

“WOMEN IN BLUE JEANS:” CONNECTING THE PAST WITH AGRICULTURAL TRANSFORMATIONS IN THE PRESENT

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“A lot of us are getting into farming later, as we get older We’re willing to toss insanity to the winds. It’s just a different focus for women.”¹

INTRODUCTION

The systemic and ongoing demise of independent farm operations is well documented and lamented.² The confluence of globalization and rising production costs in the present are further jeopardizing existing independent owner operations both domestically and internationally.³ Yet against insurmountable odds, a realm of agricultural data reveals that new waves of women farmers are engaging in endeavors that contrast the past.

Historically, women remained primarily invisible in farming operations, sustaining households and maintaining their own small gardens. This essay underscores a divergence from “the popular conception of feminisms [that on some farms] have been regarded as destabilizing and as a threat to many of the

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1. Chris Parker, *Women Adding a Second (or Third) Job: Farmer*, L.A. TIMES, Oct. 28, 2007, at 24 (quoting farm operator Kathy Fields). For a discussion of the evolving role of women in farming, see Wava G. Haney & Jane B. Knowles, *Women and Farming: Changing Roles, Changing Structures*, 12 SIGNS 797 (1987).

2. A general concern over the loss of independent farming operations is extensive. See, e.g., Linda Lobao & Katherine Meyer, *The Great Agricultural Transition: Crisis, Change and Social Consequences of Twentieth Century U.S. Farming*, 27 ANN. REV. SOC. 103, 103 (2001) (discussing “the exodus of Americans from farming”); David A. McGranahan & Calvin L. Beale, *Understanding Rural Population Loss*, 17 RURAL AM. 2, 3 (2002) (discussing population losses in agricultural ‘frontier’ counties and relationship to a “decline in economic opportunities in agriculture.”).

3. See, e.g., Appellate Body Report, *United States–Subsidies on Upland Cotton*, WT/DS267/AB/RW (June 2, 2008) (involving Brazil’s complaint of U.S. subsidies on cotton and its undue hardship on its farmers); MARCEL MAZOYER, PROTECTING SMALL FARMERS AND THE RURAL POOR IN THE CONTEXT OF GLOBALIZATION (2002), available at <http://www.fao.org/worldfoodsummit/msd/Y1743e.pdf>.

social relationships that are valued in rural life.”⁴ This corresponding contrast stems from the increasing entry rates of women in farming ventures and their production of alternative and sustainable products.⁵ When contemplated against the nation’s federal food agenda,⁶ nevertheless, the question arises whether this new trend of women held operations can succeed in the enterprise of farming.

In the present, women farm operators are legally challenging historically based rural inequities that range *inter alia* from the lack of access to federal operating and disaster based loans to the disparate treatment of federal based farm programs. Since the colonial period when native lands were subjected to the hegemony of nation building, moreover, female farming enterprises have confronted rural hostility and arbitrary treatment.

Grounded in historical intransigencies, rural inequities expose gendered biased externalities ranging from federal economic models to funding disparities for women held enterprises. In contrast, however, federal laws have expedited male dominant operations at the expense of more diverse food production systems.⁷ This essay thus examines the relationship of women farming operations against the framework of the nation’s farm bills.

In sum, this two-fold thrust systemically exposes high exit factors for the new women entering the enterprise of farming. Specifically, the present agricultural agenda is primarily structured on economies of scale that expedite current agribusiness models.⁸ This federal approach nonetheless sacrifices the small and independent owner operators at the bottom, including women-run operations.

4. Berit Brandth, *On the Relationship Between Feminism and Farm Women*, 19 AGRIC. & HUM. VALUES 107, 108 (2002).

5. See, e.g., Kathleen Mcgrory, *More Women Farmers Sprout up: Female Farmers are Growing in Numbers – and Growing Everything From Beans to Sapodilla*, MIAMI HERALD, Mar. 7, 2007, at A1 (“[T]he Department of Agriculture predicts that as many as 75 percent of U.S. farmland will be owned or co-owned by women by 2014.”); Sara Hoffman & Deborah Norton, *2002 Census of Agriculture Reveals an Increase in Women Principal Operations*, NAT’L AGRIC. STAT. SERVICE, Mar. 9, 2005, available at http://www.nass.usda.gov/Newsroom/2005/03_09_2005.asp.

6. For farm bill examples, see Agricultural Adjustment Act of 1938, ch. 30, § 2, 52 Stat. 31 (codified at 7 U.S.C.S. § 1282 et seq. (1992)); Federal Agricultural Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888 (1996). Compare RENEE JOHNSON, WHAT IS THE “FARM BILL”?, CRS REPORT FOR CONGRESS RS22131 (May 28, 2008), available at <http://www.nationalaglawcenter.org/assets/crs/RS22131.pdf> with JEAN Y. JONES ET AL., WHAT IS A FARM BILL?, CRS REPORT FOR CONGRESS, RL30956 (May 5, 2001).

7. See, e.g., *Love v. Veneman*, 224 F.R.D. 240 (D.D.C. 2004) (female farmers alleging discrimination by the USDA through refusal of farm loan applications, servicing, and continuation) [hereinafter *Veneman*].

8. Economies of scale are directly related to “industry consolidation” and its relationship to market efficiency. See, e.g., John L. King, *Concentration and Technology in Agricultural Input Industries*, AGRIC. INFO. BULL. 763 (Mar. 2001), available at <http://www.ers.usda.gov/publications/aib763/aib763.pdf>. Accordingly, economies of scale signify “the ongoing shift of production to larger operations” James M. MacDonald et al., *Profits, Costs, and the Changing Structure of Dairy Farming*, AGRIC. INFO. BULL. 763 (Sept. 2007), available at <http://www.ers.usda.gov/publications/aib763/aib763.pdf>.

The rural movements of the 1920s and 1930s, which sought to protect independent operators, eventually resulting in the nation's farm bills, also effectuated a range of systemic consequences that contrasted the goals of the insurgency.⁹ The new women operators engaging in alternative and sustainable crop production, therefore, yield to a legacy of non-qualifying status for federal benefits.¹⁰ Historically placing women outside federal economic efficiency models that are beneficial to large-scale enterprises render female operations at risk to potential forfeitures of their farming ventures.

The United States Department of Agriculture's ("USDA") vast programs and practices that offer federal assistance for research, development, and marketing promotions systematically endanger female operations. In its totality, the USDA effectively promotes the larger and male dominant agricultural enterprises. Added value from a realm of marketing programs and a sea of domestic and international agricultural agreements also benefit qualifying farmers while excluding women-held operations.¹¹ In its totality, the USDA effectively promotes the larger and male dominant agricultural enterprises.

In contrast, a gendered perspective of farm bills and production is underscored when pesticide use is contemplated in industrial agriculture.¹² "[W]omen take the brunt of the many toxic chemicals used in conventional agriculture. [Women] have greater fat stores than men, and that's where fat-soluble chemicals finally reside"¹³ Their children are also harmed from excessive pesticide contamination.¹⁴ Yet legal formalistic studies concentrate

9. ALLAN KULIKOFF, *THE AGRARIAN ORIGINS OF AMERICAN CAPITALISM* (1992). For an interpretation of the vast array of development practices that led to the transformation of agriculture, see, e.g., WILLARD W. COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE: A HISTORICAL ANALYSIS* (1993); Don Paarlberg, *Tarnished Gold: Fifty Years of New Deal Farm Programs*, in *THE NEW DEAL AND ITS LEGACY: CRITIQUE AND REAPPRAISAL* (Robert Eden ed., 1989).

10. Women engage in specialty crops production. See JOHNSON, *supra* note 6. Federal law defines what "qualifying crops" are provided subsidies. See Agricultural Adjustment Act of 1933, 7 U.S.C.A. § 601 (West 2008). See also JEAN M. RAWSON, *SPECIALTY CROPS: 2007 FARM BILL ISSUES*, CRS REPORT FOR CONGRESS RL 33520, 2 (2008), available at <http://www.ncseonline.org/NLE/CRSreports/08Mar/RL33520.pdf> ("Specialty crops . . . are not eligible for direct support under USDA's farm commodity price and programs.").

11. See, e.g., Agricultural Adjustment Act of 1938, 7 U.S.C.S. § 1301a (1992) ("parity prices"); The Farm Security and Rural Investment Act of 2002, 7 U.S.C.S. § 7901 *et seq.* (2005), sought reversing the over reliance on price supports but, in contrast, engendered an opposite effect and obligated additional funding for operations. See, e.g., Beau Hurtig, *The 2002 Farm Bill: One Small Step for Family Farmers, One Giant Leap Towards Corporate Production in Iowa*, 29 J. CORP. L. 199 (2003).

12. For an example of pesticide use regulation, see Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 (2006).

13. Elaine Lipson, *Food, Farming . . . Feminism?*, Ms., Summer 2004, at 46.

14. Compare Geoffrey M. Calvert et al., *Case Report: Three Farmworkers who Gave Birth to Infants with Birth Defects Closely Grouped in Time and Place—Florida and North Carolina, 2004-2005*, 115 ENVTL. HEALTH PERSP. 787 (May 2007), available at <http://www.ehponline.org/members/2007/9647/9647.pdf> (no causal link between prenatal pesticide exposure and birth defects but exposure still cause for concern) with Peter J.

on the regulatory state of farming, not on absorption rates for women and children.¹⁵

In tracking the nation's farm bills, the goal of this essay further highlights the federally defined agricultural relationship with consumers. Specifically and within their class of operations, women engage specialty crops and sustainable productions, offering consumers alternatives to the widespread and wide scale health scares tainted food products engender. Within communities of color, moreover, federally subsidized programs and their links to allergies and health absorption rates have also produced health disparities.¹⁶ In the aggregate, a gendered approach demonstrates how agricultural fundamentalism negatively influences women as producers, farm laborers, and consumers.¹⁷

The New Legal Realism Conferences¹⁸ expedite investigations that target those at the bottom of law's reach. The Conferences' call for action facilitates this examination of the gendered inequalities female operators witness in the agricultural agenda as codified through the nation's farm bills and policies. Part I examines the structural barriers early women of color sustained in their confrontations with rural colonialism. Part II addresses the systemic gendered disparities women have confronted in recent litigation against the USDA. Part III links women's legal struggles in the agricultural industry with the Nation's farm bills that initially emerged during the New Deal period.¹⁹ Illustrating a

Guarnaccia et al., *The Impacts of Farm Work on Health: Analyses of the Hispanic Health and Nutrition Examination Survey*, 26 INT'L MIGRATION REV. 111 (May 1992).

15. See, e.g., Mary Elizabeth Fratini, *Celebrating 200 Years of Vermont Women Farmers*, VT. WOMAN NEWSPAPER, Sept. 2005, available at http://www.vermontwoman.com/articles/0905/women_farmers.shtml ("A still neglected area of study is Vermont's women farmers . . . They have to face a society that still largely identifies farmers as male. We need to support research on women farmers to see where the differences lie and how they impact quality of life and profitability" (quoting Mary Peabody, Director of the Women's Agricultural Network)).

16. Many ethnic and racial populations cannot digest certain commodities agricultural legislation subsidizes. For example, 90%-100% of Asian Americans and American Indians, and up to 80% of African Americans, lack the genes necessary to digest lactose, the primary sugar in milk. NAT'L DIGESTIVE DISEASES INFO. CLEARINGHOUSE, LACTOSE INTOLERANCE 3, available at <http://digestive.niddk.nih.gov/ddiseases/pubs/lactoseintolerance/lactoseintolerance.pdf>.

17. The disparities of agricultural fundamentalism extend beyond gender to all minorities. The Doctrine of Agricultural Exceptionalism benefits agricultural employers while disallowing equal treatment of Latina/o farm workers. See ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* 105-06 (1964). See also Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335 (1986-87).

18. The New Legal Realism Conferences focused on those "at the bottom," as witnessed in its June 2004 and 2008 Conferences, which preclude homogeneity and thus recognize differences based on race, class and gendered distinctions. Howard Erlanger et al., *New Legal Realism Symposium: Is it Time for a New Legal Realism?*, 2005 WIS. L. REV. 335 (2005) (connecting 'bottom-up' as well as 'top-down' empirical research).

19. Definitional farming practices are broad and differ across the nation. For female farming histories, see *THE WOMEN'S WEST* (Susan Armitage & Elizabeth Jameson eds., 1987); *WESTERN WOMEN: THEIR LAND, THEIR LIVES* (Lillian Schliessel et al. eds., 1988).

break with past legislative harms Part IV contemplates the new women farmers of the present. Part V joins feminists for a collective space for all women to return to earlier periods of rural insurgency that produced the farm bills of the present.

Although women participated in the populism that led to the nation's food agenda, earlier periods disallowed collective action that could have bridged the racial disparity of the times²⁰ and the goal to protect the small independent operators.²¹ The resultant food bills and rural policies ultimately yielded to the politics of the agri-business in the present with attendant structural inequities for women-led enterprises.²²

This essay, in sum, seeks a return to the ideals of rural insurgency to offset large scale production models and the negative externalities consumers are confronting.

I. "SOCIAL ENGINEERING,"²³ HISTORY AND GENDERED AGRARIAN OBSTRUCTIONISM

Feminists have long regarded "hearing women's voices"²⁴ as important, and while there have been a few gains in venues such as the development of women studies in higher education,²⁵ women have yet to define the nation's

20. At the first level, Jim Crow legislation and its extra-legal activities effectively precluded collective group activities. Notwithstanding the racial hardship they endured, black farmers formed their own coalitions. See, e.g., M. Langley Biegert, *Legacy of Resistance: Uncovering the History of Collective Action by Black Agricultural Workers in Central East Arkansas from the 1860s to the 1930s*, 32 J. Soc. Hist. 73 (1998); Greta de Jong, "With the Aid of God and the F.S.A.": *The Louisiana Farmers' Union and the African American Freedom Struggle in the New Deal Era*, 34 J. Soc. Hist. 105 (2000); William F. Holmes, *The Demise of the Colored Farmers' Alliance*, 41 J. S. Hist. 187 (1975). For individuals of Mexican descent, the Great Depression instigated repatriation drives to "return" them to Mexico regardless of their citizenship status. See, e.g., FRANCISCO E. BALDERRAMA, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* (2006).

21. The agrarian revolt of the 1930s surfaced in large part due to the economic inequities farmers faced, including liens and foreclosures of their properties. See, e.g., LAWRENCE GOODWYN, *THE POPULIST MOMENT: A SHORT HISTORY OF THE AGRARIAN REVOLT IN AMERICA 20-22* (1978) (discussing the impact of the crop lien system).

22. See, e.g., Paarlberg, *supra* note 9.

23. See JEROME FRANK, *LAW AND THE MODERN MIND* 207 (5th ed. 1936) (law's relationship to "social engineering").

24. Nancy Grey Osterud & Lu Ann Jones, "If I Must Say So Myself": *Oral Histories of Rural Women*, 17 ORAL HIST. REV. 1, 1 (1989).

25. Various university departments of women studies exist throughout the nation, including: Dep't of Women Studies at Washington Univ., <http://depts.washington.edu/webwomen> (last visited Oct. 28, 2008); Gender & Women's Studies at the Univ. of California, Berkeley, <http://womensstudies.berkeley.edu> (last visited Oct. 28, 2008); Dep't of Women's Studies at the Univ. of Maryland, <http://www.womensstudies.umd.edu> (last visited Oct. 28, 2008); Dep't of Gender, Women, and Sexuality Studies at the Univ. of Minnesota, <http://gwss.umn.edu> (last visited Oct. 28, 2008).

food agenda.²⁶ When women challenged agricultural inequities, as highlighted below, the legal formalism of farm legislation nonetheless cemented their exclusion.²⁷

Specifically, in targeting this gendered directed approach to the nation's farm bills and rural policies, the New Legal Realism Conferences²⁸ mandate a race base distinction to the broader studies of domestic based female farmers.²⁹

Throughout history, women, particularly women of color, have faced difficulty in preserving farming enterprises against harsh rural challenges. Rural author Joan Jensen observes the varying degree of harm in some rural arenas that have ignored various gendered classes, noting the diversity of women encompasses "different places and different people but there has been a constant struggle by women to stay on the land."³⁰ Agrarian inequities, violence, and in some instances, deaths stemming from Jim Crow disenfranchisement, further structured the alienation rural women of color confronted.³¹

26. See, e.g., Osterud & Jones, *supra* note 24, at 1. ("Lena Porrier Legnon grew up hard, the daughter of Cajun sugar cane plantation workers. After her father died in 1932, she helped her mother support the family by hoeing corn and picking cotton for wages."). See, e.g., Lillian Castillo-Speed, *Chicana Studies: A Selected List of Materials Since 1980*, 11 FRONTIERS: J. WOMEN STUD. 66 (1990); Aída Hurtado, *Sitios y Lenguas: Chicanas Theorize Feminisms*, 13 HYPATIA 134 (1998).

27. Rural studies commonly draw from legal formalism thereby emphasizing the regulatory state. Accordingly, the focus is on the extensive legislation that farmers confront. The list of regulations that farmers must adhere to is extensive and beyond the scope of this essay. See, e.g., Environmental Protection Agency, 7 U.S.C.A. § 136; The Occupational Safety & Health Administration, 29 U.S.C.A. § 651. This dominance results in part from the innumerable issues that stem from operating a farm. Enterprises might also confront state driven environmental regulations, labor relationships, payment systems, crop liens, health and safety, and animal handling regulations as concerns. This dominance underscores the need for alternative mechanisms to feed the nation in light of the externalities weighing heavily on women as both producers and consumers.

28. See Erlanger, *supra* note 18 and accompanying text.

29. Within dominant legal studies, rural women are primarily subsumed within the broader network of farmers. Until this year, census enumerations limited enumeration to one individual as principal operator, thereby excluding married female operators. This affected women farmers financially because their enumerated status failed meeting USDA qualification standards when seeking access to farm loans. For a discussion on the historical transition of the legal status of farm wives, see Susan A. Schneider, *Who Owns the Family Farm? The Struggle to Determine the Property Rights of Farm Wives*, 14 N. ILL. U. L. REV. 689 (1994).

30. JOAN M. JENSEN, PROMISE TO THE LAND: ESSAYS ON RURAL WOMEN 231, 234 (1991).

31. The heinous issue of slavery and the contributions of the Black community to agriculture underscore this point. For a study that connects the economics of cotton with the lynching of Blacks, see, e.g., E.M. Beck & Stewart E. Tolnay, *The Killing Fields of the Deep South: The Market for Cotton and the Lynching of Blacks, 1882-1930*, 55 AM. SOC. REV. 526 (1990). For a brief history of Black farming endeavors and the structures they faced that threatened their viability, see Phyllis Craig-Taylor, *African-American Farmers and the Fight for Survival: The Continuing Examination for Insights into the Historical Genesis of This Dilemma*, 26 N.C. CENT. L.J. 21 (2003). To the nation's detriment, Black farmer operators

Women of color retain close cultural and spiritual ties to land based on their ancient and unique histories of rural land based experience.³² For example, Native Americans introduced the value of corn, melon, squash and tobacco to newly arrived foreign entrants.³³ The relationship to land for Indigenous women, moreover, extends beyond food cultivation to sacred entanglements between the environment and their religiosity.³⁴

From the earliest nation building efforts, Congress directed its efforts towards promoting settlements in newly acquired territories without regard to native population groups.³⁵ Colonial agricultural legislation actively disenfranchised and disposed large populations from their traditional land use.³⁶ The realm of easements and use rights held in ownership since the Spanish and Mexican colonial periods of the present American Southwest have instigated litigation to retain rights of access long into the contemporary period.³⁷

Across the agricultural landscape, the federal agrarian laws and policies that displaced significant minority population groups spans a wide realm of legislation, including Homestead laws that expedited settlement onto their properties.³⁸ When the new settlers confronted the additional difficulties in

are on the decrease, unable to thwart the systemic ongoing trends that are structurally removing them from their farm properties. This consequence emphasizes the reality that this nation's food production system is increasing less diverse. See, e.g., U.S. Dep't of Agric., *National Agricultural Census* (2007), available at <http://www.agcensus.usda.gov>; Jenalia Moreno, *Agriculture; As Fewer African-Americans and Anglos Work the Land in the U.S., More Latinos Step in as Operators; For Hispanics, Farming is a Growth Industry*, HOUS. CHRON., Jan. 22, 2006, at A1.

32. See, e.g., T.C. McLUHAN, *TOUCH THE EARTH: A SELF-PORTRAIT OF INDIAN EXISTENCE* (1971).

33. See, e.g., Renée Jacobs, *Iroquois Great Law of Peace and the United States Constitution: How the Founding Fathers Ignored the Clan Mothers*, 16 AM. INDIAN L. REV. 497 (1991); Kathleen A. Ward, *Before and After the White Man: Indian Women, Property, Progress, and Power*, 6 CONN. PUB. INT. L.J. 245 (2006-07). Native Americans troubled relationship with the federal government compounds their status in the agricultural sector. See, e.g., *Cobell v. Norton*, 283 F. Supp. 2d 66 (D.D.C. 2003) (beneficiaries of individual Indian Money alleging federal officials breached fiduciary duties); Darla J. Mondou, *The American Indian Agricultural Resource Management Act: Does the Winters Water Bucket Have a Hole in It?*, 3 DRAKE J. AGRIC. L. 381 (1998).

34. See, e.g., VINE DELORIA, JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* (1994).

35. See, e.g., *WOMEN AND POWER IN NATIVE NORTH AMERICA* (Laura F. Klein & Lillian A. Ackerman eds., 1995).

36. See, e.g., Andrew Sluyter, *Colonialism and Landscape in the Americas: Material/Conceptual Transformations and Continuing Consequences*, 91 ANNALS OF THE ASSOC. OF AM. GEOGRAPHERS 410 (2001).

37. See, e.g., *Lobato v. Taylor*, 70 P.3d 1152 (Colo. 2003) (action by successors to original settlers of Mexican land grant against landowner who fenced adjoining mountain property, seeking rights of access for hunting, fishing, timbering, and recreation); see also Placido G. Gomez, *Bringing Reason and History onto the Same Page: Lobato v. Taylor and the Struggle over the Common Lands of Spanish and Mexican Land Grants*, 17 ST. THOMAS L. REV. 83 (2004).

38. See Homestead Act of 1862, 7 U.S.C. §§ 301-308 (2001) (30,000 acre grants per senator and congressional representative to each state for settlement purposes). Preemption

facilitating farming ventures, Congress, not unlike the present, responded with newly adopted legislation.³⁹ Homestead settlers accordingly benefited from irrigation flows into arid geographical terrain with the promulgation of the Reclamation Act.⁴⁰ The Taylor Grazing Act offset high input prices and expanded access to the federal domain that also violated Native American religious sites.⁴¹

This section expands on the agrarian legislation that facilitated the historical disenfranchisement of the Mexican women who owned vast rural acreage.⁴² My intent is to demonstrate that women have long defended their property interests against rural inequities. The ongoing pattern and practice of rural marginalization, continuing with the birth of the nation's first comprehensive farm bill in the 1930s, imposed additional expansive agrarian policies with legal implications into the present.⁴³

Prior to the United States war against the Mexican Republic, women held agricultural properties in the present Southwest.⁴⁴ Unlike the common law system, the Mexican civil law system recognized the legal identity of women outside of direct male relationships.⁴⁵ Under Mexican law, women possessed and operated property independently.⁴⁶ Women also held varying sizes of properties concurrently with their spouses or siblings.⁴⁷ Maria Antonieta de

laws also benefited settlements on former Indian and Mexican domain. *See, e.g.*, An Act to Extend Preemption Rights to Certain Lands Therein Mentioned, ch. 143, 10 Stat. 244 (1853). Congress also responded to squatters in their demand for further legislation. *See, e.g.*, Christian G. Fritz, *Politics and the Courts: The Struggle over Land in San Francisco, 1846-1866*, 26 SANTA CLARA L. REV. 127, 135-36 (1986).

39. Squatters' demands promoted "squatter sovereignty" with resultant favorable legislation. *See* Donald J. Pisani, *Squatter Law in California, 1850-1856*, 25 W. HIST. Q. 277, 285 (1994).

40. For a historical background of the Reclamation Act, *see e.g.*, Cal. v. United States, 438 U.S. 645 (1978); JOHN OPIE, *THE LAW OF THE LAND: TWO HUNDRED YEARS OF AMERICAN FARMLAND POLICY* (1987).

41. Taylor Grazing Act, 43 U.S.C.A. § 315 (West 2007).

42. *See, e.g.*, *Botiller v. Dominguez*, 130 U.S. 238 (1889) (attempt to recover possession of "Rancho Las Virgenes," a tract of land given by grant of the government of Mexico).

43. Compare the losses of small and independent farm ownership of the 1930s and its attendant declining rates with farm ownership in the present. The ongoing losses have surfaced in widespread investigations concerned with the loss of diverse food production. *See, e.g.*, Lobao & Meyer, *supra* note 2.

44. *See, e.g.*, WILLIAM HENRY BISHOP, *OLD MEXICO AND HER LOST PROVINCES* (1883).

45. Gloria Ricci Lothrop, *Rancheras and the Land: Women and Property Rights in Hispanic California*, 76 S. CALIF. Q. 59, 59 (1994). For an analysis of property ownership in marital common law relationships and its implications on female ownership, *see* Schneider, *supra* note 29.

46. *See, e.g.*, *Airhart v. Massieu*, 98 U.S. 492, 492-93 (1871) (Anna Massieu inheriting property from her mother); *United States v. Castro*, 25 F. Cas. 329 (N.D. Cal. 1859) (appeal by United States challenging former Mexican, Indian, and Spanish women holding properties in the previous Mexican territories).

47. *See, e.g.*, Janet Lecompte, *The Independent Women of Hispanic New Mexico, 1821-1846*, 12 W. HIST. Q. 17, 27 (1981).

Castro owned 30,593,95 acres; Martina Castro possessed 32,702,41 acres, and Vicenta Sepúvela held 17,774,19 acres.⁴⁸ Maria Romana de la Luz Carillo de Wilson declared ownership of 48,837,27 acres, and María de Los Angeles Castro and Candida Castro, jointly owned *Canada de Raimunda* in San Mateo County, California.⁴⁹ As in the present, land ownership emphasized “self-reliance and more independence.”⁵⁰

Notwithstanding governmental promises to protect property interests through the peace agreement that ended the war between the two Republics, agricultural legislation effectively expedited the entry of third parties onto the land of the former Mexican citizens.⁵¹ In response to the newly adopted Homestead Acts, a universe of squatters and others targeted the land without regard to the supremacy of the 1848 peace agreement that terminated the war between the two nations.⁵²

Newly arrived settlers seeking access to their properties ultimately caused Rufina Castro, for example, to face a United States challenge to her Santa Clara County *Rancho Solis*.⁵³ Other Mexican, Indian, and Spanish holders of former Mexican property also confronted property losses.⁵⁴ In addition to the forfeitures caused by agricultural legislation and policies, the violence of the times generated additional losses.⁵⁵ Unfortunately, legal formalism disallowed

48. J.N. Bowman, *Prominent Women in Provincial California*, HIST. SOC'Y CALIF. Q. 37, 45 (1957). Chicanas' contributions outside of law remains vibrant and ranges beyond legal studies to include *inter alia* oral histories, politics, and a realm of multidisciplinary literature in exposing the colonialization of the period.

49. Lothrop, *supra* note 45, at 67.

50. JUAN GÓMEZ-QUINOÑES, *ROOTS OF CHICANO POLITICS, 1600-1940* 243 (1994).

51. See Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Treaty of Guadalupe Hidalgo, U.S.-Mex., Feb. 2, 1848, 9 Stat. 922, 930. The issue of property forfeiture stems from my earlier studies on the U.S.-Mexico war. See, e.g., Guadalupe T. Luna, *Legal Realism and the Treaty of Guadalupe Hidalgo: A Fractionalized Legal Template*, 2005 WIS. L. REV. 519 (2005). See also Phillip B. Gonzales, *Struggle for Survival: The Hispanic Land Grants of New Mexico, 1848-2001*, 77 AGRIC. HIST. 293 (2003); Clark S. Knowlton, *Violence in New Mexico: A Sociological Perspective*, 58 CAL. L. REV. 1054 (1970); Tom I. Romero, II, *The “Tri-Ethnic” Dilemma, Race, Equality, and the Fourteenth Amendment in the American West*, 13 TEMP. POL. & CIV. RTS. L. REV. 817, 823 (2004) (analyzing in part the squatters' rights that Congress recognized); Paul S. Taylor, *Public Policy and the Shaping of Rural Society*, 20 S.D. L. REV. 475 (1975).

52. Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Treaty of Guadalupe Hidalgo, U.S.-Mex., Feb. 2, 1848, 9 Stat. 922, 930.

53. *United States v. Castro*, 25 F. Cas. 329 (N.D. Calif. 1859).

54. The supremacy of the Peace Agreement is difficult to reconcile with the California Land Act of 1851 and its contrary covenants that accelerated third party challenges against the women and others holding property in fee simple absolute. An Act to Ascertain and Settle the Private Land Claims in the State of California, 31 Cong. Ch. 41, 9 Stat. 631 (1851). See also Douglas W. Allen, *Homesteading and Property Rights: or, “How the West Was Really Won,”* 34 J.L. & ECON. 1 (1991).

55. See, e.g., *Chabolla v. United States*, 5 F. Cas. 387, 387-88 (N.D. Cal. 1855) (giving land to squatters); ARNOLDO DE LEON, *THEY CALLED THEM GREASERS, ANGLO ATTITUDES TOWARDS MEXICANS IN TEXAS, 1821-1900* (1983); Deena J. González, *The Widowed Women of Santa Fe: Assessments on the Lives of an Unmarried Population, 1850-1880*, in *UNEQUAL*

recognition of the extent to which rural legislation expedited the rights of squatters and settlers who targeted the property of former Mexican women.⁵⁶ Ultimately, and into the future, the loss of their property defaulted many of the women and their children to a legacy of poverty, physical brutality, and racial terrorism as farm laborers.⁵⁷

Into the present, women as farm laborers remain vital to food production. Female employees are employed in present agro-maquilas that prepare chicken and beef for consumption.⁵⁸ Although female laborers have long protested against disparate working conditions, a legal span of injunctions and broad realm of physical violence accelerated the demise of unions and other self-help efforts.⁵⁹ The federal exemption that protects agricultural employers further cemented the workers' ultimate exclusion from the federal right to collective action that is guaranteed in other industries.⁶⁰

Against this legal historical backdrop of the women who confronted rural supremacy, this essay is grounded in women led protests against farm inequities. In sum, it argues for a new rural legal space for women where the

SISTERS: A MULTI-CULTURAL READER IN U.S. WOMEN'S HISTORY 34-35 (Ellen Carol DuBois & Vicki L. Ruiz eds., 2000); LISBETH HAAS, CONQUESTS AND HISTORICAL IDENTITIES IN CALIFORNIA 1769-1936 (1995).

56. U.S. GENERAL ACCOUNTING OFFICE, TREATY OF GUADALUPE HIDALGO: FINDINGS AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN NEW MEXICO, GAO-04-059 (June 2004), available at <http://www.gao.gov/new.items/d0459.pdf> (enumerating losses and lack of accountability over governmental failure to protect the property holders).

57. See, e.g., *Arguello v. United States*, 59 U.S. 539, 550 (1855) (Daniel, J., dissenting) (criticizing failure to recognize "laws . . . in force . . . at the time of the acquisition"); MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST: A THEORY OF RACIAL INEQUALITY (1979); BISHOP, *supra* note 44; CAREY MCWILLIAMS, NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE OF THE UNITED STATES 52 (Louis Adamic ed., 1949).

58. See, e.g., H.J. Lipscomb et al., *Musculoskeletal Symptoms Among Poultry Processing Workers and a Community Comparison Group: Black Women in Low Wage Jobs in the Rural South*, 50 AM. J. IND. MED. 327 (2007); Hester J. Lipscomb, *Safety Is On The line for Workers*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 29, 2008, at A19 (three year study of women in poultry plant); *Research from Wake Forest University Has Provided New Data on Psychology*, MENTAL HEALTH WKLY. DIG., Aug. 27, 2007, at 226 (Latino immigrants in poultry industry).

59. The vast realm of farm worker women leading and working for transformation in their working conditions extends beyond the intent of this essay. See, e.g., Gustavo Arellano, *Gunkist Oranges*, OC WEEKLY, June 8, 2006 (summarizing the brutality and violence employed in the June 15, 1936, strike for improved wages and conditions). The author recounts what the Mexican women participants and other workers confronted and the use of extreme police force tactics to stymie their efforts. At one point the sheriff ordered his deputies for example to "Shoot to Kill" the strikers. *Id.* The recent death of teenage farm worker Maria Isabel Vazquez Jimenez who perished from heatstroke in a California vineyard underscores some of the conditions farm laborers continue to confront. For an account of her death, see http://www.ufw.org/_board.php?mode=view&b_code=hotissue&b_no=4304 (last visited Nov. 24, 2008).

60. See National Labor Relations Act, 29 U.S.C.A. § 152 (2008).

present wave of female operators can advance new and alternative forms of feeding the nation without the threat of escalating exit factors.⁶¹

II. GENDERED RURAL DISPARITIES

“The USDA An ‘old line’ department.”⁶²

Rural women are not commonly credited with participating in the public sphere of farming enterprises and are routinely characterized as passive actors in agriculture.⁶³ Contrary to the dominant perception throughout agricultural history, women have long participated in various forms of capital formation, whether engaging in “butter and egg money” or selling their overstock to outside markets.⁶⁴ Male dominance in cultivating commercial crops, however, overshadows gendered capital formation. A more direct focus on gendered farming productions and the nation’s farm bills emphasizes the need for exploring female driven agriculture.⁶⁵ Differences between women based operations from their male counterparts could provide insight towards formulating an agricultural agenda that promotes rural equities and diversity in food production outside of large scale models.⁶⁶

In targeting the new “Women in Blue Jeans”⁶⁷ and their farming operations, this essay connects the agricultural disparities of the past with their disparate treatment of the present. Constituting a neglected field within the construct of agricultural legal formalism, the new female farmers of the present are introducing alternative forms of agricultural enterprises.⁶⁸ These new

61. I extend and apply Camille Nelson’s theory from the criminal law framework. Camille A. Nelson, *Multicultural Feminism: Assessing Systemic Fault in a Provocative Context*, 17 U. FLA. J.L. & PUB. POL’Y 263 (2006).

62. USDA, CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE, A REPORT BY THE CIVIL RIGHTS ACTION TEAM, 3 (1997) [hereinafter CRAT REPORT]. See also *Management of Civil Rights at the U.S. Department of Agriculture: Hearing before the Comm. on Oversight & Gov’t Reform*, 109th Cong. (May 14, 2008); *Racial Discrimination Claims and African American Farmer Benefits: Hearing before the House Judiciary Comm.*, 107th Cong. (June 21, 2007).

63. Elizabeth Jameson, *Women as Workers, Women as Civilizers: True Womanhood in the American West*, in *THE WOMEN’S WEST* 145 (Susan Armitage & Elizabeth Jameson eds., 1987). See also Jane Adams, *Resistance to “Modernity”: Southern Illinois Farm Women and the Cult of Domesticity*, 20 AM. ETHNOLOGIST 89 (1993).

64. Osterud & Jones, *supra* note 24, at 22.

65. *Id.*

66. See Kimberly A. Zeuli & Robert P. King, *Gender Differences in Farm Management*, 20 REV. OF AGRIC. ECON. 513 (1998). Compare Anne B. Effland et al., *Women as Agricultural Landowners: What Do We Know About Them?*, 67 AGRIC. HIST. 235 (1993) with Sonya Salamon & Ann Mackey Keim, *Land Ownership and Women’s Power in a Midwestern Farming Community*, 41 J. MARRIAGE & FAM. 109 (1979).

67. See Women in Blue Jeans Conference, <http://www.womeninbluejeans.org> (last visited Oct. 28, 2008).

68. See, e.g., Alan Hall & Veronika Mogyorody, *Organic Farming, Gender, and the Labor Process*, 72 RURAL SOC. 289-90 (2007); Shar Porier, *Southern Women Take Reins in*

operations fundamentally conflict with the nation's current food producing systems as sustained through its farm bills and rural policies.⁶⁹ As examined in a subsequent section, women are challenging the discriminatory farm programs that threaten the viability of their farming operations, prompting the fundamental need for additional gendered based rural legal studies.

A. "Women in Blue Jeans"

"[F]arm women have been willing to play very flexible roles on the farm—to do whatever is necessary."⁷⁰

Grounded in history, the present agricultural landscape is the result of a long trend of women of color and their communities attempting to protect their rural enterprises.⁷¹ In displacing Indigenous populations, innumerable farming operations of the dominant class benefited from an agriculturally directed conquest through legislation and overt violence.⁷² Following the war with the Mexican Republic, the former property holders that at one time populated the present Southwest also witnessed alienation from their property interests.⁷³

Ranching, AP ALERT (AZ), May 7, 2008 (Starlene Moore and Cindy Whitehead growing Bermuda grass and planting alfalfa fields and variety of crops on their ranch).

69. The nation's farm bills extend to dominant commodity production and they receive a wide berth of federal funds. Women, in contrast, engage in specialty or niche crop production without access to guaranteed price supports. For an example of a favored commodity, see REMY JURENAS, SUGAR POLICY AND THE 2007 FARM BILL, CRS REPORT FOR CONGRESS RL34103 (July 25, 2007), available at http://assets.openers.com/rpts/RL34103_2_0070725.pdf (guaranteed minimum price for *inter alia* growers of sugar cane and sugar beets); ROBERT A. HOPPE & DAVID E. BANKER, STRUCTURE AND FINANCES OF U.S. FARMS: 2005 FAMILY FARM REPORT, USDA, ECON. INFO. BULL. NO. 12 (2005), available at <http://www.ers.usda.gov/publications/EIB12/EIB12fm.pdf>.

70. Haney, *supra* note 1, at 799.

71. It is most difficult to reconcile the promises of the Treaty of Guadalupe Hidalgo and the legal rights that applied to those incorporated in the newly annexed territories following the U.S. war against the Mexican Republic with the vast realm of federal agricultural legislation that squandered and diminished the rights of the promisees. See *supra* pp. 11-15.

72. See, e.g., LEONARD PITT, THE DECLINE OF THE CALIFORNIOS: A SOCIAL HISTORY OF THE SPANISH-SPEAKING CALIFORNIANS, 1846-1890 (1966); DAVID MONTEJANO, ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836 - 1986 (1987).

73. Indigenous California sustained three different conquests that spanned the Spanish period, the Mexican period and, ultimately, the United States governance over the Southwest. For the challenges Indigenous California confronted, see, e.g., CONTESTED EDEN: CALIFORNIA BEFORE THE GOLD RUSH (Ramón A. Gutiérrez & Richard J. Orsi eds., 1998). The wide scale theft of native land is beyond the scope of this essay. For further discussion, see generally *Nw. Bands of Shoshone Indians v. United States*, 324 U.S. 335 (1945) (action to recover damages for the taking of land). The conquest of Indigenous territories also took on extra legal methods under the guise of "legality." See generally NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO THE PRESENT, 1492-1992 343 (Peter Nabokov ed., 1991) (result of government dam building and

In sum, the nation's agricultural history reveals the tensions that precluded women from accessing their property and operating a farming enterprise.⁷⁴ Yet women have not remained passive actors.⁷⁵ Amidst their under representation in federal programs, women have initiated litigation against agrarian inequities.⁷⁶ Their most recent attempts are addressed next.

*B. Garcia v. Johanns*⁷⁷

Women of color have long participated in both the public and private rural spheres.⁷⁸ Yet in seeking federal loan assistance or securing operating loans during economic distressful periods, they encountered overwhelming rejections of federal assistance from local USDA offices.⁷⁹ In the contemporary period, innumerable objections to their treatment and their pleas for remedial relief from discrimination in loan applications resulted in the USDA conducting hearings across the nation.⁸⁰ Federal testimony and reports show that the USDA's disparate treatment of their applications ultimately generated forfeitures of their farm operations.⁸¹ Underscoring their dilemma is the failure to hold the USDA accountable for their property losses.⁸²

pressuring tribal leader into "signing away Missouri River frontage" long held in occupation by Indian groups).

74. *See, e.g.,* *Botiller v. Dominguez*, 130 U.S. 238 (1889) (discussing squatters on the property of Mrs. Dominguez and the lack of protection from the Treaty that ended the war between the two republics). Federal preemption laws in addition to rural legislation cited throughout this essay also prevented holding onto their properties. *Id.* For one example, but not involving women, *see* *United States v. Martinez*, 184 U.S. 441 (1902).

75. *See, e.g., Botiller*, 130 U.S. 238 (challenging congressional act that breached the Treaty of Guadalupe Hidalgo).

76. Various coalitions, group based activities, and litigation have been detrimentally affected by legal and extra legal maneuvers. *See, e.g.,* *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006) (involving Hispanic farm owners); Coalición Rural Coalition, <http://www.ruralco.org> (last visited Sept. 30, 2008) (Farm and Food Policy Diversity Initiative of the 2007 Farm Bill).

77. *Garcia*, 444 F.3d 625.

78. To their detriment, and until recent additions, their stories and engagement within the rural and urban spheres remain primarily on the outside of formal studies. For example, their relationship to the nation's agricultural agenda is difficult to discern, as it is commonly located in non-law journals. *See, e.g.,* Devon G. Peña, *Indigenous Diaspora Farmers in a Struggle For Autonomy, the Los Angeles Urban Core*, EARTH FIRST!, Jan. 1, 2008, at 16.

79. *Garcia*, 444 F.3d at 626. For the plaintiffs' demands, affidavits, legal transcripts and orders, *see* <http://www.garciaaction.org> (last visited Oct. 28, 2008).

80. *See* CRAT REPORT, *supra* note 62, at 3 (USDA held "listening sessions. . . in 11 locations across the country to hear from customers —especially socially disadvantaged and minority farmers—and from USDA employees.").

81. *Id.* at 4. During the USDA sessions "[a] white female farmer said that the 'single largest problem for women is to be taken seriously by the financial community.'" *Id.* at 6.

82. *Id.* ("Farmers say that USDA's Managers are not held accountable for their actions.").

Following the contemporary legal challenges Black farmers pursued against the USDA,⁸³ women and Hispanic farmers also filed claims against the agency. At present, full remedial relief for Black farmers has lapsed to the formalism of judicial rulings requiring further congressional actions.⁸⁴ The dissatisfaction with the *Pigford* litigation has induced additional litigation for Black farming operations, while expediting litigation against the USDA by women and “Hispanic” farmers.⁸⁵

As in the Black farmer legal pursuits, “Hispanic” farmers in *Garcia v. Johanns*,⁸⁶ and the female plaintiffs in both *Love v. Veneman*⁸⁷ and *Love v. Johanns*⁸⁸ filed motions for class action status. Plaintiffs centered their complaints on the discriminatory refusal of USDA farm loans, loan servicing, loan continuation, and farm loan application forms.⁸⁹ The plaintiffs in both *Love* cases also asserted gender discrimination in their petition for class action status.⁹⁰ Plaintiffs in all three cases asserted that loans were routinely not approved, and if approved, the farmers received smaller notes than their white male counterparts.⁹¹ Their complaints also centered on the Agency’s decision to close its Office of Civil Rights, the only source of pursuing claims of

83. See *Pigford v. Glickman*, 206 F.3d 1212 (D.C. Cir. 2000) (approved debt relief award of \$2 billion plus monetary payments to certified class of 20,000 African Americans alleging racial discrimination in access to federal farm loans for a period spanning 25 years). The issue of collecting, however, proves their remedy elusive, requiring a measure of relief in the 2008 Farm Bill. See *supra* note 118. The issue of Black displacement is also contemplated but must be left for further analysis to ensure complete discussion. See, e.g., Phyllis Craig-Taylor, *To Be Free: Liberty, Citizenship, Property, and Race*, 14 HARV. BLACK LETTER L.J. 45 (1998) (exploring the historical interplay between society, discrimination, judicial decisions, and legislation affecting accumulation of property in the African American community).

84. STEPHEN R. VIÑA & TADLOCK COWAN, THE PIGFORD CASE: USDA SETTLEMENT OF A DISCRIMINATION SUIT BY BLACK FARMERS, CRS REPORT FOR CONGRESS RS20430 (Dec. 2005), available at <http://www.nationalaglawcenter.org/assets/crs/RS20430.pdf>.

85. See *Id.*; Monica M. Clark, *So Near, Yet So Far: The Past, Present, and Future of the Complaints Process Within the USDA*, 32 S.U. L. REV. 139 (2004-05).

86. *Garcia* involved both male and female plaintiffs. *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006). The USDA declares it is reaching out to minority and women farmers. See, e.g., USDA Farm Service Agency, Hispanic American Outreach Program, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=oued&topic=ops-ha> (last visited Nov. 24, 2008). Nevertheless, micro loans will not prevent forfeitures without structural changes in the farm bills and its distributive network.

87. *Veneman*, 224 F.R.D. 240 (D.D.C. 2004).

88. *Love v. Johanns*, 439 F.3d 723 (D.C. Cir. 2006) [hereinafter *Johanns*].

89. Compare *id.* at 723; *Garcia*, 444 F.3d at 626; *Veneman*, 224 F.R.D. at 241 with C.F.R. § 15.3 Discrimination Prohibited (2004). See also U.S. GENERAL ACCOUNTING OFFICE, DEP’T OF AGRIC., HISPANIC AND OTHER MINORITY FARMERS WOULD BENEFIT FROM IMPROVEMENTS IN OPERATION OF THE CIVIL RIGHTS PROGRAM, GAO-02-1124T (Sept. 25, 2002), available at <http://www.gao.gov/new.items/d021124t.pdf>.

90. *Johanns*, 439 F.3d at 723; *Veneman*, 224 F.R.D. at 241.

91. *Veneman*, 224 F.R.D. at 240; *Garcia*, 444 F.3d at 626; *Johanns*, 439 F.3d at 723.

discrimination in their attempts to access and qualify for loans, whether race or gendered based.⁹²

The plaintiffs' in both *Love* cases as in the *Garcia* litigation ultimately failed because of the district and appellate court's strict and formalistic adherence to class certification rules.⁹³ This strict interpretation therefore disallowed the plaintiffs' complaints of discrimination over a presumed failure to show commonality "plus some additional factor that would have otherwise led the court to rule the proposed members of the class had suffered from a common policy of discrimination."⁹⁴ The failure to demonstrate "common questions of fact" as interpreted by the court under the federal class action rules disallowed certification of this particular class action.⁹⁵ Extending the formalistic rulings further, the courts also held that, "plaintiffs' allegations of failure to investigate civil rights complaints did not state a claim under the Equal Opportunity Act or the Administrative Procedure Act" and ultimately disallowed their pleas to continue their litigation as a class action.⁹⁶ Constituting a class of outsider farmers, the plaintiffs in this litigation were unable to obtain recourse because the legal formality of class action motions failed the primary evidence showing widespread USDA led discrimination, underscoring the irreparable harm sustained from the unfair treatment by the Agency.⁹⁷ Although the USDA asserts it reaches out to disadvantaged operators, the judicial denial for class certification in *Garcia* and both *Love* cases have allowed the USDA to continue their discriminatory lending practices of rejecting loans based on race and gender.⁹⁸

After the rejection of their motions and the frustration with the "remedies" extended, "Hispanic" farmers nevertheless called for the Agency to "act boldly and quickly" in settling their claims.⁹⁹ A number of affidavits contrast these judicial rulings and illustrate how the USDA granted operating loans to non-minority farmers without collateral to save financially vulnerable farming operations.¹⁰⁰ This contrasts with the experiences of the plaintiffs in *Garcia* and *Love*, where they found themselves pressured by the USDA into not applying for federal operating loans, even in instances where they offered collateral on

92. CRAT REPORT, *supra* note 62, at 21.

93. *Johanns*, 439 F.3d. at 728-29.

94. *Id.* at 729.

95. *Id.*

96. *Id.*

97. *Id.*

98. Interestingly enough, a motion made by Native Americans seeking class certification for the same discrimination allegations against the USDA succeeded. *Keepseagle v. Johanns*, 236 F.R.D. 1 (D.D.C. 2006). For more information on this case, see http://www.cmht.com/cases_keepseagle.php (last visited Nov. 24, 2008).

99. Demands of the Latino/Hispanic Farmers and Ranchers, <http://www.garciaclassaction.org/Natl%20Assn%20Latino-Hispanic%20FarmersRanchers/REV%20Demands.htm> (last visited Oct. 24, 2008).

100. See, e.g., <http://www.garciaclassaction.org/declarations.htm> (last visited Nov. 17, 2008). See also U.S. GENERAL ACCOUNTING OFFICE, *supra* note 89.

their requests for loan assistance.¹⁰¹ In contrast, testimony shows dominant farmers received loans and, in several situations, the USDA's special master's sale of plaintiffs' forfeited property expedited the purchase of their farms to neighboring Anglo-American farmers at a reduced rate.¹⁰²

Maria de Lourdes Gonzalez tells us that her farming family began as sharecroppers and eventually purchased a small strawberry farm.¹⁰³ Environmental harm to their crop forced her family to request a disaster loss loan.¹⁰⁴ The local branch of the USDA dissuaded her application in part by informing her that "the application process would be extensive and difficult, the funds were extremely limited, and . . . there was no guarantee [her] family would ever qualify for disaster benefits."¹⁰⁵ Yet across the road from Maria's farm, her Anglo neighbor received a loan enabling him to continue his operation without fear of forfeiting his farm.¹⁰⁶

A long arm of federally generated inequities and disparities motivated Maria to help form the California Latino Agriculture Association ("CLAA"), in order to "pull together the problems we had with FSA."¹⁰⁷ Maria's affidavit told of her experience assisting minority farmers when they were "brushed off" and exposed to equally dubious agency tactics.¹⁰⁸ In some instances, the local office would purposefully direct the applicants to a different office to discourage applications, forcing the applicants to return to the FSA office.¹⁰⁹ Applicants were also "laughed out of the FSA when they carried their farm documents in shoe boxes."¹¹⁰ Ultimately, the agency's deceitful tactics caused Maria to train herself on the application process because "they approved applications for themselves and for their friends, and manipulated guidelines to exclude Hispanics."¹¹¹ Without funds to sustain their efforts, the CLAA folded, eventually leading to the *Garcia* litigation.¹¹²

101. See, e.g., Statement of Lupe Garcia before Committee on Agriculture, Subcommittee on Departmental Operations, 3-7 (Sept 25, 2002), available at [http://www.garciaaction.org/declarations/Statement of Lupe Garcia 09-25-2002.pdf](http://www.garciaaction.org/declarations/Statement%20of%20Lupe%20Garcia%2009-25-2002.pdf) (testimony of lead plaintiff in *Garcia*).

102. See, e.g., *id.* at 5.

103. Declaration of Maria de Lourdes Gonzalez ¶ 2 (Mar. 26, 2002), available at [http://www.garciaaction.org/Gonzalez, Maria de Lourdes 03-26-02.pdf](http://www.garciaaction.org/Gonzalez,%20Maria%20de%20Lourdes%2003-26-02.pdf).

104. *Id.* ¶ 3. The timing of loans is critical because of the demand of planting seasons and harvest of crops is limited and dependent on the environment of a particular region.

105. *Id.* ¶ 4.

106. *Id.* ¶ 7.

107. *Id.* ¶ 8. The FSA references Farm Service Agency offices. See, e.g., 7 C.F.R. § 1942 (2008); *Johanns*, 439 F.3d 723, 723 (D.C. Cir. 2006).

108. Declaration of Gonzalez, *supra* note 103, ¶ 8.

109. *Id.*

110. *Id.*

111. *Id.* ¶ 11.

112. *Id.* ¶ 19.

Long ago, Lon Fuller characterized adjudication as “a form of social ordering.”¹¹³ The adjudication in which all plaintiffs sought class action standing renders a new social ordering in which relief has disallowed outsider farmers from challenging federal agrarian inequities. As all parties await their appeals, the charge that women were passive actors in the rural sector is difficult to reconcile. Yet despite the insurmountable odds and full realm of rural difficulties they witnessed, women held operations persevered, re-emerging in the present.¹¹⁴

Further disparities overshadowing female-based farm operations contemplated next.

III. LIMITING FOOD PRODUCTION AND DIVERSITY

Charged with forming the nation’s rural policies and practices, the USDA has long promoted economies of scale in food but has formally structured a limited food production system on consumers.¹¹⁵ The resultant vertical integration of food production obstructs diverse levels of food production. This emphasis is on producers concentrating control of key crops from farm to market directly.¹¹⁶ This method also displaces the varied types of farming operations with control otherwise vesting in one corporate entity. The resultant integration underscores the systemically structured broad girth of agribusiness with the subsequent loss of independent farming operations and widespread implications for women-based farming operations.¹¹⁷

The federal regulatory structure that benefits large scale operations also proves harmful to diverse farming operations by exposing the smaller independent farmers to high exit rates. For example, a broad and wide-scale realm of federal law extends to a sea of entangled programs, departments, and conflicting policies that promote agri-industry and benefit large scale productions. As the class action complaints demonstrate, women farmers are placed on the outside of federal funding and program opportunities. The

113. Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 357 (1978) (also describing adjudication as a manner of regulating and governing human relations).

114. See, e.g., Hoffman & Norton, *supra* note 5.

115. WILLARD W. COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE* (1993); Charles M. Hardin, *American Agriculture*, 20 REV. OF POL. 196 (1959).

116. William Hefferman, *Agriculture and Monopoly Capital*, 50 MONTHLY REV. 46, 53 (1998) (“Vertical integration occurs when a firm increases ownership and control of a number of stages in a commodity system.”).

117. For a rare example with an emphasis on the farm bill’s impact on women, see Nick J. Sciuolo, “*This Woman’s Work*” in a “*Man’s World*”: A Feminist Analysis of the *Farm Security and Rural Investment Act of 2002*, 28 WHITTIER L. REV. 709 (2006) (includes international effects flowing from the farm bills). For women laborers, other issues compound the complexities of their working environments. See, e.g., Amanda Clark, *A Hometown Dilemma: Addressing the Sexual Harassment of Undocumented Women in Meatpacking Plants in Iowa and Nebraska*, 16 HASTINGS WOMEN’S L.J. 139 (2004); Maria M. Dominguez, *Sex Discrimination & Sexual Harassment in Agricultural Labor*, 6 AM. U. J. GENDER & L. 231 (1997).

complaints underscore the escalating risks that induce high exit rates where a farming operation is in need of borrowed but elusive capital that is dependent on the gender of an applicant.¹¹⁸

While federal funding of large scale commodity production offers extensive food products for consumers, its “success” is rendered suspect in part because of the beneficial treatment accruing from federal payment systems.¹¹⁹ The price supports top producers garner from subsidies and operating loans remain difficult to reconcile with the hunger and food insufficiency rates plaguing the nation, while also systemically legally harming women producers.

In response to the imbalance between price support and hunger rates, the USDA replaces the word “hunger” on its reports with the phrase “very low food security.”¹²⁰ This phrase discounts the attendant malnutrition rates that escalate particularly for the women and children who reside in “food deserts”¹²¹ and are unable to access safe and alternative food products. In contrast, heavily starched, sugar laden, or other harmful weight-producing products are offered despite their causative links to ill health.¹²² The elderly, moreover, are equally susceptible to health injury when mobility issues preclude them from accessing sustainable and healthy alternatives.¹²³

118. These include the wide and significant federal regulation of food production, *inter alia*, a broad range of price support and management. *See* the nation’s farm bills as to its scope and intrusiveness in the rural sector. For example, the farm bills are divided into separate Titles. Title IV of the 2002 farm bill encompasses four subtitles regarding nutrition. Other chapters include, *inter alia*, Conservation, Credit, Rural Development, and Research. Farm Security and Rural Investment Act, Pub. L. No. 107-171 (2002). Since this presentation, a new farm bill has since emerged, notwithstanding the threat of a presidential veto. The Food, Conservation, and Energy Act of 2008, Pub. L. 110-234 (2008).

119. For a comparison of sustainable farm operations with larger conventional farms, *see, e.g.*, John Horton, *Amish Profits Beat Modern Farms*, PLAIN DEALER (Cleveland, OH), June 5, 2003, at C1.

120. *See, e.g.*, Elizabeth Williamson, *USDA drops ‘Hungry’ from Annual Report*, SAN FRANCISCO CHRON., Nov. 16, 2006, at A6. *Compare* ERS/USDA Briefing Room, Food Security in the United States, <http://www.ers.usda.gov/Briefing/FoodSecurity> (last visited Sept. 28, 2008) (“[E]ven percent of nation food insecure at some time”) with GARY BICKEL ET AL., USDA, MEASURING FOOD SECURITY IN THE UNITED STATES, GUIDE TO MEASURING HOUSEHOLD FOOD SECURITY (2000), available at <http://www.fns.usda.gov/fsec/FILES/FSGuide.pdf>.

121. “Food deserts” are urban environments that lack access to nutritional food. *See, e.g.*, MARI GALLAGHER RESEARCH & CONSULTING GROUP, EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN CHICAGO (2006), available at http://www.marigallagher.com/site_media/dynamic/project_files/1_ChicagoFoodDesertReport-Full_.pdf; Guadalupe T. Luna, *The New Deal and Food Insecurity in the “Midst of Plenty,”* 9 DRAKE J. OF AGRIC. L. 213 (2004).

122. Without access to viable alternatives, inner city residents rely on fast food outlets for their major nutrients. *See, e.g.*, Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CAL. L. REV. 2221 (2007); *Pelman v. McDonald’s Corp.*, 396 F.3d 508 (2d Cir. 2005) (parents alleging that owner deceptively represented nutritional benefits of restaurants’ food).

123. *See, e.g.*, IOWA FOOD SECURITY, INSECURITY, AND HUNGER, RURAL FOOD ACCESS PATTERNS: ELDERLY OPEN-COUNTRY AND IN TOWN RESIDENTS (2004), available at

An additional and non-extenuating factor that extends beyond food access encompasses the food safety issues the disparate industrial agriculture imposes on consumers.¹²⁴ The USDA proclaims that “[f]ood safety and security is an important aspect of the USDA nutrition assistance programs”¹²⁵ Nonetheless, the nation is witnessing an escalating number of wide-scale health alerts from food contaminants, with some even resulting in consumer deaths.¹²⁶ When these health alerts occur, the tainted products are not immediately withdrawn from the market.¹²⁷ Instead, the present regulatory structure permits a producer to voluntarily recall the product.¹²⁸ This practice is difficult to reconcile with the reliance consumers place on governmental agencies charged with feeding the nation.¹²⁹

To alleviate the public’s concerns over food contaminants, the USDA retains an increasing network of alert mechanisms through various agencies and information distribution systems.¹³⁰ Yet at no time are price supports withdrawn nor incentives in place that would disallow federal economic

<http://www.extension.iastate.edu/Publications/SP236.pdf> (difficulties and issues of rural population loss and the impact of aging on local rural residents and connections to access).

124. Consumer illness outbreaks from food contaminants occur frequently. *See, e.g.*, Center for Disease Control Data, <http://www.cdc.gov/foodsafety> (last visited Oct. 28, 2008) (providing food illness updates). Bovine spongiform encephalopathy also provides a major concern for consumers. *Compare* Andrew Martin, *Humane Society Sues U.S. in Cattle Case*, N.Y. TIMES, Feb. 28, 2008 (non-ambulatory cattle possibly entering the food chain for consumption) *with* Engler v. Winfrey 201 F.3d 680 (5th Cir. 2000) (when consumers react to food safety issues).

125. *See* USDA FOOD SAFETY AND NUTRITION SERVICE, FOOD SAFETY, http://www.fns.usda.gov/fns/food_safety.htm (last visited Sept. 30, 2008) (links for consumer information and listing procedures for recall information and complaint filings).

126. *See, e.g.*, David Brown, *USDA Orders Largest Recall in U.S. History*, WASH. POST, Feb. 18, 2008, at A1; *Salmonella Tied to Cereal Sickens 23*, CHIC. TRIB., Apr. 13, 2007, at 9.

127. *See, e.g.*, Lisa Shames, *Safety of Food Supply*, Cong. Testimony, Apr. 25, 2007 (comparing the voluntary recall of unsafe food products with the recall authority permitted for “toys and automobile tires”).

128. *Id.* *See also* DONNA V. PORTER & SARAH A. LISTER, FOOD SAFETY: FEDERAL AND STATE RESPONSE TO THE SPINACH *E. COLI* OUTBREAK, CRS REPORT FOR CONGRESS, RL33722 (Nov. 13, 2006), *available at* <http://www.nationalaglawcenter.org/assets/crs/RL33722.pdf> (also noting delays between “advising” public of tainted food products and the testing of the source for verification purposes).

129. PORTER & LISTER, *supra* note 128. Although there may be “success stories” as to the measure of food protection, the issue of dwindling financial resources is proving injurious to the food supply and consumers. *See, e.g.*, Shames, *supra* note 127 (“[E]ach year 76 million people contract a food borne illness. . . about 35 require hospitalization, and about 5,000 die. . . .”); Henry A. Waxman, *FDA Mission*, Cong. Testimony, May 2, 2007 (“Signs of trouble at the FDA . . . The agency is under-funded, relying on a steadily shrinking budget to tackle a rapidly expanding list of responsibilities in fact. . . FDA’s entire budget for fiscal year 2007 is less than the budget for the Montgomery County school system in the same year.”); Stephen J. Hodges, *Milk Issue Not Black and White*, CHIC. TRIB., Apr. 22, 2008, at A3.

130. *See, e.g.*, USDA FOOD SAFETY, *supra* note 125.

support.¹³¹ A confluence of difficult questions thus surface when food safety studies are funded by the producers themselves and not by objective third parties.¹³²

Women and children are faced with additional consequences stemming from the nation's farm bills¹³³ support of nutrition and school lunch programs. The programs wield punitive political measures that are detrimental to the health of children and their families. Nutrition programs are often subjected to the political capriciousness of the era when farm bills are debated and held hostage to threats of slashing nutrition budgets.¹³⁴ Qualifying determinations for food stamps and other food related programs change accordingly with the political temperature of the times.¹³⁵

Further disparities with direct causative links to federal farm and credit lending practices for women and consumers arise from the county committees where women are primarily absent. Specifically, the USDA declares, "the election of responsible agricultural producers to FSA [Farm Service Agency] county committees is important to ALL farmers and ranchers with large and small operations."¹³⁶ The committees are crucial because the members "help deliver FSA programs at the local level" and offer "local input on: . . . loans and payments."¹³⁷

131. For a general framework of what types of agri-industries benefit from federal subsidies, *see, e.g.*, Farming: Farm Subsidies: Environmental Working Group, <http://www.ewg.org/featured/8> (last visited Sept. 28, 2008). *See also* Windy City Meat Co., Inc. v. U.S. Dep't of Agric., 926 F.2d 672 (7th Cir. 1991) (criminal liability generally attaches if food safety is compromised through bribery of food inspectors).

132. *See, e.g.*, Press Release, Env'tl. Working Group, FDA Cites Discredited Industry Science in Justifying High Levels of Contaminants in Infant Formula (Mar. 21, 2008), available at www.ewg.org/node/26202. Debate over farm bills is highly divisive and politicized. *See, e.g.*, Andrew Martin, *Mixing Milk and Politics*, CHIC. TRIB., Sept. 25, 2004, at A1 (maximizing votes in key dairy states by "keeping milk prices high" throughout election).

133. The Child Nutrition Act, 42 U.S.C.A. § 1786 (2003).

134. One divisive area includes reconciling the cost of nutrition programs with the expense of the farm commodity programs. *See, e.g.*, *Rep. Rosa DeLauro Holds a Hearing on the Budget for the USDA's Food and Nutrition Service*, FDCH, Mar. 8, 2007.

135. *See, e.g.*, Qualifying regulations of the Food Stamp Act of 1964, 7 C.F.R. §§ 273.4, 273.9 (2008) (income & eligibility requirements); *Lyng v. Castillo*, 477 U.S. 635, 636 (1986) (what constitutes a qualifying household); *Richmond Welfare Rights Org. v. Snodgrass*, 525 F.2d 197 (9th Cir. 1975) (school officials challenging statute, arguing that they did not have to provide free lunch to all eligible children); JOE RICHARDSON, FOOD STAMPS AND NUTRITION PROGRAMS IN THE 2002 FARM BILL, CRS REPORT FOR CONGRESS RL33690 (Oct. 12, 2006), available at <http://www.nationalaglawcenter.org/assets/crs/RL33690.pdf> (whether spending or budget cuts deemed "subject of negotiation and contention" and noting criticism of activists charging eligibility hassles).

136. USDA, County Committee Elections, <http://www.fsa.usda.gov/FSA/webapp?area=newsroom&subject=landing&topic=cce> (last visited Sept. 30, 2008). *See also* E.C. Young, *The Function of Credit in Modern Agriculture*, 23 J. FARM ECON. 52 (1941).

137. USDA Farm Service Agency, *Fact Sheet: County Committee Election* (Apr. 2008), available at http://www.fsa.usda.gov/Internet/FSA_File/cocelect.pdf.

Farmers who serve on county committees ultimately decide the kind of programs their counties will offer.”¹³⁸ At the 2006 county committee elections in Illinois, only one “Hispanic” female was eligible to vote.¹³⁹ The absence of women, particularly women of color, from farm committees precludes their active involvement in defining the nation’s food producing systems, loan determinations, and other federal programs. Their exclusion from the county committees are, moreover, at the core of the litigation impacting women operators.¹⁴⁰ The relationship between county committees and the USDA has long exposed women operators and communities of color to elevated exit risk factors while expediting male loan determinations.¹⁴¹ Their exit rates, in sum proving, disproportionate to enterprises engaging in farm committee determinations, and ultimately led to the *Garcia* and *Love* litigation.¹⁴²

The high costs of farming inputs must also be considered when discussing whether women can survive in rural operations against their absence from farm committees and the attendant backdrop of the discriminatory farm lending policies. Farming is subjected to many uncontrollable externalities, including environmental disasters that can be financially devastating. While operators of “qualifying” enterprises can turn to the wide network of the USDA’s economic assistance programs, most women operators are dissuaded from applying.¹⁴³ This contrasts with the farm committee members who are able to access, qualify, and receive beneficial credit programs during difficult farming cycles.¹⁴⁴ This current distribution of farm credit and loan programs thereby

138. *See id.*

139. Other Midwestern states had similar amounts. USDA FARM SERVICE AGENCY, COUNTY COMMITTEE ELECTION RESULTS 6 (2006), available at http://www.fsa.usda.gov/Internet/FSA_File/2006electionresults.pdf. *See also* WILLIAM KANDEL, RURAL HISPANICS AT A GLANCE, ECONOMIC INFORMATION BULLETIN 8 (Dec. 2005), available at <http://www.ers.usda.gov/publications/EIB8/eib8.pdf> (The USDA employs the term “Hispanic” as referencing “. . . those individuals who identified themselves as ‘Spanish’ of ‘Hispanic Origin’ or ‘Latino’ . . .” on past census enumerations); USDA ECONOMIC RESEARCH SERVICE, RURAL POPULATION AND MIGRATION: TREND 5 —DIVERSITY INCREASES IN NONMETRO AMERICA, <http://www.ers.usda.gov/Briefing/Population/Diversity.htm> (last visited Oct. 20, 2008) (“Hispanics and Asians are the fastest growing minority groups . . . in nonmetro areas.”). Minorities accounted for 18 percent of the nonmetro population in 2005: Blacks constituted 8.4 percent of the nonmetro population while Hispanics rated at 6.3 percent. *Id.*

140. *See, e.g.,* *Johanns*, 439 F.3d 723 (D.C. Cir. 2006).

141. *See id.*

142. *See id.* *See also* *Veneman*, 224 F.R.D. 240 (D.D.C. 2004); *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006).

143. *See Veneman*, 224 F.R.D. 240; *Garcia*, 444 F.3d 625 (D.C. Cir. 2004); *Johanns*, 439 F.3d 723.

144. The range of legislation and regulations regarding federal farm loan programs is extensive and beyond the intent of this essay. *See, e.g.,* Grains Standards and Warehouse Act of 2000, Pub. L. No. 106-472 (2000). For a comparative assessment of farm bill costs *see, e.g.,* RALPH M. CHITE, FARM BILL BUDGET AND COSTS: 2002 VS. 2007, CRS REPORT FOR CONGRESS RS22694 (Jan. 29, 2008), available at www.nationalaglawcenter.org/assets/cr/RS22694.pdf (excludes discretionary appropriations).

perpetuate gender based rural disparities for the class of women who are precluded from accessing credit or loans comparable to their non-minority status male counterparts.¹⁴⁵

In the aggregate, the nation's farm policies and bills have structurally created a concrete "social order" that subordinates nutritional and health alternatives for consumers, particularly women and children.¹⁴⁶ Their gendered exclusion from food production and policies yields to a "white male workforce" that dominates the agricultural agenda in Congress and within the federal agencies charged with the nation's food producing systems.¹⁴⁷

In promoting larger enterprises at the expense of smaller and diverse operations, the nation's farm bills suggest that the new women operators and their enterprises fundamentally conflict with the nation's food agenda.

IV. CHANGING AND REEMERGING GENDERED DEMOGRAPHICS AND GEOGRAPHIC TRENDS

"I'm the hired help"¹⁴⁸

The agricultural census data reports that against indefinable odds, women are entering farming and operating their own ventures.¹⁴⁹ Rejecting corporate farming models, a confluence of demographic and geographic shifts show women pursuing alternative and sustainable commodities.¹⁵⁰

The transition of domestic minorities and foreign-born population groups across the nation, moreover, are inspiring and initiating new farming enterprises.¹⁵¹ Immigrants and domestic based communities of color are

145. See Susan V. Iverson, *Now is the Time for Change: Reframing Diversity Planning at Land-Grant Universities*, 46 J. EXTENSION (2008), available at <http://www.joe.org/joe/2008february/a3p.shtml> ("[N]ot all sectors of society have benefited equally", including Blacks and women as two groups underrepresented in agriculture).

146. See FRANK, *supra* note 23.

147. Penni Korb, *Women Farmers in Transition*, in STRUCTURAL AND FINANCIAL CHARACTERISTICS OF U.S. FARMS: 2004 FAMILY FARM REPORT, AIB797, at 63 (David E. Banker & James M. MacDonald eds., 2005), available at <http://www.ers.usda.gov/publications/aib797/aib797h.pdf>. In one rare instance, Ann Veneman served as the Secretary of Agriculture. Currently at the state level, less than six state agricultural commissioners or directors are female. They include Sandra Lee Kunimoto (Hawaii); Celia R. Gould (Idaho); Rebecca S. Skillman (Indiana); Lorraine S. Merrill (New Hampshire); and Katy Coba (Oregon).

148. Haya El Nasser, *Women, Hispanics Put New Face on U.S. Farming*, USA TODAY, July 19, 2004, at 1A. See also Michelle Koetters, *Women are Now Farming up New Careers*, PANTAGRAPH (Bloomington, Ill.), Oct. 29, 2007.

149. Hoffman & Norton, *supra* note 5.

150. See Steven M. Schnell, *Food with a Farmer's Face: Community-Supported Agriculture in the United States*, 97 GEOGRAPHICAL REV. 450 (2007); AP ALERT, *Arkansas Immigrants' Appetite For Goat Feeding Ranchers* (June 19, 2005). The article details Nancy Edgerly's Wilver Hill Farms in the Ozark Mountains where she is raising South African Boer goats and Boer crosses that are sought after by Muslim families. Latinos also favor young goat meat, "cabrito", but supply cannot meet demand, thus obligating imports. *Id.*

151. See, e.g., KANDEL, *supra* note 139; NATIONAL IMMIGRANT FARMING INITIATIVE,

demanding alternative food products, such as *cabrito*, *chiles*, and other ethnic delicacies that the current industrial agriculture does not produce.¹⁵² This section addresses the women who are emerging against the immeasurable difficulties they face as a result of the federal funding policies and adverse judicial rulings.

A broader realm of understanding gendered food production remains indiscernible stemming in part from the exclusion of married women in agricultural census studies. Until recently, the census limited population studies to male spouses as the principal operator.¹⁵³ The status and methods of farming operations of minority women as principal operators also remains obscured, again emphasizing the need for additional study of diverse farming operations.

This section sets forth the new wave of women farmers who are defying historical norms and taking advantage of the current circumstances where the aging population of dominant farmers is diminishing.¹⁵⁴ Women, moreover, are engaging in organic and varied alternatives that run counter to industrial agricultural production models.¹⁵⁵ In many instances, this shift of female operations is reversing farming population losses across the nation.¹⁵⁶ Their status within the agricultural economy, nevertheless, renders them at risk to escalating exit rates.¹⁵⁷

<http://www.immigrantfarming.org> (last visited Oct. 29, 2008).

152. See KANDEL, *supra* note 139 (reporting that nonmetro Hispanics are transitioning to new rural spaces as one example of migration from both immigrant and domestic based shifts).

153. The forthcoming agricultural census pledged to enumerate everyone and recent changes includes three categories of primary operators as opposed to prior practices. See, e.g., USDA, NASS Census, available at <http://www.agcensus.usda.gov>; Press Release, U.S. Dep't of Agric., Everyone Counts in 2007 Census of Agriculture (Mar. 21, 2007), available at http://www.nass.usda.gov/Statistics_by_State/Louisiana/Publications/Census_Press_Releases/News0308.pdf.

154. KANDEL, *supra* note 139.

155. "Young women are increasingly drawn to farming as a career, particularly organic and sustainable operations that involve direct marketing and can be profitable." Chris Parker, *A New Breed of Farmer: Women Increasingly Take to the Land, Find Unique Niche for Themselves*, MORNING CALL (Allentown, PA), Oct. 17, 2007, at B1 (citing a Penn State study where women listed the following reasons for wanting to farm: "love of nature, soil and farming; lifestyle choice; healthy food production and food security; sustainability and self-sufficiency; being raised on a farm; being outdoors; and community.").

156. See, e.g., Kent Mullinix et al., *Latino Views on Agriculture, Careers and Education: Dispelling the Myths*, 50 NACTA J. 2 (2006).

157. The high costs of farm production increases risks drawing from a number of issues. See, e.g., William D. McBride, *Production Costs Critical to Farming Decisions*, 1 AMBER WAVES 38 (2003), available at <http://www.ers.usda.gov/AmberWaves/September03/pdf/featureproductionsept2003.pdf>. Direct farm payments and subsidies that protect farming operations during difficult periods provide safe harbor for qualifying operations. To their detriment, women and minority held operations have faced structural exclusion in large part from their non-qualifying status to federal aid. See, e.g., CRAT REPORT, *supra* note 62; Economic Res. Serv., *Minority & Women Farmers in the U.S.*, AGRIC. OUTLOOK 16, 18

Notwithstanding the threat of high exit potential from farming, Terri Hawbaker is representative of the new female entering and seeking alternatives to industrial agriculture.¹⁵⁸ As the owner of a 120-acre farm, Terri owns sixty-five dairy cows.¹⁵⁹ It is not uncommon that upon seeing her people will ask her “where the boss is” believing that she is the hired help.¹⁶⁰

The 2002 Census of Agriculture reports that the number of female principal farm operators increased in forty-three states, with more “Hispanics” running farms in all fifty states.¹⁶¹ Of the operators enumerated, women constitute about 27% of the nation’s three million farmers that operate farms alone or with others.¹⁶² The leading states with the most women as principal farm operators include Texas with 27,192; California with 12,615; Missouri with 10,818; Tennessee with 9,413; and Oklahoma with 8,720 farms.¹⁶³ The top states for women-operated acreage are Texas with 11,178,527; Arizona with 5,703,441; Montana with 3,804,871; New Mexico with 3,494,882; and Wyoming with 2,569,140 acres.¹⁶⁴ Additionally, women farmers in the East command a significant presence; the four states with the most women as principal operators include New Hampshire with 24.9 percent; Maine with 21.7 percent; Massachusetts with 21.5 percent; and Connecticut with 20.7 percent.¹⁶⁵

In the Midwest, women-operated ventures are also increasing. “[A]bout a fifth of the 101,574 farm operators in Illinois are women.”¹⁶⁶ In Wisconsin, women holding farms were primarily full owners but many also hold tenancies or part ownership status.¹⁶⁷

Although women are not segregated in this enumeration, the Census identified 400 farms owned by Spanish, Hispanic, or Latino principal operators in Wisconsin.¹⁶⁸ By comparison, the Michigan tabulation identifies that

(1998), available at <http://www.ers.usda.gov/publications/agoutlook/may1998/ao251d.pdf> (characterization of women held farm difficult because of the wide variations of operations).

158. See, e.g., El Nasser, *supra* note 148.

159. *Id.*

160. *Id.*

161. *Id.*; U.S. DEP’T OF AGRIC. NAT’L AGRIC. STAT. SERV., COUNTING DIVERSITY IN AMERICAN AGRICULTURE, available at http://www.agcensus.usda.gov/Publications/2002/FINAL_Counting_Diversity_in_American_Ag.pdf.

162. El Nasser, *supra* note 148.

163. Hoffman & Norton, *supra* note 5.

164. *Id.*

165. *Id.*

166. Koettters, *supra* note 148.

167. Women were full owners of 6,215 farms, part owners of 911 farms, and tenants of 227 farms in 2002. U.S. DEP’T OF AGRIC. NAT’L AGRIC. STAT. SERV., WOMEN PRINCIPAL OPERATORS – SELECTED FARM CHARACTERISTICS: 2002 AND 1997 tbl. 48, available at http://www.nass.usda.gov/census/census02/volume1/wi/st55_1_048_048.pdf.

168. U.S. DEP’T OF AGRIC. NAT’L AGRIC. STAT. SERV., SPANISH, HISPANIC OR LATINO ORIGIN PRINCIPAL OPERATORS – SELECTED FARM CHARACTERISTICS: 2002 AND 1997 tbl. 49, available at http://www.nass.usda.gov/census/census02/volume1/wi/st55_1_049_049.pdf.

Hispanic women altogether hold 282 farms, while Hispanic men hold 863 farming operations.¹⁶⁹

The increase in female and Hispanic farmers is partially attributable to their long time history as farm workers; when farmers retire, they tend to offer loyal employees an opportunity to buy land, and families pool resources to purchase and operate the farm.¹⁷⁰ In 2002, women worked on 59,383,557 acres of land, constituting an increase of 16.5 percent since 1997.¹⁷¹ Agricultural census data also shows that “nearly all women principal operators, 95.4 percent, own at least part of the land they operated.”¹⁷² Interestingly, rentals and leases of farms by women decreased between 1997 and 2002.¹⁷³

It is unfortunate that very little agricultural census data exists on Chicanas.¹⁷⁴ While the USDA only started reporting census data on Spanish, Hispanic, Latino women as principal operators in 2002, they still fail to report data on Chicana principal operators separate from the other groups.¹⁷⁵ However, one USDA report states that “Spanish, Hispanic, or Latino origin operators” from the previous census increased by 50.8 percent, and are the “fastest growing minority group farm operators.”¹⁷⁶ Latinas also comprise “the largest group of minority women principal operators” in the United States.¹⁷⁷

Outside of rural ventures, women also participate in urban and subset farming markets. Nonetheless, they are at the mercy of the whims of city politics, such as in the sale of neighborhood markets to developers.¹⁷⁸

169. U.S. DEP'T OF AGRIC. NAT'L AGRIC. STAT. SERV., WOMEN OPERATORS – SELECTED OPERATOR CHARACTERISTICS: 2002 AND 1997 tbl. 53, *available at* http://www.nass.usda.gov/census/census02/volume1/mi/st26_1_053_054.pdf; SPANISH, HISPANIC, OR LATINO ORIGIN OPERATORS – SELECTED OPERATOR CHARACTERISTICS: 2002 AND 1997 tbl. 54, *available at* http://www.nass.usda.gov/census/census02/volume1/mi/st26_1_053_054.pdf.

170. El Nasser, *supra* note 148.

171. Hoffman & Norton, *supra* note 5.

172. *Id.*

173. *Id.*

174. Generally, the status of Midwestern Chicana/os in agriculture is infrequently examined. For one of the few inquiries, see Lionel Cantú, *The Peripheralization of Rural America: A Case Study of Latino Migrants in America's Heartland*, 38 SOC. PERSP. 399 (1995).

175. See, e.g., SPANISH, HISPANIC OR LATINO ORIGIN PRINCIPAL OPERATORS, *supra* note 168.

176. U.S. Department of Agriculture Farm Service Agency, Hispanic American Outreach Program, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=oued&topic=ops-ha> (last visited Oct. 19, 2008).

177. Ellen Dougherty & Krissy Young, *Hispanic Farmers Represent a Growing Sector of U.S. Agriculture*, NAT'L AGRIC. STAT. SERV., Oct. 13, 2005, http://www.nass.usda.gov/Newsroom/2005/10_13_2005.asp.

178. For example, urban gardens are vulnerable to the sale of vacant land to developers. In an unreported decision, a group of urban farmers was ejected, stymied by the developer's superior title in the property as purchased from the City. See, e.g., *S. Cent. Farmers Feeding Families v. City of L.A.*, B196906, 2008 Cal. App. LEXIS 7798 (2d App. Dist. Sept. 30, 2008).

Specifically, their ventures are exposed to escalating eviction threats from city officials.¹⁷⁹

In Los Angeles, for example, a small urban farming group comprised primarily of women from indigenous Mesoamerican groups developed an “outsider garden.”¹⁸⁰ In an area that the City primarily designated as a landfill, and not unlike their rural counterparts, the female urban farmers planted and harvested native row crops, fruit-bearing trees and vines, medicinal herbs, and cacti.¹⁸¹ The women introduced “an estimated 100 to 150 species” and “at least five thousand years old [deriving] from the native ancestral crops of the Americas.”¹⁸² These women producers reintroduced plants not yet lost to the copyright protection of genetically modified products that are thrust on consumers by large scale producers.¹⁸³

In this instance, developers, however, had purchased the urban garden site and generated an ensuing political battle.¹⁸⁴ The subsequent eviction of the group¹⁸⁵ engendered immeasurable losses to a local community and the consumers that sought the diverse products the women operators offered.

Ultimately, while the agricultural census reveals women operations are accruing a measure of success their operations remain vulnerable against the economic and socio-political engines driving the farm agenda.

V. “FOOD JUSTICE”¹⁸⁶ AND PROPOSED RE-DIRECTIONS

“Lavender Fields Forever”¹⁸⁷

This new wave of rural women operators are presenting new dimensions to food production, and in some instances, as both producers and consumers, are reviving stale rural economies.¹⁸⁸ Yet women run the risk of losing their

179. *S. Cent. Farmers Feeding Families*, 2008 Cal. App. LEXIS 7798, at *13.

180. The groups represented include those constituting ancestries from Conjobal, Tojolobal, Triqui, Tzeltal, Yaqui, Nahuatl, Zapotec, as well as Chicanas. Peña, *supra* note 78. See also Barbara Deutsch Lynch, *The Garden and the Sea: U.S. Latino Environmental Discourses and Mainstream Environmentalism*, 40 SOC. PROBS. 108 (1993); Devon G. Peña, *Third-Space Farmers*, VISION MAG., Nov. 5, 2007, available at <http://www.50mmlosangeles.com/viewStory.php?storyId=227>.

181. Peña, *supra* note 180.

182. *Id.*

183. See, e.g., Mary Ann Liebert, *Safety of Food from Animal Clones, Final Risk Assessment*, 27 BIOTECHNOLOGY L. REP. 141 (2008).

184. *S. Cent. Farmers Feeding Families*, 2008 Cal. App. LEXIS 7798, at *3-4.

185. *Id.* at *13.

186. Food justice is defined as “people being able to have control of their own access to food.” Amberly Richardson, *Panel Discusses Food Justice*, POLY POST via U. WIRE, Nov. 22, 2006 (quoting Justin Valone).

187. Wendy Huber, *Lavender Fields Forever: Modest Beginning Grows to 10 Acres*, SPOKESMAN-REV. (Spokane, WA), July 24, 2007, available at <http://www.spokesmanreview.com/home/Outdoor/story.asp?ID=200722>.

188. Until the new census is released evidentiary data is gleaned from reports and interviews of women farmers. See, e.g., ANNE B. W. EFFLAND ET AL., ECONOMIC RES. SERV.,

farming ventures due to the escalating costs of inputs such as feed, seeds and grains, and their inability to access credit.¹⁸⁹ Rural isolation from other women farmers makes them particularly disadvantaged in commercial agriculture. Further risk factors emerge when they are precluded access to federal economic opportunities.

In some states, women who lose their land are met with unsympathetic responses from state agricultural officials: “I feel for them, but I think they have other opportunities that they’re just not wanting to do those [sic].”¹⁹⁰ This response is problematic, and demonstrates the lack of regard to the historically based rural inequities women face.

Recognizing their economic and social isolation and the difficulties in operating in a rural economy, women farmers offer and participate in a range of conferences. This permits the women to bridge differentials and share information they normally cannot access.¹⁹¹ Based on historical legal observations, these ad hoc efforts are admirable but do not safeguard their endeavors against the current agricultural law regime.

Further harm results, moreover, from the inequities of harsh legal rulings. The court’s refusal to certify the class against charges of federal disparities in farm lending programs and practices, illustrates the legal hurdles formalistic rulings impose.¹⁹² And the women who develop and maintain alternative urban farming enterprises to offset food deserts face exposure to risk from urban political disputes.¹⁹³ Both rural and urban women alike confront structurally generated disparate inequities and systemic marginalization from the federal

MINORITY & WOMEN FARMERS IN THE U.S., AGRICULTURAL OUTLOOK 16 (May 1998); Julia Moskin, *Women Find their Place in the Field*, N.Y. TIMES, June 1, 2005; Mary Pickels, *Female Farmers Face Challenges and Reap Benefits*, TRIB.-REV. (Greensburg, Pa.), June 17, 2007; Jeffrey Collins, *Female Farmers Thrive Just Like Other Career Women*, AUGUSTA CHRON., Oct. 12, 2003.

189. See, e.g., CRAT Report, *supra* note 64, at 21; *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006); *Johanns*, 439 F.3d 723 (D.C. Cir. 2006); *Veneman*, 224 F.R.D. 240 (D.D.C. 2004).

190. Crystal Neo, *Farm Combine: Agricultural, Conservation Groups Discuss Upcoming Ag Legislation*, COLUMBIA DAILY TRIB. (Columbia, MO), May 3, 2007 (quoting Chris Klenklen, state agricultural department representative responding to concerns over women losing their farms to “predatory buyers” and lack of assistance).

191. See, e.g., *Women in Blue Jeans*, *supra* note 67; *Connecting Threads—Weaving the Fabric of Agriculture: A Conference for Women Farmers*, <http://www.datcp.state.wi.us/registration/wfarming.jsp> (Wisconsin Farmers) (last visited Oct. 27, 2008); 2008 Midwest Women in Agriculture Conference, <http://www.ces.purdue.edu/wia/conference.html> (last visited Oct. 27, 2008).

192. See, e.g., *Garcia*, 444 F.3d 625; *Johanns*, 439 F.3d 723; *Veneman*, 224 F.R.D. 240.

193. See, e.g., Joy Powell, *St. Paul: Immigrant Farm Conference; Helping our New Farmers Take Root; Immigrant Farmers Bring Diverse Culture and Food to Farmers’ Markets, and a Conference this Week Aims to Help Them Succeed*, STAR. TRIB., (Minneapolis, MN), Mar. 5, 2008, at 1B (discussing Hmong-owned farms in metropolitan area).

agricultural and sociopolitical climate.¹⁹⁴ Accordingly, the continued lack of access and parity with their male counterparts ensures that legal maneuvering will further and systematically deplete the newly developing groups of women farmers. Against this backdrop, the task of the New Legal Realism obligates a new direction.

This essay accordingly argues for a new rural legal space for women where female operators can advance new and alternative forms of feeding the nation.¹⁹⁵ In rejecting the politics of industrial agriculture and sustained federal support of the agrarian elite, this essay joins Mary Summer in her call for a new rural insurgency.¹⁹⁶ While women in agriculture have made a few strides in equality, they have yet to define the nation's farm bills or even actively participate in the formulation of rural policies.¹⁹⁷ A re-direction that contrasts with the current farm bill and farm policies' formulations could decrease at-risk operations and expedite the increased protection of those operations.

At the onset, this renewed call for rural insurgency calls for an agricultural populism that also contrasts the rural movements of the past. Past rural populism sought to protect independent owner-operators but ultimately its legacy deviated from the ideals of rural insurgents as witnessed in the nation's farm bills.¹⁹⁸ Furthermore, the Jim Crow laws of the times precluded collective activities between all groups notwithstanding color or race. Ultimately, this renewed call for a new rural populism could also substantiate Congress' intentions as expressed in the Farmland Protection Policy,¹⁹⁹ a bill long rendered insufficient in its overall lack of enforcement.

When the tables turned against rural insurgency long ago, women actively participated in the populism that spawned the farm programs of the present but that subsequently rejected them.²⁰⁰ Prior to the Great Depression, a collapsed agricultural economy in key regions across the nation brought forth protests

194. The USDA is reaching out, but without structural changes in the farm bills, the viability of smaller independents does not diminish when contemplated against industrial agriculture. See, e.g., *Agriculture Secretary Johanns Awards \$5 Million to Assist Minority Farmers, Ranchers*, U.S. FED. NEWS, Jan. 18, 2006.

195. See Nelson, *supra* note 61 and accompanying text.

196. See Mary Summers, *Putting Populism Back In: Rethinking Agricultural Politics and Policy*, 70 AGRIC. HIST. 395 (1996).

197. *Woman and Agriculture in the United States: A State of the Art Assessment*, in TOWARDS A NEW POLITICAL ECONOMY OF AGRICULTURE 326 (William H. Friedland et al. eds., 1991).

198. See, e.g., Summers, *supra* note 196, at 398-401, 412; DAVID E. CONRAD, *THE FORGOTTEN FARMERS: THE STORY OF SHARECROPPERS IN THE NEW DEAL* 74-76 (1965).

199. See, e.g., *Farmland Protection Policy*, 7 U.S.C.A. § 4201 (2008).

200. "Agriculture dates its New Deal year from March 16 [1933] when the President called upon Congress to include relief for agriculture in its emergency legislation." J. H. Kolb, *Agriculture and Rural Life*, 39 AM. J. SOC. 787, 787 (1934). This issue is addressed more completely in a forthcoming article in which I analyze rural populism and farmers of color. Guadalupe T. Luna, *Chasing Rural Democracy and "Food Glorious Food": Farmers of Color and Anti-Trust Legislation*, 28 UCLA CHICANA/O LATINA/O L. REV. (forthcoming 2009).

against depressed prices, farm forfeitures, and banks employing liens that further accelerated farm losses.²⁰¹ During that era, women urged men to “raise less corn and more hell.”²⁰² Ultimately, this period of rural insurgency brought forth the present nation’s farm bills.²⁰³

In calling for a renewed agrarian resurgence, this essay at the core level seeks a gendered approach to the nation’s farm bills. A new direction obligates a renewed call for new forms of collective action. Food links nations and at times, can close gaps between cultures.²⁰⁴ This New Legal Realism Project thus obligates a closer look at the existing legislative exemptions that protect agricultural producers.

Specifically, the operative language provides insight for producers. The legislation in sum was promulgated to protect farmers’ economic standing and market upheavals.²⁰⁵ The Clayton Act,²⁰⁶ moreover, “linked industrial labor and farmers as the kind of economic units of individuals for whom it was thought necessary to permit cooperation . . . in order to survive against the economically dominant manufacturing, supplier, and purchasing interests with which they had to interrelate.”²⁰⁷ In the instance of gendered food production, the legislation could expedite female-based cooperatives if women legally and collectively joined to counter the disparities of the past.

All women participated in rural politics²⁰⁸ but the primary scholarly neglect of their activism remains obscured, and the racism of the times²⁰⁹

201. Bruce L. Melvin, *Rural Life*, 36 AM. J. SOC. 985 (1931) (enumerating population figures and losses of farming operations in the 1930s).

202. *Woman and Agriculture in the United States*, *supra* note 197, at 326. *See also* Pamela Riney-Kehrberg, *Separation and Sorrow: A Farm Woman’s Life, 1935-1941*, 67 AGRIC. HIST. 185 (1993) (diary of a Kansas farm woman).

203. Female rates of participation in the farm revolt of the 1930s were not investigated until the 1990s. *See* William C. Pratt, *Women and the Farm Revolt of the 1930s*, 67 AGRIC. HIST. 214 (1993).

204. *See generally* Agricultural Trade Development and Assistance, 7 U.S.C.A § 1691 (2008) (“enhancing the food security”).

205. Agriculture is exempt from anti-trust legislation. *See generally* Nat’l Broiler Mktg. Ass’n v. United States, 436 U.S. 816, 813 (1978) (“Capper-Volstead Act removed from the proscription of the antitrust laws cooperatives formed by certain agricultural producers that otherwise would be directly competing with each other in efforts to bring their goods to market.”); Capper-Volstead Act of 1922, 7 U.S.C. § 291-92 (2008).

206. Clayton Antitrust Act of 1914, 15 U.S.C. § 17 (2007).

207. *Id.* *See also* Capper-Volstead Act of 1922, 7 U.S.C. §§ 291-92; *Nat’l Broiler Mktg. Ass’n*, 436 U.S. at 830; John Lauck, *Toward an Agrarian Antitrust: A New Direction for Agricultural Law*, 75 N.D. L. REV. 449, 491 (1999).

208. *See, e.g.*, Donald B. Marti, *Woman’s Work in the Grange: Mary Ann Mayo of Michigan, 1882-1903*, 56 AGRIC. HIST. 439 (1982) (leader of Michigan’s rural women); Marilyn P. Watkins, *Political Activism and Community-Building Among Alliance and Grange Women in Western Washington, 1892-1925*, 67 AGRIC. HIST. 197 (1993).

209. *See* JULIA KIRK BLACKWELDER, *WOMEN OF THE DEPRESSION: CASTE AND CULTURE IN SAN ANTONIO, 1929-1939* (1984); JENSEN, *supra* note 30. *See also*, de Jong, *supra* note 20, at 105; James M. Sears, *Black Americans and the New Deal*, 10 HIST. TEACHER 89

dictated their marginalization of defending their farms and how the law expedited losses. It is widely recognized outside of agricultural histories that women of color fundamentally prioritized a “commitment to political action.” Black and Latina women operators and their protests against their harsh histories obligate additional gendered examination of the nation’s food production systems.²¹⁰ Female agricultural workers also protested against rural inequities.

For example, Manuela Solis Sanger and Emma Tenayuca were agricultural employees that fought against wage disparities during the 1938 Texas pecan shellers strike.²¹¹ The extent to which law intersected with their crusade and the racism of the times that precluded their public involvement in dominant populist rural insurgency presents a fertile ground for future directed studies.²¹²

Surfacing only recently in scholarly investigations, the course of their leadership informs us of their pleas for equality in the rural sector. However, rural women’s leadership roles have been historically documented:

Women are assuming a greater amount of leadership in rural organizations than in the earlier days. In some localities they now make up about 50 per cent [sic] of the officers, and incidentally, their education in terms of schooling is about two years more than that of the men in similar positions.²¹³

Historians provide examples of women in the dominant classes like Effie Kjorstand who “lived on her parents’ farm in Williams County . . . North Dakota, gave speeches and was quite effective in her role as organizer for farm equality.”²¹⁴ Edith Pearson and Josie Hallquist from Nebraska were also

(1976); Omar H. Ali, *Black Populism in the New South* (2008), available at http://pages.towson.edu/oali/black_populism_in_the_new_south.htm.

210. See, e.g., Minnie Miller Brown, *Black Women in American Agriculture*, 50 AGRIC. HIST. 202, 207 (1976).

211. Roberto R. Calderón & Emilio Zamora, *Manuela Solis Sager and Emma Tenayuca: A Tribute*, in CHICANA VOICES: INTERSECTIONS OF CLASS, RACE, AND GENDER 30 (Teresa Córdova et al. eds., 1986).

212. For Chicanas, this translates into assertions that “scholarship and artistic production should result in political action aimed at social change.” See, e.g., Hurtado, *supra* note 26, at 145 (1998).

213. J.H. KOLB & EDMUND DE S. BRUNNER, A STUDY OF RURAL SOCIETY 218 (William F. Ogburn ed., 1946).

214. *Id.* at 216. For other examples of women farm organizers, see e.g., JOHN L. SHOVER, CORNBELT REBELLION: THE FARMERS’ HOLIDAY ASSOCIATION (1965); John Mack Faragher, *History from the Inside-Out: Writing the History of Women in Rural America*, 33 AM. Q. 537 (1981); Leslie A. Taylor, *Femininity as Strategy: A Gendered Perspective on the Farmers’ Holiday*, 51 ANNALS IOWA 252 (1992).

involved in rural movement activities.²¹⁵ Outside of direct speeches, women also “specialized in community-building functions.”²¹⁶

Their legacy rejects their sought after goals and intent in advocating reform of the sector by yielding to the federal support of industrial agriculture. The ultimate breach of protecting the smaller and independent food producers led to losses that extended into the contemporary period. The losses of their farms, moreover, forced many of the women and their children into the role of agricultural farm workers in order to survive. Further exclusion of farm laborers and sharecroppers from favorable legislation also tainted their efforts to protect smaller and independent ownership of the nation’s farming communities.²¹⁷

The economic threats to the independent smaller operations of the past paralleled the vulnerabilities of the present. Specifically, the initial promises that developed into the nation’s current farm bills were declared in congressional testimony and federal legislation as means to protect small and independent operations.²¹⁸ Infidelity to rural insurgency nonetheless followed the women that had rallied for farm economic equality in the pre-New Deal period that produced the nation’s farm bills.²¹⁹ Since that profound period, the farm bills have transformed into massive exports for international arenas, and the hegemony of a large agricultural sector threatens the small family farms rural insurgency sought to protect.²²⁰

215. Pratt, *supra* note 203, at 215. For more information on the rural movement, *see, e.g.*, CARRIE A. MEYER, *DAYS ON THE FAMILY FARM: FROM THE GOLDEN AGE THROUGH THE GREAT DEPRESSION* (2007); ERIC RAUCHWAY, *THE GREAT DEPRESSION AND THE NEW DEAL: A VERY SHORT INTRODUCTION* (2008); Michael Goldfield, *Worker Insurgency, Radical Organization, and New Deal Labor Legislation*, 83 AM. POL. SCI. REV. 1257, 1271 (1989) (noting “struggles of farmers,” including “withholding of produce from the market because of low prices and the stopping of banks from auctioning mortgage defaulted property, sometimes by armed ‘penny sales.’”).

216. Watkins, *supra* note 208, at 199.

217. *See, e.g.*, Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335 (1986-87).

218. The massive legislation that the New Deal generated into the present as the nation’s farm bills provide examples but for a brief history of the connections between rural insurgency and populism. *See, e.g.*, Michael Goldfield, *Worker Insurgency, Radical Organization, and New Deal Labor Legislation*, 83 AM. POL. SCI. REV. 1257, 1271 (1989); T. SALOUTOS & J. HICKS, *TWENTIETH-CENTURY POPULISM: AGRICULTURAL DISCONTENT IN THE MIDDLE WEST, 1900-1939* (1951).

219. Preying upon the fear of communist affiliation that plagued the times, the government investigated and mislabeled community organizers as communists in an effort to thwart activism. *See, e.g.*, William C. Pratt, *Farmers, Communists, and the FBI in the Upper Midwest*, 63 AGRIC. HIST. 61 (1989); Federal Bureau of Investigation – Freedom of Information Privacy Act, Cesar Chavez and United Farm Workers et al., <http://foia.fbi.gov/foiaindex/chavez.htm> (last visited Oct. 28, 2008).

220. *See* North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993), *available at* <http://www.fas.usda.gov/itp/Policy/nafta/nafta.asp>; GEOFFREY S. BECKER, *FARM BILL TRADE AND FOOD AID PROVISIONS*, CRS REPORT FOR CONGRESS RS20997 (Jan. 28, 2003), *available at* http://assets.openers.com/rpts/RS20997_20020508.pdf.

In the present, the damage resulting from the ramifications of a narrowly based food agenda combined with the vast realm of rural inequities necessitates a return to the rural activism of the pre-New Deal era. A collective effort between minorities and all women farmers in legally defined cooperative ventures could offset the food recalls, tainted products, and challenge the food deserts harming the hungry and malnourished. A gendered approach accordingly would counter the ongoing and systemic rejection of the earlier goals of rural insurgents.

CONCLUSION

From its earliest formulations, the nation's farm bills have primarily excluded women within both their regulatory structures and food producing systems. Agricultural history shows for example that: "The precedence for discrimination in the Department of Agriculture has been established...by the first Commissioner of the Department."²²¹ A further level of well established hostility shows that when women sought to meet with government officials they were informed that "[i]t was contrary to the rules for the Secretary to receive unescorted ladies."²²² Moreover, reviews of agricultural administration, histories, laws, and policies, show a male emphasis while women remain virtually silent in the broader framework of agricultural legal studies.²²³ And while not all men are to blame for the current regime, reversing the exclusion of a gendered approach could reveal alternative and sustainable measures.²²⁴

Additionally, large scale food operations have greatly influenced and benefited from a narrowly defined domestic agenda at the expense of independent producers while sacrificing the interests of consumers.²²⁵

221. Gladys L. Baker, *Women in the U.S. Department of Agriculture*, 50 AGRIC. HIST. 190, 190 (1976) (analyzing in part women fired from the USDA).

222. *Id.* at 191.

223. JENSEN, *supra* note 30, at 241 ("Rural history has several roots, agricultural history, the discipline that developed in the United States during the 1920s, provides a source rooted in field crops, commercial production, and the white males who controlled them."). See also Baker, *supra* note 221, 190-91 (providing information on the demotion of women clerks, reduction in their salaries, and the discriminatory perceptions of women in the department).

224. For an instance where women collapsed to the legal identity of their spouses in farm programs, see *Women Involved in Farm Econ. v. U.S. Dep't of Agric.*, 876 F.2d 994 (D.C. Cir. 1989) (challenging constitutionality of Department of Agriculture regulation treating husbands and wives as one "person"). Compare Schneider, *supra* note 29 (analyzing current laws affecting the ownership rights of husbands and wives to family farm assets and discussing current farm programs in relation to the legal treatment of husbands and wives) with Debra Kahn, *Constitutional Law-Perpetuating the Presumption of Marital Interdependence Under the Agriculture Act-Women Involved in Farm Economics v. United States Department of Agriculture*, 876 F.2d 994 (D.C. Cir. 1989), cert denied, 110 S. Ct. 717 (1990), 63 TEMP. L. REV. 881 (1990).

225. Compare *Cal. Agrarian Action Project, Inc. v. Regents of the Univ. of Cal.*, 258 Cal. Rptr. 769 (Cal. Ct. App. 1989) (holding that the state university was not required to establish process to ensure Hatch Act funds for agriculture research were expanded to give

Promoting a gendered approach accordingly allows alternative and sustainable measures in farm bill and policy formulations. The present new female operators are emerging against indefinable odds and rejecting the ideals of industrial agriculture. And in some instances, women are forming new rural spaces within the geographical terrain of a city, challenging the traditional definitions of farming.

This New Legal Realism Project enables a gendered examination of the nation's farm bills. It illustrates a re-direction where a gendered analysis of the regulatory structures that support the nation's food production systems employed could offer the nation a new agricultural template. Incorporating a gendered approach could promote alternative food production systems that would benefit the populations that agricultural law and policies marginalize. A gendered perspective permits rejecting harmful and industrialized food models that thrust tainted food products on consumers and fail to eradicate hunger across the nation. This alternative thereby mandates a return to an earlier period in time when women sustained their families and communities before rural racism and structural inequities barred their participation in agricultural politics and law formulation.²²⁶

In the contemporary period, women need access to information and farm service programs that go beyond supporting their male counterparts.²²⁷ Legally formed collective action could further a food policy agenda that would bridge the gaps between race and class. Against the backdrop of food disparities and hunger in the nation, this is an urgent plea for a return to renewed forms of rural insurgency. A new rural movement would offset the loss of at risk farm groups and, in sum, obligates nothing but the alternative and innovative measures women held operations promise.²²⁸

consideration to the needs of the small family farmer) with Christopher D. Merrett & Cynthia Struthers, *Globalization and the Future of Rural Communities in the Midwest*, 12 *TRANSNAT'L L. & CONTEMP. PROBS.* 33, 34 (2002) ("ConAgra Foods makes more than 80,000 miles of Slim Jims every year, enough to wrap around the equator nearly three and a half times."); UNICEF, *THE STATE OF THE WORLD'S CHILDREN 2008*, available at http://www.unicef.org/publications/files/The_State_of_the_Worlds_Children_2008.pdf (for a gendered perspective on hunger).

226. For a gendered and international perspective, see Marianne Villa & Karoline Daugstad, *Summer Farmers: Discourses in New Arenas*, 38 *J. COMP. FAM. STUD.* 395 (2007) (addressing feminists theories and female values and applying to Norwegian farmers).

227. Janice Jiggins et al., *Improving Women Farmers' Access to Extension Services*, in *IMPROVING AGRICULTURAL EXTENSION* 73, 73 (Burton E. Swanson et al. eds., 1997).

228. The conceivable loss of alternative and sustainable farms is part of a bigger potential food crisis. See Jacques Diouf, *Feeding A World of 9 Billion*, *PEOPLE & THE PLANET*, Oct. 21, 2007, <http://www.peopleandplanet.net/doc.php?id=341§ion=3> (positing that a possible food crisis looms, stemming from "climate change, forest denudation, land degradation, water shortage, declining oil supplies, species extinction, destruction of coastal ecosystems . . ."). See also Romano Prodi, *To Avoid a Food Disaster*, *WASH. TIMES*, Apr. 27, 2008, at B1 (concern over escalating food prices across the world).