

A RIGHT TO FARM, BUT NO RIGHT TO FOOD

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ABSTRACT

The right to farm emerged in the United States as a response to nuisance litigation, and was promoted as a way to protect farmland and rural ways of life from frivolous lawsuits. The right to food developed in international humanitarian law as a response to hunger, grounded in the idea that access to available and adequate food is a basic human necessity. Despite their different origins, both rights were framed as solutions to existential threats – economic survival for farmers and physical survival for eaters.

Yet both of these modern rights have fallen short of their promises. Farms continue to disappear, even as hunger and malnutrition persist as public health problems. Simultaneously, hunger and food insecurity have increased in rural communities and among farmer populations. This article argues that one of the reasons why food security policies have struggled is because all proposed solutions insist on viewing farmers and eaters separately. Instead, true progress toward addressing hunger and agricultural decline will require abandoning that divided policy approach.

This article is the first to examine the right to farm alongside the right to food, and to scrutinize how both of these rights operate separately and in tandem. When viewed together, these twin public policy efforts expose shared failures in modern food systems and in our flawed food security policies. Although these rights target opposite ends of the food system, the populations they were designed to protect overlap in critical ways. All farmers are eaters, and all eaters depend on farmers for survival.

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Introduction

- I. Intertwined Fates of Farmers & Feeders
 - II. The Right to Farm: United States Origins & Growing International Impact
 - A. Right to Farm Legislation is Rooted in Nuisance Law and Has Been Adopted in All Fifty United States
 - B. Expansion of Right to Farm Statutes to International Jurisdictions
 - C. Recent Expansions of Right to Farm Powers in the United States
 - III. The Right to Food: International Origins and Growing Influence in the United States
 - IV. Considering the Right to Farm and the Right to Food Together
- Conclusion

INTRODUCTION

Farming and eating, and farming and feeding, are naturally intertwined human activities.¹ Most farmers are feeders, and feeders need consumers to economically survive and thrive.² And all humans and animals need to feed on food,³ preferably healthy food, to continue to live. These interdependencies have meant that the fates of farmers and the populations they support have been intertwined since the dawn of human existence, and scholars have often credited the growth of human civilization to agricultural pursuits. The stabilization of a safe food supply is needed for stable governments, cities, educational

¹ See, e.g., WENDALL BERRY, “The Pleasures of Eating” in *WHAT ARE PEOPLE FOR?* (San Francisco, N. Point Press ed. 1990) (“I begin with the proposition that eating is an agricultural act.”); see also Jack Sherrick, *Prose to Policy: How Wendell Berry’s Distinct Strain of Agrarianism Can Influence Farm Policy*, 56 *COLUM. J. OF L. & SOC. PROBS.* 295 (2023).

² See generally Susan A. Schneider, *Reconnecting Producers and Consumers: On the Path Toward a Sustainable Food and Agricultural Policy*, 14 *DRAKE J. AGRIC. L.* 75, 94 (2009) (noting the historic connection between people and their food sources, and arguing that the agricultural industry should not feel “threatened by consumers’ new found desire to know about and perhaps to influence the food system” because “the current trend of connecting consumers to their food offers incredible opportunities for farmers, food manufacturers and retailers”).

³ While not all consumers of food produce their own food, all producers of food need to eat. This means that while not all food consumers are food producers, all food producers are food consumers.

systems and artistic pursuits to grow.⁴

But like many symbiotic and dependent relationships, the interactions between farmers and feeders⁵ has often been fraught with fear and tension.⁶ As consumers have sought to have a stronger input in the food that is produced to feed them, many farmers and agribusiness entities have resisted any change that would reduce their efficiency and resulting profits.⁷

⁴ See, e.g., Robin Bradley Kar, *Western Legal Prehistory: Reconstructing the Hidden Origins of Western Law and Civilization*, U. ILL. L. REV. 1536-37 (2012) (describing the development of agricultural techniques and its influence on establishing early human societies) (citing BRIDGET ALLCHIN & RAYMOND ALLCHIN, *ORIGINS OF A CIVILIZATION: THE PREHISTORY AND EARLY ARCHAEOLOGY OF SOUTH ASIA* 113–83 (1997)).

⁵ This article is using the word “feeders” in addition to the use of the word “eaters” to purposefully include animals and other creatures upon which our society is currently dependent, either for food or fiber or medical devices. Over the years commentators and scholars have used many words to refer to the people who cultivate our food (including “farmers,” “producers,” “feeders,” etc.) and often use these terms interchangeably. See, e.g., Cody McCracken, *Old MacDonald Had a Trust: How Market Consolidation in the Agricultural Industry, Spurred on By a Lack of Antitrust Law Enforcement, Is Destroying Small Agricultural Producers*, 13 WM. & MARY BUS. L. REV. 575, 576 (2022). Likewise, there are many words available to refer to the everyone who buys and eats food (including consumers, humans, and even “takers”). See, e.g., Craig Kohn & Charles W. Anderson, *Makers vs. Takers: Perceived Challenges to Food Production Among Agriculturalists in the United States*, 28 J. AGRIC. EDUC. & EXTENSION 503 (2022) (describing the economic challenges created by consolidation in the agribusiness industry and its impact of turning everyone, including farmers, into price “takers” lacking the marketplace power of the past). This article recognizes and respects the distinctions and nuances between all of these terms. Nevertheless, in order to keep the focus on the primary analysis will follow the majority of writers and use many of these terms interchangeably.

⁶ Compare Nathan D. Pohlman, *The Polarization Surrounding Agriculture in America*, 48 L. & PSYCH. REV. 235, 251 (2024) (describing various tensions between producers and consumers and concluding “the general public must try to better understand farmers and work with them to create a better future”) with Margot J. Pollans, *Eaters, Powerless By Design*, 120 MICH. L. REV. 643, 646 (2022) (describing the system that forms food laws in the United States as “a system of control rather than a system of nourishment” and criticizing its negative impact on farmers, consumers and the environment).

⁷ See, e.g., Margot J. Pollans, *Abundance and Other Food Fixations*, 96 U. COLO. L. REV. 209, 233 (2025) (explaining that the food and agriculture

This article is the first to examine the tensions between farmers and eaters through the lens of the “right to farm” and the “right to food,” two policy initiatives designed separately to help farmers and feeders respectively. The right to farm is an agriculture-oriented solution to land-use conflicts that has arguably done more harm than good to its intended beneficiaries,⁸ and the right to food is a consumer-oriented solution that has also come under criticism for its unintended negative impact.⁹ While the right to farm has been recognized via statutory authority in all fifty of the United States of America, the right to food has largely been an international humanitarian effort that has been uniformly rejected on the federal level in the United States and only recognized by one state (Maine).¹⁰

Thus, the United States is a country with an established right to farm but no established right to food. The results of this odd imbalance can be seen in rural America, where the number of farmers and farmlands have shrunk¹¹ since the first right to food statutes were passed in the 1970s.¹² Simultaneously, the level of hunger in rural populations has risen.¹³ The reasons for these statistical shifts are

industry has long withstood meddling from consumers and regulators through fear, because “scarcity [is] one of the weapons in its antiregulatory arsenal” and the industry has perfected the art of making people afraid that interfering in their methods will “drive up production costs and make food more expensive and less available to average Americans”).

⁸ See discussion *infra* Part II.

⁹ See discussion *infra* Part III.

¹⁰ See, e.g., Wendy Heipt, *The Right to Food Comes to America*, 17 J. FOOD L. & POL’Y 111, 120-22 (2021) (giving the historical background of Maine’s right to food and explaining that Maine “now has the only constitutionally enshrined [right to food] in the country”).

¹¹ Andrew Keller & Kathleen Kessell, *Number of U.S. Farmers Continues Slow Decline*, CHARTS OF NOTE, U.S. DEPT. OF AGRIC. ECON. RES. SERVICE, available at <https://ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=111304> (“The number of U.S. farms continued its slow decline in 2024, reaching 1.88 million, the lowest in more than a century.”).

¹² See, e.g., Randall Wayne Hanna, “Right to Farm” Statutes – *The Newest Tool in Agricultural Land Preservation*, 10 FLA. ST. L. REV. 415, 430-37 (1982) (describing various right to farm statutes and explaining most of them had been passed in the three years leading up to the publication of that article in 1982).

¹³ See, e.g., MATTHEW P. RABBIT, MADELINE REED-JONES, LAURA J. HALES & MICHAEL P. BURKE, HOUSEHOLD FOOD INSECURITY IN THE UNITED STATES IN 2023, 20 (U.S. Dep’t of Agric. Econ. Res. Serv. Rep. No. ERR-337 2023), available at https://ers.usda.gov/sites/default/files/_laserfiche/

myriad, but the twin policy failures of the rights to farm and food are connected to the fact that both of these movements have been largely working in isolation to each other.¹⁴

Both the right to farm and the right to food highlight the complexities of the modern food system, and the complex balance between food production and food access in a world with global food supply chains. The complex modern world is full of many rights, some well-established¹⁵ and some more narrow,¹⁶ but few are as intertwined as the rights to farm and food. But lawyers and lawmakers have largely treated these two rights as separate issues without acknowledging the innate connection and tension between these two efforts. However, just as agricultural and food law¹⁷ are being seen as interconnected

publications (explaining the national average for food insecure households was 13.5 percent that year, with households in rural areas showing a “significantly higher” food insecurity rate of 15.4 percent).

¹⁴ This article recognizes that many organizations have worked hard to address the issues of hunger through agricultural solutions over the years, and many of the people working on behalf of those organizations were good people with good intentions. This is not a criticism of their efforts, but rather an acknowledgment that the system itself has not been kind to farmers or eaters during recent decades.

¹⁵ See, e.g., Jeffrey Rosen, *The Right to Be Forgotten*, 64 STAN. L. R. ONLINE 88 (2012) (explaining the European Union’s initiative to recognize privacy rights in the face of growing concerns about social media monitoring); Jessica A. Shoemaker, *Re-Placing Property*, 91 U. CHI. L. REV. 811, 893-95 (2024) (discussing the “right to wander” in Scotland and its basis in a mutually beneficial sense of responsibility held by both land-owners and land-wanderers); but see Roger I. Roots, *The Orphaned Right: The Right to Travel by Automobile, 1890-1950*, 30 OKLA. CITY U. L. REV. 245 (2005) (describing the “right to travel” which was widely recognized for decades but has largely disappeared from American life, and discussing the negative consequences of this loss on American liberty).

¹⁶ See, e.g., Juan Carlos Riofrio, *The Right to Feasts and Festivals*, 23 VAND. J. ENT. & TECH. L. 567, 568 (2021) (calling for a formal recognition of a “right to feast”); Joshua J. Schroeder, *Courting Oblivion Part I: How to Predicate the Right of Oblivion on the Right to Move On*, 72 CLEV. ST. L. REV. 805 (2024) (arguing for recognition of a right of oblivion, which the author also refers to as “the right to move on” as a “legal right to forgive, a right to forget, and a right to heal”).

¹⁷ Food law is the only area of the law that everyone ingests into their body every day. Although everyone ingests food law every day if they are lucky, the rise of hunger law as a branch of food law indicates there is a growing need for lawyers and scholars who focus on the legal causes and policy impacts of hunger issues.

again after years of being treated as separate fields of study,¹⁸ this article seeks to inspire a more thoughtful approach to contemplations about the rights to farm and food and ponder whether both efforts have failed to help the populations these efforts aimed to help.

The “right to food” is one of the places where these two law and policy discussions intertwine, as is “the right to farm.” The “right to farm” also sits in the nexus of food production, climate change, corporate influence, property law and constitutional authority – and the general consensus among people who follow “right to farm” issues is that it is only a matter of time before a case challenging some of the more controversial aspects of “right to farm” statutes will go before the United States Supreme Court.¹⁹

Politicians, practitioners, advocates and scholars need to look beyond the granular approach and think broadly to come to solutions that take the needs of farmers, feeders and eaters into account. The current approach to the right to farm has resulted in a large decline in farms and in farmers in America, and the current approach to the right to food has resulted in a large increase in the population of hungry people in the world. This article posits that a more intertwined solution is needed for these complex problems in order to change direction towards a more effective policy solution overall.

In Part I, this article elaborates on the intertwined fates of farmers and eaters.²⁰ In Part II, this article explains the right to farm in more detail, including giving a brief history of how these laws came to be passed in all fifty states and the negative impact of later amendments on the very farmers these laws intended to help.²¹ In Part III, this article explains the right to food in more detail and discusses how the lack of a consensus on the definition of this right has hampered its acceptance and implementation over time.²² In Part IV, this essay

¹⁸ See, e.g., Stephanie Tai, *Food Systems Law from Farm to Fork and Beyond*, 45 SETON HALL L. REV. 109, 110 (2015) (explaining “the legal world has long treated food and agriculture as separate spheres” but policymakers and scholars are starting to think of these subjects as broadly intertwined).

¹⁹ See, e.g., Rowan Aragon, *Taking Back Control: Using the Takings Clause to Hold Animal Agriculture Responsible for Its Waste Problem*, 119 NW. L. REV. 1071, 1084 (2025); discussing *Himsel v. Himsel*, 122 N.E.3d 935, 938–39, 946–48 (Ind. App. 2019); cert. denied, *Himsel v. 4/9 Livestock, LLC*, 141 S. Ct. 364 (2020).

²⁰ See *infra* Part I, “The Interconnected Fates of Farmers and Eaters.”

²¹ See *infra* Part II, “The Right to Farm: United States Origins and Growing International Impact.”

²² See *infra* Part III, “The Right to Food: International Origins and Growing Influence in the United States.”

explains how the problems that led to the development of the right to farm and the right to food are not separate legal issues, and instead are twin policy ideas that need to be considered together.²³ Finally, this essay concludes that the conversations about the right to farm and the right to food must be reframed to consider the rights to farm and food as braided rights with blended fates.²⁴

I. INTERTWINED FATES OF FARMERS AND EATERS

The interdependency of farmers and the bodies they nourish has been true since cultivation began, and scholars have long credited the origins of modern civilization to agricultural pursuits.²⁵ Productive farmland is needed for towns and cities to form, and for advanced civilizations to rise.²⁶ This is because advanced civilizations need thinkers and artists and engineers to grow and flourish, and experts on advanced intellectual topics are usually not nearly as successful when they have to spend most of their existence hunting and gathering for the food they need to survive.²⁷ Productive farmland makes

²³ See *infra* Part IV, “Declining Farmers, Increasing Hunger: The Right to Farm and Right to Food in Context.”

²⁴ See *infra* “Conclusion.”

²⁵ See, e.g., JONATHAN COPPRESS, *BETWEEN SOIL & SOCIETY* 3 (Univ. Neb. Press 2024) (explaining that ten thousand years of history connects the products of soil with the establishment of society: “The connections between soil & society are deep and profound. Soil has underwritten human developments spanning culture, government, economies, markets and technology.”); *but see* Richard A. Proctor, *The Influence of Food on Civilization*, 135 N. AM. REV. 547 (Dec. 1882) (arguing that stable food supplies are necessary for building civilizations, but warning against forces that create food that is too cheap as excessively cheap food leads to excessively cheap labor, decreased quality of life, and overall exploitation of the working class by the wealthy to the overall detriment of societies).

²⁶ See generally Dorian Q. Fuller & Chris J. Stevens, *Between Domestication and Civilization: The Role of Agriculture and Arboriculture in the Emergence of the First Urban Societies*, 28 VEGETATION HIST. & ARCHAEOBOTANY 263 (2019).

²⁷ See *id.* at 263-64; *contrast with* James Ming Chen, *Anthropocene Agricultural Law*, 3 TEX. A&M. L. REV. 745, 747-48 (2016) (arguing that the plentiful production of food in the modern world has allowed legal disputes to focus on the more “expressive aspects of food” such as food labeling, but that growing environmental concerns and Anthropocene threats will make the production of food a renewed concern in the future).

peaceful and prosperous civilizations possible.²⁸

Much has been written about the agrarian myth²⁹ and its role in the development of the United States³⁰ and particularly its influence on American farm and food policy.³¹ The agrarian myth in American has been described as a “romantic complex of ideas that asserted that the yeoman farmer was the ideal man and that agriculture was a uniquely productive and important component of society.”³² Others have written that the agrarian myth is a massively influential “creed” that has become part of America’s folklore.³³ The nostalgic pull of the agrarian myth has had a deep influence on the minds of many Americans and an even deeper influence on American politics.

²⁸ The dependence of societies on productive farmland is one of the many reasons that destruction of food sources has recently been recognized as a war crime in certain contexts. *See, e.g.*, Tom Dannenbaum, *Siege Starvation: A War Crime of Societal Torture*, 22 CHI. J. INT’L L. 368, 376-80, n. 21 (explaining that the recognition of starvation as a war crime is a relatively recent and limited concept in spite of the practical reality that the deprivation of access to vital food-producing resources can have horrific effects on a civilian populations).

²⁹ *See, e.g.*, ROSS SINGER, STEPHANIE HOUSTON GREY & JEFF MOTTER, *ROOTED RESISTANCE: AGRARIAN MYTH IN MODERN AMERICA* (University of Arkansas Press 2020) (describing the influence of the agrarian myth on American food choices and American politics).

³⁰ *See, e.g.*, Joyce Appleby, *Commercial Farming and the Agrarian Myth in the Early Republic*, 68 J. AM. HIST. 833 (1982) (exploring the historical influence of the agrarian myth and the myth’s legacy).

³¹ *See, e.g.*, Jessica Guarino, *The Injustices of Agricultural Exceptionalism: A History and Policy of Erasure*, 27 DRAKE J. AGRIC. L., 321 (2022) (discussing the negative impacts of legal traditions that the author argues have been overly deferential to the agricultural sector due to the influence of the agrarian myth).

³² *See, e.g.*, Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalism, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 255 (2005) (citing RICHARD HOFSTADTER, *THE AGE OF REFORM FROM BRYAN TO FDR* 24-25 (New York, Alfred A. Knopf, 1956)).

³³ *Id.*; *see also* Keith D. Haroldson, *Two Issues in Corporate Agriculture: Anticorporate Farming Statutes and Production Contracts*, 41 DRAKE J. AGRIC. L. 393, 398 (1992) (explaining that the agrarian myth became part of the American heritage, and believed that “farming was the best way of life and the most important economic activity, that it conferred psychological as well as economic benefits, and it produced the best citizens”) (quoting RICHARD S. KIRKENDELL, “Up to Now: A History of American Agriculture From Jefferson to Revolution to Crisis,” in *AGRICULTURE & HUMAN VALUES* 4 (1987)).

American public law and policy has a myriad of exceptions for agricultural enterprises, exempting them from labor laws and other important regulations, largely because of public fears of mass agricultural failure and rampant starvation.³⁴ But just as all myths evolve over time,³⁵ the American agrarian myth has evolved in the minds of the American people and the modern American public's relationship with the American farmer is currently strained.³⁶

Scholars have yet to agree why there has been increasing disconnectedness between farmers and feeders over the past century, and the suggested reasons for this disconnect often depend upon the perspective of the speaker or the author. Stakeholders from the agriculture industry sometimes blame things like “generational and geographic distance between farmers and consumers, technological advances in farming, and changes in farm size and structure.”³⁷

³⁴ See, e.g., Guarino, *supra* note 31; Pollans, *supra* note 7, at 231-33 (describing how the fear of starvation or any type of lack of abundance has shaped the way voters and policymakers think about agriculture in America).

³⁵ See, e.g., JULIEN D'HUY & STEVE MIRSKY, *How Myths Evolve Over Time and Migrations*, on SCIENTIFIC AMERICAN (Nov. 15, 2016), <https://www.scientificamerican.com/podcast/episode/how-myths-evolve-over-time-and-migrations/>; see also Robert D. Taylor, *Reclaiming Our Roots: Law and Mythology*, 29 DUQ. L. REV. 271, 273 (1991) (“Myths are the images, metaphors and symbol systems which comprise the stories or narrative accounts by which we direct our lives, choose our mates, as well as our careers, set our goals, and spend our money.”); Leah M. Litman, *The Myth of the Great Writ*, 100 TEX. L. REV. 219 (2021) (discussing the evolving understanding of the writ of *habeas corpus* and describing it as a legal myth).

³⁶ See, e.g., Melissa D. Mortazavi, *Are Farm Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger Free Kids Act and the Farm Bill*, 68 WASH. & LEE L. REV. 1699 (2011) (criticizing the public health impacts of farm subsidies); see also ROSS SINGER, STEPHANIE HOUSTON GREY & JEFF MOTTER, “*Mythic Rhetoric Imagines the American Garden*,” in *ROOTED RESISTANCE: AGRARIAN MYTH IN MODERN AMERICA* 3 – 34 (University of Arkansas Press 2020) (“Cultural myths pervading agricultural discourse in the twentieth and twenty-first century America shift with the scene, often taking forms that fit, alter or contradict earlier manifestations of agrarian myth and its values.”).

³⁷ See CENTER FOR FOOD INTEGRITY, 2011 CONSUMER TRUST RESEARCH REPORT at 4 (hereinafter “CENTER FOR FOOD INTEGRITY 2011 CONSUMER TRUST REPORT”); see also Pohlman, *supra* note 6, at 239-40 (chronicling the decreased interactions between the general public and their food sources from 1900 to the present, and lamenting “While farmers helped shape the foundation of the country, their role in society has been slowly overlooked by the growing urban and semi-urban populations”).

Industry-friendly public health officials have been known to blame sensationalistic stories in the media and overall consumer confusion.³⁸ Consumer-focused commentators have tended to blame the increasing disconnect and distrust on manipulative tactics by the industries themselves.³⁹ Whatever the cause, many commentators believe that the gap between food producers and food eaters is wider than ever.⁴⁰

In a 2011 report to the agriculture industry on its research into trust issues related to consumer markets, the Center for Food Integrity encouraged its agricultural funders to consider courting, rather than alienating, consumer confidence: “Maintaining the public trust that protects your social license to operate is not an act of altruism, it is enlightened self-interest.”⁴¹ The report also acknowledges that past

³⁸ See, e.g., HARVARD SCHOOL OF PUBLIC HEALTH & INTERNATIONAL FOOD INFORMATION COUNCIL FOUNDATION, IMPROVING PUBLIC UNDERSTANDING: GUIDELINES FOR COMMUNICATING EMERGING SCIENCE ON NUTRITION, FOOD SAFETY AND HEALTH FOR JOURNALISTS, SCIENTISTS AND OTHER COMMUNICATORS (1998), originally published as Harvey Fineberg & Sylvia Rowe, *Improving Public Understanding: Guidelines for Communicating Emerging Science on Nutrition, Food Safety and Health*, 90 J. NAT. CANCER INST. 3 (Feb. 4, 1998).

³⁹ See, e.g., Andrea Freeman, *Constitutional Food Inequality*, 55 HARV. CIVIL RIGHTS – CIVIL LIBERTIES L. REV. 840, 886 (2020) (lamenting the influence the milk industry has over government food standards, and arguing the food industry has lobbied federal agencies to promote corporate interests over public health) (citing Marion Nestle, *Hunger in America: A Matter of Policy*, 66 FOOD NATURE & CULTURE 257, 271 (1999)).

⁴⁰ See, e.g., Tammi S. Etheridge, *The Big Cost of Small Farms*, 77 FLA. L. REV. 465, 468-72 (2025) (describing recent political debates about the rising cost of food in America, which are occurring at a time of record corporate profits for food and meat companies, and stating “consumers are outraged”); see also Aragon, *supra* note 19, at 1071 (2025) (painting an unflattering portrait of animal agriculture and its negative impact on public health).

⁴¹ See CENTER FOR FOOD INTEGRITY 2011 CONSUMER TRUST REPORT, *supra* note 37, at 4. The funders thanked in the report included the U.S. Farmers and Ranchers Alliance, the United Soybean Board, the American Farm Bureau Foundation, the National Pork Producers Council, and Monsanto, which at the time was the largest agricultural company in the world. *Id.* at 30. This report is on file with the author and was a handout at the 2013 World Food Prize and Borlaug Dialogue Conference, one of the most influential gatherings of agricultural leaders in the world. See, e.g., Kenneth Quinn, *Living History Interview with Ambassador*, 17 TRANSNAT’L L. & CONTEMP. PROBS. 165, 167 (2008) (explaining the World Food Prize was created after

attempts to justify their production methods to consumers have not been successful in courting consumer understanding and support. The report laments the agriculture industry's tendency to confuse "scientific verification with ethical justification."⁴² The report also encourages farmers and agricultural stakeholders to shift consumer concerns away from controversial words such as "genetically engineered" and "pesticides" and use words such as "technology" instead.⁴³

Fifteen years later, that wariness of dependency on "scientific verification" over "ethical justification" is prescient. Many modern scholars have lamented the heavy influence corporations have gained over the scientific process, largely through donations to universities and scientific grants.⁴⁴ The increasing influence of agribusiness on studies related to food production, food science and public health has created an increasingly cynical consumer view of health studies related to food.⁴⁵ Most of the leading land-grant university have agricultural departments that enjoy funding from major corporate donors and or whose board members are from the agriculture and food industries,⁴⁶ and that has had a decreasing impact on the amount of public trust in the results of those studies. As consumers have lost faith in the food and agricultural sectors of our economy to be honest

the Nobel Committee had neither the funds or the inclination to create a Nobel Prize related to agriculture and food, so Dr. Norman Borlaug created his own version which has grown in influence and importance over the decades).

⁴² CENTER FOR FOOD INTEGRITY 2011 CONSUMER TRUST REPORT, *supra* note 37.

⁴³ See CENTER FOR FOOD INTEGRITY 2011 CONSUMER TRUST REPORT, *supra* note 37, at 27-29.

⁴⁴ See, e.g., MARION NESTLE, FOOD POLITICS 111 (2003) ("The efforts of food companies to influence dietary advice to the public and to establish an image of their products as nutritious extend well beyond lobbying Congress and influencing governmental agencies ... co-opting experts – especially academic experts – is an explicit corporate strategy"); see also BERRY, *supra* note 1, at 51 (lamenting the failure of the land-grant university system and placing part of the blame on the influence of agribusiness corporations in land-grant universities, noting "the willingness of land-grant professors, scientists, and extension experts to serve as state-paid researchers and traveling salesmen for those corporations is widely known").

⁴⁵ See generally Pollans, *supra* note 6.

⁴⁶ See NESTLE, *supra* note 44, at 111-136 (describing in detail the various ways food and agriculture companies influence academic studies, papers and conferences in order to procure positive outcomes and press for their products).

about health and feed them healthy food, there is a feedback loop between that loss of trust and the dilution of the power of the agrarian myth.

The emphasis the agriculture industry places on consumer confidence in their business practices is not simply a need to be liked. They need the public to believe in some version of the agrarian myth because the modern agriculture industry is highly dependent on tax dollars,⁴⁷ and for much of the past hundred years the agriculture industry was also dependent on exporting its product around the world.⁴⁸ As Charlie Arnot, president of Center for Food Integrity, explained to his peers, “If consumers don’t believe U.S. agriculture has a responsibility to feed the world then we can’t build consumer support for today’s farming simply by claiming we need to feed more people,” further explaining that the public support for agriculture will wane “unless we can build public support that feeding the world should be a priority.”⁴⁹

The most recent shifts in American agricultural sector sales after the closing of the United States Agency for International Development (USAID) is an example of this interdependence between farmers and feeders. After USAID was effectively eliminated in early 2025, many farmers and agricultural interest groups were floundering to sell

⁴⁷ See, e.g., Jack Sherrick, *Prose to Policy: How Wendell Berry’s Distinct Strain of Agrarianism Can Influence Farm Policy*, 56 COLUM. J. L. & SOC. PROBS. 295, 334-35 (2023) (explaining that direct payments to farmers are traditionally the second-largest expense in \$400-plus billions of funds that are allocated through the Farm Bill); see also Candice Wilson, *Too Big to Fail: How Consolidation in the Agriculture Industry Has Created Unintended Consequences That Threaten Farmers, Consumers, and Our National Security*, 28 DRAKE J. AGRIC. L. 171, 193-94 (2023) (lamenting that “the federal government continues to write checks to struggling farmers and hungry citizens with little oversight over potential causes” even while “agribusiness companies remain[] flush with cash” while exercising “monopoly and monopsony power over the food supply at the American taxpayer’s expense”).

⁴⁸ See, e.g., Bill Tomson, *Farm & Humanitarian Groups Square Off Over Food Aid*, AGRI-PULSE (June 6, 2023), <https://www.agripulse.com/articles/19632-farm-and-humanitarian-groups-square-off-over-food-aid> (“In fiscal 2022, the U.S. Agency for International Development paid about \$2.6 billion to ship 1.8 million metric tons of wheat, rice, soy products and other U.S.-grown commodities to feed 53 million people in 21 countries, according to USAID data.”).

⁴⁹ See CENTER FOR FOOD INTEGRITY 2011 CONSUMER TRUST REPORT, *supra* note 37, at 4.

products that had been reliably exported for decades.⁵⁰ And agricultural interest groups who had reliably supported the party in power for decades have been startled to realize their allies in Washington were no longer listening to stories about the importance of American agricultural exports as a cornerstone for international diplomacy and peace.⁵¹

So it is not just that farmers and eaters have different priorities, it is that they are both functioning in a system that is designed to keep them in opposition. This is a complex dynamic that is unlikely to change soon, especially given the ongoing political disputes over who should bear the financial risk for growing food, who should profit from those activities, and who should pay for the expenses along the way.

II. THE RIGHT TO FARM: U.S. ORIGINS AND GROWING INTERNATIONAL INFLUENCE

The right to farm started in the United States⁵² and was originally championed by United States farmers and related advocacy groups⁵³ as an effective way to protect family farms and rural ways of life.⁵⁴ In

⁵⁰ See, e.g., Elizabeth Williamson, *From Food Aid to Dog Chow: How Trump Cuts Hurt Kansas Farmers*, N.Y. TIMES (July 7, 2025), <https://www.nytimes.com/2025/07/07/us/politics/trump-farmers.html>, (describing the effective death of the “Food for Peace” program and its economic impact on farmers, farming cooperatives, and other agricultural interests in Kansas).

⁵¹ See *id.*; but see Matthew Weaver, *Rubio Says USAID Officially in “Close Out Mode,”* CAPITAL PRESS (Sept. 4, 2025) (discussing attempts by various agricultural commodity groups to save the Food for Peace program by moving it under the United States Department of Agriculture).

⁵² See NAT’L. AGRIC. L. CENTER, *States’ Right to Farm Provisions* (2019), <https://nationalaglawcenter.org/state-compilations/right-to-farm/>; see also MARGIE ALSBROOK, *THE RIGHT TO FARM: A LEGAL RESEARCH GUIDE* (Hein 2025).

⁵³ See, e.g., Gina Moroni, *Mediating Farm Nuisance: Comparing New Jersey, Missouri and Iowa Right to Farm Laws and How that Utilize Mediation Techniques*, 2019 J. DISP. RESOL. 299, 305-07 (2018) (explaining the various types of agricultural interest groups that are typically involved in right to farm lobbying, their roles, and giving examples for each category).

⁵⁴ LOKA ASHWOOD, AIMEE IMLAY, LINDSAY KUEHN, ALLEN FRANCO & DANIELLE DIAMOND, *EMPTY FIELDS, EMPTY PROMISES: A STATE-BY-STATE GUIDE TO UNDERSTANDING AND TRANSFORMING THE RIGHT-TO-FARM* 3 (2023) (explaining that the first right to farm laws were passed as interest rates on farm debts soared in the 1970s and then forty more states passed

the past fifty years every state in the United States has passed right to farm laws,⁵⁵ and some states have enshrined these rights in their state constitutions.⁵⁶ The idea of right to farm protections for agricultural land owners has also spread internationally, particularly into Canada.⁵⁷

*A. Right to Farm Legislation is Rooted in Nuisance Law
and Has Been Adopted in All Fifty States*

The original idea for right to farm laws are rooted in classic property law, particularly nuisance law.⁵⁸ Nuisance law is a

similar laws in the 1980s as “farmers went out of business in droves and farmer suicides hit record highs as debt soared, land prices collapsed, and commodity prices bottomed out”); *see also* Don A. Langford, *Agriculture in the Seventies – A Decade of Turbulence*, FED. RES. BANK OF CHI. ECON. PERSPS. 3 (1978) (explaining the historic highs and historic lows that caused economic distress for the agriculture perspective during that time); Jessica A. Shoemaker, *Re-Placing Property*, 91 U. CHI. L. REV. 811, 897-98 (explaining that property laws and property rights can be heavily influenced by people’s deep attachments to place and the ideas people have about land-ownership and place-based values).

⁵⁵ *See generally* NAT. AGRIC. L. CENTER, *supra* note 52; ASHWOOD, ET. AL., *supra* note 54; ALSBROOK, *supra* note 52. All of these sources provide a list of the right to farm laws that have been passed in all fifty states and citations to the relevant statutes.

⁵⁶ *See, e.g.*, MISS. CONST. art. I § 35; N.D. CONST. art. XI § 29; *see also* Angela Kennedy, *Sustainable Constitutional Growth? The “Right to Farm” and Missouri’s Review of Constitutional Amendments*, 81 MO. L. REV. 205 (2016).

⁵⁷ *See* Laura Alford & Sarah Berger Richardson, *Right-to-Farm Legislation in Canada: Exceptional Protection for Standard Farm Practices*, 50 OTT. L. REV. 131 (2018).

⁵⁸ Jennifer L. Beidel, *Pennsylvania’s Right-to-Farm Law: A Relief for Farmers or an Unconstitutional Taking?*, 110 PENN. ST. L. REV. 163, 164 (2005) (“right-to-farm” laws are intended to preserve agricultural operations by protecting them from nuisance suits”). A general discussion of the basics of nuisance law is outside the scope of this article, but nuisance law is a foundational principle in property law and more information is widely available. *See, e.g.*, Jeff L. Lewin, *Boomer and the American Law of Nuisance: Past, Present and Future*, 54 ALB. L. REV. 189 (1990); *see also* Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972).

notoriously complicated area of the law,⁵⁹ and fully understanding the implications of the right to farm on land use in America is still evolving. Many recent cases have attempted to involve the idea of constitutional takings of property into right to farm litigation,⁶⁰ a process that involves the possibility of land ownership being forcibly changed by legal action.⁶¹

As the population of the United States grew rapidly in the last hundred years,⁶² and as more and more space was used for roads for

⁵⁹ Brigid Massaro, *Navigating the “Impenetrable Jungle:” Statutory Limits on Wisconsin Public Nuisance Actions*, 90 MARQ. L. REV. 95, 99 (2006) (citing sources that describe nuisance law as an “impenetrable jungle” and “a sort of legal garbage can” and the term nuisance as something that is impossible to define consistently); *see also* Calabresi & Melamed, *supra* note 58 at 1120 (“Nuisance damages may be very hard to value, and the costs of informing all of the injured of their rights and getting them into court may be prohibitive.”).

⁶⁰ *See, e.g.*, Beidel, *supra* note 58; Adam Van Buskirk, *Right-to-Farm Laws as “Takings” in Light of Bormann v. Board of Supervisors and Moon v. North Idaho Farmers Association*, 11 ALB. L. ENV. OUTLOOK 169 (2006); Aragon, *supra* note 19, at 119.

⁶¹ A discussion of governmental takings as it relates to property law is outside the scope of this article, but “takings” is a foundational principle in property law and more information is widely available. *See, e.g.*, Maureen E. Brady, *Property Convergence in Takings Law*, 46 PEPP. L. REV. 695, 705 (2019) (“...the takings clauses of the state and federal constitutions prevent private property from being taken for public use without just compensation. This is the area of property law that most empowers property owners against both direct confiscation and confiscatory regulation – “regulatory takings” – by federal, state and local governments.”).

⁶² Compare Sarah Mangroo, *A Band-Aid Solution: The Need for a Better Treatment Plan for the Physician Burn-Out Crisis*, 34 ANNALS OF HEALTH L. & LIFE SCI. 101 n.30 (2025) (citing statistics that say the population was just over 336,226,000 in 2024) with William L. Church, *Farmland Conversion: The View from 1986*, 1986 U. ILL. L. REV. 521 (1986) (noting the population of the United States was 240,000,000 in 1986 and was expected to reach 300 million by 2020) and Michael Martinez, *Vertical Farming: A Bottom-Up Approach*, SEATTLE J. OF TECH. ENV'T. & INNOVATION L. 1 (2023) (“The human population is expected to reach 9.7 billion by 2050. During that same year, the United States population is expected to reach 434 million.”); *but see* Chelsie V. Henderson, *Baby-Making as Federal Policy: Mandating Insurance Coverage for Infertility Treatments Under the Patient Protection and Affordable Care Act*, 58 IND. L. REV. 213, 222-23 (2024) (discussing current concerns about reduced birth rates in the United States).

automobiles⁶³ and human necessities,⁶⁴ the cities, towns and suburbs that humans lived in spread as well.⁶⁵ As habitation spread for humans increasingly encroached on farmland,⁶⁶ agricultural groups began brainstorming for alternate ways to deal with these conflicts.⁶⁷ The idea of right to farm protections were born and rapidly adopted, as

⁶³ See, e.g., John K. McIlwain, *Show Me the Money: A Proposed Federal Response to Urban Sprawl*, 11 AFF. HOUS. & COMM. DEV. L. J. 26, 27 (2001) (quoting a study that estimates every five million person increase in population requires another 2.5 million automobiles, and over 150 square miles of parking lots to park them); see also Jordan Lesser, *Local Land-Use Control, Constitutional Hydrofracking: New York and Beyond*, 28 TUL. ENV'T. L. J. 315, 326 (2013) (citing *Robinson Twnshp v. Cm*, 623 Pa. 564 (2013) (“We smashed our highways through fertile fields and thriving city neighborhoods.”)); but see STEPHANIE A. MERCIER & STEVE A. HALBROOK, *AGRICULTURAL POLICY OF THE UNITED STATES* 111-12 (Springer 2020) (explaining that agricultural groups were one of the earliest supporters of increasing roads and transportation as part of “The Good Roads Movement,” which was started by bicyclists before widespread use of the automobile; agricultural interests quickly recognized the potential for increased roads to increase the efficiency of transporting agricultural commodities to market).

⁶⁴ See Jess R. Phelps, *Subdivision and Conserved Farmland*, 86 TENN. L. REV. 735 (2019); see also William L. Church, *Farmland Conversion: The View from 1986*, 2 U. ILL. L. REV. 521, 521 (1986) (explaining that the “conversion of agricultural land into other uses has become a topic of major interest for American agriculturalists, economists, lawyers, and government” and that by 1986 increased concern about the loss of agricultural land had caused every state, and many local jurisdictions, to pass regulations and laws in response).

⁶⁵ See, e.g., Patrick Gallagher, *The Environmental, Social and Cultural Impacts of Sprawl*, 15 NAT. RES. & ENV'T. 219, 222 (2001) (discussing some of the impacts of human activities and urban sprawl on farmland); see also THOMAS L. DANIELS & JOHN C. KEENE, *THE LAW OF AGRICULTURAL LAND PRESERVATION IN THE UNITED STATES* 337 (ABA 2018) (explaining that “over the past forty years, many people have moved to the countryside especially on the outer edge of metropolitan areas” and those people do not appreciate the noise, smells, pesticides and dust that are common parts of agricultural production).

⁶⁶ See, e.g., MERCIER & HALBROOK, *supra* note 63, at 344 (Springer 2020) (“Overall land use patterns in agriculture change very slowly. But it is estimated that 1-3 million acres of agricultural land are lost to non-farm uses each year.”).

⁶⁷ See, e.g., ASHWOOD, ET. AL., *supra* note 54, at 3; Moroni, *supra* note 53, at 303-04.

most states enacted right to farm laws between 1978 and 1984.⁶⁸

Problems continued to increase as human development increased, particularly when urban or suburban residents moved into rural areas that had traditionally been used for farming purposes and then complained about things like odors,⁶⁹ dust,⁷⁰ pesticide use,⁷¹ animal

⁶⁸ DANIELS & KEENE, *supra* note 65, at 337 (ABA 2018). Although the larger financial pressures on farmers at the time are beyond the scope of this article, the larger farm financial crisis of this period played a huge role in persuading legislators and the general public to create increased financial protections for farmers. *See, e.g.*, ASHWOOD, ET. AL., *supra* note 54, at 3 (“[Right to farm] laws hit legislative floors during one of the most severe agricultural crises in the history of the United States. In the early 1980s farmers went out of business in droves and farmer suicides hit record highs as debt soared ...”).

⁶⁹ *See, e.g.*, *Condon v. Vickery*, 270 Ga. App. 332, 322-23, 606 S.E.2d 336, 337-38 (Ga. Ct. App. 2004) (determining the outcome in the latest of several legal actions between warring neighbors where one sued the other for malicious prosecution after he was found guilty under a local municipal criminal code related to odors; at the original trial one witness testified the odor emanating from the offending cows “smel[led] like nasty baby diapers”); *Pestey v. Cushman*, 259 Conn. 345, 348, 788 A.2d 496, 500 (Conn. 2002) (describing the cattle manure processes of a large dairy farm and the resulting odors as “smell[ing like] sulphur and sewage”).

⁷⁰ *See, e.g.*, *Soukop v. Conagra, Inc.*, 264 Neb. 1015, 653 N.W.2d 655 (Neb. 2002) (contemplating a dispute between a grain elevator and a nearby used car dealership over the large amount of dust produced by the grain operation); *Payne v. Skaar*, 127 Id. 341, 900 P.2d 1352 (Idaho 1995) (using the state legislature’s notes of their intent in reviewing a dispute between a city and a nearby feedlot over complaints of excessive dust, among other disputes).

⁷¹ *See, e.g.*, *Aana v. Pioneer Hi-Bred International, Inc.*, 965 F. Supp. 2d 1157 (D. Haw. 2013) (reviewing litigation of a nuisance case from a notice perspective); *John Larkin, Inc. v. Marceau*, 184 Vt. 207, 959 A.2d 551 (Vt. 2008) (rejecting a land developers’ attempt to maneuver around a state right-to-farm statute by filing a trespass claim related to orchard pesticides and affirming the lower court’s decision in favor of the farmer).

noise,⁷² industrial noise,⁷³ increased insect populations,⁷⁴ and other issues traditionally associated with agricultural production.⁷⁵

As neighborly litigation and legal conflicts continued to rise,⁷⁶ and zoning laws proved to be an unfair method for resolving these conflicts,⁷⁷ right to farm laws were imagined to be a possible statutory

⁷² See, e.g., *Hood River County v. Mazzara*, 193 Ore. App. 272, 89 P.3d 1195 (Or. Ct. App. 2004) (reversing a criminal conviction under a local noise ordinance caused by a dog who trained to protect a goat herd, and rejecting the trial court's refusal to apply the state right to farm act); *Holubec v. Brandenburger*, 111 S.W.3d 32 (Tex. 2003) (including animal noises from bleating lambs in a list of complaints from neighbors who lived near a sheep farm that had added a large feedlot to their operations).

⁷³ See, e.g., *McVickars v. Christensen*, 156 Idaho 58, 64, 320 P.3d 948, 954 (Idaho 2014) (reversing and remanding a lower court decision that a horse arena was automatically a producer of industrial nuisance, and requiring an analysis of the "cumulative effects" of the operations before rendering further judgment); *Trosclair v. Matrana's Produce, Inc.*, 717 So. 2d 1257 (La. Ct. App. 1998) (overturning a dismissal of a nuisance suit brought by a neighbor of a noisy produce business using an analysis of the state's right to farm law).

⁷⁴ See, e.g., *Toftoy v. Rosenwinkel*, 368 Ill. Dec. 50, 983 N.E.2d 463 (Ill. 2012) (using an excessive amount of flies as a prominent fact in a nuisance suit between two neighbors); *Cline v. Franklin Pork, Inc.*, 219 Neb. 234, 361 N.W.2d 566 (Neb. 1985) (contemplating the latest issue in a years-long dispute between neighbors and a pork processing facility over whether the noise, smell and flies associated with the business were nuisances or were protected by the state right to farm statute).

⁷⁵ Moroni, *supra* note 53, at 304 ("In the 1970s and 1980s, urban sprawl placed people who had never been around farming operations right next door to one. The charm of living next to a farm was often short-lived, as new neighbors' perceptions of a farm and rural living collided with its reality."); Shannon Knapp, *Right to Farm or Right to Harm: Do New York's Right to Farm Laws Go Too Far?*, 70 SYRACUSE L. REV. 659, 663 (2020) (quoting a 1983 journal article that explained how conflicts between farmers and residents underlie many of the conflicts that led to the passage of right to farm laws as saying "The irony of the situation is obvious. While farming creates and maintains the atmosphere and bucolic landscape so many wish to be part of, it is the business of agriculture ... that many find offensive") (quoting Mark B. Lapping, George E. Penfold & Susan Macpherson, *Right to Farm Laws: Do They Resolve Land Use Conflicts?*, 38 J. SOIL & WATER CONSERVATION 465 (1983)).

⁷⁶ See, e.g., Moroni, *supra* note 53, at 303-04 (explaining the history of neighborly disputes that formed the rationale for right to farm laws).

⁷⁷ See, e.g., Alexander E. Reinert, *The Right to Farm: Hog-Tied and*

resolution⁷⁸ that could help farmers preserve their agricultural land ownership and related businesses by proactively cutting off the kind of expensive and complicated litigation that could force them into large-scale legal expenses, or worse to cease operations all together.⁷⁹

Several lawsuits had been successful in combatting nuisance allegations by using the “coming to the nuisance” defense,⁸⁰ a defense that was perfect for agricultural operations and family farms that were already in operation before the new neighbors moved in.⁸¹ The idea was essentially based on the common law concept of “first in time, first in right” and many early state statutes protected any farm or agricultural operation that was at least one year old.⁸² For many in agriculture this idea made sense: “The newcomers are coming to the nuisance, and thus they are creating the conflict.”⁸³

Right to farm advocates wanted to create legal protections for farmers to save them the time, cost, and stress of nuisance litigation. The idea was that if the legal trends were already recognizing the “coming to the nuisance” defense, that statutory protections passed by

Nuisance-Bound, 73 N.Y.U. L. REV. 1694, 1705 (1998) (explaining that most right to farm laws were passed under the presumption that many cities and towns would “zone out” agricultural operations if they could, so many right to farm laws “limit the power of local government to pass ordinances that restrict agricultural activity”).

⁷⁸ See, e.g., *id.* at 1699-1703 (1998) (exploring the historical background of the “coming to the nuisance” defense that formed the rationale for the movement to pass right to farm laws in all fifty states).

⁷⁹ See, e.g., DANIELS & KEENE, *supra* note 65, at 337 (explaining that right to farm laws do not prevent lawsuits, they simply provide defenses, and if sued an agricultural operator will still have to hire an attorney to make that defense on his, her or their behalf).

⁸⁰ See, e.g., Neil Hamilton, *Right to Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May be Ineffective*, 3 DRAKE J. AGRIC. L. 103, 104 (1998) (explaining that right to farms are “in many ways a codification of the common law defense of ‘coming to the nuisance’” that provide some security for farmers and agricultural operations as well as a warning those who wish to move into agricultural areas).

⁸¹ *Id.* at 104 (1998) (“Preventing non-farm operations from moving close to and then challenging the very existence of an indigenous agricultural operation can be a valid attempt to preserve farms and farmland and a way of insuring fundamental fairness.”).

⁸² DANIELS & KEENE, DANIELS & KEENE, *supra* note 65, at 337.

⁸³ *Id.*; see also Hamilton, *supra* note 80, at 104 (opining that right to farm laws have “an element of legal validity and equitable justification that cannot be denied”).

state legislators could help future farmers in these types of disputes. Right to farm supporters hoped these statutes would create a litigation landscape where future farmers would not have to pay lawyers to walk future judges through all of this background information, and also proactively cut off expensive, related litigation squabbles.⁸⁴ Advocates for right to farm also hoped right to farm statutes would proactively discourage developers from building new residential neighborhoods close to active agricultural operations once the possibility of winning nuisance law suits was significantly lowered.⁸⁵

The original right to farm laws often contained additional protections for farmers and farmland. Some included proactive protections against local ordinances and zoning laws, and others included protections for operations based on agricultural industry norms. Agricultural scholars Thomas Daniels and John Keene have categorized right to farm laws as falling into four categories:⁸⁶

- a) Right to farm laws that provide protections from private nuisance suits based on the length of time that the agricultural operation has existed, usually giving preference to operations that have existed for a year before there was a change in the area;⁸⁷

⁸⁴ See, e.g., ASHWOOD, ET. AL., *supra* note 54, at 3 (“Early advocates for [right to farm] laws characterized the threatening, sue-happy urbanite moving out to the country as unfamiliar with the sights and sounds of agriculture. Likewise, they warned of the litigious lawyer, evoking long-simmering resentment by rural dwellers ...”).

⁸⁵ See, e.g., Hamilton, *supra* note 80, at 104 (explaining that right to farm laws “alert and place on notice those non-farm owners who move into agricultural areas that the use of their property may be subject to the rights of nearby pre-existing farm operations”); see also ASHWOOD, ET. AL., *supra* note 54, at 3 (repeating a quote from a 1987 newspaper article featuring the president of the Indiana Farm Bureau, who said “Hopefully this will send a message to the public that if they move next to a farmer, they have to accept how he operates”).

⁸⁶ THOMAS L. DANIELS & JOHN C. KEENE, THE LAW OF AGRICULTURAL LAND PRESERVATION IN THE UNITED STATES 337 (ABA 2018).

⁸⁷ *Id.*; see also ASHWOOD, ET. AL., *supra* note 54, at 5 (noting that over 24 states have included a statutory provision that “once an operation is up and running for a year, it is immune from negligence suits,” and explaining that the term “operation” is often interpreted broadly by courts to go well beyond the kind of family farms that were envisioned in the original wave of right to farm statutes). One example of the use of right to farm protections in industrial litigation is *Born v. Exxon Corporation*, where Exxon was able to use the shortened statute of limitations in a state right to farm statute to

- b) Right to farm laws that provide protection from restrictive local zoning ordinances or nuisance regulations;⁸⁸
- c) Right to farm laws that provide protection to agricultural operations based on “generally accepted agricultural management practices;”⁸⁹ and
- d) Right to farm laws that are specifically designed to protect concentrated animal feeding operations, also known as CAFOs.⁹⁰

Right to farm lawsuits have also gotten more complicated over the years. For example, one of the most famous court cases involving a challenge to a right to farm statute was *Bormann v. Board of Supervisors in and for Kossuth County*,⁹¹ in which the Iowa right to

successfully win a motion to dismiss. *See id.* (citing *Born v. Exxon Corp.*, 388 So. 2d 933, 934 (Ala. 1980), ALA. CODE § 6-5-127(a) (1975)).

⁸⁸ DANIELS & KEENE, *supra* note 65; *see also* ASHWOOD, ET. AL., *supra* note 54, at 7 (“Today thirty-one states have statutory provisions that restrict local governmental decision-making or regulatory authority over agricultural operations”).

⁸⁹ DANIELS & KEENE, *supra* note 65; *see also* Garrett Chrostek, *A Critique of Vermont’s Right to Farm Law and Proposals for Better Protecting the State’s Agricultural Future*, 36 VT. L. REV. 233, 238-39 (2011) (discussing “accepted agricultural provisions” in various right to farm statutes around the country and explaining how they can suppress innovations); Benjamin A. Varadi, *A Flower By Any Other Name: The Case for Cannabis Right to Farm Protection*, 18 ALB. GOV. L. REV. 81, 111-12 (2025) (discussing how the requirement for use of “generally acceptable agricultural practices” can create a barrier for cultivators of marijuana-related crops, and suggesting ways to resolve these conflicts to extend right to farm protections to those types of farmers).

⁹⁰ While an extensive discussion of CAFOs is beyond the scope of this article, CAFOs have been the subject of increasing scrutiny from legal scholars. *See generally* ASHWOOD, ET. AL., *supra* note 54 (explaining the various negative legal and environmental impacts of CAFOs and the way right to farm laws have isolated them from facing the consequences of their operations); Douglas A. Kysar, *Farm Until Its Gone: Industrial Animal Agriculture and the Limits of Law*, 74 DEPAUL L. REV. 249, 269 (2025) (explaining the extensive power imbalances that prevent legal and environmental challenges from succeeding against CAFOs); *but see* Andrea Prisco, *The Rise of Concentrated Animal Feeding Operations, Their Effects, and How We Can Stop Their Growth*, 126 DICK. L. REV. 883, 894 (2022) (maintaining that there are some of the societal benefits from CAFOs, including increased agricultural production and lowered food costs for consumers but still asking for some limits on their power).

⁹¹ 584 N.W.2d 309 (Iowa 1998), *cert. denied*, *Girres v. Bormann*, 525 U.S. 1172 (1999).

farm statute was ruled to have created an unconstitutional “taking” of another’s property.⁹² Additionally, recent revisions to right to farm laws across the country have expanded these proactive protections to processing facilities and other industrial operations.⁹³

To date there is no right to farm at the federal level,⁹⁴ and efforts to propose and pass one seem stagnant as of the date of submission of this article. Similarly, no right to farm cases have appeared before the United States Supreme Court.⁹⁵ For several years the federal government adopted a practice of addressing the issue of farmland preservation through incentivizing preservation through a variety of programs designed to compensate farmers for various conservation-related land practices.⁹⁶ As of the submission of this article the future of those conservation programs is in doubt, which may change the calculation of various stakeholders when it comes to pushing for policy changes through legislation or court action. In the meantime, right to farm laws continue to grown in power and impact through state statutes and related litigation.

B. Expansion of Right to Farm Statutes to International Jurisdictions

The idea of granting farmers and agricultural land protection from nuisance litigation has spread beyond the United States, most notably

⁹² See, e.g., Van Buskirk, *supra* note 60, at 177-79 (giving a history of the *Bormann* decision and the Iowa court’s rationale for its decision); Jesse J. Richardson, Jr. & Theodore A. Feitshans, *Nuisance Revisited After Buchanan and Bormann*, 5 *DRAKE J. AGRIC. L.* 121 (2000) (explaining the *Bormann* outcome in the context of the “takings” law that was current at the time of the publication of the article).

⁹³ See *infra* Part II.B; see also ASHWOOD, ET. AL., *supra* note 54, at 6-8 (explaining how “significant amendments to [right to farm] laws have enabled the concentration and corporatization of agriculture and extended special protections to ostensibly non-farm businesses”).

⁹⁴ See, e.g., ALSBROOK, *supra* note 52, at 1 (noting that as of 2025 there is no federal right to farm statute).

⁹⁵ The most notable attempt to procure a United States Supreme Court review of right to farm laws originated in Indiana, but the Court declined to review the case. *Himsel v. Himsel*, 122 N.E.3d 935, 938–39, 946–48 (Ind. Ct. App. 2019); *cert. denied, Himsel v. 4/9 Livestock, LLC*, 141 S. Ct. 364 (2020).

⁹⁶ See, e.g., MERCIER & HALBROOK, *supra* note 52, at 344-46 (describing various federal farm retention and preservation programs).

to Canada and Australia.⁹⁷ Like the United States, neither Canada or Australia has passed a federal right to farm statute. Also like the United States, a federal statute is not anticipated in the near future. However all of the individual provinces in Canada⁹⁸ and several states in Australia⁹⁹ have passed their own right to farm laws.

Some Canadian right to farm statutes give even broader protections than many statutes that have been passed in the United States. For example, British Columbia's right to farm statute creates a board to oversee right to farm complaints, and then takes a step further by granting that board the power to designate certain types of land as agricultural in to ensure that land is protected.¹⁰⁰ Canadian protections are often focused on protecting farmers who can prove they use "normal" or "standard" practices in their operations, which is similar to some American statutes,¹⁰¹ and that focus on established practices has faced similar criticisms about stifling innovation from that country's commentators.¹⁰² Meanwhile Australia's right to farm laws are still in the early stages of development since most of them

⁹⁷ See generally Alford & Richardson, *supra* note 57, at 131; Lenny Roth, "Right to Farm Laws: An Update," in NEW SOUTH WALES PARLIAMENTARY RESEARCH SERVICE ISSUES BACKGROUNDEERS (Oct. 17, 2019), available at https://www.parliament.nsw.gov.au/researchpapers/Documents/Right%20to%20farm%20laws_an%20update.pdf.

⁹⁸ See Alford & Richardson, *supra* note 57, at 136 ("Quebec was the second province to enact RTFs, and within a few years every Canadian province had its own version of RTF.").

⁹⁹ See John G. Paterson, *A Right to Farm, A Right to Live?*, 28 AUSTL. PLANNER 8 (2010) (explaining that right to farm laws have been enacted across the United States and Canada as part of an article urging for more right to farm protections in Australia).

¹⁰⁰ See *Province of British Columbia Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, c. 131; available at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96131_01#section1; see also PROVINCE OF BRITISH COLUMBIA, GOOD NEIGHBOR FARMING: A FARMER'S GUIDE TO MITIGATING COMMON NUISANCE COMPLAINTS AND BRITISH COLUMBIA'S FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT (2022) (explaining the role and procedures of British Columbia's Farm Industry Review Board).

¹⁰¹ See *supra* note 89.

¹⁰² See Alford & Richardson, *supra* note 97, at 143-44 (critiquing the focus on normalcy over reasonableness, and claiming it effectively "allows the agri-food industry, which is driven by market forces, to set the standard for what is considered legal" and explaining how Canadian courts have created and applied an "evaluative test" for determining the victor in right to farm lawsuits).

have only been available for use between disputing parties for ten years or less.¹⁰³

At this point in the history of right to farm laws it is uncertain whether other countries or agricultural regions will adopt these types of statutes as part of the domestic agricultural policy. The European Union, along with many of its neighbors including Great Britain, have not adopted the idea of a right to farm because Europe has its own cultural ideations and traditions related to farming, and for the past several decades those have often centered around the Common Agricultural Policy (CAP).¹⁰⁴ Similarly, most regions of Africa seem unlikely to adopt right to farm laws in the near future. The most publicized land-use conflicts in Africa related to farming concern clashes between herdsman and crop farmers, some of which have turned violent.¹⁰⁵ These differences in approach made adoption unlikely from the beginning, but as discussed in the next part right to farm laws are becoming increasingly controversial which may further discourage their adoption in other parts of the world.

C. Recent Expansions of Right to Farm Privileges in the United States

Over the years right to farm laws have been amended or interpreted in ways that offer expanded privileges and protections to agribusiness and other industrial entities. In some states these expansions of right to farm privileges have come through amended statutes or expanded laws,¹⁰⁶ while in others these expansions of

¹⁰³ See Roth, *supra* note 97 (offering insights into the history and implementation of right to farm efforts in New South Wales, Tasmania and Victoria).

¹⁰⁴ See generally Alfonso Giuliani & Herve Baron, *The CAP (Common Agricultural Policy): A Short History of Crises and Major Transformations in European Agriculture*, 54 FORUM FOR SOCIAL ECONOMICS 68-94 (2023).

¹⁰⁵ See generally Perpetua C. Ezeaputa & Charles O. Enyia, *Cassava Farmers Prospect to Herdsmen Nuisance and Its Effect on Food Security in Aguata Agricultural Zone, Anambra State*, 8 AM. J. ECON. & BUS. MGMT. 714 (2025); Charles Oluwaseun Adetunji & Kingsley Eghonghon Ukhurebor, *The Effects of Fulani Herdsmen and Farmer Clashes on Food Security on Nigeria*, 9 NIGERIAN FOOD, DRUG & HEALTH L. J. 34, 34-41 (2020).

¹⁰⁶ See, e.g., Wyatt Bazrod & Sarah Page, *HB 1150: The Freedom to Farm Act*, 39 GA. ST. U. L. REV. 229 (2022) (describing powerful 2022 amendments to the Georgia right to farm act that expanded right to farm protections); see also *Texas Proposition 1 Election Results: Establish a*

powers have come through court decisions.¹⁰⁷ As right to farm powers have aged these wins for large-scale operators have sometimes come at the expense of the original family farms that these statutes were designed to help.¹⁰⁸

Much of the scholarship related to these expansions have focused on CAFOs,¹⁰⁹ or concentrated animal feeding operations.¹¹⁰ CAFOs are controversial among many populations, including farmers, and the expansion of right to farm protections to include CAFOs has been decried by some farmers as well as environmentalists, scholars, consumers and many other groups. CAFOs are highly criticized because they often create circumstances that are more than a mere nuisance: they can make life miserable for the people who live nearby.¹¹¹

Right to Farm, Garden and Ranch in the State Constitution, N.Y. TIMES, (Dec. 5, 2023), available at <https://www.nytimes.com/interactive/2023/11/07/us/elections/results-texas-proposition-1-right-to-farm-and-ranch.html>.

¹⁰⁷ See, e.g., ASHWOOD, ET. AL, *supra* note 54, at 27-29 (discussing recent legal trends that favor large businesses over small farmers); see also Halle B. Kissell, *Extending Protections for CAFOs is the Wrong Move for Iowa Courts and the Legislature to Make*, 109 IOWA L. REV. 2267 (2024) (explaining how recent changes to right to farm laws in Iowa opened the door to further expansions of power under right to farm laws).

¹⁰⁸ See, e.g., ASHWOOD, ET. AL, *supra* note 54, at 9-12 (offering data and analysis showing that CAFOs and business firms are more likely to win right to farm cases than farms owned by a sole proprietor, and explaining that the agricultural exceptionalism that helped right to farm laws get passed has evolved into “corporate exceptionalism” over time).

¹⁰⁹ See *supra* note 90.

¹¹⁰ Much has been written about the miseries that neighbors suffer due to the animal waste from CAFOs, especially certain communities in North Carolina which have endured well-documented health effects from nearby CAFO operations. See, e.g., Charlotte E. Blattner & Odile Ammann, *Agricultural Exceptionalism & Industrial Animal Food Production: Exploring the Human Rights Nexus*, 15 J. FOOD L. & POL’Y 92, 93-94 (2019) (explaining the horrible impact that large-scale CAFOs had on surrounding North Carolina communities and the resulting jury verdict in favor of impacted citizens); see also ASHWOOD, ET. AL, *supra* note 54, at 1 – 2, 9 – 11; but see Aragon, *supra* note 19 (arguing that other national laws could be used to reduce right to farm protections in the context of environmental regulations and the impact of CAFOs).

¹¹¹ Much has been written about the miseries that neighbors suffer due to the animal waste from CAFOs, especially certain communities in North

CAFOS produce a lot of poop, blood, and bodily fluids as well as other types of animal waste.¹¹² Poop in particular has become the centerpiece of many recent agriculture controversies, partially because it is so voluminous, partially because it creates a reliable reaction of repulsion in the public, and partially because the agriculture industry has started to envision poop as an ever-growing source of potential profit.¹¹³ James Carville was an agricultural consultant in America in the 2020s, he might make his clients a giant banner that says “It’s the poop, stupid.”¹¹⁴

Given the increasing challenges to farming as a way of life, and the current pressure to optimize efficiency in every aspect of the American economy, some commentators have argued that the idea of saving farmland and farmers is doomed to fail.¹¹⁵ Half a century ago Earl

Carolina which have endured well-documented health effects from nearby CAFO operations. *See, e.g.*, ASHWOOD, ET. AL, *supra* note 54, at 2 (describing the impact of CAFOs on a local family); Blattner & Ammann, *supra* note 110, at 93-94 (explaining the horrible impact that large-scale CAFOs had on surrounding North Carolina communities and the resulting jury verdict in favor if impacted citizens); *compare with* Aragon, *supra* note 19 (arguing that other national laws could be used to reduce right to farm protections in the context of environmental regulations and the impact of CAFOs).

¹¹² *See, e.g.*, Kissell, *supra*, note 107, at 2284 (explaining the poop usually does not stay confined to the CAFO area because “manure leaks and spills are common among CAFOs, and they often go unregulated” and this combines with a decrease in air quality to cause a myriad of negative health consequences for nearby populations.”).

¹¹³ *See, e.g.*, Christina Grillo, *Host Notes: Mo’ Poop, Mo’ Profit*, JOHNS HOPKINS UNIV. CTR. FOR A LIVABLE FUTURE, Dec. 10, 2025 (linking to *Unconfined Podcast: Calling BS on Poop Gas*, JOHNS HOPKINS UNIV. CTR. FOR A LIVABLE FUTURE (downloaded using Spotify, Dec. 12, 2025) (citing to Allie Wainer, et. al., *Deconstructing the Livestock Manure Digester and Biogas Controversy*, 12 CURRENT ENVIRONMENTAL HEALTH REPORTS 43 (2025)).

¹¹⁴ James Carville was a famous political consultant during the 1992 United States presidential campaign who famously hung up a banner in the headquarters of Bill Clinton’s campaign headquarters that read “It’s the economy, stupid.” *See, e.g.*, *It’s the Economy Stupid*, POL. DICTIONARY, available at <https://politicaldictionary.com/words/its-the-economy-stupid/> (last visited Jan. 13, 2026). The banner, and Carville himself, were widely credited for keeping the candidate and his staff focused on economic issues when talking to voters and the press, and variations on the original phrase still appear in campaign-oriented political analysis. *See id.*

¹¹⁵ *See, e.g.*, Steve Clowney, *Do Rural Places Matter?*, 57 CONN. L. REV.

Butz, the sitting United States Secretary of Agriculture, famously declared that farmers should “get big or get out.”¹¹⁶ Much ink has been spilled discussing the impact of this philosophy on the American food system, and its connection to shrinking amounts of farmland and numbers of independent farmers.¹¹⁷ Some commentators have argued that the battle has already been lost, and perhaps the lifestyle envisioned by the agrarian myth is mostly dead and what is left in rural America is not worthy of saving.¹¹⁸ Other commentators have argued that societies with fewer farms that function more efficiently are better off, and any protections and subsidies offered to farming operations should be offered on the basis of productivity, not on the idea of protecting nostalgia.¹¹⁹ Many have made convincing arguments that agricultural industrialization and related subsidies have actually done more to harm farmers and rural life over time.¹²⁰

Regardless of the nuances of these debates, the statistics show that the amount of farms have continued to trend downward since the initial passage of right to farm laws in America.¹²¹ Instead of helping family farmers hold on to their land, the modern right to farm laws

129, 170 (2024) (arguing for the end of various taxpayer subsidies to rural America).

¹¹⁶ See, e.g., Nathan A. Rosenberg & Bryce William Stuckey, *The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural History*, 13 J. FOOD L. & POL'Y 12, 14-19 (2017) (explaining Butz' famous quote and related commentary, but arguing that it did not have the economic and social impact that Butz' critics lay at his feet because the issues started decades before).

¹¹⁷ See, e.g., *id.* (citing scholars who have used Butz's quote to explain the trends towards industrialization and other large-scale changes in the American food system).

¹¹⁸ Clowney, *supra* note 115, at 170.

¹¹⁹ See Alford & Richardson, *supra* note 57, at 161 (citing THOMAS F. PAWLICK, *THE WAR IN THE COUNTRY: HOW THE FIGHT TO SAVE RURAL LIFE WILL SHAPE OUR FUTURE* 6 (Greystone Books 2009)).

¹²⁰ See, e.g., ASHWOOD, ET. AL, *supra* note 54, at 20-29; see also Clowney, *supra* note 115, at 170 (“The days of agricultural subsidy payments helping a majority of rural people are long over.”); (citing Thomas R. Poole, *Silly Rabbit, Farm Subsidies Don't Help America*, 31 WM. & MARY ENV'T L. & POL'Y REV. 183, 195 (2006) (“Price supports are simply federal welfare for large agribusiness concerns.”)).

¹²¹ See, e.g., ASHWOOD, ET. AL, *supra* note 54, at 10 (“In 1982, on the cusp of the [right to farm] wave, there were 2.24 million farms spanning 987 million acres. Since then, the overall number of farms has declined by 10 percent to just over 2 million, covering only 895 million acres.”).

seem more likely to aid their neighbors instead.¹²² In that sense the right to farm is a legal idea that has failed to assist the very population it was designed to help, and in the process this modern property right has arguably done more harm than good.

III. THE RIGHT TO FOOD: INTERNATIONAL ORIGINS AND GROWING INFLUENCE IN THE U.S.

The right to food has been described as centering around three important elements: availability, accessibility, and adequacy.¹²³ It is an idea that was generated from international humanitarian and human rights law,¹²⁴ and one born with the hopes of combating some of the humanitarian crisis of the previous century.¹²⁵ But unlike the right to farm, the right to food has yet to see widespread adoption and use. This is largely because people are still debating what the right to food actually entails, and discussing the nuances of how that right

¹²² See, e.g., Terence J. Centner, *Governments and Unconstitutional Takings: When Do Right-to-Farm Laws Go Too Far?*, 33 B.C. ENV'T L. AFF. L. REV. 87, 94, 137 (describing the ways right to farm laws have changed since their original inception and noting the modern right to farm laws are designed to protect industry over neighbors); see also ASHWOOD, ET. AL, *supra* note 54, at 9-12 (analyzing the results of right to farm lawsuits around the country and determining that large industrial agriculture businesses do very well, but small proprietor farmers “the closest match to the iconic farmer” also do “the poorest of any party” when they are plaintiffs in right to farm litigation).

¹²³ Ying Chen & Teresa Yasin, *Navigating the Battlefield of Hunger During Armed Conflicts: Obligations, Obstacles and Solutions*, 30 AM. U. INT'L L. REV. 219, 224-25 (2024) (citing U.N. OFF. HIGH COMM'R FOR HUM. RTS., FACT SHEET NO. 34: THE RIGHT TO ADEQUATE FOOD 2-3 (Fact Sheet No. 34 (April 1, 2010) (emphasizing that food must be “available, accessible, and adequate”); available at <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf> (emphasizing that food must be “available, accessible, and adequate”)).

¹²⁴ See, e.g., R. Denisse Cordova Montes, *Using International Human Rights Law to Address Hunger in the U.S.*, 6 BUS. ENTREPRENEURSHIP & TAX. L. REV. 1 (2022) (explaining the right to food is largely sourced from international human rights law).

¹²⁵ See, e.g., GEORGE KENT, *FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD* 47-49 (2005) (giving a brief history of the right to food, which was arguably more focused on standard of living when it was first part of a non-binding international agreement created after World War II).

should be defined and applied around the world.¹²⁶

One of the first significant recognitions of the right to food occurred in 1966 when the United Nations recognized the right to food in the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹²⁷ The right to food has been written into several international treaties since then, with varying degrees of international attention and success.¹²⁸ This summit produced the Rome Declaration on Food Security.¹²⁹

Although the right to food has been touted in many international settings, the United States has traditionally been reluctant to recalcitrant when asked to acknowledge the right to food.¹³⁰ Some of the reluctance to embrace an undefined human right is cultural: politicians and scholars have recognized that a nation that has traditionally been protective of its “inalienable rights” has often been reluctant to recognize new rights at the national level.¹³¹ Some of the

¹²⁶ See, e.g., Montes, *supra* note 124 (“The right is further enumerated in international law through additional conventions and standards and is continuously being interpreted and analyzed”); see also *infra* notes 128, 137-142.

¹²⁷ See, e.g., Jesse Burgess, *Let Them Eat Cake: Constitutional Rights to Food*, 18 WILLAMETTE J. INT’L L. & DISP. RESOL. 256, 256-57 (2010).

¹²⁸ Even people who work and write scholarship in this area do not have a consensus on the history of the right to food, or what treaty or event constitutes the most important basis for expanding awareness and implementation of the right. Compare generally Montes, *supra* note 124 with KENT, *supra* note 125 and Burgess, *supra* note 127.

¹²⁹ See, e.g., Amanda Cahill-Ripley, *Food For Thought: Exploring the Right to Food in Theory and Practice*, 4 J. OF HUM. RTS PRAC. 147, 148 (2012), reviewing JEAN ZIEGLER, CHRISTOPHE GOLAY, CLAIRE MAHON, & SALLY-ANNE WAY, *THE FIGHT FOR THE RIGHT TO FOOD: LESSONS LEARNED* (2011).

¹³⁰ See, e.g., Burgess, *supra* note 127 at 257 (explaining that although the United States was “a signatory to the ICESCR, it has never ratified this agreement” or created a federal law or constitutional right to food).

¹³¹ This article recognizes that lack of movement at the federal level does not dismiss the strong energy and activism surrounding topics such as food justice and food injustice in the United States. See, e.g., Avi Brisman, *Food Justice as Crime Prevention*, 5 J. FOOD L. & POL’Y 1, 7-8 (2009) (describing the ideals of the fight for food justice in the way that many people describe the right to food: “the idea that no individual, group of people, or community should live without an adequate supply of nutritious, affordable food because of economic constraints or social inequalities”); see also Gerda R. Wekerly, *Food Justice Movements: Policy, Planning and Networks*, 23 J. PLAN. EDUC. & RES. 378 (2004).

reluctance to embrace the right to food in the United States is political and economical: since current hunger relief programs are often cast disparagingly as “entitlements” in the press politicians have been wary of creating a new right without corresponding funding.¹³² Additionally, agribusiness entities and other groups with intellectual property interests have been wary that the international right to food would dilute patent and trademark protections related to agricultural and food products.¹³³

But possibly the largest hurdle the right to food has faced, both internationally and in the United States, is general confusion about what it entails. Research shows that the “right to food” is rarely explained in a quick and easy-to-read way, which creates confusion about what the “right to food” actually means. For example, some have argued the right to food should go beyond availability, accessibility and adequacy to include sustainability.¹³⁴ Even the original conception was part of a larger sense that the right to food should be part of an overall basic right to a certain standard of living.¹³⁵ All of these different ideas and perceptions continue to create confusion about what the right to food is, and about how the right to food will be enforced and implemented.

In another example, the United Nations’ publication explaining the right to food has a section called “What is the Right to Food” that is almost five pages long.¹³⁶ Of those five pages, half of the pages are spent explaining what the right to food is *not*:¹³⁷ it does not create an

¹³² See THE RIGHT TO ADEQUATE FOOD, *supra* note 123, at 3 (“Many assume that the right to food means that Governments have to hand out free food to anyone who needs it. They conclude that this would not be feasible or might cause dependency.”).

¹³³ Nadia Lambek & Priscilla Claeys, *Institutionalizing a Fully Realized Right to Food: Progress, Limitations and Lessons Learned from Emerging Alternative Policy Models*, 40 VT. L. REV. 743, 772 (2016); see also Hans Morten Haugen, “The Right to Food, Farmers’ Rights, and Intellectual Property Rights: Can Competing Law Be Reconciled?” in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES, AND THE LAW 195 (Nadia C.S. Lambek et. al. eds. 2014).

¹³⁴ See Chen & Yasin, *supra* note 123, at 225 (citing Ying Chen, *Improving Sustainability and Promoting the Right to Holistic Food: The Role of Agribusiness*, 31 FLA. J. INT’L L. 143, 178 (2019)).

¹³⁵ See KENT, *supra* note 125, at 46 (explaining the original call for a right to food was part of an overall call for an international understanding of a right to a decent standard of living).

¹³⁶ See THE RIGHT TO ADEQUATE FOOD, *supra* note 123, at 1-5

¹³⁷ See *id.* at 3-5.

obligation for governments to feed people who are not incarcerated,¹³⁸ or who are not in distress due to armed conflict,¹³⁹ or without food due to natural disasters;¹⁴⁰ it does not create a right to safe food;¹⁴¹ it does not create a need to change the way the world produces food or how much food is produced;¹⁴² it does not need to be confused with issues related to food security or food sovereignty.¹⁴³ This overall confusion between what the right to food is and what it is not has hampered its widespread appeal.

Interestingly, the one jurisdiction in the United States that has adopted a constitutional right to food did so by focusing more on food production than food consumption. The people of Maine voted overwhelmingly to include a right to food in the constitution of the State of Maine in 2021,¹⁴⁴ a development that was based largely on Maine's strong history of individualism when it comes to the personal production of one's own food.¹⁴⁵ The final language that was passed on to the voters removed much of the language about humans having a "fundamental right to be free from hunger, malnutrition, starvation, and the endangerment of life from the scarcity of or lack of access to nourishing food" that had appeared in an earlier version of the proposed ballot initiative.¹⁴⁶ The version approved by the voters focused more on each individual's right to "grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being."¹⁴⁷ This focus on the individual's efforts to produce food, instead of simply acquire food, makes this domestic right to food resemble a right to production more than a simple right to consumption. In other words, Maine's

¹³⁸ *See id.* at 3-4.

¹³⁹ *See id.* at 4.

¹⁴⁰ *See id.*

¹⁴¹ *See* THE RIGHT TO ADEQUATE FOOD 1-5, *supra* note 123, at 5.

¹⁴² *See id.* at 4-5.

¹⁴³ *See id.* at 4.

¹⁴⁴ Wendy Heipt, *The Right to Food Comes to America*, 17 J. FOOD L. & POL'Y 111, 122 (2021) (describing how Maine's constitutional right to vote ballot initiative passed with over sixty percent of the popular vote); Smita Narula, *Realizing the Right to Food in Maine: Insights from International Law*, 76 MAINE L. REV. 166, 166-67 (2024).

¹⁴⁵ *Compare* Heipt, *supra* note 144, at 115-22; *with* ASHWOOD, ET. AL., *supra* note 54, at 118-21 (discussing the provisions of Maine's right to farm laws, which reflect the state of Maine's individualist-centered approach to farming, aquaculture and food production).

¹⁴⁶ *See* Heipt, *supra* note 144, at 124.

¹⁴⁷ *See* Heipt, *supra* note 144, at 123.

initiative protects eaters who are food producers instead of simply focusing on eaters who are only food consumers.

Although Maine is the first, and to date the only, state in the United States to adopt any version of the idea of a right to food, there are efforts to expand the right to food to other areas. West Virginia may be the second state to adopt a version of the right to food,¹⁴⁸ and groups are working to encourage other states to follow suit.¹⁴⁹

IV. CONSIDERING THE RIGHT TO FARM AND THE RIGHT TO FOOD TOGETHER

The right to farm and the right to food need to be considered together. When law only focuses on protecting producers through right to farm, then the law is protecting food production without enabling food access. Similarly, when law and policy efforts only focus on protecting eaters through the right to food, then resulting work encourages food availability without securing food production. Thus, when efforts to protect these two rights occur in silos then that work will inevitably fail: it is only when the right to farm and the right to food are considered together that both efforts, and the populations they serve, will be nurtured and successful.

It is easier to see how much the right to farm and the right to food have in common when they are viewed as two compatible tensions within the same food system. All farmers and feeders are eaters, and all eaters need food to survive and thrive. It is only because of politics and combating economic forces¹⁵⁰ that these connections have not

¹⁴⁸ See, e.g., Joshua Lohnes & Mackenzie Steele, *The Uneven Legal Geographies of Nutrition Entitlement Programs in the United States: Realizing or Hindering the Right to Food?*, 31 U. MIA. INT'L & COMPAR. L. REV. 15, 38 (2024) (describing a right to food initiative that was introduced into the West Virginia legislature in 2022, the same year that a declaration in support of that initiative was passed by the governing body of the city of Morgantown).

¹⁴⁹ See, e.g., NATIONAL RIGHT TO FOOD COMMITTEE OF PRACTICE, PROGRESSING THE RIGHT TO FOOD IN THE UNITED STATES: A JOIN SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL (Apr. 7, 2025), available at https://33aa917d-14e2-4ab7-9c35-6f1b2020e321.filesusr.com/ugd/c8ac2a_defac061401049b1baf2c482aab3d74d.pdf (including over thirty organizations in the signatories of a report urging forward movement towards an adoption of the right to food in the United States).

¹⁵⁰ See Liz Young, *Global Hunger: A Framework for Analysis*, 81 GEOGRAPHY 91, 100-05 (1996) (explaining that economic growth and

been made before, and that lack of connection is detrimental to both policy efforts and both populations.

When the right to farm is protected but there is no consideration of the right to food, then the result is a system that safeguards agricultural production and industrial output while tolerating widespread hunger, and in the process encourages the resulting societal destabilization that occurs when large parts of a society remain food insecure.¹⁵¹ Conversely, when the right to food is protected but there is no consideration of the right to farm, then the result is a system that promises nourishment with no consideration of the erosion of food production systems.

Part of the reason why these two rights have traditionally been discussed separately is because the right to farm and the right to food are parallel responses to fear and scarcity within the food system. The right to farm proliferated as part of a narrative that encouraged people to nurture fears of decreasing farmers and decreasing farmland leading to decreasing food and increasing hunger, and thus the right to farm was born out of a fear of scarcity in the food supply. Similarly, right to food was born out of a different type of food scarcity, one that impacted food consumption.

Both of these rights emerged from real fears inspired by legitimate threats to each population's continued survival. When the idea of the right to farm became popular in the 1970s and 1980s, farmers were under significant economic strain. The cause of that strain is debatable but the threat to their financial wellbeing was very real.¹⁵² It is understandable how the right to farm emerged out of these conditions. It is also understandable, given the amount of political power and the potential profit involved in American agriculture, that forces emerged to pollute any positive progress that may have been made by the right to farm. In recent years many who study the right to farm agree that this right has evolved to the point where misdirection of its intended benefits actively hurts the farmers this right is intended to help.¹⁵³

increased food production do not guarantee a reduction in hunger as the data shows that the opposite effect often occurs).

¹⁵¹ See, e.g., Chase Sova & Eilish Zembilci, *Dangerously Hungry: The Link Between Food Insecurity and Conflict*, available at CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Apr. 21, 2023), <https://www.csis.org/analysis/dangerously-hungry-link-between-food-insecurity-and-conflict>.

¹⁵² See *supra* note 58-85 and accompanying text.

¹⁵³ See, e.g., ASHWOOD, ET. AL, *supra* note 54, at 9-12 (showing statistics that indicate smaller farms tend to lose in right to farm litigation against

Similarly, the idea of the right to food became popular after the widespread food shortages and nutrition scarcity that the world experienced due to World War I and World War II. Food insecurity has always been an issue in wartime, and both wars saw tragic examples of food shortages and even weaponized hunger.¹⁵⁴ Food remained scarce around the globe for years after the fighting concluded. As just one example, food rationing in the United Kingdom did not end until years after peace was declared in Europe.¹⁵⁵ It is understandable that the right to food emerged in the wake of extended devastation to farming and food production mechanisms around the globe.¹⁵⁶ It is also understandable, given the amount of political power and the potential profit involved in the global food system, that forces emerged to pollute any positive progress that may have been made by the right to food.

One especially problematic symptom of discussing these rights in isolation to one another is the rise of hunger and food insecurity in rural America.¹⁵⁷ This rise has been especially sharp in counties where

larger industrial agriculture entities); Joseph Malanson, *Returning Right to Farm Laws to Their Roots*, 97 WASH. U. L. REV. 1577, 1593-95 (2020) (illustrating the negative economic impact on established smaller farms when larger industrial agricultural neighbors change their operations in a way that negatively impacts their business, and arguing that right to farm laws should be interpreted using their legislative history and intent).

¹⁵⁴ See, e.g., Dannenbaum, *supra* note 28, at 376 (discussing starvation in the context of World War I and World War II); Dr. Lisa Payne Ossian, *The Grimmiest Spectre: The World's Emergency Famine, Herbert Hoover's Mission, and the Invisible Year, 1946*, at TRUMAN LIBRARY INSTITUTE (Sept. 8, 2017) ("When the Second World War finally ended, food mattered most ... In some areas such as Eastern Europe, Greece, China and India, more people were threatened by and succumbed to starvation after the war than during world conflict.").

¹⁵⁵ Compare, e.g., *United States v. Sobell*, 314 F.2d 314, 326 (2d. Cir. 1963) (noting that the "actual shooting" of World War II ended on August 14, 1945) with Ina Zweiniger-Bargielowska, *Rationing, Austerity and the Conservative Party Recovery After 1945*, 37 THE HISTORICAL JOURNAL 173, 177-78 (1994) (explaining Great Britain actually saw intensified food shortages and stricter rations after World War II ended in 1945, and exploring polling data that showed the shortage of food was one of the primary concerns on the minds of voters until approximately 1949).

¹⁵⁶ See *supra* notes 125–129 and accompanying text.

¹⁵⁷ See *supra* notes 11 – 13 and accompanying text; see also Carmen Byker Shanks, Lauri Andress, Annie Hardison-Moody, Stephanie Jilcott Pitts, Megan Patton-Lopez, T. Elaine Prewitt, Virgil Dupuis, Karen Wong, Marisa

farming and food production is high,¹⁵⁸ meaning that rural America is producing food efficiently but not ensuring that access is available. This discrepancy between rising food production levels and decreasing food availability is part of the economic strain that has created so much resentment from rural Americans, and that resentment is still having a negative impact on our democracy as a whole.¹⁵⁹

Another problematic development that both of these rights share is stakeholder bias. Over time, both the right to farm and the right to food have evolved in ways that shield private interests through public protections or funding. The idea of the right to farm has evolved into an implementation system that benefit larger companies and agricultural interests over the smaller farmers they were originally designed to protect.¹⁶⁰ The majority of the right to farm statutes have been amended to protect corporate or industrial interests over small farms,¹⁶¹ at the same time that the American farm bill has evolved to fund these corporate resources through taxpayer dollars.¹⁶² Simultaneously, the right to food has evolved into a global food security network that is largely funded by taxpayers and NGOs, and many of those funds are channeled towards networked non-

Kirk-Epstein, Emily Engelhard, Monica Hake, Isabel Osborne, Casey Hoff & Lindsey Haynes-Maslow, *Food Insecurity in the Rural United States: An Examination of Struggles and Coping Mechanisms to Feed a Family Among Households With a Low Income*, 2022 NUTRIENTS 5250 (2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9785039/>.

¹⁵⁸ See, e.g., Ben Felder, *These Rural Communities Feed The World. They Are Also Going Hungry.*, INVESTIGATE MIDWEST (Sept. 24, 2025) (citing statistics showing the rise in rural hunger and quoting experts that are concerned the rates of rural hunger will go up in 2026 because of the combination of budget cuts, economic strain on farmers, and other stresses on rural economies).

¹⁵⁹ See generally Nicolas Jacobs & B. Kal Munis, *Place-Based Resentment in Contemporary U.S. Elections: The Individual Sources of America's Urban-Rural Divide*, 76 POLITICAL RESEARCH QUARTERLY 1102 (2022); but see Paul Krugman, *Can Anything Be Done to Assuage Rural Rage?*, N.Y. TIMES (Jan. 26, 2023) (arguing that rural America has benefitted from political investment over the past century even though many rural residents believe otherwise).

¹⁶⁰ See, e.g., Centner, *supra* note 122.

¹⁶¹ See *id.*

¹⁶² See, e.g., Clowney, *supra* note 115, at 170; but see Spencer Mizerak, *Keeping the "Garden" in the Garden State: How New Jersey Farming Legislation Has Failed to Adequately Protect Farming*, 72 RUTGERS U. L. REV. 159, 184-85 (2019) (arguing for increased public investment in farming and farm preservation).

governmental organizations connected to corporations and private interests.¹⁶³

When the right to farm and the right to food are kept separate these private interests will continue to proliferate over the public good that was intended when both rights were created. When the right to farm and the right to food are treated as distinct legal ideas, and any resulting policy solutions are created in isolation, then these policy solutions are doomed to corruption and ultimate failure. This is because viewing these rights in isolation misses what these rights share, how these rights interact, and opportunities to make truly meaningful change toward public good.

The separateness of discussions about the right to farm and the right to food, and their related policy crises, have obscured a myriad of possible solutions. Solving the farmland crisis and the global hunger crisis will not be possible until we stop encouraging farmers and eaters to be pushed apart by political forces, parallel funding streams, and divisive rhetoric. As long as the law only focuses on protecting production without access through the right to farm, or only focuses on access without securing production through the right to food, then both rights will fail to meet their policy goals.

CONCLUSION

When the right to farm is protected, but there is no consideration of the right to food, then the result is a system that safeguards agricultural production and industrial output while tolerating widespread hunger, and in the process encourages the resulting societal destabilization that occurs when large parts of a society remain food insecure. Conversely, when the right to food is protected, but there is no consideration of the right to farm, then the result is a system that promises nourishment with no consideration of the practical aspects of food production or the people who need to make a living doing that type of beneficial work for the larger society.

As feeders and eaters face parallel crises we need to stop treating these crises as separate stressors as that obscures their shared roots. and start viewing them as connected crises that need to be solved together. Fully addressing either problem in isolation of the other is an impossible task because these rights are connected crises with common roots and must be solved together. The right to farm and the

¹⁶³ See generally ANDREW FISHER, *BIG HUNGER: THE UNHOLY ALLIANCE BETWEEN CORPORATE AMERICA AND ANTI-HUNGER GROUPS* (MIT Press 2018).

right to food are legal and policy efforts braided rights and blended fates, and these efforts must be considered together for the intended impact of either right to have a hope of solving the crises they were designed to help.