

**Right to Farm Laws: A Thematic Analysis**

by

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## Abstract

Sociological research has devoted scant attention to the state-specific laws and their impact on agriculture and rural communities in the United States. This proposal analyzes Right-to-Farm laws, statutes that exist in every state with the proposed purpose of protecting agricultural operations from nuisance suits. This thesis identifies shared and divergent themes in Right-to-Farm and develops a Corporate Agriculture State Spectrum to highlight which statutes are more accommodating to industrial agricultural operations. This research is heavily grounded in legal literature and agrifood studies. I use a political economic framework to understand the purpose and intention of these, and contribute to literature on corporate agriculture.

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## List of Abbreviations

CAFO      Confined Animal Feeding Operation

RTF      Right to Farm

TNC      Transnational Corporation



## **Right to Farm Laws: A Thematic Analysis**

### CHAPTER ONE: INTRODUCTION

In 2006, six plaintiffs were awarded \$4.6 million over complaints of hog odors produced by one of Premium Standard Farm's confined hog feeding operations. This lawsuit, filed in 1999, turned out the largest settlement in a hog farm odor complaint. Years later, in March of 2010, a decision by a southwest Missouri jury was made for Premium Standard Farms to award \$11 million to seven plaintiffs due to odor complaints. The operation based in Gentry County processed about 200,000 hogs annually and its operations were said to damage the use and enjoyment of neighboring property. Premium Standard Farms appealed the verdict. In 2011, the Missouri Court of Appeals denied this claim and maintained the original verdict. Premium Standard Farms then threatened to leave the state of Missouri if the filing of nuisance lawsuits continues against their sites. In an effort to dissuade the company from leaving, Gov. Jay Nixon signed a law limiting the payouts to people filing nuisance suits against livestock farms to prevent neighbors from filing repeated lawsuits for the same problems on the same farms.

This story is an instance where the state intervened to accommodate the presence of corporate agribusiness through the creation of laws. Right to Farm (RTF) laws were created in all 50 states throughout the 1970s and 1980s to limit the instances under which an agricultural operation can be deemed a nuisance (Hamilton and Bolte 1988:101). These laws surfaced in response to concerns about the diminishing farmland base and the threats to agriculture by inappropriate private and public nuisance actions which adversely affect the viability of farms (Hamilton and Bolte 1992:101). RTF laws attempt to diminish the threat to normal farming practices posed by nuisance litigation and prohibitive state and local government regulation.

Many perceive RTF laws as an important component of any farmland retention policy (Hamilton 1988:99), although they may have become instances where the state prioritizes the right of corporate agribusiness over the public.

This paper distinguishes family-based corporate agricultural operations from nonfamily corporations. Global agribusiness firms have established operations in small, remote rural communities while representing large, commercial clientele (Lobao and Stoffernan 2008:220). Mentions of the corporation in this paper are referring to non-family corporate ownership of agricultural operations. Operations owned by these entities are typically structurally different and vertically aligned, distinguishing them from farms owned by family corporations (Welsh, Carpentier, and Hubbell 2001:544). Scale is another distinguishing factor. Language in RTF laws alludes to larger-scale operations which implies the exclusion of the traditional family farm. Aside from their purported efficiency, farms owned by corporate agribusiness firms have been cited for negative social and environmental impacts, making them a less desirable mode of production (Constance and Bonanno 2000; Constance and Bonnano 2001; Welsh, Carpentier, Hubbell 2001; Lobao and Stoffernan 2007). RTF laws in some states encourage this seemingly more efficient form agriculture despite its downfalls.

Scholars have argued that over time Right to Farm laws have shifted away from protecting family farms (Laurent 2002:240). Today, the majority of Right to Farm laws focus on enacting laws that protect agribusiness (Hamilton 1998:112). In practice, these laws include more provisions that protect large operations. Hamilton (1998:112) mentions that this occurs for the practical issue of what size operation is most likely to generate nuisance complaints. Larger facilities, especially if owned by outside investors or corporations, are more likely to be the target of citizen resistance.

This study conducts a thematic analysis of all 50 fifty RTF statutes to provide a comprehensive explanation of predominant aspects of these laws. I conduct a second phase of analysis to extract language implying the protection of large-scale operations to highlight the state's role in encouraging the presence of corporate agribusiness in farming. Corporate agribusinesses have established control over the state through their dominance of markets, resources, and the production process. The state has lost its ability to mediate conflicts between the corporation and the public (Constance and Bonanno 2000:443), and in some states, RTF laws demonstrate this. The purpose of this paper is to address the gap in rural sociology literature on RTF statutes. In the second phase of analysis, a political economic framework is used to highlight themes and discourse pertaining to the protection of corporately owned agricultural operations.

## CHAPTER 2: REVIEW OF THE LITERATURE

This review discusses the state's use of the corporation to shape agriculture, which is a mainstay of modern agricultural production. I begin with the period most relevant to RTF laws, the Farm Financial Crisis of the 1980s. Rodefeld (1974) argued that the traditional family at the time was disintegrating and was being replaced by corporate-industrial farms. As this shift in farming scale and ownership emerged, so did nuisance suits against neighboring operations. RTF laws were first drafted in 1978 as the Farm Financial Crisis came about (Reinert 1998:1695), demonstrating the interaction between the law and the changing state of agriculture.

Following the Farm Financial Crisis, transnational corporations became prominent in the realm of agriculture and used vertical integration to maximize profits and efficiency, morphing the former meanings of animal husbandry and often overlooking family labor. RTF laws have no limitations for foreign investment, which makes operations owned by TNCs also protected by these statutes. This allows for more vertical integration, perpetuating the disintegration of family farms. Instances of human health and environmental impacts are also considered to contribute to the argument that RTF laws are protecting such actions.

I also review rural sociological research on anticorporate farming laws, which unlike RTF laws, have received some attention. I clarify their implications and meaning relative to RTF laws. Anti-corporate farming laws place ownership restrictions on corporately-owned operations to ensure that there is limit to how much land they can own for farming purposes. These exist in eight states that have been known to have high numbers of industrial agricultural operations. These laws, particular to land, do not capture industrial farming operations, which often do not need large amounts of land. From here, I discuss the available literature on RTF

laws, which predominately rests in legal studies. My literature review offers a rural sociological perspective on the components of these laws, which has not yet to appear in the literature.

### The Farm Financial Crisis of the 1980s

The Farm Financial Crisis of the 1980s was a major contributor to the growth of industrial agriculture in the United States. The integration of US agriculture into larger national and economic systems made family farmers vulnerable to outside economic and political influences (Barnett 2000). Concern amongst rural sociologists developed over whether technological change in agriculture was marginalizing family farmers and farm workers in the US (Buttel, Larson, and Gillepsie 1990). These technologies were adopted as farm scale and corporate ownership increased. Larger agricultural operations established their dominance in the US market as family farmers began to abandon the idea of farming as a livelihood strategy (Meyer and Lobao 1997:204). As this occurred, it is important to consider the state's role in that shift.

Brewster et al. anticipated that industrial agriculture would become more concentrated at the turn of the century (1983:671). This prediction held true. Farm and nonfarm production became integrated into a single system that integrated different organizational forms of production (Buttel, Larson, Gillepsie, 1990). States developed RTF laws beginning in the 1980s which reflected this shift, in order to protect larger agricultural operations from nuisance suits. The development of definitions of agricultural operations in RTF statutes illustrate how courts have expanded the definition of farm and agriculture exemptions in nuisance suits, leading to more protection of operations falling under the preset definitions (Branan 2004:8). Family farms disintegrated as corporate agribusinesses employed the use of labor- and land-saving technologies, aspects that were considered quintessential to running an economically successful operation.

## Transnational Corporations

When considering the overall culture of corporate agribusinesses, it is best to look at the larger picture of corporations, and then consider the inner workings of corporations relative to industrial agriculture. Outlining the economic factors and business strategies can give light to the social implications that corporate structures hold for communities and the classic “agrarian” image of farming. In the late 1700s, corporations were initially used by governments to perform public services. By the mid-1800s, corporations like the railroad had transformed from quasi-public agencies into a private entity that was protected from government accountability and legally accountable to none but its owners (Roy 1999:41). Welsh argues that the emergence of the publicly owned corporation substantially altered the nature and understanding of the relationships between ownership and control of a firm and the knowledge of how the firm operates (1998:202). The government established and capitalized corporations by defining what they were and what particular rights and responsibilities that owners, managers, laborers, consumers, and citizens could legally exercise relative to the corporation which yields private power (Roy 1999:42). An example of this can be found through RTF laws which define the make-up of a farming operation. It then dictates the rights of neighboring individuals and communities in relation to the operation.

It is important to study the division of power between public and private sectors because it frames the structure of authority and accountability in the case of agricultural operations. RTF laws stipulate limitations on the responsibility of operations for various types of nuisances. The division of power between public and private sectors is important because it frames the structure of authority, accountability, and power (Roy 1999:43). The state has been referred to as the guardian of society by Hackett and Moffett (2016:312), who suggest that government should

play a more definitive role in holding corporations responsible for malfeasances. The emerging economic implications of that statement bring RTF laws into question.

Other factors that fuel the growth of agricultural operations can be the corporation's relationship to the polity that enable them to profoundly influence legal patterns. Bonanno and Constance discuss what methods transnational corporations (TNCs) employ to circumvent state laws and federal regulations to maximize revenues (2001:7). Resistance to industrial farming has influenced TNCs to be even more proactive in their economic and social advancement. Marketing strategies include the portrayal of a "green" image that indicates adherence to good practices of environmental stewardship (Bonanno and Constance 2001:12). Each state government decides that agricultural operations will be protected if they are in conformance with generally accepted management practices, including the proper disposal of waste. When TNCs market themselves in a manner that follows those guidelines, it undermines any opposition that presents any case of environmental detriment caused by an industrial farm.

These corporations have a heightened ability to move around the world in search of favorable production sites (Harvey 1990), which increases their bargaining power over countries that are essentially competing for their business (Bonanno and Constance 2001:13). This yields the control of environmental issues over to TNCs, shifting them from the political arena to the administrative realm. Kneen highlights that national economies are judged by the health of their corporations as opposed to that of their citizens (1999:162), which effectively gives corporations the power over humans to influence decisions in legal arenas. Agribusinesses have been able to remove citizen participation from the environmental decision-making process because of the connections they have formed with the polity (Bonanno and Constance 2001:17). The state has lost its ability to mediate conflicts between the rural community and TNCs. It has transformed

from the role of overseer to a facilitator of TNCs' operational requirements (Bonanno and Constance, 2000:443).

Other factors that fuel the growth of agricultural operations can be the corporation's relationship with the polity that enable them to profoundly influence legal patterns. Bonanno and Constance argue that TNCs maintain significant powers which allow them to avoid the laws and regulations of nation-states. They discuss what methods TNCs employ to circumvent state laws and federal regulations to maximize revenues (2001). Resistance to industrial farming has influenced TNCs to become proactive in their economic and social advancement.

#### Vertical Integration

Corporate agribusinesses deliberately restructure food systems to ensure higher yields and profits. Many have analyzed the increase of average farm scale, vertical integration of farming with off-farm businesses, and higher propensities for contract farming (Lobao, 1987; Lobao and Meyer, 2001; Welsh, 1998) as a part of this restructuring that has characterized the development of US agriculture in the 20<sup>th</sup> and early-21<sup>st</sup> centuries. These central aspects have given corporate agribusinesses the ability to industrialize agriculture and displace the traditional family-labor farm (Lyson and Welsh, 2005:1479). This is done through the development of a tightly choreographed supply chain in which farmers sign a contract with a major food company to deliver pre-determined farm products on a precise schedule, differing from the commodity agriculture of the past (Lobao 1987:464). Transnational food corporations have coordinated their supply chains to include every aspect of production, processing, and distribution of food, making them dominant fixtures in the US food systems and economy.

One distinct aspect of corporately owned agricultural operations is their scale. Hart states that "size brings economic power and this particularly significant when set against the structure



of the farming industry with its large number of relatively small producers. Some of the most dramatic changes in agricultural marketing “reflect the power of these new markets to extract their requirements from the farming industry” (Hart 1992:176). This has implications for labor, profit gained, and location of agricultural operations. Small-scale producers balance the distribution of their operation’s labor requirements (McMichael 2016:1), while larger scale operations involve the increased use of hired labor on farms (Lyson and Welsh 2005:1479). Lyson and Welsh further explain that because processors and retailers seek large quantities of standardized and uniform products, they have substantial control over how and where agricultural production takes place (2005:1480). RTF statutes generally give the power to the manager or owner to determine the locality of the farm. Larger scale operations’ affinity to concentrate farming systems implies that they require vast plots of land for amped up facilities. They link back to the vertical integration of corporations into farming that involve contract farming arrangements, absentee ownership, and operation by farm managers as opposed to family members (Lobao and Stoffernan, 2008:222).

#### Corporate Influence on the Definition of Family Farm

The law is not the only strategy used to reorganize family farms into corporate agribusinesses. The organizational structure of corporate agribusiness fuels the development of dependency that eliminates the traditional farmer’s self-reliance, self-provisioning, and autonomy by requiring that they sign on as contract farmers and purchase certain products to fulfill their technological needs and production requirements (Kneen, 2005:163-165). Bell, Hullinger, and Brislen (2015) speak to corporate marketing strategies of the agribusiness industry that further separates the farmer from their operation. These methods manipulate farming masculinities to convince conventional farmers to purchase corporate machinery or

technology. Pfeffer (1992:5) calls this a turn to “appropriationism,” which is defined as the process by which corporate agribusiness replaces natural processes with industrial products. This provides transnational corporations with the economic prerogative to experience continuous success in the market. This gives way to a deskilling process where industry replaces laborers with technologies that reduce labor costs and maximize profits (Bell, Hullinger, and Brislen, 2015:286). This falls in line with Kneen’s (2005:163) statement on corporate agribusiness’ elimination of self-reliance and self-provisioning. The reorganization of agriculture places an emphasis on the use of machinery and technology, and involves the use of marketing materials to portray an idealized image of a businessman farmer who collaborates with corporate representatives (Bell, Hullinger, and Brislen, 2015:299). This prevents the traditional farmer from exercising their autonomy and determining their own production techniques. It deeply entrenches the conventional farmer’s reliance on agribusiness products and further alienates them from their land or operation.

In particular, the limited liability corporate (LLC) structure in agriculture deflects much of the responsibility for pollution, ownership, and health in various forms of farm commodity production (Ashwood, Diamond, and Thu, 2014:2). Corporations can form and collapse with ease under LLC governance structures, leaving the assets of actual people intact, while the environmental and community implications can be dire. While this has strong implications in pollution that has impacts on public health and the environment, there is very limited research in the field of rural sociology pertaining to the underpinnings of limited liability employed by corporate agribusinesses. Ashwood, Diamond and Thu bring to light the repercussions for legal liability in concern to subsidiary LLCs (2014:7). This mechanism shields corporate

agribusinesses from receiving the blame on environmental problems and is one of the facets that makes them immune from local protest.

### Confined Animal Feeding Operations

A major player in RTF laws are Confined Animal Feeding Operations (CAFOs). CAFOs are a product of vertical integration that allow for year-round confinement of animals in large-scale industrial facilities or CAFOs. Such facilities keep animals alive in small faces by adding vitamins to feed rations, using antibiotics and growth hormones to fight disease outbreaks, and genetic selecting for the quickest fattening animals under such conditions (Imhoff, 2010). The goal of these operations is to produce more in less space, which, Imhoff notes, has eradicated the traditional practice of animal husbandry (2010). This contract between the animal and the farmer has been replaced by the contract between the farmer and the agribusiness, effectively estranging farmers from their own operation. The existence of CAFOs has been fueled by corporate needs to homogenize production, satisfy processing sector demands, and reduce costs (Constance and Bonanno, 2001:9). Industry and corporate agribusiness has justified CAFOs as an effective manner to reduce production costs and bring jobs to economically depressed areas (Welsh, 1998). This rhetoric has contributed to their appeal in the political sector, allowing owners to select favorable conditions of production with respect to state regulations, socioeconomic incentives, and political postures (Constance and Bonanno, 2001:9).

Beyond legal implications, the effects of consolidated farming on the environment have been thoroughly studied. Agricultural residues and run-off contaminating water and food supplies have become a matter of public health concern affecting both urban and rural populations (Lowe 1992:10). Environmental consequences of industrial agriculture have also lead to an increase in Safe Drinking Water Act violations, air quality problems, increased risks of

nutrient overload in soils (Lowe 1992:9). CAFOs have been pinpointed for their impacts on water and air quality that have affected the public health of those living in proximity (Radon et al., 2006; Wing et al., 2008; Mirabelli et al., 2006). Nuisance suits over odor annoyance also include reports of asthma symptoms and nasal allergies in areas concentrated with animal houses. Radon et al. focus on environmental epidemiology to determine exposure and outcomes, however they conclude that CAFOs may contribute to the burden of respiratory disease among neighbors given controlled conditions (2007:300). Using objective environmental measures gives more insight into possible contributing factors over commonplace respiratory issues. RTF laws limit the ability of individuals to sue for nuisances including health impacts, regardless of whether proof of causation exists or not.

In addition to air quality, the use of antibiotics and growth hormones to fight disease outbreaks among livestock in CAFOs has intensified the risk of new, more virulent or resistant microorganisms (Imhoff, 2010; Gilchrist et al. 2007). This research has implications for raising livestock in close proximity with frequent and unregulated use of antimicrobial growth medicine. Gilchrist et al. (2007:313) suggest that these substances be restricted to prescription only for human and veterinary use. This continued use of these agents promulgates the risk of an influenza pandemic and researchers recommend that regulations be developed to restrict the co-location of CAFOs and set appropriate separation distances for animals (Gilchrist et al., 2007; Gray and Baker, 2010).

RTF laws generally state that an operation will not be protected in the case of any instances of public health threats (please see my Chapter 4 for more details). The aforementioned studies connect CAFOs to an array of adverse health effects, but limited liability clauses adopted by these operations have protected them from being held accountable (Ashwood, Diamond, and

Thu, 2014:7). This legal mechanism, along with corporate agribusiness' involvement in the polity (Constance and Bonanno, 2001:11), have presented a challenge to those filing nuisance against CAFOs. This research discusses the clauses in RTF laws that may also compound this dilemma.

Half the states that mention pollution reference surface and groundwater quality, and that any contamination of these bodies will result in an operation being deemed a nuisance (Please see my Chapter 4). Heaney et al. investigate microbial water quality in surface waters proximal to swine CAFOs and took place over a year in North Carolina (2015:2). North Carolina's RTF statute references that it shall not affect the right of anyone to recover damages for any injuries or damages sustained on account of any pollution of the water of any stream (106-107 subsection b). Testing of 187 surface water samples showed high fecal indicator bacteria levels at both up- and downstream sites, and some sites had samples that exceeded state and federal recreational water quality guidelines for E. Coli and Enterococcus (Heaney et al. 2015:6). While the RTF law does not take accountability for handling instances of pollution, Braunig (2005:1505) states that the existence of CAFOs post-dates the nation's environmental laws, making them exempt from this form of regulation. To prove that pollution is tied directly to the operation would require bringing CAFOs into the regulatory fold. Results of Heaney's et al. study suggest that diffuse and overall poor sanitary quality of surface waters exist where swine CAFO density is high (2015:7), however this only shows correlation and legal arenas require proof of causation.

#### Anti-Corporate Farming Laws

A specific example of an interaction between laws and the corporate agribusinesses is present in the development and evolution of anti-corporate farming laws. While these laws have different implications than RTF laws and are only adopted by eight states, they serve as a frame

to analyze the state's mediation between the corporate agribusiness and the public. Anti-corporate farming laws provide that corporations or other investment-type entities shall not engage in farming, nor shall they directly or indirectly own or otherwise acquire interests on agricultural land (Pedersen and Meyer, 1995:45). However, Welsh, Carpentier, and Hubbell (2001:554) find that anti-corporate farming laws create a hierarchy of regulation of ownership arrangements in agriculture, making them less restrictive than their title implies. Lyson and Welsh (2005:1482) note that these laws are not intended to impede of the changes in US agriculture, meaning that they are not preventing the vertical integration of farming operations. They simply limit the acreage under non-family corporate ownership arrangements (Welsh, Carpentier, and Hubbell, 2001:548).

The common theme in the literature on anti-corporate farming laws centers around rural community welfare (Lobao and Meyer, 2001; Lobao and Stoffernan, 2008; Lyson and Welsh, 2005). This work seeks to support the Goldschmidt Hypothesis (Goldschmidt, 1947), which maintains that large-scale, concentrated farming has negative effects on rural communities. The literature further contributes to the understanding that anti-corporate farming laws acts as a form of mediation for farm scale and mitigate potential negative impacts of large-scale farming on rural communities (Lyson and Welsh, 2005; Lobao and Stoffernan, 2008). The limitation of this research pertaining to agricultural law is that it only applies to states that include anti-corporate farming laws. Restrictive legal language on large-scale farming operations is absent from forty-two remaining states. RTF laws are present in each state and it is essential to draw out what sort of implications they hold for states that do not have any sort restrictions on corporate agribusinesses. Additionally, RTF laws cover more than just ownership arrangements, which is the focus of anti-corporate farming laws. They define which operations receive provisions under

each statute. In order to provide an understanding of them similar to the understanding of anti-corporate farming laws, they need to be studied in their entirety and subsequently broken down to understand the implications of statutes' components.

### Right to Farm Laws

RTF laws were originally intended to regulate instances in which an individual or municipality could file a nuisance suit against preexisting agricultural operations (Reinert, 1998:1697; Hamilton, 1988). They have since changed from their original intention, which at first read as preventing urban encroachment from affecting the viability of agricultural operations. Since that time, Centner (2006) and DeLind (1995) discuss how amendments to state-specific statutes have placed more restrictions on those desiring to file a nuisance. These limitations give large-scale operations the advantage when conducting agricultural practices, as most of them are protected under these statutes. Grossman and Fischer (1983:108) identify that in a private nuisance, court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally weigh the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors: the degree of harm and its duration, the social value that state and local law places on both farming and the type of neighboring use that has been harmed, the suitability of the agricultural uses to the locality, and the ease with which the neighbor could avoid the harm. The legal literature on RTF laws discusses whether this a fair process with respect to the community or neighboring individuals, and conclude that these laws favor the operation (Centner, 2006; Grossman and Fischer, 1983; Hamilton and Bolte, 1992; Haroldson, 1982; Norris, Taylor, and Wyckoff, 2011; Schroeter, Azzam, Aiken, 2006).

Legal literature has discussed the implications of RTF laws for the current state of farming. Much literature discusses the limitations that these statutes place on the operation or the plaintiff (Hamilton 1988; Centner 2006). In specific cases, RTF statutes provide blanket immunity for agricultural operations in the case of expansion, time in operation, and stewardship, although most of this literature is state specific, and none of it provides a comprehensive national review (Center, 2006; Adelaja and Friedman 1999). My study builds off of the groundings provided by legal literature and studies on corporate farming to highlight the advantage that is given to industrial agricultural operations under the provisions determined by the state through a national analysis of RTF laws. A national review of RTF statutes has not been done since Hamilton (1992), and this did not use a rural sociology framework.



## CHAPTER 3: METHODS

This study used a two-phased qualitative design: a thematic analysis of RTF statutes and the subsequent development of a Corporate Agriculture State Spectrum. This contributes to rural sociology scholarship on the law and its impact on the state of farming in the US. Coding was done through NVivo, a qualitative software designed to organize and analyze data such as the legal documents used in this study. Themes were quantified to observe trends across states which informed the Corporate Agricultural State Spectrum. This is used as an explanatory framework presented in the second results chapter to provide how select themes denote the presence of corporate agribusiness in farming. This clarified the relationship between RTF discourse and industrial farming the United States.

### Sampling and Data Collection

This research uses purposeful sampling in accordance with Patton's (1990:169) recommendation to choose "information-rich cases for study in depth." As these laws have implications for the current state of agriculture and rural life in the US, researchers aimed to provide a comprehensive explanation of each statute through themes. A purposive sample of all 50 RTF statutes were obtained from the legal statutes database in LexisNexis and states' individual legislative websites when necessary. These were found through searches using the keywords "agricultural nuisance," "right to farm," and "farmland preservation." Not all statutes were titled "Right to Farm." Some were found under general nuisances, tax codes, or land/private property clauses, but the general theme is farming and limiting liability. These documents were imported to NVivo to begin analysis.

### Data Analysis

The data analysis was conducted by the author and Loka Ashwood, the advisor for this research. Early data analysis began during the collection of RTF laws. Open coding revealed emergent themes applicable to a majority of statutes. Phase one of the analysis includes the development of themes which organized statutes in NVivo, allowing for researchers to compare themes across states. A deeper understanding of themes developed throughout the analysis, and led to second phase of analysis: the development of a spectrum that highlights aspects of corporate agribusinesses in these statutes.

#### Phase one: Thematic analysis

Themes were developed deductively from existing literature and inductively through open coding of the RTF laws. This involved the development of phrases and words to capture meanings of portions of the data. A total of seventeen themes were used to classify sections and phrases in each statute: General Nuisance, Commodity, Definition of Agricultural Operation, Timing of Operation, Change in Operation, Pollution, Labor, Removal of Local Governance, Stewardship, Preservation of Farmland, Litigation Fees, Ownership, Human Health, Agricultural/Industrial Areas, Energy, University, and Animal Health. The themes are discussed and quantified to demonstrate trends among states in Chapter 4.

A general codebook was created in NVivo for thematic analysis. Statutes were classified as a source which creates a folder in NVivo that contains each case. States were made a case within the Statutes source to make them separate entities that would be coded individually. Attributes, a classification function on NVivo, were added to each state that categorized them based on regions of the US (Northeast, Southeast, Midwest, Southwest and Northwest). Once each statute was uploaded and classified, the process of coding began.

Both researchers came from different educational backgrounds which affected interpretations of statute discourse. To reduce error and ensure coding consistency, researchers first coded Alabama's statute individually on paper, then compared codes to note what themes were similar and divergent between the coders. We then revised our respective codes and then met again and began coding in Nvivo, following the statutes alphabetically. At that time, we ran a coding comparison query to see how our codes compared and to increase congruency. NVivo assesses inter-coder reliability through a Kappa Statistic function, which compares codes done separately by researchers. Once we obtained a kappa score of above .7, which is excellent, we began coding states separately. We still continued to check our congruency by revisiting every fourth state to test our Kappa score. Codes receiving less than this were discussed and revised. In the case we had been coding distinctly, each of us relatively went back and changed coding on other states once we had agreed on a particular theme. Once consistent satisfactory kappa scores were achieved, coders assigned themselves 4 statutes a week to code individually, while both shared the coding of a fifth state.

The thematic analysis generated similarities and differences in discourse across states. These are broken down into detailed contexts under select themes. Axial coding (Charmaz 2006) was used to group related phrases into one context that demonstrated trends within themes. In some cases, there were similarities in discourse used among states, while in others, the rhetoric used was different but the meaning was consistent with provisions in other statutes. For example, with reference to the removal of local governance in Kentucky vs. Michigan:

Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make an agricultural or silvicultural operation or its appurtenances a nuisance per se, or providing for abatement thereof as a nuisance, a trespass, or a zoning violation in the circumstance set forth in this section shall be void. However, the provisions of this subsection shall not apply whenever a nuisance results from the

negligent operation of any such agricultural operation or any of its appurtenances. (Kentucky Statutory Limitations and Actions. 413.072.)

Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act. (Michigan Right to Farm Act. Section 4. Paragraph 6).

While these two statutes use different phrasing, these paragraphs imply the same meaning: that any local ordinances are voided with the enactment of these statutes. They both remove the municipality's right to file an ordinance that would affect the operations of a farm. Language used in this manner fit under the context of "A municipality may not adopt any ordinances against the agricultural operation" (as seen in Chapter 4). This is an instance where sections of statutes use different language that means the same thing. For legal purposes, each word has significance to the overall meaning of the provision. However, to generate trends in the context of rural sociology, different phrases that generally mean the same were grouped under the same context in the results. The different contexts under each theme are quantified and presented in table form in Chapter Four.

#### Phase two: Development of the corporate agriculture legal spectrum

This first phase helped to better understand the relationship between the state and corporate agribusiness, and provide a comprehensive understanding of what statutes consisted of and how they diverged from each other nationally. This then informed the second phase of my research, developing the corporate spectrum. I determined based on my analysis of these codes that the laws were enabled corporate agribusiness. To demonstrate this relationship in an empirical

model, pertinent themes and literature on corporate agriculture are used to develop a spectrum that I title the “Corporate Agriculture State Spectrum.” This uses the statutes to demonstrate the relationship between the state and corporate agribusiness. It makes use of restrictive language and definitions that place the agricultural operations at an advantage over the rural community. It also includes language that gives precedence to large-scale operations. A subsequent data analysis of the themes alluding to corporate agribusiness informed the development of criteria to rank states based on the use of rhetoric alluding to corporately-owned industrial agricultural operations. Themes used to develop the criteria were: Agricultural/Industrial Area, Timing of Operation, Change in Operation, Stewardship, Pollution, Definition of Agricultural Operation, Labor, Litigation Fees, Farmland Preservation, and Removal of Local Governance. The model of the spectrum orders states from most-to-least lenient towards aspects of corporate agribusinesses.

The criteria are as follows:

1. The statute allows for the development of an agricultural or industrial area that gives governance rights to the operator.
2. The failure to specifically mention pollution when classifying what sort of operation constitutes a nuisance.
3. The use of the phrase “best management practices” or “generally accepted management practices” without reference to an explicit definition or any regulations.
4. The statute removes the right for a local government to file a local ordinance against an agricultural operation.
5. Labor is defined without regard to the owner or farmer, but instead with the use of verbs or mention of machinery.

6. Any sort of change in the conditions of an operation or its ownership will not be considered a nuisance if a farm has been in operation for a certain length of time and was not deemed a nuisance on the date of its establishment.
7. States define agriculture in terms of commercial production or minimum gross profit.
8. Litigation fees are awarded to the prevailing party of the nuisance suit, potentially discouraging a plaintiff from filing a case.
9. There is an explanation that the statute is intended to promote the development and improvement of agricultural operations.

These criteria are expanded upon in Chapter 5 using results from the thematic analysis.

A discourse analysis of statutes including these themes was conducted to check if the language met these criteria. After this conceptualization of the relationship between the state and corporate agribusiness, an excel document was used to quantify how many themes each statute had to order the states for the spectrum. This spectrum is discussed in Chapter Five to explain why some states are seen as more oriented for the success of corporately-owned agricultural operations than others.

Phase one's thematic analysis informed phase two's Corporate Agriculture State Spectrum. The multi-staged qualitative approach to these statutes allowed for an in-depth understanding of what each section means for agricultural operations in the US. Themes and their contexts were quantified to demonstrate what is most and least common across statutes. The thematic analysis was the basis for explanations included alongside the quantifications in Chapter Four. A Corporate Agriculture State Spectrum was developed to conceptualize these statutes into the realm of rural sociology literature.

## CHAPTER 4: PHASE ONE RESULTS

### Thematic Analysis

This chapter reviews themes derived from our analysis that serve to inform the state spectrum and corporate agriculture legal spectrum in Chapter 5. The first section discusses the results of the thematic analysis. Themes are broken down into specific language mentioned in select statutes to explain how a theme was coded and why this is significant. The thematic findings are presented in dialogue with any existing legal literature that helps clarify their meaning and implications for rural communities. These themes were critical to the comprehensive understanding of all statutes. They were generated to apply to the national sample.

The language coded under these themes varies from statute to statute, and not all statutes contain each theme. As mentioned in the method section, these themes were classified in the qualitative software, NVivo, and were developed both deductively and inductively as coding took place. I order these themes by most to least prevalent.

### General Nuisances

All fifty states generally describe what constitutes a nuisance. Each state provided details on what would be protected under their respective statute through definitions. Generally, the thematic analysis revealed that an operation will not be a nuisance unless it is in violation of federal/state regulations or unless it is the cause of any injury or damages through pollution or any unsound farming/management practices. For example, Hawaii defines that a nuisance is any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or

impede the authority of the State to protect the public health, safety, and welfare. In Delaware, an agricultural operation that is conducted in a negligent or improper manner is considered a nuisance. States like Illinois and Florida explain that operations are protected from nuisance suits because of nonagricultural land uses extending into agricultural areas. More specific instances of nuisances, such as a change in ownership or the amount time in operation, are discussed in this section.

### Commodity

In each state, specific commodities were coded for prevalence, to determine if there were any trends in commodities mentioned most often in RTF statutes. Statutes commonly individually define what is considered to be an agricultural product, and these terms were coded under this theme. Despite common understandings of what constitutes a farm, these statutes include provisions for both livestock and horticultural farming. The following lists the top five most common commodities that were coded, including how many times they were referenced overall:

1. Livestock – 222
2. Forestry, Trees – 131
3. Product, Farm or Agricultural – 97
4. Fish or aquaculture – 38
5. Fruits – 29

Of these coded commodities, livestock was mentioned most often. This is to be expected, as these are open categories that are most often mentioned over specific commodities. By state, Livestock had the most mention within individual statutes. This does not come as a surprise, as RTF laws predominantly address issues of animal agriculture (Centner, 2006; Grossman and Fischer, 1983; Hamilton and Bolte, 1992; Haroldson, 1982; Norris, Taylor, and Wyckoff, 2011; Schroeter, Azzam, Aiken, 2006).



Definition of farm, agriculture, or farm operation

States were coded for the definition of farm, agriculture, or farm operation to gain a better sense of the forms of operation that receive nuisance protection. They are typically sections included in the beginning of the RTF statute. The only state that did not include a definition was Colorado. They repealed their definition for reasons unknown.

**Table 1. Different Phrases used to Define Agricultural Operations in RTF Statutes**

Word or Phrase	Percentage of Statutes	Number of States	List of States
Commodity Production	50%	25	Alaska, Arizona, Arkansas, California, Georgia, Hawaii, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Virginia, West Virginia, Wyoming
Facility	32%	16	Alaska, Arizona, Arkansas, California, Georgia, Idaho, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, New York, New Mexico, South Carolina, South Dakota
Commercial	32%	16	Hawaii, Iowa, Louisiana, Maine, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, Wyoming
Land Used for Agricultural Production	8%	4	Florida, Illinois, Indiana, Massachusetts
Minimum Income or Acreage	6%	3	Montana, Nevada, New Jersey
Use of Chemicals	6%	3	Florida, Tennessee, Washington

Half of the states defined an agricultural operation in terms of commodity production. An example of this is taken from Arizona:

"Agricultural operations" means all activities by the owner, lessee, agent, independent contractor and supplier conducted on any facility for the production of crops, livestock, poultry, livestock products or poultry products."

Defining a farm solely in terms of production excludes other aspects of farming from RTF provisions. This means that a farm that profits primarily off of agritourism is not protected under these statutes and could be subject to a nuisance suit. More generally, the language "operation" does not distinguish between types of operations, like a Community Supported Agriculture farm, or an absentee owned industrial animal facility. Further, there is no explicit mention of the family in relation to the farm, suggesting that these statutes do not provide any additional protections to such types of operations.

Sixteen statutes use the term "facility" when referring to the type of agriculture. For example, in Georgia:

"Agricultural facility" includes, but is not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, timber, forest products, or products which are used in commercial aquaculture. Such term shall also include any farm labor camp or facilities for migrant farm workers.

This stands apart potentially from anti-corporate farming laws, which are specific to land ownership. In these statutes, it is clear that facility includes any aspect of the agricultural operation. Statutes that consider farming operations to be facilities provide broad protection for larger scale farms, again, without any mention to family farms. This term has industrial connotations that speaks to farm scale and vertical integration. A facility includes CAFOs, but it is unclear on how free-range or smaller-scale operations are considered when handling nuisance suits.

Sixteen states mention specifically that any operation producing “commercially” is protected under the RTF law, as in Iowa:

"Farm" means the land, buildings, and machinery used in the commercial production of farm products.”

This implies that any farm not producing commercially does not fit the state’s definition of an agricultural definition, and is therefore, not protected. This primarily affects small scale operations that rely on roadside stands or farmers’ markets to sell their products. Their commodities are not being produced on a commercial scale, making their status in the farming arena potentially insignificant. Implicitly, such language favors large-scale operations. When discussing the changing state of agriculture in the US, this definition is a specific example of the shift from subsistence farming to industrial agriculture.

A small group of states defines an operation as anything conducted on agricultural land. This doesn’t have any implications for protecting corporate agribusiness over family farms, but instead relates more to the original groundings of RTF laws. When nonagricultural uses extend into agricultural land, operations become subject to nuisance suits. This code is significant because only four states mention land. This shows that the majority of RTF statutes have developed beyond their original purpose of protecting pre-existing operations from urban encroachment. Instead, more than half of these laws define operations in terms of industry, indicating that these laws may be protecting the interests of corporate agribusinesses.

Three states mention that for an operation to be considered a farm, it must provide a minimum annual gross income. An example is included in Montana’s definition:

"Agricultural activity" means a condition or activity that provides an annual gross income of not less than \$ 1,500 or that occurs on land classified as agricultural or forest land for taxation purposes.”

The limit of \$1,500 is a small amount for any sized operation, and is the general definition for farm used by the U.S. Census of Agriculture. It does exclude any subsistence farming or “backyard” farming from being protected in the case of a nuisance suit. It implies that the operation must be grossing a certain amount of money to be considered a farm under these statutes.

Three states include the use of chemicals in their definition of agriculture, such as Tennessee:

"Farm operation" means a conditions or activity that occurs on a farm in connection with the commercial production of farm products or nursery stock as defined in § 70-8-303, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; the employment and use of labor; marketing of farm products in conjunction with the production of farm products thereof."

The protection given to operations using pesticides disregards surrounding non-agricultural properties. These chemicals can affect the enjoyment of one’s land through the contamination of nearby waterways and through their impacts on air quality.

North Dakota’s definition is unique. It states that an agricultural operation owned by a corporation or limited liability company:

“As used in this chapter, "agricultural operation" means the science and art of producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and includes the preparation of these products for people's use and the disposal of these products by marketing or other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.”

The remainder of the statutes do not make mention of the presence of a facility, commercial production of commodities, the use of chemicals, or the requirement for income or size. They define operations in relation to a farmer or operation or as the land used for farming practices. There is less of a tone of industrialized agriculture, leaving room for family farms to be protected under these statutes.

#### Timing of Operation

RTF statutes provide protection to operations in cases where the operation has preexisted any surrounding nonagricultural land uses or when the operation has been in existence for at least a year. With references in 32 states (64% of statutes), this is the most commonly mentioned theme that directly pertains to nuisance protection. Often nuisance suits have been described as protecting existing farms from urban encroachment. For example, Grossman and Fischer (1983:98) states that RTF laws require that agricultural operations preexist its neighbors (1983:28). However, Hamilton (1998) later noted that many statutes were revised shortly after enactment to allow agricultural operations to be protected nuisance suits, even if neighbors were there first. If a new operation was established in an area with nonagricultural land uses, for example, it had to be in operation for requisite period of time before it became immune to nuisance suits (Hamilton 1998:108). In fact, though, our thematic analysis show that the farm being here first is not a prerequisite for agricultural operations. Rather, in most states any agricultural operation can be protected from nuisance suits if it has been in existence for a designated period of time. Only 14% of states require that the operation be there first.

**Table 2. The Mention of Durational Requirements in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
In operation for one year or more	48%	24	Arkansas, California, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Texas
The operation was established prior to neighboring residents	14%	7	Arkansas, Montana, Nebraska, Ohio, Vermont, West Virginia, Wisconsin, Wyoming

Some notable outliers deserve mention beyond this table. Both Iowa (not included in table) and Minnesota include a rebuttable presumption that applies even if the operation was initiated after property owners were in place. In Iowa, the operation is protected as soon as it is established, and this protection applies for up to six years after leaving an agricultural area:

“A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This paragraph shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area other than by withdrawal as provided in section 352.9.”

As long as the operation is included in an area zoned for agricultural use, it will not be deemed a nuisance in Iowa. It does not require the operation to be in existence for any requisite amount of time.

Minnesota and Oklahoma require that an operation be in existence for at least two years, but in the time prior to that, there is a two year rebuttal period for any suits filed against the operation.

(a) An agricultural operation is not and shall not become a private or public nuisance after two years from its established date of operation as a matter of law if the operation:

(1) is located in an agriculturally zoned area;

(2) complies with the provisions of all applicable federal, state, or county laws, regulations, rules, and ordinances and any permits issued for the agricultural operation; and

(3) operates according to generally accepted agricultural practices.

(b) For a period of two years from its established date of operation, there is a rebuttable presumption that an agricultural operation in compliance with the requirements of paragraph (a), clauses (1) to (3), is not a public or private nuisance.

The above excerpt is from Minnesota's RTF statute and explains the two-year requirement and its rebuttal period. It starts off by explaining that an agricultural operation shall not become a general nuisance once it has been in existence for a minimum of two years. Clauses (1) through (3) explain that after two years, the operation will receive protection from nuisance suits as long as it follows those requirements. Paragraph (b) explains that before the agricultural operation has been in existence for two years, it is presumed that the operation is adhering to the requirements outline under paragraph (a). Essentially, while there is a requirement for the operation to be around for at least two years, it will still be protected under the rebuttable presumption that the operation is in compliance with the aforementioned guidelines. This disregards any potential issues with stewardship that may be occurring within the operation from its establishment date. Without investigation, it will be presumed that an operation in Minnesota is adhering to laws and regulations, giving agricultural operations free reign with regard to farming practices.

California does not have a rebuttal period, but it requires that an operation be in existence for a minimum of 3 years as opposed to the common time of one year.

Change in Operation

Right to Farm laws in 29 states (58% of statutes) provide a series of protections for operations that may change ownership structure, increase in size, change in commodity production, or use new machinery or technology. These additions do not mean that the operation's date of establishment restarts. States mention the change in or about the locality of an operation in an effort to capture those that will not be deemed a nuisance. Statutes that include this theme do not consider surrounding land use patterns, putting the operation at an advantage over any nearby residences. It does not restrict the operation from any expansions that could interfere with surrounding property uses. As opposed to preventing any encroachment on behalf of nonagricultural land uses, this effectively increases the potential for farming operations to infringe upon surrounding property rights. Of the statutes including these protections, Indiana and Minnesota explain that significant changes do not include:

(A) The conversion from one type of agricultural operation to another type of agricultural operation.

(B) A change in the ownership or size of the agricultural operation.

(C) The:

(i) enrollment; or

(ii) reduction or cessation of participation;

of the agricultural operation in a government program.

(D) Adoption of new technology by the agricultural operation.

In contrast, Florida states that an operation will be deemed a nuisance if a change in operation leads to a more excessive farm operation with regard to noise, odor, dust, or fumes were the existing farm operation is adjacent to a homestead or business. The remaining four states mentioning substantial or significant changes do not define what constitutes such adjustments.



For example, in Vermont an agricultural operation will not be a nuisance if “it has not significantly changed since the commencement of the prior surrounding nonagricultural activity.” Centner states that this sort of blanket immunity permits unreasonable expansion and protects too many agricultural practices (2002:259).

Thirteen states declare that any changes made to the facility will not be deemed a nuisance if it has been in operation for a specified amount of time. All of these states decide that it must be in operation for at least one year without previously being deemed a nuisance, with the exception of California, which states that it must be in operation for at least three years. This pre-durational requirement compounds the ability to resolve the effect of changes in the farming operation, including the expansion of agricultural operations, the addition of machinery or technology, a change in ownership, or a change in commodity production (Hamilton 1988:108). Furthermore, Alaska, Georgia, Louisiana, Oklahoma, South Carolina, and Texas specify that any changes made to the operation will not change the establishment data of the operation. This includes changes in type of agricultural production, ownership, or the addition of machinery or technology to the operation. This implies that no matter how many expansions have occurred after residents have moved nearby the operation, it will still be considered to pre-date any non-agricultural uses.

A change in operation occurs after the establishment date, which is considered as the day when the agricultural operation commenced farming practices. Six states explain that if the physical facilities of the agricultural operations are subsequently expanded, the establishment date of operation for expansion is a separate and independent establishment date of operation. It would be considered the date of commencement of the expanded operation. In these cases, the commencement of expanded operation does not divest the agricultural operation of a previously

established date of operation. This means that the original establishment date of the unexpanded operation does not change when it becomes expanded. The date of original commencement and the date of expansion are separate. These statutes do not clarify whether the date of expansion is considered in a nuisance suit. If this expansion has been in operation for less than the required amount of time, it is unclear on whether the court considers the original establishment date or the date of commencement of the expanded area.

**Table 3. Changes in Operation that Do Not Constitute a Nuisance**

Context	Percentages of Statutes	Number of States	List of States
A change in the operation is not a nuisance	48%	24	Alaska, Arkansas, California, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Michigan, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, West Virginia, Wisconsin
Changes are not a nuisance if the operation has been around for a specified amount of time	26%	13	California, Connecticut, Delaware, Idaho, Illinois, Indiana, Maine, New Hampshire, New Mexico, North Carolina, North Dakota, Pennsylvania, Texas
Any unsubstantial change is not a nuisance	14%	7	Connecticut, Florida, Indiana, Minnesota, Oregon, Texas, Vermont
Changes to the operation will not affect the establishment date	12%	6	Alaska, Georgia, Louisiana, Oklahoma, South Carolina, Texas

### Pollution

This theme includes a wide range of codes pertaining generally to pollution. Pollution mentioned in 27 statutes (54% of statutes). While the number speaks for itself, it is important to stress that 46% of statutes make no mention of pollution, leaving whatever nuisance protections provided to

agriculture in the statute decoupled from their potential environmental harm. By pollution, I mean any sort of pollution of waterways or nearby premises that could cause injury or interfere with the enjoyment of one’s property. While this is a commonly mentioned theme that directly pertains to nuisance protection, Adelaja and Friedman (1999:565) point out that RTF laws do not explicitly incorporate environmental concerns. While pollution is generally mentioned in a majority of statutes, the exclusions for any injuries or damages sustained on account of pollution have not been tested in all state courts (Goeringer and Goodwin, 2013:2). Furthermore, water and odor pollution standards vary in judicial decisions (Grossman and Fischer, 1983:105), which hardly makes sense, as the rulings should be based on local, state, or federal regulations. However, Braunig (2005:1505) states that the existence of CAFOs post-dates the nation’s environmental laws, making them exempt from this form of regulation. To prove that pollution is tied directly to the operation would require bringing CAFOs into the regulatory fold.

**Table 4. Mentions of Pollution in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
A section does not defeat the right of an individual to sue for damages or injury caused by pollution of water sources	38%	19	Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma South Carolina, Virginia, West Virginia
Noise, dust, odor, or fumes	18%	9	Connecticut, Florida, Indiana, Maine, Maryland, Michigan, Montana, Rhode Island, Washington

Statutes have explained what actions are not considered a nuisance, but in nineteen states, damages or injury caused by pollution of water sources are excluded from any provisions. This is

mentioned differently across statutes. The most common phrasing can be seen in states like Kentucky:

“The provisions of this section shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream or ground water of the person, firm, or corporation.”

Different phrasing is used in Mississippi’s statute:

“The provisions of this section shall not be construed to affect any provision of the "Mississippi Air and Water Pollution Control Law."

Ohio also phrases this clause in a different manner:

“No person shall unlawfully obstruct or impede the passage of a navigable river, harbor, or collection of water, or corrupt or render unwholesome or impure, a watercourse, stream, or water, or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others.”

While these may be interpreted differently in the legal sense, they all essentially state that the right to file nuisance suits due for damage done or injury caused by the pollution is allowed, regardless of the other RTF provisions. However, this clause does not state that the recovery of damages will automatically be granted in the case of pollution. Due to LLC clauses, the plaintiff has to prove direct causation on behalf of the agricultural operation to the court.

Eight states explain that the presence of noise, dust, and odor are a part of normal farming procedures and will not be deemed a nuisance. This can be seen in Maryland:

“The operation, including any sight, noise, odors, dust, or insects resulting from the operation, may not be deemed to be a public or private nuisance;”

Florida differs from these eight states when mentioning noise, dust, or odors:

“When expansion of operation not permitted. -- This act shall not be construed to permit an existing farm operation to change to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.”

It actually restricts an operation from expanding in a manner that would generate more of these instances. This sort of language is not common with respect to agricultural operations. As seen with rhetoric in statutes like Maryland's, dust, noise and odor are generally considered to be standard in agricultural operations. Maryland and the remaining states restrict any entity from filing a nuisance suit based annoyance generated by these instances, which is the major reason nuisance suits are filed (DeLind, 1995, Centner, 2006; Goeringer and Goodwin, 2013; Grossman and Fischer, 1983; Hamilton and Bolte, 1992; Hanna, 1982; Haroldson, 1982; Norris, Taylor, and Wyckoff, 2011; Schroeter, Azzam, Aiken, 2006).

### Labor

A majority of statutes make no mention of a human when referencing labor, so operations are protected without mention to the farmer, which RTF laws often purport to represent (See recent debate over the 777 Oklahoma Constitutional Amendment). Labor was not discussed in 48% of states, and in 26 statutes (52%) it was mentioned, although not in direct related to nuisance suit protection. Half of the states that include rhetoric involved with labor define it in terms of production without mention to hired labor. This also does not distinguish between mechanization and human labor. These inclusions also fail to mention any sort of family labor. Defining labor in the form of production simply outlines that the specific mentioning of agricultural practices will be protected in the event of a nuisance suit.

**Table 5. How RTF Statutes Regard Labor**

Context	Number of States	Percentage of Statutes	List of States
Definition of labor mentions production but no farmer/human	13	26%	Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Louisiana, Maryland, Michigan, New Hampshire, New Jersey, New Mexico, Oklahoma, North Carolina, South Carolina
Farmer/Operator	5	10%	Alabama, California, Iowa, Massachusetts, West Virginia
Right of farmer to produce for the state	3	6%	Maine, Montana, Wyoming

In 13 statutes, labor is defined in verb form without mentioning who or what is performing these tasks. For example, in Alaska labor is termed “agricultural operations” and defined as:

(A) any agricultural and farming activity such as

- (i) the preparation, plowing, cultivation, conserving, and tillage of the soil;
- (ii) dairying;
- (iii) the operation of greenhouses;
- (iv) the production, cultivation, rotation, fertilization, growing, and harvesting of an agricultural, floricultural, apicultural, or horticultural crop or commodity;
- (v) the breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock;
- (vi) forestry or timber harvesting, manufacturing, or processing operations;
- (vii) the application and storage of pesticides, herbicides, animal manure, treated sewage sludge or chemicals, compounds, or substances to crops, or in connection with the production of crops or livestock;
- (viii) the manufacturing of feed for poultry or livestock;
- (ix) aquatic farming;
- (x) the operation of roadside markets

The ambiguity over what entity is conducting these activities undermines the role of the farmer on the farm and the community more broadly. This implies that machinery can also perform this work, which estranges the farmer from their land and transforms the farm into a more industrialized operation.

Five states mention the farmer or the operator relative to farming practices.

Massachusetts includes the farmer in its definition of labor:

“Actions performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.”

The explicit mention of farmer alludes to smaller-scale operations and family farms where human labor is employed in place of or alongside machinery. As this is included in the definitions of section of a statute, actions performed by a farmer will be protected, given that they are congruent with laws and regulations.

Three states protect the right of the farmer to produce for the state, which specifically gives credit to the farmer’s part in the state’s economy. This denotes more value placed on the farmer’s work as opposed to defining farming practices as a means of production. An example can be seen in Wyoming:

To protect agriculture as a vital part of the economy of Wyoming, the rights of farmers and ranchers to engage in farm or ranch operations shall be forever guaranteed in this state.

This provision states that rights of farmers to produce is vital to the state’s economy, and will therefore be protected. This was coded under “Labor” because it mentions the engagement of farm or ranch operations.

Removal of Local Governance

This addresses whether the state has withdrawn local government rights to enact an ordinance that stipulates some agricultural facilities as nuisances. Capacity to locally govern was removed in 25 states (50% of statutes). This section arose after municipalities used their zoning power to ‘zone out’ offensive agricultural uses (Reinert, 2011:1697). The adoption of the removal and avoidance of local ordinances has allowed for RTF acts to pre-empt local laws that extend, revise, or conflict with its provisions (Norris, Taylor, Wyckoff, 2011:369). As large portions of municipalities have become controlled by farmers, farmers have been able to exert their power on local political outcomes. Adelaja and Friedman (1999:576) state that corporate agribusiness can propose legislation to forestall any problems presented by the municipality.

**Table 6. Ways in which RTF Statutes Remove the Right of Municipalities to File an Ordinance**

Context	Percentage of Statutes	Number of States	List of States
A municipality may not adopt any ordinances against an agricultural operation	32%	16	Alabama, Alaska, California, Connecticut, Delaware, Florida, Indiana, Kentucky, Louisiana, Michigan, Montana, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina
All previous ordinances null and void	22%	11	Alabama, Arkansas, California, Colorado, Delaware, Kentucky, Michigan, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina
Local governance is removed in agricultural/industrial zones	10%	5	Iowa, Maine, Ohio, Utah, Virginia

Notable outliers include the case where a commissioner determines if the ordinance will be adopted in the state of Maine and New York. Colorado only allows for the adoption of ordinances to provide additional protection for agricultural operations.

Stewardship



Twenty-five states (50% of statutes) include language about farming or management practices as practicing “stewardship.” Robinson (1999:28) notes that in addition to timing requisites, this is another limitation placed on operations. The theme stewardship captures references to farming practices according to generally accepted activities, in compliance with the law, and best practices, but had no specific understanding of stewardship. By not providing a detailed standard for stewardship, the state can sidestep what kinds of agricultural operations are protected, in effect ensuring that there is little to no oversight of operations (Hamilton 1998:109). This leaves it up for the judicial arena to interpret the scope of accepted agricultural and management practices, which has arguably expanded in recent years (Norry, Taylor, and Wyckoff, 2011:369).

The only semblance of explicit language comes in the form states in compliance with local, state, and federal rules, laws, and regulations. As previously mentioned under Pollution, many operations protected under RTF statutes are not regulated (Braunig, 2005:1505). So in effect, this symbolic language of stewardship is never enforced.

**Table 7. References to Stewardship in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
Generally accepted agricultural and farm management or production practices	24%	12	Alabama, Arkansas, Colorado, Connecticut, Hawaii, Indiana, New Jersey, Ohio, Oklahoma, Tennessee, Utah, Wyoming
In compliance with state, local, and federal regulations	22%	11	Delaware, Indiana, Maryland, Mississippi, Nebraska, New Jersey, Ohio, Oklahoma, Rhode Island, Utah, Washington
Best management practices	8%	4	Florida, Maine, Mississippi, Virginia
Practices in a manner consistent with similar agricultural operations	6%	3	Louisiana, Minnesota, Oklahoma
Good agricultural conduct	6%	3	Delaware, Nevada, Washington

## Preservation of Farmland

Right-to-Farm proponents purport to protect bucolic countryside from urban encroachment. The theme “preservation” captured any mention of protecting farms from other interests. This theme was present in 20 states (40% of statutes). Eighteen states start their RTF statute by stating it is their intention to conserve farmland as an explanation for the purpose of these laws, as in

Alabama:

“The Legislature recognizes the importance of the family farm in Alabama. It is the intent of the Legislature to assist in the preservation of family farms in Alabama by assuring that lawfully conducted farms and farm operations will not be considered to be public or private nuisances when and so long as they are operated in conformance with generally accepted agricultural and farm management practices, as described herein.”

In actuality, though, few statutes (see earlier theme: Change in Operation) have no firm legal language that protects the land or existing farms from encroachment, but rather pave the way for industrial operations to come in.

This can be explained, in part, by the farm financial crisis. As farms became a powerful component of economic development in the US, it became important to prevent the filing of nuisance suits to shut down these contributions of commodities and money to the state. This paints the picture that urban encroachment is to blame for the origin of nuisance suits. However, the literature (Adelaja and Friedman, 1999) shows that suits are being filed by rural communities and residents whose property rights, such as enjoyment of clean air and water, are threatened. Adelaja and Friedman (1999:576) further speculate that RTF laws were not adopted to encourage farmland preservation of agriculture. The main context following the mention of mention of preservation is the encouragement of the development and improvement to agricultural operations. This implies growth, which extends beyond the means of preservation. This context

grants operation owners the security in making investments to improve and expand farming operations (Robinson 1999:28).

**Table 8. States Explaining their Role in Preservation of Farmland**

Context	Percentage of Statutes	Number of States	List of States
Rhetoric such as “duty” to “preserve agricultural land”	36%	18	Alabama, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Idaho, Iowa, Kansas, Kentucky, New York, North Carolina, South Carolina, South Dakota, Texas, Vermont
Actual existence of a state commission dedicated to farmland preservation	6%	3	Iowa, Maine, New Jersey

#### Litigation Fees

This theme captures who, in the event of a nuisance suit, is liable for the other parties litigation fees. As such, this can serve as a major deterrent to filing nuisance suits, or encourage out-of-court settlements. Eighteen states (36% of statutes) mention litigation fees. Most states stipulate that the defendant, which is typically a resident or neighboring farmer suing an agricultural operation, be liable for court and litigation fees. In the worst-case scenario, where the plaintiff loses in one of those eleven states, he or she is responsible for their own fees in addition to the defendant’s litigation fees. While the literature does not cover the implications of this provision, it became clear through thematic analysis that this is a legal mechanism to dissuade anyone from filing a nuisance suit.

**Table 9. The Awarding of Legal Fees in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
Litigation fees are awarded to the prevailing defendant	22%	11	Illinois, Iowa, Kansas, Louisiana, Michigan, Missouri, New Mexico, New York, Oklahoma, South Dakota, Texas, Washington
Litigation fees are awarded to the prevailing party	12%	6	Arizona, Arkansas, Colorado, Indiana, North Carolina, Oregon

**Ownership**

All statutes were coded for any reference to a type of ownership, which surprisingly, did not explicitly mention the farmer as a person and owner in any statute. Twelve states (24% of statutes) mention change of ownership or practices conducted by the owner generally. Haroldson (1992:394) writes about the how the competition between family farmers and foreign investors and corporations affects the ownership of agricultural land. This could explain why any sort of change in ownership does not constitute a nuisance in the case of a family farm being bought out by a transnational corporation. This is a case of additional nuisance protection in eight states.

Farming practices conducted by the owner are rarely mentioned, but in the few cases they are, labor is defined without any reference to a person, and included after generally accepted management practices. In these cases, common practices conducted by the owner (again, not specific to any person or family farm) are protected.

**Table 10. References to Ownership in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
Change in owner does not constitute a nuisance	16%	8	Alabama, Arkansas, Colorado, Florida, Indiana, Kentucky, Minnesota, North Carolina
Practices conducted by the owner	8%	4	Montana, New York, West Virginia, Wyoming

## Human Health

Industrial animal operations are increasingly associated with a plethora of negative health outcomes related to mental health, respiratory issues, and influenza pandemics (Radon et al. 2006; Wing et al. 2008; Gilchrist et al. 2007; Mirabelli et al. 2006; Gray and Baker 2010).

Statutes were coded for any mention of human or animal health in relation to the agricultural operation. Ten states (20% of statutes) included the theme of human health. In general, statutes outline that if the operation conforms to federal, state, and local laws and regulations, it is not seen as a threat to public health. With minimal regulations placed on large-scale agricultural operations (Braunig 2005), they may still be in line with current standards while also causing threats to public health.

RTF laws attempt to establish zero liability for damages caused by waste by-products currently being emitted by producers. The plaintiff must prove that any damages incurred can be directly traced back to the operation. This makes it difficult for anyone to place liability on agricultural operations. By shutting off the potential avenue of seeking equitable relief in the courts, those who feel harmed by agricultural operations are often forced to seek other outlets for their grievances (Haroldson 1998:116).

**Table 11. Mentions of Human Health in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
Affecting health through damage to the environment or pollution	8%	4	Alabama, California, Florida, Maryland, Missouri, Montana
Action for injuries or damages is not affected by the provisions of the statute	6%	3	Arkansas, Texas, Vermont

Agricultural/Industrial Areas

So-titled agricultural and industrial areas are regions specifically zoned for agricultural and/or industrial use. Nine states overall (18% of the statutes) explicitly mention agricultural and/or industrial zones as immune from nuisance suits.

**Table 12. Different Contextual References to Agricultural or Industrial Areas**

Context	Percentage of Statutes	Number of States	List of States
Only agricultural areas are mentioned in statute	12%	6	Georgia, Iowa, Maine, Minnesota, New Jersey, Virginia
The statute distinguishes between agricultural and industrial areas	6%	3	New York, Ohio, Utah
Operations (in agricultural areas) with a direct impact on public safety or health are excluded from nuisance protection	6%	3	New Jersey, Ohio, Virginia
Owner has rights to expand the agricultural/industrial area	4%	2	Iowa, Ohio
Commissioner is present in agricultural/industrial area	4%	2	Maine, New York

Non-farm owners who move into agricultural or industrial areas are notified by real estate agents that this property is on land zoned for agricultural or industrial uses. Their property may be subject to the rights of the nearby pre-existing farm operations, which can affect the extent to which residents can enjoy their land. Additionally, the residential owners must tolerate any normal farming activities, as these are completely protected within agricultural zones.

In the case of Iowa, which makes use of agricultural areas, legal scholar Centner writes that their statute provides too much protection for agricultural operations at the expense of neighboring property owners (2006:95). Iowa’s statute conveys that the owner of the agricultural operation may file to have their operation designated as a part of an agricultural area, which gives them the right to expand the borders of the district. This is contingent upon neighboring

residents' agreement; however, no procedures are outlined in the RTF for gaining or proving consent. Grossman and Fischer (1983:135) note that this allows for the infringement on the rights of property owners adjoining agricultural land without just compensation, effectively violating the fifth amendment.

### Energy

Surprisingly, we coded for energy after discovering that it was mentioned alongside agriculture in some Right-to-Farm laws. Seven states (14% of statutes) included discussed the concept of energy in varying terms.

A majority of cases mention the conservation of energy relative to the operation of a farm. An example includes Iowa:

“It is the intent of the general assembly and the policy of this state to provide for the orderly use and development of land and related natural resources in Iowa for residential, commercial, industrial, and recreational purposes, preserve private property rights, protect natural and historic resources and fragile ecosystems of this state including forests, wetlands, rivers, streams, lakes and their shorelines, aquifers, prairies, and recreational areas to promote the efficient use and conservation of energy resources, to promote the creation and maintenance of wildlife habitat, to consider the protection of soil from wind and water erosion and preserve the availability and use of agricultural land for agricultural production, through processes that emphasize the participation of citizens and local governments.”

This provision also includes the role of the commissioner of energy in evaluating the use of chemicals on operations, as seen in Connecticut:

“The use of chemicals, provided such chemicals and the method of their application conform to practices approved by the Commissioner of Energy and Environmental Protection or, where applicable, the Commissioner of Public Health.”

Virginia defines “value added agricultural products,” including the mention of crops used as energy sources:

*"Value-added agricultural or forestal products"* means any agricultural or forestal product that (i) has undergone a change in physical state; (ii) was produced in a manner that enhances the value of the agricultural commodity or product; (iii) is physically segregated in a manner that results in the enhancement of the value of the agricultural or forestal product; (iv) is a source of renewable energy; or (v) is aggregated and marketed as a locally produced agricultural or forestal product."

Virginia includes a unique section defining the phrase "value-added agricultural or forestal products." The mention of products as a "source of renewable energy" entails that this sort of commodity production will be protected under Virginia's RTF statute.

**Table 13. Mentions of Energy in RTF Statutes**

Context	Percentage of Statutes	Number of States	List of States
Conservation of Energy Resources	10%	5	Iowa, Nevada, Oregon, New York, New Jersey
Commissioner of Energy	2%	1	Connecticut
Renewable Energy	2%	1	Virginia

#### University

The mention of any state higher education institution and its relation to the operation or its role in state regulations was included in five states (10% of statutes). Select states will consult with state universities to receive recommendations on the adoption of farming technologies, land classifications, and how management practices are defined. This initially appears to add credibility to operations and state agencies working with universities. However, corporate influences can be present in these entities through the funding of research or any other investment.



**Table 14. The Role of Universities in Agricultural Operations**

Context	Percentage of Statutes	Number of States	List of States
Recommendation of farming practices		3	Missouri (MU), New Hampshire (UNH), New York (Cornell)
Accepted management practices are determined by a university		2	Louisiana (LSU Ag Center), Michigan (MSU)

Animal Health

This theme was coded in as it pertains to welfare and the treatment of animals. This includes the removal of carcasses and sanitation after the presence of a microbial disease. This mentioned the least among statutes, with only Alabama, Florida, and Wisconsin having references to animal health.

This section includes all major themes the researchers devised from the thematic analysis to give a comprehensive overview of each statute. It also demonstrates the significance of RTF statutes. The definitions of agriculture and the explanation of protective provisions explain how each state regards its role in mediating the implications of agricultural operations in areas containing nonfarming residents. These themes informed the Corporate Agricultural State Spectrum through the notice of language providing protection to or the limited regulation of larger-scale operations. Thematic analysis of RTF statutes provides a rural sociology perspective through an in-depth analysis of statute implications on the state of agriculture and the rights of the rural community.

## **CHAPTER 5: PHASE TWO RESULTS**

### **The Development of Corporate Agribusiness Components**

Coding Right-to-Farm statutes nationally revealed a persistent presence of corporate language and structure. To capture this trend, I developed a corporate agriculture state legal spectrum. Here, I shift my focus to the components of statutes that directly pertain to corporate agriculture. Currently in agrifood scholarship, there is much discussion of corporate agriculture, but there is to date no explicit identification of what components constitute corporate agriculture. I fill this void through my analysis of Right-to-Farm laws. I argue that these statutes may be an instance of corporate agribusiness' control in the polity. Corporations have established control over markets, world resources, and segments of the production process, which has lead to their control over the nation-state (Bonanno and Constance, 2000:443). Given the power that corporations exert over the polity, they are able to influence legislation and laws to facilitate corporate requirements for operation. Instead of mediating conflicts between the public and corporate agribusinesses, there is a noticeable use of restrictive language in RTF laws that denotes the precedence of the agricultural operation over the rights of resident or plaintiff.

Roy addresses the common assumption that production and distribution processes are privatized, while the government's role is to protect the public from private interests (1999:43). This distinction between the state and the corporation becomes blurred when regarding the right to privacy and ownership. Government regulation of corporate excesses may potentially be muddled by the belief that as many functions as possible should be privately decided upon, deterring the intervention of policy-makers (Roy 1999:44). This relationship comes into question when developing an understanding of RTF statutes. As industrial agriculture continues as the dominant form for farming in the United States, RTF laws can serve as a lens to analyze a potential connection between the power of state governments and the prevalence of corporate agriculture. Certain themes that pertain

to this, in a sense, inverse relationship between the corporation and the state are outline in Table 5.1. I demonstrate through my analysis of Right-to-Farm laws that the state plays an active role in the proliferation of industrial agriculture.

My conclusions in some senses counter the prevailing literature. While Constance and Bonnano (2001:12) contribute to the existing literature on transnational corporations and their general relationship to the state, they often see the state as the regulator and the corporation as an agent of capitalism. In addition, they do not detail the specific components and mechanisms that intertwine corporate agribusinesses and state legal systems. Further, Right-to-Farm laws have not been analyzed by rural sociologists. Welsh (1998) writes on anti-corporate farming laws and their prevention of corporations from enter the state's farming system. However, these results focus on how RTF laws could be mechanisms that encouragement corporate presence as opposed to preventing it.

#### Criteria for State Spectrum

Below, I organize a state spectrum based on set criteria induced from coding of the statutes. While not all RTF laws use uniform language, I use examples from select statutes to demonstrate the favoring of large agribusiness corporations over family farms and rural communities in RTF statutes. It starts off with Table 15 to create a concise explanation of how statute elements relate to the corporate subversion of aspects of modern-day agriculture. The criteria explain this table through pertinent themes that are grouped under each primary component of US agriculture.

**Table 15: Elements of Corporate Agriculture and How They Are Regarded in RTF Laws<sup>a</sup>**

Primary Components of US Agriculture	Corporate Subversion	Enactment	Legal Mechanism in RTF Statutes
Environment	Externalization of costs Stewardship rhetoric Lack of regard of pollution	Public health commissioners are responsible for determining if claims of pollution are legitimate	Limited liability No mention of pollution relevant to the operation Effects on public health are not specifically explained
Governance	Removal of local control Corporate collective pursues as government structure	Removal of local governance over agricultural operations	Local units of government may not enact/enforce an ordinance against an agricultural operation
Health	Ambiguity of whether the operation takes the blame for injuries or damages	Only three statutes mention animal health  Must prove that there is a direct relationship between the operation and adverse effects on health	Limited liability
Labor	Defined in terms of action (agricultural activities) Sparse mention of farmer or human conducting activities	28 statutes mention machinery in their definition of labor	No mention of protection of farm employees
Ownership/Property	Definition of Farm Non-proprietary forms of ownership Encouragement of industrial development	The mention of shareholders Change in ownership Expansion of agricultural operation The creation of agricultural districts	Relevance of changed conditions in the operation to a nuisance suit
Profit	Centralization Primary purpose is economic development Commercial production	Litigation fees Defining agricultural operations in terms of minimum profit or commercial production	Plaintiff bares legal costs of defending party if plaintiff loses nuisance suit For an operation to be considered as a farm protected by the state, they must bring in a set minimum profit Defining operations in large-scale terms of production implies that they produce commodities for the state, contributing to its economy The purpose of these statutes is explained as promoting the improvement and development of agricultural operations

<sup>a</sup>Table 5.1 illustrates elements intertwined with corporate agriculture in the United States and how these are reflected in the statutes.

## Environment and health

(1) The failure to specifically mention pollution when classifying what sort of operation constitutes a nuisance. This disregards any local, state, or federal regulations on water and air quality. Statutes included under this criteria often make mention to human health without mentioning the impact of pollution. They do not place any restrictions on operations in the case of water or air contamination that may lead to impacts on public health they make mention to. For example:

Agricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practice and not adversely affecting the public health and safety. (Arizona)

Agricultural activities conducted on farm or ranch land, if consistent with good agricultural practices and established prior to nearby nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse affect on the public health and safety. (Oklahoma)

The impact of pollution plays a hand in human health risk factors linked to living in proximity to CAFOs. Poor air and water quality can lead to a higher rate of impaired brain and lung functions in comparison to residents that don't live in proximity to CAFOs (Kilburn 2012:1). Illustrating the effects of pollution on human health does not suffice. Kilburn's study was conducted on a sample Tennessee, whose statute makes no mention of human health. Statutes commonly mention that threats to public health resulting from negligent operations must be directly tied or related to agricultural operations. This is an instance where limited liability and lack of environmental regulation enforcement may prevent plaintiffs from making a direct connection of CAFOs to pollution and public health (Braunig 2005:1506).

(4) The use of the phrase "best management practices" or "generally accepted management practices" without reference to an explicit definition or any regulations. For example, in Louisiana:

'Generally accepted agricultural practices' are practices conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural

operations in a similar community or locale and under similar circumstances... The legislature hereby declares that persons who are engaged in agricultural operations in accordance with generally accepted agricultural practices or traditional farm practices should be protected from legal actions brought by persons who subsequently acquire an interest in any land in the vicinity of the agricultural operation and from any nuisance action, public or private, against the agricultural production of an agricultural product or an agricultural operation including but not limited to, agricultural processing, and any agricultural activity involved, directly or indirectly, in the production of food for human consumption or for animal food. (Louisiana)

This definition suggests that generally accepted agricultural practices are those adopted by similar agricultural operations. This implies no set standard of operations by state laws. This is an area for potential study that would look into what it means to compare an operation in question to neighboring farms. Nineteen states include this symbolic language when referring to management or agricultural practices without stating what practices will or will not be protected. This is another case where less regulations are placed on the agricultural operation. Language like this makes no use of regulations in place to prevent agricultural operations from impacting public health.

#### Governance

(4) The statute removes the right for a local government to file a local ordinance against an agricultural operation, as in Michigan:

Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act. (Michigan)

States that remove local governance are restricting any enactment or establishment of municipal ordinances against agricultural operations deemed acceptable by the RTF law. As demonstrated through the thematic analysis, some statutes are lenient with regards to management and agricultural standards. Operations protected under RTF laws can still be infringing upon the rights of rural communities, as described by DeLind (1995). The case against a hog CAFO in Michigan which was

ruled in favor of the plaintiffs that filed a local ordinance against an operation responsible for compromised air and water quality (DeLind, 1995:35). Shortly after, Michigan amended its RTF statute to provide more protections to agricultural operations from municipal ordinances (DeLind, 1995:34). Instead of instating more regulations on CAFOs in Michigan, the rights of residents were restricted in favor of commercial agriculture. This is the case in 25 states (50% of statutes). The precedence given to the agricultural operation prevents nearby residents from enjoyment on their property.

### Labor

(5) Labor is defined without regard to the owner or farmer, but instead with the use of verbs or mention of machinery.

1. the plowing, tilling or preparation of soil at an agricultural facility;
2. the planting, growing, fertilizing or harvesting of crops;
3. the application of pesticides, herbicides, or other chemicals, compounds or substances to crops, weeds or soil in the connection with production of crops, livestock, animals or poultry;
4. the breeding, hatching, raising, producing, feeding, keeping, slaughtering or processing of livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits or similar farm animals for commercial purposes” (New Mexico)

The way labor is defined in statutes strikes notes of appropriation, which Pfeffer defines as the process by which corporate agribusiness replaces natural processes with industrial products (1992:5).

There is no mention of the farmer or the human performing the labor, but instead the focus is placed on machinery that conducts a specific action. This provides TNCs with the economic prerogative to experience continuous success in the market. Bell et al. argue that this gives way to a deskilling process where industry replaces laborers with technologies that reduce labor costs and maximize profits (2015:286). The success of agribusiness can partially be attributed to this factor. If RTF laws acknowledge this phenomenon through the sole mention of actions as opposed to the person, the employment of more machinery and technology will be commonly accepted agricultural operations.

### Ownership/property

(5) The statute allows for the development of an agricultural or industrial area. This provision places agricultural operations at an advantage over any neighboring nonagricultural land uses by subjecting residential land owners to laws tailored to agricultural operations. Iowa's agricultural area arguably gives most governing power to the owner of an agricultural operation:

1. An owner of farmland may submit a proposal to the county board for the creation or expansion of an agricultural area within the county. An agricultural area, at its creation, shall include at least three hundred acres of farmland; however, a smaller area may be created if the farmland is adjacent to farmland subject to an agricultural land preservation ordinance pursuant to section 335.27 or adjacent to land located within an existing agricultural area. The proposal shall include a description of the proposed area to be created or expanded, including its boundaries. The territory shall be as compact and as nearly adjacent as feasible. Land shall not be included in an agricultural area without the consent of the owner. Agricultural areas shall not exist within the corporate limits of a city. The county board may consult with the department of natural resources when creating or expanding an agricultural area contiguous to a location which is under the direct supervision of the department, including a state park, state preserve, state recreation area, or sovereign lake. Agricultural areas may be created in a county which has adopted zoning ordinances. Except as provided in this section, the use of the land in agricultural areas is limited to farm operations.

2. The following shall be permitted in an agricultural area:

a. Residences constructed for occupation by a person engaged in farming or in a family farm operation. Nonconforming preexisting residences may be continued in residential use.

b. Property of a telephone company, city utility as defined in section 390.1, public utility as defined in section 476.1, or pipeline company as defined in section 479.2.

3. The county board of supervisors may permit any use not listed in subsection 2 in an agricultural area only if it finds all of the following:

a. The use is not inconsistent with the purposes set forth in section 352.1.

b. The use does not interfere seriously with farm operations within the area.

c. The use does not materially alter the stability of the overall land use pattern in the area.

In the first paragraph, the owner determines the boundaries of the area and what land is included, giving them power over determining land uses without mention of surrounding residences or nonagricultural establishments. Section b under paragraph 2 states that land uses other than for agriculture can be included in the zoned area as long as they do not interfere with farm operations. This gives the right of an owner to have a residence or nonagricultural land removed from the area if it affects the operations of the farm. In effect, it gives the operation owner the ability to deem



neighboring land use a nuisance, while removing that ability from an entity experiencing annoyances from the agricultural operation. States that regard the theme titled Agricultural/Industrial Area in this manner are restricting the rights of rural communities and placing less regulation on agricultural operations, something that corporate agribusinesses look for when opening a farm in a state (Constance and Bonanno, 2001:9).

(6) Any sort of change in the conditions of an operation or its ownership will not be considered a nuisance if a farm has been in operation for a certain length of time and was not deemed a nuisance on the date of its establishment.

No farm operation shall become a public or private nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with Best Management Practices adopted by local, state, or federal agencies if such farm has been in operation for 1 year or more since its established date of operation and if it was not a nuisance at the time of its established date of operation. (Florida)

All the changes noted above denote the encouragement of growth and development for agricultural operations. A change in ownership could mean that a family farm has been bought out by corporate agribusiness wishing to create a larger-scale operation. A change of farm product allows for an agricultural operation to expand its production capabilities. Giving owners and operators the right to determine the change in commodity production also allows them to convert their operation to accommodate more animal feeding stalls. This change could potentially exacerbate the potential for pollution. Allowing an operation to shift from producing one farm product to another includes any machinery needed to perform new farm practices. This could contribute to noise pollution and the presence of dust, affecting the enjoyment of neighboring land.

Any of these changes have an impact on the surrounding community who may not have been prepared for new ownership, commodity production, or the adoption of new machinery. This

provision not only allows for the growth of agricultural operations, but also removes the right of community members to file a nuisance against a change that has a direct impact on them.

#### Profit

(7) There is an explanation that the statute is intended to promote the development and improvement of agricultural operations.

It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest land and facilities for the production or distribution of food and other agricultural products, including without limitation forest products.  
(Georgia)

This sort of language is included in the beginning of eighteen statutes to explain the purpose of the RTF law. The phrase “encourage the development and improvement of...agricultural and forest land and facilities for the production and distribution of food” points out the state’s role in the development of its agricultural operations. It does not include the state’s role in mediating issues created for rural communities due to the presence of a farm that is perceived as a nuisance. This statement implies that the growth of agricultural operations is the state’s priority.

(8) States define agriculture in terms of commercial production or minimum gross profit. This denotes a large-scale operation.

“‘agricultural facility’ means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment that is used or is intended for use in the commercial production or processing of crops, livestock, or livestock products, or that is used in aquatic farming” (Alaska)

“‘Agricultural use’” means the current employment of real property as a business venture for profit, which business produced a minimum gross income of \$5,000 from agricultural pursuits during the immediately preceding calendar year...(Nevada)

These two states present examples where agricultural facilities are referred to in a profit-driven or large-scale sense. States like Alaska define the operation in terms of a facility that produces

commercially, undermining any farms that exist for subsistence purposes. Nevada not only creates a minimum profit requirement, but also requires the operation to be a business venture for profit. This detracts from farming practices and operations that are in existence for the purpose of commodity production. Definitions are present in statutes to explain what is protected under each provision. Defining farms in terms of commodity production and profit-grossing entities highlight their importance to the state's economy.

(9) Litigation fees are awarded only to the prevailing defendant of the nuisance suit, potentially discouraging a plaintiff from filing a case.

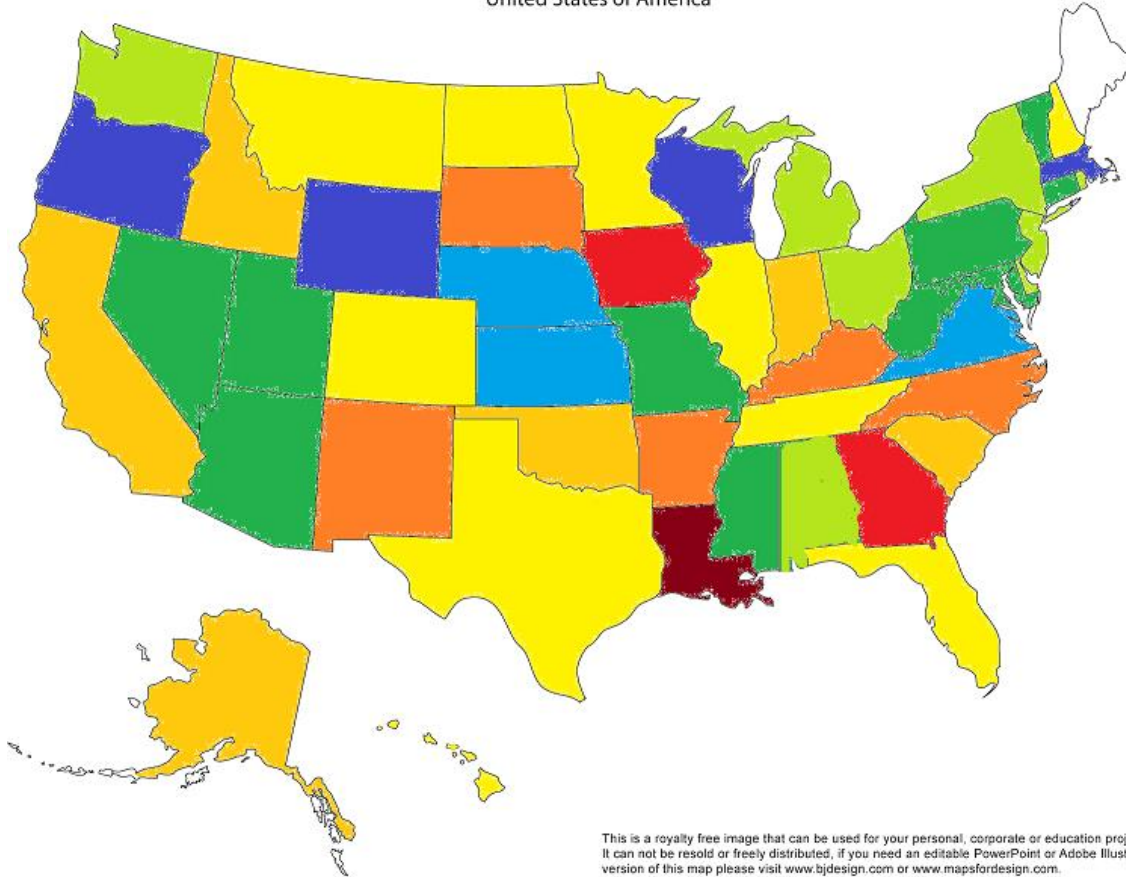
“Costs and fees. In any nuisance action in which a farming operation is alleged to be a nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in the defense of the nuisance action, together with a reasonable amount for attorney fees. For the purposes of this Section, a prevailing defendant is a defendant in a lawsuit in whose favor a final court order or judgment is rendered. A defendant shall not be considered to have prevailed if, prior to a final court order or judgment, he or she enters into a negotiated settlement agreement or takes any corrective or other action that renders unnecessary a final court order or judgment.” (Illinois)

Illinois is an example where only the defendant's legal fees are awarded if they prevail. This discourages an individual from filing a nuisance due to sheer costs alone. This provision goes beyond the protection of agricultural operations in the case of a nuisance suit, and prevents them from being filed in the first place. Some statutes including this provision explain that due to high volumes of nuisance suits, operations have had to close because of sheer legal costs. However, awarding legal fees to the plaintiff ideally keeps the agricultural operation in the state where it is able contribute to the economy. This another instance where profit-grossing entities are given priority over the rural community.

The Corporate Agriculture State Spectrum

States are grouped based on how many guidelines in the above criteria were met. The number pertains to how many themes were included in each statute that restrict the rights of an entity to file a nuisance and/or themes that give favor to the agricultural operation.

**Figure 1. Corporate Agriculture State Spectrum<sup>a</sup>**  
United States of America



- <sup>a</sup> Nine: Brown
- Eight: Red
- Seven: Orange
- Six: Yellow-orange
- Five: Yellow
- Four: Lime-green
- Three: Green
- Two: Sky blue
- One: Blue
- None: White

This spectrum reflects interpretations from the thematic analysis to highlight many aspects that encourage the presence of corporate agribusiness farming in a state. States on the higher end demonstrated a leniency towards agricultural operations with more restrictions placed

on the right of entities to file nuisance suits. Constance and Bonanno's work (2001:9) primarily informs how this applies to TNCs: corporate entities looking to open an agricultural operation in the US seek states that allow for minimal regulations. Iowa's RTF statute holds true to this, as it is home to a plethora of industrialized and consolidated agricultural operations owned by corporate agribusiness. It was expected that states known for high volumes of CAFOs, such as Illinois and North Carolina, would be in the top ten of this list. This could be due to community protest in light of CAFO growth in these states.

Eight states (South Dakota, North Dakota, Iowa, Minnesota, Wisconsin, Nebraska, Missouri, and Kansas) adopted anticorporate farming laws, which limit corporate involvement in agriculture through regulations prohibiting corporate ownership of agricultural land or corporate production of agricultural commodities (Haroldson 1992:394). This explains why these states, which are typically known for corporately-owned agricultural operations, are not higher up on this spectrum (with the exception to Iowa). The prospect of out-of-state corporate interests acquiring ownership of agricultural land and competing against family farmers in agricultural production has motivated these states to balance the benefits and burdens in favor of their own citizens. Thus, these laws are generally written to protect the state's citizens from the competitive forces of both in-state and out-of-state corporations (Haroldson 1992:396). Anticorporate farming laws place ownership limitations on transnational corporations, potentially limiting the presence of corporate agribusiness in these states.

Louisiana had the most themes that met criteria for the Corporate Agriculture State Spectrum, coming as a surprise. Given the adoption of anticorporate farming laws, other states may be adopting more lenient statutes to encourage the presence of out-of-state and in-state corporate interests. It's a way for other states to take advantage of the legal provisions in the eight states discouraging the

corporate ownership of agricultural operations. Additionally, there is a lot still unknown about these statutes. Each state has key decision-makers behind these laws, influencing the creation the and amendments included. Amendments could also be influenced by an influx of cases that have halted agricultural operations. The changing state of agriculture in the US has brought in to question the role of the state. RTF laws may be an instance where the state adopts and/or adapts statutes to accommodate corporate interests in farming. States like Louisiana and Georgia may have tailored their laws to attract corporate agribusiness.

This spectrum is uniform to one thematic analysis based on common trends across states only in RTF statutes. Certain states also include CAFO acts and farmland preservation acts, more legislation that could inform this spectrum. Additionally, due to the breadth and depth of this analysis, there were specific sections in states that did not apply to themes and were therefore not included. Statute-specific sections can also inform the position of some states on this list and is an area for further analysis.

## CHAPTER 6: CONCLUSION

This work delves beyond the legal jargon involved in RTF laws to conceptualize what major sections of these laws imply. It serves as a potential explanation for the intent of these laws, but furthermore, it dissects the specifics of RTF statutes. Most provisions have implications for the success of the defined operation and the rights of the rural community. These laws are considered for their role in the changing state of US agriculture to large-scale, vertically integrated operations. As legal scholars have studied the implications of these laws, a perspective considering rural communities and the development of industrialized farming systems has not previously been considered. This work brings RTF laws into the realm of rural sociology, providing a base for future research.

The comprehensive analysis of each statute led to an array of potential directions of this study. Given the state of modern day industrialized agriculture, this research focuses on the role of the state in this system. While highlighting the explicit and implicit mentions of corporate agribusiness aspects in the statutes, the thematic analysis provided a deeper understanding of statutes presented unanswered questions. This study presents RTF law provisions in a sociological light, highlighting how the state and corporate agribusiness affect rural community wellbeing. There are aspects of these statutes that provide areas of further study for the field of rural sociology.

Statutes provided specific definitions of the form of agricultural operation that would be protected in nuisance suits. Results showed that more than half the statutes included definitions pertaining to large-scale agriculture. It would be worthwhile to explore case studies where farms have not been protected because they do not fit the criteria of commercial production or gross minimum income. The RTF statute implicitly denotes a push towards economic development,

which undermines small-scale farms and their contribution to rural communities. More research needs to be done conceptualize how profit-driven rhetoric is a mechanism for corporate agribusiness dominance.

Vague language was seen under the theme “Change in Operation” when referring to what constituted substantial changes within or about an operation. As mentioned in Chapter Four, only Florida, Indiana, and Minnesota. Of the remaining states, substantial changes are not defined. This presents questions about what sort of changes would constitute a nuisance. Most likely, the court determine will determine on a case-by-case basis if a change is significant. Individual cases presenting nuisances based on changed conditions of an agricultural operation should be analyzed to see how courts have ruled. If this provision has not yet been tested in court, it may be symbolic language that is not restrictive on agricultural operations in actuality.

Many cases have been presented in court based on different forms of pollution. In most cases, as with Premium Standard Farms, settlements are reached and the operation can continue to remain in existence. Limited work has been done to determine the state’s role in ensuring the operation does not continue to practice in a manner that pollutes or poses as a threat to public health. As seen in literature (Braunig 2005 and Lowe 1992), state regulations directly restricting large-scale operations are sparse, making it harder to enforce any standard of environmentally sound practices.

Keeping with the theme of Pollution, there is very limited literature on the limited liability clauses adopted by large-scale operations owned by corporate agribusinesses. A portion of statutes mention that an agricultural operation will not be protected in the case of pollution directly related to the operation. Studies done on instances of pollution in proximity of industrialized farming operations (Heaney et al. 2015 and Radon et al. 2006) have only been able



to show correlation, not direct causation. This another case where language in RTF laws does clarify how the operation will be held accountable. It would be worthwhile to explore how to prove direct causation back to agricultural operations.

Legal literature (Centner 2006) has cited instances of unconstitutional land takings under the fifth amendment due to the establishment of agricultural zones. This could be area for a case study approach studying impacts of this provision on communities. Local response to this violation of rights would be worth documenting and analyzing. The language in statutes declaring the right to create agricultural zones varies in terms of what rights the farmer/operator has within the designated area. Some give farmers complete control over establishing and expanding the area (Iowa) while others simply establish agricultural zones to separate farming operations from residences (Maine). A more in-depth understand of these variances across statutes would provide insight into how the establishment of agricultural zones affects communities in different states.

RTF statutes were originally created to prevent farms from nuisances suits due to urban encroachment (Heckler 2012:240). Since their enactment in the 1970s and 1980s, they have changed drastically. While the original statutes are very hard to find, amendments can be found through WestLaw and can demonstrate what has been added and repealed from RTF laws. A similar form of thematic analysis could be conducted of the amendments to examine whether revisions follow the trend of the rise of industrialized agriculture in the US. Future studies could look into whether these statutes changed to accommodate the changing state of agriculture at the turn of the century.

This paper contributes to the rural sociological literature that clarifies these statutes and their potential to shape rural communities and the development of agriculture in the United

Sates. It outlines themes that explain what are prominent concerns at the political level through an analysis of each RTF law provision. While this analysis was heavily grounded in legal literature and agrifood studies, the themes and their interpretation were also influenced by the point of view of the researchers. The subjectivity of others working with these statutes can develop different view-points that could shape themes differently. In this sense, this study provides a base for a rural sociology perspectives of RTF Statutes.

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