Absentee Ownership and the "Berle-Means Farm"*

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Introduction

The renewed scholarly attention to global "land grabs" highlights an important trend in control of farmland over the last several decades, as land is increasingly under the control of dispersed, absentee owners.[1] Studies have found trends toward concentration of control over farmland "in all regions" globally since the 1980s.[2] Processes of financialization sit at the heart of this transformation: over 100 farmland-focused investment funds in the United States, for example, "rais[ed] $22 billion in combined capital... [b]etween 2006 and 2016."[3]

In other work forthcoming in Yale Law Journal, we explore how U.S. law has enabled and is ill-equipped to constrain this shift away from household-level agrarian production, and towards cor-

* For helpful discussion on this topic, we thank participants and organizers at the *Future of Capitalism: Neo-Feudalism* conference at the University of Chicago.
[1] M. Fairbairn, *Fields of Gold: Financing the Global Land Rush*, 2020; S. Ouma, *Farming as Financial Asset: Global Finance and the Making of Institutional Landscapes*, 2020.
[2] W. Anseeuw, G.M. Baldinelli (eds.), *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, 10 Nov. 2020; M.G. Ceddia, "The Impact of Income, Land, and Wealth Inequality on Agricultural Expansion in Latin America," in *Proceedings of the National Academy of Sciences of the United States of America*, vol. 116, no. 7, pp. 2527-2532, Jan. 2019.
[3] Fairbairn, *supra*, at p. 43; see also B. Christophers, *Our Lives in Their Portfolios: Why Asset Managers Own the World*, 2023.

porate consolidation in agricultural land ownership.[4] Complementing that other work, here we examine a particular form of dispersed absentee ownership of farmland mediated by global capital flows.

Our focus is on the United States, a context in which several otherwise seemingly distinct areas of law – property, corporate, and securities – operate in tandem to facilitate financialized farmland. As legal scholar Katharina Pistor has observed, in work emphasizing the role of private law in creating legally tradable assets as the basis for distributing global wealth, "most observers treat law as a sideshow when in fact it is the very cloth from which capital is cut."[5] After decades of ideological success of law-and-economics approaches that seek to naturalize wealth maximization and market logics, U.S. legal frameworks are deeply structured to promote market alienation and to prioritize the allocation of property to its highest value uses, a purpose typically defined with reference to return on investment.[6] By reorienting legal thought around concepts of economic efficiency that prioritize the interests of those with a higher "willingness to pay," the market-oriented property law framework in the United States is thought to encourage Pareto-optimal transactions that maximize the wealth of property owners.[7] Yet the effect is to marginalize non-owners and those with real-world attachments to the land, undermining traditional forms of land tenure that emphasize community, sustainability, and equitable access.[8] We bring these themes in conversation with a broader literature in institutional economics and corporate governance about the "separation of ownership and control" within a form of economic organization known as the "Berle-Means firm."

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[4] J.A. Shoemaker, J.F. Tierney, "Trading Acres," in *Yale Law Journal*, forthcoming vol. 135, 2025-2026; see also J. Britton-Purdy, D.S. Grewal, A. Kapczynski, K.S. Rahman, "Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis," in *Yale Law Journal*, vol. 129, pp. 1784-1835, 2020.
[5] K. Pistor, *The Code of Capital*, at p. 4, 2019.
[6] Shoemaker, Tierney, *supra* note 4; J.A. Shoemaker, "Re-placing Property," in *The University of Chicago Law Review*, vol. 91, p. 811, 2024.
[7] Britton-Purdy et al., *supra* note 4, at pp. 1796-99.
[8] Shoemaker, *supra* note 6, at p. 839.

The phenomenon we describe – the Berle-Means *farm* – refers to a particular style of absentee investor ownership of farmland that has emerged in the last 45 years. In this model of ownership, absentee owners pool capital through structures like limited liability companies (LLCs). Perhaps no single investor holds a majority stake in the LLC, with each owning some fraction. Understood as a single "farm company," an LLC capitalized at $3.3 million might be split into 220 membership units valued at $15,000 each. Alternatively, a fund might raise a $50 million pot of money to buy a portfolio of farms. In either case, the land will often be leased out to a local tenant operator, while the investors are typically distant, disengaged from the land's actual use, and seeking only financial returns.[9]

This essay situates the financialized ownership of farmland within a broader account of the institutional economics of absentee ownership. We identify some of the under-appreciated linkages between corporate and property law giving rise to parallel dynamics for farmland and for the broader industrial organization of economic production. By recognizing and addressing the ways in which these areas of law operate similarly to concentrate wealth and promote financialization, we can begin to challenge the underlying assumptions that perpetuate inequality and explore legal reforms that prioritize social equity and sustainable land use.

Absentee land ownership in perspective

When land is treated as a financial asset by absentee owners, the effects extend beyond economic productivity and impact the social and environmental fabric of entire regions.[10] For rural communities dependent on agriculture, absentee land ownership creates power

[9] A. Gunnoe, "The Political Economy of Institutional Landownership: Neorentier Society and the Financialization of Land," in *Rural Sociology*, vol. 79, issue 4, pp. 478-504, Dec. 2014.
[10] T.M. Li, "What is Land? Assembling a Resource for Global Investment," in *Transactions of the Institute of British Geography*, vol. 39, p. 589, 2014.

asymmetries, as local farmers become tenants to distant investors who may be unaccountable to community needs or some environmental impacts.[11] Absentee ownership of land, in ways distinct from that of other means of production, thus has unique implications for community autonomy and ecological sustainability, making it a focal point for sociolegal inquiry and reform.

A century ago, Thorstein Veblen critiqued absentee ownership for prioritizing "exchange value" in the market over its "use value."[12] An important element of the transformation from feudalism to capitalism was marked by the shift from use-value (*i.e.*, to what purposes can land, or a factory, be devoted?) to exchange-value (*i.e.*, what are the financial returns that it can generate?).[13] This is not merely a matter of socio-legal theory. In legal systems like that of the United States, property law often emphasizes the rights of owners to transfer and alienate property for financial return, such as through general policies against restrictions on alienation, privileging "exchange value" over "use value."[14] Historically, the development of property law in the United States aimed to promote agrarian community-building among (white) settlers, positioning land ownership as a cornerstone of democratic society and as a rejection of the feudal landholding systems of Europe.[15] This anti-feudal vision prioritized distributed own-

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[11] E.g., J. Gaventa, *Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley*, 1982.

[12] T. Veblen, *Absentee Ownership*, 1923.

[13] See id.; K. Polanyi, *The Great Transformation*, London, 1944.

[14] As Lee Anne Fennell has observed, this reflects that property law permits value creation through the "consumption stream... gleaned through possession" and through "an investment return … gleaned through alienating possession." L.A. Fennell, "Possession Puzzles," in M.A. Wolf (ed.), *Powell on Real Property*, 2010; see also J. Christman, *The Myth of Property: Toward an Egalitarian Theory of Ownership*, 1994.

[15] J.W. Singer, "Subprime: Why a Free and Democratic Society Needs Law," in *Harvard Civil Rights-Civil Liberties Law Review*, vol. 47, p. 141 (2012). It bears emphasizing that policies toward settler land allocation were bound up in the "displacement of [existing] Indigenous systems and the dispossession of original Indigenous owners". J.A. Shoemaker, "Fee Simple Failures: Rural Landscapes and Race", in *Michigan Law Review*, vol. 119, pp. 1695, 1713, 2021. While many choices in early property law sought to promote agrarian community-building, policies like this were racialized and their egalitarian nature largely restricted to white settlers.

ership of farmland, which was seen as a foundation for individual autonomy, civic participation, and the success of rural communities.[16]

Yet in systems like in the United States today, property law has in important ways become unmoored from these anti-feudal roots. Property law today tends to protect and enhance rights associated with abstract ownership, permitting the slicing and dicing of property interests in ways that promote alienation of those interests while diminishing the claims of non-owner possessors with tangible connections to the land against dispossession.[17]

This dynamic can be conceptualized through a property relations typology with two axes. One axis represents "property localness," or the degree of real attachments or physical relations to the property. The other represents the strength of legal protections afforded to property rights.[18] As property law encourages owners to sell to the highest bidder and promotes passive investment over active stewardship, the axis of property localness becomes skewed toward non-local, abstract ownership. Spatial justice, which advocates for the fair and equitable distribution of resources over space, is compromised as local inhabitants lose agency over the land that shapes their livelihoods.[19] This undermines communities' ability to influence their environments and resources, pricing small-scale farmers and new entrants out of their communities. According to simulation-based modeling of outside investment in Western Canadian farmland, "the presence of institutional investors elevates farmland prices in the study region by approximately 15% to 40%," leading to a greater degree of farm consolidation and field leasing by operators to pursue scale.[20]

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[16] Shoemaker, Tierney, *supra*, at pp. 15-18 (citing, e.g., M. Blaakman, *Speculation Nation: Land Mania in the Revolutionary American Republic*, 2023).

17 J.A. Shoemaker, "Papering over Place: When Land Becomes Asset Class," in B. Akkermans (ed.), *A Research Agenda for Property Law*, pp. 127-144, 2024.

[18] Shoemaker, *supra* note 6.

[19] On spatial justice, see, for example, id.; K. Nordberg, "Spatial Justice and Local Capability in Rural Areas", in *Journal of Rural Studies*, vol. 78, p. 47, 2020; E.W. Soja, *Seeking Spatial Justice*, 2010.

[20] C. Su, R.A. Schoney, J.F. Nolan, "Buy, Sell or Rent the Farm: Succession Planning and

There is passing similarity between the feudal aristocracy and the new lords – financial institutions, hedge funds, and billionaires – that control large swathes of farmland, extracting profits while often leaving local communities in precarious conditions.[21] But we do not mean to overstate the similarities, as the Berle-Means farm we identify is a distinctly modern capitalist phenomenon.[22] Indeed, this dynamic is further entrenched by the imperative of growth, which legal scholar Sarah Krakoff identifies as a defining feature of post-industrial capitalism: the relentless pursuit of growth "makes all other values and goals subordinate," and creating a situation in which "growth … requires constantly increasing profits."[23] The financialized farmland market operates within a system of global capital flows, where land is bought and sold not as a place to inhabit as well as be productive but rather solely for its potential for generating financial returns.

The rise of the Berle-Means *farm*

Before turning to how this model has arisen in recent decades in farmland ownership, we take a few moments to lay a conceptual foundation drawing on the work of institutional economists focused on absentee ownership in business. The same intellectual milieu that produced Veblen also featured mid-twentieth-century institutional economists like Adolf Berle, whose later work was, "[i]n its time, ... understood as an extension of... Veblen's *Absentee Ownership*."[24] An account of absentee ownership in the United States would be incomplete without the idea of the "Berle-Means firm" as a form of eco-

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the Future of Farming on the Great Plains," in *Journal of Economic Interaction and Coordination*, vol. 18, p. 627, 2023.

[21] Polanyi, *supra* note 13, at pp. 44-45, 72-75.

[22] Cf. N. Ravenscroft, "'Post-feudalism' and the Changing Structure of Agricultural Leasing", in *Land Use Policy*, vol. 16, issue 4, pp. 247-57, 1999.

[23] S. Krakoff, "Environmental Injustice and the Limits of Possibilities for Environmental Law," in *Environmental Law*, vol. 49, pp. 229-238, 2019.

[24] C.R.T. O'Kelley, "Berle and Veblen: An Intellectual Connection," in *Seattle U. L. Rev.*, vol. 34, pp. 1317, 1349, 2011.

nomic organization.

In the classic 1932 book The *Modern Corporation and Private Property*, Berle together with Gardiner Means accounted for a fundamental shift in the organization of economic enterprise.[25] Drawing directly on Veblen's work, Berle and Means identified absentee ownership through the corporation as "a method of property tenure and a means of organizing economic life": "there may be said to have *evolved* a '*corporate system*' – as there was once a feudal system."[26] In a traditional model of capitalist economic organization, ownership and control were aligned, closely held by a few individuals. By the 1930s this had shifted to a dispersed model, where ownership was spread among a vast number of owners.[27] In a "Berle-Means firm," a dispersed base of shareholders own the corporation but do not control day-to-day operations, which are managed by a board and senior managers (and, in some cases, by control groups that may include institutional investors).[28] As expanded in what follows, Berle and Means made their contributions with a concern for the consequences of these frameworks and not as an ideal.[29]

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[25] A. Berle, G. Means, *The Modern Corporation and Private Property*, 1967 rev. ed. (1932).
[26] Id. at p. 1.
[27] Berle and Means identified three functions of ownership that "the owner-worker performed" in pre-industrial economic production: "having interests in" it, exercising "power over it", and "acting with respect to it". They contrasted this model, followed by "most farmers" in the 1930s, with the modern industrial corporation. Id. at p. 112.
[28] D. Tsuk, "From Pluralism to Individualism: Berle and Means and the 20th-century American Legal Thought," in *Law & Social Inquiry*, vol. 30, pp. 179, 180, 2005. Although we can debate the details around the edges, this model of economic production remains with us today for most large, publicly traded corporations; the employees and managers of Microsoft are in significant part different from the shareholder base, who include not just individual stockholders but also many mutual funds (whose investors in turn include millions of retirement fund savers who are the "beneficial owners" of these funds). The collective action problems, principal-agent problems, and other corporate-governance concerns that arise from this arrangement remain central to corporate law scholarship today, making Berle and Means' contribution to the field hard to overstate. J. Erickson, "The Gatekeepers of Shareholder Litigation", in *Oklahoma Law Review*, vol. 70, p. 237, 2017; M.M. Blair, L.A. Stout, "Team Production in Business Organizations: An Introduction," in *Journal of Corporation Law*, vol. 24, p. 743, 1999.
[29] See *infra* notes 46-49.

Consider how the financialized turn in the business of "farm ownership" is akin to that of other kinds of businesses. Shareholders are represented by corporate boards, who then typically hire managers to run the business for them and generate profits. In similar ways, investors in farmland LLCs are represented by LLC managers (typically advisers who sponsored the investment), who outsource to a local operator the task of "farming" while collecting the economic rents. Understood at this level of generality, there is nothing distinctly new about "corporate farming." Berle and Means themselves noted that agriculture in the United States was the economic sector that had shown the lowest level of corporate entry so far (compared to, say, manufacturing). Yet they also reported that even by 1920, at least 4% of land by value was farmed by "managers," or those who farmed on behalf of another in exchange for wages – a category they assumed meant business-owned farmland.[30]

Nor is opposition to absentee ownership of farmland new; the anti-feudal principles that underlay early American property law – such as the preference for localized, farmer-owned land – persisted well into the twentieth century. The state of Kansas adopted the first anti-corporate-farming law in 1931 and many states followed.[31] In 1977, congressional hearings at the national level examined a controversial proposal by Continental Illinois National Bank & Trust Co. to create a $50 million investment fund for pension funds to purchase farmland and lease it to operators for income.[32] The proposal

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[30] Berle, Means, *supra* note 25, at p. 16 (relying on aggregate census data); see Dept. of Commerce, Bureau of the Census, *Fourteenth Census of the United States Taken in the Year 1920*, vol. 5 (Agriculture), pp. 121, 130, 133, 1922. They also report another 34.9% of land by value was operated by "tenants", which they assumed included some farms where the property owners were businesses. Recent time series data suggests that the share of farms leased out to tenants has remained relatively stable at around 40%. See D. Bigelow, A. Borchers, T. Hubbs, "U.S. Farmland Ownership, Tenure, and Transfer", in *Economic Information Bulletin*, No. (EIB-161), August 2016.

[31] J.M. Boomershine Jr., "The Battle Over America's Farmlands: Corporate Farming Practices and Legislative Attempts at Preserving the Family Farm", in *Drake Journal of Agricultural Law*, vol. 21, pp. 361-388, 2016 (citing Kan. Stat. Ann. § 17-5904).

[32] *The Ag-Land Trust Proposal*, Hearings Before the Subcomm. on Family Farms, Rural

met with widespread outrage, reflecting a persistent agrarian skepticism toward absentee financialized landlords.[33] A South Dakota senator called the plan "a highhanded attack on the basic premise of the family farm system," expressing fears about the erosion of community-oriented farming and the rise of impersonal financial interests in rural areas.[34] The state's other senator said in a law review article that the proposal threatened a "descent into corporate feudalism."[35]

While the Ag-Land Trust proposal was ultimately withdrawn due to public and political opposition, such a reaction is nearly unthinkable today. The social and political infrastructure that once resisted absentee financialized land ownership has diminished, leaving rural areas more vulnerable to external capital interests. In a trend closely linked with financialization, rural places have depopulated, "as rural residents see fewer opportunities for employment and community development and thus have moved to urban areas in search of better prospects."[36] The depopulation of rural places has also coincided with a decline in public skepticism about investment funds' involvement in agriculture, as the dominance of financialized models has reshaped norms around land ownership and its social significance.[37] By the 2000s, institutional investors such as pension funds and private equity firms began exploring farmland as a hedge against inflation and a source of stable income. Meanwhile the late 2010s marked the rise of fintech platforms that have leveraged digital technology and regulatory changes (discussed below) to expand farmland investment. These intermediaries create markets into which retiring farmers or their heirs can sell land, often to be leased

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Development, and Special Studies, of the House Agriculture Comm., 95th Cong., 1st Sess., 1977. For discussion, see Fairbairn, *supra* note 1; Ouma, *supra* note 1.

[33] Shoemaker, Tierney, *supra* note 4, at pp. 17-18, 82-83.

[34] Cong. Rec., p. 3783, Feb. 7, 1977.

[35] J. Abourzek, "Agriculture, Antitrust, and Agribusiness: A Proposal for Federal Action", in *South Dakota Law Review*, vol. 20, p. 499, 1975.

[36] Shoemaker, Tierney, *supra* note 4, at pp. 41; see id. at pp. 17-19.

[37] Fairbairn, *supra* note 1; G.F. Davis, S. Kim, "Financialization of the Economy", in *Annual Review of Sociology*, vol. 41, pp. 203-221, Aug. 2015.

out to other tenant operators and then flipped later with the hope of profit.[38] Through these intermediaries, institutional investors (like endowments and pensions) and ultra-high-net-worth families buy fractions of farmland-owning LLCs. Recall from the introduction's example, that an LLC worth $3.3 million might be split into 220 ownership interests worth $15 thousand, each the equivalent of a particularly expensive share of stock.

As this story reflects, the rise of what we call the "Berle-Means farm" over the last 15 years in particular did not occur in a vacuum. It occurred as a result of an array of choices that have shaped markets and the distribution of entitlements to property. The move to make land not just alienable, but able to be sliced and diced into financialized interests that can be traded by absentee owners, reflects the policies underlying legal frameworks of corporate and property law. These sets of laws are designed to facilitate the accumulation and transfer of property rights in ways that prioritize economic efficiency and investment over traditional models of stewardship or community-based management.[39]

First, property law itself promotes capital formation, particularly through choices that favor alienability – the ease with which land can be sold – as part of a wider logic of promoting market transactions and allocating resources based on market logics and wealth maximization for owners. This project, grounded in the neoliberal synthesis of the late twentieth century, reframed legal doctrines and policy debates around the primacy of economic efficiency, often at the expense of social, cultural, and ecological considerations.

Alienability is seen as foundational to promoting economic growth, as it theoretically enables assets to reach the hands of those who value them the highest (not necessarily the same as who can use them most effectively).[40] By reducing land to a portfolio asset

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[38] E. Duncan, A. Magnan, "Exploring the Growing Links Between Digital Agriculture, Finance Capital, and Farmland Investors and Managers in North America", in *International Journal of Sociology of Agriculture and Food*, vol. 29, issue 2, pp. 1-14, 2024.
[39] Shoemaker, Tierney, *supra* note 4, at pp. 42-51.
[40] E. Kades, "Of Piketty and Perpetuities: Dynastic Wealth in the Twenty-first Century

and prioritizing transferability – apart from any requirement of possession – this paradigm has colonized the space with which property law might achieve other goals. With respect to this ideological effort, legal scholars Jed Britton-Purdy, David Grewal, Amy Kapczynski, and K. Sabeel Rahman have argued that the "twentieth century synthesis" effectively recast property rights and markets as instruments for maximizing aggregate welfare, sidelining alternative frameworks that emphasized community, equity, and sustainability.[41] This intellectual shift influenced lawmakers, courts, and regulatory agencies, embedding a market-centric logic into the legal and economic systems that govern land ownership.

In addition to these property-law trends, changes in American fiduciary, securities, and corporate law have opened categories of risky investment to wider groups, conditioning the market for demand of alternative investments like farmland. To begin with fiduciary law, those who invest for others typically must act in their beneficiaries' best interests. Between 1986 and 2006, all the states reformed this legal principle so money managers could look outside traditional conservative investments, and in fact had to consider the teachings of modern corporate finance in considering investment opportunities.[42] By encouraging diversification, reforms to the prudent investor rule have encouraged investors to seek new asset classes, such as farmland, as a means of reducing risk.[43] In addition, reforms in the National Securities Markets Improvement Act of 1996 removed limits on who can invest in private funds, a regulatory change that facilitated the rapid growth of the private investment

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(and Beyond)", in *Boston College Law Review*, vol. 60, pp. 145, 189, 2019; see Shoemaker, *supra* note 6, at pp. 875-76.

[41] Purdy et al., *supra* note 4.

[42] M.M. Schanzenbach, R.H. Sitkoff, "Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?", in *The Journal of Law and Economics*, vol. 50, pp. 681-711, 2007.

[43] L. Ashwood, J. Canfield, M. Fairbairn, K. De Master, "What Owns the Land: The Corporate Organization of Farmland Investment", in *The Journal of Peasant Studies*, vol. 49, pp. 233-62, 2022.

industry by allowing more high-net-worth individuals to invest.[44] Other regulatory shifts, like the JOBS Act of 2012 and the amendments that created Rule 506(c) of Regulation D, facilitated the widespread advertisement of private investment opportunities through "general solicitations."[45] General solicitations for these private LLC interests have proliferated on investing podcasts and digital media, promoting alternative investments like farmland as a stable, inflation-hedged, and passive income-generating asset.

Finally, American corporate law in the late 20th century moved away from the legal-pluralist ambition that corporate power be exercised responsibly for the betterment of society. As legal scholar Dalia Tsuk Mitchell has argued, Berle and Means' analysis "embraced a legal pluralist vision of the modern state" that proclaimed "that the power of large economic organizations, as augmented by the separation of ownership and control, should be exercised to satisfy the demands of the community."[46] Berle and Means' argument about corporate power, offered in 1932, influenced a great many young and idealistic New Deal lawyers who sought to harness positive potential of dispersed corporate power for the good of all of society.[47] But that vision was set aside over ensuing decades as "legal scholars embraced an individualist interpretation of corporate law" and moved away from prescriptions that linked corporate purpose

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[44] M. Ewens, J. Farre-Mensa, "The Deregulation of the Private Equity Markets and the Decline in IPOs", in *The Review of Financial Studies*, vol. 33, pp. 5463-5509, Dec. 2020.
[45] A.A. Geeza, Comment, "Put Your Money Where Your Mind Is: Protecting the Markets in the Age of Post-JOBS Act Rule 506 Offerings", in *Seton Hall Law Review*, vol. 45, p. 581, 2015.
[46] Tsuk, *supra* note 28, p. 182 (characterizing Berle and Means' policy prescription as because "the breakup of the property atom allowed corporations to accumulate and exercise power of the magnitude of state power", this called for "subjecting corporations to the limitations associated with sovereign power – that is, the requirement that their power be exercised to benefit the community at large"). In this sense, "pluralism" refers to the "multiplicity of normative centers or institutions in society", including "corporations as norm-creating and norm-enforcing institutions" that could be "equivalent to sovereign power, and hence as unchecked by political and economic markets". Id. at 180 n. 2; see also A.A. Berle, *The 20th Century Capitalist Revolution*, p. 169, 1954.
[47] O'Kelley, *supra*.

with the public interest.[48] For example, legal scholars embracing a more individualist approach focused on the agency cost implications of Berle and Means' argument – that managers might act inconsistent with the individual interests of shareholders – and moved away from their more pluralist implications. By the 1980s, a new paradigm within corporate law known as contractarianism had emerged, entrenching a vision of corporate law that focused on maximizing welfare for shareholders, not for everyone.[49]

The move to this individualist, shareholder-oriented approach to corporate law over the ensuing decades has not eliminated the concerns that drove Berle and Means' early policy prescriptions about regulating corporate action for the benefit of the whole of society, however. If anything, these concerns have deepened in the face of growing financialization of farmland. As corporate governance became more aligned with shareholder wealth maximization, the same processes of separation and alienation that Berle and Means identified in corporations began to shape land and farm ownership.

Countervailing power and the double movement

The structure of land ownership and the associated power relations appear to operate as a boundary condition on the potential for meaningful doctrinal intervention, limiting what is legally feasible within the current political-economic framework. There is, we believe, a tension between policies that encourage the free marketability of land and those that aim to preserve the social, cultural, and environmental fabric of rural communities. We explore this dynamic more fully in other work,[50] but touch on it here because it is relevant to

[48] Tsuk, *supra* note 28, pp. 180-82.
[49] F. Easterbrook, D. Fischel, *The Economic Structure of Corporate Law*, 1990; M.C. Jensen, W.H. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure", in *Journal of Financial Economics*, vol. 3, pp. 305-360, Oct. 1976; see G.M. Hayden, M.T. Bodie, "The Uncorporation and the Unraveling of Nexus of Contracts Theory", in *Michigan Law Review*, vol. 109, p. 1127, 2011.
[50] See Shoemaker, Tierney, *supra* note 4.

the question of what is to be done about financialized farmland.

Property law, shaped (as in the United States anyway) by centuries of privileging alienability and private ownership, sets the foundation for the financialization of farmland. It positions the accumulation and commodification of land as legally protected rights. Some scholars suggest that legal reforms might be brought to bear to fight back against financialized farmland, but as legal scholars we are less sanguine about these policies.[51] Doctrinal efforts to regulate ownership concentration or prioritize community interests often encounter resistance within this deeply entrenched framework. There are well-intentioned regulatory attempts, such as anti-corporate ownership laws, but these face structural obstacles. Legal doctrines cannot fully address the power imbalances inherent in absentee land ownership if the underlying sociological and economic structures – favoring absentee investment and speculative control – remain intact.

Unless the broader economic conditions supporting these power structures are challenged, doctrinal interventions may be limited to superficial reforms that fail to alter the status quo in any substantive way. In some sense, the collectivist utopianism of Berle, Means, and their cohort reflected a restrained theory of change about capitalism and economic reform. They viewed it as a form of what sociologist Erik Olin Wright calls "taming capitalism," a technocratic and modest improvement of material conditions that are the negative byproducts of industrial capitalism.[52] Whether it takes that or another form, it seems some kind of pushback is inevitable.

Karl Polanyi's concept of the double movement, which posits that society will push back against market forces that threaten social stability, provides a framework for understanding this dynamic.[53] There is nothing new about "land reform" efforts or even "the land

[51] D. Becher, "Land inequalities in the United States", in *Annual Review of Sociology*, vol. 49, no. 1, pp. 421-441, Mar. 2023.
[52] E.O. Wright, *Envisioning Real Utopias*, 2010.
[53] Polanyi, *supra*.

question" in this sense; the view that land is "a moral good in need of protection from the self-regulating market" finds different expressions across time and place.[54] Across contexts, however, legally-constituted market forces drive commodification, and communities and movements emerge in response to protect social needs and counterbalance economic pressures.[55]

As rural communities face the impacts of absentee ownership and speculative investment, the way forward is for countervailing power to arise to assert the social value of land and limit its treatment as speculative investment vehicle.[56] Building countervailing power in this context means rallying stakeholders – from farmers to rural residents to policymakers – to reclaim agency over land use and ownership, challenging the legal and economic systems that enable financialized absentee ownership. The need for this kind of movement underscores a broader struggle for spatial justice, as communities seek to reclaim control over the resources essential to their livelihoods and identities.

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[54] A. Dobeson, S. Kohl, "The Moral Economy of Land: From Land Reform to Ownership Society, 1880-2018", in *Socio-Economic Review*, vol. 22, no. 2, pp. 737-764, Apr. 2024. For a discussion of institutional investment and the legacy of heterodox economist Henry George: contribution by P. Forrester, conference "The Future of Capitalism: Neo-Feudalism?", University of Chicago, May 2, 2024.

[55] K. Andrias, B.I. Sachs, "Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality", in *Yale Law Journal*, vol. 130, issue 3, pp. 546, 2021.

[56] Compare L. Ashwood, ""No Matter if You're a Democrat or a Republican or Neither": Pragmatic Politics in Opposition to Industrial Animal Production," in *Journal of Rural Studies*, vol. 82, pp. 586-594, 2021.