

RURAL INHERITANCE: GENDER DISPARITIES IN FARM TRANSMISSION

HANNAH ALSGAARD*

ABSTRACT

Farmers are farmers' sons. Notable in our modern day, heralded by many as a gender-neutral society, it is farmers' sons, not farmers' daughters, who become farmers and take over ownership and management of the family farm. It has long been true that agricultural knowledge and land have passed through generations of men. In contrast, daughters, even today, are neither considered to be farmers nor likely to inherit family farmland. This Article begins by chronicling how farmland is inherited (by sons) then discusses why the pattern of excluding women continues. There have been substantial legal changes in the United States impacting land inheritance and ownership, culminating with the Equal Protection Clause's extension to gender discrimination and the gender-neutral Uniform Probate Code. Social changes have also been tremendous, but even legal and social developments have been unable to correct gender disparity in farm inheritance. After exploring many legal and social factors, I conclude it is grooming – at the familial, governmental, and social levels – that plays the most vital role in training future farmers and mainly accounts for the gender difference in farm inheritance and the farming profession. This Article ultimately proposes girls must be groomed to farm in order to rectify the vast gender disparity in the ownership and management of family farms. A three pronged approach will be needed to remedy the situation, specifically: changing the role of lawyers, educating girls and women, and educating testators. What remains most important is that daughters are given the same opportunity as sons to farm based on merit, rather than being excluded from farm inheritance merely because of their gender.

* BA, University of Kentucky; JD, University of California, Berkeley, School of Law. This Article would not have been possible without the guidance of Professor Kathryn Abrams. I also thank Professor Catherine Albiston, Professor Kristen Holmquist, Professor Patrick Hanlon, Anna Lund, Vikram Swaruup, Christian Lehmann, and my parents, as well as participants in the inaugural Berkeley Law legal scholarship seminar, for their comments and support. Thanks is also due to Amanda Brossart, Evie Hudson, Shanna Brown, Margaret Eyre, and the rest of the North Dakota Law Review team for their hard work and helpful suggestions.

I.	INTRODUCTION.....	348
II.	THE PROBLEM: CURRENT PRACTICES IN FARM INHERITANCE	352
	A. THE SCOPE OF THE ARTICLE.....	354
	B. OPTIONS FOR PROPERTY DISTRIBUTION.....	356
	C. INHERITANCE PRACTICES	359
	D. THE IMPACT OF DIVORCE	362
	E. ADDITIONAL COMPLICATIONS: THE COST OF FARMLAND AND ACCESS TO EDUCATION	365
III.	LAW.....	369
	A. HISTORICAL LEGAL CHANGES.....	370
	B. CURRENT INTESTACY LAWS.....	374
IV.	SOCIETAL EXPECTATIONS AND INTERACTIONS	377
	A. SOCIAL CHANGES	377
	1. <i>Urbanization</i>	378
	2. <i>Higher Education</i>	380
	3. <i>Earlier Inheritances</i>	383
	B. GROOMING: FAMILY, GOVERNMENT, AND SOCIAL SUPPORT.....	384
V.	MOVING FORWARD	394
	A. THE LAWYER'S ROLE	396
	B. EDUCATION OF GIRLS AND WOMEN.....	398
	C. EDUCATION OF TESTATORS.....	405
VI.	CONCLUSION.....	407

I. INTRODUCTION

[John Bergson] often called his daughter in to talk to her about [farm production]. Before Alexandra was twelve years old she had begun to be a help to him, and as she grew older he had come to depend more and more upon her resourcefulness and good

judgment. His boys were willing enough to work, but when he talked with them they usually irritated him. It was Alexandra who read the papers and followed the markets, and who learned by the mistakes of their neighbors. It was Alexandra who could always tell about what it had cost to fatten each steer, and who could guess the weight of a hog before it went on the scales closer than John Bergson himself. Lou and Oscar were industrious, but he could never teach them to use their heads about their work.¹

Women have always been an important part of farming in the Midwestern United States.² Female farmers have oftentimes been devalued – one form of this devaluation has been to leave women without land. Two heroines created by Willa Cather are instructive.³ In her trilogy, Willa Cather explores the consequences – on society, success, and happiness – of land inheritance created by the early death of a father.⁴ Despite the common struggle of these daughters to help the family farm, there is a great difference in how their lives progress, in part because Alexandra of *O PIONEERS!* is left with an ownership interest in the family farm while *Ántonia* of *MY ÁNTONIA* is not.⁵

On his deathbed, Alexandra's father places his daughter in charge of the farm production and instructs the children to divide the land equally.⁶ Years later, Alexandra becomes a more successful farmer than either of her

1. WILLA CATHER, *O PIONEERS!* 22-23 (Houghton Mifflin Co. 1941) (1913) [hereinafter CATHER, *PIONEERS*].

2. The United States census defines the American Midwest as twelve states: North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Michigan, Illinois, Indiana, and Ohio. See U.S. CENSUS BUREAU, *CENSUS REGIONS AND DIVISIONS OF THE UNITED STATES*, http://www.census.gov/geo/www/us_regdiv.pdf [hereinafter U.S. CENSUS BUREAU, *REGIONS & DIVISIONS*]. However, this Article also incorporates evidence from some closely related Western states, Montana and Wyoming, and will in large part treat them as part of the Midwest. See *id.*

3. Willa Cather wrote a trilogy of prairie books, which included *THE SONG OF THE LARK*. Although a story about a young woman from the prairie, *THE SONG OF THE LARK* differs substantially from the other two novels. The novel follows Thea, a Colorado native, as she matures and moves from the family's small town home to Chicago. Thea never lived on a farm and moved away from her town at a young age. See generally WILLA CATHER, *THE SONG OF THE LARK* (1915) [hereinafter CATHER, *LARK*].

4. See generally CATHER, *PIONEERS*, *supra* note 1; WILLA CATHER, *MY ÁNTONIA* (Franklin Mint Corp. 1978) (1918) [hereinafter CATHER, *ÁNTONIA*].

5. See CATHER, *PIONEERS*, *supra* note 1, at 26-27; CATHER, *ÁNTONIA*, *supra* note 4, at 254-59 (describing *Ántonia's* new life on her husband's farm).

6. He told his sons, "I want you to keep the land together and be guided by your sister. . . . When you marry, and want a house of your own, the land will be divided fairly." CATHER, *PIONEERS*, *supra* note 1, at 26.

brothers and owns a well-established and financially successful farm.⁷ Alexandra's brothers push back against her landownership and authority, saying, "[t]he property of a family really belongs to the men of the family, because they are held responsible, and because they do the work."⁸ By the end of the book she becomes a very profitable farmer, but suffers enormous personal losses,⁹ which Cather suggests are caused by issues of land ownership and control. Alexandra inherits land, but that land contributes to her being single well into her adulthood, familial estrangement, and the loss of her youngest brother.¹⁰

In contrast, the heroine of *MY ÁNTONIA* never controls the family farm after her father's untimely death, but by the end of the novel she lives a traditionally happy family farm life.¹¹ In her teens after her father's death, Ántonia first labors on the homestead under the direction of her older brother.¹² Then she works in town and sends money back to her brother to help fund the farm.¹³ Despite financially contributing to the family homestead, Ántonia, like many women, is left without land ownership.¹⁴ Her life is difficult. However, the last time the reader encounters Ántonia, she is thriving on her husband's land with her children¹⁵ and is much happier than Alexandra at the end of *O PIONEERS!*. Cather suggests Ántonia's familial happiness arises from not inheriting the land and acquiescing to traditional gender roles.

This pair of books shows the importance of land – but raises the possibility that female land ownership does not lead to ultimate happiness. Alexandra makes many (good) decisions over the course of her lifetime, while Ántonia is guided by her older brother.¹⁶ Yet in *O PIONEERS!*, Alexandra's decision-making ability does not seem to have produced a better life. I disagree with this interpretation. I argue that in the American Midwestern farming communities, land ownership and decision-making capabilities are vitally important to the role of women in family and society. Despite the importance of access to land, women are still following

7. *Id.* at 83.

8. *Id.* at 169.

9. Her youngest brother (and closest sibling) was shot by the husband of an illicit lover. *Id.* at 258-36.

10. *Id.* at 171-76, 181-83, 258-63, 307-08.

11. CATHER, *ÁNTONIA*, *supra* note 4, at 72-73, 254-59.

12. *Id.* at 93-96.

13. *Id.* at 115-17, 234.

14. *See id.*

15. Ántonia has twelve children by the end of the book. While this is a large number of children, Ántonia is happy with her family and the number of children she has borne. *Id.* at 251-59.

16. *Id.* at 72-73, 112; CATHER, *PIONEERS*, *supra* note 1, at 65-77, 83.

Ántonia's, not Alexandra's, path in life and accessing land only through marriage to a farmer, rather than through inheritance from parents, almost a hundred years after Cather penned her trilogy.

This Article chronicles the inheritance system in place on the family farms of the American Midwest, and distinguishes that pattern from the narrative of “equality in inheritance” heralded by scholarly accounts of urban¹⁷ women. Increasingly, dominant feminist scholarship has moved away from writing only about white, straight, middle-class women.¹⁸ Unfortunately, most scholarship continues to focus on the lives of urban women.¹⁹ This Article is a step toward including rurality as an additional intersectional factor in feminist scholarship: I take seriously the proposition that women are not a monolith. Moreover, I take seriously that there are important differences in the lives of rural women that must be addressed, especially when rural women are seemingly disadvantaged in comparison to urban women.²⁰

Part II identifies inequality in inheritance as a problem and explores why inheritance matters. It overviews the practices surrounding farm inheritance and demonstrates that women are not inheriting land to the same degree. I explore the pattern of rural families tending to leave land – and therefore oftentimes the bulk of their wealth – to sons instead of daughters. “[T]here is a tendency in intergenerational transfer of the [farm] to follow

17. The United States census requires that an urban area have a core census block of at least one thousand people per square mile plus surrounding census blocks with a population of at least five hundred per square mile. All other areas are considered rural. *Census 2000 Urban and Rural Classification*, U.S. CENSUS BUREAU, http://www.census.gov/geo/www/ua/ua_2k.html (last updated July 13, 2011).

18. Paradigmatic writings include Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*, in PERSPECTIVES ON GENDER (2d ed. 1999) and Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). Feminist publications, including legal journals, have shifted their priorities and now focus on intersection work. See, e.g., *Our Mandate*, BERKELEY J. GENDER L. & JUST., <http://genderlawjustice.berkeley.edu/about/mandate/> (last visited June 27, 2012) (“Our mandate is to publish feminist legal scholarship that critically examines the intersection of gender with one or more other axes of subordination, including, but not limited to, race, class, sexual orientation, and disability.”).

19. The main exception to this rule is the work of Lisa R. Pruitt of the University of California, Davis, School of Law. Her recent works include Marta R. Venegas & Lisa R. Pruitt, *CEDAW and Rural Development: Empowering Women with Law from the Top Down, Activism from the Bottom Up*, 41 BALT. L. REV. 263 (2012) and Janet L. Wallace & Lisa R. Pruitt, *Judging Parents, Judging Place: Poverty, Rurality and Termination of Parental Rights*, 77 MO. L. REV. 95 (2012).

20. See generally Lisa R. Pruitt, *Gender, Geography & Rural Justice*, 23 BERKELEY J. GENDER L. & JUST. 338 (2008) [hereinafter Pruitt, *Gender, Geography & Rural Justice*]; Debra Lynn Bassett, *Ruralism*, 88 IOWA L. REV. 273 (2003).

male lines.”²¹ Finally, Part II discusses additional flaws in the modern system for land distribution, including the tendency of women to lose land at divorce. Part III turns to the legal context – both historical and contemporary – that informs the societal system as described in Part II. Although the law provides important background rules, and may potentially shape testator choice, the law is not the problem. Therefore, Part IV turns to the social history of women’s land ownership and farming, and the contemporary grooming practices favored by farming families. I determine progress has been made, yet women are not being groomed to take over family farms; thus, they are left without the tools to become competent farmers.

Starting with the conclusion that women have a lesser chance of gaining ownership and control of the family farm, Part V explores the implications of these disparate patterns of inheritance and control. Substantiating the importance of land ownership in citizenship,²² I argue neither law nor social institutions should accept this pattern. Finally, I suggest that education and support for farmers, farm-children, and estate-lawyers will be useful to ensure testators make the best decision for themselves, their farms, and their families while not systematically excluding women from farming and land ownership.

II. THE PROBLEM: CURRENT PRACTICES IN FARM INHERITANCE

The most notable question at issue in this Article is how family farmers actually transmit real property to children. Underlying this Article is the importance of women in the history of American farming. Women settled

21. William A. Douglass, *Sheep Ranchers and Sugar Growers: Property Transmission in the Basque Immigrant Family of the American West and Australia*, in HOUSEHOLDS: COMPARATIVE AND HISTORICAL STUDIES OF DOMESTIC GROUPS 109, 121 (Robert McC. Netting et al. eds., 1984). This source is specific to Basque emigrants; however, Part II.C. will demonstrate that the statement is a broad generalization in the American Midwest.

22. Access to property has long been an important right in the United States. This includes a constitutional limitation on deprivation of any person’s “life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 1. Certainly property ownership is not guaranteed by the United States Constitution or other founding documents. The United States Declaration of Independence guaranteed “Life, Liberty and the pursuit of Happiness.” THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Although John Locke was a substantial influence on the drafters of the Declaration of Independence, Thomas Jefferson, in writing the Declaration, replaced Locke’s right to “property” with a right to “the pursuit of Happiness.” JOHN LOCKE, SECOND TREATISE ON CIVIL GOVERNMENT ch. V (C.B. McPherson ed., Hackett Publ’g Co. 1980) (1689); THE DECLARATION OF INDEPENDENCE 14-15 (T.W. Gough ed., Basil Blackwell Oxford 1948) (1776); RAY FORREST HARVEY & JEAN JACQUES BURLAMAQUI: A LIBERAL TRADITION IN AMERICAN CONSTITUTIONALISM 120 (1937). For a related discussion on the importance of a right to personal property, see generally Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).

the West as homesteaders – both alone and with husbands or families.²³ During World War I, over twenty thousand women from cities and towns ascended on rural America to work farms left devoid of workers since many farmers had been transformed into soldiers.²⁴

Modern data indicate the continuing importance of women to farming communities and agricultural production. As of the most recent Census of Agriculture – conducted in 2007²⁵ – there were 2,204,792 farms in the United States.²⁶ This is a four percent increase in the number of farms over the 2002 census.²⁷ However, that growth was not evenly distributed over the size of farms. “Between 2002 and 2007, the number of farms with sales of less than \$1,000 increased by 118,000. The number of farms with sales of more than \$500,000 grew by 46,000 during the same period.”²⁸

The 2007 Census of Agriculture also showed increased diversity in farming with increased numbers of female, Hispanic, American Indian, Asian, and Black farmers.²⁹ The trend for new farms has also been toward smaller farms; most of the new farms have “more diversified production, fewer acres, lower sales and younger operators who also work off-farm.”³⁰ Many of these newer farms are considered lifestyle farms,³¹ where owners are not farming as a primary source of support, but rather farming for enjoyment and to supplement income from other sources.³² Therefore,

23. James Muhn, *Women and the Homestead Act: Land Department Administration of a Legal Imbroglio*, 7 W. LEGAL HIST. 284 (1994) (explaining that women were allowed to settle the American West as solo women homesteaders, but could not file on homesteads if married).

24. Elaine F. Weiss, *Before Rosie the Riveter, Farmerettes Went to Work*, SMITHSONIAN (May 29, 2009), <http://www.smithsonianmag.com/history-archaeology/Before-Rosie-the-Riveter-Farmerettes-Went-to-Work.html>.

25. The Census of Agriculture is conducted every five years and is the main census measuring farms and their output. The 2012 census will be conducted between December 2012 and February 2013. *About the Census*, U.S. DEP’T OF AGRIC., http://www.agcensus.usda.gov/About_the_Census/index.php (last updated April 10, 2012) [hereinafter U.S. DEP’T OF AGRIC., *About the Census*].

26. *Census of Agriculture, Shows Growing Diversity in U.S. Farming*, U.S. DEP’T OF AGRIC. (Feb. 24, 2009), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2009/02/0036.xml> [hereinafter U.S. DEP’T OF AGRIC., *Showing Growing Diversity*].

27. *Id.*

28. U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRICULTURE FARM NUMBERS, http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/farm_numbers.pdf (last visited Jan. 16, 2012) [hereinafter U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRIC.].

29. U.S. DEP’T OF AGRIC., *Showing Growing Diversity*, *supra* note 26.

30. *Id.*

31. The Census of Agriculture provides a definition: “Residential/lifestyle farms are those that produced less than \$250,000 in sales of agricultural products and where the principal operators reported something other than farming as their primary occupation.” U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRIC., *supra* note 28.

32. *Id.* (“Operators of new farms were more likely to be engaged in occupations other than farming and to derive income from non-farm sources. The percentage of principal operators who

although diversity may be increasing in the sheer numbers of farms, the evidence does not show that farming minorities are gaining control of larger and more productive farms, rather, they are often starting their own smaller and less economically productive farms.

A. THE SCOPE OF THE ARTICLE

In this Article, I have chosen to focus on family-owned farms and ranches that provide a substantial amount of a family's income. This excludes corporate farmers,³³ farm laborers, and those who live on most lifestyle farms. This Article focuses mainly on agricultural farms and some ranches in the American Midwest and the Northern Mountain West, in large part as a product of available anthropological research.³⁴ Throughout this Article, I intend to include ranching states such as Wyoming and Montana within my discussion of the Midwestern farms that are the focus on my analysis.

As this Article is focused mainly on agricultural farms in the Midwest, it generally excludes Southern farms and, therefore, most African American farms.³⁵ In 1997, there were only twenty thousand African American farmers, or less than one percent of all farmers, and those farmers owned fewer than two million acres in total.³⁶ To put these numbers in perspective, in 2010, South Dakota, a state with only seven hundred thousand residents, had over thirty thousand farms operating on well over forty million acres.³⁷ Despite the fact that agriculture is intimately linked with the history of African Americans and African Americans are integral

reported farming as their primary occupation was 33 percent for these new farm operators. The average for all principal farm operators was 45 percent.”)

33. For more information on and the history of corporate farms in the United States, see generally Philip M. Raup, *Corporate Farming in the United States*, 33 J. ECON. HIST. 274 (1973) and Melanie J. Wender, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment*, 22 VILL. ENVTL. L.J. 141 (2011).

34. The United States Census definition of the Mountain West includes seven states. This Article looks at evidence from the northern-most states, including Montana, Idaho, and Wyoming. See U.S. CENSUS BUREAU, REGIONS AND DIVISIONS, *supra* note 4.

35. This exclusion is certainly not because of a lack of discrimination against African American farmers. For a comprehensive discussion of the discrimination in agriculture generally, see generally Kristol Bradley Ginapp, Note, *Jim “USDA” Crow: Symptomatic Discrimination in Agriculture*, 8 DRAKE J. AGRIC. L. 237 (2003).

36. Jess Gilbert et al., *The Decline (and Revival?) of Black Farmers and Rural Landowners: A Review of the Research Literature* 44 (Land Tenure Ctr., Working Paper No. 44, 2001).

37. *S.D.'s Farm Families Offer Grocery Gift Card*, YANKTON PRESS & DAKOTAN (Aug. 29, 2012), <http://www.yankton.net/Articles/2012/08/29/community/doc503edc1ce18d8062166741.prt>.

to the history of agriculture in the United States,³⁸ this Article does not discuss Southern farms separately, in large part, due to the lack of substantial recent anthropological studies of African American or other Southern farms.³⁹

The research that this Article relies also has very little to say about Southwestern or Western farms, which include a large proportion of Hispanic farmers.⁴⁰ Whereas farms and ranches in the Midwest tend to be family owned and operated, most Southwestern and Western agricultural production has moved toward large corporate farms.⁴¹ Because I choose to focus on family farms and their exclusion of female heirs,⁴² the non-family farms are outside of the scope of this Article. This Article addresses Midwestern family farms, meaning further research is needed on other regions of the country.⁴³

As a consequence of focusing mainly on the Midwest, this Article comments mainly on the lives and inheritances of white women. Certainly white women are not the only population impacted by continuing inequality in inheritance; however, by virtue of where anthropological and sociological studies have taken place,⁴⁴ most studied are farming

38. See Michael D. Schulman et al., *Problems of Landownership and Inheritance Among Black Smallholders*, 2 AGRIC. & HUM. VALUES 40, 40-41 (1985).

39. While little is available on African American inheritance practices on farms, for more general information see Gilbert et al., *supra* note 36, at 2, which provides a survey of broader historical research on black farmers. African Americans still struggle for equality in farming; recently a federal judge approved a settlement between African American farms and the United States Agricultural Department for a suit based on race discrimination claims. *Judge Signs Off on Settlement for Black Farmers*, N.Y. TIMES (Oct. 28, 2011), <http://www.nytimes.com/2011/10/29/us/politics/judge-signs-off-on-settlement-for-black-farmers.html>.

40. See generally Paul Guitierrez & Jerry Eckert, *Contrasts and Commonalities: Hispanic and Anglo Farming in Conejos County, Colorado*, 56 RURAL SOC. 274 (1991).

41. I use the phrase “corporate farm” in the colloquial sense of large farms that are owned by corporations or individuals who do not work the land as the small family farmer does. Of course many small family farms are formed as corporations, for various reasons, including tax benefits. See *J. Grant Farms, Inc. v. C.I.R.*, 49 T.C.M. 1197, 1200 (1985). For the number of farms divided by amount of sales, see U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRIC., *supra* note 28.

42. “‘Heirs’ . . . means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.” N.D. CENT. CODE § 30.1-01-06 (2001).

43. I have no reason to believe that inheritance works any differently in the types of agricultural production not covered in this Article. However, I cannot say with any degree of certainty that inheritance patterns are the same. Similar limits on studying rural America have been used before, for example, see Nancy Grey Osterud, *Gender and the Transition to Capitalism in Rural America*, 67 AGRIC. HIST. 14, 18-19 (1993) (“[The Article] does not include Native Americans’ diverse farming systems, the biracial South, or the multicultural Hispanic Southwest, which all require distinct analysis”).

44. It is important that I work with the part of the country where anthropological and sociological studies have been done. These studies, as further examined in Part III, provide substantial background information about how farming parents actually transmit their land. These studies thus provide an empirical background that allows the Article to rely on some data rather than merely narratives and instincts.

communities of mainly northern European ancestry.⁴⁵ With these limitations in mind, this Article is still able to deal with a little-recognized form of oppression operating on women – that of being rural. Rural women are not a monolithic group – in fact, much of the research cited is comparative work that contrasts the inheritance practices of different ethnic groups of farmers. This Article shows trends in the existing diverse research to indicate how, despite differences in rural women’s lives, many are being excluded from an equal share of inheritance and an equal chance of land ownership.

B. OPTIONS FOR PROPERTY DISTRIBUTION

*“Female heirs present a particular problem for family-farm continuity. A son is a potential farmer, but a daughter may either marry a farmer or marry a non-farmer and leave agriculture.”*⁴⁶

In the modern day, there are many ways in which parents pass property and skills onto their children. As I discuss, there has been a shift toward parents providing more educational support for children in lieu of large payments at the death of the parents.⁴⁷ This trend is certainly affecting farming communities; however, because of the amount of wealth tied up in land and equipment, inheritance practices are necessarily different – and arguably more important – on family farms.⁴⁸ Farm real estate⁴⁹ is the major asset for most farms.⁵⁰ In 2009, land and structures on farms accounted for eighty-four percent of the total value of farm assets in the United States.⁵¹

In farming communities, there are several common patterns of wealth distribution at the death or retirement of the parents. The first practice sees

45. See Sonya Salamon et al., *Family Factors Affecting the Intergenerational Succession to Farming*, 45 HUM. ORG. 24, 31 (1986) (discussing farmers of Swedish and Yankee origin).

46. Sonya Salamon & Karen Davis-Brown, *Farm Continuity and Female Land Inheritance: A Family Dilemma*, in WOMEN AND FARMING: CHANGING ROLES, CHANGING STRUCTURES 195, 195 (Wava G. Haney & Jane B. Knowles eds., 1988).

47. See *infra* Part IV.A.

48. Machinery and equipment values continue to rise. They were expected to grow 4.3% from 2011 to 2012. *Farm Income and Costs: Assets, Debt, and Wealth*, U.S. DEP’T OF AGRIC. (Feb. 13, 2012), <http://www.ers.usda.gov/briefing/farmincome/wealth.htm> [hereinafter U.S. DEP’T OF AGRIC., *Farm Income and Costs*]; WILLIAM EDWARDS, IOWA STATE UNIV. EXTENSION, ESTIMATING FARM MACHINERY COSTS, <http://www.extension.iastate.edu/Publications/PM710.pdf> (last visited Jan. 16, 2013).

49. Farm real estate is defined as the combination of land and structures. CYNTHIA NICKERSON ET AL., U.S. DEP’T OF AGRIC., EIB-92, TRENDS IN U.S. FARMLAND VALUES AND OWNERSHIP, at iii (2012).

50. *Id.*

51. *Id.*

the family farm liquidated with proceeds divided between children; liquidation tends to result in equal distribution of wealth between children of different genders.⁵² This trend is not surprising in light of economic circumstances. A study of peasant communities found “when a rural community becomes highly monetized, the heirs tend to translate their rights into cash rather than to entangle themselves in joint family economic enterprises.”⁵³ If there is no child willing to take over the family farm, often the land is liquidated after the parents’ deaths or at the time of the parents’ retirement from farming.⁵⁴ The major downfall of this system is that the value of the farm is generally higher if passed through generations rather than sold, in particular because of the high cost of farm equipment that would lose value upon dissolution of a family farm.⁵⁵

In the alternative, if land is not liquidated, the land will stay in the family and either a single-heir or multiple heirs will inherit. In single-heir systems, a single child inherits the farm; even today it is most likely the inheriting child is a son who has been groomed from an early age to take over the farm.⁵⁶ The benefits of this system include maintaining a strong farmer class, providing the next generation of farmers with adequate land for productive farming, and lessening the indebtedness of new farmers.⁵⁷ A strong farmer class is maintained because farmers inherit enough land to

52. CAROLE SHAMMAS ET AL., *INHERITANCE IN AMERICA: FROM COLONIAL TIMES TO THE PRESENT* 290 (1987).

53. Walter Goldschmidt & Evalyn Jacobson Kunkel, *The Structure of the Peasant Family*, 73 AM. ANTHROPOLOGIST 1058, 1069 (1971). Certainly, American farmers do not consider themselves as peasants; however, their lives do not map the same as the classic suburban middle-class of America.

54. For example, the Ohio State University Extension recommends liquidating land as an option for families where a farmer “may have arrived at a generation where no one in the family wants to or can farm.” JERRY MAHAN, OHIO STATE UNIV. EXTENSION, *WHAT SHOULD I DO WITH THE FARM?* 1 (2009), http://ohioline.osu.edu/ae-fact/pdf/AEDE_13_09.pdf.

55. See Ralph J. Brown, *Loss of Earning Capacity in the Case of a Farmer*, 1 LITIG. ECON. DIGEST 1, 1, 4 (1995) (discussing the difficulty of determining earning capacity for farmers because earning capacity is dependent on “the market value of the farmer’s labor and management services” and the changes to an enterprise at death of a farmer as “[c]hanges in farm output and input prices, changes in the weather, changes in the government farm program, changes in farm taxes (property taxes), interest rates, changes in the rate of obsolescence due to technological change and a whole range of other variables will directly affect the returns to labor and management”).

56. Stories abound where it is sons who take over the family farm. For example, in the chronicling of a “century farm” (a farm within one family for a hundred years), the story was conveyed as the patriarch’s father originally homesteading the land in 1911 and now it is his grandson who operates the farm. The farm has now been in the family’s ownership for a hundred years, passing through generations of men. *Applicants Sought for Century Farm Program*, YANKTON PRESS & DAKOTAN (May 31, 2012, 9:13 PM), http://yankton.net/Articles/2012/05/31/river_city/doc4fc8252430c78247187671.txt.

57. Buis T. Inman, *Farm Inheritance Practices in Austria*, 23 J. LAND & PUBLIC UTIL. ECON. 288, 288-89 (1947).

survive economically; the alternative is seeing family farms, divided through generations, that ultimately become too small for economical production.⁵⁸ However, in the single-heir system there is a great chance that even if other children are compensated with personal property or other non-farm real property they will receive a smaller proportion of their parents' wealth than the child taking the farm.⁵⁹

In multi-heir systems, all of the children receive a fairly equal share of the land.⁶⁰ The land can be divided into separate pieces, or the land can be held in common by the children.⁶¹ Generally, one son is groomed to farm and takes over management of the farm.⁶² Therefore, the farming child must either cooperate with siblings who are co-owners or must buy out siblings to gain full ownership of the farm.⁶³ The benefits of this system include advantages stemming from tax incentives to distribute land equally, as well as equal treatment of children, regardless of chosen profession or gender.⁶⁴ The system is problematic because the farm will be split up into small parcels and therefore less economically viable pieces of land.⁶⁵ Thus, the child wanting to farm will have to find capital to buy out siblings, or the farming child will have to make farming decisions with non-farming siblings who still own significant portions of the farm but do not contribute labor or presence.⁶⁶

All three systems – liquidation, single-heir, and multi-heir – have been used extensively in farming communities around the world.⁶⁷ Farmers in

58. *Id.*

59. See generally Richard R. Wilk & Robert McC. Netting, *Households: Changing Forms and Functions*, in HOUSEHOLDS: COMPARATIVE AND HISTORICAL STUDIES OF DOMESTIC GROUPS 1, 11-12 (Robert McC. Netting et al. eds., 1984).

60. MAHAN, *supra* note 54, at 4.

61. *Id.* Currently in the United States thirty percent of farmland is owned by non-operators. It is unknown how many of the non-operating owners are family members of operators and how many are investors. It is notable that as of February of 2009, less than two percent of United States farmland was owned by foreigners. NICKERSON ET AL., *supra* note 49, at 32.

62. Ramona Marotz-Baden & Claudia Mattheis, *Daughters-in-Law and Stress in Two-Generation Farm Families*, 43 FAMILY REL. 132 (1994).

63. MAHAN, *supra* note 54, at 4.

64. Theodore A. Feitshans & Guido van der Hoeven, N.C. COOPERATIVE EXTENSION SERV., FEDERAL AND STATE GIFT AND ESTATE TAXES, ESTATE PLANNING IN NORTH CAROLINA, <http://www.ag-econ.ncsu.edu/faculty/feitshans/AG-688-03April28.pdf> (last visited Jan. 16, 2013).

65. See, e.g., Inman, *supra* note 57, at 288-89.

66. This is why the Ohio State University Extension Service recommends this: "Heirs who have worked on the farm and increased its value may need to inherit the land to keep the farm as a viable economic business. Other children could be given cash or other assets of an equitable value." MAHAN, *supra* note 54, at 2.

67. See, e.g., 25 U.S.C. § 2206(a)(2)(D)(iii) (2006) (imposing a single heir rule for the inheritance of Indian land in the United States); Inman, *supra* note 57, at 288-89 (discussing both systems in Austria and the impacts on land ownership and farm productivity over time); MIROSLAVA GEC-KOROS EC & VESNA RIJAVEC, INTERNATIONAL ENCYCLOPEDIA OF LAWS:

the United States use all three systems, but because of the developing cultural emphasis on equal treatment of children and tax structures to support the same, the trend has been for farming communities to move more toward a multi-heir system.⁶⁸ This trend has not been implemented fully, has not created equal land ownership opportunities for women, and has not been implemented in the same way across communities.⁶⁹ In a multi-heir system, one might think women would be likely to take over the family farm at least some of the time, but despite the United States trend toward a multi-heir system, women are still not taking over management of family farms.⁷⁰ I propose that, even with equal wealth distribution, a main reason why women are not becoming farmers may be explained by gendered differences in grooming practices.

C. INHERITANCE PRACTICES

It is clear that daughters are not farming with their parents.⁷¹ Less clear is what those parents are leaving to their daughters as an inheritance. It is certainly arguable that residence and inheritance are “simply different aspects of a single system, the operating principle of which is that the heir or heirs maintain their residence and membership within the paternal household.”⁷² The link to residence is clear from quantitative studies: if a woman and her husband farm with the woman’s parents, she is more likely to own land, as well as larger portions of it, than a woman who farms with her husband’s parents, who would likely own little, if any, land.⁷³ Given the apparent strong correlation between children staying on the farm and land ownership, and the strong tendency of sons staying on the family farm, the question then arises: how are parents compensating daughters? Compensation could include personal property, liquid assets, part ownership of the family farm, life insurance policies, or other real property

FAMILY AND SUCCESSION LAW SLOVENIA ch. 7 (2011) (imposing a single heir succession system in Slovenia).

68. Solamon & Davis-Brown, *supra* note 46, at 195.

69. *Id.*

70. *See infra* Part II.C for a substantial discussion of *how* farms are inherited in today’s society. After examining existing literature, I show that women continue to not own or manage family farms at the same rates as their brothers. *See, e.g.*, Douglass, *supra* note 21, at 120.

71. *See, e.g.*, Marotz-Baden & Mattheis, *supra* note 62, at 135 (reporting that out of a random sample of 253 farm or ranch families in Montana only two families reported farming or ranching with an adult daughter, whereas seventy-three reported farming or ranching with an adult son); Douglass, *supra* note 21, at 120 (finding that in only two of thirty-three cases was a daughter the heir selected to inherit the farm, and in two of the households that daughter was a single child).

72. Goldschmidt & Kunkel, *supra* note 53, at 1062.

73. Marotz-Baden & Mattheis, *supra* note 62, at 133.

such as an off-the-farm house.⁷⁴ Each of these varying inheritances could be given as testamentary⁷⁵ or inter vivos⁷⁶ gifts.

The evidence on how farms are passed down is contradictory; in many instances it appears parents give equally to their children and the farming sibling must buy-out his siblings in order to actually take the land. Anthropological studies have found variances among communities between single-heir and multi-heir inheritance practices.⁷⁷ However, the trend appears to be moving toward a multi-heir approach as ideology and tax law in America value the splitting of property among heirs.⁷⁸ Even in multi-heir systems where there is a focus on equitable distribution of assets, equality is often neither practicable nor desired.⁷⁹ For example, the child who will continue to farm has often graced the farm with years of equitable labor, which would create an undue benefit in the other children if there were an equal distribution of land at the parent's death.⁸⁰ In addition, it will often be difficult, if not impossible, for the farming child to pay off siblings, putting the continuance of the family farm in jeopardy.⁸¹ These are all very specific considerations made by parents as they plan their estates and weigh

74. For example, the North Carolina extension office makes several of these recommendations to farmers. THEODORE A. FEITSHANS ET AL., N.C. COOPERATIVE EXTENSION SERV., PROPERTY DECISIONS FOR ESTATE PLANNING: ESTATE PLANNING IN NORTH CAROLINA, <http://www.ag-econ.ncsu.edu/faculty/feitshans/AG-688-07.pdf> (last visited Jan. 16, 2013).

75. Testamentary gifts are gifts "provided for or appointed by a will." BLACK'S LAW DICTIONARY 713 (3d Pocket ed. 2006). Therefore, testamentary gifts are necessarily given in death.

76. Inter vivos is defined as "of or relating to property conveyed not by will or in contemplation of an imminent death, but during the conveyer's lifetime." BLACK'S LAW DICTIONARY 379 (3d Pocket ed. 2006).

77. See, e.g., Susan Carol Rogers & Sonya Salamon, *Inheritance and Social Organization among Family Farmers*, 10 AM. ETHNOLOGIST 529 (1983) (examining two communities in America, finding one to be traditionally single-heir and the other to be traditionally multi-heir); Douglass, *supra* note 21, at 119 (finding that American Basque immigrant families sometimes granted land to one son, sometimes to two or more sons).

78. See, e.g., Rogers & Salamon, *supra* note 77, at 536-37. An interesting analysis outside the scope of this Article is a comparative study of how tax structures impact the inheritance of family farms. In contrast to the United States, Alberta has laws encouraging the passage of the farm to one child.

79. MAHAN, *supra* note 54, at 2. Nevada's cooperative extension service notes the problem in their publication on estate planning:

A major estate planning issue with farm and ranch families is the allocation of assets among farm and non-farm children. While giving each child an equal share of the assets may seem like the most equitable solution, such a plan could result in the future loss of the farm or ranch.

KYNDA R. CURTIS & MARGARET W. COWEE, UNIV. OF NEV.-RENO, *Key Concepts & Steps in Agricultural Estate Planning*, <http://www.unce.unr.edu/publications/files/ag/2006/fs0610.pdf> (last visited Apr. 2, 2013).

80. MAHAN, *supra* note 54, at 2.

81. CURTIS & COWEE, *supra* note 79, at 1 ("If the parents leave equal shares of the family assets to each child, the on-farm child may not be able to afford to buy the farm shares from his/her siblings who want a cash settlement, resulting in farm sale in the end.").

tax benefits and fairness against what is best for continuance of the family farm.⁸²

A twenty-three-year-old man from outside Yankton, South Dakota, reports how his parents will likely distribute the farm between him, his three younger brothers, and sister:

If my brother decides to take over the farm, the land will not be divided. I would guess that Adam, and potentially Sam, would receive all of the farmland and Jenni, Josh, and I would receive a monetary payout. Obviously, if no one takes over the farm, the land and monetary assets would be split equally among us.⁸³

For this family, it seems intuitively fair that only the farming child will take ownership of the farm, while the other siblings will receive payouts to compensate for not having an interest in the farm.⁸⁴ The scheme of equal division of the farm itself is not seen as an option.⁸⁵

Even in communities and families where there is an equal distribution of wealth, it is still not women who end up as owners and managers of the family farm.⁸⁶ Rather, it is their brothers or husbands who end up in control of the land. Part of this trend is the problem that women are not being groomed to take over the family farm.⁸⁷ Therefore, a woman's best chance of farming is to marry into a farming family and have a husband who takes the family farm from his parents.⁸⁸ Certainly for many women, this is a trend that is workable – women can continue to farm, just not at their natal farm. However, assuming women are comfortable and protected farming inside another family is problematic and oftentimes very wrong. People tend to have sentimental value attached to family land,⁸⁹ but if it is always

82. Tax discussions can be additionally complicated by state taxes. For example, Maryland recently passed legislation that allows a farm valued at less than five million dollars to pass down without taxes, but only if the farm stays in production for the next ten years. If the farm is no longer used for farming purposes, the taxes will be recaptured. Niles, Barton & Wilmer, *Estate Tax Relief for Family Farms?*, JDSUPRA (July 18, 2012), <http://www.jdsupra.com/legalnews/estate-tax-relief-for-family-farms-11307/>.

83. Telephone Interview with S.R.A. (Apr. 7, 2011).

84. *Id.*

85. *Id.*

86. *See, e.g.*, Marotz-Baden & Mattheis, *supra* note 62, at 135; Douglass, *supra* note 21, at 120.

87. *See infra* Part IV.B.

88. This can be a risky venture. *See infra* Part II.D.

89. In narratives about farmland, the historical connection to the land is often critical. For example, in profiling a Maine farmer, a New York Times blogger validates the farmer by explaining:

Jason is a fifth-generation Maine farmer. He cultivates the land first planted by his great-great grandfather in 1878. He lives with his wife and two kids in the farmhouse built by his great-great grandfather. He still uses a well-maintained mechanical seed

women who are moving to new plots of land, then there is a lesser connection built through generations of women to the family land.⁹⁰ In addition, moving to a husband's family farm often leads to tension between the daughter-in-law and the husband's family, which can make isolated rural life less desirable for farm women.⁹¹ Studies have found the daughter-in-law is the most stressed family member in two-generational farming and ranching families.⁹²

Even if women are land owners, they often cede either ownership or control to husbands or brothers.⁹³ Therefore, inheritance systems are not the only factor at play in determining whether or not women have access and control over land. However, inheritance plays an important role, along with grooming, in determining how much land access each child will have, and therefore the gendered makeup of farmers in the United States.

D. THE IMPACT OF DIVORCE

Kim put 10 years of sweat equity into their farm; her only way out of an unhappy marriage was to leave that investment behind. "I didn't want to destroy the farm by asking for half of it," Kim says. She emerged without a job, her own credit history, or even a title to list on a resume.⁹⁴

drill bought new in the 1940s by his great grandfather. It's parked beside the restored 1963 International tractor that he still uses. History and heritage matter to Jason.

Craig Leisher, *From a Farm Stand, New and Old Insights*, N.Y. TIMES GREEN BLOG (Oct. 25, 2011), <http://green.blogs.nytimes.com/2011/10/25/from-a-farm-stand-new-and-old-insights/>. Not surprisingly, this narrative is written about a male farmer and describes his male ancestors as the critical players in the family farm's history. *Id.* For a female spiritual perspective on the connection to land see KATHLEEN NORRIS, *DAKOTA: A SPIRITUAL GEOGRAPHY* (1993). Norris moves from the big city to her grandparents' former home in Lemmon, South Dakota. *Id.* This book chronicles her spiritual story in discussing the connection to the land and community from whence her family came. *Id.*

90. Willa Cather portrays the importance of patrilocal societies to generations of men through a male character who had moved west from his hometown. The male character says:

In my own town in Michigan, now, there were people who liked me on my father's account, who had even known my grandfather. That meant something. But here it's all like the sand: blows north one day and south the next. We're all a lot of gamblers without much nerve, playing for small stakes.

CATHER, LARK, *supra* note 3, at 103. This connection to community would be as important for women if they were given the chance over generations to develop connections with the land and community.

91. See, e.g., Marotz-Baden & Mattheis, *supra* note 62, at 136.

92. *Id.* at 135-36.

93. Sonya Salamon & Ann Mackey Keim, *Land Ownership and Women's Power in a Midwestern Farming Community*, 41 J. MARRIAGE & FAM. 109 (1979).

94. Meg Cadoux Hirshberg, *Why So Many Entrepreneurs Get Divorced: Why the Start of a Company so Often Spells the End of a Marriage*, INC. (Nov. 1, 2010), <http://www.inc.com/magazine/20101101/why-so-many-entrepreneurs-get-divorced.html>.

Because women tend not to have ownership of their parents' land and tend to live with husbands on property inherited from his family, a potential divorce puts a woman's chances of land ownership at risk. There is no existing literature that explores this issue in depth. However, this Article attempts to briefly mention the different factors impacting how female farmers are harmed in divorce.

There are several trends that contribute to the pattern of women losing land ownership and access at divorce. First, as already discussed, women are less likely to take over the natal farm than are their brothers, meaning a woman is more likely to move onto the family farm of a husband, leaving her without access to, and oftentimes ownership of, her natal farm. A second factor is the timing of wealth transmission in intergenerational farm families. Because most parents do not deed land over until death, or at least late old-age, it is unlikely the young or middle-aged adult farmer will outright own the land that he or she is farming.⁹⁵ In turn, this means a woman may labor for years on her husband's family farm and walk away from a divorce with no land because it did not yet belong to the couple.⁹⁶ Where the farm is not owned by the couple and therefore is not marital property, a wife is likely not going to get an interest in the land at divorce.⁹⁷ Although probably able to negotiate a settlement for the labor put into the farm and an increase in value, a divorcee is not going to receive the same type of monetary settlement she would have gotten had the couple already owned the farmland.⁹⁸

One example from South Dakota – a separate property state – provides a good examination of what lies in store for women in divorce.⁹⁹ In 2000, the South Dakota Supreme Court decided *Albrecht v. Albrecht*.¹⁰⁰ After marrying, the couple soon moved to the husband's parents' farm where the couple purchased farmland from the husband's parents with assets from the

95. See A. Thelin & S. Holmberg, *Farmers and Retirement: A Longitudinal Cohort Study*, 15 J. AGROMEDICINE 38, 38 (2010) (finding that "farmers continue to work full or part time around retirement age to a much larger extent than employees").

96. See, e.g., *Temple v. Temple*, 365 N.W.2d 561, 564 (S.D. 1985) (affirming a trial court order that granted the husband land and the wife money in a divorce).

97. "Property acquired during the marriage by one spouse by bequest, devise, or descent, generally remains that spouse's separate property and is not subject to division on dissolution of the marriage." 24 AM. JUR. 2D *Divorce and Separation* § 489 (2008). Cf. *Halbersma v. Halbersma*, 738 N.W.2d 545, 549 (S.D. 2007) ("[I]nherited property 'is not ipso facto excluded from consideration in the overall division of property.'" (quoting *Novak v. Novak*, 713 N.W.2d 551, 553 (2006))).

98. 24 AM. JUR. 2D *Divorce and Separation* § 489 (2008).

99. HERMA HILL KAY & TRISTIN GREEN, *SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS* 281 (7th ed. 2012) (comparing and contrasting "common law" and community property states).

100. 609 N.W.2d 765 (S.D. 2000).

marital estate.¹⁰¹ Twelve years later at divorce, the trial court determined that only the appreciation in the land bought from the parents was marital property – the rest was husband’s separate property because it was a gift – even though it was bought with marital assets.¹⁰² The husband also received the livestock, equipment, and marital home because it came through his family – the wife received only a parcel of rental property located away from the family farm.¹⁰³

The Supreme Court of South Dakota reversed only the finding that the parcel of land had been a gift from the husband’s parents.¹⁰⁴ The court found no abuse of discretion in awarding the husband the marital home simply because it was on farmland purchased from his family, and found no abuse of discretion in awarding the farm equipment to him because he needed it to operate a farming business, while the wife’s interest in raising livestock was dismissed as unnecessary.¹⁰⁵ The laws of South Dakota¹⁰⁶ were unable to protect the wife’s property interest, and she received very little for her contribution to the farm and nothing to help her continue in the agricultural business – largely because the couple farmed on the husband’s family’s land, not the wife’s family’s land.

Not only does the threat of divorce and an expensive settlement increase stress in intergenerational farm families, but a divorce itself leaves women with no stake in her husband’s future probability of owning land.¹⁰⁷ If a divorce is looming, it is going to be the husband and his natal family who control when and how the land changes hands, making it even easier for men to control strategically when they become land owners in order to effectively exclude women.¹⁰⁸

101. *Albrecht*, 609 N.W.2d at 767.

102. *Id.* at 767-68.

103. *Id.*

104. *Id.* at 770.

105. *Id.* at 771.

106. S.D. CODIFIED LAWS §§ 25-2-4, 25-4-44 (2004).

107. Generally, spouses have no marital property interest in their spouse’s future interest. The exception comes through trusts, which occasionally courts find as marital property and divide the future interest. *See, e.g.*, *Chilkott v. Chilkott*, 607 A.2d 883, 885 (Vt. 1992). The issue in such cases is whether “the future interest is so remote that it has no ascertainable present value.” *Id.* This rule applies where property has already been placed in trust, but does not apply to wills where property has not yet been transferred. Michael Diehl, *The Trust in Marital Law: Divisibility of a Beneficiary Spouse’s Interests on Divorce*, 64 TEX. L. REV. 1301, 1354 (1986).

108. As discussed earlier in Part II.C, parents often wait longer periods to transfer land to the next generation. This means that for many farm families, two-generations simultaneously work and live on a farm. Although a fine practice, harm can occur if the older generation continues to own the property, while the younger generation works to improve the property. For an example of how the older generation’s ownership of land can lead to unequal property distribution at divorce, *see Temple v. Temple*, 365 N.W.2d 561, 564 (S.D. 1985). It is because of the benefit to their own

Divorce is also a factor for farming couples who are not part of two-generational households. As one young farmer described rural living, “we are in a wonderful spot in rural America, even if there aren’t hip bars with good beer on tap.”¹⁰⁹ Presumably for many farmers, rurality contributes positively to their quality of life. However, living on a farm in a rural community can also lead to feelings of isolation. The “isolation break[s] up marriages” in some circumstances.¹¹⁰ The breakup of marriages should be a concern because of the sweat equity poured by both parties to a marriage into the farm and the complications of asking one party to leave the farmland to the other. There is less concern about excluding women when a couple owns their own land and the land will be divided either equally or equitably under the marital property regime than when land was gifted, inherited, or purchased from the husband’s parents.¹¹¹ The threat – and impact – of divorce is an important factor governing couples’ lives on farms. As discussed further in Part V, there is an important role for both extension service agents and lawyers to play in informing women, and men, about the way that property will be divided at divorce.¹¹²

E. ADDITIONAL COMPLICATIONS: THE COST OF FARMLAND AND ACCESS TO EDUCATION

As is evidenced by history, the start-up cost for farmers is simply too high for most people to buy land and begin farming.¹¹³ The high cost of land is another complicating factor that prevents women from becoming farmers.¹¹⁴ Because farmland is currently at a premium, it is even more damaging to a farming career for daughters who do not inherit land.

Iowa is illustrative of high farm prices as the state has seen a spike in farm prices recently, which has led to high demand for farmland.¹¹⁵ As

children that parents may wait to transfer property until they die or are firmly convinced of the survival of the marriage.

109. Isolde Raftery, *Young Farmers Find Huge Obstacles to Getting Started*, N.Y. TIMES, Nov. 13, 2011, A25 (quoting thirty-one-year-old farmer Luke Deikis from upstate New York).

110. *Id.*

111. Comparing two Idaho cases is instructive of this point. In *Shumway v. Shumway*, the Idaho Supreme Court determined that the husband’s family land was a gift and thus at divorce he ultimately received three-fourths of the land. 679 P.2d 1133, 1138 (Idaho 1984). In *Larson v. Larson*, a couple had bought, rather than inherited, ranch land and at divorce the wife received most of the worth of the ranch. 88 P.3d. 1210, 1211-12 (Idaho 2004). These cases are merely illustrative, an empirical analysis of marital property cases about farmland is needed to fully understand current trends.

112. See *infra* Part V.A.

113. See, e.g., Raftery, *supra* note 109, at A25.

114. See generally *id.*

115. A.G. Sulzberger, *As Crop Prices Soar, Iowa Farms Add Acreage*, N.Y. TIMES (Dec. 30, 2011), <http://www.nytimes.com/2011/12/31/us/in-iowa-farmland-expands-as-crop-prices-soar.htm>

crop prices have risen – corn has tripled and soybeans doubled in the last five years – “[f]arm operators appear willing to pay up to maximum values for land based on expected profits accruing from the land’s best use.”¹¹⁶ In other words, farmers are putting their money in land rather than other investments.¹¹⁷ This additional land investment is the result of the rise in crop prices as well as farming technology that has allowed farmers to make a profit off of land previously thought inhospitable.¹¹⁸ “The three most important factors driving higher asset values (including farm real estate) continue to be relatively high expected income from production assets, favorable borrowing costs, and expected growth of future return on these investments.”¹¹⁹

To some, the prodigious gain in farm prices is unsustainable:

In Iowa, the state with the highest gains in the Midwest, the average price of farmland grew a record 32 percent [in 2010] to \$6,700 an acre, according to a study released last week by Iowa State University. [In December 2011] a land auction in the northwest corner of the state shattered records when one farm sold for \$20,000 an acre, prompting another round of warnings of a real estate bubble.¹²⁰

Increasingly expensive tillable land thus creates a structural and economic barrier to new farmers entering the profession.¹²¹ Certainly the acreage value of farmland varies considerably among states.¹²² However, there is a predicted 23.5% increase in land values from 2008 until 2012.¹²³

Currently, the price of farmland is high, but the “income from farming has been more than sufficient to service the debt on farm real estate

l?pagewanted=all&_r=0 (“Across much of the Midwest the sharp increase in farm earnings has driven the price of farmland to previously unimaginable – and, some say, unsustainable – levels.”); Press Release, U.S. Dep’t of Agric., South Dakota Land Values Up From a Year Ago (Aug. 4, 2011), available at http://www.nass.usda.gov/Statistics_by_State/South_Dakota/Publications/Economics_Press_Release/2011/land1108.pdf (“South Dakota farm real estate value . . . on January 1, 2011, [was] up 13.4 percent from the 2010 revised estimate The U.S. farm real estate value . . . is up 6.8 percent from 2010.”).

116. U.S. DEP’T OF AGRIC., *Farm Income and Costs*, *supra* note 48; Sulzberger, *supra* note 115.

117. Sulzberger, *supra* note 115.

118. *Id.*

119. U.S. DEP’T OF AGRIC., *Farm Income and Costs*, *supra* note 48.

120. Sulzberger, *supra* note 115.

121. It should be noted that farmland has not always been so expensive. During the 1980s, farmland dropped to dangerously low prices showing the risk farmers take by placing their equity into farmland where value is dependent on outside factors. Richard Orr, *Midwest Farm Values Drop Another 4.6%*, CHI. TRIB., Aug. 26, 1985, at 3.

122. U.S. DEP’T OF AGRIC., *Farm Income and Costs*, *supra* note 48.

123. *Id.* During the same time period, debt was only increased by 3.5 percent. *Id.*

purchases at current mortgage rates.”¹²⁴ However, this has only been true over the last few years – from 2005 until 2008 farming income was insufficient income to cover the debts required to purchase farm real estate.¹²⁵ The United States Department of Agriculture asserts historically low interest rates as a significant contributing factor allowing the income from farming to support the high land values.¹²⁶ The warning is that “[i]ncreases in interest rates would likely put downward pressure on farmland values” because farming income would no longer be able to support high prices.¹²⁷ “Agriculture is particularly sensitive to interest rates because it is one of the most capital-intensive industries in the economy.”¹²⁸

The farmers who start without a family business and piece of land tend to operate smaller operations on less space and earn less income, as the data on new farms by minority owners indicates.¹²⁹ A part of this is the actual cost of land, and another is the start-up costs of investing in the expensive equipment needed on larger farms and ranches.¹³⁰ Capital and land access are two main barriers to entry for new farmers.¹³¹ For many new farmers, farming is relegated to a second source of income. For example:

At Quincy Farm in upstate New York, Luke Deikis and Cara Fraver say they are living their dream, harvesting cabbage, sweet potatoes and carrots on a 49-acre property on the Hudson River. Still, even after three years of farming, Ms. Fraver, 30, waits tables, and Mr. Deikis, 31, moonlights as an engineer in the film industry, occasionally driving three and a half hours to Manhattan to pay the bills.¹³²

This couple is not abnormal in the world of young farmers as seventy-three percent of young farmers must work away from their farms.¹³³ The 2007 Census of Agriculture found close to eighty percent of the new farm operators had to work off-farm and were less likely to farm full time than

124. NICKERSON ET AL., *supra* note 49, at iii.

125. *Id.* This was also true from 1978 until 1985.

126. *Id.* at 2.

127. *Id.*

128. U.S. DEP’T OF AGRIC., *Farm Income and Costs*, *supra* note 48.

129. U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRIC., *supra* note 28.

130. “Machinery and equipment are major cost items in farm businesses. Larger machines, new technology, higher prices for parts and new machinery, and higher energy prices have all caused machinery and power costs to rise in recent years.” EDWARDS, *supra* note 48, at 1.

131. *E.g.*, Raftery, *supra* note 109, at A25.

132. *Id.*

133. *Id.* at 20 (citing number provided by The National Young Farmers’ Coalition).

established farmers.¹³⁴ “Farms with principal operators who started within the past [five] years only account for [thirteen] percent of all U.S. farms and [seven] percent of all sales.”¹³⁵ While new farmers seek to enter the profession, the challenges are high – particularly for those who are not inheriting land or who have not been groomed to become farmers.

Moreover, new farmers are challenged to gain the education that has traditionally been passed through family grooming. Educational institutions are beginning to diversify their offerings – potentially creating a greater space for those who did not grow up on family farms to enter the profession.¹³⁶ However, despite increased educational opportunities, access to land remains a critical barrier to becoming a farmer. At various times in the United States’ history, the government has pushed agricultural education. The first such push was in 1785 when associations for the promotion of agriculture were first formed.¹³⁷ The first year that a limited number of colleges began to provide agricultural instruction was 1792.¹³⁸ The first school to offer agricultural instruction was Columbia, followed by Harvard and Yale.¹³⁹

Agricultural education shifted from the private to the public sphere after the passage of the Morrill Act in 1862.¹⁴⁰ The Morrill Act was critical to creating agricultural colleges.¹⁴¹ Importantly, it apportioned public land to each state to create state colleges of agriculture and mechanic arts.¹⁴² The year 1887 saw expansion for many land-grant universities through the Hatch Act, which provided agricultural experiment stations in every state, many of which were placed on land-grant universities.¹⁴³ In the early 1900s, the federal government shifted policy goals and there was a focus on secondary education and a limited focus on elementary education.¹⁴⁴ The Department of Agriculture was interested in unifying the education system as to “agriculture and country life.”¹⁴⁵ One proposal was to create hundreds

134. U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRICULTURE, NEW FARMS, NEW FARM OPERATORS, http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/new_farms.pdf (last visited Jan. 16, 2013).

135. *Id.*

136. *See infra* Part IV.A.2.

137. Benjamin Marshall Davis, *Agricultural Education: The United States Department of Agriculture*, 10 ELEMENTARY SCH. TEACHER 101, 101 (1909).

138. *Id.*

139. *Id.*

140. 7 U.S.C. §§ 301-08 (2006).

141. Davis, *supra* note 137, at 101.

142. 7 U.S.C. § 301; Davis, *supra* note 137, at 101.

143. Hatch Act of 1887, ch. 314, 24 Stat. 440-42; Davis, *supra* note 137, at 101.

144. Davis, *supra* note 137, at 103.

145. *Id.* at 106.

of “agricultural finishing schools” around the nation to complement the already existing land-grant universities.¹⁴⁶ Willet M. Hayes, then the Assistant Secretary of the Department of Agriculture, stated in 1909 that the goals of these schools would be “something of instruction in agriculture, in home economics, and in social and civil affairs, as well as . . . general education, and shall be taught to all the boys and girls of the farm.”¹⁴⁷ In 1917, the federally supported vocational agricultural educational programs were created.¹⁴⁸ High schools currently vary widely on the agricultural educational offerings, including the availability of student organizations, agricultural courses, and extracurricular activities.¹⁴⁹ Land-grant universities continue to lead the higher education of future farmers.¹⁵⁰

The additional complications are more evidence of the importance of women gaining access to land through inheritance. Once the importance of women’s access to family land is recognized, the question in large part becomes whether this is something that can and should be advocated through laws or social programs.

III. LAW

In order to understand why the inheritance practices exist as they do, I examine historical and contemporary laws. Historically women have had fewer land and inheritance rights and states had statutes that discriminated on the basis of gender.¹⁵¹ Many legal changes have impacted how women earn, own, and inherit property. The important legal changes include the Nineteenth Amendment,¹⁵² the application of the Equal Protection clause to gender discrimination,¹⁵³ and statutory actions such as the Married

146. *Id.* at 107.

147. *Id.* (quoting WILLET M. HAYES, OFFICE OF EXPERIMENT STATIONS, CIR. 84, EDUCATION FOR COUNTRY LIFE 90 (1909)).

148. COMM. ON AGRIC. EDUC. IN SECONDARY SCH., UNDERSTANDING AGRICULTURE: NEW DIRECTIONS FOR EDUCATION 25 (1988) [hereinafter COMM. ON AGRIC. EDUC. IN SECONDARY SCH.].

149. *See, e.g.*, Rich Harrison, *Agri-Science Programs Seeking More State Funds*, NECEN (May 19, 2012), http://www.necn.com/05/19/12/Agri-science-programs-seeking-more-state/landing_politics.html?apID=bbce5ac6323f47058843413638a0e45b; Wendy Carlson, *At Prep School, Rolling Up Sleeves and Working the Soil*, N.Y. TIMES, Nov. 18, 2011, at CT12.

150. *See generally* Davis, *supra* note 137, at 101.

151. *See, e.g.*, *Bradwell v. Illinois*, 83 U.S. 130, 141 (1873) (upholding Illinois law prohibiting women from practicing law because the “natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life” and “[t]he paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother”).

152. U.S. CONST. amend. XIX.

153. *See, e.g.*, *Reed v. Reed*, 404 U.S. 71, 76-77 (1971).

Women's Property Acts,¹⁵⁴ the abolishment of dower,¹⁵⁵ and gender neutral intestacy schemes.¹⁵⁶ Also important is an exploration of the contemporary gender-neutral intestacy laws and what, if any, impact they have on how land is inherited.

A. HISTORICAL LEGAL CHANGES

Legal changes have impacted how women inherit land. Social changes, such as changing norms in inheritance, access to higher education, and urbanization, have affected mainly urban and suburban women. However, the legal changes in the status of women have been more far-reaching and apply to rural women as well.¹⁵⁷ The status of women has been on a positive, albeit admittedly intermittent, track toward gender-equality and continues to progress. Several constitutional and statutory changes have had a particularly important and lasting impact on women's rights to property and inheritance.

To begin, an important move in the dismantling of legal coverture¹⁵⁸ was the passage of the married women's property acts by individual states from the 1830s, through the 1870s.¹⁵⁹ These laws gave women the right to own the property they brought into the marriage or were deeded during the marriage.¹⁶⁰ These laws were important for women's legal status as they allowed married women to own property.¹⁶¹ However, the laws were promulgated not to advance women's rights but to keep the wife's property free from creditors, enabling families to remain solvent when husbands were in debt.¹⁶² This purpose was particularly salient for farmers because at the time "farmers operated in a dangerous cycle of borrowing and amassed dangerous levels of debt."¹⁶³ Therefore, the married women's property acts

154. See John R. Gunderson, *Women in America: Virginia and New York as a Case Study 1700-1800*, in *INHERITANCE AND WEALTH IN AMERICA* 91, 111-12 (Robert K. Miller, Jr. & Stephen J. McNamee eds., 1998).

155. See, e.g., MICH. COMP. LAWS ANN. § 558.1 (West 2012); NEB. REV. ST. § 30-2317 (2009).

156. See, e.g., N.D. CENT. CODE § 30.1-04-01 (2010).

157. See, e.g., Pruitt, *Gender, Geography & Rural Justice*, *supra* note 20, 382 (discussing specifically how economic progress has impacted rural women and their work patterns).

158. Coverture is the "application of the common law doctrine that merged a married woman's interest with those of her husband for the duration of the marriage and gave the husband actual control of her interests. It did not obliterate her rights, but it suspended independent action during the marriage." Gunderson, *supra* note 154, at 116 n.1.

159. NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* 52 (2000).

160. *Id.*

161. *Id.*

162. *Id.* at 52-53.

163. *Id.*

created a way for middle class families to achieve a level of economic security the wealthy had long obtained through trusts.¹⁶⁴ Though these laws could have substantially changed how women owned and accessed property, they were applied conservatively¹⁶⁵ and did little to change how women lived.¹⁶⁶ Despite their limitations, ultimately the married women's property acts provided the groundwork for later progressions that would better allow women to control land.¹⁶⁷

Accompanying the promulgation of the married women's property acts were the laws that abolished dower.¹⁶⁸ Under early American common law, dower was a legal protection provided to women.¹⁶⁹ Dower recognized women had a property interest in the marital property held by her husband.¹⁷⁰ In most states, a wife was guaranteed a life estate in one-third of the marital property upon her husband's death.¹⁷¹ However, before the married women's property acts were passed by individual states, a woman had no control of marital assets during her husband's lifetime.¹⁷² Therefore, if her husband were to lose the property she would receive no dower at his death and be left without property for support.¹⁷³ After the 1850s, all but two separate property states had replaced dower with intestacy schemes that gave gender-neutral shares to husbands and wives at the death of their spouse.¹⁷⁴ The movement toward equality in intestacy was a part of the same movement that abolished dower in most states by 1850.¹⁷⁵ While the new intestacy schemes oftentimes limited the shares to a life estate, they

164. *Id.* at 53.

165. For example the New York courts applied the law only to marriages and property acquired after the passage and also only originally allowed women to "hold" land but not convey or devise that property. Gunderson, *supra* note 154, at 111-12.

166. COTT, *supra* note 159, at 5 (pointing out that most states' laws did not give women the right to use property by prohibiting women from contracting, buying, or selling).

167. *Id.*

168. Dower is defined as: "At common law, a wife's right, upon her husband's death, to a life estate in one-third of the land that her husband owned in fee." BLACK'S LAW DICTIONARY 225 (3d Pocket ed. 2006).

169. Gunderson, *supra* note 154, at 116 n.1.

170. *Id.*

171. *See, e.g.*, MICH. COMP. LAWS ANN. § 558.1 (West 2012) ("The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.").

172. Gunderson, *supra* note 154, at 116 n.1.

173. *Id.*

174. SHAMMAS ET AL., *supra* note 52, at 85.

175. *Id.* (see chart).

generally granted substantial homestead exemptions¹⁷⁶ and therefore allowed widows, or widowers, to remain in the marital home.¹⁷⁷

Despite the fact the new intestacy laws abolishing dower rid women of the inequality of receiving a lesser share than their male counterparts, the laws sometimes decreased the property available to a widow.¹⁷⁸ Currently in separate property states, widows are guaranteed an “elective share” of their deceased husband’s estate.¹⁷⁹ If an elective share is an option, a widow, or widower, can elect to take a certain percentage of the wealth, oftentimes one-half or one-third, rather than whatever was gifted through the will.¹⁸⁰ In community property states, women are guaranteed a one-half interest in any marital property.¹⁸¹ The abolishment of dower laws and the shift toward elective shares has given women more say in the property they inherit at the time of a spouse’s death.

Possibly the most vital legal change was the passage of the Nineteenth Amendment in 1920. The Nineteenth Amendment conferred on women one important indicia of citizenship – suffrage.¹⁸² The Nineteenth Amendment overturned *Minor v. Happersett*,¹⁸³ an 1874 case which held the right to vote was not a privilege of citizenship; therefore, women could be denied the vote.¹⁸⁴ Even after women achieved the vote, they were still denied many indicia of citizenship.¹⁸⁵ Voting did not necessarily translate into equal property and inheritance rights for women; however, the amendment did provide women with a basis to claim full citizenship.

By the 1970s, the Supreme Court had become more willing to accept Fourteenth Amendment attacks on gender discrimination.¹⁸⁶ In 1971 the Court first struck down a gender classification under the Equal Protection

176. A homestead is “[t]he house, outbuildings, and adjoining land owned and occupied by a person or family as a residence.” BLACK’S LAW DICTIONARY 331 (3d Pocket ed. 2006); A homestead law is “[a] statute exempting a homestead from execution or judicial sale for debt, unless all owners, usu. a husband and wife, have jointly mortgaged the property or otherwise subjected it to creditors’ claims.” *Id.* at 332.

177. SHAMMAS ET AL., *supra* note 52, at 85 (see chart).

178. *Id.* at 86.

179. *See, e.g.*, NEB. REV. ST. § 30-2317 (2009).

180. *Id.*

181. SHAMMAS ET AL., *supra* note 52, at 8.

182. U.S. CONST. amend. XIX.

183. 88 U.S. 162 (1874).

184. *Minor*, 88 U.S. at 163, 176.

185. The denial of full citizenship rights for women can be evidenced by the inability of women to contract for the type and hours of employment during the *Lochner* era. *See, e.g.*, *Muller v. Oregon*, 208 U.S. 412, 422-23 (1908); *Goesaert v. Cleary* 335 U.S. 464 (1948). For additional information on the *Lochner* era, *see generally* David E. Bernstein, *Lochner’s Legacy’s Legacy*, 82 TEX. L. REV. 1 (2003).

186. *See generally* *Reed v. Reed*, 404 U.S. 71 (1971).

Clause.¹⁸⁷ In 1976, the Supreme Court strengthened protection against gender discrimination by applying a heightened scrutiny standard.¹⁸⁸ Although limits exist on what the Court will strike down,¹⁸⁹ a state classification of inheritance based on gender would not survive the heightened scrutiny in place for gender classifications.¹⁹⁰ Therefore, any law that mirrored actual patterns of farm inheritance could not survive review.¹⁹¹ The prohibition against relying merely on stereotypes of proper gender roles in the creation of gender-based classification also means states could not create a law favoring male farmers merely on the stereotype that only sons wish to farm.¹⁹²

Finally the gender-neutral Uniform Probate Code (UPC) published in 1969 helped to produce a range of other gender-neutral state intestacy laws.¹⁹³ This statutory gender neutrality has led courts to grant equality to female takers in instances where there is no will.¹⁹⁴ The gender neutral intestacy schemes are important as they assure the government will not distribute property based on gender.¹⁹⁵ However, neither the UPC nor any

187. *Id.* at 76-77 (finding an intestacy scheme preferring males to females for administrators invalid under the Equal Protection Clause).

188. *Craig v. Boren*, 429 U.S. 190, 197 (1976) (“To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”).

189. *See, e.g., Nguyen v. INS*, 533 U.S. 53, 71 (2001) (“The statutory scheme’s satisfaction of the equal protection scrutiny we apply to gender-based classifications constitutes a sufficient basis for upholding it.”).

190. The Court now applies the heightened scrutiny standards from *United States v. Virginia (VMI)*, 518 U.S. 515, 533 (1996) (“The State must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” (internal quotation marks omitted)).

191. *See generally id.*

192. Ruth Bader Ginsburg is famous for her stereotype principles of discrimination. For an in-depth discussion of her theory and its impact, *see* Deborah Jones Merritt & David M. Lieberman, *Ruth Bader Ginsburg’s Jurisprudence of Opportunity and Equality*, 104 COLUM. L. REV. 39, 46-48 (2004) (“[B]y forcing us to focus on individual traits, rather than group stereotypes, Justice Ginsburg has reduced the tenacity of bias.”).

193. *Shangreau v. Babbitt*, 68 F.3d 208, 210 (8th Cir. 1995) (discussing the Uniform Probate Code’s impact on the intestate laws applicable to children born out of wedlock).

194. *See, e.g., Jordan v. Anderson*, 421 N.W.2d 816, 819-20 (N.D. 1988) (citing N.D. CENT. CODE § 30.1-04-01 (2010)) (holding that property of intestate decedent would go to sisters under North Dakota’s intestacy scheme).

195. The government’s distribution of property based on gender is a real concern. Much research has been done on the history of intestacy and how governments distribute property. The intestacy scheme of the Israelites was:

If a man dies without leaving a son, you shall let his heritage pass on to his daughter; if he has no daughter, you shall give his heritage to his brothers; if he has no brothers, you shall give to his father’s brothers; if his father has no brothers, you shall give his heritage to the nearest relative in his clan, who shall take possession of it.

Numbers 27:8-11 (King James). This rule was a clear governmental preference for the passage of property to sons, not daughters. Compare the Israelite’s intestacy scheme with that of modern day

other intestacy scheme has a direct impact on testators, nor do the intestacy schemes assure that testators will not use antiquated stereotypes in devising property.¹⁹⁶

B. CURRENT INTESTACY LAWS

In the United States, the Equal Protection Clause of the Fourteenth Amendment – for the most part – requires equal governmental treatment of women.¹⁹⁷ Intestacy schemes previously favored men in the distribution of property.¹⁹⁸ In 1971, the Supreme Court decided *Reed v. Reed*,¹⁹⁹ striking down a provision of the Idaho intestacy statute which preferenced naming men as administrators of estates.²⁰⁰ This decision buttressed the gender neutrality advocated by the UPC.²⁰¹

The UPC includes multiple parts; the most important for this discussion is the intestacy scheme. Intestacy schemes govern the way property will be distributed if a decedent dies without a will or other distribution document.²⁰² The UPC does not make any determination based on a recipient's gender.²⁰³ Today, twenty states have adopted the UPC either in whole or in part.²⁰⁴ The states that have not adopted the UPC also do not

North Dakota, where there is no mention of the gender of beneficiaries. N.D. CENT. CODE § 30.1-04-02 (2010).

196. Intestacy schemes apply only to property “not effectively disposed of by will.” N.D. CENT. CODE § 30.1-04-01.

197. *See* *Frontiero v. Richardson*, 411 U.S. 677, 677 (1973) (equal protection decision where the Court determined that military benefits for family members could not be allocated based only on gender).

198. In the United States, intestacy schemes were originally based on primogeniture.

When the early settlers came to this country from England, they naturally brought with them the common law; but it was not unexpected that the new social and economic conditions and opportunities should gradually be manifested in the legal institutions. For intestate succession many colonies at first retained the rule of primogeniture for land, and a number of others set up the unusual rule of a double portion for the eldest son.

Joseph Dainow, *Inheritance by Pretermitted Children*, 32 ILL. L. REV. 1, 1 (1937). Primogeniture is “[t]he superior or exclusive right possessed by the eldest son, and particularly, his right to succeed to the estate of his ancestor, in right of his seniority by birth to the exclusion of younger sons.” BLACK’S LAW DICTIONARY 1191 (6th ed. 1990).

199. 404 U.S. 71 (1971).

200. *Reed*, 404 U.S. at 76 (using a rational relationship test to overturn the law before heightened scrutiny was developed by the Court).

201. The case was decided only two years after the first UPC was promulgated. *Id.*

202. *See, e.g.*, NEB. REV. STAT. § 30-2301 (2009).

203. *See generally* North Dakota’s intestate scheme. N.D. CENT. CODE § 30.1-04-01 (2010). North Dakota has adopted in full the Uniform Probate Code and recognizes no gender difference in the distribution of property in intestacy.

204. Only sixteen states have fully adopted the UPC, but four others have adopted the UPC in part. Those states fully adopting the UPC are: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah.

differentiate based on gender.²⁰⁵ States, rural and urban, have very similar intestacy doctrines whereby sons and daughters take equal shares.²⁰⁶ For the purposes of this Article, intestacy schemes are important for two reasons. First, many people die without wills or trusts in place so a substantial percentage of wealth is transmitted through the intestate process and goes to the takers assigned by statute.²⁰⁷ Second, intestacy schemes are often interpreted as presumed intent doctrines and therefore legislatures promulgate intestacy schemes to reflect what the average decedent would want.²⁰⁸

As the default rule, the intestacy schemes in a state can have a large impact on how property is passed down through generations. For someone to avoid intestacy, he or she must promulgate a valid will or trust which dispenses all of their property.²⁰⁹ If a farmer living in South Dakota, a farming state which has adopted the UPC, dies leaving no spouse but four children, those children will each split the property equally.²¹⁰ An equal splitting of property may not always be the best decision for ensuring the continuation of a family farm, but it is the law in all United States jurisdictions and serves to treat all siblings equally, regardless of their gender or relationship to the farm. In the United States, around fifty percent of the population dies intestate.²¹¹ Many more die in partial intestacy.²¹²

205. See, e.g., CAL. PROB. CODE § 6400 (Deering 2012).

206. See, e.g., NEB. REV. ST. § 30-2301 (2009); CAL. PROB. CODE § 6400.

207. This includes about half of Americans. Linda Lyons, *Last Wishes' Half of Americans Have Written Wills*, in THE GALLUP POLL: PUBLIC OPINION 2005, at 207, 207-08 (2005) [hereinafter GALLUP POLL] (reporting 50%, May 2-5, 2005, survey of 1005 adults); ABC NEWS POLLS: PLANNING AHEAD (2002), available at <http://abcnews.go.com/images/PollingUnit/883a13PlanningAhead.pdf> (reporting 50%, Jul.-Aug. 2002, survey of 1024 adults) [hereinafter ABC NEWS POLLS].

208. Presumed intent theory is not the only way that intestacy schemes have been rationalized. However, the presumed intent theory is the most prominent theory espoused.

209. “Any part of a decedent’s estate not effectively disposed of by will passes by intestate succession to the decedent’s heirs as prescribed in this title, except as modified by the decedent’s will.” N.D. CENT. CODE § 30.1-04-01(1) (2010).

210. S.D. CODIFIED LAWS § 29A-2-101 (2004).

211. GALLUP POLL, *supra* note 207, at 207; ABC NEWS POLLS, *supra* note 207. This is because people are unwilling to face their own deaths, ROPER CTR. FOR PUBLIC OPINION RESEARCH, UNIV. OF CONN., AARP THOUGHTS ON THE AFTERLIFE SURVEY 5 (2006) (June 2006, survey of 1011 adults 50 and over); Lawyers do not market the advantages of wills in relation to intestacy; Michael R. McCunney & Alyssa A. DiRusso, *Marketing Wills*, 16 ELDER L.J. 33, 48-55 (2008); and, many people elect to transfer property outside of the probate process such as through life insurance policies, joint tenancies, and lifetime trusts, MARY RANDOLPH, 8 WAYS TO AVOID PROBATE 11-12, 197 (2d ed. 1999).

212. Partial intestacy occurs when “a will fails to dispose of all of a decedent’s property.” *Basile v. Aldrich*, 70 So. 3d 682, 683 (Fla. Dist. Ct. App. 2011). The effect is “that property [the decedent] owned at the time of her death not disposed of by her will passes to her heirs, in the manner prescribed by” state intestacy schemes. *Id.* Partial intestacy occurs for various reasons, including failure to include a residual clause. See, e.g., *id.* However, “[i]n construing a will, there is a strong presumption that its maker intended to dispose of his entire estate and did not intend to

State probate systems and the UPC apply the intestacy scheme to all property not otherwise distributed at decedent's death.²¹³

The second importance of intestacy schemes is conceptualizing them as presumed intent doctrines. This theory holds that a state should design its intestacy scheme to match what a testator would want to happen to his or her property, which in most instances is to share property equally between children.²¹⁴ A second theory is the duty theory, which holds that intestacy schemes should be drafted to provide for distribution of the estate to continue the decedent's duty of support.²¹⁵ However, the duty theory has not maintained prominence in the United States; rather, states are legislating based on the presumed intent theory.²¹⁶ In fact the drafters of the UPC stated that the intestacy provisions were in place "to reflect the normal desire of the owner of wealth as to the disposition of his property at death."²¹⁷ With this as the stated purpose, states, both rural and urban, believe the average person intends that his or her children, regardless of gender, take equal shares of all property.²¹⁸ However, as demonstrated in Part II, in farming families, this is not the case.

The Fourteenth Amendment limits how laws can automatically distribute property – even if relying on testator's intent.²¹⁹ In discussing another group long excluded from intestacy doctrines, so-called illegitimate children, the Supreme Court in *Trimble v. Gordon*²²⁰ noted "[a]t least when the disadvantaged group has been a frequent target of discrimination, as illegitimates have, we doubt that a State constitutionally may place the burden on that group by invoking the theory of 'presumed intent'" and thereby excluding them from intestate succession.²²¹ This same limit would apply were a state to explicitly favor sons over daughters in intestacy laws, so states are forced to provide equal protection to children under the

die intestate as to any part of his property." *In re Estate of Klein*, 434 N.W.2d 560, 562 (N.D. 1989).

213. See, e.g., S.D. CODIFIED LAWS § 29A-2-101 (2004).

214. Ronald F. Scalise, Jr., *Honor Thy Father and Mother?: How Intestacy Law Goes Too Far in Protecting Parents*, 37 SETON HALL L. REV. 171, 173-74 (2006).

215. *Id.* at 174-75.

216. *Id.*

217. Martin L. Fried, *The Uniform Probate Code: Intestate Succession and Related Matters*, 55 ALB. L. REV. 927, 928-29 (1992) (quoting UNIF. PROBATE CODE art. II, pt. 1 gen. cmt. (1969)).

218. See generally *id.*

219. U.S. CONST. amend. XIV.

220. 430 US 762 (1977).

221. *Trimble*, 430 US at 775 n.16. Although dicta, the Court provides strong constitutional background for the claim and the rule would presumably prevail in any instance where a presumed intent doctrine discriminated against a protect grouped. *Id.*

intestacy laws.²²² Intestacy doctrines may be theorized to be presumed intent doctrines, but the fact that a state cannot discriminate on gender appears to create a disparity between the actual intent of decedents and how states distribute property.

This is the legal background against which testators operate as they decide to whom their property should go. However, it is unclear how much individual testators are influenced by the intestacy schemes – presumably, those who fully agree with the intestacy schemes do not bother to write wills. With substantial property distribution happening during life and more happening through probate, the societal explanations for the inheritance and ownership of land are particularly important because of the private ordering of so much of this transmission.

IV. SOCIETAL EXPECTATIONS AND INTERACTIONS

Since the continuing disinheritance of daughters on family farms is more than the combination of the legal history and contemporary legal framework, this problem must be explained by additional social factors. This Part examines social changes that have impacted the inheritance of women in America, and specifically how those changes have impacted the inheritance of family farms. I argue a substantial reason why women are not becoming principal farmers is daughters are not groomed to take over the farm. This in turn leaves women ill-equipped to manage a farm even if they were to receive a property interest, thus leaving a properly-groomed brother with control and decision-making ability over that land.

A. SOCIAL CHANGES

Several factors explain why even contemporary rural women fail to inherit farms: these changes include urbanization, increased access to higher education, and changing norms in inheritance practices.²²³ Traditionally, rural women's access to land and the profession of farming

222. *See generally id.*

223. These are far from the only changes impacting agriculture today. The Committee on Agricultural Education in Secondary Schools identifies a host of issues that contribute to a changing agricultural system.

These forces include demographics; urbanization; rapid gains in worldwide agricultural production capacity; domestic farm and trade policies; lifestyle changes; global competition in basic and high-technology industries; the explosion in knowledge caused by increasingly sophisticated computers, digital equipment, and biotechnological techniques; specialization within the professions; and public expectations about the role of schools, the food supply, and public institutions.

COMM. ON AGRIC. EDUC. SECONDARY SCH., *supra* note 148, at v. This paper does not cover all of these changes, but rather only the changes important to land inheritance specifically.

was not direct, but instead depended on marrying a husband with land.²²⁴ Even once a woman had access to land, either through a father or husband, she was still prevented from being the principal farmer or rancher.²²⁵ In addition to the legal changes chronicled above, there have been cultural and socio-economic changes in American that have affected common practices of inheritance. Ultimately, however, the common understanding and practice is that sons will become farmers – daughters will, at most, become a farmer’s wife. Take for example a recent editorial in a South Dakota newspaper entitled *Writer’s Block: A Farm Wife Wears Many Hats*.²²⁶ The writer discusses how her role in the farm was to cook for the men – it is “the men and now the sons” who collaborate as farmers in the neighborhood.²²⁷ Her innocent description of farm life is telling – in many rural farming communities for a daughter to farm is unexpected.²²⁸ However, social changes impacting inheritance are more complicated than this woman’s narrative. Urbanization, increased availability of higher education, and increased inter vivos gifts have changed how farmland and farm knowledge are passed from one generation to the next.²²⁹

1. *Urbanization*

A primary trend impacting inheritance practices is urbanization. During the colonial period, when much of the population was living on small family farms, families tended to give land to one son and give the

224. Mary Neth, *Gender and the Family Labor System: Defining Work in the Rural Midwest*, 27 J. SOC. HIST. 563, 569-70 (1994).

225. See *supra* Part II.C. For example, the boisterous Laura Ingalls Wilder, although dreaming large, was always circumscribed by her mother’s call for proper Victorian gender roles though she longed for something else. “Laura ran back and forth, waving her sunbonnet and yelling, ‘Hi! Yi-yi-yi!’ till Ma told her to stop. It was not ladylike to yell like that. Laura wished she could be a cowboy.” LAURA INGALLS WILDER, *LITTLE HOUSE ON THE PRAIRIE* 165-66 (Harper & Row, 1971) (1935).

226. Linda Wuebben, *Writer’s Block: A Farm Wife Wears Many Hats*, YANKTON DAILY PRESS & DAKOTAN (Nov. 17, 2011), <http://www.yankton.net/Articles/2011/11/17/opinion/editorials/doc4ec481625ac22184152875.txt>.

227. *Id.*

228. *Id.*

229. There is an additional change that is important to agriculture, but not relevant to this Article. There has been a substantial move toward the corporate commercialization of farms, which has in turn impacted how many farmers in this country work and live. Particularly in California and areas of the Southwest, farmland is increasingly owned by corporations; this means there is a smaller percentage of small farm owners and more farmers working for corporate operations. This change and its effects on gender and inheritance are beyond the scope of this Article, but it is worth noting that the commercialization of farming has helped to fuel the unsubstantiated perception that there are no longer rural family farmers in America. Hoy Carman, *California Corporate Farms: Myth and Reality*, UNIV. OF CAL. GIANNINI FOUNDATION OF AGRIC., http://giannini.ucop.edu/media/are-update/files/articles/v12n6_3.pdf (last visited Feb. 22, 1013).

other children any remaining personal property.²³⁰ Soon, however, population centers started developing.²³¹ One impact was the push by the urban merchant class to be able to pass wealth through generations using the trust as a vehicle.²³² The development of the trust created a way for non-real property to be passed down through generations and rendered real property less central in the intergenerational wealth transfer for the wealthy urban class.²³³ Trusts were particularly helpful for families as they allowed older generations to put limitations on the spending of money through devices such as the spend-thrift trust²³⁴ and trusts that paid out in a future generation.²³⁵ Along with trusts, the growth of suburban home ownership has been important in changing practices.²³⁶ By the twenty-first century, with a large portion of the population now living in cities and suburbs rather than on farms,²³⁷ families' assets have changed. For most families, the majority of their wealth is now tied up in their family home and personal property; family homes are generally liquidated and passed to heirs as liquid assets.²³⁸ The liquidating of homes makes it easier to divide assets

230. JACQUELINE L. ANGEL, *INHERITANCE IN CONTEMPORARY AMERICA: THE SOCIAL DIMENSIONS OF GIVING ACROSS GENERATIONS* 12 (2008).

231. *See generally* BLAKE MCKELVEY, *THE URBANIZATION OF AMERICA 1860-1915* (1963).

232. Peter Dobkin Hall & George E. Marcus, *Why Should Men Leave Great Fortunes to Their Children?: Class, Dynasty, and Inheritance in America*, in *INHERITANCE AND WEALTH IN AMERICA* 139, 145 (Robert K. Miller, Jr. & Stephen J. McNamee eds., 1998).

233. *Id.*

234. A spendthrift trust is “[a] trust that prohibits the beneficiary’s interest from being assigned and also prevents a creditor from attaching that interest.” *BLACK’S LAW DICTIONARY* 737 (3d Pocket ed. 2006).

235. For example, a generation-skipping trust, which is “[a] trust that is established to transfer (usu. Principal) assets to a skip person (a beneficiary more than one generation removed from the settlor).” *BLACK’S LAW DICTIONARY* 735 (3d Pocket ed. 2006).

236. “Suburban homeownership has been a linchpin of the American dream.” John Wasik, *After the Housing Bust, What’s Next?*, *REUTERS MONEY* (June 17, 2011), <http://blogs.reuters.com/reuters-money/2011/06/17/after-the-housing-bust-whats-next/>.

237. For details on the rural to urban population shift from 1790 until 1990 *see* U.S. CENSUS BUREAU, TABLE 4, POPULATION: 1790 to 1990, <http://www.census.gov/population/censusdata/table-4.pdf> (last visited Feb. 22, 2013). Although this information covers each decade, looking at fifty year intervals can be informative. This chart begins in 1790 with 5.1% of the United States population classified as urban and 94.9% as rural. *Id.* Fifty years later in 1840, the population was 10.8% urban and 89.2% rural. *Id.* Another fifty years in 1890, 35.1% of the population was urban and 63.9% was rural. *Id.* It was in 1920 that the majority of the population was urban, not rural. *Id.* By 1940, 56.5% of the population was urban and only 40.4% rural. *Id.* Finally, in 1990, two hundred years after the first census, the urban population had reached 75.2% and the rural population was only 24.8%. *Id.* It is worth noting that this trend continues, albeit on a smaller scale, with traditionally rural states. Between 2000 and 2010, Iowa has seen significant shifts from rural to urban populations. Grant Schulte, *Iowa Population Shifts from Rural to Urban*, *USA TODAY* (Feb. 10, 2011), http://usatoday30.usatoday.com/news/nation/census/2011-02-10-iowa-census_N.htm.

238. ANGEL, *supra* note 230, at 3.

equally between multiple children, making it more likely than with family farms that all children will have equal access to their parents' property.²³⁹

The development of trusts and the move toward suburban land ownership does not have the same impact on the property distribution of rural farmers who continue to have a large portion of their wealth tied up in the family farm, as opposed to trusts or suburban homes. Because there are not as many liquidated assets available on the death of the farm-owning parent, it is much more important how the farm or ranch land gets distributed.²⁴⁰ The common narrative of equality in inheritance that relies on urban standards of ownership thus cannot account for situations in which a family farm or ranch is still the majority of a family's wealth and will likely not be liquidated.²⁴¹

2. *Higher Education*

The second societal change leading to shifting inheritance norms is the availability and rising cost of higher education. In the last century, college has become more accessible but also has risen drastically in price.²⁴² Cultural norms have also changed: early settlers of the Midwest were not always appreciative of education; in western North Dakota in the 1920s, "higher education was frowned upon. Most of the parents took the position that it served only to spoil young people and, even more dangerous, it lured them away from farm life."²⁴³ Contemporary farmers see education as beneficial to children and the future of family farms. Higher education is important because children are now more likely to use a bulk of what would be their inheritance to pay for college instead of having inheritance come through large gifts at the parents' deaths.²⁴⁴ Parents are pushed to save for

239. This trend can be sadly told through the way that American families lost wealth during the recent housing market crash. Between 2007 and 2010, the "median family's net worth dropped 38.8 percent." *Weak House Prices Drag Family Wealth: Fed*, REUTERS (June 11, 2012) <http://www.reuters.com/Article/2012/06/12/us-usa-economy-networth-idUSBRE85A1A2201206>

240. "Although declines in the values of financial assets or business were important factors for some families, the decreases in median net worth appear to have been driven most strongly by a broad collapse in house prices" because "housing was of greater importance than financial assets for the wealth position of most families." *Id.* (quoting the Fed).

241. U.S. DEP'T OF AGRIC., *Farm Income and Costs*, *supra* note 48.

242. This is not to say that farmers and ranchers cannot or do not divide land equally among children. However, there are distinct problems that arise from dividing productive land in this way, *see supra* Part II.B, for a discussion of this problem.

243. Jillian Kinzie et al., *Fifty Years of College Choice: Social, Political and Institutional Influences on the Decision-making Process*, 5 LUMINA FOUND. FOR EDUC. NEW AGENDA SERIES 3 (2004), available at <http://luminafoundation.org/publications/Hossler.pdf>.

244. CARRIE YOUNG, NOTHING TO DO BUT STAY: MY PIONEER MOTHER 6 (1991).

245. ANGEL, *supra* note 230, at 16-17.

college from early on and often times sink significant wealth into providing higher education for their children.²⁴⁵

Increased attendance at and spending for college is not only an urban trend; rural men and women are also leaving the farm for college. However, leaving for college does not mean young people will not return to farm. A twenty-three-year-old man originally from Utica, South Dakota explains his decision to attend college:

When I graduated from high school I knew I wanted to farm, and in reality there really is no need for a college degree to run a farm in my opinion. But, my dad talked some sense into me and I got my degree so that I could eventually hopefully own the farm myself.²⁴⁶

This man intends to find a local engineering job and begin to help his father on the farm in his spare-time, eventually taking over the farm full-time.²⁴⁷ His college education did not teach him to farm; but in his view learning to farm in college would have been superfluous because so much grooming had happened in his childhood.²⁴⁸ However, college helped him to obtain the financial resources he would one day need to take over operation of the family farm.²⁴⁹ For many other future-farmers, college is a time to gain additional agricultural education despite having been groomed by parents.²⁵⁰

Therefore, another common pattern is for farm children to receive college degrees in agriculture in anticipation of taking over the family farm.²⁵¹ As more rural children have begun attending colleges, the agricultural programs at many schools have become more robust. However, it is not only farm children seeking agricultural degrees. With the increasing interest in small agricultural work, the educational climate has changed:

[I]n just the last few years, more beginning farmers with small plots of land have stepped into the mix. Just a few years ago, the

245. *E.g.*, I.R.C. § 529 (2006).

246. Telephone Interview with N.H. (Apr. 4, 2011).

247. *Id.*

248. *Id.*

249. *Id.*

250. For example, South Dakota State University offers a Bachelor of General Agriculture degree designed in part for the student who “plans to return to the farm or ranch after college.” *General Agricultural (GNAG) Major (Bachelor of)*, S.D. STATE UNIV., http://catalog.sdstate.edu/preview_program.php?catoid=20&poid=3060&returnto=1535 [hereinafter S.D. STATE UNIV., *GNAG Major*] (last visited June 18, 2012). Major requirements include accounting, agricultural marketing and prices, and farm and ranch management and lab as well as many other courses.

251. *See generally id.*

Milwaukee campus began offering a beginning farming class in response to demand. That requires a different kind of lesson plan than one for a commercial farmer with hundreds of acres, or a family farmer who has been steeped in agricultural knowledge since birth.²⁵²

Land-grant universities are not the only institutions providing agricultural knowledge to those who have not been groomed to farm. A secondary preparatory school in Connecticut has created a farming and gardening program as an extra-curricular activity for their students – even though these students are mainly from urban backgrounds and have no intention to make a living from farming.²⁵³ In Chicago, an agricultural program trains future-agriculturalists through a nine-month program – including some men recently released from jail.²⁵⁴ The Chicago course “includes instruction in greenhouse and outdoor growing methods and Power[P]oint classroom presentations on farm management, marketing and other business practices.”²⁵⁵ The intended outcome of such a program is for participants to open urban farms.²⁵⁶

Making agricultural knowledge available to a greater array of people is an admirable goal. But particularly the states’ land-grant universities cannot neglect the importance of furthering the education of “a family farmer who has been steeped in agricultural knowledge since birth.”²⁵⁷ Not only are there constant technological changes in which newer generations must be trained, but also, as this Article demonstrates, many children on farms are not truly “steeped in agricultural knowledge”²⁵⁸ since birth. Rather, parents are making decisions whereby some children are provided more support than others in the gaining of agricultural knowledge.²⁵⁹ Schools must be prepared to provide education for farmers who want to make a career out of farming, rather than only those who want a lifestyle farm.

An additional aspect of higher education is that historically, and in the present day, it is not infrequent for women who have attained educational degrees to come back and teach at rural schools near the family farm and

252. Phyllis Korkki, *Land Spreading Out, but Not So Far and Wide*, N.Y. TIMES, Feb. 29, 2012), at F2.

253. Carlson, *supra* note 149, at CT12.

254. Don Terry, *An Urban Garden Prepares Inmates for Green-Collar Jobs*, N.Y. TIMES, Sept. 17, 2011, at A.27A.

255. *Id.*

256. *Id.*

257. Korkki, *supra* note 252, at F2.

258. *Id.*

259. *See infra* Part IV.B.

continue to help with farm labor.²⁶⁰ A hundred and fifty years ago, school teachers frequently were women from the community with an education of high school or less.²⁶¹ As schools have become increasingly regulated, teachers must obtain formal higher education in order to teach, which has also encouraged children to leave for higher education.²⁶² This necessarily breaks up the transmission of agricultural knowledge from parent to child. Because college is impacting the operation of family farms and when intergenerational farm transfer happens, it is important that educational institutions contribute to agricultural knowledge for those who hope to take over the family farm.

3. *Earlier Inheritances*

It is worth noting a third change as discussed previously: the increasing practice of spending inheritance during the life of the parent for college and other expenditures.²⁶³ Parents putting inheritance money into college educations has become more common as longer average life-spans also mean that more property transfers are happening during the testator's life as opposed to after death.²⁶⁴ Parents living longer means inheritance practices are changing, and parents will stay involved with the farm later in

260. Mary Neth, *Gender and the Family Labor System: Defining Work in the Rural Midwest*, 27 J. SOC. HIST. 563, 575 n.15 (1994).

261. ANN ROMINES, *CONSTRUCTING THE LITTLE HOUSE: GENDER, CULTURE, AND LAURA INGALLS WILDER* 215 (1997). By the mid-1870s, young women from rural communities were increasingly used as school-teachers. For Laura and her family, teaching jobs "commanded considerable prestige, and their work was more lucrative than any of the other available jobs that Laura's parents considered respectable for a single woman." *Id.* In the first half of the twentieth century, teachers often obtained two-year college degrees from regional teaching colleges. *See, e.g.*, YOUNG, *supra* note 243, at 16-18.

262. In contrast to the early days of prairie education, states now require substantial certification and renewal for their teachers. A description of the requirements from North Dakota demonstrates the trend. WAYNE KUTZER, N.D. STATE FOR CAREER BO. & TECHNICAL EDUC., *SECONDARY TEACHER LICENSING REQUIREMENTS* (2012), available at <http://www.nd.gov/cte/teacher-cert/docs/SecondaryLicensingReq.pdf>.

263. *See, e.g.*, Walter Hamilton, *Many Baby Boomers Don't Plan to Leave Their Children an Inheritance*, L.A. TIMES (Sept. 5, 2011), <http://Articles.latimes.com/2011/sep/05/business/fi-laboomer-inheritance-20110906> (discussing how baby boomers have spent much of their savings on their children's educations and now plan to not save specifically for the purpose of bequeathing additional wealth).

264. ANGEL, *supra* note 230, at 18; Stephen J. McNamee & Robert K. Miller, *Inheritance and Stratification*, in *INHERITANCE AND WEALTH IN AMERICA* 193, 201 (Robert K. Miller, Jr. & Stephen J. McNamee eds., 1998). There has been some shift away from this practice in the most recent economic downturn as upper-middle-class parents are more likely to require their children to pay for their own school costs. Ruth Simon & Rob Barry, *College Debt Hits Well-Off: Upper-Middle-Income Households See Biggest Jumps in Student Loan Burden*, WALL ST. J., Aug. 8, 2012, at A1 ("The boomers are the first generation shifting the cost of college to their kids,' both through increased student borrowing and reduced taxpayer support for higher education, says Susan Dynarski, a professor of education and public policy at the University of Michigan.").

life.²⁶⁵ “Fathers have been notoriously reluctant to relinquish control, not only over capital, but also over management, to their sons.”²⁶⁶

Although earlier payment for school may lead to a more equitable distribution of liquid assets during the testator’s life, it does not necessarily have an impact on how land is transferred.²⁶⁷ Even assuming much more wealth is transferred during life, particularly for higher education costs, this does not explain whether, when the land is eventually passed down in old age or at the end of life, women are receiving ownership.²⁶⁸ Therefore, this explanation of changes in inheritance practices speaks only to the proportion of wealth at stake in the end to be split between children. One might think that better education of women could contribute to parental decisions to leave daughters farms; however, as will soon be discussed, daughters are not groomed in a way to take over the family farm.²⁶⁹ Therefore, formal higher educational support from parents may not be enough.

B. GROOMING: FAMILY, GOVERNMENT, AND SOCIAL SUPPORT

An important step in the process of distributing family farms happens long before actual transfer of title: that is, the grooming of a child or children to take over the farm.²⁷⁰ “The small-scale ranch or farm tends to be a family enterprise in which from an early age sons become accustomed to working with their fathers.”²⁷¹ Female farmers often recount how their parents did not view them as future farmers. One woman recounts:

Nancy Wilson and her husband, Phil, own and operate the 9,000-acre working cattle ranch and bed and breakfast at Fossil, Oregon . . . Nancy and Phil live in the area Phil’s family homesteaded in the late 1800s. . . . Raised on a ranch in Kimberly, Oregon, with four older sisters and one younger brother, Nancy and her father would have never gotten off their horses if Nancy’s mother hadn’t intervened and taught her the tasks of cooking,

265. Rita Brhel, *Passing the Ag Torch*, YANKTON DAILY PRESS & DAKOTAN (Dec. 24, 2011), <http://www.yankton.net/Articles/2011/12/24/neighbors/doc4ef54df1b4f83093122477.txt> (“Different people have different ways of letting the business go: Some don’t let go, some ‘let go’ but keeping coming back to micromanage the new owners, some let go and will advise from the sidelines if needed, and some let go and disappear.”).

266. Osterud, *supra* note 43, at 27.

267. Despite earlier inheritances, it is still true that when land is distributed, it is more likely to go to a son than a daughter. *See supra* Part II.C.

268. *See supra* Part II.C.

269. *See infra* Part IV.B.

270. Douglass, *supra* note 21, at 120-21.

271. *Id.*

sewing, gardening, taking care of people. “What came first was to be a rancher’s wife,” Nancy remembers.²⁷²

Another female farmer describes her grooming as such: “‘I’m a third-generation agriculturalist,’ Emma Jean says as she describes herself. ‘Actually, I came from a mother and father that really didn’t think that women belonged in the agricultural industry.’”²⁷³

Grooming can happen in multiple ways, including through the work children do and the type of formal education they gain. Parents tend to train children to become farmers by incorporating them into farm work early in life.²⁷⁴ For instance, many parents report having children ride along on combines or other equipment from the time they are toddlers in an attempt to make everything on the farm familiar.²⁷⁵ Parents view hands-on activity as the best teaching tool: “When our kids – and also the neighbors’ kids – were small, there wasn’t a better hands-on training opportunity for the young farmers than the constant hauling of silage.”²⁷⁶

272. HOLLY BOLLINGER, *WOMEN OF THE HARVEST: INSPIRING STORIES OF CONTEMPORARY FARMERS* 92 (2007).

273. *Id.* at 124.

274. That incorporation is a very gendered process. It is clear from the famous Little House series that daughters do not have the same access to training and vocation as do their brothers. In *FARMER BOY* (1933), Laura Ingalls Wilder wrote of her husband’s training to be a farmer, while contrasting his experience with that of his two older sisters. In reviewing Almanzo’s story, Anne Romine says, “Alice and her older sister Eliza Jane, although they are clearly secondary characters, provide much of the cultural complexity of *Farmer Boy*, they suggest that an unbroken inheritance of an agricultural vocation is difficult – if not impossible – for a girl as it is effortless for their brother Almanzo.” ROMINES, *supra* note 261, at 42.

275. Steven Neufeld et al., *Not Raising a “Bubble Kid”: Farm Parents’ Attitudes and Practices Regarding the Employment, Training and Supervision of their Children*, 18 *J. OF RURAL HEALTH* 57, 61 (2002). Laura Ingalls Wilder recounted her husband’s training on his father’s farm:

A man had the right to keep his sons at work for him until they were twenty-one years old. But Almanzo’s father had put his boys to work early and trained them well. Almanzo had learned to save money before he was ten and he had been doing a man’s work on the farm since he was nine.

Laura Ingalls Wilder, *THE LONG WINTER* 100 (Rev. ed. 1953) (1940). Laura, on the other hand, while less domestic than her sisters, was still not equipped by her parents to do farm work, in part because Ma “did not like to see women working in the fields. Only foreigners did that. Ma and her girls were Americans, above doing men’s work.” *Id.* at 4. One year, Laura did help Pa with the haying under the threat of a very hard winter arriving too soon, but Laura was not perfect and was very sore after just one day of work. *Id.* at 7, 9.

276. Wuebben, *supra* note 226. Although farming families have long held the belief that on-farm training and early integration into the business is the best way to train future generations of farmers, the federal government has oft attempted to limit the training and working of farm children. Most recently, in April of 2012, the Department of Labor proposed a ban on farm children under sixteen working dangerous jobs. The Obama administration quickly changed position recognizing that the proposed rules would impact the running of family farms. Marjorie Elizabeth Wood, *Pitting Child Safety Against the Family Farm*, *N.Y. TIMES* (May 7, 2012), <http://www.nytimes.com/2012/05/08/opinion/pitting-child-safety-against-the-family-farm.html>.

A twenty-three year old man and oldest child who grew up on a farm outside of Yankton, South Dakota explains his grooming. He was a son who, from an early age, knew he did not want to farm.

Honestly, I think my parents knew that I probably wouldn't ever take over the farm. Yes, I learned how to drive tractors, mow alfalfa, and fix fences, but I never felt pressured into leading a life that I may not have wanted to live.²⁷⁷

The twenty-three year old man from Utica, South Dakota says:

[M]y dad had my brother, sister, and I start helping out on the farm at about 9 or 10 years old. He basically had us do basic jobs like cleaning out the barn. He started to teach us how to drive tractors and once we were confident enough he let us drive on our own and help him in the fields. We also had cattle so we learned to ride horses and how to work cattle. We spent most of our summers helping dad and we helped after school too.

I think that dad allowing me to help out more and more as I got older and eventually do the jobs on my own really was how he taught me how to run a farm.²⁷⁸

Both of these men reported that their parents did not treat their sisters any different than them or their brothers.²⁷⁹ However, in both families it is a son who is preparing to take over the family farm.²⁸⁰

For many families, sons and daughters receive different training. Now in her seventies, a woman from Rolfe, Iowa, always wanted to farm, but was not groomed to take over the family farm.²⁸¹ “As a kid she resented that her brother, Charles, the only boy in the family, was trained to take over the family business.”²⁸² It was Charles who was “the one groomed to make decisions about farming. He had more significant farm projects. I had chickens; he had cattle. He had a 40-acre field project.”²⁸³ Finally, in her fifties, she decided to try to assume control of the land she had inherited from a grandfather – land that her brother had been managing for twenty

277. Telephone Interview with S.R.A., *supra* note 83.

278. Telephone Interview with N.H., *supra* note 246.

279. Telephone Interview with N.H., *supra* note 246; Telephone Interview with S.R.A., *supra* note 83.

280. Telephone Interview with N.H., *supra* note 246; Telephone Interview with S.R.A., *supra* note 83.

281. Kathleen Masterson, *U.S. Sees More Female Farmers Cropping Up*, NAT'L PUB.RADIO (Mar. 30, 2011), <http://www.npr.org/2011/03/30/134979252/u-s-sees-more-female-farmers-cropping-up>.

282. *Id.*

283. *Id.*

years.²⁸⁴ This woman now manages her own farm – in fact she is leasing part of her land to a young female farmer.²⁸⁵

This farmer, a woman in her thirties and a member of the new generation, still reports that few of her female childhood friends were groomed to farm.²⁸⁶ She counts herself as lucky: her father “included her in all aspects of farming.”²⁸⁷ Her contemporaries were not so lucky – she remembers telling friends she helped plant and cultivate, while her friends reported that they were not allowed to “go in field after crops were up.”²⁸⁸ In this young farmer’s mind, it was the grooming by her father that has allowed her to farm as a profession.²⁸⁹

In addition to on-farm training, many prospective farmers also attend universities for formal training in both running the business side of the farm and the actual farming or ranching.²⁹⁰ In contrast, there is also purported to be a “farmer’s daughter effect.”²⁹¹ The farmer’s daughter effect is where farming parents encourage their daughters to become educated for professions other than farming because they expect their male child to take over the farm.²⁹² Whereas sons were traditionally better educated than daughters, with the increasing numbers of women in college and professional school, it would not be surprising to see the “farmer’s daughter effect” operating today based on general education trends whereby women are more likely to attain higher education than men.²⁹³ Ultimately, it is unclear how long the trend of more farmers’ daughters than farmers’ sons becoming educated remains, as more farmers achieve higher education now than in the past.

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.* She reports that she would “haul in grain to farms, unload, get augers fixed, which [she] got good at too.” In addition, she “did a lot of repairs.” Her father would show her until she was able to make the repair herself. *Id.*

288. *Id.*

289. *Id.* This story included no information on whether this younger farmer owned her own land or would be inheriting from her parents. At present she is renting land.

290. *See, e.g.,* S.D. STATE UNIV., *GNAG Major*, *supra* note 250. As discussed *supra* note 250, Major requirements for the bachelor’s degree offered in General Agriculture from South Dakota State University include classes aimed at the managing of the farm, such as: accounting, agricultural marketing and prices, and farm and ranch management and lab.

291. E. Wilbur Bock, *Farmer’s Daughters Effect: The Case of the Negro Female Professionals*, 30 *PHYLON* 17, 17 (1969).

292. *See, e.g., id.*

293. *See* Hope Yen, *Women Surpass Men in Advanced Degrees, Census Says*, *SEATTLE TIMES*, Apr. 26, 2011, at C3. Women began to exceed men in college enrollment in the early 1980s. *Id.* 1996 marked the first year where women surpassed men in bachelor’s degrees; 2010 marked the first year where women surpassed men in graduate degrees. *Id.*

Women are subordinated both through not inheriting their family's farmland and through the role they play with the management of the farm. "Farm women have traditionally been responsible for mediating relationships among fathers and sons in order to ensure the continuity of farming as a way of life and the intergenerational transfer of family enterprises."²⁹⁴ Not only do farming women manage the social interactions of their families, but "[m]others have customarily socialized sons to accept prolonged subordination of paternal authority, cajoled fathers to grant more autonomy to sons, and sometimes relinquished their role as their husbands' farm partners to make a place for their sons."²⁹⁵

Even at the end of the twentieth century, anthropological work about farm communities in America continues to show these farming communities are mainly patrilineal²⁹⁶ and patrilocal²⁹⁷ in nature.²⁹⁸ An important part of this continuing trend is research showing that women are neither viewed nor groomed as successors to the family farm.²⁹⁹ Even if women do ultimately inherit some of or the entire family farm, they are still not considered to be the "farmer," as agriculture continues to be defined as the husband's occupation even if the land is inherited through a wife.³⁰⁰ Labeling only men as farmers may not be an entirely false use of language in many circumstances, as many female farmers do perform outside labor in order to subsidize the often-meager farm earnings.³⁰¹ However, labeling only men as farmers is too categorically and stereotypically based, as many women are farmers, either alone or in partnership with their husbands.³⁰²

294. Osterud, *supra* note 43, at 27.

295. *Id.*

296. Patrilineal societies are societies where property and identity pass through the father's line as opposed to the mother's line. For example, in traditional patrilineal societies, both names and property were distributed by fathers to sons. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 1656 (2002).

297. Patrilocal societies are societies where sons tend to remain in or near the natal home while daughters marry outside the family and move to their husband's natal home. Although the American Midwest is not characterized by multi-generational families living in one home, it is common for parents and a son to share farmland and for each to have their own home. *Id.*

298. See Marotz-Baden & Mattheis, *supra* note 62, at 133. Percentages of sons and daughters living within a certain distance of parents shows that sons are more likely to live closer to their parents. See e.g., *id.* at 134; see also Goldschmidt & Kunkel, *supra* note 53, at 1061 (finding that "peasant societies never show preference for matrilineal land inheritance, and none consistently forms joint households on the basis of matrilineal residence").

299. See Marotz-Baden & Mattheis, *supra* note 62, at 133.

300. *Id.*; see also *A Ranch Wife's Slant*, <http://www.ranchwifesslant.com/news.php>.

301. See *Farm Household Economics and Well-Being: Beginning Farmers, Demographics, and Labor Allocations*, U.S. DEP'T OF AGRIC., <http://www.ers.usda.gov/briefing/wellbeing/demographics.htm> (last updated Nov. 29, 2011) (finding that off-farm employment is increasingly common for both farm operators and their spouses).

302. *Id.* Not only straight women suffer from the stereotype of men as farmers. There is no sexual-orientation specific evidence available on lesbian farmers; most studies assume that women

In fact, the number of female farmers has been on the rise in the United States.³⁰³ According to the 2007 Census of Agriculture, there are 306,209 women principal farm operators; this represents a twenty-nine percent increase from the 2002 Census of Agriculture.³⁰⁴ Overall, the National Agriculture Statistics Service, which runs the Census of Agriculture, estimates that fourteen percent of all farms are owned and operated by women.³⁰⁵ Women own and operate fourteen percent of farms but do not earn fourteen percent of all farm income. Whereas the 2007 report found the average male owned and operated farm was 452 acres, with an average earning over one hundred fifty thousand dollars, the average female owned and operated farm was only 210 acres and earned just over thirty six thousand dollars annually.³⁰⁶ While men tend to own grain and oilseed farms and cattle ranches, women tend to own farms categorized as “other livestock farms” or “all other crops,” which would include horse farms or farms used for hay.³⁰⁷ The types of farms owned by women are therefore often smaller and produce less profitable crops or livestock, meaning that even as women do break into farm-work, their work is not valued as high as the still-traditionally male role of a high-earning farmer.³⁰⁸ This current practice follows a historical trend where men’s farm labor brought in higher earnings than women’s.³⁰⁹ One advocate for female farmers described the

are straight-identifying. Bud W. Jerke, *Queer Ruralism*, 34 HARV. J. L. & GENDER 259, 268 (2011). Also lacking is substantial research on gay men and transgender individuals of both genders. *Id.* at 259-62. However, some recent work has highlighted the plight of one male-to-female transgender woman living in northeast South Dakota. *Id.* at 288-92. This woman farmed with her wife and parents before the transition and thankfully did not lose her status as the child who would continue to farm with her parents after transitioning, although ultimately she decided to sell her interest in the farm and relocate to an urban area. *Id.* at 292.

303. See David Blower Jr., *DeLauro Presents Equity for Women Farmers Act*, FARM WORLD (Jan. 13, 2010), <http://www.farmworldonline.com/news/NewsArticle.asp?newsid=9263>.

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. For example, in Laura Ingalls Wilder’s famous novel about her husband Almanzo’s boyhood, there were clear gendered divisions of labor in Almanzo’s natal home. Feminist author Ann Romines asked in the context of *Farmer Boy*:

Must *farmers* be boys and men? Almanzo’s sisters help in some of the field work and regularly assist their mother with cooking and housework. And Mother is a multiskilled worker, as we have seen. Yet, however high the price her butter brings, it is only half the sum Father gets for his potatoes, and all the farm profits presumably go into *his* bank account. . . . In this book, written and marketed by a mother and daughter about a husband and father who does not write, patriarchy, paternity, and farming are clearly linked.

ROMINES, *supra* note 261, at 39-40 (emphasis in original).

trend as such: “I mean [women are] not getting into farming to run quarter-million-dollar combines; they’re out there raising food.”³¹⁰

Notably for the purposes of this Article, the states boasting the highest percentage of women primary operators are in the Southwest and Northeast while the lowest percentages of female farmers are in the Midwest, with South Dakota as the state with the lowest percentage of female farmers.³¹¹ These numbers likely exist because there are more women principal operators running lifestyle farms, which are concentrated in the Northeast.³¹² Because most American farmers who are making a primary living off of their farms live in the Midwest,³¹³ it is notable that it is the same area where women have had the greatest problem accessing farming and farmland.³¹⁴ The majority of the anthropological and sociological research cited is studies of Midwestern states.³¹⁵ The differing presence of primary female farmers may be further evidence of how the Midwestern inheritance system is different than that in the Northeast or Southwest. Unfortunately, it is beyond the scope of this Article to explore regional differences in the gendered makeup of primary operators separate from the differences in inheritance which may impact, or be impacted by, the higher rate of women farmers outside of the Midwest.³¹⁶

Women as a group are increasing as a percentage of farmers, but women still continue to face particular struggles within the farming profession. Gender discrimination in the farming business is not surprising because of the long-time male dominance, but it does crop up in interesting

310. Masterson, *supra* note 281 (quoting Leigh Adcock, the director of the Women Food and Agricultural Network).

311. Blower, *supra* note 303 (highlighting the four states with the highest percentages of female farmers are Arizona, New Hampshire, Massachusetts, and Maine, while the four states with the lowest percentages of female farmers are South Dakota, Nebraska, Minnesota, and Iowa).

312. ROBERT A. HOPPE & DAVID E. BANKER, U.S. DEP’T OF AGRIC., STRUCTURE AND FINANCE OF U.S. FARMS: FAMILY FARM REPORT, 2010 EDITION 17 tbl. 4 (2010). There are also growing numbers of lifestyle farms in the Pacific Northwest, particularly with the growing popularity of farmers’ markets. Kirk Johnson, *Small Farmers Creating a New Business Model as Agriculture Goes Local*, N.Y. TIMES, July 2, 2012, at A7.

313. Johnson, *supra* note 312, at A7.

314. Blower, *supra* note 303.

315. See *supra* Part II.C.

316. Although there appears to be a much stricter division of labor on Midwestern farms today, earlier in American history the Midwestern farms were less rigid in gender roles:

Extending this framework across the continent, large-scale wheat farms on the Prairies and Great Plains had more sharply gender-divided work patterns and women were peripheral to the main commercial farm operation, while dairy farms in northern New England, central New York, and the upper Midwest had more flexible patterns of shared labor across gender lines and women were central to the primary income-producing farm operation.

Osterud, *supra* note 43, at 20 (citations omitted).

ways. In 2000, *Love v. Vilsack*³¹⁷ was filed in the Federal District Court of the District of Columbia by female farmers alleging discrimination in federal loan practices.³¹⁸ The plaintiffs essentially argued that based on the discriminatory practices of the United States Department of Agriculture (USDA), women were denied agricultural loans, provided with those loans late, or were provided with less money than needed to adequately support a farming operation.³¹⁹ The plaintiffs sought class action certification in the District Court.³²⁰ The District Court refused to certify the class, and the female farmers were left with little chance of success in court.³²¹ In December 2012, the District Court issued an order granting a motion to dismiss several claims for lack of jurisdiction and denying a summary judgment motion filed by the plaintiffs.³²² After that order, the parties jointly agreed that the plaintiffs' attorneys would identify each named plaintiff who intended to proceed with the litigation, as opposed to participating in the administrative claims process provided by the government.³²³ The remaining cases could then be transferred venue and litigation would continue separately in each case.³²⁴ Thus, the case was stayed and administratively closed in the District Court for the District of Columbia as of December 18, 2012, but the litigation will continue for individual farmers.³²⁵

While *Love v. Vilsack* continued to wind its way through the courts, Representative Rosa DeLauro³²⁶ introduced the Equality for Women

317. See generally Complaint, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW).

318. See generally *id.*

319. *Id.* at 3.

320. *Id.*

321. Memorandum Order Denying Class Certification, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW) [hereinafter Sept. 2004 Memorandum Denying Class Certification]. It is worth noting there were interlocutory appeals filed, but the Plaintiffs were unable to successfully challenge the District Court's negative rulings. Notice of Interlocutory Appeal, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW); Notice of Appeal, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW).

322. Order Granting Motion to Dismiss for Lack of Jurisdiction; Denying Motion for Partial Summary Judgment, *Love v. Vilsack*, 2012 WL 6156996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW, Doc. 175).

323. Minute Order, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW).

324. *Id.*

325. *Id.*

326. DeLauro is a Democrat who has served as the representative for Connecticut's third congressional district since 1991. Congresswoman Rosa DeLauro, delauro.house.gov (last visited Feb. 1, 2013). At the time of the bill's introduction, DeLauro was the Chairwoman of the House Agriculture Appropriations Subcommittee. *Id.*

Farmers Act in 2009.³²⁷ The bill was drafted as a response to long-term discrimination by the USDA against women through denying loans and loan servicing – the same practices that inspired *Love v. Vilsack*.³²⁸ The Act was a direct response to the denial of class certification in *Love v. Vilsack* and three other lawsuits filed by female farmers against the USDA.³²⁹ The bill was meant to provide protection for female farmers “who will seek to apply for loans and loan management in the future” and sought to guarantee “their requests will be considered equally with all others” as well as creating a compensation fund.³³⁰ DeLauro’s public statement included an estimate that 43,000 female farmers had been discriminated against during the USDA loan process and denied “more than \$4.6 billion in farm loans and loan servicing from USDA over the years.”³³¹ At the press conference announcing the bill, Rosemary Love, the named plaintiff in *Love v. Vilsack*, spoke about why she continued to fight the discrimination perpetrated by the USDA saying: “This bill is important for future female farmers – for daughters and granddaughters who want to continue farming.”³³²

Female farmer advocates saw the bill as necessary after female farmers were denied class certification and thus were contemplating having to bring suits separately.³³³ The bill ultimately stalled in the Subcommittee on Conservation, Credit, Energy, and Research.³³⁴ Neither judicial nor legislative efforts have given women relief from discrimination perpetrated

327. H.R. 4264, 111th Cong. (2011); Press Release, Congresswoman Rosa DeLauro, DeLauro Calls for Equality for Women Farmers (Dec. 10, 2009), *available at* http://delauro.house.gov/index.php?option=com_content&view=Article&id=54:delauro-calls-for-equality-for-women-farmers&catid=9:2009-press-releases&Itemid=25 [hereinafter DeLauro Press Release].

328. Letter from Rosa L. DeLauro & Anna G. Eshoo to Members of Congress Support Equality for Women Farmers (Feb. 18, 2010), *available at* http://www.womenfarmers.com/DC_2_%20-%20Editorials.pdf [hereinafter Letter from Rose L. DeLauro].

329. DeLauro Press Release, *supra* note 327; Jerry Hagstrom, *Fund Proposed for Female Farmers in USDA Bias Cases*, GOV’T EXEC (Dec. 11, 2009), <http://www.govexec.com/oversight/2009/12/fund-proposed-for-female-farmers-in-usda-bias-cases/30511/>. Although the bill was most specifically aimed at the lawsuit filed by women farmers, there had also been lawsuits filed by black farmers, Hispanic farmers, and American Indian farmers. *Id.* The case filed by black farmers, *Pigford v. Glickman*, was settled by the Clinton administration. The settlement resulted in payments of over one billion dollars. Jerry Hagstrom, *Women Farmers Seek Compensation: Bill Would Pay \$4.6 Billion to Cover Discrimination Suits*, DTN/THE PROGRESSIVE FARMER (Dec. 16, 2009), http://www.dtnprogressivefarmer.com/dtnag/common/link.do?symbolicName=/free/news/template2&forceNavUpdate=false&vendorReference=4377d365-60ef-42c6-b468-f07bce00071b_1260971372242. The actual payment of this settlement has been less than ideal. *Editorial: Pay Up*, N.Y. TIMES, Feb. 7, 2010, at A20.

330. DeLauro Press Release, *supra* note 327.

331. *Id.*

332. Hagstrom, *supra* note 329.

333. Letter from Rosa L. DeLauro, *supra* note 328; Sept. 2004 Memorandum Denying Class Certification, *supra* note 321.

334. Rep. DeLauro, THOMAS LIB. OF CONG. LIB., [http://thomas.loc.gov/cgi-bin/bdquery/R?d111:FLD003:@1\(Rep+DeLauro\)](http://thomas.loc.gov/cgi-bin/bdquery/R?d111:FLD003:@1(Rep+DeLauro)) (last visited Feb. 11, 2013).

by the USDA in its granting and servicing of loans. However, the legislation has led to public hearings and women telling their stories of discrimination in farming.³³⁵ The lawsuit has continued to progress, albeit slowly, toward settlement, showing some hope that even without legislation, female farmers will be able to recover for the past discrimination.³³⁶

One woman explained her perception of the cause of the discrimination: “I think what sometimes happened is that women are thrust into [farming] through divorce or death of a husband, and it takes them a while to get the knowledge. They are taken advantage of because of their inexperience, more than the fact of their gender.”³³⁷ Once again, women are facing not only a decreased chance of inheriting farmland, but also, even if they do receive farmland, they may be less equipped to run a successful farm either because of gender discrimination, a lack of training, or both.³³⁸ This woman falsely assumes that women will only ever be farmers in a time of need because a man is absent; however, she does correctly point out that women should also be groomed, because while possibly not intending to take over farming, they may have to.³³⁹

The narratives that women provided during these congressional hearings show that more structural protection is required for female farmers. Although changing inheritance patterns will go a long way toward increasing women’s participation in the agricultural profession, government agencies and communities of farmers must also be willing to accept female farmers. Italy appears to have similar problems as the United States – women own less economically productive farms and own smaller plots of

335. See, e.g., Celeste Baumgartner, *Women Farmers in Ohio Share Stories of Facing Discrimination Near the Farm*, FARM WORLD (Jan. 13, 2010), <http://www.google.com/url?sa=t&ct=j&q=&esrc=s&source=web&cd=1&ved=0CDIQFjAA&url=http%3A%2F%2Fwww.farmworldonline.com%2FNews%2FNewsArticle.asp%3Fnewsid%3D9264&ei=pjb-UOispPLaBZKsgLgC&usg=AFQjCNE3uFUadjfBl6hRQP3IFpNHND1lg&sig2=6aYZmcnyrzpEKxxOcBOOFQ&bv m=bv.41248874,d.b2I>.

336. As stated earlier, the case continues and individual women now face transfer of their suits to other district courts. I refrain from hypothesizing that women will prevent future discrimination by the USDA based on the potential outcome of individual cases stemming from *Love v. Vilsack*. The Plaintiffs had sought a preliminary injunction that would enjoin the USDA from “pursuing foreclosure on or accelerations of debt against” women and other minority farmers. Plaintiffs’ Motion for Preliminary Injunction, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW). The District Court denied the motion because Plaintiffs had not successfully shown likelihood of success on the merits or irreparable injury. Order, *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012) (No. 1:00-cv-02502-RBW) [hereinafter March Order].

337. Baumgartner, *supra* note 335.

338. See *id.*

339. *Id.*

land.³⁴⁰ Despite these structural barriers, “[w]omen, who manage one-third of Italian farms, have been particularly open to branching out the core business, what operators call multifunctional agriculture.”³⁴¹ In addition to strengthening their economic position in the agricultural world by being more willing to diversify, Italian women have used barriers to promote bonding. One woman said in an interview: “We have great respect for each other’s work, I think more than men do Women can work together, we have this in Sicily and it only gets stronger as time goes on”³⁴² And although discrimination exists, she views it as a bonding agent for female farmers.³⁴³ There is no reason to think that women will not be as productive and successful in the field of agriculture as men if they have familial, governmental, and social support.

V. MOVING FORWARD

In farming families, current practices tend to leave women landless, and without the ability to follow in the family business. Women are excluded because they do not inherit land,³⁴⁴ they are not groomed to become farmers,³⁴⁵ and they are largely unsupported by the government in their quest to farm.³⁴⁶ Land is expensive and is at a premium, creating additional structural barriers for prospective female farmers.³⁴⁷ Thus it is important not only that daughters are groomed to take over the land when they are the best family option, but also that testators and families gain support in writing their end-of-life documents and disposing of their farm.

340. Elisabetta Povoledo, *Growing Beyond the Fields*, N.Y. TIMES (Jan. 3, 2012), <http://www.nytimes.com/2012/01/04/world/europe/growing-beyond-the-fields.html?pagewanted=all>.

341. *Id.*

342. *Id.*

343. *Id.* Discrimination in Italy has been both active and passive. “Women are vastly underrepresented at a political and institutional level, added Susanna Cenni, a member of the Democratic Party who sits on the agricultural committee of the lower house of Parliament.” *Id.* In addition,

Agriculture Minister Mario Catania said in an interview that the economic crisis had sharply diminished public spending, meaning that “there are no resources to put on the table” for female farmers. In any case, Mr. Catania said, earmarking money according to sex is “not simple to enact.” Italy would do better, he said, to improve family services like day care to help more women join the work force.

Id. Despite the lack of support from the government, women have become more successful as farmers “thanks in part to a few institutional and grass-root networks that offer both financial and moral support to women.” *Id.*

344. *See supra* Part II.C.

345. *See supra* Part IV.B (discussing family grooming).

346. *See, e.g., supra* Part IV.B (discussing *Love v. Vilsack*, 2012 WL 6136996 (D.D.C. Dec. 11, 2012)).

347. *See supra* Part II.E.

“Ideally, family farmers would plan the farm transfer a generation ahead, beginning when their family is young and making decisions for the future of the farm as they’re bringing up their children.”³⁴⁸ Grooming is important, but so are the legal and economic plans laid down by parents, “[i]t takes a lot more than simply picking a kid to get the farm and handing it over” to successfully transfer a farm to the next generation.³⁴⁹

Land distribution of family farms is in many aspects private; however, the state does take a part in land distribution through inheritance and divorce laws.³⁵⁰ In addition to laws, economics will often factor into how land is distributed.³⁵¹ For example, if a single child takes over the family farm but other siblings received a share of the farm, there may be problems because farming is a financially difficult profession and oftentimes the non-farming siblings can harm the family farm by exerting economic control over the land that they are not physically working.³⁵² There is also a fear that the new generation will “squander the wealth” of the family business, thus creating a need for parents to supervise the transition period.³⁵³ The dominant problem with leaving only one child the farm is that that child is almost always a son.³⁵⁴ In addition, divorce often leaves women without an ownership interest in her husband’s family’s land.³⁵⁵ Fortunately, the harm to women created by these practices can be mitigated.

In order for the inequities in farm ownership and control to decrease, a multi-prong approach is needed. In proposing solutions, I examine three particular ways to increase women’s farm ownership through inheritance. First, I explore the role that the estate lawyer might have in the process, concluding that although estate lawyers should not push testators toward giving daughters land, they should make relevant information available to their clients. This information can include the basics of testamentary options as well as tax implications and the best models of inheritance for particular types of families. Second, I propose that services for children teach girls how to farm because many of these girls are not being groomed by their own parents to take over the farm. Girls can benefit from programs

348. Brhel, *supra* note 265.

349. *Id.*

350. *See supra* Part II.

351. Sonya Salamon et al., *Family Factors Affecting the Intergenerational Succession to Farming*, 45 HUM. ORG. 24 (1986).

352. *See, e.g., id.*

353. Brhel, *supra* note 265.

354. *See supra* Part III.

355. *See supra* Part II.D; *Albrecht v. Albrecht*, 609 N.W.2d 765, 771 (S.D. 2000).

in all types of services, including the publicly run 4-H program³⁵⁶ and the private organization Future Farmers of America.³⁵⁷ Women also need continuing support and knowledge in order to be the most successful farmers possible. Finally, there should be training for parents through extension services, legal providers, and community initiatives that teaches them how daughters can be successful farming heirs and also teaches them how to groom a daughter to take over the farm.

A. THE LAWYER'S ROLE

This is not a change that can be effected overnight. A primary hurdle is that estate lawyers may be unaware of any negative impact on women caused by contemporary inheritance practices. As such, this is an area of law where state bars should do studies within their own borders and develop continuing legal education courses that educate estate lawyers on the problem. Simple knowledge by lawyers of what their clients in the aggregate are doing would be a first step in bringing the legal community into the process. If lawyers are more informed, then they can better help their clients create just and equitable distribution plans.

Testamentary freedom is highly valued in this country³⁵⁸ and should continue to be respected. Respect is particularly important because it would be a negative outcome if rural testators were put under pressure to conform to certain practices while urban testators were left alone to devise property as they wished. Therefore, lawyers should not push clients toward giving daughters land. While other nations impose specific statutory restrictions on the inheritance of farmland, the United States should not.³⁵⁹ The point is not to make rural testators act like urban testators, but rather to ensure that women are given an equal chance of farm ownership. While “[i]t makes

356. *Who We Are*, 4-H, <http://www.4-h.org/about/youth-development-organization/> (last visited July 1, 2012).

357. *National FFA Organization: Agricultural Education*, <http://www.ffa.org> (last visited July 1, 12).

358. Perhaps the strongest statement honoring testamentary freedom came from the United States Supreme Court in rulings finding unconstitutional a law that abolished the ability to pass on property at death, as an uncompensated taking of property in violation of the Fifth or Fourteenth Amendments. *Babbitt v. Youpee*, 519 U.S. 234, 243-45 (1997); *Hodel v. Irving*, 481 U.S. 704, 716 (1987).

359. An example is Slovenia's succession law. The law imposes a “specific regime of succession,” which is “intended to prevent the falling into disrepair of such farms and to make possible for their heirs to take them over under conditions that are not overburdening them.” GEC-KOROS EC & RIJAVEC, *supra* note 67, at ch. 7, § 1. The law mandates that “[a] protected farm is inherited, as a rule, only by one heir, that is appointed by the decision of succession issued after a proceedings of selection.” *Id.* § 3. Norway has also legislated how farms are passed. See generally Marit S. Haugen & Berit Brandth, *Gender Differences in Modern Agriculture: The Case of Female Farmers in Norway*, 8 GENDER & SOC'Y 206 (1994).

sense to believe that the inheritance law of a people will shape their attitudes,” in the United States, policy makers should shift the attitudes of testators in ways other than a change to the law.³⁶⁰

There is ample space under the model rules of professional ethics for lawyers to provide advice on “moral, economic, social and political factors, that may be relevant to the client’s situation.”³⁶¹ The applicable rule acknowledges that “[p]urely technical legal advice, therefore, can sometimes be inadequate.”³⁶² This rule should not be used liberally in testamentary choices. Not only do testators generally have substantial freedoms, but as grooming is so important to farm inheritance, most parents will have already groomed a son to take over the farm before writing the will that legally gives him the opportunity to inherit the land he has been prepped to farm.

What lawyers should do, with support from continuing legal education programs and state bars, is provide literature and knowledge to testators. If lawyers were able to provide state-produced pamphlets to testators describing the problems of excluding daughters from land, while also providing concrete examples of successful female farmers and perhaps avenues of support available to female farmers, testators may begin to incorporate thoughts of providing their daughters with farming opportunities.

Lawyer withdrawal is technically an option in most of the cases where women are being excluded from farmland, but should not generally be used. Optional withdrawal is available to lawyers anytime that their client would not be materially harmed by the withdrawal and is available even if the client would be materially harmed as long as the lawyer has a fundamental disagreement with the client’s course of action.³⁶³ Certainly some testators will provide ample basis for a lawyer to withdraw for good reason; however, making a practice of withdrawing whenever a testator excludes daughters from land ownership is not productive. The purpose of providing access to farmland for women is not to exclude all men from farming, but rather, to give men and women the opportunity to farm based on merit, not based on gender. Reaching this goal will be a long-term effort based more

360. Alfred L. Brophy, *What Should Inheritance Law Be? Reparations and Intergenerational Wealth Transfers*, 20 LAW & LITERATURE 197, 198 (2008).

361. MODEL RULES OF PROF’L CONDUCT R. 2.1 (2010). Rule 2.1 provides background for the scope of advice that lawyers can provide to their clients. The full text reads: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” *Id.*

362. *Id.* at cmt. 2.

363. MODEL RULES OF PROF’L CONDUCT R. 1.16 (2010).

on advocacy rather than on individual lawyers withdrawing from average cases. Thus, lawyers should remain involved with clients – even if those clients appear to be unfairly favoring a son over a daughter in the land distribution process.

Lawyers may also have a role to play in the marriages and divorces of farmers. As explored earlier, farming communities are still patrilocal and women often end up living on the family land of their husband and therefore may not be able to receive that land at divorce.³⁶⁴ Perhaps lawyers should educate women on this problem and encourage prenuptial agreements that allow women to either receive part of the farm or gain remedial compensation enough for the start-up costs of their own farm. Because prenuptial agreements are absent in so many marriages, divorce lawyers must also be willing to fight for enough compensation to allow women to continue on in the profession of farming if that is the desire. Also important may be encouraging women to gain skills that will easily transfer to paid labor if they are forced to leave the family farm; however, it is problematic to tell women, but not men, that they must have a second-career waiting in case land is lost to divorce. Although this would help individual women, it may perhaps create an additional level of protection for men who expect to always retain their marital farm. The handling of farm divorces is another place where continuing legal education would be helpful for lawyers and their clients.³⁶⁵

B. EDUCATION OF GIRLS AND WOMEN

Although intestacy statutes exist and sometimes aid in the passage of land, it is grooming practices and social expectations – rather than intestacy and probate rules – that determine who owns and operates land.³⁶⁶ With respect to family farms in particular, intestacy is less of a presumed intent doctrine and more a normative statement of how parents *should* be distributing property.³⁶⁷ In opposition, for much of urban and suburban America, intestacy operates as a presumed intent doctrine. Even as merely a normative statement, the intestacy laws provide benefits by conferring land to women whose parents die without a will, thus leaving the land

364. *See, e.g.*, Albrecht v. Albrecht, 609 N.W.2d 765, 766-67 (S.D. 2000); *see supra* Part II.D.

365. *See, e.g.*, FARM DIVORCES: A PRACTICAL APPROACH, NEBRASKA CONTINUING LEGAL EDUCATION & NEBRASKA STATE BAR ASSOCIATION (2000) (Nebraska's continuing legal education publication on how to handle farm divorces). Because this Article is focused on intergenerational land transfer – not inter-spousal land transfer – the discussion ends here; however, there is much yet to be said about gender biases suffered by divorcing farmers.

366. *See supra* Part III.B; Part I.D.

367. *See supra* Part III.B.

distribution process to occur through a state's intestacy scheme.³⁶⁸ Despite some current inheritance by women and the normative statement of the intestacy laws, improvement in women's land ownership will depend on social, rather than merely legal, changes. Thus I propose small, albeit meaningful, policy changes that can help to foster farming for girls and women.

Each state has at least one land-grant university that is tasked, in part, with providing support and continuing education to farmers.³⁶⁹ Each state has a cooperative extension office run out of the land-grant university that administers various programs, including 4-H and continuing education classes for adults.³⁷⁰ They have historically been very gendered in their programming offered.³⁷¹ It is primarily through the extension offices that state and local governments can make a positive impact for female farmers.

My mother has always attended extension classes, run by the county extension office, on how to can and preserve foods. She has also been a member of a "homemakers" group, an off-shoot of a state extension group that trains women in household tasks.³⁷² "Homemakers receive monthly educational lessons in all areas of family and consumer sciences."³⁷³ Notably, state-supported services for the continued training of women operate to teach household tasks rather than farming-related tasks.³⁷⁴ Extension services have been and are an important part of rural women's social life and personal development; "[y]ears ago, it was a day off the farm for many women and they had a chance to learn those things their grandmothers never taught them"³⁷⁵ and a chance to network with other

368. See, e.g., NEB. REV. STAT. § 30-2301 (2009).

369. Davis, *supra* note 137, at 101.

370. For example, Kentucky continues to have a robust cooperative extension service program run out of the University of Kentucky. Their website provides substantial information on the different sectors of their program. College of Agriculture: Cooperative Extension Service, UNIV. OF KENTUCKY, <http://ces.ca.uky.edu/ces/> (last visited May 11, 2011).

371. The gendered programming is not limited to United States extension offices, it is a problem worldwide. For a discussion of extension services in the developing world, see generally MARGUERITE BERGER ET AL., INT'L CTR. FOR RESEARCH ON WOMEN, BRIDGING THE GENDER GAP IN AGRICULTURAL EXTENSION (1984); S. TJIJ WALKER, INNOVATIVE AGRICULTURAL EXTENSION FOR WOMEN, POPULATION AND HUMAN RESOURCES DEPARTMENT: THE WORLD BANK (1990).

372. See, e.g., *Kenton County Extension Homemakers*, COLLEGE OF AGRIC. UNIV. OF KENTUCKY, <http://ces.ca.uky.edu/kenton/extensionhomemakers> (last visited Jan. 16, 2013).

373. *Id.*

374. See *id.*

375. Betty Jespersen, *Extension Homemakers Celebrate 60 years*, FRANKLIN SUN J. (Oct. 24, 2010), <http://www.sunjournal.com/franklin/story/931027> (quoting Claudina Bechtel, an eighty-four-year-old homemakers member).

women.³⁷⁶ The importance of preserving food and growing family gardens cannot be disputed; however, homemaker groups, as the extension groups dedicated to women, need to focus on farming and ranching as well as the tasks historically assigned to “farm wives.”

Even more important will be reaching out to young girls and grooming them for farming from an early age. The 4-H organization has a positive impact on many rural children.³⁷⁷ As the youth portion of the cooperative extension system,³⁷⁸ 4-H provides children with access to knowledge and training on a variety of topics, including farm animals and crops.³⁷⁹ Although it has received criticism for its highly gendered programs, 4-H can still be a productive part of training girls to become farmers.³⁸⁰ By expanding their programs and becoming more gender-neutral, 4-H can move their programs forward, training both young girls and boys to become agriculturalists with the resources to take over a family farm successfully.³⁸¹ Recently, girls have participated in 4-H at higher rates than boys.³⁸² Parents are more likely to encourage daughters to participate in 4-H.³⁸³ However, a notable decline in 4-H membership happens during adolescence, a time

376. For many rural women who had long been excluded from networks of male farmers, the homemakers groups were particularly important.

I believe that the Extension Homemakers had the first “Old Girls Network.” They kept each other informed, supported each other, and learned from each other how to get things done. But to do this they needed to meet other women outside their communities, and the Homemakers Camp was one way to make these contacts.

Mary Sorber, Golden Anniversary Speech 10 (June 2, 1982), available at <http://extension.oregonstate.edu/lane/sites/default/files/documents/hstryhmkr.pdf>.

377. See, e.g., Sarah Kramer, *To Make the Best Better*, UNIV. OF DELAWARE: COLLEGE OF AGRIC. & NAT. RESOURCES (Aug. 22, 2011), http://ag.udel.edu/extension/4h/mediareleases/releases/bestbetter_sarahkramer.html (“I quite honestly told her that 4-H had saved my life.”).

378. 4-H, along with many adult educational services, is provided out of the Cooperative Extension System.

379. 4-H, *supra* note 356.

380. See Anna L. Ball et al., *The Influence of Learning Communities and 4-H/FFA Participation on College of Agriculture Students’ Academic Performance and Retention*, 42 J. AGRIC. EDUC. 54, 54 (2001) (describing authors’ study that demonstrates previous participation in youth agricultural programs is associated with academic performance and could indicate a benefit in recruiting people with those experiences).

381. As impending budget cuts threaten cooperative extension services, counties are having to step forward and begin supporting many 4-H programs. For example, with the most recent South Dakota cuts, counties now must pay the salary for a 4-H coordinator in order to continue 4-H fully. See Randy Dockendorf, *Officials Dealing With Extension Service Cuts*, YANKTON DAILY PRESS & DAKOTAN (Apr. 15, 2011), <http://www.yankton.net/Articles/2011/04/15/community/doc4da7bd696e0f2800229670.txt>.

382. Greg Homan et al., *Differences in Youth Perceptions of Ohio 4-H Based on Gender*, 45 J. EXTENSION 1, 1 (2007) (discussing gender differences in Ohio); Karin Bartoszuk & Brandy A. Randall, *Characteristics and Perceptions of 4-H Participants: Gender and Age Differences Across Adolescence*, 49 J. OF EXTENSION 1, 2 (2011) (discussing North Dakota).

383. Homan et al., *supra* note 382, at 1.

when it is perhaps most important for future farmers to be receiving fundamental training.³⁸⁴

Another youth program able to train young girls to become farmers is National FFA Organization (FFA), what was formally titled Future Farmers of America. FFA is not associated with the government or the cooperative extension services, but does serve to educate and encourage high school students to succeed in agricultural professions.³⁸⁵ Only forty-three percent of FFA's national membership is currently female, but those girls hold over fifty percent of all state leadership positions.³⁸⁶ Therefore, FFA appears poised to continue recruiting and promoting girls in the organization and helping them achieve a working knowledge of how to take over their families' farms. However, girls' leadership in FFA has not translated into women's leadership on farms. It is unclear what creates this disparity, but FFA should focus on ensuring that girls see themselves as future farmers, rather than just the spouse of a future farmer.

The FFA should make the encouragement of female farmers a priority in the organization. The organization can connect with other farmer organizations or local groups and encourage those groups to mentor successful young women interested in farming. The FFA might also create bridges between their young female leaders and farmers who do not have a child to take over their farm.³⁸⁷ At the bare minimum, the FFA should be clear in always portraying an image of successful farmers as both male farmers and female farmers.

FFA and 4-H can be particularly important for girls who are not groomed to farm because the programs can compensate for a lack of on-farm experience.³⁸⁸ College students who have participated in one of the

384. Bartoszek & Randall, *supra* note 382.

385. *Mission and Motto*, FFA, <https://www.ffa.org/about/whoweare/Pages/MissionandMotto.aspx> (last visited Jan. 16, 2013).

386. *FFA Statistics*, FFA, <https://www.ffa.org/About/WhoWeAre/Pages/Statistics.aspx> (last updated Nov. 2011).

387. See Jessica Stroller-Conrad, *Future Farms of America Might Not Include Much Family*, NPR (Jan. 31, 2013), <http://www.npr.org/blogs/thesalt/2013/01/31/170659579/future-farms-of-america-might-not-include-much-family> (discussing how the next generation of farmers may be from outside a farm's current owning and operating family).

388. Margaret S. Zoglmann et al., *The Role of 4-H and FFA Involvement and Gender on Student Success in an Introduction to Animal Science Course*, 54 J. S. AGRIC. EDUCATION RESEARCH 219, 221 (2004). The FFA actually includes a "Supervised Agricultural Experience" as one of the integral parts of an agricultural education experience, which are part of their key tenets: classroom instruction, FFA, and Supervised Agriculture Experience. *Supervised Agricultural Experience*, FFA, <https://www.ffa.org/about/whoweare/sae/Pages/default.aspx> (last visited Jan. 16, 2013). The program encourages FFA members to "[o]wn and operate an agricultural business" (entrepreneurship); "[g]et a job or internship on a farm or ranch (placement); "[p]lan and conduct a scientific experiment" (research and experimentation); or "[e]xplore careers in agriculture" (exploratory). *Id.*

youth organizations have a higher cumulative grade point average at the end of their first year than students who have not participated in either program.³⁸⁹ Prior participants in 4-H and FFA were substantially more likely to return for their second year of college.³⁹⁰ Involvement in youth organizations also has a positive impact on students' perception of their knowledge.³⁹¹ This can be particularly important for girls who are not as comfortable in agriculture because of a lack of parental training and support.³⁹² While youth organizations can provide a basis of agricultural knowledge, students with no farming experience can be just as successful academically in agricultural degree programs as long as a course is designed to teach to students with no prior knowledge.³⁹³

Local schools – beginning with elementary and continuing through high school – can also be supportive of agricultural education. Schools can be supportive of agriculture by adding it to the standard curriculum as well as supporting the extra-curricular activities of its students through groups such as FFA and 4-H. Similar to the model of the Connecticut Preparatory School,³⁹⁴ public schools in small towns and farming communities can formally educate their students through hands-on agricultural activities.³⁹⁵ Relationships between farmers and classrooms can also be used to make students more aware of how farms operate. For example, a fifth grade classroom “adopting” a farmer for a year who sends the classroom video updates of the farm operation and visits the class.³⁹⁶ Although these programs may be most beneficial to students not steeped in agricultural knowledge through grooming, they will be useful to students who both stand to inherit land and those who do not, yet may develop an interest in agriculture.

389. Ball et al., *supra* note 380, at 58.

390. *Id.* at 60. The retention rate for students not involved in agricultural youth programs is 83.8%; the retention rate for students who were involved is 94.3%. *Id.*

391. Zoglmann, *supra* note 388, at 223.

392. *See id.* at 227 (explaining how gender plays a role in subjective and objective performance assessment).

393. *Id.* at 228 (“Students with little or no background in agriculture or involvement in the agricultural youth organizations can perform just as well as students with a favorable background if the course is designed to teach students as if none has any prior knowledge or experience.”). The classroom teaching of agriculture is not the major barrier to becoming farmers. As discussed, the high cost of farmland is a major barrier for any intended farmer who will not inherit farmland. *See supra* Part II.E.

394. *See supra* Part IV.A.

395. *See* Carlson, *supra* note 149; Louise Rafkin, *The Little Farm in Berkeley Teaches Kids About Food*, N.Y. TIMES, Apr. 8, 2012, at A23B.

396. *Webster Elementary Classes To Celebrate National Ag Week*, YANKTON DAILY PRESS & DAKOTAN (Mar. 9, 2012), <http://yankton.net/articles/2012/03/09/community/doc4f59838408759980898736.txt>.

Connecticut is an example as it provides substantial state-sponsored agricultural training through its vocational agricultural high schools.³⁹⁷ The state began these high school programs during the 1920s and they continue on today, although funding is currently an issue.³⁹⁸ For a state with as large a population and as small an area as Connecticut, it is functional and beneficial to transport future farmers to specific agricultural high schools.³⁹⁹ At the high school level, agricultural-specific vocational school is simply less of an option in states with smaller populations and much further distances between existing towns and high schools.

Land-grant universities also have a role to play as they are largely responsible for the formal education of agriculture-bound students.⁴⁰⁰ Agriculture is not the only field where men still predominate; agriculture departments can look to strategies used by engineering departments, among others, in order to recruit more women into their programs. A useful model at the collegiate level is Women in Science and Engineering (WISE). WISE exists at engineering schools across the country with local chapters operating to best support women at individual institutions. At the University of California, Berkeley, WISE has taken the form of a residential program – women science and engineering students have the opportunity to live together and take a seminar tailored to their needs.⁴⁰¹

At the University of Kentucky, a program entitled Women in Engineering (WIE) “serves as a central clearinghouse for women seeking information on course scheduling, scholarships for women, financial aid, tutoring, graduate education, job search strategies, and other services on campus.”⁴⁰² Because schools have created WISE programs best suited to fit their needs, the programs differ across the country. Instituted in the 1990s, the WISE programs have now been providing support to several decades of women. A similar model should be implemented in agriculture schools to provide academic and social support to women interested in entering the field of agriculture. Such a program might connect aspiring female farmers

397. Harrison, *supra* note 149.

398. *Id.*

399. *Id.*

400. Of course, other schools have been involved in agriculture education at various times, with the initial push for agricultural education coming from the Ivies. “[I]n 1792 . . . colleges undertook to provide for instruction in agriculture, first Columbia, and then Harvard and Yale.” Davis, *supra* note 137, at 101.

401. *The Women in Science and Engineering (WiSE) Theme Program: Exploring Math, Science, and Engineering*, BERKELEY (Mar. 11, 2012), <http://themeprograms.berkeley.edu/wise.html>.

402. *Women in Engineering*, UNIV. OF KENTUCKY, <http://www.engr.uky.edu/wie/> (last updated Jan. 4, 2012).

with established female farmers in a mentorship program or provide a series of talks on issues faced by female farmers.

Schools should also actively encourage women to manage and farm their own land. Although partnership is valued by many people – it provides companionship and a way to share labor – it is dangerous to imbue women with the sense that they *must* marry a farmer’s son in order to access family farmland, or indeed to farm at all. Even if women do not inherit land, they should be able to access the resources necessary to begin their own agricultural careers. College is becoming more common for children from rural families,⁴⁰³ and as the numbers of farmers with college educations continue to increase, so will the importance of agricultural departments in the training of future farmers.

The services provided by the extension service are vital for many rural people and provide a way to remain educated and productive; however, these services are now facing financial cuts.⁴⁰⁴ The current economic crisis is impacting many areas of government services, including the extension offices in rural areas.⁴⁰⁵ It is important that the extension services continue as they provide support and education for rural farmers. One impact of the financial cuts is that states are consolidating services to a few areas rather than keeping smaller offices open in very rural areas.⁴⁰⁶ This will increase travel requirements for both the staff and the consumers of services, negatively impacting how many people can be reached and how effectively. Continued funding is therefore critical to keep farmers educated on the newest technologies and strategies. Despite this need, there are expected federal government cuts to the extension service, which will remove even more resources from the country’s rural agriculturalists.

With impending budget cuts, and likely no way to reverse that course of action, it is important that private organizations provide training for girls and women. FFA has a role to play, particularly with their support of girls. Private support groups for female farmers are also important. “American Agri-Women is the national coalition of farm, ranch, and agri-business women’s organizations.”⁴⁰⁷ Formed in 1974, this organization continues to

403. *See supra* Part IV.A.ii.

404. *See* Dockendorf, *supra* note 377, at 1.

405. Randy Dockendorf, *Restructuring Will Cause Area Extension Offices To Close This Fall*, YANKTON DAILY PRESS & DAKOTAN (Apr. 13, 2011), <http://www.yankton.net/Articles/2011/04/13/community/doc4da5283f7770e528554890.txt>.

406. *See, e.g.*, South Dakota’s proposed cuts. They would leave the South Dakota system with only seven regional offices in contrast to before the cuts when there was a local organizer in each county. Dockendorf, *supra* note 405.

407. *Welcome to American Agri-Women*, AM. AGRI-WOMEN, <http://www.americanagriwomen.org/node/1> (last visited July 10, 2012).

expand and provide additional resources for agricultural women around the country.⁴⁰⁸ The National Farmers Union is a longstanding private organization that works for economic well-being and quality of life improvement for family farmers.⁴⁰⁹ In the summer of 2012, the National Farmers Union held a conference aimed toward rural and farm women that provided instruction in farm financing, estate planning, and leadership skills.⁴¹⁰ In using private organizations to supplement services provided by the Extension Service, necessary additional support can, and should, be provided to female farmers.

C. EDUCATION OF TESTATORS

While education and grooming can be supplemented with state sponsored programs, such as extension services, and private organizations, such as FFA, the most important decisions of land distribution will still be made at the familial level. For the most part, it is parents who will control how and when their children learn to farm, and whether those children will ultimately have access to land in order to begin a career in farming. Therefore, it is also important for services to reach out directly to parents who will ultimately make those decisions for their child.

Extension services are influential in rural life and should be used by the government to educate parents about the potential of their daughters to become farmers, and the importance of grooming them as well as sons. A strategic parent will train multiple children and leave the farm in the hands of the most capable child, even if that child is a daughter. The cooperative extension services of each state could provide trainings and publications on how and why women can become successful farmers. Instituting small policy changes could make a difference. Extension service offices already offer estate planning services to farmers.⁴¹¹ These programs should be

408. *Id.*; TRENN A. R. GRABOWSKI & CHRISTINA M. WILSON, AMERICAN AGRI-WOMEN 1974-1994: A PROUD HERITAGE – A PRECIOUS LEGACY 1, 7 (1994), available at http://www.americanagriwomen.org/files/AAW%20History_0.pdf. New York just formed its state chapter in 2010. Beth Young, *Conference Brings Together Female Farmers*, SUFFOLK TIMES (Mar. 11, 2012), <http://suffolktimes.timesreview.com/2012/03/30638/conference-brings-together-female-farmers/>.

409. “*Empowering Farm Women*” *Topic of NFU Conference*, YANKTON DAILY PRESS & DAKOTAN, May 5, 2012, at 4.

410. *Deadline Looms for NFU Women’s Conference*, YANKTON DAILY PRESS & DAKOTAN, June 6, 2012, at 4 (“A variety of trained instructors will teach family farm finances, budgeting and cash flow, cooperatives, marketing, farm transfer and estate planning, business planning, leadership assessment and skills, generational issues, and action planning.”); “*Empowering Farm Women*” *Topic of NFU Conference*, *supra* note 409, at 4.

411. See Carrie Ann Knauer, *Extension Offering Farm Transition and Estate Planning Workshop*, CARROLL COUNTY TIMES (Mar. 10, 2012), http://m.carrollcountytimes.com/mobile/news/local/extension-offering-farm-transition-and-estate-planning-workshop/Article_299a39e9-

expanded and made available online as well as in person, in order to accommodate the most rural farmers in a given state.

After reading many extension documents providing estate planning guidance during the writing of this Article, I was not able to find a single publication discussing gender issues in the transmittance of the farm. Extension publications are gender neutral,⁴¹² but must go further. It is not enough to discuss – in the abstract – that daughters *could* be farmers. Rather, extension services and other state agents must actively educate farming parents and promote future female farmers.

States, through land-grant universities, extension offices, or state government, could publish stories of successful female farmers in local newspapers.⁴¹³ States could also create awards, for example: Best Female Farmer of the Year, to incentivize women to be principal farmers and also show parents that other women have been successful, potentially indicating that their daughter could be successful too. New York City already honors female farmers at an annual banquet.⁴¹⁴ Although a seemingly small step, creation and publication of such prizes could be a large step for the recognition of female farmers. South Dakota State University awards the Eminent Farmer/Rancher and Homemaker Award annually.⁴¹⁵ This award has been in existence since 1927 in order to “recognize citizens for a lifetime of leadership and service” in rural communities.⁴¹⁶ The awards for Farmer/Rancher go to men; the awards for Homemaker to women.⁴¹⁷ Although honoring members of the community is beneficial, it is not good to do so in a way that labels women’s work as only homemaker and men’s

fdb5-550c-938a-89083836ca67.html; *Extension Service To Hold Estate Planning Sessions*, KELOLAND NEWS (Feb. 19, 2012), <http://www.keloland.com/newsdetail.cfm/extension-service-to-hold-estate-planning-sessions-/?id=127957>.

412. For example, “the on-farm child might not be able to afford to buy out the farm shares from his/her siblings.” Curtis & Cowee, *supra* note 79, at 1.

413. In a way, this has already been done. For example, a book about California female farmers chronicles women’s decisions to farm and their successes and struggles. *See generally* BOLLINGER, *supra* note 272. However, a more easily accessible forum – such as a newspaper – would provide these types of narratives to more potential female farmers and more parents.

414. Florence Fabricant, *Dining Calendar*, N.Y. TIMES, June 26, 2012, at D5.

415. *Nominations for Farmer/Rancher and Homemaker Awards Sought*, YANKTON PRESS & DAKOTAN (July 5, 2012), <http://www.yankton.net/Articles/2012/07/05/community/doc4ff516a18b696562551886.txt>.

416. *Id.*

417. For the gender division of the 2011 awards, *see SDSU Announces 2011 Eminent Farmers/Ranchers, Homemakers*, TRI-STATE NEIGHBORS (Sept. 9, 2011), http://www.tristateneighbor.com/news/regional/Article_88d97f0e-daf3-11e0-ba91-001cc4c002e0.html. For the gender division of the 2010 awards, *see Leader Connection*, S.D. FARM BUREAU (Sept. 13, 2010), http://www.sdfbf.org/connect_detail.php?conid=98. For the gender division of the 2009 awards, *see The 2009 Eminent Farmers and Homemakers Hail from Lake, Haakon, and Brookings Counties*, S.D. STATE UNIV. (Aug. 9, 2011), <http://www.sdstate.edu/news/Articles/the-2009-eminant-farmers-and-homemakers-hail-from-lake-haakon-and-brookings-counties.cfm>.

work as only farmer/rancher. Perhaps South Dakota State University could use the existing award to honor female farmers as farmers.

Through their cooperative extension services, some states have already introduced programs to educate farmers on how best to distribute property at their deaths.⁴¹⁸ However, this literature has been focused mainly on the economic risks of splitting up the farm and has not discussed the gender implications of those decisions.⁴¹⁹ These programs should be extended to provide two distinct services to parents. First, parents should be educated that women can, and do, take over and successfully run family farms. As part of this, parents should learn that grooming daughters is a beneficial practice as their daughter may be the most competent heir.⁴²⁰ Second, as parents are nearing the time in their lives that they are determining to which child the farm will go, they should be educated on the impact that giving (or not giving) land to a child can have and be educated on the gender implications that their decision may have on a daughter if she is left without access to land.

VI. CONCLUSION

Although for Willa Cather, women's land ownership may bring personal hardship and prevent women from living the ideal feminine life,⁴²¹ increasing women's access to and ownership of land is an important goal. It is antiquated and discriminatory to continue to believe that women are better off ceding control to the men in their lives – be it a brother or a husband – rather than having ownership and control of their own businesses and property. Despite common narratives of how women in the United States have gained equality and have equal access to land ownership and professions of their choice, this Article illustrates how this equality is not true for family farms and ranches.

Women cannot freely choose this profession, because they are not being properly groomed to take over the family farm and oftentimes do not share in the inheritance of the land. Even when women share in the inheritance of the farm, they are being excluded from the profession of “farmer” as they are neither trained to farm nor given control over family

418. See Knauer, *supra* note 411; *Extension Service To Hold Estate Planning Sessions*, *supra* note 411; Prionsais de Burca, *Debunking Farm Inheritance Myths*, IRISH INDEPENDENT (Nov. 24, 2009), <http://www.independent.ie/farming/news-features/debunking-farm-inheritance-myths-1951863.html>.

419. See *e.g.*, Curtis & Cowee, *supra* note 79.

420. Willa Cather's Alexandra was clearly portrayed throughout O PIONEERS! as the most competent child, but it was clear that she only had the ability to show off this competence because her father groomed her from an early age. See *generally* CATHER, PIONEERS, *supra* note 1.

421. See *generally* CATHER, PIONEERS, *supra* note 1; CATHER, ANTONIA, *supra* note 4.

land as brothers or husbands are considered the “farmer” and exercise control. This is particularly troubling as “[b]y far the most common problem is that there is no leader selected. Either the parents fail to designate a leader among the second generation, or they choose someone who doesn’t have the skills needed to do the position proficiently.”⁴²² Certainly doubling the class of potential leaders in the new generation of farmers could help to alleviate any lack of children willing and able to farm the family land. “Gender relations, then, are central . . . to the future of family farms in rural America.”⁴²³

Although this Article is a vital beginning to a discussion of the exclusion of rural women from the profession of farming and an equal chance at inheritance, more work must be done. Because no empirical work has been done on the attitudes that impede parents from choosing to groom daughters to farm or eventually passing on land, it is hard to truly understand the mindset of farming parents. Once empirical work is done, the conclusions of this Article will be stronger. Until then, this Article serves to demonstrate how rural women are losing opportunities.

This Article has exposed the ways that women are being left out of rural inheritance. This is problematic not only because women are monetarily disadvantaged by their gender, but also because “the right of women to hold, control, inherit, and alienate property are seen as essential to determining women’s status.”⁴²⁴ If rural women are not inheriting or controlling land, their status may be lower than women in urban areas: this is something that should be known and contemplated both by parents giving away their land and the society that creates a system that perpetrates the current inequities.

422. Brhel, *supra* note 265.

423. Osterud, *supra* note 43, at 29.

424. Gunderson, *supra* note 154, at 91-92.