

Prose to Policy: How Wendell Berry's Distinct Strain of Agrarianism Can Influence Farm Policy

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Industrial agricultural practices have greatly increased food yields but cause significant harm to the environment and rural communities. Over half of the topsoil of the United States has been washed away in the past seventy years and an even higher percentage of the country's farmers have voluntarily left or been driven out of the profession. Wendell Berry, a celebrated author and farmer, is a staunch critic of industrial agriculture. His writings primarily concern healthy rural communities, sustainable agriculture, and the relationship between the two. Academics and policymakers alike have appreciated Berry's writings for their nostalgia and aesthetics, yet few readers have conducted legal treatments of or crafted policy in accordance with his work. This Note explains why there has been so little analysis and fills that gap, using Berry's writings as the basis of a framework for farm reform.

This Note analyzes the values present in Berry's work and transmutes them into a cognizable policy framework. Part I examines the harms caused by industrial agriculture and shows how the current legal-regulatory framework preserves and promotes an unworkable status quo. Part II introduces Berry and addresses issues in his thought that impede robust legal and policy analysis. Part III uses Berry's writings, supplemented by legal and political theories, to construct a policy framework designed to foster and utilize agrarian values. Part IV applies

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the framework to the Farm Bill and suggests several reforms for the bill's 2023 reauthorization.

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INTRODUCTION

Tens of thousands of years ago, vast glaciers inched their way across the land now known as the American Heartland.¹ When the glaciers receded to cooler climes at the end of the last ice age, they left behind a layer of rich topsoil more than 100-feet deep in some places.² Prairie grasses burrowed their roots deep into this sediment, further enriching the soil, reducing erosion, improving water quality, and providing habitat to countless species of wildlife.³ For thousands of years, the ecological health of the region flourished.⁴ Now, by some estimates, modern unsustainable agricultural practices (collectively, “industrial agriculture”)⁵ have washed away more than half of that topsoil in many regions in just the past century.⁶ What took glaciers tens of thousands of years to create is taking humanity decades to destroy.

The current American system of agriculture is failing. Since Nixon’s Secretary of Agriculture, Earl Butz, told farmers to “get big or get out,”⁷ 10,000-acre farms⁸ have replaced small family

1. KEMAL PISKIN & ROBERT E. BERGSTROM, ILL. DEP’T REG. & EDUC., CIRCULAR 490, GLACIAL DRIFT IN ILLINOIS: THICKNESS AND CHARACTER 8 (1975); *A History of Illinois Agriculture*, ILL. STATE MUSEUM, http://www.museum.state.il.us/OHIA/htmls/land_glaciers/land_glaciers.html [https://perma.cc/3D36-C9TE].

2. *Id.* For a map of glacial deposits, see generally David Fullerton et al., *Map of Surficial Deposits and Materials in the Eastern and Central United States*, U.S. GEOLOGICAL SURV. (2003), https://pubs.usgs.gov/imap/i-2789/i-2789_p.pdf [https://perma.cc/A9Y6-7X2Q].

3. NAT. RES. CONSERVATION SERV., ESTABLISHING NATIVE GRASSES 1 (Mar. 2011), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_017880.pdf [https://perma.cc/JV8F-DSBJ]. Prairies can also provide vital nutrients to the soil via habitual prairie burns. See Rebecca Kessler, *In Midwest, Bringing Back Native Prairies Yard by Yard*, YALE ENV’T 360 (Dec. 20, 2012), https://e360.yale.edu/features/in_us_midwest_restoring_native_prairie_ecosystems_kessler [https://perma.cc/SRL3-U4U7].

4. See CHARLES C. MANN, 1491: NEW REVELATIONS OF THE AMERICAS BEFORE COLUMBUS 363 (2005) (“Native Americans had been managing their environments for thousands of years. . . . [B]y and large they modified their landscapes in stable, supple, resilient ways.”).

5. See *infra* Part I (defining industrial agriculture in more depth and cataloging its harms).

6. *Soil Erosion and Degradation*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/threats/soil-erosion-and-degradation> [https://perma.cc/RU5A-MQRH]; see also David Pimentel, *Soil Erosion: A Food and Environmental Threat*, 8 ENV’T, DEV. AND SUSTAINABILITY 119, 119–37 (2006), (finding that soil is being lost from land areas ten to forty times faster than the rate of soil renewal).

7. Tom Philpott, *A Reflection on the Lasting Legacy of 1970s USDA Secretary Earl Butz*, GRIST (Feb. 8, 2008), <http://grist.org/article/the-butz-stops-here/> [https://perma.cc/UDN9-SW2C].

homesteads as the country's primary food supply.⁹ Industrial agriculture's exploitation and destruction of topsoil is representative of the way it treats other inputs—both human and ecological. Agricultural yields have increased exponentially¹⁰ over the past century, yet modern farming practices have pushed millions of Americans out of the profession,¹¹ exacerbated rural poverty,¹² and devastated countless ecosystems.¹³ These harms demand a different model for how the nation feeds itself.

Enter one of industrial agriculture's fiercest critics, Wendell Berry. Hailing from Port Royal, a small community located in Henry County, Kentucky¹⁴ roughly ten miles south of the Ohio River,¹⁵ Berry has been fighting industrial agriculture from his

8. Jacob Bunge, *Supersized Family Farms are Gobbling Up American Agriculture*, WALL ST. J. (Oct. 23, 2017), <https://www.wsj.com/articles/the-family-farm-bulks-up-1508781895> [<https://perma.cc/3VFU-T6GC>] (describing Lon Frahm's 30,600-acre farm).

9. James MacDonald and Robert Hope, *Large Family Farms Continue to Dominate U.S. Agricultural Production*, USDA (Mar. 6, 2017), <https://www.ers.usda.gov/amber-waves/2017/march/large-family-farms-continue-to-dominate-us-agricultural-production/> (finding small farms to account for only twenty-four percent of production in 2015). *But see* Nathan Rosenberg, *The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural History*, 13 J. FOOD L. & POL'Y 12, 17–20 (2017) (arguing that Earl Butz was not a major architect behind America's industrial food system and that the farm crisis began years before Butz's tenure as Secretary of Agriculture).

10. The United States' farm output grew by 170 percent between 1948 and 2015, but total input use rose only 7 percent during that period. *See* Sun Ling Wang et al., *Agricultural Productivity Growth in the United States: 1948-2015*, USDA (Mar. 5, 2018), <https://www.ers.usda.gov/amber-waves/2018/march/agricultural-productivity-growth-in-the-united-states-1948-2015/> [<https://perma.cc/5X66-GLG8>]; *see also* Hannah Ritchie & Max Roser, *Crop Yields*, OUR WORLD IN DATA (2021), <https://ourworldindata.org/crop-yields> [<https://perma.cc/6M7N-BMVF>] (showing an increase in American wheat yields from 1.61 tons per hectare in 1961 to a peak of 3.54 tons per hectare in 2016). Corn has seen similar production increases over approximately the same time period. *Id.*

11. In 1970, 4.4 percent of the labor force was employed in farming. In 2019, that number had dropped to 1.4 percent. *The Truth About Industrial Agriculture*, FAMILY FARM ACTION ALLIANCE 7 (2021), <https://farmaction.us/wp-content/uploads/2021/07/Truth-Report.pdf> [<https://perma.cc/VD9J-D6TF>].

12. *See infra* Part I.A. According to estimates from the 2019 American Community Survey, the nonmetro poverty rate was 15.4 percent in 2019, compared with 11.9 percent for metro areas. *Rural Poverty & Well-Being*, USDA (2013), <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/> [<https://perma.cc/YLL2-7FDB>]. Nonmetro poverty reached a 30-year peak of 18.4 percent in 2013. *Id.*

13. *See infra* Part I.B.

14. Henry County is home to 15,678 people. *QuickFacts: Henry County, Kentucky*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/henrycountkentucky/PST045221#PST045221> [<https://perma.cc/EH6Z-U9CY>]. Port Royal has around sixty residents. Dorothy Wickenden, *Wendell Berry's Advice for a Cataclysmic Age*, NEW YORKER (Feb. 21, 2022), <https://www.newyorker.com/magazine/2022/02/28/wendell-berrys-advice-for-a-cataclysmic-age> [<https://perma.cc/5KMR-T3G4>].

15. WENDELL BERRY, *THE ART OF LOADING BRUSH* 11 (2017) [hereinafter *THE ART OF LOADING BRUSH*].

fields and typewriter¹⁶ for over half a century. Called a “poet who speaks for the farmers,”¹⁷ Berry has published over eighty books.¹⁸ Most of Berry’s essays and books celebrate healthy rural farming communities and harshly criticize¹⁹ the forces that would see them exploited. A decorated author,²⁰ some commentators give Berry a seat at the table of great American environmentalists alongside John Muir, Aldo Leopold, and Henry David Thoreau.²¹

This Note places the works of Wendell Berry within a political and legal framework to shed light on what a new agricultural model can and should be. The framework targets national-level policymakers but can be used by anyone who cares about how, where, and by whom their food is grown. Part I demonstrates why such an effort is necessary. It defines industrial agriculture, describes its harms to both people and the environment, and shows how America’s current legislative and regulatory regime supports industrial farming while inadequately addressing its harmful effects. Part II provides background on Berry; it examines the intellectual traditions he inherited, describes how his thought bridges political divides, and explains why his ideas have not substantively entered political or legal spheres. The Part also explains how policymakers can use Berry’s ideas to

16. WENDELL BERRY, *Why I Am Not Going to Buy a Computer*, 10 NEW ENG. R. & BREAD LOAF Q. 112 (1987), *reprinted in* WHAT ARE PEOPLE FOR? 170, 170 (Counterpoint 2010) (1990).

17. Daniel Fromsom, *A Poet who Speaks for the Farmers*, ATLANTIC (Dec. 15, 2009), <https://www.theatlantic.com/health/archive/2009/12/a-poet-who-speaks-for-the-farmers/31818/> [<https://perma.cc/C6J4-K3VK>].

18. Amanda Petrusich, *Going Home with Wendell Berry*, NEW YORKER (July 14, 2019), <https://www.newyorker.com/culture/the-new-yorker-interview/going-home-with-wendell-berry> [<https://perma.cc/4HRN-LLP3>].

19. WENDELL BERRY, *The Pleasures of Eating*, in WHAT ARE PEOPLE FOR? (1990), *reprinted in* THE WORLD-ENDING FIRE 143, 149 (Paul Kingsnorth ed., 2017) (comparing conditions in industrial farms to concentration camps) [hereinafter *The Pleasures of Eating*].

20. For example, Berry is a recipient of the National Humanities Medal and the Richard C. Holbrooke Distinguished Achievement Award. *Dayton Literary Peace Prize Names Distinguished Achievement Award Recipient*, DAYTON DAILY NEWS (Aug. 12, 2013), <https://www.daytondailynews.com/entertainment/books--literature/dayton-literary-peace-prize-names-distinguished-achievement-award-recipient/lb3K4L6Aj6BK2P3huwvhsK/> [<https://perma.cc/XE7C-ENQ7>]; *see also* Wendell Berry, POETRY FOUND., <https://www.poetryfoundation.org/poets/wendell-berry> [<https://perma.cc/D3TP-WBUS>] (listing Berry’s various accolades).

21. *See* Eric Zencey, *A Whole Earth Catalogue*, NATION (July 1, 2002), <https://www.thenation.com/article/archive/whole-earth-catalogue/> [<https://perma.cc/FHY5-FLUS>] (calling Berry “one of the few contemporary authors worthy of mention in the same breath with that triumvirate of immortals, Thoreau, Muir and Leopold”).

influence government policy, even though some argue—including, on occasion, Berry himself—that his ideas should not be used in such a manner. After demonstrating that Berry’s distinct brand of agrarianism can be “judged and corrected”²² to accommodate a robust application to policy, Part III creates a policy framework that develops the best possibilities of the Kentuckian’s thought. It summarizes and translates Berry’s works into the vernacular of a policymaker, distilling them into defined political positions. This Part then uses political and legal theories to make sense of, critique, and operationalize Berry’s ideas. Part IV applies the framework developed in Part III, proposing several reforms to the Farm Bill.

I. INDUSTRIAL AGRICULTURE

“Get Big or Get Out.”²³

Barb Kalbach is a farmer.²⁴ So were her parents, grandparents, and great-great grandparents. For generations Barb’s family sowed seeds in the spring and harvested crops in the fall. Barb’s children will not be farmers.²⁵ The plot of Iowa land Barb farms with her husband, Jim, once surrounded by small homesteads, is now an island marooned in a sea of corn patrolled by automated combines and showered with pesticides. Large landowners have bought up the land surrounding the Kalbach’s property and leased it to tenant farmers.²⁶ Barb and Jim used to grow oats, hay, corn, and beans and raise chickens, cows, and pigs.²⁷ Now, Barb, Jim, and their few remaining neighbors can only afford to grow corn and soybeans as feed for

22. Wendell Berry, *Poetry and Marriage*, COEVOLUTION Q., Winter 1982, reprinted in *STANDING BY WORDS* 210 (1983) (“Maturity sees that the past is not to be rejected, destroyed, or replaced, but rather that it is to be judged and corrected, that the work of judgment and correction is endless, and that it necessarily involves one’s own past.”).

23. Tom Philpott, *supra* note 7.

24. Chris McGreal, *How America’s Food Giant Swallows Family Farms*, *GUARDIAN* (Mar. 9, 2019), <https://www.theguardian.com/environment/2019/mar/09/american-food-giants-swallow-the-family-farms-iowa> [<https://perma.cc/GZ7X-SCXE>].

25. *Id.*

26. *Id.*

27. *Id.*; see also WENDELL BERRY, *THE UNSETTLING OF AMERICA* 43–44 (Counterpoint Press 2015) (1977) [hereinafter *THE UNSETTLING OF AMERICA*] (describing how farms were highly diversified before the prevalence of industrial agriculture).

livestock or inputs for ethanol.²⁸ Barb's story is unique only in that she has survived so long without selling her land.²⁹ When asked about the future of small farms in America, Barb replied, "I think they're done."³⁰

The type of agriculture currently practiced on most Americans farms has no single definition or name³¹ but does have several core tenets.³² This method of farming is commonly called "industrial agriculture." Industrial agriculture has three key characteristics, described *infra*: a reliance on annual³³ monocultures,³⁴ dependence on fossil-fuel-based inputs, and an "industrial" orientation. This Part defines industrial agriculture, describes its concomitant harms, and examines the legal framework undergirding such an unsustainable status quo. These efforts show the unworkability of America's agricultural system and demonstrate the need for an alternative.

Ninety percent of the world's food comes from just thirty crop species—most of them annuals—even though about 7,000 crop species exist.³⁵ Annual monocultures are especially prevalent in American agriculture. In 2018, an estimated 239.8 million acres—an area more than twice the size of California³⁶—were sown with four annual crops: corn, soybeans, wheat, and cotton.³⁷

28. *Id.*; Ethanol is fuel made from corn and other plant materials. More than ninety-eight percent of gasoline in the United States contains some ethanol. *Alternative Fuels Data Center*, U.S. DEPT OF ENERGY, <https://afdc.energy.gov/fuels/ethanol.html> [<https://perma.cc/RST7-8HJP>].

29. See Part I.A (describing the decline in the number of farms).

30. See McGreal, *supra* note 24.

31. Berry often refers to it as "agribusiness." Gracy Olmstead, *Wendell Berry's Right Kind of Farming*, N.Y. TIMES (Oct. 1, 2018), <https://www.nytimes.com/2018/10/01/opinion/wendell-berry-agriculture-farm-bill.html> [<https://perma.cc/7B82-6QUM>].

32. These tenets are set out by John Head who terms the type of agriculture "industrial fossil-carbon-based enhanced extractive agriculture." Head admits this moniker is quite a mouthful and uses the name "modern extractive agriculture" for short. JOHN W. HEAD, INTERNATIONAL LAW AND AGROECOLOGICAL HUSBANDRY: BUILDING LEGAL FOUNDATION FOR A NEW AGRICULTURE 15–17 (2017).

33. Annual plants live for only one growing season.

34. Monoculture is the practice of growing one crop species in an area at a time.

35. HEAD, *supra* note 32, at ix, app.

36. California is 101,676,000 acres. *Inventoried Roadless Area Acreage Categories of NFS Lands Summarized by State*, USDA, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm8_037652.htm [<https://perma.cc/2ZE6-E742>].

37. Kent Thiesse, *2018 Acreage Estimates*, FARM PROGRESS (Mar. 16, 2018), <https://www.farmprogress.com/usda/2018-acreage-estimates> [<https://perma.cc/P8ZB-SZSX>]; see also USDA, 2012 CENSUS OF AGRICULTURE HIGHLIGHTS: FARMS AND FARMLAND 2 https://www.nass.usda.gov/Publications/Highlights/2014/Highlights_Farms_and_Farmland.pdf [<https://perma.cc/U79L-L4HP>] (showing that in 2012, 389.7 million acres were used as cropland). The prevalence of monocultures is

Federal policy contributes to this lack of diversity by heavily subsidizing the production of a limited number of crops.³⁸ The end result: many farmers spend their entire lives looking over the same field of corn or soybeans every fall and sowing the same kinds of seeds every spring.

Industrial agriculture depends upon fossil fuel. It is used in farm machinery and the production of synthetic fertilizers and biocides. About seventy percent of the world's ammonia is used as agricultural fertilizer³⁹ and its production burns large amounts of natural gas.⁴⁰ The skewed ratio between the work, i.e., work in a physics sense,⁴¹ done by humans as opposed to the work done by fossil fuel-powered machines illustrates American agriculture's dependence on fossil fuel inputs. For example, fossil fuels provide 99.96 percent of the caloric energy used to grow corn in the United States.⁴² Industrial agriculture's addiction to fossil fuels prompted one author to ask: "What will we eat as the oil runs out?"⁴³

evident from the consumer-side as well; there are approximately forty-five thousand items in the average American supermarket and over a quarter of them contain corn. MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA* 19 (2006).

38. William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 221 (2009) [hereinafter Eubanks II, *A Rotten System*] (recounting the Farm Bill's initial subsidization of over 100 crops in the 1930s to just a "handful of crops" now).

39. *Ammonia Technology Roadmap: Executive Summary*, INT'L ENERGY AGENCY (2021), <https://www.iea.org/reports/ammonia-technology-roadmap/executive-summary> [https://perma.cc/TV4T-82V2].

40. WEN-YUAN HUANG, USDA, *IMPACT OF RISING NATURAL GAS PRICES ON U.S. AMMONIA SUPPLY* 5 (Aug. 2007), <https://www.ers.usda.gov/publications/pub-details/?pubid=40460> [https://perma.cc/F3VZ-KKXQ] ("Approximately 33 million British thermal units. . . of natural gas are needed to produce 1 ton of ammonia.").

41. Work is the measure of energy transfer occurring when an object is moved by an external force. It is equal to the force exerted on an object multiplied by the distance an object travels. *Work*, BRITANNICA (Oct. 6, 2022), <https://www.britannica.com/science/work-physics> [https://perma.cc/SDH2-CKSS].

42. HEAD, *supra* note 32, at 62. Industrial agriculture is also less efficient than non-fossil carbon-based alternatives in terms of caloric energy expended. See ERNEST L. SCHUSKY, *CULTURE AND AGRICULTURE: AN ECOLOGICAL INTRODUCTION TO TRADITIONAL AND MODERN FARMING SYSTEMS* 113–19 (1989) (evaluating the caloric efficiency of industrial farming methods); Tim Crews, *Will Becoming Local Here Get Us There?*, in LAND INST., *LAND REPORT NO. 108*, 5, 9 (2014), <http://landinstitute.org/wp-content/uploads/2014/11/LR-108> [https://perma.cc/5Q8X-FJ9K] ("Most indigenous or traditional agricultures without fossil fuels had ratios between 10 and 40 calories of food out per calorie of food consumed in farming.").

43. Richard Heinberg, *What Will We Eat as the Oil Runs Out?* (Nov. 22, 2007) <https://richardheinberg.com/188-what-will-we-eat-as-the-oil-runs-out> [https://perma.cc/62SC-ZY9Z].

Industrial agriculture’s “industrial” orientation refers to the emphasis on increasing production and a reliance upon exogenous inputs such as artificial fertilizers.⁴⁴ Philosophically, an industrial orientation assumes human ingenuity alone is enough to remedy all problems. People need not develop cooperative relationships with a region’s ecology because human technology defines a place’s ecology and its limits—or lack thereof.⁴⁵ This orientation eschews consideration of a policy or technology’s wider ecological impact and prompts the adoption of practices predicated exclusively on their capacity to increase yields, such as spraying pesticides that eradicate entire insect populations to protect crops.⁴⁶

According to Sir Albert Howard, one should treat “the whole problem of health in soil, plant, animal, and man as one great subject.”⁴⁷ In accordance with Sir Howard’s advice, the following two sections show how industrial agriculture harms people and the environment alike. Part I.C then demonstrates how the existing legal-regulatory framework in America buoys industrial agriculture and does little to mitigate its injuries.

A. PEOPLE

In 1973, President Nixon’s Secretary of Agriculture Earl Butz, a champion of industrial farming, called upon American farmers to “get big or get out.”⁴⁸ Butz wanted American farms to “feed the world” and saw a highly centralized, corporate-run food system as the best way to do so.⁴⁹ The secretary’s words were a death knell to millions of small farmers. America, once a nation of farmers, is now a country in which less than two percent of the workforce

44. *The Pleasures of Eating*, *supra* note 19, at 146 (“[I]n the food industry—as in any other industry—the overriding concerns are not quality and health, but volume and price.”).

45. Wes Jackson defines this orientation as “the industrial mind.” See HEAD, *supra* note 32, at 116 (citing Wes Jackson’s description of the industrial mind and its implications).

46. See Francisco Sánchez-Bayo & Kris Wyckhuys, *Worldwide Decline of the Entomofauna: A Review of its Drivers*, 232 *BIOLOGICAL CONSERVATION* 8, 8 (2019) (finding that over forty percent of insect species are threatened with extinction and pesticide use is a major driver of this decline).

47. *The Pleasures of Eating*, *supra* note 19, at 148 (quoting ALBERT HOWARD, *THE SOIL AND HEALTH* (1947)).

48. See Philpott, *supra* note 7; POLLAN, *supra* note 37, at 51–52.

49. Philpott, *supra* note 7.

farms.⁵⁰ The number of farms has shrunk as well, from a highwater mark of 6.8 million homesteads in 1935 to 2.0 million homesteads in 2021.⁵¹

The average American farmer has become older and poorer.⁵² From 1998–2002, 14.2 percent of farmworkers were aged forty-five years or older; by 2008–2012, that figure nearly doubled to 27.1 percent.⁵³ The average farmer is 59.4 years old and a third of farmers are over the age of 65.⁵⁴ Industrial agriculture's emphasis on bigger machines, bigger yields, and bigger farms is partially responsible for this trend, erecting substantial barriers to entry for young, aspiring farmers.⁵⁵ One source estimates the

50. HEAD, *supra* note 32, at 43.

51. *Farming and Farm Income*, USDA (Sept. 1, 2022) <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/> [<https://perma.cc/QA8X-8QH8>]; *see also* USDA, 2012 CENSUS OF AGRICULTURE PRELIMINARY REPORT HIGHLIGHTS (Feb. 2014), <https://chautauqua.cce.cornell.edu/resources/highlights-ag-census-2012> [<https://perma.cc/5V3F-HNWN>]; *see also* MARK B. TAUGER, *AGRICULTURE IN WORLD HISTORY* 139 (2d ed. 2010) (documenting that the number of farms “declined from seven million in 1940 to two million by 2000”); Roberto Ferdman, *The Decline of the Small American Family Farm in One Chart*, WASH. POST (Sept. 16, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/09/16/the-decline-of-the-small-american-family-farm-in-one-chart/> [<https://perma.cc/FLD4-S66D>] (reporting that the “top 10 percent of farms in terms of size account for more than 70 percent of cropland in the United States; the top 2.2 percent alone takes up more than a third”).

52. The percentage of white farm owners has also drastically increased. Ninety-eight percent of farmland is owned by white people yet sixty percent of farm laborers are people of color. Maine Conservation Voters, *Agriculture and Climate Change: Cows, Corn, and Crap*, YOUTUBE (Apr. 8, 2022), <https://www.youtube.com/watch?v=5YuOnBlgXE8> [<https://perma.cc/V6MD-RZF6>].

53. STEPHEN G. BRONARS, P'SHIP FOR NEW AM. ECON., *A VANISHING BREED: HOW THE DECLINE IN U.S. FARM LABORERS OVER THE PAST DECADE HAS HURT THE U.S. ECONOMY AND SLOWED PRODUCTION ON AMERICAN FARMS* 19 (July 2015), http://research.newamericaneconomy.org/wp-content/uploads/2015/08/PNAE_FarmLabor_August-3-3.pdf [<https://perma.cc/J6S6-ZS3A>].

54. USDA, 2017 CENSUS OF AGRICULTURE 72 (Apr. 2019), https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf [<https://perma.cc/H8YR-SFGK>]; Chuck Abbott, *On Average, U.S. Farmers Are Aging, but a Quarter of Them Are Newcomers*, FERN (Apr. 11, 2019), https://thefern.org/ag_insider/on-average-u-s-farmers-are-aging-but-a-quarter-of-them-are-newcomers/ [<https://perma.cc/9NGZ-ADFX>] (reporting that the average age of the “principal operator” or farmer as 50.3 years in the 1978 Census of Agriculture, 53.3 years in 1992, 57.1 years in 2007, 58.3 years in 2012, and 59.4 years in 2017); *see also* Alana Semuels, *The Graying of Rural America*, ATLANTIC (June 2, 2016), <http://www.theatlantic.com/business/archive/2016/06/the-graying-of-rural-america/485159> [<https://perma.cc/JB8N-QUXY>] (describing how rural Americans, not just farmers, are becoming older).

55. *See, e.g.*, Sam Ellis, *Different Types of Combine Harvester: How Much They Cost*, FARM & ANIMALS (Jan. 10, 2021), <https://farmandanimals.com/different-types-of-combine-harvester/> [<https://perma.cc/27ET-57QD>] (noting that a new combine costs between \$330,000–500,000 and the average used combine is priced at approximately \$122,000).

cost of starting a 1,500 acre farm—with 500 owned acres and 1,000 leased acres—to be \$5,157,500.⁵⁶

As farmers' ages have increased, their income from crop receipts has shrunk. In 2012, the median farm income was negative \$1,453.⁵⁷ Over ninety-one percent of all farm households must rely on multiple sources of income as farm receipts fail to meet their needs⁵⁸ and a mere sixteen percent of small family farms earn most of their income from farming.⁵⁹ Moreover, income has become concentrated in the hands of fewer owners. One percent of American farmers receive over fifty percent of the national farm income.⁶⁰ Corporations have also dipped into a share of the agricultural profits once held by farmers.⁶¹ For every dollar consumers spend on food, farmers receive sixteen cents, down from fifty cents in 1952.⁶²

Farmers are now almost as dependent on government payments as they are on their own crops, with forty percent of farmer income coming from the government in 2020.⁶³ The

56. Shawn Williamson, *How Much \$ Does it Take to Become a Farmer?*, SUCCESSFUL FARMING (June 6, 2017), <https://www.agriculture.com/farm-management/business-planning/how-much-does-it-take-to-become-a-farmer> [<https://perma.cc/8KNF-Z6JT>]. For comparison, the national average value of farmland and buildings per acre was \$100.39 in 1958. Adjusting for 2022 inflation, a 1,500-acre farm, bought outright, would cost over \$1,500,000. USDA, THE FARM COST SITUATION 17 (May 1958), <https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q637s/n870zt630/765374246/Farmcostsit-05-08-1958.pdf> [<https://perma.cc/A7W7-4SSM>] (reporting the cost of farm real estate); *Inflation Calculator*, <https://www.usinflationcalculator.com/> [<https://perma.cc/U2DB-9ASJ>] (adjusting for inflation).

57. Bren Smith, *Don't Let Your Children Grow Up to Be Farmers*, N.Y. TIMES (Aug. 9, 2014), <https://www.nytimes.com/2014/08/10/opinion/sunday/dont-let-your-children-grow-up-to-be-farmers.html> [<https://perma.cc/2YF3-98YF>].

58. *Id.* For contrast, see Daren Bakst, *Can You Earn a Living at Farming?*, N.Y. TIMES (Aug. 14, 2014), <https://www.nytimes.com/2014/08/15/opinion/can-you-earn-a-living-at-farming.html> [<https://perma.cc/BM42-T725>] (writing that the median farm household has earned more than the average nonfarm household).

59. Mary Berry & Debbie Barker, *Renewing a Vision for Rural Prosperity*, CIVIL EATS (Aug. 15, 2018), <https://civileats.com/2018/08/15/renewing-a-vision-for-rural-prosperity-in-wendell-berry-country/> [<https://perma.cc/9G2R-4FFY>].

60. HARVEY BLATT, AMERICA'S FOOD: WHAT YOU DON'T KNOW ABOUT WHAT YOU EAT 5 (2008).

61. 4 multinational meatpackers control 54% of poultry processing, 66% of pork packing, and 85% of beef packing. *Fairness for Farmers*, NAT'L FARMERS' UNION, <https://nfu.org/fairness-for-farmers/> [<https://perma.cc/3JYS-LUTD>]. 4 corporations control 85% of corn seeds and 76% of soybean seeds. 4 firms control 84% of the global herbicide and pesticide market. *Id.* Farmers selling corn and soybeans must sell to the 4 companies that control 82% of the soybean crushing and 84% of the wet corn milling in the United States. *Id.* 95% of large farm tractors are made by Deere, CNH Industrial, and AgCo. *Id.*

62. *Id.*

63. *U.S. Government Checks Constituted 40% of Farmers' Income in 2020: USDA*, MARKET WATCH (Dec. 31, 2020), <https://www.marketwatch.com/story/u-s-government->

enormous subsidies given to farmers, most of them targeting wheat, rice, and corn,⁶⁴ prompted President Trump to declare that “some people say our farmers do better now than when they actually had a farm.”⁶⁵

Industrial agriculture also creates public health crises that affect both farmers and consumers. One of the most direct dangers is pesticides. Pesticide products cause 10,000–20,000 farmworker poisonings each year.⁶⁶ Many pesticides are carcinogens and exposure can increase the likelihood of developing neurological disorders.⁶⁷ Suicide also plagues the agricultural community. Suicide rates for those in agricultural, forestry, and fishing industries are approximately three times higher than the average suicide rates of the general working population.⁶⁸ Financial stress and isolation, both of which have been exacerbated by industrial agriculture, are in a large part responsible for this crisis.⁶⁹

For consumers, the prevalence of low-nutrient monocultures contributes to high obesity rates⁷⁰ and limits consumer choice.⁷¹

checks-constituted-40-of-farmers-income-in-2020-usda-01609444429 [https://perma.cc/3RCF-LGDD].

64. In the early 1960s, the “Green Revolution” led to a tripling in grain yields (namely of the heavily subsidized wheat, rice, and corn) due to scientific advances in the field of crop hybridization. Although crop yields increased, many argue that the consequences for rural life were devastating. See Richard Manning, *The Oil We Eat*, HARPER’S MAG., Feb. 2004, at 41 (calling the green revolution the “worst thing that has ever happened to the planet”).

65. *U.S. Government Checks Constituted 40% of Farmers’ Income in 2020*, *supra* note 63.

66. *Regulatory Impact Analysis of Worker Protection Standard for Agricultural Pesticides*, EPA V-11 (1992).

67. Eubanks II, *A Rotten System*, *supra* note 38, at 277; see also, RAFTER FERGUSON ET AL., UNION OF CONCERNED SCIENTISTS, FARMWORKERS AT RISK: THE GROWING DANGERS OF PESTICIDES AND HEAT 20 (2019).

68. Wendy Ringgenberg et al., *Trends and Characteristics of Occupational Suicide and Homicide in Farmers and Agriculture Workers, 1992–2010*, 34 J. RURAL HEALTH 246, 246 (2018); see also Cora Peterson et al., CTRS. FOR DISEASE CONTROL AND PREV., *Suicide Rates by Industry and Occupation — National Violent Death Reporting System, 32 States, 2016*, 69 MMWR 57 (2020) (finding that farmer, rancher, and other agricultural manager suicides grew by forty percent in the past twenty years).

69. *Id.* at 249 (citing financial stress and isolation as “risk factors” for suicide in farmers).

70. The American adult obesity prevalence in 2017–2020 was 41.9 percent. Obesity-related conditions include heart disease, type 2 diabetes, and certain types of cancer. The annual medical cost of obesity was \$173 billion in 2019 and people with obesity have medical costs \$1861 higher than people of a healthy weight. *Adult Obesity Facts*, CTRS. FOR DISEASE CONTROL & PREV., <https://www.cdc.gov/obesity/data/adult.html> [https://perma.cc/M394-WTNY].

Monocultures like corn and soy are essential for sweeteners and oils like high fructose corn syrup and vegetable oil. Highly-processed foods with relatively high amounts of salt, sugar, and fat—i.e., unhealthy foods—rely upon these sweeteners, oils, and other monoculture-derived products.⁷² Industrial farms flood the market with monocultures, making highly-processed foods cheaper than healthier alternatives and ultimately contributing to high obesity rates.⁷³

In addition to providing cheap inputs for highly processed foods, industrial agriculture has facilitated increased caloric consumption by Americans. Since the Nixon administration, the average American farmer has produced an additional 500 calories per person per day.⁷⁴ Accordingly, caloric intake has increased by ten percent since 1977.⁷⁵ As discussed *infra*, the government subsidizes the production of monocultures and their unhealthy derivatives⁷⁶ more than the production of nutrient-rich foods. This scheme makes it easier and cheaper to buy unhealthy foods and more difficult to find and afford healthier alternatives.

B. ENVIRONMENT

The environmental fallout of industrial agriculture is felt locally and globally. Industrial agriculture erodes topsoil at ten to forty times the rate of replenishment.⁷⁷ Pesticides reduce

71. There are approximately forty-five thousand items in the average American supermarket and over a quarter of them contain corn. POLLAN, *supra* note 37, at 19.

72. See Kevin D. Hall, *Did the Food Environment Cause the Obesity Epidemic?*, 26 OBESITY (SILVER SPRING) 11 (2018).

73. *Id.*

74. POLLAN, *supra* note 37, at 103; *Food Waste FAQs*, USDA <https://www.usda.gov/foodwaste/faqs> [<https://perma.cc/3YP8-FH6U>] (finding there to be an average of 218.9 pounds of food waste per person in the United States).

75. POLLAN, *supra* note 37, at 102.

76. Corn syrup, for example.

77. See Pimentel, *supra* note 6, at 119. This is in part due to the prevalence of annual crops which require frequent soil tillage and oftentimes have shallower roots than perennials. Timothy E. Crews et al., *Is the Future of Agriculture Perennial? Imperatives and Opportunities to Reinvent Agriculture by Shifting from Annual Monocultures to Perennial Polycultures*, 1 GLOBAL SUSTAINABILITY, 2018, at 1–18. Heavier rains induced by climate change—to which industrial agriculture significantly contributes—are another factor responsible for high erosion rates. See U.S. GLOBAL CHANGE RSCH. PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT: VOL. II — IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES 24–25 (2018) [hereinafter NATIONAL CLIMATE ASSESSMENT], https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf [<https://perma.cc/6JMS-W6DM>].

biodiversity and contaminate soil.⁷⁸ Tractors and combines—ever increasing in size⁷⁹ and weight⁸⁰—compact soil and prevent roots from reaching deep into the soil. Such restriction inhibits nutrient uptake and increases runoff.⁸¹

The harms of runoff extend far beyond the regions in which the runoff originates. Topsoil and fertilizer runoff from fields in the American Heartland contributes to nitrogen loading in the Mississippi, which feeds oxygen-depleting algae blooms that create dead zones in the Gulf of Mexico.⁸² Livestock feeding operations also cause tremendous runoff problems. By the end of the twentieth century, concentrated animal feeding operations (CAFOs)⁸³ produced 130 times more annual waste than humans and manure runoff was responsible for tens of thousands of “impaired river miles.”⁸⁴

American agriculture requires enormous amounts of resources and generates enormous amounts of waste. Agricultural irrigation uses more than 135 billion gallons of water a day, over one-third of the total water used by the country.⁸⁵ An often-

78. See Tari Gunstone et al., *Pesticides and Soil Invertebrates: A Hazard Assessment*, 9 FRONTIERS ENV'T SCI. 643847 (2021) (compiling data from nearly 400 studies and finding that pesticides harmed beneficial, soil-dwelling invertebrates including earthworms, ants, and beetles, in seventy-one percent of cases reviewed).

79. “Small” combines made up ninety-five percent of the used combines sold in 2002 and comprise only thirty-two percent of used combines sold in 2019. David Davidson, *Have Combines Maxed Out on Size?*, IRON SOLS. (Oct. 25, 2019), <https://ironsolutions.com/agriculture-equipment-value-guides/have-combines-topped-out/> [https://perma.cc/BSA2-E2GP].

80. E.g., the John Deere S690 weighs 15,636 kg, the Claas Lexion 780 weighs 18,920 kg, the Case IH 9240 weighs 19,144 kg, the New Holland CR 10.90 weighs 24,600 kg, and the Claas Lexion 8900 weighs 22,400 kg. Sam Ellis, *Different Types of Combine Harvester: How Much They Cost*, FARM & ANIMALS (Jan. 10, 2021), <https://farmandanimals.com/different-types-of-combine-harvester/> [https://perma.cc/7DYQ-VFSL]. These are all popular offerings. *Id.*

81. *Soil Compaction*, UNIV. MINN. EXTENSION, <https://extension.umn.edu/soil-management-and-health/soil-compaction#nutrient-uptake-1147261> [https://perma.cc/ALR2-K9R7]; see also Tom Batey, *Soil Compaction and Soil Management — A Review*, 25 SOIL USE & MGMT. 335, 339 (2009) (“The compaction of soil affects adversely nearly all properties and functions of the soil.”).

82. PETER LEHNER & BOB DEANS, IN DEEP WATER: THE ANATOMY OF A DISASTER, THE FATE OF THE GULF, AND ENDING OUR OIL ADDICTION 134 (2010).

83. The EPA defines CAFOs as agricultural enterprises where more than 1,000 animal units are kept and raised in confined situations. *Animal Feeding Operations*, NAT. RES. CONSERVATION SERV., USDA, <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsanimals/livestock/afo/> [https://perma.cc/3YU9-GTK4].

84. Blount et al., *The New Nonpoint Source Battleground: Concentrated Animal Feeding Operations*, 14 NAT. RES. & ENV'T 42, 42 (1999) (looking at twenty-two states).

85. SUSAN S. HUTSON ET AL., U.S. GEOLOGICAL SURVEY, ESTIMATED USE OF WATER IN THE UNITED STATES IN 2000 (2004), <http://pubs.usgs.gov/circ/2004/circ1268/>

overlooked producer of greenhouse gasses, agricultural activities account for approximately thirteen percent of worldwide emissions.⁸⁶ A 2006 United Nations report found that the emissions from livestock alone eclipse those from transportation.⁸⁷ In terms of wastefulness, the United States spends over \$218 billion annually on food that is never eaten.⁸⁸ Much of this waste occurs before food even leaves the field. One study found 33.7 percent of edible produce remains unharvested because farmers prefer to leave it in the ground when labor costs are too high or food costs are too low.⁸⁹ Both a contributor to and victim of environmental degradation, industrial agriculture's chickens are coming home to roost as erosion, soil exhaustion, and climate change threaten yields.⁹⁰

[<https://perma.cc/F8P6-D7PN>] (“Since 1950, irrigation has accounted for about 65 percent of total water withdrawals, excluding those for thermoelectric power. . . . [T]he percentage of total irrigation withdrawals from ground water has continued to increase, from 23 percent in 1950 to 42 percent in 2000.”).

86. HEAD, *supra* note 32, at 400.

87. This United Nations Report most likely overestimated the emissions produced by livestock, pegging it at eighteen percent of worldwide GHG emissions. Ben Elgin, *Beef Industry Tries to Erase Its Emissions with Fuzzy Methane Math*, BLOOMBERG (Oct. 19, 2021), <https://www.bloomberg.com/news/features/2021-10-19/beef-industry-falsely-claims-low-cow-carbon-footprint> [<https://perma.cc/SC8P-3Y7F>]. Some EPA data suggests that livestock produce six percent of America's GHG emissions and other sources put the number closer to nine percent. Ralph Loglisci, *How Much Does U.S. Livestock Production Contribute to Greenhouse Gas Emissions?*, JOHN HOPKINS CTR. FOR A LIVABLE FUTURE (Aug. 4, 2009), <https://clf.jhsph.edu/stories/how-much-does-us-livestock-production-contribute-greenhouse-gas-emissions> [<https://perma.cc/5SYL-WWSS>].

88. REFED, A ROADMAP TO REDUCE U.S. FOOD WASTE BY 20 PERCENT 9 (2016), https://staging.refed.org/downloads/ReFED_Report_2016.pdf [<https://perma.cc/6CKL-LVWV>] (finding 52.4 million tons of food are sent to landfill annually and 10.1 million tons of food are left in the fields annually).

89. Gregory Baker et al., *On-Farm Food Loss in Northern and Central California: Results of Field Survey Measurements*, 149 RES., CONSERVATION & RECYCLING 541, 541 (2019) (listing “crop, variety, market price, labor costs, grower practices, buyer specifications, and environmental conditions” as factors affecting on-farm food loss). Forty million Americans are food insecure, showing a disconnect between market factors responsible for leaving crops in the ground and the public good. Gosia Wozniacka, *Study Finds Farm-Level Food Waste is Much Worse Than We Thought*, CIVIL EATS (Aug. 20, 2019), <https://civileats.com/2019/08/20/study-finds-farm-level-food-waste-is-much-worse-than-we-thought/> [<https://perma.cc/5QLL-3249>].

90. See NATIONAL CLIMATE ASSESSMENT, *supra* note 77, at 16–17 (“Rising temperatures, extreme heat, drought, wildfire on rangelands, and heavy downpours are expected to increasingly disrupt agricultural productivity in the United States.”).

C. REGULATION AND POLICY

Legislative support of large agricultural operations combined with limited regulation have allowed industrial agriculture to run rampant. From Butz onward, American policy—aided in no small part by the incredibly powerful farm lobby⁹¹—has prioritized large farms. President Trump’s Secretary of Agriculture, Sonny Perdue, echoed Butz when he declared, “[i]n America, the big get bigger and the small go out.”⁹² Butz and Perdue’s statements were not idle rhetoric; their words reflect federal and state legislative and regulatory schemes. The Farm Bill, discussed in greater detail in Part IV *infra*, is the dominant federal legislative vehicle driving the interests of industrial agriculture, but the legislative influence of agribusiness does not stop there.

Agriculture is expressly exempt from many federal and state statutes.⁹³ The table in the appendix⁹⁴ summarizes the major exemptions farmers have from federal environmental laws and the outcomes of those exemptions. State laws, often passed at the behest of Big Agriculture,⁹⁵ also tend to be lenient toward

91. See generally N.Y. Times, *Meet the People Getting Paid to Kill Our Plant*, YOUTUBE (Feb. 1, 2022), <https://www.youtube.com/watch?v=kOclYyVy6o> [<https://perma.cc/YN8T-K2LT>] (describing the farm lobby’s bipartisan capture of federal politicians).

92. *U.S. Agriculture Secretary: Family Farms Might Not Survive*, CBS NEWS (Oct. 2, 2019), <https://www.cbsnews.com/news/agriculture-secretary-sonny-perdue-says-family-farms-might-not-survive/> [<https://perma.cc/6SF8-FBC9>] (“I [Perdue] don’t think in America we, for any small business, we have a guaranteed income or guaranteed profitability.”); see Alana Semuels, *They’re Trying to Wipe Us Off the Map, Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019), <https://time.com/5736789/small-american-farmers-debt-crisis-extinction/> [<https://perma.cc/TG44-JB2J>] (describing difficulties facing small farms); see also Jim Goodman, *Perdue to Small Farmers: Stop Whining, Your Demise is Inevitable*, WIS. EXAMINER (Oct. 3, 2019), <https://wisconsinexaminer.com/2019/10/03/perdue-to-small-farmers-stop-whining-your-demise-is-inevitable/> [<https://perma.cc/RZ82-WDBR>] (criticizing Perdue for not supporting a federal supply management system for small farmers, prioritizing trade relations with China over the health of rural communities, and heading a USDA that disproportionately doles out subsidies to large farms).

93. See generally J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263, 293–316 (2000) (providing an inventory of the many environmental laws that exempt, release, and excuse farms from regulation).

94. See *infra* Appendix.

95. Nancy Huehnergath, *Big Agriculture Bullies and Lobbies to Keep Americans in the Dark*, FORBES (May 5, 2016), <https://www.forbes.com/sites/nancyhuehnergath/2016/05/05/big-ag-bullies-and-lobbies-to-keep-americans-in-the-dark/?sh=2fa8e1bb502c> [<https://perma.cc/8S3H-5UX8>] (describing Big Agriculture’s successful efforts to get state

agriculture and deter citizens from suing farmers. Most state erosion and sediment control laws exempt agricultural activities.⁹⁶ All fifty states have passed “right-to-farm” statutes which protect farmers from common law nuisance claims as long as they are in compliance with applicable legislation and regulation.⁹⁷ Some states have even adopted fee-shifting provisions that require plaintiffs to pay the defendant-farmer’s attorney’s fees and costs if a nuisance claim is unsuccessful.⁹⁸ Large farms, especially those raising livestock, benefit the most from these laws because they are subject to a disproportionate share of lawsuits compared to smaller operations.⁹⁹

Government subsidies also promote industrial agriculture. Ninety percent of government agricultural subsidies are directed at only five crops—corn, soybeans, wheat, rice, and cotton.¹⁰⁰ Large farms receive the lion’s share of these subsidies. Eighty percent of government subsidies go to farms with annual revenues of more than a million dollars,¹⁰¹ and large farms

laws passed that punish the nonconsensual recording and distribution of images of conditions at CAFOs).

96. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 719 (9th ed. 2022); see also ENV’T L. INST., ENFORCEABLE STATE MECHANISMS FOR THE CONTROL ON NONPOINT SOURCE WATER POLLUTION iii (1997), <https://www.eli.org/sites/default/files/eli-pubs/d7.06.pdf> [<https://perma.cc/87N3-JLRA>] (describing the difficulties involved with enforcing water pollution laws when it comes to agriculture).

97. Kitt Tovar, *Update on Right-to-Farm Legislation, Cases, and Constitutional Amendments*, IOWA STATE UNIV. CTR. AGRIC. L. & TAX’N (May 28, 2019), <https://www.calt.iastate.edu/article/update-right-farm-legislation-cases-and-constitutional-amendments> [<https://perma.cc/VT9W-7NX6>]; Rusty Rumley, *Right-To-Farm: Typical Provisions*, NAT’L AGRIC. L. CTR. (Jan. 2020), <https://nationalaglawcenter.org/state-compilations/right-to-farm-provisions/> [<https://perma.cc/S9NQ-N3FC>]; *Bormann v. Bd. of Sup’rs In and For Kossuth Cnty.*, 584 N.W.2d 309, 321–22 (Iowa 1998) (finding an Iowa law immunizing farm operations from nuisance suits to be unconstitutional).

98. See, e.g., N.Y. AGRIC. & MKTS. LAW §§ 300–310 (McKinney 2017).

99. For example, twenty-six federal nuisance lawsuits were brought against Murphy-Brown LLC, one of the world’s largest hog integrators in 2018. Tovar, *supra* note 97. In the cases that went to trial, juries awarded \$50.75 million, \$25 million, and nearly \$475 million respectively. *Id.* Following these rulings, the North Carolina General Assembly passed Senate File 711, strengthening the right-to-farm in North Carolina. *Id.*; see also Leah Douglas, *Big Ag Is Pushing Laws to Restrict Neighbors’ Ability to Sue Farms*, NPR (Apr. 12, 2019), <https://www.npr.org/sections/thesalt/2019/04/12/712227537/big-ag-is-pushing-laws-to-restrict-neighbors-ability-to-sue-farms> [<https://perma.cc/F6GS-AL7Q>].

100. Harvey Blatt, AMERICA’S FOOD: WHAT YOU DON’T KNOW ABOUT WHAT YOU EAT 11 (2008).

101. Wickenden, *supra* note 14. From 1995–2020, the top 1% of recipients for commodity subsidies payments received 26% of payments and the top 10% received 78% of payments. *Commodity Subsidies in the United States Totaled \$240.5 Billion from 1995–2020*, EWG <https://farm.ewg.org/progdetail.php?fips=00000&progcode=totalfarm&page=conc®ionname=theUnitedState>

receive more subsidies per acre. For example, via the crop insurance program, the top ten percent of farms by sales received subsidies of twenty-nine dollars per acre, compared to an average of twelve dollars per acre for all crop farmers.¹⁰² Subsidies to fossil fuel corporations also support industrial agriculture by nursing the sector's dependence on fossil fuels.¹⁰³ The aggregate force of these policies fuels the insatiable growth of industrial farming and its many harms.

II. WENDELL BERRY

“[D]addy won’t you take me back to Muhlenberg County
Down by the Green River where Paradise lay
Well, I’m sorry my son, but you’re too late in asking
Mister Peabody’s coal train has hauled it away”¹⁰⁴

Academics and policymakers alike have appreciated Berry’s writings for their poetic, moral, and literary qualities, yet little effort has been made to translate them into policy.¹⁰⁵ This Part first explains why the Kentuckian is so admired, evaluating how Berry dynamically engages with his intellectual predecessors to craft fresh, yet grounded, work. Second, Berry’s thought is critiqued: the author tends to underestimate the transformative power of policy, deterring policy development in response to his writings. Yet, a policy framework heavily influenced by—but not

s [<https://perma.cc/G9W2-M2UZ>]; see also Scott Lincicome, *Examining America’s Farm Subsidy Problem*, CATO INST. (Dec. 18, 2020) <https://www.cato.org/commentary/examining-americas-farm-subsidy-problem> [<https://perma.cc/L2FU-3MLN>] (characterizing farm subsidies as regressive and a strain on the federal budget).

102. Chris Edwards, *Agricultural Subsidies*, DOWNSIZING THE FED. GOV’T (April. 16, 2018) <https://www.downsizinggovernment.org/agriculture/subsidies> [<https://perma.cc/J4P5-H8C9>].

103. See HEAD, *supra* note 32, at 61–63 (providing an overview of the subsidization of the fossil fuel industry and how that benefits industrial agriculture).

104. JOHN PRINE, *Paradise*, on JOHN PRINE (Atl. Recording Co. 1971).

105. But see Nathaniel Stewart, *The Tragedy of the Commonwealth and the Vision of Wendell Berry*, 18 GEO. INT’L ENVTL. L. REV. 465, 468 (2006) (diagnosing Berry’s thought with several “grave deficiencies” when attempting to convert it to policy); Wendell Berry, *The 50-Year Farm Bill*, ATLANTIC (Nov. 13, 2012) [hereinafter Berry, *The 50-Year Farm Bill*], <https://www.theatlantic.com/national/archive/2012/11/the-50-year-farm-bill/265099/> [<https://perma.cc/97T5-UCGB>] (describing a federal piece of legislation that would be in-line with Berry’s writings); Judith Koons, *At the Tipping Point: Defining an Earth Jurisprudence for Social and Ecological Justice*, 58 LOY. L. REV. 349, 379, 389 (2012) (drawing influence from Berry to develop an “earth-based purpose of law and governance”).

completely dependent upon—Berry’s ideas is possible. This Part concludes by showing how Berry’s thought provides common ground on which people of varying political persuasions can stand together.

A. BERRY’S INTELLECTUAL HERITAGE

To best understand Wendell Berry, one must first understand his heritage. Berry intertwines, revives, and amends the intellectual traditions he inherits. His inspirations include figures ranging from Homer to Thomas Jefferson to Edward Abbey.¹⁰⁶ The author blends environmentalism, conservatism, and populism to create a unique strand of agrarianism.¹⁰⁷ He claims to have not created anything novel, however, commenting, “I fail to see how an individual brain alone can have any originating power whatsoever.”¹⁰⁸ This admission indicates how Berry’s thought is rooted in the past and how his project is to renew and reinterpret his intellectual heritage. Berry summarizes his agrarian views in the following eleven tenets:

1. An elated, loving interest in the use and care of the land, and in all the details of the good husbandry of plants and animals.
2. An informed and conscientious submission to nature, or to Nature, and her laws of conservation, frugality, fullness or completeness, and diversity.
3. The wish, the felt need, to have and to belong to a place of one’s own as the only secure source of sustenance and independence. (The freed slaves who pled for “forty acres and a mule” were more urgently and practically agrarian than the “Twelve [white] Southerners.”)
4. From that to a persuasion in favor of economic democracy, a preference for *enough* over *too much*.

106. KIMBERLY K. SMITH, WENDELL BERRY AND THE AGRARIAN TRADITION: A COMMON GRACE 6 (2003) [hereinafter A COMMON GRACE] (listing Henry David Thoreau, Liberty Hyde Bailey, Albert Howard, Wallace Stegner, and Gary Snyder as other influences on Berry).

107. See *id.* ch. 1–2 for a history of the schools of American thought that preceded Berry’s emergence onto the environmental stage; see, e.g., Wendell Berry, *Landsman*, MAG. NAT’L ENDOWMENT FOR HUMANITIES, May–June 2012, reprinted in IT ALL TURNS ON AFFECTION 41, 48 (2012) (citing Jane Austen, Thoreau, Sarah Orne Jewett, Mark Twain, Yeats, Faulkner, Stegner, and James Still as influences).

108. WENDELL BERRY, LIFE IS A MIRACLE 50 (2000) [hereinafter LIFE IS A MIRACLE].

5. Fear and contempt of waste of every kind and its ultimate consequence in land exhaustion. Waste is understood as human folly, an insult to nature, a sin against the given world and its life.
6. From that to a preference for saving rather than spending as the basis of the economy of a household or a government.
7. An assumption of the need for a subsistence or household economy, so as to live so far as possible *from* one's place.
8. An acknowledged need for neighbors and a willingness to *be* a neighbor. This comes from proof by experience that no person or family or place can live alone.
9. A living sense of the need for continuity of family and community life *in place*, which is to say the need for the survival of local culture and thus of the safekeeping of local memory and local nature.
10. Respect for work and (as self-respect) for good work. This implies an understanding of one's life's work as a vocation and a privilege, as opposed to a "job" and a vacation.
11. A lively suspicion of anything new. This contradicts the ethos of consumerism and the cult of celebrity. It is not inherently cranky or unreasonable.¹⁰⁹

Berry is avowedly a western traditionalist,¹¹⁰ yet his thought challenges nearly every tradition it incorporates in some way. Traditionalism is oftentimes employed as an uncritical worldview mired in the past and unreceptive to development.¹¹¹ Berry, however, views traditions as living, evolving norms that communities create for themselves.¹¹² He borrows from an array of influences oftentimes at odds with each other. For example, he

109. THE ART OF LOADING BRUSH, *supra* note 15, at 8–9.

110. WENDELL BERRY, *The Conservation of Nature and the Preservation of Humanity*, in ANOTHER TURN OF THE CRANK 64, 73 (1995) (“[I]f we want to use the world with care, we cannot exempt ourselves from our cultural inheritance, our tradition. . . . [M]ost of us are in the Western tradition somewhat as we are in the world: we are in it because we were born in it. We can’t get out of it because it made us what we are; we are, to some extent, what it is.”).

111. Jeremy Beer, *Wendell Berry and the Traditionalist Critique of Meritocracy*, in WENDELL BERRY: LIFE AND WORK 212 (Jason Peters ed. 2007).

112. *See id.* at 213 (“The traditionalist, in this view, regards inhabitation within a community enlivened by a matrix of vital and living traditions as essential to human flourishing. This is a traditionalism that emerges from the other side of reason. It consists in the critical appropriation and appreciation of traditional practices and mores by a reason that has come to realize its own limits.”).

holds an anthropocentric view¹¹³ of environmentalism yet his second tenet requires submission to nature. He believes, like Jefferson and the agrarians after him, that farmers are essential to the health and welfare of the nation yet condemns rugged individualism and autonomy in his eighth tenet.¹¹⁴ He agrees with many libertarian and conservative critiques of big government but condemns the alleged virtues of the free market.¹¹⁵

Berry navigates the tensions between differing intellectual traditions and assembles a modified vision to develop the best possibilities of each. This effort attracts admirers from both sides of the political spectrum.¹¹⁶ Conservative organizations echo Berry's praise of family values and liberal organizations laud Berry for his incisive lambasting of corporate exploitation.¹¹⁷ This range of appeal is another reason why adapting Berry's thought to a policy framework is important—within a polarized political landscape, he furnishes a common language by which

113. See Wendell Berry, *Preserving Wildness*, Wilderness, Spring 1987, reprinted in HOME ECONOMICS 148–49 (1987) (“I don’t know how the human species can avoid some version of self-centeredness; I don’t know how any species can. . . . [W]e are . . . obliged to think and act out of a proper self-interest and a genuine self-respect as human being.”); Wendell Berry, It All Turns on Affection, 41st Annual Jefferson Lecture of the Nat’l Endowment for the Humanities (April 23, 2012), in IT ALL TURNS ON AFFECTION 9, 26 (2012) [hereinafter It All Turns on Affection] (“[T]here is no knowledge but human knowledge . . . we are therefore inescapably central to our own consciousness. . . . We are thus isolated within our uniquely human boundaries.”).

114. See WENDELL BERRY, *Rugged Individualism*, in WHAT ARE PEOPLE FOR? (2004), reprinted in THE WORLD-ENDING FIRE: THE ESSENTIAL WENDELL BERRY 265 (Paul Kingsnorth ed., 2017); Wendell Berry, *A Few Words in Favor of Edward Abbey*, in RESIST MUCH, OBEY LITTLE; REMEMBERING ED ABBEY (James Hepworth ed., 1985), reprinted in WHAT ARE PEOPLE FOR? 40 (Counterpoint 2010) (1990) (“[T]o defend and conserve oneself as a human being in the fullest, truest sense, one must defend and conserve others and much else.”). Berry is also a pacifist, a sharp contrast to Jefferson’s view that “the tree of liberty must be refreshed from time to time with the blood of patriots & tyrants.” Letter from Thomas Jefferson to William Stephens Smith (Nov. 13, 1787), in 12 THE PAPERS OF THOMAS JEFFERSON 355, 356 (Julian P. Boyd ed., 1955).

115. As discussed *infra*, this partial embrace of conservatism is the weakest link in Berry’s thought.

116. Wickenden, *supra* note 14 (discussing Berry’s popularity in the 1970s with “environmentalists, hippies, and civil-rights advocates” despite the fact that his books “seem conservative”).

117. See Jedediah Britton-Purdy, *A Shared Place*, NATION (Sept. 9, 2019), <https://www.thenation.com/article/archive/wendell-berry-essays-library-of-america-review/> [<https://perma.cc/7563-NM84>] (commenting on Berry’s friendly treatment by socialist-feminist writer and editor Sarah Leonard as well as right-leaning traditionalist Christian journal *First Things* and *The American Conservative*).

groups of differing political colors can reconcile their interests.¹¹⁸ Berry's vision of sustainable agriculture provides a common ground on which environmentalists, the traditional farming community, and those seeking to revitalize rural communities can all stand.

B. WHY BERRY'S IDEAS HAVE NOT BEEN ADOPTED BY POLICYMAKERS

Berry's thought appeals across party lines and is based in rich traditions shared by many Americans, yet it has not significantly influenced policy or received much legal treatment. This section examines the lack of critical political and legal engagement with Berry's work and explains why he hasn't received more attention. It argues that Berry's staunch criticism of government in his earlier writings has prevented his thought from entering the political sphere. Addressing this issue is the first step in adapting and modifying his thought into a policy framework.

Berry's project is of a predominately moral and social character; he gives relatively little attention to policy. He posits, "our country is not being destroyed by bad politics; it is being destroyed by a bad way of life."¹¹⁹ In this way, Berry's work *isn't* suited to legal analysis. Such views are partially responsible for a dearth of thorough legal analysis on his writings. Dozens of law journals have cited Berry, yet many authors only gild a section heading with one of his quotes or insert an elegant turn of phrase from one of his essays to emphasize a point.¹²⁰ Few legal scholars

118. See Ed Kilgore, *Partisan Polarization Reaching Record Levels*, N.Y. MAG. (Jan. 23, 2020), <https://nymag.com/intelligencer/2020/01/partisan-polarization-reaching-record-levels.html> [<https://perma.cc/CZ8C-AEZZ>] (discussing a Gallup poll supplying evidence that partisan divisions have reached new heights); see generally *In a Politically Polarized Era, Sharp Divides in Both Partisan Coalitions*, PEW RSCH. CTR. (2019), <https://www.pewresearch.org/politics/2019/12/17/in-a-politically-polarized-era-sharp-divides-in-both-partisan-coalitions/> [<https://perma.cc/EW3S-GB5E>].

119. Kimberly K. Smith, *Wendell Berry's Political Vision*, in WENDELL BERRY: LIFE AND WORK 49, 53 (Jason Peters ed., 2007) [hereinafter *Wendell Berry's Political Vision*]. Notice the similarities to the following quote from philosophical founder of conservatism, Edmund Burke: "Manners are of more importance than laws." David Brooks, *What Happened to American Conservatism*, ATLANTIC (Dec. 8, 2021), <https://www.theatlantic.com/magazine/archive/2022/01/brooks-true-conservatism-dead-fox-news-voter-suppression/620853/> [<https://perma.cc/Q5KA-JTBV>].

120. See, e.g., Stewart *supra* 105 at 466 n.8 (listing articles citing Berry); Macy Cotton, *Electric Avenue: How Texas Should Reform the Way Cars Are Sold and Allow Tesla to Sell Directly to Consumers*, 16 TEX. TECH ADMIN. L.J. 419, 420 (2015); Daniel R. Williams, *After the Gold Rush—Part I: Hamdi, 9/11, and the Dark Side of the*

discuss his work in any significant depth.¹²¹ Some that have attempted a more robust analysis criticize Berry's work as legally intractable and quixotic, with one author going so far as to call Berry's writing "splendid prose" but "disastrous advice."¹²² Another author, Nathaniel Stewart, applied a legal lens to Berry's work and concluded that his proposals suffer "grave deficiencies."¹²³ Since the publication of Stewart's article in 2006, however, Berry has written works that address some of these deficiencies, opening the door for more robust legal and policy analysis.

Despite recent writings, Berry still underestimates policy's ability to serve as a mechanism for change and its ability to influence the nation's moral and cultural landscape. He writes that the "real healings and renewals in human life occur in individual *lives*, not in the process of adjusting or changing their abstractions or their institutions."¹²⁴ According to Berry, positive change should originate in households and gardens rather than in boardrooms and the chambers of Congress. Governments occasionally do make commendable laws, but these laws are the

Enlightenment, 112 PENN. ST. L. REV. 341, 358 (2007); Katherine L. Oaks, *The Public Value of Ecological Agriculture*, 21 VT. J. ENV'T L. 544, 587 (2020).

121. See Stewart, *supra* note 105 (conducting a legal analysis of Berry's understanding of commonwealth); Koons, *supra* note 105, at 351 (using Berry's writings to develop an "earth jurisprudence" that guides "the transformation of law and governance for the well-being of humanity and the Earth community").

122. George Scialabaa, *Back to the Land*, BAFFLER (Jan. 2020), <https://thebaffler.com/salvos/back-to-the-land-scialabba> [<https://perma.cc/WP5H-CJ9A>] (referencing Berry's essay *Thinking Little*).

123. Stewart, *supra* note 105, at 468. Stewart appears to be the only author who has conducted a thorough legal analysis of Berry's thought that has been published in a law journal. Stewart also confined his analysis to a limited number of Berry's essays.

124. WENDELL BERRY, *THE HIDDEN WOUND* 104–05 (Counterpoint Press 2010) (1970) [hereinafter *THE HIDDEN WOUND*]; see also *id.* at 135 ("It is impossible to believe that people can be changed fundamentally by government requirement."). Berry's attitudes towards systemic change can be analogized to white evangelical Christians' view of the same topics. White evangelical Christians tend to view the state of society as merely the aggregation of individuals and believe social change is achieved by personal change and renewal. See Michael Emerson & Christian Smith, *DIVIDED BY FAITH: EVANGELICAL RELIGION AND THE PROBLEM OF RACE IN AMERICA* 115–133 (2000); see also *id.* at 115 ("If you want a better WORLD, Composed of better NATIONS, inhabited by better STATES, Filled with better COUNTIES, Made up of better CITIES, Comprised of better NEIGHBORHOODS, Illuminated by better CHURCHES, Populated with better FAMILIES, Then you have to start by becoming a better PERSON") (quoting a book advertisement on the back cover of *Christianity Today*). Unlike many white evangelicals, however, Berry acknowledges the pervasiveness of anti-Black racism in American society. *THE HIDDEN WOUND*, *supra* (describing the pervasive harms of racism on white and Black Americans alike).

result of, rather than the cause of, positive cultural developments made at a more intimate, communal level.¹²⁵ Berry believes in the positive power of institutions,¹²⁶ but they must be personal and integrated into the community in which they operate. Berry condemns corporations and most governments¹²⁷ as abstract institutions unable to discern and respond to the needs of local communities.¹²⁸ Berry carefully substantiates this view with respect to corporations¹²⁹ but not with respect to the government.

Berry's dismissal of government policy rests on overly cynical assumptions and a failure to recognize institutional features that mitigate the perils he describes. His writings do not fully recognize that a government's capacity to prioritize national interests over certain local interests can be a virtue rather than a vice.¹³⁰ One of a representative government's strengths is its ability to consider, balance, and *have* competing local interests. Furthermore, governments have mechanisms to integrate themselves into the communities they serve. The most obvious of these mechanisms is the electoral process, but other institutional features, such as the public notice and comment process established in the Administrative Procedures Act,¹³¹ can also

125. *Id.* at 104–05 (“[I]t is likely that the best and least oppressive laws come as the result or the reflection of honest solutions that men have already made in their own lives.”).

126. *E.g.*, families' and farmer's cooperatives. See *infra* Part III.D on the Tobacco Producer's Program.

127. It is oftentimes unclear at what level of government Berry directs his criticism. The federal government is inherently larger and less local than other United States governments. Because Berry prefers smaller, more local governments, it can be assumed most of his criticisms apply at least to the federal government.

128. *Wendell Berry's Political Vision*, *supra* note 119, at 49, 51 (2007) (“An agency or bureau or institution cannot exercise taste and judgment, cannot be motivated by love or compassion, cannot value a man for his industry or his art or his pride. They are abstractions themselves and must deal with people as abstractions.”) (quoting Berry).

129. See *infra* Part III.D.

130. *E.g.*, NIMBYism (“not in my backyard”) refers to opposition by residents of a community to local projects which are generally considered to be in promotion of the public good but may place a burden, real or perceived, on the community in which they are constructed. Examples include local opposition to the construction of affordable housing and siting of renewable energy resources. Amrith Ramkumar & Jennifer Hiller, *Hamptons Opponents Hound Offshore Wind-Power Project*, WALL ST. J. (Apr. 16, 2022), <https://www.wsj.com/articles/hamptons-opponents-hound-offshore-wind-power-project-11650058015> [<https://perma.cc/G6ZN-CCVV>] (describing Hamptons residents attempting to stop an offshore wind farm in part because the turbines were a blemish on their ocean vistas); Peter W. Salsich, *Affordable Housing: Can Nimbyism Be Transformed into Okimbyism?*, 19 ST. LOUIS U. PUB. L. REV. 453, 455 (2000) (addressing local opposition to affordable housing). National policy can oftentimes supersede local opposition.

131. 5 U.S.C. § 553 (2000).

imbue government policy with a local flavor.¹³² These features do not always ensure that local concerns are filtered into policy (e.g., industrial interests are overrepresented in agency rule-making processes),¹³³ but they do not justify Berry's partial dismissal of the government's capacity to enact positive change.

Notably, Berry has somewhat softened his stance on policy in the past decade.¹³⁴ In 2012, he penned an op-ed endorsing a 50-Year Farm Bill, a proposal sketching out a national plan to remedy and reverse industrial agriculture.¹³⁵ In a 2017 book, Berry praises a New Deal Tobacco Program, writing that during the program's early decades, the farming in and around his community was "highly diversified and at its best, exemplary in its husbanding of the land."¹³⁶ These recent writings, as well as evidence from his earlier works of fiction, demonstrate that Berry believes the national government can write and implement good policy as long as certain conditions, which this Note outlines,¹³⁷ are met. Although Berry still prefers that change originate in personal relationships and percolate through households, communities, and eventually the nation, he sees the possibility of an inverted scenario in which government policy filters down to positively affect ever more intimate levels of association. For example, Wheeler Catlett, a recurring character in Berry's fiction novels, is actively involved in politics and depicted as a virtuous member of the community.¹³⁸ Therefore, although this Note is not faithful to the letter of Berry's work, its policy framework is not antithetical to the Kentuckian's views. It is possible to

132. See generally Mark Seidenfeld, *A Civic Republican Justification for the Bureaucratic State*, 105 HARV. L. REV. 1511, 1541–42 (1992) (arguing the administrative process offers the best setting for realizing the civic republican ideal).

133. See e.g., Marissa Martino Golden, *Interest Groups in the Rule-Making Process: Who Participates? Whose Voices Get Heard?*, 8 J. PUB. ADMIN. RSCH. & THEORY 245 (1998) (conducting a quantitative analysis and concluding that industry interests are disproportionately represented in the rule-making process).

134. Before the 2010s, Berry advocated for protectionist trade policies, laws against trusts and monopolies, and praised progressive income taxes. He did not do much more than mention these issues, however. See e.g., Wendell Berry, *The Idea of a Local Economy*, ORION MAG. 9 (2001) [hereinafter *The Idea of a Local Economy*], <http://www.geoffwells.com/wp-content/uploads/2011/08/Berry-The-Idea-of-a-Local-Economy.pdf> [<https://perma.cc/6CUB-U6XJ>] (mentioning protectionism, antitrust laws, and progressive income taxes).

135. *The 50-Year Farm Bill*, *supra* note 105. It will be discussed *infra* how this proposal doesn't say much in terms of actual policy.

136. THE ART OF LOADING BRUSH, *supra* note 15, at 28.

137. See *infra* Part III (creating a framework).

138. See A COMMON GRACE, *supra* note 106, at 189.

develop a useful policy framework influenced, rather than dominated, by his ideas.

III. CREATING A FRAMEWORK

“Woe unto him who searches in the winding paths of the theory of interest-balancing for some technique to uphold the debasing of human dignity.”¹³⁹

Now that the grim reality of American agriculture has been explained and Berry’s thought examined and critiqued, the stage is set for the delineation of an alternative based on sustainable agriculture, environmental stewardship, and care for community. This Part uses Berry’s thought to draft a policy framework to achieve this alternative. The first task is to distill Berry’s writings into a discrete number of cognizable principles. Berry has many ideas—such as the abolition of the corporate person¹⁴⁰ and the large-scale replacement of farm machinery with mules¹⁴¹—that will not be considered due to their impracticability.¹⁴² Furthermore, Berry’s skeptical view of government will be considered but not significantly influence this analysis.¹⁴³ The purpose of this section is not to convert Berry’s entire corpus into a legal framework, as doing so would produce an unwieldy and unhelpful product; rather, the purpose is to create a framework that develops the best possibilities of Berry’s thought.

The analysis considers all of Berry’s fiction and nonfiction writing, but focuses on Berry’s nonfiction writings, especially his more recent essays which clarify and elucidate ideas presented in

139. George P. Fletcher, *In God’s Image: The Religious Imperative of Equality Under Law*, 99 COLUM. L. REV. 1608, 1625 (1999) (basing the quote on the passage in IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 141 (Mary Gregor trans., 1991)).

140. *The Idea of a Local Economy*, *supra* note 134, at 6 (saying that the legal fiction of the corporate person results in a “limitless destructiveness . . . precisely because a corporation is *not* a person”) (emphasis added).

141. THE UNSETTLING OF AMERICA, *supra* note 27, at 199; *but see* Tess Taylor, *On Small Farms, Hoof Power Returns*, N.Y. TIMES (May 3, 2011), <https://www.nytimes.com/2011/05/04/dining/04oxen.html> [<https://perma.cc/QC4X-ZKVH>] (discussing small farmers who are returning to animal labor).

142. Impracticable not only in the sense that these proposals are politically infeasible but also in the sense that their adoption would disrupt the legal system in a negative way that outweighs the benefits they would bring.

143. *See supra* Part II.B.

his previous work.¹⁴⁴ His fiction writings, set in the town of Port William modeled after Berry's own community of Port Royal, are also informative because they illustrate his vision in potential practice.¹⁴⁵ Berry has spent over a half-century producing a catalog of thousands of pages, so much of this section lets the writer speak for himself.

The moniker that encompasses most, if not all, of what Berry stands for, and on,¹⁴⁶ is agrarianism. Berry defines his version of agrarianism with eleven tenets, which were previously mentioned but bear repeating¹⁴⁷:

1. An elated, loving interest in the use and care of the land
2. An informed and conscientious submission to nature
3. The wish, the felt need, to have and to belong to a place of one's own
4. A preference for *enough* over *too much*
5. Fear and contempt of waste
6. A preference for saving rather than spending
7. An assumption of the need for a subsistence or household economy
8. An acknowledged need for neighbors and a willingness to *be* a neighbor
9. A living sense of the need for continuity of family and community life *in place*
10. Respect for work and (as self-respect) for good work
11. A lively suspicion of anything new.¹⁴⁸

144. Much of Berry's recent writings summarize his past work. THE ART OF LOADING BRUSH, *supra* note 15, at 5, 8–9 (acknowledging his tendency to repeat himself and laying out basic tenets of agrarianism that summarize his past and present positions). Focusing on his more recent writings further distinguishes this analysis from Stewart's and Koons' articles, which were published in 2006 and 2012, respectively.

145. See A COMMON GRACE, *supra* note 106, at 115–16 (arguing that Berry's fiction writings are a method of justification for his social and moral theory, demonstrating its consequences if followed).

146. WENDELL BERRY, *Below, in A PART* (1980), reprinted in THE PEACE OF WILD THINGS 73 (2018) ("All my dawns cross the horizon and rise, from underfoot. *What I stand for is what I stand on.*") (emphasis added).

147. Stewart's analysis of Berry's agrarian values in *The Tragedy of the Commonwealth* was conducted prior to the publication of THE ART OF LOADING BRUSH in which Berry more clearly delineates his definition of agrarianism.

148. THE ART OF LOADING BRUSH, *supra* note 15, at 8–9 (edited for brevity); see Part II.A *supra* for the unedited list.

These eleven principles can be further distilled and placed into four buckets: local knowledge, work as a vocation, acknowledging limitations, and anti-corporation. Not every tenet neatly slides into one of these four categories, but they capture the essence of Berry's ideas. Nor is each section an isolated pillar. All the categories are interconnected and understanding each bucket requires reference to its neighbors. Each section in this Part proceeds by first summarizing what Berry has to say about each category. Then, supplemental theories and models are introduced to make sense of, critique, and operationalize Berry's ideas. Finally, general policies are suggested consistent with earlier analysis.

A. LOCAL KNOWLEDGE

Berry adamantly advocates for the preservation, celebration, and utilization of local knowledge.¹⁴⁹ Local knowledge is imbued with a sort of intimacy, completeness, and sense of place that connects the knowledge holder to the community about which they know—each place produces its own distinct strain. This intimate understanding is necessary to avoid the mishandling of community resources. Berry writes, “people *exploit* what they have merely concluded to be of value, but they *defend* what they love.”¹⁵⁰ Local knowledge extends beyond a conventional anthropocentric understanding of one's community and encompasses an insight into what's best for the total ecology of a place. Local knowledge should not and cannot be objective. Claiming objectivity would erroneously assume that one does not eat, drink, and breathe from the community and environment in which they live.¹⁵¹

To craft policy preserving and promoting local knowledge, it is helpful to consult Berry's writings on farmers who appreciate and use this unique type of understanding. Those possessing local knowledge work with nature rather than against it.¹⁵² Berry

149. See WENDELL BERRY, *Conservation and Local Economy*, in *THE ART OF THE COMMONPLACE* 195, 200 (2002) (“We must keep alive in every place the human knowledge of the nature of that place.”).

150. LIFE IS A MIRACLE, *supra* note 108, at 41.

151. See LIFE IS A MIRACLE, *supra* note 108, at 26 (addressing the false assumption of objectivity).

152. See *THE UNSETTLING OF AMERICA*, *supra* note 27, at 34 (referencing Sir Albert Howard's suggestion that farmers should pattern the maintenance of their fields after the

writes about local knowledge in action in his essay, *Elmer Lapp's Place*.¹⁵³ Elmer Lapp's 80-acre homestead has been in the Lapp family since 1915.¹⁵⁴ It is a thriving farm tended by a man with decades of intimate and generational knowledge.¹⁵⁵ Berry writes, "All the patterns of the farm are finally gathered into an ecological pattern; it is one 'household,' its various parts joined to each other and the whole joined to nature, to the world, by liking, by delighted and affectionate understanding."¹⁵⁶ Berry also lauds the farming communities in the Peruvian Andes, the Amish, and the Menominee tribe as exemplar practitioners of local knowledge.¹⁵⁷ These communities are dependent upon the land and have learned how to work with it to the mutual benefit of both themselves and their local ecology. He encourages others to act in a similar manner, stating, "As far as you are able make your lives dependent upon your local place, neighborhood, and household — which thrive by care and generosity."¹⁵⁸

Adopting Margaret Radin's personhood theory of property would help preserve and promote the sort of local knowledge Berry so admires. Radin's personhood perspective creates a hierarchy of property entitlements in which the entitlement becomes stronger the more closely it connects to one's personhood.¹⁵⁹ In practice, a property right deemed to be personal as opposed to fungible has a prima facie case that it should be protected from government invasion and conflicting fungible property interests.¹⁶⁰ Mapping Radin's theory onto Berry's concept of local knowledge, the connection to personhood is strengthened the more local knowledge one has about a place. Privileging local knowledge in this way would keep people in the

forest floor); THE ART OF LOADING BRUSH, *supra* note 15, at 157 ("It is good to have Nature working for you. She works for a minimum wage.") (quoting *Sheep Sense* by Henry Besuden); Wickenden, *supra* note 14 ("Mother Earth never attempts to farm without livestock; she always raises mixed crops; great pains are taken to preserve the soil and to prevent erosion; the mixed vegetable and animal wastes are converted into humus; there is no waste.") (quoting Albert Howard)).

153. WENDELL BERRY, *Elmer Lapp's Place*, in THE GIFT OF GOOD LAND 216–26 (1981).

154. *Id.* at 217.

155. *Id.*

156. *Id.* at 226.

157. THE UNSETTLING OF AMERICA, *supra* note 27, at 179–83; WENDELL BERRY, *Conserving Forest Communities*, in ANOTHER TURN OF THE CRANK 25, 42 (1995).

158. Terry Heick, *A Wendell Berry Commencement Address*, TEACHTHOUGHT <https://www.teachthought.com/education/commencement/> [<https://perma.cc/42CC-D8TN>].

159. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 986 (1982).

160. *See id.* at 1014–15.

places where their expertise can be best applied and incentivize further cultivation of local expertise. The legal embrace of such a theory would grant more privileges—such as protections from evictions and government exercise of eminent domain—to tenant-farmers who may not own the fields in which they work but know them more intimately than their landlords.¹⁶¹

B. WORK AS A VOCATION

Wendell Berry's ideal farm centers around what may seem obvious, the farmer. A farm dependent upon the farmer has two primary benefits: the promotion of beneficial values in the farmer and the thoughtful use of technology. The mechanization and automation¹⁶² of agriculture incrementally strips the farmer of autonomy and connection to the land. As a farmer's relationship to their land becomes more abstract and attenuated via mechanical, automated, and even virtual,¹⁶³ interference, the farmer's relationship with the land degrades and work becomes a job rather than a vocation.¹⁶⁴ The land itself becomes abstract in the mind of the farmer and merely an input required for increased production. Therefore, a labor-saving technology oftentimes prevents one from engaging in fulfilling, edifying, valuable work.¹⁶⁵ Berry asks the following questions, when assessing whether new technology, namely a new tool, should replace its predecessor: "Is the new one cheaper than what it replaces? Is it small-scale? Does it work better? Does it use less energy? Can it be repaired and maintained by a person of

161. See *id.* at 992–96 (applying the property for personhood theory to residential tenancy).

162. See, e.g., *Harvest Smart Sales Manual*, JOHN DEERE http://salesmanual.deere.com/sales/salesmanual/en_NA/combindes_headers/2017/feature/combindes/cab_controls/harvestsmart_field_install.html [https://perma.cc/8Q6R-2QBA] (describing John Deere's Harvest Smart system which is an adaptive control system designed to enable automatic ground speed control during harvest operation).

163. See Feng Yu et al., *The Research and Application of Virtual Reality (VR) Technology in Agriculture Science*, 317 BEIJING ACAD. AGRIC. & FORESTRY SCI. 546 (2009) (discussing applications of VR technology in agricultural science).

164. See WENDELL BERRY, *Horse Drawn Tools and the Doctrine of Labor Saving*, in *THE GIFT OF GOOD LAND: FURTHER ESSAYS CULTURAL AND AGRICULTURAL* (1981), reprinted in WENDELL BERRY ESSAYS: 1969-1990, 475–76 (2019) [hereinafter *Horse Drawn Tools*] (finding industrial agriculture's preference for speed and volume to prompt careless farming and disconnection from the land).

165. WENDELL BERRY, *Health is Membership*, in *ANOTHER TURN OF THE CRANK* 86, 90 (1995) ("When the choice is between the health of a community and technological innovation, I choose the health of a community.").

ordinary intelligence?” The mechanization of agriculture enables farmers to do more work, but not better work.¹⁶⁶

One solution to Berry’s complaint is an economy that emphasizes labor over capital. This proposal is not sufficient to solve the problem—farmers may still abuse their land regardless of whether they do it using a state-of-the-art combine or a scythe—but it is a necessary step. The farmer must do the work *with* a tool rather than a tool doing the work with the farmer’s oversight. Policies that promote this hierarchy can either incentivize labor-intensive work or make it more difficult to do capital-intensive work. One policy that takes the latter tact is Controlled Traffic Farming (CTF). CTF responds to the problem of soil compaction caused by farm machinery ever-increasing in weight and size. It reduces soil compaction in crop zones by restricting traffic to permanent tracks. CTF incentivizes the adoption of lighter, more nimble machinery that requires more operator interface.¹⁶⁷ CTF and other labor-intensive farming practices bring farmers back into the field, oftentimes increasing productivity in the process.¹⁶⁸

Higher levels of land ownership by farmers, but also people generally, would encourage the loving interest in the use and care of land that Berry supports. Theories explaining this relationship extend back to the founding of the United States.¹⁶⁹ Ownership grants one personal stake in property, incentivizing careful use and maintenance. Unfortunately, rising prices have precluded many from land ownership. The price of farmland has risen an average of around four and a half percent annually in the past twenty years to \$4,442 per acre in 2019.¹⁷⁰ This rapid

166. *Horse Drawn Tools*, *supra* note 164, at 474 (“The coming of the tractor made it possible for a farmer to do more work, but not better.”). “Better” in this context presumably means more ecologically sustainable and fulfilling for the farmer than industrial alternatives.

167. Tseganesh Wubale Tamirat et al., *Controlled Traffic Farming and Field Traffic Management: Perceptions of Farmers Groups from Northern and Western European Countries*, 217 *SOIL & TILLAGE RSCH.* 1, 5 (2022).

168. *See generally* HEAD, *supra* note 32, at 188–201 (arguing that “bringing food production closer to nature,” which in part requires more labor and less fossil-fuel based machinery, is a more effective way to feed people than industrial agriculture).

169. *See, e.g.*, Letter from Thomas Jefferson to James Madison (Oct. 28, 1785), in 8 THOMAS JEFFERSON, *THE PAPERS OF THOMAS JEFFERSON* 681, 682 (Julian P. Boyd ed. 1953) (“The small landholders are the most precious part of a state.”).

170. *Farmland Prices in the United States*, ACRETRADER, <https://www.acretrader.com/resources/farmland-values/farmland-prices> [https://perma.cc/3SSQ-XHMJ]. For comparison, the average annual rate of inflation between 2000–2021 was 2.23 percent.

change represents an increase of nearly \$2,400 per acre of farmland over this period.¹⁷¹ Low-interest loans on land are one method to combat this precipitous rise in farmland price. Such loans could give middle- and lower-income buyers the opportunity to hold and care for farmland of their own.

C. ACKNOWLEDGING LIMITATIONS

Berry depicts nature as unknowable, something humanity can only comprehend “through a glass darkly.”¹⁷² This view, however, is not accompanied by a throwing up of the hands and demure resignation to humanity’s limitations. Berry responds instead with more of an awe-struck appreciation of nature’s nearly infinite complexity. This understanding of limited human ability is essential when assessing the capacity of an ecosystem. Berry writes, “[w]ithout a lively recognition of our own limits—chiefly of our knowledge and of our ability to know—we cannot even approach the issue of the limits of nature.”¹⁷³

According to Berry, current policymakers lend unmerited credence to technology and believe problems inherently cultural can be invented away rather than deliberately and carefully expunged via social and cultural reform. Berry does appear to underestimate humanity’s capacity to innovate its way out of issues, however. Certain problems previously thought inextricable have been solved with the advent of new technology without creating new problems.¹⁷⁴ That being said, policy is still

Current US Inflation Rates 2000-2022, U.S. INFLATION CALCULATOR, <https://www.usinflationcalculator.com/inflation/current-inflation-rates/> [<https://perma.cc/B7XM-X4EL>] (calculated by adding up the annual average inflation rate for each year and then dividing by the number of years).

171. The exact number is \$2394. *Farmland Prices in the United States*, *supra* note 170.

172. THE ART OF LOADING BRUSH, *supra* note 15, at 127 (quoting and agreeing with *The Faerie Queene* by Edmund Spenser).

173. LIFE IS A MIRACLE, *supra* note 108, at 37.

174. For example, the Clean Air Act has drastically lowered the concentration of various pollutants in the atmosphere in part through technology-forcing provisions. Firms were obligated to invent their way into compliance with the Clean Air Act and many successfully did without creating significant negative externalities. *See generally* Note, *Forcing Technology: The Clean Air Act Experience*, 88 YALE L.J. 1713, 1714 (1979); *see also* *Air Quality — National Summary*, EPA, <https://www.epa.gov/air-trends/air-quality-national-summary> [<https://perma.cc/3MF5-QJQ8>] (showing that levels of criteria pollutants have dramatically decreased while GDP, vehicle miles traveled, population, energy consumption, and CO2 emissions have all increased).

required to aid humanity in understanding its limits and living within them.

Berry's views on human limits and working without complete information can be operationalized by examining the academic literature¹⁷⁵ on complexity theory.¹⁷⁶ CS Holling proposes an integrative theory to process and understand complex systems that overwhelm attempts at absolute comprehension.¹⁷⁷ Using Holling's work and those building upon it, complex systems become more navigable. J.B. Ruhl applies complexity theory within the context of environmental law. The author advocates for adaptive management over prescriptive management. The former approach allows long-term optimization through repeated reexamination of system design while the latter method prescribes a solution that appears best at the moment but is likely to produce suboptimal results as systems evolve.¹⁷⁸

Paul Cairney provides three general lessons for policy makers looking to integrate complexity theory into their policymaking.¹⁷⁹ First, top-down control is disfavored and instead, local organizations should have ample freedom to learn from and adapt to their environment. Second, interventions will almost

175. This Note confines its analysis of complexity theory to academic literature, but various faiths have also grappled with the limitations of human understanding. See, e.g., *Ecclesiastes* 8:17 (New International Version) ("No one can comprehend what goes on under the sun. . . . Even if the wise claim they know, they cannot really comprehend it.").

176. See generally Steven M. Manson, *Simplifying Complexity: A Review of Complexity Theory*, 32 *GEOFORUM* 405, 405 (2001) (defining "deterministic complexity" and "aggregate complexity," the two veins of complexity research most relevant to this Part's discussion, as respectively "posit[ing] that the interaction of two or three key variables can create largely stable systems prone to sudden discontinuities" and "concern[ing] how individual elements work in concert to create systems with complex behavior").

177. See CS Holling, *Understanding the Complexity of Economic, Ecological, and Social Systems*, 4 *ECOSYSTEMS* 390, 391 (2001). Holling's framework and process is designed to satisfy the following criteria: "Be 'as simple as possible but no simpler' than is required for understanding and communication. Be dynamic and prescriptive, not static and descriptive. Monitoring of the present and past is static unless it connects to policies and actions and to the evaluation of different futures. Embrace uncertainty and unpredictability. Surprise and structural change are inevitable in systems of people and nature." *Id.*

178. J.B. Ruhl, *Sustainable Development: A Five-Dimensional Algorithm for Environmental Law*, 18 *STAN. ENV'T L.J.* 31, 54 (1999).

179. Paul Cairney, *Complexity Theory in Political Science and Public Policy*, 10 *POL. STUDS. REV.* 346, 353–54 (2012); for more on complexity theory praxis, see J.B. Ruhl, *Complexity Theory as a Paradigm for the Dynamic Society System: A Wake-Up Call for Legal Reductionism and the Modern Administrative State*, 45 *DUKE L.J.* 849, 853 (1996) (describing the extent to which laws can control complex systems); Donald T. Hornstein, *Complexity Theory, Adaptation, and Administrative Law*, 54 *DUKE L.J.* 913, 913 (2005) (analyzing mechanisms by which institutions can adapt to complex systems).

always create unintended consequences. The high likelihood of unexpected results suggests higher reliance on “trial and error” policy making and pilot projects. Third, policymakers need to collaborate more with agencies, practitioners, and people from all disciplines to better monitor the impacts of policy.¹⁸⁰ Following Cairney’s suggestions gives policymakers the tools to operate in the presence of inevitable uncertainty and avoid the pitfalls Berry elucidates.¹⁸¹

F.A. Hayek’s depiction of mature market economies also helps operationalize Berry’s ideas on nature’s complexity and humanity’s limitations. To Hayek, the complexity of industrial market economies far outstrips any synoptic effort to centrally understand and control them.¹⁸² Complex markets do not respond well to efforts at centralized “conscious control” and function best when economic actors, be it government agencies, businesses, or consumers, operate within smaller spheres.¹⁸³ In the same way, to Berry, the ecology of a place relies upon far too many variables for any one party to fully understand and completely control.¹⁸⁴ Both the Austrian economist and the Kentuckian farmer come to similar conclusions in response to this overwhelming complexity: work with the system without attempting to exercise complete dominion over it. Hayek argues

180. See Cairney, *supra* note 179, at 353–54.

181. Complexity theory does not look to eliminate uncertainty; it only aspires to give decisionmakers tools to make the most of uncertain situations. It is important to understand complexity theory as a method of adaption, not understanding. Some critics argue that those trumpeting the merits of their distinct approach to complexity theory are falling prey to the same overconfidence that precipitated the development of the theory in the first place. See Jeffrey Rudd, *J.B. Ruhl’s “Law-and-Society System”: Burying Norms and Democracy Under Complexity Theory’s Foundation*, 29 WM. & MARY ENV’T L. & POL’Y REV. 551, 554 (2005) (arguing that J.B. Ruhl “overlooks the epistemological limits and normative shortcomings of all-encompassing theories”).

182. FRIEDRICH HAYEK, *THE ROAD TO SERFDOM: DEFINITIVE EDITION* 95 (Bruce Caldwell ed., 2007) (“There would be no difficulty about efficient control or planning were conditions so simple that a single person or board could effectively survey all the relevant facts. It is only as the factors which have to be taken into account become so numerous that it is impossible to gain a synoptic view of them that decentralization becomes imperative.”).

183. *Id.* (“[N]obody can consciously balance all the considerations bearing on the decisions of so many individuals, the coordination can clearly be effected not by ‘conscious control’ but only by arrangements which convey to each agent the information he must possess in order effectively to adjust his decisions to those of others.”).

184. It All Turns on Affection, *supra* note 113, at 27 (“She [Nature] is always trying to tell us that we are not so superior or independent or alone or autonomous as we may think.”).

for the principle of “planning for competition”¹⁸⁵ and Berry says the healthiest farms have “Nature working for you.”¹⁸⁶ Both proposed solutions rely on an acknowledgement of human limitations and local coordination with, rather than against, the systems Hayek and Berry view as outside complete comprehension.

D. ANTI-CORPORATION

Corporations embody most everything Berry condemns, and they lack most everything he admires. Berry sees corporations as inherently devoid of the local, practical, and intimate knowledge he values so dearly.¹⁸⁷ He criticizes corporations for the industrial mindset they embody—that of unmitigated production without consideration of ecological, cultural, and human costs.¹⁸⁸ He also denounces them because no one can answer the seemingly basic question about corporations—“Where is it?”—without sounding ridiculous.¹⁸⁹ Berry sees value in the felt environment and corporations exist exclusively in the charters, laws, and minds that give them legitimacy.¹⁹⁰ Such an abstract existence is anathema to Berry.

To Berry, corporations and industries are not concerned with the wellbeing of their consumers; their priorities are “volume and price” rather than “quality and health.”¹⁹¹ This orientation is inimical to principles of thrift and leads to waste and neglect. Corporations see themselves as the only actors in an economy

185. Hayek, *supra* note 182, at 90; *see also* Paula Valderrama, *Planning for Freedom*, 41 INT’L J. POL. ECON. 88, 90–92 (2012) (summarizing and analyzing Hayek’s “planning for competition” principle).

186. THE ART OF LOADING BRUSH, *supra* note 15, at 157 (quoting *Sheep Sense*, an article written by an admired sheepman acquaintance of Berry’s).

187. *See* Wendell Berry, *The Whole Horse*, in *THE NEW AGRARIANISM* 63, 67 (Eric T. Freyfogle ed., 2001).

188. *See* THE HIDDEN WOUND, *supra* note 124, at 122 (describing corporate executives).

189. *See* Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 809–12 (1935) (demonstrating how courts defy logic to answer this question).

190. *See* Stewart, *supra* note 105, at 484 (2006) (describing Berry’s view of corporations).

191. *The Pleasures of Eating*, *supra* note 19, at 147; *see also* Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://timesmachine.nytimes.com/timesmachine/1970/09/13/223535702.html?pageNumber=379> [<https://perma.cc/FE83-V689>] (“What does it mean to say that ‘business’ has responsibilities? Only people can have responsibilities.”).

and do not abide by any self-imposed limitations.¹⁹² This economic view permits corporations to commit “peacetime acts of aggression”¹⁹³ upon both the land¹⁹⁴ and its residents.¹⁹⁵ Berry sees all of existence as a part of “The Great Economy” containing innumerable “little econom[ies]” within its sphere.¹⁹⁶ The Great Economy is mysterious and beyond complete human comprehension whereas the little economies within The Great Economy are capable of being understood and managed.¹⁹⁷ Corporations disregard both the little and Great economies, seeing everything as understandable, profitable, exploitable, and within their purview.¹⁹⁸

There are two general policy approaches to addressing problems of the type Berry describes: pass policy to weaken corporations or pass policy to transform corporations into empathetic institutions.¹⁹⁹ A policy in line with the former approach would be a cessation of subsidies that encourage rampant corporate production, especially in the agricultural sector.²⁰⁰ In America, between 30–40 percent of the food supply is wasted—218.9 pounds of annual food waste per person.²⁰¹ This

192. See Koons, *supra* note 105, at 380 (“The industrial economy is not a good human economy because it sees itself as the only economy and does not recognize limitations” (citing E.F. SCHUMACHER, *SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED* 16–17 (Hartley & Marks ed., 1999) (1973))).

193. Terry Heick, *A Wendell Berry Commencement Address*, TEACHTHOUGHT <https://www.teachthought.com/education/commencement/> [https://perma.cc/7YUR-RUYD]; see also WENDELL BERRY, *Economy and Pleasure*, in *WHAT ARE PEOPLE FOR?* (1990), reprinted in *THE WORLD-ENDING FIRE* 268, 270 (Paul Kingsnorth ed., 2017) (“[I]t is a fact that the destruction of life is a part of the daily business of economic competition as now practiced.”).

194. See, e.g., Wendell Berry, *Strip-Mine Morality: The Landscaping of Hell*, NATION (Jan. 24, 1966), <http://thenation.s3.amazonaws.com/pdf/landscapingofhell1966.pdf> [perma.cc/45K4-JA49] (condemning strip-mining); see also William Major, *Other Kinds of Violence: Wendell Berry, Industrialism, and Agrarian Pacifism*, ENV’T HUMANS, 25, 25–41 (2013) (examining the way Berry’s pacifism is at odds with industrial violence).

195. E.g., industrial accidents, labor exploitation, etc.

196. Wendell Berry, *Two Economies*, in REVERBERATIONS 187–88 (2005), http://www.worldwisdom.com/public/viewpdf/default.aspx?article-title=Two_Economies_by_Wendell_Berry.pdf [perma.cc/76SU-HTL3].

197. See *id.* (elaborating on humanity’s inability to comprehend the world, i.e., The Great Economy, and everyone’s need to understand and live within their own local place, i.e., the little economy).

198. See *id.* at 198–99; Stewart, *supra* note 105, at 484 (explaining Berry’s attitudes towards corporations).

199. Berry would likely find the second approach untenable, at least for large multinational corporations.

200. See *supra* Part I.C (discussing agricultural subsidies that encourage production).

201. *Food Waste FAQs*, USDA <https://www.usda.gov/foodwaste/faqs> [perma.cc/3YP8-FH6U]. The USDA’s Economic Research Service estimates that thirty-one percent of food

sort of waste is enabled by a designed glut of food flooding American markets.

Compensating employees with equity is a solution more consistent with the latter approach. Programs like Employee Stock Ownership Plans provide employees with capital stake in the firms at which they work.²⁰² These sorts of policies align the health of the employee, at least in a financial sense, with the health of the corporation. Equity compensation addresses corporate exploitation of workers but does not touch on corporate exploitation of ecosystems. Furthermore, it could implicate employees in the corporate destruction of the environment and entrench the industrial mindset in workers. It would, at best, be a partial solution to the concerns Berry raises.

A more complete solution would be something akin to the Tobacco Producer's Program. Berry presents the Tobacco Producer's Program as the paradigm of good economic²⁰³ policy that effectively combats the corporate mindset. The program relied on price supports and supply controls, voted on by a farmer's cooperative, to constrain production and foster sustainable communities.²⁰⁴ These design features precluded corporations from prioritizing "volume and price" over "quality and health" because the former pair were outside their control. A modern-day iteration²⁰⁵ of this program, which could include long-term contracts with local buyers to reduce farmers' uncertainty and volume controls that encourage farmers to grow a greater variety of crops, would meet the unsatisfied demand for local and sustainable produce that corporations fail to provide.²⁰⁶

is lost at retail and consumer levels, corresponding to roughly 133 billion pounds and 161 billion dollars' worth of food in 2010. *Id.*

202. See JOHN LOGUE & JACQUELYN YATES, *THE REAL WORLD OF EMPLOYEE OWNERSHIP* 1 (2001); *The Origin and History of the ESOP and Its Future Role as a Business Succession Tool*, MENKE GROUP, <https://www.menke.com/esop-archives/the-origin-and-history-of-the-esop-and-its-future-role-as-a-business-succession-tool/> [<https://perma.cc/NN5P-HFK8>].

203. But not moral.

204. THE ART OF LOADING BRUSH, *supra* note 15, at 41–50 (describing and commending the program).

205. The Berry Center has already begun to implement such a program. See *A Modern-Day Iteration of the Producer's Program*, BERRY CTR. (Mar. 26, 2017), <https://berrycenter.org/2017/03/26/modern-day-iteration-producers-program/> [perma.cc/MC5U-7M67].

206. *Louisville Local Food Demand Analysis*, SEED CAPITAL KY 4 (2013), <http://seedcapitalky.org/local-food-economy/local-food-demand-study/index.html> [<https://perma.cc/8Q4L-2MRK>] (finding demand for locally grown food in the Louisville, Kentucky area greatly outstrips the existing supply).

This sort of program would ensure that the land is used well, by people who know how and can afford to use it well.²⁰⁷

Table 1 below condenses this section's analysis. The sixth agricultural tenet—a preference for saving rather than spending—is missing from the table. That absence is because this preference for frugality operates in the background of every category and is integrated into this framework via a thoughtful consideration of cost when proposing any policy.

TABLE 1: FRAMEWORK SUMMARY

Buckets	Agrarian Tenets Most Implicated	Supplemental Theories and Models	Example Policies
Local knowledge	1, 8, and 9	Personhood theory of property	Federal programs implemented by state and local governments
Work as a vocation	1, 3, and 10	Labor-intensive production; Land ownership	Low-interest loans; Controlled traffic farming
Limits on Human Knowledge	2 and 11	Complexity theory; Adaptive management; Hayek's depiction of mature industrial markets	Pilot programs; Interdisciplinary monitoring programs

207. See *A Modern-Day Iteration of the Producer's Program*, *supra* note 205 (“[I]f agriculture is to remain productive, it must preserve the land, and the fertility and ecological health of the land; the land, that is, must be used well. A further requirement, therefore, is that if the land is to be used well, the people who use it must know it well, must have time to use it well, and must be able to afford to use it well”) (quoting Berry).

Anti-corporation	4, 5, and 7	The Tobacco Producer's Program	Reduction of corporate subsidies; Price and volume controls
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IV. APPLYING THE FRAMEWORK: BERRY'S ADAPTED VISION

“Here is my Farm Relief bill: Every time a Southerner plants nothing on his farm but cotton year after year, and the Northerner nothing but wheat or corn, why, take a hammer and hit him twice right between the eyes. You may dent your hammer, but it will do more real good than all the bills you can pass in a year.”²⁰⁸

This Part applies the framework developed in Part III. The most appropriate and timely application of this framework is to the Farm Bill. This Part proceeds by first giving a brief history of the Farm Bill. It then proposes four reforms to the bill, each falling within one of the buckets described in Part III—local knowledge, work as a vocation, acknowledging limitations, and anti-corporation. Every proposal also bleeds into other buckets because each element of the framework is contingent upon the whole. These proposals are not a wholesale overhaul of the Farm Bill, although that is arguably what must be done to prevent further ecological and rural collapse in America.²⁰⁹ The proposals only intend to show the practicability of the framework by revising select provisions for the better.

A. FARM BILL BACKGROUND

The ultimate piece of legislation when it comes to agriculture, the Farm Bill is the primary legislative culprit supporting industrial agriculture.²¹⁰ The Farm Bill is an omnibus, multiyear law that oversees a large array of agricultural and food

208. Tom Lawrence, *Lawrence: The Insanity of the Farm Bill*, FARM FORUM (Mar. 20, 2018), <https://www.farmforum.net/story/news/columnists/2018/03/20/lawrence-the-insanity-of-the-farm-bill/118982968/> [perma.cc/7WT5-YCW3] (quoting Will Rogers).

209. See *supra* Part I.A and Part I.B.

210. See generally Eubanks II, *A Rotten System*, *supra* note 38. The Farm Bill authorizes many of the subsidies and policies described in Part I.C.

programs.²¹¹ Originally enacted as part of the New Deal, the bill has three primary goals which have remained the same since the 1930s: keep prices fair for farmers and consumers, ensure an adequate food supply, and protect and sustain the country's natural resources.²¹² The most recent iteration of the Farm Bill is composed of twelve titles, each dealing with a different subject related to agriculture or food.²¹³ The current Farm Bill, officially titled the Agricultural Improvement Act of 2018 and totaling over 1000 pages,²¹⁴ was passed in 2018 with bipartisan support.²¹⁵ The bill is up for renewal in 2023.

In many respects, the Farm Bill has been a resounding success; in other ways, it is an abject failure. The many iterations of the bill have overseen the explosion in crop production and are responsible for keeping food prices low.²¹⁶ Despite its stated goals, however, the Farm Bill is so unwieldy that it fails to coherently pursue them in a unified manner.²¹⁷ As one issue, the Farm Bill doles out huge chunks of its projected funding of \$428 billion²¹⁸ in support payments, most of them

211. See generally CONG. RSCH. SERV., RS22131, WHAT IS THE FARM BILL? (2019).

212. *What Is the Farm Bill?*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/our-work/campaigns/fbcampaign/what-is-the-farm-bill/> [https://perma.cc/43WQ-BVAV].

213. The twelve titles in the current farm bill are: I. Commodities, II. Conservation, III. Trade, IV. Nutrition, V. Credit, VI. Rural Development, VII. Research, Extension and Related Matters, VIII. Forestry, IX. Energy, X. Horticulture, XI. Crop Insurance, and XII. Miscellaneous. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

214. The Bill is exactly 1008 pages long. Thomas J. McClure, *What's the Buzz? 2018 Farm Bill*, WIS. LAW. (June 12, 2019), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=92&Issue=6&ArticleID=27060> [https://perma.cc/GHY4-YGJY].

215. The Senate passed the 2018 Farm Bill by a vote of 87 to 13 and the House passed the bill by a vote of 369 to 47. John Newton, *Who Supported the Farm Bill?*, AM. FARM BUREAU FED'N (Dec. 19, 2018), <https://www.fb.org/market-intel/who-supported-the-farm-bill> [perma.cc/8V3M-CN3M].

216. *Food Prices and Spending*, USDA, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-prices-and-spending/> [perma.cc/6TST-GZP8]. In 2021, United States consumers spent 10.3 percent of their disposable income on food. This percentage is higher now given the rate of inflation. *Id.*

217. See Sarah J. Morath, *The Farm Bill: A Wicked Problem Seeking a Systematic Solution*, 25 DUKE ENV'T L. & POL'Y F. 389, 401 (2015) (classifying the passage of the Farm Bill as a "wicked problem" that is "exceedingly complex" and that "involve[s] a number of stakeholders, often with conflicting interests"); D. Lee Miller, *A Seat at the Table: New Voices Urge Farm Bill Reform*, 127 YALE L.J.F. 395, 398 (2017) (attributing the Farm Bill's incoherence in part to the influence of interest groups, public disinterest and misinformation, and the lack of academic interest in food and agriculture policy).

218. *What Is the Farm Bill?*, *supra* note 212.

benefiting the rich and powerful.²¹⁹ Direct subsidies to farmers are the second largest expense in the Farm Bill, but these funds are not distributed proportionately.²²⁰ The Farm Bill also authorizes many of the subsidies and policies described in Part I.C *supra*. When it comes to farm policy, all roads lead to the Farm Bill,²²¹ making it a prime target for the application of the framework developed in Part III.

B. APPLICATION

Berry has made unsuccessful efforts to reform the Farm Bill. He supports the 50-Year Farm Bill, a proposal created by the Land Institute to manage issues such as soil erosion, loss of biodiversity, and the destruction of farming communities.²²² The proposal addresses the problems with the Farm Bill at a very high level, however, focusing more on the harms industrial agriculture poses and discussing various scientific research supporting perennial polycultures.²²³ The 50-Year Farm Bill provides scientific justification for reform and paints a picture of a sustainable, achievable future but does not dive into specific

219. Gracy Olmstead, *The Farm Bill Ignores the Real Troubles of U.S. Agriculture*, N.Y. TIMES (Dec. 14, 2018), <https://www.nytimes.com/2018/12/14/opinion/farm-bill-agriculture.html> [<https://perma.cc/7B6T-JQ5S>] (“From 1996 to 2016, the top 10 percent of the companies that received the Farm Bill’s commodity subsidies — the biggest operations in sales — accounted for 77 percent of the total.”).

220. See Tracy Miller, *The Farm Bill: Discretionary Spending We Can Do Without*, FISCAL TIMES (Jan. 4, 2019), <https://www.thefiscaltimes.com/Columns/2019/01/04/Farm-Bill-Discretionary-Spending-We-Could-Do-Without> [perma.cc/J7MW-EM2M] (“More than 60 percent of payments from the three largest subsidy programs go to the largest 10 percent of farms.”).

221. Although not as important as the Farm Bill, other laws also significantly affect farming policy. For example, the Bipartisan Infrastructure Law entrusts over \$6 billion to federal agencies to, among other things, manage watersheds, invest in flood prevention, and reduce wildfire risk. *Bipartisan Infrastructure Law*, USDA, <https://www.usda.gov/infrastructure> [<https://perma.cc/8QDZ-ZYDC>]. The Inflation Reduction Act also provides funding for agriculture. *Inflation Reduction Act*, USDA, <https://www.usda.gov/ira> [<https://perma.cc/3N2K-XZ7F>].

222. See Berry, *The 50-Year Bill*, *supra* note 105; *A 50-Year Farm Bill*, LAND INST. (June 2009) [hereinafter LAND INST. PROPOSAL], <https://landinstitute.org/wp-content/uploads/2016/09/FB-edited-7-6-10.pdf> [<https://perma.cc/32TE-HSY8>]. In addition to writing essays in support of the 50-year Farm Bill, Berry has traveled to Washington, D.C. with the bill’s architects to promote its passage. *A 50-Year Farm Bill, Media Coverage*, LAND INST. (July 1, 2009), <https://landinstitute.org/media-coverage/50-year-farm-bill/> [<https://perma.cc/Z2JJ-9AVM>].

223. See Berry, *The 50-Year Bill*, *supra* note 105; LAND INST. PROPOSAL, *supra* note 222, at 10 (listing problems the 50-Year Farm Bill would address).

methods by which this change is to occur.²²⁴ As such, this section goes beyond the high-level changes proposed by the Land Institute, instead suggesting specific reforms in line with the policy framework created in Part III *supra*. The aggregate effect of these reforms, along with other policies consistent with this framework, will be an agricultural sector in which farming is done more locally, at a finer and smaller scale, with more human labor.²²⁵

1. *Local Knowledge and Heirs' Property*

Reforming the Farm Bill's approach to heirs' property would promote the preservation, development, and use of local knowledge in a way consistent with the framework. Heir's property is when the owner of a property dies without a valid will and all the decedent's heirs inherit the property as tenants in common.²²⁶ If the heirs don't resolve the property's ownership issues, this process continues each generation. In one extreme case, an \$8000 parcel of land amassed a total of 439 owners.²²⁷ In the agricultural context, heirs' property issues can make it difficult for farmers living on jointly inherited land to qualify for disaster assistance, use their property as collateral for a loan, and apply for federal conservation programs and financial assistance.²²⁸ Worst of all, heirs' property owners, especially Black owners,²²⁹ are under constant threat of a "forced partition sale" if a fellow co-tenant—who may have never seen the property

224. The Land Institute's Proposal is only nineteen pages, about half of them devoted to title page, an index, and graphs. It proposes a steady transition away from monocultures over the 50-Year Farm Bill's duration. LAND INST. PROPOSAL, *supra* note 222, at 6 (projecting how quickly perennials would replace annuals). How this transition would occur is not addressed in much depth.

225. See William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 ENV'T L. REP. 10493, 10505 (2009) (also urging this transition).

226. *Heirs' Property Landowners*, USDA, <https://www.farmers.gov/working-with-us/heirs-property-eligibility#about> [<https://perma.cc/83XT-62ML>] ("Heirs' property is family owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate.").

227. *Hodel v. Irving*, 481 U.S. 704, 713 (1987).

228. Brooks Lamb, *Understanding Heirs' Property and Its Impact on Farmers*, AGDAILY (Feb. 23, 2022), <https://www.agdaily.com/insights/understanding-heirs-property-and-its-impact-on-farmers/> [<https://perma.cc/3DVC-LU3M>].

229. The USDA has called heirs' property "the leading cause of Black involuntary land loss." *Id.*

or known long about their ownership rights—sells their stake in the property.²³⁰

To be eligible for many of the Farm Bill's programs and services, a property must have a farm number.²³¹ Farm operators²³² often have difficulty providing owner verification of heirs' property. If the next iteration of the Farm Bill relies upon Margaret Radin's personhood theory of property when allocating farm numbers, the benefits of USDA programs would more easily flow to those with local knowledge.²³³ For example, a farmer without a valid deed should be able to show receipts of farm expenses or tax returns to obtain a farm number. These alternative forms of verification showcase the farmer's connection to and knowledge of their property.

2. *Acknowledging Limitations and Data Integration*

The USDA should increase agricultural data integration and analysis, both within and across agencies from the federal to the local level.²³⁴ Sharing information between agencies facilitates adaptive management as policymakers have access to a wider breadth of information upon which to base their decision making. Section 1619 of the 2008 Farm Bill allows the USDA to share agricultural data with land grant institutions for the purposes of technical assistance. USDA should establish more agreements with research institutions pursuant to the section. Section 1619

230. B. James Deaton, *A Review and Assessment of the Heirs' Property Issue in the United States*, 46 J. ECON. ISSUES 615, 617 (2012) ("Put in conventional economic terms, the utility derived from the stream of consumption associated with land is subject to risk and uncertainty because other heirs are in a legal position to alter ownership interests via partition actions.").

231. *Heirs' Property Landowners*, USDA, <https://www.farmers.gov/working-with-us/heirs-property-eligibility#about> [<https://perma.cc/83XT-62ML>] (listing lending, disaster relief programs, and participation in county committees needing a farm number).

232. An operator is "an individual, entity, or joint operation who is in general control of the farming operations for the current year." *Guidance for Heirs' Property Operators to Participate in Farm Service Agency (FSA) Programs*, USDA, <https://www.farmers.gov/sites/default/files/2022-03/fsa-guidance-for-heirs-property-operators-to-participate-in-farm-service-agency-fsa-programs.pdf> [<https://perma.cc/SM98-SJND>].

233. See *supra* Part III.A.

234. See Nat'l Sustainable Agric. Coal., Comment Letter on the Executive Order on Tackling the Climate Crisis at Home and Abroad (Apr. 29, 2021), https://sustainableagriculture.net/wp-content/uploads/2021/04/NSAC-Comment_Response-to-EO-on-Tackling-Climate-Crisis_04292021.pdf [<https://perma.cc/FX5Q-LZBV>] (proposing similar changes).

also prohibits certain information disclosures and should be amended to allow greater dissemination of information.²³⁵

These reforms are consistent with the framework because they foster greater engagement between local and federal groups and give decisionmakers the data to adopt adaptive management approaches. This approach hews close to Paul Cairney's policy suggestions regarding complexity theory.²³⁶ It encourages trial and error at a granular level by giving land grant institutions the freedom to experiment and facilitates the dissemination of their results among other institutions and agencies. This proposal also heeds Hayek's cautioning against central planning and efforts at top-down comprehension. Each land grant institution would presumably operate within a still complex, but more intelligible silo. Federal agencies such as the USDA could learn from these more local institutions and alter their own approaches accordingly: responding to each part rather than attempting to wrangle and control the whole.

3. *Work as a Vocation and Subsidies for Absentee Farmers*

The current Farm Bill funds absentee farming. Those who run a "family farm" can receive \$125,000 (\$250,000 for married couples) in subsidies if the household provides "active personal management" (APM).²³⁷ APM requires very little—even filling out the subsidy paperwork qualifies²³⁸—and in 2017, nearly 20,000 people living in the nation's fifty largest cities received federal farm subsidies.²³⁹ APM is inconsistent with the notion that work should be a vocation and require active, lively, and

235. 7 U.S.C. § 8791(b)(2).

236. See *supra* Part III.C (discussing Cairney's three general lessons for policy makers looking to integrate complexity theory into their policymaking).

237. *Top 10 Worst Provisions in the Farm Bill*, TAXPAYERS FOR THE COMMON SENSE (Dec. 11, 2018), <https://www.taxpayer.net/agriculture/top-10-worst-provisions-in-the-2018-farm-bill/> [<https://perma.cc/5QCJ-WNH9>].

238. *Id.* (also listing participating in calls about farm business and securing financing as APM).

239. Chris Campbell & Scott Faber, *Nearly 20,000 'City Slickers' Received Farm Subsidies in 2017*, ENV'T WORKING GRP. (Nov. 1, 2018), <https://www.ewg.org/news-insights/news/nearly-20000-city-slickers-received-farm-subsidies-2017> [<https://perma.cc/4QWP-NU3F>] ("[R]oughly one-fourth of farm subsidy recipients do not contribute personal labor to farms."); see generally Editorial, *Federal Farm Subsidies Should Be Slashed*, WASH. POST (Apr. 1, 2011), https://www.washingtonpost.com/opinions/federal-farm-subsidies-should-be-slashed/2011/04/01/AFLySkJC_story.html [<https://perma.cc/SE3J-7XGS>].

thoughtful engagement. Many of those receiving subsidies only participate in farming in the sense that they own the land on which the crops are grown.

Applying the framework, APM should be amended in a way that privileges labor over capital. The threshold of involvement to receive subsidy payments should be higher than the current standard. The Senate version of the 2018 Farm Bill contained a provision raising the standard until it was dropped in a conference agreement.²⁴⁰ The provision would have required farm subsidy recipients who did not physically work on the farm to make a “substantial contribution” to management to receive taxpayer subsidies.²⁴¹ Five hundred hours annually of management work would fulfill the substantial contribution threshold.²⁴² This provision would have two benefits. First, it would encourage more active engagement with farming owners, presumptively leading to more informed decision-making. Second, it would reduce costs because not every owner would be willing to contribute the labor necessary to receive payments. Although a more active farm owner is not necessarily a good farm owner, this policy would look to repair the vitiated relationships absentee owners have with their properties—properties the owners may have only dealt with as abstractions via emails on a screen or numbers on a spreadsheet.

4. *Anti-Corporation and Clean Energy*

The embrace of clean energy connects farmers to their land and either takes power out of corporations’ hands or helps transform corporations into more empathetic and locally responsive institutions. It also improves the economic conditions of the farmers most harmed by industrial agriculture: seventy percent of wind farms are in low-income rural communities.²⁴³ Farmers who lease their land out for wind projects typically earn \$7,000 to \$10,000 annually per turbine. This value far exceeds the monetary return farmers would get for farming the equivalent land area.²⁴⁴ Most of these leases are negotiated for

240. *Top 10 Worst Provisions in the Farm Bill*, *supra* note 237.

241. *Id.*

242. *Id.*

243. BRUCE USHER, RENEWABLE ENERGY: A PRIMER FOR THE TWENTY-FIRST CENTURY 37 (2019).

244. *Id.*

terms of twenty years or more, ensuring the landowner a set annual return for nearly a generation.²⁴⁵ This practice allows farmers to economically benefit from their land in a way that does not harm the farm's local ecology.

Furthermore, Rural Electric Cooperatives (RECs)—nonprofit customer-owned electric utilities—would benefit from the build out of rural clean energy.²⁴⁶ These cooperatives are like the farmer cooperatives that were the democratic driver of the Tobacco Producer's Program. RECs are managed by democratically elected boards of directors, with most directors coming from the communities served by the cooperative.²⁴⁷ Well-run RECs, unlike many corporations, would better ensure that the benefits of clean energy development travel to the communities served.²⁴⁸

The Rural Energy for America Program (REAP) is a program authorized via the 2018 Farm Bill energy title.²⁴⁹ REAP offers two types of assistance: (1) it provides loan guarantees to farmers and rural businesses for energy efficiency improvements and the purchase of renewable energy systems and (2) it provides grants to service providers who work with farmers and rural small businesses for energy audits and renewable energy planning and development.²⁵⁰ Although considered a key program for

245. *Id.*

246. Over 800 RECs provide electricity to 42 million people in 48 states. *Electric Co-op Facts and Figures*, NRECA AMERICA'S ELEC. COOP. (April 28, 2022), <https://www.electric.coop/electric-cooperative-fact-sheet/> [<https://perma.cc/48XG-WKKP>].

247. Dusan Paredes & Scott Loveridge, *Rural Electric Cooperatives and Economic Development*, 117 ENERGY POL'Y 49, 50 (2018).

248. See, e.g., NAT'L RURAL ELEC. COOP. ASS'N, USE CASES FOR DISTRIBUTED WIND IN RURAL ELECTRIC COOPERATIVE SERVICE AREAS (2021), <https://www.cooperative.com/programs-services/bts/radwind/Documents/RADWIND-Use-Cases-Report-April-2021.pdf> [<https://perma.cc/S3QF-PWMW>] (describing the way RECs utilize distributed wind turbines and how this use benefits their consumer-members); Dusan Paredes & Scott Loveridge, *Rural Electric Cooperatives and Economic Development*, 117 ENERGY POL'Y 49 (2018) (finding the county-level share of electricity produced by locally owned electric cooperatives is positively related to county level wage growth in rural areas); Gabriel Pacyniak, *Greening the Old New Deal: Strengthening Rural Electric Cooperative Supports and Oversight to Combat Climate Change*, 85 MO. L. REV. 409, 415 (2020) (arguing for increased supports for and better regulation of RECs so they can more easily transition to low-carbon electricity).

249. See generally CONG. RSCH. SERV., IF10639, 2018 FARM BILL PRIMER: ENERGY TITLE (Mar. 24, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF10639> [<https://perma.cc/SY53-JH6H>].

250. *Rural Energy for America Program*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/publications/grassrootsguide/renewable-energy/renewable-energy-energy-efficiency/#basics> [<https://perma.cc/QGM2-6S2V>].

combating climate change by the USDA,²⁵¹ REAP only receives around fifty million dollars in annual funding.²⁵² With minor reforms, the program can be better equipped to address climate change while simultaneously supporting local economies.

Increasing REAP's emphasis on environmental performance and its preference for small businesses are improvements in line with the framework. REAP uses scoring criteria to determine whether applicants are eligible for funds.²⁵³ Applicants can score up to one hundred points based on several factors. Currently, the environmental benefits of a project can only earn an applicant up to five points. The USDA should increase this number to incentivize and reward projects that provide environmental benefits such as water conservation and protection.²⁵⁴ Applicants also receive scores of zero, five, or ten based upon their size—the smaller the farm or business, the more points received. Scoring should increase for smaller businesses to incentivize more involvement by local businesses. These two reforms would combat corporate overreach and privilege businesses that are more local and concerned with ecological integrity.²⁵⁵

CONCLUSION

This Note has intended to do with Berry's ideas what he has done with the ideas of his predecessors: develop their best possibilities by blending them with different perspectives while acknowledging and addressing their shortcomings. The framework developed in this Note is designed to influence policymakers looking to transition American agriculture from a

251. USDA, USDA BUILDING BLOCKS FOR CLIMATE SMART AGRICULTURE AND FORESTRY 3, 47 (May 2016), <https://www.usda.gov/sites/default/files/documents/building-blocks-implementation-plan-progress-report.pdf> [<https://perma.cc/77DJ-ED27>].

252. REAP has received fifty million dollars in mandatory annual funding since 2018 and receives an additional few hundred thousand in discretionary appropriations. *Rural Energy for America Program*, *supra* note 250.

253. *USDA REAP Scoring Criteria*, SPARK NW., <https://sparknorthwest.org/wp-content/uploads/USDA-REAP-Scoring-Criteria.pdf> [<https://perma.cc/28VN-ZJYQ>].

254. See Env't L. & Pol. Ctr., Comment Letter on the Final Rule for the Rural Energy for America Program (Jun. 29, 2021), <https://www.regulations.gov/comment/RBS-20-BUSINESS-0027-0006> [<https://perma.cc/P726-G94W>] (also suggesting an increase in scoring for projects that provide environmental benefits).

255. The USDA recently put out a notice amending scoring provisions to grant priority points for applications that meet various key priorities set out by the Biden-Harris administration. Inviting Applications for the Rural Energy for America Program; Amendment, 86 Fed. Reg. 66273 (Nov. 22, 2021).

system privileging unchecked production to one operating within ecologically prescribed limits. The Note is also intended to generate more interest and legal scholarship on Wendell Berry. It demonstrates the practicality of a legal treatment of Berry's thought and is designed to open the door for further reflection, analysis, judgment, and correction.

APPENDIX

TABLE 2: MAJOR EXEMPTIONS FOR FARMERS UNDER FEDERAL ENVIRONMENTAL LAWS²⁵⁶

Area	Statute	Regulation	Key Exemptions/ Limitations	Outcome
Water Pollution	Clean Water Act (CWA), Section 402	Point sources must satisfy technology and water quality standards to obtain a permit to discharge pollutants into U.S. waters	"Point sources" include CAFOs in general but exempt "agricultural stormwater discharges and return flows from irrigated agriculture"	About 6,600 CAFOs have permits ²⁵⁷ All other farms may legally discharge animal wastes, fertilizers, and pesticides in U.S. waters without a permit
	CWA Sec. 404	Permits are required to fill wetlands	Excludes "normal farming" activities with incidental discharges of dredged material or fill material	In many cases, farmers can convert wetlands to crop production without a permit

256. Eubanks II, *A Rotten System*, *supra* note 38, at 277.

257. EPA, NPDES CAFO PERMITTING STATUS REPORT (May 11, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/cafo_status_report_2020.pdf [<https://perma.cc/458N-GVY3>].

	CWA Sec. 208, 303, and 319; Coastal Zone Management Act (CZMA)	States must develop plans to address pollution from nonpoint sources in waters failing to meet ambient quality standards	Federal funding and enforcement are very limited States determine which nonpoint sources to regulate	Some states exempt farmers while other states promote voluntary adoption of best management practices Direct regulation by state or local officials is rare
Air Pollution	Clean Air Act (CAA), Sec. 110	Each state must develop an enforceable plan to meet national ambient air quality standards or be regulated by the EPA	Regulations emphasize “major sources” that emit threshold levels of pollutants These thresholds implicitly or explicitly exclude farmers	Individual farms are not regulated by the CAA
Chemical Use	Federal Insecticide, Fungicide, and Rodenticide Act (FIRFA) and Toxic Substances Control Act (TSCA)	Registration and determination of approved uses of chemicals, including who can apply these chemicals	Subject to EPA approval, states may register additional pesticide uses or temporarily use an unregistered pesticide to address pest emergencies	EPA determines which pesticides and fertilizers farmers can use, but species exemptions have been allowed for methyl bromide and others
	Comprehensive Environmental Response, Compensation,	Monitoring, reporting, and liability for storage and/or	Exempts FIFRA registered pesticides and	EPA does not regulate, track, or report

	and Liability Act (CERCLA), Emergency Planning and Community Right-to-Know Act (EPCRA), and Resource Conservation and Recovery Act (RCRA)	disposal of toxic chemicals	agricultural use of fertilizers	farmers' use of registered pesticides and fertilizers
Wildlife Habitat	Endangered Species Act (ESA) and Federal Migratory Bird Treaty Act (FMBTA)	Prohibits "takings" of threatened and endangered species and migratory birds	Unclear whether intent must be present in the case of poisoning of migratory birds	Legal actions have been taken against farmers and ranchers who "take" threatened and endangered species
Farm Bill	Swampbuster and Sodbuster	Farmers who convert wetlands or fail to apply conservation systems on highly erodible land cannot collect payments	Provisions apply only to a small share of current recipients of farm program benefits Enforcement is questionable	Farmers receiving payments have an incentive to comply Other farmers do not