

# PRESERVATION OF FAMILY FARMS— THE WAY AHEAD

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## I. INTRODUCTION

Politicians and lawmakers worldwide are fond of extolling the virtues of family farms. In Western Europe, preservation of the family farm has long been recognized as critical to agricultural policy.<sup>1</sup> In Eastern Europe, governments base farm policies on the family farm model.<sup>2</sup> In recent efforts to reform federal programs in the United States, politicians have reaffirmed their support for policies protecting family farms.<sup>3</sup>

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1. Margaret Rosso Grossman, *Agro-Environmental Measures in the Common Agricultural Policy*, 25 U. MEM. L. REV. 927, 973-74 (1995) (describing the importance of family farming in the Treaty of Rome).

2. Pawlak: *Agricultural Policy Will Be Based on Family Farms*, PAP Polish Press Agency, Sept. 3, 1994, available in LEXIS, NEXIS Library, PAP File (stating that Prime Minister Waldenar Pawlak promises the government will pursue an agricultural policy based "on family farms"); *Czech Farm Minister Promoting Free-Market Policies*, AGRA EUROPE, Aug. 6, 1993, at N4 (quoting Czech Republic's Minister of Agriculture Josef Lux who stated that "[w]e want to base Czech farming predominately around the family farm model").

3. David C. Beeder, *Ag Chief Gives Plan for Cuts*, OMAHA WORLD HERALD, June 14, 1995, at 18. "[Secretary of Agriculture] Glickman said Congress should insist that the 1995 farm bill preserve a safety net for family farmers . . ." *Id.*; see also President's Statement on the National Rural Conference, 1994 PUB. PAPERS 1324 (July 27, 1994). "This administration is committed to working closely with rural communities in tackling the important issues of jobs, trade, and the preservation of the family farm as our Nation enters the next century." *Id.*

As emerging democracies consider basing farm policy on the family farm model, it is important to review the effectiveness of policies in the United States that are intended to preserve family farms. Reviewing United States policies is also critical as Congress charts an agricultural policy for the twenty-first century. This Article will examine both federal and state legislation in the United States designed to preserve family farms. The Article will then examine the rationale underlying the desire to protect family farms. Policy-makers have not articulated clear and consistent rationale for preserving family farms. As a result, this Article concludes that federal and state policies are not highly focused or effective in preserving traditional family farms. Finally, the Article will make suggestions for focusing farm policy.

## II. STATE LAWS AND POLICIES IN THE UNITED STATES PROTECTING FAMILY FARMERS

Schemes to protect the family farmer pervade state and federal farm policies. Policies vary from outright prohibitions on corporate farms to more subtle measures allowing farmers better access to credit and other farming inputs. Legislation at the state level is not uniform, but varies dramatically from state to state. Though the type of legislation varies, most states have adopted schemes to protect and preserve the family farm.

### A. Anti-Corporate Farming Laws

To ensure the survival of family farms, nine states have enacted legislation restricting corporate ownership of farms and farmland.<sup>4</sup> Anti-corporate farming statutes preserve family farms by limiting the ability of corporations and other institutional investors to purchase farmland.<sup>5</sup> The statutes usually make exceptions for family-owned corporations and family-owned limited liability companies.<sup>6</sup> The Minnesota anti-corporate farming statute describes the typical justification for anti-corporate farming laws.<sup>7</sup> The Minnesota statute states that it is designed to preserve the family farm "as the most socially desirable mode of agricultural production."<sup>8</sup> The preamble to Minnesota's anti-corporate Farming Act states that family farms "enhance and promote the stability and well-being of rural society . . . and the nuclear family."<sup>9</sup> Supporters of the law allege that corporate farming leads to absent landowners and tenant operation of farms, which would have adverse eco-

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4. J.W. LOONEY ET AL., *AGRICULTURAL LAW: A LAWYER'S GUIDE TO REPRESENTING FARM CLIENTS* 550 (1990); see also 2 JULIAN CONRAD JUERGENSMEYER & JAMES BRYCE WADLEY, *AGRICULTURAL LAW* § 30.12, at 154-55 (1982) (stating that "these statutes reflect the public policy of protecting family farms and seem to be designed to limit or discourage investment in farmland by 'outsiders,' such as large businesses or public corporations").

5. 2 JUERGENSMEYER & WADLEY, *supra* note 4, at 155.

6. Steven Bahls & Jane Easter Bahls, *Just How Bad Is Corporate Farming?*, *FARM FUTURES*, Dec. 1991, at 7, 7.

7. MINN. STAT. ANN. § 500.24(1) (West 1990 & Supp. 1997).

8. *Id.*

9. *Id.*

nomic consequences and would "result in decreased stewardship and preservation of soil, water, and other natural resources."<sup>10</sup>

Corporate farms have attacked these state statutes on the basis that they deny equal protection of the law to farm corporations, in violation of the Fourteenth Amendment to the United States Constitution.<sup>11</sup> Federal courts, however, usually do not strike down social or economic measures enacted by states, except when "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the legislature's activities were irrational."<sup>12</sup> The Eighth Circuit Court of Appeals recently applied this test to a Nebraska statute and upheld Nebraska's efforts to restrict corporate farming.<sup>13</sup> The court concluded that it should not second guess the decision of the people of Nebraska to protect the family farmer.<sup>14</sup>

State anti-corporate farming laws are the most radical, and direct, approach to preserve the family farm. It is doubtful, however, that such legislation, at the state level, is good public policy. When corporations, insurance companies, and other institutions are prohibited from purchasing farmland, prices are artificially depressed.<sup>15</sup> Artificially low prices actually hurt those that the legislation is designed to serve—the family farmer. In addition, family farmers experiencing financial problems are deprived of an important vehicle to raise funds. Family farms in states with anti-corporate farming laws are deprived of the ability to incorporate and sell interests to investors.<sup>16</sup>

Farmers in several states have led the efforts to repeal anti-corporate statutes.<sup>17</sup> In Oklahoma, for example, Tyson Foods sought to establish a hog operation.<sup>18</sup> It proposed to contract with 150 family farms to feed its hogs.<sup>19</sup> Family farmers successfully lobbied to loosen the anti-corporate farming law to accommodate the mutually profitable arrangement.<sup>20</sup>

In practice, the avowed goal of anti-corporate farming statutes—to protect the rural economy—has not been realized. In Minnesota, for example, at least one commentator blamed the anti-corporate farming statute for the demise of the state's beef and pork industry.<sup>21</sup> If the purpose is to preserve

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10. See *MSM Farms, Inc. v. Spire*, 927 F.2d 330, 333 (8th Cir. 1991).

11. U.S. CONST. amend XIV, § 1.

12. *Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 463 (1988) (citations omitted).

13. See *MSM Farms, Inc. v. Spire*, 927 F.2d at 332-33.

14. *Id.* at 333.

15. *Bahls & Bahls*, *supra* note 6, at 7.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*; see also Mark Lee, *Pork Industry Set to Expand in Three States*, *TULSA WORLD*, Apr. 3, 1991, at B1 (describing Tyson Foods' bid to open a hog breeding facility in Oklahoma as well as efforts by local farmers to open the way for contracting with Tyson Foods to manage such farms).

21. Richard F. Prim, Comment, *Saving the Family Farm: Is Minnesota's Anti-Corporate Farm Statute the Answer?*, 14 *HAMLIN J. PUB. L. & POL'Y* 203, 221 (1994). Mr. Prim observes: "While Minnesota's restrictions have reduced its national livestock market

small farms, anti-corporate farming statutes have probably failed. In Nebraska, a state with a strong anti-corporate farming statute, the number of farms has dropped from 65,000 in 1980 to 55,000 in 1994.<sup>22</sup> During the same time, the average farm size grew from 734 acres to 856 acres.<sup>23</sup>

States maintaining anti-corporate farming statutes are probably swimming against the tide. Farm and other interests are chipping away at the statutes which are already riddled with exceptions.<sup>24</sup> Those states maintaining restrictive corporate statutes are nearly powerless to discourage corporate agricultural interests from building competitive strength in surrounding states.<sup>25</sup> As a result, family farmers in states with anti-corporate farming statutes have fewer opportunities to market products like cattle, hogs, and poultry.<sup>26</sup> Ultimately, when family farmers sell their property, they realize artificially lower prices for their land because the number of buyers has been limited.

While anti-corporate statutes are well intentioned, they are a crude instrument. If states are concerned about the perceived "bad habits" of corporations, states would be better served by identifying and regulating those bad habits. Appropriate legislation might include land use regulations or environmental regulations. States wishing to preserve a viable rural way of life could do so more effectively. If states are concerned about poverty in rural areas, they could create economic development programs, including special rural enterprise zones.<sup>27</sup> If states are concerned about the rate of conversion of farm land to urban uses, they should enact and enforce agricultural farmland preservation programs.<sup>28</sup> States should avoid the temptation to use the drastic measure of prohibiting corporate farms, especially when more focused legislation will protect the public from the perceived evils of corporate farmers. Focused statutes that directly address specific rural problems would better protect the public from unacceptable behavior by both corporate and family farms.

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share, states which welcome corporate farming, such as North Carolina and Arkansas, are experiencing corresponding increases in national market share." *Id.* (citations omitted).

22. Leslie Boellstorff, *Corporate Farm Ban Rethought, Committee Hears Measure to End It*, OMAHA WORLD HERALD, Mar. 1, 1995, at 13SF.

23. *Id.*

24. See 2 JUERGENSMEYER & WADLEY, *supra* note 4, § 30.12, at 154-69.

25. See 2 *id.*

26. 2 *id.*

27. For a discussion of rural enterprise zones at the federal level, see Donald E. Voth, *A Brief History and Assessment of Federal Rural Development Programs and Policies*, 25 U. MEM. L. REV. 1265, 1288-89 (1995).

28. For a good discussion of farmland preservation laws, see William L. Church, *Farmland Conversion: The View from 1986*, 1986 U. ILL. L. REV. 521. See also Christopher P. Markley, Comment, *Agricultural Land Preservation: Can Pennsylvania Save the Family Farm?*, 87 DICK. L. REV. 595 (1983) (suggesting that Pennsylvania could slow conversion by modifying existing programs and creating incentive-based land use control programs).

### B. State Regulation of Contract Farming

States have adopted more indirect ways to protect family farms.<sup>29</sup> Many of these states seek to protect small farmers with relatively weak bargaining positions, as opposed to those with larger and stronger economic interests, by regulating production contracts.<sup>30</sup> Production contracts are contracts entered into between farmers and food processing firms, whereby the farmer agrees to supply farm products meeting specified standards.<sup>31</sup>

State laws regulating production contracts are partially designed to protect farmers by leveling the playing field.<sup>32</sup> Family farmers are often at a disadvantage when dealing with more economically powerful seed companies, food processors, and vertically integrated food processors.<sup>33</sup> Agricultural commodity purchasers are gaining market power vis-à-vis family farmers because of new technologies,<sup>34</sup> rights to genetic material,<sup>35</sup> and oligopolistic markets.<sup>36</sup> Critics of contract farming are concerned that bargaining disparity will affect the independence of family farms because their farm products and, in some cases, farming methods will be regulated by the contract.<sup>37</sup>

State regulation of production contracts often includes required mediation or arbitration,<sup>38</sup> a required notice period before cancellation of the contract by the contractor,<sup>39</sup> a producer's right to cause a breach after notice,<sup>40</sup> and an implied covenant of good faith.<sup>41</sup> Other state laws require prompt payment<sup>42</sup> and prohibit unfair practices.<sup>43</sup> Laws regulating contract farming are usually much narrower, better focused, and therefore, more effective than state anti-corporate farming statutes.

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29. Neil D. Hamilton, *State Regulation of Agricultural Production Contracts*, 25 U. MEM. L. REV. 1051, 1054 (1995).

30. *Id.*

31. *Id.* at 1057-58.

32. *Id.* at 1054.

33. *Id.* "The contracts are usually developed in situations where there is great inequality, bargaining power, and information between the parties." *Id.*

34. *Id.* at 1055.

35. *Id.*

36. Russel C. Parker & John M. Conner, *Consumer Loss Due to Monopoly in Food Marketing*, in *IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?* 233-37 (Gary Comstock ed., 1987).

37. Suzanne Steel, *Many Farmers Aren't Rooting for Contract Hog Farming Proposal*, COLUMBUS DISPATCH, May 22, 1994, at 2H. "In a typical contract arrangement, farmers lose some of their independence but also bear less risk." *Id.*

38. See, e.g., MINN. STAT. ANN. § 17.91 (West Supp. 1997).

39. See, e.g., *id.* § 17.92.1(1).

40. See, e.g., *id.* § 17.92.2.

41. See, e.g., *id.* § 17.94; see also WIS. ADMIN. CODE § 101.01(13) (1992).

42. See, e.g., CAL. AGRIC. CODE § 56701 (West 1986); MINN. STAT. ANN. § 27.138 (West Supp. 1995) (establishing trust funds to ensure payment).

43. See, e.g., WIS. ADMIN. CODE § 101.07(4)(a)-(f) (1992) (listing prohibited practices similar to those found in lists of unfair or deceptive practices). See also Hamilton, *supra* note 29, at 1079-80.



Ultimately, however, any state legislation that is too aggressive in its attempts to protect family farms from the perceived evils of corporate interests is probably not the most effective way to protect family farmers. If corporate interests perceive regulations as too oppressive, competitors will simply relocate to other states with less restrictive legislation. Corporate interests will congregate in states with less regulation and will become powerful competitive economic powers. Interstate compacts and federal legislation mitigate this problem, although not fully. Multinational businesses often have the option of conducting business from other countries. Competitors will be tempted to relocate across borders. To avoid the problem of corporate flight, states should avoid the temptation to base farm policy exclusively on the regulation of corporate behavior.

### C. State Regulation of Rural Land Use

A better approach for states desiring to preserve the rural way of life is to regulate land use in rural areas. Effective regulations include farmland conversion disincentives and liability protection for those farming in areas of urban/rural interface. While farm corporations can move to surrounding states, farmland cannot. In the United States, various states have enacted these statutes to protect family farms and the rural way of life.

One common way to protect family farms and the rural way of life is farmland preservation statutes.<sup>44</sup> According to the United States Department of Agriculture, every year 1.5 million acres of productive farmland are converted from agricultural to nonagricultural uses.<sup>45</sup> At this rate, the cropland base in the United States will diminish by twelve percent from 1982 to 2030.<sup>46</sup> Many states have enacted statutes designed to slow the rate of farmland conversion, and the approaches taken vary drastically. Oregon, for example, permits counties to designate areas as "exclusive farm use zones."<sup>47</sup> This severely limits nonfarm uses of property within agricultural districts.<sup>48</sup> Many states assess farmland at its farm-use value, rather than its high market value.<sup>49</sup> Offering incentives to farmers in exchange for an agreement not to convert their land to nonfarm purposes, Ohio allows farmers to create agricultural

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44. Steven Bahls & Jane Easter Bahls, *The Right and Wrong Ways to Protect Land from Development*, FARM FUTURES, May/June 1993, at 5.

45. James E. Holloway & Donald C. Guy, *Rethinking Local and State Agricultural Land Use and Natural Resource Policies: Coordinating Programs to Address the Interdependency and Combined Losses of Farms, Soils, and Farmland*, 5 J. LAND USE & ENVT'L. L. 379, 380 n.3 (1990) (citing THE SECOND RCA APPRAISAL: SOIL, WATER, AND RELATED RESOURCES ON NONFEDERAL LAND IN THE UNITED STATES—ANALYSIS OF CONDITIONS AND TRENDS 2, 4 (1989)).

46. *Id.*

47. OR. REV. STAT. § 215.203(1) (1993).

48. *See id.*

49. *See, e.g.*, N.Y. AGRIC. & MKTS. §§ 301-310 (1994); WIS. STAT. ANN. § 71.6(1)(c) (West 1995).

districts.<sup>50</sup> More incentives include exemptions from special assessments for water and sewer, as well as protection against nuisance lawsuits.<sup>51</sup>

While farmland preservation statutes may be effective in slowing urban sprawl, many statutes do so at the expense of farmers. These statutes often result in depressing real estate prices.<sup>52</sup> In effect, many statutes allow the resident of a state to enjoy open spaces, but at the expense of the farmer who suffers a diminished market for other land. The best statutes are those permitting, but not requiring, farmers to enroll in agricultural districts.<sup>53</sup> Usually, incentives are the best way to encourage farmers to enroll.<sup>54</sup>

In addition to legislative incentives to preserve farmland, most states have enacted legislation to protect farmers from the claims of neighboring property owners who object to farm activities.<sup>55</sup> Some states have enacted so-called right to farm statutes.<sup>56</sup> These bills, designed to preserve farms, protect farmers against claims from neighbors—often urban neighbors—on the fringe of agricultural areas.<sup>57</sup> These statutes protect farms from nuisance claims arising from the sights, sounds, and smells of the farm.<sup>58</sup> New rural residents, moving from the city, often have a romantic view of farmland. When they are offended by the sights, sounds, smells, and slow vehicles which typify rural America, they sue. Right to farm statutes protect the farmer from liability, but usually the degree of protection is limited.<sup>59</sup>

Right to farm laws have been less effective than many have hoped. In the author's survey of reported cases, few farms are successful in fending off nuisance suits.<sup>60</sup> Most states define the right to farm quite narrowly.<sup>61</sup> The defense is not valid unless the offending use began before the neighbor

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50. OHIO REV. CODE ANN. §§ 929.01-.05 (Anderson 1995).

51. *Id.* § 929.03(A)(1).

52. See David M. Henneberry & Richard L. Barrows, *Capitalization of Exclusive Agricultural Zoning into Farmland Prices*, LAND ECON. 249 (1990) (stating that "previous research on agricultural zoning supports the hypothesis that zoning which restricts development opportunity will decrease land prices").

53. See, e.g., Bahls & Bahls, *supra* note 44, at 5 (stating that "[s]ome states authorize the creation of agricultural districts by local farmers, who are offered incentives in exchange for agreeing not to convert their land to nonfarm uses").

54. See *id.* (stating that "[t]hese programs actually work, because . . . they offer incentives that are of genuine value to the farmer").

55. See Margaret Rosso Grossman & Thomas G. Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 WIS. L. REV. 95, 117-24.

56. See, e.g., ILL. ANN. STAT. ch. 5 §§ 1101-1105 (Smith-Hurd 1992); N.C. GEN. STAT. §§ 106-700 to 106-701 (Michie 1995); ARIZ. REV. STAT. ANN. §§ 3-1051 to 3-1061 (1989).

57. Grossman & Fischer, *supra* note 55, at 97-98.

58. *Id.* at 104; see also Jane Easter Bahls, *Under Fire: Pork Producers Feel Heat of Increased Public Involvement in Environmental Issue*, HOG FARM MGMT., March 1991, at 40, 41 (noting that right to farm statutes were designed to protect against nuisance lawsuits but are inadequate to protect against pollution lawsuits).

59. Grossman & Fischer, *supra* note 55, at 117-18.

60. Steven Bahls & Jane Easter Bahls, *When Neighbors Raise a Stink About the Way Your Livestock Smell*, FARM FUTURES, Dec. 1988, at 28, 28.

61. *Id.*

moved in, or if the farm use changes after the neighbor moved in.<sup>62</sup> Most states will not protect farmers if the farm is operated in a negligent manner or creates a public health hazard.<sup>63</sup>

Farmland preservation and right to farm statutes, which govern land use, are usually more effective in preserving the rural way of life than anti-corporate farming statutes. Anti-corporate farming statutes are riddled with exceptions and protect the rural way of life at the expense of individual farmers. Unfortunately, state legislatures often do not have a clear view as to whether it is more important to protect the family farmer or the traditional rural life style. Anti-corporate farming statutes protect family farmers, but do not necessarily preserve traditional rural areas. Farmland preservation statutes preserve traditional rural areas, but do not necessarily preserve family farms. As a result of this confusion, most states lack comprehensive and consistent legislative farm agendas.

#### D. Case Law

State court judges also display a tendency to protect the family farm.<sup>64</sup> Court decisions in the areas of lender liability, and cases dealing with dissension on the family farm demonstrate the willingness of some state courts to give an extra measure of protection to family farms.<sup>65</sup>

After the farm debt crises of the mid-1980s, several state courts went to substantial lengths to protect family farms, noting that a disparity in bargaining power existed between farmer and lender.<sup>66</sup> One Wisconsin court, finding in favor of a farmer in a credit dispute with a bank noted, "some people who [are] excellent farmers [are] not particularly good at figures or making business decisions."<sup>67</sup> Another Minnesota court sympathetically noted that the "farm crises of the 1980s produced cash strapped and financially unsophisticated farmers who claimed reliance upon their bank officers' oral promises to renew their loans."<sup>68</sup> As a result of these sympathies, many of the large judgments in lender liability cases went to farmers.<sup>69</sup>

Further evidence of state court willingness to protect family farms is found in cases involving dissension among family members, who are also owners of farms.<sup>70</sup> Most state corporation codes authorize judicial interven-

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62. *Id.*

63. *Id.*

64. See *infra* notes 73-78 and accompanying text.

65. See, e.g., *Production Credit Ass'n v. Vodak*, 441 N.W.2d 338, 345 n.3 (Wis. Ct. App. 1989); *Rural Am. Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702, 705 (Minn. 1992).

66. See generally Steven C. Bahls, *Termination of Credit for the Farm or Ranch: Theories of Lender Liability*, 48 MONT. L. REV. 213 (1987); Steven C. Bahls, *Farm and Ranch Credit: Theories of Lender Liability*, 19 WM. MITCHELL L. REV. 367 (1993) (examining the courts' tendency to reject lender liability claims) [hereinafter *Farm and Ranch Credit*].

67. *Production Credit Ass'n v. Vodak*, 441 N.W.2d at 345 n.3.

68. *Rural Am. Bank of Greenwald v. Herickhoff*, 485 N.W.2d at 705.

69. Richard B. Schmitt, *Farmers, Attacking Lending Practices, Are Taking Banks to Court and Winning*, WALL ST. J., July 6, 1987, at 6.

70. See Steven C. Bahls, *Judicial Approaches to Resolving Dissension Among Owners*



tion when "directors or those in control of the corporations have acted, or are acting in a manner that is illegal, oppressive, or fraudulent."<sup>71</sup> If the court finds impermissible conduct, it is authorized to dissolve the corporation.<sup>72</sup> Courts in several jurisdictions have been particularly hesitant to dissolve family farm corporations. In *Maddox v. Norman*,<sup>73</sup> for example, the Montana Supreme Court refused to liquidate a family farm, even though the conduct of the majority shareholders would have permitted it to do so. The court noted that the sister, who moved to the city, was a "prodigal," who "must defer to the one who stayed at home, built the ranch, worked with the father and struggled to a successful ranch unit."<sup>74</sup> The court found that the ranch was a "successful family ranch and, barring dissolution, is likely to remain so."<sup>75</sup> A Missouri court demonstrated a similar resolve to protect the family ranch from dissolution in the face of a claim of majority shareholder misconduct. In *Struckhoff v. Echo Ridge Farms, Inc.*,<sup>76</sup> the Missouri Court of Appeals refused to dissolve a family farm, in part because its continued existence "would benefit the public through its high production and profitability."<sup>77</sup>

Relying on courts to protect the interest of family farms in the absence of a statutory mandate is risky business. While courts were sympathetic to many farm lender liability claims in the mid-1980s, courts became increasingly hostile to the claims in the 1990s.<sup>78</sup> Though some courts have refused to liquidate family farms, courts generally have not articulated clear and consistent principles concerning dissension among the owners of family farms.<sup>79</sup> If public policy favors protection of family farmers, it is best to do so through clear and consistent legislation.

### III. FEDERAL LAWS PROTECTING FAMILY FARMS

Congress has demonstrated on many occasions its desire to grant special treatment to farmers in general<sup>80</sup> and family farms in particular.<sup>81</sup> Prominent

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of the Family Farm, 73 NEB. L. REV. 14, 30-37 (1994).

71. MODEL BUS. CORP. ACT § 14.30(2)(ii) (1984).

72. *Id.*

73. *Maddox v. Norman*, 669 P.2d 230, 236 (Mont. 1983).

74. *Id.* at 234.

75. *Id.* at 238.

76. *Struckhoff v. Echo Ridge Farms, Inc.*, 833 S.W.2d 463 (Mo. Ct. App. 1992).

77. *Id.* at 466.

78. *See Farm and Ranch Credit*, *supra* note 66, at 367-68.

79. *See Bahls*, *supra* note 70, at 37.

80. When I teach Agricultural Law, I start by telling students that Agricultural Law is a study of exceptions. Agricultural law exceptions in the United States include exceptions to tax, antitrust, leasing, contract, tort, property, and other areas of law.

81. Professor J.W. Looney aptly observed, "Congress has, from time to time, recognized family farming as important to the economic well-being of agriculture and has specified that new programs funded by USDA must give appropriate attention to the effects they may have on the structure of family orientated agriculture." J.W. Looney, *The Changing Focus of Government Regulation of Agriculture in the United States*, 44 MERCER L. REV. 763, 792 (1993). Carol Ann Eiden presents a more cynical view of Congress' efforts to help the family farm. Carol Ann Eiden, *The Courts' Role in Preserving the Family Farm During*

protections for family farms are found in federal tax law, federal bankruptcy law, and in federal farm programs.

Congress is fond of using the Internal Revenue Code to protect favored sectors of the economy. Perhaps the most significant provision of the federal tax law benefiting family farms is Section 2032A of the Internal Revenue Code.<sup>82</sup> It encourages family farming by allowing special lower estate tax valuations of land for ongoing farm businesses.<sup>83</sup> Although the special valuation rules of section 2032A apply to all closely held businesses, Congress created the section with farmers in mind.<sup>84</sup>

After the farm debt crises of the mid-1980s, Congress modified the federal bankruptcy law to provide special debt relief for family farmers suffering financial problems.<sup>85</sup> The Chapter 12 Family Farm Bankruptcy Act allows farmers and qualifying farm corporations that owe less than 1.5 million dollars to reorganize their debts by reducing their secured debt to the market value of the collateral.<sup>86</sup> The Act provided a streamlined procedure for doing so.<sup>87</sup>

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*Bankruptcy Proceedings Involving FmHA Loans*, 11 LAW & INEQ. J. 417, 424 (1993) ("Although many . . . [government] programs were promoted as saving the family farm, they actually strengthened the huge nonfamily corporate farms at the family farm's expense.").

82. I.R.C. § 2032A (1995).

83. *Id.*

84. The legislative history describes the incentives it creates for continued use of farm property as farm property:

Your committee believes that, when land is actually used for farming purposes or in other closely held businesses (both before and after the decedent's death), it is inappropriate to value the land on the basis of its potential "highest and best use" especially since it is desirable to encourage the continued use of property for farming and other small business purposes. Valuation on the basis of highest and best use, rather than actual use, may result in the imposition of substantially higher estate taxes. In some cases, the greater estate tax burden makes continuation of farming, or the closely held business activities, not feasible because the income potential from these activities is insufficient to service extended tax payments or loans obtained to pay the tax. Thus, the heirs may be forced to sell the land for development purposes.

H.R. Rep. No. 1380, at-21-22 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3375-76.

85. See 11 U.S.C. §§ 1201-1231 (1994). Chapter 12 was designed specifically to benefit farmers. The legislative history states:

Chapter 12 . . . is designed to give family farmers facing bankruptcy a fighting chance to reorganize their debts and keep their land. It offers family farmers the important protection from farm creditors that bankruptcy provides while, at the same time, preventing abuse of the system and ensuring that farm lenders receive a fair repayment.

H.R. Conf. Rep. No. 958, 89th Cong., 2d Sess. 48 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

86. See Barbara Dockery Tremper, *The Montana Family Farmer Under Chapter 12 Bankruptcy*, 49 MONT. L. REV. 40 (1988).

87. Marcia Zarley Taylor, *New Hope for Hard-Pressed Farmers*, FARM J., Dec. 1986, at 22.

Perhaps the most important federal programs for family farmers are federal farm benefit programs. Congress has designed many of these programs especially for family farmers.<sup>88</sup> Farmers Home Administration Farm Ownership Loans are designed especially for family farm operations.<sup>89</sup> Recently, Congress capped federal farm payments at \$50,000 with respect to many farm programs, so family farmers could receive proportionately more than large corporate farms.<sup>90</sup>

Although federal farm benefits are available to all types of farms, including non-family corporate farms, policymakers often justify the continued existence of the benefits as necessary to preserve family farms. President Clinton, for example, in a recent speech, seemed to concede that large corporate farms could thrive without federal farm programs because of economics of scale.<sup>91</sup> The cost of federal farm programs is tremendous in part because so many farmers participate in them.<sup>92</sup> Between 1982 and 1987, for example, participation by the nation's corn growers in government programs jumped from twenty-nine percent to ninety percent.<sup>93</sup>

The effectiveness of federal farm programs in preserving a large number of family farms is questionable. Many of today's farm policies and programs were part of the New Deal, developed in reaction to farm problems of the 1930s.<sup>94</sup> Since 1940, the number of farms has actually decreased by approximately sixty-seven percent.<sup>95</sup> The number of family farms is likely to

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88. See Looney, *supra* note 81, at 792-93.

89. See 7 C.F.R. § 1943.2 (1996) (stating that the basic objective of the loan program is to provide credit and management assistance).

90. 7 U.S.C. § 1308 (1994).

91. President Clinton stated:

[I]f you want family farmers to farm, you have to have some system which rides them through the tough times. Otherwise, the economics will turn all the farms over to big corporations who can finance their own tough times. I mean, if you basically think about it, that's—in a lot of our states where large corporate farms exist, they don't need the support programs because the good years outweigh the bad years, and they don't have to worry about the bank loans.

President William Clinton, Remarks at Discussion with Montana farmers and agriculture organization leaders (June 2, 1995), in U.S. NEWSWIRE, June 5, 1995, at 11.

92. In 1995, payments under commodity programs alone cost about six billion dollars. Agricultural Secretary Dan Glickman, Remarks at Agriculture Department Outlook Conference, FED. NEWS SERVICE, Feb. 21, 1996, available in LEXIS, News Library, Fednew File; see also Gordon C. Rausser & David Nielson, *Looking Ahead: Agricultural Policy in the 1990s*, 23 U.C. DAVIS L. REV. 415, 422-23 (1990) (discussing the high budgetary costs of the agricultural commodity program as one of the incentives for reforming agricultural policy). In the late 1980s, farm program payments accounted for about twelve percent of gross farm income. Barry K. Goodwin & Allen M. Featherstone, *An Empirical Analysis of Participation in U.S. Government Farm Programmes*, 27 APPLIED ECON. 39 (1995).

93. *World Agricultural Outlook Board: Feed Yearbook Part 5*, PRESSWIRE, Nov. 21, 1995.

94. Thomas J. Schoenbaum, *Agricultural Trade Wars: A Threat to the GATT and Global Free Trade*, 24 ST. MARY'S L.J. 1165, 1184-85 (1993).

95. Bob Sector & Tracy Shryer, *Farmings' Exodus of the Young: the '80s Crisis Is Over, But the Turmoil Took a Toll on Youth*, L.A. TIMES, July 23, 1991, at A1; see also Cal

continue to dwindle, because the average age of a farmer is now fifty-two years old.<sup>96</sup> The United States Office of Technology Assessment predicts that the number of farms will tumble from more than 2 million in the 1980s to 1.1 million in the year 2000.<sup>97</sup> Some have gone so far as to suggest that federal farm payments actually have increased the size of farms.<sup>98</sup> Because federal farm programs eliminate much of the risk of low prices, federal programs have created economic incentives to put more land in production and for farmers to acquire more farmland.<sup>99</sup> The net result is the preservation of family farms that would not otherwise be viable but for governmental programs.<sup>100</sup>

It is, of course, possible that state and federal policies have been at least moderately effective in stemming an even further decline in the number of family farms. The issue still remains, however, whether the cost of preserving the family farm is justified by the benefits. As the next section of this Article demonstrates, policy makers and courts have not always articulated clearly the rationale for preserving family farms. This lack of precision in federal policy is one reason for the ineffectiveness of federal farm policies.

#### IV. RATIONALE FOR PRESERVING FAMILY FARMS

Advocates of family farming provide different rationale for protecting family farms. The arguments, however, can be generally divided into three categories. The first rationale states that family farming is a "way of life,"

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Dooley, *Rep. Dooley's One Farmer Who Wants to Jettison Status Quo Farm Programs*, ROLL CALL, July 24, 1995, at 15. The article states:

However, much has changed in the [United States] Agriculture industry over the past 50 years. In 1940, there were 6.1 million farms. In 1992, the number of farms dropped, for the first time since 1850, below 2 million. In the 1980s alone, the number of farms decreased by 20 percent. If [United States] farm policy is meant to preserve the family farm, its effectiveness must be questioned.

*Id.*

96. Sector & Shryer, *supra* note 95, at A1 ("In short, the next generation of would-be farmers . . . are abandoning land in droves.").

97. IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?, *supra* note 36, at xvii.

98. Dean Smith, *Soil Depletion in the United States: The Relationship Between the Loss of American Farmer's Independence and the Depletion of the Soil*, 22 ENVTL. L. 1539, 1564 (1992).

99. *Id.* at 1565.

100. Luther Tweeten, *Has the Family Farm Been Treated Unfairly*, in IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?, *supra* note 36, at 229. Professor Tweeten states:

I conclude that farm credit policies have increased the number and proportion of family farms where a considerable share of their benefits have been concentrated. Such programs have not necessarily served social justice, however, because they have encouraged overproduction, brought lower farm commodity prices but higher land prices, and have encouraged some operators to remain in farming when they could have contributed more to their own and the nation's well-being in other occupations.

*Id.*

and that the family farm "way of life" is worthy of protection in and of itself. The second rationale states that farming is a critical sector of our economy, and family farms serve that sector most efficiently. The third common rationale for preserving the family farm is that family farming preserves traditional rural areas and helps ensure appropriate use of rural land. Different rationale justify different programs.

#### A. Farming as a Way of Life

Thomas Jefferson envisioned the family farmer as the heart of America. He wrote: "Those who labor in the earth are the chosen people of God . . . . Corruption of morals in the mass of cultivators is a phenomenon of which no nation has furnished an example."<sup>101</sup> Professor Myers accurately observed the impact of Jefferson's views of rural America: "Although we remain predominately an urban society, a nostalgia persists for those Jeffersonian notions about the good life in rural America and its significance for our well-being. This modern paradox—'a rural ethic in an industrial society'—manifests itself in part through the various initiatives designed to preserve agricultural land."<sup>102</sup>

The phenomenon of romanticizing the family farmer, however, did not begin with Thomas Jefferson. One author traces the romantic notion of farmers back to Ancient Rome.<sup>103</sup>

The United States Congress has seemingly adopted the Jeffersonian view of the self contained and morally fit farmer. The preamble to the Agriculture and Food Act of 1981 states that "the maintenance of the family farm system of agriculture is essential to the social well being of the nation."<sup>104</sup> State anti-corporate farming acts are often justified with this rationale.<sup>105</sup>

To some observers, the strength of the sentiment to preserve family farms is confusing. With farmers comprising less than three percent of the population of the United States,<sup>106</sup> why does the public sentiment to preserve family farms at a significant cost continue? Why do we not find a similar public sentiment in preserving "Main Street" retail stores or small manufacturing operations? It is probably because most Americans can trace their roots to rural America. When I teach about cases or statutes involving family

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101. Thomas Jefferson, Notes on Virginia, in BASIC WRITINGS OF THOMAS JEFFERSON 161 (Philip S. Foner ed., 1944). Jefferson continued: "Generally speaking the proportion which the aggregate of the other classes of citizens bears in any state to that of its husbandmen, is the proportion of its unsound to its healthy parts." *Id.*

102. David A. Myers, *Farmland Preservation in a Democratic Society: Looking to the Future*, 3 AGRIC. L.J. 605, 607 (1982).

103. Richard S. Kirkendall, *Up to Now: A History of American Agriculture from Jefferson to Revolution to Crisis*, 4 AGRIC. & HUM. VALUES 1, 4-5 (1987).

104. Agriculture and Food Act of 1981, Pub. L. No. 97-98, 95 Stat. 1213 (codified as amended at 7 U.S.C. § 2266 (1994)).

105. See Brian F. Stayton, *A Legislative Experiment in Rural Culture: The Anti-Corporate Farming Statutes*, 59 UMKC L. REV. 679, 689 (1991).

106. See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 417 (1995).



farms, I find the majority of students quite sympathetic to the plight of family farmers.<sup>107</sup> When asked if their parents, grandparents or great-grandparents had a farm, students usually answer in the affirmative. It is my experience that when advocates of family farming are pressed about the high costs of preserving this rural way of life, they usually justify those costs by asserting that family farms are necessary to keep food costs down, or they are necessary to preserve farmland and the other attributes of rural America.

Given crushing federal deficits and the current Congressional resolve to reduce the deficit through reduction of expenditures, society must evaluate the importance of preserving the family farm. If the reason for preserving family farms is due to a romantic notion of farmers, does this view of farms justify protecting farmers at the expense of other pressing needs of society? Should funds be cut from education and health programs to allow continued funding of family farms? If significant expenditures for preserving family farms are to continue, a stronger rationale than the romantic notion of the Jeffersonian farmer is necessary.<sup>108</sup>

#### B. *Economic Justification for Family Farms*

Some argue that family farms are worthy of preservation because family farms are the best way to ensure stable and reliable distribution of the nation's food and fiber. Congress has found that the system of family farming is "essential to . . . the competitive production of adequate supplies of food and fiber" in the United States.<sup>109</sup> Perhaps the agricultural production of crops is the best example of almost perfect competition in the United States. With thousands of producers, no one producer of agricultural commodities can significantly impact prices.

The cost, however, of maintaining a large number of farms may not justify the competitive benefits. Anti-corporate farming statutes have stifled economic growth in many states maintaining them.<sup>110</sup> In fact, most agree that family farms are less efficient than corporate farms.<sup>111</sup> Those who argue that family farms have lower costs than other farms usually do not consider that

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107. A 1986 ABC News Poll found that over half of all Americans would prefer to live in a rural community if they could. *IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?*, *supra* note 36, at xvii.

108. I recognize that preserving a nation's cultural values are important. But with only three percent of the nation's citizens engaging in farming, there are probably far better ways to preserve and enhance national values of self-reliance and industry. Richard S. Kirkendall, *A History of the American Farm*, in *IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?*, *supra* note 36, at 94.

109. See 7 U.S.C. § 2266(a) (1994).

110. See Prim, *supra* note 21, at 220-21; see also Earl O. Heady, *Externalities of American Agricultural Policy*, 7 U. TOL. L. REV. 795, 829 (1976) (arguing that farm employment, purchase of inputs in the community, and off-farm income generated within the community all decline with farm size, and that income per farm would be greater with large farms).

111. See Michael Boehlje, *Cost Benefits of Family Farming*, in *IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?*, *supra* note 36, at 361.

farmers are not usually compensated for the value of their managerial skills.<sup>112</sup>

The trend toward larger farms is a market driven trend toward efficiency.<sup>113</sup> Technological advances in agricultural manufactures and biotechnology require a greater capital investment in farming.<sup>114</sup> As farming becomes more capital intensive and less labor intensive, the market encourages larger farms. The cost of producing commodities in many cases is lower with larger farms, because of economies of scale. Economies of scale in markets not subject to regulation help lower food prices. If the goal of American farm policy is to provide low cost food, barriers to larger farms are not justified.

Undoubtedly, too much concentration among producers might interfere with low consumer prices. If, for example, two or three corporations could control all of the crop production in the United States, oligopolistic conditions would preclude low prices. The fact remains, however, that there is a point between artificially maintaining the million or more small family farms and permitting oligopolistic conditions. Economists note that oligopolistic conditions do not usually occur until eight or fewer farms control fifty to sixty-five percent of output.<sup>115</sup> Oligopolistic conditions in the farming industry can be regulated like oligopolistic conditions in other industries.<sup>116</sup> While food and fiber is critical to the United States' economy and to civilization, many other industries are also important. Oligopolistic conditions can be and are regulated in other critical industries such as health care, transportation, and utilities.<sup>117</sup> If these conditions develop among agricultural producers, they also could be regulated.

Finally, the trend toward concentration in the food industry will continue, notwithstanding policies to maximize the number of producers. Food processing is increasingly being dominated by fewer processors, who take advantage of economies of scale. Large food processing and distribution companies are increasingly engaging in production farming by entering into contracts with farmers.<sup>118</sup> Therefore, consumers do not fully realize the benefits of near perfect competition at the production level. Middlemen are increasingly concentrated, increasing the possibility of price collusion at the processing, wholesale, and retail levels.

### C. Preserving Farmland and the Nature of Rural America

Increasingly, advocates of the family farm argue that preserving the family farm is necessary to preserve rural America. One common argument

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112. *Id.* at 366.

113. *Id.*

114. *Id.* at 370.

115. Luther Tweeten, *Food for People and Profit*, in *IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?*, *supra* note 36, at 253.

116. Antitrust and unfair competition laws are designed to guard against anti-competitive concentration of economic power. *See, e.g.*, 15 U.S.C. § 2 (1994).

117. *Id.*

118. Smith, *supra* note 98, at 1554.

is that family farmers pass down farmland to subsequent generations. Hence, family farmers have more incentive to preserve farmland for the next generation.<sup>119</sup> These advocates argue that farmers have more incentive and a stronger commitment to use better conservation practices and fewer potentially harmful farm chemicals.<sup>120</sup> Because family farmers are often willing to work for less compensation than their corporate counterparts, an argument could be made that they rely more on labor than chemicals to achieve profitability. There is no doubt that chemical use and other unsound farm practices endanger not only food but also the environment. Farmers are the largest source of nonpoint source water pollution in the United States.<sup>121</sup>

Others have observed that, in practice, there is no empirical evidence to suggest that family farms are better stewards of the land than corporate farms.<sup>122</sup> In recent decades, market forces have resulted in farmers specializing in one or two products.<sup>123</sup> The farm of the turn of the century was a relatively closed environmental system.<sup>124</sup> Crops were rotated; silage and feed were grown on the farms to support livestock; waste from livestock was used as fertilizer.<sup>125</sup> Recent trends toward product standardization and production farming have eliminated much of the diversity of activities in the closed system.<sup>126</sup> The result is that farmers face the same difficulties as larger corporate operations in devising economical ways to protect the environment.<sup>127</sup>

Society has a great interest in protecting the safety of its food and the quality of its air and water. If society relies primarily on the goodwill of its corporate or family farmers, it will assume an undue risk. Economic pressures often discourage conservation and encourage excessive chemical use.<sup>128</sup> Different family farms and different corporations place different values on environmental protection. Direct regulation of farming practices, combined with tax and other incentives, may be a more efficient and reliable way of protecting the environment. Many argue that even if the planning horizon of a family farm is longer than a corporate farm, it is not long enough.<sup>129</sup> A farmer's horizon may be to the next generation, but in many cases, an even

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119. Carol Hodne, *We Whose Future Has Been Stolen, in IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM?*, *supra* note 36, at 54-55; *see also* MARTY STRANGE, *FAMILY FARMING: A NEW ECONOMIC VISION* 35, 42 (1988).

120. Hodne, *supra* note 119, at 54-55.

121. George A. Gould, *Agriculture, Nonpoint Source Pollution, and Federal Law*, 23 U.C. DAVIS L. REV. 461, 463-65 (1990); *see also* John H. Davidson, *Thinking About Nonpoint Sources of Water Pollution and South Dakota Agriculture*, 34 S.D. L. REV. 20, 22 (1989) ("The domestic agricultural industry is a principle source of non-point pollutants.").

122. Boehlje, *supra* note 111, at 368.

123. Guadalupe T. Luna, *Forward: Changing Structures and Expectations in Agriculture*, 14 N. ILL. U. L. REV. 609, 610 (1994).

124. *See* Heady, *supra* note 110, at 816.

125. *Id.*

126. *Id.*

127. *Id.* at 815-17.

128. *Id.* at 818.

129. Prim, *supra* note 21, at 205-06.

longer horizon is required. Once land is contaminated or soils are depleted, it may take natural processes thousands of years to regenerate these resources.

The best way to preserve clean and open rural land is to do so directly. Environmental regulations ought to reflect our society's collective norms as to how much chemical usage and soil erosion is acceptable. If society values clean, open spaces, and a rural ambiance, Congress and legislatures could protect those spaces through appropriate farmland preservation laws.

#### V. LESSON FROM MONTANA HIGHWAY 200

Many of my opinions concerning preservation of small family farms were formed after years of observing the countryside along Montana State Highway 200. Traveling Highway 200 is a great lesson in agricultural history. Stretches of this highway are so sparsely populated that truck drivers wave to drivers going the opposite direction. If you travel from east to west, you enter Montana on Highway 200 from the high plains of the Dakotas. One cannot help but notice the large number of well preserved abandoned homesteads, in dry, sparsely populated eastern Montana. One passes several ghost towns, or near ghost towns, that once served the rural farm population. Farms and ranches are now measured in thousand acre increments in eastern Montana, unlike the old 320 acre measurement of a homestead.<sup>130</sup> The number of farms and ranches in one county in the heart of eastern Montana has, over the last fifty years, decreased nearly seventy-five percent and farm size increased nearly sevenfold.<sup>131</sup> Huge tractors, much bigger than in the Midwest, are needed to economically harvest the immense wheat fields near Great Falls. As one passes the many abandoned small homesteads and ghost towns, one cannot help but wonder what it would have cost society to preserve these thousands of homesteads as viable economic units. While significant pain and dislocation likely occurred as these small economic units failed, the cost to society to maintain these units would have been tremendous. The subsidies paid to farmers in order to maintain these small homesteads would have been nothing more than farmer welfare programs. Farmers on welfare would be inconsistent with Jefferson's notion of self-reliant farmers contributing to the general prosperity and fabric of society.

As one travels State Highway 200 into western Montana and into the mountains, the mountainsides are often logged in a checkerboard pattern. Each square of the checkerboard is one square mile. To encourage settlement westward, the government gave the railroad land in a checker board pattern. It was government policy that initially encouraged homesteading, even though the homestead units were too small to support farming in the long run.

One learns other lessons from traveling Montana Highway 200. Much of the rangeland is never plowed virgin rangeland. It is dry and, as a general rule, not profitable to irrigate. On occasion, virgin rangeland is interrupted by large fields of weeds. After talking to locals, I learned these fields of weeds

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130. JOHN A. ALWIN, *EASTERN MONTANA: A PORTRAIT OF THE LAND AND ITS PEOPLE*, 60, 65 (1982).

131. *Id.* at 103.

were once plowed to raise wheat. As fragile as the land was, much of the land produced wheat for only a season or two. That land is now nearly worthless. It is nothing more than a field of weeds. Many of the farmers who chose to plow the land were family farmers. Corporate farm operations are not the only ones that make short sighted decisions.

The example of Montana State Highway 200 is telling. As the agricultural economy changed, so did the farm. Despite these changes, family farms, while larger, still predominate. Because Montana is not subject to the pressures of urban development, most land used in agriculture one hundred years ago is still used for agriculture today. Government policies, however, could not preserve those small Montana homesteads against the tide of change in the farm economy. Current governmental policies should accommodate the continuing change in the farm economy because that change yields new efficiencies. Family farms along Highway 200 will survive for the next hundred years, but only if they are permitted to adapt to the changing farm economy. Farmers and ranchers along Highway 200, however, are more fortunate than many farmers. Montana State Highway 200 has preserved its rural character because of the lack of urban pressure to convert farmland to urban uses. If rural land in other more densely populated states is to be preserved, farmland preservation measures are necessary.

## VI. CONCLUSION

State and federal policies designed to protect family farmers have had mixed results. State anti-corporate farming statutes serve to depress land prices for the family farm and encourage food processing companies to locate in other states. Federal policies are tremendously expensive and have been ineffective in maintaining both the number of family farms and the small size of farms. One of the reasons for the general ineffectiveness of these policies is the lack of clarity about why governments should protect the family farm.

If the dominant motive for protecting the family farm is to preserve the romantic notion of the Jeffersonian family farmer, it is questionable whether society has the resolve to make the investment necessary to fulfill Jefferson's vision. If government policy should preserve small family operations because of the intrinsic merits of these operations, continuing huge subsidies will be required. While most Americans romanticize about family farms, it is probably quite different to eliminate or reduce funding for education programs or other social programs to support the romantic notion of the independent family farmer. To protect family farms sufficiently would require a huge reallocation of resources from other sectors of the economy to subsidize the family farmer. It is unlikely most Americans would allow that reallocation.

The best reason to protect the lifestyle of the family farm is to protect the open and undeveloped rural countryside. Open spaces are part of the United States heritage and are worthy of protection. Protection of open spaces ensures that future generations will have sufficient farmland to produce necessary food and fiber. Just as countries in Europe have recognized the



intrinsic value of farmland and open spaces,<sup>132</sup> many Americans are also coming to that realization. Farmland preservation statutes and right to farm statutes in the United States are a first step toward achieving farmland preservation.

If farmland preservation is the reason Americans really want to preserve family farms, state and federal legislation should be tailored more directly toward preserving farmland. Family owned farms do not necessarily preserve farmland and corporate farms do not necessarily destroy farmland. Policy-makers, instead of romanticizing the family farm with empty rhetoric, should begin to debate seriously which policies most effectively preserve farmland. The public policy issues are undoubtedly difficult when choosing between appropriate schemes to preserve farmland. Should governments focus programs on purchasing development rights from landowners, or should tax incentives be the cornerstone of preservation programs? Should the government compensate farmers if property values decrease because of restrictive zoning ordinances? Are Right to Farm laws effective in protecting the rural/urban interface? These are difficult questions for policymakers to decide. Stripping the rhetoric of preserving the family farm from the debate may be the first step in effectively addressing farmland preservation policies.

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132. See Terence J. Centner, *Preserving Rural-Urban Fringe Areas and Enhancing the Rural Environment: Looking at Selected German Institutional Responses*, 11 ARIZ. J. INT'L & COMP. L. 27 (1994).

