



## Property rights and rural justice: A study of U.S. right-to-farm laws

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### ARTICLE INFO

#### Keywords:

Family farm  
Property rights  
Land ownership  
Agricultural law

### ABSTRACT

Are property rights merely a tool of the market economy, disempowering those with the least in rural places and further lining the pockets of those with the most? Most rural scholarship, on the aggregate, argues that yes, property rights dispossess the many in favor of the few. We, though, find the situation to be much more nuanced in our analysis of U.S. right-to-farm laws, the first of its kind. An overlooked dimension of property rights—the capacity to claim trespass on property through nuisance—enables rural people to defend their rights to clean air and water and the use and enjoyment of their property in the face of large-scale, industrial agricultural operators. Our analysis of statutes in all 50 U.S. states finds that right-to-farm laws, while largely purported to defend family farmers, reduce rural people's capacity to protect their land through nuisance actions in defense of their environmental, health, and community rights. We argue that property rights, when properly protected from nuisance, can help rural people push back against the market economy in defense of their health and environmental rights when other political means falter. Recognizing as much helps reveal a relationship between property rights and justice that currently is overlooked by rural scholars.

### 1. Introduction

Right-to-farm laws suggest in name what rural people desperately need: a defense of farming livelihoods against the trends of industrialization and get-big-or-get-out agriculture, stopping expansive urban sprawl, and ending the rural exodus that leaves communities bereft of the youth who ensure their continuance. Beginning in the late 1970s, every state in the United States, perhaps hopeful that content could live up to hyperbole, adopted some version of a right-to-farm statute. The popularity of similar legislation is growing abroad, and can be found in Australia. In the first national analysis of U.S. right-to-farm laws, we find that hopeful intentions are largely unrealized in the actual content of statutes. Rather, right-to-farm laws collapse neighbors' rights to clean air and water as part of the use and enjoyment of their property. On the aggregate, such laws protect industrial-scale operations and the production of profit as the ultimate aim of farming.

Such an understanding of property rights as more than an economic exertion of power, but also an exertion of human and environmental rights, is scant in current rural scholarship. A more singular approach prevails, one inspired by the classic ideas of Polanyi (1944) and Marx. The logic goes that property, as soon as commodified, becomes subject to the satanic mill of the market economy (Birchfield, 2011; Silver and Arrighi, 2003). Rights to ownership, thus, are seen as akin to theft.

Ample literature on land takings, land grabs, and land commodification has followed this vein of work by studying the deleterious impacts of privatization on rural people's lives (Higgins et al., 2018; Magnan, 2015; Whittman, Dennis, and Pritchard, 2017; Wolford et al., 2013).

All property rights, though, are not created equal. Nor are they practiced equally. Ribot and Peluso (2003) made such a point when they argued that webs of power configure who can access property and benefit accordingly. They boldly concluded that a focus on property as only a right confused the situation (Varghese et al., 2006). Yet they forgot, due to their focus on property as an economic commodity, that the right to property can also be an exertion of the right to a clean and safe environment. This is because nuisance goes unmentioned in their article, and in rural studies more generally. Nuisance is a key dimension of property rights that has the capacity to defend livelihoods, health, and the environment. In fact, the old, classic democratic liberalism that once helped spurn the English Revolution still lives on through the nuisance dimension of private property rights. This vital facet of property as a right helps us understand the attachment of rural people to property as a tool of justice (Ashwood, 2018).

Our national analysis of U.S. right-to-farm laws brings nuisance to bear on current discussions of property in rural studies. We find that right-to-farm laws seek to collapse nuisance protections by safeguarding certain types of agricultural production from lawsuits where

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rural people allege pollution, health impacts, loss of property rights and livelihoods, and enjoyment of home and place—all based on their property rights. We describe how this happens by pinpointing enabling legal language, with attention to state-specific variations. We find the following dimensions of property rights to be increasingly constrained by right-to-farm laws: home, a clean and safe environment, labor and family, local governance, and place longevity.

The exertion of property rights through nuisance claims is now at the forefront of rural people's attempts to push back against the market economy in the context of industrial agriculture. The fact that property has been overlooked as a tool to stall market penetration of society, not simply enable it, points to an oversight in the literature. Further, it points to an oversight in studying laws that have real-time implications for people living in rural places. We combine agri-food, peasant, and rural scholarship with legal studies to explain how the state uses such laws to empower industrial forms of production over other rural concerns. We find that right-to-farm laws are an act of enclosure, where industrial-scale operators are awarded special allowances to forcibly claim dominance over the property and personhood rights of other rural landowners.

## 2. The market economy, property rights, and rural dispossession

Land continues to dominate the discussion of property in rural studies (Higgins et al., 2018). And it is of little surprise. Degree of land consolidation, another way of talking about wealth, shapes who has access to resources. Ample literature on resource extraction has shown as much, where poverty is closely tied to who controls the land and its fruits (Freudenburg et al., 2008; Humphrey et al., 1993). Further, land shapes cultural norms and power in rural places (Gaventa, 1980; Salamon, 1995). Polanyi (1944) wrote of the damaging implications of subsuming the cultural authority and sustenance of land to market forces, where it becomes a mere commodity. Land, he wrote, could never be simply something bought and traded, for it existed before. Treating it like it was made by humans, with a purpose only to produce profit, was pure fiction, he argued (Polanyi, 1944). The repercussions of land as a commodity attuned to profit, he warned, would undercut the very sustenance of humanity.

The act of privatization—that moment where what was once commonage or public land becomes subjected to the market—has gained the attention of scholars, including rural ones (Lyons and Westoby, 2014; Neimark, 2016). There is much evidence that suggests it is crucial to pay attention to who wins and loses in the process. Historically, the transformation of the woods from commonage to private property meant the end of the poor's open access to its many resources, like fodder, food, and water (Marx and Engels [1848] 1972). When what formerly had no price comes to hold one, for example more recent acts of water privatization and commercialization, the repercussions can be dire (Lyons and Westoby, 2014). Cocq and McDonald (2010) call water privatization “one of the most controversial policy developments of the past 20 years” (p. 6). The bottling of water, for example, reduces local access (Jaffee and Newman, 2013). In critical geography, individual property ownership is considered a lynchpin of the most deleterious processes of privatization and, more broadly, neoliberalism. Harvey (2005) writes that “[we] live, therefore, in a society in which the inalienable rights of individuals (and, recall, corporations are defined as individuals before the law) to private property and the profit rate trump any other conception of inalienable rights you can think of” (p. 181). In such a view, individual property ownership seems black or white—either you have it, or you do not. An individual human holder can be mistakenly assumed to operate with the same power as an individual corporate holder. Consequently, property and its related rights become oversimplified.

One key way to push back on the oversimplification of property rights is to clarify who owns what, and why it matters (Jacobs, 1998). Goldschmidt (1978) established that corporate versus proprietary

family farms meant the difference between faltering and thriving rural economies. Geisler and Salamon (1993), inspired by related concerns, put together a *Rural Sociology* special issue focused on “emergent forms of ownership,” “common property regimes,” and “tenure niches and cultures of ownership” (p. 530). Scholars studied U.S. anticorporate farming laws that restricted corporate landownership unless the majority of shares belonged to a farm family or rural residents (Lobao and Stofferahn, 2008). These laws, which exist in only nine U.S. states (note that right-to-farm laws are in all 50), attracted attention from rural sociologists and agricultural economists because they are explicitly about the question of ownership. Likewise, recent literature on heir property, otherwise known as the inheritance of property ownership through tenancy in common, studies who owns the land (Dryer et al., 2009; Gilbert et al., 2002; Mitchell, 2000).

This work boils down to one central question that largely preoccupies scholarship as pertains to property rights—who is the owner. Certainly, the mechanisms and reasons for which land investment is changing are new, as demonstrated by land grab studies (van der Plog et al. 2015) or the financialization literature (Gunnøe, 2014; Magnan 2015). However, the question driving these studies is not new. Rural studies continue to focus on who holds the deed and why, and are less concerned with who gets to use the land and for what purposes. This misses much of the nuance around the rights afforded along with property, for people can own land without having full capacity to use it, or to use it in the way that they would like. This suggests a broader question of the market economy, which we seek to answer by using the phrase *property rights*, rather than the narrower orientation of landownership (Campbell and Lindberg, 1990).

Property, though, is not only a question of who owns it. The capacity of individual humans to exert their property rights is dialectically related to the capacity of a corporation to exert its property rights. States create corporations. States create property rights. And so, too, do they create markets (Polanyi, 1944). Historically, the state subsidized industrialization by promoting mechanization and demoting human labor on the farm (Friedmann and McMichael, 1989). Increasingly specialized producers sold to corporate power holders, put in preeminent positions by the state. New public-private agreements between major grain processors and the state marked a regulatory era that benefited the largest of growers (Bingen and Siyengo, 2002). Farmers' managerial and production decisions contracted to suit corporate integrator demands (Bingen and Siyengo, 2002). Agriculture support programs, tax policies, labor policies, and especially the research orientation of the U.S. Department of Agriculture (USDA) and land grant colleges placed corporations in a preeminent position (Goldschmidt, 1978). The USDA has afforded little support, conversely, to smaller-scale organic agriculture (Duram, 2005). Attaining agricultural credit necessary to farm today remains subject to corporate demands (Grant; MacNamara, 1996). The very fact a corporate entity, such as a limited liability corporation (LLC), can exist and limit its risks in ways a human person cannot changes the nature of farming and rights in the countryside (Ashwood et al., 2014). In Hungary and the Czech Republic, corporations “cherry pick” the most “lucrative parts” of former collective farms and convert them into separate legal entities (Chaplin et al., 2004:63). Rising corporate power pushed French family farms away from diversity in order to “integrate corporate rationales” (de Raymond, 2013:293). Agribusiness corporations have coopted organic certification, often to the disfavor of smaller farmers (Johnston et al., 2009). Bryand and Garnham (2014), in their study of Australian wine growers, find that farmers blame “[s]tate policy and corporate investment” for their economic woes (p. 308).

To capture the many ways in which the market situates how property can be used, Ribot and Peluso (2003) suggested more focus on access, and less focus on rights. With attention to social relations, social identity, authority, knowledge, labor, markets, capital, and technology, the Ribot and Peluso (2003) approach has proven incredibly useful. As the authors posit, a right to hold the deed is subject to the bundles and

webs of power that stipulate what benefits can be derived from ownership. They suggested moving away from the formal “rights”-based approach to better understand the structural and relational mechanisms of access, in addition to rights-based and illicit ones.

But they forgot in this approach that property rights are not just about the market in the sense of ownership. Property rights have been, and continue to be, wedded to other rights—like the right to have clean air and water on one's own property—for a property right has long been coupled with its capacity to be free of nuisances, a term that gives property rights ecological teeth. By forgetting the environmental and health dimensions of property rights, the access approach overlooks the environmental justice dimension of property rights. Namely, property rights are much more than enjoyment for the sake of earnings—they can also be about enjoyment for the sake of living. In part, the theory of access overlooks this role of property because it is more about analytical critique, and less about ways in which people currently being dispossessed of the most important elements of living can stop that dispossession through their property rights, when they have them.

Right-to-farm laws exist at the juncture of property as a right of ownership and property as a right to clean air and water. Common law has long tied the right of private property to protection from nuisance (Hanna, 1982). The idea is that one person's right (to property) should not infringe upon another's right (to property). In the sense of land, even property exists in a sort of commonage, where individuals cannot do something on their own property that then takes from the property of others. Right-to-farm laws initially were touted as an attempt to preserve farmland and the farming way of life in the face of urban sprawl during the 1980s, putting the question of farming in direct dialogue with the question of nuisance (Grossman and Fischer, 1983; Hamilton, 1989; Hamilton and Bolte, 1988). Closer studies of such laws suggest that they have little to do with preserving a farming-centered way of life, and have more to do with preempting local land use controls and limiting environmental rights and protection of natural resources, often to the detriment of rural people (Hamilton, 1998). While not of national scale, some state-specific scholarship finds that such laws enable industrial operators to pollute the property of those who live nearby in the state contexts of Florida, New Jersey, Iowa, and Michigan (Adesoji and Friedman, 1999; Centner, 2006; DeLind, 1995; Goeringer and Goodwin, 2013; Norris et al., 2011; Rivera, 2013). Such laws seek to limit rural people's capacity to use their ownership of property as a last-ditch effort to exert their rights in the face of negative impacts from the market economy.

With a nuisance-informed approach to property rights, our work provides four contributions. We most basically conduct an analysis of current right-to-farm laws in the United States, the first in rural and peasant studies and the second since Hamilton and Bolte's (1988) legal study. A detailed thematic coding has not yet been done as pertains to these laws. In short, there is little existing knowledge of what comprehensively these laws do, and how they do it, which is of service to rural people as well as scholars. Second, we complicate prevailing ideas about private property by identifying it as more than a tool of economic power, but also a tool for some rural people to protect their environment and health through nuisance claims. Third, we encourage a more nuanced understanding of how nuisance gives property rights the capacity to achieve some semblance of justice for those bearing the greatest burdens of industrial agriculture in the countryside. Critics of individually owned private property overlook these nuances, as right-to-farm laws demonstrate. And last, we identify how power is transferred from rural communities to industrial-scale agribusinesses through the enactment of right-to-farm laws.

### 3. Material and methods

Ashwood and Walker obtained right-to-farm statutes from 50 states through the database LexisNexis in conjunction with states' individual legislative websites in summer 2016. When we reference right-to-farm

laws, we are referring to statutes that explicitly protect agricultural operations from nuisance suits or take away local authority to regulate them. In LexisNexis, these statutes were collected using keyword searches for “agricultural nuisance,” “right to farm,” and “farmland preservation.” Not all statutes were titled right-to-farm. For example, farmland preservation searches helped reveal some right-to-farm laws that were called by a different name. We also found some statutes under general nuisances, tax codes, or land/private property clauses. In some states, multiple statutes that provide nuisance suit protection were analyzed. We, though, did not examine distinct statutes that only address preservation, nor did we comprehensively review statutes that pertain to damages, agricultural processing, definitions of nuisance, preemption, ranchers, or all statutes referenced in existing statutes.

Ashwood and Walker transferred statutes from LexisNexis into Word documents that included statute title, subtitles, chapters, definitions, and code. These were imported into the qualitative software system NVivo, which allows researchers to work together as a team to code and analyze unstructured data. Ashwood and Walker made a general codebook in NVivo for thematic analysis. They independently coded the first statute on paper, and then met to discuss their different inductive and deductive approaches to identifying key themes. Once the coding strategy was agreed upon, Ashwood and Walker moved on to code a second state's statutes electronically in NVivo. Any differences were discussed before moving on to a third state, when intercoder reliability was assessed through NVivo's kappa statistic function. Once a kappa score of above 0.7 was attained, Authors 1 and 3 coded states independently. Ashwood and Walker continued to check their congruency by revisiting every fourth state to test the kappa score. Once all 50 states were coded, NVivo allowed Ashwood and Walker to turn themes into descriptive statistics that show trends across states.

Not all states codify their laws protecting agricultural operations from nuisance claims in the same manner. Thus, our descriptive statistics are specific to our search terms and must be interpreted accordingly. We further explain our descriptive statistics by referencing and researching other laws, finding cases, and searching news articles relevant to our themes.

### 4. Results

We identified five facets of property rights that right-to-farm laws seek to constrain in order to further subject rural communities to the demands of the market economy: home, labor and family, clean and safe environment, local governance, and longevity of place. We identify how, in McMichael's (2016) words, “these rules have institutionalized market and property relations privileging agribusiness in the name of production ‘efficiencies’, ‘free trade’ and global ‘food security’” (p. 682). These categories help scholars pinpoint how the state uses the law to make the rural countryside subservient to the market economy by restricting the nuances of property rights defensible in court under the category of nuisance. Most importantly, the possession of private property rights is not zero-sum, nor is the market economy.

Against the current tide in rural studies, our paper identifies the capacity to exert property rights as a dimension of power that can help some rural people exert their rights to clean air and water in the market society. Polanyi (1944), who identified landownership as one of the key fictitious commodities, warned of the capacity for abuse and misuse, as soon as landed property rights were subject to market forces. Our point here is not to refute his claims, but we do seek to complicate them. As Hann (2007) observed, there is a tendency to “exaggerate the nightmare” (p. 287) of private property, missing the nuances of who is possessed and dispossessed within different ownership regimes. Certainly, some of the most vulnerable of rural people do not own land. Simultaneously, rural people who do own land can still be vulnerable, as ample research has demonstrated that those who own property can also be poor (Dryer et al., 2009; Duncan, 2014).

Nuisance suits offer ample fodder to analyze who has power to exert

**Table 1**

The above states explicitly stipulate who bears the burden of attorney fees in right-to-farm laws.

Attorney Fees	Percentage of States	Number of States	List of States
Attorney fees are awarded to the prevailing defendant (typically agricultural operations)	32%	16	Hawaii (if deemed frivolous), Illinois, Indiana, Iowa, Kansas (chemicals), Louisiana, Maine (if deemed frivolous), Michigan, Missouri, New Mexico, New York, Oklahoma, South Dakota, Texas, Washington, Wisconsin
Attorney fees are awarded to the prevailing party (either homeowner or agricultural operation)	10%	5	Arizona, Arkansas, Colorado, North Carolina, Oregon

property rights, especially in the context of more nuanced needs relative to property beyond the production of profit. Such suits often constitute one of the last legal options to defend the necessities of home, like clean air and water, when the market economy demands the imposition of an unwanted activity or operation, protest is to little avail, and protective laws and regulations are limited to nonexistent.

#### 4.1. Home

There is no one way statutes in the United States have defined the concept of “nuisance.” In general, the term has been applied to cases where there is substantial harm to public health or welfare (public nuisance) or some kind of unreasonable or substantial interference with people's use or enjoyment of their property (private nuisance) (O'Neill, 1992:51). A nuisance can be considered permanent if it is reasonably certain to exist in the future, or temporary if it is abatable when the responsible entity takes certain steps to remediate (L. Hill, 1997). Remedies available include monetary damages, an injunction stopping the activity causing the nuisance, a partial injunction requiring a change in practices or conditions contributing to the nuisance, or some combination of an injunction and damages. When those suing industrial operations win, remedies can help protect homes by, for example, no longer emitting a chemical or polluting a waterway. While landowners of any size can be impacted, those who live on their properties face the most severe consequences, because of the environmental and health impacts on their daily lives, not just their property value.

Take, for example, a jury award of over half a million dollars to a family in Iowa that brought a nuisance suit against Prestage Farms in 2013. Prestage Farms, a company doing business in Iowa, Oklahoma, Mississippi, North Carolina, and South Carolina, produces over 1 billion pounds of turkey and pork annually (Prestage Farms, 2017). In 2012, Prestage Farms built a hog confinement facility just over 2000 feet from the McIlrath's family home on a farm they bought in 1971. A year later, Mrs. McIlrath filed a nuisance suit against the operation and sought damages due to the impacts of odor on her property. She was awarded damages of \$525,000 against Prestage. The ruling, though, still faces uncertainty. It has been upheld on appeal, but is awaiting review by the Iowa Supreme Court (McIlrath v. Prestage Farms of Iowa LLC 2016). Further, just shortly after the McIlrath victory, Iowa's right-to-farm law was amended, making it more difficult for plaintiffs to recover their losses in nuisance actions against animal feeding operations by limiting compensatory damages for plaintiffs (Iowa Code Annotated, 2017).

Another example is a 2010 verdict where a Missouri jury awarded \$11.05 million to 15 plaintiffs. Plaintiffs consisted of neighboring small farm owners, including those who had farmland in their family over 100 years, and also families that had lived on the land for up to five generations. One of the closest neighbors was a fourth-generation cattle rancher. The group sued Premium Standard Farms, a subsidiary of Smithfield Foods, for the nuisance caused by a facility housing 80,000 hogs (Draper, 2010). The plaintiffs' successful assertion of their rights was short lived. In 2011, the Missouri legislature passed a law to put a cap on damages in agricultural nuisance cases, limiting them to “the reduction in the fair market value of the claimant's property caused by the nuisance, but not to exceed the fair market value of the property”; and/or capped at the value of the diminution in the fair rental value of

the claimant's property caused by the nuisance (Annotated Missouri Statutes, 2011). The worth of home was given a cap.

A few years later, a “right-to-farm” amendment to the Missouri Constitution passed by less than half a percent of the state's voters (Vernon's Annotated Missouri Statutes, 2014). The amendment provides protection for foreign capital, as Smithfield was acquired by a company backed by the Chinese government in 2013. It was the largest such takeover of a U.S. business, about 25 percent of the pork industry in the United States (Woodroof, 2014).

Then, in 2015, the Missouri Supreme Court upheld as constitutional the law capping damages for landowners impacted by nuisances. The Court held, among other things, that limiting damages to the “fair market value of property” did not unjustly deny compensation to plaintiffs' constitutionally protected rights to the use and enjoyment of their property (Labrayere v. Bohr Farms LLC 2015). In effect, the law disjointed monetary compensation from the more nuanced aspects of home, like the pride taken in where one lives and the investments of time that don't easily transcribe to dollars. Yet, under the law, the value of a home becomes only what it can be sold for at market, a price that often already is less for rural people who live in places riddled with extractive industries.

Right-to-farm laws, thus, enact enclosure within what is already enclosed. Since capacity to exert one's property rights in defense of life and home can come down to the courtroom, who can afford to pay litigation fees plays a preeminent role in determining who is able to sue. Right-to-farm laws make it increasingly difficult or risky for people defending their homes to sue by placing the burden of litigation fees on them. Nearly one-third (32 percent) of states award defendants (agricultural operations) attorney fees in the event they win the suit (see Table 1). Iowa, Louisiana, Missouri, New Mexico, and Oklahoma clarify that for a plaintiff to be awarded such funds, the suit must be determined to be frivolous, meaning the nuisance claim must be found to be not credible, which is typically up to court discretion. Only 10 percent of states require that the prevailing party—defendant or plaintiff—pay the costs. The remaining 58 percent of states make no mention of litigation fees. The 32 percent of states that award only defendants' attorney fees in the event they win, but not plaintiffs, discourage those whose homes are harmed from risking litigation. It tilts the field of power in favor of industrial operators.

The burden of proof usually falls on those aggrieved, typically people who live in the homes and generate livelihoods on the land they seek to defend. Wisconsin offers a good example of this, where one must prove a substantial threat to public health or safety to show that a nuisance exists (see Wisconsin Statutes Annotated, 2009). If this burden is not met or if for any other reason the activity is deemed not to be a nuisance, the defendant shall be awarded “litigation expenses,” which include attorney and expert witness fees. Such fees can cost unsuccessful plaintiffs hundreds of thousands of dollars, in addition to the costs they must shoulder to bring a case in the first place. Even if they have contingency representation—meaning counsel only receives payment of fees if successful—there are still up-front costs to be covered. The rule has had a chilling effect on nuisance cases brought against large-scale livestock operations in Wisconsin since the enactment of this law in 2009.

#### 4.2. Labor and family

John Locke famously said, in his classic defense and simultaneous proposition of property rights ([1689]1824):

[Y]et every man has a property in his own person: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided and left in it, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. (P. 353–54)

If one did the work, Locke reasoned, one should gain some rights to ownership. This issue is far from dead, even though, as many critiques of Lockean reasoning have offered, accumulation gradually disjoins those who labor from those who own, with the latter benefiting and the former suffering. Still, the idea that ownership comes with labor continues to hold credence, which is at the center of right-to-farm laws, which purport to protect the families that work on the farms they own. In fact, though, right-to-farm laws mostly subvert the relationship between labor, family, and property rights.

Take the definition of the farm. All states define some variant of *farm*, *farm operation*, and *farm use* or *agricultural operations*, either in their nuisance laws or in secondarily cited statutes. We found that key terms included in definitions are *production* (90 percent), *land* (60 percent), *commercial* (56 percent), *facility* (36 percent), *labor and employment* (16 percent), *use of chemicals* (14 percent), and *farmer* (12 percent) (see Table 2). The most commonly used types of agriculture described as warranting special protection in right-to-farm statutes are livestock (94 percent); poultry, broilers or layers (86 percent); and forestry and trees, or silviculture (76 percent). None of the definitions stipulate family labor or ownership of animals or land as features of the farm, nor do they specify a specific amount of land necessary to constitute a farm.

Still, right-to-farm statutes in some act preambles purport to represent families that labor on the farm. In Alabama, the paragraph of legislative intent states that “[t]he Legislature recognizes the importance of the family farm in Alabama ... the intent of the Legislature to assist in the preservation of family farms in Alabama.” Yet when it comes to the specific statutory language, family does not register as a necessary feature of the farm. Rather, Alabama defines a protected farm as any that has a Farm Service Agency (FSA) serial number. According to the FSA, “farms are *constituted* to group all tracts having the same owner and the same operator under one farm serial number” (Farm Service Agency, 2010). Owners can include legal entities and related subsidiaries. Oregon mentions “family” in its definition of farm, but specifically excludes “family dwellings” from constituting farm use, and thus from constituting protection.

The FSA’s role in defining a farm and sponsoring the market society exemplifies the intertwined hands of the state and market economy. The Agency provides credit to agricultural producers, and its Commodity Operations Division “purchases and delivers commodities for use in humanitarian programs at home and abroad” (U.S. Department of Agriculture, 2017). FSA lending programs sometimes support the construction of concentrated animal feeding operations (CAFOs), and regional offices sometimes award federal money without following environmental assessment procedures. For example, Earthjustice, representing aggrieved citizens and conservation groups from Arkansas, sued the Small Business Administration (SBA) and FSA for improperly providing millions of dollars in government-backed loans to a Cargill hog operation constructed on the banks of the Buffalo River (Buffalo River Watershed Alliance v. Department of Agriculture 2014). Although the federal court agreed and ordered the FSA to conduct a proper environmental assessment, the Agency again found that the 6500-head hog confinement would have “no significant impact” on the environment. It continues to operate today.

The word *labor* is also conspicuously absent from right-to-farm laws. For example, Gasson et al. (1988) argue that family members working on the farm distinguish family farm businesses, and B. Hill (1993) further stresses the importance of labor to distinguishing family farms from others. Only eight states mention labor in their definition of *farm*, and each state that does so pairs the term *labor* with the term *employment*. In fact, there is never any stipulation that those who own the operation also work on it, effectively disjoining the idea of “farmer” from the broader “agricultural operation.” Further, the rights of farmworkers are not mentioned, and thus are relatively nonexistent. Likewise, the identification of a farmer also as a laborer is rare, and is mentioned in agricultural operation definitions in only six states. Even in these states, the term *farmer* is used mostly descriptively, but not substantively. Only two states in the nation—Maryland and Massachusetts—explicitly define agricultural activities in reference to a farmer. The conspicuous absence of phrases like *farmer* or *farm labor* elevates profit over the presence of people relative to property.

Other state definitions further clarify the penetration of the market economy by making sure that the property holder with the “right to farm” is not limited to a living person, but includes the fictitious legal entity of the corporation as an agent of industrialization. This is fundamentally at the center of rights, as extending rights of ownership to corporations is fundamentally distinct from rights of ownership belonging to a person (Sklar, 1988). Iowa, one of 28 states, defines the farm as “commercial production” (see Table 2). North Dakota’s statute is perhaps even more explicit, stating that an agricultural operation includes a “corporation or a limited liability company as allowed under chapter 10-06.1 [the state’s anticorporate farming law]” (North Dakota Century Code Annotated, 2005, 2015). Simultaneously, North Dakota’s

**Table 2**

The above terms and phrases are used to capture what qualifies as agriculture in right-to-farm laws.

Defining Terms	Percent of States	Number of States	List of States
Production	90%	45	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
Land	60%	30	Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Oregon, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin, Wyoming
Commercial	56%	28	Alaska, Arizona, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, Wyoming
Facility	36%	18	Alaska, Arizona, Arkansas, California, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota
Labor and employment	16%	8	Alabama, Florida, Hawaii, Iowa, Maine, Montana, Tennessee, Washington
Use of chemicals	14%	7	Alaska, Georgia, Idaho, Louisiana, Mississippi, New Hampshire, New Mexico
Farmer	12%	6	Alabama, California, Delaware, Maryland, Massachusetts, Oregon

anticorporate farming law, banning nonfamily corporations from owning farmland or operating farms, has been in existence since the 1930s. After a law was passed in the state's legislature to relax the corporate farming ban in 2015, voters repealed the legislation through a ballot measure. Just before the 2016 ballot measure went to a vote, the Farm Bureau challenged the state's anticorporate farming law as unconstitutional in federal district court (Nicholson, 2017). It was just recently upheld by that court in part (see North Dakota Farm Bureau Inc. v. Stenehjem 2018), but it remains to be seen if agribusiness groups or proponents of the law will appeal or seek new legislation.

For those 30 states that do include land in their definition of farming, which is more in line with the initial farmland preservation intent, no amount of land is specified. In effect, the law protects agricultural operations rather than actual farmland acreage from urban encroachment. Montana, for example, defines agricultural activity as a “condition or activity that provides an annual gross income of not less than \$1500 or that occurs on land classified as agricultural or forest land for taxation purposes” (Montana Code Annotated, 2017).

This is why the word *production* is the most commonly used term to define a farm, as it is present in 90 percent of state definitions. Some sort of an income on land as pertains to agricultural purposes delineates what counts as agricultural activity in right-to-farm laws. If income is not produced, the land does not count as agricultural, for example in the context of subsistence. Right-to-farm laws elevate the production of profit, rather than the sustenance of labor or family.

#### 4.3. Clean and safe environment

Right-to-farm laws, according to their initial intent, offered to give a special buffer to farmland as part of the broader preservation movement (Bunce, 1998). Right-to-farm or preservation laws were considered a centerpiece of this effort that protected agricultural land uses in the face of nonagricultural influx (Grossman and Fischer, 1983; Hanna, 1982).

Right-to-farm laws, though, largely do not do this in practice. We find language related to preservation of land present in 16 states (see Table 3), and even this language lacks much legal power. In the statutes we analyzed that pertain to right to farm, only four states provide viable statutory provisions for farmland facing developmental pressures. Iowa, for example, provides the creation of agricultural land preservation ordinances through “agricultural areas” outside cities. These agricultural areas then have some legal standing to prevent urban development or other nonfarm uses (Iowa Code Annotated, 1993). New Jersey's Farmland Preservation Program provides an eight-year commitment of agricultural farmland to “increased agricultural production as the first priority use of that land” through deed restrictions (New Jersey Statutes Annotated, 2015). The remaining 68 percent of right-to-farm statutes do not mention agricultural land preservation rhetorically or provide statutory protection.

The laws, rather, provide special protections for industrial operations to pollute by using broad terminology of what counts as farming. In effect, the language lessens the capacity of rural property holders to defend their holdings against pollution as nuisance. Thirty states stipulate that to receive immunity from nuisance suits, agricultural operations must conform to some version of acceptable agricultural practices, designated through a variety of phrases. Such phrases include

*generally acceptable practices* (13 states), *agricultural management practices* (New Jersey), *best management practices* (7 states), *generally recognized practices* (Idaho), *good practices* (7 states), *reasonable practices* (Arkansas and Colorado), *sound practices* (New York and Utah), and *traditional farm practices* (Mississippi and Louisiana) (for more details, see Table 4). Please also note that these categories are not mutually exclusive, as some states use a combination of these phrases to express some sort of limitation on acceptable farming practices. These phrases, while suggesting protection, for the most part lack any criteria that actually enables it, by, for example, clarifying what is or is not good, or what is or is not acceptable. For example, Colorado's statute says that agricultural operations should employ “methods or practices that are commonly or reasonably associated with agricultural production” (Colorado Revised Statutes Annotated, 2000) without clarifying what *common* entails. Wyoming defines acceptable livestock and management practices as requiring “sufficient quality of wholesome food and water” for animals. Violators are subject to a fine of no more than \$5000 and/or one year of imprisonment (Wyoming Statutes Annotated, 2011). Although we did not search all statutory language for mentions of animal health, in the nuisance statutes that we did study, Wyoming was one of only three states that mention animal health as a consideration (the others are Alabama and Florida).

In the case of generally accepted, good, reasonable, sound, or traditional, the view of what constitutes acceptable agricultural practices goes back to the major power holders that set the stage for industrial agriculture. For example, in *Aana v. Pioneer Hi-Bred International Inc.* (2014), the Court granted a motion to dismiss a nuisance claim because pesticide use was considered “consistent with generally accepted agricultural or management practices” under Hawaii's Right to Farm Act. Best management practices (BMPs) can, in some cases, come with specific stipulations for agricultural operations. Yet most state BMPs are not binding. Further, the burden of proof to show a practice is a BMP is an uphill battle for nonindustrial agricultural operators. A staggering 40 percent of states fail to even include general stipulations like those in Table 4, including three of the four top pork-producing states in the country (Iowa, Illinois, and North Carolina).

Still, at first glance, it appears right-to-farm laws do not allow corporate agribusinesses to pollute. We found in our analysis of statutes that 66 percent of statutes stipulate that agricultural operations that pollute will not receive protection from nuisance suits, either by using language regarding pollution or by referencing pollution events. Yet pollution is not specifically defined, and rather defaults to existing regulations, making its meaning more symbolic. Right-to-farm statutes often presume that a nuisance does not exist, unless the plaintiff can prove noncompliance with some environmental statute or rule. At times, this can create an insurmountable burden, as industrial agricultural production has, in many respects, circumvented regulation. A series of legal challenges by the Farm Bureau, the National Pork Producers Council, and others to the U.S. Environmental Protection Agency's (EPA's) Clean Water Act regulations have left CAFOs largely immune to the Clean Water Act, unlike any other industry defined as a “point source” (see *Waterkeeper Alliance Inc. v. U.S. EPA 2005*; *National Pork Producers Council v. U.S. EPA 2011*; and *Alt v. U.S. EPA 2013*). Further, the EPA abandoned an information collection rule due to industry pressure, which has left federal and state governments with little knowledge as to where industrial animal facilities are located,

**Table 3**  
Right-to-farm laws that rhetorically mention land, without legal backing, and right-to-farm laws that provide a legal basis for land protection.

References and Enforcement of Land Preservations	Percent of States	Number of States	List of States
Rhetoric associated with preservation of land, without stipulations	24%	12	Arkansas, Colorado, Florida, Georgia, Illinois, Kansas, Kentucky, North Carolina, South Carolina, South Dakota, Texas, Vermont
State ordinances or committees provide legal basis to protect farmland from urban uses	8%	4	Iowa, Maine, New Jersey, New York

**Table 4**  
Right-to-farm statutes use the above language to stipulate the kinds of practices protected from nuisance suits.

Defensible Farming Practices	Percent of States	Number of States	List of States
Generally accepted practices	26%	13	Alabama, Connecticut, Florida, Hawaii, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, Ohio, Tennessee, Wyoming
Best management practices	14%	7	Florida, Kentucky, Louisiana, Maine, Mississippi, New Jersey, Virginia
Good practices	14%	7	Arizona, Delaware, Kansas, Nevada, Oklahoma, Vermont, Washington
Reasonable practices	4%	2	Arkansas, Colorado
Sound practices	4%	2	New York, Utah
Traditional farm practices	4%	2	Louisiana, Mississippi
Agricultural management practices	2%	1	New Jersey
Soil conservation plan	2%	1	Alaska
Generally recognized practices	2%	1	Idaho

whether they are polluting, or if they manage their waste appropriately (see [Federal Register, 2012](#)). In late 2009, just days before George W. Bush left the White House, “midnight rules” were enacted exempting CAFOs from notification and reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act and the Emergency Planning and Community Right-to-Know Act ([Federal Register, 2008](#)). These regulatory actions have since been the subject of ongoing litigation. In 2005, the EPA entered into a voluntary air monitoring and compliance agreement with some CAFOs throughout the country (see Appendix E to [Federal Register, 2005](#)). Participating CAFOs helped fund the study, and then received immunity from enforcement and penalties for violations of the Clean Air Act while participating. Twelve years later, the EPA’s Office of Inspector General issued a report on the National Air Emissions Monitoring Study finding that the Agency had failed to finalize any emissions methodologies per the compliance agreement, despite the fact it was supposed to begin publishing them for use in 2009 ([U.S. Environmental Protection Agency, 2017](#)). To date, there is little enforcement of the Clean Air Act as regards CAFOs. Altogether, industrial operations need little to purport compliance with environmental regulations and thus have protection from nuisance claims via right-to-farm statutes, when few regulations exist and those that do are often too vague to be adequately enforced.

**4.4. Local governance**

Local governmental capacity to exert regulatory control over land, water, and air has the potential to limit the imposition of certain impacts of the market economy on rural society. Further, it has the potential to elevate certain kinds of property rights, especially those that are concerned with local economies and ecology. Zoning constitutes a critical field of power for rural property rights, in terms of resistance to it, but also the potential for support if utilized as a defense of the dimensions of property rights constrained by right-to-farm laws, like home and longevity of place. In practice, the usurpation of local governance by right-to-farm laws in favor of industrial agribusiness has provided for the “utterly materialistic” aims of the market economy to achieve the “social dislocation” necessary to make more profit ([Polanyi, 1944:42](#)). In 60 percent of states, right-to-farm statutes remove local authority to stop the siting or operation of unwanted industry (see

[Table 5](#)). This happens in mainly two ways. Governance is removed from the local level in any form in 48 percent of states, through preempting or superseding existing municipal and county ordinances or preventing any attempts at enacting new ordinances. A further 12 percent of states allow little to no local control to enact ordinances prohibiting certain types of agricultural operations in places already zoned as agricultural districts. Maine and New York, two unusual cases, subject any local ordinance to approval by their state commissioner of agriculture.

Local control can also be removed in other ways outside of the right-to-farm statutory language. For example, Iowa’s master matrix provides a limited role for county governments in the siting of animal confinement operations ([Iowa Code Annotated, 2002](#)). Counties can only pass local ordinances that comply with the state’s master matrix law, and not based on local needs. Applications for siting and construction, as well as manure management practices, are reviewed based on certain specified criteria, such as separation distances from residences and public use areas, and the types of waste disposal and storage systems to be employed ([Iowa Code Annotated, 2002](#)). If a county rejects an application based on those criteria, the Iowa Department of Natural Resources can still override the decision and approve a facility ([Iowa Code Annotated, 2003](#)).

When rural property owners with more diverse interests than commercial-scale production try to preserve their zoning authority, they are regularly affronted by the daunting reach of industrial agribusiness lobbyists. Indiana’s county governments maintain the authority to zone in agricultural areas, so long as local ordinances do not conflict with state law. But this authority is regularly challenged. For example, in the 2015 legislative session, a bill was proposed to take away this authority “partly in response to a Bartholomew County moratorium which banned locating new CFOs [confined feeding operations] until their planning and zoning ordinance could be updated to reflect their local concerns” ([Hoff, 2016:8](#)). On the aggregate, right-to-farm laws take away local power to designate what property rights should entail in favor of industrial-scale agribusiness.

**4.5. Place longevity**

The arguably unparalleled power of activities even tangentially related to agriculture in rural communities undergirded initial support of

**Table 5**  
Some right-to-farm laws remove local governmental control by limiting ordinances.

Removal of Local Governance	Percent of States	Number of States	List of States
Governance removed from the local level by superseding any existing ordinance and/or voiding the enactment of new ordinances	48%	24	Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Montana, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia
Little to no control in enacting new ordinances in existing agricultural districts	12%	6	Iowa, Maine, New Jersey, New York, Utah, Virginia

**Table 6**

Right-to-farm laws have different takes on the issue of time and preexisting agricultural operations, giving some operations absolute protection if they have been in operation for a period of time or if they were there first.

Time in Operation to Warrant Immunity	Percent of States	Number of States	List of States
Immune from suit if in operation for one year or more	46%	23	Alabama (in nuisance, general provisions), Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Texas
Immune if there first	16%	8	Colorado, Montana, Nebraska, Ohio (in agricultural district), Oregon, Vermont, West Virginia, Wyoming
Immune from suit if in operation for two years or more prior to neighboring residents	4%	2	Minnesota, Oklahoma
Immune if in operation for more than three years	4%	2	California, Utah (mining only)
Immune if in operation for more than six years in an agricultural zone	2%	1	Iowa
Immune from suit if any type of agricultural production predated operation	2%	1	Wisconsin

right-to-farm laws. Supporters typically cite long-standing farmers suffering as a result of newcomers. In 1980, a *New York Times* reporter wrote that “[t]he steady encroachment of suburban development on what is left of New Jersey’s agricultural community has intensified urban-rural tensions and, in many cases, made life miserable for farmers” (De Palma, 1980). This rhetoric continues in frequent debates over the enactment of right-to-farm laws. For example, in 2016 in Oklahoma, state senator Don Barrington explained his support of right-to-farm statutes by saying that “I have fourth and fifth generations of farmers and ranchers coming up here and they are for it. Why would they want something that is a detriment to their livelihood? . . . I’m going to support the issue, because those are the people who have the sway on this” (Dean, 2015).

In practice, though, right-to-farm laws subvert the value placed on how long someone has lived in the same place—what we refer to as longevity of place—a sentiment familiar to those who hold on to property for reasons like love and heredity (Baldwin et al., 2017), but of little value to corporate profit seekers (Ashwood, 2018). Only 16 percent of states stipulate that to be protected, facilities must have been in operation longer than the plaintiff who is suing (see Table 6). In 46 percent of states, if an agricultural operation has been in place for over a year, it is largely immune from nuisance suits. A further 12 percent of states, ranging from zero to six years in operation, provide immunity from nuisance suits. The language affording such blanket immunity is up to court interpretation.

With the tendency for courts to group any agriculture as all agriculture, the one-year time limit in practice means that even if plaintiffs sue within the first 365 days that a facility has been in operation, there is a multitude of ways in which they can lose a case. A case in point is *Parker v. Obert’s Legacy Dairy LLC* (2013). Under Indiana’s Right to Farm Act, an agricultural operation “is not and does not become” a nuisance if it has been in operation for more than a year and no significant change has occurred (Indiana Code Annotated, 2005). The Court held that the defendant’s conversion of part of its farm’s operations from cropland to a dairy CAFO was not a “significant change” in the type of agriculture and thus was not a nuisance. This was despite the fact that the CAFO was built on what was originally cropland and the number of cows that had been kept on another part of the subject property increased from 100 to 720 cows (Parker, 2013:324).

Most statutes also couple a time limitation on nuisance suits with protections in the event that the agricultural use changes, or the people living around the agricultural practice change. In the event the area around a facility changes, 54 percent of states explicitly protect operations from nuisance suits (see Table 7). States most commonly describe this type of protection with variations on the phrase *conditions in a locality or area*. In practice, agricultural operations can claim immunity from nuisance suits if ownership of a nearby home changes,

people decide to build a home on their retirement property, or the ownership of a neighboring farm changes. In effect, such statutes regulate the ways in which newcomers and old-timers can develop and use their properties, to the advantage of potentially liable operations. For example, a father gifted his son and daughter-in-law a parcel of land from his 120-acre Illinois farm that included a hundred-year-old farmhouse that had always been occupied. The couple tore it down to begin construction of a new home on the same site. When they sued a neighboring cattle operation for nuisance in *Toftoy v. Rosenwinkel* (2012), the Illinois Supreme Court held that the plaintiffs’ nuisance action was barred by the state’s Farm Nuisance Suit Act (Illinois Compiled Statutes Annotated, 1991), based on the Act’s language that “[n]o farm or any of its appurtenances shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year.” A change in ownership and tearing down an old house to build a new one counted as a changed condition, despite the fact that the actual property uses remained consistent and stayed in the family.

Nine states explicitly mention that a change in ownership or change in technology does not qualify as a substantial alteration of the type of production. The remainder of states have no specific language stating as much, but neither do any other states explicitly bar the protection of agriculture operations in the event ownership changes to a foreign corporation, like Smithfield. Some states further clarify the ways in which agricultural operations are immune from liability on neighboring property holders. Wisconsin provides perhaps the most comprehensive protection for agricultural operations: Agricultural practices may not be found to be a nuisance if conducted on “land that was in agricultural use without substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or agricultural practice” (Wisconsin Statutes Annotated, 2009). At first, this seems to suggest that if the agricultural operation was there first, then it is warranted special protection. But reading closer, it is clear that *any* agricultural use prior to an existing operation could qualify for protection from a nuisance suit.

In practice, it means that if a farm changes from a field of wheat to a 10,000-head dairy operation, the new land use could still be considered an agricultural use, making intensive industrial farming operations largely immune from lawsuits by neighboring property owners. In effect, by making foreign or corporate ownership structure or changes irrelevant to protection, the state furthers the encroachment of corporate agribusinesses, including transnational ones, in rural communities.

## 5. Conclusion

Right-to-farm laws currently play a significant role in reconstituting what property rights mean in the countryside. They fundamentally alter



**Table 7**

When operations change what they produce, how they produce it, or who owns it, or when they stop producing for a period of time, some right-to-farm laws make sure to protect such operations, regardless.

Nonsignificant Changes	Percent of States	Number of States	List of States
Immunity from nuisance suit in event of change in locality	54%	27	Alabama, Alaska, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, Utah, Wisconsin, Wyoming
Not a significant change if new technology used	18%	9	Arkansas, Colorado, Indiana, Kentucky, Michigan, Minnesota, New Mexico, North Carolina, South Carolina
Not a significant change if ownership change	18%	9	Alabama, Arkansas, Colorado, Florida, Indiana, Kentucky, Michigan, Minnesota, North Carolina
Not a significant change if operation produces a different product	16%	8	Arkansas, Colorado, Florida, Indiana, Kentucky, Minnesota, North Carolina, West Virginia
Not a significant change if boundaries or size of operation change	14%	7	Alabama, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Wisconsin
Not a significant change if there is a cessation or interruption in farming operation	12%	6	Arkansas, Colorado, Michigan, Minnesota, North Carolina, Oregon
Any site with former agricultural production protected, regardless of any change	2%	1	Wisconsin

the common law that undergirds property by disjoining rights of ownership from rights to enjoyment. Agriculture is treated as synonymous with production, making the formerly multifaceted defense of property, like access to clean air and water, secondary to industrial concerns. As the popularity of right-to-farm laws grows, and legislatures continue to tighten the language to make it more and more difficult for people to sue industrial operations, the profits of the few compile as the property of the many decreases in market value and, more importantly, loses its capacity to provide for life.

Our detailed analysis of these laws provides the first thematic analysis across all 50 U.S. states. It takes a small step toward bringing questions of rights back into the fold of rural studies on property. Further, the tables we provide are a practical tool for scholars in Australia and elsewhere to decipher the impact of similar laws being proposed in other nations. While sounding innocuous in title, they actually have a significant impact on rural places. The article also can help rural people navigate what right-to-farm laws actually do on a per-state basis in the United States. Still, as we have cautioned, the ability to utilize property rights as the holder deems expands beyond right-to-farm laws. We analyze here only one crucial, but overlooked, dimension of property and power in the countryside. Our descriptive statistics are only pertinent to right-to-farm laws, and as such, further research is needed to understand complementary statutes, as well as other laws, on a more comprehensive level.

Right-to-farm laws in part have been overlooked by rural scholars because they are at heart about property as a right. Considering property rights as a means to environmental justice would strike many scholars in agri-food, peasant, and rural studies as counterintuitive. But, in fact, we find them to be a key tool for rural people to exert their rights to clean air and water, when no other recourse remains. The recent tendency to throw rights out with property has left a substantial void in how we think about ownership, particularly landownership. Further, by not paying attention to rights, scholars overlook rural people's on-the-ground concerns as pertains to their property rights. Mistaking all land property as simply a commodity situated in networks of exchange overlooks the subtle transformations in the capacity to exert one's property rights in face of transnational corporate takings. While the initial act of commodification is important, commodities exist within markets shaped by laws and cultural norms that constrain what property is worth, socially and in the market. Forgetting as much can lead us to miss the very real ways in which enclosure is happening today, in ways that we have not yet anticipated, like enabling international corporate agribusinesses to dispossess local owners not of their deed, but of the significance of their deed. It is crucial to remember this in rural studies. Otherwise, too much attention falls on what is and is

not commodified, and too little on the legal institutions that inform whose property as a right matters most.

### Acknowledgements

This project was supported by a grant from the United States Department of Agriculture's National Institute for Food and Agriculture; and the Auburn University College of Agriculture Research Enhancement, Exploration and Development program.

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