to-study-one-of-its-biggest-assets-farmland> [https://perma.cc/2AYM-57MV].

<sup>24</sup>. *Id.*; see also Chris Janiec, *Nuveen Raises More Than \$550m for Farmland and Forestry Funds*, AGRI INVESTOR (Feb. 1, 2024), <https://www.agriinvestor.com/nuveen-raises-more-than-550m-for-farmland-and-forestry-funds> [https://perma.cc/3T95-GRUP] (describing Nuveen).

<sup>25</sup>. Cronin & Hettinger, *supra* note 23.

Nebraska?”<sup>26</sup> The answer was clear: “multinational corporations, out-of-state corporate farms and out-of-state investors.”<sup>27</sup> North Carolina’s Great Plains Farm LLC, for example, spent roughly \$65 million for about 12,500 acres of Nebraska land, while San Francisco’s Homestead Capital laid out almost \$33 million for just over 5,800 acres.<sup>28</sup> Meanwhile, Microsoft cofounder Bill Gates has become the largest private owner of farmland in the country, with holdings acquired through his investment manager that are, Gates says, “not connected to climate.”<sup>29</sup>

In one respect, absentee investment in farmland is part of a broader national trend towards financialization, or “the tendency for profit making in the economy to occur increasingly through financial channels rather than through productive activities.”<sup>30</sup> A concept we elaborate on below, farmland’s financialization is not merely a market trend but is instead the product of deep social choices governing the accumulation of investor wealth: property, corporate, and securities law. These foundational legal structures create the requisite preconditions

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26. *Nebraska Journalism Course Provides Data for Flatwater Free Press’ Latest Story*, U. NEB.-LINCOLN COLL. JOURNALISM & MASS COMM’NS (Nov. 27, 2023), <https://journalism.unl.edu/news/nebraska-journalism-course-provides-data-flatwater-free-press-latest-story> [https://perma.cc/PPF6-MXXB].

27. Yanqi Xu & Destiny Herbers, *Who’s Buying Nebraska? Corporations, Investors Grabbing Giant Chunks of Nebraska Farmland*, NEB. PUB. MEDIA (Nov. 17, 2023), <https://nebraskapublicmedia.org/es/news/news-articles/whos-buying-nebraska-corporations-investors-grabbing-giant-chunks-of-nebraska-farmland> [https://perma.cc/KJ68-RCF2]. Foreign purchasers in Nebraska, on the contrary, have a relatively small presence. See *supra* note 6.

28. Xu & Herbers, *supra* note 27; Xu & Herbers, *supra* note 6.

29. See Eric O’Keefe, *Farmer Bill Gates*, LAND REP. (Jan. 11, 2021), <https://landreport.com/farmer-bill-gates> [https://perma.cc/E97M-TCXS]; Rebecca Bauer, *He Says It’s Not About Climate. So Why Is Bill Gates Investing in Farmland?*, AGFUNDERNEWS (Aug. 27, 2021), <https://agfundernews.com/gates-if-not-for-climate-then-why-is-bill-buying-up-so-much-farmland> [https://perma.cc/YA8K-G6WK]. For a wider review of the status of financialized investment in farmland, see *infra* Sections I.A, I.C. For a Nebraska comparison, some of the largest purchasers are the Church of Jesus Christ of Latter-day Saints and Ted Turner. Destiny Herbers, *Who’s Buying Nebraska? After Shopping Spree, Mormon Church Is Top Land Purchaser*, FLATWATER FREE PRESS (Nov. 22, 2023), <https://flatwaterfreepress.org/whos-buying-nebraska-after-shopping-spree-mormon-church-is-top-land-purchaser> [https://perma.cc/HFQ9-DDB5] (reporting that the investment arm of the church bought 57,500 acres); Evelyn Mejia, *Ted Turner, Longtime Nebraska Land Baron, Still Buying as Next Chapter Nears*, FLATWATER FREE PRESS (Dec. 8, 2023), <https://flatwaterfreepress.org/ted-turner-longtime-nebraska-land-baron-still-buying-as-next-chapter-nears> [https://perma.cc/D6BF-BWQJ] (reporting that billionaire Ted Turner became the state’s largest landholder in the 1990s and owned nearly 500,000 acres at his peak).

30. KRIPPNER, *supra* note 8, at 4. On the conceptual definition of “financialization” that we follow here, see *infra* notes 79-80 and accompanying text.

for investors to translate material space (farmland) into capital (asset), flowing through far-flung economic channels.<sup>31</sup>

The risks associated with large-scale farmland investment in the United States are also widely misunderstood. Attention-grabbing headlines focused only on foreign ownership, for example, miss this much wider domestic land-grab dynamic entirely.<sup>32</sup> Legal scholars have also largely missed this transition,<sup>33</sup> though scholars in geography, sociology, political science, and rural studies have been sharply critical of these trends – both here and abroad.<sup>34</sup> We bring these scholars into conversation with legal scholarship here and contribute our own unique combination of expertise as scholars of property and securities law.

This Article offers the first sustained account of farmland's financialization through the combined lenses of corporate law, property law, and securities regulation. These bodies of doctrine are rarely put into dialogue, even as their

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31. See *infra* Sections III.A, III.B.

32. Broader domestic changes are occurring largely (though not entirely) under the radar, but there are silver linings in this space. For example, the Farmland for Farmers Act, introduced in 2023 by Senator Cory Booker and cosponsored by Senator Bernie Sanders, would prohibit most new financialized forms of farmland ownership regardless of national origin. Farmland for Farmers Act, S. 2583, 118th Cong. (2023); see *infra* Section V.C.3.

33. Legal scholars have written about aspects of the broad topic, such as anti-corporate-farming laws, but to our knowledge none have looked holistically at how property, corporate, and securities law encourage the financialization of farmland. For the closest scholarship we have found on this topic, see Christopher Markuson, Note, *A Timeshare by Any Other Name: Fractional Homeownership and the Challenges and Effects of Commodified Single-Family Homes*, 43 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC., no. 2, 2022, at 1, 24-27, which considers farmland as one component of an analysis of financialized home ownership; Zoe Cometti, *Possibilities of Limiting the Protection of Large-Scale Investments in Farmland*, 21 GERMAN L.J. 1198, 1200-02 (2020), which examines the international-finance implications of regulating farmland investment and global "land grabs," but does not address this phenomenon in the United States; Matthew C. Canfield, *Disputing the Global Land Grab: Claiming Rights and Making Markets Through Collaborative Governance*, 52 LAW & SOC'Y REV. 994, 996 (2018), which studies global movements against "land grabs"; and Marouf & Casado Pérez, *supra* note 7, at 307-12, which addresses foreign investment in the United States specifically. For a student note that addresses financialized farmland in the context of property law, see generally Stephen George, Note, *Not for Sale: Why Congress Should Act to Counter the Trend of Massive Corporate Acquisitions of Real Estate*, 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 97 (2022). For a short essay spun off from this Article, see generally James Fallows Tierney & Jessica A. Shoemaker, *Absentee Ownership and the "Berle-Means Farm,"* 54 J. EUR. ECON. HIST. 183 (2025); and *infra* notes 113 & 208.

34. See generally STEFAN OUMA, *FARMING AS FINANCIAL ASSET: GLOBAL FINANCE AND THE MAKING OF INSTITUTIONAL LANDSCAPES* (2020) (critiquing the financialization of farmland); Loka Ashwood, John Canfield, Madeleine Fairbairn & Kathryn De Master, *What Owns the Land: The Corporate Organization of Farmland Investment*, 49 J. PEASANT STUD. 233 (2022) (same); Jennifer Clapp & S. Ryan Isakson, *Risky Returns: The Implications of Financialization in the Food System*, 49 DEV. & CHANGE 437 (2018) (analyzing financialization in the agrifood sector).

intersection quietly enables the translation of soil into shares. The novelty of our contribution, therefore, lies not only in diagnosing the legal underpinnings of this formation of a new asset class but also in showing how farmland is a particularly important and powerful site to evaluate law's constitutive role in financialization.

Our analysis begins with the plain commitments that rural communities matter, that farms should produce food sustainably, that real people should have the opportunity to become farmers, and that concentrated absentee control over rural economies and environments is a dangerous thing. Farms have always been important places where people live their lives and feed their communities, but now farmland is being repackaged into investment vehicles and traded as shares in markets remote from these communities. These changes raise concerns familiar from other domains; in private equity, these include short investment horizons, extractive strategies, diminished local accountability, and systemic opacity. Indeed, the transformation of farmland into a tradable asset can in many ways be understood as the most recent episode in a long and harmful pattern of rural extraction and alienation<sup>35</sup> – one that threatens to squeeze out next-generation rural residents and farmers from direct land ownership, causing real harm to local communities, economies, and environments.<sup>36</sup> Critically, this is not a “rural versus urban” story. It is metropole versus periphery – the same extraction logic running through urban and suburban rental housing is now cannibalizing farmland in the countryside.<sup>37</sup>

Consider a prototypical case, in which organizers put land into special-purpose limited-liability companies (LLCs), carve those LLCs into membership units, and sell slices to private-equity funds, pensions, and endowments.<sup>38</sup> Ownership fractures. Decision-making recenters far from the land itself – in boardrooms in Chicago or on a digital platform that translates field-level data into

<sup>35</sup>. See *infra* Section II.A.

<sup>36</sup>. See, e.g., Markuson, *supra* note 33, at 1, 27 (arguing that “there is nothing ostensibly *wrong* with selling fractional ownership in LLCs that own land,” such as single-family homes in vacation-rental communities, but observing that “another paper entirely” would have to deal with “whether there are legitimate moral reservations about treating farmland as a profit-yielding investment rather than a source of nourishment for people”).

<sup>37</sup>. For comparisons to similar investment trends occurring across single-family housing and other natural resources, including timber, see generally Brandon Weiss, *Corporate Consolidation of Rental Housing & the Case for National Rent Stabilization*, 101 WASH. U. L. REV. 553 (2023); Taylor Shelton, *Mapping Dispossession: Eviction, Foreclosure and the Multiple Geographies of Housing Instability in Lexington, Kentucky*, 97 GEOFORUM 281 (2018); and Andrew Gunnoe & Paul K. Gellert, *Financialization, Shareholder Value, and the Transformation of Timberland Ownership in the US*, 37 CRITICAL SOCIO. 265 (2011).

<sup>38</sup>. For more detailed discussion of typical financialized farmland investments, see *infra* Section I.C.

remotely issued directives. The metric that matters in these spaces is risk-adjusted return, not the particularized consequences facing local communities: whether a family can secure a lease, the soil is healthier in five years, or the school district can stay open. Financial actors operate within these legal regimes to transform material space into a financial product, and the law forms a new asset class out of land: property law makes the parcels modular; corporate law makes the owners distant and shielded; and securities law makes the shares liquid.<sup>39</sup>

We focus on farmland not only because of its central importance to human survival but also because of its political potential. Wall Street's takeover of rural America is neither complete nor inevitable. The idea of the American farmer still carries powerful political weight.<sup>40</sup> Movements have resisted concentrated land power before; this was true not only in the 1970s backlash to the Ag-Land Trust but remains true in today's broad discomfort with foreign-owned farmland—although that discomfort is now disjointed and misplaced. Our intent here is not to inflame the same xenophobic rhetoric aimed only at "foreign" purchasers but to emphasize that some deep concern for the health and vitality of local rural communities and food systems remains.<sup>41</sup> We also do not defend the status quo of high land prices that lock out newcomers and further entrench a highly racialized system of almost exclusively white farmland ownership (built on the erasure of a long history of racial and colonial violence).<sup>42</sup> Our aim is the opposite: to lower barriers to entry for new resident farmers and build greater local control over democratic decision-making about how farmland is used and the food system functions.

Moreover, collective concern for farmland futures is not too late. A generational turnover of farmland is on the immediate horizon: more than a third of current farmers have already reached retirement age.<sup>43</sup> Nearly half of U.S. farmland is expected to change ownership in the next two decades, and new people

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39. See *infra* Section I.B.2 (detailing these legal preconditions for financialization).

40. See, e.g., *supra* notes 4 & 12 and accompanying text.

41. See Marouf & Casado Pérez, *supra* note 7, at 310-12 (arguing that modern restrictions on domestic land ownership by foreign entities and individuals revive xenophobic "alien land laws").

42. Although beyond the scope of full analysis here, there is much to question about the American legacy of allocating farmland via family inheritance, especially in a property system rooted in Indigenous land dispossession and chattel slavery. See Shoemaker, *supra* note 12, at 1698-99; Angela P. Harris, *[Re]Integrating Spaces: The Color of Farming*, 2 SAVANNAH L. REV. 157, 184-85 (2015); K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062, 1134-41 (2022); *infra* Section III.C.

43. Nat'l Agric. Stat. Serv., *2022 Census of Agriculture Highlights: Farm Producers*, U.S. DEP'T. OF AGRIC. (Feb. 2024), [https://www.nass.usda.gov/Publications/Highlights/2024/Census22\\_HL\\_FarmProducers\\_FINAL.pdf](https://www.nass.usda.gov/Publications/Highlights/2024/Census22_HL_FarmProducers_FINAL.pdf) [https://perma.cc/25K8-SMVS].

want to become farmers.<sup>44</sup> Yet, aspiring farmers and ranchers report an inability to acquire farmland as their single greatest obstacle to joining future-focused rural communities and reimagining food systems in more just and sustainable ways.<sup>45</sup> Financialization is accelerating, but the window to reimagining these land-based relations remains open, at least for a short time.

We explore this ongoing process of farmland financialization in the following five parts. In Part I, we identify the economic conditions that make farmland a desirable investment target and, as importantly, the legal preconditions that create and facilitate the financialization of farmland. In Part II, we consider how this financialization reflects yet another chapter in a long history of exporting and exploiting resources from the periphery—that is, from rural and economically disadvantaged communities—for metropolitan rewards that benefit economically advantaged elites.<sup>46</sup> Many of the commonly understood causes of rural decline flow from direct resource extraction or the decline of historic manufacturing industries. Making farmland an asset class follows a similar pattern, hollowing out rural labor and resources with consequences across social, political, ecological, and economic dimensions.<sup>47</sup>

In Part III, we explain how the prevailing legal regime enables farmland's transition to an asset class.<sup>48</sup> Acknowledging the hope of critical scholars in other disciplines that law might come in to save us from financialization's threats, we emphasize that the pursuit of a remedy is more complex and layered than adding new doctrine on top of existing legal structures.<sup>49</sup> In particular, we identify four deep legal undercurrents—(1) the dominance of market logics; (2) the

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44. Sophie Ackoff et al., *Building a Future with Farmers 2022: Results and Recommendations from the National Young Farmer Survey*, NAT'L YOUNG FARMERS COAL. 6, 8 (Aug. 2022), [https://youngfarmers.org/wp-content/uploads/2025/07/National-Survey-Web-Update\\_11.15.22-1.pdf](https://youngfarmers.org/wp-content/uploads/2025/07/National-Survey-Web-Update_11.15.22-1.pdf) [https://perma.cc/C2NT-9WRU].

45. *Id.* at 10 (“Land access is the top challenge . . . and proves even more challenging for BIPOC farmers.”).

46. See, e.g., Loka Ashwood, Katherine MacTavish & Dalton Richardson, *Legal Enforcement of Spatial and Environmental Injustice: Rural Targeting and Exploitation*, in THE ROUTLEDGE COMPANION TO RURAL PLANNING 89, 89-90 (Mark Scott, Nick Gallent & Menelaos Gkartzios eds., 2019).

47. See *infra* Section II.A. See generally MICHELLE WILDE ANDERSON, THE FIGHT TO SAVE THE TOWN: REIMAGINING DISCARDED AMERICA (2022) (studying urban decline and government collapse in four blue-collar American communities); ANN M. EISENBERG, REVIVING RURAL AMERICA: TOWARD POLICIES FOR RESILIENCE (2024) (critiquing the extraction of rural natural resources for urban consumption).

48. As Katharina Pistor has noted, “[M]ost observers treat law as a sideshow when in fact it is the very cloth from which capital is cut.” KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY 4 (2019).

49. See, e.g., Andrew Gunnoe, *The Political Economy of Institutional Landownership: Neorentier Society and the Financialization of Land*, 79 RURAL SOCIO. 478, 479 (2014).

abstraction of legal rights from physical reality; (3) a temporal bias favoring past and present entitlements over future needs; and (4) profound economic and political inequality—that powerfully bend law and market practices toward “capital formation” over all else, including sustaining rural communities and healthy food systems.<sup>50</sup> Without attention to these structural power dynamics, piece-meal doctrinal interventions are unlikely to “save” rural America from farmland’s future as an asset class.

In Part IV, we examine historic attempts to reform these dynamics. We consider anti-corporate-farming laws, right-to-farm laws, securities-disclosure requirements, and limits on REITs. These efforts have so far proven ineffective in mitigating the expansion of farmland financialization. Neither property law nor financial regulation supplies a ready doctrinal solution. There is no “one simple trick that farm investors hate” that will meaningfully limit the financialized, absentee ownership of agricultural land. Indeed, experience suggests it is often paradoxical to fight fire with fire.<sup>51</sup> Foundational structures of property, corporate, and securities law are designed to facilitate capital formation, not hinder it, rendering futile any attempts to combat the financialization of farmland with more financial regulation.<sup>52</sup> It is therefore no surprise that interest groups have successfully evaded previous attempts at reform. Taken together, these dynamics amount to “playing shell games with finance”—a behavioral tactic adopted by investors to frustrate more meaningful engagement with the deep, procapital structures of property and corporate law.

So, what *can* innovative law and regulation do to address farmland’s transformation into an asset class? Legal tools are not entirely powerless or counterproductive, but they depend on deeper structural efforts to enable human flourishing outside of exclusively profit-focused metrics, including in rapidly

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50. See Cary Martin, *Private Investment Companies in the Wake of the Financial Crisis: Rethinking the Effectiveness of the Sophisticated Investor Exemption*, 37 DEL. J. CORP. L. 49, 100 (2012) (defining capital formation and noting regulatory demand for “rules that promote the efficient allocation of capital for investors who rely on the public capital markets to produce returns”); Anita K. Krug, *Beneficial Conflicts of Interest*, 45 CARDOZO L. REV. 175, 208-30 (2023). Critically, these legal arrangements do not simply respond to neutral market forces; they actively construct them. On the preference for capital formation above all else, see ERIK OLIN WRIGHT, ENVISIONING REAL UTOPIAS 34-85 (2010), which describes a structural critique of capitalism, including this aspect of it; Sarah Krakoff, *Environmental Injustice and the Limits of Possibilities for Environmental Law*, 49 ENV’T L. 229, 238 (2019), which explains that in postindustrial capitalism, the pursuit of growth “makes all other values and goals subordinate,” resulting in a drive to “constantly increas[e] profits”; and PISTOR, *supra* note 48, at 3, 13-15, which explores how the law “codes capital”—transforming assets into wealth-producing capital through “legal modules” such as contract, property, and corporate law—by bestowing key attributes essential for wealth creation: priority, durability, universality, and convertibility.

51. See *infra* Section IV.B.3.

52. See *infra* Sections I.B.2, III.A.

depopulating rural spaces. We conclude Part V with a critique of what farmland financialization means for U.S. democracy and offer early thoughts on a range of specific legal reforms designed to remedy the harms produced by this process. Property and corporate law are influential drivers shaping the material worlds in which we live, and collectively we make choices at every juncture—in property law, corporate law, securities law, and other forms of private ordering—that shape the places we inhabit. Alternative choices exist, and we end with brief thoughts on achieving this more democratic vision of land relations.

## I. THE FINANCIALIZATION OF FARMLAND

Farmland appeals to investors as an asset class for two main reasons. First, it offers the prospect of long-term value appreciation of the land itself. Second, the revenue generated by productive farmland provides a steady flow of rental income. Contemporary investor interest in farmland—as both an appreciating asset and a flow of revenue—expanded in 2007 with rising agricultural commodity prices and a large-scale shift in investor risk preferences following the 2008 financial crisis.<sup>53</sup> Although some level of speculation has always been part of the American property system, the emergence of an entire market ecosystem of financial intermediaries that profit from farmland investments by managing deal flow and earning rents is new.<sup>54</sup> Today, shifting politics, new technologies, and a relaxed regulatory landscape all facilitate the transformation of farmland into a financial asset, traded for returns and detached from its place-based context.<sup>55</sup>

This Part explores the current state of farmland financialization. We begin in Section I.A with historical context by tracing the evolution of farmland investment to its current state. In Section I.B, we unpack the many legal and political preconditions necessary to convert farmland to an asset class. Finally, in Section I.C, we describe at a high level the current landscape of financialized investment with an overview of typical investment processes and participants. This background reveals how legal choices have been necessary at every stage to facilitate the financialization happening now.

<sup>53.</sup> Madeleine Fairbairn, ‘*Like Gold with Yield*: Evolving Intersections Between Farmland and Finance, 41 *J. PEASANT STUD.* 777, 777 (2014).

<sup>54.</sup> See *infra* Section I.C.

<sup>55.</sup> See *infra* Part III; cf. CÉDRIC DURAND, *FICTITIOUS CAPITAL: HOW FINANCE IS APPROPRIATING OUR FUTURE* 114 (2017) (“Finance capital is not made up of material and immaterial assets directly engaged in production, but of idle money and securities.”). This dephysicalization of land rights into bundles of abstract property rights has already long been critiqued as a cost of modern private-property systems. See, e.g., Nicole Graham, *Dephysicalised Property and Shadow Lands*, in *HANDBOOK ON SPACE, PLACE, AND LAW* 281, 281-82 (Robyn Bartel & Jennifer Carter eds., 2021).

### A. *Situating Farmland in Time and Space*

This Section traces how farmland investment has emerged over time. But first, we begin with the land itself. Land has always been among the most important sites of social and political struggle.<sup>56</sup> Land's fixity, ecological significance, and essentiality for life all distinguish it from other assets—physically, legally, and morally. These characteristics have historically also made land uniquely vulnerable to, and capable of, provoking resistance against full commodification.<sup>57</sup>

There are myriad potential systems for collectively organizing human relationships with land. The current American property regime of fixed, physically bounded, and privatized land ownership is not the only available choice.<sup>58</sup> This prevailing property regime, however, requires a range of legal interventions to flatten farmland's physical properties into discrete, tradable assets, endowed with legal status and legitimacy.<sup>59</sup> Legal instruments—such as deeds, property estates, shares, and securities—transform farmland into an asset that can be divided and sold to investors in global markets as part of intangible investment

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56. “Controversy over the control of land is as old as America.” WALTER GOLDSCHMIDT, *AS YOU SOW: THREE STUDIES IN THE SOCIAL CONSEQUENCES OF AGRIBUSINESS*, at xxiii (2d ed. 1978). See generally KARL KAUTSKY, *THE AGRARIAN QUESTION* (Pete Burgess trans., Zwan Publ’ns 1988) (1899) (examining agricultural land and labor dynamics); K-Sue Park, *Property and Sovereignty in America: A History of Title Registries & Jurisdictional Power*, 133 YALE L.J. 1487 (2024) (examining the history of the title registry in American property law); GREGORY ABLAVSKY, *FEDERAL GROUND: GOVERNING PROPERTY AND VIOLENCE IN THE FIRST U.S. TERRITORIES* (2021) (describing the role of federal authority in determining property and territory distribution in the early United States, including the settlement of critically important disputes over land).

57. See, e.g., KARL POLANYI, *THE GREAT TRANSFORMATION* 178 (1944); cf. *supra* notes 14-20 and *infra* Section V.A (discussing land’s unique political status).

58. American history is rife with examples of property law’s efforts to dispossess (and later attempt forced assimilation of) Indigenous peoples. See LINDSAY G. ROBERTSON, *CONQUEST BY LAW: HOW THE DISCOVERY OF AMERICA DISPOSSESSED INDIGENOUS PEOPLES OF THEIR LANDS* 24-28 (2005); Jessica A. Shoemaker, *An Introduction to American Indian Land Tenure: Mapping the Legal Landscape*, 5 J.L. PROP. & SOC’Y 1, 3-11 (2020).

59. These mechanisms include grid-like boundaries, enforced through fences, deeds, and property surveys; digitized soil and climate data; sophisticated rent- or asset-management systems; alienable property rights for market exchange; and corporate- and securities-law rules allocating control, profits, and risk. See Tania Murray Li, *What Is Land? Assembling a Resource for Global Investment*, 39 TRANSACTIONS INST. BRIT. GEOGRAPHERS 589, 589 (2014); see also Graham, *supra* note 55, at 281 (discussing the “dephysicalization” of land through property law).

portfolios.<sup>60</sup> As Karl Polanyi quipped, to isolate land, “an element of nature inextricably interwoven with man’s institutions,” and to “form a market out of it was perhaps the weirdest of all undertakings of our ancestors.”<sup>61</sup>

Investor-led land speculation and accumulation—derisively termed “land grabbing”—is also not an entirely new phenomenon.<sup>62</sup> Investing has always been part of U.S. property law and markets.<sup>63</sup> Early American property debates reflected persistent tensions between speculative (commodity) and agrarian (proprietary) models of land ownership.<sup>64</sup> Yet, despite this tension, many early choices about property-law design emphasized agrarian community building, at least for settlers. For instance, early homesteading and other land-allocation policies distributed free or low-cost land in exchange for active stewardship, residence, and improvement in new rural spaces.<sup>65</sup> Even where there were waves of speculation on the “financialized frontier,”<sup>66</sup> corporate giants sought ultimately

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60. See, e.g., Alainn Pottage, *The Originality of Registration*, 15 OXFORD J. LEGAL STUD. 371, 371-73 (1995); Brenna Bhandar, *Title by Registration: Instituting Modern Property Law and Creating Racial Value in the Settler Colony*, 42 J.L. & SOC’Y 253, 253-57 (2015) (articulating the “logic of abstraction,” which separates property as an abstract thing disconnected from actual possession).

61. POLANYI, *supra* note 57, at 178.

62. The term “land grab” is not universally accepted and varies significantly across different cultures and legal systems. See generally Smita Narula, *The Global Land Rush: Markets, Rights, and the Politics of Food*, 49 STAN. J. INT’L L. 101, 132-60 (2013) (contrasting “rights-based” and “market-plus” approaches to land transfers). In many contexts, land is not merely an economic asset but a basis for identity, community, and survival. Land-grab terminology references problems with the capitalization and marketization of land, such as when global demand for land by investors entrenches the vision of land as a marketable commodity, stripping away its traditional and communal values. This process also tends to disadvantage local communities, who may not have the legal knowledge or the bargaining power to negotiate fair terms or protect their interests. The imposition of a market-based definition of land ownership may also overlook Indigenous land rights and local customs, leading to displacement, loss of livelihood, and social unrest. The disruption of established community structures in the global “land grab” raises serious questions about the equity and justice of these transactions—themes we advert to here, while recognizing differences across these contexts.

63. See Robert F. Sayre, *The Landscape of Capitalism*, 30 IOWA REV. 114, 116 (2000); MICHAEL A. BLAAKMAN, *SPECULATION NATION: LAND MANIA IN THE REVOLUTIONARY AMERICAN REPUBLIC* 6 (2023) (“The American revolutionary era was . . . a turning point when long-standing processes of dispossession and settlement blended in new ways with speculative finance.”).

64. See PAUL W. GATES, *THE JEFFERSONIAN DREAM: STUDIES IN THE HISTORY OF AMERICAN LAND POLICY AND DEVELOPMENT* 7 (1996). See generally GREGORY S. ALEXANDER, *COMMODITY & PROPRIETY: COMPETING VISIONS OF PROPERTY IN AMERICAN LEGAL THOUGHT, 1776-1970* (1997) (discussing this tension).

65. See Jessica A. Shoemaker, *Re-Placing Property*, 91 U. CHI. L. REV. 811, 814-15, 829-32 (2024).

66. BLAAKMAN, *supra* note 63, at 1-8, 14.

to redistribute appreciated land to new waves of resident-owners.<sup>67</sup> These practices reflected a decidedly antifeudal orientation in early American property law and sought explicitly to reject the inherited dynasties and landed nobilities of Europe in pursuit of a more democratic society built through direct, widely distributed agrarian farmland ownership.<sup>68</sup>

This agrarian preference persisted throughout the twentieth century, reflected both in pro-family-farm policy choices and particularly in the deep skepticism towards metropolitan absentee investors buying farmland. Outcry over the Ag-Land Trust proposal of the 1970s may well be the high watermark for bipartisan political concern about institutional investment in farmland.<sup>69</sup> Then came the farm crisis of the 1980s, reflecting a combination of high interest rates, declining crop prices, rising input costs, an unexpected global commodity surplus, and unfavorable exchange rates.<sup>70</sup> Farmers who had been encouraged to finance their business through debt found that they could not service their loans, leading to widespread bankruptcies and foreclosures.<sup>71</sup> Social movements responded to these crises with profarmer demonstrations and national events like Farm Aid concerts to raise awareness and solidarity for rural communities.<sup>72</sup>

Yet, as sociologist Madeleine Fairbairn details in her history of this transition, the force of political opposition to farmland investment, evidenced in the

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67. See Sean M. Kammer, *Railroad Land Grants in an Incongruous Legal System: Corporate Subsidies, Bureaucratic Governance, and Legal Conflict in the United States, 1850-1903*, 35 LAW & HIST. REV. 391, 403-04 (2017) (explaining that the implementation of railroad land grants and other subsidies enabled “self-dealing” behavior by railroad insiders that might even be considered an early example of “financial manipulation” (quoting RICHARD WHITE, *RAILROADED: THE TRANSCONTINENTALS AND THE MAKING OF MODERN AMERICA*, at xxviii (2011))); Brian Highsmith, *Regulating Location Incentives*, 74 DUKE L.J. 741, 753, 757-68 (2024) (describing how railroads, “America’s first big business,” were an early example of “extracting public subsidies and regulatory favors from local communities competing for mobile economic activity,” which tended to benefit the railroads at the expense of local residents).

68. Joseph William Singer, *Subprime: Why a Free and Democratic Society Needs Law*, 47 HARV. C.R.-C.L. L. REV. 141, 149-50 (2012); see JOSEPH FISHKIN & WILLIAM E. FORBATH, *THE ANTI-OLIGARCHY CONSTITUTION: RECONSTRUCTING THE ECONOMIC FOUNDATIONS OF AMERICAN DEMOCRACY* 2-3 (2022). For more on our visions of democratic land reform, see *infra* Part V.

69. See *supra* notes 14-20 and accompanying text.

70. See generally Barry J. Barnett, *The U.S. Farm Financial Crisis of the 1980s*, 74 AGRIC. HIST. 366 (2000) (describing this crisis).

71. See Michael Stewart Foley, “Everyone Was Pounding on Us”: *Front Porch Politics and the American Farm Crisis of the 1970s and 1980s*, 28 J. HIST. SOCIO. 104, 110-11 (2015).

72. See, e.g., William C. Pratt, *Using History to Make History? Progressive Farm Organizing During the Farm Revolt of the 1980s*, 55 ANNALS IOWA 24, 31-34 (1996); see also Roger G. Ginder, Kenneth E. Stone & Daniel Otto, *Impact of the Farm Financial Crisis on Agribusiness Firms and Rural Communities*, 67 AM. J. AGRIC. ECON. 1184, 1184-89 (1985) (identifying wider economic and rural-community impacts flowing from the farm crisis).

Ag-Land Trust hearings and through the 1980s crisis, did not hold.<sup>73</sup> Farm foreclosures gave banks and insurers opportunities to develop some farmland-management capacity; deregulation of commodity-derivative markets whetted investor interest in agriculture; and transitions within the timber industry facilitated experiments with new real-estate investment models.<sup>74</sup> Meanwhile, as other scholars have documented, wider public views of American managerial capitalism began to give way to a more intense drive to maximize shareholder value, with corporate raiders, junk-bond speculation, and the rise of private-equity and hedge-fund strategies.<sup>75</sup> These trends toward greater financial intermediation in private markets helped eclipse other concerns over farmland structure with greater emphasis and drive for “capital formation.”<sup>76</sup>

Fast forward to 2025, and there is increasing evidence of a radical transformation across rural America. There were only twenty farmland-focused investment funds in 2005, but that number grew to 220 in 2023.<sup>77</sup> Today, “institutional landowners now own and control millions of acres . . . consisting of some of the nation’s most valuable and productive land.”<sup>78</sup>

The rise of financially intermediated institutional land ownership reflects broader trends of financialization.<sup>79</sup> By “financialization,” we simply mean that financing and control have shifted from relationship-based banking and farm operations to impersonal markets where land is valued for its ability to be moved

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73. FAIRBAIRN, *supra* note 6, at 27-39.

74. *Id.*

75. See Zohar Goshen & Doron Levit, *Agents of Inequality: Common Ownership and the Decline of the American Worker*, 72 DUKE L.J. 1, 16-26, 18 n.91, 19 n.96 (2022); Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2575-78 (2021).

76. See Mark A. Sargent, *The New Regulation D: Deregulation, Federalism and the Dynamics of Regulatory Reform*, 68 WASH. U. L.Q. 225, 238, 251 (1990) (describing the debate about the goals and effectiveness of “the SEC’s various attempts throughout the 1980s to strike a regulatory balance facilitating small business capital formation,” as compared to fraud).

77. 2023 *Midyear Viewpoint: Investing in Food and Agriculture Assets in a Changing World*, VALORAL ADVISORS 3 (July 2023), <https://www.valoral.com/wp-content/uploads/Investing-in-Food-and-Agriculture-Assets-in-a-Changing-World-Valoral-July-2023.pdf> [https://perma.cc/X2XX-M96Y].

78. Gunnroe, *supra* note 49, at 479.

79. Financialization is a contested concept, and our point does not rest on adopting a particular definition of it. For one definition of financialization, see Mike Konczal & Nell Abernathy, *Defining Financialization*, ROOSEVELT INST. 5, 7 (July 27, 2015), <https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Defining-Financialization-201507.pdf> [https://perma.cc/273X-YC9U], which characterizes financialization as trends encompassing “the increasing control and power of finance over our productive economy and traditional businesses” as well as the “reduction of all of society to the realm of finance.”

as a security in ways fast, opaque, and destabilizing.<sup>80</sup> What is known as the “financialization of everything” extends this logic to numerous elements of daily life, from healthcare and housing to the data gathered about users’ personal choices and preferences.<sup>81</sup> Our primary concern, then, is that farmland is increasingly managed through a wide ecosystem of financial channels created to serve the needs of outside equity investors. Unlike housing or consumer information, farmland is finite, ecologically irreplaceable, and politically central to American identity. It produces the food that sustains humans and is historically bound up with agrarian ideals of stewardship and democracy.

Understanding where this phenomenon fits into the political economy, and how large or impactful it is, remains an ongoing empirical challenge. In the United States, land records are “scattered across . . . more than three thousand county or county-equivalent” recordkeeping entities.<sup>82</sup> The absence of any comprehensive public database of land ownership increases the difficulty in tracking changes to these arrangements. But Fairbairn has documented, for example, an approximately ninefold increase in the value of farmland properties held by institutional investors between 1991 and 2018, as reflected in the Farmland Property Index, which Fairbairn deems “not a perfect data source” but still “the most comprehensive data source available.”<sup>83</sup> Publicly available data from the same

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80. This approach follows the sociological definition of financialization as a shift in the intermediation of finance from “banks and other institutions” to “markets.” Gerald F. Davis & Suntae Kim, *Financialization of the Economy*, 41 ANN. REV. SOCIO. 203, 204, 213 (2015) (identifying “increasing ownership of timberland and farmland by institutional investors” as an example of this form of financialization of “areas traditionally considered outside the market economy”).

81. Geoffrey Lawrence & Kiah Smith, *The Concept of ‘Financialization’: Criticisms and Insights, in THE FINANCIALIZATION OF AGRI-FOOD SYSTEMS: CONTESTED TRANSFORMATIONS* 23, 28-29 (Hilde Bjørkhaug, André Magnan & Geoffrey Lawrence eds., 2018) (theorizing the “totalizing” effects of financialization in connection with agrifood research). See generally RANDY MARTIN, *FINANCIALIZATION OF DAILY LIFE* (2002) (exploring how financialization gained prominence in modern economic life); BRETT CHRISTOPHERS, *OUR LIVES IN THEIR PORTFOLIOS: WHY ASSET MANAGERS OWN THE WORLD* (2023) (explaining that asset managers now own not just financial assets but also housing, hospitals, and other basic building blocks of everyday life); WENDY BROWN, *UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION* (2015) (arguing that neoliberal rationality helped remake democracy into an economic register).

82. Ashwood et al., *supra* note 34, at 233; cf. Park, *supra* note 56, at 1549 (outlining the potential to tell more accurate property stories if only the fragmented land registries across the country “could be consolidated and studied as an archive”).

83. FAIRBAIRN, *supra* note 6, at 40-41 (showing growth from less than one billion dollars to over nine billion dollars in the market value of farms owned by institutions from 1991 to 2018, based on data from the National Council of Real Estate Investment Fiduciaries’ “Farmland Property Index”).

index in 2023 report almost double the value of even those high-water marks.<sup>84</sup> Meanwhile, several local case studies of farmland transfers have documented parallel concerns about recent investor purchases in Oregon,<sup>85</sup> Iowa,<sup>86</sup> Nebraska,<sup>87</sup> Illinois,<sup>88</sup> California,<sup>89</sup> and Appalachia.<sup>90</sup>

Overall, individuals and families continue to own most of America's farmland, but these figures are changing at a rate that is difficult to track and without meaningful oversight.<sup>91</sup> The agrarian vision of an owner-operator farm family still carries political power at times—including in the reaction against foreign ownership.<sup>92</sup> But as to the central question of who owns, controls, and benefits from the roughly nine hundred million acres of privately owned farmland in the

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<sup>84</sup>. See NCREIF Farmland Property Index, NAT'L COUNCIL REAL EST. INV. FIDUCIARIES, <https://user.ncreif.org/data-products/farmland> [<https://perma.cc/3FTP-3NXG>] (showing a \$16.4 billion market value in U.S. cropland “acquired in the private market for investment purposes only”).

<sup>85</sup>. See Megan Horst, *Changes in Farmland Ownership in Oregon, USA*, 8 LAND art. no. 39, at 17 (2019) (documenting that 19% of purchasers of farmland from 2010 to 2015 were “corporations and investors,” with these buyers purchasing “over 40% of acres,” suggesting an “overall trend [that] appears to be away from individual ownership to more corporate ownership especially of larger properties”).

<sup>86</sup>. Jingyi Tong & Wendong Zhang, *Iowa Farmland Ownership and Tenure Survey 1982-2022: A Forty-Year Perspective* 57 (Ctr. for Agric. & Rural Dev., Iowa State Univ., Working Paper, Paper No. 23-WP 651, 2023), [https://farmland.card.iastate.edu/files/inline-files/23wp651\\_o.pdf](https://farmland.card.iastate.edu/files/inline-files/23wp651_o.pdf) [<https://perma.cc/CU35-92D5>] (documenting increases in nonresident ownership of farmland and an overall “increase in the percentage of land being purchased by those who are classified as investors or landowners who inherited land,” often without farming experience).

<sup>87</sup>. See *supra* note 27 and accompanying text.

<sup>88</sup>. See Ashwood et al., *supra* note 34, at 238, 243-44 (tracing complex corporate-ownership webs in two counties in Illinois and discovering an “overwhelming[] . . . outward shift toward absentee control”).

<sup>89</sup>. Lukas Ross, *Down on the Farm: Wall Street: America's New Farmer*, OAKLAND INST. 10-20 (2014), [https://www.oaklandinstitute.org/sites/default/files/files-archive/OI\\_Report\\_Down\\_on\\_the\\_Farm.pdf](https://www.oaklandinstitute.org/sites/default/files/files-archive/OI_Report_Down_on_the_Farm.pdf) [<https://perma.cc/LAM3-4UT6>] (highlighting three important case studies of financialized farmland acquisition in California).

<sup>90</sup>. Lindsay Shade & Levi Van Sant, *Geographies of Land Ownership Change in the Rural United States: Challenges, Methods, and Possibilities*, 75 PRO. GEOGRAPHER 844, 849 (2023) (documenting local county data showing that absentee landowners held forty-five percent of land but shouldered less than five percent of the property-tax burden).

<sup>91</sup>. Ashwood et al., *supra* note 34, at 256; Gunnoe, *supra* note 49, at 493-94; see also FAIRBAIRN, *supra* note 6, at 40-49 (tracking the dramatic escalation in both global and domestic-farmland acquisitions by institutional investors after 2008).

<sup>92</sup>. See Ben-Asher & Pollans, *supra* note 12, at 28-31; Thomas, *supra* note 12, at 1819-20, 1820 n.47.

United States, there has been almost no response to the very real and much wider threat of an investor-driven land grab.<sup>93</sup>

### *B. Making an Asset Class*

To convert farmland from physical space to tradable asset requires a host of legal interventions. In this Section, we survey both (1) the economic conditions that generate—and in many cases determine—farmland value and (2) the specific legal preconditions required for farmland financialization to function.

#### *1. Value Creation*

Farmland produces two sources of financial value: (1) capital gains from buying, holding, and selling for a higher price; and (2) income in the interim. With respect to the asset itself, the value of farmland has historically appreciated over time. Indeed, the national average price-per-acre of farmland doubled between 2004 and 2013—and is still rising.<sup>94</sup> These high valuations may be driven by the growing scarcity of arable land, increasing demand for food, and/or urbanization.<sup>95</sup> Demand-side pressure from investors may further contribute to rising farmland prices.<sup>96</sup> As a source of revenue, farmland provides income through land rents, the sale of natural resources, or direct food, energy, or amenity production.<sup>97</sup> Farmland can also generate income from farm subsidies, conservation-program enrollments, and other favorable tax treatments.<sup>98</sup>

These factors help explain farmland's particular appeal for investors, both as an appreciating capital asset and as a passive income source. Land can be even

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93. See Daniel Bigelow, Allison Borchers & Todd Hubbs, *U.S. Farmland Ownership, Tenure, and Transfer*, U.S. DEP'T OF AGRIC. 15-17 (Aug. 2016), [https://ers.usda.gov/sites/default/files/\\_laserfiche/publications/74672/EIB-161.pdf](https://ers.usda.gov/sites/default/files/_laserfiche/publications/74672/EIB-161.pdf) [https://perma.cc/2CFD-49JQ]. But see *infra* Section V.C.3.

94. See Nat'l Agric. Stat. Serv., *Land Values: 2013 Summary*, U.S. DEPT. OF AGRIC. 5 (Aug. 2013), <https://downloads.usda.library.cornell.edu/usda-esmis/files/pn89d6567/n870zt28d/8c97kt04x/AgriLandVa-08-02-2013.pdf> [https://perma.cc/JR96-NDJG].

95. See John E. Anderson, *Agricultural Use-Value Property Tax Assessment: Estimation and Policy Issues*, 32 PUB. BUDGETING & FIN. 71, 72-74 (2012).

96. See Artem Milinchuk, *Farmland Values Are Rising—What's Driving This Growth?*, CAIA ASS'N (Oct. 21, 2024), <https://caia.org/blog/2024/10/21/farmland-values-are-rising-whats-driving-growth> [https://perma.cc/2WGV-YGH5]; *infra* notes 139, 197 and accompanying text.

97. On amenity production, see generally Allison Borchers, Jennifer Ifft & Todd Kuethe, *Linking the Price of Agricultural Land to Use Values and Amenities*, 96 AM. J. AGRIC. ECON. 1307 (2014), which discusses the nonagricultural attributes of farmland that contribute to the market value.

98. See *infra* notes 102-104, 155-159 and accompanying text (exploring issues of subsidy distribution).

more attractive, however, because of the generally accepted wisdom of diversification—that is, the desirability of investment across a variety of assets whose returns are imperfectly correlated.<sup>99</sup> As the returns of traditional asset classes (like stocks and bonds) have become increasingly correlated, investors have turned to farmland as an important alternative. Farmland has historically exhibited a low correlation with other asset classes, and, because it is a real asset, is seen as a hedge against inflation.<sup>100</sup> Land is, as one investor aptly described, “like gold with yield.”<sup>101</sup>

## 2. Legal Conditions of Financialization

These rising farmland values are not natural but rather the deliberate result of a variety of legal choices. Notable among these choices are direct policy subsidies for farmland owners. For example, federal crop-insurance and price-support programs function as public guarantees against risk, cushioning farm revenues and stabilizing land values even in downturns.<sup>102</sup> Preferential agricultural property-tax treatment, present in every state, further lowers the cost of holding farmland, effectively subsidizing ownership.<sup>103</sup> Other regulatory interventions shift costs from owners to the public and workers, further subsidizing ownership; examples include agriculture’s routine exclusion from core environmental laws and labor protections.<sup>104</sup> Together, these policy choices bolster land values by externalizing risk and liability to the public.

But transforming farmland into an asset class requires more than publicly subsidized land values. More fundamental legal and structural preconditions for

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<sup>99.</sup> See, e.g., RICHARD A. BREALEY, STEWART C. MYERS & FRANKLIN ALLEN, *PRINCIPLES OF CORPORATE FINANCE* 161 (8th ed. 2006); cf. Brian A. Lavelle & Katherine Yamamoto, *Revisiting the Portfolio Diversification Impact of Farmland*, 24 J. ACCT. & FIN. 110, 111, 117–18 (2024) (finding from returns of a publicly traded farmland real-estate investment trust (REIT) that “farmland [is] an unattractive choice for investors at virtually all risk levels despite possessing a low correlation with other assets,” but speculating for lack of evidence that crowdfunding investments may be different in kind).

<sup>100.</sup> Fairbairn, *supra* note 53, at 778.

<sup>101.</sup> *Id.* at 785 (citation omitted).

<sup>102.</sup> *Id.*; see also Pavel Ciaian, Edoardo Baldoni, d’Artis Kancs & Dušan Drabik, *The Capitalization of Agricultural Subsidies into Land Prices*, 13 ANN. REV. RES. ECON. 17, 18 (2021) (“The capitalization of subsidies into farmland prices is considered a major channel of subsidy leakage outside the farming sector . . . .” (footnote omitted)).

<sup>103.</sup> See Anderson, *supra* note 95, at 71; *infra* notes 151–153.

<sup>104.</sup> See, e.g., Silvia Secchi, *The Marginalization of the Environment in Agricultural Policy*, 98 AGRIC. HIST. 462, 468 (2024); Jessica Guarino, *The Injustices of Agricultural Exceptionalism: A History and Policy of Erasure*, 27 DRAKE J. AGRIC. L. 321, 322 (2022).

investing in a novel type of asset class must also exist.<sup>105</sup> These preconditions, in the form of what Katharina Pistor has called “legal coding,” must be met for a physical, material piece of land to be converted into a legally cognizable asset that can be exchanged through global financial markets.<sup>106</sup>

Property law provides the foundation for farmland’s financialization by ensuring that farmland is parceled into alienable (or freely transferable) estates that can be bought and sold in arm’s-length markets, stripped of the obligations of personal use or ownership.<sup>107</sup> Modern U.S. doctrine makes it possible for absentee owners to enforce and subdivide rights to income and control without any duty of direct cultivation or actual connection to the land, clearing the way for speculative ownership structures.<sup>108</sup>

Securities law then overlays this framework with a capital-formation mandate.<sup>109</sup> Federal securities law, for example, enables the Securities and Exchange

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<sup>105</sup>. Broadly, the transformation of farmland into a financialized “asset class” means that agricultural land is treated as a distinct investment category alongside traditional categories of assets like stocks and bonds. See Madeleine Fairbairn, “*Just Another Asset Class?* *Neoliberalism, Finance, and the Construction of Farmland Investment*, in THE NEOLIBERAL REGIME IN THE AGRI-FOOD SECTOR: CRISIS, RESILIENCE, AND RESTRUCTURING 245, 246-47, 254-55 (Steven A. Wolf & Alessandro Bonanno eds., 2014). For a comparable discussion of the creation of cryptocurrency as a new asset class, see Kyle Langvardt, *Crypto’s First Amendment Hustle*, 26 YALE J.L. & TECH. 130, 132 (2023), which argues that “[r]ather than relying on technical infrastructure as a regulatory shelter, the crypto industry seeks its shelter in law”; and Katharina Pistor, *Theorizing Beyond “The Code of Capital”: A Reply*, 11 ACCT. ECON. & L. 65, 71-72 (2021), which notes that the value of cryptocurrency depends on being able to “graft[] the modules of the legal code onto simple promises to pay.”

<sup>106</sup>. See *supra* note 50 (describing Pistor’s theory of legal coding).

<sup>107</sup>. See *infra* Section III.A.

<sup>108</sup>. See Shoemaker, *supra* note 65, at 839, 861. Fee-simple estates and the near-total alienability of farmland enable investors to hold property purely for appreciation or rental income, unencumbered by obligations of productive use. Tenancy statutes and lease-enforcement rules then make it straightforward to extract cash flows through tenant-farming arrangements, further separating ownership from stewardship. As a result, farmland can be packaged, managed, and traded like any other yield-bearing financial instrument—an outcome unimaginable if law required (for instance) landowners themselves to live on, farm, or care for the land.

<sup>109</sup>. Businesses sell stocks, bonds, and other “securities” to investors on both public and private markets. See Securities Act of 1933, 15 U.S.C. § 77e(a), (c) (2024). Promoters of farmland investment may be subject to securities law when, for example, they sell what qualifies as an “investment contract,” which has historically included some contracts to sell productive agricultural land and certain interests in entities like limited liability companies (LLCs) and limited partnerships that are typical in private investment funds. See THOMAS LEE HAZEN, TREATISE ON THE LAW OF SECURITIES REGULATION § 1:61 (8th ed. 2020 & Supp. 2025) (noting that while “interests in real estate by themselves will not be securities,” they may be when “packaged more as an investment contract”); *id.* § 1:62 (discussing partnership interests); *id.* § 1:63 (discussing LLC interests). The category of “investment contract” includes

Commission (SEC) to regulate for investor protection and “the public interest,” which has been defined as “efficiency, competition, and capital formation.”<sup>110</sup> Courts have interpreted efficiency to require cost-benefit analysis aimed at weighing the interests of *investors* and other market participants, not those impacted by investment activity.<sup>111</sup> The capital-formation policies of these securities laws seek to weight investment in private companies – including farmland – against the consideration of other stakeholder interests, such as the broader community impacts resulting from this form of investment. In practice, securities law promotes the creation of portfolio assets, while disclaiming responsibility for its distributive consequences insofar as they do not affect investors or the markets in which they participate.

Finally, corporate law supplies the vehicle. Limited-liability entities insulate investors from personal liability, while separation of ownership and control enables distant shareholders to capture rents through professional managers. Modern U.S. corporate law has facilitated the rise of a particular form of dispersed, absentee-owned business entity in what corporate scholars call the “Berle-Means” firm.<sup>112</sup> Central to corporate-governance theory is the idea that owners provide capital but relinquish control to professional managers. In our prior work investigating this phenomenon as it applies to farmland, we dub this the “Berle-Means farm”<sup>113</sup>: that is, the Berle-Means farm recasts a historically on-

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certain passive investments in which others’ managerial efforts drive profits. In the canonical case defining an investment contract, the Court determined that an investment involving the sale of agricultural land along with a contract for the seller to cultivate and market the produce qualifies as a statutory security. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–301 (1946). Though not entirely relevant to whether an ownership interest in a farm LLC would constitute an “investment contract,” note that the Court’s canonical articulation of the relevant test involved the sale of tracts of agriculturally productive land along with a service contract – a sliced-and-diced farm sold to absentee investors. *Id.* at 294–96.

- <sup>110</sup>. Yoon-Ho Alex Lee, *The Efficiency Criterion for Securities Regulation: Investor Welfare or Total Surplus?*, 57 ARIZ. L. REV. 85, 89–90 (2015).
- <sup>111</sup>. See James Fallows Tierney, *Reg BI+: Conflicted Sales Practices and Algorithmic Financial Advice*, 2024 MICH. ST. L. REV. 947, 974–77 (describing these decisions’ consequences for the SEC’s policy approach); cf. Donald C. Langevoort, *The SEC as a Lawmaker: Choices About Investor Protection in the Face of Uncertainty*, 84 WASH. U. L. REV. 1591, 1596 (2006) (“[B]ecause both [the SEC’s] political structure and governing statute orient it almost exclusively toward ‘investor protection,’ the political voices of other stakeholders are predictably . . . diminished.”).
- <sup>112</sup>. See, e.g., Dalia Tsuk, *From Pluralism to Individualism: Berle and Means and 20th-Century American Legal Thought*, 30 LAW & SOC. INQUIRY 179, 180 (2005). See generally ADOLF BERLE & GARDINER MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932) (laying out the theory now called a “Berle-Means firm”).
- <sup>113</sup>. The “Berle-Means farm” exemplifies how corporate and property law coalesce to commodify farmland. Within the Berle-Means paradigm, widely held shares in farm-landlord firms circulate in global markets, effectively divorcing decision-making power from the physical

the-ground, labor-intensive form of farming into an abstract, asset-management enterprise dependent on tenant farming or wage labor. Shareholder primacy and value-maximization norms push managers toward speculative land acquisition as a growth strategy while shielding investors from the social and environmental costs of these choices.

Through this particular layered architecture – property law ensuring absentee ownership, divisibility, and alienability; securities law facilitating capital inflows; corporate law enabling shareholder primacy – material land is translated into an abstract, tradable financial asset.<sup>114</sup> Farmland becomes not just soil and a place for community food production but also real estate, and then an asset class, available for portfolio diversification in global markets.<sup>115</sup> The convergence of these doctrines demonstrates that farmland financialization is not a natural evolution of market forces but a legally manufactured phenomenon, sustained by deliberate legal-system design.

### C. Process and Participants

Finally, we end this Part with a few comments about the difficult task of defining financialization precisely, along with a broad overview of its typical processes and participants. There are multiple ways to organize farmland investment, and defining what qualifies as farmland financialization is both complex and contestable. Modern farmland investing includes a wide range of participants, including family trusts and offices, ultra-high-net-worth households, operating partnerships, professional asset managers, and now-absent heirs of legacy family farms.<sup>116</sup> Each of these landowner categories has different motivations and presents slightly different concerns.

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realities of the farmland itself. *See infra* Section IV.B.4; Tierney & Shoemaker, *supra* note 33, at 189–92.

114. *See* PISTOR, *supra* note 48, at 10–13, 29–38 (discussing how the enclosure and alienability of land turned it into a capital asset).
115. Cf. Jessica A. Shoemaker, *Papering Over Place: When Land Becomes Asset Class*, in A RESEARCH AGENDA FOR PROPERTY LAW 127, 134–39 (Bram Akkermans ed., 2024) (analyzing rapidly increasing land investment in the United States); NICOLE GRAHAM, LAWSCAPE: PROPERTY, ENVIRONMENT, LAW 134–62 (2011) (compiling accounts of the “dephysicalization” of property).
116. Of the top ten land buyers in Nebraska by money spent between 2018 and 2022, for instance, four are corporate farms (one owned by the family of Nebraska’s governor and another owned by the Church of Jesus Christ of Latter-day Saints); two are businesses in other sectors (a residential developer and a Meta data center); one is a wealthy and active local farmer; and three are funds focused on farmland investment. Xu & Herbers, *supra* note 6; *see also* Sebastian Moss, *Revealed: Facebook Is Behind Sarpy, Nebraska Data Center*, DATA CTR. DYNAMICS (Feb.

Because financialization can be difficult to define, alternative approaches may focus on vectors like absenteeism, concentration, or commodification. We might measure, for example, relative absentee ownership by assessing the *distance* between owners and their land assets. But absenteeism alone is a wide net, sweeping in both retired farmers with deep community connections and distant investors in far-away cities with no physical or historical ties to the land whatsoever.

Another dimension is *concentration*: to what extent is farmland controlled by a small number of largeholders, compared to historical patterns of a large number of smallholders? What constitutes “concentration” is also relative and geographically contingent. A two-hundred-acre row-crop operation is tiny in Iowa—but may be enormous for a diversified vegetable farm in Connecticut. Meanwhile, a more typical two-thousand-acre row-crop operation in Illinois is small for an arid cattle ranch in Wyoming.<sup>117</sup>

Finally, financialization concerns can also be understood through the lens of *commodification*, or profit motivation. To what extent is land valued for its capacity to generate profit through extraction or speculative appreciation, versus as a site of livelihood, community connection, and ecological stewardship?

Recognizing some conceptual blurriness in this complex web of bespoke investment vehicles, we focus on a specific thread potentially present in each context: outside equity investment in farmland. The legal frameworks of property, securities, and corporate law join together to allow land to be packaged into a limited-liability entity, divided into fractional ownership shares, and dispersed through financial markets. This legal system facilitates the accumulation and transfer of land rights in ways that prioritize returns on investment over traditional stewardship models or community-based management.

To frame this category, consider what is not financialized farmland: a hypothetical 445-acre farm, likely a small corn or soybean operation in Iowa, owned by a single family for several generations and actively operated by a current—but now elderly—owner.<sup>118</sup> The current elderly owner of the farm has a clear tax incentive not to sell during his life and to hold that farm until his death. Stepped-

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<sup>117</sup> 2017), <https://www.datacenterdynamics.com/en/news/revealed-facebook-is-behind-sarpy-nebraska-data-center> [https://perma.cc/8CG6-NQ62] (noting that Raven Northbrook is a Meta data center); CELEBRITY HOMES OMAHA, <https://www.celebrityhomesomaha.com> [https://perma.cc/Y56Q-7753] (demonstrating that one land buyer is a residential developer); *Upper Big Blue NRD Welcomes New Members to Board of Directors*, UPPER BIG BLUE (Feb. 13, 2023), <https://www.upperbigblue.org/leadership-and-service-natural-resources> [https://perma.cc/KX8H-TGEC] (providing a biography of Bohaty, one of the top land buyers).

<sup>117</sup>. See Bigelow et al., *supra* note 93, at 16–20.

<sup>118</sup>. See Nat'l Agric. Stat. Serv., *Farms and Land in Farms: 2021 Summary*, U.S. DEP'T OF AGRIC. 4 (Feb. 2022), [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/fnloo222.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/fnloo222.pdf) [https://perma.cc/N8AC-UW57] (“The average farm size for 2021 is 445 acres.”).

up basis rules protect his heirs from capital gains on past appreciation of his assets once inherited, and the farm is likely his most significant retirement asset.<sup>119</sup>

Yet even this presents heirs with a tough choice: keep a high-value, fixed asset within the family or dispose of it. Some heirs have sentimental, place-based attachments to the land and are not eager to sell. In earlier ages, many farm owners would expect the next generation to pick up the ploughshares; today, however, if the heirs do not actively take up farming, their options are limited to either leasing or selling the land.

At one time, land may have been sold, if at all, in local auctions or through private sales to neighbors. But increasingly, these transactions have shifted to the other end of the spectrum through a quintessentially financialized investment transaction.<sup>120</sup> Today, a financial sponsor<sup>121</sup> sets up a special-purpose business entity—for example, an LLC—to acquire the farm on behalf of a pool of absentee investors.<sup>122</sup> In structuring the deal, the financial sponsor conducts due diligence on the property—examining soil quality and water rights—and likely arranges a lease, most likely with an established farmer looking to expand his operation who has a good record of providing secure, reliable rental payments. The sponsor (or perhaps its affiliated broker-dealer) then markets and sells membership interests in the LLC to external investors, such as pension funds, endowments, or other wealthy individuals interested in steady returns from what is, in effect, an agricultural landlording business.<sup>123</sup>

There are also a handful of “public” pooled-investment companies, like REITs,<sup>124</sup> and a large number of private funds that hold pools of agricultural

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<sup>119</sup>. See *infra* notes 303-304 and accompanying text. The male pronoun is intentional here. See, e.g., Hannah Alsgaard, *Rural Inheritance: Gender Disparities in Farm Transmission*, 88 N.D. L. REV. 347, 349-52 (2012) (exploring deep social and cultural gender norms in agriculture, including assumptions that sons, not daughters, should take over farm operations).

<sup>120</sup>. See, e.g., Ashwood et al., *supra* note 34, at 235-36.

<sup>121</sup>. What we call “financial sponsors” are the fund managers and advisors who are responsible for the strategy, acquisition, management, and disposal of the farmland assets. See *infra* notes 128-131 and accompanying text.

<sup>122</sup>. Real-estate developers often create separate special-interest vehicles for each property. Thus, the promoter of farmland investments might put one Nebraska soy farm in an LLC and a California vineyard in a separate LLC. Each LLC issues membership units—the LLC version of shares—representing fractional interests in the company’s governance and economic rights. In this way, ownership interests in individual farmland can be sold off à la carte. See MARK A. SARGENT & WALTER D. SCHWIDETZKY, *LIMITED LIABILITY COMPANY HANDBOOK* § 1:3 (2024) (describing the role of LLC membership interests); *How It Works*, ACRETRADER, <https://acretrader.com/resources/how-it-works> [https://perma.cc/YMC8-FTF3].

<sup>123</sup>. See FAIRBAIRN, *supra* note 6, at 43-49.

<sup>124</sup>. See, e.g., FARMLAND PARTNERS, <https://www.farmlandpartners.com> [https://perma.cc/DE5H-D6FH] (describing itself as a publicly traded real-estate company that owns or manages approximately 139,000 acres of farmland in sixteen states and is taxed as an REIT).

land as assets for investors rather than dividing them into individual LLCs.<sup>125</sup> Those who ultimately dedicate capital to these investment vehicles include institutional investors (for example, university endowments, pensions, and mutual funds) and ultra-high-net-worth households.<sup>126</sup>

Several intermediaries have also marketed farmland as an asset class. Consider AcreTrader, an online platform for investing in farmland real-estate funds. AcreTrader operates as a financial sponsor that identifies available farms, negotiates with the seller and lessee, and arranges for a profitable exit. For this work, AcreTrader typically earns management and performance fees from the funds.<sup>127</sup> These intermediaries are instrumental in shaping farmland into a financial product that can be packaged, marketed, and sold to investors. AcreTrader raises money from institutions and high-net-worth individuals in exchange for ownership interests in funds that are either devoted to a single property or a portfolio.<sup>128</sup> AcreTrader has a management company that organizes the LLC, acquires the farm, and facilitates the financial transaction.<sup>129</sup> For handling the company's operations, finances, and eventual exit, the manager earns a fee.<sup>130</sup>

As investors choose between legal forms, there are legally relevant regulatory asymmetries between the rules governing traditional farming operations and those governing different types of financialized instruments.<sup>131</sup> Ultimately, in important ways we explore below, these regulatory asymmetries tend to channel capital toward the least transparent, lowest-public-obligation vehicles: private-equity funds, family offices, and special-purpose LLCs that can accumulate

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<sup>125</sup>. See FAIRBAIRN, *supra* note 6, at 38, 43-44.

<sup>126</sup>. *Id.* at 44.

<sup>127</sup>. See *How It Works*, *supra* note 122.

<sup>128</sup>. See *id.* These funds may be structured as an LLC selling membership units or as a limited partnership selling partnership interests.

<sup>129</sup>. See, e.g., *Offerings Managed by Acretrader Management*, ACRETRADER, <https://acretrader.com/docs/INC-Historical-Exits.pdf> [<https://perma.cc/D8KT-NAV5>].

<sup>130</sup>. See Meb Faber, *Episode #312: Carter Malloy, Acretrader*, “In a Couple of Minutes, You Can Invest as Little as \$15,000 or \$20,000 in a Particular Farm,” MEB FABER RSCH. (May 17, 2021), <https://mebfaber.com/2021/05/17/e312-carter-malloy> [<https://perma.cc/4MJD-RGH6>] (describing AcreTrader’s business model as making “money in fees that are already going to be paid in a” brokered real-estate transaction, plus a “management fee” of 0.75 to 1% in connection with putting the farm in a “special purpose vehicle”).

<sup>131</sup>. See, e.g., Jim McCandless, *The Last, Great Untapped Asset Class*, UBS ASSET MGMT. 30-31 (Jan. 2021), <https://irei.com/wp-content/uploads/2020/12/Jan-2021-UBSAssetManagement-Spo nsorReport.pdf> [<https://perma.cc/7J22-W8BM>]; Michael DeSa, *Agriculture as an Asset Class*, FARMLANDGRAB (July 11, 2017), <https://www.farmlandgrab.org/post/view/27321-agriculture-as-an-asset-class> [<https://perma.cc/9JPK-PNG2>]; Rik van Beers, Sander Bierman, Charles Elworthy, Dane Rook & Jérôme Schoumann, *Farmland Investment: Reaping the Rewards of Illiquidity?*, VBA JOURNAL, Summer 2013, at 9, 9-12.

acreage without revealing strategy, counterparties, or performance.<sup>132</sup> In contrast, public REITs and mutual funds tend to bear higher disclosure and governance costs,<sup>133</sup> which can deter their entry or push them toward scale, homogeneity, and sale-leaseback models that prioritize predictable yields. The upshot is regulatory arbitrage in organizational form: sophisticated investors select structures that minimize reporting while maximizing leverage and tax advantages, thereby accelerating consolidation. For local owners and new-generation farmers, these differences are largely negative: opaque bidders with cheaper capital and superior deal flow raise land prices, widen information asymmetries, and crowd out would-be owner-operators. The one partial positive is that public vehicles leave a data trail (for example, 10-Ks and offering docs), which can aid policymakers and researchers. But because the fastest-growing pools (private funds, syndicates, and family offices) disclose little, market intelligence remains thin where it matters most. In practice, disclosure asymmetry reshapes who competes, not just how they behave, thereby tilting the field toward absentee financial owners and away from community-rooted entrants.

## II. THE HIGH STAKES OF BETTING THE FARM

Promotional claims by farmland investment funds tend to highlight a rosy picture, marked by investor innovation, capital liquidity for working farmers, and environmental priorities.<sup>134</sup> Yet Wall Street's increasing influence over

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<sup>132</sup>. See *infra* Section IV.A.2. Passed in 2020, the Federal Corporate Transparency Act sought to require many smaller entities, including many LLCs, to file with the federal government online reports disclosing information about their beneficial owners. See *Corporate Transparency Act*, Pub. L. No. 116-283, § 6403, 134 Stat. 4604, 4605-25 (2021) (codified at 31 U.S.C. § 5336). Information collected here is for anti-money-laundering purposes and not made available to the public. These obligations extend to real-estate companies. See Terence M. Grugan & Mary K. Treanor, *Money Laundering and Real Estate*, 75 CONSUMER FIN. L.Q. REP. 248, 255-56, 260-61 (2021). As of our writing, enforcement of the law is enjoined. See *Smith v. Dep't of Treasury*, 761 F. Supp. 3d 952, 952 (E.D. Tex. 2025) (enjoining the enforcement of 31 C.F.R. § 1010.380 (2024)).

<sup>133</sup>. See *infra* notes 277-278, 314-317 and accompanying text.

<sup>134</sup>. See FAIRBAIRN, *supra* note 6, at 2, 31-32, 72-80; see also *Why Farmland?*, FARMLAND PARTNERS, <https://www.farmlandpartners.com/why-farmland> [https://perma.cc/QPY8-3CS0] ("We believe that by investing in farmland, we're investing in more than real estate – we're investing in rural America and the people who feed and fuel the world."); Sara Wensley, *Farmland: A Strategic Asset for Sustainable Impact and Long-Term Returns*, FARMTOGETHER (Dec. 17, 2024), <https://farmtogether.com/learn/blog/farmland-a-strategic-asset-for-sustainable-impact-and-long-term-returns> [https://perma.cc/VE34-75WG] ("As global focus on sustainability intensifies, farmland has emerged as a valuable asset for investors seeking to drive meaningful environmental impact.").

farmland has profound implications not only for those who live in these communities but also for all who depend on farming.

An active body of interdisciplinary literature has documented a pervasive pattern of rural suffering and resentment—to say nothing of environmental degradation—flowing from cycles of resource exploitation and abandonment that have transpired throughout American history.<sup>135</sup> Across distinct U.S. geographies—from mountain-top-removal mining in Appalachia to depleted fisheries in the Pacific Northwest—outside capital investment has seriously eroded landscapes and communities.<sup>136</sup> Many of these extractive patterns benefit metropole economic interests at the expense of long-term rural livelihoods.<sup>137</sup>

The financialization now transforming U.S. farmland follows similar patterns. Although absentee ownership is not new to U.S. agriculture, financialization has dramatically reshaped the scale, structure, and consequences of this form of farm management. Traditional absentee landlords—such as retired farmers or rural landowners living off-farm—have long existed.<sup>138</sup> But the rise of institutional investors and farmland funds introduces a new dynamic: under a financialized model of absentee ownership, such ownership is now more opaque, driven by fiduciary imperative, and detached from long-term stewardship or local accountability.

In this Part, we engage with the work of multidisciplinary scholars to identify what is at stake when we bet the proverbial farm in this way. In the Sections that follow, we identify four interconnected reasons to worry about farmland's growth as an asset class: (1) the negative impacts on the welfare of rural communities; (2) the weakening of transparency and other democratic land-

<sup>135</sup>. See, e.g., JOHN GAVENTA, POWER AND POWERLESSNESS: QUIESCEENCE AND REBELLION IN AN APPALACHIAN VALLEY, at v-x (1980); NICHOLAS F. JACOBS & DANIEL M. SHEA, THE RURAL VOTER: THE POLITICS OF PLACE AND THE DISUNITING OF AMERICA 14-15, 162-65 (2023); LOKA ASHWOOD, FOR-PROFIT DEMOCRACY: WHY THE GOVERNMENT IS LOSING THE TRUST OF RURAL AMERICA, at ix-xi (2018). Others have framed rural spaces as “sacrifice zones” to reflect these patterns. See, e.g., Julia Fox, *Mountaintop Removal in West Virginia: An Environmental Sacrifice Zone*, 12 ORG. & ENV'T 163, 168, 181 (1999); Ann M. Eisenberg, *Distributive Justice and Rural America*, 61 B.C. L. REV. 189, 197 (2020). This also echoes what other scholars call “internal colony” theory. See Shannon Elizabeth Bell & Richard York, *Community Economic Identity: The Coal Industry and Ideology Construction in West Virginia*, 75 RURAL SOCIO. 111, 119 (2010).

<sup>136</sup>. See, e.g., Marc Edelman, *Hollowed out Heartland, USA: How Capital Sacrificed Communities and Paved the Way for Authoritarian Populism*, 82 J. RURAL STUD. 505, 506 (2021); STEVEN STOLL, *RAMP HOLLOW: THE ORDEAL OF APPALACHIA* 159-65 (2017).

<sup>137</sup>. See Ann M. Eisenberg, *Rural America as a Commons*, 57 U. RICH. L. REV. 769, 772-75, 789-91 (2023).

<sup>138</sup>. See, e.g., Bigelow et al., *supra* note 93, at 5-6, 35-36 (confirming the existence of tenant farming operations over time and discussing retiring farmers' decision to rent out land and transition to nonoperator landlord status).

governance values; (3) the erosion of food-system resilience; and (4) worsening inequality. We emphasize, however, that these are not discrete harms; rather, they are mutually reinforcing and path-dependent dynamics that, together, give rise to the systemic shift now underway in contemporary farm ownership.

Consider, for example, one such feedback loop that intensifies the challenges described above: as more investors flock to farmland, demand for land as an asset increases, causing land prices to rise and making it more difficult for small-scale and beginning farmers to enter the market.<sup>139</sup> Just as investor interest in single-family housing has made home purchases less attainable for new home buyers, aspiring farmers and ranchers find themselves increasingly locked out—and priced out—of land access. Many new and young farmers are motivated by environmental stewardship values and seek to run highly diversified and regenerative operations.<sup>140</sup> Their entry into farming also promises a new lifeblood for more vibrant, future-focused rural communities.<sup>141</sup> But without land access, this opportunity is foreclosed.

Given that aspiring farmers and ranchers tend to have less investable capital than their better-established counterparts,<sup>142</sup> these individuals face a steep disadvantage in their competition with private equity in bidding wars over productive farmland. Indeed, the financing methods farmers have historically relied upon—such as bank loans—may not provide sufficient capital to match rising prices driven by speculative investment. As we emphasize below, these barriers to accessing capital contribute to compounding cycles of rural depopulation and decline, environmental devastation, and worsening inequality.

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<sup>139</sup> As land becomes more concentrated and more expensive, small-scale and beginning farmers—who typically have less capital—are increasingly unable to compete with large investors for available land. Shoemaker, *supra* note 12, at 1726–29; see also Omanjana Goswami, *Farmland Consolidation, Not Chinese Ownership, Is the Real National Security Threat*, EQUATION—UNION CONCERNED SCIENTISTS (Mar. 2, 2023, 3:59 PM), <https://blog.ucusa.org/omanjana-goswami/farmland-consolidation-not-chinese-ownership-is-the-real-national-security-threat> [https://perma.cc/MH3G-V2BG] (“Arguably the single biggest effect of land consolidation is that it excludes new and beginning farmers and BIPOC . . . farmers from owning land, entering the profession, and creating generational wealth.”).

<sup>140</sup> See Ackoff et al., *supra* note 44, at 16–17.

<sup>141</sup> See Shoemaker, *supra* note 12, at 1748–49 (making the case for farmland access as part of a wider reconciliation for histories of exclusion and dispossession across rural landscapes).

<sup>142</sup> See, e.g., Nigel Key & Greg Lyons, *An Overview of Beginning Farms and Farmers*, U.S. DEP’T OF AGRIC. 14 (Sep. 2019), <https://www.usda.gov/sites/default/files/documents/ERS%20Report-Nigel%20Key.pdf> [https://perma.cc/DKY4-CR77] (noting that beginning farmers and ranchers have less wealth and a higher debt-to-asset ratio than established farmers).

### A. Social and Economic Decline in Rural Communities

Rural sociologists consistently connect absentee farmland ownership to negative social-welfare outcomes in rural communities. An important early study by Walter Goldschmidt compared two California communities with nearly identical farm-production values but different farm structures and sizes. One had large, absentee-owned farms employing wage labor, while the other consisted of small family-owned-and-operated farms.<sup>143</sup> These structural ownership differences had far-reaching impacts across multiple measures of community life, including standard of living, educational opportunity, political engagement, and access to public services.<sup>144</sup> In the Goldschmidt study, absentee owners manipulated the economic and political institutions of their industrialized communities for their own benefit, while local owner-operators adopted a broader interest in general local welfare.<sup>145</sup>

Since Goldschmidt's 1940 study, numerous scholars have documented detrimental community impacts from industrialized farming on many indicators of quality of life, including socioeconomic well-being and the social ties that bind local communities.<sup>146</sup> This literature has also uncovered a negative correlation between local economic outcomes and a landlord's residential distance from the property.<sup>147</sup>

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<sup>143.</sup> GOLDSCHMIDT, *supra* note 56, at 281-82, 306-30.

<sup>144.</sup> *Id.* at 282-85.

<sup>145.</sup> *Id.*

<sup>146.</sup> Linda Lobao & Curtis W. Stofferahn, *The Community Effects of Industrialized Farming: Social Science Research and Challenges to Corporate Farming Laws*, 25 AGRIC. & HUM. VALUES 219, 221, 225, 228 (2008) (summarizing fifty-one studies of industrial farming and community well-being); *see also* Conner Bailey & Mahua Majumdar, *Absentee Forest and Farm Land Ownership in Alabama: Capturing Benefits from Natural Capital Controlled by Non-Residents*, in RURAL WEALTH CREATION 134, 140-44 (John L. Pender, Bruce A. Weber, Thomas G. Johnson & J. Matthew Fanin eds., 2014) (finding a correlation between absentee ownership of Alabama timberland and negative socioeconomic outcomes at the county level, including on measures of income and educational attainment); Thomas A. Lyson & Rick Welsh, *Agricultural Industrialization, Anticorporate Farming Laws, and Rural Community Welfare*, 37 ENV'T & PLAN. 1479, 1489 (2005) (finding empirical support for the Goldschmidt hypothesis but also concluding that state "anticorporate farming laws" can mitigate the negative socioeconomic consequences of consolidation and absentee ownership); Mary K. Hendrickson, *Resilience in a Concentrated and Consolidated Food System*, 5 J. ENV'T STUD. & SCIS. 418, 425-29 (2015) (analyzing the detrimental effects of industrial farming on food-system resilience).

<sup>147.</sup> Siraj G. Bawa & Scott Callahan, *Absent Landlords in Agriculture—A Statistical Analysis*, U.S. DEP'T OF AGRIC. 23 (Mar. 2021), [https://ers.usda.gov/sites/default/files/\\_laserfiche/publications/100664/ERR-281.pdf](https://ers.usda.gov/sites/default/files/_laserfiche/publications/100664/ERR-281.pdf) [<https://perma.cc/EX5N-MR48>] (finding, for example, that "per capita income shows a negative and statistically significant association with average landlord distance"); *see also id.* at 4-8 (mapping the distance between nonoperator landlords and farm tenants).

Neither absentee ownership nor industrialized farming are, on their own, necessarily synonymous with financialized land ownership as we have defined it here. But these are all practices organized around a central premise of separating ownership and control from local labor and community control.<sup>148</sup> Absentee land ownership, by definition, disrupts traditional, place-based connections and empowers outsiders to make land-use decisions.<sup>149</sup> Nonresident owners do not experience direct land-use effects in the same way as local residents. An industrialized operation's focus on profit, independent from the processes by which this profit is generated, risks undervaluing community investment in infrastructure or other local projects and otherwise distorting economic relations in inequitable ways.<sup>150</sup>

Financialized land ownership magnifies both of these effects. The local consequences of external decision-making are likely to be most detrimental where owners are both absentee and profit-driven – for example, investors seeking only anonymized portfolio returns and who have no personal ties to the community.

Property taxes represent one further piece of this puzzle. While all landowners should, in theory, contribute to local budgets for schools, infrastructure, and other public services through property taxes, farm investors' contribution to municipal funding is often minimal.<sup>151</sup> Levies are typically based on assessed market value, so the more land one owns (and the more valuable that land is), the greater the contribution to the local property-tax base.<sup>152</sup> Agricultural land, however, is consistently subject to special treatment for property-tax purposes, and absentee agricultural landlords and asset managers can navigate tax laws to their advantage.<sup>153</sup> When agricultural land valuations are reduced for the benefit of

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<sup>148.</sup> Cf. Luke Herrine, *Regulating Cutthroat Business*, 103 N.C. L. REV. 1573, 1620–21 (2025) (discussing this dynamic in the context of industrial meatpacking).

<sup>149.</sup> See *infra* Section III.B.

<sup>150.</sup> See, e.g., Lobao & Stofferahn, *supra* note 146, at 224–28 (examining the adverse effects of industrialized farming across an array of contexts, including local socioeconomic conditions and community social fabrics, produced by forty-one studies in the fifty-two-study pool); LINDA M. LOBAO, LOCALITY AND INEQUALITY: FARM AND INDUSTRY STRUCTURE AND SOCIO-ECONOMIC CONDITIONS 53–75 (1990).

<sup>151.</sup> See Daniel P. Bigelow & Todd Kuethe, *The Impact of Preferential Farmland Taxation on Local Public Finances*, 98 REG'L SCI. & URB. ECON. art. no. 103848, at 1, 12–13 (2023) (detailing how preferential property-tax relief for farmland owners negatively impacts local-government tax revenues, although local losses may be offset by state-level funding transfers).

<sup>152.</sup> Anderson, *supra* note 95, at 72–75.

<sup>153.</sup> *Id.* at 71. This can involve lobbying for lower property-tax rates or pushing for assessments that undervalue their properties, thereby reducing their tax liability. Only two states (Connecticut and Delaware) allow nonresidents, such as absentee landowners, to vote in local elections at all. *See Voting by Nonresidents*, NAT'L CONF. STATE LEGISLATURES (Dec. 31, 2023),

nonresident owners, a program of public support intended for resident farmers shifts instead to the coffers of absentee investors. This, in turn, reallocates the balance of the tax burden to smaller property owners and residents who—as a result of this shift—face higher taxes while also suffering cuts in funding to schools and other essential services.<sup>154</sup>

Related dynamics play out in farm subsidy programs. Farm income supports “are neither an efficient nor effective policy mechanism for promoting rural community development,”<sup>155</sup> with slightly more than half of farm-program spending now flowing *outside* of rural counties to metropolitan centers.<sup>156</sup> The Environmental Working Group more colorfully describes this as a persistent pattern of “city slickers and beach bums” receiving extensive farm subsidies, rather than resident rural farmers.<sup>157</sup> These trends have only grown as more landowners become nonoperating asset managers.<sup>158</sup> Instead of subsidizing rural economies, today’s farm-program payments contribute to rising farmland prices, exacerbating a cycle of absentee investors’ portfolio growth at the expense of resident farmers’ land access and income stability.<sup>159</sup>

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<https://www.ncsl.org/elections-and-campaigns/voting-by-nonresidents> [<https://perma.cc/XBW6-M68D>]. Yet sophisticated property owners can also structure their holdings through various business entities, such as trusts or LLCs, that further complicate tax matters. See Shade & Van Sant, *supra* note 90, at 849 fig.1.

154. See Shade & Van Sant, *supra* note 90, at 849 (highlighting a case of ten large companies that “hold 45 percent of deeded property but shoulder less than 5 percent of the county’s property tax burden”); *supra* Section I.B.2 (discussing additional policy choices that inflate farmland value); Therese J. McGuire, Leslie E. Papke & Andrew Reschovsky, *Local Funding of Schools: The Property Tax and Its Alternatives*, in *HANDBOOK OF RESEARCH IN EDUCATION FINANCE AND POLICY* 376, 387–88 (Helen F. Ladd & Margaret E. Goertz eds., 2015) (outlining school-finance issues, specifically).
155. Douglas Jackson-Smith, Jessica D. Ulrich-Schad & Curt Grimm, *Assessing the Impacts of Federal Farm Bill Programs on Rural Communities*, AGREE, at vi (Apr. 2013), [https://scholars.unh.edu/cgi/viewcontent.cgi?article=1106&context=soc\\_facpub](https://scholars.unh.edu/cgi/viewcontent.cgi?article=1106&context=soc_facpub) [<https://perma.cc/24L7-UBC5>].
156. *Id.* at 26.
157. Eve Devens & Jared Hayes, *Hundreds of City Slickers and Beach Bums Received Farm Subsidies for 37 Straight Years*, ENV’T WORKING GRP. (May 25, 2023), <https://www.ewg.org/news-insights/news/2023/05/hundreds-city-slickers-and-beach-bums-received-farm-subsidies-37> [<https://perma.cc/WM6T-UVFF>]; see also *Farm Subsidy Primer*, ENV’T WORKING GRP., <https://farm.ewg.org/subsidyprimer.php> [<https://perma.cc/2FSE-B7HT>] (“[T]he vast majority of farmers do not benefit from federal farm subsidy programs and most of the subsidies go to the largest and most financially secure farm operations.”).
158. Jackson-Smith et al., *supra* note 155, at vi.
159. *Id.* (describing how larger farms shift their purchasing away from local communities); see also Ciaian et al., *supra* note 102, at 18 (“The capitalization of subsidies into farmland prices is considered a major channel of subsidy leakage outside the farming sector . . . .” (footnote

### B. Lack of Transparency

Despite the critical importance of the question “who (or what) owns the land,” financialization routinely clouds ownership information and thus amounts to a form of legally sanctioned opacity.<sup>160</sup> Part of this difficulty stems from the complex structures of ownership that corporate and securities law enable, which can obscure the identity of land’s beneficial owners.<sup>161</sup> When the “name on the deed” is an investment vehicle or other legal entity, such as a trust or LLC, this legal layering shields the identity of the owner of the land.<sup>162</sup>

Moreover, America lacks any public, centralized database for land ownership, making it even more difficult to see who really owns what land. While county-level data are typically public, each data source is different, making it challenging to draw comparisons across jurisdictions and impeding efforts to compile national measures of land distribution.<sup>163</sup> Perhaps the best national data come from the 2014 U.S. Department of Agriculture’s Tenure, Ownership, and Transition of Agricultural Land survey, but even these data are limited, inconsistent, and subject to changing federal attentiveness and funding.<sup>164</sup> These 2014

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omitted)); *supra* note 139 and accompanying text (describing the cycle of investors displacing local farmers in competition for land access).

160. See Shade & Van Sant, *supra* note 90, at 845 (“[A]t the most basic level, much less is known about rural U.S. land ownership when compared to urban areas.”).
161. Ashwood et al., *supra* note 34, at 235–36.
162. *Id.* at 233–36. For examples of the extensive efforts needed to uncover who is buying “giant chunks of Nebraska farmland,” see Xu & Herbers, *supra* note 6; Herbers, *supra* note 6; Mejia, *supra* note 29; and Destiny Herbers, *Spilling Bill’s Beans: Tech Billionaire Spent \$113 Million on Nebraska Farmland*, FLATWATER FREE PRESS (Dec. 21, 2023), <https://flatwaterfreepress.org/spilling-bills-beans-tech-billionaire-spent-113-million-on-nebraska-farmland> [https://perma.cc/2KFY-ZK2R].
163. See *supra* notes 82–93 and accompanying text. The flip side of this is that property deeds are registered across more than three thousand jurisdictions, each with their own codes, processes, and entry points. See Park, *supra* note 56, at 1490 (describing the more than three thousand decentralized county-level title registries); Shade & Van Sant, *supra* note 90, at 844 (describing obfuscation of “much of the basic empirical information about U.S. land ownership” due to “difficulty accessing and analyzing property data”); Ashwood et al., *supra* note 34, at 233 (emphasizing the added complexity introduced via financialization and corporate-ownership structures). In some markets, moreover, information about land transactions is even more attenuated. See, e.g., MONT. CODE. ANN. § 15-7-308 (2025) (providing that a required real-estate transfer certificate along with the sale-price information it contains “are not a public record and must be held confidential by the county clerk and recorder and the department”).
164. See Bigelow et al., *supra* note 93, at 12 (summarizing survey data from the U.S. Department of Agriculture’s Tenure, Ownership, and Transition of Agricultural Land); Census of Agric. Hist. Archive, 2014 *Tenure, Ownership and Transition of Agricultural Land (TOTAL)*, U.S.

data have also become outdated and are reported in categories incongruent with county-level property records, further frustrating work to aggregate land-ownership data beyond county lines.<sup>165</sup>

Ultimately, it is hard to know who owns what. Even knowing or paying attention to who lives at or operates a given farmstead no longer functions as a clear proxy for ownership.<sup>166</sup> As a practical matter, owner anonymity is bad for communities and neighbors.<sup>167</sup> Without knowing who owns neighboring lands, it is hard to build community and solidarity with these individuals.

A farmer renting ground from an LLC may not even know the ultimate owners—whether beneficiaries of a pension fund or a private-equity syndicate—and thus cannot meaningfully negotiate or engage directly with the actual decision-makers. Likewise, local communities weighing land-use issues, infrastructure needs, and other environmental and social impacts may confront only registered agents and shell entities, not accountable owners.

Community and solidarity with one's neighbors are not sentimental add-ons; they are governance assets. Dense local ties lower coordination costs, enable informal risk sharing, and strengthen collective efficacy—the capacity to solve problems and hold decision-makers to account.<sup>168</sup> By contrast, financial

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DEP'T AGRIC., [https://agcensus.library.cornell.edu/census\\_parts/2012-2014-tenure-ownership-and-transition-of-agricultural-land-total](https://agcensus.library.cornell.edu/census_parts/2012-2014-tenure-ownership-and-transition-of-agricultural-land-total) [<https://perma.cc/6QKC-QUJV>] (showing limited data availability). This survey reached operator and nonoperator landlords in forty-eight states and produced statistically significant samples for the twenty-five states with the greatest agricultural cash-rent receipts. Bawa & Callahan, *supra* note 147, at iv. However, it relies on voluntary responses and has not been repeated consistently, limiting its ability to capture trends or provide the basis for accurate comparative analyses. See, e.g., Megan Horst & Amy Marion, *Racial, Ethnic and Gender Inequities in Farmland Ownership and Farming in the U.S.*, 36 AGRIC. & HUM. VALUES 1, 5-6 (2018) (outlining the history of sporadic and inconsistent USDA ownership surveying over time).

<sup>165</sup>. See, e.g., Shade & Van Sant, *supra* note 90, at 844 (describing how “[e]ven with scores of journalists and researchers working to uncover the details of [their] landholdings,” the exact number of acres owned by Bill and Melinda Gates remains uncertain); Mejia, *supra* note 29 (noting all of the errors in available public data).

<sup>166</sup>. Journalists, advocates, researchers across multiple disciplines, and even investors themselves struggle to know exactly who owns rural America. See, e.g., Shade & Van Sant, *supra* note 90, at 850 (outlining barriers to data access but also noting ethical concerns about vulnerabilities that can be created when ownership data are made more readily available to powerful land speculators); see also Horst, *supra* note 85, at 4-5 (describing one sample research methodology that required obtaining and then evaluating numerous individual land-transfer records from various county assessor offices across the state).

<sup>167</sup>. See Weiss, *supra* note 37, at 554-55 (emphasizing landlord anonymity as a concern in the financialized-housing context).

<sup>168</sup>. See generally, e.g., Mallory L. Rahe, Andrew J. Van Leuven & Trey Malone, *Leveraging Social Ties to Financial Gains: Exploring the Impact of Social Capital in Rural Development*, 114 J. RURAL

intermediation often loosens these local ties, separating control not just from ownership but also from place. The result is thin reciprocity and weak accountability: neighbors are less able to bargain, monitor, or mobilize effectively against land-use externalities or for shared stewardship, because the real principals are faceless, distant, and insulated by organizational form.<sup>169</sup>

### C. Loss of Environmental and Food-Systems Resilience

The fact that financial investors are, by definition, profit driven also creates tensions with other environmental and food-system values. Businesses tend to reduce their production costs by externalizing them.<sup>170</sup> Farm landlords may, therefore, make decisions to prioritize immediate financial returns over long-term ecological health, thus promoting short-term crop yields while degrading soil quality, reducing biodiversity, and increasing vulnerability to pests and diseases. These practices contrast sharply with more sustainable approaches like crop rotation and organic farming, which enhance long-term soil fertility and farm resilience but may not maximize immediate financial output for an investor's bottom line.<sup>171</sup>

This is not universal. An investor focused on the appreciation of a capital asset (land) might be incentivized to make more resource-responsible decisions, particularly where pro-environment capital expenditures also secure one's long-term investment.<sup>172</sup> Radical soil depletion, for example, risks diminishing both

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STUD. art. no. 103539 (2025) (analyzing local ties that can promote capital formation in place-based development); Jason T. Carbone & Stephen Edward McMillin, *Reconsidering Collective Efficacy: The Roles of Perceptions of Community and Strong Social Ties*, 18 CITY & CMTY. 1068 (2019) (providing an empirical model illustrating connections between measures of local social ties and collective efficacy).

<sup>169</sup>. See *infra* Section IV.B.

<sup>170</sup>. See WRIGHT, *supra* note 50, at 34.

<sup>171</sup>. *But cf.* Bawa & Callahan, *supra* note 147, at 18 (describing a "mixed picture regarding the effect of absent landlords on measures of soil health").

<sup>172</sup>. Karina Mudd, *Farmland Investment as a Vehicle for Environmental Conservation: An Analysis of Stakeholder Attitudes and Social Impacts*, U.C. BERKELEY 20 (May 2021), [https://food.berkeley.edu/wp-content/uploads/2021/07/Farmland-Investment-as-a-Vehicle-for-Environmental-Conservation\\_Karina-Mudd\\_2021.pdf](https://food.berkeley.edu/wp-content/uploads/2021/07/Farmland-Investment-as-a-Vehicle-for-Environmental-Conservation_Karina-Mudd_2021.pdf) [<https://perma.cc/X9U6-FQF7>] (noting that most nonoperator landowners at least express a desire to protect land for the future and willingness to support soil conservation, though their actions do not always reflect those commitments). We say "should" because "small farm size and family ownership represent absolutely no guarantee of agroecological integrity," especially as conditioned by current finance demands and agricultural policy. Chen & Adams, *supra* note 10, at 408. *But see* Jessica Leahy & Patrick Lyons, *Place Attachment and Concern in Relation to Family Forest Landowner Behavior*, 12 FORESTS 295, 306 (2021) (finding that "as place attachment and landowner concern increase, so does the

long-term land values and the surrounding environment. This logic bears out in some empirical assessments of certain environmental decisions made by investor-owners, which show mixed (but not all bad) results on environmental stewardship.<sup>173</sup> Still other research, however, shows that absentee landlords are unlikely to impose or enforce prosustainability farming practices on their tenants, even if incentivized to do so by government policies or payments.<sup>174</sup>

More subtly, financialization pushes farming into more streamlined production systems, which can be managed and monitored more easily from afar and at scale. Absentee investment tends to reduce land management to a few objective metrics – which can be easily measured through monocultures of high-yield crops, high-density livestock operations, and intensive mechanized farming – in ways that obscure the complex local and generational knowledge enjoyed by resident farmer-owners.<sup>175</sup> These efficiency-focused practices can be more easily streamlined into digital codes for algorithmic decision-making or votes in a boardroom in Boston, but are not informed by firsthand farming experience and expertise.<sup>176</sup> Further exacerbating this phenomenon, satellite data and management algorithms contribute to profit-maximizing farm management by optimizing decision-making at scale; these technological shifts impact crop input and rotation, water access, soil quality, and even tenant selection and rent collection.<sup>177</sup>

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likelihood of a landowner engaging in certain behaviors,” including conservation-oriented practices).

- 173. See, e.g., Bawa & Callahan, *supra* note 147, at iv (finding no clear statistical “association between the prevalence of absent landlords” and “effort[s] to improve soil health”). Some ownership goals and strategies might well be driven by amenity values such as wildlife conservation, access to recreational activities like hunting, or simply the prestige of land ownership. Thomas, *supra* note 12, at 1823, 1827, 1832-33 (noting the prevalence in tax data of farmers with small operating losses, and explaining that many are hobbyists or lifestyle farmers because their households also typically have sizable off-farm income).
- 174. See, e.g., Collin Weigel et al., *Using a Randomized Controlled Trial to Develop Conservation Strategies on Rented Farmlands*, 14 CONSERVATION LETTERS art. no. e12803, at 1, 6 (2021) (finding no significant effect on cover-crop adoption despite targeted incentive programs offering non-operating agricultural landlords sample lease language and financial incentives to require these conservation measures of their farm tenants).
- 175. See, e.g., FAIRBAIRN, *supra* note 6, at 85-86 (discussing farmland investors’ ability to manage risk through portfolio diversification rather than more traditional diversification methods, such as variable and rotating crops within a single property).
- 176. See, e.g., Luke Macaulay & Van Butsic, *Ownership Characteristics and Crop Selection in California Cropland*, 71 CAL. AGRIC. 221, 221 (2017) (analyzing land-ownership data as an “important predictor of economic decision-making, conservation practices and recreational use”).
- 177. Emily Duncan, Sarah Rotz, André Magnan & Kelly Bronson, *Disciplining Land Through Data: The Role of Agricultural Technologies in Farmland Assetisation*, 62 SOCIOLOGIA RURALIS 231,

We see examples of these effects in national food-safety recalls and recent egg shortages caused by rapid bird-flu spread.<sup>178</sup> In addition, recent years have seen the collapse of numerous widely dispersed and diversified small farms into a few dominating industrial hog operations.<sup>179</sup> Some observers call these “swine cities,” with fully enclosed facilities and conditions that resemble a factory more than a farm.<sup>180</sup> These massive streamlined operations threaten the resiliency of the overall food system and have wide-ranging consequences for the environment and food supply.<sup>181</sup> But they are easier to own, manage, and grow from afar, leading absentee investors to prioritize their own bottom lines over the resilience of the food system.<sup>182</sup>

Despite all this, much of the promotional material for farmland investment frames these platforms as saving the environment, with a unique focus on sustainability and greater technological support for the world’s breadbaskets.<sup>183</sup> The global food system already produces more than sufficient calories to feed the

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232-34, 239-42 (2022); *cf.* Brett Christophers, *How and Why U.S. Single-Family Housing Became an Investor Asset Class*, 49 J. URB. HIST. 430, 438-39 (2021) (identifying rental-management technology as a key factor in the financialization of housing).

<sup>178</sup>. Julie Creswell, *Egg Prices Are High. They Will Likely Go Higher*, N.Y. TIMES (Jan. 24, 2025), <https://www.nytimes.com/2025/01/24/business/egg-shortage-prices.html> [<https://perma.cc/MP3G-ZPES>].

<sup>179</sup>. See Kaitlin Kelly-Reif & Steve Wing, *Urban-Rural Exploitation: An Underappreciated Dimension of Environmental Injustice*, 47 J. RURAL STUD. 350, 353-55 (2016).

<sup>180</sup>. See Pat Stith & Joby Warrick, *Boss Hog: North Carolina’s Pork Revolution*, 18 AMICUS J., no. 1, Spring 1996, at 36, 36.

<sup>181</sup>. Hendrickson, *supra* note 146, at 418 (“A relatively small number of agribusiness firms, operating globally, have powerfully shaped who produces food, what is produced, how and where it is produced, and by whom it is eaten.”).

<sup>182</sup>. Farmland financialization also inspires a particular kind of conservative leasing strategy that favors expanding existing large-scale operations over smaller and more diversified production. *See infra* note 190 and accompanying text; Tong & Zhang, *supra* note 86, at 27, 57 (finding that more than half of nonoperating landlords in Iowa in 2022 had no farming experience). But it is also worth noting that short-term tenancies always structurally disfavor the long-term knowledge and security required for sustainable farming practices, such as permaculture or agroforestry. *See, e.g.*, Keefe O. Keeley et al., *Multi-Party Agroforestry: Emergent Approaches to Trees and Tenure on Farms in the Midwest USA*, 11 SUSTAINABILITY art. no. 2449, at 1, 2 (2019) (discussing the challenges that short-term lease terms create for investing in long-term sustainability efforts, including agroforestry); *see also* Hendrickson, *supra* note 146, at 429 (exploring how local farmers “have different goals and aspirations [than corporate firm power] because they are rooted in particular places and in particular communities”).

<sup>183</sup>. See Cronin & Hettinger, *supra* note 23; Nuveen, *How We Invest in Farmland*, TIAA 11 (2018), [https://www.tiaa.org/public/pdf/how\\_we\\_invest\\_in\\_farmland.pdf](https://www.tiaa.org/public/pdf/how_we_invest_in_farmland.pdf) [<https://perma.cc/ZR3L-NS6F>]; Doug Hertzler, *Part 2: TIAA’s Farms Up Close*, ACTIONAID (July 8, 2019), <https://www.actionaidusa.org/insight/tiaas-farms-up-close> [<https://perma.cc/J6QJ-9Y4Q>].

planet's population, even accounting for future growth projections.<sup>184</sup> Yet today, more than two billion people suffer from food insecurity and hunger, and seventy percent of food-insecure people are farmers themselves, including many small farmers and agricultural laborers in the Global South.<sup>185</sup> In the United States, rural residents and farmworkers experience disproportionate food insecurity, and more than a third of the food we produce is simply put to waste.<sup>186</sup>

The modern agricultural sector is increasingly divorced from its fundamental role – to provide food and support sustainable rural livelihoods – and financialized farmland moves us still farther from these purposes.<sup>187</sup> Financialization subordinates production decisions to portfolio logics. When law codes land as an asset class, it channels capital toward extraction rather than sustenance, eroding the twin purposes of agriculture: reliable food and durable rural livelihoods.

#### *D. Concentration, Inequality, and Exclusion*

Finally, creating a system of investor ownership of agricultural land widens already dire spatial, economic, and political inequalities.<sup>188</sup> In a system of financialized farmland, multiple third-party actors stand ready to take a cut of farmland values. Land is packaged by financial sponsors, sold to distant investors as shares in a farmland asset, and ultimately leased to tenants or farmed via hired wage labor in an industrialized farming model.<sup>189</sup> And in many cases, these

<sup>184</sup>. See William Boyd, *Food Law's Agrarian Question: Capital, Global Farmland, and Food Security in an Age of Climate Disruption*, in RESEARCH HANDBOOK ON INTERNATIONAL FOOD LAW 29, 58 (Michael T. Roberts ed., 2023); see also *Trade and Environment Review 2013: Wake Up Before It Is Too Late: Make Agriculture Truly Sustainable Now for Food Security in a Changing Climate*, U.N. CONF. ON TRADE & DEV., at iii (2013), [https://unctad.org/system/files/official-document/ditcted2012d3\\_en.pdf](https://unctad.org/system/files/official-document/ditcted2012d3_en.pdf) [<https://perma.cc/NZ39-NX7S>] (“[T]he world currently already produces sufficient calories per head to feed a global population of 12-14 billion . . .”).

<sup>185</sup>. See Boyd, *supra* note 184, at 58 (citing *Trade and Environment Review*, *supra* note 184, at iii).

<sup>186</sup>. *Id.*; Briana E. Rockler, Stephanie K. Grutzmacher, Jonathan Garcia, Marc T. Braverman & Ellen Smit, *Something to Eat: Experiences of Food Insecurity on the Farm*, 40 AGRIC. & HUM. VALUES 1419, 1428 (2023).

<sup>187</sup>. The challenge of defining our food system's fundamental purpose has received important scholarly attention. See, e.g., Smita Narula, *Beyond Reform: Food Sovereignty and the Future of Global Food Systems*, 31 IND. J. GLOB. LEGAL STUD. 141, 151 (2024) (suggesting that the concept of food sovereignty may be at odds with the global financialization of food systems); Margot J. Pollans, *Abundance and Other Food Fixations*, 96 U. COLO. L. REV. 209, 243 (2025) (arguing that the discussion of food in politics and broader public discourse artificially limits the debate over food security).

<sup>188</sup>. See *infra* Section III.B (discussing the concept of spatial justice in more detail).

<sup>189</sup>. When small-scale and beginning farmers are pushed out of the market, rural communities lose key contributors to local economies and communities. See GOLDSCHMIDT, *supra* note 56, at 281-82.

tenants are established operators looking to expand existing production, rather than beginning farmers who present riskier future income streams for investors.<sup>190</sup>

In both cases, passive investors get richer while tenant farmers or farmworkers net less income, and rural residents and farm laborers are increasingly deprived of opportunities for long-term equity investment in farmland.<sup>191</sup> Because farmland has a finite potential for producing income – limited by the productive capacity of the land itself – splitting the financial returns between a producer-farmer and landowner-landlord diminishes net income for what may already be tenuous operations. In this context, the active farmer gets less in exchange for her labor, and the investor-owner gets more from passive growth in wealth.

As economist Thomas Piketty has shown, systems that privilege returns to private capital over social growth tend to increase the level of socioeconomic inequality over time.<sup>192</sup> Increasing concentration of land ownership by passive investors worsens this dilemma. This is the growth curve on which the United States now finds itself: current ethnographic research of farmland investors, for example, documents an active and unmet desire to amass even larger and more concentrated parcels of land as quickly as possible.<sup>193</sup> As we discuss in the final Part of this Article, these concerns present grave risks for the future of our democracy.<sup>194</sup>

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<sup>190.</sup> See FAIRBAIRN, *supra* note 6, at 91–92 (describing a sample system of intertenant competition and surveillance); Kathy Ruhf & Bob Wagner, *Farmland Investors: An Exploration for New England and Beyond*, LAND FOR GOOD 10 (Apr. 2013), <https://landforgood.org/wp-content/uploads/LFG-Farmland-Investors-An-Exploration-Guide.pdf> [https://perma.cc/3ZAW-ML4G] (describing investor strategies that favor established farmers over new and beginning farmers).

<sup>191.</sup> For example, tenant farmers who pay cash rents are predicted to risk “large losses” on an average Illinois grain farm in 2025, while farmers who own even some of their own land, even subject to debt service, would still clear a profit. See Gary Schnitkey, Nick Paulson, Carl Zulauf & Bradley Zwilling, *Projected Farm Income for 2025: Importance of Rental Arrangements on Farm Income*, FARMDOC DAILY (Apr. 1, 2025), <https://farmdocdaily.illinois.edu/2025/04/projected-farm-income-for-2025-importance-of-rental-arrangements-on-farm-income.html> [https://perma.cc/G8SY-GAAJ]. For outlines of parallel concerns regarding the allocation of farm subsidies, see generally Jackson-Smith et al., *supra* note 155; Devens & Hayes, *supra* note 157; and *Farm Subsidy Primer*, *supra* note 157.

<sup>192.</sup> See Edward J. McCaffery, *Piketty Revisited: The Meaning of Capital in the Twenty-First Century*, 2021 MICH. ST. L. REV. 31, 49 (“In the world of patrimonial capitalism, where  $r > g$ , wealth seems perpetual and dynastic, and inheritance looms large.” (citing THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 25–27 (Arthur Goldhammer trans., 2014))); see also Eric Kades, *Of Piketty and Perpetuities: Dynastic Wealth in the Twenty-First Century (and Beyond)*, 60 B.C. L. REV. 145, 152–53 (2019) (connecting outsized growth in wealth from passive land ownership to growing inequality).

<sup>193.</sup> FAIRBAIRN, *supra* note 6, at 42–43.

<sup>194.</sup> See *infra* Part V.

With more capital available to invest than real estate currently available for sale, it is the legacy of household-scaled production and parcel sizes that, until now, has been an obstacle to greater financial investment.<sup>195</sup> As current-generation farmers age and selling pressures continue, we can expect more land to be eaten up, consolidated, and accumulated at an enormous scale.<sup>196</sup> This accumulation, however, diverges from past speculative land booms because it is unlikely to generate local investment and redistribution to individual community members, instead reinforcing a cycle of external control and profit extraction. The export of both land values and rental income from rural communities to investor portfolios repeats a “pattern of one-way transfer of money and people out of rural communities that has become all too familiar.”<sup>197</sup>

In today’s challenging and heavily concentrated agricultural system, land ownership by local farming communities is, alone, insufficient to allow new farmers to exercise truly independent control of their place in the global food system.<sup>198</sup> Yet meaningful land access is an essential prerequisite to many other emancipatory visions of inclusive, sustainable, and just rural futures and food systems. In this respect, financialization and associated farmland concentration also contribute to rural depopulation, as both aspiring and existing rural residents see fewer opportunities and leave their communities in search of better prospects.<sup>199</sup>

Finally, this combination of barriers to new farm entry and ongoing rural depopulation contributes to a separate, though related, democratic crisis. Rural places used for resource extraction – from Appalachian communities stripped of their mountaintops to Pacific Northwest communities with depleted fisheries and forests – are repeatedly cast as sacrifice zones: unseen, forgotten, and left behind.<sup>200</sup> The financialization of farmland follows a similar pattern. In such neglected spaces, governance and public services are minimal, public policies are less effectively enforced, and residents have limited access to resources.<sup>201</sup> To

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<sup>195.</sup> Shoemaker, *supra* note 65, at 876.

<sup>196.</sup> See *supra* note 43 and accompanying text; *see also* FAIRBAIRN, *supra* note 6, at 40-43 (showing that investor appetite is currently in excess of domestic-farmland supply).

<sup>197.</sup> Richard A. Levins & Willard W. Cochrane, *The Treadmill Revisited*, 72 LAND ECON. 550, 552 (1996).

<sup>198.</sup> See *infra* Section III.D (highlighting the concentration of other agricultural markets); Hendrickson, *supra* note 146, at 418-19 (exploring how concentrated firm power in agricultural markets leads to constrained choices by local farmers and workers).

<sup>199.</sup> See *The Equity of Economic Opportunity in Rural America*, CTR. ON RURAL INNOVATION (Oct. 12, 2023), <https://ruralinnovation.us/blog/equity-economic-opportunity-rural-america> [<https://perma.cc/EBY9-AM48>].

<sup>200.</sup> See *supra* notes 135-138, 181 and accompanying text; *infra* Sections III.B, IV.B.4.

<sup>201.</sup> See, e.g., ANDERSON, *supra* note 47, at 101-09.

many extractive industries, these areas are prime expendable territories where environmentally harmful practices can take place without significant scrutiny.<sup>202</sup> Absentee ownership, depopulation, and rural othering thus form another mutually reinforcing feedback loop: depopulation and degradation entrench the perception and manifestation of rural areas as distant and disposable.<sup>203</sup>

### III. FINANCIALIZATION BY LAW

Having identified the harms of financialization, we now turn to the law's role in constituting this transition. Rather than pursuing widely distributed land ownership in service of agrarian production and rural flourishing, current legal choices combine to create farmland as a tradable asset, prioritizing capital formation and market alienation at the expense of other social and environmental values.<sup>204</sup>

In particular, we identify four deep structural features of American law that, when taken together, enable the current agricultural land-grab phenomenon. These include: (1) legal frameworks built on market supremacy; (2) spatial inequalities built into decision-making (divorcing who makes and benefits from decisions from who bears the costs of those choices); (3) temporal biases favoring the dead hand of the past and present interests over the needs of the future; and (4) rules that allow for and facilitate concentrated economic power, particularly in agricultural and real-estate markets.

Each of these structural features of law is sustained through specific doctrinal choices and legal authorities, explored in more detail in what follows. Because

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202. See Ackoff et al., *supra* note 44, at 77. In contrast, one recent study did find more absentee landlords in counties and states with lower farmland rents and lower land values. Bawa & Callahan, *supra* note 147, at 6, 34. It could be that absentee landlords contribute to economic decline, or it could be “that nonlocal investors prefer to buy land in areas with less vibrant economies because of lower financial barriers to entering economically depressed land markets.” Bawa & Callahan, *supra* note 147, at 23. Landowners might also be more likely to leave—and become absentee landlords for—more economically depressed communities. *Id.* Private equity may also target disinvested communities, as appears to be the case in the single-family rental market. See, e.g., Eric Seymour, Taylor Shelton, Stephen Averill Sherman & Joshua Akers, *The Metropolitan and Neighborhood Geographies of REIT- and Private Equity-Owned Single-Family Rentals*, 47 J. URB. AFFS. 1998, 1998-99 (2025).

203. See *supra* notes 135-137 and accompanying text (collecting examples of “hollowing out” and the “sacrifice” of rural America); see *infra* Section IV.B.

204. See *supra* notes 67-68 and accompanying text; cf. James Fallows Tierney, *Radical Securities Law*, 101 CHI.-KENT. L. REV. (forthcoming 2026) (manuscript at 14), <https://ssrn.com/abstract=5349981> [<https://perma.cc/T5CM-Z4FP>] (reviewing PADDY IRELAND, *PROPERTY IN CONTEMPORARY CAPITALISM* (2024)) (describing “oligarchic control, regulatory capture, and the political economy of mass ‘forced capitalists’ as ‘entrenched obstacles’ to reforming securities law”).

these deeply entrenched structures of law fundamentally drive processes of financialization, we emphasize that one-off, superficial reforms to legal doctrine are insufficient to constrain farmland's transition to an asset class. We return to this point—that doctrinal band-aids will not fix a problem constituted by these deeper structural commitments—in Part IV, where we assess concrete examples of past and future reform proposals, as well as other existing toolkits against financialized farmland.

#### *A. Market Supremacy and Logic*

We have already explored many of the foundational legal interventions required to convert farmland into an asset class.<sup>205</sup> Property law, for example, creates and allocates private and highly alienable property estates in land and ensures these estates can be divided and sold by absentee owners. Corporate law offers limited investor liability and a suite of flexible legal entities that facilitate passive, fragmented ownership through shares designed to produce financial returns. And securities law sets up the regulatory architecture for scaled investment, centering investor protection and capital formation without equal regard for other social or environmental impacts and minimizing public oversight of private capital markets.

All of these legal preconditions are essential for farmland's financialization and work together to amplify its possible reach—but they do not require this transformation. Here, we emphasize a deeper logic that transcends these areas of law—the fundamental structure of market supremacy—that is more directive of this result. Law in contemporary capitalism fundamentally relies on market transactions to allocate resources to higher-value uses. This reflects our collective choice to enshrine a form of market-based resource governance that prioritizes individual owner and investor decision-making based on market incentives. Alienability—the ease with which land or assets can be sold—is particularly important in a system designed to promote market transactions, ensure liquidity, and center freedom of contract.<sup>206</sup> In theory, alienability enables assets to reach the hands of those who value them the highest, facilitates greater productivity, and nets an optimal allocation of resources.<sup>207</sup>

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<sup>205</sup>. See *supra* Section I.B.2.

<sup>206</sup>. See Jessica A. Shoemaker, *Complexity's Shadow: American Indian Property, Sovereignty, and the Future*, 115 MICH. L. REV. 487, 532-33, 551 (2017).

<sup>207</sup>. *Id.* at 532. See generally Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1111-14 (1972) (developing a framework for “entitlements” that are protected by property, liability, or inalienability rules); Lee Anne Fennell, *Adjusting Alienability*, 122 HARV. L. REV. 1403 (2009) (applying inalienability rules to traditionally market-based transactions to achieve efficiency).

This market system venerates exchange values (effectively, the price a commodity can be exchanged for in trading) but risks overlooking or diminishing use values (the actual utility of a good or service).<sup>208</sup> Farmland ownership was once tied to labor and community stewardship,<sup>209</sup> but when this land is reimagined as an asset, its market value becomes divorced from its physical reality and social importance. What does not register as value in these legal regimes is an important and telling factor. What is the price of the environmental health of the land? What is the value of the well-being of the rural community, or local traditions of use and access? Is there cultural or regenerative significance to alternative farming practices or in producing less-uniform material goods?

Consider, for example, many communities' struggles, particularly in mid-western states, over concentrated animal-feeding operations (CAFOs). Despite well-documented harms to water quality, soil health, and rural quality of life, state lawmakers have repeatedly expanded "right-to-farm" protections that shield these large operators from nuisance suits.<sup>210</sup> Powerful companies also use their market power to overwhelm other local siting processes.<sup>211</sup> In doing so, the law makes surrounding communities' health, cultural ties to the land, and inter-generational stewardship obligations invisible, erasing these values to scale production and maximize returns. In the same way, the market, structured by these and other legal choices, might well determine that selling agricultural land to an LLC that will rent it out, only to flip it a few years later, is more "valuable" than keeping the land, living there, and building a diversified and sustainable food-producing operation.

At each turn, legal choices—including legal choices to forgo available regulatory or public-interest interventions that would otherwise limit the rights of individual market participants—retrench the market's structural supremacy. Property law, for example, is much more likely to protect an investor's legal title

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<sup>208</sup>. See Tierney & Shoemaker, *supra* note 33, at 186–87 (citing THORSTEIN VEBLEN, *ABSENTEE OWNERSHIP* (1923)); cf. Kathryn A. Sabbeth, (*Under*)Enforcement of Poor Tenants' Rights, 27 GEO. J. POVERTY L. & POL'Y 97, 121–23 (2019) (calculating an example of rent-abatement rules undervaluing a home as a place to live); Frank Ackerman & Lisa Heinzerling, *Pricing the Priceless: Cost-Benefit Analysis of Environmental Protection*, 150 U. PA. L. REV. 1553, 1557 (2002) (critiquing efforts to assign a price to "life, health, nature, and the future" for purposes of policy analysis as fatally flawed and distorting).

<sup>209</sup>. See *supra* note 65 and accompanying text.

<sup>210</sup>. See N. William Hines, *CAFOs and U.S. Law*, 107 IOWA L. REV. ONLINE 19, 51–61 (2022); see also *infra* Section IV.A.3 (describing the unrealized promise of right-to-farm laws and potential reforms for expanding land access).

<sup>211</sup>. See, e.g., SONJA TROM EAYRS, *DODGE COUNTY, INCORPORATED: BIG AG AND THE UNDOING OF RURAL AMERICA* 1–6 (2024) (providing a firsthand account of one Minnesota family's unsuccessful fight against concentrated animal-feeding operations' siting and corporate takeover of local government).

to land over other longstanding place-based attachments not formalized in legal title.<sup>212</sup> Corporate and securities law, too, focus on investors rather than the objects or community contexts of their investments.<sup>213</sup> These are all examples of legal frameworks governing property and finance that systematically prioritize farmland's status as a tradable commodity, in spite of the glaring costs to local communities, ecosystems, and traditions.

### *B. Abstract Law and Physical Geography*

Just as law shapes markets, the law also structures how we live together in physical space—that is, how we convert abstract “space” to meaningful social “place.”<sup>214</sup> Property and business law, in particular, shape where we locate ourselves, how we use (or conserve) natural resources, and often how much we invest in specific geographies.<sup>215</sup> For example, the legal preconditions of financialization explored above—such as the veneration of absentee property rights and fragmented ownership information through the corporate form—necessarily impact what it is like to inhabit those physical spaces.<sup>216</sup> Thus, the law not only informs our collective experience of physical space but also necessarily operates in physical space. Law shapes—and is shaped by—our spatial relationships.<sup>217</sup>

Because of law’s unavoidable spatial impacts, spatial justice is a relevant concern for legal decision-making.<sup>218</sup> Spatial justice is the fair and equitable distribution of resources across landscapes, with a particular emphasis on how human

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<sup>212.</sup> See Shoemaker, *supra* note 65, at 835-44 (collecting examples); Jessica A. Shoemaker, *Invited Essay: Pipelines, Protest, and Property*, 27 GREAT PLAINS RSCH. 69, 76-77 (2017) [hereinafter Shoemaker, *Pipelines*].

<sup>213.</sup> Regulations that focus on issues like investor protection or corporate governance operate within this wider profit-seeking logic, as do property-law rules that tend to privilege owners’ rights without adequate focus on responsibilities to nonowners. See Tierney, *supra* note 204 (manuscript at 2-3).

<sup>214.</sup> For a more complete analysis of how property law in particular shapes human placemaking, see Shoemaker, *supra* note 65, at 811-23.

<sup>215.</sup> See, e.g., GREGORY M. FULKERSON & ALEXANDER R. THOMAS, URBANORMALITIVITY: REALITY, REPRESENTATION, AND EVERYDAY LIFE 25-27 (2019); Andreas Philippopoulos-Milhalopoulos, *Spatial Justice: Law and Geography of Withdrawal*, 6 INT’L J.L. CONTEXT 201, 211 (2010); DAVID A. HARVEY, SPACES OF HOPE 23-46 (2000).

<sup>216.</sup> See also Shoemaker, *supra* note 65, at 833-35 (examining how property rights impact people-place relationships).

<sup>217.</sup> See, e.g., Nicholas Blomley, *Introduction to THE LEGAL GEOGRAPHIES READER: LAW, POWER, AND SPACE* 3, 3-6 (Nicholas Blomley, David Delaney & Richard T. Ford eds., 2001); Graham, *supra* note 55, at 281-82; GRAHAM, *supra* note 115, at 17-22; Shoemaker, *supra* note 65, at 833-35.

<sup>218.</sup> Cf. Paul Babie, *The Spatial: A Forgotten Dimension of Property*, 50 SAN DIEGO L. REV. 323, 329-34 (2013) (explaining the concept of spatial justice as applied to property).

experiences diverge across space.<sup>219</sup> True spatial justice would require a range of place-sensitive legal arrangements attuned to a variety of structural inequalities across geographies,<sup>220</sup> but our point here is more simple: to emphasize how property, corporate, and securities law are shockingly *insensitive* to spatial dynamics. To that end, we identify a much deeper logic of abstraction – or spatial indifference – in the legal decision-making causing the financialization of farmland.

For example, consider again how – although land is a fixed, material reality – property and business law construct and validate ownership claims to that resource which can circulate in national and global markets as largely dematerialized wealth.<sup>221</sup> In property law, real property “estates” are recognized, by law, as tradable market objects. In corporate and securities law, ownership can be layered through intermediated claims that permit management by actors – officers, financiers, and proxies – remote from the enterprise’s physical footprint. These forms of legal abstraction reimagine physical land as a mobile asset severed from physical place, governed by distant investors or voters who, despite their formal legal ties, lack physical connection to the affected community and space.<sup>222</sup> These trends necessarily distort local decision-making by transferring power away from its spatial context.

This abstraction is integral to the spatial logic of capitalism, in which rural spaces frequently serve as sites of resource extraction for capital accumulation – often, but not always, centered in the metropole. This dynamic is not merely

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<sup>219</sup> We follow geographers in thinking about spatial justice in these terms, as well as scholars turning this lens to rural concerns. See EDWARD W. SOJA, SEEKING SPATIAL JUSTICE 71-72 (2010); Kenneth Nordberg, *Spatial Justice and Local Capability in Rural Areas*, 78 J. RURAL STUD. 47, 47-48 (2020); *see also*, e.g., Tierney and Shoemaker, *supra* note 33, at 4 (explaining how spatial justice is compromised by absentee landowners); Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 184-207 (2006) (outlining how rural and urban residents and areas are treated differently in several areas of the law).

<sup>220</sup> See Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmitiy: Equal Protection, Child Poverty, and Place*, 71 MONT. L. REV. 1, 10-11 (2010) (introducing the concept of spatial inequality); *cf.* Eisenberg, *supra* note 135, at 194-95 (explaining how distributive justice intersects with rurality).

<sup>221</sup> See PADDY IRELAND, PROPERTY IN CONTEMPORARY CAPITALISM 62-66 (2024) (explaining how law constructs property as capital, or forms of wealth that can be traded in secondary markets); *cf.* POLANYI, *supra* note 57, at 68-76 (describing land as a fictitious commodity, because like labor and money, it is not created to be sold, a tension giving rise to some of the crises of our market society).

<sup>222</sup> See *supra* note 55 and accompanying text; *see also* GRAHAM, *supra* note 115, at 134 (“In legal theory, ‘dephysicalisation’ means the removal of the physical ‘thing’ from the property relation and its replacement with an abstract ‘right.’”).

distributive but structural, as theorized by David Harvey and others: law serves capital by appropriating and reorganizing peripheral geographies.<sup>223</sup>

The tendency to erase law's material impacts on actual heterogeneous places has profound consequences. As we have outlined above, legal rules that sanction absentee farmland investment subject rural residents to many of the costs but few of the benefits of the resources they sustain.<sup>224</sup> Farms become sites of extraction, legally structured to serve the capital needs of markets, while surrounding spaces receive little reciprocal investment.<sup>225</sup> In this sense, rural communities become relegated to the economic periphery, with their surplus value flowing predominantly to a metropolitan core. This regime privileges absentee legal rights over the lived realities of local communities, fueling sustained patterns of rural alienation and grievance when distributing economic surplus.<sup>226</sup>

Even more insidiously, property and business law operate in surprising ways to deny rural residents power over the decisions that most directly impact the spaces they inhabit. For example, creating fictitious, mobile property "estates" and corporate "shares" can reset jurisdictional boundaries (who decides what) along artificial lines in ways that limit existing local power. State efforts to impose anti-corporate-farming laws banning outside farming investment (a case we take up in more detail in Section IV.A.1) are illustrative of this problem. There, the legal construction of land as a corporate asset meant that these "assets" could be swept up into "interstate commerce" for purposes of federal jurisdiction. Land is not, in fact, moving through interstate commerce, but property and corporate law create "estates" and "shares" that are. Conceiving of these investors' abstract legal stakes in land as objects of *interstate* commerce invalidated state efforts to protect in-state interests under the dormant Commerce Clause.<sup>227</sup> Farmland's transition to an asset class therefore prevented states and localities from protecting in-state interests from out-of-state investors.

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<sup>223</sup>. See HARVEY, *supra* note 215, at 77-83; *see also supra* notes 56-60, 105-115 and accompanying text (providing further examples).

<sup>224</sup>. See *supra* notes 135-136 and accompanying text; *see also infra* note 427 and accompanying text (collecting additional examples of rural democratic deficits).

<sup>225</sup>. See ANDERSON, *supra* note 47, at 83-129 (discussing one example of the effects of post-resource extraction on a rural community).

<sup>226</sup>. See, e.g., EISENBERG, *supra* note 47, at 36, 50-52. Critics of the spatial-justice framework might argue that emphasizing rural areas' unique needs and rights borders on rural parochialism. But these kind of ownership patterns are the continuation of a long history of extraction from the periphery (rural areas) to the metropole (urban centers). *See supra* note 135 and accompanying text. This extraction often occurs without adequate compensation or reinvestment, exacerbating rural-urban divides on metrics of social welfare.

<sup>227</sup>. *See infra* Section IV.A.1.

This is just one way that law's logic of abstraction facilitates spatial injustice. Rural communities are frequently denied the power to govern issues uniquely relevant to their local geographies, including through the preemption of local livestock-siting and pesticide regulations and efforts to recategorize local land-use decisions as matters of interstate commerce.<sup>228</sup> These shifts in power facilitate financialization by exempting outside investors from key mechanisms of local control.

### C. Inheriting a Temporal Bias

Property and business law favor financialized investors in another, temporal respect: the privileging of ancestral control and present demands over unrepresented futures.<sup>229</sup> Many of farmland financialization's most concerning implications are forward-looking—long-term loss of food-system resilience and ecological diversity, compounding inequality, and the inability of new future farmers to access land. Yet none of these future-focused interests are well accounted for in law.

To the contrary, farmland ownership is already heavily impacted by historic property-allocation mechanisms and has become increasingly dynastic: the candid reality of starting a farm today is that one must either win the birth lottery (inheriting land) or come to the market with substantial generational wealth. As some farmers put it, “You either marry a farm or inherit one.”<sup>230</sup> Given this high, capital-intensive barrier to entry, there is little accessible land for new generations of aspiring farmers and ranchers, especially those outside established land-owning families.

Despite its antifeudal origins, modern property law facilitates this dynastic consolidation of land. This occurs, for example, through legal recognition and protection of perpetual ownership rights under fee-simple ownership, the ability of next-generation absent heirs to hold farmland from a distance (in family trusts or legal entities), and other policy choices, such as stepped-up taxable

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<sup>228</sup>. See *infra* notes 296–300 and accompanying text (discussing state right-to-farm laws that have rewritten local nuisance standards in favor of industrialized agricultural production); *infra* note 368 and accompanying text (collecting examples of local preemption over both siting of livestock operations and pesticide application).

<sup>229</sup>. Cf. Richard L. Revesz & Matthew R. Shahabian, *Climate Change and Future Generations*, 84 S. CAL. L. REV. 1097, 1160–62 (2011) (drawing on intergenerational justice to argue against using financial approaches to intertemporal discounting in order to weight the interests of unrepresented future generations).

<sup>230</sup>. Julia C.D. Valliant, Marie T. O’Neill & Julia Freedgood, *Bipartisan Creation of US Land Access Policy Incentives: States’ Efforts to Support Beginning Farmers and Resist Farm Consolidation and Loss*, 42 AGRIC. & HUM. VALUES 421, 428 (2024).

“basis” and generous estate-tax exclusions, specifically designed to protect generational transfer of family farms.<sup>231</sup> Although Thomas Jefferson famously described land as a “usufruct to the living,” property law creates perpetual rights that endure many generations beyond present owners.<sup>232</sup> In ideal scenarios, these legal rights can protect intergenerational legacies and anchor place-based identities, but they also limit more equitable resource distribution and block aspirants without inherited wealth or familial connections – especially those from historically dispossessed and marginalized communities.<sup>233</sup> The result is not just individual bad luck, but the reproduction of race- and class-based inequalities rooted in how land was acquired and allocated in the early years of American settlement.<sup>234</sup>

This problem of first-generation perpetual rights has only worsened with the introduction of financial intermediaries with layers of financial capital, investment firms, and professional managers. When a farm purchaser is not a rural resident but a corporation or an investment group, these legal entities, unlike human owners, do not die.<sup>235</sup> They are designed (often by default) for perpetuity and to maximize shareholder value rather than community well-being. When land is held by such financialized actors, barriers to entry for new farmers rise, local control over land use shrinks, and generational privilege solidifies.<sup>236</sup>

Farm-bill programs that support beginning farmers (discussed in more detail in Section IV.A.3) reflect promising political recognition of these problems. But their limited funding and narrow reach underscore just how entrenched the underlying dynamics remain.<sup>237</sup> While many states have attempted efforts to

<sup>231</sup>. Thomas, *supra* note 12, at 1832-39; *supra* note 119 and accompanying text.

<sup>232</sup>. Letter from Thomas Jefferson to James Madison (Sep. 6, 1789), in 15 THE PAPERS OF THOMAS JEFFERSON, 27 MARCH 1789 TO 30 NOVEMBER 1789, at 392, 392 (Julian P. Boyd & William H. Gaines, Jr. eds., 1958).

<sup>233</sup>. Shoemaker, *supra* note 65, at 832-33.

<sup>234</sup>. See *supra* note 42 and accompanying text; Shoemaker, *supra* note 12, at 1722-24.

<sup>235</sup>. Cf. *infra* Section IV.A.1 (discussing efforts to limit eligibility for land ownership directly). For examples of default rules, see UNIF. LTD. LIAB. CO. ACT § 108(c) (UNIF. L. COMM’N, amended 2013); and DEL. CODE ANN. tit. 8, § 102(b)(5) (2025). See also Alexander C. Sandeen, *Thy Will Be Done: Issues in Family Farm Transitions Between the Farmers, Their Family, and New Agrarians*, 27 DRAKE J. AGRIC. L. 129, 130 (2022) (comparing the shortness of one farmer’s lifespan to corporate ownership that has no such natural end and assessing strategies for family farmers to control for farmland succession across multiple generations).

<sup>236</sup>. See *supra* Sections II.D, III.B; see also *infra* note 253 and accompanying text (explaining that property law prevents excessive fragmentation of minute property claims but does not prevent excessive accumulation).

<sup>237</sup>. See, e.g., Adam Calo & Margiana Petersen-Rockney, *What Beginning Farmers Need Most in the Next Farm Bill: Land*, BERKELEY FOOD INST. 2 (Aug. 2018), <https://food.berkeley.edu/wp->

support land transfers to new farmers, these piecemeal reforms have been largely insufficient in combatting these deeper dynamics.<sup>238</sup> More robust tools—ones that counteract absentee ownership and facilitate community-rooted tenure across generations—are needed.

Perpetual ownership also increases the power of current owners, including the authority to make choices about management practices that can, for example, significantly impact the sustainability of agricultural practices and contribute to (or mitigate) climate change. Legal and policy frameworks that fail to consider these longer time horizons—both for equitable distribution over time and for resource stewardship more broadly—risk injustice to future generations.<sup>239</sup> Yet the legally entrenched incentive to hold land within families—or to sell farmland to the highest-bidding institutional investor—is misaligned with the needs of future generations to access land and to enjoy a healthy environment. Instead, this system benefits current heirs and profit-motivated present investors.

#### *D. Expanding Monopoly Power*

In this final Section, we emphasize how the current legal landscape for financialized farmland ownership creates a self-reinforcing cycle of power and wealth accumulation that continues to disempower nonowner stakeholders, local communities, and future generations.

To start, multiple legal structures link the concentration of economic power to political inequality.<sup>240</sup> Property ownership facilitates wealth accumulation,

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content/uploads/2018/08/BFI-Beginning-Farmers-Policy-Brief.pdf [<https://perma.cc/PZG2-5A2J>] (outlining the importance of expanding beginning-farmer programs).

<sup>238</sup>. See *infra* notes 286–295 and accompanying text (discussing in more detail the limits of these existing programs). See generally Adam Calo, *The Yeoman Myth: A Troubling Foundation of the Beginning Farmer Movement*, 20 GASTRONOMICA 12 (2020) (questioning the wisdom of policy efforts to replace existing farmers with new, beginning farmers without questioning the wider re-entrenchment of existing food-system failures).

<sup>239</sup>. Cf. Brett Frischmann & Mark P. McKenna, *Intergenerational Progress*, 2011 WIS. L. REV. 123, 124 (outlining a parallel argument in the context of utilitarian intellectual-property theory that “the market is inherently short-sighted” and therefore a property entitlement that relies heavily on markets for resource allocation is “less future regarding than it could be”); Lawrence B. Solum, *To Our Children’s Children: The Problems of Intergenerational Ethics*, 35 LOYOLA L.A. L. REV. 163, 191 (2001) (“[I]ntergenerational relations pose problems for theories that rely on contractual solutions to the coordination of social relationships. We cannot contract with unborn future generations, and hence their interests must be represented in some other way.”).

<sup>240</sup>. See, e.g., PISTOR, *supra* note 48, at 3, 13–15 (theorizing how a variety of private-law structures—such as property, trust, corporate, and bankruptcy—systematically concentrate wealth and resulting power); see also, e.g., Vanessa Casado Pérez, *Ownership Concentration: Lessons from*

which translates into political influence.<sup>241</sup> Law exacerbates this dynamic by privileging the preservation and growth of existing wealth over redistributive or egalitarian aims, making it harder to respond and rebalance systems of power, politically or economically.<sup>242</sup> Legal incentives for wealth accumulation include homeownership subsidies, preferential capital-gains treatment, and the absence of a general wealth tax. These policies shelter existing asset portfolios while offering little to those seeking upward mobility. As a result, the distribution of wealth becomes not only stratified but calcified.

These dynamics are especially visible in agriculture, where longstanding industrialization has consolidated markets and marginalized small producers. Horizontal concentration across sectors – such as soybean processing and beef packing<sup>243</sup> – and vertical integration via production contracts have shifted control from traditional owner-operators to large agribusinesses.<sup>244</sup> Contract farmers often bear production risks without control over inputs or meaningful bargaining power. At the same time, financialization has deepened these effects. As of 2014, nearly half of agricultural production value was attributed to “large-scale family-owned and non-family-owned operations,” which make up only 4.7% of U.S. farms.<sup>245</sup> Between 1982 and 2007, the midpoint farm acreage nearly doubled from 589 to 1,105 acres.<sup>246</sup> And globally, the top 1% of farms control 70% of the land.<sup>247</sup>

Meanwhile, federal farm programs – including commodity supports and crop insurance – primarily benefit a particular kind of large-scale, monocrop

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*Natural Resources*, 117 NW. U. L. REV. 37, 37 (2022) (describing concentration as both a cause and a symptom of inequality).

<sup>241</sup>. See, e.g., KAY LEHMAN SCHLOZMAN, SIDNEY VERBA & HENRY E. BRADY, THE UNHEAVENLY CHORUS: UNEQUAL POLITICAL VOICE AND THE BROKEN PROMISE OF AMERICAN DEMOCRACY 148–68, 238–61 (2012) (noting that, given the need for campaign fundraising, elected representatives largely align themselves with the interests of donors rather than the median voter, and that this dynamic entrenches unequal political influence in an age of widening economic inequality).

<sup>242</sup>. See *infra* notes 383–387 and accompanying text.

<sup>243</sup>. *Agriculture Concentration Data*, FARM ACTION (2024), <https://farmaction.us/concentrationdata> [https://perma.cc/99LM-EFUD] (observing that as of 2024, four corporations owned 80% of soybean crushing, 85% of beef processing, 67% of pork processing, and 60% of poultry processing).

<sup>244</sup>. See *id.*

<sup>245</sup>. Hossein Ayazi & Elsadig Elsheikh, *The US Farm Bill: Corporate Power and Structural Racialization in the United States Food System*, U.C. BERKELEY: OTHERING & BELONGING INST. 9 (Oct. 28, 2015), <https://escholarship.org/uc/item/55v6q06x> [https://perma.cc/S8MC7YJ5].

<sup>246</sup>. *Id.* at 51.

<sup>247</sup>. See Ward Anseeuw & Giulia Maria Baldinelli, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, INT’L LAND COAL. 61 (Nov. 2020), <https://www.landcoalition.org/en/uneven-ground/report-and-papers> [https://perma.cc/S7AB-UN84].

agricultural operation.<sup>248</sup> Though framed as producer protections, these programs have inflated land values and rewarded scale, thereby intensifying consolidation and financialization.<sup>249</sup> The result is a legal architecture that reinforces corporate industrial agriculture while sidelining diversified, small-scale, and local farming models. Despite rhetoric about protecting family farmers, policy advantages flow disproportionately to large, consolidated operations.<sup>250</sup> Smaller farms struggle to compete, find buyers, or exit rigid supply chains. These structural constraints, combined with rising land prices, have made farm entry even more prohibitively difficult.

Property and business law impose no structural check on land accumulation and therefore exacerbate this dynamic.<sup>251</sup> Historically, homesteading law limited ownership to what one could physically inhabit and improve. Today, no such limits exist: large-scale investor-owners face no legal cap on the maximum size and scale of their holdings.<sup>252</sup> Legal mechanisms—like tax-delinquency rules, adverse possession, and partition sales—prevent the overfragmentation of property into ever-smaller interests, but no parallel doctrines curtail overaccumulation.<sup>253</sup> To the contrary, as Thomas W. Merrill has discussed, property has a built-in multiplier effect: ownership begets appreciation and facilitates future acquisition, even without labor or physical presence.<sup>254</sup> Therefore, those who own are most likely to own even more.

Without any legal limits on investor accumulation of farmland, the only effective curb on future concentration thus far has ironically been family ownership.<sup>255</sup> Yet this attachment value reinforces an increasingly dynastic land-ownership pattern, dependent on birth lottery rather than open access. In both cases, the law structures land access in a way that is grossly unequal. Furthermore, as

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<sup>248</sup>. See, e.g., *Unsustainable: State of the Farm Safety Net*, NAT'L SUSTAINABLE AGRIC. COAL. 5-7 (Feb. 2024), <https://sustainableagriculture.net/wp-content/uploads/2024/02/Farm-Safety-Net-Report-February-2024-Final.pdf> [https://perma.cc/55H4-GJ43]; see also *supra* notes 155-159 and accompanying text (discussing the uneven distribution of farm-program benefits).

<sup>249</sup>. See, e.g., Ciaian et al., *supra* note 102, at 33 (discussing empirical evidence showing that the future stream of expected subsidy payments gets partially capitalized into the value of land, with the consequence of inflating its value); Casado Pérez, *supra* note 240, at 49 (describing the consolidation of water rights in Colorado by an investment-management firm).

<sup>250</sup>. See, e.g., Nathan A. Rosenberg & Bryce Wilson Stucki, *The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural History*, 13 J. FOOD L. & POL'Y 12, 13 (2017).

<sup>251</sup>. For a wider discussion of concentration effects built into property law itself, see generally Shoemaker, *supra* note 12.

<sup>252</sup>. See Shoemaker, *supra* note 65, at 875-78.

<sup>253</sup>. See, e.g., Michael A. Heller, *The Boundaries of Private Property*, 108 YALE L.J. 1163, 1165, 1170-74 (1999).

<sup>254</sup>. Thomas W. Merrill, *The Property Strategy*, 160 U. PA. L. REV. 2061, 2093-94 (2012).

<sup>255</sup>. See *supra* Section III.C.

we explore below, this inequality is self-reinforcing: increasing wealth translates to disproportionate economic and political power that too often curbs efforts to meaningfully reset these power relations.<sup>256</sup>

#### IV. PLAYING SHELL GAMES WITH FINANCE

We have now seen how specific legal regimes – namely, property law, corporate law, and securities law – structure the legal and economic organization of farmland. Together, these legal systems – organized around market primacy and a range of biases that skew power along spatial, temporal, and distributive lines – create the conditions for the current financial takeover of land. If these legal systems instead prioritized social and environmental concerns over current market pricing, different landscapes would exist. Likewise, the financial sector’s grip on farmland may dissipate if residents – rather than absentee owners – had more say over how farmland is used, if the concerns of unrepresented future generations were accounted for in these food-system choices, or if economic power were more evenly distributed. This is not the world we live in – yet – but it is a legal possibility that we can imagine with a deeper rebalancing of our collective priorities.

Instead, our current legal regimes create a system of structural advantage for established and well-funded agricultural interests, which prevents small farms and aspiring farmers alike from acquiring new land. Yet, even with this system, can law nonetheless be used to better balance community interests against those of powerful financial actors? Building on our argument that law promotes capital formation over most other concerns, this Part addresses existing doctrinal efforts to restrain the role of metropolitan finance in rural land markets. Section IV.A evaluates these existing interventions, including restrictions on ownership by firms and noncitizens, changes to the scope of nuisance liability through “right-to-farm” laws, and land-access initiatives. We also examine the role of securities law and REIT regulation in shaping where we are today.

Taken together, these efforts illustrate the inefficacy of doctrinal “band-aids” that fail to fundamentally reorder any of the deeper structures driving farmland’s growth as an asset class. To the contrary, superficial reforms often make it paradoxically *easier* for outside investors to penetrate these land markets. Section IV.B identifies four strategies by which external capital evades doctrinal fixes or exploits them to its advantage. These four strategies – which we describe as “playing shell games with finance” – include (1) the exploitation of definitional difficulties; (2) evasion strategies; (3) positional advantages in increasingly complex regulatory structures; and (4) deliberate opacity on how these systems actually

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<sup>256.</sup> See *infra* Part V.

operate. We turn in Part V to more fruitful strategies for reimagining the principles that govern land ownership, land use, alienability, and investment.

### A. Evaluating Existing Interventions

This Section introduces a taxonomy of existing regulatory interventions. We begin with efforts to limit eligibility for land ownership directly, make investment effects more transparent, shift incentives within existing land markets, and directly regulate those investments in land. We then demonstrate the deficiencies in each of these strategies.

#### 1. Direct Ownership Limits

State anti-corporate-farming laws were among the earliest legal responses to farmland financialization. The movement to restrict corporate farming gained steam in the 1970s, as several Midwestern states sought to limit the ability of business entities—particularly corporations and LLCs—to own agricultural land.<sup>257</sup> These laws reflected concern about farm production being organized to favor outside financial interests over local residents. In particular, reformers focused on the risks associated with liability shields unique to these entities.<sup>258</sup> Reformers worried that liability limits, if extended to thinly capitalized farmland-owning entities, might impede the remedial and incentive-shaping functions of tort law, enabling absentee owners to take risks and externalize costs while using their preexisting economic power to accumulate ever-greater landholdings at the expense of local communities.<sup>259</sup>

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<sup>257.</sup> See Rick Welsh, Chantal Line Carpentier & Bryan Hubbell, *On the Effectiveness of State Anti-Corporate Farming Laws in the United States*, 26 FOOD POL'Y 543, 543-44 (2001); see also *Corporate Farming & Land Ownership Laws—An Overview*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/corporatefarminglaws> [https://perma.cc/3YMN-UKSK] (defining “corporate farming laws” and distinguishing them from “foreign ownership laws”).

<sup>258.</sup> Suppose a farm worth \$3 million later incurs a liability worth \$4 million, leaving the farm owners underwater by \$1 million in negative equity. Either way, the owners are out their original \$3 million, but the liability shield affects whether they must also pay the \$1 million loss out of pocket (as they might need to in a sole proprietorship or general partnership, in which the owners may be personally liable for the business's shortfall). Limited liability has been identified as capitalism's most important legal innovation in promoting absentee investment in risky firms. See, e.g., STEPHEN M. BAINBRIDGE & M. TODD HENDERSON, *LIMITED LIABILITY: A LEGAL AND ECONOMIC ANALYSIS* 2-3 (2016).

<sup>259.</sup> See Anthony B. Schutz, *Corporate-Farming Measures in a Post-Jones World*, 14 DRAKE J. AGRIC. L. 97, 98-100 (2009) (describing corporate-farming laws as reflecting “a debate about the consequences of limited liability,” which “may free the operation of the restraints that liability would otherwise impose upon the owners”).

While nine states ultimately passed laws prohibiting most limited-liability-entity ownership of farmland, all such laws exempted family-held entities when at least one resident-owner actively engaged in the farm's operation – an exemption that was both politically expedient and conceptually important.<sup>260</sup> The primary goal of these laws was to prohibit liability shields for absentee owners. Active farming residents, by contrast, were presumed to internalize the social and environmental costs of farming choices in direct, personal ways that would enhance their likelihood of making prosocial decisions.<sup>261</sup>

Scholars and practitioners debated these laws' desirability and efficacy, with some critics arguing that these laws fell short of their stated purposes of curbing agricultural consolidation, embedding production in local economies, and reducing industrialization in farming.<sup>262</sup> In the early 2000s, the Eighth Circuit struck down several such laws as unconstitutional under the dormant Commerce Clause, concluding that state preferences for in-state actors violated federal law's mandate of free-flowing interstate commerce.<sup>263</sup> These cases turn on the power of our legal imaginations to transform land (a fixed material reality) into a fictional object of interstate commerce (a corporate share or legal entity that can

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<sup>260.</sup> See *id.* at 111. Active resident farmers' exemption from these laws echoes the "actively engaged in farming" requirement for eligibility for commodity-revenue-support programs under the Farm Bill. See RANDY SCHNEPF, CONG. RSCH. SERV., R44656, USDA's ACTIVELY ENGAGED IN FARMING (AEF) REQUIREMENT 10-11 (2019) (outlining requirements for a corporation to be deemed "actively engaged in farming," including a requirement that each owner "makes a significant contribution of personal labor or active personal management"). While seemingly a check on passive investment and absenteeism, this rule has also proven ineffective. Because subsidies are capitalized into land prices regardless of who receives them, the restriction has little redistributive effect. Moreover, research by groups like the Environmental Working Group shows that many subsidy recipients are headquartered far from any farm – often in East Coast cities – undermining the notion that these programs support active working farmers or rural livelihoods. See Jared Hayes, *Update: Trump's USDA Trade Bailout Flows to City Slickers, a D.C. Lobbyist and 'Farms' on Golf Courses*, ENV'T WORKING GRP. (Aug. 15, 2019), <https://www.ewg.org/news-insights/news/update-trumps-usda-trade-bailout-flows-city-slickers-dc-lobbyist-and-farms-golf> [https://perma.cc/6MDX-RFE4].

<sup>261.</sup> Cf. Schutz, *supra* note 259, at 101 (implying that "non-formal or social controls" would sufficiently police the choices of exempt family-farm corporations, but not absentee owners).

<sup>262.</sup> See Neil D. Hamilton, *Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 DRAKE L. REV. 289, 302-03 (1997) (articulating the anti-industrialization focus of corporate-farming laws); Shoemaker, *supra* note 12, at 1724-26 (worrying that these efforts would not address the growing issue of legacy farmland trusts or other family landholdings with absentee beneficiaries). *But see* Lyson & Welsh, *supra* note 146, at 1487-88 (affirming the ability of anti-corporate-farming laws to mitigate some negative community impacts of industrial farming, particularly with regard to county-level poverty).

<sup>263.</sup> E.g., *Jones v. Gale*, 470 F.3d 1261, 1270 (8th Cir. 2006); *S.D. Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583, 596 (8th Cir. 2003); *see also* Schutz, *supra* note 259, at 122-23 (further describing the Eighth Circuit's reasoning in *Jones*).

take its ownership rights across state lines).<sup>264</sup> In this way, legal challenges, often brought by powerful agribusiness interests, successfully reframed this anticorporate land regulation into an unconstitutional restriction on interstate commerce, invalidating state-level authority to govern land ownership in the public interest.

Corporate-farming laws nicely illustrate the challenges of these simple doctrinal fixes. Once physical farmland was reimagined as a business asset owned by corporate entities, it became subject to the rules of market efficiency and interstate commerce. Law converted land to real property and then to assets in *market-dominated* commerce streams. This *abstraction* of physical land into a discrete, legally cognizable asset exchangeable across state lines not only facilitated capital flows but also destabilized states' authority to define property rights for local or long-term interests.

Furthermore, even these state-level attempts to carve out a broad and manipulable exception for active *family*-farm operations echo problematic tensions about inheritance values and the timespan of present-day entitlements. These laws shield *family-owned* landholdings not because they are efficient or even necessarily equitable but because of deeply embedded legal commitments to familial provisioning in a precarious, insecure, and unequal world.

Recent developments further highlight the difficulty of reforming state anti-corporate-farming laws and resolving these democratic deficits in the regulation of farmland. North Dakota, for example, has long resisted corporate ownership of farms and recently won a partial victory in litigation over its corporate-farming and ranching statute, albeit with a federal court requiring that both in- and out-of-state entities be eligible for the family-farm exception.<sup>265</sup> More recently, however, when faced with pressure to expand development of large-livestock confinement operations, the state loosened its corporate-farmland restrictions across the board.<sup>266</sup> Minnesota, meanwhile, retains an active corporate-farming law—though it too has been riddled with exceptions, including for the entire

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<sup>264</sup>. See *supra* notes 226–227 and accompanying text.

<sup>265</sup>. N.D. Farm Bureau v. Stenehjem, 333 F. Supp. 3d 900, 925–27 (D.N.D. 2018).

<sup>266</sup>. See *North Dakota Loosens Corporate Farming Restrictions*, FREDRIKSSON LLP (July 6, 2023), <https://www.fredlaw.com/alert-north-dakota-loosens-corporate-farming-restrictions> [<https://perma.cc/GV8Z-NPSC>]; see also Carrie Stadheim, *Leaving the Family Farm? North Dakota Legislature Forges Ahead on Changes to Corporate Farming Law*, TRI-STATE LIVESTOCK NEWS (Mar. 11, 2023), <https://www.tsln.com/news/leaving-the-family-farm-north-dakota-legislature-forges-ahead-on-changes-to-corporate-farming-law> [<https://perma.cc/P3AU-QXET>] (explaining the requirements of the loosened farming-law requirements and highlighting local responses).

poultry industry, and observers argue that its efficacy has been further limited by evasion tactics through contract farming.<sup>267</sup>

## 2. Sunlight Requirements

Given challenges with anti-corporate-farming laws, reformers have turned to an alternative strategy: disclosure and reporting. We identify two prominent examples of these strategies, rooted in property (foreign-ownership rules) and securities law (public-disclosure requirements).

### a. Foreign-Investment Reporting

Contemporary concerns about foreign investment in farmland are not new. In 1978, Congress passed the Agricultural Foreign Investment Disclosure Act (AFIDA), focused on reporting and monitoring these purchases.<sup>268</sup> Yet, even with this disclosure mandate, problems with data collection continue to limit our ability to assess the extent or effects of actual foreign ownership.<sup>269</sup>

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<sup>267</sup>. See *Corporate Farming Law—Minnesota*, INST. FOR LOC. SELF-RELIANCE (Nov. 21, 2008), <https://ilsr.org/articles/2022-2> [<https://perma.cc/UYK6-SZQ5>]; Jarrod Ingles, *Strategies for Promoting Small and Sustainable Farming Practices: Avoiding the Pitfalls of the Dormant Commerce Clause*, 27 DRAKE J. AGRIC. L. 25, 44-45 (2022).

<sup>268</sup>. 7 U.S.C. §§ 3501-3508 (2024); see H.R. REP. NO. 95-1570, at 7 (1978) (warning that foreign ownership would threaten the “traditional owner-operator pattern” that was deemed essential to the family-farm system of agriculture); *Answering to AFIDA: Reporting Requirements of Foreign Agricultural Land Investments*, NAT’L AGRIC. L. CTR. (Nov. 15, 2022), <https://nationalaglawcenter.org/answering-to-afida-reporting-requirements-of-foreign-agricultural-land-investments> [<https://perma.cc/43XR-4LEQ>]. As noted in the Introduction, several states are also pursuing bans on foreign ownership, the validity of which Fatma Marouf and Vanessa Casado Pérez argue is largely unresolved. See generally Marouf & Casado Pérez, *supra* note 7 (describing the xenophobic motives undergirding recent anti-foreign-ownership land laws and the unresolved legal questions involving them). On descriptions of the existing bans on foreign-owned farmland, see Stephen George, *Not for Sale: Why Congress Should Act to Counter the Trend of Massive Corporate Acquisitions of Real Estate*, 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 97, 112-13 (2022). For a regularly updated collection of every such state law, see Micah Brown & Nick Spellman, *Statutes Regulating Ownership of Agricultural Land*, NAT’L AGRIC. L. CTR. (Apr. 27, 2025), <https://nationalaglawcenter.org/state-compilations/aglandownership> [<https://perma.cc/Y9WM-GKFD>]. Although there are some federal restrictions on specific foreign land acquisitions as of this writing, they do not apply to most private agricultural land. See, e.g., 48 U.S.C. § 1507 (2024) (limiting foreign acquisitions of public land specifically); Marouf & Casado Pérez, *supra* note 7, at 356-60 (outlining narrow avenues to rein in particular foreign-investment methods under existing federal law).

<sup>269</sup>. According to government reports, “Foreign ownership and investment in U.S. agricultural land . . . has grown since 2016.” U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106337,

AFIDA requires disclosure to the USDA by foreign persons who acquire or transfer “any interest . . . in agricultural land.”<sup>270</sup> In practice, however, decades of reporting under AFIDA have not clarified most ownership data. AFIDA data show a significant number of farmland leases, not ownership, a nuance consistently overlooked in modern political rhetoric.<sup>271</sup> Moreover, the largest number of land investors hail from Canada and the Netherlands, followed next by Italy, Germany, and the United Kingdom, while Chinese investors—the prime target of political attention—control a minuscule amount of American agricultural land.<sup>272</sup> Finally, it is unclear whether these reports have been meaningfully analyzed or checked.<sup>273</sup> Ultimately, this complex disclosure system has not had the democratizing effects for which advocates had hoped.<sup>274</sup>

### b. *Securities Disclosures*

Federal securities law employs disclosure to reduce information asymmetries, encourage good behavior by corporate managers, and promote capital formation.<sup>275</sup> But the system is fundamentally designed for public companies,

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FOREIGN INVESTMENTS IN U.S. AGRICULTURAL LAND: ENHANCING EFFORTS TO COLLECT, TRACK, AND SHARE KEY INFORMATION COULD BETTER IDENTIFY NATIONAL SECURITY RISKS 1, 34 (Jan. 2024), <https://www.gao.gov/assets/d24106337.pdf> [<https://perma.cc/6G5S-TYY4>]. *But see id.* at 36 (identifying limits to what government agencies can know about foreign ownership of land “without accurate data and transparent reporting”).

<sup>270</sup> 7 U.S.C. § 3501(a) (2024). A government report in 1978 found that reliable data about foreign investment were difficult, if not impossible, to comprehensively obtain. Robert F. Keller, *Foreign Ownership of U.S. Farmland: Much Concern, Little Data*, U.S. GOV’T ACCOUNTABILITY OFF. (June 12, 1978), <https://www.gao.gov/assets/ced-78-132.pdf> [<https://perma.cc/AFX5-6WND>]. For more information on what must be disclosed and how, see Disclosure of Foreign Investment in Agricultural Land, 7 C.F.R. pt. 781 (2025).

<sup>271</sup> E.g., Micah Brown, Nick Spellman & Harrison Pittman, *Foreign Ownership of Ag Lands: Legal Background & Updates*, NAT’L AGRIC. L. CTR. 8 (Oct. 20, 2021), <https://nationalaglawcenter.org/wp-content/uploads/2021/10/Presentation-Slides.pdf> [<https://perma.cc/QMK6-49Y8>] (describing foreign ownership but “[n]ot[ing] that ‘ownership’ includes long-term leases”); *see also* Herbers, *supra* note 6 (noting that “[v]ery few” of the foreign interests reported in Nebraska are “true ownership interests . . . [as] [m]ost are leases or . . . easements, where the holder of that interest doesn’t own the land”).

<sup>272</sup> Brown et al., *supra* note 271, at 8.

<sup>273</sup> Herbers, *supra* note 6 (describing state legislators’ concern that reports of foreign ownership are being filed without someone “designated to look at it closer to see whether or not it’s something that should be questioned or challenged”).

<sup>274</sup> Despite its limited impact, the current Trump Administration’s strategy to “protect” U.S. farmland from “foreign” interests does include expanded enforcement of these same reporting obligations. *See supra* note 5 and accompanying text.

<sup>275</sup> See, e.g., John C. Coffee, Jr., *Market Failure and the Economic Case for a Mandatory Disclosure System*, 70 VA. L. REV. 717, 721-23 (1984).

which must meet extensive disclosure requirements when selling ownership interests to the public. Firms can, however, still raise capital through private offerings—those arranged to be exempt from the securities laws' disclosure obligations.<sup>276</sup> In recent years, more money has been raised in private than public markets, though this trend reversed in fiscal year 2024.<sup>277</sup> As a result, most companies and funds involved in farmland investment are structured to avoid meaningful public disclosures about their operations, ownership structures, and environmental impacts.

This lack of transparency is not unique to farms, but it is particularly salient when farmland becomes an asset class for remote investors. Securities law does not itself create a “veil” that obscures business information from public view—private capital markets have essentially always operated outside of public view. But securities laws *do* reinforce and legitimize this opacity.<sup>278</sup> Even nonexempt investment funds generally have limited obligations to report on environmental impacts, especially if not considered “material” under current legal standards.<sup>279</sup> The consequence of these disclosure regimes is a patchy, investor-oriented framework that rarely aligns with broader interests.<sup>280</sup> Because materiality is judged from the standpoint of a reasonable investor’s expected financial returns, harms to soil, water, labor, or local food systems fall outside the frame. Alignment would require disclosure standards that treat community well-being and

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<sup>276</sup>. See *infra* note 410.

<sup>277</sup>. See Off. of the Advoc. for Small Bus. Cap. Formation, *Annual Report Fiscal Year 2024*, SEC. & EXCH. COMM’N 16 (Dec. 12, 2024), <https://www.sec.gov/files/2024-oasb-annual-report.pdf> [<https://perma.cc/YN2R-TFNB>]; George S. Georgiev, *The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms*, 18 N.Y.U. J.L. & BUS. 221, 228 (2021).

<sup>278</sup>. Georgiev, *supra* note 277, at 224 (noting that because of securities law, “it is possible today for two firms that are *identical* in virtually every respect—business model, size and scope of operations, enterprise value, access to capital, number of shareholders, number of employees, and so on—to have *widely different* regulatory obligations”).

<sup>279</sup>. See HAZEN, *supra* note 109, § 12:60 (noting that materiality in securities law generally means there is a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available” about the decision at hand); Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668, 21724 (Mar. 28, 2024) (noting that the Commission “decline[d] to” adopt “provisions that specifically require the disclosure of targets or goals related to mitigation of impacts on local communities”).

<sup>280</sup>. See, e.g., Jill E. Fisch, *Making Sustainability Disclosure Sustainable*, 107 GEO. L.J. 923, 926-27, 933-35 (2019) (critiquing the fragmented, investor-centric U.S. approach and noting that because disclosure is pegged to financial materiality, sustainability information is limited and often noncomparable); Virginia Harper Ho, *Modernizing ESG Disclosure*, 2022 U. ILL. L. REV. 277, 283-85, 293-305.

ecological sustainability as legally relevant in their own right, not just insofar as they affect short-term profit.

Some scholars and practitioners have expressed optimism that so-called environmental, social, and governance (ESG) disclosure might offer a path to aligning investor attention with broader social goals.<sup>281</sup> This aspirational view holds that requiring firms to disclose data on ESG impacts on the environment, communities, and their own employees would empower stakeholders and investors to demand reform. Yet enthusiasm for this strategy has cooled in light of both practical limits and political backlash. Recent efforts to impose mandatory climate-related disclosures – like the SEC’s proposed rules under the Biden Administration – were withdrawn by the Trump Administration amid fierce political opposition and questions about their likelihood of surviving judicial scrutiny.<sup>282</sup> The anti-ESG sentiment ascendant under the Trump Administration casts even further doubt on the regulatory momentum behind these proposals in the short and medium term.<sup>283</sup>

Even when new disclosure rules are contemplated, however, their scope is narrow. Mutual funds and public companies may be required to report on climate risks or certain governance policies, but they are not typically required to disclose cumulative impacts on rural land use, labor practices, or long-term community resilience. Materiality requirements, grounded in financial relevance to a reasonable investor, limit the inclusion of broader social harms.<sup>284</sup> Meanwhile, companies that wish to avoid these or other disclosures that flow from public-company status often “go dark”: they delist from exchanges, reduce the number of shareholders that trigger public reporting, and thereby escape oversight. That companies can avoid the public-company disclosure regime with such ease

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<sup>281</sup>. An ESG disclosure refers, generally, to forms of public reporting by which a reporting firm shares information about its current and anticipated performance and risks across environmental, social, and corporate-governance metrics. *See generally* Maggie Pahl, Michael Hamersky & Jason J. Czarnezki, *Multinational Asset Management Firms & ESG Disclosure Management*, 20 N.Y.U. J.L. & Bus. 577 (2024) (surveying ESG-disclosure frameworks and regulations across major jurisdictions and their implications for asset managers).

<sup>282</sup>. *See, e.g.*, Lamar Johnson, *SEC Withdraws Defense of Climate-Risk Disclosure Rule*, ESG DIVE (Mar. 28, 2025), <https://www.esgdive.com/news/sec-withdraws-climate-risk-disclosure-rule-defense-eighth-circuit-reactions/743860> [https://perma.cc/9PGM-ZSGF].

<sup>283</sup>. *See, e.g.*, Pahl et al., *supra* note 281, at 616-17.

<sup>284</sup>. *See supra* note 279 and accompanying text; Stephan Kim Park, *Untangling the Extraterritoriality of ESG Regulation*, 49 N.C. J. INT’L L. 399, 412 (2024) (contrasting the United States’s investor-aligned approach to materiality to the European Union’s “double materiality” standard, “which seeks to capture risks that the company imposes on others, including non-investor stakeholders”).

undermines its potential to generate sustained external accountability and to influence corporate behavior.<sup>285</sup>

In short, disclosure may reveal inefficiencies or externalities, but it does not by itself remedy them. Nor is the current system of ESG disclosure complete, reliable, or enforceable. Without broader changes to what must be reported—and to whom—the disclosure regime will continue to fall short of offering meaningful tools to address the entrenched inequalities of financialized landholding.

### *3. Tinkering with Land Markets*

Other interventions attempt to change incentive structures for buyers and sellers in farmland markets. Reforms of this type typically focus on facilitating land access for new farmers or preserving existing farmland to stabilize land affordability for present and future farmers.<sup>286</sup> This Section will focus on two primary types of reform: land-access programs and right-to-farm laws.

#### *a. Land-Access Programs*

Recognizing access to land as the greatest barrier to entry for beginning farmers, at least twenty states have developed some form of land-access policy.<sup>287</sup> These land-access incentives address either the sell or buy side.<sup>288</sup> Sell-side incentives encourage existing owners to transfer their land to beginning farmers rather than, for example, financialized investors. These incentives typically take the form of tax credits on income from renting or selling to new farmers. While at least moderately impactful, these policies make landowners the gatekeepers of

<sup>285</sup>. See Jesse M. Fried, *Firms Gone Dark*, 76 U. CHI. L. REV. 135, 143-50 (2009) (examining evidence that firms escaping public-company reporting status tend not to provide information voluntarily); *see also* Allison Herren Lee, Comm'r, Sec. & Exch. Comm'n, Remarks at The SEC Speaks 2021: The Growth of Private Markets and the Impact on Investors and the Economy (Oct. 12, 2021), <https://www.sec.gov/newsroom/speeches-statements/lee-sec-speaks-2021-10-12> [https://perma.cc/HF5U-23XA] (arguing that the migration of capital to private markets allows firms to sidestep disclosure obligations, weakening transparency and accountability).

<sup>286</sup>. See Ingles, *supra* note 267, at 68 (arguing that these reforms do not have the same risks as other pro-family-farm laws).

<sup>287</sup>. See Valliant et al., *supra* note 230, at 421. The federal government has also recently invested in some local efforts to expand land access. *See, e.g.*, U.S. Farm Serv. Agency, *Increasing Land, Capital, and Market Access Program*, USDA, <https://www.fsa.usda.gov/programs-and-services/increasing-land-access> [https://perma.cc/DST8-YVKV].

<sup>288</sup>. *See generally* Valliant et al., *supra* note 230 (discussing the formation and tradeoffs of state land-access policy initiatives meant to support beginning farmers while resisting farm consolidation).

land-ownership decisions and involve heftier transaction costs than a cash sale to, for example, Bill Gates.<sup>289</sup> On the buyer side, regulatory interventions provide financial support aimed at increasing new farmers' purchasing power. Regulatory models vary, but they often include low-interest loans in exchange for enrolling the land in conservation programs aimed to preserve agriculture-only land uses.<sup>290</sup>

Other efforts are driven not by public regulatory incentives but by private funding. Nonprofit land-trust models, for instance, seek to purchase land and hold it for the benefit of charitable purposes (like conservation) or in trust for the benefit of local communities.<sup>291</sup> Cooperative models, where farmers collectively own and manage land, can also promote a more equitable distribution of farmland.<sup>292</sup> Community land grants are another possibility, in which land is made available to those who will use it for sustainable farming.<sup>293</sup>

While these models help distribute land more equitably and promote sustainable farming, they face significant obstacles. For one, they require substantial capital—a resource often lacking in the communities that most need access to land.<sup>294</sup> Furthermore, these models must contend with an agricultural and legal system already heavily skewed towards large-scale, industrial farming and financialization. And they often require incredible expertise in order to navigate intricate land and tax regulations. For this reason, according to one recent analysis of

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<sup>289</sup>. These state efforts began in Nebraska in 1999 when the state deemed beginning-farmer entry and access to land as “key to rural community prosperity.” *Id.* at 426. These state efforts, however, were themselves modeled on a 1982 federal initiative called the Beginning Farmer Bond (or Aggie Bond), which charged lower interest rates to owners who leased to beginning farmers. *Id.* at 424.

<sup>290</sup>. *E.g.*, Valliant et al., *supra* note 230, at 424–25.

<sup>291</sup>. See, *e.g.*, Robert Parsons et al., *Research Report and Recommendations from the FarmLASTS Project*, FARMLASTS PROJECT 18, 23 (Apr. 2010), [https://landforgood.org/wp-content/uploads/2023/10/FarmLASTSResearchReport\\_full.pdf](https://landforgood.org/wp-content/uploads/2023/10/FarmLASTSResearchReport_full.pdf) [<https://perma.cc/DG66-DFMK>] (discussing various nonprofit farmland-trust models).

<sup>292</sup>. See, *e.g.*, Darby Weaver, *Land Cooperatives vs. the Farmland Commons*, FARMERS LAND TR., INC. (May 14, 2025), <https://www.thefarmerslandtrust.org/post/land-cooperatives-vs-the-farmland-commons> [<https://perma.cc/UR24-HUJD>].

<sup>293</sup>. Parsons et al., *supra* note 291, at 20–21; see also Jimmy Dula & Vanessa McCracken, *Access to Land: Boulder County Land Lease Program*, NAT'L FARMERS UNION (Feb. 3, 2017), <https://nfu.org/2017/02/03/access-to-land-boulder-county-land-lease-program> [<https://perma.cc/YW4K-87UM>] (introducing Boulder County’s land-lease program).

<sup>294</sup>. See, *e.g.*, Parsons et al., *supra* note 291, at 15–16; Ackoff et al., *supra* note 44, at 42; Adam Calo & Kathryn Teigen De Master, *After the Incubator: Factors Impeding Land Access Along the Path from Farmworker to Proprietor*, 6 J. AGRIC. FOOD SYS. & CMTY. DEV. no. 2, Winter 2015–2016, at 111, 111–12.

state-level efforts to incentivize beginning-farmer land access, many funds in these programs have been less influential than anticipated.<sup>295</sup>

*b. Right-to-Farm Laws*

So-called “right-to-farm” (RTF) laws also aim to protect farms and control farmland values. RTF laws generally immunize certain farm operations from nuisance liability, rebalancing the relative rights of use and enjoyment between rural neighbors. One core goal of these laws, according to advocates, is to preserve agricultural land from encroaching urbanization and thereby stabilize farmland prices.<sup>296</sup> Political messaging around these reforms has typically centered on safeguarding traditional family-owned operations from hostile legal actions by encroaching suburban or amenity-seeking neighbors unaccustomed to the noises or smells associated with farming.

In practice, these objectives failed to materialize. Farmland acreage has dropped from 987 million acres in 1982 to under 900 million acres today.<sup>297</sup> More importantly, the promise of necessary protections for small farmers has not matched reality. In fact, RTF laws have instead benefited CAFOs, large industrial operators, and multinational agribusinesses.<sup>298</sup> Recent scholarship reveals that RTF laws primarily shield agricultural operations that generate significant environmental and social harm, and the neighbors who bear the brunt of industrial agriculture’s negative externalities are not newcomers but often themselves resident farmers.<sup>299</sup> A small dairy farm might find itself next to a massive CAFO that produces significant pollution, leaving the small farm with declining property values, community health concerns, and a degraded local ecosystem. In this way, RTF laws have harmed rather than protected these small owner-occupier farms.<sup>300</sup>

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<sup>295</sup>. Valliant et al., *supra* note 230, at 435.

<sup>296</sup>. See Loka Ashwood, Danielle Diamond & Fiona Walker, *Property Rights and Rural Justice: A Study of U.S. Right-to-Farm Laws*, 67 J. RURAL STUD. 120, 122, 125 (2019) [hereinafter Ashwood et al., *Property Rights and Rural Justice*] (emphasizing the goal of farmland preservation to prevent urban encroachment); LOKA ASHWOOD, AIMEE IMLAY, LINDSAY KUEHN, ALLEN FRANCO & DANIELLE DIAMOND, *EMPTY FIELDS, EMPTY PROMISES: A STATE-BY-STATE GUIDE TO UNDERSTANDING AND TRANSFORMING THE RIGHT TO FARM* 3-7 (2023) [hereinafter ASHWOOD ET AL., *EMPTY FIELDS, EMPTY PROMISES*] (offering a history of right-to-farm laws).

<sup>297</sup>. *Fewer Farms and Fewer Acres: Are Right-to-Farm Laws the Answer?*, ONE RURAL, <https://onerural.uky.edu/right-to-farm> [<https://perma.cc/7JGP-QTCR>].

<sup>298</sup>. ASHWOOD ET AL., *EMPTY FIELDS, EMPTY PROMISES*, *supra* note 296, at 8-16.

<sup>299</sup>. See *id.* at 23 (finding an even greater likelihood of business firms prevailing in farm nuisance suits in “states with high rural poverty and high rural racial minority levels”).

<sup>300</sup>. See, e.g., *id.* at 274-75.

#### 4. *Shaping Investment Vehicles*

A final category of regulatory intervention targets the pooled-management challenges endemic to real-estate investment. Though somewhat less common in farmland so far, financialized real estate is often packaged into REITs—investment vehicles that have surged in popularity over the last thirty years.<sup>301</sup> REIT regulation today is not designed to mitigate the social, spatial, or ecological harms of financialized real estate, but rather to promote capital formation for investors. As such, REIT governance rules facilitate rather than restrain financialization trends. Yet REITs' core design features offer a foothold for reforms that could democratize land ownership and address inequality, as discussed below.<sup>302</sup>

REITs primarily address the tax consequences of real-estate investing. Real property appreciates in value, producing unrealized capital gains taxable upon lifetime transfer but not upon inheritance. This explains why many farmer-owners hold land until death: heirs receive land with a “stepped-up” basis, erasing prior capital gains.<sup>303</sup> Real-estate investors use similar deferral strategies, contributing appreciated property to a REIT in exchange for ownership interests to avoid immediate capital-gains taxation. These gains are only realized upon subsequent disposition of those interests.<sup>304</sup>

In this context, corporate-law scholars Jason S. Oh and Andrew Verstein identified two governance features that contribute to REITs' appeal: (1) REITs prohibit profit reinvestment, instead distributing earnings to shareholders; and (2) they are insulated from hostile takeovers.<sup>305</sup> These features align different

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<sup>301</sup>. Jason S. Oh & Andrew Verstein, *A Theory of the REIT*, 133 YALE L.J. 755, 758–59 (2024) (reporting that although REITs “barely existed” until recently, today nearly half of American households own REIT stock, representing more than \$4.5 trillion in assets). As to farmland, there are two publicly traded REITs, compared to over a hundred funds in non-REIT structures. See Shujie Wu & Joe Janzen, *Understanding Farmland REITs: An Updated Price Analysis*, FARMDOC DAILY (Dec. 22, 2023), <https://farmdocdaily.illinois.edu/2023/12/understanding-farmland-reits-an-updated-price-analysis.html> [https://perma.cc/UH2U-S3NG].

<sup>302</sup>. See *infra* note 412 and accompanying text.

<sup>303</sup>. See Thomas, *supra* note 12, at 1835; Valliant et al., *supra* note 230, at 422.

<sup>304</sup>. These tax issues are complex and include other potential maneuvers, such as like-kind or 1031 exchanges. See generally JASON GODDARD & BILL MARCUM, REAL ESTATE INVESTMENT: A VALUE BASED APPROACH 141–62 (2012) (discussing options to reduce taxation on real estate); Terrence Floyd Cuff, *Issues in Section 1031 Exchanges for Real Estate Investment Trusts*, 31 REAL EST. TAX’N 113 (2004) (noting the advantages of 1031 exchanges). REITs can offer at least some tax advantages vis-à-vis other corporate structures for real-estate investing, primarily via a REIT-specific deduction that effectively exempts REITs from corporate-level taxes. Oh & Verstein, *supra* note 301, at 760, 766.

<sup>305</sup>. Oh & Verstein, *supra* note 301, at 761.

investor types – those seeking cash returns and those deferring gains – within a single entity.<sup>306</sup> This institutional design reconciles timeline and payoff conflicts that can destabilize collective property investments.

In the context of farmland financialization, what makes REITs interesting is not their current function, but their potential. REITs use legal design to resolve internal investor conflicts without strict adherence to the strongest forms of profit maximization dominant among corporate scholars and practitioners. Our point is not that the REIT structure should be used to create more farmland investment or to seek a more ruthlessly efficient form of intermediated real-estate investment. Rather, if these design features can manage competing financial preferences, they might also be adapted to accommodate democratic, ecological, or place-based priorities.<sup>307</sup>

Yet as they stand, REITs do little to mitigate the core problems of farmland financialization. Their disclosure obligations, while more robust than those of private-equity funds, are still investor-focused rather than community-facing, leaving ecological and social externalities invisible. Their governance rules, though capable of reconciling investor timelines, remain structured around cash distribution and tax deferral, not around stewardship or equitable access. And because REITs are optimized for scale, liquidity, and portfolio diversification, they naturally favor concentrated absentee ownership over dispersed, locally embedded control. In short, the REIT form is another instrument of capital formation, not a corrective to speculative consolidation. Recognizing these limitations makes clear why REITs are inadequate as a present-day solution – but also why their design malleability offers a tantalizing site for democratic or ecological experimentation, a theme we return to in Part V.

#### *B. Ongoing Obstacles*

The structural forces we have identified fuel capital's steady expansion through rural communities, and we have seen how even targeted legal reforms intended to curb this kind of financialized investment encounter obstacles easily

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<sup>306</sup>. By locking in managers and constraining them to pay dividends, REITs enable managers to placate investors' demands for investment returns in the short term while considering a different set of stakeholder interests in tax deferral in the long term. In this way, REITs uniquely enable asset managers to manage heterogeneous ownership interests effectively. *See id.* at 761-63, 786-90.

<sup>307</sup>. Cf. WRIGHT, *supra* note 50, at 15-17 (requiring that "a coherent, credible theory of the alternatives to existing institutions and social structures that would eliminate, or at least significantly mitigate the harms and injustices" of the status quo, would have to be "elaborated and evaluated in terms of . . . desirability, viability, and achievability," and working out theories of emancipatory social change surrounding these criteria).

exploited by sophisticated actors. This Section highlights four tactics used to skirt regulatory interventions in this space – tactics that, if left unaddressed, are likely to undermine not only the effectiveness of legal reforms but also broader goals of equity, sustainability, and democratic governance. The following Sections briefly explore each of these four shell games played by finance: (1) definitional challenges; (2) evasion opportunities; (3) capture enabled by complexity; and (4) democratic disempowerment. Ultimately, unless more robust structural changes confront the drivers of financialization, piecemeal fixes will not suffice.

### 1. *Definitional Challenges*

First, finance benefits from the inherent difficulty in defining which forms of ownership and investment are sufficiently harmful to warrant systemic reform.<sup>308</sup> Indeed, attempts to ban specific categories of land ownership often falter on this threshold question: what, exactly, should be prohibited? Defining the categories of ownership that ought to be prohibited is a significant challenge precisely because any definitional category will inevitably be both under- and overinclusive.<sup>309</sup> Reformers attempting to target corporate or financial actors, for example, face the difficulty that categories such as “corporate ownership,” “non-local investment,” or even “absenteeism” can be overlapping, complex, and relative.<sup>310</sup> While some features – absenteeism, concentration, and commodification – are key symptoms of farmland financialization, they are also context-dependent and distributed along a spectrum.<sup>311</sup> For example, some institutional investors may prioritize ecological stewardship and community well-being, while other local landowners may engage in extractive practices.

This challenge plagued early corporate-farming laws. Even the most prototypical “family farm” may be organized in a way that includes some limited-liability entity, making it difficult to draw a regulatory line between legitimate structuring and extractive investment.<sup>312</sup> But the legal choice to allow farmland (or other real estate) to be held through an entity means that other features of the entity form, such as slicing and dicing bundles of rights with respect to governance and cash flows, can be used by financial actors as well. Furthermore,

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<sup>308.</sup> For our discussion of “finance,” see *infra* note 333.

<sup>309.</sup> See *supra* Section I.C (outlining the difficulties of finding a stable definition of financialized landholding and investment).

<sup>310.</sup> See, e.g., Schutz, *supra* note 259, at 111 (explaining that exemptions from corporate-farming laws “reflect a legislative judgment about who should be allowed to farm using limited-liability business forms”).

<sup>311.</sup> See *supra* notes 116-118 and accompanying text.

<sup>312.</sup> Schutz, *supra* note 259, at 111-18 (outlining the definitional challenges of carving out family farms from efforts to target traditional limited-liability entities).

although anti-corporate-farm laws may exempt certain local or family-operated entities from the exclusion, these exemptions were the wrinkle that created legal vulnerabilities under the dormant Commerce Clause.<sup>313</sup>

These many axes of variability make it nearly impossible to define precisely what types of financialization will and will not be problematic within a given category of ownership structures. Moreover, without a normative framework that distinguishes accumulation in service of caretaking from that in service of capital extraction, reform attempts risk being both under- and overinclusive in ways that capital can exploit.

## 2. *Evasion Opportunities*

Second, even as property and securities regulations rely on these imperfect definitions – of ownership, control, and public status – sophisticated capital can easily redefine itself to avoid facing regulatory scrutiny. In this sense, definitional ambiguity feeds the evasion problem: sophisticated actors can restructure ownership to comply with the letter but not the spirit of the law. Property law lets rights to ownership and control of land fragment across disparate entities; corporate and securities law offer a similarly malleable suite of entity forms to facilitate opacity.

This regulatory flexibility has direct implications for transparency and political participation. Exemptions from disclosure requirements, like those in the securities regulations discussed above, are intended to make it easier for small businesses to raise capital from wealthy households.<sup>314</sup> However, these exemptions now serve as vehicles through which large-scale land investments can be hidden from public view. The use of private investments in LLCs, limited partnerships, and other special-purpose vehicles allows investors to avoid reporting ownership, transfer activity, or environmental externalities. This opacity, in turn, frustrates public oversight and makes meaningful community engagement in land governance considerably more difficult.

We have also seen these evasion strategies in regulatory attempts to ban or cap investment by certain entity types. For example, in Brazil, foreign investors

<sup>313.</sup> See *supra* notes 262–263 and accompanying text.

<sup>314.</sup> See Securities Act of 1933, ch. 38, § 5(a), (c), 48 Stat. 74, 77–78 (prohibiting offers and sales of securities before certain triggering events keyed to the filing or effectiveness of a “registration statement,” unless an exception or exemption is available); *id.* §§ 3–4, 48 Stat. at 75–77 (outlining two large categories of statutory exemptions); Martin, *supra* note 50, at 67–68; *see also* HAZEN, *supra* note 109, § 4:2 (“One way of summarizing . . . the 1933 Act’s registration requirements and exemptions is that an offering of securities is either registered, exempt, or illegal.”); Regulation D, 17 C.F.R. §§ 230.500–508 (2025) (exempting certain private placements from registration requirements). On accredited investors, see *infra* note 410.

created domestic shell companies to circumvent foreign-ownership restrictions.<sup>315</sup> Likewise, in the United States, firms may layer landholding entities or shift operations offshore to avoid costly or onerous public-disclosure requirements. Publicly traded firms can also “go dark” to shed disclosure obligations.<sup>316</sup> Similarly, in response to future farmland-ownership regulations, investors could reorganize their holdings into layers of LLCs, trusts, or foreign-domiciled entities to bypass ownership limits, transparency requirements, or other regulatory hurdles.

These behaviors reflect regulatory arbitrage, not benign legal planning. While legal structuring is not inherently suspect—many small operations incorporate bespoke structures for risk management or financing—the distinction lies in purpose and effect. And while it might be tempting to tweak these exemptions, the deeper problem lies in how the law operationalizes distinctions like this public/private boundary.<sup>317</sup> Unless evasion strategies are anticipated and rules are adapted to evolving capital behaviors, regulatory limits will remain ineffective in the face of legally resourceful investors who can nimbly bypass intended constraints.

### 3. *Complexity Advantages*

Meanwhile, many securities, land-use, and corporate laws have become so intricate that the most sophisticated incumbents are best positioned to exploit their full flexibility. Investors and entities wealthy enough to hire lawyers to transact their way around property and securities restrictions will benefit from more legal complexity, whereas less-resourced actors will not.<sup>318</sup> This phenomenon breeds the asymmetries that form what legal scholars call “regulatory arbitrage”: small actors operate under the real or perceived risk of noncompliance, while larger actors use legal teams to locate and exploit every gap.<sup>319</sup> For this reason, legal complexity does not level the playing field; rather, it risks reinforcing the advantages of those who can afford sophisticated legal representation.<sup>320</sup>

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<sup>315.</sup> See FAIRBAIRN, *supra* note 6, at 124–25.

<sup>316.</sup> See Fried, *supra* note 285, at 135–36.

<sup>317.</sup> See, e.g., Georgiev, *supra* note 277, at 282 (noting that public regulation has effectively become elective for issuers of securities).

<sup>318.</sup> See PISTOR, *supra* note 48, at 3–4, 13–17, 19–22.

<sup>319.</sup> See, e.g., Victor Fleischer, *Regulatory Arbitrage*, 89 TEX. L. REV. 227, 230 (2010); cf. Rob Frieden, *Regulatory Arbitrage Strategies and Tactics in Telecommunications*, 5 N.C. J.L. & TECH. 227, 227–29 (2004) (describing this phenomenon in one regulatory regime).

<sup>320.</sup> Cf. Chester S. Spatt, *Complexity of Regulation*, 3 HARV. BUS. L. REV. ONLINE 1, 1 (2012) (“[C]omplexity in regulation leads to huge entry barriers associated with the cost of

As such, asymmetries of this variety tend to consolidate economic power and weaken regulatory legitimacy.

Law can respond, of course, but it must do so by design. Anti-evasion clauses, principles-based rules, and adaptive enforcement mechanisms are all used in tax and financial regulation to limit arbitrage. For instance, the foreign-account tax-compliance provisions of the Hiring Incentives to Restore Employment Act require foreign institutions to disclose U.S. beneficial ownership, putatively disrupting the anonymity that facilitates tax evasion.<sup>321</sup> Similarly, anti-money-laundering regimes mandate disclosure of some underlying beneficial or controlling interests, but these rules have been limited in recent rulemakings<sup>322</sup> and face the same limitations as other passive-disclosure regimes.<sup>323</sup>

#### 4. *Shadowlands*

Finally, in perhaps the most insidious of these effects, existing legal frameworks tend to obscure rather than elucidate the underlying factual reality of land relations, masking trends like concentration under nested corporate-ownership structures and through the many tentacles of layered financial instruments. Contemporary frameworks governing financialized farmland incentivize opacity in ways that make it difficult to determine who controls and profits from the land. For example, even if an LLC nominally owns farmland, its members are nameless, creating a web of ownership that may be impossible to untangle.<sup>324</sup> Similarly, private trusts can conceal beneficiaries' identities, shielding them from scrutiny while granting the economic benefits of ownership.

Transparency facilitates effective citizen participation in a democracy,<sup>325</sup> but the democratic challenge at issue here goes beyond mere access to ownership information. Rural places already tend to experience a kind of “shadowland”

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regulatory compliance. Instead of addressing ‘too big to fail,’ this can lead to maintaining ‘too big to fail’ institutions.”).

<sup>321</sup>. See Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, §§ 501-502, 124 Stat. 71, 97-108 (2010) (section known as the Foreign Account Tax Compliance Act, or FATCA).

<sup>322</sup>. See *supra* note 132 (describing the Federal Corporate Transparency Act); *see also supra* Section IV.A.2 (outlining the inherent limits of disclosure regimes).

<sup>323</sup>. See *supra* Section IV.A.2. For a proposed framework presumptively disqualifying certain opaque structures for farmland ownership, see *infra* Section V.B.3.

<sup>324</sup>. See *supra* notes 26, 166 and accompanying text.

<sup>325</sup>. See Shade & Van Sant, *supra* note 90, at 847-48 (describing participatory research methods to engage communities in evaluating local land ownership).

effect, with rural realities sufficiently over the horizon to be all but invisible to most urban and suburban Americans' daily experience.<sup>326</sup>

Although a narrow subclass of investors may receive investment-oriented disclosures, it becomes much harder to see what is happening in agricultural spaces on the ground as absentee owners exercise their powerful property rights of exclusion. For example, special agricultural trespass statutes – colloquially called “ag-gag” laws – have emerged to preclude most photography or viewing of the conditions of livestock being raised in confined feed operations.<sup>327</sup> Likewise, recent Supreme Court property opinions, including *Cedar Point Nursery v. Hassid*, have enhanced large farm owners’ rights to preclude service providers from accessing farmworkers at their work sites.<sup>328</sup> Viewed in these terms, both “ag-gag” laws and *Cedar Point Nursery* illustrate how statutes and court decisions alike have deployed property-law logic to provide monied interests increasing control over agricultural operations. Similarly, interdisciplinary scholars have documented how financialized land ownership can concentrate power in ways that preclude local, customary access to important community spaces, foreclosing histories of open-land traditions in Maine farmlands or traditional forms of Indigenous land relations on what is now called Vancouver Island.<sup>329</sup>

The specter of expanding absentee control is not hypothetical but a real and persistent threat. Consider how, despite the histories of anti-corporate-farming laws and restrictions on foreign ownership of farmland, there is significant political momentum moving in the opposite direction today.<sup>330</sup> Eric Kades, for

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<sup>326.</sup> See *supra* note 214 and accompanying text. For this important “shadowland” concept, we also credit valuable work by Australian scholar Nicole Graham. See, e.g., Graham, *supra* note 55, at 285–88.

<sup>327.</sup> Elizabeth Rumley, “Ag-gag” Laws: An Update of Recent Legal Developments, NAT’L AGRIC. L. CTR. (Aug. 26, 2021), <https://nationalaglawcenter.org/ag-gag-laws-an-update-of-recent-legal-developments> [https://perma.cc/C967-9N8Z].

<sup>328.</sup> 594 U.S. 139, 162 (2021) (recognizing a law allowing labor organizations to enter agricultural employers’ property as a *per se* taking).

<sup>329.</sup> See, e.g., Kelly Kay, *Rural Rentierism and the Financial Enclosure of Maine’s Open Lands Tradition*, 107 ANNALS AM. ASS’N GEOGRAPHERS 1407, 1420–21 (2017) (detailing how restructuring the timber industry to allow increased investor ownership resulted in the active exclusion of historic open-lands traditions in those spaces); GREAT LAND GRAB, <https://www.greatlandgrab.com> [https://perma.cc/HM4C-KRFD] (collecting research and other resources related to financialized investment in forest lands on Hul’qumi’num territory and its impact on Indigenous land access and governance).

<sup>330.</sup> E.g., Ashwood et al., *Property Rights and Rural Justice*, *supra* note 296, at 122–28 (outlining how property reforms sold as protecting farms in fact reduced rural residents’ capacity to object to industrialized operations); Jeff Beach, *North Dakota Bill Aims to Loosen Corporate Farm Restrictions and Boost Animal Agriculture*, AGWEEK (Jan. 25, 2023, 10:07 AM), <https://www.agweek.com/news/policy/north-dakota-bill-aims-to-loosen-corporate-farm-restrictions-and-boost-animal-agriculture> [https://perma.cc/XYU6-SWCK].

example, has shown how the rule against perpetuities – a core antidynasty principle built into the foundations of American property law – was radically weakened or eliminated in nearly every state in recent years, without significant political debate and often connected to vague claims about the need to protect family farms from a perceived risk of estate-tax obligations.<sup>331</sup> But as Kathleen DeLaney Thomas emphasizes, these threats are based in large part on untested myths about farming, as estate taxes rarely – if ever – apply to family farmers.<sup>332</sup> Indeed, the wealth required to reap the benefit of these estate-tax reforms far exceeds the wealth held by many of America’s family-run farms.

Because these identified shadowland effects render these systems largely invisible from public assessment, the idea of family farmers shapes policy decisions in ways based more on an imagined mascot than any lived reality – and often in ways co-opted to exacerbate the very kinds of unequal wealth concentration that threaten rural futures. As we consider the likely success or failure of various interventions, the key point here is that powerful financial capital can and does continue to benefit from this lack of transparency and true political discussion. Layers of opacity and technicality do not merely confuse specialists; they actively erode the capacity for democratic participation, leaving rural residents governed by rules and owners they cannot see, let alone influence.

Our concern, therefore, is with institutional and quasi-institutional actors whose structures and incentives make land a financial product first and a place to live and work second.<sup>333</sup> Agriculture systems and farmland ownership structures are already complex, hard to read, and removed from public view. Adding new layers of complexity and highly technical regulation risks magnifying this

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<sup>331.</sup> Kades, *supra* note 192, at 177–83. Kades shows how state-level reforms of dynasty trusts (and elimination of the rule against perpetuities) were driven by federal changes to estate-tax rules that themselves stemmed from worries that family farmers could lose their land without larger exemptions. These changes now enable individuals to control vast wealth for generations – almost indefinitely – through complex trust structures, amplifying and extending existing inequalities.

<sup>332.</sup> Thomas, *supra* note 12, at 1834.

<sup>333.</sup> By powerful financial capital, we mean the participants in this ecosystem: large, professionally managed pools of other people’s money – private-equity and hedge funds, asset managers, REITs, sovereign wealth funds, public pensions, and university endowments – acting through layered LLCs to buy, lease, or control farmland primarily for financial return, at a scale and opacity that lets them move prices, shape rules, and outcompete local buyers.

“shadowland” effect, precluding the very political conversations most necessary for reform.<sup>334</sup> Democracy requires greater simplicity.<sup>335</sup>

## V. DEMOCRATIZING LAND

Our objective has been to wrap our hands around the tangled mass of mechanisms, interconnected through property, corporate, and securities law, that advance wealth concentration and financialization in the context of farmland. From this analysis, it is apparent that these mutually reinforcing mechanisms—perpetuated through property, corporate, and securities law—pose deep threats to democracy. Democracy exists where “people treat one another as political equals, allowing everyone in the community, or *demos*, to share in exercising power, or *kratos*.<sup>336</sup> Democracy can also be defined in contrast to its opposites—distinguished from alternative structures like aristocracies or monarchies that entrench social hierarchies and allow domination by one person or group over another.<sup>337</sup>

At a minimum, democracy requires a cluster of practices to protect political equality. In addition to legal structures facilitating the equitable distribution of political power, political equality demands the satisfaction of each citizen’s basic needs, such that they can enjoy real freedom in the exercise of their franchise.<sup>338</sup>

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<sup>334</sup>. See, e.g., Matthew Eshbaugh-Soha, *The Conditioning Effects of Policy Salience and Complexity on American Political Institutions*, 34 POL’Y STUD. J. 223, 225-26 (2006) (describing a model in which high-complexity, low-salience issues are dominated by “power elites” while “the public and media are unlikely to be involved”); cf. Jack H.L. Whiteley, *Perpetuities in an Unequal Age*, 117 NW. U. L. REV. 1477, 1512-16 (2023) (arguing that the complexity of the rule against perpetuities contributed to its demise, in part because the rule’s own technicality makes it hard for voters to understand and advocates to defend).

<sup>335</sup>. See generally CASS R. SUNSTEIN, *SIMPLER: THE FUTURE OF GOVERNMENT* (2013) (framing simplicity as an important democratic ideal and making a case that governments should strive for clearer communication with citizens as a prerequisite to effective political participation); Tina Eliassi-Rad et al., *What Science Can Do for Democracy: A Complexity Science Approach*, 7 HUMANS. & SOC. SCIS. COMM’NS art. no. 30 (2020) (framing democracies as complex systems that require some baseline of shared knowledge, beliefs, and norms to function).

<sup>336</sup>. Nikolas Bowie, *Antidemocracy*, 135 HARV. L. REV. 160, 160 (2021).

<sup>337</sup>. *Id.* at 167 (defining democracy as a “community of political equals” that is recognized by its distinction from other systems with “hierarch[ies] of assets or inheritance”).

<sup>338</sup>. *Id.* at 167-68 (emphasizing the need to eliminate economic and social inequalities as a prerequisite to effective democratic governance); *see also* Shiela R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL’Y REV. 281, 328 (2016) (outlining a democratized vision of city governance that emphasizes “an active citizenry” with each citizen positioned as “a city-maker rather than just a city-user”); Timothy M. Mulvaney & Joseph William Singer, *Essential Property*, 107 MINN. L. REV. 605, 628 (2022) (arguing that a democratic system of property would require property allocation “in a manner that treats each person as a valuable contributor to the common good . . . and vulnerable to circumstances outside their control”).

Exercising the franchise also requires conditions of sufficient information symmetry—that is, transparency and accountability—to enable that active participation.<sup>339</sup>

If farmland financialization is a test of these democratic values, many aspects of this new land grab fail the test. The opaque and multilayered ownership information that accompanies fragmented financial investment actively hampers local oversight and accountability. Absentee, profit-motivated ownership also fosters a dangerous “sacrifice zone” dynamic across rural landscapes, depopulating rural spaces and divorcing metropole power and benefits from local rural costs in ways that create real democratic deficits and expand inequality. And as sophisticated capital brings more layers of intermediated financial relationships and legal regulations to this investment space, the system’s complexity makes it nearly illegible to the people most affected by it.

And yet, despite all this, one of the most carefully cultivated claims of farmland investors is the idea that transforming farms into assets owned across multiple dispersed portfolios will actually democratize land ownership.<sup>340</sup> In what follows, we assess these claims. We start with the threshold analysis of land as a unique object of political attention, emphasizing land’s special place and potential as a coalition-building catalyst. Then, we turn to address the alternative ideas that existing farmland-investment vehicles are themselves democratic. We reject those claims and end with a brief review of other legal reforms that could better support more democratic land relations.

#### *A. Land’s Unique Potential*

This first Section explores farmland as a particular site of productive democratic engagement. Although it can come to seem natural or like something that

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<sup>339.</sup> See, e.g., Robert L. Glicksman, *Shuttered Government*, 62 ARIZ. L. REV. 573, 575-77 (2020) (identifying accountability, participation, and transparency as key characteristics of democratic governance, particularly in a regulatory environment). We also acknowledge that democracy is an “essentially contested concept,” with its meanings, applications, and core commitments subject to (democratic?) debate. See Edward L. Rubin, *Getting Past Democracy*, 149 U. PA. L. REV. 711, 714 (2001). Following Kate Andrias, we do “not attempt to espouse a theory of democracy or to pick among the many competing theories of democracy that scholars have offered.” Kate Andrias, *Constitutional Clash: Labor, Capital, and Democracy*, 118 NW. U. L. REV. 985, 993 n.25 (2024).

<sup>340.</sup> Cf. Thomas Lambert, *Democratizing Entrepreneurship: Evidence from Kickstarter*, THOMASLAMBERT.ORG (Apr. 19, 2024), <https://thomaslambert.org/democratizing-entrepreneurship-evidence-from-kickstarter> [<https://perma.cc/RF48-Z56R>] (finding increases in new business creation with crowdfunding platforms, albeit subject to some sociodemographic biases). But see Annaleena Parhankangas, Colin Mason & Hans Landström, *Crowdfunding: An Introduction*, in *HANDBOOK OF RESEARCH ON CROWDFUNDING* 1, 6-13 (2019) (dismantling claims that crowdfunding tools result in net-positive gains for democratization).

“just is,” property, like finance, is a human-created construct imposed on land.<sup>341</sup> It is a social choice to elevate capital formation over other values.<sup>342</sup> However, property rules can be hard to change, in part because existing legal rights to land have become so embedded in human experience and attachments.<sup>343</sup> In more subtle ways, property rights have created categories of understanding the world that tend to foreclose other ways of knowing; it is hard to think outside of fee-simple boxes.<sup>344</sup> Property becomes so ingrained in day-to-day experience that it—like the market—seems almost natural, which can entrench the status quo and make it hard to reimagine ownership in more equitable or sustainable ways.<sup>345</sup>

Yet existing property structures are contingent, contested, and revisable. Legal realists showed that ownership is a state-constructed bundle of jural relations, theorists have traced how new uses routinely trigger doctrinal rewrites, and sociological work demonstrates durable nonmarket governance alongside

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<sup>341.</sup> Shoemaker, *supra* note 65, at 823–25; *supra* Section I.A; *see also supra* notes 50, 58 and accompanying text (discussing markets and property regimes as constructed by law rather than reflecting a natural order, and noting that American history shows contingent, power-laden choices about land and Indigenous dispossession); IRELAND, *supra* note 221, at 112 (“[T]he modern concepts of ‘property’ and ‘ownership,’ far from being timeless and universal, are not only historically and culturally specific, but relatively recent.”); BERNARD E. HARCOURT, THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER 32 (2011) (“[T]he ideas of natural order and market efficiency have helped naturalize the market itself and thereby shield from normative assessment the massive wealth distributions that take place there.”).

<sup>342.</sup> *See, e.g.*, PETER BARNES, CAPITALISM 3.0: A GUIDE TO RECLAIMING THE COMMONS, at xiii (2006) (“When capitalism started, nature was abundant and capital was scarce; it thus made sense to reward capital above all else. Today we’re awash in capital and literally running out of nature.”); Joseph H. Guth, *Law for the Ecological Age*, 9 Vt. J. ENV’T L. 431, 435 (2008) (arguing that the prevailing property paradigm “was invented when the American continent seemed ‘empty’” and “envisions not only that the economy can grow forever, but also that the total scale of legally-justified damage to the Earth can grow forever as well”); *cf. supra* Sections I.A., III.A (describing how legal and financial design choices actively construct property, channelling farmland governance toward capital formation over stewardship and democratic values).

<sup>343.</sup> *See infra* note 384 (collecting sources on the role of existing entitlements in mediating property reforms).

<sup>344.</sup> *See, e.g.*, *infra* note 384 and accompanying text; Jessica A. Shoemaker, *Transforming Property: Reclaiming Indigenous Land Tenures*, 107 CALIF. L. REV. 1531, 1540–41, 1550–51 (2019) (outlining a theory of property as “a common language that creates deep internal categories and concepts that we use to understand our world” and that can either expand or limit what we imagine as possible).

<sup>345.</sup> *Contra* Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1, 36–61 (2014) (outlining a successful reform effort to change partition rules to stem African American land loss).

existing market mechanisms.<sup>346</sup> As an evolving framework of social agreements about the proper allocation of resources, property reflects collective—democratic—choices about who gets access to what, on what terms, and to what ends.<sup>347</sup> Indeed, American history incorporates numerous examples of bold property reforms—from the Homestead Act, which redistributed land to create new forms of wealth and opportunity for new (non-Indigenous) resident stewards,<sup>348</sup> to a host of other property-law changes discussed in Section V.C.1. Land relations can be adapted again to serve more inclusive democratic goals.<sup>349</sup>

Land is also uniquely positioned for this kind of democratic transformation, distinguishing it from other objects of financialization.<sup>350</sup> Land's commodification often triggers strong public reactions. In an economic history of the rise of both the market economy and fascist ideologies, Polanyi theorized that the natural world is one of the few commodities that exists without being created for sale; thus, under the logic of what he called the "double movement," society tends to push back when land becomes fully absorbed into market logics.<sup>351</sup> This dynamic may prove especially true when control over land shifts from local communities to distant investors.<sup>352</sup> Land receives special treatment not because markets are inherently bad, but because land's social, environmental, and

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<sup>346.</sup> See generally, e.g., Wesley N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16 (1913) (arguing that legal interests, including those in property law, are relational); Carol M. Rose, *Crystals and Mud in Property Law*, 40 STAN. L. REV. 577 (1988) (illustrating how the law shifts between crystalline rules and opaque standards); Thomas W. Merrill & Henry E. Smith, *What Happened to Property in Law and Economics?*, 111 YALE L.J. 357 (2001) (examining various conceptual tensions within property law).

<sup>347.</sup> Cf. Anna di Robilant, *Property and Democratic Deliberation: The Numerus Clausus Principle and Democratic Experimentalism in Property Law*, 62 AM. J. COMP. L. 367, 367 (2014) ("[F]or some critical resources that involve public interests, use and management decisions should be made not by a single owner, whether public or private, but through a process that is democratic and deliberative.").

<sup>348.</sup> See, e.g., Shoemaker, *supra* note 12, at 1718–19, 1754; Homestead Act of 1862, ch. 75, 12 Stat. 392, *repealed by*, Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1701–1787).

<sup>349.</sup> Of course, homesteading was also deeply problematic, and its use here to exemplify property's dynamic potential should not—and does not—erase its contribution to colonial dispossession and racial violence. Cf. *supra* notes 35, 42 and accompanying text; Shoemaker, *supra* note 12, at 1697–99.

<sup>350.</sup> Cf. *supra* Section II.A (noting the direct harms communities experience as a result of farmland financialization).

<sup>351.</sup> See POLANYI, *supra* note 57, at 76–80.

<sup>352.</sup> See *infra* notes 426–427 and accompanying text (presenting additional examples of rural reactions to land grabs by outside investors).

political significance are in tension with its market function.<sup>353</sup> This framing underscores a key claim of this Article: land is special, and subsuming this factor of social life to market logics is uniquely likely to trigger productive social backlash.<sup>354</sup>

### B. Evaluating Finance and Democracy

Perhaps because of land's distinct material and political characteristics, farmland-investment promoters have cultivated a unique cultural allure by pitching farmland investment as a step toward democratizing land ownership.<sup>355</sup> This marketing narrative focuses on making farmland accessible to more investors.<sup>356</sup> Similar to other crowdfunding platforms, farmland-investing vehicles have made a moral claim that they are broadening the number of investors who can

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353. See POLANYI, *supra* note 57, at 3-4, 144, 231-36 (explaining that, against the “utopia[n]” vision “of a self-adjusting market,” “society took measures to protect itself, but whatever measures it took impaired the self-regulation of the market, disorganized industrial life, and thus endangered society in yet another way”); see also Fenner Stewart, Jr., *Berle’s Conception of Shareholder Primacy: A Forgotten Perspective for Reconsideration During the Rise of Finance*, 34 SEATTLE U. L. REV. 1457, 1498 (2011) (explaining that the double movement implies “a constant tension between favoring the needs of markets and the needs of society” and predicting that any given “pendulum . . . swing[] . . . will not be permanent”).

354. Just as Polanyi argued that market overreach provokes countermobilization, farmland financialization may be beginning to elicit democratic backlash: rural communities mobilizing against land grabs, Indigenous nations reclaiming stewardship, environmental groups contesting industrial monoculture, and cooperatives or land trusts carving out nonmarket forms of ownership. These movements are “productive” in the sense used here not because they guarantee immediate victory but because they reassert land’s civic and ecological dimensions against reduction to an asset class. Political contestation reminds us that land governance is a matter of democratic choice. In this way, backlash should be conceived not as a pathology but as a generative mechanism, redirecting the arc of land relations when market logics press too far.

355. See, e.g., *Our Story*, ACRETRADER, <https://acretrader.com/company/about-us> [https://perma.cc/82EX-NYAX] (emphasizing the site’s purpose to make farmland investing more accessible); see also Grey Moran, *JD Vance Funded AcreTrader. Here’s Why That Matters*, CIV. EATS (Sep. 18, 2024), <https://civileats.com/2024/09/18/jd-vance-invested-in-acretrader-heres-why-that-matters> [https://perma.cc/LKC8-65S2] (stating that AcreTrader “enables a wider pool of investors to passively invest in farmland”); FAIRBAIRN, *supra* note 6, at 99-102 (discussing the motivations for opening fractional farmland investment opportunities).

356. See, e.g., Sarah Wensley, *Expanding U.S. Farmland Access: Opportunities for Institutional and Individual Investors*, FARMTOGETHER (Oct. 12, 2023), <https://farmtogether.com/learn/blog/how-farmtogether-is-expanding-access-to-the-3-trillion-farmland-market> [https://perma.cc/WE72-356H]; *About FarmFundr*, FARMFUNDR, <https://www.farmfundr.com/about-us> [https://perma.cc/63PL-5DP3] (quoting the fund’s founder as stating that he “saw a need to offer people the opportunity to invest in farmland without putting up huge amounts of capital”); see also FAIRBAIRN, *supra* note 6, at 134 (collecting other specific claims regarding the “democratization” of farmland ownership via investing).

hold real estate.<sup>357</sup> Wealthy individuals no longer need to seek out, assess, or purchase a full high-value farm property and can instead hold slices of interests in farmland properties in their portfolios. This arrangement allows institutional investors to own a stake in productive farmland with a lower bar to entry while increasing the total number of owners with input into decision-making about that land.<sup>358</sup> But is this democratic? The reality of these mechanisms is not so straightforward.

First, if democracy requires political equality in governance by the people and for the people, private investment facilitates, at best, governance by investors for investors.<sup>359</sup> A more democratic land-governance model would distribute decision-making authority equitably to the stakeholders affected by these decisions, including community members and workers. This democratic conception of land relations would also require conditions in which information is fairly, simply, and transparently available for participatory systems relevant to stakeholder concerns.<sup>360</sup> This does not necessarily require collective ownership, but rather emphasizes the need for mechanisms that fairly distribute decision-making authority to impacted stakeholders.

By contrast, most pooled-investment models allocate decision-making power proportionate to the size of an owner's investment stake and offer no voice (let alone decision-making authority) to noninvestor stakeholders. Under this "fundamentally aristocratic" system,<sup>361</sup> larger investors enjoy greater influence over land-use decisions, while nonowners have no direct say.<sup>362</sup> This governance

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<sup>357.</sup> See, e.g., Meb Faber, *Episode #215: David Chan, FarmTogether, "How Do We Make Farmland as an Asset Class More Accessible?"*, MEB FABER RSCH. (Apr. 27, 2020), <https://mebfaber.com/2020/04/27/episode-215-david-chan-how-do-we-make-farmland-as-an-asset-class-more-accessible> [<https://perma.cc/6XTT-8TK5>] (discussing FarmTogether's mission to "make farmland as an asset class more accessible"); cf. Lambert, *supra* note 340 (highlighting the use of crowdfunding platforms to facilitate the creation of new businesses).

<sup>358.</sup> On the connection between wealth and eligibility to invest, see *infra* note 410.

<sup>359.</sup> Cf. Grant M. Hayden & Matthew T. Bodie, *A Democratic Participation Model for Corporate Governance*, 109 MINN. L. REV. 1579, 1584 (2025) (arguing for the extension of corporate governance beyond its shareholder-centric franchise). Others have questioned whether corporations are ever – even internally – democratic institutions. E.g., Bowie, *supra* note 336, at 181 (arguing that shareholder democracy in corporations is overstated and, in reality, managers often face "little functional oversight from less-interested boards, which in turn typically structure shareholder elections to practically guarantee their own reelection").

<sup>360.</sup> See *infra* note 372.

<sup>361.</sup> Bowie, *supra* note 336, at 181.

<sup>362.</sup> Surprisingly, requiring ownership as a precondition to voting is not unique to private investment and extends to some modern public models of resource governance. See, e.g., LUCAS BESSIRE, *RUNNING OUT: IN SEARCH OF WATER ON THE HIGH PLAINS* 5, 15-17 (2021) (outlining aquifer depletion as encompassing "crises of ecologies, democracy, and interpretation")

model and its drawbacks are familiar in the broader corporate-governance context. It can and often does lead to outcomes that favor large investors, often at the expense of smaller stakeholders and the broader community.<sup>363</sup>

These democratic stakes extend beyond immediate land ownership to the wider community. As we have explored, when control over land shifts from resident farm owners to institutional investors, local communities often lose practical leverage over development and land use. Ownership and decision-making migrate into layered LLCs and fund structures, which dulls traditional mechanisms of accountability and voice (neighbor bargaining, local hearings, and ongoing relational concerns), privileging portfolio returns over place-based governance.

For instance, after the Eighth Circuit invalidated Nebraska's corporate-farming initiative in *Jones v. Gale*, large absentee owners faced fewer structural barriers to consolidation, shifting influence over land use from residents to distant capital.<sup>364</sup> Meanwhile, North Carolina recently expanded its nuisance protections for the biggest agricultural producers, and the U.S. Supreme Court recently fortified landowners' rights to exclude union organizers from accessing farmworkers in California.<sup>365</sup> These, too, are recent examples of how local recourse against industrial operations narrows. These are not merely information problems produced by intermediaries; they reflect structural reallocations of authority embedded in property, corporate, and land-use rules that collectively re-weight rural governance toward powerful owners and investors.

The point is that, although property rights as legal institutions are subject to active and ongoing democratic reforms, our current legal choices allocate more of that reform potential at scales that can overpower local voices, including through rules that prioritize state or national politics but preempt or exclude local control.<sup>366</sup> As we have seen, this occurs not only through constitutional doctrines like the dormant Commerce Clause, which has blocked many state-level efforts to regulate out-of-state farmland ownership,<sup>367</sup> but also through

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and explaining a system by which only landowners have a formal say in groundwater management in Kansas).

<sup>363</sup>. See *supra* notes 75–76 and accompanying text.

<sup>364</sup>. See *supra* notes 262–264 and accompanying text.

<sup>365</sup>. See Hines, *supra* note 210, at 57–60 (analyzing a series of bellwether-trial nuisance verdicts); *supra* note 328 and accompanying text (discussing *Cedar Point*).

<sup>366</sup>. See *supra* Section III.B (arguing that spatial justice requires “place-sensitive legal arguments”); cf. LANI GUINIER, THE TYRANNY OF THE MAJORITY 6–7 (1994) (articulating threats of majoritarianism).

<sup>367</sup>. See *supra* Section III.B. New federal proposals, such as the Farmland for Farmers Act, S. 2583, 118th Cong. (2023), may offer a way around these constraints, but they face their own political and implementation challenges. See *infra* Section V.B.3.

preemption of local regulation of other important matters of local concern—from the application of pesticides to the siting of large confined-feeding operations.<sup>368</sup> Likewise, even when local requirements are deployed, sophisticated capital can often outmaneuver or otherwise evade those intended limits.<sup>369</sup>

Finally, what farmland investment proponents call democratization is really a veneer for practices that consolidate wealth and exacerbate objectionable inequalities in the distribution of land.<sup>370</sup> A just and democratic society requires, at a minimum, that every person has the opportunity to acquire the resources they need to sustain themselves with dignity and security.<sup>371</sup> These basic rights include access to physical spaces and physical resources necessary to provide for one's self and one's family.<sup>372</sup> But farmland investment exacerbates inequality and expands existing monopolies, further limiting the ability of new farmers and ranchers to access land at all.

Instead of democratizing land ownership, farmland financialization remakes rural places in antidemocratic ways.<sup>373</sup> Property law does not merely facilitate coordination; it actively shapes social conditions.<sup>374</sup> Scholars have shown that—

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<sup>368.</sup> See, e.g., Christopher A. Novak, *Agriculture's New Environmental Battleground: The Preemption of County Livestock Regulations*, 5 DRAKE J. AGRIC. L. 429, 432 (2000) (arguing in favor of preempting local livestock-siting rules); Terence J. Centner & Davis Clarke Heric, *Anti-Community State Pesticide Preemption Laws Prevent Local Governments from Protecting People from Harm*, 17 INT'L J. AGRIC. SUSTAINABILITY 118, 119 (2019) (arguing against the state practice of preempting local pesticide regulations).

<sup>369.</sup> Cf. Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 530-33, 539-40 (2009) (acknowledging concerns about the viability of local governments' ability to constrain and discipline global financial capital but also expressing some optimism in light of the place-specific demands of many development projects).

<sup>370.</sup> See *supra* Sections II.D, III.D.

<sup>371.</sup> See, e.g., WRIGHT, *supra* note 50, at 8.

<sup>372.</sup> *Id.* (“In a politically just society, all people would have broadly equal access to the necessary means to participate meaningfully in decisions over things which affect their lives.”); Amina Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 113 (2020) (relying on Wright's and others' conceptions of democratic political economy); Tierney, *supra* note 204 (manuscript at 13) (“A social-relational property regime would require an administrative framework that empowers labor, sustains community interests, and integrates ecological values into economic governance.”); cf. Joe Pieri, *Democratizing the Fourth Sector*, 72 S.C. L. REV. 83, 119-20 (2020) (analyzing governance models in contexts like B Corps or other social enterprises that designate nonshareholder stakeholders—including workers or local communities—as specific objects of concern for business activity and calling for even greater participation in actual governance).

<sup>373.</sup> See Shoemaker, *supra* note 65, at 870.

<sup>374.</sup> See, e.g., Joseph William Singer, *Property as the Law of Democracy*, 63 DUKE L.J. 1287, 1291 (2014) (discussing democratic power); Shoemaker, *supra* note 65, at 829 (demonstrating how property law facilitates placemaking); Gregory S. Alexander, *The Social-Obligation Norm in*

across places like the Pacific Northwest, central Appalachia, and rural Alabama – “the fact that outsiders owned or controlled land and associated natural capital undermined local wealth creation.”<sup>375</sup> These outcomes illustrate how property law can sustain a civic order that resembles feudal hierarchy: wealth and opportunity concentrate among absentee owners, while local communities face diminished influence over the material conditions of their lives. To democratize land relations, then, requires more than assuming capital inflows will meaningfully broaden ownership; it requires legal interventions to ensure that rural communities retain the capacity to govern and live full and equitable lives in their shared landscapes.<sup>376</sup>

Instituting more democratic systems of agricultural land ownership and governance requires radically reimagining land-tenure and financial systems to prioritize community well-being over individual profit.<sup>377</sup> While such a shift would certainly challenge conventional notions of both property and business law, re-thinking land ownership in this way may facilitate more equitable access to land, promote more sustainable practices in agriculture, and strengthen the voices of local community members. In the following Section, we consider briefly some of the legal tools that might better align farmland ownership with these principles of democracy.

### C. Sample Reform Tools

Farmland financialization fails – both procedurally and substantively – to achieve anything like a democratic system of land relations. Yet, as we have seen, the current landscape of reform is messy. Past failed efforts prove, on the one

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*American Property Law*, 94 CORN. L. REV. 745, 749-50 (2009) (illustrating how property law facilitates individual and community flourishing); Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 959-60 (1982) (demonstrating how property law is bound up with human identity).

<sup>375</sup>. Bailey & Majumdar, *supra* note 146, at 134.

<sup>376</sup>. Singer, *supra* note 374, at 1301; Joseph William Singer, *Democratic Estates: Property Law in a Free and Democratic Society*, 94 CORN. L. REV. 1009, 1039 (2009); see also Tierney & Shoemaker, *supra* note 33, at 187 (discussing the “anti-feudal roots” of American property law).

<sup>377</sup>. For instance, the late sociologist Erik Olin Wright, in cataloging “institutional designs that would increase social empowerment over the economy,” highlighted land trusts – a reform model, discussed in the next Section, in which land is “controlled by socially rooted collective associations rather than by private individuals or capitalist developers.” WRIGHT, *supra* note 50, at 186; see also ASHWOOD, *supra* note 135, at xi (arguing that flawed systems of government have centralized profit); John Emmeus Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, 51 U.S.F. L. REV. 1, 49 (2017) (discussing Wright’s proposal to “build new forms of social empowerment in the niches and margins of capitalist society, often where they do not seem to pose any immediate threat to dominant classes and elites”).

hand, that change is possible, but they also demonstrate the difficulty of achieving this progressive, democracy-promoting vision. As history shows, reform efforts are often complicated by the very systems they seek to change.<sup>378</sup>

Nonetheless, the story described in this Article does not need to end with private equity buying up the rest of America's farmland to lease to a shrinking rural population of large-scale tenant farmers, nor with billionaires cosplaying as ranchers.<sup>379</sup> We identify a series of possible interventions, as well as a federal bill proposed in 2023, as examples of farmland-ownership policies better designed to promote a more equitable and sustainable future, one which emphasizes secure and equitable occupancy rights to inhabit ecologically sustainable spaces. But we approach this topic with humility about our ability to accurately predict or recommend the reforms that are best for thriving rural communities, fragile ecosystems, and food-system reimagination.<sup>380</sup>

To democratize land in an increasingly antidemocratic lawscape, we must reorient our legal-institutional mechanisms so that decisions are made by and for the people rather than elites. From a "movement-law" perspective, progressive visions on property or corporate law "won't advance in a vacuum; they need public pressure from informed and motivated citizens."<sup>381</sup> Thus, the reforms we consider here are motivated, first and foremost, by efforts to rebalance power and authority in ways that foster more just land relations, expressed through fair community processes.<sup>382</sup>

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<sup>378.</sup> See *supra* notes 319-320 and accompanying text (discussing some of the perverse effects of overly complex securities regulations).

<sup>379.</sup> Cf. JUSTIN FARRELL, BILLIONAIRE WILDERNESS: THE ULTRA-WEALTHY AND THE REMAKING OF THE AMERICAN WEST 107 (2020) (providing an example of a wealthy investment banker purchasing a large rural property).

<sup>380.</sup> Cf. WRIGHT, *supra* note 50, at 135 (conceptualizing change through "multiple, heterogeneous institutional forms along the various pathways through which social power can be exercised over the production and distribution of goods and services").

<sup>381.</sup> Tierney, *supra* note 204 (manuscript at 17).

<sup>382.</sup> We acknowledge here that tax, agricultural policy, antitrust, environmental law, and labor law all also offer possible levers to intervene in the challenges of financialized farmland. As just one example, to the extent that farmland values are inflated in part by the exceptions granted to farm operations from most environmental- and labor-regulation costs, requiring farm landowners to internalize more of those costs could reset farmland values to more reasonable measures and indirectly dissuade investment, especially by investors motivated more exclusively by profit. Addressing these areas of law individually is beyond the scope of this Article, but other scholars have begun to think through some of these important possibilities. See generally Boyd, *supra* note 184 (discussing the role of law in structuring land transactions and creating distributional disparities on a global scale); Margot J. Pollans, *Eaters, Powerless by Design*, 120 MICH. L. REV. 643 (2022) (providing a structural critique of the food system as a whole); Amy J. Cohen, Mark Vicol & Ganesh Pol, *Living Under Value Chains: The New*

### 1. *Reimagining Land Tenure*

The ideals of market centrality and free exchange at the core of our economic system suggest that property rights must be simple, stable, and secure to facilitate seamless exchange. This framework has led scholars to contend that property rights should not, or cannot, be easily reformed or otherwise adapted.<sup>383</sup> Indeed, the very concept of property has become so deeply aligned with free alienability that attempts to alter this bundle of rights face significant resistance.<sup>384</sup>

Yet the reality is that property, by its nature, is dynamic and subject to change. By treating property as a flexible, evolving social institution—rather than a rigid entitlement—we can begin to imagine new legal and political frameworks that prioritize stewardship over speculation and democracy over disconnection. Historically, property institutions, like entail, primogeniture, or racially restrictive covenants, have been dismantled when society sees them as unjust.<sup>385</sup> Farmland financialization can therefore follow a similar path to reform, if subjected to similar scrutiny.

Within recent memory, for example, owners of lunch counters had to extend their services to all patrons without regard to race, and women gained the right to own property at all. First airplanes, then later drones, reduced the height at which landowners could claim exclusive airspace over their homes.<sup>386</sup> The

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*Distributive Contract and Arguments about Unequal Bargaining Power*, 22 J. AGRARIAN CHANGE 179 (2022) (analyzing arguments about unequal bargaining power in contracts related to rural development and illustrating how dominant proposals for reform are constrained by such inequalities).

<sup>383</sup>. See, e.g., Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 CALIF. L. REV. 107, 148 n.265, 148-49 (2013) (first citing Eduardo M. Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889, 1892 (2005); and then citing D. Benjamin Barros, *Property and Freedom*, 4 N.Y.U. J.L. & LIBERTY 36, 47-49 (2009)).

<sup>384</sup>. See, e.g., Eduardo Moisés Peñalver & Sonia K. Katyal, *Property Outlaws*, 155 U. PA. L. REV. 1095, 1134 (2007) (“American property law is full of doctrines whose principal purpose appears to be the hindrance of nonconsensual alterations in existing property allocations and entitlements.”); Christopher Serkin, *What Property Does*, 75 VAND. L. REV. 891, 913 (2022) (outlining many ways that the property system functions by moderating the pace of change to protect “evolutionary reliance”).

<sup>385</sup>. See, e.g., Claire Priest, *The End of Entail: Information, Institutions, and Slavery in the American Revolutionary Period*, 33 LAW & HIST. REV. 277, 277 (2015) (exploring the history of the abolition of the fee tail in early America); Eric Kades, *A New Feudalism: Selfish Genes, Great Wealth, and the Rise of the Dynasty Family Trust*, 55 CONN. L. REV. 19, 37-43 (outlining the historic rise and fall of primogeniture and connecting it to current dynasty-trust reforms); Carol M. Rose, *Property Law and Inequality: Lessons from Racially Restrictive Covenants*, 117 NW. U. L. REV. 225, 235 (2022) (exploring the law’s slow process of finding racially restrictive covenants unenforceable).

<sup>386</sup>. See, e.g., Troy A. Rule, *Airspace in an Age of Drones*, 95 B.U. L. REV. 155, 159-74 (2015) (describing how property-law doctrine changed along with technological advancement).

“mineral estate” in real property did not always exist, yet, once recognized, it created a new source of wealth for its estate holders.<sup>387</sup> As these and other examples reflect, laws governing property and alienation, like farmland being packaged into a firm, can be reformed. Indeed, many of the examples of prior reforms discussed in the last Section are themselves widespread, recent, and popular rural land reforms that have occurred in the United States.

To that end, democratic interventions around land ownership could make real differences in rural land access, food-system resilience, and the future of next-generation rural communities. Consider, for example, recent changes enacted in Scotland to allow communities to purchase directly—either as a first right of refusal or, in some limited cases, even a forced sale—land from concentrated absentee landowners to be put to more direct community-benefiting uses.<sup>388</sup>

Historically, American reformers have pursued other property tools that could be useful in this scenario: land-ownership caps,<sup>389</sup> progressive property taxes that impose higher obligations on concentrated or absentee landowners,<sup>390</sup> tenant rights to buy certain leasehold interests,<sup>391</sup> or even an ongoing duty to reside on or cultivate land as a condition of continued control and benefit.<sup>392</sup>

Other models could involve the expansion of public-access trusts accountable to governance by the public, where land is held in trust for the community’s benefit and managed through democratic processes. Examples of this regime include the public vote to provide housing on municipal land in the Canadian Arctic and ongoing efforts in the American West to build public incubator projects

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<sup>387.</sup> See, e.g., Peter L. Reich, *Western Courts and the Privatization of Hispanic Mineral Rights Since 1850: An Alchemy of Title*, 23 COLUM. J. ENV’T L. 57, 58 (1998); Gary D. Libecap, *Economic Variables and the Development of the Law: The Case of Western Mineral Rights*, 38 J. ECON. HIST. 338, 339 (1978).

<sup>388.</sup> Carey Doyle, *Rethinking Communities, Land and Governance: Land Reform in Scotland and the Community Ownership Model*, 24 PLAN. THEORY & PRAC. 429, 432 (2023).

<sup>389.</sup> See, e.g., Casado Pérez, *supra* note 240, at 51.

<sup>390.</sup> See generally Andrew T. Hayashi & Richard M. Hynes, *Protectionist Property Taxes*, 106 IOWA L. REV. 1091 (2021) (outlining concerns about protectionism via property taxes but carving out the risks of concentration and absenteeism at issue here).

<sup>391.</sup> See, e.g., Ezra Rosser, *Progress and the Taking of Indigenous Land*, 85 OHIO ST. L.J. 623, 645-48 (2025) (describing Hawai’i’s Land Reform Act of 1967, which gave tenants the right to acquire a fee-simple title through the state’s eminent-domain power, subject to certain conditions).

<sup>392.</sup> See, e.g., Anna di Robilant, *Populist Property Law*, 49 CONN. L. REV. 933, 951, 954 (2017) (describing the National Reformers Association’s campaign to impose positive duties on landowners). In the housing context, a recent proposal in Minnesota sought to ban corporations from converting existing homestead properties into rentals. See H.F. 685, 93d Leg., Reg. Sess. (Minn. 2023).

for beginning farmers and ranchers.<sup>393</sup> Although land-tenure changes require significant political will and careful consideration, the point here is that (1) property already changes all the time, and (2) reform models exist that, with greater political will and dialogue, warrant greater discussion.<sup>394</sup>

## 2. New Financial Models

Financial regulation remains a powerful tool for shaping economic ordering and for redistributing income and resources.<sup>395</sup> The challenge is whether securities law – long organized around investor protection and market efficiency – can be redeployed to confront financialization’s harms: inequality, opacity, and the decoupling of investment from place. Rather than defaulting to a shareholder-centric logic,<sup>396</sup> we argue that securities law should be read – and rebuilt – to serve a broader democratic and distributive function.<sup>397</sup>

Recent Delaware changes surrounding controlling-shareholder transactions and books-and-records requests underscore how malleable legal design is.<sup>398</sup> Without sustained scrutiny, these structures too often lead to arrangements that insulate managers and intermediaries from meaningful checks. That malleability is a reason to act, not to defer to the market.

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393. See, e.g., Sarah Rogers, *Nunavut Communities Deliver a Resounding No to Land Sales*, NUNATSIAQ NEWS (May 10, 2016, 2:55 PM EDT), [https://nunatsiaq.com/stories/article/65674nunavut\\_communities\\_offer\\_a\\_resounding\\_no\\_to\\_land\\_sales](https://nunatsiaq.com/stories/article/65674nunavut_communities_offer_a_resounding_no_to_land_sales) [https://perma.cc/C449-63DF] (discussing the results of a referendum in Nunavut on municipalities’ ability to sell municipal land); Calo & De Master, *supra* note 294, at 111, 113–14.

394. For a helpful analysis of the political realities of such an effort in the context of food-system reform, see generally Antonio Roman-Alcalá, *Land Reform in the United States: Lost Cause or Simply a Cause That Has Been Lost?*, 12 ELEMENTA: SCI. ANTHROPOCENE art. no. 00087, at 1–2 (2024).

395. See *supra* note 50 and accompanying text.

396. See RICHARD A. BOOTH, *FINANCING THE CORPORATION* § 3:3 (2024–2025 ed.) (arguing that the pair of voting and control rights, characteristic of common equity, “go hand in hand: since the common stock is paid last, it assumes the greatest risk . . . and therefore naturally will want control”).

397. See Tierney, *supra* note 204 (manuscript at 20) (theorizing the goals of a “radical securities law agenda . . . to implicate broader rights beyond consumer protection for wealthy investors”). This rhymes with proposals about restricting access to investment options that encourage wealth inequality. See Emily Winston, *Unequal Investment: A Regulatory Case Study*, 107 CORN. L. REV. 781, 839–44 (2022).

398. See, e.g., Sabrina Willmer, *Musk’s War on Delaware Spurs Law Pushed by Private Equity*, BLOOMBERG L. (Mar. 26, 2025, 11:15 AM EDT), <https://news.bloomberglaw.com/private-equity/private-equity-joins-fight-to-overhaul-delaware-corporate-law> [https://perma.cc/F2G5-C3KF] (describing significant changes to Delaware corporate law related to controlling-shareholder transactions and books-and-records requests). On malleability, see Tierney, *supra* note 204 (manuscript at 10).

Our position is direct: relying on shareholders will not fix financialized farmland.<sup>399</sup> In this sector, the median investor is geographically distant, diversified, and legally oriented toward portfolio returns, not stewardship of place. Shareholder empowerment channels authority to asset managers whose fiduciary duties run to their investors. In practice, shareholder-oriented reforms risk legitimating and re-entrenching the very ownership structures that produce displacement and opacity.<sup>400</sup> Shareholder voice could well be an instrument, but it is neither the driver nor the measure of success. The lodestar is whether law reconnects finance to place and redistributes power toward those who live with the consequences.

Disclosure remains another potential site for reform. Securities law traditionally distinguishes between public and private companies, exempting many large landowners—including agricultural-investment funds—from any meaningful transparency.<sup>401</sup> One potential reform could mandate that all farmland owners exceeding a certain acreage or asset threshold count as Exchange Act reporting companies for disclosure purposes.<sup>402</sup> This intervention would make it harder for large investors to aggregate farmland through complex webs of subsidiaries or affiliates without facing public scrutiny. That public visibility could, in turn, promote greater transparency and democratic accountability.

Another less obvious intervention is “merit regulation.” Unlike federal securities law, which emphasizes disclosure and investor self-protection, state merit regulation involves substantive review of the investment itself.<sup>403</sup> Though merit review is increasingly rare due to federal preemption, it was once a widespread

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<sup>399.</sup> But see Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243, 1268-72 (2020) (recognizing the role of shareholders in pressuring companies to increase the gender diversity of their boards).

<sup>400.</sup> See, e.g., Lisa M. Fairfax, *Making the Corporation Safe for Shareholder Democracy*, 69 OHIO ST. L.J. 53, 98 (2008) (“Increasing shareholder power appears to strengthen the legitimacy of the shareholder primacy norm.”); Elizabeth Pollman, *Corporate Acceptance of Stakeholderism: Will It Hinder or Boost Government Regulation of Corporate Externalities?*, ECGI BLOG (Oct. 19, 2023), <https://www.ecgi.global/publications/blog/corporate-acceptance-of-stakeholderism-will-it-hinder-or-boost-government> [https://perma.cc/H2FT-77Z7].

<sup>401.</sup> See *supra* notes 316-317 and accompanying text.

<sup>402.</sup> Cf. Jason D. Rogers, Christopher A. Scharman & Brad R. Jacobsen, *Avoiding General Solicitations in a Securities Private Placement*, 23 UTAH BAR J., no. 2, Mar./Apr. 2010, at 34, 34 (providing examples of the Exchange Act’s registration and reporting requirements).

<sup>403.</sup> See Joel Seligman, *The Obsolescence of Wall Street: A Contextual Approach to the Evolving Structure of Federal Securities Regulation*, 93 MICH. L. REV. 649, 673 (1995). Regulators can examine the price, capitalization, promoter compensation, conflicts of interest, and overall fairness of the investment, and deny or condition it if the terms are unfair, unjust, or inequitable, even when disclosure is complete. *Id.*

feature of state securities law.<sup>404</sup> Though not an easy solution, it might be possible to apply merit-regulation-based logic as a justification for categorical restrictions on who may invest in farmland.

While not typically labeled as such, policies that would bar entities from acquiring farmland reflect a kind of merit regulation: a judgment that certain market participants making certain investments is too risky. As Vanessa Casado Pérez has argued in the context of water rights, certain resource markets may warrant public-interest review or screening before allowing transfer to financial actors.<sup>405</sup> Applied to farmland, this model would limit ownership to actors with a demonstrated local or stewardship interest, rather than treating land as a fungible investment vehicle. In addition, merit regulation adopted by a future Congress could help avoid pitfalls associated with the dormant Commerce Clause. Such a law might, for example, restrict farmland ownership based on the nature of the investor rather than the quality of the investment itself.<sup>406</sup>

Still, merit regulation presents both ideological and doctrinal difficulties. Ideologically, merit regulation conflicts with neoliberal principles favoring minimal market intervention and individual choice.<sup>407</sup> The idea of government officials determining which investments are appropriate is inconsistent with neoliberal free-market ideology, where investors are expected to weigh risks and rewards for themselves. Yet it is not clear that these neoliberal leanings are universally held.<sup>408</sup> Although objections to merit regulation tend to focus on concerns about inefficiency or paternalism,<sup>409</sup> these objections are, in our view, misplaced. Securities law already exercises substantial paternalism, shielding

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<sup>404.</sup> See Jennifer J. Johnson, *Private Placements: A Regulatory Black Hole*, 35 DEL. J. CORP. L. 151, 156–58 (2010).

<sup>405.</sup> Vanessa Casado Pérez, *Water Flowing Down Wall Street*, 109 MINN. L. REV. 2749, 2831 (2025).

<sup>406.</sup> See *infra* text accompanying notes 420–422.

<sup>407.</sup> “Most modern commentators consider [it] . . . obviously correct” that federal securities law does not—in the name of investor protection, anyway—“screen the businesses that . . . investors are allowed to invest in,” as it did under state blue-sky laws. Holger Spemann, *Indirect Investor Protection: The Investment Ecosystem and Its Legal Underpinnings*, 14 J. LEGAL ANALYSIS 16, 49 (2022).

<sup>408.</sup> It may be that society distrusts the staff of the average state securities regulator to do an effective case-by-case evaluation of the merits of an investment. It may *not* be, however, that society distrusts a blanket or categorical state-law determination that certain kinds of investments are off-limits. Categorical determinations are no less a variety of merit regulation; they just appear in a different form.

<sup>409.</sup> See generally Susanna Kim Ripken, *Paternalism and Securities Regulation*, 21 STAN. J.L. BUS. & FIN. 1 (2015) (analyzing the promises and drawbacks of market paternalism and advocating for a heavily tailored approach); Steven L. Schwarcz, *Rethinking the Disclosure Paradigm in a World of Complexity*, 2004 U. ILL. L. REV. 1, 27 (considering objections to merit regulation, including the “historical” lesson from “the state blue sky laws” that it is “ineffective and not worth its cost”).

individuals from high-risk and complex transactions that, collectively, are best avoided.<sup>410</sup>

Property law is no stranger to inalienability rules either, reinforcing the idea that certain kinds of assets should not be freely traded. Prescription drugs cannot be sold without regulatory approval; eagle feathers are protected from trade; and human body parts are generally not tradable commodities.<sup>411</sup> These examples reflect longstanding legal traditions restricting certain transactions on their merits not because markets fail, but because certain values – ecological, ethical, or communal – override market logic. Outright rejection of “merit regulation” in financial markets due to an ideological opposition to paternalism warrants greater scrutiny.<sup>412</sup>

Finally, a significant amount of financialized farmland is held in investment funds subject to extensive regulation. As such, fund-level regulatory interventions offer direct mechanisms to address financialized farmland. Farmland is often structured as a portfolio asset in private funds, as a special-purpose vehicle like an LLC, or in a public fund like an REIT. The regulation of these structures

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<sup>410.</sup> See James Fallows Tierney, *Investment Games*, 72 DUKE L.J. 353, 403 (2022) (“[S]equities law is already thick with paternalism, everywhere you look.”); Urska Velikonja, *Waiving Disqualification: When Do Securities Violators Receive a Reprieve?*, 103 CALIF. L. REV. 1081, 1086, 1096 (2015) (discussing disqualification provisions). Consider private securities, a major category of exempt securities offerings. Regulation D’s wealth- and income-based safe harbors effectively exclude over eighty percent of American households from investing in private company securities. *Id.* (explaining that Regulation D and “Rule 144A’s exemption for resales to large institutions” are “[t]he most popular exemptions”). At risk of oversimplifying here, only “accredited investors” are eligible to participate in private investments under Rule 506(c) of Regulation D, and in practice they are the main participants in investments under Rule 506(b) as well. Accredited investors include various categories of institutions as well as high-net-worth households. HAZEN, *supra* note 109, § 4:40 (describing the accredited-investor definition). Measures of the distribution of net worth reflect that about the top ten percent of households by net worth (not including home equity) and between the top five and twelve percent of households by income (depending on the size of the household) meet the net-worth or income requirements for accredited-investor status. *Review of the “Accredited Investor” Definition Under the Dodd-Frank Act*, SEC. & EXCH. COMM’N 23 (Dec. 14, 2023), <https://www.sec.gov/files/review-definition-accredited-investor-2023.pdf> [<https://perma.cc/R644-9AZZ>].

<sup>411.</sup> Fennell, *supra* note 207, at 1429-30 (discussing the special property rules for eagle feathers); Barbara J. Williams, *On-Line Prescriptions and Drug Sales: An Overview of Emerging Issues*, 1 HOU. J. HEALTH L. & POL’Y 147, 174-76 (2001) (discussing federal administration of prescription-drug purchase and sale); Radhika Rao, *Property, Privacy, and the Human Body*, 80 B.U. L. REV. 359, 367-80 (2000) (outlining the complex rules for trading, donating, or selling various human body parts).

<sup>412.</sup> 15 U.S.C. § 77r (2024). To be certain, federal law has increasingly moved away from merit regulation. See Johnson, *supra* note 404, at 156. The National Securities Markets Improvement Act of 1996 preempted much of states’ merit regulation of securities offerings, reinforcing the dominance of a disclosure-based model. HAZEN, *supra* note 109, § 8:3.

could be reimagined to serve nonfinancial values. A possible intervention would require investor-owned farmland to be held in publicly traded REITs.

Public REITs are subject to federal securities laws mandating transparency, periodic disclosures, and public reporting—constraints that private funds and private operating companies currently escape. Further, REITs’ existing structural features, like limits on reinvestment and protections against hostile takeover, create space for experimentation with additional novel reforms. Federal legislators could condition REIT eligibility on adherence to nonshareholder stakeholder rights, such as community consultation or sustainability covenants.<sup>413</sup> While current REIT law promotes tax efficiency and liquidity, these principles need not exclude goals like spatial justice or democratic land governance.<sup>414</sup>

What’s more, these forms of creative intervention illustrate a broader point: legal reforms that reallocate corporate and investor power can be used to illuminate, and possibly counteract, some of the forces driving dispossession and disinvestment. Nevertheless, we acknowledge that such measures, standing alone, are unlikely to address the full scale of the financialization problem. As such, comprehensive reform will require sufficient political will, enforcement, and organizing to become viable in practice.

### 3. Recent Federal Legislative Efforts

Some reform efforts of this variety are already underway. In the summer of 2023, after collaborating with a host of rural, small-farm nonprofits, Senator Cory Booker proposed S. 2583, known as the Farmland for Farmers Act.<sup>415</sup> The

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<sup>413</sup>. There are, of course, other kinds of possible interventions in this space. One would be to eliminate certain regulatory exemptions that allow the managers of farmland-investment funds to avoid public-fund scrutiny. Individual-farm LLCs can be exempt from the 1933 Act if sold only to accredited investors. As with private-equity funds in other industries, farmland-fund managers can avoid additional public-fund obligations under the 1940 Act by limiting investors to “qualified purchasers,” a category that raises the wealth floor to five million dollars. Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(51) (2024); *see also* 15 U.S.C. § 80a-3(c)(7) (2024) (exempting private funds based on whether their purchasers are accredited investors or qualified purchasers, a category of slightly wealthier households); William W. Clayton, *How Public Pension Plans Have Shaped Private Equity*, 81 Md. L. REV. 840, 848 (2022) (describing wealth and other exemptions on which fund managers rely). By removing these exemptions specifically pertaining to farmland investments, regulators might impose more oversight on these managers, promoting practices more aligned with the public interest.

<sup>414</sup>. *See supra* Section IV.A.4.

<sup>415</sup>. Farmland for Farmers Act, S. 2583, 118th Cong. (2023); *see also* Press Release, Booker Introduces Legislation to Protect Farmland from Corporate Consolidation (July 27, 2023), <https://www.booker.senate.gov/news/press/booker-introduces-legislation-to-protect-farmland-from-corporate-consolidation> [https://perma.cc/R2MU-RG2X] (showing the Act’s goals of

bill targets corporate ownership of farmland, which Booker cites as contributing to rising land prices, ownership concentration, and the displacement of local farmers.

The bill's cornerstone is its prohibition on most business entities from acquiring new farmland, with a notable exemption for "authorized legal [entities]."<sup>416</sup> Allowable entities must have no more than twenty-five owners, all of whom must be natural persons actively engaged in farming.<sup>417</sup> Importantly, these entities cannot be part of a "multilayered subsidiary" structure.<sup>418</sup> Given concerns about evasion and who benefits from complexity,<sup>419</sup> this feature seems designed to help prevent corporations from exploiting shell entities to bypass these restrictions or to obscure beneficial ownership. This provision reflects a direct attempt to curb absentee ownership while fostering locally rooted, farmer-driven ownership models that align with sustainable agricultural practices and community resilience.

The Farmland for Farmers bill includes several additional exemptions for ownership, recognizing the diverse stakeholders who might own farmland for nonspeculative purposes. These include exemptions for farms owned by schools, nonprofits, and "authorized farmer or rancher cooperative[s]," reflecting the bill's intent to preserve community-oriented and mission-driven ownership models.<sup>420</sup> To ensure compliance, the bill mandates the "divestment of agricultural land" acquired by unauthorized legal entities after the effective date, using civil penalties and enforcement by federal agencies to deter violations.<sup>421</sup> Moreover, the bill includes a dormant Commerce Clause fix, enabling states to enact laws that are no less restrictive than the federal standard.<sup>422</sup> This provision recognizes the need for state-level involvement in regulating farmland ownership while shielding such regulations from legal challenges under the dormant Commerce Clause.<sup>423</sup>

The bill represents a direct response to the common practice of corporate entities using complex ownership arrangements to evade land-ownership regulations. Enforcing these provisions, however, remains a challenge, particularly

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preserving rural communities, preventing unsubstantiated investments, and securing the fair distribution of federal program benefits).

<sup>416</sup>. S. 2583, §§ 3(4), 3(18), 4(a).

<sup>417</sup>. *Id.* § 3(4)(B)-(C).

<sup>418</sup>. *Id.* § 3(4)(A).

<sup>419</sup>. See *supra* Sections IV.B.2, IV.B.3.

<sup>420</sup>. S. 2583, § 4(b)(1)(J).

<sup>421</sup>. *Id.* § 6(b)-(c).

<sup>422</sup>. *Id.* § 7.

<sup>423</sup>. See *supra* Section IV.A.1 (providing examples of past state anti-corporate-farming efforts).

given the sophistication of financial actors, the opacity of corporate structures, and limited federal resources.

There remain questions of political salability. Other than receiving a cosponsorship from Senator Bernie Sanders and a referral to the Senate Agriculture, Nutrition, and Forestry Committee, the bill had no movement after its introduction and died unenacted at the end of that session of Congress. It is too soon, however, to say that this sort of legislation is dead on arrival. The bill's quasi-populist framing and social preferences about regulating ownership of farmland are not cleanly divided along partisan lines.<sup>424</sup> The bill's emphasis on supporting small farmers and protecting farmland from speculative interests may broaden its appeal, particularly in rural constituencies. The success of future bills like it will depend on building countervailing power in communities affected by financialized farmland. Harmed constituencies cut across ideology, creating strange-bedfellows opportunities.<sup>425</sup> For example, viable coalitions might pair (1) small-farmer groups with community banks to press for entry and anti-monopoly rules; (2) county officials and watershed districts with conservation, recreation, and land-trust organizations to link ownership transparency and acreage caps to tax-base stability and soil/water stewardship; and (3) rural labor, housing, and community advocates to tie ownership reforms to enforceable protections.

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Ultimately, this struggle over farmland ownership is deeply rooted in the experience of the communities that live in these places and are striving to halt detrimental changes to their landscapes.<sup>426</sup> In other contexts, rural-led movements have reflected a desire to build countervailing power against exploitation by outside financial institutions that prioritize profit over people.<sup>427</sup> Grassroots efforts characterized by the Ag-Land trust opposition and anti-corporate-farming laws underscore the need to empower local populations to have a meaningful say in land-use decisions.<sup>428</sup> This advocacy adopts the slow, brave, and sustained

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<sup>424</sup>. *But see* Moran, *supra* note 355 (noting Vice President J.D. Vance's own historic investment in a platform for farmland investing).

<sup>425</sup>. *Cf. supra* note 4 and accompanying text (demonstrating bipartisan consensus to restrict foreign involvement in U.S. agriculture).

<sup>426</sup>. These experiences are diverse and complex. *See generally* Ann M. Eisenberg, *Just Transitions*, 92 S. CAL. L. REV. 273 (2018) (exploring the difficulty of some rural communities' reliance on existing means of wage production even in extractive contexts).

<sup>427</sup>. *See* ASHWOOD, *supra* note 135, at ix-xi; Shoemaker, *Pipelines*, *supra* note 212, at 71-75.

<sup>428</sup>. *See* Ashwood et al., *supra* note 34, at 255-56 (arguing that more could be done to shield family farms from corporate intrusion); Jessica Crawford, Douglas Bessette & Sarah B. Mills, *Rallying the Anti-Crowd*, 90 ENERGY RSCH. & SOC. SCI. art. no. 102597, at 6-8 (2022) (assessing the democratic deficit in large-scale renewable-energy siting decisions that do not engage local opposition).

movement work necessary to express, through the law, communities' shared commitment to one another.

## CONCLUSION

Financialized farmland is part of a larger structural problem that reflects a continuing separation of wealth and capital from the local, lived experiences of human and ecological communities. This Article highlights the possibilities—and limits—of regulatory responses to financialized farmland. Indeed, it seems that legal interventions might not be enough to stem the tide of this phenomenon. Current property-, securities-, and business-law frameworks prioritize capital formation, efficient markets, and investor protection—principles that align neatly with the interests of farmland investors, but not necessarily with the broader interests of farmers, rural communities, or the environment. Asking property, corporate, and securities law—or even the law as it is currently structured—to serve as a bulwark against farmland financialization might be asking it to perform a task for which it is currently ill-suited.

In short, while financial-regulatory interventions have their role to play, they are not a panacea. To move the needle on issues like rural community welfare, sustainable agriculture, and economic justice, advocates may need to look beyond the law of investment and toward more radical reforms and innovative strategies. Given that rural communities face multiple overlapping crises of how law mediates socioeconomic inequality and other structural injustices, transitions of the sort we describe require multilayered approaches to the laws of finance capital, corporate ownership, and property.

The critical agrarian response in the 1970s to the Ag-Land trust proposal seems quaint and almost unachievable today.<sup>429</sup> That movement gained traction amidst a groundswell of efforts to safeguard family farms and promote community land stewardship. By contrast, the modern landscape is dominated by market forces and frameworks that have come to favor large-scale investment and privatization—as most Americans have physically moved farther from any agrarian roots.<sup>430</sup>

Yet, as we note, the emerging bipartisan consensus on restricting foreign ownership of farmland acts as both a barrier and an opportunity. By fixating on foreign entities, policymakers divert attention from the more pressing issues of domestic corporate consolidation and financialization in farmland.<sup>431</sup> This misdirection encourages and facilitates the systematic accumulation of land by

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<sup>429.</sup> See *supra* notes 14–20 and accompanying text.

<sup>430.</sup> See *supra* Section I.A.

<sup>431.</sup> See *supra* notes 3–4 and accompanying text.

domestic corporations to continue unchecked, and in the process, displaces family farmers and undermines rural communities. Yet the energy behind these reactions to foreign ownership suggests hope is not lost.<sup>432</sup> Some deep concern for the health and vitality of local rural communities and food systems remains.

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<sup>432</sup>. See generally Roman-Alcalá, *supra* note 394 (exploring the absence of land-reform discussions in food and agrarian movements in the United States and suggesting ways of overcoming these gaps).