

**THE BATTLE OVER AMERICA’S FARMLANDS:
CORPORATE FARMING PRACTICES AND
LEGISLATIVE ATTEMPTS AT PRESERVING THE
FAMILY FARM**

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“Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independ[e]nt, the most virtuous, & they are tied to their country & wedded to it’s (sic) liberty & interests by the most lasting bands.”¹

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¹ Thomas Jefferson, Letter to Jon Jay, Aug. 23, 1785.1

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I. INTRODUCTION

Journalistic inquiries in recent decades have shed light on enterprising tactics employed by corporate farming entities seeking to increase production and profitability in the national economy. Large-scale corporate entities engaging in the production of agricultural products—labeled “agribusiness” or “corporate farms”²—are deemed hostile to traditional family farmers—closely-held farming entities or family-ran farms operating on a small-scale basis.³ Family farms are variously defined, but include common characteristics such as agricultural operations owned by a family or a family corporation with somewhat lower gross annual sales between forty and two hundred thousand dollars per year, along with the hiring of minimal additional labor.⁴

Although corporate farmers are under attack by mainstream media, lawmakers have regulated and limited the practices of these entities as far back as 1931.⁵ Since this period, anti-corporate farming statutes have been adopted in nine Midwest states,⁶ each placing limitations on the practices of large and small-scale agricultural corporations. Currently, there are eight anti-corporate farming statutes

2. This author will employ the term “corporate farm” or “corporate farming” in lieu of “agribusiness.”

3. See, e.g., IOWA CODE § 9H.1(8) (2016).

4. John Opie, *Is There a Moral Obligation to Save the Family Farm?*, 49 ANNALS OF IOWA 729, 730 (1989) (reviewing GARY COMSTOCK, *IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?* (1987)).

5. See KAN. STAT. ANN § 17-5904 (2016); Nancy L. Thompson, *Anti-Corporate Farming Laws*, ENCYCLOPEDIA GREAT PLAINS, <http://plainshumanities.unl.edu/encyclopedia/doc/egp.law.004> (last visited Jan. 16, 2017).

6. Thompson, *supra* note 5.

in effect.⁷ The goal of these anti-corporate farming statutes is the limitation of corporate-farming practices, while encouraging the continued growth and sustainability of family farming.⁸

Prior analyses of these anti-corporate farming statutes generally observe the legal consequences they impose. Although this Note will touch on those consequences, the primary purpose is to shed light on the underlying rationales influencing lawmakers' regulatory intent of anti-corporate farming regulations and the practical consequences they impose on corporate and family farmers.

Thus, the purpose of this Note is cautionary—it seeks to show that the intended effects of anti-corporate farming legislation (legislation intended to protect family farmers) could actually have an adverse effect on those family farmers. Specific emphasis will be placed on Iowa's anti-corporate farming law,⁹ and an in-depth analysis of its provisions will act as a model for understanding similar laws in surrounding Midwest states. The method of inquiry for this Note will primarily invoke theoretical and legal analysis. Cultural, sociological, and political inquiries will also be utilized to analyze the underlying rationales of lawmakers' intentions of anti-corporate farming regulations. Ultimately, this Note will seek to demonstrate three points: (1) that there is prevailing sentiment in the United States against corporate-farming entities; (2) that this is a negative sentiment, one which has become an underlying rationale for legislative regulations restricting the growth of corporate-farming entities; and (3) that these regulations limiting corporate-farming entities impose implicit restrictions on family-farming entities, thus, running afoul of the underlying intentions of anti-corporate farming legislation.

II. CORPORATE AND FAMILY FARMING

In general, corporate farming is a term for large-scale agricultural companies who engage in business practices distinguishable from traditional famers—farmers who engage in more localized, small-scale agricultural operations.¹⁰ Moreover,

7. See Kaitlyn Trout, Note, *You Can't Have Your Beef and Eat It Too: The Statutory Effect of Anti-Corporate Farming Acts on Family Farms and Beef Corporations*, 39 OKLA. CITY U.L. REV. 513, 516 (2014).

8. See e.g., IOWA CODE § 9H (2016).

9. See generally *id.*

10. See LUTHER TWEETEN, THE OHIO STATE UNIV., ESO #2404, AGRIC. INDUSTRIALIZATION: FOR BETTER OR WORSE? 2 (1998), <http://ageconsearch.umn.edu/bitstream/28337/1/eso2404.pdf> (identifying specific features of industrial agriculture, or corporate farming, such as “fewer, larger farms . . . to other departures from the traditional family farm where the operator and family provided over half the labor, management, and equity capital.”).

corporate farms are incorporated agricultural entities.¹¹ General characteristics of corporate farming operations include large-scale farming operations or factory farming, vertical integration,¹² and other practices consistent with corporate culture.¹³ A more significant element of corporate farming is the emphasis on production and output.¹⁴

Corporate farming, then, includes practices of large-scale agricultural entities engaging in corporatized practices to increase the overall production and output of agricultural products, while seeking higher profits and returns.¹⁵ It should be noted that corporate farming is distinct from agribusiness, a term commonly (and mistakenly) viewed as synonymous with corporate farming. Whereas corporate farming includes the general practices listed above, agribusiness deals with the business surrounding agriculture, such as insurance sales, product distribution, *et cetera*.¹⁶ Thus, the term “corporate farming” is distinguishable from “agribusiness.” Furthermore, “corporate farming” is also distinct from “traditional farming” and “family farming.”

Family farming is a term associated with traditional notions of farming in America: it represents the independently owned farm situated in rural America.¹⁷

11. See Jan Stout, Note, *The Missouri Anti-Corporate Farming Act: Reconciling the Interests of the Independent Farmer and the Corporate Farm*, 64 UMKC L. REV. 835, 835 n.2 (1996); see also Ron Plain, *The Meaning of Industrialization*, in INDUSTRIALIZATION OF AGRICULTURE 2, 7 (Harold Breimer ed., 1995).

12. Vertical integration is “the combining of manufacturing operations with source of materials and/or channels of distribution under a single ownership or management especially to maximize profits.” *Vertical Integration*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/vertical%20integration> (last visited Jan. 16, 2017).

13. See TWEETEN, *supra* note 10, at 2; see also CAROLYN DIMITRI ET AL., USDA, THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY 2 (2005), http://www.ers.usda.gov/webdocs/publications/eib3/13566_eib3_1_.pdf.

14. See Richard F. Prim, *Saving the Family Farm: Is Minnesota’s Anti-Corporate Farm Statute the Answer?*, 14 HAMLIN J. PUB. L. POL’Y 203, 204 (1993) (discussing agricultural land as an enterprise asset for corporate farmers seeking an appreciating investment.).

15. See *id.*; see also Douglas Allen & Dean Lueck, *The Nature of the Farm*, 41 J.L. & ECON. 343, 344 (1998) (citing the “capital intensive enterprises” of large scale farms in America today).

16. See, e.g., MD. CODE REGS. 19A.96.11 (2016) (noting a difference between “corporate farm entities, commodity organizations, trade associations, and agribusiness entities such as the farm credit bureau, farm equipment suppliers, food processors, and farm transportation entities.”)

17. See Stout, *supra* note 11, at 835 n.2; see also Plain, *supra* note 11, at 7.

On the family farm, “the operator and family provide[] over half the labor, management, and equity capital.”¹⁸ In general, family farming is consistent with popular notions of farming in the United States where the individual farmer and her family grow crop and raise livestock, produce agricultural products, and sell these products at a market or to a distributor.¹⁹

III. THE EVOLUTION OF FARMING IN NORTH AMERICA

A. History's View of the Farmer and Agricultural Practices

Generally defined as the “activity or business of growing crops and raising livestock,”²⁰ farming is a staple of American society and culture.²¹ As discussed in *The New Culture of Rural America*, farming communities and the American farmer carry with them the general cultural embodiment of traits considered American:

America long thought of itself as essentially connected with farming and farm communities. According to this idea, landholding produced self-reliant, free-thinking citizens, unlike the immigrants of the cities who were dependent on their priests and party bosses. In a tradition famously identified with Jefferson, the man who worked the land was upright, reliable, and uniquely able to serve his local village and defend his country.²²

By making the claim that “America [has] long thought of itself as essentially connected with farming and farm communities,” Jedidiah Purdy insinuates that the essence of America is, at least arguably, attached to this image of the farmer or the farming community.²³

Purdy echoes the sentiments of Thomas Jefferson, a famous statesman and Founding Father who attached significant value to agricultural practices and those who pursued such practices.²⁴ In a letter to fellow Founding Father and statesman,

18. TWEETEN, *supra* note 10, at 2.

19. See Renee Gabbard, *Sow Estate Planning Ideas for Farm and Ranch Owners*, ESTATE PLANNING, Dec. 2013, at 8, 8; see also Alicia L. Taylor, Note, *Lowering Values: The Federal Estate Tax and American Farmer*, 22 U. FLA. J. L. & PUB. POL'Y 183, 189 (2011).

20. *Farming*, OXFORD ENG. DICTIONARY, <https://en.oxforddictionaries.com/definition/farming> (last visited Oct. 25, 2016).

21. See Jedediah Purdy, *The New Culture of Rural America*, AM. PROSPECT (Nov. 14, 2001), <http://prospect.org/article/new-culture-rural-america> (elaborating on the cultural significance of farming in America and America's identification with farming in general).

22. *Id.*

23. See *id.*

24. See Letter from Thomas Jefferson to James Madison (Oct. 28, 1785), in 1 THE FOUNDERS CONSTITUTION, Ch 15, Doc. 32 (Philip B. Kurland & Ralph Lerner eds., Univ. of

James Madison, Jefferson wrote:

Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labour and live on. If, for the encouragement of industry we allow it to be appropriated, we must take care that other employment be furnished to those excluded from the appropriation. If we do not the fundamental right to labour the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of a state.²⁵

Speaking to the value of uncultivated land and those who labor to cultivate it, Jefferson went on to say that “small landholders are the most precious part of the state.”²⁶ In a letter to George Washington, Jefferson also indicated that “[a]griculture is our wisest pursuit, because it will in the end contribute most to real wealth, good morals, and happiness.”²⁷

Jefferson’s thoughts on agriculture and Purdy’s commentary on his thoughts show that agricultural practices have been deeply rooted in the fibers of American culture and that significant values are attached to these practices. Arguably, then, there is a general notion in the United States that farming, an agricultural activity,²⁸ is associated with the idea of Americanism.²⁹

B. The Industrial Revolution’s Changes to the Farming Process

In recent decades, farming has undergone substantial developments as a product of the Industrial Revolution.³⁰ Prior to the industrial revolution, farming

Chi. Press Web ed. 2000), <http://press-pubs.uchicago.edu/founders/documents/v1ch15s32.html>.

25. *Id.*

26. *Id.*

27. Adam Hinton, *Agriculture, Our Wisest Pursuit*, AM. FARMERS (Jan. 22, 2015), <http://www.americasfarmers.com/2015/01/22/agriculture-our-wisest-pursuit/>.

28. This note operates under the assumption that farming is an agricultural practice. Generally, agriculture is defined as “[t]he science of or practice of farming.” *Agriculture*, OXFORD ENG. DICTIONARY, http://www.oxforddictionaries.com/us/definition/american_english/agriculture (last visited Nov. 1, 2016) Defined Americanism as “a custom or trait peculiar to America.”

29. *Americanism*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/Americanism> (last visited Nov. 1, 2016).

30. See DIMITRI ET AL., *supra* note 13, at 2 (explaining the changes in farming practices

was conducted through laborious methods, often involving the use of animals or primitive machinery to carry out essential tasks.³¹

Early 20th century agriculture was labor intensive, and it took place on a large number of small, diversified farms in rural areas where more than half of the U.S. population lived . . . The agricultural sector of the 21st century, on the other hand, is concentrated on a small number of large, specialized farms in rural areas where less than a fourth of the U.S. population lives. These highly productive and mechanized farms employ a tiny share of U.S. workers and use 5 million tractors in place of the horses and mules of earlier days.³²

Where farming was once an activity driven by human labor, aided by tools and animals, it is now highly mechanized for increased efficiency and productivity.³³ With the aid of machinery, scientific advancements in seed and fertilizer, and expanded opportunities for land development and storage, the modern farmer benefits from resources encouraging increased production and output.³⁴

C. The Rural Concentration of Family Farmers

Changes in farming have not been just technological over time but geographical as well: where family farmers were once spread out across the nation, they are now concentrated in smaller rural areas.³⁵ A recent study by the United State Department of Agriculture (USDA), report shows that “just over 46 million [people] in 2014” live in rural counties, which accounts for 15 percent of residents in the United States.³⁶ Among those living in rural areas, research indicates that, although many persons often leave rural communities at the age of 20 to 24, the migration back of older demographics seeking “the presence of parents and desire to raise their children back home were the most frequently cited reasons for returning to live in relatively remote rural communities.”³⁷ In general, participants in the

over the course of the 20th century).

31. See generally *History of Agriculture*, NEW WORLD ENCYCLOPEDIA, http://www.new-worldencyclopedia.org/entry/History_of_agriculture#c (last modified Oct. 26, 2015, 7:04PM).

32. DIMITRI ET AL., *supra* note 13, at 2.

33. *Id.*; see also Prim, *supra* note 14, at 207; Allen & Lueck, *supra* note 15, at 344.

34. See DIMITRI ET AL., *supra* note 13, at 6.

35. *Id.* at 2.

36. ECON. RES. SERV., USDA, RURAL AMERICA AT A GLANCE: 2015 EDITION 2 (2016), http://www.ers.usda.gov/webdocs/publications/eib145/55581_eib145.pdf.

37. JOHN CROMARTIE ET AL., USDA, No. 185, REPORT SUMMARY: FACTORS AFFECTING FORMER RESIDENTS' RETURNING TO RURAL COMMUNITIES, at iv (2015), <http://agecon-search.umn.edu/bitstream/206008/2/err185.pdf>.

USDA study indicate that smaller rural communities offer more community opportunities.³⁸ Significantly, the study also revealed that “[s]trong community ties ma[k]e it easier to translate their education and training into economic and social benefits.”³⁹ Overall, then, this study shows people tend to migrate to smaller rural communities in order to pursue a lifestyle focused on opportunity and community.

D. The Current State of Farming and Corporate Practices

The farming practices of today have fundamentally changed⁴⁰ from those farming practices of the past.⁴¹ This is most likely due to the fact that large-scale farming operations have become increasingly prevalent in American society.

Since early in the 20th century US agriculture has been increasingly characterized by a loss in farm numbers, increasing average farm scale, increases in the use of hired labor on farms, vertical integration of farming with off-farm businesses, and upsurges in contract farming . . . These changes have been uneven across time and place, but in general they have characterized the development of US agriculture in the 20th and early-21st centuries, and have caused some observers to argue that agriculture is ‘industrializing.’⁴²

Furthermore, “[s]ince the Industrial Revolution, corporations have proven to be the most advantageous form of the industrial firm. The large sums of capital that corporations can raise allow them to take advantage of economies of scale.”⁴³ General characteristics of corporate farming, as Thomas Lyson points out in the excerpt above, include: “increases in the average farm scale, increases in the use of hired labor on farms, vertical integration of farming with off-farm businesses, [and] upsurges in contract farming . . .”⁴⁴ Moreover, agricultural entities engaging in these activities have increased substantially in recent decades.⁴⁵

38. *See id.* at v.

39. *Id.*

40. *See* Nathan Wittmaack, *Should Corporate Farming be Limited in the United States?: An Economic Perspective*, 8 MAJOR THEMES IN ECON. 45, 45-46 (2006), <http://business.uni.edu/economics/Themes/wittmaack.pdf>.

41. *See* DIMITRI ET AL., *supra* note 13, at 2 (describing traditional farming practices and culture where farmers and farming practices occurred in small, compartmentalized sectors of the U.S. economy).

42. Thomas A. Lyson & Rick Welsh, *Agricultural Industrialization, Anticorporate Farming Laws, and Rural Community Welfare*, 37 ENV'T & PLAN. A 1479, 1479 (2005) (internal citation omitted).

43. Wittmaack, *supra* note 40, at 45-46.

44. Lyson & Welsh, *supra* note 42, at 1479.

45. *See* TWEETEN, *supra* note 10, at 2 (illustrating various developments in the agriculture industry in recent decades).

With this increase in corporate farming, a question arises as to the propriety of these entities.⁴⁶ Many Americans question whether the corporate farmer is harmful to the general well-being of the agricultural system in the United States due to the tendency of corporate farms to displace and/or limit the family farmer.⁴⁷ These concerns are of increasing prevalence in American media, as demonstrated by Robert Kenner's 2008 documentary, *Food Inc.*⁴⁸

i. Public Concerns over the Legality of Corporate Farmers' Actions – The Legal Relevance of Food, Inc.

The general concern held by Americans regarding corporate farmers raises questions, not only to the general acceptability of the corporate farmer as an entity in American agriculture, but also to the legality, ethics, and negative aspects of the business practices invoked by these entities. In 2008, director Robert Kenner released his documentary, *Food, Inc.*⁴⁹ In this film, Kenner explores the expansion of corporate practices in the agricultural industry today.⁵⁰ The primary allegation Kenner puts forth is that the practices of corporate farmers—specifically the use of contracts and patents on fertilizers and seeds—creates an unfair burden on family farmers, forcing them to work around the restrictions imposed by corporate farmers, or to cease farming altogether.⁵¹

From a legal perspective, *Food, Inc.* raises an interesting question: What are the legal and practical implications of corporate farming practices on American agriculture overall? In the first part of the film, Kenner examines the industrial production of pork.⁵² He claims these production methods are economically and

46. See Lyson & Welsh, *supra* note 44, at 1479 (identifying the general concern that “industrial farming [might] displace the traditional family-labor farm.” Lyson also notes the “public concern within and outside rural USA,” pertaining to corporate farmers).

47. See *id.*; see also Neil D. Hamilton, *Agriculture Without Farmers? Is Industrialization Restructuring American Food Production and Threatening the Future of Sustainable Agriculture?*, 14 N. ILL. U. L. REV. 613, 616 (1994) (noting that “[t]he debate over industrialization [in agriculture], is one the nation should join, because it will provide us with the opportunity to examine the structure of farming and agriculture and determine what forms are best suited for our future.”).

48. *FOOD, INC.* (Magnolia Pictures 2008).

49. See *id.*

50. See *id.*

51. See *id.*

52. See *id.*

environmentally unstable given current corporate practices.⁵³ Kenner then examines the industrial practices surrounding grains and vegetables.⁵⁴ Of particular interest, however, is Kenner's third area of inquiry in the film, namely the inquiry into the economic and legal powers of corporate farmers.⁵⁵

In discussing the legal and economic powers held by corporate farmers, Kenner highlights a particular agricultural giant, Monsanto Inc.⁵⁶ "Monsanto Company develops, manufactures, licenses, and sells agricultural chemicals, agricultural biotechnology and other agricultural products."⁵⁷ Kenner points to practices by Monsanto, including lawsuits brought against family farmers for breach of contract and patent infringement.⁵⁸ Courts and scholars have taken note of these practices by Monsanto, alleging that the company engages in "aggressive, farmer-directed litigation efforts to protect proprietary, genetically modified seed technologies through patent litigation lawsuits."⁵⁹ In response to these findings and allegations, Monsanto includes a statement on their website reading: "Monsanto files suits against farmers who breach their contracts and infringe our patents—not against farmers who did not intentionally take these actions."⁶⁰

Studies indicate that Monsanto has brought roughly 112 lawsuits (as of 2007) against various family farmers for both breach of contract and patent infringement.⁶¹ The broadest example of contract suits brought by Monsanto has to do with its Roundup Ready product lines and the use of those products by family farmers.⁶² Monsanto has also brought various patent infringement lawsuits over the past two decades for the unauthorized use of Monsanto's "genetically modified seeds, plants, genes, and methods for producing such technologies."⁶³ These lawsuits brought against family farmers influence the public's negative perception of

53. *See id.*

54. *See id.*

55. *See id.*

56. *See id.*

57. *Scruggs v. Bost*, 149 So. 3d 493, 494 (Miss. 2014); *Monsanto Co. v. Scruggs*, 249 F. Supp. 2d 746, 747 (N.D. Miss. 2001).

58. *See FOOD, INC.*, *supra* note 48.

59. Michelle Ma, Comment, *Anticipating and Reducing the Unfairness of Monsanto's Inadvertent Infringement of Lawsuits: A Proposal to Import Copyright Law's Notice-and-Takedown Regime into the Seed Patent Context*, 100 CAL. L. REV. 691, 691 (2012).

60. *Food Inc. Movie*, MONSANTO, <http://www.monsanto.com/food-inc/pages/default.aspx> (last visited Jan. 16, 2017).

61. Ma, *supra* note 59, at 700.

62. *See id.* at 701.

63. *Id.* at 700.

corporate farmers—namely that corporate farmers bully family farmers or monopolize the agricultural industry.⁶⁴

IV. CORPORATE FARMING'S NEGATIVE CONNOTATIONS

There is no question that the dominant economic forces in terms of agricultural production and profits are corporate farmers.⁶⁵ “The largest chunk of agricultural output—61 percent—comes from America's ‘corporate’ farms, operations that usually produce a single commodity under contract with a consolidated firm.”⁶⁶ The general structure of corporate farming is similar to the following:

Nationwide, there are 163,000 corporate operations, and 63 percent of these are under contract to a consolidated firm. The farmer who signs on with Cargill or Tyson agrees to produce a commodity that meets the firm's specifications. In the world of “monoculture” farming, the farmer relinquishes his expertise in land use and animal husbandry—such skills and virtues are no longer required. Instead, he or she follows the dictates of the corporation, which wants a uniform product and mass production. Low cost and speed are the farmer's priorities.⁶⁷

Arguably, corporate farming practices become inferior to family farming practices when consolidated firms, or large-scale agricultural businesses such as those mentioned above, become involved in agriculture to “produce a commodity.” Moreover, the consolidated firms, much like any corporate entity seeking profits, invoke expectations of production on agricultural “commodities.” Thus, agricultural products and the values tied to these products, which were at onetime produced on a small-scale basis by family farmers for local benefit, have become corporate commodities created for profit.

A. *The Commodification of Agrarianism*

Has agriculture become commodified? The Oxford English dictionary defines “commodification” as “[t]he action or process of treating something as a mere commodity.”⁶⁸ A commodity is generally some “useful” or “valuable” thing; a

64. *See id.* at 691.

65. Debra K. Bendis, *Field of Corporate Dreams: Farming without the Farmer*, CHRISTIAN CENTURY, June 19-26, 2002, at 8.

66. *Id.* at 8-9.

67. *Id.*

68. *Commodification*, OXFORD ENG. DICTIONARY, <https://en.oxforddictionaries.com/definition/commodification> (last visited Jan. 16, 2017).

“raw material”; or a “primary agricultural product that can be bought and sold.”⁶⁹ Generally, commodities are viewed only as tangible economic products used to produce something of value.⁷⁰

According to Marx . . . commodification takes place when economic value is assigned to something not previously considered in economic terms; the exchange value compensates for the use value of a product. Generally commodification refers to the expansion of for-profit trade into previously non-profit spheres, and to the treatment of things as if they were a tradable commodity.⁷¹

The question under this commodification analysis vis-à-vis farming, is whether family farming is something generally considered only in economic terms. In a fundamental sense, to the contrary, family farming is associated with agrarianism, a deeply rooted notion of morality and community.⁷² Social philosophers have observed three basic tenets associated with the agrarian lifestyle:

The first tenet connects agrarianism to nature; through contact with nature, the agrarian acquires virtues of honor, self-reliance, and moral integrity. Next, agrarianism engenders a sense of belonging to a community. Jefferson believed that agricultural pursuits keep citizens in touch with communities and that Democracy requires such a connection. Finally, agrarianism checks against the evils of urbanism, capitalism, and the imbalances of modern society. Jefferson believed that if each farm was a self-sustaining enterprise and if a substantial portion of the populace could be employed as independent farmers, the country would stave off the power-seeking schemes of massive economic concern.⁷³

These fundamental ideals embodied within the agrarian lifestyle are commonly held to be prevalent in American views towards farming today.⁷⁴

A consequence, then, of commodifying farming, would also be the commodification of agrarian values such as those enumerated above. By enforcing production standards and output requirements, the agricultural process has become more of a corporate operation than a personal endeavor of family farmers. Corporate

69. *Commodity*, OXFORD ENG. DICTIONARY, <https://en.oxforddictionaries.com/definition/commodity> (last visited Jan. 16, 2017).

70. *See id.*

71. Miikka Pyykkönen, *UNESCO and Cultural Diversity: Democratisation, Commodification or Governmentalisation of Culture?*, 18 INT'L J. CULTURAL POL'Y 545, 548 (2012).

72. *See* Margot Pollans & Michael Roberts, *Setting the Table for Urban Agriculture*, 46 URB. LAW. 199, 204 (2014).

73. *Id.*

74. *See id.* at 206.

operations, generally day-to-day activities of corporations “conducted for the purpose of generating profits,”⁷⁵ seem to be engaged in agricultural activities solely for the purpose of garnering profit.

A 2013 study on how culture, in a conceptual sense, is “packaged” and “sold” as a commodity contains a brief hint on how modern business corporations might exploit cultural norms for profit.^{76, 77} The authors of this study indicate that [t]he amalgamation of culture and economy seems to be increasingly common in today’s globalized society . . . [A] more intimate connection between the two emerged during what has been called “the new economy,” where culture began to play a more prominent role in business as companies started to borrow concepts from the humanities and social sciences.⁷⁸

This concept of the “new economy” carries with it the view that contemporary business strategies capitalize on understandings of human culture and developments in the social sciences in order to engage in profit-making endeavors. By capitalizing on cultural and social phenomena, businesses are therefore able to create a commodity out of them, namely some “useful” or “valuable” thing; a “raw material;” or, in the sense of farming, a “primary agricultural product that can be bought or sold.”⁷⁹

Of course, family farmers also tend to create commodities out of agricultural products. Although family farmers engage in practices seeking to create profit out of agricultural products, corporate farmers are the entities under attack by lawmakers and mainstream media.⁸⁰ The media points to harmful corporate practices, and lawmakers seek to maintain the underlying values and ethics of the family

75. *Business Operations*, BUSINESSDICTIONARY, <http://www.businessdictionary.com/definition/business-operation.html> (last visited Jan. 16, 2017).

76. See Elias Mellander & Anna-Mari Fagerström, *Balancing Acts: Culture as Commodity among Business Consultants*, 5 CULTURE UNBOUND 319, 319 (2013) (indicating that the purpose of the article is to “analyze how the concept of culture is pack-aged, sold and delivered as a commodity”).

77. Please note the ideas drawn from the above cited article are this author’s interpretations and inferences drawn from the studies and observations of Elias Mellander and Anna-Mari Fagerström. This author’s inferences and interpretations should not be construed as representing the actual beliefs of the Mellander and Fagerström, but rather as starting points for an analysis of the way in which business entities commodify cultural phenomena.

78. Mellander & Fagerström, *supra* note 76, at 320.

79. *Commodity*, *supra* note 69.

80. See Julie Bosman, *North Dakotans Reconsider a Corporate Farming Ban, and Their Values*, N.Y. TIMES (June 12, 2016), http://www.nytimes.com/2016/06/13/us/north-dakotans-reconsider-a-corporate-farming-ban-and-their-values.html?_r=0.

farmer.⁸¹ Arguably, then, the underlying intent of lawmakers in passing anti-corporate farming acts is to avoid commodifying agrarian values by maintaining a sense of virtue and pride for those who engage in family farming. This also addresses the ethical concerns held by much of society.

Although family farmers commodify agricultural products to an extent, it is apparent that society has a general notion that corporate farmers commodify agricultural products and the underlying value systems of agrarianism. Corporate farming's commodification is a negative aspect because it commodifies, not simply a product, but also the values commonly associated with farming throughout history. Thus, although family farmers commodify agricultural product for profit, the corporate commodification of both agricultural products and agrarian values arguably have influenced attacks by the media and lawmakers against corporate farming.

B. Conclusion on Commodification

The underlying assumptions of both the media and lawmakers can be summarized as follows: family farmers commodify agricultural products, and there is nothing inherently wrong with such a commodification; but corporate farmers commodify agricultural products vis-à-vis agrarian values, and there is something inherently wrong with such a commodification.

Commodification of agrarianism has therefore contributed to negative views of corporate farming today. "At the 2001 National Youth Roundtable it was recorded that the majority of people had a positive notion towards rural life with perceptions primarily focussing [sic] on the romance of the country and what a lovely lifestyle it would be."⁸² This perception of farming corresponds with negative connotations of contemporary corporate farming practices; corporate farming has been characterized as "one of the most devastating events in U.S. history."⁸³ Moreover, researchers have demonstrated that "[t]he public is clearly concerned about the 'industrialization of agriculture' and the demise of the 'family farm.'"⁸⁴ In 2000, statistical analysis of the societal perception of agribusiness, researchers concluded that

81. *See id.*

82. *Future Farmers Network – The Public's Perception of Agriculture*, FARM WKLY., <http://www.farmweekly.com.au/specialfeature.aspx?id=3628> (last visited Jan. 16, 2017).

83. TAD WILLIAMS, AM. FOR DEMOCRATIC ACTION EDUC. FUND, *THE CORRUPTION OF AMERICAN AGRICULTURE 2*, <http://www.adaction.org/media/TadFinal.pdf> (last visited Jan. 16, 2017).

84. CHERYL WACHENHEIM & RICHARD RATHGE, N.D. ST. UNIV., No. 449, *SOCIETAL PERCEPTIONS OF AGRICULTURE 2* (2000), <http://ageconsearch.umn.edu/bitstream/23541/1/aer449.pdf>.

Respondents tended to have strong negative opinions about evolving farm structure. Nearly half strongly agreed that large scale farms create more environmental concerns (49.1 percent) and the trend of larger farms replacing smaller farms will have undesirable economic and social consequences (44.9 percent). Forty-three percent of respondents strongly agreed that poor economic conditions will result in more large scale farms.⁸⁵

From this data, there is demonstrable proof that there is a general negative perception of corporate farmers, at least within the demographic of those interviewed in the study above.

V. ANTI-CORPORATE FARMING STATUTES AND RESPONSES TO ETHICAL CONCERNS OVER CORPORATE FARMING PRACTICES

Monsanto's presence in the agricultural sector—specifically its barratry against family-farmers for alleged breach of contracts and patent infringements—provides a basis for understanding the concern many Americans have with corporate farmers. As economist Milton Friedman asserts in *Capitalism and Economy*, “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.”⁸⁶ With respect to corporate farming, then, the general concern held by many citizens and lawmakers is that corporate farmers focus more on engaging in activities to increase profits and less on staying within the rules of the game. In an effort to ensure that corporate farmers stay within the rules, a group of Midwest states have enacted anti-corporate farming statutes.⁸⁷

A. *The Anti-Corporate Farming Statutes*

In recent decades, states have attempted to limit corporate farming practices by instituting anti-corporate farming laws.⁸⁸ Eight states currently impose anti-corporate farming restrictions limiting the perceived monopoly of corporate farmers in both local and national agricultural practices.⁸⁹ The general purpose behind anti-corporate farming statutes is “to protect family farmers from the intrusion of large corporations into agricultural production.”⁹⁰ Moreover, it is argued that these statutes aim to “insulate the rural lifestyle, or culture, that is found on family farms

85. *Id.*

86. MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 133 (Univ. of Chi. Press 40th Anniversary ed. 2002).

87. Trout, *supra* note 7, at 514; Brian F. Stayton, *A Legislative Experiment in Rural Culture: The Anti-Corporate Farming Statutes*, 59 UMKC L. REV. 679, 679 (1991).

88. Trout, *supra* note 7, at 514; Stayton, *supra* note 87, at 679.

89. Trout, *supra* note 7, at 514; Stayton, *supra* note 87, at 679.

90. Stayton, *supra* note 87, at 679.

from economic competition, and resulting destruction, by large corporations.”⁹¹ The protection of family farmers, although one goal of the anti-corporate farming statutes, seems to have given way to the fundamental goal of “insulating the rural lifestyle, or culture” generally associated with the family farm.⁹² The method chosen by lawmakers to protect these fundamental values are regulatory mechanisms aiming to decrease the sustainability and development of agricultural corporations.⁹³

i. Kansas’ Anti-Corporate Farming Act – a Basis for Legislation.

One of the first states to regulate corporate farmers is Kansas, which instituted its initial anti-corporate farming act in 1931.⁹⁴ Still in effect today, Kansas’ anti-corporate farming statute places significant restrictions on corporate farming entities:

No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state.⁹⁵

Under this statute, only family farm corporations or other authorized entities are allowed to acquire ownership or leasehold interests in agricultural land within the State of Kansas. Thus, the effect of this statutory limitation provides significant leeway to family farmers and other corporate entities falling within the scope of the state legislature’s statutory protections.

ii. Initiative 300—the Outer Limits of Anti-Corporate Farming Regulations.

The most telling example of anti-corporate farming regulation is Nebraska’s Initiative 300—an effort by Nebraska legislators to amend the Nebraska Constitution with substantial prohibitions against corporate farming entities.⁹⁶ “Initiative 300 prohibits corporations or syndicates (non-family-owned limited partnerships)

91. *Id.* (internal citations omitted).

92. *Id.*; Pollans & Roberts, *supra* note 72, at 225.

93. *See, e.g.*, KAN. STAT. ANN. § 17-5904 (2016).

94. *See* Stayton, *supra* note 87, at 681.

95. KAN. STAT. ANN. § 17-5904.

96. *See Corporate Farming Law—Nebraska*, INST. FOR LOC. SELF-RELIANCE (Nov. 21, 2008), <https://ilsr.org/rule/corporate-ownership-limitations/2020-2/>.

from acquiring an interest in 'real estate used for farming or ranching in [Nebraska]' or 'engag[ing] in farming or ranching,' with certain exceptions.⁹⁷ Interestingly, explanatory statements regarding Initiative 300 explained to voters that

A vote FOR [Initiative 300] will create a constitutional prohibition against further purchase of Nebraska farm and ranch lands by any corporation or syndicate other than a Nebraska family farm corporation. A vote AGAINST [Initiative 300] will reject such a constitutional restriction on ownership of Nebraska farm and ranch land.⁹⁸

Voters adopted Initiative 300 in 1982.⁹⁹ Initiative 300 demonstrates the furthest reaches of anti-corporate farming legislation in American jurisprudence. It is apparent from this legislation that attitudes against corporate farmers ultimately enticed Nebraska legislators to propose amendments to the Nebraska constitution in order to protect state farmland from corporate development. Thus, the general goal of Initiative 300 was to protect Nebraska from the rising presence of corporate farmers while promoting growth and, at a minimum, sustaining family farms.

Subsequent to its adoption, Initiative 300 faced substantial criticisms from corporate farming entities, culminating in Constitutional challenges to Initiative 300.¹⁰⁰ In 2006, the 8th Circuit deemed Initiative 300 unconstitutional on Dormant Commerce Clause grounds, ruling that Nebraska's constitutional provisions facially discriminate "against farming by corporations and syndicates," but "does not apply to family farm corporations or limited partnerships in which at least one family member resides on or engages in the daily labor and management of the farm."¹⁰¹

iii. Anti-Corporate Farming Laws in General.

Although Nebraska represents an extreme example of regulatory attempts on corporate farming, most states have followed the Kansas model for anti-corporate farming regulations.¹⁰² Minnesota, Wisconsin, and Nebraska have all enacted statutes enforcing similar restrictions as those developed in Kansas in 1931.¹⁰³ For example, Minnesota has found

97. *Jones v. Gale*, 470 F.3d 1261, 1264 (8th Cir. 2006); NEB. CONST. art. XII, § 8 (2016).

98. *Jones*, 470 F.3d at 1264.

99. *Id.*

100. *See id.*

101. *Id.* at 1268.

102. *See Stayton*, *supra* note 87, at 685.

103. *Id.* at 683-84.

that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.¹⁰⁴

Following this line of reasoning, Minnesota, just like Kansas and other anti-corporate farming states, has placed substantial limitations on corporate farmers:

No corporation, limited liability company, pension or investment fund, trust, or limited partnership shall engage in farming; nor shall any corporation, limited liability company, pension or investment fund, trust, or limited partnership, directly or indirectly, own, acquire, or otherwise obtain any interest, in agricultural land other than a bona fide encumbrance taken for purposes of security.¹⁰⁵

The Minnesota statute can be seen as a stricter burden on corporate farmers, reading, “[n]o corporation, limited liability company, pension or investment fund, trust, or limited partnership shall engage in farming”¹⁰⁶ Textually, corporate farmers are effectively banned from engaging in farming practices in Minnesota.¹⁰⁷ The outright ban on corporate farming is also found in Iowa’s anti-corporate farming statute, Iowa Code section 9H.¹⁰⁸

iv. Iowa’s Anti-Corporate Farming Act – Practical Implications

The Iowa Anti Corporate Farming statute, set forth generally in section 9H of the Iowa Code, substantially favors family-run entities.¹⁰⁹ There are two controlling subsections in Iowa Code section 9H: (1) Subsection 9H.4 and (2) Subsection 9H.5.¹¹⁰ Subsection 9H.4 is a restrictive section, and Subsection 9H.5 is a limiting section.¹¹¹ Moreover, Section 9H contemplates three categories of business entities: (1) the family-ran entity; (2) the authorized entity; and (3) the traditional entity. The family-ran entity is one generally ran by “persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.”¹¹² This familial standard

104. MINN. STAT. ANN. § 500.24(1) (West 2016).

105. *Id.* § 500.24(3)(a).

106. *Id.*

107. *Id.*

108. *See generally* IOWA CODE § 9H (2016).

109. *See generally id.*

110. *See* IOWA CODE § 9H.4; *see also* IOWA CODE § 9H.5.

111. *See* IOWA CODE § 9H.4; *see also* IOWA CODE § 9H.5.

112. IOWA CODE § 9H.1(9).

is imposed on each traditional business entity contemplated by the statute, including corporations, limited liability corporations, limited partnerships, and trusts.¹¹³ Authorized entities include all traditional entities, excluding partnership entities.¹¹⁴ Authorized entities carry with them the following characteristics: (1) each requires that “[t]he stockholders do not exceed twenty-five in number;” and (2) that “[t]he stockholders are all natural persons or persons acting fiduciary capacity for the benefit of natural person or non-profit corporations.”¹¹⁵ Finally, the traditional entity includes corporations, limited liability corporations, limited partnerships, and trusts formed under the general laws of the state of Iowa.¹¹⁶

Code Section 9H generally favors family-ran entities.¹¹⁷ Authorized entities are favored to a degree less than family-ran entities, and traditional entities are disfavored.¹¹⁸ Assuming Iowa’s anti-corporate farming statute is informative of similar anti-corporate farming statutes in sister states, a review of the provisions in Iowa’s anti-corporate farming statute demonstrates that legislators favor family-ran agricultural entities, provide exceptions for certain authorized agricultural entities, and attempt to limit the overall expansion of corporate-agriculture entities within their states.

a. Subsection 9H.4—Restrictions

Subsection 9H.4 governs restrictions on the increase of holdings in agricultural land. A holding is a “comprehensive term applied to the property, whether real, personal, or both, owned by an individual or business.”¹¹⁹ Iowa Code § 9H.1(2) broadly defines agricultural land as “land suitable for farming.”¹²⁰ Agricultural land “is not defined as land actively used for farming by the owner or someone else; it is defined as land *suitable* for farming.”¹²¹ Iowa Code § 9H.1(14) defines farming as “the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock.”¹²² The purpose of subsection 9H.4, then, is to impose restrictions on interests in land

113. See IOWA CODE §§ 9H.1(8)-(11).

114. See IOWA CODE §§ 9H.1(3)-(5).

115. IOWA CODE § 9H.1(3).

116. See IOWA CODE § 9H.1(7); see also IOWA CODE §§ 9H.1(16), (17), (22).

117. See IOWA CODE § 9H.4; see also IOWA CODE § 9H.5.

118. See IOWA CODE § 9H.4; see also IOWA CODE § 9H.5.

119. *Holding*, WEST’S ENCYCLOPEDIA OF AM. L. (2d ed. 2005).

120. IOWA CODE § 9H.1(2).

121. *Iowa State Bank & Tr. Co. v. Michel*, 683 N.W.2d 95, 102 (Iowa 2004); *In re Wagner*, 259 B.R. 694, 699-700 (B.A.P. 8th Cir. 2001).

122. IOWA CODE § 9H.1(14).

suitable for farming by those entities within the scope of this provision.¹²³ Entities within the scope of Section 9H.4 include traditional entities such as those described above—that is, corporations, limited liability companies, and trusts.¹²⁴ Notably, partnership entities are excluded.¹²⁵ Entities not within scope of Section 9H.4 are family farm corporations, family farm limited liability companies, family trusts, authorized family farm corporations, authorized limited liability companies, authorized trusts, revocable trusts, and testamentary trusts.¹²⁶ Thus, traditional entities are broadly restricted from increasing holdings in agricultural land.¹²⁷

At the outset, Section 9H.4 distinguishes traditional entities, such as corporations, limited liability corporations, and trusts, from family-run and authorized entities.¹²⁸ Thus, in order to fall outside the restrictions of Section 9H.4, corporations, limited liability corporations, or trusts must be either family-run or authorized.¹²⁹ Iowa Code § 9H.1(9)(a) defines a family farm corporation as one

[f]ounded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related¹³⁰

A family farm corporation has two initial requirements concerning the decision making structure of the corporate entity: (1) a majority of *voting stock* must be held by persons¹³¹ related to each other and (2) a majority of the *stockholders* must be related to each other.¹³² To qualify as a familial relation under subsection 9H.1(9)(a), a person must be a spouse, parent, grandparent, lineal ascendant of a grandparent, or the same on a person's spouses' side of the family.¹³³ Persons with fiduciary relations to the stockholders also fall within the scope of this provision.¹³⁴ Also, to qualify as a family farm corporation, "sixty percent of the gross revenue

123. See IOWA CODE § 9H.4.

124. *Id.* § 9H.4(1).

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. See *id.*

130. IOWA CODE § 9H.1(9)(a).

131. See *id.* § 9H.1(9) (indicating that all a family corporation's stockholders are to be *natural persons* or other persons acting with a fiduciary capacity benefitting a natural person).

132. *Id.* § 9H.1(9)(a).

133. *Id.*

134. *Id.* § 9H.1(9)(b).

of the corporation over the last consecutive three-year period [must] come[] from farming.”¹³⁵ Overall a family farm corporation, under subsection 9H.1(9), must have a majority of voting stock and stockholders as relatives, and sixty percent of the corporations assets must derive from farming activities.

To qualify as a family farm limited liability corporation, the limited liability company must meet the same familial requirements for corporations under subsection 9H.1(9)(a).¹³⁶ All members of the limited liability company must be natural persons or a person acting within a fiduciary capacity for the benefit of those natural persons or family trusts,¹³⁷ and “[s]ixty percent of the gross revenues of the limited liability company over the last consecutive three-year period comes from farming.”¹³⁸ Although these requirements are the same as forming a family farm corporation, there is an implied requirement that the family farm limited liability corporation must form as a limited liability corporation under Iowa law.¹³⁹ Thus, a family farm limited liability company must form under Iowa Code section 489.¹⁴⁰

Iowa Code section 489 governs the formation of Iowa Limited Liability Corporations.¹⁴¹ Section 489 of the Iowa Code is “patterned . . . on the first Uniform Limited Liability Company Act” and codifies major provisions of the Revised Uniform Limited Liability Company Act (“Re-ULLCA”).¹⁴² This provision of the Iowa Code, in a broad sense, establishes that an Iowa limited liability company is distinct from its members, and that it shares characteristics with limited partnerships and corporations.¹⁴³ Re-ULLCA also imposes deference to a member’s operating agreement for most internal governance rules.¹⁴⁴ In contrast, section 490A of the Iowa Code is the original version of the Iowa Limited Liability Act (“ILLCA”), now displaced by the adoption Re-ULLCA, which is now mandatorily enforced since January 1, 2009.¹⁴⁵ Thus, to qualify as a family farm limited liability company under subsection 9H.1(9), the corporate requirements must be met,

135. *Id.* § 9H.1(9)(c).

136. *See id.* § 9H.1(9)(a); *see also* IOWA CODE § 9H.1(8)(a).

137. IOWA CODE § 9H.1(10)(b).

138. *Id.* § 9H.1(10)(c).

139. *See id.* § 9H.1(9)(a); *see also* § 9H.1(18) (indicating that a limited liability company is formed under sections 489).

140. *Id.* at § 9H.1(18).

141. *See* IOWA CODE § 489 (2016).

142. 5 IOWA PRAC. SERIES, *Business Organizations* § 13:2, Westlaw (database updated Nov. 2015).

143. 5 IOWA PRAC. SERIES, *Business Organizations* § 13:5, Westlaw (database updated Nov. 2015).

144. *Id.*

145. 5 IOWA PRAC. SERIES, *Business Organizations* § 13:1, Westlaw (database updated Nov. 2015).

along with the additional limited liability provisions required under Iowa law.

A family trust is one “[i]n which a majority interest in the trust is held by and the majority of the beneficiaries are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.”¹⁴⁶ Family trusts impose the same familial requirements as family corporations and family limited liability corporations. Moreover, family trusts also require that “all the beneficiaries are natural persons who are not acting as a trustee or in a similar capacity for a trust . . . or persons acting in a fiduciary capacity, or nonprofit corporations.”¹⁴⁷ Finally, a family trust has a conditional requirement that “[i]f the trust is established on or after July 1, 1988, the trust must be established for the purpose of farming and sixty percent of the gross revenues of the trust over the last consecutive three-year period must come from farming.”¹⁴⁸ Overall, then, a family trust—despite a few minor differences—requires substantially the same requirements as a family corporation and a family limited liability corporation.

In order to avoid the restrictions imposed by subsection 9H.4, farmers seeking the protection of a corporate structure or the fiduciary relationship of a trust should first take note of the above requirements in order to avoid restrictions on the increase in holdings of their agricultural land. If a farmer incorporates or establishes a trust without consideration of the above-mentioned factors, she could be subject to a deadlock on her ability to expand her farming operation. As indicated at the outset of this section, traditional corporate entities are effectively barred from increasing holdings in agricultural land. Thus, to avoid these restrictions, a farmer should seek to ensure that her farming operation falls within the standards of a family-ran, or, at minimum, the authorized status pursuant to subsection 9H.4.

b. Subsection 9H.5—Limitations

Iowa Code subsection 9H.5 is a corollary to subsection 9H.4. 9H.5 imposes limitations on the amount of land an authorized farming entity can legally obtain. The operative provision of subsection 9H.5 is 9H.5(1), which reads as follows:

An authorized farm corporation, authorized limited liability company, or authorized trust shall not, on or after July 1, 1987, and a limited partnership other than a family farm limited partnership shall not, on or after July 1, 1988, either

146. IOWA CODE § 9H.1(13)(a) (2016).

147. *Id.* § 9H.1(13)(b).

148. *Id.* § 9H.1(13)(c).

directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the authorized farm corporation, authorized limited liability company, limited partnership, or authorized trust would then exceed one thousand five hundred acres.¹⁴⁹

Although reading nearly identically to the operative provision of subsection 9H.4(1), the scope of this provision applies to two types of entities: (1) authorized entities and (2) partnership entities. Moreover, this provision provides dates that function to protect the entities within its scope from retrospective legislation. Ultimately, the primary function of subsection 9H.5(1) is to limit the amount of agricultural land authorized entities and partnerships are able to obtain.¹⁵⁰

c. Concluding Analysis

Whereas subsection 9H.4(1) works to completely bar traditional corporations from increasing holdings in agricultural land and subsequently grants the option for increases in holdings to family-ran entities and authorized entities,¹⁵¹ subsection 9H.5(1) imposes a 1,500 acreage limitation on the amount of land acquired or obtained by authorized entities and partnership entities.¹⁵² Thus, where subsection 9H.4(1) restricts traditional entities from obtaining increases in agricultural land, subsection 9H.5(1) works to limit the amount of land authorized entities and partnership entities can obtain. Notably, family-ran corporations are not subject to any restrictions on the amount of land they can obtain.¹⁵³

A question thus arises as to why traditional entities are barred from increasing holdings in agricultural land, whereas, authorized entities and partnership entities are allowed to increase holdings but only up to 1,500 acres. The answer to this question can be summarized by the previous discussions in this Note: generally, there is a negative attitude towards corporate farmers in the United States. The widespread opposition to corporate farming becomes apparent in anti-corporate farming statutes, such as Iowa's above: where family-ran entities are not restricted in the amount of agricultural land they can obtain and where authorized and partnership entities are subject to minor limitations, traditional corporate farms are legally banned from obtaining increases in agricultural land.

149. IOWA CODE § 9H.5(1).

150. *See id.*

151. *See* IOWA CODE § 9H.4(1).

152. IOWA CODE § 9H.5(1).

153. *Id.*

VI. POTENTIAL PROBLEMS

Unanticipated problems arise from statutory provisions such as Iowa's and the others discussed above. Not only do anti-corporate farming statutes limit the ability of corporate farmers to engage in agricultural practices, but the enforcement of such laws also falls upon family farmers.¹⁵⁴

Several corporate farming laws exempt "family farm corporations." To qualify as a family farm corporation, the entity typically must be comprised of family members who are within a certain degree of kinship and who must own a majority of the voting stock in the corporation. A common requirement is that the shareholders in a family farm corporation be natural persons rather than a corporate entity. Six of the state statutes limit the number of shareholders an authorized corporation can have. Another common requirement to satisfying the family farm corporation exemption is that at least one family member must reside on the farm to prevent "absentee ownership," a characteristic proponents of corporate farming laws often attribute to corporate farming activities.¹⁵⁵

Kinship and residency requirements, such as those mentioned in the above excerpt, not only prevent corporate farming operations from occupying agricultural land reserved by lawmakers for family farmers but also create additional requirements for family farmers wishing to engage in farming practices.¹⁵⁶ Moreover, as demonstrated in Iowa's anti-corporate farming statute, mandatory provisions requiring a majority of voting stock and stockholders as relatives, along with asset limitations, all work to create boundaries within which family farmers are forced to operate.

A. *Limitations on Business Opportunities for Family Farmers*

As a practical matter, then, statutes seeking to restrict and limit corporate farmers implicitly restrict and limit family farmers by imposing boundaries within which they must act. Such boundaries can have the effect of limiting the ability of family farmers' engagement in expansive business practices. A specific example of this would be restrictions on family farmers' ability to sell, lease, and contract the rights of use to their agricultural land to corporations prohibited from obtaining

154. Kristine A. Tidgren, *Iowa's Anti-Corporate Farming Laws: A General Overview*, IOWA ST. UNIV. (Oct. 25, 2015), <https://www.calt.iastate.edu/article/iowas-anti-corporate-farming-laws-general-overview>.

155. *Corporate Farming Laws – An Overview*, THE NAT'L AGRIC. L. CTR., <http://nationalaglawcenter.org/overview/corporatefarminglaws> (last visited Jan. 16, 2017).

156. *Id.*

increases in holdings of such land.¹⁵⁷ In a sense, family farmers are legally restricted to limited business practices at the risk of monetary penalties and land divestment.¹⁵⁸

B. Limitations on Prospective Farmers

Arguably, there are further problems for new farmers wishing to enter the farming industry.¹⁵⁹ Where individuals are not family members, substantial restrictions and limitations will be imposed by anti-corporate farming laws tending to restrict or otherwise limit such business endeavors. Many new farmers seeking incorporation will have to seek authorized entity status in order to procure and develop agricultural land.¹⁶⁰ Thus, individuals seeking a start in the farming industry will have to overcome substantial barriers to begin farming. Interestingly, then, anti-corporate farming statutes will limit the ability of new farmers from entering into the farming industry, potentially stagnating farming practices overall.

VII. CONCLUDING OBSERVATIONS

Despite the perceived dominance of corporate farming, the USDA contends that family farms dominate agricultural production in the United States.¹⁶¹ Citing data measuring the share of labor provided by family farms in the United States, the USDA demonstrates that farm production is still predominantly controlled by family farmers.

The first measures the share of the farm's *employed* labor provided by the principal operator and his or her spouse. Using this approach, 87.1 percent of U.S. farms (accounting for 57.6 percent of U.S. farm production) are family farms which rely primarily on the principal operator and spouse. . . . The second approach to measuring the share of labor provided by U.S. farm families requires the principal operator and his or her spouse to provide most of the labor *used* on the farm, including that provided by contract labor firms. Farms can contract with other businesses that provide workers to perform specific tasks—often harvesting—over a specified time period. These service firms hire workers themselves and provide contract labor services to the farm sector with workers who are not employees of the farm. The USDA farm survey

157. See IOWA CODE § 9H.4.

158. See *id.* § 9H.4(2).

159. See Matthew M. Harbur, *Anti-Corporate, Agricultural Cooperative Laws and the Family Farm*, 4 DRAKE J. AGRIC. L. 385, 392 (1999) (arguing that anti-corporate laws might have the potential to encourage opportunities for new farmers).

160. See IOWA CODE § 9H.1.

161. James M. MacDonald, *Family Farming in the United States*, USDA (Mar. 4, 2014), <http://www.ers.usda.gov/amber-waves/2014/march/family-farming-in-the-united-states/>.

that underlies this analysis does not collect contract labor hours; instead, researchers estimated hours by dividing the reported contract labor expenses by the average wage rate for hired farm labor in the farm's locality. Using this approach, which most closely matches the FAO definition, 86.1 percent of U.S. farms (accounting for 47.4 percent of U.S. farm production) are family farms.¹⁶²

What this data shows is that family farms play a significant role in both employing labor and personally engaging in labor.¹⁶³ This data is significant, in that it tends to counter the predominant position that corporate farming is becoming the controlling agricultural force in the United States.

Comparing the USDA's data above to information showing the growing hegemony of corporate farming in the United States, and assuming the USDA's data to be true, an important observation can be made: although corporate farmers are gaining control over the agricultural market in the United States, family farmers are still substantial agricultural players. Explaining this position, the USDA asserts three positions as to why family farmers still dominate the marketplace: (1) agricultural production is better suited for small-scale, family organizations, and not "extensive economies of scale;" (2) agricultural production generally requires knowledge of local environmental conditions and seasonal work conditions, better understood by the family farming unit; and (3) agricultural production requires "an intimate knowledge of local soil and nutrient, pest, and weather conditions to effectively manage cropping operations," situations better understood by family farmers.¹⁶⁴ Overall, the USDA indicates that, where corporate farmers dominate in the overall scale of production, family farmers possess intimate knowledge about local conditions generally favoring agricultural production.¹⁶⁵ In a basic sense, corporate farmers produce quantity, whereas family farmers produce quality.¹⁶⁶

The debate over the propriety of family and corporate farming is essentially a debate over longstanding agricultural practices, and whether these practices should change in the wake of technological and methodological advancements in agriculture. Mainstream media has pointed to concerns over corporate ethics, and whether corporate practices have a place in agriculture.¹⁶⁷ Moreover, lawmakers, concerned that the traditional values associated with farming might be "packed and

162. *Id.*

163. *See id.*

164. *Id.*

165. *See id.*

166. *See id.*

167. *See, e.g.,* FOOD, INC., *supra* note 48.

sold,¹⁶⁸ have taken steps to limit the expansion of corporate farming enterprises.¹⁶⁹

Debates between traditional family farming practices and corporate farming practices tend to fall into an “either or” dilemma—that is, people tend to presume that corporate farming ought to give way to family farming, or vice versa. In much of the dialogue on the relationship between corporate and family farming, there is an inherent want to separate the two practices and pick one over the other.

This Note has demonstrated positions on either side of the debate over farming practices in an effort to show that there is no objectively correct position to take; that corporate farming practices are an economic reality, which will inevitably take place where intellectual and technological advancements are made in the field of agriculture; and that, although traditional family farming might be hindered by corporate farming practices, there is still a substantial need for these traditional farming practices. If there is an objective truth regarding farming practices, it would be summarized in the following comment from Thomas Jefferson:

Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independ[e]nt, the most virtuous, & they are tied to their country & wedded to it's [sic] liberty & interests by the most lasting bonds. As long therefore as they can find employment in this line, I would not convert them into mariners, artisans or anything else. But our citizens will find employment in this line till their numbers, & of course their productions, become too great for the demand both internal & foreign. This is not the case as yet, & probably will not be for a considerable time.¹⁷⁰

Acting in accordance with the sentiments of famous agrarian and founding father, Thomas Jefferson, farmers, media, and lawmakers ought to focus on advancing the field of agriculture by embracing its many practical nuances; by encouraging open dialogue; and by working together to create an agricultural market that produces both quantity *and* quality agricultural products – not simply either or.

VII. FINAL RECOMMENDATIONS

Today, implicit—and in some instances explicit—attitudes towards corporate farming entities have culminated in regulations of the farming industry. These regulations, as the Iowa Anti-Corporate Farming Statute exemplifies,¹⁷¹ seek to limit the growth of corporate farming entities, while promoting the growth and

168. Mellander & Fagerström, *supra* note 76, at 320.

169. *See, e.g.*, KAN. STAT. ANN. § 17-5904 (2016).

170. Letter from Jefferson to John Jay, *supra* note 1.

171. *See* IOWA CODE § 9H (2016).

continued expansion of family-run and authorized entities. As a final recommendation, this Note suggests that those engaged in farming or those who will be engaged in farming activities in the future should pay close attention to the requirements imposed by such regulations—at least within states imposing anti-corporate farming regulations. Requirements such as minimum and mandatory stockholders with a fourth degree of kinship; gross profit maximums; and general entity considerations imposed by anti-corporate farming statutes can bring farmers—even family farmers—within the restrictive and limiting provisions of these statutes. The continued sustainability of family farmers in the United States—specifically in the Midwest states—thus, requires business planning considerations regarding the restrictions and limitations imposed by anti-corporate farming statutes. In sum, farmers, and attorneys representing these farmers, must pay specific attention, not only to business needs, but also to the restrictions imposed by anti-corporate farming regulations. To do so will encourage the continued sustainability of family farmers, protecting them from the restrictions and limitation imposed by anti-corporate farming statutes.