



# Conference Guide

Yale Law School  
New Haven, Connecticut  
Updated: January 11, 2020  
Register: <https://bit.ly/30cZPHw>

## About This Conference

Since the mid-20th century, a handful of corporations have grown to dominate America's farm and food sectors. Today, the country's four largest pork producers, beef producers, soybean processors, and wet corn processors control over 70 percent of their respective markets. Four companies control 90 percent of the global grain trade. Agrochemical, seed, and many consumer product industries are likewise now controlled by just a few mega-sized firms. The implications of these corporations' consolidated market power -- and in turn their consolidated political power -- are profound for people, animals, the environment, and our democracy alike.

In recent years, a growing tide of scholars, lawmakers, and members of the public at large have expressed increasing concern that food- and agribusiness corporations have become too big and too powerful. Many critics have called for a revival of stricter antitrust enforcement, more assertive antitrust authorities, and a general rebalancing of economic power.

The aim of this conference, which is co-organized by Yale University's Thurman Arnold Project and Law, Ethics & Animals Program, is to explore the role of antitrust and competition policy in creating America's food system and its potential for improving it. We hope the conference will help spark future research, heightened enforcement attention, and new ideas for policy reforms toward achieving more competitive, sustainable, and humane agriculture markets.

The conference strives to serve as a focal point for academics, enforcers, policymakers, practitioners, journalists, and beyond to convene and share ideas for how to jointly address concentration in agriculture. The conference will discuss what kinds of reforms are needed in antitrust enforcement and regulation to address problems in the food system and how these changes should be designed. It will also consider the relationship between competition policy and broader concerns associated with industrial agriculture -- including climate change, animal welfare, sustainability, public health, and inequalities facing workers, farmers, and rural communities. In addition, the conference will consider policy recommendations, including changes in the interpretation of antitrust laws and doctrines, new legislation, regulations, enforcement practices, and the institutional organization of agencies.

Special thanks to the conference's co-chairs: Yale Law School students Manny Rutinel, Melody Wang and Alexander Weiss. Their vision and work made this conference possible. Thank you too to LEAP Program Fellow Noah Macey and Yale undergraduate David Townley, whose work has been key to this conference's success.

Finally, our deep thanks go to LEAP's and TAP's financial supporters. We are incredibly grateful for their extraordinary generosity and commitment to making the world a more just, equitable, humane, and sustainable place.

We look forward to seeing you on January 16, 2021.

Austin Frerick  
Deputy Director, Thurman Arnold Project at Yale School of Management

Viveca Morris  
Executive Director, Law, Ethics & Animals Program at Yale Law School

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## Conference Hosts

### The Thurman Arnold Project (TAP)

The Thurman Arnold Project is named in honor of Thurman Arnold, Yale Law Professor and head of the Antitrust Division from 1938 to 1943, to capture the intellectual and enforcement tradition he represented, as well as his zeal for achieving competitive markets for the people of the United States.

The project, TAP@Yale, brings together Yale faculty, students, and scholars from other institutions to collaborate on research related to competition and competition policy as well as antitrust enforcement. The goal of the project is to generate discipline-based, rigorous scholarship and disseminate it through multiple channels to impact competition enforcement and policy around the world.

### The Law, Ethics & Animals Program (LEAP)

The Law, Ethics & Animals Program at Yale Law School is a multidisciplinary think-and-do tank dedicated to developing new strategies to address industrialized animal cruelty and its impacts on the living world, and to drawing attention to the deep questions of conscience and law raised by humanity's treatment of animals.

LEAP leads and coordinates a diverse program of activities that empower students and scholars at Yale to advance positive change for animals, people, and the environment upon which they depend. LEAP's programming includes: academic and experiential animal law courses; research and policy work; the Climate, Animals, Food, and Environment Law & Policy Lab, a unique curricular offering in which students work with experts to develop new legal and political strategies to address the multiple externalized costs of industrial animal agriculture including climate change, animal suffering, human exploitation, and environmental degradation; a student fellows program, with active support for student research projects and publications; regular lectures, panels, roundtables and speaker events that bring leading thinkers to Yale's campus; and the "When We Talk About Animals" podcast series. To learn more about LEAP's work, please visit [law.yale.edu/animals](http://law.yale.edu/animals).

# Schedule

9:15-9:30am	<b>Welcome and Opening Remarks</b> Austin Frerick
9:30-10:00am	<b>Keynote</b> Christopher Leonard
10:00-10:55am	<b>Panel 1: Meat &amp; Dairy</b> Moderator: Alexander Weiss  <i>Chronically Besieged: The U.S. Live Cattle Industry</i> Bill Bullard  <i>Meating the COVID Moment: Creating a Stronger Processing System</i> Rian Wanstreet Savannah McKinnon  <i>A Cry for Spilled Milk: Fixing the Problems of America Begins with Cleaning Up Dairy's Woes</i> Connor Nolan
11:00-11:55am	<b>Panel 2: Farmers &amp; Workers</b> Moderator: Leah Douglas  <i>Monopsony and H-2A Workers in the U.S. Agriculture Sector</i> Candice Yandam Riviere  <i>The Missouri School: Examining Power in the Agrifood System to Suggest Alternatives</i> Emily M. Miller Mary Hendrickson Philip Howard  <i>Fairness Perceptions and Expectations in Agriculture: Lessons from the Case of Dicamba</i> Mary Hendrickson Harvey James Christine Sanders
12:00-1:00pm	<b>Lunch Break</b>
1:00-1:55pm	<b>Panel 3: Systems</b> Moderator: David Muraskin  <i>Corporate Tied and Credit Bound: The Powering of Pork Production</i> Loka Ashwood Ryan Thomson John Canfield Mariyam Jamila*

\*non-presenting author

*Farm Fiction: How U.S. right-to-farm laws advance injustices in rural areas and contribute to the decline of the rural environment*

Danielle Diamond

Allen Franco

Loka Ashwood\*

Crystal Boutwell\*

Lindsay Kuehn\*

*From Friend to Foe: Mission Drift of Farm Bureaus and Commodity Check-off Programs*  
Austin Frerick

2:00-2:55pm

**Panel 4: Animal Welfare**

Moderator: Manny Rutinel

*Animal Welfare and Big Ag: How Industry Concentration Hurts Animals and Stifles Sustainable Farming*

Liz Hallinan

Lisa Winebarger\*

*Animal Welfare Regulation and Market Concentration*

Dan Scheitrum

K. Aleks Schaefer

*How Nonprofits, Corporations, and Academia Could Use the Dynamics of Oligopolistic Markets to Accelerate the End of Intensive Confinement in U.S. Animal Agriculture*

Daina Bray

Owen Pell

3:00-3:55pm

**Panel 5: Intellectual Property**

Moderator: Melody Wang

*“Oh Deere:” Who really owns your tractor?*

Matt Summers

*Seed Supply: How Patent Law Engenders Monopolization in the American Seed Market*  
Molly Collett

*“Chickenization” and Data-Monopsony: A Preventive Role for Antitrust*

Salil Mehra

4:00-4:55pm

**Panel 6: Reforms**

Moderator: Fiona Scott Morton

*Breaking the Chain of Control: Reviving Antitrust Enforcement in the Food System*  
Allison Johnson

*Farm Fairness Act: Reclaiming Liberty, Transparency & Fairness for Poultry Farmers*  
Jeamme Chia

Aaron Troncoso

Kathryn Pogin

Zoe Novic

*Food Deserts and Antitrust Law*

Christopher Leslie

## Conference Presenters and Moderators

Loka Ashwood, Assistant Professor in the Department of Sociology, University of Kentucky

Daina Bray, General Counsel, Mercy for Animals

Bill Bullard, Chief Executive Officer, Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA)

John Canfield, PhD Candidate in the Department of Sociology, University of Wisconsin-Madison

Jeamme Chia, Master Environmental Management Candidate, Yale School of the Environment

Molly Collett, J.D. Candidate, NYU School of Law

Leah Douglas, Staff Writer & Associate Editor, Food & Environment Reporting Network

Danielle Diamond, Attorney, Community Organizer, & Environmental Policy Advocate

Allen Franco, J.D. & L.L.M. in Agriculture and Food Law, University of Arkansas

Austin Frerick, Deputy Director, TAP@Yale

Liz Hallinan, Founder & Executive Director, The Greenfield Project

Mary Hendrickson, Associate Professor of Rural Sociology, University of Missouri & Co-Director, Interdisciplinary Center for Food Security

Philip Howard, Associate Professor in the Department of Community Sustainability, Michigan State University

Harvey James, Professor of Agricultural and Applied Economics in the Division of Applied Social Sciences, University of Missouri

Allison Johnson, Staff Attorney in Health & Food, Natural Resources Defense Council

Christopher Leonard, Investigative Reporter & Author

Christopher R. Leslie, Chancellor's Professor of Law, University of California Irvine School of Law

Savannah McKinnon, J.D. Candidate, University of Washington School of Law

Salil Mehra, Charles Klein Professor of Law and Government, Temple University Beasley School of Law

Emily M. Miller, Policy and Research Manager, Family Farm Action Alliance

Viveca Morris, Executive Director, Law, Ethics & Animals Program, Yale Law School

David Muraskin, Litigation Director, Public Justice Food Project

Connor Nolan, J.D. Candidate, University of Arizona James E. Rogers College of Law

Zoe Novic, M.P.H. Candidate, Yale School of Public Health

Owen Pell, Retired Partner of Counsel, White & Case LLP

Kathryn Pogin, PhD Candidate in philosophy, Northwestern University

Manny Rutinel, J.D. Candidate, Yale Law School

Christine Sanders, PhD Candidate in the Division of Applied Social Sciences, University of Missouri

Dan Scheitrum, Assistant Professor in the Agricultural and Resource Economics Department, University of Arizona

K. Aleks Schaefer, Assistant Professor in the Department of Agricultural, Food, & Resource Economics, Michigan State University

Fiona Scott Morton, Theodore Nierenberg Professor of Economics, Yale University School of Management

Matt Summers, J.D. Candidate, Harvard Law School

Ryan Thomson, Assistant Professor of Rural Sociology, Auburn University

Aaron Troncoso, Joint Degree Candidate, Yale Law School and the Yale School of the Environment

Rian Wanstreet, PhD Candidate in Communication/Science, Technology & Society, University of Washington

Melody Wang, J.D. Candidate, Yale Law School

Alexander Weiss, J.D. Candidate, Yale Law School

Candice Yandam Riviere, J.D. Candidate, University of Chicago Law School & Ph.D. Candidate in Economics, Panthéon-Sorbonne University

## Professional Biographies

### Loka Ashwood

**Assistant Professor in the Department of Sociology, University of Kentucky**

Loka Ashwood is an assistant professor in the Department of Sociology at the University of Kentucky. She studies corporate and regulatory structures that prompt environmental injustices and animosity toward the state, with an mind toward action-based change in rural communities. She published the book, *For-Profit Democracy: Why the Government is Losing the Trust of Rural America* (Yale 2018), and is co-author of *An Invitation to Environmental Sociology* (6<sup>th</sup> edition, Sage, fall 2020).

### Daina Bray

**General Counsel, Mercy for Animals**

Daina Bray is General Counsel of Mercy for Animals, a global farmed animal protection non-profit, and previously served as General Counsel of the International Fund for Animal Welfare. With more than fifteen years in legal practice, including nine years in private practice in the areas of international arbitration and litigation, Daina brings a breadth of nonprofit, international, and animal law experience. Daina is co-chair of the American Bar Association International Animal Law Committee, chair of the Tennessee Bar Association Animal Law Section, and a past chair of the ABA Animal Law Committee. She graduated from Stanford Law School with pro bono distinction, and received her bachelors in international studies from the University of North Carolina at Chapel Hill as a Morehead scholar. Following college, Daina spent a year as a Fulbright scholar in Kingston, Jamaica, working in environmental education. Daina received the 2020 ABA TIPS Excellence in Animal Law award.

### Bill Bullard

**Chief Executive Officer, Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA)**

Bill Bullard is the Chief Executive Officer of the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA), the nation's largest cattle trade association that exclusively represents independent cattle producers. He has held this position for two decades and represents independent cattle producers before Congress, state legislatures, federal agencies, and in court. Bullard has testified on behalf of R-CALF USA members before Congress and executive branch agencies, manages numerous lawsuits on behalf of the organization, is the organization's registered lobbyist, and authored an antitrust paper published in the South Dakota Law Review. Bullard is a former owner/operator of a South Dakota cow/calf ranching operation. He gained government experience while serving as the Executive Director of the South Dakota Public Utilities Commission. He has a B.S. in Political Science from Black Hills State University. Bullard resides in Billings, Montana, and has three children: Cameron, Candace, and Callie, and five grandchildren.



## John Canfield

**PhD Candidate in the Department of Sociology, University of Wisconsin- Madison**

John Canfield is a PhD student in the Department of Sociology at the University of Wisconsin-Madison. He is interested in issues ranging from agriculture to conservation. His research has explored the role of corporate forms and financialization in absentee ownership as well as industrial agriculture. Currently, he is exploring the community responses to the American Prairie Reserve, a rewilding initiative in rural Montana. In particular, he is interested in examining the political, economic, and environmental power dynamics driving the conflict between neoliberal conservation initiatives, industry groups, and local ranchers. He is also analyzing the power structures in the corporate network of industrial hog production with a particular interest in the role of space and finance.

## Jeamme Chia

**Master Environmental Management Candidate, Yale School of the Environment**

Jeamme is a Master Environmental Management candidate at the Yale School of the Environment. She is interested in sustainable land use policy and its intersection with agriculture, forestry, and development. Before attending Yale, Jeamme was a management consultant with PwC where she worked with corporate and non-profit clients on sustainability strategy and sustainable operations management. She was most recently a research associate specializing in using geospatial and political economic techniques to understand commodity-driven land use and trade flows in Indonesia and Malaysia. Jeamme has a B.A. from Sarah Lawrence College where she concentrated in Political Economy, Geography, and French. Her current research is focused on East Kalimantan's land use and forestry policy and its resilience as the site of Indonesia's new capital.

## Molly Collett

**J.D. Candidate, New York University School of Law**

Molly Collett is currently a 1L at NYU School of Law, having earned her BA cum laude from the University of Pennsylvania. She is passionate about antitrust legislation and intellectual property litigation, as well as issues related to food (its sustainable production and distribution; what she should eat for dinner).

## Danielle Diamond

**Attorney, Community Organizer, & Environmental Policy Advocate**

Danielle Diamond is an attorney, community organizer, and environmental policy advocate with more than a decade of experience confronting the critical threats posed by industrial livestock production. She oversees the Socially Responsible Agriculture Project's (SRAP) national team of community organizers. Danielle has also worked in private practice, specializing in land use, zoning, and municipal law. She holds a Master of Arts in applied environmental anthropology with high honors from Northern Illinois University (NIU) and a Juris Doctor from the NIU College of Law.

## Leah Douglas

**Staff Writer & Associate Editor, Food & Environment Reporting Network**

Leah Douglas is a staff writer and associate editor at the Food and Environment Reporting Network, an independent, nonprofit newsroom. Leah's reporting on corporate power and big business in the food and agriculture sectors has been published in the Guardian, the Nation, the Washington Post, Mother Jones, NPR, and many other outlets. Leah's work has been cited in dozens of print and television media outlets including the New York Times, Washington Post, AP, and the Atlantic. Leah was the 2020 recipient of the National Farmers Union Milt Hakel Award for excellence in agricultural reporting and a member of the 2019-2020 cohort of the New Economies Reporting Project finance solutions fellowship.

## Allen Franco

**J.D. & LL.M. in Agriculture and Food Law, University of Arkansas**

Allen Franco has a law degree and LL.M. in Agriculture and Food Law from the University of Arkansas. Allen's LL.M. thesis *Equity Uprooted: Why Common Law Nuisance Theories Should Settle Agriculture Land Disputes* explores agriculture nuisance lawsuits in the pre Right-to-Farm era and discusses alternative theories to agriculture land loss. After graduation, Allen practiced criminal law in Northwest Arkansas. Allen's practice primarily consisted of murder and other high-level criminal litigation. Allen has also served as a judicial law clerk in both state and federal court.

## Austin Frerick

**Deputy Director, TAP@Yale**

Austin is the Deputy Director of the Thurman Arnold Project at Yale University, an initiative that brings together faculty, students, and scholars from Yale Law School, the Yale School of Management, and other institutions to collaborate on research related to competition policy and antitrust enforcement. He is also a Fellow at The Harkin Institute at Drake University and a Senior Fellow at Data for Progress. He is an Iowa native and graduate of Grinnell College and the University of Wisconsin, Madison. He has written for *Fast Company*, *The American Conservative*, among others and his research has been cited in *The Washington Post* and *The New York Times*.

## Liz Hallinan

**Founder & Executive Director, The Greenfield Project**

Liz Hallinan is the Founder and Executive Director of The Greenfield Project, a nonprofit dedicated to cultivating a more joyful and resilient food system. Liz aims to harness the power of legislative, regulatory, and business policies to promote sustainable agriculture and improve the lives of farm animals, farmers, and consumers. Liz's areas of expertise include animal behavior, psychology, administrative law, and regulatory policy. Before co-founding Greenfield, Liz worked for a variety of public interest organizations, including the Natural Resources Defense Council, the Animal Legal Defense Fund, and Meyer, Glitzenstein, and Eubanks. Liz received her undergraduate degree from Harvard University and has a law degree from New York University and a masters in science from Queen's University.

## Mary Hendrickson

**Associate Professor of Rural Sociology, University of Missouri and Co- Director, Interdisciplinary Center for Food Security**

Mary K. Hendrickson is an Associate Professor of Rural Sociology at the University of Missouri, where she serves as Co-Director of the Interdisciplinary Center for Food Security. She teaches sustainable food and farming courses at MU, and was a Fulbright Scholar to Iceland, teaching sustainable agriculture at the Agricultural University of Iceland. She is particularly interested in how farmers, consumers and communities are seeking to transform the structure of food and agriculture while building equitable, fair and resilient food systems.

## Philip Howard

**Associate Professor in the Department of Community Sustainability, Michigan State University**

Philip H. Howard is a faculty member in the Department of Community Sustainability at Michigan State University, and a member of the International Panel of Experts on Sustainable Food Systems. He is the author of *Concentration and Power in the Food System: Who Controls What We Eat?* His visualizations of food system changes have been featured in numerous outlets including The New York Times, The Washington Post and The Wall Street Journal.

## Harvey S. James, Jr.

**Professor of Agricultural & Applied Economics in the Division of Applied Social Sciences, University of Missouri**

Harvey S. James, Jr., PhD, is Professor of Agricultural and Applied Economics in the Division of Applied Social Sciences at the University of Missouri. Dr. James's research focuses on applied ethics and the economic foundations of trust, happiness and ethical behavior. He is currently conducting research on how the structure of agricultural networks affects perceptions of fairness. His previous edited books include *Ethical Tensions from New Technology: The Case of Agricultural Biotechnology* (2018), which reviews the ethical implications of technological innovation and adaptation in the agricultural industry, and *The Ethics and Economics of Agrifood Competition* (2013), which examines the question of whether there is adequate competition in the agrifood industry. Dr. James is former editor-in-chief of the journal *Agriculture and Human Values* and is a member of the editorial boards at *Business Ethics Quarterly*, *Academy of Management Perspectives* and *Sustainability*.

## Allison Johnson

**Staff Attorney in Health & Food, Natural Resources Defense Council**

Allison Johnson is an attorney and policy advocate who focuses on sustainable food systems with a broad lens. Her work aims to transition us from agricultural practices that harm communities and the environment to a diversified, place-based food system that supports long-term health. Allison's current work at the Natural Resources Defense Council advances healthy food systems through federal, state, and local policy. She previously practiced environmental and land use law as an attorney at Shute, Mihaly & Weinberger and worked as an Organic Certification & Policy Specialist at CCOF. She holds a JD with an Environmental Specialization and a BS in Nutritional Sciences, Physiology & Metabolism, from the University of California, Berkeley, and a Master's in Gastronomic Sciences & Quality Products from L'Università di Scienze Gastronomiche in Italy.

## Christopher Leonard

**Business Reporter & Author**

Christopher Leonard is a business reporter whose work has appeared in *The Washington Post*, *The Wall Street Journal*, *Fortune*, and *Bloomberg Businessweek*. He is the author of *The Meat Racket* and *Kochland*, which won the J. Anthony Lukas Work-in-Progress Award.

## Christopher R. Leslie

**Chancellor's Professor of Law, University of California Irvine School of Law**

Christopher Leslie is a Chancellor's Professor of Law at the University of California Irvine School of Law. Professor Leslie received his J.D. from UC Berkeley, his M.P.P. from the Kennedy School of Government at Harvard University, and his B.A. in Economics and Political Science from UCLA. He has been a Visiting Professor of Law at Stanford, NYU, and Texas. Professor Leslie authored *Antitrust Law And Intellectual Property Rights* (Oxford University Press, 2011). He co-authored *IP And Antitrust: An Analysis Of Antitrust Principles Applied To Intellectual Property Law* (3rd ed. 2016 with Hovenkamp, Janis, Lemley, and Carrier). He is also a co-author of *Antitrust Law, Policy And Procedure* (8th ed. 2019 with Sullivan, Hovenkamp and Shelanski). Professor Leslie has published over 50 scholarly articles, including in the flagship law reviews at Columbia, Berkeley, the University of Pennsylvania, Georgetown, Cornell, Vanderbilt, Duke, Northwestern, Texas, and UCLA, among others.

## Savannah McKinnon

**J.D. Candidate, University of Washington School of Law**

Savannah is a 2022 J.D. candidate at the University of Washington School of Law, B.A. 2016, University of Wisconsin-Madison. She is the Technology Law Society Co-President and a staff member at the Washington Journal of Law, Technology & Arts. Her work at the Tech Policy Lab at University of Washington examines agricultural technologies and food resiliency. She is interested in the intersection of intellectual property and technology law, and has a background in analytics and digital media marketing.

## **Salil Mehra**

**Charles Klein Professor of Law and Government, Temple University Beasley School of Law**

Professor Salil Mehra joined the Temple Law faculty in 2000. His research focuses on antitrust/competition law and technology. Professor Mehra is a past Chair of the AALS Section on Antitrust and Economic Regulation, and is a nongovernmental advisor to the International Competition Network. He is a former Abe (AH-bay) Fellow of Japan's Center for Global Partnership and the Social Science Research Center. In 2016, Professor Mehra won the Temple University Lindback Award for Distinguished Teaching. His scholarship has appeared in a variety of journals, including the Minnesota Law Review and the American Journal of Comparative Law.

## **Emily M. Miller**

**Policy and Research Manager, Family Farm Action Alliance**

Emily M. Miller is Policy and Research Manager at Family Farm Action Alliance. She previously worked at the National Sustainable Agriculture Coalition, the Missouri Science and Technology Policy Initiative, and the Iowa House of Representatives. She holds a M.S. in Rural Sociology from the University of Missouri, and a B.S. from Iowa State University where she double majored in Animal Science and Agriculture & Society. She also sits on the boards of directors of the Women, Food, and Agriculture Network and the Iowa Farmers Union.

## **Viveca Morris**

**Executive Director, Law, Ethics & Animals Program, Yale Law School**

Viveca Morris is the Executive Director of the Law, Ethics & Animals Program at Yale Law School, an interdisciplinary think-and-do-tank focused on developing legal and political strategies to address industrialized animal cruelty and its impacts on the living world. Morris founded the Law, Ethics & Animals Program in 2019 in partnership with Faculty Co-Directors Doug Kysar and Jonathan Lovvorn. Her research focuses on legal, moral, and scientific questions raised by humanity's treatment of animals, and on how insights from multiple disciplines, the power of storytelling, and the force of law can together be leveraged to protect animals, people and the environment. Morris co-hosts and co-produces the Yale University podcast "When We Talk About Animals."

## **David Muraskin**

### **Litigation Director, Public Justice Food Project**

David S. Muraskin is the Litigation Director of the Public Justice Food Project. There he supervises a team of attorneys using impact litigation to aid organizing and build public pressure against industrial animal agriculture. David's docket focuses largely on constitutional, worker, and consumer claims. He secured first-of-their-kind victories against "Ag-Gag" Laws and the Checkoff program and was awarded the 2019 National Press Photographers Association First Amendment award. He speaks regularly on structural barriers to reforming the current food system and its negative impacts on people and the environment, and serves as Professional Lecturer in Law at George Washington University Law School. He has previously taught at Georgetown and Vermont Law Schools, graduated from Stanford Law School with Distinction, has a Master's from Oxford University, St. Antony's College, and has a B.A. from the University of Chicago.

## **Connor Nolan**

### **J.D. Candidate, University of Arizona James E. Rogers College of Law**

Connor Nolan is a second-year law student at the University of Arizona James E. Rogers College of Law. Although born in Iowa, Connor was not always interested in agriculture. Instead, his interest in agriculture and, more specifically, the effects of consolidation on agriculture began while volunteering for a congressional campaign as a student at Iowa State University. From that point forward, Connor started seeing the wide-ranging negative effects that consolidation in agriculture has on America and abroad. As the COVID-19 pandemic began, these negative effects were most notably seen through the abuse of laborers at processing plants and the waste of milk and other food products. Those unfortunate and avoidable effects are what pushed Connor to write his paper. He is excited to add to the dialogue on how to create a new, more just farm economy.

## **Zoe Novic**

### **M.P.H. Candidate, Yale School of Public Health**

Zoe is a Masters student at the Yale School of Public Health. Her academic work focuses on the interrelationship between factory farming, climate change, chronic disease, and population health. Prior to studying at Yale, Zoe worked as the San Francisco Grassroots Director for The Humane League, and she served as a Peace Corps Volunteer in Indonesia from 2014-2016. She holds a B.A. in Anthropology from Brandeis University.

## **Owen Pell**

**Retired Partner of Counsel, White & Case LLP**

Owen Pell is a Retired Partner of Counsel with White & Case LLP. He has represented governments, major banks and companies in complex, cross-border disputes, including matters involving the interaction of multiple legal systems, the extraterritorial reach of US laws, and issues under international human rights law, including historical reparations. Owen has handled major cases in the area of corporate social responsibility, including as to World War II and the Holocaust, South Africa during the Apartheid era, and African slavery in the United States. Owen has lectured widely on business and human rights issues, and delivered a TED talk on “Diplomacy 2.0,” discussing the ways in which multinational companies and NGOs are changing how international legal norms are formed. Owen is President of the Auschwitz Institute for the Prevention of Genocide and Mass Atrocities, the largest NGO training government officials around the world in genocide and mass atrocity prevention.

## **Kathryn Pogin**

**PhD Candidate in philosophy, Northwestern University**

Kathryn Pogin is a PhD Candidate in philosophy at Northwestern University, and a recent Yale Law School graduate. She is a former Yale Law, Ethics & Animals Program fellow, and a recipient of the Charles G. Albom Prize for excellence in appellate advocacy in association with a Yale Law School Clinical program. She received her master's degree from the University of Notre Dame, and bachelors from the University of St. Thomas in Minnesota. Her academic research primarily concerns the social dimensions of knowledge—for instance, how social inequality shapes conceptual frameworks—with interests in the implications for constitutional interpretation and regulatory interventions.

## **Manny Rutinel**

**J.D. Candidate, Yale Law School**

Manny is a J.D. candidate at Yale Law School with a focus on Animal and Environmental Law. He hopes to use his education and experiences to tackle a neglected issue with some of the most significant consequences for our environment, our health, and the moral fabric of our humanity: animal agriculture. Manny has worked as an Economist for the US Army Corps of Engineers, which included a work detail at the Institute for Water Resources as well as a deployment to Puerto Rico as a First Responder after Hurricane Maria. In 2020, Manny was a Summer Law Clerk at the Animal Legal Defense Fund, a Policy Fellow for the Hickenlooper Senate campaign, and a Research Assistant for the Harvard Animal Law and Policy Program. Manny holds a B.S. in Microbiology, a B.A. Economics, and minors in Chemistry and Philosophy from the University of Florida. He also holds an M.S. in Applied Economics from Johns Hopkins University.



## **Christine Sanders**

**J.D. Candidate, University of Arizona James E. Rogers College of Law**

Christine Sanders is a graduate research assistant and PhD candidate in the Division of Applied Social Sciences at the University of Missouri. Christine's research focuses on small-medium enterprise engagements with "community finance" as an experiential landscape of formal and informal information sharing, behavioral responses, and critical resource access for sustainable livelihood outcomes. Human-environment systems, rural economic sociology, community interactional capacity, business ethics, corporate social responsibility, and the power of narratives are central themes in her research pursuits.

## **Dan Scheitrum**

**Assistant Professor in the Agricultural and Resource Economics Department, University of Arizona**

Dan Scheitrum is an Assistant Professor in the Agricultural and Resource Economics Department at the University of Arizona. Dr. Scheitrum's research examines the economic, trade, and financial impacts of agricultural and energy policy. Recent projects include examining the impacts of approvals of GMO products on cultivation and international trade, estimating the price impact of animal welfare legislation, and estimating the behavioral response to animal disease management programs in the UK. Dr. Scheitrum routinely employs University of Arizona High Performance Computing resources in his empirical estimation. Dr. Scheitrum teaches undergraduate and graduate courses in microeconomics and commodity markets.

## **Aleks Schaefer**

**Assistant Professor in the Department of Agricultural, Food, & Resource Economics, Michigan State University**

Dr. K. Aleks Schaefer is an assistant professor in agricultural and food policy in the Department of Agricultural, Food, and Resource Economics at Michigan State University. Drawing upon his dual background as an agricultural economist and a lawyer, Aleks's research seeks to understand the impacts of laws and policies targeted at national and international agri-food markets. He has a passion for working in multidisciplinary settings, and has collaborated with colleagues of diverse professional backgrounds, including epidemiologists, veterinarians, and food safety experts. His research is informed by my practical experience in agricultural policy. He previously served as an economic consultant to the World Bank, where he monitored the efficacy of global livestock regulations. Aleks has also acted as a litigation consultant on several legal cases, including antidumping and antitrust proceedings. He was previously an assistant professor in agribusiness at the Royal Veterinary College, University of London.



## **Fiona Scott Morton**

**Theodore Nierenberg Professor of Economics, Yale University School of Management**

Fiona M. Scott Morton is the Theodore Nierenberg Professor of Economics at the Yale University School of Management where she has been on the faculty since 1999. Her area of academic research is industrial organization, with a current focus on competition in healthcare markets and the economics of antitrust. From 2011-12 Professor Scott Morton served as the Deputy Assistant Attorney General for Economic Analysis (Chief Economist) at the Antitrust Division of the U.S. Department of Justice, where she helped enforce the nation's antitrust laws. At Yale SOM, she served as Associate Dean from 2007-10 and has won the School's teaching award three times. She founded and directs the Thurman Arnold Project at Yale, a vehicle to provide more antitrust programming and policy projects to Yale students. Professor Scott Morton has a BA from Yale and a PhD from MIT, both in Economics.

## **Matt Summers**

**J.D. Candidate, Harvard Law School**

Matt is the founder of the Harvard Law School Antitrust Association. His antitrust-related publications include "[Facebook Isn't Free](#)" in *Behavioural Public Policy* and "Vindicating Antitrust Claims in the Face of Forced Arbitration" in the *Harvard Civil Rights-Civil Liberties Law Review* (forthcoming). Matt has experience working in defense-side and plaintiff-side antitrust law, as well as interning with the government and at a think tank. Most recently, Matt supported President-Elect Biden's antitrust policy team in advance of the election. After graduating this May, Matt will clerk for Judge Boudin on the First Circuit. Outside of law, Matt is the founder and board chair of Debate Spaces, an education non-profit that helps middle schoolers from 12+ countries build public speaking and activism skills.

## **Ryan Thomson**

**Assistant Professor of Rural Sociology, Auburn University**

Ryan Thomson is an assistant professor of rural sociology at Auburn University. His research examines the intersection environment and community health as it pertains to issues of inequality. His work frequently employs geospatial and network analysis to inform public policy and grassroots responses to complex social problems. His latest work uses participatory action research to examine a series of community-driven questions with the Gullah/Geechee Sea Island Coalition surrounding issues of heir's property, access, and land loss.

## **Aaron Troncoso**

**Joint Degree Candidate, Yale Law School and the Yale School of the Environment**

Aaron is a second-year joint degree candidate at Yale Law School and the Yale School of the Environment originally from New York City. Before graduate school, he worked to help communities around Massachusetts prepare for the impacts of climate change at the grassroots nonprofit Communities Responding to Extreme Weather. He received his bachelor's degree from Yale College. Outside of the classroom, he enjoys long-distance backpacking and running: as part of a senior thesis project in college, he hiked ~1,100 miles along the Appalachian Trail from West Virginia to Maine, studying how increases in use affected the trail's ecology and social dynamics.

## Melody Wang

**J.D. Candidate, Yale Law School**

Melody Wang is a 3L at Yale Law School. In law school, she has focused on antitrust and regulation and has been involved in the Thurman Arnold Project, working on labor competition and digital-platform issues. She has worked at the Antitrust Bureau of the NY Attorney General's office and at the Antitrust Division of the Department of Justice. In addition, she is an Articles & Essays editor of the *Yale Law Journal*, has served as Articles Editor for the *Yale Journal on Regulation*, and has written on the need to bolster post-consummation merger review. Before law school, Melody reported on antitrust enforcement news and provided analysis of pending mergers for *The Capitol Forum*. She graduated from Yale College in 2016 with a B.A. in Economics.

## Rian Wanstreet

**PhD Candidate in Communication/Science, Technology & Society, University of Washington**

Rian is a PhD Candidate at the University of Washington in Communication/Science, Technology & Society. Her research focuses on the datafication of the agricultural sector, with a particular focus on the social, ecological, economic, and security impacts of algorithmic mediation. She currently holds fellowships with Harvard's Berkman Klein Center for Internet and Society and Central European University's Center for Media and Data Studies.

## Alexander Weiss

**J.D. Candidate, Yale Law School**

Alex is a second-year JD Candidate at Yale Law School. Since coming to law school, his academic work has been in areas including animal agriculture, healthcare policy, and normative jurisprudence. He is also an editor for the Yale Journal on Regulation's symposium on New Challenges for Law and Economics. Before coming to law school, Alex was an economics PhD student at the University of California San Diego, where he studied mechanism design and law and economics.

## Candice Yandam Riviere

**J.D. Candidate, University of Chicago Law School, and Ph.D. Candidate in Economics, Panthéon-Sorbonne University**

Candice Yandam Riviere is a J.D. Candidate at the University of Chicago Law School and a Ph.D. Candidate in Economics at Panthéon-Sorbonne University. Her work focuses on labor economics, specifically on the analysis of labor regulations' effects on labor markets. Her current research areas include minimum wage effects on employment, labor market competition, and the relationship between antitrust law and labor market monopsony. Candice was formerly a visiting scholar at the China Center for Social Policy at Columbia University, where she studied the effects of China's Labor Contract Law on employment, welfare, and happiness. She was also a teaching fellow in statistics and probabilities at Panthéon-Sorbonne University. At the University of Chicago Law School, Candice's research focuses on understanding how the tensions between antitrust law and immigration law exacerbate monopsony power in the U.S. agriculture sector. She is also a member of *The University of Chicago Law Review*.

## Abstracts for Panel 1: Meat & Dairy

### **Chronically Besieged: The U.S. Live Cattle Industry**

**Bill Bullard**

The U.S. cattle industry is the largest segment of American agriculture and represents much of Rural America's economic cornerstones. It is the only livestock sector with enough remaining competitive marketing channels to sustain a competitive industry. But, our ability to protect the competitive dynamics from the actions of the dominant oligopolist beef packers is closing fast.

During past decades the entire U.S. cattle industry shrank at an alarming rate. Policy makers and market regulators have demonstrated complete disinterest in its contraction. Their disinterest is based on a lack of understanding regarding the unique characteristics of the cattle industry itself, and a misapprehension regarding the interrelationships between disaggregated cattle industry supply-chain participants (cow-calf producers, backgrounds, feeders) and the highly concentrated beef packers who purchase their cattle.

In 2013, this author's paper, "Under Siege, The U.S. Live Cattle Industry," published in the *South Dakota Law Review*, described the precarious state of the cattle industry. It described the industry's shrinkage in terms of, *inter alia*, cattle producers, herd size, marketing outlets, share of the consumer's beef dollar, and supply-chain participant profitability. The paper cautioned that without rigorous antitrust enforcement and other legal actions to protect market competition, the cattle industry we know today would be lost for future generations.

Since 2013, however, conditions in the U.S. cattle industry have worsened. In 2015 the nation experienced an inexplicable, long-term cattle-price collapse while consumers continued paying record and near-record beef prices. Since 2017 beef prices have reached new historical highs, while cattle prices trended downward, a phenomenon evincing a disconnect between the value of the raw product (*i.e.* cattle) and the value of beef. In 2019 a beef packer's temporary shutdown caused another inexplicable, nationwide price collapse. And, in 2020, for the first time in recent memory, consumers could not buy the beef they needed for their families because grocery store beef counters were bare.

An update to the 2013 paper is now needed to inform policy makers, market regulators, and the public as to how, through decades of inattention and misunderstanding, the chronically dysfunctional U.S. cattle and beef industries have suddenly become acutely dysfunctional. The update will suggest solutions to reverse the negative trajectory of the U.S. cattle industry, which, if left unaddressed, will almost certainly lead to a skeletonized, industrial top-down controlled industry that will eliminate economic opportunities for independent cattle farmers and ranchers while depriving consumers a robust, resilient, and dependable protein supply chain.

This updated paper will further expound upon the contention that the contraction of the U.S. cattle industry is driven by: (1) severely reduced market competition among domestic cattle

purchasers and beef sellers; (2) increased structural integration; (3) increased species integration; (4) misguided trade and other national policies; and, (5) failed economic modeling that misapprehends the true cost to society when optimal economies of scale are exceeded. In addition, the update will provide recommendations on what action is needed to revitalize the ailing U.S. cattle industry and to restore the crumbling economic cornerstones of Rural America.

## **Meating the COVID Moment: Creating a Stronger Processing System**

**Rian Wanstreet & Savannah McKinnon**

In early Spring, the U.S. populace was inundated with messages of potential shortages, with panicked suppliers telling the American public that food - particularly meat - would soon be unavailable to them. Stories of culled cattle, diseased workers, and empty grocery shelves permeated the media, prompting furious action on a federal and many state levels. But while COVID-19 surfaced the insufficiencies of the concentrated food system in the U.S., the resulting fractures were not the cause but simply a symptom of underlying sickness. From lack of physical meat inspections by the Food Safety and Inspection Service (FSIS) and increased consolidation without delegating adequate responsibilities to over-vaccinated and medicated meat hitting the market, the inefficiencies of these supposed hyper-efficient systems are baked into the current model.

Meat processing represents an especially brittle aspect of our food system that has strayed away from traditional notions of resiliency in agriculture. Roughly fifty plants across the United States are responsible for 98% of slaughtering and processing. Fragmented federal oversight and regulation allows for fewer, corporate plants, leaving rural ranchers and farmers with no slaughtering options. Strict regulations initiated by meat processing plants - ostensibly instituted for safety - in reality favor consolidation and disease in corporate structures, while forcing federal oversight out of the slaughterhouse. The system requires capable delegation of federal responsibilities, deconcentration of processing facilities to decrease vulnerability, and options for ranchers to reduce dependence on one facility.

In this paper, we first provide an incisive critique of the system as it is, providing an overview of the harms uber-concentration has visited upon workers, farmers, animals, the public, the environment, and competition itself. We then present case studies of three different communities in Washington, Oklahoma, and Indiana, and model examples from how these different parts of the country have responded to these problems - some through community activities, some through rancher networks. We discuss the challenges these efforts present to current law, and finally provide specific policy proposals that would alleviate some of the bigger challenges in the industry today. Ultimately, we believe that COVID-19 has provided a unique opportunity to change the system for the better, as extreme shocks to the system are often the moment when policy and legal improvement are possible.

## **A Cry for Spilled Milk: Fixing the Problems of America Begins with Cleaning Up Dairy's Woes**

### **Connor Nolan**

Over the past twenty years, over half of America's dairy farms have been lost due to the Consumer Welfare Standard's overemphasis on price and quantity and Antitrust law's indifference toward vertical integration. To save small dairy farms, there will need to be a shift in the enforcement of antitrust laws, as well as policy solutions that support small farms' vitality.

Overemphasis on price and quantity ignores other effects of dairy consolidation. Most recently, the dairy market's inflexibility at the processing level was seen through farmers dumping milk during the COVID-19 pandemic. However, the costs go beyond inflexibility. The emergence of large-scale farms in the American West presents significant environmental concerns. These farms also create the conditions necessary for the abuse of migrant labor. Finally, the ongoing conglomeration of dairy farms accelerates the obesity epidemic.

In this paper, I propose antitrust solutions that go beyond stricter scrutiny of mergers and acquisitions. While stricter scrutiny is needed, much of the damage caused by mergers and acquisitions has already been done. First, stricter antitrust enforcement is needed against exclusionary practices in the sale of milk from farmer to cooperative and milk processing. Second, discussion is needed on whether small farm dairy exists in a separate market from large farm dairy. While the end product is similar, small dairy comes with qualities that large dairy does not: supporting local communities, less climate destruction, and greater worker rights. If a separate market is established, then conduct previously found not to be anticompetitive could be anticompetitive in the smaller market.

To accomplish these changes, a rise in Antitrust enforcement at the state level is needed. While Antitrust enforcement has traditionally come from the federal level, attorneys in New York, San Francisco, and Washington DC lack the practical knowledge necessary to stop anticompetitive conduct. The promotion of state enforcement, through hiring dedicated Antitrust attorneys, will lead to enforcers having better knowledge of the local market. State enforcement may also have a greater deterring quality.

However, Antitrust alone is not enough to restore small farms' vitality. Creative policy solutions must also be put in place. These solutions should start with procuring schools' buying power, rebuilding local supply chains, and incentivizing small farmers to diversify production. Schools purchase 8% of the fluid milk market. Utilizing this buying power can keep local farmers in business and diminish the climate impact of purchasing milk from large farms located outside the region. Rebuilding local supply chains can be achieved by bringing rural America's vacant main streets back to life. Rather than subsidizing large farms' overproduction, the government should spur market activity by reallocating money into unsubsidized loans or grants that incentivize investment into local grocers and diners. As a condition of the loan or grant, the businesses would purchase goods from qualifying regional farms. Finally, small dairy farmers

should be incentivized to diversify their production. Diversifying production creates similar results to supply management but does not have the negative effect of diminishing output.

## Abstracts for Panel 2: Farmers & Workers

### **Monopsony and H-2A Workers in the U.S. Agriculture Sector**

**Candice Yandam Riviere**

Recent developments in law and economics have shown that labor market power is a pervasive antitrust issue contributing to earnings inequality and slower growth. In the agriculture sector, workers – and especially H-2A temporary agricultural workers – have consistently suffered from low, stagnating wages and poor working conditions. This paper evaluates the extent of labor market power in the agriculture sector and how conflicting antitrust law and immigration policy norms exacerbate labor monopsony.

First, this paper empirically documents the extent of labor market monopsony in the agriculture and food sectors across various regions of the U.S. and whether it contributes to wage suppression. Using data from the U.S. Department of Labor on H-2A workers' wages, the farm or ranch they work for, and in which region, the paper estimates the effects of labor market concentration on temporary workers' wages. Second, this paper shows that the pervasiveness of labor monopsony is, in part, due to a conflict between antitrust law and immigration regulation. While Section 1 of the Sherman Act protects workers from any agreement that would restrain wages, the H-2A statutory standard allows conduct that can lead to wage suppression, thus bolstering farmers' and ranchers' labor market power. Lastly, this paper offers a few proposals for reforming the H-2A guest worker program and strategies for courts to effectively approach the analysis of conflicting antitrust law and immigration policy norms in wage-suppression cases.



## **The Missouri School: Examining Power in the Agrifood System to Suggest Alternatives**

**Emily M. Miller, Mary Hendrickson & Philip Howard**

Today's agrifood system is highly concentrated, putting all actors along the supply chain at risk. COVID-19, extreme weather patterns, and trade disruption have shown the brittleness of a system built on the premise of efficiency and externalizing risk. We argue the root of food system vulnerabilities is unequal power relationships, using the mode of power thesis developed by Nitzan & Bichler. In this paper, we focus on the state of corporate power in the agrifood system and document how that power harms workers, ecologies and communities using the exemplars of COVID-19 in meatpacking and conflicts over dicamba use in row-crops. We argue the current agrifood power relationships -- the prioritization of accumulating and protecting power rather than securing our food supply -- undermine humanity's ability to feed itself in the future, which demands innovative responses to democratize agrifood systems, including policy changes.

We utilize the pragmatist approach of the "Missouri School" which requires us to analyze the current structure of the agrifood system in order to frame policy pathways towards sustainable food systems based on equitable and just relationships between people, communities and ecologies. We combine: 1) a political economy frame to account for unequal power relationships between corporations, the state, and the people, and 2) a political ecology frame to examine how the agrifood system inherently relates the interactions of humans and the environment. Both vantage points allow us to document and understand the nature of power accumulation by corporate actors, as well as to shine a light on unique points of intervention -- all of which must be employed from local to global levels of governance if we are to move toward a just and equitable food system.

In the mode of power analysis, political democracy and economic democracy are intertwined and inseparable. We argue our laser focus in scholarship, praxis and policy must be on democratizing the agrifood system at local, state, regional and national scales. Working together, policy-makers, farmers, workers and communities need to fashion alternatives and policies that can help to curb monopolistic tendencies in the agrifood system, to shine a racial lens in scholarship on agrifood system power and consolidation, to prioritize resilience and redundancy, to rethink core assumptions such as efficiency and property rights, and to encourage the development of alternative production and consumption arrangements.

We conclude by showing how a "mode of power" analysis guided policy development within Family Farm Action Alliance, an organization representing farmers, ranchers, and working people throughout the food supply chain. The organization argues that corporate actors determine who farms and who eats, a premise that shapes their responses that include policy proposals, and that are aimed at transforming the food and farm system towards justice and equity.

## Fairness Perceptions and Expectations in Agriculture: Lessons from the Case of Dicamba

Mary Hendrickson, Harvey James & Christine Sanders

A sustainable and equitable food and agricultural system cannot exist unless market participants perceive they are participating in a fair marketplace. As agricultural markets in the U.S. become more concentrated so that there are fewer buyers of agricultural commodities, some agricultural producers have expressed concerns that markets have become less fair to them over time. If markets are perceived as unfair, or if market participants frequently raise claims of unfairness about market conditions or other participants, then future market participation is discouraged or diminished, which in turn creates adverse effects on market prices, quantity, quality and overall market efficiency. In order to determine if unfairness claims have merit and to improve the overall fairness and efficiency of markets, a better understanding is needed of why and where claims of unfairness arise and whether such claims are reasonable.

Previous efforts to evaluate fairness or to respond to claims of unfairness in the marketplace fail because actors usually adopt a specific theoretical or conceptual framework of fairness, and then determine if the context is consistent with the proposed framework. We do not select *a priori* a specific theory or conceptual framework to assess unfairness claims. Instead, our approach focuses on power and dependency and on the expectations that dependent individuals have on others. In previous work, we have shown that *unfairness claims arise when expectations are violated, so assessments require first and foremost an evaluation of the reasonableness of expectations* (Hendrickson, et al. 2018). Because claims of unfairness are made when expectations are violated, assessing claims of unfairness require that we understand how, where and why people create expectations. By employing concepts from network exchange theory and considerations of power and dependency, we show that judgments about fairness can be made after considering the structure and context of the network and the way context influences expectations of network actors.

In this paper, we examine how farmers' expectations are shaped by focusing specifically on the issue of dicamba use in agricultural areas. Even though dicamba has a long history of use in row-crop production, the production of dicamba tolerant soybeans and cotton has extended the timing of application, causing damage from herbicide drift to neighboring farmers and homeowners and creating a great deal of controversy in farm country. The introduction of dicamba resistant crops was accompanied by major mergers in the global seed and agrochemical sector. Thus, the case of dicamba is ideal for exploring the expectations farmers have about fair treatment and for linking these expectations to unfairness claims.

We conducted interviews with a diverse array of Missouri farmers in 2019-2020 using a snowball sampling technique. We report the findings of how their expectations for fair treatment are and how they are shaped, using the case of dicamba as a point of focus. We then use our framework to link unfairness claims to expectations farmers believe have been violated and to assess the reasonableness of their expectations. Our work could lead to fairness considerations being incorporated into competition or contract policy.

## Abstracts for Panel 3: Systems

### **Corporate Tied and Credit Bound: The Powering of Pork Production**

**Loka Ashwood, Ryan Thomson, John Canfield & Mariyam Jamila\***

Growing concern with the expansion of financial capital into various dimensions of food and agriculture calls for greater attention to the network that enables it. We study the financial ties that connect creditors and proprietors across production scales through a Social Network Analysis (SNA) of pork production. Our SNA reveals unexpected powerholders operating in an elite and exclusive financial network of 2222 proprietary and crediting entities associated with pork production. Our preliminary results pinpoint Farm Credit, a private banking system with congressionally mandated tax exemptions, as the most central creditor in the pork powerhouse oligarchy. Our analysis of financial ties somewhat inverts the common understanding of production, where what produces the most typically is considered the most powerful. We find that the situation is more complex, with giants like Smithfield exerting power indirectly through its associates. Simultaneously, other firms less productive in terms of hogs appear more powerful in the network by virtue of their extensive corporate ties that branch into non-agricultural sectors.

\*non-presenting author

## **Farm Fiction: How U.S. right-to-farm laws advance injustices in rural areas and contribute to the decline of the rural environment**

**Danielle Diamond, Allen Franco, Loka Ashwood\*, Crystal Boutwell\* & Lindsay Kuehn\***

While the environmental justice movement has increasingly gained traction in the United States since receiving acknowledgement in federal policy in the 1990s, the relationship between agri-food systems and environmental injustices in rural areas has yet to come into focus. Our research explores the dimensions of rural environmental justice, and more specifically, how government driven agricultural policies legalize pollution and the differential treatment of rural people. We draw on preliminary findings from a national analysis of state right-to-farm laws to examine power dynamics associated with globalized industrial food production in the United States. Our findings demonstrate that the original purpose of these statutes - to protect farmers from nuisance suits due to urban sprawl - more commonly advance market domination by agribusiness industries to the detriment of the rural environment. We identify how power is transferred from rural communities to industrial-scale agribusinesses by safeguarding agribusiness interests and certain types of agricultural production from lawsuits and liability. Right-to-farm laws enable corporate agribusinesses to externalize their costs of pollution at the expense of individual property rights, traditional farmers, labor, farm families, rural communities, local economies, as well as public health, safety and the environment.

\*non-presenting author

## **From Friend to Foe: Mission Drift of Farm Bureaus and Commodity Check-off Programs**

**Austin Frerick**

This article will explore the mission drift of two of the most important institutions in the agricultural industry: state-level farm bureaus and commodity check-off programs. Collectively, farm bureaus and check-offs spent \$506 million and \$900 million, respectively, in 2018 alone. Although they were created to advocate for the interest of farmers, in recent years these organizations have taken actions that run counter to many farmers' interests. In this paper, I will argue that this mission drift is a direct result of these organizations' incentive structures.

Check-offs are financed by a requirement for farmers to pay a per unit fee for each item produced. These payments are funneled to an organization that is supposed to serve the common interest by marketing the agricultural product, funding market research studies, and providing technical assistance. But vertical integration has twisted the incentive structure such that some of the check-offs now act in the interest of a buyer or distributor of agricultural products rather than the farmer. For example, Smithfield, a corporation that primarily operates slaughterhouses, is now also the largest owner of hogs in the country. As a result, it is also the biggest funder of the National Pork Board, the check-off program that was created to serve the interests of hog farmers. This perverse incentive structure helps explain why the group opposed efforts by the Obama Administration to increase transparency and competition in the hog market.

Similarly, several state-level farm bureaus maintain large ownership stakes in for-profit insurance affiliates that make significant investments in companies whose interests are not aligned with those of farmers. In fact, the largest source of revenue for the non-profit arms of these organizations often comes from their investments in a for-profit affiliate and not membership fees. As a result, the organizations often take actions that appear to be in the best interest of their investments at the expense of their farmer members.

The mission drift of these organizations, along with their significant financial resources, mean that they have effectively advocated against sustainable agricultural policies that would benefit the nation's farmers. This paper will begin with an exploration of the history of these organizations. It will then analyze how their incentive structures have led to mission drift. Finally, it will conclude with suggested reforms to address this issue.

## Abstracts for Panel 4: Animal Welfare

### **Animal Welfare and Big Ag: How Industry Concentration Hurts Animals and Stifles Sustainable Farming**

**Liz Hallinan & Lisa Winebarger\***

Animal advocates usually consider the topic of industry concentration in agriculture to be a minor, if not totally irrelevant, one for animal welfare. However, since the largest animal agribusinesses control every step of the supply chain, these few corporations also control the lives of every chicken, pig, and cow in that chain, from birth to death to consumption. At every point, industry concentration has changed not only how many animals live in the system, but also how they live. Additionally, the structure of the supply chain itself maximizes the success of these corporations while systematically shutting out any smaller competitors, ensuring (for now) that higher welfare farming remains a niche practice.

The Greenfield Project has carried out extensive research demonstrating the link between industry concentration and low animal welfare. This paper will explore how industry concentration perpetuates the following issues: 1) ensuring painful, short, and monotonous lives for billions of animals by restricting the availability of breed variety and the autonomy of farmers to help their animals, 2) creating barriers to entry for small, high welfare farming through monopolizing access to capital, slaughter, and marketing; and 3) duping consumers into paying surreptitiously fixed prices for low welfare products, often with misleading labeling. These issues have direct effects on farm animal welfare, both the experiences of animals on farms and at slaughter, and the ability of farmers and consumers to improve those experiences. The paper will end with a discussion of the tension between recent efforts to drive animal welfare improvements via corporate campaigns and the desire to undo the effects of industry concentration more broadly. That is to say, do we help animals more by pushing large agribusiness to change only their welfare practices, or do we need to dismantle the underlying industry concentration altogether?

\*non-presenting author

## **Animal Welfare Regulation and Market Concentration**

### **Dan Scheitrum & K. Aleks Schaefer**

Concentration in the agricultural sector is a growing concern. Antitrust lawsuits finding and alleging anticompetitive behavior are becoming more frequent (e.g. broilers, tuna, pork, and beef industries are all currently defending antitrust litigation). In addition, the COVID-19 pandemic has raised serious concerns about concentration in the food supply as it leads to few points of failure. Separately, public concern for the wellbeing of animals being raised for human consumption is also growing. Legislation regulating the production practices of animal products is in place in several U.S. states (e.g. California, Colorado, and Oregon) and is pending in many others (e.g. Arizona, Maine, and New York). The main mechanism these legislative efforts employ to improve animal welfare is prohibiting high-density animal housing production practices which necessarily raises the cost of production. Prior research has shown empirically that animal welfare regulations can lead to greater concentration in the context of California's layer hen cage size requirement (Carter et. al. 2020).

In this paper, we develop a theoretical, economic model to examine the impact of competition policy on the provision of conventional animal products and products that follow enhanced animal welfare practices. Further, we examine how animal welfare regulation affects market concentration and the competitive environment. In this context, we explore policy options that governments may consider to combine with animal welfare legislation in order to avoid exacerbating market concentration in the food sector.

## **How Nonprofits, Corporations, and Academia Could Use the Dynamics of Oligopolistic Markets to Accelerate the End of Intensive Confinement in U.S. Animal Agriculture**

### **Daina Bray & Owen Pell**

Momentum to end intensive animal confinement in US agriculture is growing. A 2020 study conducted by the ASPCA showed that roughly 75% of US consumers believe that the government should support farmers in transitioning to more humane practices. This growing popular support coincides with a legislative trend. Since 2002, twelve states have banned one or more forms of intensive confinement (each of which is characterized by animals not being able to lie down, turn around or extend their limbs): hens in battery cages, calves in veal crates, and sows in gestation crates. While producers are in many cases complying with or preparing to comply with these laws, some are taking a wait-and-see approach by adopting minimal/reversible compliance, while others are challenging the laws in court. This hedging is, in part, attributable to the difficulty that markets have in pricing social or moral goods—i.e., the cost of implementing new practices cannot be tied to a quantifiable and predictable lowering of costs or increases in economic returns.

But the livestock industry presents a third important factor: A concentration of market power in the hands of a relatively small number of companies. This creates an opportunity to import market models that have been used in the human rights and environmental contexts to accelerate the trend toward ending inhumane confinement. In those models, highly-concentrated industries have sought to get ahead of government regulation by incorporating the cost of a social good into the market, imposing the costs of that social asset on consumers, and ultimately effectively barring non-conforming goods from the market.

There is precedent for collaboration between nonprofits and corporations in shaping market directions. This paper will apply lessons from the cocoa industry agreements aimed at ending child labor in cocoa harvesting, and the private labelling regime for dolphin-free tuna that was developed by an NGO in collaboration with industry leaders, to explore the potential for a non-governmental approach (involving nonprofits, industry and academia) to accelerating the end of intensive confinement, including through a potential ISO standard building-off of ISO/TS 34700:2016 (Animal welfare management—General requirements and guidance for organizations in the food supply chain).

The purpose of the proposed collaboration would be to create a space in which industry could safely gather to agree on standards that could ensure greater uniformity and consistency of approach, and greater assurance that compliance would meet with support from nonprofits, including with respect to consumer education. This initiative also could be used to spur investment in academic research to identify best practices relating to ending intensive confinement. Concerted action by major industry players could effectively reset market practices in ways that would be enforceable under US competition laws and global trade agreements, and would create a market advantage to companies complying with the new industry standard.



## Abstracts for Panel 5: Intellectual Property

### “Oh Deere:” Who really owns your tractor?

**Matt Summers**

The “Right to Repair” is central to agricultural reform because restricting at-home farm equipment repairs can be “devastating.” John Deere, as one example, has famously restricted farmers ability to repair farm equipment by inputting proprietary software that locks farmers and independent repairers out of even rudimentary fixes. While versions of the right to repair have recently passed in states like Massachusetts, there has been even more widespread mobilization around the right to repair in more agrarian states like Nebraska. Ensuring that manufacturers do not monopolize the aftermarket for repairs is resoundingly an antitrust problem, and one with deep roots in antitrust caselaw.

*Eastman Kodak Co. v. Image Tech. Servs., Inc.* remains a bold-text case in many antitrust casebooks<sup>6</sup> and holds the key to a brighter right-to-repair future. However, it has been badly misremembered by lower courts and has fallen into disuse in the decades since it was decided.<sup>7</sup> Regulators and advocates should take another look at *Kodak*, and leverage its insights along with the current enthusiasm for the right to repair. The FTC should promulgate rules for manufacturers (particularly in the agriculture space) about aftermarket monopolization using the *Kodak* decision to demonstrate the unfair and anticompetitive practices at work. Lawyers representing independent repairers should argue for a renewed interpretation of *Kodak* using actual consumer evidence about lifecycle pricing practices. And ballot initiatives about the right to repair, as well as state and federal laws, should take note as well. They can be written in ways that use the insights of the *Kodak* decision to empower private litigants (for example, by passing statutes defining aftermarkets as relevant markets for antitrust analyses).

The central legal analysis in this article focuses on a close, textual read of *Kodak*. It outlines the (arguably) radical suggestions (resembling early-stage behavioral economics insights) in the majority opinion. The majority acknowledges that consumers can act in predictably irrational ways that should inform antitrust analyses. It also suggests that one-off consumers and low-information consumers can be subtly deceived by sellers in ways that evade non-antitrust forms of regulation. This article also takes a close look at the influential dissent by Justice Scalia, which has, over time, become more emblematic of the way lower courts decide aftermarket monopolization cases. Finally, this article reviews key lower court decisions that mis-use *Kodak* by endorsing theories proffered by the dissent.

This legal analysis informs the recommendations to advocates and regulators, and provides a roadmap for judges evaluating these cases, particularly in agricultural cases. It also has the potential to inform numerous live policy and legal debates that are only made more important in a presumptive Biden-Harris administration.

## Seed Supply: How Patent Law Engenders Monopolization in the American Seed Market

Molly Collett

Come mid-August, American consumers can purchase ears of corn from innumerable locations – from suburban Costcos, to Ohio grain elevators, to farm-stands and CSAs. While the corn is grown and distributed in geographically diverse locales, on a cellular level, each ear of corn likely comes from just one of three places: seeds sold by Bayer-Monsanto, Corteva, and ChemChina (Syngenta). The seeds developed by these three firms together account for more than 85% of all corn grown on 180 million acres of American corn field. With such a significant share of the market, these companies have a veritable oligopoly on corn seed, a monopoly that dovetails with something else in the companies' possession: utility patents.

Intellectual property law ("IPL") has somewhat of an insulating effect on monopolistic practices – granting a temporary monopoly on a proprietary invention. A recent Ninth Circuit ruling in *FTC v. Qualcomm Inc.* (969 F.3d 974 (9th Cir. 2020)) has illustrated just how protective that IPL insulation is for patent-owners who, like the three dominant seed firms, hold both patents and monopoly power. For my paper, I will consider the implications of this ruling as applied to the American seed industry. Further, I will assess how the ruling, the latest in a litany of judicial opinions that establishes the dominance of IPL over antitrust legislation, exposes the challenges facing the FTC should the Commission pursue antitrust action against the three oligopolistic seed firms.

Most significantly, the circuit court in *Qualcomm* ruled that the defendant's "no license, no chips" policy did not violate federal antitrust laws. In permitting this kind of bundling, wherein Qualcomm used their monopoly power in patent-protected chips to increase the price for their non-exclusive licenses, the Ninth Circuit has given a green light to similar practices in the agricultural industry. While bundling already exists in the biotech seed industry, with companies stacking discrete traits within single seed products, this ruling creates an unsettling precedent for agricultural companies, such as Bayer, that are vertically integrated. The *Qualcomm* ruling condones cross-product bundling and would permit Bayer, for example, to instigate a "no chemicals, no kernels" policy, leveraging its patent-protected seed power to compel farmers to also purchase any of its agro-chemicals in tandem and thus leading to further market consolidation.

This ruling illustrates the synergy between IPL and monopolistic business practices that has existed in the seed industry since utility patents were first granted for plants in the 1980s. While this may benefit conglomerate seed companies, the consolidation that has been permitted by IPL, and bolstered by this most recent *Qualcomm* ruling, is otherwise detrimental in that it:

- i. Stifles innovation, by placing restrictions on research;
- ii. Leads to monocultural agriculture, decreasing biodiversity and ultimately food system resiliency; and

- iii. Is more costly for farmers, who are required to repurchase seeds annually, while maintaining oligopoly amongst seed sellers.

## **“Chickenization” and Data-Monopsony: A Preventive Role for Antitrust**

### **Salil Mehra**

Over the past decade, critics of the American agricultural system warned of the danger of “chickenization”: the tight vertical integration of farmers into the supplier chains of large processors, for example, Tyson Foods. Combined with increased horizontal concentration of suppliers, poultry farmers see chickenization as shifting bargaining power massively in favor of the large processors who buy their birds. Moreover, farmers complain that chickenization results in the replacement of previously transparent markets with one-sided contractual relationships.

A decade ago, the Obama administration tried to take on the spread of chickenization to other areas of agriculture with a series of unprecedented Department of Justice/Department of Agriculture joint hearings; while ambitious, this initiative was seen as relatively fruitless. Indeed, the pattern seen in the chicken industry has spread to other industries. Some of the results are shocking: for example, the hardships visited upon dairy farmers has led big dairy processors to start including a list of suicide prevention hotlines in the same envelopes as the checks they send to the farmers they have under contract.

Chickenization depends on both horizontal concentration and vertical integration. Horizontal concentration tends to create increased buyer market power, and at a high degree, monopsony power. A strict consumer welfare view might see this buyer market power as beneficial, if the reductions in farm product prices are passed on by the processors to consumers as cheaper food. However, monopsony power can cause long-term welfare losses, as artificially low prices deter investment by farmers and others in productive capacity.

However, the vertical dimension of chickenization deserves renewed attention. While the Chicago School held vertical restraints to be benign or even procompetitive overall, that proposition is under current debate. Moreover, it is increasingly clear that some vertical restraints can actually foster competitive harm, and if they can be identified, society might be better off prohibiting them. Big Data makes the problem of chickenization more urgent. The deployment of the so-called “Internet of Things” is driving the development of “smart farming,” by which large amounts of data about farmers’ produce and livestock will be available in real time for the analysis and optimization by processors with the market power to contract for it. As in the world of Big Data generally, a key question is whether data interoperability should be promoted to promote competition between processors rather than allowing the enclosure of farmers into walled gardens from which switching or information costs make it difficult to exit. This Paper argues that, as in the reconsideration of antitrust policy for data-rich platforms more generally, chickenization and data-monopsony require steps towards preventing asymmetries in Big Data from augmenting market power. While such an approach alone will not cure the ills of chickenization, they may prevent Big Data from worsening the condition.

## Abstracts for Panel 6: Reforms

### **Breaking the Chain of Control: Reviving Antitrust Enforcement in the Food System**

**Allison Johnson**

Size matters. When companies grow, so does their power to influence markets, politics, and society. Congress knew this when it adopted antitrust laws that targeted monopolies over a century ago, and when it expanded the reach of antitrust laws several times after that. However, in the 1960s, shortly after the Supreme Court found that a small merger in the rapidly consolidating grocery industry threatened competition, the industrial food system used its growing power to fight back. As a result of political pressures, federal antitrust agencies ushered in a period of lax antitrust law that focuses narrowly on efficiency and consumer prices and ignores the broader social and political harms of consolidated power.

The gutting of our antitrust laws explains much about the social, health, and environmental harms associated with the modern food system. The systematic rollback of antitrust enforcement has allowed control of our food to concentrate in a cadre of powerful corporations. In turn, these huge companies influence every aspect of our diet, our marketplace, and – perhaps most importantly – our political system. Their tactics range from flooding the country with misleading advertising to stealthily pushing policy agendas via trade associations and front groups. Increasingly deep corporate pockets help food companies stake out market territory, while simultaneously fighting regulation and draining opponents’ (and governments’) coffers. Their financial and political power helps explain why small businesses struggle to survive, why the healthfulness of our food supply has deteriorated, and why economic disparities continue to worsen. Critically, the power imbalances that result from consolidation disproportionately harm the most vulnerable players in our food system – the low-income people of color who risk numerous health threats to pick, process, and deliver food, while struggling to afford to eat.

The solution is part political, part legal. Even though the Supreme Court repeatedly upheld antitrust as a potent tool for curbing consolidation and protecting diverse markets through the 1960s, the antitrust enforcement agencies have dramatically reduced the reach of the laws through their policies. The FTC dropped a key “shared monopoly” case against dominant cereal companies in the early 1980s, as a result of political pressure, and since then enforcement has steadily weakened. An agency construct known as the Horizontal Merger Guidelines, in particular, subtly modified the scope of antitrust doctrine, by influencing both the types of enforcement actions agencies pursue and the resulting case law. Agency staff now rely on the Guidelines to determine which mergers to challenge, and the “safe harbors” established under those Guidelines have grown significantly, including under President Obama. As a result, the consolidated food industry continues to accrue power and influence, that it uses to protect its power and influence.

The self-perpetuating power of today’s industrial food system is precisely what drove Congress to adopt and expand our antitrust laws. And just as the antitrust agencies responded to political

pressure by propelling the era of under-enforcement, they also have the power to reestablish antitrust law as a meaningful tool for protecting the public interest.

## **Farm Fairness Act: Reclaiming Liberty, Transparency & Fairness for Poultry Farmers**

**Jeamme Chia, Aaron Troncoso, Kathryn Pogin & Zoe Novic**

Poultry production in the United States has evolved from an industry composed largely of independent, family farms to one dominated by a contract system – a system wherein farmers, across the nation, operate flock-to-flock, at the whim of consolidated corporate power. Just a handful of corporations own the majority of American poultry. Those corporations contract with individual growers to raise thousands of chickens in environments that are detrimental to the animal, to the environment, and to the growers themselves. Contract growers face precarious health, production, and financial conditions, most recently exacerbated by the COVID-19 pandemic. The public health crisis has left farmers with thousands of poultry that cannot be processed, and compromised already precarious financial stability for too many farmers. The production contracts binding these growers limit their independence.

For years, various states and the USDA attempted to introduce legislation to create fairer conditions for poultry growers, with limited success. In 2010, the USDA released the GIPSA rule (so named for the Grain Inspection, Packers and Stockyards Administration) in an attempt to improve federal protections for farmers, as well as antitrust regulation under the 1921 Packers and Stockyards Act. While the GIPSA rule contained some provisions that would have improved fairness in poultry and livestock contracts, it stalled in the face of Congressional controversy. Though it was politically uncontroversial that the industry was plagued by unfair practices, critics viewed the GIPSA rule as an example of federal overreach.

While federal attempts to improve contract fairness for farmers have fallen by the wayside, the failure of the 2010 GIPSA rule has highlighted an opportunity for state-level innovations. We identify four key areas of potential state legislative reform to restore liberty, transparency, and fairness to contract poultry farming:

- Protecting farmer freedom – for example, by guaranteeing the right of poultry growers to speak freely about their contracts and to join poultry growers' associations, to mitigate the impact of anti-competitive industry practices on a poultry grower's liberty.
- Promoting transparency and competition – for example, by mandating that integrators (agricultural corporations that contract out the work of growing chickens, but retain ownership of the animals, processing, and so on) provide growers with the data used to calculate their compensation.
- Reducing coercion and unfairness by integrators – for example, by instituting penalties for integrators whose representatives make false or misleading statements to growers.
- Reforming the contracting process itself – for example, by requiring that contracts be readable and clearly disclose risks, and by providing growers with a limited window of time to review or cancel contracts.

We propose that these reforms be introduced in Virginia due to the importance of poultry farming to the state economy and the opportunity for bipartisan legislation. The proposed legislative package has the potential to provide cross-cutting benefits to farmers, animals, and the environment.

## **Food Deserts and Antitrust Law**

**Christopher Leslie**

Food deserts describe localities in which the residents do not have access to affordable, nutritious food, such as fresh fruit and vegetables. In many rural areas, many people live several miles from the nearest purveyor of healthy food. While the distances to supermarkets are less dramatic, millions of inner-city residents live in neighborhoods classified as food deserts. In both urban and rural settings, poverty and the lack of transportation can combine to deny millions of Americans access to healthy food.

Inner-city food deserts are often a function and a symptom of systematic racism. Businesses, including supermarket chains, are often reluctant to invest in non-white neighborhoods. Denied access to healthy food choices, people who live in food deserts are more likely to suffer diseases associated with malnutrition, including diabetes, heart disease, and obesity-related ailments.

Food deserts have multiple causes, some related to supply and others to demand. Although they are not generally conceived of as such, food deserts may constitute an antitrust problem. Food deserts represent a breakdown and failure of the free market, which antitrust law is designed to protect. In some neighborhoods, potential market entrants are hampered from building supermarkets in food deserts because of restrictive covenants imposed by prior supermarket chains that have previously abandoned the inner city.

Just as there are multiple causes of food deserts, any solution must be multifaceted. Antitrust law could provide one part of the solution. This project will discuss how and why antitrust enforcement agencies should use the leverage they possess during the merger approval process to convince supermarket chains to renounce restrictive covenants in food deserts and to reenter inner-city neighborhoods and rural areas. Antitrust enforcement officials can condition merger approval on the merging parties undertaking certain structural or behavioral actions. Antitrust agencies often condition their approval of proposed mergers on parties divesting particular assets. But antitrust officials can also insist on affirmative investment in geographic markets that have been previously abandoned. Coupled with efforts to increase the demand for healthier food in inner cities and rural America, an antitrust response can address the supply side of the problem of food deserts.

Antitrust law and policy seek to harness the power of competitive markets in order to increase consumer welfare. Once food deserts are recognized as a failure of competitive markets, it makes sense to employ antitrust law as part of a multi-pronged response to remedy the problem of food deserts.