

# Tax and the Myth of the Family Farm

*Kathleen DeLaney Thomas\**

*ABSTRACT: With income and wealth inequality at historically high levels, policymakers have looked to the tax system as a potential road to reform. Specifically, new taxes on wealth or inheritances could raise much-needed revenue and reduce intergenerational wealth disparities. Yet looming behind recent proposals to strengthen the progressivity of the tax system is the specter of taxing family farms out of existence.*

*In the minds of voters, the family farmer is a sympathetic taxpayer who is cash poor but holds valuable property. Federal taxes that are based upon property values (like a wealth tax or an estate tax), rather than on cash income, appear to pose a risk that the family farm would have to be sold to fund such a tax. Yet, there is no empirical evidence that any family farm has ever been sold in the United States to fund federal taxes. Further, recent proposals to enact progressive tax reforms go out of their way to exempt farms, making the risk of taxing the family farm out of existence virtually zero.*

*This Article proposes that the threat of taxing family farms out of existence is a myth, but one worth exploring. It is the first to offer a comprehensive account of the outsized role that family farms play in shaping tax policy. In the end, the story of taxing the family farm is not a story about farmers at all. Rather, the family farm reflects our collective unease with the idea of taxing “paper gains”—that is, taxing the value of assets before they are sold, such as through a wealth tax or an estate tax. Arguably, no one better represents the pitfalls of taxing paper gains than a farmer holding valuable land that has been appreciating for decades.*

*When viewed in this light, the family farm narrative is not just an interesting story; it also symbolizes a fundamental crossroads in U.S. tax policy. Voters express strong support for higher taxes on the wealthy yet do not appear to support specific tax policies (like a wealth tax) that would achieve more redistribution. Policymakers interested in reducing inequality must reckon with the fact that even the most progressive voters may resist taxes on anything but income.*

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\* Aubrey L. Brooks Distinguished Professor of Law, University of North Carolina School of Law. I am grateful to Cecilia Barreca for excellent research assistance, and to John Coyle, Andrew Hayashi, Leigh Osofsky, Courtney Thomas, Lawrence Zelenak, and participants at the William & Mary Law School Faculty Workshop and the Duke Law Tax Policy Colloquium for helpful comments.

*To that end, the Article concludes by offering concrete reform proposals that account for the myth of the family farm.*

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“God said, I need somebody willing to get up before dawn, milk cows, work all day in the fields, milk cows again, eat supper, then go to town and stay past midnight at a meeting of the school board’—so God made a Farmer.”

– Paul Harvey<sup>1</sup>

## INTRODUCTION

The family farmer is the backbone of our country.<sup>2</sup> They embody important American cultural values like hard work, perseverance, and thrift.<sup>3</sup> They run a small business that has been in the family for generations, not a corporate, industrial, or “factory” farm.<sup>4</sup> And they provide us with the food on our dinner table. There is arguably no other figure that can unite politicians and voters of all stripes like the family farmer.

Family farms face all kinds of risks, like droughts, floods, and disease. But perhaps one of the most salient and pernicious threats to family farms is that they will be taxed out of existence by the very government that purports to revere them.<sup>5</sup>

Consider the history of the estate tax in the late twentieth century. Initially, the tax had broad support as a highly progressive measure that applied to only the richest taxpayers. But throughout the 1980s and 1990s, estate tax opponents managed to successfully erode popular support for the tax, so much so that Congress ultimately enacted legislation to repeal it in 2001.<sup>6</sup> This was a particularly stunning turn of events given that only a tiny fraction of taxpayers (less than two percent) would ever be subject to the estate tax.<sup>7</sup> But estate tax opponents had discovered and capitalized upon an incredibly powerful image in the minds of voters: the threat to family farms. Tax opponents authored publications and held hearings detailing “family farm horror stories” involving farms that would potentially have to be sold to pay the estate tax.<sup>8</sup> It turned

1. The text of the famous 1978 speech made to the Future Farmers of America, along with an audio recording, can be found at Paul Harvey, ‘So God Made a Farmer’ Speech to the FFA, AM. RHETORIC (Jan. 6, 2022), <https://www.americanrhetoric.com/speeches/paulharveysogodmadeafarmer.htm> [<https://perma.cc/J2SU-27Y9>].

2. Brandon Lipps & Pam Miller, *Farmers and Ranchers: The Foundation of Our Nation’s Nutrition Assistance Programs*, U.S. DEP’T AGRIC. (Oct. 11, 2019, 10:00 AM), <https://www.usda.gov/media/blog/2019/10/11/farmers-and-ranchers-foundation-our-nations-nutrition-assistance-programs> [<https://perma.cc/A2PD-4PH3>] (“Farmers and ranchers are the backbone of America, working from sun-up to sundown, taking care of the land and livestock and providing food for their fellow citizens and the rest of the world.”).

3. See *infra* notes 46–47 and accompanying text.

4. Alicia Harvie, *What Is a Family Farm? How Does It Differ from a Factory Farm?*, FARM AID (Apr. 9, 2010), <https://www.farmaid.org/issues/industrial-agriculture/what-exactly-is-a-family-farm> [<https://perma.cc/2YQ9-G4BS>].

5. See *infra* Part II.

6. See *infra* Section I.A.

7. See *infra* Section II.A.

8. See *infra* Section I.A.

out not to matter that no policymaker, scholar, or journalist was ever able to uncover an actual example of a family farm that was sold to pay the estate tax.<sup>9</sup>

With income inequality and wealth inequality reaching record highs in the United States, calls for tax reforms that would redistribute wealth, even beyond an estate tax, abound.<sup>10</sup> Such tax reform proposals, including a wealth tax, repealing the so called “step-up in basis” at death, or imposing a system of mark-to-market taxation,<sup>11</sup> have once again raised the threat of taxing the family farm out of existence.

The narrative about taxing family farmers is as follows: Farmers own valuable, highly appreciated property (their farmland), but they are cash poor. If farmers are subject to a tax based on their property value rather than their cash income, they will be unfairly burdened and unable to afford the tax without selling their farm. And even if the government waits until the farmer’s death to impose such a tax, this means the farm can’t be passed down to future generations.

Recent debates over tax reform, including many statements by politicians, underscore the power of this narrative in tax policy formulation.<sup>12</sup> Lurking behind proposals to make the tax system more progressive is an urgent and seemingly widespread fear that, in our attempts to tax and redistribute wealth, we will inadvertently tax farmers out of existence.

Though farmers make up only a small portion of U.S. taxpayers, they play an outsized role in tax reform. Why is this? Are family farmers truly at risk of being taxed out of existence, or otherwise unduly burdened, if progressive tax reforms are enacted? The central claim of this Article is that the answer to these questions is “no.” It proposes that taxing family farms out of existence is a myth, albeit a powerful one worth exploring. In making these claims, the Article explores the myth of the family farm<sup>13</sup> on three levels: (1) Who is the “family farmer”?; (2) Is the family farm at risk of being taxed out of existence?; and (3) Why is the American public so concerned about taxing the family farm?

The Article’s first contribution is to describe why, as a factual matter, the threat of taxing the family farm out of existence is a myth. It shows that farm households in the United States are relatively wealthy and have above-average incomes. Further, there is no record of a single farm in the United States being sold to fund federal taxes, and no current tax reform proposal would change the tax treatment of farms.

The next contribution of the Article is to explore why, given the aforementioned facts, the family farm narrative is so powerful in shaping tax

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9. See *infra* Section I.A.

10. See, e.g., Emmanuel Saez & Gabriel Zucman, *How to Tax Our Way Back to Justice*, N.Y. TIMES (Oct. 11, 2019), <https://www.nytimes.com/2019/10/11/opinion/sunday/wealth-income-tax-rate.html> (on file with the *Iowa Law Review*).

11. See *infra* Sections II.B–C.

12. See *infra* Part II.

13. This Article refers to the “myth of the family farm” as shorthand for the myth that federal taxes will cause family farms to be sold and, thus, taxed out of existence.

policy. In doing so, it examines a seeming paradox. On the one hand, U.S. voters express strong support for higher taxes on the rich, taxing wealth, and for redistribution.<sup>14</sup> Yet notwithstanding this strong public support for the idea of progressive tax reform, no specific proposal to tax wealth has gained any political traction, and voters do not appear to favor specific proposals.<sup>15</sup>

This Article argues that understanding the myth of the family farm in tax law can help us understand this paradox. The myth of the family farm has little to do with farmers. Rather, it reflects our collective unease with the idea of taxing “paper gains”—that is, taxing the value of assets before they are sold, be it through a wealth tax, an estate tax, or a mark-to-market tax.<sup>16</sup> Recent empirical work shows that individuals on both ends of the political spectrum are deeply uncomfortable with taxes on paper gains.<sup>17</sup> Arguably, no one better represents the idea of taxing paper gains than a farmer holding valuable land that has been appreciating for decades.

If the family farm is, at its core, a reflection of our psychological discomfort with taxing paper gain, then policymakers interested in higher taxes on the wealthy may need to reconsider what types of reforms are viable. Thus, the third contribution of this Article is prescriptive; it offers concrete suggestions to policymakers that account for the larger obstacles represented by the family farm.

Prior work has documented the role of the family farm in mobilizing opposition to the estate tax.<sup>18</sup> This Article is the first account of the family farm narrative that not only traces its potency in tax policy discourse but also provides data that undermines the claims and an explanation of why they are nonetheless powerful. In this regard, it is the first comprehensive account of the outsized role family farms play in tax policy.

This Article proceeds in three parts. Part I peels back the first layer of the family farm myth by exploring the identity of the family farm itself. It shows that the vast majority of farms in the United States qualify as family farms because they are owned and operated by people who are related to one another. It also surveys economic data showing that farmers have a higher income than the national median, significant wealth in the form of land ownership, and are generally not “cash poor” as commonly thought. Thus, at least from a socioeconomic perspective, the family farm does not appear to represent a demographic that needs special consideration from the tax system.

Part II peels back the second layer of the family farm myth by examining whether family farms are at risk of being sold or otherwise taxed out of existence by federal tax reform. It examines whether estate tax reforms over the past several decades have harmed or have threatened to harm family farms,

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14. See *infra* Section III.A.2.

15. See *infra* Section III.A.2.

16. See *infra* Section III.A.2.

17. See *infra* Section III.A.2.

18. See MICHAEL J. GRAETZ & IAN SHAPIRO, DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH 4, 126 (2005).

whether repealing section 1014 of the Internal Revenue Code (“Code”)—the step-up in basis at death—would harm family farms, and how recent wealth tax proposals and similar proposals to tax the very rich would impact family farms. This analysis reveals that there is no empirical evidence that family farms have been sold or would be sold due to the estate tax, a repeal of the step-up in basis at death, or a wealth tax. This is partly because all of these rules build in generous dollar thresholds that most farmers fall below. Additionally, recent legislative proposals include specific exemptions for farms.<sup>19</sup>

Part III explores the deepest layer of the family farm myth. If family farms are not at risk of being wiped out by progressive tax reform, what are we so worried about? Why is the family farm such a powerful image, one that has so effectively swayed tax policy debate? Part III first argues that concern over the family farm is best understood as a reflection of our collective discomfort with taxing unrealized gains (or “paper gain”). The farmer, who is thought to be cash poor but sitting on highly appreciated real estate, emerges as an archetype—the ultimate victim of an overreaching government that would tax property even in the absence of liquidity. This deeper issue is one that policymakers will have to reckon with if they wish to enact tax reforms that redistribute wealth without raising income taxes.

Part III then situates the “family farm” in broader social science literature that suggests personal narratives and identifiable and iconic victims are the most politically persuasive tools when it comes to public opinion. This helps explain why the image of taxing the farmer out of existence persists despite having virtually no empirical basis. Finally, Part III offers lessons for policymakers interested in tax reform, including concrete tax policy proposals that could modestly increase progressivity without taxing unrealized gain.

## I. WHAT IS THE FAMILY FARM AND HOW IS IT TAXED?

This Part uncovers the first layer of the myth of the family farm in tax law. It begins by chronicling the history of the “family farm” narrative in tax policy discourse, which surfaced in late twentieth-century debates over the estate tax. What started as a narrow interest group seeking special treatment soon grew into a broader movement to repeal the estate tax altogether. Next, this Part examines the identity of the family farm itself. It surveys economic data from the U.S. Department of Agriculture (“USDA”), the Internal Revenue Service (“IRS”), and other sources to understand the economic profile of the “typical” family farm. It then examines how farms are taxed under current law.

### A. THE ORIGINS OF THE MYTH IN THE TAX LAW

The story of the “family farm” in tax policy begins with the estate tax. The family farm first took on a prominent role in tax discourse in connection with

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19. See *infra* Section II.B.

reforms made to the estate tax in the 1970s and 1980s.<sup>20</sup> Although the estate tax was initially enacted in 1916, Congress has revisited and amended it multiple times since then, gradually narrowing its reach.<sup>21</sup> In connection with major reforms made to the estate tax in both 1976 and 1981,<sup>22</sup> opponents of the tax began raising the idea that the tax posed an undue burden on family farms.<sup>23</sup>

It is worth pausing to consider how the estate tax potentially impacts farmers or other taxpayers who hold significant amounts of property at death. An estate tax works somewhat like a property tax—that is, it taxes the value of the property held by an estate after the owner’s death.<sup>24</sup> If a person dies holding \$1 million worth of real estate, then a thirty percent estate tax could result in \$300,000 of estate tax liability. (In reality, the U.S. estate tax has a significant exemption amount, so only estates over a high value threshold are subject to tax and only on the amount over that threshold.<sup>25</sup>) Accordingly, farmers holding land and other assets of high value could be subject to tax on the value of those assets at death under an estate tax, regardless of how much cash the farmer (or his heirs) has on hand.

If an estate holding \$1 million of real property owed \$300,000 of estate tax, this could mean some or all of the property would have to be sold to pay the tax if the estate did not have cash or liquid assets on hand. Of course, this is the same issue homeowners face with property taxes. Such taxes are assessed on the home’s value, and the homeowner must have cash or liquid assets on hand to fund the tax if they wish to retain the home. This liquidity issue, discussed more in Part II, underlies many concerns about the estate tax, particularly with respect to farms.

In the years leading up to the 1976 reform of the estate tax, interest groups began to push for exemptions that would spare family farms from paying the tax.<sup>26</sup> One of the earliest recorded remarks on the impact of the estate tax on family farms came from Senator Gaylord Nelson who, in 1976, noted that “family farms and small commercial enterprises present the great difficulties in the estate tax area.”<sup>27</sup>

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20. See William Blatt, *The American Dream in Legislation: The Role of Popular Symbols in Wealth Tax Policy*, 51 TAX L. REV. 287, 316 (1996); Martin D. Begleiter, *Section 2032A: Did We Save the Family Farm?*, 29 DRAKE L. REV. 15, 17–20 (1979).

21. The estate tax was initially enacted as part of the Revenue Act of 1916. See Darien B. Jacobson, Brian G. Raub & Barry W. Johnson, *The Estate Tax: Ninety Years and Counting*, SOI BULL., Summer 2007, at 118, 119–20. Although this was the first time a tax was levied upon the estate itself, earlier similar taxes were levied on beneficiaries (i.e., inheritance taxes). See *id.*

22. For a summary of the changes in the 1976 and 1981 legislation, see *id.* at 122–24. Among other changes, these bills raised the overall exemption level and exempted marital transfers. *Id.*

23. See Blatt, *supra* note 20, at 316.

24. See Jacobson et al., *supra* note 21, at 120 (describing the estate tax as “applied to net estates, defined as the total property owned by a decedent, the gross estate, less deductions”).

25. For 2025, the estate tax exemption is \$13,990,000. See *Estate Tax*, IRS (Oct. 29, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> [<https://perma.cc/K5JM-N5PT>].

26. See Begleiter, *supra* note 20, at 17–20.

27. *Id.* at 18 n.10 (quoting 122 CONG. REC. 25,942 (1976)).

Other congressional testimony from 1976 reveals the major concerns for farms and the estate tax—farms were increasingly valuable, but liquidity was low.<sup>28</sup> For example, a House representative from Iowa testified about the vast increase in the price of farmland and the size of the average farm over the prior fifty years, leading to an increase in the size of taxable estates for family farms.<sup>29</sup> Other testimony pointed out that many farmers did not have enough cash flow to pay estate taxes and had too much existing debt to borrow more to fund taxes; the only alternative left was “to sell part or all of the farm or ranchland to pay Federal estate taxes.”<sup>30</sup>

Congress responded to these concerns in the 1976 amendments to the estate tax.<sup>31</sup> In addition to raising the overall exemption for the tax, the legislation changed the valuation rules to be more advantageous for farm property.<sup>32</sup> In general, property is valued for estate tax purposes at fair market value, which is the price an unrelated buyer would pay on the market for the property.<sup>33</sup> In the 1970s, however, reform advocates argued that valuing farms at fair market value was problematic because fair market value is generally based on land’s “highest and best use,” which may not be farming.<sup>34</sup> In other words, a developer might be willing to pay \$1.5 million for a tract of land to subdivide it and sell it as a residential community, although the land as a farm might be worth only \$1 million. Thus, reform advocates argued that the estate tax overinflated farmland values and further exacerbated farmers’ liquidity problems with respect to the tax.<sup>35</sup>

In response, Congress enacted Code section 2032A, which allows farms to be valued at their farm “use” amount, provided the farm is operated by the decedent’s heirs and is not sold.<sup>36</sup> In describing the reasoning behind the new legislation, the House report stated:

[W]hen land is actually used for farming purposes . . . it is inappropriate to value the land on the basis of its potential “highest and best use” especially since it is desirable to encourage the continued use of property for farming and other small business purposes. . . . In some cases, the greater estate tax burden makes continuation of farming . . . not feasible because the income potential from these activities is

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28. *Id.* at 18.

29. *Id.* (describing testimony of Iowa Representative Tom Harkin).

30. *Id.* at 22 (quoting *Federal Estate and Gift Taxes: Public Hearings and Panel Discussions Before the H. Comm. on Ways and Means*, 94th Cong. 589 (1976) (statement of Samuel P. Guyton)).

31. Professor Blatt described congressional testimony about the impact of the estate tax on family farms as helping drive increases to the exemption level of the tax in both 1976 and 1981. Blatt, *supra* note 20, at 316–17 n.175.

32. See Jacobson et al., *supra* note 21, at 122–23 (describing 1976 changes to the estate tax, including an increased exemption level).

33. Begleiter, *supra* note 20, at 19.

34. *Id.*

35. *Id.*

36. 26 U.S.C. § 2032A (2018).

insufficient to service . . . the tax. Thus, the heirs may be forced to sell the land for development purposes.<sup>37</sup>

It is clear from this 1976 legislative history that estate tax reform advocates succeeded in convincing Congress that farmers were worth unique consideration in estate tax policy due to the particular valuation and liquidity concerns they faced. Whether these arguments had merit—that is, whether the estate tax did, in fact, impose an undue burden on farmers—is discussed further below in Part II. For now, it suffices to say that the idea of the family farm entered tax policy discourse at least as early as the 1970s in connection with the estate tax.

The estate tax reforms of the 1970s and early 1980s involved smaller, concentrated interest groups appealing to Congress to consider the impact of the tax on family farms.<sup>38</sup> These appeals were successful in narrowing the reach of the estate tax and reducing its impact on farms through changes to the valuation rules.<sup>39</sup> Despite this, in the late 1990s and early 2000s, reform advocates continued the emphasis on family farms and on a significantly broader scale. This time around, reform advocates had a more ambitious goal in mind: a complete repeal of the estate tax.<sup>40</sup>

As chronicled by scholars Michael Graetz and Ian Shapiro in their book, *Death by a Thousand Cuts*, the 1990s and early 2000s ushered in a powerful movement that united a number of interests, including: “Republican antitax philosophers, activists, and legislators, who regard all progressive taxation as morally obnoxious and economically destructive.”<sup>41</sup> Graetz and Shapiro documented a remarkable effort by these anti-tax crusaders to not only sway Congress, but to convince the broader American public to support estate tax repeal.<sup>42</sup> This latter accomplishment—swaying public opinion—is particularly noteworthy because only a small minority of the richest taxpayers were even subject to the estate tax.<sup>43</sup> Although one might think the public would generally support a tax that both raised revenue and generally did not impact them, this turned out to be a miscalculation by supporters of the estate tax.<sup>44</sup> The yearslong effort to erode support for the estate tax described by Graetz and Shapiro culminated with stunning (albeit temporary) legislation to repeal the tax altogether in 2001.<sup>45</sup> How were these organized anti-tax groups able to

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37. Begleiter, *supra* note 20, at 25 (quoting H.R. REP. NO. 94-1380, at 21-22 (1976), as reprinted in 1976 U.S.C.C.A.N 3356, 3375-76).

38. See Blatt, *supra* note 20, at 308-13, 316.

39. Begleiter, *supra* note 20, at 25.

40. See GRAETZ & SHAPIRO, *supra* note 18, at 3-4.

41. See *id.*

42. *Id.*

43. *Id.* at 6.

44. *Id.* at 6-7.

45. *Id.* at 5. The repeal turned out to be temporary, as a later Congress retroactively reversed the 2001 legislation. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 301(a), 124 Stat. 3296, 3300 (codified as amended at 26

successfully sway public opinion with respect to a tax that, for the most part, they would never pay and could only benefit them? Here, again, the family farm (along with other small businesses) took center stage. According to Graetz and Shapiro, a critical piece of the repeal strategy was creating a compelling narrative for the American public, one that was sympathetic, salient, and easy to understand.<sup>46</sup> Strategists quickly saw that farmers were an easy group to relate to and sympathize with because they espouse important American cultural values of “asceticism, thrift, and hard work.”<sup>47</sup>

Understanding that voters were likely to feel an emotional connection to the plight of a farmer, estate tax opponents publicized detailed stories of specific farmers. One such widely cited publication was entitled *Death Tax Devastation: Horror Stories from Middle-Class America* and told three different “family farm horror stories” about specific farms that would potentially have to be sold upon the owner’s death if the estate tax was levied.<sup>48</sup> Many other members of the estate tax repeal effort similarly “sought sad stories about families whose breadwinner had died and who were struggling to keep their small businesses, farms, or ranches from being sold to pay the death tax.”<sup>49</sup>

While progressives were trying to convince voters that, statistically speaking, they were unlikely to ever pay the estate tax, the anti-tax movement had taken a more successful tack. Graetz and Shapiro summed up the strategy as follows:

Pursuing death tax repeal in a narrative rather than scientific vein had the great advantage of short-circuiting complexity. . . .

. . . If economic debates are transformed into a storytelling endeavor, the target audience moves into a comfortable zone where the storyteller simply has to provide an issue they can relate to and values they embrace—not economic arguments they must struggle to understand.<sup>50</sup>

In sum, the idea of the family farm emerged in the 1970s as an important interest to be protected against the estate tax, resulting in meaningful yet relatively modest changes to the estate tax in the 1970s and 1980s. Capitalizing on that earlier success, estate tax opponents seized on the family farm as their “poster child” as part of a bigger movement to repeal the estate tax altogether

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U.S.C. §§ 121, 684, 1014, 1022, 1040, 1221, 1246, 1291, 1296, 2210, 2664, 6018, 6019, 6075, 6716, 7701).

46. GRAETZ & SHAPIRO, *supra* note 18, at 237. In another savvy maneuver, estate tax opponents also related the tax the “death tax.” *Id.* at 14.

47. *Id.* at 231–32.

48. *Id.* at 50–51. The publication was authored by William W. Beach, Director of the Center for Data Analysis for the Heritage Foundation. 146 CONG. REC. S6772–74 (daily ed. July 14, 2000) (Exhibit 1).

49. See GRAETZ & SHAPIRO, *supra* note 18, at 51.

50. See *id.* at 237.

in 2001.<sup>51</sup> This powerful anti-tax movement cemented the family farm as a main character in tax policy discourse going forward, which has continued today.<sup>52</sup>

So here begins the myth of the family farmer in tax policy: The family farmer is cash poor but holds valuable land. The estate tax would unfairly subject the farmer to a tax bill that they could not fund with income from farming or with debt, leaving them forced to sell off their family farm to pay the tax. What, if any, truth underlies this story? Uncovering the myth of the family farm requires understanding who the family farmer is. What does it mean to be a family farm? Are family farms wealthy or poor? Do they pay taxes? The next Section explores the first layer of this myth: What is a family farm? This Section will then discuss how family farms are taxed under current law as well as summarize the economics of farming.

### B. WHO ARE THE FAMILY FARMERS?

This Section examines what it means to be a family farm or a small farm. It then considers whether family farms tend to be cash poor as claimed in many tax policy debates. Finally, it overviews the many tax benefits available to farmers under current law.

#### 1. (Almost) Every Farm Is a “Small Family Farm”

The USDA defines a “farm” as any place that produces and sells over \$1,000 of agricultural products (i.e., crops or livestock) in a year.<sup>53</sup> There are roughly two million farms in the United States today, which “vary greatly in size.”<sup>54</sup> Most of these two million farms (about ninety percent or 1.8 million farms) meet

51. *Id.* at 231–32 (“The architects of repeal also picked poster-child characters who were merely rich rather than super-rich.”).

52. Taxation is by no means the only area of the law in which farms have garnered special treatment. For example, several states have bans on foreign ownership of agricultural property. See Andrew T. Hayashi & Richard M. Hynes, *Protectionist Property Taxes*, 106 IOWA L. REV. 1091, 1105–08 (2021).

53. See CHRISTINE WHITT, JESSICA E. TODD & ANDREW KELLER, U.S. DEP’T OF AGRIC., AMERICA’S DIVERSE FAMILY FARMS 2 (2021), <https://www.ers.usda.gov/webdocs/publications/102808/eib-231.pdf> [<https://perma.cc/TQS0-BG7L>] (“USDA defines a farm as any place that, during a given year, produced, and sold—or normally would have produced and sold—at least \$1,000 of agricultural products. USDA uses acres of crops and head of livestock to determine whether a place with sales of less than \$1,000 could normally produce and sell the minimum amount required to be categorized as a farm.”).

54. Christine Whitt, *A Look at America’s Family Farms*, U.S. DEP’T AGRIC. (Jan. 23, 2020, 11:32 AM), <https://www.usda.gov/media/blog/2020/01/23/look-americas-family-farms> [<https://perma.cc/359Y-CYGQ>]. The number of farms in the United States has declined dramatically over the past one hundred years as the population shifted toward urban centers. See INGOLF VOGELER, *THE MYTH OF THE FAMILY FARM: AGRIBUSINESS DOMINANCE OF U.S. AGRICULTURE* 3 (1981). “In 1920 . . . about one American in three lived on farms. By 1977, about one person out of twenty-eight, or 3.6 percent of the nation’s 216 million people, had a farm residence.” *Id.*

the USDA's definition of a "small" farm, which means their gross income is less than \$350,000 per year.<sup>55</sup>

Within this group of small farms, less than half (about eight hundred thousand) are occupied by residents who farm full time for a living.<sup>56</sup> Most of the other half of small farms are owned by residents who have a different primary occupation, and another modest portion of small farms are owned by retired farmers who no longer farm full time.<sup>57</sup>

Although most farms are small farms, about five percent are considered "midsize" by the USDA (with gross earnings between \$350,000 and \$999,999), and about three percent earn enough to be considered "large" (over \$1 million in gross earnings).<sup>58</sup>

What makes a farm a "family" farm? It turns out the vast majority of all farms—ninety-eight percent—meet the definition.<sup>59</sup> According to the USDA, a family farm is "any farm where the majority of the business is owned by the principal operator—the person who is most responsible for making day-to-day decisions for the farm—and by individuals who are related to the principal operator."<sup>60</sup> In other words, most farms are run by the owner of the farmland and the owner's relatives. Given that this description applies to almost all farms in the United States, the term "family farm" is essentially synonymous with "farm" and conveys little useful information. "Family farm" is certainly not synonymous with "small" farm. Most of the medium and large farms in the country also meet the definition of a "family" farm.<sup>61</sup>

Although small family farms own nearly half of the farmland in the United States, they account for only about twenty-one percent of production in the country.<sup>62</sup> These farms often produce poultry, eggs, and hay.<sup>63</sup> Midsize and large family farms, on the other hand, make up about two-thirds of production in the United States despite being fewer in number; these farms tend to produce commodities like corn, soybeans, cotton, and dairy at a larger scale.<sup>64</sup>

## 2. Most Farmers Are Wealthy

Given that most farms are family farms, it is next worth examining how well off, or not, these family farms are. The USDA summarized the economic

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55. WHITT ET AL., *supra* note 53, at 3. The measure of farm size is "gross cash farm income (GCFI), a measure of the farm's revenue including sales of crops and livestock, [g]overnment payments, and other farm-related income." *Id.* at 2.

56. *Id.* at 3.

57. *Id.*

58. *Id.*

59. *Id.* at 4.

60. *Id.* at 2.

61. *Id.* at 3. Only 47,275 farms in the country, making up just 2.4 percent of farms, are not principally owned by their operators (i.e., are not family farms). *Id.*

62. Whitt, *supra* note 54.

63. *Id.*

64. *Id.*; WHITT ET AL., *supra* note 53, at 6.

state of farmers as follows: “In general, farm households are neither low-income nor low-wealth.”<sup>65</sup> Indeed, the average income for farmers in the United States is above the national median, with midsize and large family farms earning significantly above the national median.<sup>66</sup> Family farms have average wealth above the national median as well, with the principal source of their wealth being their land.<sup>67</sup> In dollar values, the average farm household has farm assets worth \$1 million.<sup>68</sup> On the other hand, very few farms are truly “poor” when looking at the numbers; “only two percent of farm households” are below the national median in both income and wealth.<sup>69</sup>

In a recent book, agricultural journalist Sarah Mock explored the economics of family farms in the United States to understand “the ideal of a modern small family farmer.”<sup>70</sup> Noting “that many of those ‘large, industrialized’ or ‘corporate farms’ that we love to hate identify as ‘small family farms,’” Mock concluded that “after years of searching, I found no farms that truly met the spirit of the small family farm dream.”<sup>71</sup>

Mock’s exploration of U.S. farms first reveals that farms most people would consider truly “small”—those owning a relatively small number of acres and selling produce at farmer’s markets—are essentially hobbies.<sup>72</sup> For the most part, such farms are run by people with another primary occupation or with enough wealth to not need a primary occupation.<sup>73</sup> The reason for this is that farms generally need to operate on a large scale to achieve financial success.<sup>74</sup> The costs of owning or renting land, providing labor, and acquiring machinery, among other expenses, are just too great and the cost of food is too low to make truly small-scale farming a viable business in the United States.<sup>75</sup> So,

65. Whitt, *supra* note 54.

66. WHITT ET AL., *supra* note 53, at 13–14.

67. *Id.* at 13.

68. SARAH K. MOCK, *FARM (AND OTHER F WORDS): THE RISE AND FALL OF SMALL FAMILY FARMS* 62 (2021).

69. *Id.*

70. *Id.* at 14–15.

71. *Id.* at 42, 130.

72. *Id.* at 56–58. As many as forty percent of small farms counted in census data are “zero-sales farms,” meaning “they do not participate in commercial markets.” *Id.* at 56 (quoting Nathan A. Rosenberg, *Farmers Who Don’t Farm: The Curious Rise of the Zero-Sales Farmer*, 7 J. AGRIC. FOOD SYS. & CMTY. DEV. 149, 155 (2017)). Mock observed that “these ‘poor’ farms are more likely the abodes of wealthy ruralites, living the leisurely life of rural gentry.” *Id.* at 56–57.

73. *Id.* at 56–58. On average, farm families earn “less than twenty-five percent of their total income on the farm.” *Id.* at 37.

74. *Id.* at 125 (“[F]arms don’t tend to make money until they reach a certain scale, around twenty-five to thirty thousand dollars in annual sales, and average farms that achieve that level of sales also have well over half a million dollars in owned assets.”).

75. *Id.*

when we picture a quaint farm producing just a handful of crops sold at local markets, we are not picturing America's full-time farmers.<sup>76</sup>

The true full-time farmers—those producing most of our nation's agricultural products and who make their entire living off farming—typically own massive amounts of acreage and operate on a large scale.<sup>77</sup> Again, this is because the economics of farming are such that only at a large scale, particularly by producing commodities like corn and soybeans in massive quantities, are farms truly profitable.<sup>78</sup>

Mock next explored how the idea that farmers are “cash poor”—that is, having relatively small amounts of liquid income—relates to overall wealth of farm households.<sup>79</sup> First, it should be repeated that many farms are not cash poor, as discussed in the next Section below.<sup>80</sup> Further, farmers with relatively low net cash flow often hold significantly valuable assets, making them wealthy even if they are illiquid. Mock observed:

The appearance of poverty is used to mask the reality of immense private wealth. In fact, America's 897,400,000 acres of privately held farmland, at an average price of \$3,160 per acre, are worth nearly three trillion dollars. This helps us make sense of the fact that today the average American farmer is a millionaire.<sup>81</sup>

America's farmers tend to be wealthy relative to other individuals because they own a valuable asset: farmland. Indeed, real estate makes up eighty-three percent of the value of total farm assets in the United States.<sup>82</sup> And the vast majority (ninety-three percent) of farmers own, rather than exclusively rent, their farmland.<sup>83</sup> In essence, farmers are engaged in two businesses.<sup>84</sup> One is the farming business, but the other is a real estate investment business.<sup>85</sup> As one farmer told Mock, “Farmland is an investment. All farmers have to do is bide their time. Eventually they'll be able to sell the land, and that

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76. *Id.* (“If a farm is wealthy, in the form of cash, income, or owned land, they're likely doing okay. If they aren't, they're dying. All the evidence points to the fact that a person really does have to be rich enough to farm.”).

77. *Id.* at 68 (“The overwhelming amount of higher grossing commercial farmers in the [United States] are farms . . . with a relatively simple commodity-focused crop mix, a small number of employees, significant acreage, and a hefty operating budget. Those last two elements are key . . .”).

78. *Id.* at 67–68.

79. *Id.* at 47–51.

80. *Id.* at 62.

81. *Id.* at 63 (citations omitted).

82. *Assets, Debt, and Wealth*, ECON. RSCH. SERV., U.S. DEP'T AGRIC. (Sept. 5, 2024), <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/assets-debt-and-wealth> [https://perma.cc/K4GT-TLZF]. This includes land and buildings on the land. *Id.*

83. MOCK, *supra* note 68, at 79.

84. *Id.* at 46–47 (discussing an interview with PastureMap founder Christine Su, who explained, “You're managing land . . . where the strategy is to buy it and hold it as a long-term asset that you may want to develop and monetize one day”).

85. *Id.*

will provide for [an] extremely comfortable and privileged life. And their means of accomplishing that is literally just accruing value as time passes.”<sup>86</sup>

Relative to other assets, farmland is a particularly profitable investment.<sup>87</sup> Farmland in the United States has appreciated consistently over the past several decades, and such appreciation often outperforms the stock market.<sup>88</sup> The average farm size in the United States is 445 acres, worth an average price of \$3800 per acre.<sup>89</sup> Note, based just on averages, this is nearly \$1.7 million in value for an average farm (which includes both the land and buildings).<sup>90</sup> Within farms, the average acreage varies greatly; for example, large farms earning over \$1 million in sales average nearly three thousand acres.<sup>91</sup> Average values also vary depending on factors like location and land use; for example, average cropland prices are \$5,050 per acre, while pasture value averages a much lower \$1,650 per acre.<sup>92</sup>

In 2022, farms hit record levels of value. From 2021 to 2022, farmland increased in value by an average of 12.4 percent, or \$420 per acre.<sup>93</sup> In October of 2022, fifty-five acres of Iowa farmland sold for a record price of a whopping \$26,250 per acre.<sup>94</sup> Cropland in Iowa, a state that generally yields higher values, averages over \$14,000 per acre.<sup>95</sup>

Of course, high farm value does not necessarily mean farmers are wealthy if they carry significant amounts of debt, but factoring in debt does not do much to change the overall picture of farmland wealth. Total farmland real estate debt is estimated to be about \$360 billion in 2024, while farmland real estate values are about \$3.5 trillion.<sup>96</sup> This gives rise to a debt-asset ratio for real estate of around ten percent; in other words, farmland value far exceeds

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86. *Id.* at 47.

87. In the 1980s, Warren Buffett purchased four-hundred acres of farmland in Nebraska, noting the investment “had no downside and potentially substantial upside.” See Tim Gray, *Farmland Is Valuable, but Buying It Is Tricky for Fund Investors*, N.Y. TIMES (Oct. 8, 2021), <https://www.nytimes.com/2021/10/08/business/mutfund/farmland-is-valuable-but-buying-it-is-tricky-for-fund-investors.html> (on file with the *Iowa Law Review*).

88. MOCK, *supra* note 68, at 48.

89. NAT’L AGRIC. STAT. SERV., U.S. DEP’T OF AGRIC., FARMS AND LAND IN FARMS: 2021 SUMMARY 4 (2022) [hereinafter USDA, FARMS AND LAND IN FARMS 2021 SUMMARY], [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/fnl00222.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/fnl00222.pdf) [https://perma.cc/3AN87DF2]; NAT’L AGRIC. STAT. SERV., U.S. DEP’T OF AGRIC., LAND VALUES: 2022 SUMMARY 4 (2022) [hereinafter USDA, LAND VALUES 2022 SUMMARY], <https://downloads.usda.library.cornell.edu/usda-esmis/files/pn89d6567/tx31rr837/5d86q625c/lando822.pdf> [https://perma.cc/WB5A-4BKF].

90. USDA, LAND VALUES 2022 SUMMARY, *supra* note 89, at 4.

91. USDA, FARMS AND LAND IN FARMS 2021 SUMMARY, *supra* note 89, at 5.

92. USDA, LAND VALUES 2022 SUMMARY, *supra* note 89, at 4.

93. *Id.*

94. Sara Schafer, *New Record: Iowa Farm Joins the \$26,000 per Acre Club*, AGWEB (Oct. 12, 2022, 9:59 AM), <https://www.agweb.com/news/business/farmland/new-record-iowa-farm-joins-26-000-acre-club> (on file with the *Iowa Law Review*).

95. *Id.*

96. *Assets, Debt, and Wealth*, *supra* note 82.

debt on farmland overall.<sup>97</sup> Further, while debt is remaining stable or declining, farmland values are rising, creating a decline in farm debt-asset ratios in recent years.<sup>98</sup>

In sum, farms in the United States generally represent a high-value asset that reliably appreciates over time. In this respect, farming not only is a business of producing crops or livestock, but also can be viewed as managing a valuable real estate asset.

### 3. Farms Generate Income and Receive Subsidies

Although most non-hobby farms hold significantly valuable real estate, the question remains as to how much cash flow farmers have. The stereotype of the American farmer is one who is “cash poor,” meaning they generate only enough income to meet their expenses, if that.<sup>99</sup> IRS tax data certainly supports this notion and likely helps perpetuate it. For example, in 2021 (the most recent year for which data was available), aggregate farm losses far exceeded aggregate farm income reported on tax returns, with an average reported net loss of \$15,000 per return.<sup>100</sup> The pattern is the same for prior years.<sup>101</sup> However, tax return data only tells part of the story because net income reported on tax returns may be less than a farmer’s true cash flow, as discussed more in the next Section.

Turning, then, to nontax data, USDA statistics show that net farm income varies greatly based on farm size. In the past decade, only relatively small farms, those earning less than \$100,000 in gross sales, had negative cash flow.<sup>102</sup> (And note, this figure encompasses farms that are operating as hobbies rather than businesses.<sup>103</sup>) Recall that small-size farms make up a high percentage of all farms; about eighty percent of all farms fall into this category of negative cash flow.<sup>104</sup> However, these farms also account for a relatively small amount of production in the United States, which is dominated by mid-size and larger farms.<sup>105</sup>

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97. Factoring non-real estate debt and assets, the total debt-to-asset ratio for 2024 is projected to be about fifteen percent. *Id.*

98. *Id.*

99. See MOCK, *supra* note 68, at 47–48.

100. INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY, INDIVIDUAL INCOME TAX RETURNS COMPLETE REPORT 2021, at 25 fig.A (2024), <https://web.archive.org/web/20240917194430/https://www.irs.gov/pub/irs-pdf/p1304.pdf> [<https://perma.cc/C3Q6-3XYL>] (calculating average loss by dividing aggregate loss by number of returns for 2019). Individual income tax data reports farm income from sole proprietors—that is, farm income that is reported by individuals, rather than as corporations or partnerships. *Id.* at 315.

101. See *id.* at 25 fig.A (showing nearly identical amounts for 2020); INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY, INDIVIDUAL INCOME TAX RETURNS COMPLETE REPORT 2019, at 21 fig.A (2021), <https://www.irs.gov/pub/irs-prior/p1304-2021.pdf> [<https://perma.cc/UCC4-TQAV>] (showing nearly identical amounts for 2019 and 2018).

102. *Farm-Level Average Net Cash Income*, ECON. RSCH. SERV., U.S. DEP’T AGRIC. (Sept. 5, 2024), <https://data.ers.usda.gov/reports.aspx?ID=4036> [<https://perma.cc/LF2P-Y75B>].

103. See MOCK, *supra* note 68, at 56–58.

104. *Farm-Level Average Net Cash Income*, *supra* note 102.

105. See *supra* notes 62–64 and accompanying text.

For these mid-size and larger farms, net cash income is generally positive, with the average amount increasing significantly as farm size goes up.<sup>106</sup> For example, farms with up to \$250,000 of sales averaged about \$57,000 of net cash income in 2021; farms with above \$500,000 of sales averaged about \$250,000 of net cash income, and farms with \$1 million or more in sales averaged close to \$900,000 in net cash income.<sup>107</sup> When considering all “family farms” together (of all sizes), the overall average net cash earnings for 2021 was \$44,000 per farm.<sup>108</sup> Thus, the idea that farms do not generate cash flow is not accurate, other than when considering the smallest farms, which often are not full-time businesses.<sup>109</sup>

Two more background facts provide relevant context in understanding overall income of farmers. First, even among the smallest farms where net cash flow is negative, overall *household* income tends to be positive.<sup>110</sup> In other words, the small farms that generate little or no profit generally have income from other sources, as discussed above.<sup>111</sup> For example, in 2022, median “off-farm income” for farm households was around \$81,000.<sup>112</sup> Again, the pattern is that smaller farms generate less household income from farming (and more from other sources), while larger farms generate most or all of their household income from farming.<sup>113</sup> For example, small farms that did earn positive income generated only eight percent of their total household income from farming in 2022, while large farms generated eighty-two percent of their household income from farming that year.<sup>114</sup>

Second, net cash income from farms includes both cash receipts from farming and government subsidies.<sup>115</sup> Although a full discussion of the various subsidies provided to U.S. farms is beyond the scope of this Article, it suffices to say that the government provides generous subsidies to farmers, including subsidized crop insurance to protect against low yield (due to bad weather,

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106. *Farm-Level Average Net Cash Income*, *supra* note 102.

107. *Id.* (rounding 2021 amounts).

108. *Id.*

109. Fifty-six percent of small family farms are owned by either individuals with another primary occupation (unrelated to the farm) or by retired farmers, while forty-four percent are operated as a primary occupation. WHITT ET AL., *supra* note 53, at 3.

110. *Farm Household Income Estimates*, ECON. RSCH. SERV., U.S. DEP'T AGRIC. (Jan. 29, 2024), <https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/farm-household-income-estimates> [<https://perma.cc/H4AC-9ZBX>].

111. *See id.*; *see supra* text accompanying notes 72–73.

112. *Farm Household Income Estimates*, *supra* note 110 (showing \$81,108 for 2022).

113. *Id.* (“Farm income is a small share of total annual income of most farm households operating residence farms, is a secondary source of income for most households operating intermediate farms[,] and is typically a primary source of income for those operating commercial farms.”)

114. *Id.* (displaying figures with median amounts).

115. *Highlights from the September 2024 Farm Income Forecast*, ECON. RSCH. SERV., U.S. DEP'T AGRIC. (Sept. 5, 2024), <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/highlights-from-the-farm-income-forecast> [<https://perma.cc/SS77-UW7L>] (“Net cash farm income encompasses cash receipts from farming as well as cash farm-related income (including Federal Government payments) minus cash expenses.”).

for example) and direct cash payments to protect against low prices (due to high yield, for example).<sup>116</sup> Thus, another part of the reason that many farms are not, in fact, “cash poor” is because they may receive direct financial assistance from the government, including in circumstances when crop yields are high (which drives down market prices).<sup>117</sup>

#### 4. Farms Enjoy Significant Tax Benefits

Given the data on farm income discussed in the preceding Section—significant positive cash flow for larger farms combined with generous government subsidies—why does IRS data portray farming as a losing investment? The last piece of context here is understanding how farm income gets reported for tax purposes.

First, IRS data showing net losses from farm income does not mean that farmers are not paying taxes or that their overall income position is a net loss.<sup>118</sup> Because farm income is combined with other income sources on an individual’s tax return, overall income is often positive for farmers, resulting in positive tax liability.<sup>119</sup>

Leaving aside income from other sources, a number of tax benefits also allow farmers to reduce their net farm income that is reportable for tax purposes. First, holding valuable, appreciated real estate confers substantial benefits for any taxpayer, because the Code does not tax unrealized gains.<sup>120</sup> This means that if a farmer purchased land for \$100,000 many years ago that is worth \$1 million today, the \$900,000 of appreciation is not taxed unless the land is sold during the farmer’s lifetime.<sup>121</sup> It should be noted that, if the farmer did sell the land, there would likely be a tax on the gain from the sale, which would be the difference between the selling price (\$1 million in this example) and the farmer’s “basis” in the land (that is, the amount the farmer paid for the land, or \$100,000 in this example).<sup>122</sup> But the tax law requires a realization event—generally a sale—to trigger this tax.<sup>123</sup>

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116. See MOCK, *supra* note 68, at 69–70; see also *ARC/PLC Program*, FARM SERV. AGENCY, U.S. DEP’T AGRIC., [https://web.archive.org/web/20240302000551/https://www.fsa.usda.gov/programs-and-services/arcplc\\_program/index](https://web.archive.org/web/20240302000551/https://www.fsa.usda.gov/programs-and-services/arcplc_program/index) [<https://perma.cc/9H6X-A2WR>] (“The Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs were authorized by the 2014 and 2018 Farm Bills. . . . [These] programs provide financial protections to farmers from substantial drops in crop prices or revenues and are vital economic safety nets for most American farms.”).

117. See MOCK, *supra* note 68, at 70.

118. See, e.g., James M. Williamson, *Agriculture, the Tax Code, and Potential Tax Reform*, CHOICES, 2d Quarter 2013, at 1–2, [https://www.choicesmagazine.org/UserFiles/file/cmsarticle\\_307.pdf](https://www.choicesmagazine.org/UserFiles/file/cmsarticle_307.pdf) [<https://perma.cc/2V5V-BJ9P>].

119. *Id.*

120. See 26 U.S.C. § 1001(a); *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955) (holding that the Code taxes “undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion”).

121. See 26 U.S.C. § 1001(a)–(c).

122. See *id.*

123. See *id.* § 1001(a). Taxable realization may be triggered by other events besides a cash sale, such as an exchange for different property. See *id.*

If the farmer simply continues to hold the land as it appreciates, there is no income tax on that appreciation.<sup>124</sup> In the meantime, the farmer may still be able to reap economic benefits from the appreciation even without selling the land. For example, the farmer might be able to take out a substantial cash loan secured by the equity in the property.<sup>125</sup>

If the farmer holds the land until death and passes it on to their heir, the appreciation is never taxed at all under section 1014 of the Code.<sup>126</sup> Under that rule, when heirs inherit appreciated property, they are given a basis in the property equal to the property's fair market value on the date of the decedent's death.<sup>127</sup> This means any prior appreciation in the property is wiped away and the heir starts with a clean slate for tax purposes.<sup>128</sup>

Returning to the example above, say our farmer bought land for \$100,000 and died fifteen years later when the land was worth \$1 million. The farmer's heir (say, a daughter) would inherit the land with a \$1 million basis, which is the land's value on the date of the farmer's death.<sup>129</sup> Essentially, the daughter would be treated as if she purchased the land for \$1 million. The \$900,000 of appreciation would effectively disappear and never be taxed.

If the daughter decided to sell the land a few months later, her gain would simply be the selling price minus her basis in the land: \$1 million in this example.<sup>130</sup> Thus, if she sold the land for \$1 million, she would have zero gain and therefore zero tax liability. The implications of this rule are significant. Farmers who hold land for many years may pass on land that is highly appreciated. The ability of heirs to take the land and escape all income taxes on the appreciation confers substantial tax benefits.

The two rules discussed above, the nontaxation of unrealized gains and the so-called "step-up in basis" at death rule of section 1014,<sup>131</sup> apply to any person who owns appreciated property; these rules are not unique to farmers. However, because the principal asset owned by farms is real estate, and farmland real estate tends to appreciate significantly, these rules are highly relevant to why farmers enjoy favorable treatment under the tax laws. Although farmers are not treated favorably compared to other landowners with respect to these rules, the nontaxation of unrealized gain and section 1014 are advantageous compared to other taxpayers who do not own appreciated property.

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124. *See id.*

125. The strategy of borrowing against an appreciated asset to avoid tax and fund consumption, referred to as "Buy, borrow, die," was coined by Professor Edward McCaffery. *See, e.g.,* Matthew Kredell, *Buy, Borrow, Die' Gains New Life*, USC GOULD SCH. L. (Aug. 30, 2021), <https://gould.usc.edu/news/buy-borrow-die-gains-new-life> [<https://perma.cc/Z6Q7-PXXG>].

126. *See* 26 U.S.C. § 1014(a)(1).

127. *Id.*

128. *See id.*

129. *Id.*

130. *See id.* § 1001(a)-(b).

131. *See* Richard Schmalbeck, Jay A. Soled & Kathleen DeLaney Thomas, *Advocating a Carryover Tax Basis Regime*, 93 NOTRE DAME L. REV. 109, 110 (2017).

With respect to assets other than land, the Code provides generous depreciation deductions for both buildings and equipment.<sup>132</sup> In the case of equipment, “bonus” depreciation and expensing rules allow farmers to deduct the entire cost of certain assets in the year of purchase.<sup>133</sup> For example, if a farmer purchases a new piece of equipment for \$100,000 in 2022, they may have been able to take a \$100,000 deduction that year, which would offset income earned from farming.<sup>134</sup> If the cost of equipment is not immediately deductible, the Code otherwise allows for accelerated depreciation of the cost, meaning the taxpayer can deduct higher amounts of the cost in earlier years and lower amounts in later years.<sup>135</sup> For example, the cost of farm equipment purchased for \$100,000 might be deducted over five years, with the largest deduction in the first year and increasingly smaller deductions in the subsequent four years.<sup>136</sup>

When it comes to farms that are passed down through families, the depreciation benefits can get even more generous. This is due to the fact that heirs who inherit property are given a basis in the property equal to its fair market value on the date of the decedent’s death under section 1014 of the Code.<sup>137</sup> For example, if a farmer dies when a piece of farm equipment is worth \$300,000, the heir will be treated as if they purchased the equipment for \$300,000.<sup>138</sup> The heir can then apply the Code’s favorable depreciation rules anew, even if the decedent had already taken depreciation deductions on the equipment for the original cost.<sup>139</sup> As with the rules for unrealized gain, the favorable depreciation and expensing rules under the tax law are not unique to farmers, but they serve to offset income generated by the farm, contributing to low or no taxable income.<sup>140</sup>

In another respect, farmers may be uniquely situated for some deductions because they tend to live on their worksite.<sup>141</sup> The Code generally does not allow personal living expenses to be deducted; this includes things like the cost of one’s residence or commuting to work from home.<sup>142</sup> For many taxpayers,

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132. See 26 U.S.C. § 168.

133. See *id.* § 168(k) (allowing bonus depreciation); *id.* § 179 (allowing expensing for certain tangible property).

134. See *id.* § 168(k).

135. See *id.* § 168(a)–(b).

136. See *id.* § 168(b) (detailing accelerated depreciation methods); *id.* § 168(e)(3) (setting a five-year recovery period for certain farm equipment).

137. *Id.* § 1014(a).

138. See *id.*

139. See, e.g., *id.* § 168(k)(1)(A) (calculating bonus depreciation by a percentage of the taxpayer’s basis in the property).

140. See Williamson, *supra* note 118, at 3.

141. See *id.* (discussing how farmers take certain accelerated depreciation deductions); see also INTERNAL REVENUE SERV., PUBLICATION 225: FARMER’S TAX GUIDE 20 (2024), <https://www.irs.gov/pub/irs-pdf/p225.pdf> [<https://perma.cc/PB3T-NW7B>] (discussing business deductions for mixed-use farm property).

142. See 26 U.S.C. § 262(a).

such as those who work outside of their home, there is little ambiguous overlap between what constitutes a deductible business expense and what constitutes a personal expense.<sup>143</sup> But because farmers may use their home, cars, and other assets for both business and personal purposes, they may end up with more business deductions overall. Although taxpayers are generally supposed to allocate mixed-use property between business and personal use, owning significant mixed-use property allows for generous allocations or, in some cases, possibly abuse.<sup>144</sup>

Finally, in addition to federal taxes (including income taxes, self-employment taxes, and possibly payroll taxes for employees), farmers may face property taxes with respect to their farmland.<sup>145</sup> In some areas, such taxes impose significant burdens on farmers with little cash flow.<sup>146</sup> However, such property tax burdens are more likely to be the exception.<sup>147</sup> Many localities across the country provide generous property tax exemptions for farmland, subjecting such land to low taxes or no property taxes.<sup>148</sup> In this respect, farmers may receive favorable treatment compared to other real estate owners by virtue of owning farms.

In sum, farm income is often subject to little or no federal income tax due to a combination of factors, including generous tax depreciation on equipment and the fact that land appreciation is generally untaxed unless the land is sold. Although localities do impose property taxes, in many states, there are generous exemptions for farmland.

## II. THE MYTH OF TAXING THE FAMILY FARM

Part I uncovered the first layer of the family farm myth by exploring the origins of the myth in tax policy debates and the identity of the family farm itself. That Part showed that the term “family farm” does not denote a small or special kind of farm. Rather, the vast majority of the farms in the United States qualify as family farms because they are owned and operated by people who are related to one another.<sup>149</sup> Thus, the popular juxtaposition of big

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143. Further, business expenses are only deductible by those taxpayers who own their own business or work as independent contractors; employees are not entitled to any business deductions under current law. See *id.* § 67(g) (suspending miscellaneous itemized deductions through 2025).

144. See INTERNAL REVENUE SERV., *supra* note 141 (discussing business deductions for mixed-use farm property).

145. See MOCK, *supra* note 68, at 49.

146. See Alyssa Schukar, ‘Once We’re Gone, We’re Not Coming Back,’ N.Y. TIMES (Nov. 23, 2021), <https://www.nytimes.com/2021/11/23/business/taxes-family-farm.html> (on file with the *Iowa Law Review*) (documenting onerous property tax burdens imposed on farmers in Nebraska).

147. MOCK, *supra* note 68, at 49–50 (“[I]n most states, farms qualify for extraordinarily generous property tax reductions. For example, in New Jersey a mere five acres or \$500 in annual sales can relieve a landowner of a good chunk of their property tax burden.”).

148. *Id.*

149. See *supra* Section I.B.1.

corporate or commercial farms (“bad”) versus individually owned family farms (“good”) does not reflect reality.

Part II explores the second layer of the myth of taxing the family farm by examining whether family farms are at risk of being sold or otherwise taxed out of existence by federal tax reform. To that end, this Part focuses on three tax rules, all of which have generated debate about the impact of the tax on family farms. The first Section examines, retrospectively, whether estate tax reforms over the past several decades have harmed or threatened to harm family farms. The next Section considers whether repealing section 1014 of the Code—the so-called “step-up in basis at death”—would harm family farms. Finally, the last Section examines how recent wealth tax proposals, and similar proposals to tax the very rich, would impact family farms.

A common thread emerges from the exploration of these three tax rules: There is no empirical evidence that family farms have been sold or would be sold due to the estate tax, a repeal of the step-up in basis at death, or a wealth tax. This is generally true for several reasons. First, all iterations of these rules build in generous dollar exemptions that exempt all or most family farms. Second, and equally important, recent legislative proposals include specific exemptions for farms. Thus, while Part I of the Article shows the “family farm” is likely not owned by a cash poor individual who cannot afford to be taxed, Part II shows that, regardless, the family farm is at virtually no risk of being taxed by any proposed tax reform.

#### A. THE ESTATE TAX

Part I discussed how the myth of the family farm entered tax policy discourse in connection with a concerted effort to repeal the estate tax in the late 1990s.<sup>150</sup> This effort culminated in temporary legislation in 2001 that slowly phased out the estate tax over ten years until it was fully repealed in 2010.<sup>151</sup> The repeal turned out to be short-lived, however, because Congress let the temporary legislation expire at the end of 2010, reverting back to pre-2001 law with the estate tax still in place.<sup>152</sup> The estate tax has remained in effect since that time with an exemption of about \$5 million per person (doubled for a married couple) from 2011 until 2017.<sup>153</sup> In 2018, in connection with a broader tax reform bill, Congress significantly increased the estate tax exemption to over \$11 million per individual (\$22 million per married couple).<sup>154</sup>

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150. See *supra* notes 40–45 and accompanying text.

151. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, §§ 501, 511, 901, 115 Stat. 38, 69–70, 150.

152. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 301(a), 124 Stat. 3296, 3300 (codified as amended at 26 U.S.C. §§ 121, 684, 1014, 1022, 1040, 1221, 1246, 1291, 1296, 2210, 2664, 6018, 6019, 6075, 6716, 7701).

153. See *Estate Tax*, *supra* note 25 (showing exemption levels from 2011 through 2023). The exemption is increased annually for inflation. *Estate and Gift Tax FAQs*, IRS (Sept. 13, 2024), <https://www.irs.gov/newsroom/estate-and-gift-tax-faqs> [<https://perma.cc/8RSE-6SP7>].

154. *Estate Tax*, *supra* note 25.

The family farm was a driving force behind support for the (temporary) repeal of the estate tax in 2001 and continues to surface in debates over the tax.<sup>155</sup> But are family farms at risk of being sold or otherwise threatened by the estate tax in its past or current form? Scholars and journalists have sought to answer this question, and all research points to the estate tax having a minimal impact on farms.

In 2001, the year of the legislative repeal, neither journalists, nor economists, nor even interest groups, had located a single example of a family farm that had been sold due to the estate tax. As David Cay Johnston reported that year:

Neil Harl, an Iowa State University economist whose tax advice has made him a household name among Midwest farmers, said he had searched far and wide but had never found a case in which a farm was lost because of estate taxes. "It's a myth," Mr. Harl said.

Even one of the leading advocates for repeal of estate taxes, the American Farm Bureau Federation, said it could not cite a single example of a farm lost because of estate taxes.<sup>156</sup>

Not only were family farms not being sold due to the estate tax, but Johnston found few farms were even paying the estate tax at all because most farm assets fell below the estate tax exemption.<sup>157</sup>

In response to continued debate, as well as a request from the Senate Finance Committee, the Congressional Budget Office ("CBO") in 2005 prepared a report on the impact of the estate tax on family farms.<sup>158</sup> At the time, the estate tax exemption was \$1.5 million, meaning that only estates exceeding that threshold were required to file returns.<sup>159</sup> (Recall that today, the exemption is significantly higher, exceeding \$11 million.<sup>160</sup>) That report found that, overall, fewer than two percent of estates were subject to estate taxes, with most estates falling below the exemption threshold.<sup>161</sup> Of the very small number of estates subject to tax, only a fraction (fewer than six percent)

155. See, e.g., David Cay Johnston, *Talk of Lost Farms Reflects Muddle of Estate Tax Debate*, N.Y. TIMES (Apr. 8, 2001), <https://www.nytimes.com/2001/04/08/us/talk-of-lost-farms-reflects-muddle-of-estate-tax-debate.html> (on file with the *Iowa Law Review*) ("To keep farms in the family, we are going to get rid of the death tax," President Bush vowed [in 2001]; he and many others have made the point repeatedly.").

156. *Id.*

157. *Id.* ("Yet tax return data show that very few farmers pay estate taxes. Only 6,216 taxable estates in 1999 included any agricultural land and equipment, the I.R.S. report shows. The average value of these farm assets was \$440,000, only about a third of the amount that any married couple could leave untaxed to heirs.").

158. See generally CONG. BUDGET OFF., U.S. CONG., EFFECTS OF THE FEDERAL ESTATE TAX ON FARMS AND SMALL BUSINESSES (2005), <https://www.cbo.gov/sites/default/files/109th-congress-2005-2006/reports/07-06-estatetax.pdf> [<https://perma.cc/W8ET-RPLK>] (investigating the effects of the estate tax on family farms).

159. *Id.* at vii.

160. See *supra* text accompanying note 154.

161. CONG. BUDGET OFF., *supra* note 158, at vii.

were farms.<sup>162</sup> What's more, the report found that "[t]he vast majority of estates, including those of farmers and small-business owners, had enough liquid assets to pay the estate taxes they owed."<sup>163</sup> In sum, the 2005 CBO Report found that, although a very small number of farms paid estate taxes in the early 2000s, those farms generally had liquidity to fund the tax. Most farms were not subject to estate tax at all.

In 2015, David Cay Johnston tried again to locate family farms that had been sold due to the estate tax in connection with a (failed) proposal in Congress to repeal the tax that year.<sup>164</sup> He once again concluded that none of the over two million farms in the United States had been sold due to the estate tax and noted that supporters of estate tax repeal were not able to cite any examples of farms lost to the estate tax in the House Ways and Means Committee hearings.<sup>165</sup>

Notwithstanding attempts by commentators to debunk the myth that family farms were being sold due to the estate tax, interest groups and politicians have continued to repeat it. By 2017, the estate tax exemption was over \$5 million per person (double for a married couple), meaning even fewer farms were subject to the tax as compared to when the CBO wrote its report in 2005.<sup>166</sup> Yet, in a speech in support of proposed tax reform, President Trump stated:

To protect . . . the American farmer, we are finally ending the crushing, the horrible, the unfair estate tax, or as it is often referred to, the death tax.

. . . .

The farmers, in particular, are affected. They have wonderful farms, but they can't pay the tax, so they have to sell the farm.<sup>167</sup>

Shortly after the speech, the fact-checking website FactCheck.org published a story debunking the claim, citing recent data showing that only a handful of farms—less than half of one percent of farm estates—owed any estate tax at all.<sup>168</sup>

162. *Id.* at 11. The data grouped "farming, forestry, and fishing" together, so the number attributable to farmers is likely lower than six percent. *Id.* at 10–11.

163. *Id.* at viii. The report indicated that a small percentage of farmers who owe estate tax (eight percent) did not have liquid assets sufficient to cover the tax, although it does not discuss how such taxes were funded. *Id.* But, again, to put context on the size of this issue: Only two percent of people pay the estate tax at all. *Id.* Of that two percent, only a small percent (less than six percent) are farmers, and of this group, another small percent (eight percent) did not have enough liquidity to fund the tax. *Id.* All in, the CBO Report estimated this was about 138 estates in 2000. *Id.*

164. David Cay Johnston, *No, the Estate Tax Isn't Destroying Family Farms*, ALJAZEERA AM. (Mar. 27, 2015, 2:00 AM), <http://america.aljazeera.com/opinions/2015/3/the-estate-tax-isnt-destroying-family-farms.html> [<https://perma.cc/8JXB-WJ6S>].

165. *Id.*

166. Robert Farley, *'Death Tax' Talking Point Won't Die*, FACTCHECK.ORG (Dec. 6, 2017), <https://www.factcheck.org/2017/09/death-tax-talking-point-wont-die> [<https://perma.cc/54GVNGVP>].

167. *Id.*

168. *Id.*

More recently, the USDA issued a report on the estate tax liability of farms for the 2020 tax year.<sup>169</sup> That report found that, due to the high exemption (currently over \$11 million per person and \$22 million for married couples), along with the favorable valuation rules for farm property,<sup>170</sup> only fifty farms (0.16 percent of all farm estates) owed any estate tax in 2020.<sup>171</sup>

Yet, the narrative of the estate tax wiping out family farms remains persistent. As recently as January 2024, Governor Ron DeSantis of Florida told a town hall audience in Iowa, “We need to eliminate the death tax on . . . family farms so that they can pass it down without getting taxed.”<sup>172</sup>

In sum, over two decades of research has shown that the estate tax has a very limited impact on farms. Due to an exceptionally high exemption amount, along with a rule that allows farms to be valued at lower than fair market value for estate tax purposes, very few farm estates are taxed at all. Importantly, the handful of farms that are subject to estate taxes are the most valuable—that is, those with assets in excess of the roughly \$22 million per family exemption. It is unlikely that farms of that size do not have enough liquidity to pay the tax. It is also worth repeating that none of the research over the past several decades has produced an example of a farm that was actually sold to pay the estate tax. In short, the narrative that the estate tax threatens family farms because farmers are forced to sell their farms to pay it is just that—a narrative.

#### B. STEPPED-UP BASIS AT DEATH

A tax provision that has received even more attention in recent tax policy debates is Code section 1014, or the step-up in basis at death. Recall that rule allows heirs to take a basis in inherited property equal to its fair market value on the date of death, effectively wiping away any unrealized gain in the property and exempting it from income tax.<sup>173</sup> For example, a farm purchased for \$100,000 worth \$5 million on the date of the owner’s death would pass to the heir with a \$5 million basis, and the \$4.9 million in unrealized gain would never be subject to income tax. Commentators have called for the repeal of this rule for years, arguing it unfairly advantages wealthy property owners and encourages taxpayers to hold assets until death even if it would make more economic sense to sell them.<sup>174</sup>

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169. See generally Tia M. McDonald & Ron Durst, *Less than 1 Percent of Farm Estates Owed Federal Estate Taxes in 2020*, ECON. RSCH. SERV. (Apr. 2, 2021), <https://www.ers.usda.gov/amber-waves/2021/april/less-than-1-percent-of-farm-estates-owed-federal-estate-taxes-in-2020> [https://perma.cc/2PVX-5T46].

170. See *supra* notes 31–37 and accompanying text.

171. See McDonald & Durst, *supra* note 169.

172. CNN Staff, *Fact Checking Ron DeSantis’ and Nikki Haley’s CNN Town Halls in Iowa*, CNN (Jan. 5, 2024, 9:02 AM), <https://www.cnn.com/2024/01/04/politics/fact-check-desantis-haley-cnn-town-halls-iowa/index.html> [https://perma.cc/EM8W-RSZA] (quoting Florida Governor Ron DeSantis).

173. See *supra* notes 126–28 and accompanying text.

174. See, e.g., Schmalbeck et al., *supra* note 131, at 112.

More recently, the Biden Administration included a proposal to repeal section 1014 in its American Families Plan.<sup>175</sup> Rather than wiping away the tax on an appreciated asset at death, the Biden proposal would have treated death as a “realization event,” meaning the gain would have been subject to income tax on the date of death as if the asset had been sold.<sup>176</sup> For example, the \$4.9 million of gain in the preceding paragraph would have been subjected to income tax on the taxpayer’s final income tax return. Biden’s proposal would have exempted from tax the first \$1 million of gain for each taxpayer (\$2 million per married couple).<sup>177</sup>

Opponents of repealing section 1014 were quick to point to the risks to family farms. In an open letter to the House Speaker, the House Majority Leader, and the Chair of the House Ways and Means Committee, thirteen members of Congress lamented:

The repeal of stepped-up basis for capital gains and immediate taxation could especially hurt family farms, some of which have been in families for generations . . . .

. . . .

The requirement to recognize capital gains at death runs the risk of forcing farms and ranches to sell part, or all, of a farm that may have been passed down for several generations in order to pay the tax burden. While the ability to simply sell a small part of an asset may work for those with shares of stocks, it would force farmers to break up land that may have been in their family for decades and seriously impact their ability to remain economically viable.<sup>178</sup>

Several months later, in August 2021, Senator John Thune published an op-ed titled *Biden, Dems’ Reckless Tax-and-Spending Spree Would Decimate Family Farms and Businesses*.<sup>179</sup> Noting that Biden’s proposal to repeal section 1014 “has the potential to force families to sell off part of the farm or lose the farm

175. Press Release, White House, Fact Sheet: The American Families Plan (Apr. 28, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan> [<https://perma.cc/67SN-8K4C>] (“The President’s plan will close this loophole, ending the practice of ‘stepping-up’ the basis for gains in excess of \$1 million (\$2.5 million per couple when combined with existing real estate exemptions) and making sure the gains are taxed if the property is not donated to charity.”).

176. See DEP’T OF THE TREASURY, GENERAL EXPLANATIONS OF THE ADMINISTRATION’S FISCAL YEAR 2022 REVENUE PROPOSALS 62 (2021), <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf> [<https://perma.cc/7SXU-26VS>].

177. *Id.* at 63.

178. Letter from Cindy Axne et al., Members, U.S. Cong., to Nancy Pelosi, Speaker, U.S. House of Reps., Steny Hoyer, Majority Leader, U.S. House of Reps., and Richard Neal, Chair, Comm. on Ways & Means (May 6, 2021), [https://hws-media-libraries.s3.us-east-2.amazonaws.com/spanberger.house.indigov.us/uploads/legacy/UploadedFiles/5.6.21\\_Stepped\\_Up\\_Basis\\_Final.pdf](https://hws-media-libraries.s3.us-east-2.amazonaws.com/spanberger.house.indigov.us/uploads/legacy/UploadedFiles/5.6.21_Stepped_Up_Basis_Final.pdf) [<https://perma.cc/GYH9-Q9SR>].

179. John Thune, *Sen. John Thune: Biden, Dems’ Reckless Tax-and-Spending Spree Would Decimate Family Farms and Businesses*, FOX NEWS (Aug. 8, 2021, 8:33 AM), <https://www.foxnews.com/opinion/biden-democrats-tax-spending-family-farms-businesses-sen-john-thune> [<https://perma.cc/4AB7-74JM>].

entirely,” Thune warned that the repeal could “devastate rural communities” and “jeopardize the future of agriculture in America.”<sup>180</sup> Similarly, Senator John Boozman argued on the Senate floor that a section 1014 repeal would “crush rural America.”<sup>181</sup>

Having seen the family farm debate play out already with the estate tax, proponents of repealing section 1014 were ready to address this critique. The American Families Plan built in a family farm exception to the repeal of section 1014, which was highlighted in the proposal’s description.<sup>182</sup> For example, the White House’s fact sheet on the proposal stated, “The reform will be designed with protections so that family-owned businesses and farms will not have to pay taxes when given to heirs who continue to run the business.”<sup>183</sup> Specifically, the proposal would have allowed “family-owned and -operated businesses,” including farms, to avoid tax on appreciated property at death, as long as the farm (or other business) continued “to be family-owned and operated.”<sup>184</sup> In other words, anticipating that critics would argue a proposal to repeal section 1014 would break up farms that were intended to remain in the family, the American Families Plan proposed that family farms would not be subject to the rule.

It should be noted that non-farm assets held by farmers, such as stock portfolios, could still have been subjected to tax under the proposal even if the farm remained in the family.<sup>185</sup> However, non-farm gains would still have needed to exceed the \$1 million/\$2 million per family exemption to be taxed.<sup>186</sup> Thus, for example, if a married couple with \$3 million of gain on their farmland and \$500,000 of gain on a stock portfolio passes their property on to their children (who continue to operate the farm), there would have been no tax because all of the farm gain would have been exempt and the stock portfolio gain falls below the \$2 million family exemption.<sup>187</sup> Further, in the event a decedent holds taxable property over the exemption level that

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180. *Id.*

181. NICK BUFFIE & BOB LORD, CTR. FOR AM. PROGRESS, THE AMERICAN FAMILIES PLAN TAXES BILLIONAIRES AND PROTECTS FAMILY FARMS AND BUSINESSES 5 (2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/08/The-AFP-Taxes-Billionaires-and-Protects-Family-Farms-and-Businesses.pdf> [<https://perma.cc/HM5K-U2UK>].

182. Press Release, White House, *supra* note 175.

183. *Id.*

184. See DEP’T OF THE TREASURY, *supra* note 176, at 63.

185. See Press Release, U.S. Dep’t of Agric., The American Families Plan Honors America’s Family Farms (Apr. 28, 2021), <https://www.usda.gov/media/press-releases/2021/04/28/american-families-plan-honors-americas-family-farms> [<https://perma.cc/TR39-QQK5>]. However, such income tax could have been paid over fifteen years. DEP’T OF THE TREASURY, *supra* note 176, at 63. Further, the first \$250,000 (\$500,000 per couple) of gain on a taxpayer’s residence would have been exempt from tax. *Id.*

186. See Press Release, U.S. Dep’t of Agric., *supra* note 185.

187. *Id.*

is illiquid (e.g., not publicly traded stock), the proposal allowed for any tax to be paid over fifteen years, rather than all in the year of death.<sup>188</sup>

The idea of the family farm being hurt by tax reform is so salient that the USDA put out its own fact sheet in connection with the rollout of the American Families Plan, titled, *The American Families Plan Honors America's Family Farms*.<sup>189</sup> In describing the proposal to repeal the section 1014 step-up in basis at death, the fact sheet emphasized:

But this won't affect family farms that stay in the family.

Under this proposal, estimates indicate more than [ninety-eight percent] of farm estates will not owe any tax at transfer, provided the farm stays in the family. The tax the remaining less than [two percent] would owe, would be on their non-farm assets.<sup>190</sup>

Several months later, the USDA Economic Research Service issued a more detailed, sixteen-page report titled, *The Effect on Family Farms of Changing Capital Gains Taxation at Death*.<sup>191</sup> That report studied the impact of repealing section 1014 on family farms, taking into account the proposal's exemption for family farms that continue to be owned and operated by the family.<sup>192</sup> By analyzing farm estates from 2019, the USDA found the following: The majority of farms (over eighty percent) "would owe no tax at death and receive stepped-up basis on all assets," because they would fall under the \$1 million (\$2 million per family) exemption;<sup>193</sup> roughly eighteen percent of farms would not owe tax at death as long as the farm continued to be operated by the family, even though they would have farm assets over the exemption amount;<sup>194</sup> and only one percent of farm estates would owe any capital gains at death, triggered by having non-farm assets in excess of the \$1 million/\$2 million exemption amount.<sup>195</sup> In other words, the USDA report found that only farmers with significant *non-farm assets*, such as investment assets like stocks, would owe any tax at death.<sup>196</sup>

188. See DEP'T OF THE TREASURY, *supra* note 176, at 63.

189. Press Release, U.S. Dep't of Agric., *supra* note 185.

190. *Id.* (emphasis omitted).

191. See generally TIA M. McDONALD, RON DURST & CHRISTINE WHITT, U.S. DEP'T OF AGRIC., *THE EFFECT ON FAMILY FARMS OF CHANGING CAPITAL GAINS TAXATION AT DEATH* (2021), [https://ers.usda.gov/sites/default/files/\\_laserfiche/publications/102144/EB-31.pdf?v=41223](https://ers.usda.gov/sites/default/files/_laserfiche/publications/102144/EB-31.pdf?v=41223) [<https://perma.cc/6B4S-VEKR>].

192. *Id.* at 1.

193. *Id.* at 6 ("[T]his group of heirs would not owe any tax at death because capital gains fall below the exemption relevant to the decedent's marital status and would receive stepped-up basis on all inherited assets.").

194. *Id.* For farm assets that are not taxed under the proposed rule because the farm is kept in the family, the heirs would take a carryover basis in the farm assets. *Id.*

195. *Id.* at 13. These heirs would take a carryover basis in farm assets. *Id.* at 6.

196. *Id.* at 13 ("Nonfarm assets included the family dwelling unless it was owned by the farm business, as well as stocks, bonds, retirement accounts, nonfarm real estate, and other nonfarm financial assets.").

In the months after the Biden Administration released the American Families Plan proposal to repeal section 1014, interest groups continued to debate its impact on family farms. Members of the Senate Committee on Agriculture, Nutrition, and Forestry requested a study from the Agricultural and Food Policy Center at Texas A&M University, which showed that lowering the estate tax exemption and repealing section 1014 would increase taxes on farms by over \$700,000 on average.<sup>197</sup> Although the study did not consider the family farm exception built into the American Families Plan, vocal critics like Senators Thune and Boozman cited the \$700,000 tax burden statistic nonetheless.<sup>198</sup> The Center for American Progress chronicled much of this debate in an August 2021 report entitled, *The American Families Plan Taxes Billionaires and Protects Family Farms and Businesses*.<sup>199</sup> That report described claims that section 1014 repeal would harm family farms as “unfounded,” citing to the high exemption level and special exemption for farms that remain family owned.<sup>200</sup>

Several observations about the recent debate over section 1014 repeal are in order. First, it is noteworthy that the American Families Plan proposal went out of its way to address the issue of family farms by including a special rule for farms that remain in the family (subjecting those heirs to a carryover basis for farm assets instead of tax). In this respect, the proposal differs from prior proposals to repeal section 1014<sup>201</sup> and likely reflects awareness by policy experts and lawmakers that any change to the step-up-in-basis rule will not be politically viable without a carve-out for farms.

This leads to a second observation that, notwithstanding the proposal’s special family farm rule, opponents of repealing section 1014 still seized on the detriment to family farms as a centerpiece of their criticism.<sup>202</sup> It seems unlikely that these lawmakers (and other critics), including Senators Thune and Boozman, were simply unaware of the farm exception built into the American Families Plan. Rather, savvy politicians likely know that the family farm narrative is salient and serves their base.

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197. BUFFIE & LORD, *supra* note 181, at 5.

198. *See id.* at 5–6. The study also included estate tax changes (such as lowering the exemption and raising the rate) in arriving at the average tax estimate; such changes were not part of the American Families Plan (though they had been floated in other proposals). *Id.*

199. *See generally id.*

200. *Id.* at 1. In addition to noting that the study fails to account for specific exemptions in the Biden plan, it also discussed what it described as “multiple methodological flaws” in the data, such as examining a group of unrepresentative and wealthier-than-average farms. *Id.* at 6.

201. For example, a discussion draft of the Sensible Taxation and Equity Promotion (STEP) Act of 2021, authored by a group of Senators, also included a \$2 million exemption for families. *See* CHRIS VAN HOLLEN, CORY BOOKER, BERNIE SANDERS, SHELDON WHITEHOUSE & ELIZABETH WARREN, SENSIBLE TAXATION AND EQUITY PROMOTION (STEP) ACT 1 (2021), <https://www.vanholLEN.senate.gov/imo/media/doc/One%20pager%20-%20STEP%20Act.pdf> [<https://perma.cc/Z962-68N4>]. Although it did not exempt family farms from tax, it allowed tax due on farms (and illiquid farm assets) to be paid over fifteen years. *Id.*

202. *See* BUFFIE & LORD, *supra* note 181, at 5–6.

In sum, although repealing section 1014 could theoretically impact family farms that hold highly appreciated farmland (and other farm assets), there appears to be no risk of such a result based on recent proposals. Virtually all lawmakers agree that a section 1014 repeal should be accompanied by an exemption amount—if for no other reason than for administrative ease. Indeed, a 2021 draft Senate bill to repeal section 1014 contained the same \$2 million family exemption as the American Families Plan.<sup>203</sup> As a result, only farms with significant assets—over \$2 million under the most recent proposals—would risk any tax liability by virtue of a stepped-up basis repeal. Farms of this size likely have other assets to fund any income tax liability, and there is no evidence such tax would force farms to be sold.

Further, given the precedent set by the American Families Plan, it seems highly unlikely any future attempt to amend or fully repeal section 1014 would come without an exception for farms that stay in the family. The American Families Plan proposal shows that the family farm myth has not lost any force since the estate tax saga of the 1990s and early 2000s, notwithstanding proactive efforts by lawmakers to counter it with specific carveouts for farmers.

### C. A WEALTH TAX AND SIMILAR TAXES

Finally, in light of rising wealth and income inequality in the United States, a number of scholars and policymakers have recently called for the implementation of a wealth tax.<sup>204</sup> Proponents argue that, under the current system, the richest Americans are able to avoid taxes because most of their wealth is made up of unrealized gains (for example, stock holdings) that are not subject to income tax.<sup>205</sup>

A wealth tax would function like an estate tax in that it would subject the fair market value of one's assets to tax, albeit annually instead of at death.<sup>206</sup> Like the estate tax, most wealth tax proposals call for a significant exemption amount, with taxpayers holding assets under that amount not subject to the

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203. See VAN HOLLEN ET AL., *supra* note 201, at 1.

204. See Emmanuel Saez & Gabriel Zucman, *Progressive Wealth Taxation*, BROOKINGS PAPERS ON ECON. ACTIVITY, Fall 2019, at 437, 440–41; *Ultra-Millionaire Tax*, WARREN FOR SENATE, <https://elizabethwarren.com/plans/ultra-millionaire-tax> [<https://perma.cc/3PRQ-PFET>]; Edward J. McCaffery, *Taxing Wealth Seriously*, 70 TAX L. REV. 305, 306 (2017); David Gamage, *Five Key Research Findings on Wealth Taxation for the Super Rich 14–16* (July 27, 2019) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3427827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3427827) (on file with the *Iowa Law Review*).

205. See, e.g., Jesse Eisinger, Jeff Ernsthause & Paul Kiel, *The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax*, PROPUBLICA (June 8, 2012, 5:00 AM), <https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax> [<https://perma.cc/B7NT-SXUQ>] (“ProPublica has obtained a vast cache of IRS information showing how billionaires like Jeff Bezos, Elon Musk and Warren Buffett pay little in income tax compared to their massive wealth — sometimes, even nothing.”).

206. See Saez & Zucman, *supra* note 204, at 441 (“A progressive wealth tax is an annual tax levied on the net wealth that a family (or an individual) owns above an exemption threshold. Net wealth includes all assets (financial and nonfinancial) net of all debts.”).

tax.<sup>207</sup> For example, Senator Elizabeth Warren has called for a wealth tax of two percent to be levied on the net value of assets above \$50 million, with an additional four percent to be levied on assets above \$1 billion.<sup>208</sup> Senator Bernie Sanders has proposed a wealth tax starting at one percent for wealth over \$32 million, with progressive rates increasing to eight percent of wealth over \$10 billion.<sup>209</sup>

Recognizing that there are political and possibly legal hurdles to implementing a wealth tax in the United States,<sup>210</sup> other scholars and policymakers have offered alternative taxes aimed at wealth, such as a mark-to-market tax on unrealized gains, or offering the government a notional equity interest in wealthy taxpayers' businesses.<sup>211</sup> For example, a recent House bill called for a "Billionaire Minimum Income Tax," which would tax unrealized gains from liquid assets (such as stocks or other marketable securities) at twenty percent, so long as the taxpayer has a net worth in excess of \$100 million.<sup>212</sup>

Neither the wealth tax nor its alternatives, such as the Billionaire Minimum Income Tax, have gained any serious political traction yet.<sup>213</sup> At the same time, inequality is only worsening and taxing the wealthy is likely to remain center

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207. *Id.*

208. *See Ultra-Millionaire Tax, supra* note 204.

209. *Tax on Extreme Wealth*, BERNIE, <https://berniesanders.com/issues/tax-extreme-wealth> [https://perma.cc/55LM-3D6C].

210. *See, e.g.*, ARI GLOGOWER, DAVID GAMAGE & KITTY RICHARDS, ROOSEVELT INST., WHY A FEDERAL WEALTH TAX IS CONSTITUTIONAL 1 (2021), [https://rooseveltinstitute.org/wp-content/uploads/2021/02/RI\\_Wealth-Tax-Constitutionality-Brief-202102-2.pdf](https://rooseveltinstitute.org/wp-content/uploads/2021/02/RI_Wealth-Tax-Constitutionality-Brief-202102-2.pdf) [https://perma.cc/F6VB-X7E6] ("Critics have argued, however, that a wealth tax would be unconstitutional because of the Constitution's apportionment rule, which requires certain taxes to be apportioned among the states according to their populations.").

211. *See, e.g.*, Brian Galle, David Gamage & Darien Shanske, *Solving the Valuation Challenge: The Ultra Method for Taxing Extreme Wealth*, 72 DUKE L.J. 1257, 1265 (2023) (proposing that "the government effectively charge[] the taxpayer an interest rate equal to the taxpayer's own internal rate of return on that asset"). For a discussion of various mark-to-market proposals, see *id.* at 1317–22.

212. Billionaire Minimum Income Tax Act, H.R. 8558, 117th Cong. § 2 (2022).

213. *See, e.g.*, Lawrence Zelenak, *1924, 2021: Taxes of the Ultrarich, and Mark-to-Market Reforms*, 172 TAX NOTES FED. 583, 583 (2021) ("There is no possibility that the ProPublica revelations will lead Congress to enact mark-to-market taxation of billionaires anytime soon."). Further, the U.S. Supreme Court could hold a wealth tax or an income tax on unrealized gains is unconstitutional. Although the Court recently upheld a tax on unrealized earnings from a foreign corporation, the Court members were divided on the issue of whether realization is constitutionally required. *See Moore v. United States*, 144 S. Ct. 1680, 1688 (2024) ("Critically, however, the MRT *does* tax realized income—namely, income realized by the corporation, KisanKraft."). Although a majority of the Court found that the income at issue had been realized by the foreign corporation (allowing the Court to sidestep the constitutional question), four Justices indicated they believe the Constitution requires realization. *Id.* at 1700–02 (Barrett, J., concurring); *id.* at 1709–10 (Thomas, J., dissenting).

stage in the tax policy discourse.<sup>214</sup> As expected, such debate on wealth tax policy breathes new life into the myth of the family farm.

Scholars have recognized that critics of wealth taxes are likely to rely on family farms as an important symbol of opposition.<sup>215</sup> Reactions to recent proposals to tax the wealthy bear this out. For example, an op-ed written in response to the Billionaire Minimum Income Tax proposal lamented:

[T]he tax doesn't just levy a [twenty] percent tax on income but applies to unrealized gains on every asset belonging to the household as well—be it a business, farm, a patent, retirement, or other investment. That is why nationally, farmers and ranchers are opposing this tax, and why I want rural Nevadans to know about this proposal.<sup>216</sup>

(Note: The author incorrectly characterized the scope of the proposed tax, which applied only to liquid securities—not real estate or other farm assets.)

Like the estate tax in its current form, along with recent proposals to repeal the step-up in basis, there is virtually no risk that a wealth tax, or similar tax on unrealized gain, would have any measurable impact on family farms. The wealth tax proposals floated by Senators Warren and Sanders apply at such high thresholds (in the tens of millions of dollars of net worth) that the vast majority of farms would not meet the threshold. And given the direction that proposals to repeal section 1014 have taken (which are decidedly more modest than a wealth tax), it is almost unimaginable that any politically viable wealth tax would not contain an explicit carveout for either all real estate or for farms.<sup>217</sup> Further, recent proposals to tax unrealized gains, such as the Billionaire

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214. See, e.g., Zelenak, *supra* note 213, at 584 (“Nevertheless, it seems likely that the ProPublica disclosures will move mark-to-market taxation (for the very wealthy, and perhaps only of their publicly traded stock) from academic pipe dream to serious legislative proposal in the next few years.”); see also Patrick Henry, *Economic Inequality Has Deepened During the Pandemic. That Doesn't Mean It Can't Be Fixed*, WORLD ECON. F. (Apr. 7, 2022), <https://www.weforum.org/agenda/2022/04/economic-inequality-wealth-gap-pandemic> [<https://perma.cc/CWB2-ENAS>] (“The pandemic wiped out years of progress in reducing poverty and caused economic inequality to spike.”).

215. See, e.g., Saez & Zucman, *supra* note 204, at 447 (“The United States does not have a progressive wealth tax but has a long experience with real estate property taxes. The property tax also generates strong opposition when rapid tax appreciation leads to increasing property tax bills hitting people on fixed incomes (such as retirees or widows) hard. A classic complaint against the U.S. estate tax is that it can force the sale of family businesses or farms that have high market value but little in liquid assets.” (footnote omitted)).

216. Rich Robledo, *The “Billionaires’ Tax” Will Hurt Rural Ranchers and Farmers*, FALLON POST (Apr. 10, 2023, 11:16 PM), <https://www.thefallonpost.org/article/4185,the-billionaires-tax-will-hurt-rural-ranchers-and-farmers> [<https://perma.cc/C723-JPXR>]; see also Julio Gonzalez, *Biden’s Billionaire Tax: Slaying the Golden Goose*, BLOOMBERG TAX (May 6, 2022, 3:45 AM), <https://news.bloomberglaw.com/tax-insights-and-commentary/bidens-billionaire-tax-slaying-the-golden-oose> (on file with the *Iowa Law Review*) (“More important, the billionaire tax potentially would have a devastating effect on family businesses and farms. Why work hard to build something to leave your children if the government is only going to confiscate it? These are the same issues we face with the estate tax.”).

217. Many European wealth taxes have carveouts for farms. See Alan D. Viard, *Wealth Taxation: An Overview of the Issues*, in MAINTAINING THE STRENGTH OF AMERICAN CAPITALISM 180, 189 (Melissa

Minimum Income Tax, have avoided the farm issue altogether by applying only to liquid assets like securities.<sup>218</sup>

### III. MEANING BEHIND THE MYTH

Parts I and II uncovered the first several layers of the myth of the family farm. Part I first revealed that the term “family farm” does not describe a particularly small or special type of farm; rather, the vast majority of farms in the United States are owned and operated by family members. What’s more, leaving aside small “hobby” farms (those that are not the primary source of income for a household), farmers in the United States generally have more income and more wealth than the average American.<sup>219</sup> Thus, at least from a socioeconomic perspective, the family farm does not appear to represent a demographic that needs special consideration from the tax system.<sup>220</sup> Part II further showed that farms are at no risk of being sold or otherwise burdened by past and recent tax reform proposals, including changes to the estate tax, the step-up in basis at death, or taxes on wealth. Instead, family farms are consistently carved out of such proposals such that any new tax would not apply to farm property. Alternatively, proposals like Senator Warren’s wealth tax that do not contain farm-specific carveouts have exemption levels so high that the tax would rarely, if ever, apply to farmers.<sup>221</sup>

This Part now turns to a more central question and, in doing so, seeks to uncover the deepest layer of the family farm myth. If family farms are not in crisis and not at risk of being wiped out by progressive tax reform, what are we so worried about? Why is the family farm such a powerful image, one that has so effectively swayed tax policy debate? This Part offers a novel theory in response to these questions.

First, this Part argues that concern over the family farm reflects a deeper discomfort with taxing unrealized gains. This deeper issue is one that policymakers will have to reckon with if they wish to enact tax reforms that redistribute wealth without raising income taxes. Part III then situates the “family farm” in broader social science literature that suggests personal narratives and identifiable and iconic victims are the most politically persuasive

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S. Kearney & Amy Ganz eds., 2019). Elizabeth Warren’s website claims that its wealth tax would only effect 75,000 households in the entire United States. *Ultra-Millionaire Tax*, *supra* note 204.

218. See Billionaire Minimum Income Tax Act, H.R. 8558, 117th Cong. § 2 (2022).

219. See *supra* Section I.B.

220. In addition to lacking an apparent economic justification, there are racial equity implications to affording farmers preferential treatment under the tax law. Farmers are overwhelmingly white (approximately ninety-five percent). See NAT’L AGRIC. STAT. SERV., U.S. DEP’T OF AGRIC., 2017 CENSUS OF AGRICULTURE HIGHLIGHTS: FARM PRODUCERS 2 (2019), [https://www.nass.usda.gov/Publications/Highlights/2019/2017Census\\_Farm\\_Producers.pdf](https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf) [<https://perma.cc/U7D7-HS SU>]. For a discussion of the racialized aspects of government assistance programs, including a comparison of farm subsidies with welfare subsidies, see Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 815 (2007) (“Government subsidies to farm owners are ‘an almost perfectly race-matched system of affirmative action for whites.’”).

221. See, e.g., *Ultra-Millionaire Tax*, *supra* note 204.

tools when it comes to public opinion. Finally, this Part offers lessons for policymakers interested in tax reform.

A. *WHAT ARE WE SO WORRIED ABOUT?*

As we have seen, the image of the family farm being sold (or otherwise burdened) has proven to be a powerful obstacle to tax reforms that would reduce wealth inequality—such as a more robust estate tax or a tax on wealth. The myth emerged during debates over the estate tax in the late 1900s, but it has resurfaced and continues to garner attention today amid debates over newer tax proposals.<sup>222</sup> What, if anything, can we learn from this?

1. Taxing the “Family Farm” Represents Taxing Unrealized Gains

It is first worth pausing to consider what types of tax proposals evoke the family farm narrative. The specter of forcing the sale of the family farm does not arise in all tax policy debates. Rather, it has surfaced (and resurfaced) in response to particular tax reform proposals: the estate tax, repealing the step-up in basis at death, and imposing an annual tax on wealth (or a similar mark-to-market tax). These taxes all have one important feature in common that sets them apart from other federal taxes: They all seek to tax “paper gains”—that is, gains that have not been realized for tax purposes.<sup>223</sup>

As discussed in Part II, the income tax requires a realization event to trigger taxation.<sup>224</sup> This is why holding appreciated assets (like stocks or real estate) does not trigger tax liability under current law if the taxpayer simply holds on to the asset while its value grows. This appreciation is referred to as “unrealized gain.” The taxpayer who buys land for \$100,000 that is now worth \$500,000 has \$400,000 of unrealized gain and no income tax liability connected to that land.<sup>225</sup> Instead, income tax is triggered when there is realization—often, though not exclusively, a sale.<sup>226</sup> Thus, the taxpayer who sells her land for \$500,000 will have \$400,000 of gain (the \$500,000 sales price minus her \$100,000 cost basis) upon which she will owe tax.<sup>227</sup> Because the taxpayer was able to defer tax liability until the sale of the land, she does not owe tax until the time when she has received cash (from the sale) to pay the taxes.

By way of contrast, all the tax reform proposals discussed in Part II, those for which the family farm has been evoked as an important obstacle, involve taxing the value of appreciated property independent of a sale. In other words, these proposals all tax unrealized gains. An estate tax, for example, would apply a tax rate to the fair market value of property held at death, independent of

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222. See *supra* Sections I.A, II.C.

223. See *supra* notes 120–23 and accompanying text.

224. See *supra* notes 120–23 and accompanying text.

225. See 26 U.S.C. § 1001 (a)–(b).

226. *Id.* § 1001 (c).

227. See *id.* § 1001 (a)–(b).

whether the property was sold.<sup>228</sup> In the above example of the land, the estate tax rate would be levied upon the \$500,000 fair market value (leaving aside exemptions for the moment).<sup>229</sup> Thus, because the estate tax potentially levies a tax with no corresponding realization event to generate cash (like a sale), the specter of having to sell property to fund the tax looms large in the minds of the public.<sup>230</sup>

Similarly, repealing the step-up in basis at death and replacing it with a “deemed realization” rule would subject appreciated property to tax at death without an actual sale.<sup>231</sup> A mark-to-market type tax, such as the Billionaire Minimum Income Tax, would also tax unrealized gain in an asset, but on an annual basis.<sup>232</sup> Either proposal would, hypothetically, subject our taxpayer holding land worth \$500,000 to tax on the \$400,000 of gain before the property was sold.<sup>233</sup> Finally, a wealth tax would operate like an estate tax but on an annual basis, levying a fixed percentage of tax on the fair market value of property held by the taxpayer.<sup>234</sup> All of these tax proposals potentially subject taxpayers to tax liability on assets they continue to hold (or that are held by their heirs). This is not a coincidence.

Viewed in this light, the family farm represents a valuable and highly appreciated asset that could potentially be subject to tax before realization. In other words, the farm would be subject to tax on nothing but “paper gain.” Notwithstanding that none of these proposed tax reforms would have any meaningful impact on farmers, the farmer is perhaps the most salient and sympathetic representation of who would be harmed by such a tax, particularly because the farmer is assumed to be cash poor.

The family farmer is thus best understood as an archetype. He is the victim of the worst kind of tax policy: taxing someone who is hardworking yet cash poor on an asset for which they have no means to fund the tax liability. The salience and durability of the family farm narrative appear to reveal unease with this result, particularly if taxing the family farm would mean the farm would have to be sold.

This notion that taxpayers are psychologically uncomfortable with taxing unrealized gains is supported by recent empirical research, which is discussed in the next Section.

## 2. (Most) Taxpayers Do Not Support Taxing Unrealized Gains

At first blush, the power of the family farm narrative in mobilizing opposition to tax reform is puzzling. Multiple polls show high levels of support for tax

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228. See *supra* Section I.A.

229. See *supra* Section I.A.

230. See *supra* Section I.A.

231. See *supra* Section II.B.

232. See *supra* Section II.C.

233. However, the Billionaire Minimum Income Tax was drafted to specifically exclude real estate. See Billionaire Minimum Income Tax Act, H.R. 8558, 117th Cong. § 2 (2022).

234. See *supra* Section II.C.

policies that would help to reduce the wealth gap.<sup>235</sup> And over two-thirds of voters express “support [for] a ‘wealth tax’ on billionaires.”<sup>236</sup> If it’s true that the public strongly supports wealth taxation, then it would appear evoking the family farm should not have much persuasive power in tax reform debates. After all, farmers make up a very small portion of the population and are not the intended target of wealth tax (and similar tax) proposals.

But notwithstanding general support for taxing the wealthy, empirical research suggests that people generally do not support taxing unrealized gain.<sup>237</sup> This appears to be true even for people who don’t hold appreciated assets and, thus, would not be impacted by taxes on unrealized gains.<sup>238</sup>

In a recent study, Professors Zachary Liscow and Edward Fox surveyed roughly 6,500 respondents regarding their views on taxing “paper gains” (that is, unrealized gain) in assets such as stock, as compared to waiting for the asset to be sold to impose tax.<sup>239</sup> Although the study collected responses on multiple types of assets (including real estate), the main focus of the survey was soliciting views on taxing appreciation on publicly traded stock since such stock is easily valued and liquidated.<sup>240</sup> Liscow and Fox found that “respondents strongly prefer to wait to tax gains on publicly-traded stocks until sale versus taxing unsold gains each year: [seventy-five percent] to [twenty-five percent]. Though this opposition is strongest among those who are wealthier or own stocks, all demographic groups oppose taxing unsold gains by large margins.”<sup>241</sup>

In other words, three-quarters of those surveyed said they did not support taxing unrealized gain in stock until the stock is sold. A similar percentage of

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235. For example, a Pew Research poll found that eighty-two percent of voters are bothered that the wealthy “don’t pay their fair share” of taxes. J. Baxter Oliphant, *Top Tax Frustrations for Americans: The Feeling That Some Corporations, Wealthy People Don’t Pay Fair Share*, PEW RSCH. CTR. (Apr. 7, 2023), <https://www.pewresearch.org/short-reads/2023/04/07/top-tax-frustrations-for-americans-the-feeling-that-some-corporations-wealthy-people-dont-pay-fair-share> [https://perma.cc/GD7R-KLBP]. A recent Gallup poll showed that fifty-two percent of respondents support redistribution of wealth through “heavy taxes on the rich.” Frank Newport, *Average American Remains OK with Higher Taxes on Rich*, GALLUP (Aug. 12, 2022), <https://news.gallup.com/opinion/polling-matters/396737/average-american-remains-higher-taxes-rich.aspx> [https://perma.cc/R5TM-XEYC]. Similarly, sixty-four percent of respondents to a Reuters/Ipsos poll “agreed that ‘the very rich should contribute an extra share of their total wealth each year to support public programs.’” Howard Schneider & Chris Kahn, *Majority of Americans Favor Wealth Tax on Very Rich: Reuters/Ipsos Poll*, REUTERS (Jan. 10, 2020, 4:12 AM), <https://www.reuters.com/article/us-usa-election-inequality-poll/majority-of-americans-favor-wealth-tax-on-very-rich-reuters-ipsos-poll-idUSKBN1Z9141> (on file with the *Iowa Law Review*).

236. See Gabriela Schulte, *Poll: Two-Thirds of Voters Say Billionaires Should Pay a Wealth Tax*, HILL (Feb. 26, 2020), <https://thehill.com/hilltv/what-americas-thinking/484771-poll-67-of-voters-believe-billionaires-should-pay-wealth-tax> (on file with the *Iowa Law Review*).

237. Zachary Liscow & Edward Fox, *The Psychology of Taxing Capital Income: Evidence from a Survey Experiment on the Realization Rule*, J. PUB. ECON. 1–2 (Sept. 2022), <https://www.sciencedirect.com/science/article/pii/S0047272722001165> (on file with the *Iowa Law Review*).

238. *Id.* at 8 (“But even among those who do not own stock in any form, only [thirty-two percent] support taxing unsold stock gains.”).

239. *Id.* at 2.

240. *Id.*

241. *Id.*

respondents (seventy-three percent) reported a belief that taxing gain on stock before it was sold is not fair.<sup>242</sup> Although there was modest variation in beliefs based on income, age, education level, and political party, *all* groups expressed significant opposition to taxing unrealized gains.<sup>243</sup> Asking respondents if they would support a tax on unrealized gains if it was limited to rich people (those with wealth above \$10 million) only modestly increased support for taxing unrealized gains (to about thirty-four percent), with a majority of respondents still thinking such a tax would be unfair.<sup>244</sup>

Further, when survey participants were educated about the arguments in favor of and against taxing unrealized gains (through short educational videos), overall support for taxing unrealized gains shifted very little (to only about thirty percent), suggesting views were not simply a reflection of ignorance or unfamiliarity with the idea of taxing unrealized gains.<sup>245</sup>

When asked about taxing harder-to-value and less easily liquidated assets, support for taxing unrealized gains was even lower: Only twenty-one percent of respondents supported taxing unsold commercial real estate, and about seventeen percent supported taxing unrealized gains related to art or homes.<sup>246</sup>

On the other hand, Liscow and Fox found much stronger support for taxing stock when it is sold.<sup>247</sup> And as between a new tax on unrealized gains or raising tax rates on income taxed under current law, participants strongly preferred raising rates.<sup>248</sup> Again, respondents did not support taxes on unrealized gains even when such a tax would not apply to them.<sup>249</sup> The authors observed, “Indeed, nearly half ([forty-six percent]) of those who *do not own taxable stock* supported raising everyone’s rates. Put differently, these people appear to prefer raising their own taxes to a mark-to-market regime on stocks that would not directly affect them.”<sup>250</sup>

In sum, Liscow and Fox concluded that “[m]any opponents of taxing unsold gains seem to just regard it as a bad tax and changing who pays it—rich or not—does not change their mind.”<sup>251</sup> As to why taxpayers have such a

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242. *Id.* at 6 (“This preference is also reflected in a separate question asking respondents what they regard as fair: only [twenty-seven percent] regard such a tax on unsold stock gains as fair versus [seventy-three percent] who do not . . .”).

243. *Id.* at 8 (“However, among all [the] sub-groups, none has greater than [thirty-four percent] support (the support among [eighteen to forty-four]-year-olds) for taxing unsold gains.”).

244. *Id.* at 11 (“Only [forty-one percent] found such a tax on the rich fair (Q71). This is true despite the fact that [seventy-four percent] of our respondents in this treatment think the rich pay too little tax (Q105), and taxing unsold gains in this treatment would explicitly only raise taxes on the rich.”).

245. *Id.* at 10.

246. *Id.* at 6.

247. *Id.* at 8. Interestingly, more than half of respondents also supported taxing stocks transferred at death, which is not a realization event under current law. *Id.*

248. *Id.* at 6.

249. *Id.*

250. *Id.*

251. *Id.* at 11.

strong aversion to taxing unrealized gains, even when such a tax would not apply to them, Liscow and Fox suggested a number of psychological factors may be at play, such as status quo bias (since the current status quo is to not tax unrealized gain) and an intuitive conception of unrealized gains as simply not constituting “income.”<sup>252</sup>

In a similar vein, Professor Edward McCaffery recently observed:

[P]olling tends to show support for the general idea of taxing the rich more, but then to show opposition to particular means of doing so, such as via a “death” or estate tax. Wealth taxes, popular in some polls, end up being repealed in states that have them, including Piketty’s native France.<sup>253</sup>

McCaffery noted that, although eighty-one percent of responders in a Pew Research poll reported a belief that the wealthy don’t pay their fair share of taxes, “only [thirty-two percent] of people support[ed] increasing the estate tax” (and a similar percentage of people supported repealing it).<sup>254</sup>

The public’s general disdain for property taxes offers another compelling case study of taxpayer attitudes toward “paper gains.” Tax scholars have noted that the property tax—although an important source of revenue for local governments—is one of the most (if not the most) unpopular taxes in the United States.<sup>255</sup> In seeking to explain why taxpayers dislike property taxes so much, particularly as compared to income taxes, Professor Andrew Hayashi argued that taxpayers are likely uncomfortable with the idea of taxing “phantom income”—that is, income that is not accompanied by the receipt of cash.<sup>256</sup> Similarly, Professor Edward Zelinsky argued that perception of taxes on unrealized gains as mere “paper gains” that are not appropriate for taxation explains public opposition to property taxes.<sup>257</sup>

Both Hayashi and Zelinsky documented efforts by voters to limit the reach of property taxes, such as California’s adoption of Proposition 13, a state constitutional amendment limiting the property tax rate to one percent and capping the amount by which property valuations can increase each year.<sup>258</sup> Other states have also enacted laws aimed at property taxes, which

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252. *Id.* at 13.

253. Edward J. McCaffery, *The Paradox of Taxing the Rich*, 26 FLA. TAX REV. 130, 168–69 (2023) (emphasis omitted) (footnote omitted).

254. *Id.* at 168 n.87.

255. See, e.g., Andrew T. Hayashi, *Property Taxes and Their Limits: Evidence from New York City*, 25 STAN. L. & POL’Y REV. 33, 35 (2014) (“The property tax is one of the most hated taxes in the United States.”); Edward A. Zelinsky, *For Realization: Income Taxation, Sectoral Accretionism, and the Virtue of Attainable Virtues*, 19 CARDOZO L. REV. 861, 896 (1997).

256. Hayashi, *supra* note 255, at 36. Hayashi also noted that taxpayers dislike property taxes because they are salient and may be perceived as regressive and/or discriminatory. *Id.* at 35.

257. Zelinsky, *supra* note 255, at 896.

258. Hayashi, *supra* note 255, at 37; Zelinsky, *supra* note 255, at 896; see, e.g., *Proposition 13*, L.A. CNTY. ASSESSOR, <https://assessor.lacounty.gov/real-estate-toolkit/proposition-13> (on file with

generally limit the ability of local governments to increase property taxes based on increases in market value of property before it is sold.<sup>259</sup>

Hayashi argued that unrealized gains may be particularly unappealing when it comes to real estate.<sup>260</sup> This is partly because taxpayers cannot always liquidate a smaller portion of their property interest to fund a tax bill the way they could with a portfolio of publicly traded stocks.<sup>261</sup> Thus, if taxpayers do not have sufficient cash on hand to pay taxes related to their real property, they may be faced with selling the entire property. There appears to be strong public opposition to this idea.<sup>262</sup>

In sum, ample evidence suggests that voters do not like the idea of taxing unrealized gains, despite what their views might be on redistribution or taxing the rich. Even in the case of publicly traded stock, which is easily liquidated, valued, and unlikely to hold sentimental or other important family value, taxpayers overwhelmingly oppose taxation before such stock is sold (or otherwise transferred). Voters are even more reluctant to tax unrealized gains in real estate, expressing strong opposition to the idea of a taxpayer being forced to sell their entire property to fund a tax bill on mere paper gains.

When considering this strong preference *against* taxing unrealized gains, it is easy to see why the idea of taxing family farms is so unappealing to people. Taxing a family farm is, in a sense, the ultimate exercise in taxing paper gain.

### 3. The Debate over Taxing Family Farms Is Consistent with Discomfort over Taxing Unrealized Gains

If voters abhor the idea of taxing paper gains in real estate and potentially forcing a sale, and family farmers represent the archetypal victim of such taxes, then the power and durability of the family farm narrative make sense. Decades of legislative history and public commentary over tax reform bear this out.<sup>263</sup> Virtually all the political rhetoric associated with tax and the family farm centers around taxes forcing farms to be “sold” or preventing the farms from being passed down to future generations (presumably because they were forced to be sold at death).<sup>264</sup> It bears repeating that this emphasis on *losing*

the *Iowa Law Review*) (“In 1978, the California Constitution was amended by the voters to restrict increases of property taxes. Proposition 13 requires assessment of each taxable property based on its fair market value and limits a property owner’s general levy tax to [one] percent of the assessed value. . . . In order to provide property owners with protection against strong fluctuations, Proposition 13 mandated that a property’s assessed value could not increase by more than [two] percent from one year to the next . . .”).

259. Zelinsky, *supra* note 255, at 897 (“[O]verall these legislative retreats from property taxation based on current market values confirm the view that much of the taxpaying public rejects the taxation of unrealized appreciation.”); Hayashi, *supra* note 255, at 37 (“As of 2008, eighteen states had limits that applied to individual property assessments.”).

260. See Hayashi, *supra* note 255, at 36 (“The phantom income issue is more complex in the case of the property tax.”).

261. *Id.*

262. *Id.*

263. See *supra* Sections I.A, II.A.

264. See *supra* Section I.A.

farms to taxation (rather than simply subjecting farmers to tax) is a unique consequence of imposing taxes on unrealized gains.

For example, recall that during the debates over repealing the estate tax in the 1990s and early 2000s, an interest group published *Death Tax Devastation: Horror Stories from Middle-Class America*, documenting “family farm horror stories” about specific farms that would potentially have to be sold if subject to the estate tax.<sup>265</sup> In response to a more recent proposal to repeal the step-up in basis at death, Senator John Thune warned that the rule could force farmers to have to “sell off” their land and devastate rural America.<sup>266</sup> And as recently as March 2023, Chairman of the Ways and Means Committee Jason Smith opened a “hearing on the State of the American Economy: The Heartland” with these remarks: “President Biden, in his [b]udget this week will want to make it even harder to pass the family farm down to the next generation. He wants to repeal stepped-up basis and increase the death tax - treating family farms like piggy banks to pay for more welfare for the wealthy.”<sup>267</sup>

Of course, the use of the family farm here also surely reflects lobbying efforts. That interest groups who are opposed to new and/or higher taxes have come up with an effective political tool to stir up voter outrage is nothing new. But it’s not the use of the family farm by these interest groups and politicians that’s so illuminating; it’s the question of *why* the family farm is so effective at rallying voters. After all, only a tiny fraction of the U.S. population owns farms. Yet evoking the family farm appears to effectively unify voters against certain tax policies—namely, those that would tax unrealized gains—even when those policies are unlikely to apply to most voters.

Thus, understanding the appeal of the family farm underscores an important lesson for policymakers, discussed more in Section C of this Part: Voters are averse to taxes on unrealized gains, and they particularly oppose taxes that could theoretically apply to real estate before it is sold. Regardless of political affiliation and regardless of views on taxing the rich, most of the American public appears to view taxing unrealized gains as bad policy.

Although farmers aren’t the only type of taxpayer who could be harmed by such taxes, they have proven to be a particularly persuasive image. The next Section explores why, given our collective disdain for taxes on unrealized gains, the “family farm” is so particularly compelling.

#### B. THE ENDURING POWER OF THE “FAMILY FARM”

Although empirical evidence suggests that most people do not support taxes on unrealized gains, Part II showed that recent tax reform proposals like wealth taxes and repealing the step-up in basis at death go out of their way to

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265. See *supra* note 48 and accompanying text.

266. See *supra* notes 179–81 and accompanying text.

267. Chairman Smith: *Congress Must Listen to Working Americans Living Under Biden’s Failed Policies so We Can Chart a Better Course*, U.S. HOUSE COMM. ON WAYS & MEANS (Mar. 7, 2023), <https://waysandmeans.house.gov/chairman-smith-congress-must-listen-to-working-americans-living-under-bidens-failed-policies-so-we-can-chart-a-better-course> [https://perma.cc/LH9V-43BQ].

exempt family farms. In other words, even if Congress enacted a new tax on unrealized gains, family farms would not be impacted. So why does the myth of family farm, or more specifically, the myth that the family farm will be lost due to taxes, persist?

As discussed below, social science research indicates that personal narratives are more compelling than facts and that identifiable, iconic victims are particularly persuasive to voters. The family farmer, who might lose his farm to taxes, encompasses all of these features. The background facts, such as that most farmers have above-average income and wealth and that farms are at virtually no risk of being sold due to taxes, simply do not matter.

### 1. Facts Don't Win Arguments (but Personal Narratives Do)

One of the defining features of humans, one which has contributed to the survival of the species, is our ability to tell and pass on stories.<sup>268</sup> As noted historian Yuval Noah Harari observed, “Humans think in stories rather than in facts, numbers, or equations, and the simpler the story, the better.”<sup>269</sup>

Social science research offers interesting insight into this propensity to think in terms of stories. For example, although people say they value arguments based on facts, evidence shows that personal anecdotes are far more persuasive.<sup>270</sup> Research also indicates that people tend to hold firm to their moral and political beliefs, viewing “facts” as subjective or easily manipulated and thus not determinative.<sup>271</sup> On the other hand, hearing someone’s firsthand experience may “have an aura of unimpeachability.”<sup>272</sup>

The idea that people do not tend to update their opinions or beliefs when presented with contrary factual evidence is well-documented.<sup>273</sup> Behavioral phenomena like confirmation bias lead us to selectively pay attention to facts that support our views while ignoring or discounting facts that oppose our

268. YUVAL NOAH HARARI, *SAPIENS: A BRIEF HISTORY OF HUMANKIND* 32–36 (2015).

269. YUVAL NOAH HARARI, 21 LESSONS FOR THE 21ST CENTURY 3 (2018).

270. See Emily Kubin, Curtis Puryear, Chelsea Schein & Kurt Gray, *Personal Experiences Bridge Moral and Political Divides Better than Facts*, PROC. NAT’L ACAD. SCI. 1–2 (Jan. 25, 2021), <https://www.pnas.org/doi/10.1073/pnas.2008389118> [<https://perma.cc/R5FP-3XC5>] (showing fifty-six percent of people said they would respect another person’s opinion if it was based on facts compared to twenty-one percent who said they would respect another’s opinion based on personal experiences; yet also showing that people respected personal narratives more than facts when presented with actual policy issues); see also Benjamin F. Scheve, Xiuyuan Zhang & Frank C. Keil, *Willingness to Interact Increases When Opponents Offer Specific Evidence*, 44 PROC. ANN. MEETING COGNITIVE SCI. SOC’Y 1526, 1526 (2022) (“Paradoxically, people are more persuaded by evidence of individual experiences rather than collective experiences.”).

271. See, e.g., Kubin et al., *supra* note 270, at 5 (“Facts may technically be ‘objective,’ but in the modern world, someone can always counter one fact with another, making facts easily doubted.”).

272. *Id.* at 2.

273. Brendan Nyhan & Jason Reifler, *When Corrections Fail: The Persistence of Political Misperceptions*, 32 POL. BEHAV. 303, 304 (2010) (“[C]itizens are likely to resist or reject arguments and evidence contradicting their opinions—a view that is consistent with a wide array of research.”).

views.<sup>274</sup> Indeed, psychologists suggest that it is an understandable, evolutionary tendency that we prefer a coherent narrative to having to constantly question and update our beliefs.<sup>275</sup> Some studies have even shown a “backfire effect,” where subjects presented with facts that counter their beliefs only strengthen their misperceptions, rather than updating their beliefs.<sup>276</sup>

People do appear to respect opposing views when those views are grounded in personal experience, however. For example, several studies have presented participants with vignettes where a hypothetical person takes a stance on certain political issues, including taxes, that was different than the participant’s own view.<sup>277</sup> In some conditions, the hypothetical person based their view on facts learned through research, whereas in other conditions, the person based their view on a specific personal experience.<sup>278</sup> A vignette about taxes compared a woman who “supports reducing taxes for businesses based on facts learned by reading extensively about taxes” with a woman who “supports reduced taxes for businesses because she . . . is facing bankruptcy due to recent tax increases to her business.”<sup>279</sup> In this and multiple similar studies (involving issues like gun control and coal regulation), participants rated people with opposing views to be more rational and worthy of respect when those views were based on personal experience, rather than facts.<sup>280</sup>

Other studies have found that hearing personal narratives exchanged through casual conversation is effective at changing people’s views, even on particularly contentious topics.<sup>281</sup> For example, a field study of door-to-door canvassers in Florida found that the strategy of soliciting personal stories

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274. See, e.g., Leigh Osofsky & Kathleen DeLaney Thomas, *Implicit Legislative Bias: The Case of the Mortgage Interest Deduction*, 56 U.C. DAVIS L. REV. 641, 690–93 (2022) (describing research on confirmation bias and discussing how it impacts our beliefs).

275. *Id.*; see also Kubin et al., *supra* note 270, at 2 (“[E]volutionary accounts argue that our minds have evolved to process personal narratives and be persuaded by stories. This may be especially true in morality and politics.” (footnotes omitted)).

276. See Nyhan & Reifler, *supra* note 273, at 323 (“The backfire effects that we found seem to provide further support for the growing literature showing that citizens engage in ‘motivated reasoning.’ While our experiments focused on assessing the effectiveness of corrections, the results show that direct factual contradictions can actually *strengthen* ideologically grounded factual beliefs . . .”).

277. Kubin et al., *supra* note 270, at 2–3 (describing the findings from their studies that are available in full by clicking on “SI Appendix” in the article); Scheve et al., *supra* note 270, at 1527–28 (replicating the study done by Kubin et al.).

278. Kubin et al., *supra* note 270, at 2–4; Scheve et al., *supra* note 270, at 1527.

279. Scheve et al., *supra* note 270, at 1527.

280. Kubin et al., *supra* note 270, at 2–4; Scheve et al., *supra* note 270, at 1527–28.

281. See, e.g., Joshua L. Kalla & David E. Broockman, *Reducing Exclusionary Attitudes Through Interpersonal Conversation: Evidence from Three Field Experiments*, 114 AM. POL. SCI. REV. 410, 422 (2020) (“Our results—which focus on two highly stigmatized groups and divisive political issues—indicate that individuals and organizations can durably reduce exclusionary attitudes in these interpersonal conversations by non-judgmentally exchanging narratives.”).

(rather than presenting abstract facts) was “broadly successful at increasing acceptance of transgender people.”<sup>282</sup>

Journalist David McRaney documented this tendency to prefer personal narratives over facts in his book, *How Minds Change*, in which he interviewed former 9/11 conspiracy theorist Charlie Veitch to find out why he had a change of heart.<sup>283</sup> McRaney chronicled how little being presented with facts motivates people to change their views.<sup>284</sup> Instead, he found people’s beliefs reflect their need to maintain a sense of tribal identity.<sup>285</sup> As for Veitch, who took part in a documentary aimed at presenting conspiracy theorists with evidence that would challenge their beliefs, it was hearing a personal account from family members of two victims that appeared to have the biggest impact on him changing his mind.<sup>286</sup>

This social science research suggests that efforts by policymakers to specifically carve family farms out of tax proposals are unlikely to have much impact on voter attitudes about the proposals. Nor is it likely to matter that, even without specific carveouts for farms, the impact on farmers from taxes like the estate tax or wealth taxes would be minimal. This indifference to the facts appears to be reflected in statements by politicians that continue to evoke the image of farms being lost to proposed tax reforms that *clearly* exempt farms.<sup>287</sup> Although the politicians likely know better, they appear to be counting on the fact that their constituents don’t.<sup>288</sup>

This research on the power of narratives over facts also sheds light on why people are so concerned about farmers losing their farms to taxes, even when there are no actual statistics indicating this to be the case. For example, in 2021, a political group called Building America’s Future ran an ad featuring a cattle rancher from Montana walking around his property in a cowboy hat and boots, telling the camera: “This ranch has been in our family for four generations, and I want to pass it down to my children. But Joe Biden’s tax increases will make that impossible.”<sup>289</sup> The ad was aimed at the Biden Administration’s tax plan, which, as discussed above, went out of its way to

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282. David Broockman & Joshua Kalla, *Durably Reducing Transphobia: A Field Experiment on Door-to-Door Canvassing*, 352 SCI. 220, 221, 223 (2016) (“Canvassers first asked each voter to talk about a time when they themselves were judged negatively for being different. The canvassers then encouraged voters to see how their own experience offered a window into transgender people’s experiences, hoping to facilitate voters’ ability to take transgender people’s perspectives.”).

283. DAVID MCRANEY, *HOW MINDS CHANGE: THE SURPRISING SCIENCE OF BELIEF, OPINION, AND PERSUASION* 1–13, 173–81 (2022).

284. *Id.* at 10–13, 159–64.

285. *Id.* at 164–81.

286. *Id.* at 6, 180–81.

287. *See supra* Section II.B.

288. *See supra* Section II.B.

289. *See* Building America’s Future, *Sen. Tester – Oppose Biden’s Tax Hikes*, YOUTUBE, <https://www.youtube.com/watch?v=Q46dy6kV5IU> [<https://perma.cc/T746-ZWR5>].

exempt farms from new tax proposals like repealing section 1014.<sup>290</sup> But consider how much more salient and identifiable this story of an actual farmer is compared to proposed statutory language carving out farms that is summarized on a White House fact sheet.<sup>291</sup>

The estate tax saga documented by Graetz and Shapiro is also a compelling case study of the power of personal narrative.<sup>292</sup> Graetz and Shapiro rightly observed that while estate tax supporters were trying to convince people that they were statistically unlikely to pay the estate tax, opponents identified actual farmers with personal stories that were much more effective.<sup>293</sup>

## 2. Identifiable and Iconic Victims<sup>294</sup>

Not only do personal narratives influence our perceptions more strongly than abstract facts, but the type of personal narrative also matters. Specifically, people are more influenced by stories about harm to a specific, identifiable person as compared to learning statistics about groups.<sup>295</sup> For example, one study found participants were more likely to change their views on welfare when they read a detailed description of a single welfare recipient, as compared to reading only statistical information about people who receive welfare.<sup>296</sup>

Scholars have also noted an “identifiable victim effect”: When presented with a description of a specific victim, as opposed to a potential victim, people are more likely to give gifts or make charitable contributions to help the victim.<sup>297</sup> For example, it is more effective to solicit donations to “*Save the Children*” with a picture and description of a specific child than with statistical information about child poverty in Africa.<sup>298</sup> Similarly, this identifiable victim effect may explain why the public contributed massive amounts of money (amounting to

290. See Robert Farley, *GOP Group’s Ad Spins Biden Tax Plan on Family Farms*, FACTCHECK.ORG (Oct. 14, 2021), <https://www.factcheck.org/2021/10/gop-groups-ad-spins-biden-tax-plan-on-family-farms> [https://perma.cc/E298-5S9K].

291. See Press Release, White House, *supra* note 175 (“The reform will be designed with protections so that family-owned businesses and farms will not have to pay taxes when given to heirs who continue to run the business.”).

292. See *supra* notes 41–47 and accompanying text.

293. See *supra* notes 41–47 and accompanying text.

294. See George Loewenstein, Deborah A. Small & Jeff Strnad, *Statistical, Identifiable, and Iconic Victims*, in *BEHAVIORAL PUBLIC FINANCE* 32, 32–46 (Edward J. McCaffery & Joel Slemrod eds., 2006) (discussing the effect that identifiable victims have on the public).

295. Kubin et al., *supra* note 270, at 3 (“Harm-based personal experiences may be especially powerful in fostering respect because, as Darwin long ago recognized, it is rational for any organism to avoid harm.”).

296. Ruth Hamill, Timothy DeCamp Wilson & Richard E. Nisbett, *Insensitivity to Sample Bias: Generalizing from Atypical Cases*, 39 *J. PERSONALITY & SOC. PSYCH.* 578, 579–82 (1980).

297. Loewenstein et al., *supra* note 294, at 33–35 (describing multiple studies on the identifiable victim effect).

298. *Id.* at 37; Deborah A. Small, George Loewenstein & Paul Slovic, *Sympathy and Callousness: The Impact of Deliberative Thought on Donations to Identifiable and Statistical Victims*, 102 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 143, 145–47 (2007).

a \$700,000 trust fund) when Jessica McClure—widely known as “Baby Jessica” at the time—fell down a well in Texas.<sup>299</sup>

Here again, the family farmer emerged as the perfect identifiable and iconic victim of unfair taxes.<sup>300</sup> In contrast, arguments in support of higher taxes tend to invoke references to statistical groups, something that has proven to be ineffective at swaying opinion. Consider, for example, Elizabeth Warren’s proposal for an “Ultra Millionaire’s Tax,” which stated:

[T]he richest top 0.1% has seen its share of American wealth nearly triple from 7% to 20% between the late 1970s and 2016, while the bottom 90% has seen its share of wealth decline from 35% to 25% in that same period. Put another way, the richest 130,000 families in America now hold nearly as much wealth as the bottom 117 million families combined.<sup>301</sup>

On the other hand, the Montana rancher in the ad described above has a name, a farm that we can see, and is telling us he is worried he is going to have to sell his farm—the farm that has been in his family for generations.<sup>302</sup> The power of hearing about this potential harm from a highly regarded, easily identifiable person, who also symbolizes broader American values like hard work and honesty, cannot be understated. Whether, statistically speaking, such a farmer is ever going to have to sell his farm if Biden’s tax proposals were enacted is beside the point.

### C. WHERE DO WE GO FROM HERE?

The family farm is at virtually no risk of being taxed out of existence. Yet, social science research indicates that trying to use data to convince voters otherwise is a futile task. What does this mean for tax reform advocates who wish to narrow the wealth gap and reduce inequality? This last Section offers some tentative lessons learned from the myth of the family farm.

#### 1. Realistic Tax Reform

Perhaps the most important, yet potentially discouraging, lesson from exploring the myth of the family farm is that taxing unrealized gain (and/or wealth) may not be viable. In one sense, this is unsurprising. Progressives

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299. Loewenstein et al., *supra* note 294, at 34. Loewenstein and his coauthors argue this effect can lead to an inefficient allocation of resources to the identifiable victim at the expense of statistical victims, noting, “It is hard to come up with any coherent theory of allocation that would support Baby Jessica receiving \$700,000 upon reaching adulthood when [sixteen] percent of American children continue to live in poverty . . . .” *Id.* at 36; *see also* Small et al., *supra* note 298, at 150 (“Certain victims trigger a disproportionate level of sympathy.”).

300. *See* Loewenstein et al., *supra* note 294, at 40 (“The specter of individual small business owners or farmers being forced to sell out what their parents built up solely to pay estate taxes created a politically compelling victim scenario entirely separate from the political power of these groups as such.”).

301. *Ultra-Millionaire Tax*, *supra* note 204 (emphasis omitted).

302. *See supra* note 289 and accompanying text.

tend to support higher taxes and more redistribution; conservatives tend to support lower taxes and less redistribution. Tax reform is frequently subject to congressional gridlock, and meaningful tax law changes are few and far between.<sup>303</sup> So, with or without the family farm, major reform like a wealth tax would seem to be a longshot.

However, tax scholars have written exhaustively, particularly in the past ten years, on the mechanics of how to tax unrealized gains.<sup>304</sup> The literature ranges from abstract overviews of mark-to-market and wealth taxes with arguments in support of such proposals, to much more detailed and granular proposals that would overcome what appear to be the major practical obstacles to such reforms.<sup>305</sup> A common theme in much of the literature is that taxes on unrealized gains are not only necessary for both revenue and distributional purposes, but also that such proposals are viable *because of the overwhelming support by voters for higher taxes on the wealthy*.<sup>306</sup>

This Article does not dispute the revenue and distributional reasons for taxing unrealized gains. But the vital lesson to be learned from exploring the myth of the family farm is that it suggests that convincing voters to tax unrealized gains may simply be a losing battle, even with the most well-thought-out exemptions and carveouts. In other words, the family farm offers perhaps the most compelling, real-world illustration of what the survey by Liscow and Fox uncovered: People simply do not like the idea of taxing paper gains.<sup>307</sup> And this is not just a matter of politics. If even progressive-identified voters are worried about taxing gains on unsold property, then wealth taxes, mark-to-market taxes, and similar proposals are unlikely to gain real political traction. To date, this intractability has proven true.

Where does that leave tax reform advocates looking to reduce income and wealth inequality? Particularly since polling data does indicate broad support for higher taxes on the rich? Policymakers interested in realistic reforms to reduce wealth and income inequality may be wise to focus their efforts on reforms that do not invoke the specter of farms (and other assets) being lost to unfair taxes on paper gains. This may mean focusing on taxes that don't tax *any unrealized gain*, even on something like marketable securities,

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303. For example, the 2017 Tax Cuts and Jobs Act was the first major tax reform bill passed in over thirty years. See *Everything You Need to Know About the Tax Cuts and Jobs Act*, TAX FOUND., <https://taxfoundation.org/tax-reform-explained-tax-cuts-and-jobs-act> [https://perma.cc/8WJ6-GUG4].

304. For work that summarizes alternative proposals to taxing unrealized gains, see generally Daniel Hemel, *Taxing Wealth in an Uncertain World*, 72 NAT'L TAX J. 755 (2019) (comparing a wealth tax, a mark-to-market tax, and a retrospective capital gains tax); Ari Glogower, *Taxing Capital Appreciation*, 70 TAX L. REV. 111 (2016) (discussing mark-to-market, formulaic, and mixed approaches to accrual taxation).

305. See *supra* notes 204–12 and accompanying text.

306. See, e.g., Saez & Zucman, *supra* note 204, at 438 (“There is a renewed political demand to use progressive taxation to curb the rise of inequality and raise revenue. A wealth tax is a potentially more powerful tool than income, estate, or corporate taxes to address the issue of wealth concentration as it goes after the stock rather than the flow.”).

307. See *supra* notes 239–46 and accompanying text.

since: (1) voters appear to dislike taxing paper gains even for publicly traded stock; and (2) politicians (and likely voters) appear to pay little attention to carveouts for farms from broader tax rules.

Specifically, the most viable candidates for meaningful tax reform are: (1) replacing the step-up in basis at death with a carryover basis rule (rather than a realization rule); (2) raising income tax rates; and (3) taxing more income of the very wealthy. Concededly, these measures are unsatisfying in that taxes on income alone will not raise as much revenue as taxes on unrealized gains and/or wealth and will make a smaller dent in reducing inequality. Again, this Article does not suggest that these more modest measures are more desirable in a vacuum. Rather, it offers a road map for tax reform that is most viable given the lessons from the myth of the family farm.

*i. Carryover Basis at Death*

Section II.B detailed the debate over repealing section 1014 of the Code (the step-up in basis at death), which disproportionately favors wealthy taxpayers and costs an estimated \$60 billion in lost revenue each year.<sup>308</sup> Recall that, in response to proposals to replace section 1014 with a rule that would treat death as a realization event (i.e., as if a taxable sale happened), opponents were quick to point out the devastating toll this change would have on family farms.<sup>309</sup>

As I (along with coauthors) have argued in earlier work, there is a more modest, yet more viable, alternative to treating death as a taxable realization event: a carryover basis rule.<sup>310</sup> Specifically, the step-up in basis at death rule could be replaced with a rule that treats property transferred at death the same as property transferred by inter vivos gift.<sup>311</sup> Under such a rule, an heir who acquires property from a decedent would have the same basis that the decedent had. (In other words, the heir would “carry over” the decedent’s basis.<sup>312</sup>)

For example, if person A bought land for \$100,000 and died when the land was worth \$500,000, then person B, who inherits the land, would also have a basis of \$100,000 in the land. The \$400,000 of unrealized gain would not be forgiven at death, as is the case under section 1014. Rather, the unrealized gain would be recognized and taxed if and when person B (the heir) sells the property. If person B inherits the property but doesn’t want to hold on to it, she could then sell it for \$500,000. At that time, her gain would be the amount realized on the sale (\$500,000) less her basis of \$100,000, resulting in \$400,000 of taxable gain.

A carryover basis regime would defer recognition of gain, possibly indefinitely, for taxpayers who plan to keep property in their family. In this

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308. STAFF OF JOINT COMM. ON TAX’N, JCX-22-22, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2022–2026, at 37 tbl.1 (2022) (showing five-year cost estimate for the exclusion of capital gains at death, with a \$59.2 billion estimate for 2023).

309. See *supra* Section II.B.

310. See Schmalbeck et al., *supra* note 131, at 128–48.

311. See 26 U.S.C. § 1015.

312. See Schmalbeck et al., *supra* note 131, at 111.

respect, it would raise less revenue than a deemed realization rule, which would require gain to be recognized at the time of death.<sup>313</sup> But a carryover basis rule would remove the incentive to hold property until death solely to avoid taxes when an heir plans to immediately sell the property.<sup>314</sup> It would also raise revenue compared to section 1014, and in this respect, it is still a vast improvement over the current regime for property transferred at death.<sup>315</sup>

Crucially, an enormous upside of replacing section 1014 with a carryover basis rule is that tax is never imposed until the time a property is sold.<sup>316</sup> In other words, this rule creates no possibility of a tax on paper gains. Instead, it simply reverses the unnecessary feature of the current law where unrealized gains are washed away at death. For this reason, carryover basis is a preferable approach to reforming the step-up-in-basis rule.

Even if political support for a deemed realization rule grows stronger at some point in the future,<sup>317</sup> policymakers should still consider a blanket carryover basis rule for all real estate. In other words, even if stocks and other investment assets are taxed at death, land shouldn't be taxed until it is sold. As we saw in Part I, there is nothing unique about farms in particular (as opposed to other forms of real estate) that merits special protection from the federal income tax. But the social science research confirms what is probably intuitive to most people: Land is different.<sup>318</sup> Land is a limited resource; it cannot be easily and quickly liquidated, and it is far more difficult to sell in small portions to fund tax liability. Land also often holds sentimental value in a way that intangible assets like stocks do not. Rather than trying to carve farms out of a proposal to tax unrealized gains at death, policymakers might be able to send a clearer message and better align themselves with popular opinion if all real estate is exempt from such a proposal.

## ii. Higher Income Tax Rates

Another alternative to taxing wealth and/or unrealized gains, one acknowledged by many commentators, is to raise tax rates on income that is already taxable under our current system. There are several ways to do this. First, as advocated by many scholars and policymakers, Congress could raise the tax rate on capital gains.<sup>319</sup>

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313. See *id.* at 143.

314. See *id.* at 143-47.

315. *Id.*

316. *Id.* at 153.

317. Liscow and Fox's study did indicate support for taxing transfers of publicly-traded stock at death, and it is possible there could be broader public support for repealing section 1014 at least for easily liquidated assets. See *supra* text accompanying note 247; see also Jay A. Soled, James Alm & Kathleen DeLaney Thomas, *Trump and a Populist Tax Agenda?*, 154 TAX NOTES 1131, 1132-33 (2017) (proposing a limited carryover basis regime at death for marketable securities).

318. See *supra* notes 246, 260-62 and accompanying text.

319. See, e.g., Kelley R. Taylor, *Biden Calls for Doubling Capital Gains Tax*, KIPLINGER (Aug. 20, 2024), <https://www.kiplinger.com/taxes/biden-calls-for-doubling-capital-gains-tax-rate> [<https://perma.cc/R2N6-BVCR>].

The debate over increasing tax rates is complex and beyond the scope of this Article. For example, economists argue that raising rates on labor income can disincentivize work.<sup>320</sup> Similarly, scholars argue that raising the capital gains rate too high may exacerbate the so-called “lock-in effect”—that is, the incentive for taxpayers to hold on to assets to avoid tax.<sup>321</sup> Without wading into those tradeoffs, it suffices to say that both ordinary income tax rates and capital gains rates have historically been higher,<sup>322</sup> and there is likely room to increase rates on both to collect more revenue from higher earners.

Less obvious, but equally important here, is the potential to raise tax rates without changing the top marginal income tax rate or even the top capital gains rate.<sup>323</sup> As observed by Professor Jason Oh, the rates at the *bottom* of the marginal income tax rate structure benefit all taxpayers, including those with the highest incomes.<sup>324</sup> This is because a taxpayer’s first dollars of income are taxed at the lowest rate of a marginal structure, and then it moves up through the brackets until only the highest dollars are taxed at the top marginal rate. As of 2024, marginal rates range from ten percent at the bottom to a top rate of thirty-seven percent.<sup>325</sup> But it is not only low-income taxpayers that pay tax at a ten percent rate.<sup>326</sup> Instead, the first \$22,000 of a millionaire’s income is also taxed at ten percent, the next approximately \$67,000 is taxed at twelve percent, and so on.<sup>327</sup> Only earnings over about \$694,000 (for a married couple) are taxed at the top rate of thirty-seven percent.<sup>328</sup>

Although this is how our income tax rates are currently structured, this is simply a policy choice. We could instead have a system where income over a certain threshold is not eligible for the lowest tax rates. For example, a person earning \$1 million could be subject to a rate structure of only twenty-four, thirty-two, thirty-five, and thirty-seven percent, eliminating the ten, twelve, and twenty-two percent brackets. Such a tax would be more progressive in that higher-

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320. Jason S. Oh, *Are Progressive Tax Rates Progressive Policy?*, 92 N.Y.U. L. Rev. 1909, 1911–12 (2017) (discussing literature on the efficiency tradeoff of raising tax rates).

321. See generally Charles C. Holt & John P. Shelton, *The Lock-In Effect of the Capital Gains Tax*, 15 NAT’L TAX J. 337, 350–52 (1962) (discussing investor behavior in response to capital gains tax).

322. See, e.g., *Taxing the Wealthy: A Historian’s Perspective*, NPR (Sept. 13, 2010, 3:00 PM), <https://www.npr.org/templates/story/story.php?storyId=129838013> [<https://perma.cc/F5ZX-PJXE>].

323. Oh, *supra* note 320, at 1915 (“In fact, raising rates at the bottom may actually result in a more progressive fiscal system.”).

324. *Id.* at 1912 (“The rich and the middle class benefit from reductions to tax rates at the *bottom* of the rate schedule. These tax cuts predominantly inure to their benefit.”).

325. Alex Durante, *2023 Tax Brackets*, TAX FOUND. (Oct. 18, 2022), <https://taxfoundation.org/2023-tax-brackets> [<https://perma.cc/QF3T-WREV>]; *Federal Income Tax Rates and Brackets*, IRS (Oct. 16, 2024), <https://www.irs.gov/filing/federal-income-tax-rates-and-brackets> [<https://perma.cc/gZJE-NXYP>].

326. Durante, *supra* note 325.

327. *Id.* (for a married person filing jointly).

328. *Id.*

income people would pay more tax (and thus have higher average tax rates), yet it would not present the efficiency cost of exceedingly high marginal rates.<sup>329</sup>

*iii. Income Taxes Based on Wealth*

Finally, policymakers should explore other alternatives that would tax people according to wealth but within the confines of the income tax. Again, the key here would be to tax only *realized* income but to do so in a manner that results in more tax being collected from wealthier people. There are several ways to do this, although this approach has received relatively little attention in the literature to date.<sup>330</sup>

First, income taxes themselves could be adjusted based on wealth. For example, we could have a tax rate structure where one's marginal tax rate on income was higher depending on how much wealth one had. Second, taxpayers with a certain level of wealth could lose access to certain deductions, exemptions, and other tax preferences. Consider, for example, a tax regime where individuals with a certain level of wealth would not have the ability to invest in a tax-favored account like a 401(k), or to exempt their employer-provided health insurance from income, or to exclude the sale of their home from tax.

These reforms could be administered by simply adding a question to Form 1040 (Individual Tax Return) that asks a short question like: "Do you own assets (including real estate, stocks, and other securities) worth over \$5 million?" If the taxpayer checks "yes," they would be taxed on certain forms of income that are exempt under current law (for example, earnings on 401(k) accounts or gain from the sale of a home) and/or subject to a different rate schedule.<sup>331</sup>

Again, these measures are unlikely to raise the amount of revenue that a comprehensive, annual wealth tax would. But policymakers could do much more to ensure wealthy taxpayers pay more tax and have less opportunity to avail themselves of tax benefits that are hard to justify.

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329. The idea here is that rational economic actors make decisions about whether to earn an additional dollar of income (for example, by working more) based on their *top* marginal rate since any additional dollars are taxed at that rate. So, a millionaire might choose not to earn more money if her highest tax bracket is eighty percent. But this economic decision should not be distorted by a change in the lowest bracket at which she pays tax.

330. An exception is work by Professor Ari Glogower, which proposed a "wealth annuity" to be added to the income tax base of taxpayers each year. Ari Glogower, *Taxing Inequality*, 93 N.Y.U. L. REV. 1421, 1430–31 (2018). In his article, Glogower observed that a basic assumption of policymakers is that income and wealth must be taxed separately under separate rate schedules, and his proposal for a wealth annuity "introduce[d] a new base for progressive taxation, which is neither an income tax nor a wealth tax[,] but a combined measure derived from both." *Id.* at 1431.

331. It is worth noting that Professor Glogower has also proposed a "deferred tax accounting" approach to unrealized gains. *See* Glogower, *supra* note 304, at 114. Under this approach, taxpayers would not be taxed until realization (avoiding the many problems with taxing paper gains), but they would also be subject to a "deferral charge." *Id.* The deferral charge works like interest to compensate for the deferral advantage of avoiding tax before realization. *Id.* Although not specifically triggered at a certain level of wealth, Glogower's proposed deferral charge would similarly seek to capture benefits that inure to wealthy taxpayers while preserving the realization rule. *Id.*

## 2. Harnessing the Power of Narrative

Aside from the specific tax reforms discussed in the preceding Section, is there a broader lesson about narratives for advocates of a more progressive tax system? Can these reform advocates find their own “poster child” to rally support the way that tax opponents have so successfully used the family farm narrative?

Consider first whether such a symbolic figure should simply be an identifiable and iconic wealthy person. The media has certainly relied on this approach; for example, Jeff Bezos appears to have become a poster child for the idea that people can become incredibly wealthy and pay very little in tax due to amassing unrealized stock gains.<sup>332</sup> But this message has not appeared to result in any meaningful tax reform measures.

A recent empirical study suggests that, perhaps counterintuitively, specific identification of wealthy people does *not* increase support for more taxes on the wealthy.<sup>333</sup> Researchers surveyed hundreds of participants and found that those presented with a description of a specific wealthy person were less troubled by wealth inequality and less supportive of redistributive policies (like wealth and inheritance taxes) compared to those who were presented with more general information about wealthy people.<sup>334</sup> The authors observed:

When people read or hear about an individual who has struck it rich, they tend to think that the riches are deserved, and so they aren't as troubled by them. Thus, when it comes to depicting the problem of economic inequality, the general rule of leading with a personalized story may backfire. It appears that it is generally more effective to focus on wealthy people in general, whose wealth tends to be seen as less deserved.<sup>335</sup>

The lesson, then, may be that the identifiable and iconic person only works in one direction—that of the victim and not the villain—when it comes to taxing the wealthy.

Yet, tax reform advocates shouldn't abandon the idea of narrative altogether. Instead, policymakers might focus on an identifiable victim of their own. For example, in advocating for a wealth tax or similar reform, rather than citing statistics on income inequality, a more effective strategy might be focusing on harm to a specific and sympathetic group.

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332. See, e.g., Eisinger et al., *supra* note 205 (“In 2007, Jeff Bezos, then a multibillionaire and now the world’s richest man, did not pay a penny in federal income taxes. He achieved the feat again in 2011.”); Saez & Zucman, *supra* note 10 (“As a group, and although their individual situations are not all the same, the Trumps, the Bezoses and the Buffetts of this world pay lower tax rates than teachers and secretaries do.”).

333. Jesse Walker, Stephanie J. Tepper & Thomas Gilovich, *People Are More Tolerant of Inequality when It Is Expressed in Terms of Individuals Rather than Groups at the Top*, PROC. NAT'L ACAD. SCIS. 1 (Oct. 18, 2021), <https://www.pnas.org/doi/epdf/10.1073/pnas.2100430118> [<https://perma.cc/J396-77BD>].

334. *Id.* at 6–7.

335. *Id.* at 7.

But who is harmed by not having more taxes on the wealthy? Virtually anyone who benefits through redistribution is harmed, be it directly through the tax system (e.g., by claiming the Earned Income Tax Credit) or less directly through government subsidies (e.g., Medicaid or food stamps). Even more broadly, all taxpayers pay higher income taxes to fund the government as a result of not taxing unrealized gains.

But this doesn't mean reform advocates can't pick their hero the same way tax opponents have chosen the family farmer. One possibility would be to focus on recent rollbacks of the Child Tax Credit. Temporarily, during COVID, Congress greatly expanded the amount of refundable credit that could be claimed for children and allowed the credit to be delivered through monthly checks instead of in a lump sum at the end of the year.<sup>336</sup> The effect was significant: The Census Bureau reported the lowest rate of child poverty on record in the United States.<sup>337</sup> Yet the expanded version of the Child Tax Credit was allowed to expire at the end of 2021, which many commentators lamented.<sup>338</sup>

The link between higher taxes on the wealthy and particular programs is, of course, somewhat arbitrary. With a few exceptions, tax dollars cannot be specifically traced to particular spending programs.<sup>339</sup> But linking a particular tax reform proposal to a program it could fund to prevent harm to an identifiable and iconic victim may be the most effective way to garner support. A story of a specific child living in poverty who could benefit from an increased child credit would be in line with the social science suggesting that narratives about actual people are the most persuasive.<sup>340</sup>

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336. See BRADLEY L. HARDY, SOPHIE M. COLLYER & CHRISTOPHER T. WIMER, BROOKINGS INST., THE ANTIPOVERTY EFFECTS OF THE EXPANDED CHILD TAX CREDIT ACROSS STATES: WHERE WERE THE HISTORIC REDUCTIONS FELT? 1 (2023), [https://www.brookings.edu/wp-content/uploads/2023/02/20230301\\_ES\\_THP\\_CTcByState.pdf](https://www.brookings.edu/wp-content/uploads/2023/02/20230301_ES_THP_CTcByState.pdf) [<https://perma.cc/3NBS-FGB7>].

337. *Id.* (discussing historic reduction in child poverty due to credit and noting that the most dramatic reductions were for Black and Hispanic children).

338. See, e.g., Dylan Matthews, *Who Killed the Expanded Child Tax Credit?*, VOX (Apr. 18, 2022, 7:30 AM), <https://www.vox.com/future-perfect/2022/4/18/23026908/child-tax-credit-joe-manchin-policy-feedback-partisan> [<https://perma.cc/9FSL-7K34>] (“[E]ven if you think the credit mildly disincentivizes work, it *still* substantially reduces poverty.”).

339. Although most taxes are not traced to specific spending programs, there are exceptions, such as payroll taxes funding Social Security and gas taxes funding the Highway Trust Fund. See, e.g., *How Is Social Security Financed?*, U.S. SOC. SEC. ADMIN., <https://www.ssa.gov/news/press/fact-sheets/HowAreSocialSecurity.htm> [<https://perma.cc/8gJS-HLPD>]; *Government Transportation Revenues and Expenditures: Highway Trust Fund*, U.S. DEP'T TRANSP.: BUREAU TRANSP. STAT., <https://data.bts.gov/stories/s/6bdc-i7mh> [<https://perma.cc/KXY9-HWCU>] (containing a section detailing the “Funding Sources for Highway Trust Fund”).

340. See, e.g., Walker et al., *supra* note 333, at 7 (“However, research on the ‘identifiable victim effect,’ whereby people care more about the suffering of a single individual than a group of people, suggests that depictions of life at the bottom of the income ladder may obey different rules. A depiction of an individual person trying to make ends meet by holding down several jobs in the gig economy may be just as impactful, or more so, than summaries . . . .” (footnote omitted)).

## CONCLUSION

The myth of taxing the family farmer out of existence, which emerged nearly fifty years ago, has only become more entrenched in tax policy discourse in recent years. Notwithstanding the lack of empirical evidence that federal taxes harm farmers and notwithstanding that most taxpayers are not members of farm households, the family farm narrative continues to be a persuasive tool in shaping tax reform. This narrative has the potential to stand in the way of tax reforms that could meaningfully address wealth and income inequality.

In exploring the myth of taxing the family farm, this Article offers a case study with broader lessons on the power of narratives to shape the law. This case study, along with insights from the social science literature, suggests that tax reform advocates are fighting a losing battle when they try to counter popular myths with facts and data. At the end of the day, it does not appear to matter that a proposed tax might benefit the majority of the population if voters feel emotionally connected to the image of someone who could be burdened by the tax.

But a final, and important, lesson from the myth of the family farm is that the power of myths—indeed, their evolutionary function—is to unite people.<sup>341</sup> Thus, perhaps the best hope for reducing inequality through the tax system is to find the myth that will best unify the many American voters who say they support higher taxes on the rich.

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341. See Harari, *supra* note 268, at 32–36.