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Right-to-farm laws: Legal shields of Big Ag

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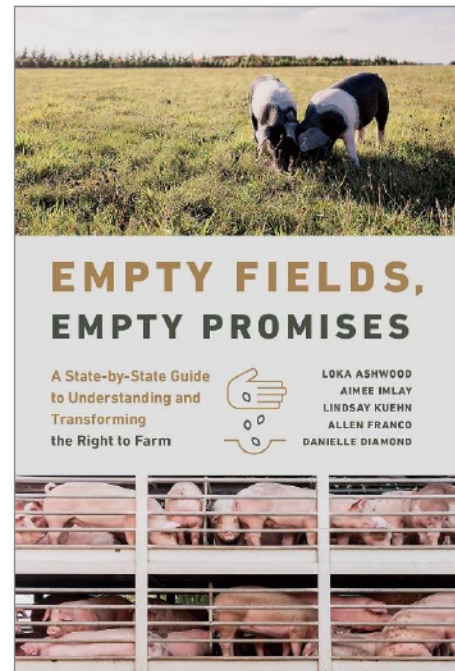
Book review by

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Review of *Empty Fields, Empty Promises: A State-by-State Guide to Understanding and Transforming the Right to Farm*, by Loka Ashwood, Aimee Imlay, Lindsay Kuehn, Allen Franco, and Danielle Diamond. (2023). Published by The University of North Carolina Press. Available as paperback and hardcover; 304 pages. Publisher's website:

<https://uncpress.org/9781469674599/empty-fields-empty-promises/>



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In the 1970s and 1980s, U.S. agriculture faced its worst crisis since the Great Depression. Dire finances due to collapsed land and commodity

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prices forced almost a third of farms nationwide to close, negatively affecting rural economies beyond farming (Barnett, 2000). During this period, right-to-farm (RTF) state laws were enacted to protect farmers from nuisance lawsuits resulting from agricultural practices, such as complaints about noise or odor. These laws were promoted to safeguard family farms and slow down the urbanization of rural areas, a trend contributing to the emergence of post-agrarian rural societies in the U.S. (Salamon, 2007). In *Empty Fields, Empty Promises*, authors Ashwood, Imlay, Kuehn, Franco, and Diamond critically examine how far RTF laws have diverged from their original intent and now instead protect large-scale operations, such as concentrated animal feeding operations (CAFOs).

The book is divided into three sections. Section I begins with a compelling case: We get to

know the Lewis family, long-time residents of White Oak, North Carolina, whose lives changed for the worse when a 14,700-hog CAFO became their neighbor in the 1990s. They sought justice for the loss of quiet at their home and health issues they claim were caused by the close location of the CAFO, only to lose their case because RTF laws supported the CAFO.

We then learn that RTF laws were first enacted in Alabama in 1978, and by the mid-1990s, existed in all 50 states, fundamentally changing private property rights in the U.S., as the “constitutional right to the enjoyment and use of land became subject to protections of agriculture” (p. 3). Next, the authors discuss two shortcomings of RTF laws, inherent since their inception and likely to prompt a negative view from a food systems and justice perspective: (1) RTF laws make no distinction between small family farms and industrial operations such as CAFOs; and (2) the agricultural practices these laws are protecting, and thus their applicability, remain vague. Accordingly, in several states, RTF protects meat processing and even mining. In 1995, a Mississippi paper mill successfully applied RTF defense to avoid liability for allegedly discharging dioxin sludge, after a court classified its timber-derived products as a crop (p. 6).

The section ends with assessing the outcomes of all 197 RTF cases nationwide through 2021. While CAFOs won 69% of cases (fully or in part) as plaintiffs or defendants, sole proprietor farmers only succeeded in 41%, including in zero of nine cases as the plaintiff (p. 9). If anyone imagines that RTF laws could protect urban farmers from neighbors who complain, the book dispels that hope: In a California case, poultry farmers were denied RTF defense because their 80 acre operation was labeled “weekend” farming (p. 14).

Section II provides brief chapters on each state’s RTF laws, covering their history, application, impact, and attorney fees, contrasting them with the number of family farms in the respective states, which has drastically declined in the past four decades in the majority of states. Farms in 30% of states are immune from nuisance lawsuits if, for example, they use a new but potentially polluting technology, if their size changes (30% of states), or even if they switch to a different com-

modity (26% of states). Once in operation for a year, farms in 48% of states are strongly protected by RTF laws, which supersede local governance in 62% of states.

There are a few curious state laws:

- Florida (p. 70) offers no explicit protection of farmland from urban development, despite RTF law being promoted as doing so.
- Indiana’s RTF law (p. 95) protects mining.
- New Hampshire (p. 158): Agritourism is included in the definition of agriculture and thus protected from nuisance lawsuits.
- Rhode Island (p. 208): Unlike other states, RTF law does not protect farms from nuisance suits if a neighboring property’s value is affected by loss of use or enjoyment.

In the concluding section, the authors stress that not a single RTF law explicitly protects family farms. They suggest that accompanying provisions, such as immunity for a farm when it switches from extensive ranching to industrial chicken production, should be reframed to empower rather than weaken rural dwellers, whether farmers or neighboring residents. The authors alternatively suggest an entire abolishment of RTF laws, since their initial goal, the revitalization of rural space, has been clearly missed (if it was ever seriously aimed for). Finally, the authors point out that the constitutionality of RTF laws has never been established, since no case has reached the Supreme Court.

The book’s central argument is that RTF laws do not protect homeowners, residents, or farmland from corporate agriculture and encroaching development; instead, they primarily serve industrial operations, giving them an advantage over smaller farms (p. 11). These burdens fall disproportionately on the poorest residents, especially minorities in Southern states—and on the “second-next victims” in what the authors call the Midwest’s “midburden,” where small and midsized farms are being displaced by consolidation and urbanization, producing new pathways to poverty (p. 23).

At times, the evidence presented is almost too abundant. When the authors note that CAFOs prevail more often than any other sector in RTF cases across the top five “hog states,” the significance of

these numbers can be questioned, given that Indiana (the state with most cases) had only seven pro-CAFO verdicts, while some other states had just a single one; in total, the book analyzes only 197 RTF cases. Also, while it is not the authors' intention, uncritical readers might interpret the book's narrative as romanticizing "good" family farms versus "bad" CAFOs, even though smallness does not guarantee environmental or social responsibility, and family farmers do not necessarily reject the idea of expanding into industrial operations.

Those expecting a "page-turner" may not find what they anticipated. Unlike Loka Ashwood's outstanding characterizations of rural America in her previous books, this work, although it includes sociological elements in its case examples, is primarily a fact- and number-heavy analysis of laws

that many in the food systems field may be unfamiliar with, placing the book closer to policy analysis than rural sociology.

However, I will assign Section I as a core reading in my food systems courses. RTF is not the root cause of rural desolation or family farm loss. Yet these laws, either never designed to promote rural prosperity or later co-opted by Big Ag, demonstrate how the legal system ultimately serves industrial agriculture, a pattern amplified by large players' access to better lawyers. Because "right-to-farm" suggests the opposite, RTF laws are a clear example of greenwashing (or food-washing). *Empty Fields, Empty Promises* offers a strong, evidence-based, and well-written argument on this point, making it both compelling and valuable for JAFSCD readers. 

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