THE INJUSTICES OF AGRICULTURAL EXCEPTIONALISM: A HISTORY AND POLICY OF ERASURE

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"The awkward becomes acceptable, and the unacceptable becomes merely inconvenient. Live with it long enough, and the unthinkable becomes normal. Exposed over the generations, we learn to believe that the incomprehensible is the way that life is supposed to be."[1]

– Isabel Wilkerson, Caste: The Lies That Divide Us

ABSTRACT

"Agricultural exceptionalism" is broadly identified in scholarship as the exemption of agriculture from social, labor, health, and safety regulations that reinforce agriculture's unique status in law in society. This article calls for a deeper examination of the historical and philosophical roots underlying the perception of agriculture as exceptional and the manifestation of this view in the legal realm. Further, the article identifies the instances in which the promoted virtues of agricultural exceptionalism fail to actualize in present-day U.S. industrial agricultural

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1. ISABEL WILKERSON, CASTE: THE LIES THAT DIVIDE US 16 (2020).

production. Through investigating the historical and philosophical origins of agriculture's unique status and reverence reflected in legal and societal policies, the article reveals an alternate view of how a food production system founded on agricultural exceptionalism promotes egregious health, safety, and labor concerns rather than a system of small, self-sustaining farms and communities. After reflecting upon the inconsistencies between agricultural exceptionalism in policy and its manifestation in practice, the article concludes by insisting agricultural policymakers reckon with the injustices that arise from agriculture's exception from important social, environmental, and safety regulations and realign current regulatory standards to support agriculture's vital role.

I. INTRODUCTION

Regulation of agriculture in the United States, under the guise of a benevolent policy of "agricultural exceptionalism," perpetuates an intensely anti-democratic reality in the United States food production. Policymakers and politicians alike insist that the hollow structure of agricultural regulation protects citizens of the highest virtue—independent, self-sufficient family farms that represent the quintessentially "American" essence—and thus our democracy writ large.[2] Yet the practice of agricultural exceptionalism in the United States creates and continues an agricultural system in which abuse of workers and the land is foundational. Especially amidst the ongoing COVID-19 pandemic, the cognitive dissonance of calling farmworkers "essential" while simultaneously allowing for illness and the elements to take their lives was and continues to be blatant. This discrimination is particularly evident where an array of federal and state protections are afforded to nearly all other industries, but agricultural workers are *specifically* excluded from legislation ensuring basic worker rights such as livable wages, limited exposure to toxic workplace environments, and freedom from discrimination in the workplace.[3] Despite this reality, most consumers remain too distant from their food source—physically and mentally—to instigate the change warranted by the horrors inflicted upon farmworkers. The public blindness about injustices of our food system is intentional and built into the very essence of the United States agricultural policy.

Though oppression of farmworkers through agricultural law and policy is nothing novel in the United States, its modern manifestation demands explanation.

2. *See, e.g.*, Bradley M. Jones, *American Agrarianism*, *in* ENCYC. OF FOOD AND AGRIC. ETHICS 158 (David M. Kaplan & Paul B. Thompson eds., 2d ed. 2019).

3. Samantha Mikolajczyk, *Equal Employment Opportunities for Agricultural Workers*, THE NAT'L AGRIC. L. CTR. (May 5, 2022), https://nationalaglawcenter.org/equal-employment-opportunities-for-agricultural-workers/ [https://perma.cc/TJC4-HVJZ].

How can the same policies that identify agriculture as essential to human and societal survival create working conditions perilous to farmworker lives? When did agricultural policy start encouraging and perpetuating farming practices that sacrifice stewardship for profit at every instance? Criticism of agricultural practices, who bears the responsibility for performing them, and how that performance manifests are questions Americans have asked of themselves time and again. From the era of European settlement up until the present day, the United States continues to reinforce a caste system that has been with us all along.[4] The only immutable principle of agriculture is that it is essential to human survival. The rest of the United States agricultural system's stagnancy when it comes to justice and reform suggests an industry-wide choice, given its persistence.

Agricultural exceptionalism is broadly identified in scholarship as "the exemption of agriculture from social, labor, health, and safety legislation [that] has reinforced agriculture's unique status in law and society."[5] Contemporary legal scholars concentrate primarily on the deleterious effects that this regulatory approach creates, from the exclusion of farmworkers from federal wage and labor protections to their unregulated exposure to pesticides, harsh weather, and other hazardous work conditions it permits.[6] Additionally, the implementation of agricultural exceptionalism has similarly been blamed for the horrific environmental

4. *See generally* ALLAN KULIKOFF, THE AGRARIAN ORIGINS OF AMERICAN CAPITALISM (Univ. Press of Va. 1992) [hereinafter AGRARIAN ORIGINS]; *see generally* Allan Kulikoff, *The Transition to Capitalism in Rural America*, 46 THE WM. & MARY Q. 120 (Jan. 1989) [hereinafter *Transition to Capitalism*].

5. Guadalupe T. Luna, *An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor*, U. PA. J. OF LAB. & EMP. 487, 489 (1998).

6. *See id.*; *see also generally* Meredith Kaufman, *The Clash of Agricultural Exceptionalism and the First Amendment: A Discussion of Kansas' Ag-Gag Law*, 15 J. OF FOOD L. & POL'Y 49 (2019); Jason Foscolo & Michael Zimmerman, *Alternative Growth: Forsaking the False Economies of Industrial Agriculture*, 25 FORDHAM ENV'T. L. REV. 316 (2014); Susan Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENV'T. L. & POL'Y REV. 935 (2010); Gabriela Steier, *A Window of Opportunity for GMO Regulation: Achieving Food Integrity Through Cap-and-Trade Models from Climate Policy for GMO Regulation*, 34 PACE ENV'T. L. REV. 293 (2017); Jess Phelps, *Agricultural Exceptionalism in Vermont Land Use Law*, 30 DUKE ENV'T. L. & POL'Y F. 143 (2019); Charlotte E. Blattner & Odile Ammann, *Agricultural Exceptionalism and Industrial Animal Food Production: Exploring the Human Rights Nexus*, 15 J. OF FOOD L. & POL'Y 92 (2019); Sean A. Andrade, *Biting the Hand that Feeds You: How Federal Law Has Permitted Employers to Violate the Basic Rights of Farmworkers and How This Has Begun to Impact Other Industries*, 4 U. PA. J. OF LAB. AND EMP. L. 601 (2002); Peter J. Wall, *Land Use and Agricultural Exceptionalism*, 16 SAN JOAQUIN AG. L. REV. 219 (2007); Andrew S. Kosegi, *The H-2A Program: How the Weight of Agricultural Employer Subsidies is Breaking*

destruction generated by the lack of regulatory practices.[7] Discussion of these particular connections between present-day working conditions and agricultural practices must carefully connect the dots between the exemption of agriculture from a wide array of regulatory edicts to shed light on the deleterious conditions the omission causes. It is not difficult to imagine that where employers are not *required* to provide costly protections, the bottom dollar decides for them. The more perplexing question arises from "why" humanitarian motivations are absent and why this has become the norm. Rarely found in the literature is an examination of agricultural exceptionalism's entrenched and unique history in the United States as well as how its manifestation has and continued to morph to avoid systemic accountability.

Behind the policy of agricultural exceptionalism in the United States' regulations is what some scholars coin the "regressive agrarian social imaginary."[8] At its heart, the agrarian social imaginary rests on what, across the literature and academic fields, is predominately referred to as "the Jeffersonian ideal," a nation built of "independent, property-owning, small-scale farmers."[9] "Yeoman," as they would come to be known, a romanticized version of the average American farmer, were thought to possess the highest virtues a newly-forming democracy could hope to secure.[10] Though this pastoral narrative persists, current USDA data shows that our commercial-industrial agricultural system looks drastically different in both

the Backs of Domestic Migrant Farm Workers, 35 IND. L. REV. 269 (2001); Nicole E. Negowetti; *Exposing the Invisible Costs of Commercial Agriculture: Shaping Policies with True Costs Accounting to Create a Sustainable Food Future*, 51 VAL. L. REV. 447 (2017); Elizabeth Lincoln, *Accountability for Pesticide Poisoning of Undocumented Farmworkers*, 24 HASTINGS ENV'T. L. J. 2 (2018); Juan F. Perea, *A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest*, 51 UCLA L. REV. 283 (2003) [hereinafter *A Brief History of Race*]; Keith Cunningham-Parmeter, *A Poisoned Field: Farmworkers, Pesticide Exposure, and Tort Recovery in an Era of Regulatory Failure*, 28 N.Y. REV. L. & SOC. CHANGE 431 (2004); Beth Lyon, *Farm Workers in Illinois: Law Reforms and Opportunities for the Legal Academy to Assist Some of the State's Most Disadvantaged Workers*, 29 ILL. U. L. J. (2004); Melissa Mortazavi, *Food, Fracking, and Folly*, 50 ARIZ. ST. L. J. 617 (2018); Katrina A. Tomas, *Manure Management for Climate Change Mitigation: Regulating CAFO Greenhouse Gas Emissions Under the Clean Air Act*, 73 U. MIAMI L. REV. 531 (2019); Danica Li, *Toxic Spring: The Capriciousness of Cost-Benefit Analysis Under FIFRA's Pesticide Registration Process and Its Effect on Farmworkers*, 5 CAL. L. REV. 1405 (2015).

7. *See* Wall, *supra* note 6.

8. Sang-hyoun Pahk, *Who is Ruining Farmers Markets? Crowds, Fraud, and the Fantasy of "Real Food"*, 39 J. OF AGRIC. AND HUM. VALUES 19, 19 (2021).

9. *Id.*; *see also* Linda A. Malone, *Reflections on the Jeffersonian Ideal of an Agrarian Democracy and the Emergency of an Agricultural and Environmental Ethic in the 1990 Farm Bill*, 12 STAN. ENV'T L. J. 3 (1993).

10. Adam Calo, *The Yeoman Myth: A Troubling Foundation of the Beginning Farmer Movement*, 20 GASTRONOMICA: THE J. FOR FOOD STUD. 12, 14-15 (2020).

the size of its operations and what is cultivated from them than the conception Thomas Jefferson envisioned.[11] Instead of promoting self-sufficiency and independence, our agricultural system "valorizes patriarchal 'family values,' denies historical legacies of racism and colonialism, and relies for its coherence on indigenous erasure."[12] If the policy of agricultural exceptionalism champions protecting both the tangible (food/agriculture products) *and* intangible products of agriculture, the current regulatory structure it engenders fails to do so.

The literature on the subject identifies two primary geneses of agricultural exceptionalism in United States regulation: (1) the founding era, namely Thomas Jefferson's notions of agrarian democracy during the nation's founding,[13] and (2) the New Deal era's legislation and political dynamics.[14] To the extent the origins of agricultural exceptionalism are discussed in scholarship, the analysis is often narrowed to social and economic forces.[15] Many scholars that point to Thomas Jefferson as the source of agricultural exceptionalism often fail to discuss his political, religious, or influential life experiences in their analysis. Those that attempt a more robust explanation attribute the tie between Jefferson and agricultural exceptionalism to his agrarian ideal of the yeoman farmer.[16] As this version of the narrative goes, Jeffersonian democracy's exaltation of the yeoman farmer was a rebuke to more aristocratic forms of governance and social hierarchy.[17] Jefferson imagined a narrative hero in the yeoman farmer, the citizen who would best uphold the ideals of life, liberty, and the pursuit of happiness.[18] But, as American Historian Richard Hofstader notes:

> [W]hat the articulate people who talked and wrote about farmers and farming—the preachers, poets, philosophers, writers, and statesmen—liked about American farming was not, in every respect, what the typical working farmer liked. For the articulate people were drawn irresistibly to the noncommercial, non-pecuniary, self-sufficient aspect of American farm life. To them it was an

11. *See* U.S. DEP'T OF AGRIC., FARMS AND LAND IN FARMS 2019 SUMMARY (Feb. 2020), https://www.nass.usda.gov/Publications/Todays_Reports/reports/fnlo0220.pdf [https://perma.cc/D2KT-FMSF].

12. Pahk, *supra* note 8, at 19.

13. *See* Jones, *supra* note 2, at 159-61.

14. Sarah O. Rodman, *Agricultural Exceptionalism at the State Level: Characterization of Wage and Hour Laws for U.S. Farmworkers*, 6 J. OF AGRIC., FOOD SYS. AND CMTY. DEV. 1, 2 (2016).

15. *See* Luna, *supra* note 5; *see also* Negowetti, *supra* note 6.

16. Calo, *supra* note 10, at 14.

17. *Id.* at 16.

18. *Id.*

ideal.[19]

And an ideal it truly was, for a brief look into Jefferson and the world he inhabited reveals a much more insidious truth.

Scholars that discuss New-Deal-era legislation as the origin of agricultural exceptionalism ordinarily focus on the inherently discriminatory nature of agricultural exceptionalism. Citation to the New Deal era is most found in pieces discussing issues of race and class inherent in American agriculture.[20] As legal scholar of agricultural labor Joan D. Flocks explains agricultural exceptionalism's manifestation during the New Deal, many of these labor regulations:

> [E]merged during a historical time in the U.S. when institutional discrimination was accepted and prevalent . . . Congress failed to extend their protections to farmworkers under the doctrine of agricultural exceptionalism—a practice that historically emerged from negotiations between Southern politicians seeking to protect agriculture's access to cheap labor (which at the time was predominately African-American) and Franklin D. Roosevelt's administration attempting to promote New Deal social and economic reform.[21]

Thus, New Deal politics were woven into agricultural exceptionalism, but was not its origin.

Though a few pieces provide substantial chronological analysis of the New Deal era origination of agricultural exceptionalism,[22] most leave the discussion at the level of stating how and when the policy took hold in the United States.[23] When

19. RICHARD HOFSTADTER, THE AGE OF REFORM 23 (Knopf 1955).

20. *See, e.g.*, Rodman, *supra* note 14.

21. Joan D. Flocks, *The Environmental and Social Injustice of Farmworker Pesticide Exposure*, 19 GEO. J. POVERTY L. & POL'Y 255, 264, 269 (2021).

22. *A Brief History of Race*, *supra* note 6, at 307 ("Agricultural exceptionalism appears to have originated in a desire to reproduce the subordinated laboring class of the southern plantation: Direct legislative history explaining the FLSA's exclusion of farmworkers is virtually nonexistent. By 1938, when the FLSA became law, the exclusion had become routine in New Deal legislation. An examination of the predecessor legislation to FLSA, however, reveals the reason for the exclusion. To enact the social and economic reforms of the New Deal, President Roosevelt and his allies were forced to compromise with southern congressmen. Those congressmen negotiated with Roosevelt to obtain modifications of the New Deal legislation that preserved the social and racial plantation system in the South—a system resting on the subjugation of blacks and other minorities. As a result, New Deal legislation, including the FLSA, became infected with unconstitutional racial motivation." (internal citations omitted)).

23. Alexis Guild & Iris Figueroa, *The Neighbors Who Feed Us: Farmworkers and Government Policy—Challenges and Solutions*, 13 HARV. L. & POL'Y REV. 157, 159-60 (2018) ("Since the American Revolution, U.S. society has largely subscribed to an 'agrarian ideal'

a policy creates such an egregious level of harm wrought upon both the land and the people, especially when concerning something so central to survival as agriculture, a more extensive examination of its history is required. Absent a more robust exploration into the motives that fuel such an attachment to the imagery painted by Thomas Jefferson and post-war agricultural regulation, the scope and extent of the harmful effects of agricultural exceptionalism in United States law will not be fully realized. The country will remain blind to the philosophical underpinnings of agricultural exceptionalism which are driving the injustices of the United States' mode of agricultural regulation. Without a critical examination of the practice of agricultural exceptionalism, American society will continue "the historic trend of selecting politically and socially vulnerable groups as the laborers of food systems."[24] And, in doing so, we will only pursue "alternatives that remain embedded in severe forms of racial and class injustice . . . and fail to give sufficient dignity to the hands that feed us."[25] While race and class are inseparable from our agricultural system and thus its regulation, attributing the origin of agricultural exceptionalism to as recently as the New Deal neglects the roots of such a poisonous tree by pointing only to the rotting apple on the ground.

The call for a more thorough analysis of agricultural exceptionalism is (at the very least) 30 years old. Nearly four decades ago, author Robert Thomas warned that "without a systematic analysis of the demand for labor—*and with it, scrutiny of the mythology of agricultural exceptionalism*—proposals for an undifferentiated solution to the problem of labor supply may well exacerbate the problems which exist already."[26] This appeal for critical analysis, from a short commentary published in 1986, notes the discrepancies between the reality of the agricultural system and how it was discussed:

> First, it is suggested that the agricultural firms (especially those which engage in fruit and vegetable production) are predominantly small, family-based enterprises. The survival of these firms is seen to be directly tied to the price of the labor they employ to cultivate and harvest their crops . . . Second, agricultural exceptionalism suggests that the perishability of crops and the volatility

that views farming as the fundamental industry of society. As a result of this societal view, agriculture has always held a privileged place in U.S. Society, and, in turn, in government attention and priorities. Even as agricultural practices in the United States have largely shifted from subsistence to profit, the 'agrarian ideal' narrative still persists.").

24. Sarah Evans, *Is Prison Labor the Future of Our Food System?*, FOODFIRST (Sept. 7, 2018), https://foodfirst.org/is-prison-labor-the-future-of-our-food-system/ [https://perma.cc/F522-PTK7].

25. *Id.*

26. Robert J. Thomas, *The Mythology of Agricultural Exceptionalism: Some Comments*, 9 IN DEF. OF THE ALIEN 18, 21 (1986) (emphasis added).

> of the markets makes a reliable supply of labor essential to the survival of farm enterprises . . . Yet, overlooked is the substantial variability in the economic structure of the fruit and vegetable industries . . . [and] Third, agricultural exceptionalism implied that the demand for farm labor is relatively undifferentiated in terms of skill or crop-specific experience. Yet, recent research . . . indicates a remarkable variety in work organization across crops, with some harvests requiring substantial skill and job experience to be economically efficient and to produce a consistently high-quality crop.[27]

Despite being written so long ago, these criticisms of agricultural exceptionalism remain true and, unfortunately, perhaps even more salient than at the time of the 1986 publication. Significant advancement in agricultural technology and a massive shift toward large commercial agricultural enterprises in place of small family farms has occurred throughout our nation's development. Regardless of the justification set forth, none fully encompass the concepts and ideologies that gave rise to agricultural exceptionalism nor *when* agricultural exceptionalism originated. Tracing the origins of agricultural exceptionalism only back so far as the 1930s reveals merely a fraction of the foundation upon which agricultural policy has been constructed.[28] It is not only this "nation's memory" of "the [agricultural] sector's economic, social, and cultural primacy in the earliest periods of American legal history," nor is it due to "its close linkages with the quintessentially American mythology of bootstrap individualism."[29] Even those scholars that harken back to the late 1700s do not peer far back enough into our history.[30]

27. *Id.* at 18-19.

28. Laurence Norton & Marc Linder, *Down and Out in Weslaco, Texas and Washington, D.C.: Race-Based Discrimination Against Farm Workers Under Federal Unemployment Insurance*, 29 U. MICH. J.L. REFORM 177, 191 (1995).

29. Li, *supra* note 6, at 1416.

30. Mortazavi, *supra* note 6, at 625-26 ("These developments are a product of historical moments in American history. Modern American agricultural law is best understood as developing in roughly three phases, closely hemming to the trajectory of the country as a whole. The first phase, land acquisition and redistribution, established a broad geographic basis for American farming predominately through Western expansion and the Homestead Act. Second, an increased interest in industrialization led to the development of farm efficiency through public education programs. The policy impetus here was to support industrial growth by increasing farm efficiency, thereby freeing farm laborers to take up industrial jobs. However, efficiency led to problems of overproduction, ushering in the final major catalyst for modern agricultural law: the market crash of the Great Depression. American law grew accordingly, sheltering the agricultural sector from crushing market forces by using public support systems to buoy faltering farm economics. Much of current agricultural law can trace its origins back to these New Deal programs, dually aimed at addressing poverty and hunger, as well as increasing the economic vitality of the farm sector. Today's agricultural law, particularly at the federal level, is a combination of distinctive exclusions from regulations seeking to

To craft a viable agricultural policy that serves more equitable and historically honest goals, a deeper analysis of agricultural exceptionalism overtime is required. If scholars wish to identify an accurate origin of agricultural exceptionalism (of which there may be more than one, which is important to note) and fully comprehend the forms it now takes in agricultural policy, it is academically unwise to attribute such a pervasive, powerful theme to a sole era or person. To suggest that ideological notions of any nature are either static or certain obfuscates reality and, consequently, hinders a more egalitarian food and agriculture system. As the noted Intellectual Historian Jennifer Ratner-Rosenhagen explains:

> Intellectual history seeks to understand where certain persistent concerns in American thought have come from and why some ideas, which were important in the past, have faded from view . . . For an intellectual historian, the context of the idea is as important as the idea itself . . . Its approach to economic history might be to investigate how economists interpreted the cause of a financial downturn or how employed laborers made sense of their difficult circumstances. And its approach to the history of the environment might consider the arguments environmental activists used to try to protect endangered species or the way a poet draws symbols from nature in her or his work.[31]

In other words, the goal of intellectual history is to recognize the dynamics of individuals and their theories as both evolve. Ideas, including the values and presumptions inherent in agricultural exceptionalism, "are historical forces that move—and thereby change—from one interlocutor to another, one place to another, and even one time period to another."[32] This change is not an explicitly progressive one and does not ensure that conditions are perfected over time. More so, the change refers to how individuals and ideas adapt, and in this case, how insidious forms of social relations like hierarchical agriculture persist and remain palatable over millennia.

Though many different camps of intellectual historians exist—some using a contextual approach, others a more structuralist approach—this paper tends to err on the side of a structuralist interpretation given the lack of a sole legal text for one to dissect. Rather, agricultural exceptionalism is more amorphous, requiring multiple informative sources tangential and/or related to the concept. Much like intellectual historians have attempted to demonstrate in other industries, this paper's:

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internalize negative externalities and affirmative supports providing insulation from other market impacts.").

31. JENNIFER RATNER-ROSENHAGEN, THE IDEAS THAT MADE AMERICA: A BRIEF HISTORY 1-2 (2019).

32. *Id.* at 5.

> central premise [is] that a principal purpose of legal thought is 'to deny the truth of our painfully contradictory feelings about the actual state of relations between persons in our social world'—in other words, to disguise or to 'mediate' a 'fundamental contradiction' that afflicts American culture as a whole and taints the lives of all its members.[33]

Agricultural exceptionalism poses one such contradiction.

This article takes the approach of intellectual history and applies it to the pervasive notion of agricultural exceptionalism in United States agricultural regulation comprehensively discussing the two periods identified in scholarship as central to agricultural exceptionalism: (1) agricultural regulation in the colonial and neonate United States and (2) the significant reformations to agricultural regulation made in the New Deal era. In further and more broadly establishing these proposed origins, the article will focus on the philosophical forces that inspired the creation of a now ossified regulatory system steeped in agricultural exceptionalism.

The first part of this article will begin with a brief overview of what agricultural practices persisted in Colonial and early America to identify the reality of farming during the founding era. This section will also provide a discussion of Thomas Jefferson's promotion of agrarian democracy and explain the origination of the elusive "yeoman farmer" now extolled in agricultural regulation. In doing so, the section will examine both Greco-Roman cultural influences that took hold in the neonate United States as the nation crafted its regulatory structure, such as the attachment to the virtue that farming and provide individuals and their community. Additionally, the article will describe the powerful authority French Physiocrats and Enlightenment philosophers held in the minds of the American political elites who determined how to structure the United States government and, necessarily, how agriculture would support it. These philosophical trends reveal the true nature of agricultural exceptionalism at its "genesis," one far more capitalistic than humanistic.

The second part of this article will then describe the subjugation of traditional notions of agrarianism to the perceived merits of industrialism during the period of westward expansion in the United States and how, during this period, agricultural exceptionalism took an even more significant hold on United States agriculture in New Deal legislation. This portion will demonstrate how understandings of land ownership and distribution altered and reinforced an agricultural regulatory system focused on the cultivation of money and prowess over virtue and community well-being during the New Deal era. This section will demonstrate how, rather

33. WILLIAM W. FISHER III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, 49 STAN. L. REV. 1065, 1074 (1997) (internal citations omitted).

than taking up farming and moving westward for the fulfilling and virtuous life it offered, Americans made virtue out of necessity[34]—for farming operations struggling with depleted soil health, westward migration presented a more viable livelihood than suffering from the effects of degraded soil. Further solidifying the role of race and socioeconomic status in the American agricultural system was the New Deal legislation that followed. New Deal policies such as the National Labor Relations Act and the Fair Labor Standards Act were geared toward remaking American farm life and crafting a uniquely American farmer identity that better fit the Jeffersonian ideal, and put that identity to use in service to the nation.[35] Indeed, we did end up with a Jeffersonian regulatory structure for agriculture, but its nature is not that of the one praised by agricultural exceptionalism.

Finally, the article will conclude with a discussion of how such a blind devotion to the rhetoric of agricultural exceptionalism, even in the face of clear and grave injustice to farmworkers and the land, has led to the present-day erasure of the needs and rights of essential workers in the United States agricultural system. Despite the perils of agricultural workers being known and the workers abused for centuries, before 2020, agricultural workers only occasionally made mainstream news headlines. Though the vastly undocumented population of agricultural workers constitutes the large portion of United States agricultural labor, only recently have American politics acknowledged the growing chasm between the reality of essential workers' working conditions and the rhetoric describing their role in society.[36] In filling this chasm, it is not simply the replacement of industrial agriculture with "more moral" local and regional producers that will rectify farmworker injustices.[37] Research has shown that the "'imagined community' of local food reflects the white, patriarchal, and heteronormative presumptions of the underlying agrarian imaginary in a way that advocates of local food may not necessarily recognize or intend—but will defend nonetheless."[38] It is only an overhaul of our fundamental understanding and connection to agricultural production that can begin reparations.

With increasingly concerning issues of climate change and the social/political divide escalating in our world, reformation of several societal systems is necessary, not the least of which is agriculture and the regulation of its production. It

34. *See* WILLIAM R. HUTCHISON, ERRAND TO THE WORLD: AMERICAN PROTESTANT THOUGHT AND FOREIGN MISSIONS 15-42 (U. of Chi. Press 1987) (1993).

35. Sean Farhang & Ira Katznelson, *The Southern Imposition: Congress and Labor in the New Deal and Fair Deal*, 19 STUD. IN AM. POL. DEV. 1, 2 (2005).

36. MARGARET GRAY, LABOR AND THE LOCAVORE: THE MAKING OF A COMPREHENSIVE FOOD ETHIC 3 (2013).

37. *Id.*

38. Pahk, *supra* note 8, at 20.

is still possible to construct an agricultural policy that "aligns agriculture with a progressive template that exemplified and engrained a larger 'American' identity—one anchored in democratization, growth, and efficiency in both farm communities and among the American people more broadly."[39] The default of agricultural exceptionalism is to create social stratification and racial strife. It must, instead, be to promote communal and individual equity and justice.

II. A BRIEF NOTE ON THE SPECIAL NATURE OF AGRICULTURE

A discussion of agricultural exceptionalism first requires an explanation of why agriculture as an industry is unique and deserving of special treatment. Agriculture itself is well understood to be vital to human survival in several respects. Agricultural products include foods, fibers, fuels, and raw materials.[40] Beyond the tangible goods it provides, agriculture is also a necessary component of societal stabilization, as over a quarter of the world's workers are employed in agriculture.[41] Broadly, agriculture shapes land ownership and even impacts government relations, and on a day-to-day level, there are very few aspects of living that agriculture does not touch.

The ways in which agriculture is distinctive from other industries, however, differ from the traditional assertions that typically underlay its preferential treatment. The ordinary justification ends at the true but generalized statement that "because agriculture is so vital to human survival, it merits this special treatment."[42] But the fundamental elements which set agriculture apart are more varied. First, the supply of land upon which agriculture may be conducted is finite, and additional land cannot be manufactured.[43] Second, agricultural commodities are human necessities and essential to survival (the rationale most often identified).[44] Third, the "agricultural industry operates in the face of many unpredictable risks, both economic and environmental (destruction and loss as a result of climate events and

39. Amanda B. Biles, Farming Democracy: American Agricultural Policy from the Great War to the Great Society 25 (Oct. 2020) (Ph.D. dissertation, North Dakota State University) (on file with author).

40. 7 U.S.C. § 451; Press Release, U.S. DEP'T OF AGRIC., Statement on Change to Definition of 'Agricultural Products' in Reporting Trade Data (Feb. 19, 2021), https://www.usda.gov/media/press-releases/2021/02/19/statement-change-definition-agricultural-products-reporting-trade [https://perma.cc/7926-NY9C].

41. *Employment in Agriculture (% of Total Employment)*, THE WORLD BANK (Jan. 29, 2021), https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?end=2018&most_recent_year_desc=true&start=1991&type=shaded&view=chart [https://perma.cc/D52T-BTY9].

42. Negowetti, *supra* note 6, at 458.

43. *Id.* at 451.

44. *Id.* at 458.

natural disasters)."[45] Lastly, the relationship between agriculture and its connection to the land limits "the economic size found in horizontal and vertical integration of production activities in other industries."[46] For these reasons, among others, agriculture *must* be treated differently as an industry, but this does not mean that the way to do so is through the use of policy positions like that of agricultural exceptionalism.

From a less commercial and more philosophical perspective, agrarianism identifies several other aspects particular to agriculture that differentiate it from other businesses and industries.[47] Along with agriculture's necessary role in the cultivation of "critical food and fiber resources," it also requires a way of life that "is said to engender strong morals, namely . . . honor, self-reliance, integrity, temperance, humility, and neighborliness."[48] From this lifestyle, agriculture is also uniquely capable of fostering independence "through self-sufficiency and sustenance," as a farmer can hypothetically "meet most of his own, necessarily limited, needs and thus buttresses his own political, economic, and spiritual freedom."[49] Agriculture's connection with the land propagates what scholars term "embeddedness," found in the labor required of it that "provides a sense of rootedness that manifests psychologically (a psychic holism and sense of purpose and identity), spatially (a groundedness in community, region, and nature), and temporally (a connection with tradition)."[50] As the theory concludes, if all of the premises of agrarianism are realized, "agriculturally oriented communities are believed to embody the ideal, egalitarian social order founded on affective dimensions such as cooperation, mutuality, reciprocity, and trust."[51] Though much of the agrarian rhetoric utilized aligns with the language used by politicians and policy advocates to promote agricultural policies, the reality is that policies aligned with the concept of agricultural exceptionalism fall far short of meeting these ideals.

With these immutable characteristics of the practice of agriculture and the virtues and vices it produces in mind, and to determine why and in what ways reality and rhetoric do not align, we now turn to an examination of the philosophical forces at play in the development of agricultural exceptionalism in the United States.

45. *Id.* at 447.

46. *Id.*

47. Jones, *supra* note 2, at 158.

48. *Id.* (stating that, conversely, urbanism is thought to be "a fountainhead of vice, corruption, class division, and greed.").

49. *Id.* (Note, this is NOT what we see as the reality for many agricultural workers. They are entirely dependent upon employers and socially/politically compromised.)

50. *Id.*

51. *Id.*

III. AGRICULTURE IN EARLY AMERICA: IN PHILOSOPHY AND PRACTICE

Repeated numerous times, Thomas Jefferson's suggestion that "cultivators of the earth are the most valuable citizen" is drawn upon to stir American hearts, inspiring the virtues of independence and self-sufficiency when it comes to the practice of agriculture.[52] As Jefferson continued in one letter, farmers "are the most vigorous, the most independent, the most virtuous, & they are tied to their country & wedded to its liberty & interest by the most lasting bonds."[53] Without much questioning of this narrative, it has become a foundational assumption in agricultural policy both past and present.[54] While Jefferson may reign supreme in the minds of most Americans as a point of authority on the heart of American agricultural policy, the concept of the yeoman farmer that emerges from this notion is only minimally realistic.[55] Even in the neonate United States, though, the idealistic tone with which an agricultural lifestyle and subsistence were portrayed was a skewed truth, often just a romanticized notion held by the political elite of the time.[56]

The pastoral life of the yeoman farmer certainly did not immediately manifest upon colonists landing on the shores of North America. These colonists brought with them a very jaded view of wage labor, abhorring the poor conditions that allowed capitalist landlords to seize land from the peasant population and subsequently rent it out to improving tenants over in Europe.[57] Representing a dramatic shift in control of the land, the economic transition that occurred during the development of English capitalism left colonists starved for both land and power.[58] To their dismay, several different struggles were present upon arrival in North America, from navigating their presence among Native peoples to confronting harsh environmental conditions that caused a significant number of colonists to perish.[59] Despite these new social and environmental factors with which to contend, sparks of a true yeoman farmer lifestyle ignited, providing examples of the fiercely independent spirit and fervent self-sufficiency. One such example comes

52. Letter from Thomas Jefferson to John Jay (Aug. 23, 1785), https://avalon.law.yale.edu/18th_century/let32.asp [https://perma.cc/P744-4R3L].

53. *Id.*

54. *See* Calo, *supra* note 10, at 12; *see also* Jones, *supra* note 2.

55. Jones, *supra* note 2, at 163.

56. *Id.*

57. *Transition to Capitalism*, *supra* note 4, at 124; *see generally* Tarla Rai Peterson, *Jefferson's Yeoman Farmer as Frontier Hero A Self Defeating Mythic Structure*, 7 AGRIC. AND HUM. VALUES 9 (Winter 1990).

58. *Transition to Capitalism*, *supra* note 4, at 124.

59. Karen Ordahl Kupperman, *Apathy and Death in Early Jamestown*, 66 J. OF AM. HIST. 24, 24 (1979).

from Virginia in the 1730s:

> [W]hen the Assembly passed a tobacco inspection act that diminished tobacco output of yeomen, small planters (yeomen and tenants) in several counties burned down the inspection warehouses. In the 1750s and 1760s, Massachusetts farmers who had moved to the Hudson Valley land owned by New York landlords revolted several times, rejecting tenancy and seeking freehold land tenure, and Massachusetts sovereignty over the lands they farmed.[60]

And thus the reality for most agricultural workers in the seventeenth and mid-eighteenth centuries, for a time, aligned with what Jefferson—had he used the term yeoman farmer—envisioned when praising the lifestyle (with the significant caveat that this was true only for landed white men).[61] In part, this is because yeoman manifested much differently in the colonies than they would otherwise have held in England; American yeomen were not simply a transplant of their English counterparts.[62] Rather, yeomen in England "were commercial farmers and sometimes tenants near the top of a complex agricultural hierarchy."[63] American yeomen, however, "were small producers who grew most of their own food."[64] Rarely did American yeomen require the help of "hired hands" and held the sole power to decide "what crops to produce, how to divide farm tasks among family members, [and] when to send crops to distant markets."[65] Indeed, if this system remained prevalent, the argument that this type of lifestyle could cultivate the virtues of self-sufficiency and independence (though only for a select few of the socioeconomic elite) holds significant weight. What is overlooked is that this state of affairs was neither long-lasting nor widespread—by 1619, twenty African captives were brought to Jamestown, as colonists had already begun to realize that they would require significantly more labor to work the land than simply their own families.[66]

Agriculture during the colonial period could be described as "an extensive type of agriculture, highly dependent on hand labor," though this form of production was not one of choice. [67] Because settlers died off in great numbers, during

60. AGRARIAN ORIGINS, *supra* note 4, at 41.

61. *Id.* at 66.

62. *Id.* at 34.

63. *Id.*

64. *Id.*

65. *Id.*

66. *First Enslaved Africans Arrive in Jamestown, Setting the Stage for Slavery in North America*, HISTORY, (Aug. 13, 2019), https://www.history.com/this-day-in-history/first-african-slave-ship-arrives-jamestown-colony [https://perma.cc/DL2K-9DJ6]; *see* Edgar T. Thompson, *Population Expansion and the Plantation System*, THE AM. J. OF SOCIO. 314, 319 (1935).

67. WILLARD W. COCHRANE, THE DEVELOPMENT OF AMERICAN AGRICULTURE: A

the early years of settlements along the Atlantic coast, labor was scarce.[68] Additionally, hand labor was required during this time because more advanced methods "had yet to be invented and developed."[69] If only because there were no other means of labor for agricultural production, colonists performed farm work themselves.[70] The idea of hand labor as preferable and virtue-cultivating, however, stood little chance when farmers were provided with innovative agricultural technologies. Rather, they "turned increasingly to the importation of black slaves," and "indentured servants to the extent they could afford it" for use with developing farm machinery.[71] Rather than focusing on the value that hands-on agriculture could bring, acquisition of capital quickly became colonial planters' focus.[72] The virtue-seeking yeoman was, with rose-colored glasses removed, "a profit-seeking planter" whose arrival in British North America:

> [C]hanged the New World ecologies, which in turn altered the rates of morbidity, mortality, and labor productivity for the populations that went to the various regional environments of colonial America. These consequences in combination with economic factors (in particular, interest rates and relative prices of servile labor) provide the evidence for our explanation of the subsequent choices of agricultural labor and the regional concentration of peoples of different ethnicities (ancestral heritages) in seventeenth-century British North America.[73]

A primary driving force of the shift during the eighteenth century which caused the American yeoman to more closely resemble his English counterpart was an increasing awareness of the availability of land, which, in turn, expedited

HISTORICAL ANALYSIS 29 (2nd ed. 1993) (historical analysis of U.S. agricultural development from 1607 to the present); *see generally* PERCY W. BIDWELL & JOHN I. FALCONER, HISTORY OF AGRICULTURE IN THE NORTHERN UNITED STATES, 1620-1860 (Carnegie Inst. of Wash. 1941) (describing the ways in which agricultural progress in the United States is linked with colonization, westward expansion, and the impacts of the Civil War).

68. COCHRANE, *supra* note 67, at 29; *see generally* BIDWELL & FALCONER, *supra* note 67; *see generally* Everett E. Edwards, *American Agriculture – The First 300 Years*, *in* FARMERS IN A CHANGING WORLD: YEARBOOK OF AGRICULTURE, 1940 171-91 (USDA 1940) (a collection of articles by mostly USDA employees outlining the history, significance, and problems associated with American agriculture).

69. COCHRANE, *supra* note 67, at 29; *see generally* BIDWELL & FALCONER, *supra* note 67; *see generally* Edwards, *supra* note 69, at 171-91.

70. COCHRANE, *supra* note 67, at 29; *see generally* BIDWELL & FALCONER, *supra* note 67; *see generally* Edwards, *supra* note 69, at 171-91.

71. COCHRANE, *supra* note 67, at 29.

72. Robert A. McGuire & Philip R.P. Coelho, *The Colonists' Choice of Agricultural Labor in Early America*, MIT PRESS ON COVID-19 (Apr. 8, 2020), https://covid-19.mit-press.mit.edu/pub/tuu3rztj/release/2 [https://perma.cc/2Y4T-WFWC].

73. *Id.*

the boom of the slave market.[74] As "landownership spread, labor shortages on the farm inevitably grew . . . Northern farmers relied upon exchanges of labor with neighbors . . . and particularly on their own families, especially the large numbers of children their wives bore"[75] Southern farmers, "in contrast . . . solved the problem of farm labor with slaves. The high demand for tobacco and rice in England gave wealthy southerners access to slave markets."[76] It is as this development took hold that the reality of agricultural labor began to starkly depart from the rhetoric of a yeoman farmer's lifestyle. If land ownership and the independence that followed was a primary definer of the yeoman farmer, it follows that the yeoman farmer disappeared along with individual ownership of land.

Yet, the narrative of the yeoman farmer and his utility in American society only continued to tighten its grip on the hearts and minds of commoners as well as the political elite. As Adam Calo explains:

> The portrait of a heroic journeyman obscures the history of ruthless pillaging that accompanied westward expansion. Stories of the Herculean individual accomplishments often ignore how the agrarian system was shaped by legal decree. The commitment to freehold obscured the necessary dispossession of land and the exclusion of non-white men from the ability to own land-based on colonial constructions of property. In particular, the deployment of the yeoman myth must be understood as co-emerging with chattel slavery in the colonies. Letters from Jefferson to James Madison indicate that the boosting of a rural yeoman population was designed to soothe landless workers' unrest of the sort that led to Bacon's Rebellion in the late 1600s.[77]

Against this backdrop, it becomes abundantly clear how the idealization of such a dwindling, if extinct group, could result in the horrific state of affairs that agricultural exceptionalism is attributed even today:

> Federal and state policy led to highly concentrated land ownership. The wealthiest 5 percent of landholders owned between a third and two-fifths of all land in both 1798 and 1860 . . . Such inequality in landholding, with the differential access to credit it implied, attests to the perpetuation of classes of wealthy farmers at the top of an income hierarchy and of tenants, sharecroppers, or wage laborers unable to get land, at the bottom.[78]

Even though:

74. AGRARIAN ORIGINS, *supra* note 4, at 40.
75. *Id.*
76. *Id.*
77. Calo, *supra* note 10, at 15.
78. AGRARIAN ORIGINS, *supra* note 4, at 44-45.

> [E]arly American society was an agrarian society, it was fast becoming more commercial, and commercial goals made their way among its agricultural classes almost as rapidly as elsewhere. The more commercial this society became, however, the more reason it found to cling in imagination to the non-commercial agrarian values. The more farming as a self-sufficient way of life was abandoned for farming as a business, the more merit men found in what was being left behind.[79]

The Transcendental thinkers exemplify the overwhelming association of societal ills with industrialism and capitalism and the consequential "unconscious yearning" to return to "an imagined time of innocence."[80] In the agricultural context, this was found in the pleas of agrarians to reincorporate the connection to and with the land that was lost in commercialized agriculture.[81] The idea of the American yeoman farmer became "a narrative of a loss of some kind of essential wholeness."[82] This sense of loss persists.

What remains perplexing is the power with which agricultural exceptionalism's grasp remains taught and functionally unchallenged. For a policy peddling a narrative that manifests as a reality for very few individuals, agricultural exceptionalism remains the dominant and default approach to crafting agricultural regulations. The adaptability of agricultural exceptionalism's rhetoric in the face of egregious social and environmental ills suggests a much more deeply rooted adherence to tradition than legal policy often considers. It is the philosophical "truths" passed down through generations, notions of "right" production and existence, that give agricultural exceptionalism's appeal its potency.

IV. AMERICAN AGRICULTURAL EXCEPTIONALISM FROM ANTIQUITY AND ENLIGHTENMENT

The political elite in colonial America was wedded to several philosophical traditions that see little discussion in analyzing the composition of agricultural policy borne of their ideals. The traditions in which the political elite were served as useful justifications to perpetuate the idea of the yeoman farmer as the soul of agricultural production and the nation's moral wellness. Moreover, the philosophical lineage of the pillars of agricultural exceptionalism seemingly derives its veracity simply from those who proposed them, rather than standing the test of time as a practice. Though we revere the yeoman farmer because Jefferson did so, Jefferson did not conjure the notion out of thin air—rather, it was extracted from prominent

79. HOFSTADTER, *supra* note 19, at 23-24.
80. Pahk, *supra* note 8, at 21.
81. *Id.* at 29.
82. *Id.* at 20.

antiquity figures such as Aristotle and Cicero.[83] The contribution of Jefferson and his ilk come instead in the form of placing a uniquely American twist to long-standing Western social and economic philosophies.

Chief among these traditions was agrarianism, which possessed much of the utopian language ascribed to a society centered on agriculture. As such, agrarianism informs a fair amount of agricultural exceptionalism's tenants. Defined as "an ethical perspective that privileges an agriculturally oriented political economy," agrarianism "is [the idea] that agriculture and those whose occupation involves agriculture are especially important and valuable elements of society.'"[84] However, in opposition to the more economic/production focus of agricultural exceptionalism, agrarianism "is a social, political, environmental, and spiritual good," to which proponents believe a society should commit itself.[85] Agrarianism suggests "five distinguishable, yet imbricated components":[86]

> The first aspect is that agricultural production is conducive to cultivating not only critical food and fiber resources but also virtue. The agrarian way of life is said to engender strong morals, namely manliness, honor, self-reliance, integrity, temperance, humility, and neighborliness.
>
> Second, agrarians argue that agriculture offers stable soil upon which to stake a claim of independence through self-sufficiency and subsistence. The yeoman farmer meets most of his own, necessarily limited, needs and thus buttresses his own political, economic, and spiritual freedom.
>
> Proponents of agrarianism also emphasize a third aspect, what might be called embeddedness. Agricultural labor provides a sense of rootedness that manifests psychologically (a psychic holism and sense of purpose and identity), spatially (a groundedness in community, religion, and nature), and temporally (a connection with tradition). Embeddedness, it is argued, works to counteract the centrifugal forces of modernity that inspire fragmentation, alienation, and atomization at the expense of order and harmony.
>
> Fourth, agrarianism is antithetical to urbanism. The moral geography that situates virtue in the countryside also renders the city a fountainhead of vice, corruption, class division, and greed.

83. Ralph Ketcham, *A Jeffersonian Model of Citizenship*, THE IMAGINATIVE CONSERVATIVE (Dec. 18, 2019), https://theimaginativeconservative.org/2019/12/a-jeffersonian-model-of-citizenship-ralph-ketcham.html [https://perma.cc/6QDK-9C2X].

84. Jones, *supra* note 2 (internal citations omitted).

85. *Id.*

86. *Id.*

> Finally, agriculturally oriented communities are believed to embody the ideal egalitarian social order founded on affective dimensions such as cooperation, mutuality, reciprocity, and trust.[87]

Upon reading these components, one may wonder how agricultural exceptionalism has departed from recognizing the innate good agriculture can bring. Much of the rhetoric surrounding agricultural exceptionalism contains agrarian undertones without the promised agrarian results. In some respects, the two terms have been dangerously conflated, minimizing the negative underlying policies of agricultural exceptionalism that stray from the goals of agrarianism. Despite these inconsistencies, an examination of the philosophical forces influencing Thomas Jefferson and others offers a plausible explanation for the strategic departures that American agricultural exceptionalism made from agrarian notions.

Primarily, agricultural exceptionalism's focus on profit and production is the most difficult to reconcile with the agrarian tradition American founders supposedly espoused. As Amanda Biles, a historian of agriculture, explains:

> [I]n the eyes of agrarian idealists, America at her founding was ideally situated to become a farmer's utopia. Thomas Paine proudly proclaimed in 1777 that 'the people of America are people of property; almost every man is a freeholder.' 'Almost every' in this case did not include the black slaves who constituted 60% of the population of South Carolina, 40% of Virginia, or one-fifth of the country as a whole. Nor did it include the American Indians whose lands would be subject in subsequent generations to alienation to the white man by any means necessary.[88]

The tranquil scene evoked by the myth of the yeoman farmer of white-owned family farms, even if true for a portion of society, is a carefully crafted narrative that erases the reality for a majority of the population. A "return" to the farming practices that Thomas Jefferson engaged in, and encouraged that we call for in the use of agricultural exceptionalism and its mythology, would not look much different from our present system of agriculture that relies upon immigrant labor. This should alarm us.

Agrarian idealists like Thomas Jefferson could not perceive the harms they were causing or the enduring struggle this system of agriculture would impose upon countless farmworkers for centuries to come. Little compelled them to do so considering the wealth and security they experienced under this system. Biles further explains:

87. *Id.*

88. Biles, *supra* note 39, at 5.

> The American founders understood agricultural prosperity as the demonstration of their experiment. They built upon a philosophy of republican government that required egalitarian freeholding for its success. They solemnized the connection between farming and civic virtue . . .[,] delayed agriculture's social crisis, and reduced the visibility of the crisis for a time, but could not entirely prevent it.[89]

Again, this prosperity for the socioeconomic elite minority came at the cost of the lives and freedom of subordinated and marginalized demographics.[90] Civic virtue was not fostered for the majority of the population legally without personhood. It was actively and intentionally deprived from them.

Understanding the attachment to the appearance of prosperity under this agricultural system comes not from virtuous ideals, but rather from the profit it generates, is key to dispelling the myth of agricultural exceptionalism. Even Thomas Jefferson, so regularly cited as the primary figure when discussing the origins of agricultural exceptionalism, was wed to profit. As historian of the early American republic Joyce Appleby notes:

> It is especially the commercial component of Jefferson's program that sinks periodically from scholarly view, a submersion that can be traced to the failure to connect Jefferson's interpretation of the economic developments to his political goals. Agriculture did not figure in his plans as a venerable form of production giving shelter to a traditional way of life; rather, he was responsive to every possible change in cultivation, processing, and marketing that would enhance its profitability.[91]

Though Jefferson may have genuinely held his agrarian beliefs, those beliefs always came with a dose of economic realism that is missing from discussions of agricultural exceptionalism and its virtues. Jefferson and other agrarian realists:

> [C]ontended that the best possible society was one dominated by small, independent producers. Only widespread distribution of land could prevent usurpation of power and destruction of the republic by wealthy merchants, lawyers, and gentlemen. Jefferson even drafted legislation that would have given all free men in Virginia seventy-five acres of improved land upon marriage . . . But the 'agrarian realists' linked small-scale farming to agricultural improvement in ways that implied greater market embeddedness than yeomen

89. *Id.* at 199.

90. *See id.*

91. Joyce Appleby, *Commercial Farming and the "Agrarian Myth" in the Early Republic*, 68 J. AM. HIST. 833, 844 (Mar. 1982).

> seeking a vent for small surpluses desired. Unlike yeomen, they were committed to rapid economic development and expanding foreign markets for staples.[92]

Jefferson is not entirely to blame, for he, "could not have anticipated the unintended consequences of the institutional framework he helped to indelibly imprint on our history."[93] Despite this, it remains true that he was responsible for establishing: "the legal basis of land ownership . . . worked to displace precapitalist land institutions embodied in the economies and cultures of Native Americans, and . . . fully supported economic liberalism and its prescripts for trade, specialization, and the rights of individuals to pursue their interests."[94] What is misunderstood is that the planter lifestyle that Jefferson idealized could not exist without intense commercialization. Commerce was at the center of many of the philosophical premises Jefferson prized, and thus the agricultural system he instituted was as well. As one historian notes, "republican government would endure only as long as opportunities and resources for the acquisition of property were available to an ever-increasing population. [Jefferson's] was the planter's logic. Under it, wealth meant landed possessions, but specie, credit, markets, and more lands were necessary for its maintenance and increase."[95] Jefferson's idealistic notion of an agrarian nation required the cultivation of the very evils it sought to prevent, dependency and disempowerment.

The transformation of the tenants of agricultural exceptionalism represents a uniquely American interpretation of ancient agricultural philosophy and agrarian ideals. Historically, agricultural societies garnered much discussion and praise from philosophers as an "ideal" form of society.[96] The likes of Cicero, Xenophon, Socrates, and Cato all "expounded the advantages of husbandry and the agricultural way of life over and against alternative occupations."[97] It is from these sources that we first see claims of the cultivation of virtue in agriculture. Aristotle argued that property ownership was essential to human virtue noting that individuals hold a stake in their community by caring for a physical plot of land which in

92. AGRARIAN ORIGINS, *supra* note 4, at 148.

93. Lisi Krall, *Thomas Jefferson's Agrarian Vision and the Changing Nature of Property*, 36 J. OF ECON. ISSUES 131, 133 (Mar. 2002).

94. *Id.*

95. Joseph Dorfman, *The Economic Philosophy of Thomas Jefferson*, 55 POL. SCI. Q. 98, 99 (Mar. 1940).

96. Jones, *supra* note 2, at 159.

97. *Id.*

turn helps to better the community.[98] Through toiling the land and expending energy and labor to do so, Aristotle believed that the practice of agriculture promoted independence, honesty, courage, and a capacity for hard work.[99] Jeffersonian democracy adopted most of these concepts.

A. Preceding Influences

The political elite of early America were studied and well-read, often deeply influenced by antiquated ideals found in classic literature. One such source, John Locke's social contract and theories of private property in *Two Treatises of Government*, promoted the notion that "improvement of land through agriculture is mankind's God-given duty. Thus, the institution of private property inevitably arises (though the mixing of labor with the soil), and should be understood as natural."[100] Harkening to principles of natural law, scholars of Locke denote the difference between natural rights and natural responsibilities, the tenants of which can be extrapolated to the agricultural context.[101] Natural rights "normally emphasized privileges or claims to which an individual was entitled," whereas natural law "emphasized duties" instead.[102] Scholars who hold that natural law predominates in human order and society explain "that when Locke emphasized the right to life, liberty, and property he was primarily making a point about the duties we have toward other people: duties not to kill, enslave, or steal."[103] Most scholars also argue that Locke recognized "a general duty to assist with the preservation of mankind, including a duty of charity to those who have no other way to produce their subsistence."[104] Conversely, scholars that argue natural rights predominate over natural law "emphasize[s] privileges or claims to which an individual was entitled . . . Locke, they claim, recognizes natural law obligations only in those situations where our own preservation is not in conflict, further emphasizing that our right to preserve ourselves trumps any duties we many have."[105] Importantly,

98. Jeremy Waldron, *Property and Ownership*, *in* STAN. ENCYCL. OF PHIL. (Mar. 21, 2020), https://plato.stanford.edu/entries/property/ [https://perma.cc/3JBN-L6XZ].

99. *Id.*

100. Liz Carlisle, *Critical Agrarianism*, 29 RENEWABLE AGRIC. AND FOOD SYS. 135, 136 (2014); John Locke, *Two Treatises of Government*, *in* THE WORKS OF JOHN LOCKE (1823), https://www.yorku.ca/comninel/courses/3025pdf/Locke.pdf [https://perma.cc/C55Y-6BTK].

101. Alex Tuckness, *Locke's Political Philosophy*, STAN. ENCYC. OF PHIL. (Oct. 6, 2020), https://plato.stanford.edu/entries/locke-political/ [https://perma.cc/5GDA-36JM].

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

these rights and responsibilities were founded in an immutable, divine order, according to Locke.[106]

Readers of this, such as Thomas Jefferson, readily adopted theories of natural law and applied them to governmental structuring to promote "social stability."[107] Through Jefferson's implementation of Lockean labor and property rights into the American agricultural system, we find the roots of the capitalist motives that predominate the system today. Though Locke, in his time, lived in a world in which "wage labor . . . had not yet crystallized as the dominant form," some scholars argue that his philosophy "by conflating labor with the production for profit . . . [became] the first thinker to construct a systematic theory of property based on something like these capitalist principles."[108] The economic liberalism injected into the notion of Lockean property rights became the true driver of American agriculture and public perception of its regulation. A more accurate depiction of Jefferson's vision for American agriculture, rather than a nation of yeoman farmers, is found in his first inaugural address:

> About to enter, fellow citizens, on the exercise of duties which comprehended everything dear and valuable to you, it is proper that you should understand what I deem essential principles of our Government, and consequently those which ought to shape its Administration . . . ***encouragement of agriculture, and of commerce as its handmaid***.[109]

Jefferson's own beliefs about agricultural production and its role in society as well as the already-entrenched system of slavery and utilizing the work of *others* to cultivate land and food were both in conflict with the notions of agrarian rights and responsibilities.[110] Because Lockean property rights rested heavily upon the idea of laboring and improvement of the land, it was fundamentally in contrast with the slaves and indentured servants upon whom agricultural production rested. Thus, proponents of agricultural exceptionalism as a narrative and as a policy preference needed to find ways to reconcile their policy with performance. The task was not difficult. Indeed, the early American political elite had only to adopt the rhetoric of those who had done the same centuries earlier, those who the American political elite admired. Historical examples of using agrarian rhetoric to explain

106. *See id.*

107. ANDREW M. HOLOWCHAK, *Thomas Jefferson*, STAN. ENCYCL. OF PHIL. (Dec. 16, 2019), https://plato.stanford.edu/entries/jefferson/ [https://perma.cc/AA3B-NU9C].

108. Krall, *supra* note 93, at 135.

109. Thomas Jefferson, First Inaugural Address (Mar. 4, 1801), https://avalon.law.yale.edu/19th_century/jefinau1.asp [https://perma.cc/B9YF-WXG5] (emphasis added).

110. Jones, *supra* note 2, at 163 (emphasis added).

away poor treatment of farmworkers were readily available to those responsible for agricultural regulation and policy development in America.[111]

Etched in history as far back as the Confucian esteemed view of farmers, governments have regularly and with alarming consistency utilized the same agrarian rhetoric to render palatable oppressive and hierarchical systems of agriculture.[112] The Roman Empire, with its intensification of extractive agriculture through the latifundia system—a large plantation system designed for income—modeled how to harness the power of characterizing agriculture as virtuous to perpetrate vile circumstances.[113] Their democratic Greek counterparts had done largely the same, utilizing Aristotle's description of the value and critical nature of agriculture to civil society.[114] Even Aristotle, a proponent of the honesty and courage that agricultural work created, lived amongst a society in which unequal property distribution ran rampant and large numbers of indebted farmers fueled festering social inequality.[115] In the case of Rome, "[w]hat distinguished [it] was neither economic inequality nor exploitation but the enormity and the scale of both. Whether or not this be deemed a fit matter for moral condemnation, the facts are of the highest historical importance, for revolution was to spring from the misery and the resentment."[116] Yet even as these unpalatable conditions persisted, Romans like Cicero praised their Greek predecessors like Xenophon and Socrates, who firmly expounded the advantages of husbandry and the agricultural way of over any other work and allows for greater resistance to injustice.[117] But conditions for farmworkers that were supposed to foster justice instead fueled revolutions and the fall of empires. Americanized agricultural exceptionalism as a policy approach offered Jefferson the antidote for its foothold in America.

B. Contemporary Influences

Also, heavily influential upon Jefferson and early American political elites, like Benjamin Franklin, in their establishment of agricultural exceptionalism was

111. *See* K.D. White, *Latifundia*, 14 BULL. OF THE INST. OF CLASSICAL STUD. OXFORD U. PRESS 62, 73 (1967).

112. *See id.*

113. *See id.* at 77.

114. Manus I. Midlarsky, *The Origins of Democracy in Agrarian Society: Land Inequality and Political Rights*, 36 J. OF CONFLICT RESOL. 454, 456-57 (1992).

115. *Id.* at 456-57.

116. C.W. MARIS, CRITIQUE OF THE EMPIRICIST EXPLANATION OF MORALITY 387 (Jane Fenoulhet trans., Uitgeverij Kluwer B.V. 1981) (2013); P.A. BRUNT, SOCIAL CONFLICTS IN THE ROMAN REPUBLIC 41 (W.W. Norton 1971).

117. VICTOR DAVIS HANSON, THE OTHER GREEKS: THE FAMILY FARM AND THE AGRARIAN ROOTS OF WESTERN CIVILIZATION 3-6 (1999).

the French physiocratic approach to economics and agriculture. Jefferson, through his frequent interactions and relationships with France and French culture, adopted philosophical tenants from his proximity to their influence.[118] Upon examining physiocracy, the undertones of the agrarian aspect of agricultural exceptionalism's narrative reveal themselves. With a foundational belief that the government should refrain from interference with natural laws,[119] physiocrats "concentrated their analysis on agriculture, believing that it alone was responsible for the creation of wealth."[120] Most physiocrats "pictured a predominately agricultural society and therefore attacked mercantilism not only for its mass of economic regulations but also for its emphasis on manufactures and foreign trade."[121] Thus emerged the themes of vilifying urbanism and praising rural, agricultural life as well as the notion that the government's role is completely removed from agricultural production. This policy, however, would require adaptation if it were to survive in America:

> Jefferson was well aware of his political constituency and was not about to extol the virtues of agriculture on the one hand and advocate taxing it on the other as Physiocrats did . . . Jefferson suggested . . . 'that a single tax on land was not for America.'[122]

And again it becomes clearer how a policy of agricultural exceptionalism has created such an intensely capitalist system. As economic scholar of Thomas Jefferson Lisi Krall states:

118. Manuela Albertone, *Physiocracy in the Eighteenth-Century America. Economic Theory and Political Weapons*, 47 HIST. OF EUR. IDEAS 97, 111 (2021).

119. O.H. Taylor, *Economics and the Idea of Natural Laws*, 44 Q. J. OF ECON. 1, 39 (1929). Prominent Physiocratic thinker Quesnay "introduces his discussion of natural law by dividing it into physical laws and moral laws. 'By physical law is here meant the ordered course of all physical happenings most advantageous to the human race.' This is the law that the Creator has ordained for the operation of the universe, much as a designer may be said to have ordained the laws by which a jet-propulsion motor operates. It is the law that governs such things as agriculture, animal husbandry, the distribution of wealth, the operation of commerce and industry. When men follow this law faithfully, they secure the greatest material benefits possible, as, for example, when they plant the right crops at the right time, use the right fertilizer and lay away the right amount for capital investment the following year. Thus, Quesnay optimistically believed that everything works properly for mankind's best material interests. All man need do is understand the law and work in harmony with it." Thomas P. Neill, *The Physiocrats Concept of Economics*, 63 Q. J. OF ECON. 4, 542 (1949) (quoting Quesnay).

120. Krall, *supra* note 93, at 140.

121. *Physiocrat*, ENCYCLOPEDIA BRITANNICA (Nov. 16, 2020), https://www.britannica.com/topic/physiocrat [https://perma.cc/2B9G-Q8YR].

122. Krall, *supra* note 93, at 141 (internal citation omitted).

> We lament the disintegration of community, uneconomic growth, loss of the family farm, decline of rural America, the concentration of wealth and power, and erosion of democratic society and often make the mistake of resurrecting Jefferson for guidance. It would be more productive at this juncture in history to stop clinging to Jefferson's outdated and confused vision and heed Jefferson on what he got right: '[L]aws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.'[123]

While it is erroneous to rely upon Jefferson and his image of the small, independent farmer as the cornerstone of a society more diverse in population and greater in size than he could have ever conceived, what is more carefully documented is the deep racial roots of agricultural exceptionalism during the New Deal. To that, we turn.

V. INDUSTRY, CAPITAL, AND RACE: AGRICULTURAL EXCEPTIONALISM IN INDUSTRIAL AND POST-WAR AMERICA

The second widely recognized "origin" of agricultural exceptionalism in United States agricultural regulation amongst scholars is the legislation and conversations that occurred during the New Deal period. Scholars rightly claim that, in this instance, "agricultural exceptionalism appears to have originated as a desire to reproduce the subordinated laboring class of the southern plantation."[124] During the post-WWII era, a vast array of legislation detailing worker wage and hour laws came into effect to address the reformation of society and the economy writ large.[125] In fact, "[m]uch of current agricultural law can trace its origins back to these New Deal programs, dually aimed at addressing poverty and hunger, as well as increasing the vitality of the farm sector."[126] Notably, however, instead of protecting farmworkers, legislation such as the landmark National Labor Relations Act ("NLRA") protects "agricultural *employers* by providing that the '[t]he term employee' shall include any employee . . . *but shall not* include any individual employed as an agricultural laborer."[127] This was not by mistake or lack of forethought. The pattern of discrimination was repeated in other labor protection laws such as the Fair Labor Standards Act ("FLSA"), Occupational Safety and Health

123. *Id.* at 147 (internal citation omitted).

124. *A Brief History of Race*, *supra* note 6, at 307.

125. Farhang & Katznelson, *supra* note 35, at 5.

126. Rodman, *supra* note 14, at 1.

127. 29 U.S.C.A. § 152(3) (Westlaw through Pub. L. No. 117-129).

Standards ("OSHA"), and others.[128] The passage of the FLSA was Congress' attempt to rectify the "conditions [that were] detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being work workers"—*all* of which farmworkers were consciously excluded from.[129] By barring agricultural laborers in such an explicit manner from federal protections, agricultural exceptionalism's manifestation is painfully obvious. Potentially equally as insidious as the legislative language are the social conundrums that fueled it.

Though, as described previously, the New Deal era is not likely the true origin of agricultural exceptionalism, it does indeed highlight the core discriminatory elements of agricultural exceptionalism that previously existed (and that New Deal legislation perpetuated). Deeply racial motives ultimately controlled the manifestation of agricultural exceptionalism in the enactment of New Deal legislation. By the 1940s, "World War II's impact on the labor force—drawing many men to the armed forces through enlistment or the draft and thousands of others to work in wartime industries—gave growers the final argument they needed to convince Congress to adopt [a worker exchange program that would import workers from Mexico]."[130] Additionally, interned Japanese workers, in addition to Italian and German prisoners of war, were utilized as farm labor.[131] As others have noted:

> Direct legislative history explaining the FLSA's exclusion of farmworkers is virtually nonexistent. By 1938, when the FLSA became law, the exclusion had become routine in New Deal legislation. An examination of the predecessor legislation from the FLSA, however, reveals the reason for the exclusion. To enact the social and economic reforms of the New Deal, President Roosevelt and his allies were forced to compromise with southern Congressmen. Those congressmen negotiated with Roosevelt to obtain modifications of the New Deal legislation that preserved the social and racial plantation system in the South—a system resting on the subjugation of blacks and other minorities. As a result, New Deal legislation, including the FLSA, became infected with racial motivation.[132]

128. *See* 29 C.F.R. § 780 (2022).

129. 29 U.S.C.A. § 202(a) (Westlaw through Pub. L. No. 117-102).

130. Andrade, *supra* note 6, at 609.

131. Barbara Heiseler, *The "Other Braceros": Temporary Labor and German Prisoners of War in the United States, 1943-1946*, 31 SOC. SCI. HIST. 239, 242 (2007); PHILIP L. MARTIN, PROMISE UNFULFILLED: UNIONS, IMMIGRATION, AND THE FARM WORKERS 39 (2018).

132. Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1336 (1987).

More of a calcification of agricultural exceptionalism rather than its origin, the New Deal era further solidified the racial, social, and classist elements of systems of agriculture that exploit its workers rather than protect them.

Just as with the centuries prior—during the Civil War and the emancipation of slavery—the post-war economy was almost completely dependent on cheap Black labor.[133] Exploitation evolved rather than reformed, with southerners utilizing sharecropping and tenancy systems.[134] As such, landowners provided housing and farming supplies in exchange for a share of the crops of payment after the harvest was produced by farmworkers.[135] Tenants and sharecroppers believed they would be able to work off the debt and achieve financial independence by either purchasing their own land or moving into a different vocation.[136] However, landowners ensured a permanent source of cheap labor by having tenants indefinitely indebted to them.[137] Landowners did so "by inflating the prices of supplies and charging exorbitant interest rates on loans . . . [b]acked by threats of violence and recapture, landlords required their tenants to pay off such debts before they could leave the farm."[138] As for the tenancy system, where tenants owned their crop and sold it to the landowner, tenants were regularly underpaid for crops or even had them stolen by the landlords.[139] Because the plantation system was so profoundly entrenched in Southern society, and because it was necessary to keep the Southern economy running, "compromises" such as those made at the expense of farmworkers during the New Deal left all agricultural workers still unprotected. This situation has not changed—in fact, modern depictions of farmworker housing and working conditions mirror this description—it has only been repackaged in the form of migrant labor.

In addition to the clear discrimination against African Americans and other racial minorities, the industrial and New Deal eras also represented a time in which

133. John T. O'Brien, *After Slavery: Black Labour and the Postwar Southern Economy*, 8/9 J. OF CANADIAN LAB. STUD. 285, 294 (1981-1982); William Collins, *African-American Economic Mobility in the 1940s: A Portrait from the Palmer Survey*, 60 J. OF ECON. HIST. 756, 778-80 (2000).

134. O'Brien, *supra* note 133, at 287.

135. Jay Mandle, *Sharecropping and the Plantation Economy in the United States South*, 10 J. OF PEASANT STUD. 120, 123 (1983); Susan Mann, *Sharecropping in the Cotton South: A Case of Uneven Development in Agriculture*, 49 RURAL SOCIO. SOC'Y 412, 414-15 (1984).

136. Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L. J. 95, 101 (2010).

137. *Id.*

138. *Id.*

139. *Id.*

undocumented labor, especially from Mexico, became a critical source of farmworkers. What some scholars identify as "proletarianized wage labor"—the inequitable treatment of workers—quickly emerged because of industrialism. As the lack of independence among most individuals living in America increased, so did the seasonal labor and tramping systems of the antebellum South.[140] Laborers would:

> [Work] in the country a few months a year, planting and harvesting crops, and then [move] to cities or forests to find employment . . . As the proportion of work done by wage laborers in the North grew from a quarter in 1860 to over a third early in the twentieth century, laborers become increasingly marginal—Irish and later Asian and Mexican immigrants, the poor, Blacks.[141]

Additionally, the Mexican revolution spurred an influx of Mexicans to the United States, who fit the bill of a workforce that "could be imported for their work, displaced when not needed, and kept in subordinate status so they could not afford to organize collectively or protest their conditions."[142] As the United States expanded and as the need for labor became even greater than it was during the nation's founding, the overall structure of agriculture did not change—it was merely the "source" of the farmworkers that did, and those laborers are consistently and overwhelmingly undocumented immigrants.[143]

The New Deal era legislation was simply a perpetuation of an already-existing, morally, and socially-flawed form of agricultural production—it subsidized the discrimination inherent in the myths perpetuated by agricultural exceptionalism that still forced the image of small, white-male-owned farms as the heart of America and democracy. As summarized by Biles:

> [M]any historians of agricultural policy in the twentieth century limited their studies to the so-called farm bills and thus saw only commodity policy, US

140. *Transition to Capitalism*, *supra* note 4, at 131; *See generally*, AGRARIAN ORIGINS, *supra* note 4.

141. AGRARIAN ORIGINS *supra* note 4, at 53-54; *Transition to Capitalism*, *supra* note 4, at 131. Interestingly, "the level of proletarianization varied among types of agriculture. Fruit and vegetable farming relied extensively on wage labor and over half the work on some early twentieth-century midwestern corn and dairy farms were done by wage laborers. Even on wheat farms, where over four-fifths of workers were family members, wage laborers in hired threshing crew harvested grain precisely when it ripened." *Agrarian Origins*, *supra* note 4, at 53-4.

142. Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L. J. 425, 436 (1990).

143. *See Farm Labor*, U.S. DEP'T. AGRIC. (Mar. 15, 2022), https://www.ers.usda.gov/topics/farm-economy/farm-labor/ [https://perma.cc/57Y3-4QC6].

> agricultural policy from Woodrow Wilson to Lyndon Johnson constituted a massive intervention into the lives and experiences of rural Americans. During this period policymakers moved purposefully and emphatically beyond commodity concerns and aimed to remake rural life and farmer identity in the United States. They held as their model Thomas Jefferson's agrarian ideal, a nation of freeholders deeply invested in the preservation of the republic and their own contributions to its success.[144]

This is the predictable result that arises from an agricultural system focused on extraction and profit in place of human rights and wellbeing. Indeed, the policy of agricultural exceptionalism highlights that economic advantages reign supreme in justifying the protection of American agriculture, because Americans expect an "adequate and steady supply of commodities at fair prices,"[145] but regularly at the cost of a disadvantaged and marginalized population that remain captive to their employer for basic living accommodations to achieve peak economic potential. This stands starkly against the backdrop of the values that the myth of agricultural exceptionalism promotes for those who participate in agricultural labor: the cultivation of personal virtue, independence, and wealth.[146] Instead, farmworkers are sentenced to a life of slavery, performing extraordinarily dangerous work that supports the essential function of food production—they are "a workforce held captive to irregular employment, impoverishment, and inadequate and unsafe housing with attendant health consequences."[147] Their only thanks come in the form of appreciation caravans of citizens holding posters and shouting thank you to workers.[148] As one legal scholar has remarked: "One thing that can be unequivocally stated is that agricultural exceptionalism has existed for well over seventy years. Additionally, employment conditions of migrant farmworkers have not improved over the same decades. There must be a direct connection between the two."[149]

VI. ERASURE OF THE ESSENTIAL: AGRICULTURAL EXCEPTIONALISM TODAY

Looking at the racial and social injustice deeply woven in the history of American agriculture, it becomes far less confounding how our system designed

144. Biles, *supra* note 39, at iii.

145. 7 U.S.C. 1282 (2018).

146. *See, e.g.*, PAUL B. THOMPSON, THE SPIRIT OF THE SOIL CH. 4 (2017).

147. Guadalupe T. Luna, *The Dominion of Agricultural Sustainability: Invisible Farm Laborers*, 2014 WIS. L. REV. 265, 274 (2014).

148. Mohammed Syed, *'Appreciation Caravans' Honor California's Essential Farmworkers*,' NBC NEWS (Apr. 25, 2020, 7:55 AM), https://www.nbcnews.com/news/latino/appreciation-caravans-honor-california-s-essential-farmworkers-n1189806 [https://perma.cc/XT26-XY8X].

149. Kosegi, *supra* note 6, at 300.

to protect the existing methods of agricultural production continues erecting barriers to justice. Through the simultaneous exemption of regulation and false praise of pastoral farm life as the heart of food production, the narrative of American agriculture has evaded reform—as has the law. Agricultural exceptionalism, then, as this article has set out to show, "peddles the logics of meritocracy and self-sufficiency, this ideology belies a history of heavy lifting by North American governments to secure enslaved and indentured labour, water and transportation infrastructure, and white male land acquisition through Indigenous dispossession."[150] The current model of American agricultural production may have proven useful for supplying *some* of the population with adequate and nutritious food, but we must ask ourselves if the cost at which that comes is worth the disregard of lives of the farmworkers who, without protection or pay, uphold the stability of our society.

Questions like these were and are more pressing as disease and climate change continue to evolve and worsen. The COVID-19 pandemic was but one illustration of the horror that the disconnect between the rhetoric of agricultural exceptionalism, praising a farmer and way of life that no longer exists, can impart on the real lives of a population of farmworkers that go ignored and remain undocumented as an invisible workforce. Up until the rise of the pandemic, there was little motivation for the American public to ask deeper questions about where their food came from—as long as the food was available on grocery store shelves, it could be taken for granted. It was only once the pandemic choked various aspects of the food supply chain that farmworkers and laborers in the food industry were proclaimed "essential" in American households.[151] Even then, and still now, treatment of farmworkers has yet to change.

Already facing some of the most dangerous working conditions in the United States, farmworkers saw little relief or aid to combat COVID-19. Farmworkers often were forced to continue working in close contact with others out in the fields to maintain profit, were not provided masks or other personal protective equipment, were offered no testing, and had little to no medical treatment available if they did contract the virus.[152] Though stories of these depraved conditions were

150. Anelyse M. Weiler, *Seeing the Workers for the Trees: Exalted and Devalued Manual Labour in the Pacific Northwest Craft Cider Industry*, 39 AGRIC. AND HUM. VALUES 65, 68 (2022).

151. Miriam Jordan, *Farmworkers, Mostly Undocumented, Become 'Essential' During Pandemic*, N.Y. TIMES (Apr. 10, 2020), https://www.nytimes.com/2020/04/02/us/coronavirus-undocumented-immigrant-farmworkers-agriculture.html [https://perma.cc/YLE7-VG4E].

152. Vivian Ho, *'Everyone tested positive': Covid Devastates Agriculture Workers in Cal-*

numerous and widespread, intervention did not come. Reform has yet to. As the pandemic (at the time of this writing) and climate change are ramping up at frightening speeds, farmworkers are still left behind, society having not internalized its lesson. Fires raged in the Western United States because of climate change in the summer of 2021, and still OSHA "ignored three recommendations from the Centers for Disease Control and Prevention that it creates a much-needed floor, a temperature level above which conditions are deemed inherently unsafe for worker safety. OSHA has also denied similar petitions from occupational and environmental groups."[153]

Much of the current legislation seeking to reform working conditions and wages for agricultural workers takes a piecemeal approach to rectifying the issues of agricultural exceptionalism. Even among declarations that farmworkers are vital and should be honored by the likes of "California Farmworker Day," little is being done on a systemic level to alter to structural forces holding together an oppressive agricultural system. [154] Commentary on federal legislation, such as the Fairness for Farm Workers Act,[155] highlights the incomplete understanding of agricultural exceptionalism's seemingly intractable relationship with agricultural policy:

> It's unacceptable that so many live in poverty, and it's time for farmworkers to receive the wages they deserve. By amending the law, we are remedying decades of economic inequality rooted in racism and ensuring that the [FLSA] truly lives up to its name for all American workers.[156]

Even reformations that openly acknowledge the racist and socio-economic injustices created and cultivated by United States agricultural regulations perpetuate agricultural exceptionalism by offering inadequate solutions. No viable alternative default policy approach is provided. For example, though certain legislation

ifornia's Heartland, THE GUARDIAN (Aug. 8, 2020, 6:00 PM) https://www.theguardian.com/us-news/2020/aug/08/california-covid-19-central-valley-essential-workers [https://perma.cc/6YVU-MF32].

153. Ximena Bustillo, *Mounting Pressure for an OSHA Heat Rule*, POLITICO (Aug. 9, 2021, 10:00 AM), https://www.politico.com/newsletters/weekly-agriculture/2021/08/09/mounting-pressure-for-an-osha-heat-rule-797037 [https://perma.cc/FV89-NPWK].

154. *See* Press Release, Senator Ben Hueso, Representing Senate District 40, State Enacts Annual California Farmworker Day (Oct. 5, 2021), https://sd40.senate.ca.gov/news/20211005-state-enacts-annual-california-farmworker-day [https://perma.cc/BVJ5-U6CX].

155. *See* Fairness for Farm Workers Act, H.R. 1080, 116th Cong. (2019), https://www.congress.gov/bill/116th-congress/house-bill/1080 [https://perma.cc/EF55-5G7F].

156. John R. Harris, *Fairness for Farm Workers Act Reintroduced in Congress, Senate*, PATCH (Feb. 8, 2019, 3:02 PM), https://patch.com/oklahoma/oklahoma-city/fairness-farm-workers-act-reintroduced-congress-senate [https://perma.cc/M89T-8BGY].

may permit and aid in protecting farmworkers who organize for better working conditions from deportation, it is questionable how much a policy like this will actually remedy the hesitancy experienced by many farmworkers to do so.[157] The California Farmworker Foundation observed a similar trend with vaccine reluctance—"farmworkers are likely to flee to a nearby employer if [vaccine requirements] are imposed."[158] How to effect actual change in the lives of farmworkers and our food system broadly will require much more fundamental shifts in our understanding and relations to food than federal and state legislation can conjure so long as agricultural exceptionalism remains its premise.

Instead of defaulting to exempting agriculture and its workers from regulation, a policy that leads only to the absence and erasure of the most essential societal product—food—one might imagine a system of agricultural regulation based on a policy of protection rather than extraction. Of humanness and animacy rather than the commodification of everything, and everyone, involved. Previous attempts to alter approaches to agricultural policy through local food movements remain entrenched in the deceit of agricultural exceptionalism's narrative: "the dignified work that local food markets supposedly enable is the province of (mostly) white landowners."[159] Romanticizing small-scale food production does not rectify issues of agricultural exceptionalism that permeate all corners of our agricultural system. Farmworker issues, and other issues borne of agricultural exceptionalism, "will get better only when all farmworkers—whether they're picking unripe tomatoes destined for a Walmart or harvesting organic Mâche destined for $15 salads in fancy Manhattan restaurants—are guaranteed a livable minimum wage, reliable health insurance, and collective bargaining protections."[160] "Justice" in a few instances, or only for a few people, does little to affect large-scale equity.

The path forward absent change is certain—history has shown the lengths to which the United States will go to confirm the narrative of its reality, no matter

157. Federico Castillo et al., *Environmental Health Threats to Latino Migrant Farmworkers*, 42 ANN. REV. OF PUB. HEALTH 257, 262 (2021); Joanne Bonnar Prado et al., *Acute Pesticide-Related Illness Among Farmworkers: Barriers to Reporting to Public Health Authorities*, 22 J. OF AGROMEDICINE 395, 395-405 (2017); Lisa Meierotto et al., *Isolation and Fear of Deportation: Intersectional Barriers to Well-Being Among Latina Farmworkers in Southwestern Idaho*, 42 J. OF CULTURE, AGRIC., FOOD AND ENV'T 93, 99 (2020); Ana M. Mora et al., *Impact of the Covid-19 Pandemic and Vaccine Hesitancy Among Farmworkers from Monterey County, California* 3 (Dec. 22, 2020), https://www.medrxiv.org/content/10.1101/2020.12.18.20248518v1.full [https://perma.cc/ML49-6QH2].

158. Bustillo, *supra* note 153.

159. GRAY, *supra* note 36.

160. *Id.*

how false, to excuse equitable treatment of people and the planet. With the aggravation of climate change over the past decade to a nearly unstoppable pace,[161] and certainly with the ongoing pandemic, the transformation of our systems writ large is occurring despite our lack of societal progress and understanding. Agricultural exceptionalism and the evils it gives rise to may no longer be explained away. In the coming years, summer heat will intensify, crop failures and livestock losses will increase suffering, and extreme drought will deplete our water supply. The truth of a policy of agricultural exceptionalism so absolutely deviating from the narrative of a nation of thriving small, independent farmers, is not only anachronistic but a total distortion. Farmworkers, such as Florencio Gueta Vargas, perish in such intolerable conditions to keep agricultural products on the market and food in stores, yet the ultimate consumer of those products is unlikely to know or understand the true price at which their convenience comes.[162] Customers usually only know the price shown at checkout.

Rather than a policy of agricultural exceptionalism in which the agricultural industry is exempted from regulation, perhaps a policy of agricultural essentialism is in order. Essentialism might take cues from agricultural intersectionality, which focuses on the development of policy and regulations that seek to identify and rectify "how structural inequalities related to race, class, gender, and sexuality produce instances of hunger and food injustice."[163] Or essentialism could reinfuse agricultural legal policy and regulation with explicit recognition of truths held by agrarian philosophy that views land not as a product to be privatized and exploited, but instead as a living entity in and of itself that, if cared for, returns the favor.[164] International law supports this position, as agricultural exceptionalism's consequences of racial and social injustices often violate humanitarian rights.[165]

Regardless of how agricultural essentialism replaces the ills of agricultural exceptionalism, the transformation of the agricultural system, how we regulate it,

161. *Climate Change and Agriculture: A Perfect Storm in Farm Country*, *UNION OF CONCERNED SCIENTISTS* (Mar. 20, 2019), https://www.ucsusa.org/resources/climate-change-and-agriculture [https://perma.cc/T9EF-KTNL].

162. Naomi Ishisaka, *The Heat is Rising and So is the Danger to Farmworkers. We Can Do Something About It*, THE SEATTLE TIMES (Aug. 9, 2021, 6:00 A.M.), https://www.seattletimes.com/seattle-news/the-heat-is-rising-and-so-is-the-danger-to-farmworkers-we-can-do-something-about-it/ [https://perma.cc/TDG3-B5VR].

163. Bobby J. Smith II, *Food Justice, Intersectional Agriculture, and the Triple Food Movement*, 36 J. OF AGRIC. AND HUM. VALUES 825, 826 (2019).

164. John Ikerd & Mackenzie Feldman, *Farm Policy Agenda for Regenerative Farming*, REGENERATION INT'L (Mar. 8, 2021), https://regenerationinternational.org/2021/03/08/farm-policy-agenda-for-regenerative-farming/ [https://perma.cc/72K7-QFB3].

165. Blattner & Ammann, *supra* note 6, at 127.

and the lives of farmworkers is assured as climate change persists. The Intergovernmental Panel on Climate Change (IPCC) unequivocally concluded this year that drought, floods, and other adverse weather events *will* have a significant impact on agricultural production.[166] Beyond the environmental loss,[167] dangerous farmworker conditions are likewise guaranteed to intensify. The panel predicts that "extreme heat thresholds relevant to agriculture and health are projected to be exceeded more frequently at higher global warming levels (*high confidence*)."[168] Our collective wellbeing hinges upon how we will respond to these inevitable challenges. Rectification of a policy of agricultural exceptionalism is one place to begin. What Jefferson did rightly conclude was that those who participate in agricultural production uphold the heart of American democracy and society—farmworkers are essential, and agricultural policy and regulations must treat them as such.

166. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS, SUMMARY FOR POLICY MAKERS 24 (2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf [https://perma.cc/Q4MJ-JYNF] [hereinafter IPCC].

167. Another area ripe for research might be to explore the environmental consequences of a policy of agricultural exceptionalism in federal regulation have generated, as opposed to a focus on the issues it creates in labor, politics, and society.

168. IPCC, *supra* note 166.